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**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

CP (CAA) No. 1272 / KB / 2019

CA (CAA) No. 489 / KB / 2019

In the matter of the Companies Act, 2013; Section – 230-232

AND

In the matter of: Bandhan Bank Ltd. & Anr



Certified Copy of the Order dated 27.09.2019 passed by this Bench.

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Shardul Amarchand Mangaldas & Co.
22 A. J. C. Bose Road
Kolkata - 700 020

No. _____ Date _____

Name : _____

Address : _____

Vendor : _____

I. CHAKRABORTY
6B, Dr. Rajendra Prasad Sarani
Kolkata - 700 001

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IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CP (CAA) No.1272/KB/2019
CA (CAA) No.489/KB/2019

In the matter of:

An application under Sec.230 - 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2017

And

In the matter of:

Bandhan Bank Limited, a Company incorporated under the provisions of the Companies Act, 2013 having its Registered office at DN-32, Sector V, Salt Lake, Kolkata-700 091, West Bengal

And

In the matter of:

Gruh Finance Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at GRUH Netaji Marg., Nr. Mithakhali Six Roads, Ellisbridge, Ahmedabad - 380 006, Gujrat

And

In the matter of:

- | | |
|-------------------------|--------------------|
| 1. Bandhan Bank Limited | : (Transferee Co.) |
| 2. Gruh Finance Limited | : (Transferor Co.) |

.....Applicant/Petitioners

Order Delivered on 27th September 2019

Coram:

Madan B. Gosavi, Member (Judicial)

Virendra Kumar Gupta, Member (Technical)

For the Applicant/Petitioners : 1. Mr. Jishnu Saha, Advocate
2. Mrs. Manju Bhuteria, Advocate
3. Mr. Siddhazhartha Datta, Advocate
4. Mr. Ishan Saha, Advocate
5. Ms. Suhani Dwivedi, Advocate
6. Mr. Deeoabhab Dutta Roy, Advocate

For the Regional Director,
(Eastern Region)
Ministry of Corporate Affairs

: Mr. Sanjay Sardar, Deputy Director



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ORDER

Per Madan B. Gosavi, Member (J)

This application has been filed by the Applicant Company, namely, Gruh Finance Limited [hereafter referred to as the Transferor Company] with Bandhan Bank Limited [hereinafter referred to as the Transferee Company] under Section 230 to 232 of the Companies Act, 2013 and their respective shareholders for obtaining sanction of this Tribunal regarding Scheme of Amalgamation proposed to be made between the Transferor Company and the Transferee Company and their respective shareholders. A copy of the Scheme of Amalgamation has been annexed with the application as Annexure P-1.

2. It is stated in the application that the Transferee Company is engaged in the business of providing banking services. The Transferee Company was issued license on 17th June 2015 by the Reserve Bank of India, under the provisions of the Banking Regulation Act, 1949, to carry on the business of banking in India. The object clause of the Memorandum of Association of the Transferee Company authorises the Transferee Company to carry on the business of banking. Equity Shares of the Transferee Company are listed on the BSE Limited (BSE) and the National Stock Exchange of India Limited (NSE). One series of subordinated, unsecured, rated, listed, redeemable, non-convertible debentures of the Transferee Company are listed on the Wholesale Debt Market segment of the BSE.

3. GRUH Finance Limited, Transferor Company, is engaged in the business of providing home loans and is registered with the National Housing Bank as a Housing Finance Company. The Registered Office of the Transferor Company is situated at Ahmedabad, outside the jurisdiction of this Tribunal. It has been submitted that the Transferor Company has filed petition before the National Company Law Tribunal, Bench at Ahmedabad for sanction of the Scheme of

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Amalgamation. The Equity Shares of the Transferor Company are listed on the BSE and NSE. Two series of unsecured redeemable non-convertible subordinated debentures issued by the Transferor Company are listed on the Wholesale Debt Market segment of NSE.

