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## **RB Promoters Private Limited Vs Registrar of Companies**

**CA (CAA)/72(Che)/2021**

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**Court:** National Company Law Tribunal, Division Bench II, Chennai

**Date of Decision:** Dec. 24, 2021

**Acts Referred:**

Companies Act, 2013 " Section 133, 230, 230(3), 230(4), 230(5), 230(6), 231, 232#Companies (Compromise, Arrangement and Amalgamation) Rules, 2016 " Rule 5, 8

**Hon'ble Judges:** S.Ramathilagam, Member J; Anil Kumar B, Member T

**Bench:** Division Bench

**Advocate:** Vidhya Sivakumar

**Final Decision:** Allowed

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### **Judgement**

S.Ramathilagam, Member (Judicial)

1. This is a joint application filed by the Applicant Companies, namely RB Promoters Pvt. Ltd. (hereinafter "Transferor Company") and San Landmark

Pvt. Ltd. (hereinafter "Transferee Company") (together the "Applicant Companies") along with their shareholders and creditors under section 230-232

of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and

Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation (hereinafter referred to as the "SCHEME") proposed by the Applicant

Companies herein with its Shareholders. The said Scheme is also annexed as Exhibit D in the typed set along with the Application bearing No.

CA(CAA)/72(Che)/2021.

2. The Applicant Companies in this Company Application have sought the following reliefs:

1) Dispensing the Meeting of Equity Shareholders and Secured and Unsecured Creditors:

i. To dispense with the convening of the meeting of the Equity Shareholders of the Transferee Company and the Transferor Company;

ii. To dispense with the convening of the meeting of the Unsecured Loan Creditors and Unsecured Trade Creditors of the First Applicant Company and Second

Applicant Company and to sanction this scheme of merger and for dissolution of transferor company without winding - up and other concerned matters;

2) Holding of Meeting of Equity Shareholders and Secured and Unsecured Creditors:

i. It is prayed that, in case this Hon'ble Bench is not inclined to dispense with the meeting of the Equity Shareholders and Secured and Unsecured Creditors of the

First and Second Applicant Companies as prayed under Point No. 1 of Para V above, the Applicant Companies humbly prays that necessary directions may be

given as follows:

a. Ā, To issue and publication of notices and the convening, holding and conducting of the meeting of Equity shareholders, Secured and Unsecured Creditors of

the First and Second Applicant Companies as proposed above as contemplated under Section 230(3) to (6) & Section 232(1) of the Act, 2013 read with Rule 5 of

the Rules.

b. Ā, To fix the time and venue for the Meeting of and Secured and Unsecured Creditors of the First and Second Applicant Companies.

c. Ā, To fix the Quorum for the meetings and the procedure to be followed for the Meetings including voting in person or by proxy.

d. Ā, For Appointment of Chairperson and scrutinizer for the meetings to be held including the terms of appointment and remuneration for the chairperson.

e. Ā, Fixing the time period within which the chairperson shall report the result of the meeting to this Hon'ble Bench.

f. Ā, Permitting filing application, petition, other documents as may be required for the purpose of sanctioning the proposed Scheme of Merger of San Landmark

Private Limited (Transferee Company) shall merge with RB Promoters Private Limited (Transferor Company) and their respective shareholders and Creditors;

3) Ā, Ordering notices to the Statutory Authorities as per the provisions of Section 230(5) of the Companies Act, 2013 and rule 8 of the Companies (Compromise,

Arrangement and Amalgamation) Rules, 2016.

4) Ā, Issuing directions by way of an order for publication of notice in Newspapers in connection with hearing of petition

5) Fixing a date for presentation of the company petition and pass such other order or orders as this Hon'ble Bench may deem fit and proper in the circumstances

of the case and render justice.

3. Ā, Affidavits in support of the above application are sworn in for and behalf of the Applicant Companies as follows along with the application:

(a) Ā, For the Transferor Company - Ramesh Radhakrishnan in the capacity of Director;

(b) Ā, For the Transferee Company- R. Arjundurai in the capacity of Director.

4. Ā, RB Promoters Private Limited (TRANSFEROR COMPANY)

(i) There are Two (2) Equity Shareholders, whose consent affidavits are annexed in Pages 238 to 285 and the Certificate issued by the Chartered Accountant certifying

the list of Equity Shareholders is annexed Page 230 of the typed set filed with the application and sought dispensation with holding of meeting.

(ii) There is NIL Secured Creditor and the certificate issued by the Chartered Accountant to this effect is annexed in Page 231 of the typed set filed with the

application.

(iii) There are two (2) Unsecured Loan Creditors and the certificate of the Chartered Accountant certifying the list of Unsecured Loan Creditors is annexed in Page 232

and Consent Affidavits from the Unsecured Loan Creditors is annexed in Pages 238 to 285 of the typed set filed along with the Application and sought dispensation

with holding meeting.

#### 5. San Landmark Private Limited (TRANSFEREE COMPANY)

(i) There are Two (2) Equity Shareholders, whose consent affidavits are annexed in Pages 238 to 285 and the Certificate issued by the Chartered Accountant certifying

the list of Equity Shareholders is annexed in Page 235 of the typed set filed with the application and sought dispensation with holding of meeting.

