

NATIONAL COMPANY LAW TRIBUNAL

GUWAHATI BENCH: GUWAHATI

CA No.: CA(CAA)/07/GB/2018

Under Section 230 to 232 of the Companies Act, 2013

1. GNRC Limited (Transferee Company)
2. GNRC Infotech Private Limited (Transferor Company)

..... Applicants

Date of Order: 24th September 2018

Coram:

Hon'ble Mr Justice P. K. Saikia, Member (J)

For the applicants:

: Mr. Kushik Goswami, Advocate
Mr. Rakesh Sarmah, Advocate
Mr. Arijoy Sandilya, Advocate

ORDER

Heard Mr. Kaushik Goswami, Mr. Rakesh Sarmah and Mr. Arinjoy Sandilya, learned counsel appearing on behalf of the Applicants.

1. The instant application filed under section 230 and 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangement and Amalgamations) Rules 2016, filed by Applicant no 1 and 2, namely GNRC LIMITED and GNRC INFOTECH PRIVATE LIMITED in connection with a proposed scheme of amalgamation of GNRC INFOTECH PRIVATE LIMITED ("Transferor Company") with GNRC LIMITED ("Transferee Company") whereby and where under the entire undertaking of the Transferor Company together with all property, rights, powers and all debts, liabilities, duties and obligations relating thereto is proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the said Scheme of Amalgamation.

2. This aforesaid application has been filed seeking following reliefs:

- a. *"That appropriate orders and / directions be passed by the Hon'ble bench for dispensing with the meeting of Shareholders of the Transferor Company as the Shareholders of the Transferor Companies have given their written consent by way of affidavit adopting the Scheme of Amalgamation without any modification(s).*
- b. *That appropriate orders and / directions be passed by the Hon'ble bench for dispensing with the meeting of Secured Creditors of the Transferor Company as the Secured Creditors of Transferor Company have given their written consent by way of affidavit adopting the scheme of Amalgamation without any modification(s).*

- c. *That appropriate orders and / directions be passed by the Hon'ble Bench declaring that there is no requirement for holding the meeting of Unsecured Creditors of the Transferor Company as there are NIL Unsecured Creditors.*
- d. *That appropriate orders and / directions be passed by the Hon'ble bench for convening the meeting of Shareholders of the Transferee Company to be held at GNRC Complex Super Market, Dispur, Guwahati, AS-781006 in State of Assam or at such other place as may be determined by this Hon'ble Tribunal and on such date and at such time as this Hon'ble Tribunal for the purpose of considering and if thought fit, approving with or without modification(s), the Scheme;*
- e. *That separate meetings of the Secured Creditors and Unsecured Creditors of the Transferee Company be held at GNRC Complex Super Market, Dispur, Guwahati, AS-781006 in State of Assam or at such other place as may be determined by this Hon'ble Tribunal and on such date and at such time as this Hon'ble Tribunal for the purpose of considering and if thought fit, approving with or without modification(s), the Scheme;*
- f. *That directions may be given as to the method of convening, holding and conducting the said meetings of the Shareholders and the Secured and Unsecured Creditors of the Transferee Company and as to the notices and advertisements to be issued in this behalf;*
- g. *That appropriate orders and / directions be passed by the Hon'ble bench to appoint a Chairperson to preside over the said meeting as this Hon'ble Tribunal may deem fit and proper and in respect of adjournment(s) thereof and that the Chairperson of the meetings shall report the result thereof to this Hon'ble Bench;*
- h. *That appropriate orders and/directions be passed by the Hon'ble bench for serving notice upon Central Government, through **Regional Director, Ministry of Corporate Affairs, Registrar of Companies, Shillong, Official Liquidator, and Income Tax Authorities** having jurisdiction over the affairs of the Company.*
- i) *AND for such further and other directions as this Hon'ble Bench may deem fit and expedient."*

3. Mr. Kaushik Goswami, the learned counsel submits that this application has been filed under Sections 230 & 232 of the Companies Act, 2013 (in short, 'Act, 2013') seeking the reliefs aforementioned. He further submits that the application in hand has been filed in accordance with the requirements of law laid down in Sections 230 to 232 of the Act, 2013 and in the various rules of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (in short, 'Rules'), more particularly the prescription rendered in Rules 3, 4, 5 & 6 of the Rules of 2016.

