

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - V

C.A.(CAA)/ 60/ MB /2024

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 read with section 66 and other applicable provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation (**Merger by absorption**) between Ashar Construction Private Limited (**“Transferor Company 1/First Applicant Company”**); Ashar Developers Private Limited (**“Transferor Company 2/Second Applicant Company”**); Toscano Infrastructure Private Limited (**“Transferor Company 3/Third Applicant Company”**); Toscano Infracon Private Limited (**“Transferor Company 4/Fourth Applicant Company”**); Max Motors Private Limited (**“Transferor Company 5/Fifth Applicant Company”**) with Kryshnajay

Developers Private Limited (“**Transferee Company/Sixth Applicant Company**”) and their respective Shareholders (“**Scheme**”)

Ashar Construction Private Limited)

A company incorporated under)

Companies Act, 1956 having its registered)

address at Ground Floor, Ashar IT Park,)

Road no 16Z Waghle Industrial Estate,)

Near Agriculture Bus Stop Thane)

Maharashtra 400604 India)

CIN: U45200MH2007PTC172446

...Transferor Company 1/ First Applicant Company

Ashar Developers Private Limited)

A company incorporated under)

Companies Act, 1956 having its registered)

address at Ashar IT Park, Ground Floor,)

Road No.16Z Wagle Industrial Estate,)

Near Agriculture Bus Stop Thane)

Maharashtra 400604 India)

CIN: U45200MH2007PTC172445

...Transferor Company 2/ Second Applicant Company

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Toscano Infrastructure Private)

Limited)

A company incorporated under)

Companies Act, 1956 having its registered)

address at 11th Floor, Ashar IT Park, Road)

No-16Z, Wagle Industrial Estate,)

Agriculture Bus Stop, Thane Maharashtra)

400604 India

CIN: U45203MH2007PTC173122

...Transferor Company 3/ Third

Applicant Company

Toscano Infracon Private Limited)

A company incorporated under)

Companies Act, 1956 having its registered)

address at 11th Floor, Ashar IT Park, Road)

No-16Z, Wagle Industrial Estate,)

Agriculture Bus Stop, Thane Maharashtra)

400604 India)

CIN: U45201MH2008PTC182328

...Transferor Company 4/ Fourth

Applicant Company

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C.A.(CAA)/ 60/ MB /2024

Max Motors Private Limited)

A company incorporated under)

Companies Act, 1956 having its registered)

address at 11th Floor, Ashar IT Park, Road)

No-16Z, Wagle Industrial Estate,)

Agriculture Bus Stop, Thane Maharashtra)

400604 India)

CIN: U51909MH2004PTC149571

...Transferor Company 5/ Fifth

Applicant Company

Kryshnajay Developers Private)

Limited)

A company incorporated under)

Companies Act, 1956 having its registered)

address at)

11th Floor, Ashar IT Park, Road No-16Z,)

Wagle Industrial Estate, Agriculture Bus)

Stop, Thane Maharashtra 400604 India

CIN: U45400MH2010PTC201992

...Transferee Company/ Sixth

Applicant Company

(The First Applicant Company, Second Applicant Company, Third Applicant Company, Fourth Applicant Company, Fifth Applicant Company and the Sixth Applicant Company shall be collectively referred to as “Applicant Companies”)

Order Dated: 01.05.2024

Coram:

Hon'ble Ms. Madhu Sinha
Member (Technical)

Hon'ble Ms. Reeta Kohli
Member (Judicial)

Appearance (through physical meeting):

For the Applicant Companies : Mr. Hemant Sethi a/w Ms. Devanshi Sethi i/b
Hemant Sethi & Co., Advocates

ORDER

1. The Learned Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Amalgamation (**Merger by Absorption**) between Ashar Construction Private Limited ("**Transferor Company 1/First Applicant Company**"); Ashar Developers Private Limited ("**Transferor Company 2/Second Applicant Company**"); Toscano Infrastructure Private Limited ("**Transferor Company 3/Third Applicant Company**"); Toscano Infracon Private Limited ("**Transferor Company 4/Fourth Applicant Company**"); Max Motors Private Limited ("**Transferor Company 5/Fifth Applicant Company**") with Kryshnajay Developers Private Limited ("**Transferee Company/Sixth Applicant Company**") and their respective Shareholders ("**Scheme**").
2. The Learned Counsel for the Applicant Companies submits that the **First Applicant Company is carrying out activities** related to purchase, trading, construction, development, redevelopment of buildings, structures, residential plots, commercial plots and to act as architect, designers, contractors for all type of construction, development and redevelopment projects. **The Second Applicant Company is**

