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**NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

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

Company Application No.207 of 2017

In the Matter of: The Companies Act, 2013;

And

In the Matter of: An application under Sections 230 and 232 of the said Act;

And

In the Matter of:

Gloster Limited (CIN L17119WB1992PLC054454), a company incorporated in 1992 under the provisions of the Companies Act, 1956, having its registered office at 21, Strand Road, Kolkata – 700001.

And

Kettlewell Bullen & Company Limited, (CIN U65192WB1923PLC004628), a company incorporated under the provisions of the Companies Act, 1913, having its registered office at 8, Munshi Premchand Sarani, Kolkata 700 022.

**Counsels on Record**

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|----------------------------|-----------------------|
| 1. Mr D N Sharma, Advocate | ] For the Applicants. |
| 2. Mr T. Khaitan, Advocate | ]                     |

Date of Pronouncing the Order

11/7/17

ORDER

This is an application filed by the applicants namely M/s Gloster Limited ("Transferor Company") and M/s. Kettlewell Bullen & Company Limited ("Transferee Company") under Section 230(1)/ Section 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the proposed Scheme of Amalgamation of the Transferor Company with the Transferee Company. The aforesaid Scheme is also annexed as Annexure "F" to the application.

In this application, the applicants have prayed for the following:

- a) That meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company and the Equity shareholders and Unsecured Creditors of the Transferee Company be convened and held at Shripati Singhania Hall, Rotary Sadan, 94/2, Chowringhee Road. Kolkata – 700020 or at such other place as may be deemed fit by this Tribunal to consider and approve the said Scheme of Amalgamation of the Transferor Company with the Transferee Company and for necessary directions as to the issue of notices for convening, holding and conducting of the meetings proposed and for the publication of advertisements pursuant to sub-section (1) of Section 232 of the Act;

- b) Direction be issued to serve notices upon the Registrar of Companies, West Bengal; the Regional Director, Official Liquidator, Income Tax Authorities, Securities & Exchange Board of India, BSE Limited, The Calcutta Stock Exchange Limited and the Reserve Bank of India pursuant to sub-section (5) of Section 230 of the Act;
- c) Direction be given upon the applicant companies for filing the confirmation petition for sanction of the Scheme of Amalgamation pursuant to Rule 15 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- d) Such or other order or orders be made and/or directions be given as to this Hon'ble Tribunal may deem fit and proper.

The Transferor Company had as on 31.03.2017:

3,399 Equity Shareholders holding total paid up share capital of the Transferor Company;

5 Secured Creditors having total claim of Rs. 35,95,72,616;

608 Unsecured Creditors having total claim of Rs. 15,58,22,693.

The Transferee Company had as on 31.03.2017:



15 Equity Shareholders holding total paid up share capital of the Transferor Company;

The Transferee Company did not have any Secured Creditors;

8 Unsecured Creditors having total claim of Rs. 4,76,37,950.

I have perused the application of the applicants herein and have also heard the oral submission of the Ld. Counsels appearing for the applicants. Taking into consideration the above, the following directions are issued in relation to calling, convening and holding of the meetings of the equity shareholders, secured creditors and unsecured creditors of the Transferor Company and equity shareholders and unsecured creditors of the Transferee Company as follows:

(1) Meetings will be convened and held as under:

(a) Meeting of the equity shareholders of Gloster Limited, the Transferor Company shall be convened and held at Shripati Singhania Hall, Rotary Sadan, 94/2, Chowringhee Road, Kolkata – 700020 on Monday the 4th day of September, 2017 at 10.30 A.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Amalgamation of the Transferor Company with the Transferee Company;

- (b) Meeting of the secured creditors of Gloster Limited, the Transferor Company shall be convened and held at Shripati Singhania Hall, Rotary Sadan, 94/2, Chowringhee Road, Kolkata – 700020 on Monday the 4th day of September, 2017 at 12.30 P.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Amalgamation of the Transferor Company with the Transferee Company;
- (c) Meeting of the unsecured creditors of Gloster Limited, the Transferor Company shall be convened and held at Shripati Singhania Hall, Rotary Sadan, 94/2, Chowringhee Road, Kolkata – 700020 on Monday the 4th day of September, 2017 at 2.00 P.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Amalgamation of the Transferor Company with the Transferee Company;
- (d) Meeting of the Equity Shareholders of Kettlewell Bullen & Company Limited, the Transferee Company shall be convened and held at Shripati Singhania Hall, Rotary Sadan, 94/2, Chowringhee Road, Kolkata – 700020 on Monday the 4th day of September, 2017 at 3.00 P.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Amalgamation of the Transferor Company and the Transferee Company; and

(e) Meeting of the Unsecured Creditors of Kettlewell Bullen & Company Limited, the Transferee Company shall be convened and held at Shripati Singhanian Hall, Rotary Sadan, 94/2, Chowringhee Road, Kolkata – 700020 on Monday the 4<sup>th</sup> day of September, 2017 at 4.00 P.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Amalgamation of the Transferor Company and the Transferee Company.

