

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

T.P.No.295/17

IN

C.A.627/16

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 PROPCARE MALL MANAGEMENT (INDIA) PRIVATE
LIMITED**

T.P.No.295/17 IN C.A.No.627/16

1. Propcare Mall Management (India) Private Limited

Municipal No.1, Sampige Road, Malleshwaram,

Bangalore-560003

- APPLICANT/SECOND TRANSFEREE COMPANY

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.627/16. 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.295/17.

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 and Secured Creditors of the Applicant/Transferee Company and convening of meeting of Unsecured creditors for considering the Scheme of Amalgamation, where under the Propcare Holdings Private Limited (Transferor Company), Propcare Real Estate Management Private Limited which is Transferor Company to be merged with Propcare Mall Management (India) Private Limited (Applicant/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 and Secured Creditors and convening of meeting Unsecured Creditors for considering the Scheme of Amalgamation of Propcare Holdings Private Limited and Propcare Real Estate Management 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/Transferee Company was incorporated on 16th October, 2009 under the name and style of Propcare Mall Management (India) Private Limited with the Registrar of Companies, Karnataka. The Registered office of the Applicant Company is situated at Municipal No.1, Sampige Road, Malleshwaram, Bangalore-560003. The main objects of the Applicant Company is to undertake the work of providing all and any kind of services including but not limited to development services, design services, construction management services, financing services, market research services, leasing services, specialty leasing services and marketing services in relation to construction of malls, buildings, houses, garages, halls, flats, office premises, shops, residential accommodation, godowns, warehouses, mills, factories, chawls, dwelling houses, roads, bridges, culverts, docks etc., to purchase, take on lease or otherwise acquire land, buildings, halls, apartments, industrial buildings and rent such accommodation. 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.50,00,000/- divided into 5,00,000 Equity Shares of Rs.10/- each into 15,000 Equity Shares of Rs.10/-each fully paid up. The Audited balance sheet as on 30th June, 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 Propcare Holdings Private Limited (Transferor Company) and Propcare Real Estate Management Private Limited (Transferor Company) are 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/Transferee Company, who has filed the application for dispensing with the convening of meeting of Equity Shareholders and Secured Creditors and convening of meeting of Unsecured Creditors for considering the Scheme of Amalgamation of Propcare Holdings Private Limited and Propcare Real Estate Management 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 89 Unsecured Creditors as certified by the Chartered Accountant shown as Annexure-AE.

After hearing the counsel and after perusing the documents filed, we pass the following order.

The meeting of Unsecured Creditors of the Applicant Company be convened and held at St. Marks Hotel, St. Marks Road, Bangalore-560001, on 10th June, 2017 at 01:00 P.M. for the purpose of considering and, if thought fit, in approving with or without modifications the proposed scheme of Amalgamation of Propcare Holdings Private Limited (Transferor Company) and Propcare Real Estate Management Private Limited (Transferor Company) with Propcare Mall Management (India) Private Limited (Second Transferee Company).



Mr.Girish Gupta, General Manager-Accounts failing whom Mr.Ganapathy Venkatesh, Assistant Vice President-Finance and Accounts as proposed by the Applicant Company is appointed as Chairperson and Mr.Anuj Agarwal, Company Secretary as Scrutinizer for the Unsecured Creditors meeting. The remuneration of chairperson and Scrutinizer is fixed at Rs.20,000/- and Rs.10,000/- respectively for convening the Unsecured Creditors meeting.

The quorum for the Meeting of the Unsecured Creditors is two.

The Notice of the Meeting of Unsecured Creditors shall be published in an English Daily Financial Express and Vijayavani (Kannada daily).

The Applicant Company or its authorized signatory is directed to issue notice(s) to Unsecured Creditors by Registered or Speed Post; or Courier; or Air Mail; or email; or hand delivery to their last known address at least 30 clear days before the said meeting of the Unsecured Creditors as per Form No.CAA2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ensuing convening the said Unsecured Creditors Meeting at the place, day, date and time, along with a copy of scheme of arrangement, a copy of Explanatory Statement, pursuant to be sent under the Section 230 of the Companies Act, 2013 and form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014.

The Applicant Company is directed at least 30 clear days before the Meeting of the Unsecured Creditors of the Applicant Company to be held as aforesaid, a notice convening the said meeting, at the place, date and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid.

The Applicant Company to serve the notice upon the Regional Director, South-East Region, Ministry of Corporate Affairs, Hyderabad pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/or Central Government has no objection to the proposed Scheme.

The Applicant Company to serve the notice upon the Registrar of Companies, Karnataka pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Registrar of Companies, Karnataka within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies, Karnataka has no objection to the proposed Scheme.

The Applicant Company to serve the notice upon the Income Tax Authority, within whose jurisdiction that Applicant Company's Assessment are made, pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme.

The Applicant Company to serve the notice upon the Reserve Bank of India, if applicable pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Reserve Bank of India within 30 days of the date of receipt of the notice it will be presumed that Reserve Bank of India has no objection to the proposed Scheme.

The Applicant Company to serve the notice upon the other sectoral regulators or authorities if any, pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from other sectoral regulators or authorities within 30 days of the date of receipt of the notice it will be presumed that the other sectoral regulators or authorities has no objection to the proposed Scheme.

The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise before or at any adjournment thereof or any other matter including an amendment to the scheme or resolution, if any, proposed at the meeting by any person(s).



The voting shall be in person or by proxy or authorised representative in case be permitted, provided that the proxy in the Form No. MGT-11 authorization duly signed by the person entitled to attend and vote at the meeting, is to be filed with the Applicant Company at its Registered office, not later than, forty eight hours before the aforesaid meeting in accordance with Rule 10 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

The said Chairperson to file affidavit not less than seven days before the day fixed for holding of the meeting and do report to this tribunal that the direction regarding convening and issuance of notice(s) to all the necessary parties have been duly complied with in conformity with the relevant Provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

The Chairman shall report the conclusion of the aforesaid meeting as per the Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

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