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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 11/NCLT/AHM/2017

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 18.04.2017**

Name of the Company: Bhanderi Corporation Ltd.


Section of the Companies Act: Sections 230-232 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	ASHA PANCHAL	Adv	Power	Asha Panchal
2.				

ORDER

Learned Advocate Ms. Asha Panchal i/b A R Gupta present for Applicant.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 18th day of April, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 18th day of April, 2017

C.A.(CAA) 11/NCLT/AHM/2017

In the matter of :-

M/s Bhanderi Corporation Limited,
A company incorporated under
the provisions of the Companies
Act, 1956 and having its Registered
Office at B/9 & B/10, Jabuka Complex,
Near Bajarang Ashram,
Below Vikas School, N.H. 8, Thakkarbapa Nagar,
Ahmedabad – 382 350, Gujarat. ... Applicant
(Transferee Company)

Appearance:-

Mr. Mohit Gupta, Advocate, for Mr. A.R. Gupta, Advocate for the
Applicant.

FINAL ORDER

(Date: 18.04.2017)

1. M/s. Bhanderi Corporation Limited (hereinafter referred to as the “transferee company) has filed this application under Sections 230 to 232 of the Companies Act, 2013.
2. The applicant transferee-company is a Public Limited company. The Board of Directors of the applicant-company passed a resolution on 17th November, 2016 (Annexure “C”) approving a Scheme of Amalgamation whereby the applicant transferee-company will acquire five other companies, viz. Bileshwar Infrastructure Private Limited, Brahmani Buildcon Private Limited, Dharnidhar Construwell India Private Limited, Shreenathji Vastucon Private Limited and Tulsi Infradevelopers Private Limited (“Scheme” for short). A copy of the said Scheme is produced at Annexure “D” to the

application. It is stated in the application that all the shareholders of the applicant-company have given their approval to the Scheme in the form of written consent letters. It is also stated that all the shareholders have given up their right to attend the meeting for the purpose of considering such resolution. Chartered Accountant of the applicant-company gave a certificate confirming that there are in all 13 shareholders of the applicant-company, i.e. 11 equity shareholders and 2 preference shareholders and all of them gave their consent to the proposed Scheme of Amalgamation. The said certificate of Chartered Accountant is produced at Annexure "G". It is stated in the application that the applicant-company has no secured creditors. It is also stated in the application that the interests of the creditors of the applicant-company shall not be affected in any manner as a result of the proposed Scheme of Amalgamation. It is further stated in the application that the proposed Scheme does not envisage any arrangement or compromise with the creditors of the applicant transferee-company. It is further stated in the application that the applicant-company undertakes to fulfil all its liabilities towards creditors in its normal course of business. The applicant-company also produced a certificate issued by Chartered Accountants at Annexure "H" confirming that the net worth of the applicant-company as on 30th September, 2016 prior to giving effect to the proposed Scheme was Rs.57,49,15,006/- whereas after the Scheme coming into effect, the net worth of the applicant-company would be approximately Rs.75,57,30,347/-.

3. In this application, the applicant transferee-company is seeking dispensation of meeting of shareholders (both equity and preference) of the applicant-company for the purpose of considering and, if thought fit, approving, the proposed Scheme of Amalgamation of five transferor-companies with the applicant transferee-company and publication of notice therefor. The applicant company is also seeking exemption from convening and holding of meeting of unsecured creditors in view of the averments made in paragraph 12 of the application.



4. Heard learned Advocate, Mr. Mohit Gupta, for Mr. A.R. Gupta, Advocate for the applicant-company.

5. In CA(CAA) No.4 of 2017, this Tribunal held that the Tribunal has got discretionary power to dispense with the meeting of shareholders wherein consent of the shareholders have been obtained. For coming to the aforesaid conclusion, this Tribunal relied on following decisions of various Honourable High Courts:-

(1) **Mazda Theatres Pvt. Ltd. and Anr. Vs. New Bank of India Ltd. and Ors.** reported in MANU/DE/0104/1974;

(2) **Mysore Cements Ltd., in Re,** reported in [2009]149 Comp Cas 50 (Karn);

(3) **Ansal Properties & Industries Ltd. and Anr. Vs. Company,** reported in MANU/DE/0118/1976; [1978]48 Comp Cas 184 (Delhi);

(4) **Scheme of Amalgamation of GE Capital Transportation Financial Services Limited vs. GE Capital Services India,** reported in 2009 SCC online Del 535. (2009) 149 Comp Cas 52;

(5) **In Re: Sharat Hardware Industries P. Ltd.** reported in MANU/DE/0262/1976; [1978] E Com Cas 23 (Delhi)

6. In the aforesaid decision in CA (CAA) No.4 of 2017, this Tribunal, after discussing the provisions of Sections 230 and 231 of the Companies Act, 2013, came to the conclusion that where the shareholders are less in number and, if they have given consent, the meeting of the shareholders can be dispensed with.