4. The object of this application is to ultimately obtain sanction of this Tribunal to a Scheme of Amalgamation whereby and whereunder:

- a) Amalgamation of the Transferor Company into and with the Transferee Company;
- b) Whole of the business and undertaking of the Transferor Company including all its assets and liabilities shall be transferred to the Transferee Company as a going concern.
- c) Transfer of the authorised share capital of the Transferor Company to the Transferee Company and consequential increase in the authorised share capital of the Transferee Company;
- d) Issuance and allotment of fully paid-up equity shares by the Transferee Company to the shareholders of the Transferor Company in terms of the share exchange ratio in terms of the scheme;
- e) Dissolution of the Transferor Company without winding up; and
- f) Various other matters consequential or incidental to or otherwise integrally connected with the above.

5. It is stated in the application that the Board of Directors of the applicant companies have, at their Board Meetings held on 7/1/2019 by a resolution passed unanimously, approved the Scheme of Amalgamation. Copies of the Board Resolution are annexed with the application as Annexure P-11 and P-14.

6. The BSE and NSE have granted No-Objection to the filing of the Scheme of Amalgamation by their communications dated 3rd April 2019. The RBI has also granted No-Objection to the Scheme on 14th March 2019. The Securities &



Exchange Board of India (SEBI) by letter dated 3rd April 2019 has acceded to the adoption of the Scheme of Amalgamation for the purpose of meeting minimum public shareholding norms. The communications dated 3rd April 2019 of the BSE and NSE have been annexed to the petition as Annexure P-15. The communication of the RBI and the SEBI have been annexed to the petition as Annexure P-16 and P-15 respectively.

7. The National Housing Bank has by communication dated 4th March 2019 to the Transferor Company granted its No-Objection to the Scheme of Amalgamation. Copy annexed with the application as Annexure P-17.

8. It is submitted that the Transferor Company and the Transferee Company had filed a Notification Form with the Competition Commission of India (CCI) on 18th March 2019 disclosing details of the proposed combination under the provisions of Sec.6(2) of the Competition Act, 2002. The CCI by its order dated 15/4/2019 has approved the proposed combination and a copy of the said order of the CCI is annexed to the Petition as Annexure P-20.

9. It appears from the record that no investigation proceedings have been instituted or are pending in relation to the Transferee Company under Chapter XIV of the Companies Act, 2013. To the knowledge of the Transferee Company, no winding up proceedings have been filed or pending against the Transferee Company under the 2013 Act.

10. Auditor of the Transferee Company has issued certificate to the effect that the accounting treatment prescribed in the Scheme is in conformity with the accounting standards under Sec.133 of the Companies Act, 2013. A copy of the Certificate dated 7/1/2019 issued by the Auditor of the Transferee Company is annexed with the application as Annexure P-21.

11. This Tribunal vide its order dated 20/6/2019 in C.P.(CAA) No.1272/KB/2019 directed dispensation of meeting of the Secured Creditors of

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the Transferee Company. By the said order, it was also directed convening of a meeting of the Equity Shareholders of the Transferee Company and dispensed with the requirement of convening the meeting of the Unsecured Creditors of the Transferee Company while directing issuance of notice of the Scheme of Amalgamation to the Unsecured Creditors to whom the debt owed is in excess of Rs.5 lakh, as the Transferee Company had received consent to the Scheme from the requisite numbers (including value) from the Sundry Creditors and only Debenture Holder.

12. In compliance with the Order dated 20/6/2019 in CA (CAA) No. 489/KB/2019, affidavit of service has been filed on 17/7/2019 proving issuance of notice to the Equity Shareholders of the Transferee Company and publication of notice in the newspapers. Affidavit of compliance is annexed with the application as Annexure P-30. The Transferee Company has also placed on record the affidavit as regards issuance of notice to the Unsecured Creditors of the Transferee Company (to whom the debt owed is in excess of Rs.5 lakhs). It has been submitted that the Transferee Company has complied with the issuance of notice to the Central Government, Statutory and Regulatory Authorities in compliance of Section 230(5) of the Companies Act, 2013.

