

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 21/NCLT/AHM/2017

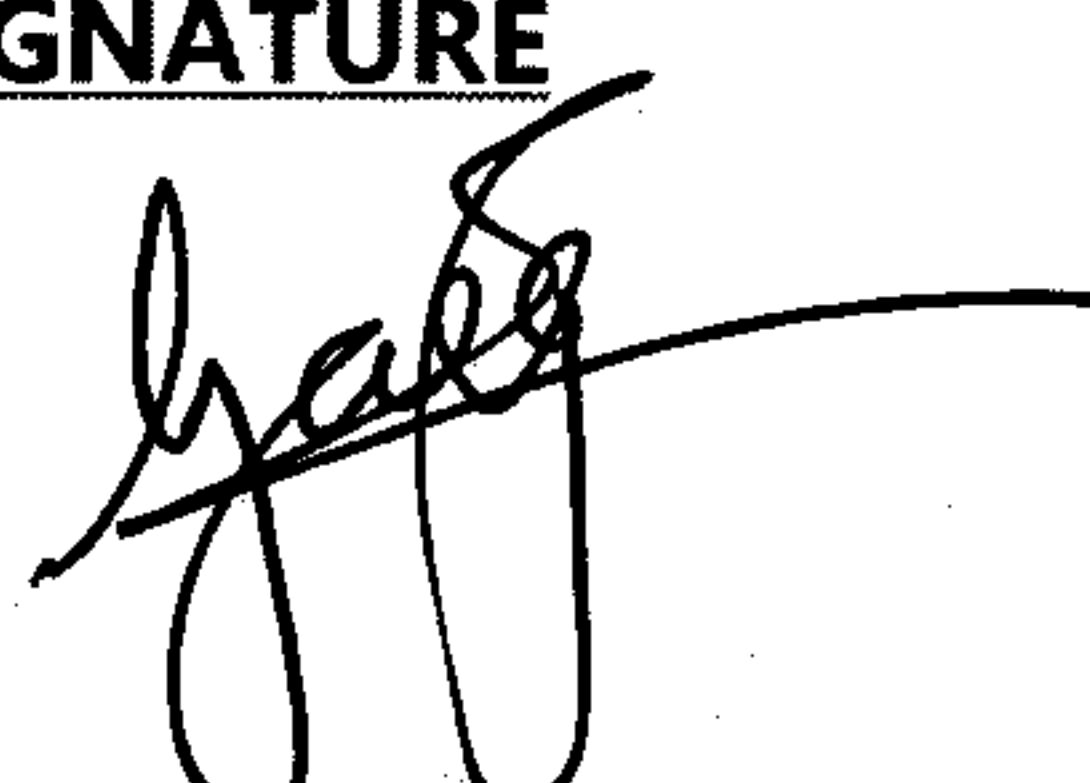
Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.06.2017**

Name of the Company: Shaswat Nirman Pvt Ltd
Indraprashtha Supermart Pvt Ltd (Joint Application)

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>
1.	GARGI R. VYAS	ADVOCATE	APPLICANT	
2.				

ORDER

Learned Advocate Ms. Gargi Vyas present for Applicants.

Order Pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 13th day of June, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.A(CAA) NO. 21/NCLT/AHM/2017

**CORAM: SHRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL
(DATE: 13th day of June, 2017)**

In the matter of : -

1. Shaswat Nirman Private Limited,
A company incorporated under the
Companies Act, 1956 and having
its Registered Office at: 109, Man Heritage,
1st Floor, South Tukoganj,
Indore, Madhya Pradesh – 452001. ... Applicant
(Transferor Company)
2. Indraprastha Supermart Private Limited,
A company incorporated under the
Companies Act, 1956 and having
its Registered Office at: 109, Man Heritage,
6/2, South Tukoganj,
Indore, Madhya Pradesh – 452001. ... Applicant
(Transferee Company)

Appearance: -

Ms. Gargi Vyas, Advocate, for the Applicant Companies.

FINAL ORDER

(Date:13.06.2017)

1. Heard learned Advocate for the Applicant Companies. Perused the joint application and the supporting affidavit of Mr. Manish Sharma, the authorized signatory of the Applicant Companies dated March 11, 2017 along-with additional affidavits dated April 12, 2017 and May 31, 2017 and the documents appended thereto.

