

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.No.260/17
IN
C.A.733/16**

DATED: WEDNESDAY THE 12TH DAY OF APRIL 2017

***PRESENT: SRI RATAKONDA MURALI, MEMBER JUDICIAL
SRI ASHOK KUMAR MISHRA, MEMBER TECHNICAL***

**IN THE MATTER OF COMPANIES ACT, 1956
SECTIONS 391-394 OF THE COMPANIES ACT, 1956
AND
IN THE MATTER OF COMPANIES ACT, 2013
SECTIONS 230 and 232 OF THE COMPANIES ACT, 2013
AND**

**IN THE MATTER OF GO GO TEXTILES BANGALORE PRIVATE LIMITED
T.P.No.260/17 IN C.A.No.733/16**

**1. Go Go Textiles Bangalore Private Limited
No.5, KHB Industrial Area,
Yelahanka, Bangalore-560064 - APPLICANT/TRANSFEROR COMPANY 5**

PARTIES PRESENT:

Mr. K.V.SATISH, Advocate
Unit No.S-2, 2nd Floor, Harshita Arcade,
No.138, 1st Main, Seshadripuram
Bangalore 560020

Heard on: 17.03.2017, 15.02.2017 and 23.01.2017

ORDER

Originally this Company Application was filed before the Hon'ble High Court of Karnataka by the Applicant Company under Section 391 of the Companies Act, 1956, being numbered as C.A. No.733/16. Subsequently as per Notification No. GSR.1119(E) dated 7th December, 2016 issued by Ministry of Corporate Affairs, New Delhi, the said case is transferred to this Tribunal and renumbered as T.P.No.260/17.

This Company Application is filed on behalf of the Applicant Company under Section 391 of the Companies Act, 1956, praying to order for dispensing with for convening of the Meeting of Equity Shareholders of the Applicant/Transferor Company, Secured Creditors and Unsecured Creditors for considering the Scheme of Amalgamation, where under the Applicant Company **Go Go Textiles Bangalore Private Limited** which is Transferor Company 5 to be merged with **Go Go International Private Limited** (Transferee Company). The Scheme of Amalgamation shown as **Annexure-Z**.

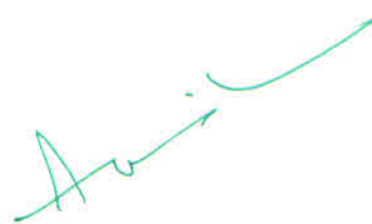

The averments made in the Company Application are briefly described hereunder:-

The Applicant Company seeks an order for dispensing with convening of the Meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors for considering the Scheme of Amalgamation of Applicant Company Go Go Textiles Bangalore Private Limited with Go Go International Private Limited in terms of Scheme of Amalgamation shown as **Annexure-Z**.

It is further averred in the Application that the Applicant/Transferor Company 5 was incorporated on 23rd May, 2006 under the name and style of **Go Go Textiles Bangalore Private Limited** with the Registrar of Companies, Karnataka vide CIN bearing No. U17121KA2006PTC039540. The Registered office of the Applicant Company is situated at No.5, KHB Industrial Area, Yelahanka, Bangalore-560064. The main objects of the Applicant Company is to carry on the business of manufacturers, importers, exporters, processors, wholesale and retail dealers of fabrics, clothing and wearing apparels of all types of readymade garments, hosiery including, woolen knitwear and garments of leather, jute and hemp and to process, weave, comb, spin, due, bleach, finish, laminate stitch or make marketable, any fibre (cotton or synthetic), cloth, thread, yarn and more specifically jute, hemp, silk. The copy of Memorandum and Articles of Association of the Applicant Company is shown as **Annexure-A**.

The latest authorized share capital of Applicant Company is Rs.37,00,000/- divided into 3,70,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid-up share capital is Rs.36,65,980/- divided into 3,66,598 Equity Shares of Rs.10/-each fully paid up. The Audited balance sheet as on 31st March, 2016 is marked as **Annexure -B**.

It is further stated that, the Board of Directors of the Applicant Company has approved and adopted a Scheme of Amalgamation at its meeting held on 30th August, 2016 by virtue of which Applicant Company Go Go Textiles Bangalore Private Limited (Transferor Company 5) is proposed to be merged with Go Go International Private Limited (Transferee Company) subject to confirmation. A copy of the Board Resolution of Applicant Company dated 30th August, 2016 in approving and adopting the Scheme of Amalgamation is shown as **Annexure-C**.



