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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 9/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 22.03.2017**

Name of the Company: Speedon Network Ltd.


Section of the Companies Act: Section 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.	SWATI SOPARKAR	ADVOCATE	APPLICANT	Swati Soparkar

ORDER

² Learned Advocate Mrs. Swati Soparkar present for Applicant.

Order pronounced in open Court vide separate sheet.

 22/3/17
**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 22nd day of March, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AMEDABAD BENCH
AHMEDABAD**

C.A. (CAA) No. 9/NCLT/AHM/2017

CORAM: SRI BIKKI REVEENDRA BABU, MEMBER JUDICIAL

Date: 22nd March, 2017

In the matter of:

Speedon Network Limited. Applicant
(Demerged Company)

Appearance:

Ms. Swati Soparkar, Learned Advocate for the applicants

FINAL ORDER

Pronounced on 22nd March, 2017

1. M/s. Speedon Network Limited. is a wholly owned subsidiary of M/s. Sterlite Networks Limited. which is a public limited listed company. The registered office of M/s. Speedon Network Limited is situated in Union Territory of Dadra and Nagar Haveli, within the jurisdiction of this bench. M/s. Speedon Network Limited. is hereinafter referred to as "the demerger Company" and M/s. Sterlite Networks Limited is hereinafter referred to as "resulting Company".
2. This company application is filed by the demerger company proposing a scheme of arrangement in the nature of demerger and transfer of passive infrastructure business of the demerger company to M/s. Sterlite Networks Limited, the resulting company and restructure of capital of the applicant demerged company in the form of utilisation of its securities premium account.



3. It is stated in the application that, the resulting company have its registered office in the State of Maharashtra and hence the requisite proceedings are being undertaken before National Company Law Tribunal, Mumbai Bench having jurisdiction for the resulting company.
4. It is further stated in the application that, although the applicant company is a wholly owned subsidiary of the resulting company it has opted to file the present application under Section 230 to 232 of the Companies Act, 2013.
5. In this application, the applicant demerger company has prayed for the following reliefs:
 - (a) the meeting of the equity shareholders of the applicant demerged company is not required to be convened;
 - (b) the meeting of the debenture holder of the applicant demerged company is not required to be convened;
 - (c) meeting of the unsecured creditors of the applicant demerged company is not required to be convened or in the alternate, directions be issued to convene and hold requisite meeting of the equity shareholders and debenture holder.
6. Heard learned senior advocate Ms. Swati Soparkar for the applicant.
7. Perused the application, supporting affidavit of authorised signatory of the applicant demerger company, consent letters of equity shareholders, debenture holder, unsecured creditors of the applicant demerged company.
8. The proposed scheme is in the nature of demerger and transfer of passive infrastructure business of the demerged company to Sterlite Technologies Limited, the resulting company and restructure of capital of the applicant demerged company in form of the utilisation of its securities premium account.
9. The proposed scheme shown as annexure "F" to the application was approved by the Board of Directors in the Board Meeting held on 27th



October, 2016 vide annexure "E". It is stated in the application that the equity shares of the resulting company are listed in National Stock Exchange of India Ltd. Annexure H-1 and H-2 of the application show that the resulting company had obtained approval from BSE Ltd. and National Stock Exchange of India Ltd. The applicant company filed audited balance sheet of the applicant demerger company as on 31st March, 2016 vide annexure B-1 as well as audited balance sheet of the resulting company as on 31st March, 2016 vide annexure D-1. It is stated that, the resulting company in its Board Meeting held on 27th October, 2016 approved the scheme.

