

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.NO. 285/2017
IN
C.A.NO. 652/2016
DATED: TUESDAY THE 11th DAY OF APRIL 2017
PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI ASHOK KUMAR MISHRA, MEMBER TECHNICAL
IN THE MATTER OF COMPANIES ACT, 2013(18 OF 2013);
AND
IN THE MATTER OF SECTIONS 391 to 394 OF THE COMPANIES ACT, 1956
AND SECTION 230-232 OF THE COMPANIES ACT, 2013
AND
OTHER RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013
ALONG WITH RULES OF THE COMPANIES (COMPROMISES,
ARRANGEMENTS AND AMALGAMATIONS) RULES 2016
AND IN THE MATTER OF
RMZ INFOTECH PRIVATE LIMITED

1. RMZ Infotech Private Limited,
'The Millenia', Tower-B, Level-2
12-24, No.1&2, Murphy Road,
Ulsoor, Bengaluru 560-008

- APPLICANT/TRANSFeree COMPANY

PARTIES PRESENT:

Mr. SAJI P. JOHN
SPJ LEGAL
UNIT NO.1002, 10TH FLOOR,
#30, PRESTIGE MERIDIAN II M G ROAD
BENGALURU 560001

Heard on: 10.03.2017, 6.03.2017, 2.03.2017, 14.02.2017, 6.02.2017

ORDER

Originally this Company Application was filed before the Hon'ble High Court of Karnataka by the Applicant Company under Sec 391 of the Companies Act, 1956, being numbered as CA 652/16. Subsequently as per notification No. GSR.111(E) dated 7th December 2016 issued by the Ministry of Corporate Affairs, New Delhi, the said case is transferred to this Tribunal and renumbered as T.P. No.285/2017.




This Company Application is filed on behalf of the Applicant Company under Section 391 of the Companies Act, 1956, praying to order for dispensing of the meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company for approving the scheme of Amalgamation, where under the **RMZ INFRATECH PRIVATE LIMITED** (Transferor Company No.1) **VITAL CONSTRUCTION PRIVATE LIMITED** (Transferor Company No.2) are proposed to be merged with **RMZ INFOTECH PRIVATE LIMITED** (Applicant/Transferee Company) for purposes of considering the scheme of amalgamation etc.

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

The Applicant seeks an order dispensing with convening of separate meeting of equity shareholders and secured & unsecured creditors of the Applicant Company for approving the scheme of amalgamation of **RMZ INFRATECH PRIVATE LIMITED AND VITAL CONSTRUCTION PRIVATE LIMITED** with the Applicant Company **RMZ INFOTECH PRIVATE LIMITED** in terms of Scheme of Amalgamation shown as **Annexure H**.

It is further averred in the Company Application that the applicant company was originally incorporated as a private company on ^{11th} 25th November, 2003 as per the provisions of the Companies act, 1956 under the name and style of **RAMANAND AGRO-TECH PRIVATE LIMITED** in the State of Andhra Pradesh. Subsequently changes were made to the name of the Applicant Company on 26th August, 2004 and finally on 5th December, 2005 as **RMZ INFOTECH PRIVATE LIMITED**. With passing of Special Resolution and an order of Company Law Board Bench, Chennai dated 14th September, 2006 the applicant company shifted its registered office to the State of Karnataka bearing CIN No. **U01119KA2003PTC041807**.

The registered office of the Applicant Company is situated at **RMZ Infotech Private Limited, 'The Millenia', Tower-B, Level-2 12-24, No.1&2, Murphy Road, Ulsoor, Bengaluru 560-008**

The Applicant Company is engaged in the business of construction, development, operation, maintenance and management of special economic zones, townships, commercial space residential apartments, villas, townhouses, service apartments, hotels, hospitals, industrial estates, technology parks, industrial parks, bio-tech parks, info-tech parks.



The copy of Certificate of Incorporation, Memorandum and Articles of Association of the Applicant Company is shown as **Annexure A**.

The authorised share capital of the Applicant Company as on 31st March 2016 Rs.6,500,000,000/- divided into 650,000,000 Equity Shares of Rs.10/-each. The total paid up share capital as on 31st December, 2016 is Rs.4,190,705,710/- divided into 419,070,571 Equity Shares of Rs.10/- each fully paid up.

