

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, MUMBAI

CP (CAA)/758/MB.II/2019
Connected with
CA (CAA)/1795/MB.II/2019

In the matter of
The Companies Act, 2013

and

In the matter of
Section 230-232 of the Companies
Act, 2013 and other applicable
provisions of the Companies Act,
2013

In the matter of
Scheme of Amalgamation of
Proaim Enterprises Limited
(First Transferor Company)

And

Axon Ventures Limited
(Second Transferor Company)

And

Rockon Enterprises Limited
(Third Transferor Company)

with

Banas Finance Limited
(Transferee Company)

Proaim Enterprises Limited
CIN:L51900MH1984PLC034867 ...

Petitioner Company-1/
Transferor Company-1

Axon Ventures Limited
CIN: L65999MH1982PLC027945 ...

Petitioner Company-2/
Transferor Company-2

Rockon Enterprises Limited
CIN: L65923MH1976PLC019072 ...

Petitioner Company-3/
Transferor Company-3



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Banas Finance Limited
CIN: L65910MH1983PLC030142 ...

Petitioner Company-4/
Transferee Company

Order pronounced on 15th July, 2020

Coram:

Shri Rajasekhar V.K. : Member (Judicial)
Shri V Nallasenapathy : Member (Technical)

Appearances (through videoconferencing):

For the Petitioner(s) : Mr. Ahmed M Chunawala i/b
Rajesh Shah & Co., Advocates
For the Regional Director (WR) : Ms Rupa Sutar, Deputy Director

ORDER

Per: V. Nallasenapathy, Member (Technical)

1. The Bench is conveyed by videoconference today.
2. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition to the said Scheme.
3. The sanction of the Tribunal is sought under sections 230 to 232 and other relevant provisions of the Companies Act, 2013 and the rules framed thereunder for the Scheme of Amalgamation of Proaim Enterprises Limited (*First Transferor Company*), Axon Ventures Limited (*Second Transferor Company*), Rockon Enterprises Limited (*Third Transferor Company*) with Banas Finance Limited (*Transferee Company*).



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4. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions at their respective meetings held on 15th May, 2018 which are annexed to the Company Petition.
5. Learned Counsel appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in the CA (CAA) No.1795/MB.II/2019 of this Tribunal.
6. Learned Counsel appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of this Bench and they have filed necessary affidavits of compliance in this regard.
7. Learned Counsel for the Petitioner Companies states that the First Petitioner Company presently carrying on business of providing loan, share trading and commodity trading. The Second Petitioner Company presently is carrying on business of providing loan, share trading and commodity trading. The Third Petitioner Company presently is carrying on business of providing loan, share trading and commodity trading. The Fourth Petitioner Company presently is carrying on business of providing loan, share trading and commodity trading.
8. The rationale for the Scheme of the Petitioner Companies is that since all the Companies involved in the Scheme are under the same management, the merger will lead to synergies of operations and more particularly the following benefits:
 - a. The arrangement shall provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the arrangement will enable optimal utilisation of



- existing resources and provide an opportunity to fully leverage assets, capabilities, experience and infrastructure of all the four companies.
- b. Reduce the managerial overlaps involved in operating multiple entities; ease and increase operational and management efficiency; integrate business functions; eliminate duplication and rationalisation of administrative expenses.
 - c. Greater efficiency in cash management of the Transferee Company and unfettered access to cash flow generated by the combined businesses which can be deployed more efficiently to fund organic and inorganic growth opportunities to maximise shareholder value.
 - d. Improved organisational capability and leadership arising from the pooling of human capital that has diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.
 - e. Cost savings are expected to flow from more focused operational efforts, rationalisation, standardisation and simplification of business processes, productivity improvements, and improved procurement.
 - f. Synchronising of efforts to achieve uniform corporate policy, Greater integration and greater financial strength and flexibility for the amalgamated entity.
 - g. Reduce regulatory compliance and multi-layer taxation of inter-se transaction.
 - h. Better value creation for the shareholders of the company and improved competitive position of the combined entity in the market.