(2) The quorum for the meetings as aforesaid will be as under:

- a. The quorum for meeting of the equity shareholders of the Transferor Company shall be in accordance with section 103 of the Companies Act, 2013;
- b. The quorum for meeting of the Secured Creditors of the Transferor Company shall be two (2) persons present either in person or by proxy;
- c. The quorum of meeting of the Unsecured Creditors of the Transferor Company shall two(2) persons present either in person or by proxy;
- d. The quorum for meeting of the Equity Shareholders of the Transferee Company shall be five (5) members present in person in accordance with section 103 of the Companies Act, 2013; and



- e. The quorum for meeting of the Unsecured Creditors of the Transferee Company shall be two (2) persons present either in person or by proxy.

If the quorum is not present at the commencement of the meeting(s), the meeting(s) would be adjourned for 30 minutes and thereafter, the members or creditors, as the case may be, present in person or through proxy would be treated as proper quorum.

(3) Mr. Vinod Kothari, practising Company Secretary is appointed as the Chairperson for the meetings to be held under this order and the relevant law. The Chairperson shall be paid Rs. 60,000/- lump sum for his services as the Chairperson. The Scrutinizer for the meeting of the equity shareholders (which includes public shareholders), secured creditors and unsecured creditors of the Transferor Company and equity shareholders and unsecured creditors of the Transferee Company shall be Mr. Arun Kumar Gupta, practising Chartered Accountant. The Scrutinizer shall be paid Rs. 25,000/- for his services as Scrutinizer.

(4) In view of Section 230(4) of the Companies Act, 2013 read with Rules 5 and 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and Rules 20 and 22 of the Companies (Management and Administration) Rules, 2014, the Transferor Company is required to provide the facility of postal ballot and e-voting to its equity shareholders. Accordingly, voting by equity shareholders of the Transferor Company to the scheme shall be

carried out through (i) postal ballot and e-voting; and (ii) ballot at the venue of the meeting of the equity shareholders of the Transferor Company to be held on 4th September, 2017. In the case of meetings of secured creditors and unsecured creditors of the Transferor Company and equity shareholders and unsecured creditors of the Transferee Company, voting shall be carried out through ballot/polling paper only.

(5) At least one month before the aforesaid date of the said meetings, an advertisement about convening of the meetings indicating the place, day, date and times, as aforesaid, shall be published in the Economic Times in the English Daily and Ei Samay, in the Bengali Daily. 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 containing necessary details required to be furnished pursuant to Section 102 read with Sections 230 to 232 of the Companies Act, 2013 and the prescribed form of proxy can be obtained free of charge at the registered office of the concerned Applicant company/ companies or at the office of their Advocates M/s. Khaitan & Co, Emerald House, 1B, Old Post Office Street, Kolkata 700 001 in accordance with second proviso to sub-section (3) of Section 230 of the Act and Rule 7 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 ["Companies (CAA) Rules, 2016"].

(6) At least one month before the aforesaid date of the said meetings of the equity shareholders of the applicant companies, a notice convening



meetings in Form C.A.A.2 indicating the day, date, place and times as aforesaid together with a copy of the Scheme, copy of statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and Rule 6 of Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the equity shareholders of the applicant companies at their respective registered or last known addresses either by registered post or speed post / Airmail or through courier or through e-mail. In addition, postal ballot forms alongwith instructions for voting and instructions for e-voting will also be sent to the equity shareholders of the Transferor Company.

The aforesaid notice of the Transferor Company and other documents shall also be placed on the website of the Transferor Company, if any, and the same shall be sent to Securities and Exchange Board of India, BSE and the Calcutta Stock Exchange. The notices shall be sent to the equity shareholders of the Transferor Company with reference to the list of persons appearing on the record of the Transferor Company and/or its Registrar as on 21st July, 2017, being the cut-off date as prescribed under Rule 20 of the Companies (Management and Administration) Rules, 2014. The aforesaid cut of date would be the date for determining the eligibility to vote by the equity shareholders.

