

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI**

CSA NO. 2 OF 2018

In the matter of sections 230 to 232
and other applicable provisions of
the Companies act 2013

and

In the matter of the scheme of
Amalgamation of Best Seller United
India Private Limited and Bestseller
Fashion India Private Limited and
their respective shareholders.

Bestseller Fashion India)	
Private Limited, a company)	
incorporated under the)	
Companies Act, 1956 and having)	
its registered office at The Lalit)	
Residency, Part of 3 rd Floor, The)	
Lalit Mumbai, Sahar Airport Road,)	...Applicant Company/
Andheri (E), Mumbai – 400 059)	Transferee Company

Order delivered on 8th day of February 2018

Coram:

Hon'ble B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble V. Nallasenapathy, Member (Technical)

Mr. Peshwan Jehangir, Mr. Himanshu Vidhani, Mr. Devangshu Nath, Ms.
Lakshmi Bussa i/b Khaitan & Co, Advocates for the Applicant Company

Per: V. Nallasenapathy, Member (T)

ORDER

UPON the application of the Applicant Company abovenamed by a
Notice of Admission and **UPON HEARING** the Learned Counsel for the
Applicant Company **AND UPON READING** the Application along with

the Notice of Admission dated 2nd January 2018 of Mr. Ganesh Nayak, Company Secretary of the Applicant Company, in support of the Notice of Admission dated 2nd January 2018 along with the Application and Exhibits therein referred to, **IT IS ORDERED THAT:**

1. A meeting of the Equity Shareholders of the Applicant Company be convened and held at the registered office of the Applicant Company at The Lalit Residency, Part of 3rd Floor, The Lalit Mumbai, Sahar Airport Road, Andheri (E), Mumbai – 400 059 on 21st March, 2018 at 11.00 AM for the purpose of considering, and, if thought fit, approving, with or without modification(s), the proposed Scheme of amalgamation of Best Seller United India Private Limited ("**Transferor Company**") and Bestseller Fashion India Private Limited ("**Transferee Company**" or "**Applicant Company**") and their respective shareholders ("**Scheme**").
2. At least 30 (Thirty) 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(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016 and the prescribed Form of Proxy, shall be sent by Registered Post Acknowledgement Due 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 e-mail address of the Equity Shareholders as per the records of the Applicant Company.
3. At least 30 (Thirty) clear days before the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting, at the place, date and time aforesaid be published once each in "Free Press Journal" in English and "Navshakti" in Marathi, both circulated in Mumbai and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230(3) of the

Companies Act, 2013 read with Rule 6 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and that the Form of Proxy can be obtained free of charge at the registered office of the Applicant Company as aforesaid.

4. The Applicant Company undertakes to:

- (i) Issue notice convening meeting of the 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
- (iv) Advertise the notice convening meeting as per Form No. CAA.2 (Rule 7) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertaking is accepted.

5. Mr. Vineet Gautam, authorised representative of Bestseller United NL BV, Netherlands who are Equity Shareholder of the Applicant Company failing whom, Mr. Arindam Ghosh, shareholder of the Applicant Company, is appointed as the Chairperson for the meeting of the Equity Shareholders of the Applicant Company. The Scrutinizer for the meeting shall be Mr. Laxmikant Roongta, Partner of Modi Roongta & Associates, Chartered Accountants.

6. The Chairperson appointed for the aforesaid meeting of the Applicant Company is to issue notices of the Meeting of the Equity Shareholders referred to above. The Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting 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 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 authorised representative, in case of a 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 The Lalit Residency, Part of 3rd Floor, The Lalit Mumbai, Sahar Airport Road, Andheri (E), Mumbai – 400 059, not later than, 48 (forty eight) hours before the aforesaid meeting, as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
9. The value and number of the equity 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 shall file an affidavit not less than 7 (Seven) 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 shall report to this Tribunal, the result of the aforesaid meeting within 30 (Thirty) days of the conclusion of the said Meeting of the Equity Shareholders of the Applicant Company, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
12. The Counsel for the Applicant Company submits that there are no Preference Shareholders or Debenture Holders of the Applicant Company and therefore the question of convening

meetings of the Preference Shareholders or Debenture Holders of the Applicant Company does not arise.

13. The Counsel for the Applicant Company submits that since the Scheme is an amalgamation of the Transferor Company with the Applicant Company and their respective shareholders, and therefore, only meetings 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, the Applicant Company has placed on record the consent affidavit of its sole Secured Creditor. The sole Secured Creditor has given its consent to the Scheme and also confirmed that it has no objection if the meeting of the Secured Creditor for seeking approval to the Scheme is not convened. The Bench hereby directs the Applicant Company to issue notice, by post/ courier/ email/ hand-delivery, to its Secured Creditor, as required 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 Applicant Company.

14. The Counsel for the Applicant Company submits that since the Scheme is an amalgamation of the Transferor Company with the Applicant Company and their respective shareholders, and therefore, only meetings 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, the Applicant Company has placed on record the consent affidavits of 5 (five) Unsecured Creditors of the Applicant Company, the aggregate outstanding unsecured debt of such Unsecured Creditors being over 90% in value of the total outstanding unsecured debt of the Applicant Company, as of 30th November 2017. These Unsecured Creditors have given their consent to the Scheme and have also confirmed that they have no objection if the meeting of the Unsecured Creditors for seeking approval to the Scheme is not convened. The Bench hereby directs the Applicant Company to issue notice, by post/ courier/ email/ hand-delivery, to its Unsecured Creditors, as required 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 Applicant Company.

15. The Applicant Company to serve notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, 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 (Thirty) days of the date of receipt of the notice, it will be presumed that the 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.
16. The Applicant Company to serve notice upon the concerned 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 concerned Registrar of Companies within 30 (Thirty) days of the date of receipt of the notice, it will be presumed that the concerned Registrar of Companies 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 notice upon the Income Tax Authority, within whose jurisdiction the Applicant Company's assessments 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 said Income Tax Authority within 30 (Thirty) days of the date of receipt of the notice, it will be presumed that the said Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

18. The Applicant Company to file an Affidavit of Service of the directions given by the Tribunal not less than 7 (Seven) days before the date fixed for holding of the meeting and report to the Tribunal that the directions regarding the issue of notices has been duly complied with.

Sd/-Sd/-

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