

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

CA(CAA)/761/MB/ 2018

Under Section 230 to 232 of the
Companies Act, 2013

In the matter of Scheme of Merger by
Absorption between LOYAL APPARELS
PRIVATE LIMITED, the First Transferor
Company and SHREE MARUTI
RESIDENCY & MALL DEVELOPERS
PRIVATE LIMITED, the Second
Transferor Company and TOPLER
FASHIONS (INDIA) PRIVATE LIMITED,
the Transferee Company and their
respective shareholders.

LOYAL APPARELS PRIVATE LIMITED

.... Applicant Company No. 1

SHREE MARUTI RESIDENCY & MALL DEVELOPERS PRIVATE LIMITED

... Applicant Company No. 2

TOPLER FASHIONS (INDIA) PRIVATE LIMITED

... Applicant Company No. 3

Order on 30th August, 2018

Coram:

Hon'ble Bhaskara Pantula Mohan Member (Judicial)

Hon'ble V. Nallasenapathy Member (Technical)

For the Petitioner(s): Mr. Rajesh Shah with Mr. Ahmed M. Chunawala
i/b M/s. Rajesh Shah & Co., Advocate for the
Petitioner.

Per : V. Nallasenapathy Hon'ble Member (Technical)

ORDER

UPON the application of the Applicant Company above named by a
Company Notice of Admission AND UPON HEARING Mr. Rajesh Shah
instructed by Rajesh Shah & Co., Advocate for the Applicant
Company, AND UPON READING the Application along with the Notice
of Admission dated 24th July, 2018 Kiran Sharma, Authorized

Signatory of all the Applicant Companies in support of Notice of Admission along with Application and the Exhibits therein referred to, IT IS ORDERED THAT:

1. A meeting of the Equity Shareholders of the Applicant Company No.1 be convened and held at 10-11, Mehar Tiles Compound, Subhash Road Jogeshwari(E), Mumbai – 400060 , on 15th day of October, 2018 at 10:00 A.M., for the purpose of considering and, if thought fit, approving, with or without modification(s), in the proposed Scheme.
2. A meeting of the Equity Shareholders of the Applicant Company No.2 be convened and held at 10-11, Mehar Tiles Compound, Subhash Road Jogeshwari(E), Mumbai – 400060, on 15th day of October, 2018 at 10:30 A.M., for the purpose of considering and, if thought fit, approving, with or without modification(s), in the proposed Scheme.
3. A meeting of the Equity Shareholders of the Applicant Company No.3 be convened and held at 10-11, Mehar Tiles Compound, Subhash Road Jogeshwari(E), Mumbai – 400060, on 15th day of October, 2018 at 11:00 A.M., for the purpose of considering and, if thought fit, approving, with or without modification(s), in the proposed Scheme.
4. A meeting of the Preference Shareholders of the Applicant Company No.3 be convened and held at 10-11, Mehar Tiles Compound, Subhash Road Jogeshwari(E), Mumbai – 400060, on 15th day of October, 2018 at 11:30 A.M., for the purpose of considering and, if thought fit, approving, with or without modification(s), in the proposed Scheme.
5. At least 30 clear days before the said meeting of the Equity Shareholders of the Applicant Companies to be held as aforesaid, a notice convening the said Meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by registered post or by air mail or by courier or by speed post or by hand delivery to each of the Equity Shareholders of the Applicant Companies at their respective

registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders as per the records of the Applicant Companies.

6. At least 30 clear days before the Meeting of the Equity Shareholders of the Applicant Companies to be held as aforesaid, a notice convening the said meeting, at the place, date and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of Proxy can be obtained free of charge at the registered office of the Applicant Companies as aforesaid and shall also be published once each in 'Free Press Journal' in English and 'Navshakti' in Marathi.
7. At least 30 clear days before the said meeting of the Preference Shareholders of the Applicant Company No. 3 to be held as aforesaid, a notice convening the said Meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by registered post or by air mail or by courier or by speed post or by hand delivery to each of the Preference Shareholders of the Applicant Company No. 3 at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Preference Shareholders as per the records of the Applicant Company No. 3.
8. At least 30 clear days before the Meeting of the Preference Shareholders of the Applicant Company No. 3 to be held as aforesaid, a notice convening the said meeting, at the place, date and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of Proxy can be obtained free of charge at the registered office of the Applicant Company No. 3 as aforesaid and shall also be published once each in 'Free Press Journal' in English and 'Navshakti' in Marathi.
9. The Applicant Companies undertakes to:

- i. issue Notice convening meeting of the equity and preference shareholders as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
- ii. issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
- iii. issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and
- iv. advertise the Notice convening meeting as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertakings are accepted.

