

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSA No. 869 OF 2017

Under Section 230 to 232 of Companies Act,
2013

And

In the matter of Scheme of Amalgamation of
Flora Projects Consultancy Private Limited
(‘Flora’ or ‘the Transferor Company’) with
Lucrative Fashions Private Limited (‘Lucrative’
or ‘the Transferee Company’) and their
Respective Shareholders

FLORA PROJECTS CONSULTANCY PRIVATE

LIMITED, a company incorporated under the
provisions of Companies Act, 1956 having its
registered address at 43, Rajagir Chambers, Opp.
Old Custom House, S.B.S. Road, Fort, Mumbai
400 023, Maharashtra

.....The Transferor Company / First Applicant

LUCRATIVE FASHIONS PRIVATE LIMITED, a

company incorporated under the provisions of
Companies Act, 1956 having its registered
address at 39, Rajgir Chambers, 4th Floor, Opp.
Old Custom House, S.B.S. Road, Fort, Mumbai -
400 023, Maharashtra

.....The Transferee Company/ Second Applicant

Order delivered on 22nd September, 2017

Coram:

Hon’ble **B.S.V. Prakash Kumar**, Member (J)

Hon’ble **V .Nallasenapathy Hon’ble**, Member (T)

For the Applicant(s): Mr. Hemant Sethi i/b Hemant Sethi & Co.

Per: B.S.V. Prakash Kumar (J)

ORDER

1. The Counsel for the Applicant states that the present Scheme is a Scheme of Amalgamation of Flora Projects Consultancy Private Limited (‘Flora’ or ‘the Transferor Company’) with Lucrative Fashions Private Limited (‘Lucrative’ or ‘the Transferee Company’) and their Respective Shareholders. This Scheme of Amalgamation is proposed

to merge the Transferor Company with the Transferee Company without winding up the Transferor Company pursuant to the relevant provisions of the Companies Act.

2. The Counsel for the Applicants further submits that the Transferor Company is mainly engaged in the business of commodity trading and holds various other investments and the Transferee Company is mainly engaged in the business of all kinds of clothes apparels, fashion accessories etc.

3. The rationale for the proposed scheme is as under:

Both the companies under this Scheme of Amalgamation are part of the same group. The Group believes that the restructuring would benefit the companies and its stake holders on account of the following reasons:

- Simplification of group structure; and
- Rationalisation of overheads.

4. That the meeting of the Equity Shareholders of the Transferor Company be convened and held at 43, Rajagir Chambers, Opp. Old Custom House, S.B.S. Road, Fort, Mumbai - 400 023, Maharashtra on Friday, 27th day of October, 2017 at 10.00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation of Flora Projects Consultancy Private Limited ('Flora' or 'the Transferor Company') with Lucrative Fashions Private Limited ('Lucrative' or 'the Transferee Company') and their Respective Shareholders.
5. That the meeting of the Preference Shareholders of the Transferor Company be convened and held at 43, Rajagir Chambers, Opp. Old Custom House, S.B.S. Road, Fort, Mumbai - 400 023, Maharashtra on Friday, 27th day of October, 2017 at 10.30 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation of Flora Projects Consultancy Private Limited ('Flora' or 'the Transferor Company') with Lucrative Fashions Private Limited ('Lucrative' or 'the Transferee Company') and their Respective Shareholders.

6. That the meeting of the Equity Shareholders of the Transferee Company be convened and held at 39, Rajgir Chambers, 4th Floor, Opp. Old Custom House, S.B.S. Road, Fort, Mumbai - 400 023, Maharashtra on Friday, 27th day of October, 2017 at 11.00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation of Flora Projects Consultancy Private Limited ('Flora' or 'the Transferor Company') with Lucrative Fashions Private Limited ('Lucrative' or 'the Transferee Company') and their Respective Shareholders.
7. That at least one month before the said meetings of the shareholders of Transferor Company and Transferee Company to be held as aforesaid, a notice convening the said Meeting at the place, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14th December, 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Hand Delivery / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the shareholders, at their last known address or email addresses as per the records of the respective company.
8. That atleast one month before the meeting of the shareholders of the Transferor and Transferee Company to be held as aforesaid, a notice convening the said Meeting, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and / or at the office of its Advocates, M/s. Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai - 400 071.
9. That the Notice of the Meeting shall be advertised in two local newspapers viz. 'Free Press Journal' in English and 'Navshakti' in Marathi, both circulated in Mumbai not less 30 days before the date fixed for the meeting.

