

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH-II, CHENNAI**

**CP(CAA)/94(CHE)/2022**

**IN**

**CA(CAA)/54(CHE)/2022**

*(Under Section 230 -232 of the Companies Act, 2013)*

*In the matter of THE SCHEME OF AMALGAMATION*

*Between*

**EQUITAS HOLDINGS LIMITED**

CIN: L65100TN2007PLC064069

Req. off:-

410A, 4th Floor, Phase II, Spencer Plaza,  
No.769, Mount Road, Anna Salai,  
Chennai – 600 002

*... 1<sup>st</sup> Petitioner Company /  
Transferor Company*

And

**EQUITAS SMALL FINANCE BANK LIMITED**

CIN: L65191TN1993PLC025280

Req. off:-

4th Floor, Phase II, Spencer Plaza,  
No.769, Mount Road, Anna Salai,  
Chennai – 600 002

*... 2<sup>nd</sup> Petitioner Company /  
Transferee Company*

And

**THEIR RESPECTIVE SHAREHOLDERS**

Order Pronounced on 12<sup>th</sup> January, 2023

CORAM

**DR. DEEPTI MUKESH, MEMBER (JUDICIAL)**

**SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Petitioner(s): Pawan Jhabakh, Advocate*



**ORDER**

**Per: DR. DEEPTI MUKESH, MEMBER (JUDICIAL)**

CP(CAA)/94(CHE)/2022 is a joint Company Petition filed by the Petitioner Companies viz., **EQUITAS HOLDINGS LIMITED** (for brevity "*Transferor Company*") and **EQUITAS SMALL FINANCE BANK LIMITED** (for brevity "*Transferee Company*") under section 230-232 of Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the scheme of amalgamation (herein after referred as "SCHEME") proposed by the Petitioner Companies. The said Scheme is annexed along with the present Company Petition as 'Annexure - A1' between Page Nos. 30 - 51.

**2. 1<sup>ST</sup> MOTION APPLICATION**

2.1. The Petitioner Companies had filed a joint Company Application (First Motion) vide CA(CAA)/54(CHE)/2022, based on such an Application moved under Sections 230-232 of the Companies Act, 2013; directions were issued by this Tribunal vide order dated 22.07.2022, for holding of meeting(s) as follows;

	<b>EQUITY SHAREHOLDERS</b>	<b>UNSECURED CREDITORS</b>	<b>DEPOSIT HOLDERS</b>
<b>1<sup>ST</sup> PETITIONER COMPANY</b>	<i>To hold meeting</i>	<i>To hold meeting</i>	N/A
<b>2<sup>ND</sup> PETITIONER COMPANY</b>	<i>To hold meeting</i>	<i>To hold meeting</i>	<i>To hold meeting</i>

2.2. In the said order, Mr. N.P. Vijay Kumar (Advocate) and Alpa Jain (Practicing Company Secretary) were appointed as the 'Chairperson' and 'Scrutinizer' of the said meeting(s) respectively.

The Chairperson has filed the reports before this Tribunal vide SR. No. 5285 on 13.09.2022. It is stated that the meetings were convened through virtual mode and voting was conducted through the NSDL e-voting platform. The particulars and results of the respective e-voting and meeting are as below:

**TRANSFEROR COMPANY:**

<b>IN RELATION TO THE EQUITY SHAREHOLDERS</b>	
Date of Meeting	06.09.2022
Time of Meeting	15:30 Hrs
Schedule for e-voting in the NSDL Platform	03.09.2022 (09:00 Hrs) - 05.09.2022 (17:00 Hrs)
Percentage of votes casted in favour of the Resolution	<b>99.9973 %</b>
Percentage of votes casted against the Resolution	0.0027 %

<b>IN RELATION TO THE UNSECURED CREDITORS</b>	
Date of Meeting	06.09.2022
Time of Meeting	14:00 Hrs
Schedule for e-voting in the NSDL Platform	03.09.2022 (09:00 Hrs) - 05.09.2022 (17:00 Hrs)
Percentage of votes casted in favour	<b>100 %</b>

**TRANSFeree COMPANY:**

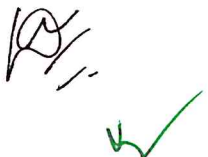
<b>IN RELATION TO THE EQUITY SHAREHOLDERS OF THE TRANSFeree COMPANY</b>	
Date of Meeting	06.09.2022
Time of Meeting	12:00 Hrs

