

**In the National Company Law Tribunal
Kolkata Bench- I, Kolkata**

C.A. (CAA) No. 23 / KB /2022

An application under Section 230 and 232 and other applicable provisions of the Companies Act 2013 read with Companies (Compromise, Arrangement and Amalgamation) Rules 2016;

In the matter of:

1. **Ratnabali Securities Private Limited**, [CIN: U65100WB2012PTC183212] a company incorporated under the Companies Act, 1956 and a Private Company within the meaning of the Companies Act 2013 and having its registered office at 5A, Woodburn Park Road, Woodburn Central, 3rd Floor, Kolkata-700020 within the aforesaid jurisdiction.

.... TRANSFEREE COMPANY

And

2. **Rockhard Builders Private Limited**, [CIN: U70109WB1991PTC053340] a company incorporated under the Companies Act, 1956 and a Private Company within the meaning of the Companies Act 2013 and having its registered office at 5A, Woodburn Park Road, Woodburn Central, 3rd Floor, Kolkata-700020 within the aforesaid jurisdiction.

.... TRANSFEROR COMPANY NO. 1

And

3. **Windfall Properties Private Limited**, [CIN: U70109WB1991PTC053307] a company incorporated under the Companies Act, 1956 and a Private Company within the meaning of the Companies Act 2013 and having its registered office at 5A, Woodburn Park Road, Woodburn Central, 3rd Floor, Kolkata-700020 within the aforesaid jurisdiction.

.... TRANSFEROR COMPANY NO. 2

And

In the matter of:

1. RATNABALI SECURITIES PRIVATE LIMITED
2. ROCKHARD BUILDERS PRIVATE LIMITED.
3. WINDFALL PROPERTIES PRIVATE LIMITED

... APPLICANTS

Date of Hearing: 22.04.2022

Date of pronouncing the order: 10/05/2022

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Counsels on Record for the Applicant(s):

1. Mrs. Manju Bhuteria, Advocate,
2. Ms. Meenakshi Manot, Advocate,
3. Mr. Anirudhya Dutta, Advocate.

ORDER

Per Rajasekhar V.K., Member (Judicial):

1. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 (“**Act**”) for orders and directions with regard to and dispensation of meetings of shareholders and creditors in connection with the Scheme of Amalgamation of Rockhard Builders Private Limited being the “**Transferor Company No. 1**”, and Windfall Properties Private Limited being the “**Transferor Company No. 2**” with Ratnabali Securities Private Limited being the “**Transferee Company**” whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed date viz 1st April, 2021 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“**Scheme**”).

2. It is submitted by Ld. Counsel appearing for the Applicant that shares of none of the Applicant Companies are listed in any of the Stock Exchange. Further, the Applicant has the following classes of shareholders and creditors:-

Sl. No.	Name of Applicant Companies	Equity Shareholders	Secured Creditors	Unsecured Creditors
1	Ratnabali Securities Pvt. Ltd	80 and 1 Preference shareholder	2	16
2	Rockhard Builders Pvt. Ltd.	5	Nil	Nil
3	Windfall Properties Pvt. Ltd.	6	Nil	Nil

3. It is further submitted that Preference Shareholders, Secured Creditors and over 99.83% in value of the Unsecured Creditors of the Applicant No. 1, and all Equity Shareholders of the applicant Company No. 2 and 3 have already given their consent to the Scheme by way of affidavits which are annexed to the application. Applicant No. 2 and 3 has no Creditors.
4. Learned Counsel appearing for the applicants submit that the Scheme does not envisage any reduction of capital and that therefore there will be no prejudice caused to the creditors. The Secured Creditors have given their consent by way of No Objection Certificates. Since the scheme does not envisage any diminution of liability on the part of the applicant companies, no meeting of the Secured Creditors may be deemed necessary.
5. Directions are sought accordingly for (a) holding meeting of the Equity Shareholders of the Applicant Company No. 1 (b) dispensing with meetings of the Preference shareholders of the Applicant Company No. 1, (c) dispensing with the meetings of the Equity shareholders of the applicant Company no. 2 and 3 and secured and unsecured creditors of the applicant company no. 1 as they have already given their consent to the Scheme to consider the Scheme under Section 230(1) [read with Section 232(1)] of the Act. (d) dispensing with the meetings of the creditors of the applicant company no., 2 and 3 as there is no creditors.
6. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant, we allow the instant application and make the following orders:-
 - (a) Meetings dispensed: Meetings of the Equity Shareholders of the Applicant Company No. 2 and 3, Preference shareholder of the Applicant Company no. 1, Secured Creditors and Unsecured Creditors of the Applicant Company no. 1, 2 and 3 are hereby dispensed with under Section 230(1) [read with Section 232(1)] of the Act.
 - (b) Meetings to be Held: Meeting of the Equity Shareholders of the Applicant Company no. 1 to be held on 26th June, 2022 at 11.30 a.m. at 5A, Woodburn Park Road, Woodburn Central 3rd Floor Kolkata-700020.
 - (c) Mode of meetings: The meetings, as above, shall be held physically at 5A, Woodburn Park Road, Woodburn Central 3rd Floor Kolkata-700020 with stipulated health protocols.