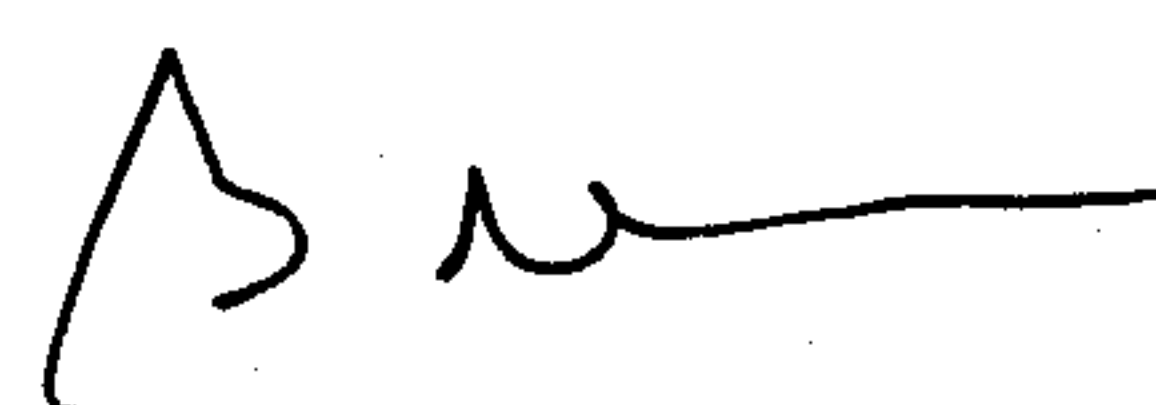
10. Annexure "K" to the application show that, there are seven equity shareholders in the applicant demerger company. Annexure J-1 to J-7 are the affidavits of the equity shareholders of the applicant demerger company. In those affidavits it is clearly stated that the shareholders have consented for the scheme.
11. A perusal of the list of shareholders shows that, the resulting company is major shareholder and all other shareholders are nominees of the resulting company. The scheme envisages transfer of one of the undertakings of the applicant demerged company to the resulting company. In that view also, there may not be any need to hold the meeting of equity shareholders.
12. It is pertinent to mention here that the applicant demerger company is a wholly owned subsidiary of the resulting company. This Tribunal already held that, it has got discretion to dispense with the meeting of shareholders in view of the decisions of Hon'ble High Court under section 391 of the Companies Act, 1956; in the following cases:

(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**

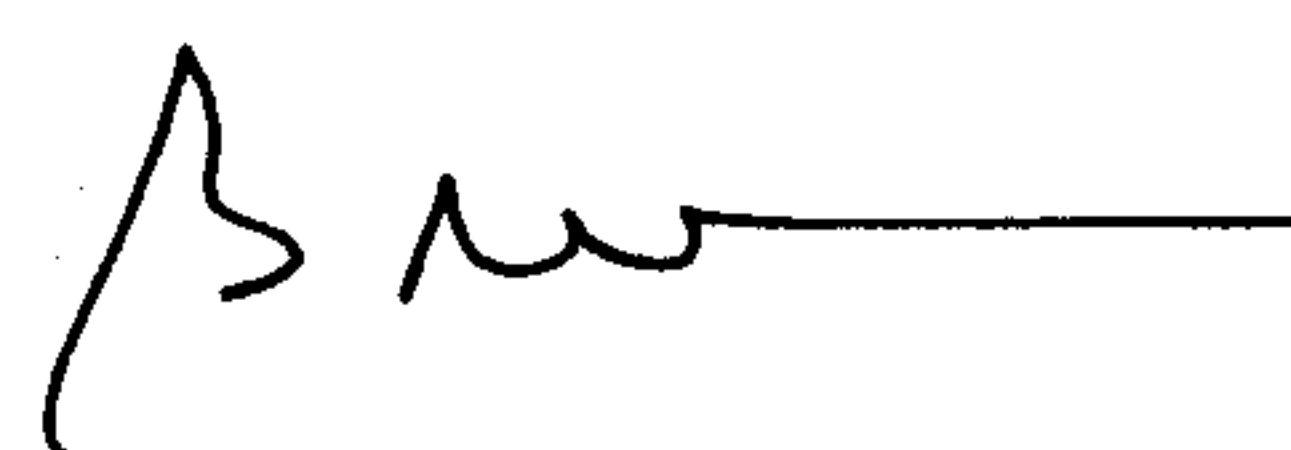


Capital Services India, Reported in 2009 SCC online Del 535. (2009) 149 Comp Cas 52;

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

This Tribunal in its order dated 14th March, 2017 in CA (CAA) 4/17 after discussing the provisions of Section 230 - 232 of the Companies Act, 2013 came to the conclusion that, where the shareholders are less in numbers and if they have given consent, the meeting of the shareholders can be dispensed with.

