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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 62/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 16.05.2017**

Name of the Company: Gopal Glass Works Ltd. &
Gopal Mirror Coating Pvt. Ltd. (Joint Application)

Section of the Companies Act: Section 230-232 of the Companies Act, 2013


S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.	Jaimin R. Dave	Advocate	Petitioner	
2.				

ORDER

Learned Advocate Mr. Jaimin Dave i/b Learned Advocate Mrs. Swati Soparkar present for Applicants.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 16th day of May, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.A.(CAA) 62/NCLT/AHM/2017

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 16th day of May, 2017

In the matter of: -

Gopal Glass Works Limited,
(CIN U26109GJ1978PLC003174). ... Applicant
(Transferor Company)

And

Gopal Mirror Coating Private Limited,
(CIN U24250GJ1996PTC030028). ... Applicant
(Transferee Company)

Both the companies incorporated under the provisions of the Companies Act, 1956 and having their Registered Office at 282, Gaganvihar, Ground Floor, Khanpur, Ahmedabad – 380001 in the State of Gujarat.

Appearance: -

Mr. Jaimin R. Dave, Advocate, with Mr. Jaimin R. Patel, Advocate, for Mrs. Swati Soparkar, Advocate, for the Applicants.

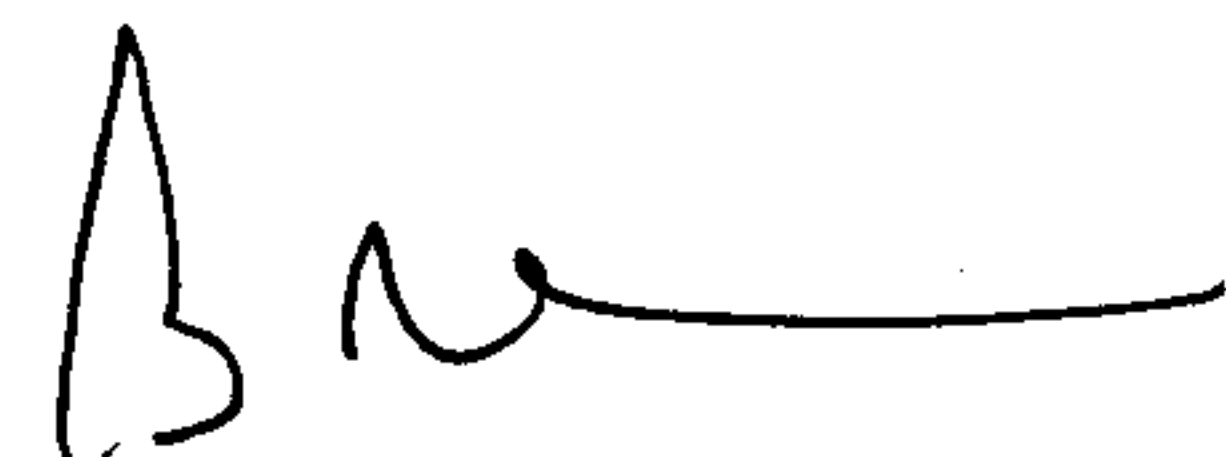
FINAL ORDER

(Date: 16.05.2017)

1. This application is filed jointly by two applicant-companies, namely, Gopal Glass Works Limited (applicant transferor-company) and Gopal Mirror Coating Private Limited (applicant transferee-company) under Sections 230-232 of the Companies Act, 2013 (hereinafter referred to as the "Act") read with Rules 3 and 18 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 (hereinafter referred to as the "Rules"), seeking directions for the purpose of convening and

holding meetings of shareholders and creditors of the applicant-companies in respect of a scheme of arrangement between Gopal Glass Works Limited and Gopal Mirror Coating Private Limited and their respective shareholders and creditors ("Scheme" for short).

2. The applicant-companies had filed an application, being CA(CAA) No.12 of 2017, seeking directions under Sections 230 to 232 of the Companies Act, 2013 for convening and holding of meetings of shareholders and creditors of the applicant-companies in respect of the very same Scheme. This Tribunal, vide order dated 5th April, 2017, issued necessary directions for convening and holding of the meetings. According to the applicants, later on they realized that, due to inadvertence, the Scheme annexed to the said application was the draft version instead of the final version. Therefore, the applicants filed Interlocutory Application No.86 of 2017, seeking permission to place on record of this Tribunal the correct version of the Scheme of Arrangement and to serve correct version of the Scheme to all the equity shareholders and unsecured creditors of the applicant-companies as also to the statutory authorities with necessary clarification. However, by order dated 8th May, 2017, this Tribunal disposed of the said Interlocutory Application as having not pressed with liberty to file a fresh application for directions. Hence, this application.
3. Applicant transferor-company is a public company limited by shares. The authorised share capital of the applicant transferor-company, as on 30th November, 2016, was Rs.5,00,00,000/- and the issued, subscribed and paid-up share capital of the applicant transferor-company as on the said date was Rs.4,00,00,000/- divided into 4,00,000 equity shares of Rs.100/- each.