7. In the case on hand, there are only thirteen shareholders (eleven equity shareholders and two preference shareholders) of the applicant-company and all of them gave consent to the proposed Scheme of Amalgamation. The applicant-company filed copies of Board resolutions authorising the persons who gave consent affidavits. In this view of the matter, this Tribunal is of the view that

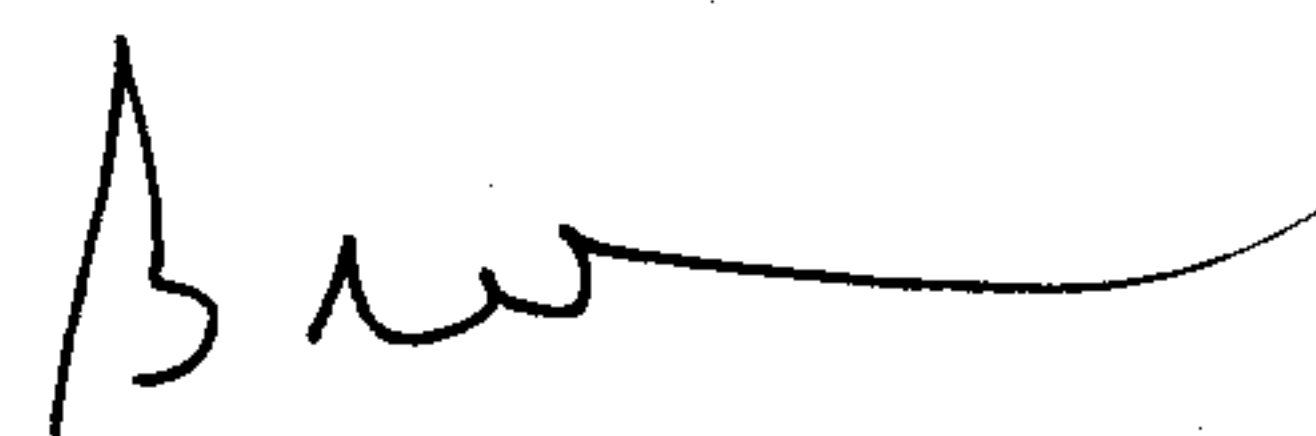


meeting of shareholders (both equity shareholders and preference shareholders) of the applicant transferee-company deserves to be dispensed with.

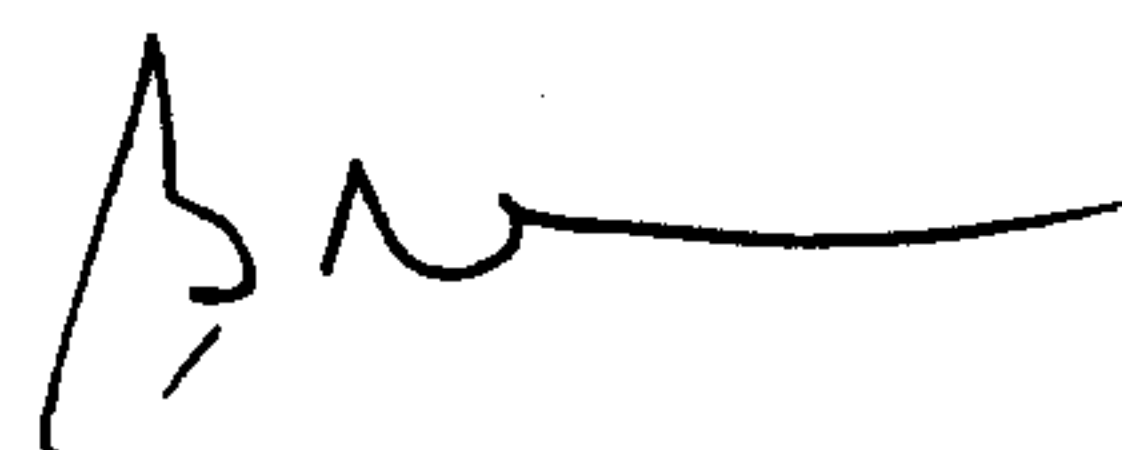
8. Coming to the creditors, it is stated in the petition that the applicant-company has no secured creditors. It is also stated in the application that the interests of the creditors of the applicant-company shall not be affected in any manner as a result of the proposed Scheme of Amalgamation. It is further stated in the application that the proposed Scheme does not envisage any arrangement or compromise with the creditors of the applicant transferee-company. The applicant-company also produced a certificate issued by Chartered Accountants confirming that the net worth of the applicant-company as on 30th September, 2016 prior to giving effect to the proposed Scheme was Rs.57,49,15,006/- whereas after the Scheme coming into effect, the net worth of the applicant-company would be approximately Rs.75,57,30,347/-. Applicant-company also filed further affidavit on 23.03.2017 giving share capital, list of shareholders and list of unsecured creditors of the transferee-company. In view of the fact that the unsecured creditors of the applicant-company did not give any consent letters to the proposed Scheme of Amalgamation, this Tribunal is not inclined to dispense with the meeting of unsecured creditors, as prayed for in the application. As there are no secured creditors, this Tribunal is of the view that there is no need to hold a meeting of them.

