

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, C-IV

C.A. (CAA)/186/MB-IV/2022

In the matter of

*Sections 230-232 and other applicable provisions
of the Companies Act, 2013 read with the
Companies (Compromises, Arrangements and
Amalgamations) Rules, 2016*

And

In the matter of

*Scheme of Amalgamation of
APAC Housing Finance Private Limited
(Transferor Company)*

with

***APAC Financial Services Private Limited**
(Transferee Company)*

and their respective shareholders

APAC Financial Services Private Limited,
[CIN: U65999MH2017PTC294664]
Company/

...Applicant

Transferee Company

Order delivered on: **30.03.2023**

Coram:

Mr. Prabhat Kumar

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances (through video conferencing):

For the Applicant(s): : Ms. Rohini Menon, Advocate i/b
A K Mylsamy & Associates LLP.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Court convened through videoconferencing today.
2. The present Application under section 230(1)(b) of the Companies Act, 2013 (the Act) seeks certain orders in respect of a proposed Scheme of Amalgamation (the Scheme) of Transferor Company with the Transferee Company.
3. The Applicant Company submits that the Transferor Company, APAC Housing Finance Private Limited, has filed a separate Company Application [C.A. (CAA)/182/MB-IV/2022] before the Bench – IV, Mumbai of this Tribunal.
4. The Applicant Company further submits that the Transferor Company is a housing finance company engaged in the business of providing long term or short-term loans for the purpose of enabling the persons borrowing the same to erect, purchase, extend or improve any plot or land or flat or house or building for residential, commercial or other purposes etc. The Transferee Company is a non-banking finance company (NBFC) engaged in the business of lending, advancing money or giving credit to person, firms or companies particularly to carry on the business as financiers and investors and to acquire any share, bonds, stocks, obligations, securities, debentures, debenture stocks, properties, unique bonds, mutual funds share, unit securities, commercial papers, certificates subject to principal approval from the Reserve Bank of India.

5. The Board of Directors of the Applicant Company, in their meeting held on 3rd March 2022, have approved the Scheme of Amalgamation with the Appointed Date as 1st April 2022.

6. The Counsel for the Applicant Company submits that the rationale for the scheme is as follows:
 - a. The Transferor Company is a wholly owned subsidiary of the Transferee Company and the amalgamation is therefore within the Group Companies.
 - b. The amalgamation will facilitate a consolidation of the business of the group and a simplification of group corporate structure.
 - c. The amalgamation would pave the way for sustained growth and profitability of the group as a whole, in the long run.
 - d. The amalgamation will eliminate inter-company transactions and holdings.
 - e. The amalgamation will facilitate a consolidated and improvement of internal systems, procedures & control and will also bring greater management and operational efficiency.
 - f. The amalgamation will facilitate an elimination of doubling of related costs, thereby reducing operational and administrative expenses and overheads, and lead to better cost and operational efficiencies.
 - g. The amalgamation would be in the interest of both the Companies concerned and would bring in economies in operations, thereby helping in reducing expenditure considerably.

- h. The amalgamation is in the interest of the shareholders, creditors and all other stakeholders of the respective companies, and is not prejudicial to the interests of the concerned shareholders, creditors or the general public at large.
- i. There is no adverse effect of Scheme on any directors, key management personnel, promoters, non-promoter members, creditors and employees of both the Transferor and Transferee Companies.
- j. The Scheme would be in the best interest of all stakeholders of the Transferor and Transferee Companies and the group as a whole and it would result in enhanced value for the shareholders.

7. The Capital Structure of Applicant Company is as follows:

Share Capital	Amount in Rupees
Authorized Share Capital	3,06,00,00,000
30,60,00,000 Equity Shares of Rs. 10 each	3,06,00,00,000
1,75,00,000,0.01% Compulsorily Convertible Preference Shares of Rs. 10 each	17,50,00,000
Total	3,25,50,00,000
<u>Issued, subscribed and paid-up Share Capital</u>	
30,43,50,000	3,04,35,00,000
0.1% Compulsorily Convertible Preference Shares of Rs.10	0
Total	3,04,35,00,000

8. **Consideration:**

The entire equity share capital of the Transferor Company is held by the Transferee Company and its nominees. Accordingly, pursuant to this amalgamation, no shares of the Transferee Company would be allotted in respect of its holding in the Transferor Company. Hence, upon the Scheme becoming effective, the entire share capital of the Transferor Company shall be cancelled and extinguished and the investments in the shares of the Transferor Company, appearing in the books of account of the Transferee Company shall, without any further act or deed, stand cancelled.

9. The Applicant Company submits that the Scheme is an arrangement between the Transferee Company and their shareholders 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 the creditors as no sacrifice is called from them. Accordingly, the rights of the creditors will not at all be affected.

10. That there are 7 (seven) Secured Creditors of the Applicant Company as on June 21, 2022 having an outstanding amount of Rs. 223,42,11,301/- (Rupees Two Hundred and Twenty-Three Crore Forty-Two Lakh Eleven Thousand Three Hundred and One only) and there are 15 (Fifteen) Unsecured Creditors of the Applicant Company as on June 21, 2022 having an outstanding amount of Rs. 34,44,257/- (Rupees Thirty-Four Lakhs Forty-Four Thousand Two Hundred and Fifty-Seven only).