2. Shahswat Nirman Private Limited ('Transferor Company' or the 'Applicant Transferor Company') and Indraprastha Supermart Private Limited ('Transferee Company' or the 'Applicant Transferee Company') (collectively known as the 'Applicant Companies') have



preferred this joint application under Section 230-232 of the Companies Act, 2013, seeking directions for the purpose of convening and holding meetings of shareholders and unsecured creditors of the Applicant Companies and seeking dispensation of the meeting of the secured creditors in respect of scheme of amalgamation between Shahswat Nirman Private Limited and Indraprastha Supermart Private Limited ('Scheme') since the Applicant Companies do not have any secured creditors.

3. Both the Applicant Companies are private companies limited by shares. The authorized share capital of the Applicant Transferor Company, is Rs.40,00,000/- and its issued, subscribed and paid-up share capital, as on March 1, 2017, is Rs.34,33,200/-, divided into 3,43,320 equity shares of Rs.10/- each.

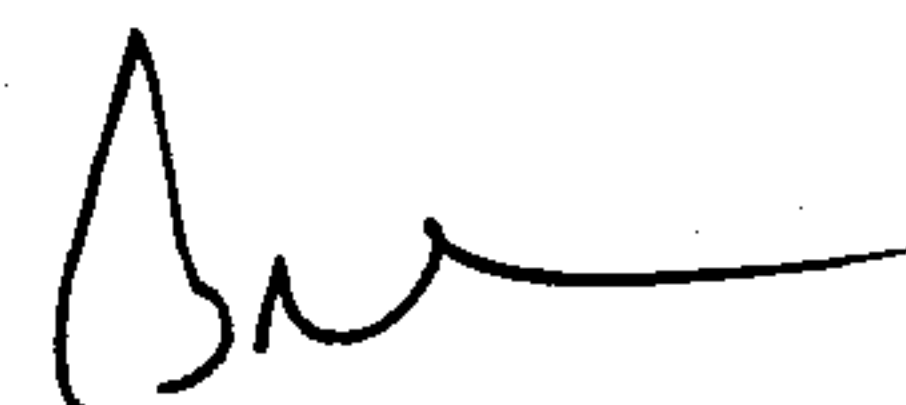
4. The authorized share capital of the Applicant Transferee Company, is Rs. 50,00,000/- and its issued, subscribed and paid-up share capital as on, March 1, 2017, is Rs.19,47,400/-, divided into 1,94,740 equity shares of Rs.10/- each.

5. The Scheme for amalgamation of the Applicant Transferor Company with the Applicant Transferee Company was placed before the Board of Directors of the Applicant Companies for consideration and approval. The Board of Directors of both the Applicant Companies, in their respective meetings held on March 1, 2017, approved the Scheme.

6. The Applicant Companies have in Paragraph 19 of the joint Application, placed on record, certificates of chartered accountants at Annexure-K and Annexure-L to the effect that there are no secured creditors of the applicant companies as on 31st March, 2017. On June 1, 2017, the applicants filed an additional affidavit producing therewith certificates of Chartered Accountants to the effect that, even as on May 25, 2017, the Applicant Companies do not have any

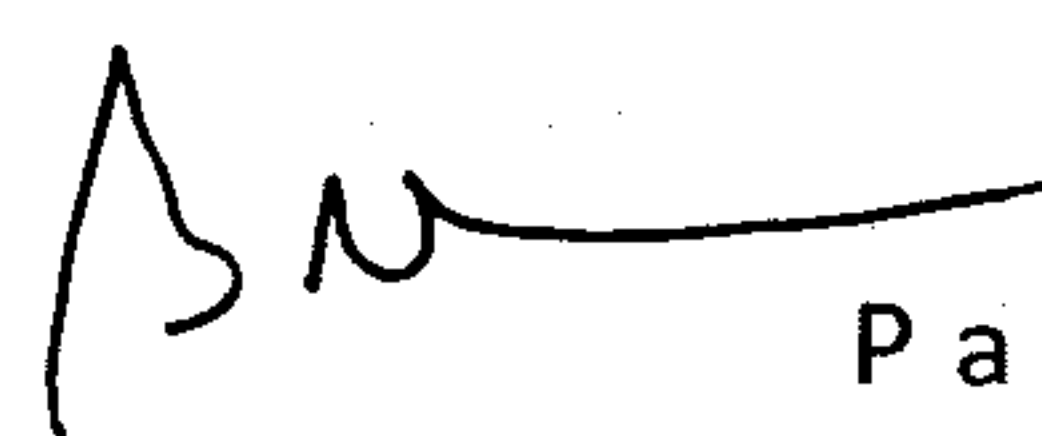
secured creditors. Considering the certificates of Chartered Accountants, this Tribunal is of the view that there is no need to conduct meetings of secured creditors of the Applicants Companies.