The Auditor Balance Sheet for the year ending 31.03.2016 of the Applicant Company is shown as **Annexure B** and Provisional financials from 1st April, 2016 till 31th December, 2016 is shown as **Annexure 4**.

It is further stated that, the board of directors of the Applicant/Transferee Company has approved and adopted a scheme of Amalgamation at its meeting held on 31st August 2016 by virtue of which RMZ Infratech Private Limited & Vital Construction Private Limited are proposed to be merged with the Applicant Company. It is further stated that, the proposed scheme of amalgamation, would be beneficial to consolidate the like businesses of the group to enhance value of shareholders and to bring in synergies in the business operations of the Companies. A copy of the Board resolution of the Applicant Company is shown as **Annexure G**.

We have heard the counsel appearing for the Applicant/Transferee Company who has filed the application for dispensing with convening of meeting(s) of the shareholders and secured & unsecured creditors for considering the scheme of Amalgamation. The Companies by name RMZ Infratech Private Limited & Vital Construction Private Limited (Transferor Companies) are proposed to be merged with the Applicant/Transferee Company as per the scheme of Amalgamation shown as **Annexure H**.



The Applicant Company is seeking an order to dispense with convening of meeting of Shareholders and Creditors on the ground that all the 5 Shareholders, 90% of the Secured Creditors and 92% of the Unsecured Creditors in value have given their consent to the scheme. The Certificate of Chartered Accountant certifying the number of Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company shown as **Annexure 1, Annexure 2 & Annexure 3** respectively.

We have seen the consent letters issued by the Shareholders of the Applicant Company as certified by the Chartered Accountant. The five shareholders are (i) Millennia Realtors Private Limited holding 25,37,54,792 equity shares of Rs.10/- each constituting 53.39% of the paid up capital, (ii) Sealine Investment Company , holding 10,47,67,643 equity shares of Rs.10/- each constituting 25.0% of the paid up capital (iii) Heta Holdings Limited , holding 9,05,48,128 equity shares of Rs.10/- each constituting 21.60% of the paid up capital, iv) Raj Menda holding 04 equity shares of Rs.10/-each constituting 0.00% of the paid up capital v) Manoj Menda holding 04 equity shares of Rs.10/- constituting 0.00% of the paid up capital of the applicant company. The consent letters of Shareholders are shown as **Annexure 1(Pg.3-17)**.

We have also seen the consent letters issued by the 3 (three) Secured Creditors holding 90% in value of the secured debt of Applicant Company as certified by the Chartered Account, who gave consent to the scheme and waiving their right to receive notice(s) of any meetings of Secured Creditors shown as **Annexure 2**.

We have also seen the consent letters issued by the 20 (twenty) Unsecured Creditors holding 92% in value of unsecured debt of the Applicant Company as certified by the Chartered Account, giving consent to the scheme and waiving their right to receive notice(s) of any meetings of Secured & Unsecured creditors shown as **Annexure 3**.

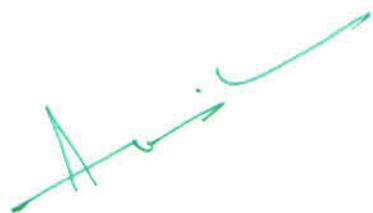

Thus the Applicant Company got the consent of the five Shareholders and 90% of the Secured & Unsecured Creditors in value and Board of Directors have passed the resolution approving the scheme of amalgamation.

No doubt the word used in Section 230(1) of the Companies Act, 2013 that the Tribunal "may" order for meeting of creditors or shareholders. It is true, discretion is vested on the Tribunal in the case of dispensing with the holding and convening of meetings of creditors and shareholders. The discretion is judicial exercise and must be within the parameters of law. We have heard the counsel for the applicant company at length. The Transferor Companies are proposed to be merged with the RMZ Infotech Private Limited/Applicant Company, in terms of Scheme of Amalgamation.

The total debt due to the Secured Creditors is more than Rs.1700 (Seventeen hundred) Crores out of which the Applicant Company has the consent of 90% and the remaining non consenting Secured creditor i.e. Union Bank of India to which Applicant owed Rs.174 (One Hundred and seventy four) Crores. Similarly the total value of Unsecured creditors is more than 80 (Eighty) Crores and the total number of Unsecured Creditors is 317 (Three Hundred and seventeen) and the applicant company has the consent of 92% i.e. 20 out of 317 unsecured creditors.

