

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENCH AT MUMBAI
COMPANY SCHEME APPLICATION NO. 171 OF 2017
(High Court transferred Company Summons for Direction (L) No. 999 of 2016)

IN THE MATTER of the Companies Act
2013 (and the erstwhile Companies Act,
1956 (1 of 1956);

AND

IN THE MATTER of Section 230 -232 of
the Companies Act 2013 (and erstwhile
section 391 to 394 of the Companies
Act, 1956);

AND

IN THE MATTER of Newcon Interiors
Private Limited;

AND

In the matter of Scheme of
Amalgamation
of

Newcon Interiors Private Limited
(‘the Transferor company or ‘NCIPL’)

And

Satya Buildmart Private Limited
(‘the Transferee Company’ or ‘SBPL’)

Newcon Interiors Private Limited)	
A Company incorporated)	
Under the Companies Act, 1956)	
And having its registered office at 401,)	
4 th floor, Ackruti Star Building, MIDC, Central)	
Road, Andheri (E) Mumbai – 400093)	...Applicant Company

Mr. Manish Malpani, Advocate for the Applicant

Coram: B.S.V. Prakash Kumar Member (J)

V. Nallasenapathy Member (T)

Date: 23.02.2017

MINUTES OF ORDER

UPON the application of the Applicant Company abovenamed by a High Court transferred Company Summons for Direction AND UPON HEARING Mr. Manish Malpani, Advocate, AND UPON READING the Affidavit dated 19th November 2016 of Mr. Mahendra Kumar Singhania authorized signatory of the Applicant Company in support of the High Court transferred Company Summons for Direction and the Exhibits therein, wherein para no. 10 of the said Affidavit states the reason for Amalgamation as follows:

"10. That the Applicant Company and the Transferee Company are closely held family owned companies belonging to the same business group and under the same management. The management of the companies is of the view that it would be prudent to amalgamate these companies so as to form a single entity which will invariably reduce the administrative and other common costs. The objective / benefits of the Scheme of Amalgamation is to create a single business entity which will in turn help them:

- (a) To manage their businesses more efficiently and effectively and rationalize administrative expenses;*
- (b) To make use of same management control leading to better co-ordination of the business activities;*
- (c) To utilize their resources optimally and reduce the cost by more focused operational efforts;*
- (d) To easily avail the finances required for their expansion and projects;*
- (e) To improve asset base by consolidating the immovable assets of all the companies;*
- (f) To better negotiate the lending terms and conditions with the banks, financial institutions; and*
- (g) To derive the benefit of synergies.*
- (h) To standardize and simplify the business process"*

IT IS ORDERED THAT:

1. A meeting of the Equity shareholders of the Applicant company, be convened and held at 401, 4th floor, Ackruti Star, MIDC, Central Road, Andheri (E), Mumbai -400093 on 21.4.2017 At 12.00 am for the purpose of considering, and if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation of Newcon Interiors Private Limited ("Transferor Company") with Satya Buildmart Private Limited ("Transferee Company").
2. At least 30 clear days before the said meeting of Equity shareholders of the Applicant Company be held as aforesaid, a notice convening the said meeting at a 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 email 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 said meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, notice convening the said meeting at the place, day, date and time aforesaid and stating that copies of the scheme of Amalgamation and the statement required to be furnished pursuant to the section 230 of the Companies Act 2013 and that the 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 'Free Press Journal' in English and 'Navshakti' in Marathi, both circulate at Mumbai.

4. The Applicant Company undertakes to:

- i. issue Notice convening meeting of the Equity Shareholder as per Form No. CAA.2 (Rule 6) of the Companies (Compromise, 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 10) of the Companies (Management and Administration) Rules, 2014; and
- iv. advertise the Notice convening meeting as per Form No. CAA.2 (Rule 7) of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

The undertaking is accepted.

5. Mr. Mahendra Kumar Singhania, Director of the Applicant Company, is appointed as the Chairperson for the meeting of the Equity Shareholders called under this order and relevant law of the Applicant. Mrs Shobha Ramesh Tainwala, the Director of the Applicant Company shall be alternative Chairperson of the aforesaid meeting called under this order and the relevant law of the Applicant Company. The Scrutinizer for the meeting shall be FCS Pradeep Pincha M. No. 5369.

6. The Chairperson appointed for the aforesaid meeting to issue the advertisement and the notices for the Meeting referred to above. The said Chairperson shall have powers under the Companies (Compromise, Arrangements and Amalgamations) Ruled, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise at the meeting or at any adjournment thereof or any other matters including an amendment to the scheme or resolution, if any, proposed at the meeting by any person(s).

7. The quorum for 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 the 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 '401, 4th floor, Ackruti Star, MIDC, Central Road, Andheri (E), Mumbai -400093, Maharashtra', not later than 48

hours before the aforesaid 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 days before the date fixed for the holding of the meeting and do report this Tribunal that the directions regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.
11. The Chairperson to report to this Tribunal, the result of the aforesaid meeting of the Equity Shareholders within three days of the conclusion of the meeting, and the said report shall be verified by his Affidavit as per the Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
12. The Counsel of the Applicant Company submits that since the Scheme is an arrangement between the Applicant Company and its members, 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. Further there are no secured creditors therefore the question of issue of notice to the secured creditors does not arise. This Bench hereby directs that the Applicant company to issue notice to its Unsecured Creditors as required under Section 230(3) of the Companies Act, 2013 with the direction that they may submit their representations, if any, to the Tribunal and copies of such representations shall simultaneously be served upon the Applicant Company.
13. The Applicant Company to serve the 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) Rule, 2016. If no response is received from the Regional Director within 30 days of the date of receipt of the notice, it will be presumed that the Regional Director/ central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016.
14. The Applicant to serve the notice upon the concerned Registrar of Companies, pursuant to Section 203(5) of the Companies Act 2013 as per the Rule 8 of the

Companies (Compromises, Arrangements and Amalgamations) Rule, 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 the Registrar of Companies has no objections to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016.

15. The Applicant to serve 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. A.S. Kanchwala & Associates with remuneration of Rs 20,000/- for the services. If no response is received by the Tribunal from the Official Liquidator within 30 days of the date of receipt of the notice, it will be presumed that the Official Liquidator, High Court, Bombay has no objection to the proposed Scheme as laid out in Section 230(5) of the Companies Act, 2013.
16. The Applicant to serve notice to the concerned Income Tax Authority within whose jurisdiction the Applicant Company is situated pursuant to Section 230(5) of the Companies Act, 2013. 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 the Income Tax Authority has no objection to the proposed Scheme as laid out in Section 230(5) of the Companies Act, 2013.
17. The Applicant to file an affidavit of service of the notices issued to the equity shareholders and the notices to the creditors, regulatory authorities and publication in newspapers not less than seven days before the date fixed for the holding of the meeting of the equity shareholders and do report this Tribunal that the direction regarding the issue of notices and advertisement have been duly complied with.

Sd/-

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

Sd/-

V. Nallasenapathy Member (T)