- (d) Advertisement: At least 30 (thirty) clear days before the meeting(s) to be held, as aforesaid, an advertisement of the notice of meeting(s) be published once each in the “**Business Standard**” in English and “**Aajkal**” in Bengali as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- (e) Individual Notices: At least 30 (thirty) clear days before the date of the meeting(s) to be held, as aforesaid, notices convening the said meeting(s), along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Act disclosing necessary details and the prescribed form of proxy, shall be sent to each of the said shareholders of the Applicant No 1 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by post or air mail or courier or email or through personal messenger at their respective or last known addresses. The said notices along with accompanying documents shall also be posted on the websites of the Applicant(s), if any.
- (f) Chairperson: **Mr. Abhishek Sikdar**, Advocate (Email: sikdar.advocates@gmail.com) is appointed as the Chairperson of the meeting(s) to be held, as aforesaid. The Chairperson shall be paid a consolidated sum of Rs. 75,000/- (Rupees Seventy-five Thousand only) for conducting the aforesaid meeting(s) as Chairperson.
- (g) Scrutinizer: **Ms. Aisha Amin**, Advocate (Mob. No. 8981204500) is appointed as the Scrutinizer of the meeting(s) to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of Rs. Rs. 60,000/- (Rupees Sixty Thousand only) for acting as Scrutinizer.
- (h) Quorum and Attendance: The quorum for the said meeting(s) of persons entitled to attend the same shall be determined in accordance with Section 103 of the Companies Act, 2013. For the meeting(s) to be held physically, only attendance of such persons physically at the venue shall be counted for quorum. Attendance at such meeting(s) shall be recorded in the minutes of the meeting(s) instead of taking physical attendance slips. In case the quorum of any meeting is not present within half an hour from the time appointed for the meeting, the Chairperson may adjourn such meeting to any date/time and take a decision on the quorum for the adjourned meeting.
- (i) Mode of Voting: At the venue of the meeting(s) held physically, voting shall be conducted physically by polling paper
- (j) Cut-off date: The cutoff date for determining the eligibility to vote and value of votes shall be 10th June, 2022 and the value of the votes cast shall be reckoned and scrutinized with reference to the said date.
- (k) Voting procedure: Subject to the directions and matters dealt with herein, the procedure for voting by polling paper and conduct of voting, in so far as the same is

prescribed by the Companies (Management & Administration) Rules, 2014 (“**the said Rules**”), and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.

(l) Persons who are entitled and have an option to vote on the resolution put to a meeting by polling paper at the meeting, as above, may opt to exercise their votes only in such mode.

(m) Proxies & Board Resolutions: A person, including a Body Corporate, entitled to attend and vote at the venue of a meeting, as aforesaid, may do so personally or by proxy, provided the proxies in the prescribed form duly signed by such person and/or the certified copy of resolution of the Board of Directors or other governing body of such person, where it is a Body Corporate, authorizing its representative to attend and vote at such meeting on its behalf, as the case may be, is deposited at the registered office of the concerned Applicant Company not later than 48 (forty eight) hours before the time for holding such meeting.

(n) That the Chairperson appointed for the said meeting(s) or any person authorized by the Chairperson do issue and send the notices of the aforesaid meeting(s).

(o) The votes cast shall be Scrutinized by the Scrutinizer. Votes cast in all the modes shall be consolidated. The Scrutinizer shall prepare and submit the reports on the meeting along with all papers relating to the voting to the Chairperson of the meeting within 3 days of the conclusion of the meeting. The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutinizer.

(p) The value of each shareholder shall be in accordance with the books and records of the Applicant(s) and, where entries in the books are disputed, the chairperson shall determine the value for purposes of the said meeting(s).

(q) The resolution for approval of the Scheme of Arrangement put to a meeting shall, if passed by a majority in number representing three-fourths in value of the respective shareholders casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under Section 230(1) read with Section 232(1) of the Companies Act, 2013.

(r) The Chairperson to report to this Tribunal, the results of the said meeting(s) within four weeks from the date of the conclusion of the said meeting(s). Such report shall be in Form No. CAA4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

7. Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall also be served on the following :

- i) Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;
- ii) Registrar of Companies West Bengal,
- iii) Income Tax Department having jurisdiction over the Applicants clearly indicating the PAN of the companies concerned and
- iv) Official Liquidator, High Court of Calcutta

by sending the same by hand delivery through special messenger, by speed post and by email within two weeks from the date of receiving this order. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Advocates / Authorized Representative] of the said Applicant. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme of Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA3 of the said Rules with disclosures required under Rule 6 & incorporating the directions herein.

8. The applicant to file an affidavit proving service of notices to all statutory /sectoral authorities and compliance of all the directions contained herein within two weeks after such services.
9. The Company Application being **C.A. (CAA) No. 23 /KB/2022** is disposed of accordingly.
10. Connected Company Petition to be filed within a period of three weeks from the date of meeting.
11. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

**BALRAJ
JOSHI**

**Balraj Joshi
Member (Technical)**

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**Rajasekh
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**Rajasekhar V.K.
Member (Judicial)**

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Signed on this, the 10th day of May, 2022