10. Kiran Sharma, Director of Application Company No. 2 failing whom Indrajit Goenka, Director of Applicant Company No. 2 is appointed as the Chairperson for the meeting of Equity Shareholders of the Applicant Company No.1. The Scrutinizer for the meeting shall be M/s Mayank Arora & Co., Practicing Company Secretary, (COP No. 13609, Membership No. 33328).
11. Kiran Sharma, Director of Application Company No. 2 failing whom Indrajit Goenka, Director of Applicant Company No. 2 is appointed as the Chairperson for the meeting of Equity Shareholders of the Applicant Company No.2. The Scrutinizer for the meeting shall be M/s Mayank Arora & Co., Practicing Company Secretary, (COP No. 13609, Membership No. 33328).
12. Kiran Sharma, Director of Application Company No. 2 failing whom Indrajit Goenka, Director of Applicant Company No. 2 is appointed as the Chairperson for the meeting of Equity Shareholders of the Applicant Company No.3. The Scrutinizer for the meeting shall be M/s Mayank Arora & Co., Practicing Company Secretary, (COP No. 13609, Membership No. 33328).
13. Kiran Sharma, Director of Application Company No. 2 failing whom Indrajit Goenka, Director of Applicant Company No. 2 is appointed as the Chairperson for the meeting of Preference

Shareholders of the Applicant Company No.3. The Scrutinizer for the meeting shall be M/s Mayank Arora & Co., Practicing Company Secretary, (COP No. 13609, Membership No. 33328).

14. The Chairpersons appointed for the aforesaid Meeting to issue the notices of the Meeting referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
15. The quorum for the aforesaid meeting of the Equity and Preference Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
16. The voting by proxy or authorised representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Companies at its Registered Office, not later than, 48 hours before the aforesaid meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
17. The value and number of the shares of each member shall be in accordance with the books/ register of the Applicant Companies or depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
18. The Chairpersons to file an affidavit not less than seven days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
19. The Chairpersons to report to this Tribunal, the result of the aforesaid meeting within 30 working days of the conclusion of the

meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

20. That Counsel for the Applicant Company No. 1 submits that there are no Secured Creditors as mentioned in para 30 of the Application
21. That Counsel for the Applicant Company No. 2 submits that there are no Secured Creditors as mentioned in para 31 of the Application
22. That Counsel for the Applicant Company No. 3 submits that since the scheme is an arrangement between the Applicant Company No.3 and their respective shareholders only a meeting of the Equity Shareholders and Preference Shareholders is proposed to be held in accordance with the provisions of Section 230 (1) (b) of the Companies Act, 2013. This bench hereby directs the Applicant Company No.3 to issue notice to its Secured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.3.
23. That Counsel for the Applicant Company No. 1 submits that since the scheme is an arrangement between the Applicant Company No. 1 and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230 (1) (b) of the Companies Act, 2013. This bench hereby directs the Applicant Company No.1 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.1.
24. That Counsel for the Applicant Company No. 2 submits that since the scheme is an arrangement between the Applicant Company No.2 and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230 (1) (b) of the Companies Act, 2013.

This bench hereby directs the Applicant Company No.2 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.2.

25. That Counsel for the Applicant Company No. 3 submits that since the scheme is an arrangement between the Applicant Company No.3 and their respective shareholders only a meeting of the Equity Shareholders and Preference Shareholders is proposed to be held in accordance with the provisions of Section 230 (1) (b) of the Companies Act, 2013. This bench hereby directs the Applicant Company No.3 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.3.
26. The Applicant Companies to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
27. The Applicant Companies to serve the notice upon the concerned Registrar of Companies, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

28. At least 30 clear days before the date fixed for hearing, Applicant Company No.1 to 2 to serve the notice of hearing of Application upon the Official Liquidator, High Court, Bombay pursuant to Section 230(5) of the Companies Act, 2013. The Tribunal is appointing Chartered Accountant, M/S Agarwal & Associates, with remuneration of INR 70,000/- for the services. If no response is received by the concerned Tribunal from Official Liquidator within 30 days it may be presumed that Official Liquidator, High Court, Bombay has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
29. The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessment are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
30. The Applicant Companies to file an affidavit of service of the directions given by the Tribunal not less than seven days before the date fixed for the holding of the meetings and do report to this Tribunal that the direction regarding the issue of notices have been duly complied with.

SD/-

V. NALLASENAPATHY
MEMBER (T)

SD/-

BHASKARA PANTULA MOHAN
MEMBER (J)