7. It is stated in the application that there are no investigations pending under Section 209 to 229 of the Companies Act, 2013, or any other provisions of the Companies Act, 2013. It is also stated that the Applicants Companies being private limited, their shares are not listed in any stock exchange. It is therefore submitted that no notice is required to be served under Section 230 (5) of the Companies Act, 2013 on the Securities and Exchange Board of India. The Applicants, by way of an additional affidavit dated April 12, 2017, stated that they are producing a certificate on record issued by the statutory auditors of the applicant transferor and transferee company stating to the effect that the Scheme is in conformity with the accounting standards as prescribed under Section 133 of the Companies Act, 2013. However, instead of placing the certificate of statutory auditors, the applicants have annexed some other communication along with the Additional Affidavit. Therefore, it is observed that the applicant companies shall produce the certificate of statutory auditors stating that the accounting standard prescribed in the proposed scheme is in conformity with Section 133 of the Companies Act, 2013 along with the petition for sanctioning of the scheme. It is further stated in the application that there is no winding up petition pending against the Transferor and Transferee Companies. It is also stated in the application that there will not be any implications which adversely affect the competition in the industry and hence, the companies need not comply with any of the provisions of the Competition Act, 2002. It has been submitted that none of the shareholders of the applicant companies are foreign nationals and neither of the applicant companies are non-banking financial companies. Therefore, it is not necessary to serve notice of the meeting on the Reserve Bank of India.



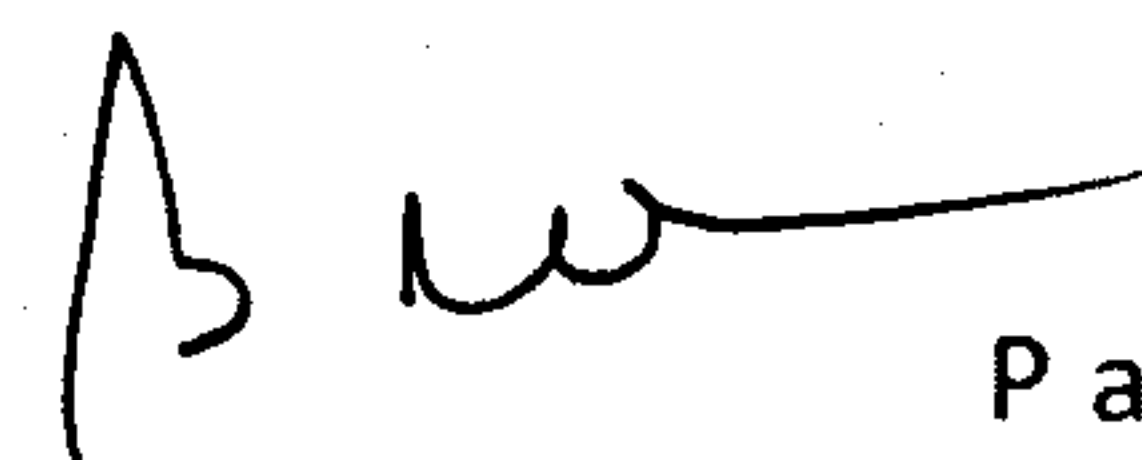
8. Having considered the entire material on record, this Tribunal passes the following order:

- a. A meeting of the equity shareholders of the Applicant Transferor Company shall be convened and held at the registered office of the applicant company on July 25, 2017 at 11:00 A.M., for the purpose of considering and if thought fit, approving with or without modification (s) the Scheme;
- b. A meeting of the equity shareholders of the Applicant Transferee Company shall be convened and held at the registered office of the applicant company on July 25, 2017 at 11:30 A.M., for the purpose of considering and if thought fit, approving with or without modification (s) the Scheme;
- c. A meeting of the unsecured creditors of the Applicant Transferor Company shall be convened and held at the registered office of the applicant company on July 25, 2017 at 12:00 noon, for the purpose of considering and if thought fit, approving with or without modification (s) the Scheme;
- d. A meeting of the unsecured creditors of the Applicant Transferee Company shall be convened and held at the registered office of the applicant company on July 25, 2017 at 12:30 P.M., for the purpose of considering and if thought fit, approving with or without modification (s) the Scheme;
- e. At least one month before the date of the aforesaid meetings, an advertisement about convening of the said meetings, indicating the day, date, place and time as aforesaid, shall be published in English Daily Free Press Journal, Indore Edition and Hindi Daily Choutha Sansar, Indore Edition. The publication shall indicate the time within which copies of the Scheme shall be made available to the concerned persons free of charge from the registered office of the Applicant Companies. The publication shall also indicate that the