4. Mr. Kaushik Goswami, the learned counsel further draws the attention of this Hon'ble Court to the following documents annexed to the Application viz:

- a. Necessary Board Resolution dated 03-07-2018 marked as Annexure "F" at Pages 245 to 252 of the Application.
- b. The benefit of the scheme mentioned at pages 35 to 37 of the application at Paragraph 4.2. The salient feature of the scheme of amalgamation is elaborated in the scheme marked as Annexure "E".
- c. Auditors Certificate as per section 232(3) is marked as Annexure "L" at pages 328 to 330 of the application.
- d. Valuation Report for Exchange Ratio of the Transferor Company and Transferee Company marked as Annexure "G" at Page 253 to 267 of the application.

- e. List of Shareholders of the Transferee Company marked as Annexure "H" at page 268 to 291 of the application.
 - f. List of Shareholders of the Transferor Company along with their consent marked as Annexure "I" at page 292 to 308 of the application.
 - g. Certificate from Auditor for the Transferor Company confirming 2 secured creditors and NIL unsecured creditors along with their consent marked as Annexure "K" at page 317 to 327 of the application.
 - h. An Affidavit in the prescribed form is sworn by Mr. Vikash Vijayvargiya and Ms. Priyanka Borah in respect of the Applicant Companies and mentioned at pages 333 to 338.
5. I have considered such submissions in the light of averments made in the petition having regard to the various rules and procedures holding the field. On doing so, I find it necessary to render the following order in regard to prayer made in the petition under consideration:
- i) A separate meeting of the holders of the equity shareholders of GNRC Limited (hereinafter referred to as Transferee Company) shall be convened and held at GNRC Complex Super Market, Dispur, Guwahati, AS-781006 in State of Assam, on 10th November 2018 at 10.30 A.M. for the purpose of considering, and if thought fit, of approving, with or without modification, the Scheme of Arrangement between the transferor company and the transferee company. The said Scheme hereinafter would be referred to as the Scheme of Arrangement.
 - ii) A separate meeting of the Secured Creditors of transferee company, namely, GNRC Limited, shall be convened and held at its registered office at GNRC Complex Super Market, Dispur, Guwahati, AS-781006 in State of Assam, on 10th November 2018 at 12.30 noon, for the purpose of approving with or without modification the aforesaid Scheme of Arrangement.
 - iii) A separate meeting of the Unsecured Creditors of transferee company, namely, GNRC Limited, shall be convened and held at its registered office at GNRC Complex Super Market, Dispur, Guwahati, AS-781006 in State of Assam, on 10th November 2018 at 01.30 P.M. for the purpose of approving with or without modification the aforesaid Scheme of Arrangement.
 - iv) At least 30 days before the aforesaid meetings to be held at the place aforementioned, a notice convening the said meetings at place and time as aforesaid together with the copy of the said Scheme of Arrangement as well as a copy of the statement required to be sent under Rule 6 (3) of the Rules of 2016 and the prescribed Forms of Proxy shall be sent to each equity shareholder of the Transferee Company and each Creditor (Secured and Unsecured) of the Transferee Company by registered post with AD or by speed post at their respective last known addresses. Such notice convening the said meeting at place and time as aforesaid shall be in Form No CAA2.
 - v) Further, the notice of the meeting under Section 230 (3) of the Act of 2013 shall be advertised in Form No.CAA.2 at least 30 days before 10th November 2018 (i.e. the date fixed for meeting) and such advertisement shall be published in the 'The Assam Tribune, an English Daily, and in the 'Dainik Janambhumi', an Assamese daily, which have wide circulation in the state where the registered offices of the petitioner companies are situated. Such a notice shall also be placed, not less than 30 days before the date fixed for meeting on the website of the company, if any.