4. Applicant transferee-company is a private limited company. The authorised share capital of the applicant transferee-company, as on 30th November, 2016, was Rs.75,00,000/- and the issued, subscribed and paid-up share capital of the applicant-transferee-company, as on the said date, was Rs.25,51,000/- divided into 2,55,100 equity shares of Rs.10/- each.
5. This Company Application is filed jointly by the applicant-companies proposing a scheme of arrangement between Gopal Glass Works Limited and Gopal Mirror Coating Private Limited and their respective shareholders and creditors ("scheme" for short).
6. In this application, the applicant-companies prayed for the following reliefs: -
 - (a) to permit and give requisite directions to the applicant transferor-company to convene and hold separate meetings of equity shareholders and unsecured creditors for the purpose of considering and, if thought fit, approving the proposed scheme of arrangement, with or without modifications, the proposed scheme of arrangement between Gopal Glass Works Limited and Gopal Mirror Coating Private Limited;
 - (b) to permit and give requisite directions to the applicant transferee-company to convene and hold a meeting of equity shareholders for the purpose of considering and, if thought fit, approving the proposed scheme of arrangement, with or without modifications, the proposed scheme of arrangement between Gopal Glass Works Limited and Gopal Mirror Coating Private Limited;
 - (c) to issue necessary directions to the applicant-companies as to the method of convening, holding and conducting the said

meetings including day, date, time and venue of the meetings and as to the notices and advertisements to be issued in this regard;

(d) to appoint Chairman/men and Scrutinizer for the said meetings of applicant-companies and in respect of adjournment(s), if any, and further to direct the said Chairman/men to report the result of the said meetings to the Tribunal;

(e) to fix the quorum for the said meetings and to lay down the procedure for voting at the meetings, including voting by proxy;

(f) to issue necessary directions to the applicant-companies for the service of notices of the meetings to the concerned statutory authorities;

(g) to issue necessary directions in view of the submissions made in paragraphs 16 to 24 of the application; and

(h) to grant dispensation of the meeting of the unsecured creditors of the transferee-company in view of the submissions made in paragraph 25 of the application and, alternatively, if the Tribunal is not inclined to grant such dispensation, issue necessary directions either (i) to serve individual notice to each of the unsecured creditors of the applicant transferee-company bringing to their notice the proposed scheme and invite objections, if any, from them within 30 days of the service of such notice or (ii) as regards convening, holding and conducting the meeting in terms of the prayers made therein.

7. Heard learned Advocates, Mr. Jaimin R. Dave and Mr. Juimin R. Patel, for learned Advocate, Mrs. Swati Soparkar, for the Applicant-companies. Perused the application and the supporting affidavit of Mr. Vikesh Shah, Managing Director of the applicant transferor-company and Director of the applicant transferee-company and the annexures annexed thereto.

8. The proposed scheme of arrangement is for transfer of the Windmill Undertaking of Gopal Glass Works Limited to Gopal Mirror Coating Private Limited by way of reconstruction in the nature of slump sale and for amalgamation of the residual business of Gopal Glass Works Limited with Gopal Mirror Coating Private Limited.
9. The proposed scheme shown as Annexure-F to the application along with valuation reports and share exchange ratio certificate submitted by M/s Borkar & Mazumdar and N. C. Vaishnav & Company, Chartered Accountants (hereinafter referred to as "Joint Valuation Report"), in respect of the proposed scheme of arrangement for transfer of the Windmill Undertaking of Gopal Glass Works Limited to Gopal Mirror Coating Private Limited by way of reconstruction in the nature of slump sale and for amalgamation of the residual business of Gopal Glass Works Limited with Gopal Mirror Coating Private Limited was placed before the Board of Directors of the applicant-companies for consideration and approval. The Board of Directors of both the companies, in their respective meetings held on 16th January, 2017, approved the scheme.
10. It is stated in paragraphs 16 and 25 of the application, by producing Chartered Accountants' certificates Annexure "I" and Annexure "L", respectively, that there are no secured creditors of the applicant transferor-company and the applicant transferee-company. Hence, there is no need to conduct meetings of secured creditors of the applicant-companies.
11. It is stated in paragraph 25 of the application that there is no need to conduct meeting of unsecured creditors of the applicant transferee-company for the following reasons :-



- (a) That the proposed scheme does not affect the rights and interests of the creditors;
- (b) That there is no compromise or arrangement with the creditors of the transferee-company;
- (c) That the transferee-company is a profit making company; and
- (d) That the net worth of the transferee-company in the post scheme scenario shall be Rs.151.47 crores as per certificate of Chartered Accountants produced vide Annexure "M".

