

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**T.P.No. 86/2017
C.P.No. 973/2016**

Coram:

Hon'ble Shri Vijai Pratap Singh, Member (Judicial)

In the matter of: The Companies Act, 1956;

And

In the matter of: An application under Sections 391(2) and 394 of the said Act;

And

In the matter of:

Scheme of Amalgamation of Ujjwal Barter Private Limited, Ramanlal Madanlal Trading Private Limited, Nirjhar Vyapaar Private Limited, Macro Entertainment Private Limited, G.K.S. Finvest Privte Limited and Calcutta Fan (1995) Private Limited with G.S.Global Projects Private Limited and their respective Shareholders;

And

In the matter of:

Ujjwal Barter Private Limited, a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 238A, A.J.C.Bose Road, 2nd Floor, Suit No. 2B, Kolkata 700020, West Bengal, within the aforesaid jurisdiction.

And

In the matter of:

Ramanlal Madanlal Trading Private Limited, a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 238A, A.J.C.Bose Road, 2nd Floor, Suit No. 2B, Kolkata 700020, West Bengal, within the aforesaid jurisdiction.

And

In the matter of

Nirjhar Vypaar Private Ltd., a company incorporated under the Companies Act, 1956, having its Registered Office at 34, Ganesh Chandra Avenue, 4th floor, Suite No. 16, Kolkata 700013, within the aforesaid jurisdiction.

And

In the matter of:

Macro Entertainment Private Ltd., a company incorporated under the Companies Act, 1956, having its Registered Office at 34, Ganesh Chandra Avenue, 4th floor, Kolkata 700013, within the aforesaid jurisdiction.

And

In the matter of:

G K S Finvest Private Limited, a company incorporated under the Companies Act, 1956, having its Registered Office at 238A, A.J.C.Bose Road, 2nd Floor, Suit No. 2B, Kolkata 700020, West Bengal, within the aforesaid jurisdiction.

And

In the matter of:

Calcutta Fan (1995) Private Limited, a company incorporated under the Companies Act, 1956, having its Registered Office at 238A, A.J.C.Bose Road, 2nd Floor, Suit No. 2B, Kolkata 700020, West Bengal, within the aforesaid jurisdiction.

And

In the matter of:

G S Global Projects Private Limited, a company incorporated under the Companies Act, 1956, having its Registered Office at 238A, A.J.C.Bose Road, 2nd Floor, Suit No. 2B, Kolkata 700020, West Bengal, within the aforesaid jurisdiction.

And

In the matter of:

1. Ujjwal Barter Private Limited
2. Ramanlal Madanlal Trading Private Limited
3. Nirjhar Vyapaar Private Limited
4. Macro Entertainment Private Limited
5. G K S Finvest Private Limited
6. Calcutta Fan (1995) Private Limited
7. G S Global Projects Private Limited

... Petitioners

Counsel last attended:

1. Ms. Noelle Banerjee, Advocate] For the petitioners
1. Mr. Tapas Kumar Das, Assistant Director] RD(ER), MCA

O R D E R

This Company Petition was originally filed before the Hon'ble High Court at Calcutta U/s. 391 and 394 of the Companies Act 1956 for sanction of a Scheme of Amalgamation of the Transferrer Companies /Amalgamating Companies with the Transferee Company/ Amalgamated Company whereby and where under the entire undertaking of the Transferor Companies/ Amalgamating Companies as a going concern together with all the assets and the liabilities relating thereto is proposed to be transferred to and be vested in the Transferee Company/Amalgamated company on the terms and conditions and in the manner fully stated therein.

Upon constitution of NCLT, Kolkata the Hon'ble High Court at Calcutta transferred the petition to this Tribunal. Upon perusal of the records and on a reference of the order dated 21st September 2016 of the Hon'ble High Court at Calcutta it is understood that meeting of the shareholders is dispensed with a further direction to file confirmation petition within eight weeks from the date of the order.

This petition being transferred to this Tribunal in accordance with the provisions of The Companies Act, 2013 the procedure to be followed for the confirmation of a Scheme of Amalgamation is as per Sections 230 to 232 of the Companies Act,2013 read with Rule 16 of the Companies (Compromise, Arrangement and Amalgamation) Rules,2016 with effect from 15.12.2016. Under Section 230 (9) of the Companies Act the Tribunal may dispense with the calling of a meeting of creditor or class of creditors, having at least 90% value, agree and confirm by way of affidavit to the scheme of compromise or arrangement.

Section 232(1) provides that where an application is made to the Tribunal U/s. 230 for the sanction of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal:-

- a) that the compromise or the arrangement has been proposed for the purposes of or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and
- b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferred company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is

proposed to be divided among and transferred to two or more companies,

the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-section (3) to (6) of section 230 shall apply *mutatis mutandis*.

It is thus clear that where a company or companies are applying for amalgamation and scheme is presented to the Tribunal u/s 232, meeting of the shareholders and creditors are to be held and in case the creditors of the company having given their consent by way of affidavit to dispense with the meeting, then as per provisions of S. 230(9), creditors meting can be dispensed with. Here, in this case, shareholders meeting had been dispensed with by the Hon'ble High Court at Calcutta but no order was passed regarding the creditors and the creditors have also not given their consent by way of affidavit so that the meeting may be dispensed with.

In the circumstances, before passing any final order in the Company Petition the petitioner is directed to file a supplementary affidavit annexing the list of creditors along with the consent of the creditors by way of affidavit within 10 days from today.

List the matter on.....27/10/17 for further order.

Sd/-
14/9/17

(Vijai Pratap Singh)
Member (Judicial)

Signed on this, the 14/9/17 day of September, 2017.