engaged in the business of carrying out activities related to purchase, trading, construction, development, redevelopment of buildings, structures, residential plots, commercial plots and to act as architect, designers, contractors for all type of construction, development and redevelopment projects. **The Third Applicant Company is engaged in the business** of civil contractors, infrastructural developments and to undertake contracts for any type of infrastructure development contractual work related to road, bridges, building, and apartments. **The Fourth Applicant Company is engaged in the business** of to carry out activities of developing and providing infrastructure facilities and maintaining the housing and infrastructure facilities constructed as per the requirement of the project awarded by Nashik Municipal Corporation to Fourth Applicant Company. **The Fourth Applicant Company is the wholly owned subsidiary of the Third Applicant Company.** **The Fifth Applicant Company is engaged in the business** of marketing, selling, distributing, and trading of component parts, spare parts, accessories, equipment's, tools, fittings and apparatus of any nature related to vehicles. **The Sixth Applicant Company is engaged in the business of** construction, development and redevelopment of real estate projects including but not limited to construction, development and redevelopment of buildings, structures, residential plots, commercial plots and it also acts as architect, designers, contractors for all type of construction and development projects.

3. The Learned Counsel for the Applicant Companies submits that the Board of Directors of the Applicant Companies in their respective meetings held on 21st March, 2024 have approved the Scheme. The Board Resolution approving the Scheme for the Applicant Companies was annexed as an "Annexure O1 to Annexure O6" to 485 to the Joint Company Scheme Application.
4. The Learned Counsel for the Applicant Companies submits that Appointed Date for merger of the Applicant Companies is *April 01, 2023*.

5. The Learned Counsel for the Applicant Companies submits that the Authorized, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on date of the approval of the Scheme by the Board of Director of the respective companies (i.e. 21st March 2024) is as follows:

First Applicant Company/ Transferor Company 1:

Share Capital	Rs.
Authorized Capital	
2,50,000 Equity Shares of Rs. 10/- each	25,00,000
Total	25,00,000
Issued, Subscribed and Paid-up Share Capital	
10,000 Equity Shares of Rs. 10/- each	1,00,000
Total	1,00,000

Second Applicant Company/ Transferor Company 2:

Share Capital	Rs.
Authorized Capital	
2,50,000 Equity Shares of Rs. 10/- each	25,00,000
Total	25,00,000
Issued, Subscribed and Paid-up Share Capital	

10,000 Equity Shares of Rs. 10/- each	1,00,000
Total	1,00,000

Third Applicant Company/ Transferor Company 3:

Share Capital	Rs.
Authorized Capital	
10,00,000 Equity Shares of Rs. 10/- each	1,00,00,000
Total	1,00,00,000
Issued, Subscribed and Paid-up Share Capital	
5,59,713 Equity Shares of Rs. 10/- each	55,97,130
Total	55,97,130

Fourth Applicant Company/ Transferor Company 4:

Share Capital	Rs.
Authorized Capital	
10,000 Equity Shares of Rs. 10/- each	1,00,000
Total	1,00,000
Issued, Subscribed and Paid-up Share Capital	

10,000 Equity Shares of Rs. 10/- each	1,00,000
Total	1,00,000

Fifth Applicant Company/ Transferor Company 5:

Share Capital	Rs.
Authorized Capital	
50,00,000 Equity Shares of Rs. 1/- each	50,00,000
Total	50,00,000
Issued, Subscribed and Paid-up Share Capital	
50,00,000 Equity Shares of Rs. 1/- each	50,00,000
Total	50,00,000

Sixth Applicant Company/ Transferee Company:

Share Capital	Rs.
Authorized Capital	
26,70,000 Equity Shares of Rs. 10/- each	2,67,00,000
7,34,000 Preference Shares of Rs. 100/- each	7,34,00,000
Total	10,01,00,000

Issued, Subscribed and Paid-up Share Capital	
10,000 Equity Shares of Rs. 10/- each	1,00,000
7,34,000 Preference Shares of Rs. 100/- each	7,34,00,000
Total	7,35,00,000

6. The Learned Counsel for the Applicant Companies further submits that the **rationale for the Scheme** is as follows:

The existing group structure involves multiple group entities held individually by the same set of shareholders. To streamline the current group structure and to consolidate assets and liabilities of the various group entities under a single vehicle, the Board of Directors of the Companies are desirous of entering into the Composite Scheme of Amalgamation of the Transferor Companies with the Transferee Company.

