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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**IA 14/2018 in CP (CAA) No. 63/NCLT/AHM/2017
With CA(CAA) No. 36/NCLT/AHM/2017**


Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 17.01.2018**

Name of the Company: Safal Consturction Pvt. Ltd.
Bsafal Infraheights Pvt Ltd.

Section of the Companies Act: Section 230-232 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.	Yuvraj Thakore for MS. D.N. Raval	Advocate	Applicant	
2.				

ORDER

Learned Advocate Mr. Yuvraj Thakore i/b Learned Advocate Ms. Dharmishta Raval present for Applicant/Petitioners in IA 14/2018.

Order in IA 14/2018 pronounced in open court. Vide separate sheets.


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 17th day of January, 2018.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

**NATIONAL COMPANY LAW TRIBUNAL,
BENCH, AT AHMEDABAD**

IA No.14/NCLT/AHM/2018

In

C.P. (CAA) No. 63/NCLT/AHM/2017

In the matter of:-

Safal Constructions Private
Limited.

Applicant Amalgamating Company

And

BSafal Infraheights Private Ltd.
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Applicant Amalgamated Company

Order delivered on 17th January, 2018

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J)

And

Hon'ble Ms. Manorama Kumari, Member (J)

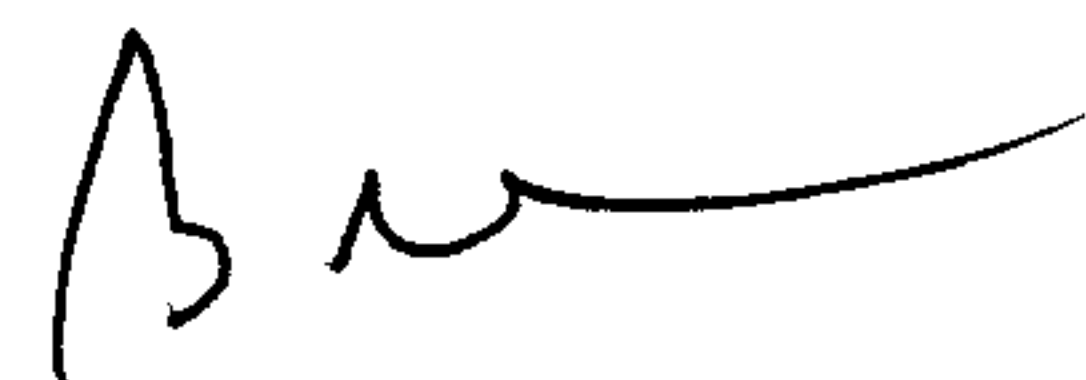
Appearance:

Ms. Dharmishta Raval, Advocate for M/s Raval & Raval
Advocates for the Applicant Companies

ORDER

[Per: Hon'ble Ms. Manorama Kumari, Member (J)]

1. Heard learned Advocate Ms. Dharmishta Raval for Raval & Raval Advocates of Applicant Company. Perused the application and the supporting affidavit of Mr. Rajeshkumar Brahambhatt, Director of the Applicant Company, dated 20th December, 2017 and the documents annexed thereto.



2. This is an application filed by Safal Constructions Pvt. Limited under Section 230-232 of the Companies Act, 2013. Safal Constructions Private Limited i.e. the applicant company had earlier filed CA (CAA) No.36/NCLT/HM/2017 seeking dispensation of the meeting of the equity shareholders and Preference Shareholders and seeking directions for convening the meetings of the secured creditors and unsecured creditors in respect of a scheme of arrangement between the applicant company i.e. the Transferor company and the BSafal Infraheights Pvt. Ltd. (the "Transferee Company") and their respective shareholders and creditors ("Scheme" for short) in the nature of the merger of the transferor company with the transferee-company under Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Act.

3. This Tribunal by an order dated 09.05.2017, dispensed with the meeting of equity shareholders and preference shareholders of the Transferor company and directed the Transferor Company to convene the meeting of the secured creditors and the unsecured creditors. In the said order, this Tribunal noted the submission of the Transferor Company that it had four secured creditors and as the consent affidavits were not filed, the transferor company was directed to convene a meeting of the secured creditors with reference to the list of the persons appearing on the record of the applicant company as on 14.03.2017.

4. The applicant company has submitted that the Chairman appointed for the meeting, conducted the meeting of the secured creditors. It was also submitted



on behalf of the applicant company that the Chairman of the meeting had received the Chartered Accountant's certificate, wherein, it was certified that the applicant company had only two secured creditors and not four as submitted by the applicant in Company Application No.CA (CAA) No.36/NCLT/HM/2017. The Chairman of the meeting had therefore, issued notices to the two secured creditors. However, only one secured creditor remained present in the meeting and subsequently the second secured creditor has given his consent. Along with the application, the consent affidavit of the second secured creditor has been annexed as well as a copy of the certificate issued by the Chartered Accountant certifying that as on March, 2017, the applicant company has two secured creditors.

