

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT NO. II**

Company Petition (CAA) No. 205/ KB /2023

Connected with

Company Application (CAA) No. 146/KB/2023

A petition under Section 230 read with Section 232 of the Companies Act 2013; read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, and other applicable provisions of law.

IN THE MATTER OF:

A Scheme of Amalgamation of (Final Motion):

EASTERN CREDIT CAPITAL PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having Corporate Identification No. U67120WB1994PTC126499 and its registered office at “Ramkrishna Chambers”, 72, Shakespeare Sarani, Kolkata-700017, West Bengal.

..... Petitioner Company No. 1/ Transferor Company No. 1

And

NORTHEAST INFRAPROPERTIES PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having Corporate Identification No. U70102WB2011PTC157152 and its registered office at “Ramkrishna Chambers”, 72, Shakespeare Sarani, Kolkata-700017, West Bengal.

..... Petitioner Company No. 2/Transferor Company No. 2

And

RIDDHI PORTFOLIO PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having Corporate Identification No. U67120WB1995PTC071066 and its registered office at “Ramkrishna Chambers”, 72, Shakespeare Sarani, Kolkata-700017, West Bengal.

..... Petitioner Company No. 3/Transferee Company
And

IN THE MATTER OF:

1. EASTERN CREDIT CAPITAL PRIVATE LIMITED
2. NORTHEAST INFRA PROPERTIES PRIVATE LIMITED
3. RIDDHI PORTFOLIO PRIVATE LIMITED

..... PETITIONER COMPANIES

Date of pronouncing the order: 18 /04/2024

CORAM:

Smt. Bidisha Banerjee: Hon'ble Member (Judicial)

Shri D. Arvind: Hon'ble Member (Technical)

Ld. Counsels on Record appeared Physically/through Video Conference:

Ms. Neha Somani, Practising Company Secretary - For the Petitioners

Mr. Sudhir Kapoor, Joint Director, Office of the Regional Director (Eastern Region), MCA

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Court is congregated through hybrid mode.
2. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 ("Act") sanctioning the **SCHEME OF AMALGAMATION** of Eastern Credit Capital Private Limited, being the

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Petitioner No.1 above named ("**Transferor Company 1**" or "**Petitioner No.1**" or "**ECCPL**") and **Northeast Infraproperties Private Limited**, being the Petitioner No.2 above named ("**Transferor Company 2**" or "**Petitioner No.2**" or "**NIPL**") with **Riddhi Portfolio Private Limited**, being the Petitioner Company No. 3 abovenamed ("**Transferee Company**" or "**Petitioner No. 3**" or "**RPPL**") whereby and whereunder the Transferor Companies is proposed to be amalgamated with the Transferee Company from the **Appointed Date**, that is **01st April, 2022** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("**Scheme**").

Details of the Petitioner Companies are as follows:

SN	NAME OF THE COMPANY	COMPANY AS PER THE SCHEME	PARTY TYPE	RELEVANT ANNEXURE, PAGE NO. AND VOLUME OF THE COMPANY PETITION
Appointed Date: 01st April, 2022				
I.	EASTERN CREDIT CAPITAL PRIVATE LIMITED	Transferor Company No. 1	Petitioner No. 1	Scheme of Amalgamation is annexed to the Company Petition being Annexure- A in Volume-I at Page No. 45-85.
II.	NORTHEAST INFRAPROPERTIES PRIVATE LIMITED	Transferor Company No. 2	Petitioner No. 2	
III.	RIDDHI PORTFOLIO PRIVATE LIMITED	Transferee Company	Petitioner No. 3	

3. The Petition has now come up for final hearing. The Ld. Authorized Representative for the Petitioners submits as follows: -

(a) The Scheme was approved by the respective Board of Directors of all the Petitioner Companies at their meetings held on **19th November, 2023** respectively.

(b) The circumstances which justify and have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-

1. RPPL, Transferee Company and ECCPL, Transferor Company No. 1 are Non-Deposit taking Non-Banking Financial Companies bearing Registration No. B-05.04058 dated 20.07.2010 and B-05.06803 dated 23.04.2009 respectively.
2. The Applicant Companies have common shareholders and therefore it would be beneficial for the Transferor Companies to merge with the Transferee Company and thus strengthen the position of the merged entity.
3. The amalgamation of the Companies will lead to better administrative control and will be convenient for the management to operate as well.
4. The amalgamation will result in prevention of cost duplication and the resultant operations would be substantially cost-efficient. Consequently, the Transferee Company will offer a strong financial structure and facilitate resource mobilization and achieve better cash flows. The synergies created by the amalgamation would increase the operational efficiency and integrate business functions.
5. Such consolidation of business into one economic entity shall enable the Transferee Company to effectively manage the funds and also

result in several benefits including streamlined group structure by reducing the number of legal entities, reducing the multiplicity of legal and regulatory compliances, rationalizing costs, it is intended that the Transferor Companies be amalgamated with Transferee Company.