It is stated in the scheme that, the Board of Directors of Applicant Company are of the view that the transfer and vesting of all the Business undertaking including but not limited to assets, liabilities, contracts, rights and obligations is in the interest of all concerned including the shareholders, creditors, employees and general public as it would provide:

1. Focussed management orientation to each of the businesses with specialization and leadership vision;
2. Greater transparency and visibility on the operational and financial performance of each business;
3. High degree of independence as well as accountability with autonomy for each of the business segments etc.,

We have heard the Counsel appearing for the Applicant/Transferor Company 5, who has filed the application for dispensing with the convening of meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors for considering the scheme of Amalgamation. The Applicant is the Transferor Company 5 which is proposed to be merged with Go Go International Private Limited as per the scheme of Amalgamation shown as **Annexure-Z**.

The Applicant Company is seeking an order to dispense with convening of meeting of Equity Shareholders, Secured and Unsecured Creditors on the ground that the Applicant Company has only Five Equity Shareholders and they have given their consent to the Scheme of Amalgamation. The Certificate of Chartered Accountant certifying the name and number of Equity shareholders as on 30th June, 2016 is shown as **Annexure-AA**.

We have seen the consent letters of the Five Equity shareholders shown as Annexure-AB series i.e., (i) Shyamsunder Gopiram Goenka holding 5,000 equity shares, constituting 1.36% of the paid-up capital, (ii) Rajeev Shyamsunder Goenka holding 5,000 equity shares, constituting 1.36% of the paid-up capital, (iii) M/s Bliss Rentals Private Limited holding 128069 equity shares, constituting 34.93% of the paid-up capital, (iv) M/s Cosmic Rentals Private Limited holding 147450 equity shares, constituting 40.22% of the paid-up capital, (v) M/s Transcendental Rentals Private Limited holding 81079 equity shares, constituting 22.12% of the paid-up capital.

Applicant Company further filed affidavits of the Equity Shareholders dated 17.03.2017 in addition to consent letters, conveying their no objection for approval of the Scheme of Amalgamation.

We have seen the Certificate issued by the Chartered Accountant stating that there are no Secured Creditors. The Certificate of the Chartered Accountant is shown as **Annexure-AC**. There are 7 Unsecured Creditors as certified by the Chartered Accountant. The Certificate of Chartered Accountant is shown as Annexure-AC. It is stated that, the value of amount due to unsecured creditors of the Applicant Company is Rs.72,295,899/- and 100 % of the unsecured creditors representing value of Rs.72,295,899/- have given their consent to the Scheme. We have seen consent letters issued by the Unsecured Creditors is shown as **Annexure-AD series**.

Thus the Applicant Company has obtained consent of the Five Shareholders and 100% of Unsecured Creditors in value and Board of Directors have passed the resolution approving the scheme of amalgamation.

The Applicant Company has obtained consent of shareholders, which is 100%. The Applicant Company is praying to dispense with convening of meeting of shareholders as all the shareholders have given their consent to the scheme. It is the contention of the counsel that no useful purpose would be served if meeting of shareholders is ordered as they have already given consent to the scheme. When there is consent of all the shareholders, convening of meeting of shareholders would be futile exercise. It is true when all the shareholders have given consent for the scheme then no useful purpose would be served by convening meeting of Shareholders. Therefore Applicant Company is permitted to dispense with convening of meeting of shareholders.

Section 230(9) of the Companies Act, 2013 provides if creditors having atleast 90% value agree and confirm by way of affidavit to the scheme of arrangement, the Tribunal may dispense with calling of meeting of creditors or class of creditors. Before transfer to the tribunal the Applicant Company has filed consent letters obtained from the Unsecured Creditors as per procedure followed in the Hon'ble High Court of Karnataka. Thus relying on the same procedure and related provisions of the Companies Act, 2013, the meeting of Unsecured Creditors can be dispensed with.

In the result, the application is allowed and holding of meeting of the Equity Shareholders and Unsecured Creditors is dispensed with. In any eventuality when the Applicant Company approaches this Tribunal for seeking approval of the scheme it would be open for any person who are interested in the Scheme of Amalgamation to put forth their contentions before the Tribunal.

12/4/17
(RATAKONDA MURALI)
MEMBER, JUDICIAL

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 12th DAY OF APRIL, 2017