The proposed merger would, inter alia, achieve the following advantages, amongst others, to the Companies, their respective shareholders and creditors:

- (i) Consolidation of the group entities under a single vehicle resulting in a simplified corporate structure;*
- (ii) Value maximization for the business;*
- (iii) Better financial position of seeking leverage for businesses and access to borrowings/ funds;*
- (iv) Strengthening of fund position at a group level and consolidation under a single entity;*
- (v) Provide an opportunity to leverage combined assets and build a stronger sustainable business. It is believed that the proposed merger will create*

enhanced value for shareholders and allow a focused strategy for sustained growth, which would be in the best interest of all the stakeholders and the persons connected with the aforesaid companies;

- (vi) Operational synergies, cost optimization and efficient use of management resources; and*
- (vii) Synchronization of efforts to achieve uniform corporate policy, greater integration and greater financial strength and flexibility for the group entities.*

In view of the aforesaid advantages, the Board of Directors of the Transferor Companies and the Transferee Company have considered and proposed the Scheme of Amalgamation under provisions of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013.

7. The Learned Counsel for the Applicant Companies submits that as regards the ***First Applicant Company/ Transferor Company 1***, there are:

- i. **2 (Two) Equity Shareholders** a list of which is annexed as “**Annexure R1 and R2**” to the Joint Company Scheme Application; The Equity Shareholders have **provided their consent affidavit(s)** to dispense from convening and conducting the Meeting of the Equity Shareholders of the First Applicant Company/ Transferor Company 1 which is annexed as **Annexure S1 and S2** to the Joint Company Scheme Application.

Accordingly, the Meeting of the Equity Shareholders of the of the First Applicant Company is hereby dispensed with.

- ii. There are **no Secured Creditors in the First Applicant Company**. Chartered Accountant Certificate certifying the same is annexed as **Annexure T2** to the Company Scheme Application. Hence, there is no question of convening meeting of Secured Creditors of the First Applicant Company.
- iii. As on 20th March, 2024 there is **1 (one) unsecured creditor** amounting to Rs. 5,00,000/- (Rupees Five Lakhs) a list of which is annexed as **Annexure U1 and U2** to the Joint Company Scheme Application; The **sole unsecured creditor has provided their consent affidavit** to dispense from convening the meeting of the Unsecured Creditors of the First Applicant Company, the consent affidavit is annexed as **Annexure V** of the Company Scheme Application.

Accordingly, the Meeting of the Secured Creditor and Unsecured Creditors of the of the First Applicant Company is hereby dispensed with.

8. The Learned Counsel for the Applicant Companies submits that as regards *the Second Applicant Company/Transferor Company 2*, there are:
- i. **2 (Two) Equity Shareholders** a list of which is annexed as “**Annexure W1 and W2**” to the Joint Company Scheme Application; The Equity Shareholders have **provided their consent affidavit(s)** to dispense from convening and conducting the Meeting of the Equity Shareholders of the Second Applicant Company/ Transferor Company 2 which is annexed as **Annexure X1 and X2** to the Joint Company Scheme Application.

Accordingly, the Meeting of the Equity Shareholders of the of the Second Applicant Company is hereby dispensed with.

ii. As on 20th March, 2024 There are **no Secured Creditors in the Second Applicant Company**. Chartered Accountant Certificate certifying the same is annexed as **Annexure Y2** to the Company Scheme Application. Hence, there is no question of convening meeting of Secured Creditors of the Second Applicant Company.

iii. As on 20th March, 2024 there is **1 (one) unsecured creditor** amounting to Rs. 5,00,000/- (Rupees Five Lakhs) a list of which is annexed as **Annexure Z1 and Z2** to the Joint Company Scheme Application; **The sole unsecured creditor has provided their consent affidavit** to dispense from convening the meeting of the Unsecured Creditors of the Second Applicant Company, the consent affidavit is annexed as **Annexure AA** at page 551 of the Company Scheme Application.

Accordingly, the Meeting of the Secured Creditor and Unsecured Creditors of the of the Second Applicant Company is hereby dispensed with.