6. The amalgamation will provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage assets, capabilities, experience and infrastructure of the companies. The amalgamation will also reduce the managerial overlaps involved in operating different entities, ease and increase operational and management efficiency, integrate business functions.
 7. Greater efficiency in cash management of the Transferee Company and unfettered access to cash flow generated by the combined businesses which can be deployed more efficiently to fund organic and inorganic growth opportunities to maximize shareholder value.
- (c) The Statutory Auditor of the Petitioner Company No. 3 i.e. Transferee Company has by their certificate dated 16th March, 2023 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.
- (d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioners.
- (e) The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Mr. Ritesh Kumar Gupta, Registered Valuer.
- (f) The shares of the Petitioner Companies are not listed on any stock exchange.

- (g) By an order dated 5th September, 2023 in Company Application (CAA) No. 146/KB/2023, this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act:
- a. Meetings of the Equity Shareholders of all the Petitioner Companies, Unsecured Creditors of the Petitioner Company No. 1 & 2 and Secured Creditor and Debenture Holder of the Petitioner Company No. 3 are dispensed with under Section 230 (1) read with Section 232 (1) of the Act.*
- b. Meetings of Unsecured Creditors of the Petitioner Company No. 3, being the Transferee Company was directed to be held physically at its registered office on 13.10.2023 at 11:00 AM for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modifications.*
- (h) The aforesaid meeting of the Unsecured Creditors of the Petitioner Company No. 3 was held but the voting could not be done on the said date as the Scrutinizer failed to attend the meeting. The Ld. Authorised Representative mentioned the matter and the Tribunal by its Corrigendum order dated 18th October, 2023 in C.A. (CAA) No. 146/KB/2023, adjourned the meeting to 27th October, 2023 and appointed a new Scrutinizer for the adjourned meeting.
- (i) The Ld. Authorised Representative appearing for the Petitioner submits that the Unsecured Creditors of the Petitioner Company No. 3 have approved the scheme in the adjourned meeting held on 27.10.2023.
- (j) Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated 15.12.2023 the instant petition was admitted by this Tribunal and fixed for hearing on 23.01.2024 upon issuance of notices to the Statutory Authorities and advertisement of date of hearing. In compliance with the said order dated 15.12.2023 the Petitioners have duly served such notices on the Central Government through Regional Director, Eastern Region; Registrar of Companies, West Bengal; and Official Liquidator; Kolkata; Reserve Bank of

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India and Income Tax Department having jurisdiction over the Petitioner Companies by way of hand delivery and Speed post on 8th January, 2024. The notices along with documents were also sent through email to the Authorities on 5th January, 2024 and have also published such advertisement in the “**Business Standard**” and “**Aajkaal**” in their issue dated 08.01.2024. An **affidavit of compliance** in this regard has also been filed by them on 13.01.2024.

S. NO.	REGULATORY AUTHORITIES	DATE OF SERVICE	RELEVANT ANNEXURE OF THE AFFIDAVIT OF SERVICE	RELEVANT PAGE NO. OF THE AFFIDAVIT OF SERVICE
BY HAND DELIVERY OR SPEED POST				
1.	Regional Director (ER) MCA Kolkata	08.01.2024	A	4
2.	Registrar of Companies	08.01.2024	A	6
3.	Official Liquidator	08.01.2024	A	8
4.	Reserve Bank of India	08.01.2024	A	10
5.	Income Tax Authorities	08.01.2024	A	12
THROUGH E-MAIL				
1.	Regional Director (ER) MCA Kolkata	05.01.2024	A	5
2.	Registrar of Companies	05.01.2024	A	7

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3.	Official Liquidator	05.01.2024	A	9
4.	Reserve Bank of India	05.01.2024	A	11
5.	Income Tax Authorities	05.01.2024	A	13
NEWSPAPER PUBLICATION				
1.	Business Standard	08.01.2024	B	14
2.	Aajkaal	08.01.2024	B	15

(i) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners Companies. The Scheme has been made bona fide and is in the interest of all concerned.

4. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“**RD**”), have filed their representations before this Tribunal.

5. The Official Liquidator has filed his report dated 19th January, 2024 and concluded as under:-

9. That the report of Official Liquidator is based upon the documents/reply submitted by the Transferor Companies. Balance Sheet, Memorandum and Article of Association and other documents furnished by the Transferor Companies have not been enclosed with the report as the same are already on records of National Company Law Tribunal.