13. It has been submitted that the Equity Shareholders of the Transferee Company have approved the Scheme at the meeting held on 30th July 2019 with the requisite majority and the Chairperson Report on the said meeting has been filed with the Tribunal on 1/8/2019 and annexed as Annexure P-32.

14. It has further been submitted by the Ld. Counsel that pursuant to the notice to the Unsecured Creditors of the Transferee Company (to whom the debt owed is in excess of Rs.5 lakhs), the Transferee Company has not received any objection to the Scheme.



15. This Tribunal by an order dated 20/8/2019 in CP(CAA) No.1272/KB/2019 directed publication of notice to be effected of the hearing of the petition, issuance of the notices of this petition to the statutory and Regulatory authorities for their representations, if any.

16. In compliance with the said order dated 20/8/2019, the Transferee Company has filed affidavit of service duly affirmed on 3/9/2019, evidencing publication of notice in the newspapers and service upon the Central Government, Statutory and Regulatory Authorities.

17. Deputy Commissioner of Income Tax vide its report dated 2/9/2019 has stated as under: -

"In connection with the above, this to bring to the kind notice of the Hon'ble Bench that the petitioner-company is assessed to income tax with this Circle and this office records do not show any income-tax demand outstanding against the petitioner-company for any assessment year. However, this is to inform that assessment proceedings under Section 143(3) of the Income-tax Act, 1961 for the assessment years 2016-17 and 2017-18 in respect of the petitioner-company are pending before the undersigned. The pending assessment proceedings are required to be completed on or before 31.12.2019. Since the Transferor Company is not assessed to tax within this Circle, no information regarding the said company is available with the undersigned."

18. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata vide its affidavit dated 17/9/2019 has reported as under:-

"2. That the observations of the Central Government on the scheme are as under:

(a) That it is submitted that the Registrar of Companies, West Bengal in his report stated that there is NIL complaint and no inspection/investigation/Technical Scrutiny and no prosecution

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filed against the Petitioner Transferee Company. The Transferee Petitioner Company is also updated in filing their statutory returns.

(b) It is submitted that the Transferee Company may be directed to pay the applicable stamp duty for the transfer of the properties by virtue of the Scheme.

(c) The "appointed date" is defined in the Scheme as 1st January, 2019 or such other date as may be mutually agreed between the amalgamating companies. The definition is vague and devoid of definiteness. The Scheme requires to be amended for providing clear cut definition of the "appointed date".

(d) It is submitted that M/s. Bandhan Bank Limited is a Schedule Commercial Bank and engaged in the business of Banking under license issued by the Reserve Bank of India vide Licence no.109 dated 17/06/2015. The Reserve Bank of India vide letter No.DBR.PSBD. No.7669/16.01.145/2018-19 dated 14/03/2019 addressed to the Transferee Company issued their "No Objection" to the proposal for voluntary amalgamation of Gruh Finance Limited with Bandhan Bank Limited.

(Copy of the said letters of the RBI collectively marked as Annexure-I is annexed herewith for kind perusal)

(a) It is submitted that the Transferee Company is listed with NSE and BSE. The NSE and BSE vide its letter No.NSE/LIST/19750 dated 03/04/2019 and No.DCS/ AMAL/SV/R37/1423/2019-20 dated 03/04/2019 respectively issued their observation letters with regard to the proposed scheme of amalgamation, which may kindly be perused.

(Copy of the said letters of NSE and BSE collectively marked as Annexure-II is annexed herewith for kind perusal)

(b) 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 12/07/2019 with a request to forward their comments/observations/objections, if any. However, the same is still awaited."



19. The Petitioner Company has filed an affidavit affirmed on 19/9/2019 in response to the affidavit filed by the Regional Director, Eastern Region, Kolkata.

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A copy of the affidavit has also been served on the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata on 20th September 2019.