9. The Learned Counsel for the Applicant Companies Submits that regards ***the Third Applicant Company/ Transferor Company 3***, there are:

i. **4 (Four) Equity Shareholders** a list of which is annexed as **Annexure BB1 and BB2** of the Company Scheme Application. The Equity Shareholders have **provided their consent affidavit(s)** to dispense from convening and conducting the Meeting of the Equity Shareholders of the Third Applicant Company/

Transferor Company 3 which is annexed as **Annexure CC1 to CC4** to the Company Scheme Application.

Accordingly, the Meeting of the Equity Shareholders of the of the Third Applicant Company is hereby dispensed with.

- ii. As on 20th March, 2024 there is **1 (one) Secured Creditor of the Third Applicant Company** amounting to Rs. 23,03,41,572/- (Rupees Twenty-Three Crores Three Lakhs Forty-One Thousand Five Hundred and Seventy-Two Only) a list of which is annexed as **Annexure DD1 and DD2** to the Joint Company Scheme Application; The sole secured creditor has **provided their consent affidavit** to dispense from convening the meeting of the Secured Creditors of the Third Applicant Company, the consent affidavit is annexed as **Annexure EE** of the Company Scheme Application.
- iii. As on 20th March, 2024, there are **3 (three) unsecured creditors of the Third Applicant Company** amounting to Rs. 8,63,62,444/- (Rupees Eight Crore Sixty-Three Lakhs Sixty-Two Thousand Four Hundred and Forty-Four Only) a list of which is annexed as **Annexure FF1 and FF2** on the Company Scheme Application; all 3 unsecured creditors have **provided their consent affidavit** to dispense from convening the meeting of the Unsecured Creditors of the Second Applicant Company, the consent affidavit is annexed as **Annexure GG1 to GG3** at page 576 of the Company Scheme Application.

Accordingly, the Meeting of the Secured and Unsecured Creditors of the Third Applicant Company is hereby dispensed with.

10. The Learned Counsel for the Applicant companies submits that regards to **the Fourth Applicant/ Transferor Company 4** there are:

- i. **2 (Two) Equity Shareholders** including nominee shareholders a list of which is annexed as Annexure HH1 and HH2 of the Company Scheme Application. The Equity Shareholders have **provided their consent affidavit(s)** to dispense from convening and conducting the Meeting of the Equity Shareholders of the Fourth Applicant Company/ Transferor Company 4 which is annexed as **Annexure II1 to II2** to the Company Scheme Application.

Accordingly, the Meeting of the Equity Shareholders of the of the Fourth Applicant Company is hereby dispensed with.

- ii. As on 20th March, 2024 there are **no Secured Creditors in the Fourth Applicant Company** Chartered Accountant Certificate certifying the same is annexed as **Annexure JJ2** to the Company Scheme Application. Hence, there is no question of convening meeting of Secured Creditors of the Fourth Applicant Company.

- iii. As on 20th March, 2024 there is **1 (one) unsecured creditor of the Fourth Application Company** amounting to Rs. 7,00,000/- (Rupees Seven Lakhs Only) a list of which is annexed at **Annexure KK1 and KK2** of the Company Scheme Application. The sole unsecured creditor has **provided their consent affidavit** to dispense from convening the meeting of the Unsecured Creditors of the Fourth

Applicant Company, the consent affidavit is annexed as **Annexure LL** of the Company Scheme Application.

Accordingly, the Meeting of the Secured and Unsecured Creditors of the Fourth Applicant Company is hereby dispensed with.

11. The Learned Counsel for the Applicant Companies submits that regards to the **Fifth Applicant/ Transferor Company 5** there are:

i. **2 (Two) Equity Shareholders** a list of which is annexed as “**Annexure MM1 and MM2**” to the Joint Company Scheme Application; The Equity Shareholders have **provided their consent affidavit(s)** to dispense from convening and conducting the Meeting of the Equity Shareholders of the Fifth Applicant Company/ Transferor Company 5 which is annexed as **Annexure NN1 and NN2** to the Joint Company Scheme Application.