Schedule for e-voting in the NSDL Platform	03.09.2022 (09:00 Hrs) - 05.09.2022 (17:00 Hrs)
Percentage of votes casted in favour of the Resolution	<b>99.9986 %</b>
Percentage of votes casted against the Resolution	0.0014 %

IN RELATION TO THE UNSECURED CREDITORS OF THE TRANSFEREE COMPANY	
Date of Meeting	06.09.2022
Time of Meeting	10:30 Hrs
Schedule for e-voting in the NSDL Platform	03.09.2022 (09:00 Hrs) - 05.09.2022 (17:00 Hrs)
Percentage of votes casted in favour of the Resolution	<b>100 %</b>

IN RELATION TO THE DEPOSIT HOLDERS OF THE TRANSFEREE COMPANY	
Date of Meeting	07.09.2022
Time of Meeting	10:30 Hrs
Schedule for e-voting in the NSDL Platform	04.09.2022 (09:00 Hrs) - 06.09.2022 (17:00 Hrs)
Percentage of votes casted in favour of the Resolution	<b>99.9037 %</b>
Percentage of votes casted against the Resolution	0.0963 %

2.3. Subsequently, the present Company Petition came to be filed on 15.09.2022 before this Tribunal and vide order dated 03.11.2022, directions for the issuance of notice to the Statutory Authorities concerned and also for the issuance of publication in English 'Business Standard' (All India Edition) and Tamil 'Makkal Kural' (Tamil Nadu Edition) were made.



2.4. Pursuant to the said directions, publications were effected on 23.11.2022 and notices were duly served on the Statutory Authorities. Affidavit of Service dated 12.12.2022 is filed before this Tribunal in SR No. 6481 dated 13.12.2022.

### **3. RATIONALE OF THE SCHEME**

3.1. The primary objective of the proposed scheme of amalgamation bears reference to one of the condition imposed by the Reserve Bank of India (hereinafter referred to as 'RBI') vide its License (Licence No. MUM: 119) dated 30.06.2016 issued in favour of the Transferee Company and the RBI Guidelines dated 27.11.2014 for the Licensing of 'Small Finance Banks'.

3.2. The condition being that the 'Promoter' of Transferee Company, which holds more than 40% of Equity Shares in the Transferee Company, must reduce its shareholding to 40% within a period of 5 years from the date of commencement of the Business of the Transferee Company. In the present case, RBI recognises the Transferor Company as the 'Promoter' of the Transferee Company and therefore compliance is sought to be made to the said obligation.

3.3. The proposed amalgamation in terms of the Scheme is expected, inter alia, to result in following benefits:



- i) Achieve satisfaction and compliance of the conditions laid down by RBI in relation to the shareholding of the Transferee Company thereby ensuring continuity of the business of the Transferee Company which is also in accordance with the SFB Licensing Guidelines read with RBI Clarification.
- ii) Providing all the public shareholders of the Transferor Company with direct shareholding in the Transferee Company thereby helping them to unlock value to their investments in the business of the Transferee Company, which is currently held through the Transferor Company. Consequently, the shareholders of the Transferor Company can take independent decisions with respect to their holdings in the Transferee Company without being constrained to hold an investment in the Transferor Company to be able to derive value of benefit from the Transferee Company's business.
- iii) The Scheme also ensures that there is no dilution of value to public shareholders of the Transferor Company in the process of amalgamation in accordance with this Scheme.
- iv) There is no likelihood that the interests of any shareholder, depositor or creditor or employee of either Applicant Companies would be prejudiced as a result of the Scheme. The Scheme will not impose any additional burden on the members of the Transferor Company or the Transferee Company. The Scheme is not in any manner prejudicial or against public interest and would, on the contrary, serve the interest of all

shareholders, depositors, creditors and stakeholders given that the Scheme ensures compliance of the conditions prescribed by RBI required for continued banking operations.

#### 4. STATUTORY AUTHORITIES

##### 4.1 REGIONAL DIRECTOR

4.1.1. The Regional Director, Southern Region (*hereinafter referred to as 'RD'*) to whom the notice was issued, has filed his Report on 02.12.2022 before this Tribunal. At paragraph 3 of the Report, while referring to clause 2.3 of Part II of the proposed scheme, the RD has observed that that the 'Appointed Date' cannot be the 'Effective Date' in terms of 232(6) of the Companies Act, 2013.

4.1.2. The Petitioner Companies in response to the same has filed an Affidavit dated 16.12.2022 wherein the Board of the Petitioner Companies resolved to recommend '01.01.2023' as the Appointed Date. Thus, as recommended by the Petitioners, we hereby fix the 'Appointed Date' for the proposed Scheme as **01.01.2023**.