13. A perusal of certificate of the Chartered Accounts at page No. 109 shows that there is only one debenture holder i.e. the resulting company in the applicant demerger company. Annexure J-8 shows that the sole debenture holder have consented for the scheme.
14. Coming to the sole debenture holder, he has also consented for the scheme. Therefore, there is no need to order to convene meeting of the sole debenture holder.
15. Coming to unsecured creditors, the applicant demerger company as on 07/02/2017, was having 87 unsecured creditors as can be seen from the certificate of Chartered Accountant, annexure "A", page 156. Further, the demerger undertaking of the applicant demerger company was having 82 unsecured creditors as on 07/02/2017 as can be seen from the certificate of the chartered accountant at page 157. The said certificates were annexures to the supplementary affidavit filed by authorised signatory of the applicant demerger company filed on 08/03/2017.
16. The applicant filed consent letters of unsecured creditors at Annexure "O" page No. 115 to 142. A perusal of Annexure "P", the certificate given by Chartered Accountants shows that, the unsecured creditors of demerger undertaking of the applicant demerger company is 82 in numbers and their aggregate value is Rs. 94.73 crores. In the said certificate, it is also mentioned that, the consent given by the unsecured creditors amounts to 93.3% in value of the total unsecured creditors of the demerged company and amounts to 91.3% in value of the total unsecured creditors of the demerged undertaking. Section



230, sub section 9 of the Companies Act, 2013 states that the Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors having at least ninety per cent, value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

17. In view of the above discussions, meeting of the equity shareholders of the applicant company, meeting of the sole debenture holder of the applicant company and meeting of the unsecured creditors of the applicant demerger company is dispensed with.
18. Coming to the secured creditors it is stated in the certificate of the Chartered Accountant dated 18/02/2017 at page No. 110, that, the company has no secured creditors as on 07/02/2017. Therefore, there is no need of holding a meeting of unsecured creditors of the applicant demerged company.
19. The applicant company is not to be dissolved and notice to Official Liquidator is not necessary. The applicant stated that the applicant demerged company is a wholly owned subsidiary of the of the resulting company i.e. the resulting company which had already obtained approval for the proposed from the concerned stock exchanges. The applicant stated that notice is not required to be sent to Securities and Exchange Board of India. The applicant also stated that, the Competition Commission of India regulations are not applicable to the applicant company in terms of the total value of assets and or turnover of the applicant company. The applicant company has also stated that none of the shareholders are foreign national or non-resident Indians and none of the companies are non-banking finance companies and therefore, provisions of Reserve Bank of India rules are not applicable to the applicant companies. Considering the above statement, this Tribunal is of the view that there is no need to issue notice to Official Liquidator, Competition Commission of India and Reserve Bank of India. In view of the fact that the resulting company is a listed company and the application for demerger is with a subsidiary company, there is need to send notice to the Securities and Exchange Board of India, Bombay Stock Exchange and National Stock Exchange.



20. The company application is disposed of accordingly with the following directions: -

- (1) The applicant company is exempted from holding meeting of equity shareholders, sole debenture holder and unsecured creditors for the purpose of considering the scheme of arrangement in annexure "F"
- (2) There is no need to hold meeting of secured creditors since there are no secured creditor of the applicant demerged company.

(a) The applicant demerged company is directed to send notice to the statutory authority in form CAA3, combined with a copy of the scheme for arrangement, explanatory statement to; (a) the Central Government through the Regional Director, North Western Region, Gujarat State, (b) Registrar of Companies, Gujarat (c) Income-tax authorities concerned and (d) Securities and Exchange Board of India, (e) Bombay Stock Exchange and National Stock Exchange asking them to make any representation if they desire to make, within a period of 30 days from the date of receipt of notice, to this Tribunal and in case no representation is received within the stated period of 30 days by this Tribunal, it shall be presumed that the authorities have no representation to make on the proposed scheme of arrangement.

21. The applicant company shall file petition for sanction of scheme of arrangement within two months from the date of the order.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on this 22nd day of March, 2017.