

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

T.P.No.261/17

IN

C.A.734/16

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 TRANSCENDENTAL RENTALS PRIVATE LIMITED

T.P.No.261/17 IN C.A.No.734/16

1. Transcendental Rentals Private Limited

**No.5, KHB Industrial Area,
Yelahanka, Bangalore-560064**

-APPLICANT/TRANSFEROR COMPANY 2

PARTIES PRESENT:

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

Heard on: 23.01.2017, 15.02.2017 and 17.03.2017

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.734/16. Subsequently as per Notification No. GSR1119(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.261/17.

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 convening of the Meeting of Equity Shareholders of the Applicant/Transferor Company 2, Secured Creditors and Unsecured Creditors for considering the Scheme of Amalgamation, where under the Applicant Company **Transcendental Rentals Private Limited** which is Transferor Company 2 to be merged with **Go Go International Private Limited** (Transferee Company). The Scheme of Amalgamation shown as **Annexure-Z**.

12/4/17

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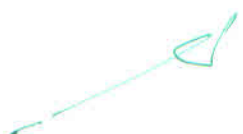
The averments made in the Company Application are briefly described hereunder:-

The Applicant seeks an order for dispensing with convening of the Meeting of Equity Shareholders and Secured and Unsecured Creditors for considering the Scheme of Amalgamation of Applicant Company Transcendental Rentals 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 2 was incorporated on 21st February, 2005 under the name and style of **Transcendental Rentals Private Limited** with the Registrar of Companies, Karnataka vide CIN bearing No. U70200KA2005PTC035660. 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 purchase, acquire, sell, take on lease or tenancy or in exchange, hire, take-over, own and maintain basis or buy on hire purchase, lease, sell, or other basis or to get on rental basis commercial properties, residential properties, estates, interests, capital equipments which may be utilized for the business of the company or which may be allowed to be utilized by others on such hire, lease, rent, or other consideration as may be mutually agreed. 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.1,00,000/- divided into 1000 Equity Shares of Rs.100/- each. The issued, subscribed and paid-up share capital is Rs.1,00,000/- divided into 1000 Equity Shares of Rs.100/-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 Transcendental Rentals Private Limited (Transferor Company No 2) 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 Transferee as well as Transferor Companies were 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 2, which has filed the application for dispensing with the convening of meeting of Equity Shareholders and Secured & Unsecured Creditors for considering the scheme of Amalgamation. The Applicant is the Transferor Company 2 which is proposed to be merged with Go Go International 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 and 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 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 200 equity shares, constituting 20% of the paid-up capital, (ii) Rajeev Shyamsunder Goenka holding 200 equity shares, constituting 20% of the paid-up capital, (iii) Achal Shyamsunder Goenka holding 200 equity shares, constituting 20% of the paid-up capital, (iv) Nirmala Rajeev Goenka holding 200 equity shares, constituting 20% of the paid-up capital and (v) Lalitha Achal Goenka holding 200 equity shares, constituting 20% of the paid-up capital.

Applicant Company further filed affidavits of the Equity Shareholders of the Applicant Company 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 3 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 amounts due to unsecured creditors of the Applicant Company is Rs.4,35,510/- and 100 % of the unsecured creditors representing value of Rs.4,35,510/- have given their consent to the Scheme. We have seen consent letters issued by the Unsecured Creditors and is marked 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.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 12th DAY OF APRIL, 2017