20. In so far as paragraph 2(b) of the affidavit filed by the Regional Director is concerned, the Petitioner Company in its affidavit has stated that the sanction of the Scheme by the Tribunal does not in any manner, absolve the Petitioner Company from payment of appropriate stamp duty if any, under applicable law on the Scheme which is subject matter of the present Petition.

21. In so far as paragraph 2(c) of the affidavit of the Regional Director is concerned, the Petitioner Company has stated that the Appointed Date is 1/1/2019 as submitted in the Company Petition. The Petitioner Company has further stated that this Tribunal may clarify the same in terms of Section 231(1)(b) of the Companies Act, 2013.

22. In further response to paragraph 2(d)(a), the Petitioner/Transferee Company states that it is bound by the observations as set out in the letters dated 3rd April 2019 of both BSE and NSE.

23. In response to paragraph 2(d)(b) the Petitioner Company has annexed Annexure-A to the affidavit dated 19/9/2019, the communication dated 3rd September 2019 of the Income Tax Department where no objections have been raised to the Scheme. With reference to the said communication dated 2nd September 2019 of the Income Tax Department, the Petitioner Company has stated that pursuant to the sanction of the Scheme by the Tribunal, the Petitioner Company shall be continuing its corporate existence. Accordingly, the Petitioner Company shall, subject to available appellate remedies, be bound by the assessment order(s) passed by the Income Tax Department with respect to the assessment years 2016-17 and 2017-18.

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24. The Petitioner Company has further stated that subsequent to the advertisement of the notice of the petition, the Petitioner Company has not received any objections to the Scheme.

25. Ld. Counsel for the Petitioner Company has also stated that the National Company Law Tribunal, Ahmedabad Bench vide its order date 18th September, 2019 has approved the Scheme of Amalgamation.

26. Heard Ld. Counsel for the applicant companies and authorized representative of Regional Director, Eastern Region, Ministry of Corporate Affairs at Kolkata, the report of the Official Liquidator, High Court, Calcutta. In view of absence of any objection and since all the requisite compliance has been fulfilled, the following order is passed: -

ORDER

- i. The Scheme of Amalgamation, being Annexure A is sanctioned by this Tribunal to be binding with effect from 1st January 2019 on the Transferor Company with the Transferee Company and their respective shareholders and all concerned.
- ii. All the properties, rights and interest including accretions and appurtenances of the Transferor Company thereto shall be transferred to and vested in or be deemed to have been transferred to and vested in the Transferee Company as a going concern so as to become with effect from the appointed date and accordingly the same shall be transferred to and vest without any further act or deed in the Transferee Company pursuant to Section 230(7) of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 for all the estates and interests of the Transferor Company.

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- iii. All the liabilities and duties of Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall be pursuant to Section 230(7) of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the liabilities and duties of the Transferee Company.
- iv. All the proceedings and/or suit/appeals now pending by or against the Transferor Company shall be continued by or against the Transferee Company.
- v. The Petitioner Companies do within 30 days after the date of obtaining the Certified Copy of the order to be made herein, cause certified copies of this order to be delivered to the Registrar of Companies, West Bengal for registration.
- vi. The Transferor Company is dissolved without winding up and all records relating to the Transferor Companies be transferred and merged with the records of and related to the Transferee Company, namely, Bandhan Bank Limited by the Registrar of Companies, West Bengal.
- vii. The schedule of assets in respect of the Transferor Company be filed within a period of 60 days from the date of this order.

27. In the event any of the Petitioner Companies supplies a computerised print out of the said Scheme of Amalgamation in acceptable form in the Department, the department concerned is hereby directed to append such computerised print outs upon verification to the certified copy of this order without insisting on a handwritten copy thereof.

28. The Company Petition being CP (CAA) No.1272/KB/2019 [in CA (CAA) No.489/KB/2019] is disposed of accordingly

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29. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

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27/9/2019

(Virendra Kumar Gupta)
Member (T)

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27/9/2019

(Madan B. Gosavi)
Member (J)

Signed on: 27th September 2019



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30/09/19
DD / DR (AR) Court Officer
National Company Law Tribunal
Kolkata Bench