9. In the result, this application stands disposed of with the following directions: -

- I. Meeting of shareholders of the applicant-company (both equity shareholders and preference shareholders) for the purpose of considering the Scheme of Amalgamation of five transferor-companies with the applicant transferee-company is dispensed with.



- II. Applicant shall serve individual notices to all the shareholders (both equity and preference) in the petition seeking sanction of arrangement.
- III. Meeting of unsecured creditors of the applicant company for the purpose of considering the Scheme of Amalgamation of five transferor-companies with the transferee-company is ordered to convene.
- IV. A meeting of the unsecured creditors of the Applicant-company shall be held on 5th June 2017, at 3.00 P.M., at the registered office of the Applicant-company at B/9 & B/10, Jabuka Complex, Near Bajrang Ashram, Below Vikas School, N.H. 8, Thakkarbapa Nagar, Ahmedabad – 382 350, for the purpose of considering and, if thought fit, approving with or without modification(s) the agreement embodied in the Scheme.
- V. In the meeting unsecured creditors, the voting shall be carried out through ballot/polling paper.
- VI. At least one month before the date of the aforesaid meeting of unsecured creditors to be held as aforesaid, a notice convening the said meetings, indicating the day, date, place and time, as aforesaid, together with a copy of the scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the unsecured creditors of the Applicant-company at their respective registered or last known addresses either by Registered Post or Speed Post/Airmail or by Courier. The notice shall be sent to the unsecured creditors of the Applicant-company with reference to the list of persons appearing on the record of the Applicant-company as on 4th May, 2017.



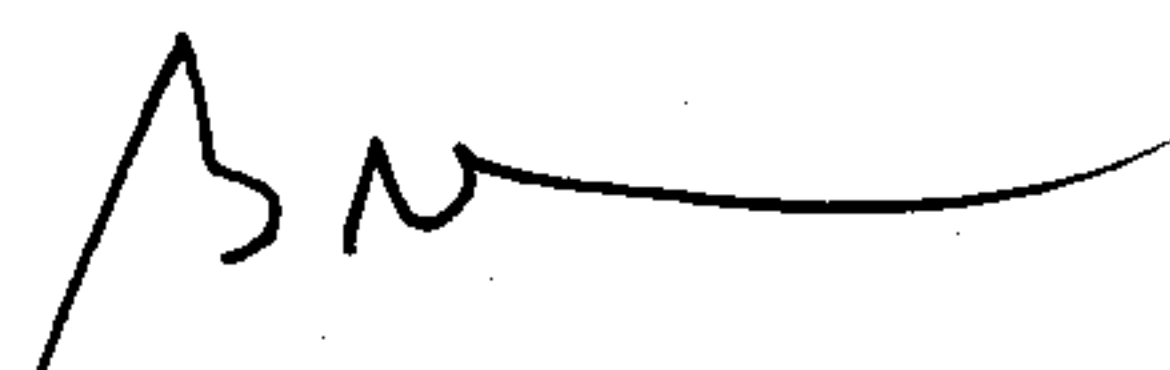
VII. Mr. Mukesh Patel, an Independent Director of the Applicant-company and, in his absence, Mr. Ravindra Bhedab, an Independent Director of the Applicant-company shall be the Chairman/Chairperson of the aforesaid meetings to be held on 5th June, 2017 and in respect of any adjournment or adjournments thereof.