However, sub-section (9) of Section 230 of the Companies Act, 2013 says that the meeting of creditors may be dispensed with provided 90% of creditors give their consent for the arrangement.

Moreover, in the proposed scheme of arrangement, the residual undertaking of the transferor-company, i.e. other than the Wind Mill Division, is going to be amalgamated with the transferee-company, whereas the Windmill Division of the transferor-company is going to be transferred to the transferee-company. The scheme also proposes conversion of the transferee-company from a private company into a public company and alteration to the name clause. Hence, this Tribunal is of the view that the transferee-company shall also hold meeting of its unsecured creditors.

12. It is stated in the application that there are no proceedings/investigation pending the applicant-companies under Sections 210-217, 219, 220, 223, 224, 225, 226 and 227 of the Companies Act, 2013 and/or Sections 235 to 251 of the Companies Act, 1956. It is also stated in the application that there is no winding up petition pending against the applicant-companies. It is further stated that the statutory auditors have certified that the accounting treatment, as proposed in the scheme, is in conformity with the accounting standards

prescribed under Section 133 of the Act. It is further stated in the application that there are no secured creditors of the applicant-companies, as confirmed by the certificates of Chartered Accountant. It is further stated in the application that none of the applicant-companies is a listed public limited company and, therefore, no notice is required to be served under Section 230(5) of the Act on the Securities and Exchange Board of India. It is also stated that the Competition Commission of India regulations are not applicable to the applicant-companies in terms of the total value of assets and/or turnover of the applicant-companies. It is further stated in the application that none of the shareholders of the applicant-companies is a foreign national or non-resident Indian and that the applicant-companies are non-banking companies and, hence, it is not necessary to serve the notice of meetings on the Reserve Bank of India.

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

- (1) A meeting of the equity shareholders of the applicant transferor-company shall be convened and held at the Corporate Office of the applicant-company situate at 26, Govt. Servant Society, Behind Navrangpura Municipal Market, Off. C. G. Road, Navrangpura, Ahmedabad – 380 009, in the State of Gujarat, on Friday, the 23rd June, 2017, at 11.00 A.M., for the purpose of considering and, if thought fit, approving with or without modification(s) the scheme.
- (2) A meeting of the equity shareholders of the applicant transferee-company shall be convened and held at the Corporate Office of the applicant-company situate at 26, Govt. Servant Society, Behind Navrangpura Municipal Market, Off. C. G. Road, Navrangpura, Ahmedabad – 380

009, in the State of Gujarat, on Friday, the 23rd June, 2017, at 1.00 P.M., for the purpose of considering and, if thought fit, approving with or without modification(s) the scheme.

- (3) A meeting of the unsecured creditors of the applicant transferor-company shall be convened and held at the Corporate Office of the applicant-company situate at 26, Govt. Servant Society, Behind Navrangpura Municipal Market, Off. C. G. Road, Navrangpura, Ahmedabad – 380 009, in the State of Gujarat, on Friday, the 23rd June, 2017, at 3.00 P.M., for the purpose of considering and, if thought fit, approving with or without modification(s) the agreement embodied in the scheme.
- (4) A meeting of the unsecured creditors of the applicant transferee-company shall be convened and held at the Corporate Office of the applicant-company situate at 26, Govt. Servant Society, Behind Navrangpura Municipal Market, Off. C. G. Road, Navrangpura, Ahmedabad – 380 009, in the State of Gujarat, on Friday, the 23rd June, 2017, at 5.00 P.M., for the purpose of considering and, if thought fit, approving with or without modification(s) the agreement embodied in the scheme.
- (5) In view of Sections 230(4) and 232(1) 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 applicant-companies are required to provide the facility of postal ballot and e-voting to its shareholders. Accordingly, voting by equity shareholders of the applicant-companies to the scheme shall be carried out through (i) postal ballot and e-voting; and (ii) electronic voting system or ballot or polling paper

at the venue of the meeting to be held on 23rd June, 2017. In the case of meetings of unsecured creditors, the voting shall be carried out through ballot/polling paper.

- (6) At least one month before 23.06.2017, i.e. the date of 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, Indian Express, Ahmedabad edition and a Gujarati translation thereof in Sandesh, Ahmedabad 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 Act read with Sections 230 to 232 of the Act and the prescribed form of proxy can be obtained free of charge at the registered office of the applicant-companies in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.
- (7) At least one month before 23.06.2017, i.e. the date of aforesaid meetings of equity shareholders, a notice in Form No.CAA.2 convening the said meeting indicating the day, date, place and time aforesaid, containing instructions with regard to postal ballot and e-voting (in case of equity shareholders) together with a copy of the scheme, a copy of the 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 equity shareholders of the applicant-companies at their respective registered or last known addresses either by Registered Post or Speed Post /Airmail

or by Courier or e-mail.. The notices shall be sent to the equity shareholders of the applicant-companies with reference to the list of persons appearing on the record of the applicant-companies and its register as on 28.02.2017, being a cut of date as prescribed under Rule 20 of the Companies (Management and Administration) Rules, 2014. The aforesaid cut of date would be the date determining the eligibility to vote by the equity shareholders.