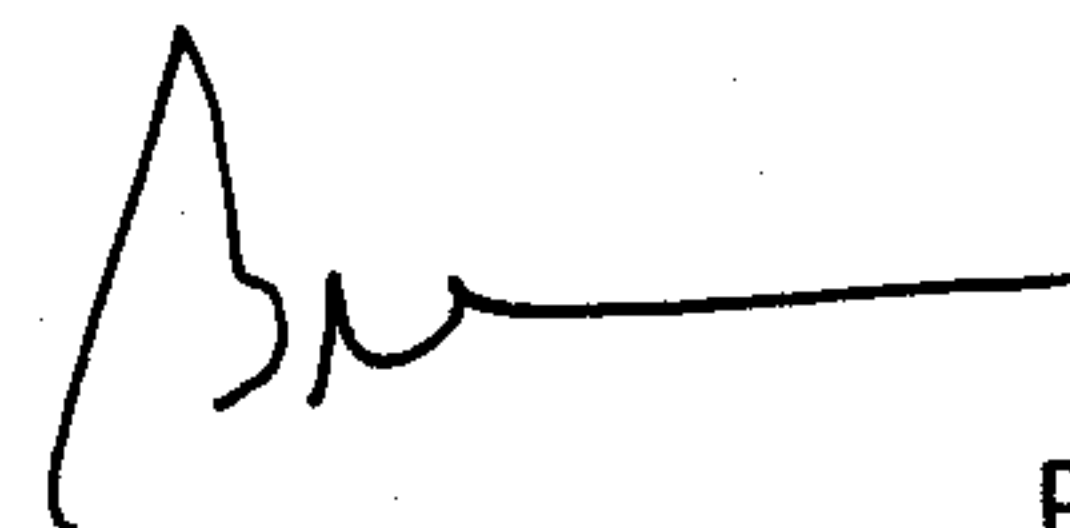
statement required to be furnished pursuant to Section 102 of the Companies Act, 2012, read with Section 230 to 232 of the Companies Act, 2013 and the prescribed form of proxy can be obtained free of charge from the registered office of the Applicant Companies in accordance with the second proviso to subsection (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.

- f. At least one month before the date of the aforesaid meetings of the equity shareholders, a notice in Form No. CAA.2 convening the said meetings, indicating the day, date, place and time as aforesaid, together with a copy of the Scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Companies Act, 2013 read with Section 230 to 232 of the Companies Act, 2013 and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed proxy form shall also be sent to equity shareholders or each of the equity shareholders of the applicant-companies at their respective registered or last known addresses either by registered post or speed post or air mail or by courier or email. The notices shall be sent to the equity shareholders of the Applicant Companies with reference to the list of persons appearing on record of the applicant companies and its register as on March 1, 2017, being the cut-off date as prescribed under Rule 20 of the Companies (Management and Administration) Rules, 2014.
- g. In addition to the above, at least one month before the date of the aforesaid meetings of the unsecured 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 the statement required to be furnished pursuant to Section 102 of the Companies Act, 2013 read with Section 230 to 232 of the Companies Act,



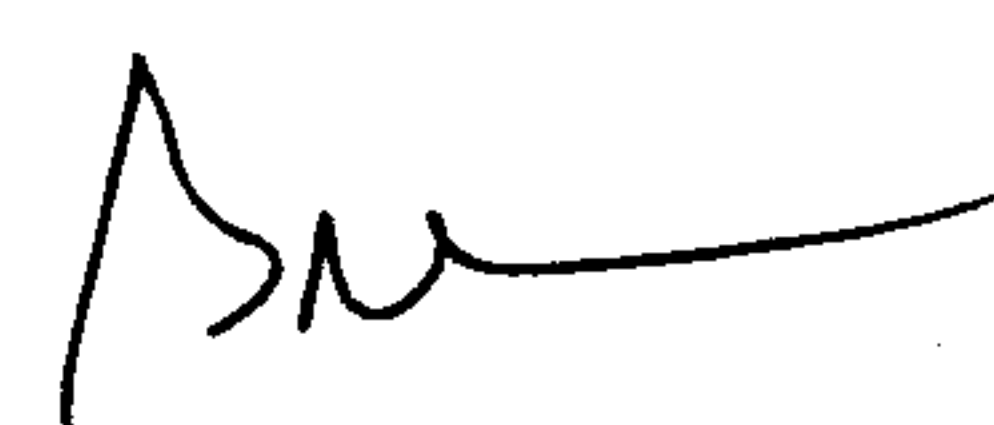
2013 and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed proxy form shall also be sent to unsecured creditors of the Applicant Companies at their respective registered or last known addresses either by registered post or speed post or air mail or by courier or email. The notices shall be sent to the unsecured creditors of the Applicant Companies with reference to the list of persons appearing on record of the applicant companies and its register as on March 1,2017.