11. We have heard the Learned Counsel representing the Applicant Company and have perused the records. In consideration of the materials indicated supra the following order is passed.

ORDER

- a. The Application be and the same is allowed.
- b. The meeting of the Equity Shareholders of the Applicant Company be convened and held within 45 days from the date of this Order at such place, within municipal jurisdiction of its registered office, or in the manner as decided by the Applicant, for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme.
- c. The meeting of the Secured Creditors of the Applicant Company be convened and held within 45 days from the date of this Order at such place, within municipal jurisdiction of its registered office, or in the manner as decided by the Applicant, for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme.
- d. The meeting of the Unsecured Creditors of the Applicant Company be convened and held within 45 days from the date of this Order at such place, within municipal jurisdiction of its registered office, or in the manner as decided by the Applicant, for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme.
- e. That at least one month before the said meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Applicant Company to be held as aforesaid, a notice convening the said meetings at the place, day, date and time as aforesaid, together with a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with

Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post / hand delivery or through E-mail (*to those Equity Shareholders / Secured & Unsecured Creditors whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notice by email*), addressed to each of the Equity Shareholders, Secured and Unsecured Creditors of the Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.

- f. That at least thirty (30) clear days before the said meetings of the Applicant Company to be held as aforesaid, a notice convening the said meetings, indicating the place, day, date and time of meeting as aforesaid be published stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Act read with Rule 6 of the Rules and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid.
- g. That a notice of the aforesaid meetings of the Applicant Company shall be advertised in two local newspapers viz. One in English and another in vernacular language having circulation in the area where the registered office of the Applicant Company is situated, not less thirty (30) days before the date fixed for the meetings.
- h. This Bench hereby appoints Mr. Durgesh Kumar Kabra, having address at 803 Ashok Height, Nicco Circle, near Bhuta School, Old Nagardas X Road, Gundavali, Andheri (E), Mumbai 400069, (Mob. No.9869015418; Email: durgeshkabra@dmkhca.in), as the Chairperson for the aforesaid meetings of the Applicant Company. The consolidated fees of the Chairperson shall be

₹.40,000/- (Rupees Forty Thousand only) for the purpose indicated and shall be borne by the Applicant Company. The arrangement of the meeting and voting thereat shall be organised by the Applicant at its expense in the manner as decided mutually with the Chairperson.

- i. The Chairperson appointed as above shall notify the text of the advertisement and the notices of the meetings referred to above to the Applicant Company, who shall ensure its publication and despatch in the manner specified by the Chairperson. The Chairperson shall have all powers as per Articles of Association of the Applicant Company and also under the Rules in relation to the conduct of the meetings, including for deciding procedural questions that may arise at the aforesaid meeting(s) or at any adjournment thereof or any other matter including an amendment to the Scheme or Resolution, if any, proposed at the meeting by any person(s). The expenses incurred by the Chairman towards advertisement and notices shall be borne by the Applicant Company.
- j. The quorum of the aforesaid meetings of the Applicant Company shall be as prescribed under Section 103 of the Act.
- k. That voting by proxy or Authorized Representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meetings, is filed with the Applicant Company at its Registered Office not later than 48 hours before the aforesaid meetings as required under Rule 6 of the Rules.
- l. The value and number of the shares of each shareholder of the Applicant Company shall be in accordance with the books / register of the Applicant Company and where the entries in the books / register are disputed, the

Chairman of the meeting shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf shall be final.

- m. That Mr. N.B. Shah, having address at 602, Damji Shamji Trade Centre, Opp. Vidyavihar Rialway Station (W), Mumbai – 400 086, Email: nbshah@nbshah.com, Practicing Company Secretaries, is hereby appointed as Scrutinizer for the aforesaid meetings of the Applicant Company.
- n. The fee of the professional appointed as Scrutinizer for the meetings of the Applicant Company to be held as aforesaid shall be aggregating to ₹. 30,000/- (Rupees Thirty Thousands only).
- o. The Chairman of the meetings of the Applicant Company to report to this Tribunal, the results of the aforesaid meetings within 30 (thirty) days of the conclusion of the meetings.
- p. The Applicant Company shall serve the notice(s) of Application along with a copy of the Scheme upon –
- (i) Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai; 6
 - (ii) Registrar of Companies, Maharashtra, Mumbai;
 - (iii) Income Tax Authority within whose jurisdiction the Applicant Company's assessment is made;
 - (iv) Reserve Bank of India, in terms of section 230(5) of the Act and as per Rule 8 of the Rules.
 - (v) The Jurisdictional GST Officer (Proper Officer under GST Law) with whom the petitioner companies are assessed to tax;

If no response is received by the Tribunal from the regulatory authorities within 30 days of the date of receipt of the notice it will be presumed that the Authorities have no objection to the Scheme.

- q. The Applicant Company is directed to furnish a declaration that:
- a. There is no pending litigation against the Petitioner Company.
 - b. There is no contingent liability; and
 - c. There are no proceedings pending under Insolvency & Bankruptcy Code against the and by the Applicant Company.
- r. The Applicant Company shall file Compliance Affidavit, of the above directions, in not less than seven (7) days before the date fixed for holding of meetings, in the Registry.

Sd/-

Shri Prabhat Kumar
Member Technical
SVR/30.03.2023.

Sd/-

Kishore Vemulapalli
Member Judicial