5. The applicant company filed Interlocutory Application No. 341 of 2017 praying that as the secured creditor of the applicant company had subsequently given their consent, it be considered a sufficient compliance of the order dated 9th May, 2017, passed by this Tribunal. However, the applicant company sought permission to withdraw the said application and by order dated 10.01.2018, this Tribunal permitted the applicant company to withdraw that application.

6. The present application has, therefore, been filed seeking directions permitting the applicant company to convene the meeting of the two secured creditors.

7. On perusal of the documents, it appears that when the meeting was convened, out of the two, only



one attended the meeting and, subsequently, the other secured creditor has given consent affidavit. In this view of the matter, in the interest of justice the applicant company is required to convene the meeting of the Secured Creditors of the Transferor Company.

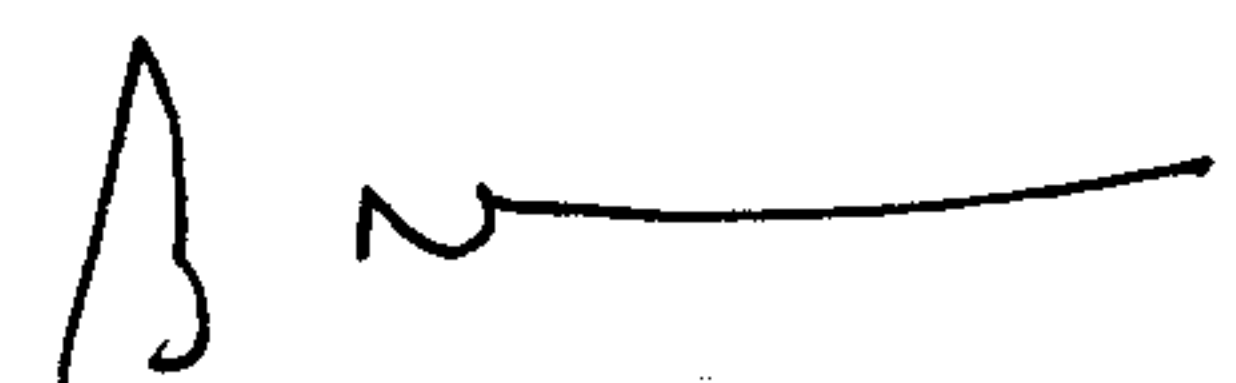
8. In view of the above, this Tribunal passes the following orders:

- I. A meeting of the two secured creditors of the Applicant Company shall be held on 19th February, 2018 at 11.00 A.M., at BSafal House, B/H Mirch Masala Restaurant, Off S.G. Highway, Ahmedabad, for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme.
- II. At least one month before 19th February, 2018, i.e. the date of the aforesaid meeting, an advertisement about convening of the said meetings, indicating the day, date, place and time, as aforesaid, shall be published in English daily, Indian Express, Ahmedabad edition and a Gujarati translation thereof in Sandesh, Ahmedabad edition. The publication shall indicate the time within which copies of scheme shall be made available to the concerned persons free of charge from the registered office of the company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and the prescribed form of proxy can be obtained free of charge from the registered office of the Applicant Transferor Company in

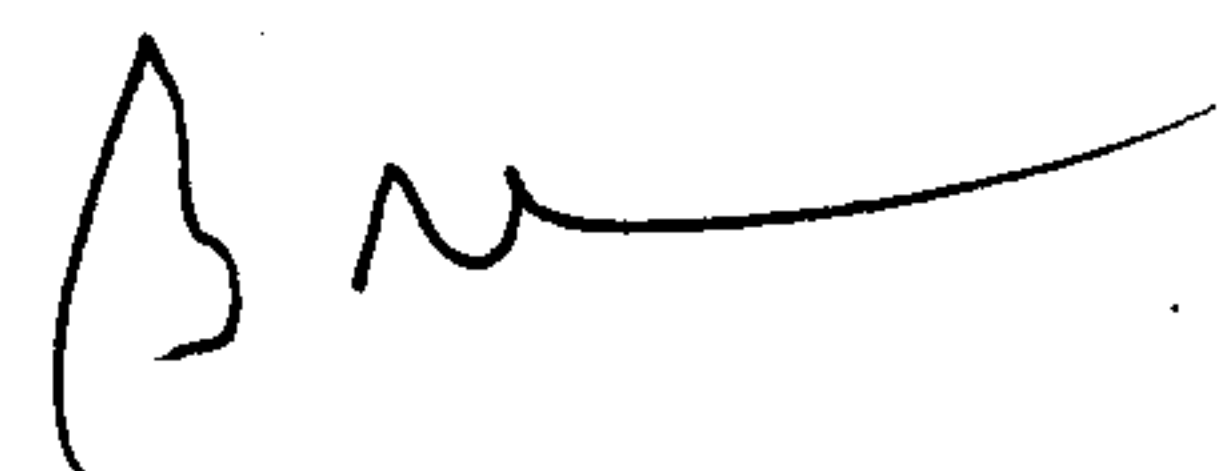


accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.