- vi) Further, for the purpose of sub-section (5) of section 230 of the Act, the notice shall be sent in Form No. CAA.3, and shall be accompanied by a copy of the scheme of compromise or arrangement, the explanatory statement and the disclosures, mentioned under rule 6, and such notice shall be sent to the Central Government through the Regional Director, North Eastern Region, Ministry of Corporate Affairs, the Registrar of Companies, Shillong, Official Liquidator, and the Income-tax authorities having jurisdiction over the Applicants.
- vii) The notice to the aforesaid authorities shall be sent forthwith, after notice is sent to the Members and Creditors of the transferee company and such notice are to be sent by Registered Post with A/D or by speed post at the Office of aforesaid authorities.
- viii) In the notice, it may also be stated that the authorities referred to in Rule 8 (1) of the Rules, 2016, may make their representation under sub-section (5) of Section 230 and same shall be sent to this Bench within a period of 30 days from the date of receipt of such notice.
- ix) Further, a copy of such representation from the aforesaid authorities shall simultaneously be sent to the companies as well and in any case, if such representation from those authorities is not received by this Bench, it shall be presumed that those authorities have no comments to make on the proposed Scheme of Compromise or Amalgamation.

6. Mr. Barun D. Deka, Advocate, and failing him, Mr. Manish Dewan, Advocate, shall be the Chairman of the meeting of the equity shareholders of the transferee company to be held at the place aforementioned.

7. Mr. Alok Goswami, Advocate and failing him, Mr. Brun D. Deka, Advocate, shall be the Chairman of the meeting of the Secured Creditor of the transferee company to be held at the aforesaid place.

8. Mr. Manish Dewan, Advocate, and failing him, Mr. Alok Goswami, Advocate shall be the Chairman of the meeting of the Unsecured Creditor of the transferee company to be held at the aforesaid place.

9. The Chairman of the above mentioned meetings will be paid a remuneration of Rs.10,000.00 (Rupees Ten thousand only)

10. The Quorum of the Unsecured Creditors and Equity Shareholder meetings shall be five persons, present either in person or by proxy. In respect of the Secured Creditor meeting of the Transferee Company, the Quorum shall be one person. Voting by proxy shall be permitted, provided a proxy in the prescribed form duly signed by the person, entitled to attend and vote at the meeting, is filed with the company at its registered office not later than 48 hours before the meeting. The other conditions specified in Rule 10 (2) to Rule 10 (5) would be applicable in case of voting by proxy. The Chairman shall have the power to adjourn the meeting if necessary.

11. The Chairman shall file an affidavit before this Bench not less than 7 days before the date fixed for meeting or the date of the first meeting as the case may be stating that the direction regarding issue of notice and the advertisement have been duly complied with.
12. The respective Chairman shall report the result of such meetings to this Bench within 7 days from the date of conclusion of the meetings and their report shall, be submitted in Form No.CAA.4.
13. It has been stated that the transferor company has 4 (four) equity Shareholders and such Shareholders have given their written consent to scheme and have agreed to have no objection if the meeting of the Shareholders of Transferor Company are dispensed with and in that connection, an Affidavit from those Shareholders has also been annexed with the application.
14. It has been stated that the transferor company has 2 (two) Secured Creditors and such Secured Creditors have given their written consent to the scheme and have agreed to have no objection if the meeting of the Secured creditors of Transferor Company are dispensed with and in that connection, an Affidavit from those Secured Creditors has also been annexed with the application.
15. It has further been stated that the transferor company does not have any Unsecured Creditors and hence there is no requirement for holding meeting of Unsecured Creditors of the transferor company.
16. In view of the above, the Shareholders meeting and Secured Creditors meeting of the transferor company is dispensed with. Further, it is evident from the application that the transferor company has no Unsecured Creditor and hence no meeting is required to be held.
17. The prayers stand allowed and the application being CA No.: CA(CAA)/07/GB/2018 is disposed of accordingly.
18. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.



Member (Judicial)
National Company Law Tribunal,
Guwahati Bench, Guwahati.

Dated, Guwahati the 24th September, 2018
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