In the Interest of Creditors, considering the amount due to the Secured Creditor and number of unsecured creditors involved. We are of the view that the meetings of the Secured & Unsecured Creditors are to be convened in order to ensure Corporate Democracy and principle of participation in such important decision making process. The participation of Creditors is an essential aspect which can't be dispensed with.

When the meeting is convened, the applicant company will have the opportunity to discuss, consider the scheme at length on merits and vis-à-vis the interests of the creditors. In holding the meeting of the creditors it will create an opportunity for considering the merits of the scheme and they will have a chance to offer their views over the scheme.





Hence the Tribunal is of considered view and do further Order.

In the result, the application is partly allowed and holding of meeting of the Equity Shareholders is dispensed with and the meeting of the Secured & Unsecured Creditors to be convened.

The separate meeting(s) of the Secured & Unsecured Creditors of the Applicant Company be convened and held for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed scheme of amalgamation **RMZ INFRATECH PRIVATE LIMITED** (Transferor Company No.1) **VITAL CONSTRUCTION PRIVATE LIMITED** (Transferor Company No.2) with **RMZ INFOTECH PRIVATE LIMITED** (Applicant/Transferee Company).

The Date and Venue of Separate Meeting(s) of Secured & Unsecured Creditors is fixed at **10 A.M. & 11 A.M.** respectively Monday, the 22nd May, 2017 at the registered office of the Applicant Company 'The Millenia', Tower-B, Level-2, 12-24, No.1&2, Murphy Road, Ulsoor, Bengaluru 560-008.

Shri M. Chandrappa, Practising Company Secretary as proposed by the Applicant Company is appointed as Chairperson and **Shri Raj Menda, Director** as Scrutinizer for the separate meeting(s) of the Secured & Unsecured Creditors. The Applicant Company is at liberty to decide the terms of appointment including remuneration of Chairperson and Scrutinizer. The remuneration of Chairperson and Scrutinizer is fixed at Rs.20,000/- and Rs.10,000/- respectively for convening the separate meetings of Secured and Unsecured creditors.



The quorum for the Separate Meeting(s) of the Secured & Unsecured Creditors is two as proposed by the Applicant Company in accordance with Section 103 of the Companies Act, 2013.

The Notice of the Separate meeting(s) of the Secured & Unsecured Creditors shall be published in an English Daily of "The Hindu" and in Kannada Daily "Kannada Prabha".

The Applicant Company or its authorized signatory is directed to issue notice(s) to Secured & Unsecured Creditors by Registered or Speed Post; or Courier; or Air Mail; or email; or hand delivery; or any legitimate communicable means to their last known address at least 30 clear days before the said separate meeting(s) of Secured & Unsecured Creditors as per Form No.CAA2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ensuing convening the said separate meeting(s) at the place, day, date and time, along with a copy of scheme of amalgamation, a copy of Explanatory Statement, required to be sent under the Section 230 of the Companies Act, 2013 and the form of Proxy as per Form No. MGT-11 (Rule19) of the Companies (Management and Administration) Rules, 2014.

The Applicant Company or its authorized signatory is directed to serve notice(s) along with documents upon the Southern Regional Director; Registrar of Companies (Bengaluru); Income Tax Department within whose jurisdiction assessment is made; and if applicable to Competition Commission of India; Reserve Bank of India; and other sectoral regulators and authorities if any, pursuant to Section 230(5) of the Companies Act as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

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 in person or by proxy or authorized 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 Amalgamations) Rules, 2016.

The said Chairperson to file an affidavit not less than seven days before the day fixed for the holding of the separate meeting(s) of secured & unsecured creditors 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 and Amalgamations) Rules, 2016.

The Chairman shall report the conclusion of the aforesaid meeting as per the Rule 14 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 on 25th May 2017.

The Applicant Company or its authorized signatory is also directed to furnish copy of the scheme free of charge as and when requisition is made before the Applicant Company by the members or creditors.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 11th DAY OF APRIL, 2017