10. That Mr. Shailesh T. Shah, Director, and failing him, Mr. Kanaiyalal J. Darji, Director of the Transferor Company shall be the Chairman of the aforesaid meeting of the Equity and Preference Shareholders of the Transferor Company to be held at 43, Rajagir Chambers, Opp. Old Custom House, S.B.S. Road, Fort, Mumbai - 400 023, Maharashtra on Friday, 27th day of October, 2017 at 10.00 a.m. and 10.30 a.m. respectively or any adjournment or adjournments thereof.
11. That Mr. Shailesh T. Shah, Director, and failing him, Mr. Kanaiyalal J. Darji, Director of the Transferee Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Transferee Company to be held at 39, Rajgir Chambers, 4th Floor, Opp. Old Custom House, S.B.S. Road, Fort, Mumbai - 400 023, Maharashtra on Friday, 27th day of October, 2017 at 11.00 a.m. or any adjournment or adjournments thereof.
12. That the Chairman appointed for the aforesaid Meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meeting by any person(s).
13. That the quorum of the aforesaid meeting of the Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
14. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meeting, are filed with the Applicants at their respective Registered Office(s) not later than 48 hours before the aforesaid meeting.
15. That the value and number of the shares of each shareholder shall be in accordance with the books / register of the Transferor and Transferee Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.

16. That Mr. Shantilal L. Jain, Practicing Chartered Accountant is hereby appointed as Scrutinizers of the meeting of the Equity and Preference Shareholders of the Transferor Company proposed to be held at 43, Rajagir Chambers, Opp. Old Custom House, S.B.S. Road, Fort, Mumbai - 400 023, Maharashtra on Friday, 27th day of October, 2017 at 10.00 a.m. and 10.30 a.m. respectively and his remuneration is fixed as Rs. 2,500/- excluding taxes for each meeting.
17. That Mr. Shantilal L. Jain, Practicing Chartered Accountant is hereby appointed as Scrutinizers of the meeting of the Equity of the Transferee Company proposed to be held at 39, Rajgir Chambers, 4th Floor, Opp. Old Custom House, S.B.S. Road, Fort, Mumbai - 400 023, Maharashtra on Friday, 27th day of October, 2017 at 11.00 a.m. and his remuneration is fixed as Rs. 2,500/- excluding taxes.
18. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
19. That the Chairman of the meeting to report to this Tribunal, the results of the aforesaid meeting within thirty days of the conclusion of the meeting.
20. The Transferor Company is also directed to serve notice along with copy of scheme upon Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013. The Tribunal is appointing Chartered Accountant, M/s. S. U. Buch & Co. with remuneration of Rs. 40,000/- for the services. If no response is received by the Tribunal from Official Liquidator within thirty days of the date of receipt of notice, it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
21. The Transferor and Transferee Company are directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) the Official Liquidator, Mumbai (in case of Transferor Company) (iv) Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty days from the date

of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Transferor and Transferee Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

22. The Counsel for the Applicants submits that since the Scheme is an arrangement between the Transferor Company and their respective shareholders only, a meeting of the shareholders of the Transferor Company is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. This bench hereby directs the Transferor Company to issue notice to all Secured and Unsecured Creditors, under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Transferor Company.
23. The Counsel for the Applicants submits that since the Scheme is an arrangement between the Transferee Company and their respective shareholders only, a meeting of the shareholders of the Transferee Company is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. The Counsel for the Transferee Company further submits that there are no Secured Creditors in the Transferee Company, therefore the question of sending notices to the Secured Creditors does not arise. This bench hereby directs the Transferee Company to issue notice to all Unsecured Creditors, under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Transferee Company.
24. The Transferor and Transferee Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, unsecured creditors, secured creditors (in case of Transferor Company) publication of notices in newspapers and to the regulatory authorities as stated in clause 21 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)