VIII. Mr. Viral Ranpura, a Practising Company Secretary, is appointed as the Scrutinizer for the meeting of the unsecured creditors of the Applicant-company.

IX. The Chairman or Chairperson appointed for the aforesaid meetings shall issue and send the notice of the meeting referred to above. The Chairman/Chairperson is free to avail the services of the Applicant-company or any agency for carrying out the aforesaid directions. The Chairman or Chairperson shall have all powers under the Articles of Association of the Applicant-company and also under the Rules in relation to the conduct of meetings, including for deciding any procedural questions that may arise at the meeting or adjournments thereof proposed at the said meeting, amendment(s) to the aforesaid scheme or resolutions, if any, proposed at the aforesaid meeting by any person(s) and to ascertain the decision of the sense of the meeting of the unsecured creditors by polling paper/ballot.

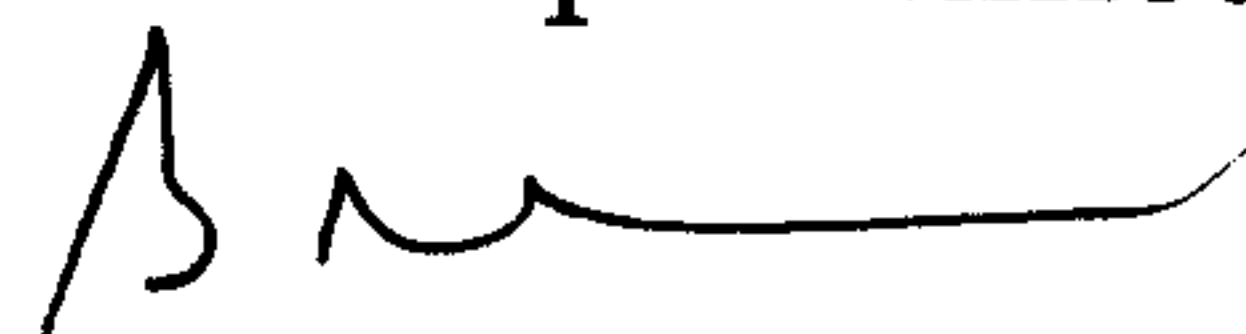
X. The quorum for the meeting of the unsecured creditors shall be five (5) persons present in person.

XI. Voting by proxy/authorised representative is permitted, provided that the proxy in the prescribed form/authorisation duly signed by the person entitled to attend and vote at the aforesaid meetings is filed with the Applicant-company at its registered office at B/9 & B/10, Jabuka Complex, Near Bajrang Ashram, Below Vikas School, N.H. 8, Thakkarbapa Nagar,



Ahmedabad – 382 350, Gujarat not later than 48 hours before the meetings vide Rule 10 of Companies (CAA) Rules, 2016 read with Section 105 of the Companies Act.

- XII. The number and value of unsecured creditors shall be in accordance with the records or registers of the Applicant-company and where the entries in the records or registers are disputed, the Chairman of the meetings shall determine the number or value, as the case may be, for purposes of the meetings.
- XIII. The Chairman/Chairperson to file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meeting and to report to this Tribunal that the directions regarding issuance of notices of the meeting have been duly complied with as per Rule 12 of Companies (CAA) Rules, 2016.
- XIV. It is further ordered that the Chairman or Chairperson shall, report to this Tribunal on the result of the meeting in Form No.CAA.4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in Form No.CAA.4.
- XV. In compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (CAA) Rules, 2016, the Applicant-company shall send a notice of meeting under sub-section (3) of Section 230 read with Rule 6 of the Companies (CAA) Rules, 2016 in Form No.CAA.3 along with a copy of the scheme of arrangement, the explanatory statement and the disclosures mentioned under Rule 6, to (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, (iii) the Income-tax authorities, (iv) the Reserve Bank of India and (v) the Competition Commission of India stating that representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have



no objection to make on the proposed scheme. The said notice shall be sent forthwith after notice is sent to the unsecured creditors of the company by registered post or by speed post or by courier or by hand delivery at the office of the authority as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230, shall sent the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which it will be deemed that they have no representation to make on the proposed arrangement.



BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on this
18th day of April 2017.
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