(ii) There is One (1) Secured Creditor whose consent affidavits are annexed as Annexure 28 and the Certificate issued by the Chartered Accountant certifying the list

of Equity Shareholders is annexed in Page 236 and Consent Affidavits from the Secured Creditor is annexed in Pages 238 to 285 of the typed set filed along with the

Application and sought dispensation with holding meeting.

(iii) There are Four (4) Unsecured Loan Creditors and the certificate issued by the Chartered Accountant certifying the list of Unsecured Loan Creditors is annexed in

Page 237 and Consent Affidavits from the Unsecured Loan Creditors is annexed in Pages 238 to 285 of the typed set filed along with the Application and sought

dispensation with holding meeting.

6. Æ, We have perused the application and the connected documents / papers filed therewith including the Scheme contemplated by the Applicant

companies.

7. Æ, From the certificate of incorporation filed, it is evident that

(i) The Transferor Company is a Private limited company incorporated under the provisions of Companies Act, 2013 on 29.05.2014. The Authorized

Share Capital of the Transferor Company is Rs 3,00,00,000/- (Rupees Three Crore Only) consisting of 30,00,000 (Thirty Lakh only) Equity Shares of

INR 10/- each. The Issued, Subscribed and Paid-up Capital is Rs 2,54,25,670/- (Rupees Two Crore Fifty Four Lakh Twenty Five Thousand Six

Hundred and Seventy Only) consisting of 25,42,567 (Twenty Five Lakh Forty Two thousand Five Hundred and Sixty Seven Only) Equity Shares of

INR 10/- each.

(ii) The Transferee Company is a Private Limited company incorporated under the provisions of the Companies Act, 1956 on 19.03.2012. The

Authorised Share Capital is Rs 4,50,00,000 (Rupees Four Crore Fifty Lakh Only) consisting of 45,00,000 (Forty Five Lakh Only) equity shares of

INR 10/- each. The Issued, Subscribed and Paid-up Capital of the Transferee Company is Rs 4,50,00,000/- (Rupees Four Crore Fifty Lakh Only)

consisting of 45,00,000 (Forty Five Lakh Only) equity shares of INR 10/- each.

8. Æ, The Applicant Companies have filed its Memorandum and Articles of Association inter alia delineating its object clauses as well as their last

available Audited Annual Accounts for the year ended 31.03.2020 in Exhibit C.

9. The Board of Directors of the Applicant Companies vide meeting held on 3rd March, 2021 have unanimously approved the proposed Scheme as

contemplated above and copies of the resolutions passed thereon have been placed on record by the Applicant Companies.

The Appointed date as specified in the Scheme shall be 1.04.2021.

11. Æ, The Statutory Auditors of the Transferor and Transferee Companies have examined the Scheme in terms of provisions of Sec. 232 of

Companies Act, 2013 and the rules made thereunder and certified that the Accounting treatment is in compliance with the Accounting Standards

pertaining to Merger read with Section 133 of the Companies Act, 2013. The Certificate of the Statutory Auditors issued in this regard is annexed as

Exhibit G.

12. Æ, Taking into consideration the application filed by the Applicant Companies and the documents filed therewith as well as the position of law, this

Tribunal propose to issue the following directions : -

IN RELATION TO THE TRANSFEROR COMPANY:

(i) With respect to the Equity shareholders:

Since it is represented by the First Transferor Company that there are Two (2) Equity Shareholders in the Company whose consents by way of

Affidavits have been obtained from all and are placed on record, the necessity of convening and holding the meeting is dispensed with.

(ii) Æ, With respect to the Secured Creditors:

Since it is represented by the First Transferor Company that there is NIL Secured Creditor in the Company the necessity of convening and holding

the meeting is dispensed with.

(iii) Æ, With respect to the Unsecured Loan Creditors:

Since it is represented by the First Transferor Company that there are Two (2) Unsecured Loan Creditors in the Company whose consents by way of

Affidavits have been obtained from all and are placed on record, the necessity of convening and holding the meeting is dispensed with.

IN RELATION TO THE TRANSFeree COMPANY:

(i) With respect to the Equity shareholders:

Since it is represented by the Second Transferor Company that there are Two (2) Equity Shareholders in the Company whose consents by way of

Affidavits have been obtained from all and are placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the

approval of the scheme is dispensed with.

(ii) With respect to the Secured Creditors:

Since it is represented by the Second Transferor Company that there is One (1) Secured Creditor in the Company whose consents by way of

Affidavits have been obtained from all and are placed on record, the necessity of convening and holding the meeting is dispensed with.

(iii) Æ, With respect to the Unsecured Loan Creditors:

Since it is represented by the Second Transferor Company that there are Four (4) Unsecured Loan Creditors in the Company whose consents by way

of Affidavits have been obtained from all and are placed on record, the necessity of convening and holding the meeting is dispensed with.

14. Accordingly, the Application stands Allowed and the Applicant Companies are directed to file the Application for the Second Motion within a

period of fourteen (14) days from the date of receipt of this Order.