- (8) In addition, 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 Act read with Sections 230 to 232 and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the unsecured creditors of the applicant-companies at their respective registered or last known addresses either by Registered Post or Speed Post/Airmail or by Courier. The notice shall be sent to the unsecured creditors of the Applicant-company with reference to the list of the persons appearing on the record of the Applicant-company as on 31st January, 2017.
- (9) Mr. Vikesh J. Shah, Director of the applicant-companies and, in his absence, Mr. Mayur J. Shah, Director of the applicant-companies shall be the Chairman/Chairperson of the aforesaid meetings to be held on 23.06.2017 and in respect of any adjournment or adjournments thereof.
- (10) M/s. Parikh Dave & Associates, a Practising Company Secretary firm, is appointed as the Scrutinizer for the meeting of the equity shareholders of the applicant-

companies including for conducting the postal ballot and e-voting process and also for the meeting of the unsecured creditors of the Applicant-companies.

- (11) The Chairman or Chairperson appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meetings referred to 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 powers under the Articles of Association of the Applicant-companies and also under the Rules in relation to the conduct of meetings, including for deciding any procedural questions that may arise at the meetings or adjournments thereof proposed at the said meetings, amendment(s) to the aforesaid 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 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 and for the unsecured creditors by polling paper/ballot.
- (12) The quorum for the meetings of equity shareholders of the applicant-companies shall be 5 (five) persons each present in person. The quorum for the meeting of unsecured creditors of the applicant transferor-company shall be 5 (five) persons present in person and the quorum for the meeting of unsecured creditors of the applicant transferee-company shall be 2 (two) persons present in person.
- (13) Voting by proxy/authorised representative is permitted, provided that the proxy in the prescribed form/authorisation duly signed by the person entitled to attend and vote at the aforesaid meetings is filed with the

applicant-companies at their registered office at 182, Gaganvihar, Ground Floor, Khanpur, Ahmedabad – 380 001, not later than 48 hours before the meetings vide Rule 10 of Companies (CAA) Rules, 2016 read with Section 105 of the Companies Act.


- (14) The number and value of equity shares of the equity shareholders or the value of the debts of the unsecured creditors, as the case may be, shall be in accordance with the records or registers of the applicant-companies and where the entries in the records or registers are disputed, the Chairman of the meetings shall determine the number or value, as the case may be, for purposes of the meetings.
- (15) The Chairman/Chairperson to file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of Companies (CAA) Rules, 2016.
- (16) It is further ordered that the Chairman or Chairperson shall, report to this Tribunal on the result of the meeting in Form No.CAA.4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in Form No.CAA.4 within seven days.
- (17) In compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (CAA) Rules, 2016, the Applicant-companies shall send a notice of meeting under sub-section (3) of Section 230 read with Rule 6 of the Companies (CAA) Rules, 2016 in Form No.CAA.3 along with a copy of the scheme of arrangement, the explanatory statement and the disclosures mentioned under Rule 6, to
(i) the Central Government through the Regional Director,

North Western Region, (ii) the Registrar of Companies, and (iii) the Income-tax authorities stating that representations, if any, to be made by them shall be made 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 on the proposed scheme. The applicant transferor-company shall also send the aforesaid notice to the Official Liquidator, Ahmedabad. The said notices shall be sent forthwith after notice is sent to the members or creditors of the company by registered post or by speed post or by courier or by hand delivery at the office of the authority as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230, shall send the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which it will be deemed that they have no representation to make on the proposed arrangement.

- (18) 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 Applicant-company. The voting in respect of the same is to be carried out through postal ballot and e-voting. Since the applicant-companies are directed to convene meetings of equity shareholders, which include public shareholders, and the voting in respect of equity shareholders, which includes public shareholders, is through postal ballot and e-voting, it is sufficient compliance of SEBI Circular dated 30.11.2015 referred to above. However, the Scrutinizer appointed for the meeting of equity shareholders shall submit a separate report to the Chairman of the applicant-companies with regard to the result of the postal ballot and e-voting 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 meetings with regard to the result of the postal ballot and e-voting in respect of the equity shareholders and the report with regard to the result of the ballot paper/poll paper cast at the meeting in respect of the unsecured creditors.

14. In view of the above directions, the directions given in CA(CAA) No.12 of 2017 on 5th April, 2017 need not be implemented.
15. This Company Application is disposed of accordingly.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open Court
on this 16th day of May, 2017.

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