10. That the Official Liquidator on the basis of information submitted by the Transferor Companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the

provisions of the erstwhile Companies Act, 1956/ the Companies Act, 2013, whichever is applicable.

6. The RD has filed his reply affidavit dated 21.02.2024 (“**RD affidavit**”) which has been dealt with by the Petitioners by their Rejoinder affidavit dated 27.03.2024 (“**Rejoinder**”). The observations of the RD and responses of the Petitioners are summarized as under:-

Paragraph 2(a) of RD Affidavit:

That it is submitted that on the examination of report of the Registrar of Companies, West Bengal it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. Further, all the petitioner companies are updated in filing their Financial Statements and Annual Returns for the financial year 31/03/2023.

Para 3(a) of Rejoinder:

With reference to paragraph 2(a) of the said affidavit, it is submitted that the same is a matter of record and may be considered as such by the Hon’ble Tribunal. The Petitioner Companies have already filed complete set of Financial Statement and Annual Return for the year ended 31st March, 2023.

Para 2(b) of RD Affidavit:

The Appointed Date stated in the Scheme is 1 April 2022. In terms of the Circular no. 09/2019 dated 21.08.2019 of the Ministry of Corporate Affairs, "where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the appointed date is significantly ante dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest" It is not ascertainable from the documents provided by the Applicant

whether the application for the scheme was filed before Hon'ble Tribunal within a year from the said Appointed Date. If the application for the scheme was filed with Hon'ble Tribunal after more than one year from the appointed date, Hon'ble Tribunal may kindly direct the Applicant to bring out the justification for the Appointed Date being more than one year before the date of filing of the Application for the scheme, in accordance with the said Circular.

Para 3(b) of Rejoinder:

With reference to paragraph 2(b) of the said affidavit, it is submitted that the Scheme of Amalgamation was e-filed on the NCLT portal on 30th June, 2023. As on that date, the latest available financial statements were for the Financial Year ended as on 31st March, 2022. The valuation report was prepared considering 1st April, 2022 as the Appointed Date. It was signed on 15th November, 2022, that is, within a year of the Appointed Date, then the Board of Directors of the applicant companies met on 19th November, 2022 and approved the Scheme of Amalgamation and the same was e-filed on the NCLT portal on 30th June, 2023. Further, there was a delay in the receipts of affidavits from shareholders and the creditors; therefore filing of the application got delayed. I state that the decision of merger was taken in the financial year 22-23, considering the latest available audited financial statements as on 31st March 2022. The Valuation report was prepared on 15th November, 2022 based on the latest available audited financial statements for the year 22-23, considering 1st April 2022 as the Appointed Date. Thus, the appointed date i. e., 1st April, 2022 is not ante dated, and is justified for reasons stated above.

Para 2(c) of RD Affidavit:

That it is submitted that the Transferor Company namely Eastern Credit Capital Private Limited and the Transferee Company namely Riddhi Portfolio Private Limited are registered with RBI as NBFC Companies and their Certificate of Registration No. B-05.06803 dated 23/04/2009 and No. B-05.04058 dated

20/07/2010 respectively. However, no NOC' from RBI has been provided yet in the matter of proposed amalgamation.

Para 3(c) of Rejoinder:

*With reference to paragraph 2(c) of the said affidavit, it is submitted that the Transferor Company No. 1 i.e., Eastern Credit Capital Private Limited and the Transferee Company i.e., Riddhi Portfolio Private Limited are registered as NBFC Companies with Reserve Bank of India (RBI) bearing Registration No. B-05.06803 dated 23.04.2009 and B-05.04058 dated 20.07.2010 respectively. In terms of RBI Circular DNBR (PD) CC No. 065/03.10.001/2015 -16 dated July 09, 2015, prior approval of the Reserve Bank of India is required for this Scheme of Amalgamation. Further, both the Companies had already applied to the RBI for their 'NOC' before filing the application with the Hon'ble NCLT, Kolkata Bench, acknowledgments of the same were also made part of the petition as **Annexure N (Page 448-451 of Volume III)**. Several correspondences have been exchanged with RBI in this regard and our application is still under consideration by the RBI. However, it is worth noting that the RBI till date has made no specific objection/observation with respect to the Scheme per-se or to any clause of the Scheme. Further, pursuant to Hon'ble NCLT Order dated 5th September, 2023 and 15th December, 2023 a copy of the Application and Petition have also been served via mail and speed post to RBI. Copies of the acknowledgement of the applications made with Reserve Bank of India for their NOC and the Notice served pursuant to the Hon'ble NCLT Order dated 5th September, 2023 and 15th December, 2023 are annexed hereto and marked as **Annexure A**.*

Para 2(d) of RD Affidavit:

The Petitioner Companies should be directed to provide list/details of Assets, if any, to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme.