(7) In addition, at least one month before the aforesaid date of meetings of the secured creditors and unsecured creditors of the Transferor Company and unsecured creditors of the Transferee Company to be held as aforesaid, a notice convening the meetings in Form C.A.A.2 indicating the day, date, place and times as aforesaid together with a copy of the Scheme, copy of statement

required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the secured creditors and unsecured creditors of the Transferor Company and unsecured creditors of the Transferee Company at their respective registered or last known addresses either by email or registered post or speed post / Airmail or through courier. The notice shall be sent to the secured creditors and unsecured creditors of the Transferor Company and unsecured creditors of the Transferee Company with reference to the list of persons appearing on the record of the applicant companies as on 31.03.2017.

(8) The applicant companies shall individually send notice to (i) Central Government, through the Regional Director, Eastern Region, (ii) Registrar of Companies, West Bengal, (iii) Income Tax Department, (iv) the Official Liquidator, (v) Securities Exchange Board of India, (vi) BSE Limited, (vii) the Calcutta Stock Exchange Limited and (viii) the Reserve Bank of India alongwith copies of required documents and disclosures required under the provisions of Section 230(5) of the Companies Act, 2013 in Form No. CAA.3 of the Companies (CAA) Rules, 2016 with necessary variations incorporating the directions therein, by sending the same by hand delivery through special messenger or by registered post or speed post forthwith, after the notice is sent to the members or creditors of the Companies, for filing their representation, if any, within 30 days from the date of notice. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the



applicants and/or their advocates. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation.

(9) Voting of the meetings shall be allowed on the proposed Scheme by voting in person or by proxy. In addition, for meeting of equity shareholders of the Transferor Company, voting through postal ballot or through electronic means as per the Rules will also be allowed which shall be in accordance with the procedure recommended by the relevant depository for such e-voting.

(10) The Chairperson shall be responsible to report the results of the meetings within 3 days of the conclusion of the meetings with a vote on the proposed scheme.

(11) The Chairman/Chairperson in relation to meeting of the equity shareholders of the Transferor Company is free to avail the services of the Transferor 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 Transferor Company and also under the Rules in relation to the conduct of meetings, including for deciding any procedural questions that may arise at the meeting or adjournments thereof proposed at the said meeting, amendment(s) to the aforesaid scheme or resolutions, if any, proposed at the aforesaid meeting by any person(s) and to ascertain the decision of the sense of the meeting of equity shareholders of the Transferor



Company by (i) postal ballot and e-voting; and (ii) electronic voting system or ballot or polling paper at the venue of the meeting of the equity shareholders of the Transferor Company and of the meeting of secured creditors and the unsecured creditors of the Transferor Company and the equity shareholders and unsecured creditors of the Transferee Company by polling paper/ballot.

(12) SEBI Circular No. CIR/CFD/CMD/16/2015 dated 30th November, 2015 requires that the scheme shall be approved by the public shareholders of the Transferor Company. The voting in respect of the same is to be carried out through postal ballot and e-voting. The meeting of the equity shareholders, which includes public shareholders, of the Transferor Company through postal ballot and e-voting is sufficient compliance of SEBI Circular dated 30.11.2015 referred to above. However, the Scrutinizer appointed for the meeting of equity shareholders of the Transferor Company shall submit a separate report to the Chairman of the Transferor company with regard to the result of the postal ballot, e-voting and physical voting at the meeting in respect of public shareholders. The said report to be submitted by the Scrutinizer shall be in addition to the report submitted by the Scrutinizer to the Chairman or Chairperson of the meeting with regard to the result of the postal ballot, e-voting and physical voting in respect of the equity shareholders of the Transferor Company and the report with regard to the result of the ballot paper/poll paper cast at the meeting in respect of the secured creditors and unsecured creditors of the Transferor Company and equity shareholders and unsecured creditors of the Transferee Company.

(13) The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

(14) All the aforesaid directions are to be complied with in accordance with the applicable law including forms and formats contained in the Companies (CAA) Rules, 2016 as well as the provisions of the Companies Act, 2013. The undertaking of the authorized representatives of the applicant companies to this effect is accordingly taken on record.

Company Application No.207 of 2017 is hereby disposed of.

There shall be no orders as to costs.

Urgent photostat certified copies of this order if applied for be supplied to the parties upon compliance of all requisite formalities.

Sd/- 11/7/17

(Vijai Pratap Singh)  
Hon'ble Member (J)

Signed on this, the 11th day July 2017.