- III. In addition, at least one month before the date of the meetings of the secured and creditors to be held as aforesaid, a notice convening the said meetings, indicating the day, date, place and time, as aforesaid, together with a copy of the scheme, a copy of statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the of the Applicant Companies at their respective registered or last known addresses either by Registered post or Speed Post/Airmail or by Courier. The Notice shall be sent to the Secured Creditors of the Applicant Transferor Company with reference to the list of the persons appearing on the record of the Applicant Company as on 14th March, 2017.
- IV. Mr. Ullas Shah, Chartered Accountant and, in his absence, Mr. Naishal Shah, Chartered Accountant shall be the Chairman/Chairperson of the aforesaid meeting to be held on 19th February, 2018 and in respect of any adjournment thereof.
- V. Mr. Shambhubhai Jeram Bhikadi, Practicing Company Secretary and, in his absence, Mrs. Jindagi Sanghvi, chartered Accountant is appointed as the Scrutinizer for the meeting of the of the Applicant company.




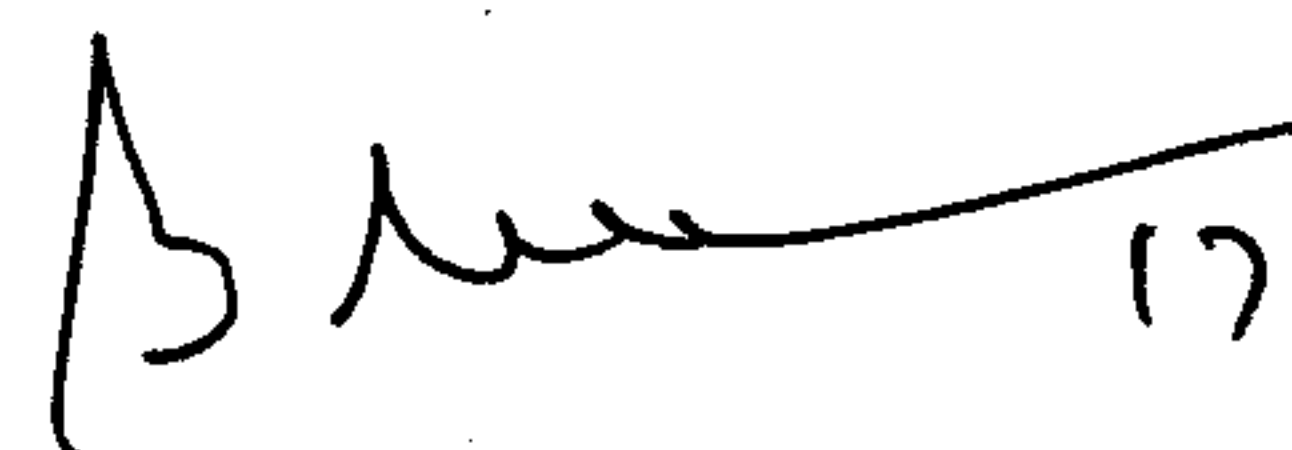
- VI. The Chairman or Chairperson appointed for the aforesaid meeting shall issue advertisements and send out notices of the meetings referred to above. The Chairman/Chairperson is free to avail services of the Applicant Company or any agency for carrying out the aforesaid directions. The Chairman or Chairperson shall have all powers under the Articles of Association of the Applicant Company and also under the Rules in relation to the conduct of meetings, including for deciding any procedural questions that may arise at the meetings or adjournment(s) to the aforesaid scheme or resolution, if any, proposed at the aforesaid meeting by any person(s) and to ascertain the decision of the sense of the meetings of the Secured Creditors by polling paper/ballot.
- VII. The quorum for the meeting of the secured creditors shall be 2(two) persons present in person and if the meeting gets adjourned, the quorum shall be the persons present and voting in the meeting.
- VIII. Voting by proxy/authorized representatives is permitted, provided that the proxy in the prescribed form/authorization duly signed by the person entitled to attend and vote at the aforesaid meeting is filed with the Applicant company at its registered office at BSafal House, B/H Mirch Masala Restaurant, Off S.G. Highway, Ahmedabad, not later than 48 hours before the meetings vide Rule 10 of Companies (CAA) Rules, 2016 read with Section 105 of the Companies Act.



- IX. The number and value of the Secured Creditors, as the case may be, shall be in accordance with the records or registers of the Applicant-company and where the entries in the records or registers are disputed, the Chairman of the meetings shall determine the number or value, as the case may be for purposes of the meetings.
- X. The Chairman/Chairperson to file an affidavit not less than 7(seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Ruule12 of the Companies (CAA) Rules, 2016.
- XI. It is further ordered that the Chairman or the Chairperson shall report to this Tribunal on the result of the meetings in From No.CAA.4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in from No. CAA.4 within seven days.

9. This Interlocutory Application is disposed of accordingly.


Ms. Manorama Kumar,
Member (J)

 17.1.18
Bikki Raveendra Babu,
Member (J)

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