Accordingly, the Meeting of the Equity Shareholders of the of the Fifth Applicant Company is hereby dispensed with.

ii. As on 20th March, 2024 There are **no Secured Creditors in the Fifth Applicant Company**. Chartered Accountant Certificate certifying the same is annexed as **Annexure OO2** to the Company Scheme Application. Hence, there is no question of convening meeting of Secured Creditors of the Fifth Applicant Company.

iii. As on 20th March, 2024 there is **1 (one) unsecured creditor of the Fifth Applicant Company** amounting to Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakhs Only) a list of which is Annexed as **Annexure PP1 and PP2** of the Company Scheme Application. The **sole unsecured creditor has provided consent affidavit** to dispense from convening the meeting of the Unsecured Creditors of the Fifth Applicant Company, the consent affidavit is annexed as **Annexure QQ** of the Company Scheme Application.

Accordingly, the Meeting of the Secured and Unsecured Creditors of the Fifth Applicant Company is hereby dispensed with.

12. The Learned Counsel for the Applicant Companies submits that regards to **the Sixth Applicant / Transferee Company** there are:

i. **3 (Three) Equity Shareholders, and 2 (two) Preference Shareholders** a list of which is annexed as **Annexure RR1 and RR2** to the Company Scheme Application; The Equity shareholders have **provided their consent affidavit(s)** to dispense from convening and conducting the Meeting of the Equity shareholders of the Sixth Applicant Company/ Transferee Company which is annexed as **Annexure SS1 to SS3** to the Company Scheme Application. **The Preference shareholders have also provided their consent affidavits** to dispense from convening and conducting the Meeting of the Preference Shareholders of the Sixth Applicant Company, which is annexed as **Annexure TT1 to TT2** to the Company Scheme Application.

Accordingly, the Meeting of the Equity Shareholders and Preference Shareholders of the of the Sixth Applicant Company is hereby dispensed with.

ii. As on 20th March, 2024 There are **no Secured Creditors in the Sixth Applicant Company**. Chartered Accountant Certificate certifying the same is annexed as **Annexure UU1 and UU2** to the Company Scheme Application. Hence, there is no question of convening meeting of Secured Creditors of the Sixth Applicant Company.

iii. As on 20th March, 2024 There are **no Unsecured Creditors in the Sixth Applicant Company**. Chartered Accountant Certificate certifying the same is annexed as **Annexure VV1 and VV2** to the Company Scheme Application. Hence, there is no question of convening meeting of Unsecured Creditors of the Sixth Applicant Company.

Accordingly, the Meeting of the Secured and Unsecured Creditors of the Sixth Applicant company is hereby dispensed with.

13. The Learned Counsel of the Applicant Companies further submitted that the Scheme is for amalgamation between the Applicant Companies and shareholders of the Applicant Companies as contemplated under Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Act as there is no compromise and/or arrangement with Secured and unsecured creditors, and that the unsecured creditors of all Applicant Companies are being paid in the normal course of business and as per the agreed terms and are not called upon to make any

sacrifices, hence their interests are not getting affected in any way and are also secured.

14. Based on the above, this Bench is of the view that the meeting of the Equity Shareholders, Preference Shareholders, Secured Creditors and unsecured creditors of the all Applicant Companies are hereby dispensed with in view of the fact that all of their consent affidavits are provided

15. The First Applicant Company, Second Applicant Company, Third Applicant Company, Fourth Applicant Company, Fifth Applicant Company and the Sixth Applicant Company are directed to serve notice along with copy of Scheme under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 upon the-

- i. Central Government through the office of Regional Director, Western Region, Mumbai;
- ii. Jurisdictional Registrar of Companies;
- iii. Jurisdictional Income Tax Authority within whose jurisdiction the respective Applicant Company's assessment are made;
- iv. the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address: - 3 Floor, Aayakar Bhawan, Mahrishi

Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in]; and

v. Jurisdictional GST Authority(s) (proper officer), within whose jurisdiction such companies are assessed to tax under GST law.

vi. MAHARERA in so far as Sixth Applicant company is concerned.

16. The First Applicant Company, Second Applicant Company, Third Applicant Company, Fourth Applicant Company and Fifth Applicant Company being the Transferor Companies are also directed to serve notice upon Official Liquidator, High Court, Bombay, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

17. The aforementioned Notices shall be served through by Registered Post-AD/ Speed Post/ Hand Delivery/ email along with copy of Scheme and state that “If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme”. It is clarified that notice serviced through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the notice.

18. The Applicant Companies to file Affidavit of Service to report to this Tribunal that the direction regarding the issue of notices have been duly complied with as per the applicable Rules of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

SD/-

Madhu Sinha
Member (Technical)
/Abhay/

SD/-

Reeta Kohli
Member (Judicial)