- h. Mr. Yash Gupta, practicing Company Secretary of the Applicant Companies, shall be the chairman/chairperson of the aforesaid meetings to be held on July 25, 2017 and in respect of any adjournment or adjournments thereof.
- i. Mr. Manish Maheshwari, Company Secretary in Practice, is appointed as the scrutinizer for the meeting of the equity shareholders and unsecured creditors of the Applicant Companies.
- j. The chairman or chairperson appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meeting referred above. The Chairman/chairperson is free to avail the services of the Applicant Companies or any agency for carrying out the aforesaid directions. The chairman or chairperson shall have all the powers under the Articles of Association of the Applicant Companies and the Rules in relation to the convening of meetings, including deciding any procedural questions that may arise at the meetings or adjournments thereof proposed at the said meetings, amendment (s) to the Scheme or resolutions, if any, proposed at the aforesaid meetings by any person(s) and to ascertain the decision of



the sense of the meeting of equity shareholders and unsecured creditors by polling paper.

- k. The quorum for the meetings of the equity shareholders of the applicant companies shall be 2 (two) persons each present in person. The quorum for the meetings of the unsecured creditors of the applicant-companies shall be 2 (two) persons each present in person.
- l. Voting by proxy/authorized representative is permitted provided that the proxy in the prescribed form/authorization duly signed by the persons entitled to attend and vote at the aforesaid meetings is filed with the Applicant Companies, at their registered office, not later than 48 hours before the meeting *vide* Rule 10 of the Companies (CAA) Rules, 2016 read with Section 105 of the Companies Act, 2013.
- m. The number and value of the equity shareholders and the unsecured creditors of the Applicant Companies shall be in accordance with the register of the Applicant Companies and where the entries in the records or registers are disputed, the Chairperson of the meetings shall determine the number or value, as the case may be for the purposes of the meetings.
- n. The Chairperson of the Applicant Companies to file an affidavit not less than 7 (seven) days before the date fixed for holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisements of the meetings have been duly complies with as per Rule 12 of the Companies (CAA) Rules, 2016.
- o. It is further ordered that the Chairperson of the Applicant Companies shall report to this Tribunal, the results of the meetings in Form CAA 4, verified by his affidavit, as per Rule



14 of the Companies (CAA) Rules, 2016 in Form CAA 4 within 7 (seven) days after conclusion of the meetings.

- p. In compliance of section 230(5) of the Companies Act, 2013 and Rule 18 of the Companies (CAA) Rules, 2016, the Applicant Companies shall send a notice of the meetings under Section 230 (3) read with Rule 6 of the Companies (CAA) Rules, 2016 in Form No. CAA. 3 along-with a copy of the Scheme, explanatory statement and the disclosures mentioned under Rule 6 to the (i) Central Government, through Regional Director, North Western Region, (ii) Registrar of Companies, Gwalior and (iii) the Income Tax Authorities, stating that the representations, if any to be made by them within a period of 30 days from the date of receipt of such notice, failing which, it shall be presumed that they have no objection to make to the Scheme. The Applicant Transferor Company shall also send a notice to the office of the Official Liquidator. The said notice shall be sent forthwith after notice is sent to the equity shareholders and the unsecured creditors of the Applicant Companies at the office of the respective authority, as required by Rule 8 (2) of the Companies (CAA) Rules, 2016, by registered post or speed post or air mail or courier or by hand delivery. The aforesaid authorities, who desire to make any representation under Section 230 (5) shall send the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which, it shall be deemed that they have no representation to make on the Scheme.

9. This Company Application is disposed of accordingly.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court
on this 13th day of June, 2017.

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