4.1.3. It is observed that the apart from the above observation, the RD has no objection and as per the report of RoC, Chennai, the Petitioner Companies are regular in filing the statutory returns and has reported that there is no prosecution / complaint / inspection / investigation is pending against the Petitioner Companies.

##### 4.2 INCOME TAX DEPARTMENT

4.2.1. The Deputy Commissioner of Income Tax – Corporate Circle 1(1) (hereinafter referred to as 'AO') vide his communication dated 24.11.2022 has appraised the 'Demand Status' of the Petitioner Companies. In relation to the Transferor Company, the status of demand as per the AO is as under:

<b>S No.</b>	<b>Assessment Year</b>	<b>Proceedings under the Income Tax Act, 1961</b>	<b>Outstanding Demand (In Rs.)</b>
1	2015-16	147	<b>58,150/-</b>
2	2015-16	147	<b>3,62,540/-</b>
3	2015-16	234D	<b>19,480/-</b>
4	2016-17	147	<b>9,01,580/-</b>
5	2016-17	234D	<b>2,56,953/-</b>
6	2018-19	220(2)	<b>33,354/-</b>
7	2018-19	143(3)	<b>95,00,830/-</b>
8	2018-19	143(3)	<b>7,07,510/-</b>
9	2021-22	143(1)	<b>1,16,11,470/-</b>

4.2.2. With reference to the above demands, clause 13 of the proposed Scheme mentions that all the proceedings, including the above would stand transferred to the Transferee Company. Affidavit of the Petitioner Companies dated 16.12.2022 to this effect is placed on record. The Petitioner Companies specifically submitted as under:

'We further state that the Scheme of Amalgamation also provides for transfer of ant legal proceedings which would be defended by the Transferee Company. We state that the rights, and demands (*if any*) would be protected under the



Scheme of Amalgamation and the interests of the Income Tax Department would not be prejudiced’.

4.2.3. Therefore, we feel that the scheme and the undertaking of the Petitioner Companies is sufficient and the interest of the revenue is not obstructed in any manner.

#### **4.3 SECURITIES EXCHANGE BOARD OF INDIA**

4.3.1. The Securities Exchange Board of India (hereinafter referred to as ‘SEBI’) had appointed an Adjudicating Officer in terms of Section 15I of the Securities and Exchange Board of India, 1992 and proceedings came to be initiated in terms of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 by the Adjudicating Officer. However, pending consideration of the present Company Petition, the said proceeding came to be disposed in favour of the Transferor Company by the Adjudicating Officer vide order dated 19.12.2022. The said order of the Adjudicating Officer is placed on record vide SR No. 6638 dated 20.12.2022. Thus, there is no impediment for considering the present Company Petition.

#### **4.4 BOMBAY STOCK EXCHANGE (BSE)**

4.4.1. The BSE vide letter dated 10.06.2022 has communicated that there are no adverse observations with reference to those matters having bearing on listing / de-listing / continuous listing

requirements within the provisions of Listing Agreement. The said letter is placed on record as 'Annexure – A19'. Thus, there is no impediment for considering the present Company Petition.

#### **4.5 NATIONAL STOCK EXCHANGE (NSE)**

4.5.1. The NSE vide letter dated 10.06.2022 has communicated that their 'No Objection' in term of Regulation 94 of SEBI (LODR) Regulations, 2015. The said letter is placed on record as 'Annexure – A19'. Thus, there is no impediment for considering the present Company Petition.

#### **4.6 THE RESERVE BANK OF INDIA**

4.6.1. The RBI vide letter dated 06.05.2022 has conveyed its 'No-Objection' to the proposed Scheme. The said letter is placed on record as "Annexure – 18". Thus, there is no impediment for considering the present Company Petition.

#### **4.7 OFFICIAL LIQUIDATOR**

4.7.1. The Official Liquidator had engaged Chartered Accountants to verify the affairs of the Transferor Company and has filed its Report dated 01.11.2022 before this Tribunal with SR No. 5860 on 01.11.2022. No objection is raised by the Official Liquidator with respect to the Scheme, except seeking to fix the remuneration payable to the Auditor who has investigated into the affairs of the

Transferor Company. In this regard, this Tribunal hereby directs the Petitioner to pay a sum of **50,000/-** plus GST.