Para 3(d) of Rejoinder:

With reference to paragraph 2(d) of the said affidavit, it is submitted that the Schedule of assets shall be provided by the Company after the pronouncement of the order by the Hon'ble National Company Law Tribunal.

Para 2(e) of RD Affidavit:

That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

Para 3(e) of Rejoinder:

With reference to paragraph 2(e) of the said affidavit, I undertake to comply with the provisions of 232(3)(i) of the Companies Act, 2013.

Para 2(f) of RD Affidavit:

That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it

Para 3(f) of Rejoinder:

With reference to paragraph 2(f) of the said affidavit, it is stated that the Transferee Company shall pay the applicable stamp duty, if applicable, on the transfer of immovable properties from the Transferor Companies to it.

Para 2(g) of RD Affidavit:

The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Para 3(g) of Rejoinder:

With reference to Paragraph 2(g) of the said affidavit, it is stated that the Scheme of Amalgamation filed with the Company Application (CAA) No. 146/KB/2023 and the Scheme of Amalgamation filed with the Company Petition No. 205/KB/2023 is one and same and there is no discrepancy.

Para 2(h) of RD Affidavit:

It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 09/10/2023 for their views/observation in the matter. However, no such views/observation in the matter from the Income Tax Department has been received yet. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

Para 3(h) of Rejoinder:

With reference to paragraph 2(h) of the said affidavit, it is submitted that the same is a matter of record and may be considered as such by the Hon'ble Tribunal.

7. Heard submissions made by the Ld. Counsels/Authorised Representatives appearing for the Petitioner. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

- A.** The **SCHEME OF AMALGAMATION** being **Annexure "A"** is hereby sanctioned by this Tribunal from the Appointed Date being **1st April, 2022** and shall be binding on all the Equity Shareholders of the Petitioner Companies and all concerned;
- B.** All the property, rights and powers of the Transferor Companies, including those prescribed in the Schedule of Assets herein, be transferred from the said Appointed Date, without any further act or deed, to the

Transferee Company, and accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013 be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same, as provide in the Scheme;

- C. All the debts, liabilities, duties and obligations of the Transferor Companies to be transferred from the said Appointed Date, without further act or deed to the Transferee Company and the same shall pursuant to Section 232(4) of the Companies Act, 2013 be transferred to and become the debts, liabilities, duties and obligations of Transferee Company;
- D. All the workmen and employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in the Scheme. All the obligations /liabilities of the Transferor Companies with regard to their workmen and employees shall be responsibilities of the Transferee Company;
- E. All proceedings and/or suits and/or appeals now pending by or against the Transferor Companies shall be continued by or against the Transferee Company as provided in the Scheme; and the sanctioning of the scheme by this Tribunal shall not come in the way of any proceedings pending/contemplated against any of the petitioner companies, for which the relevant records shall be preserved by the Transferee Company who is any way responsible for attending to any such proceedings on behalf of the constituent companies;
- F. With effect from the Appointed Date and up to and including the Effective Date, all legal, arbitration, and tax assessment proceedings/ appeals of whatsoever nature by or against the Transferor Companies pending and/or arising on or after the Appointed Date shall be continued and/or enforced by or against the Transferee Company. Any compounding/penalties/

liabilities/ taxes required to be done on behalf of the Transferor Companies for any violation of the Companies Act shall be the responsibility of the Transferee Company. The Transferee Company shall also preserve the necessary records in respect of any such pending proceedings at least till the culmination of such proceedings;

- G. The Transferee Company shall issue and allot shares to the shareholders of the Transferor Companies, the shares in the Transferee Company in accordance with the Scheme;
 - H. Upon the Scheme being effective, the Transferor Companies shall stand dissolved without winding up;
 - I. Leave is granted to the petitioners to file the Schedule of Assets of the Transferor Companies in the form as prescribed in the Schedule to Form No. CAA-7 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 within three weeks from the date of order;
 - J. The Petitioner do each within thirty days of the date of the receipt of the order, cause a certified copy to be delivered to the Registrar of Companies for registration;
 - K. After dissolution of the Transferor Companies, the fee paid by the Transferor Companies on their Authorized Share Capital to be set off against the fee payable by the Transferee Company on its authorised share capital subsequent to the amalgamation;
8. The Petitioners shall supply legible print out of the scheme and schedule of assets in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.
8. Hence, the **Company Petition (CAA) No. 205/KB/2023** connected with **Company Application (CAA) No. 146/KB/2023** is **disposed of** accordingly.

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10. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

D. Arvind

Member (Technical)

Bidisha Banerjee

Member (Judicial)

Signed this, on the 18th day of April, 2024

NKS(LRA)