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- i. The proposed scheme is not prejudicial to the interest of the creditors or the employees of the Transferor Companies and the Transferee Company.
9. The Regional Director has filed his Report dated 24th June, 2020 stating therein that save and except the observations as stated in paragraph IV (a) to (h) of the report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

(a) *In compliance of AS-14 (Ind AS-I03), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (Ind AS-8) etc.*

(b) *As per Definition of the Scheme.*

“The Appointed Date” means the 1st April, 2018 or such other date as the National Company Law Tribunal (Tribunal) or any other appropriate authority may otherwise direct; and.

“The Effective Date” means the date on which certified copies of the Order(s) of the NCLT at Mumbai vesting the assets, properties, liabilities, rights, duties, obligations and the like of all the Transferor Companies in the Transferee Company are filed with the Registrar of Companies, Maharashtra, after obtaining the necessary consents, approval, permissions, resolutions, agreements, sanctions and orders in this regard.

In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the



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appointed date. However, this aspect may be decided by the Tribunal taking into account its inherent powers.

Further, the Petitioner may be asked to comply with the requirements and clarified vide circular No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

- (c) *Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.*
- (d) *The Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.*
- (e) *As the Petitioner Companies are listed with BSE, the Petitioner Companies be directed to file an affidavit to the extent it has complied with the directions of issued vide letter No.DCS/AMAL/PB/R37/1398/2018-19 dated 30-01-2019 by BSE or Tribunal may kindly pass appropriate orders;*
- (f) *The Transferee Company is a Non Banking Financial Corporation (NBFC), therefore, the Transferee Company may be directed to submit NOC of RBI and/or SEBI.*
- (g) *The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Amalgamation. Further, the approval of the scheme by this Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).*



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(h) As stated in Para -11 of the above table, one Technical Security is pending against the Transferee Company. Accordingly, the Petitioner Company may be asked to clarify the same.

10. So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that in addition to compliance of AS-14, the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 etc.
11. So far as the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Appointed Date is 1st April 2018 from which it shall be effective and the Scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.
12. So far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned, Learned Counsel for the Petitioner Companies submits that the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be accordance with provisions of section 232(3)(i) of the Companies Act, 2013.
13. So far as the observation in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies undertake that this Scheme is approved by the requisite majority of members and creditors as per the directions issued in terms of the order dated 5th September, 2019.



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14. So far as the observation in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies undertakes to comply with the directions issued *vide* letter No. DCS/AMAL/PB/R37/1398/2018-19 dated 30-01-2019 by BSE Limited. The Petitioner Company further submits that they have enclosed with the Petition the NOC dated 8th April, 2019 received from BSE Limited.
15. So far as the observation in paragraph IV (f) of the Report of Regional Director is concerned, the Petitioner Companies submits that they have obtained NOC from RBI dated 31st August 2018 and filed with the petition.
16. So far as the observation in paragraph IV (g) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that sanction of the Scheme by this Tribunal may not deter any authorities to deal with any of the issues arising after giving effect to the scheme and that the decision of authorities is binding on the Petitioner Companies.
17. So far as the observation in paragraph IV (h) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company will facilitate with technical scrutiny post sanction of the scheme and the same will not affect the present Scheme.
18. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 10 to 17 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.



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19. The Official Liquidator has filed his report on 3rd March, 2020 in the Consolidated CP (CAA) No.758/MB.II/2020, *inter alia* stating therein that the affairs of the Transferor Companies have been conducted in a proper manner not prejudicial to the interest of the Shareholders of the Transferor Companies and that the Transferor Companies may be ordered to be dissolved by this Tribunal.
20. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
21. Since all the requisite statutory compliances have been fulfilled, CP (CAA) No.758/MB.II/2020 is made absolute in terms of clauses (a) to (c).
22. The Scheme is hereby sanctioned, with the Appointed Date fixed as 1st April, 2018. The Transferor Companies be dissolved without winding up.
23. The Petitioners are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in E-Form INC-28, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry.
24. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.



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25. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal.
26. Any person interested shall be at liberty to apply to the Tribunal in above matter for any directions that may be necessary.
27. Ordered accordingly. Pronounced in open court today. File be consigned to the record.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

Rajasekhar V.K
Member (Judicial)



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Assistant Registrar
National Company Law Tribunal, Mumbai Bench