

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

COMPANY SCHEME APPLICATION NO. 80 OF 2017

In the matter of the Companies Act, 2013

AND

In the matter of Section 230 to 232 of the  
Companies Act, 2013 and other relevant  
provisions of the Companies Act, 2013  
along with the Companies Act, 1956.

AND

In the matter of Sections 391 to 394 of the  
Companies Act, 1956 and other relevant  
provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation  
of GILL SHYAM COTEX PRIVATE  
LIMITED ( the Transferor Company),  
with GILL & COMPANY PRIVATE  
LIMITED, the Transferee Company

GILL SHYAM COTEX PRIVATE LIMITED, )  
a company incorporated under the Companies )  
Act, 1956 having its registered office at B-118, )  
Second Floor, Cotton Exchange Building, )  
Opp. Cotton Green Railway Station, Cotton )  
Green, Mumbai - 400 033.

**... APPLICANT COMPANY**

**Called for Direction:**

Mr. Rohan P. Munj, Advocate for the Applicant Company.

Coram: B.S.V. Prakash Kumar, Member (J) and  
V. Nallasenapathy, Member (T)

Date: 16<sup>th</sup> March, 2017

**MINUTES OF THE ORDER**

Upon the application of the Applicant Company by Company Scheme Application ( High Court Transferred) and UPON HEARING Mr. Rohan P. Munj, Advocate for the Applicant Company and upon reading the Affidavit dated 27<sup>th</sup> October, 2016 of Mr. Jayant B. Shah, Director of the Applicant Company, in support of the Company Scheme Application, IT IS ORDERED THAT:

1. A meeting of the Equity Shareholders of the Applicant Company, be convened and held at B-118, Second Floor, Cotton Exchange Building, Opp. Cotton Green Railway Station, Cotton Green, Mumbai - 400 03, on **11<sup>th</sup> May, 2017 at 3:30 p.m.** for the purpose of considering and if thought fit, approving, with or without modifications, the proposed Scheme of Amalgamation of GILL SHYAM COTEX PRIVATE LIMITED ( the Transferor Company), with GILL & COMPANY PRIVATE LIMITED, the Transferee Company;
2. At least 30 clear days before the said meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by Registered Post or by Air Mail or by

Courier or by Speed Post or by hand delivery to each of the Equity Shareholders of the Applicant Company at their respective registered or last known addresses or by e-mail to the registered email address of the Equity Shareholders as per the records of the Applicant Company.

3. At least 30 clear days before the meeting to be held aforesaid, an advertisement convening the said meeting, at the place, date and time aforesaid and stating that copies of the proposed Scheme of Amalgamation and the statement required to be sent pursuant to Section 230 of the Companies Act, 2013 and form of proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid, shall be published once each in two local news papers viz. "Free Press Journal", in English language and in "Navshakti", in Marathi Language, both having circulation in Mumbai;
4. The Applicant Company undertakes to:
  - i. Issue Notice convening meeting of equity shareholders as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
  - ii. Issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
  - iii. Issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies ( Management and Administration) Rules, 2014; and

The undertaking is accepted.

5. That Mr. Mr. Jayant B. Shah, Director of the Applicant Company shall be the Chairperson of the meetings of Equity Shareholders and failing him, Mr. Mohit D. Shah, Director of the Applicant Company shall be the alternate Chairperson of the said meeting.

6. The Chairperson appointed for the aforesaid Equity Shareholders Meeting to issue advertisements and send out the notices of the meeting referred to above. The said Chairperson shall have all the 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 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).
7. The quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
8. The 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, is filed with the Applicant Company at its Registered Office at B-118, Second Floor, Cotton Exchange Building, Opp. Cotton Green Railway Station, Cotton Green, Mumbai - 400 033, not later than, 48 hours before the aforesaid Equity Shareholders meeting, as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
9. The value and number of the shares of each member shall be in accordance with the books / register of the Applicant Company or depository records and where the entries in the books / register/ depository records are disputed, the Chairperson of the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.

10. The Chairperson to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
11. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within three (3) days of the conclusion of the meeting, and the said report shall be verified by his affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
12. That the question of issuing notice to the Secured Creditor does not arise since there are no Secured Creditors of the Applicant Company as stated in paragraph 18 of the Affidavit in support of Company Scheme Application (Summons for Direction).
13. That Counsel for the Applicant submits that since the scheme is an arrangement between the Applicant Company and their respective shareholders, only a meeting of the Equity Shareholders 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 Applicant Company to issue Notice to its Unsecured Creditors as required under Section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representation, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
14. The Applicant Company to serve Notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, Maharashtra, pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of

the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the 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 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

15. The Applicant Company to serve Notice upon the Registrar of Companies, pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
16. The Applicant Company to serve Notice upon the concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessment are made, pursuant to Section 230 (5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the 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 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
17. The Applicant Company to serve the notice upon the Official Liquidator, High Court, Bombay, pursuant to Section 230 (5) of the Companies Act, 2013. The Tribunal is appointing Chartered Accountant, M/s DMKH & CO. with remuneration of Rs.25,000/- for the services. If no response is

received by the Tribunal from Official Liquidator within thirty (30) days of the date of receipt of the 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.

18. The Applicant to file an affidavit of service of the notices in the Registry not less than seven (7) days before the date fixed for the holding of the meetings and do report to this Tribunal that the Direction regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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

Dated: 16/03/2017