

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

T.P.No.280/17

IN

C.A.634/16

DATED: FRIDAY THE 28TH 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 PROPCARE HOLDINGS PRIVATE LIMITED

T.P.No.280/17 IN C.A.No.634/16

1. Propcare Holdings Private Limited

Mantri House, No.41, Vittal Mallya Road

Bangalore-560001

-APPLICANT/TRANSFEROR COMPANY No.7

PARTIES PRESENT:

Shruti Jere, Advocate, Cyril Amarchand Mangaldas
No.201, Midford House, Midford Garden
Off M.G.Road, Bangalore 560001

Heard on: 06.02.2017, 28.2.2017, 24.03.2017, 17.04.2017

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.634/16. 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.280/17.

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, Secured Creditors and Unsecured Creditor of the Applicant/Transferor Company for considering the Scheme of Amalgamation, where under the Applicant Company Propcare Holdings Private Limited which is Transferor Company No.7 to be merged with Propcare Mall Management (India) Private Limited (Second Transferee Company). The Scheme of Amalgamation shown as **Annexure-A**.

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


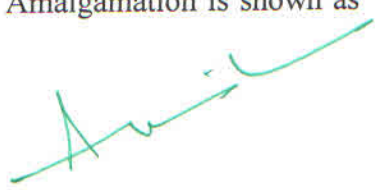



The Applicant Company seeks an order for dispensing with convening of the Meeting of Equity Shareholders, Secured Creditors and Unsecured Creditor for considering the Scheme of Amalgamation of Applicant Company Propcare Holdings Private Limited with Propcare Mall Management (India) Private Limited in terms of Scheme of Amalgamation shown as **Annexure-A**.

It is further averred in the Application that the Applicant/Transferor Company No.8 was incorporated on 26th November, 2007 under the name and style of Zylus Infra Tech Private Limited with the Registrar of Companies, Karnataka. Subsequently on 20th April, 2010 the name of the Applicant Company was changed to Propcare Holdings Private Limited. The Registered office of the Applicant Company is situated at Mantri House, No.41, Vittal Mallya Road, Bangalore-560001. The main objects of the Applicant Company is to carry on the business of providing, either directly or through subsidiaries, facilities, services, arrangements, consultancy, execution and any other related matter with respect to maintenance, upkeep, landscaping, security arrangements, maintenance in the nature of housekeeping, electrical, plumbing, sanitation, lift maintenance, elevator maintenance and any such maintenance what so ever it may be for buildings, bungalows, residential structures, super structures, office complexes, commercial complexes, resorts, play areas, swimming pools in any place, to carry on the business in all branches of architecture and of contractors, ercetors, construction of buildings, houses, apartments, structures or residential offices, industrial, institutional or commercial or developers of co-operative housing societies, etc., . The copy of Memorandum and Articles of Association of the Applicant Company is shown as **Annexure-B**.

The latest authorized share capital of Applicant Company is Rs.1,00,00/- divided into 10,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid-up share capital is Rs.1,00,000/- divided into 10,000 Equity Shares of Rs.10/-each fully paid up. The Audited balance sheet as on 31st March, 2016 is marked as **Annexure -C**.

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 29th June, 2016 by virtue of which Applicant Company Propcare Holdings Private Limited (Transferor Company No.7) is proposed to be merged with Propcare Mall Management (India) Private Limited (Transferee Company) subject to confirmation. A copy of the Board Resolution of Applicant Company dated 29th June, 2016 in approving and adopting the Scheme of Amalgamation is shown as **Annexure-Y**.

It is stated in the scheme that, the scheme would inter-alia, have the following benefits:

1. Greater integration and greater financial strength and flexibility for the combined entities;
2. Greater efficiency in the cash management of the combined entities and unfettered access to cash flow generated by the combined business;
3. Benefit of operational synergies of the combined entities etc.,

We have heard the Counsel appearing for the Applicant/Transferor Company No.7, 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 of Applicant Company Propcare Holdings Private Limited with Propcare Mall Management (India) Private Limited in terms of Scheme of Amalgamation shown as **Annexure-A**.

The Applicant Company is seeking an order to dispense with convening of meeting of Equity Shareholders on the ground that the Applicant Company has only Two 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 is shown as **Annexure-AC**.

We have seen the consent letters of the Two Equity shareholders shown as Annexure-AD i.e., (i) Propcare Holdings Private Limited holding 14,999 equity shares, constituting 99.99 % of the paid-up capital,(ii) Mantri Developers Private Limited holding 1 equity share, constituting 0.01% of the paid-up capital.

It is further averred that, there are no Secured Creditors as certified by the Chartered Accountant shown as Annexure- AE.

It is further averred that, the Applicant Company has only one Unsecured Creditor as certified by the Chartered Accountant shown as Annexure-AE. It is stated that, the value of amounts in respect of the unsecured creditors of the Applicant Company is Rs.12,32,125/-. The Applicant Company is due to (i) Mantri Developers Private Limited is Rs.12,32,125/-.

We have seen the consent letter of one unsecured creditor and 100% in value of the Unsecured Creditor has given consent to the scheme. The consent of unsecured Creditor is shown as Annexure-AF.

The Applicant Company is proposed to be merged with the Transferee Company, as per the scheme of Amalgamation shown as Annexure-A and Board of Directors of the Applicant Company have passed the resolution approving the scheme of amalgamation.

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 letter obtained from the Unsecured Creditor 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 Creditor can be dispensed with.

In the result, the application is allowed and holding of meeting of the Equity Shareholders, Unsecured Creditor 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.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 28th DAY OF APRIL, 2017