**5. VALUATION REPORT:**

5.1. The Learned Counsel for the Petitioner Companies invited the attention of this Tribunal to the 'Swap Ratio' / 'Valuation Report' recommended by a Registered Valuer which is placed on record as 'Annexure – A7' at page nos. – 355 – 367. Under the said report, it is recommended as follows:

"231 shares of Transferee Company to be issued to the Shareholders holding 100 shares in the Transferor Company. (all Rs 10 fully paid-up)"

5.2. Thus, based on the valuation carried out as above, the consideration at clause 10 of the proposed Scheme is fixed as under:

"each of the equity shareholders of the Transferor Company as on the Record Date, without any further application or deed, shall be allotted 231 (Two Hundred and Thirty One) Equity Shares of Rs. 10/- each credited as fully paid up of the Transferee Company in respect of every 100 (One Hundred) Equity Shares of Rs. 10/- each fully paid up held by them in the Transferor Company."

**6. ACCOUNTING TREATMENT**

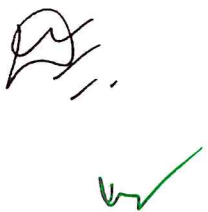
6.1. It is submitted that the Statutory Auditor of the Petitioner companies has examined the Scheme and has certified that the

Petitioner Companies have complied with proviso to Section 230 - 232 and the Accounting Treatment contained in the proposed Scheme of Arrangement is in compliance with the Applicable Indian Accounting Standards notified under section 133 of the Companies Act, 2013 read with the rules made there under and other generally accepted accounting principles in India. The Certificate(s) issued by the Statutory Auditor certifying the Accounting Treatment of all the Petitioner Companies are filed and placed on record as 'Annexure - A17'.

**7. OBSERVATIONS OF THIS TRIBUNAL**

(i) This Tribunal is of the considered view that the scheme as contemplated amongst the petitioner companies seems to be *prima facie* not, in any way detrimental to the interest of the shareholders of the Company. In view of the absence of any material objections from any statutory authorities and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Arrangement appended as Annexure "A1" with the Petition as well as the prayer made therein.

(ii) The objectives of the proposed merger are in consonance with the terms of license read with the RBI License. Post the approval of the scheme, the



shareholding of the Transferee Company will be as under:

<b>Particulars</b>	<b>As on date</b>	<b>Post-Merger</b>
Promoter Shareholding	74.52%	Nil
Public Shareholding	25.48%	100%

- (iii) Notwithstanding the above, if there is any deficiency found or, the violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the petitioners.
- (iv) While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

**8. THIS TRIBUNAL DO FURTHER ORDER:**

- (i) That all properties, rights and interests of the Transferor Company shall, pursuant to Section

232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Transferee Company in terms of the Scheme.

- (ii) That all the liabilities, powers, engagements, obligations and duties of the Transferor Company shall pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Transferee Company in terms of the Scheme.
- (iii) That the Appointed date for the Scheme shall be **01.01.2023** as sought for by the Petitioner Companies.
- (iv) The 'Effective date' shall be the last of the dates on which the certified copies of this order of sanctioning the scheme are filled with ROC Chennai as mentioned in clause 2.8 of Part - II of the Scheme.
- (v) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.
- (vi) That all the employees/workmen of the Transferor Company in service on the date immediately preceding the date on which the Scheme finally takes effect shall become the employees of the Transferee Company without any break or interruption in their service with all the benefits, as existing on the date.



- (vii) The Transferee Company do without further application allot fully paid-up equity shares to such members of the Transferor Company, as have not given such notice of dissent, as is required by Clause 10 of Part IV of the Scheme to which they are entitled, in the ratio as mentioned in valuation report as under:

"each of the equity shareholders of the Transferor Company as on the Record Date, without any further application or deed, shall be allotted 231 (Two Hundred and Thirty One) Equity Shares of Rs. 10/- each credited as fully paid up of the Transferee Company in respect of every 100 (One Hundred) Equity Shares of Rs. 10/- each fully paid up held by them in the Transferor Company."

- (viii) That the Transferee Company shall file the revised Memorandum and Articles of Association with the Registrar of Companies, Chennai and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company after setting off the fees paid by the Transferor Company.
- (ix) That both the Petitioner Companies, shall within thirty days of the date of receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, on such certified copy being so delivered, the Transferor Company shall be dissolved without winding up and the Registrar of Companies shall place all documents relating to the Transferor Company registered with

him on the file kept by him in relation to all the Transferee Company and the files relating to all the said companies shall be consolidated accordingly.

- (x) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

9. Accordingly, the Company Petition is **allowed** on the aforementioned terms and stands disposed of.

—SD—

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

—SD—

**DR. DEEPTI MUKESH**  
MEMBER (JUDICIAL)

*V.Shreekumar*