

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CSANO. 807 OF 2017

In the matter of the Companies Act, 2013 and
Companies (Compromises, Arrangements and
Amalgamations) Rules, 2016

And

In the matter of Nucleus Stock Brokers Private
Limited and Creative Global Stock Broking Private
Limited and Creative Computer and Marketing
Private Limited and CG Leasing (Bombay) Private
Limited and Creative Polytex Private Limited and
Dream Wisdom Construction Company Private
Limited and Harmony Landmarks and Real Estate
Private Limited and Creative Home Furnishing
International Private Limited and Creative Estates
Private Limited and their Respective Shareholders

And

In the matter of Sections 230 to Section 232 read
with section 52 and other applicable provisions of
the Companies Act, 2013

Nucleus Stock Brokers Private Limited

....the Applicant Company

Order delivered on 6th September, 2017

Coram:

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

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

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

Per: **V. Nallasenapathy, Member (T)**

ORDER

1. The Counsel for the Applicant submits that the present Scheme is Scheme for demerger of Stock Broking Undertaking (as defined in Clause 1 of the Scheme) of Creative Global Stock Broking Private Limited ("Creative Global") and vesting of the same into Nucleus Stock Brokers Private Limited ("Nucleus") and merger of Creative Global, Creative Computer and Marketing Private Limited ("Creative Computer"), CG Leasing

(Bombay) Private Limited ("CG Leasing"), Creative Polytex Private Limited ("Creative Polytex"), Dream Wisdom Construction Company Private Limited ("Dream Wisdom"), Harmony Landmarks and Real Estate Private Limited ("Harmony Landmarks") and Creative Home Furnishing International Private Limited ("Creative Home Furnishing") (hereinafter collectively referred to as "Transferor Companies") with Creative Estates Private Limited (hereinafter referred as "Transferee Company") and their Respective Shareholders under Section 230 to 232 read with Section 52 of the Companies Act, 2013.

2. The Counsel for the Applicant further submits that the Stock Broking business held by Creative Global holds significant potential for growth and profitability in future and the management believes that the arrangement will enable it to provide greater business attention and focus on the Stock Broking Business which may result in increasing the profitability while simultaneously attracting strategic partners and lenders and creating long term value for the various stakeholders. The amalgamation of Transferor Companies with Transferee Company is being proposed for the purpose of consolidation of businesses of Creative Group. The proposed arrangement would result in the following benefits:
 - a. Consolidation of businesses;
 - b. Reduction in the number of companies and thereby simplifying the group structure;
 - c. Streamlining the cross-holding of investments in group companies;
 - d. Reduction of administrative, operative and marketing costs;
 - e. Greater administrative efficiency;
 - f. Operational rationalization, organizational efficiency and optimal utilization of various resources.
3. That the meeting of Equity Shareholders of the Applicant Company be convened and held at the registered office of the company at 123, Cama Industrial Estate, Sun Mill Compound, Lower Parel, Mumbai - 400013, Maharashtra, India on 12th October 2017

at 2.30 pm for the purpose of considering, and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Scheme.

4. That at least one month 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, date and time as aforesaid, together with a copy 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 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / 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 Equity Shareholders of the Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.
5. That at least one month before the meeting of the Equity Shareholders of the Applicant 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 – 400071.
6. That the notice of meeting shall be advertised in two local newspapers viz., “Free Press Journal” in English and “Navshakti” in Marathi, both circulated in Mumbai not less than one month before the date fixed for the meeting.

7. That Mr. Arunanshu Agarwal, Director of the Applicant Company and failing him, Mr. Vishwanshu Agarwal, another Director of the Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders.
8. 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 the powers as per Articles of Association of Applicant Company and also under the Companies Act, 2013 in relation to the conduct of the meeting of Applicant Company as aforesaid, 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).
9. The quorum of the aforesaid meeting of the Equity Shareholders of the Applicant Company shall be as prescribed under Section 103 of the Companies Act, 2013.
10. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, are filed with the Applicant Company, as may be applicable, at its Registered Office not later than 48 hours before the aforesaid meeting.
11. That the value and number of the shares of each Equity Shareholder 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 Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
12. That A.Y. Sathe & Co., a firm of Practicing Company Secretaries, represented by Mr. Ajit Sathe, be appointed as Scrutinizers for the meeting of Equity Shareholders of the Applicant Company to be held on 12th October, 2017 at the registered offices of the Applicant Company and its remuneration is fixed as Rs. 7500/- plus taxes as applicable.

13. 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 this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
14. 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.
15. The Applicant Company is directed to serve individual notices along with copy of scheme upon:- (i) concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessments is made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai (iii) Registrar of Companies, Mumbai, Maharashtra, 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 Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposal.
16. The Counsel for the Applicants submits that there are no Secured Creditors in the Applicant Company. Hence, the question of issue of notice to Secured Creditors does not arise. The counsel for the Applicant further submits that since the Scheme is an arrangement between the Applicant 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 notices to all its Unsecured Creditors as on the date of dispatch of the notice 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.

17. The Applicant to file affidavit of service in the Registry proving dispatch of notices to the shareholders, publication of notices in newspapers, to the regulatory authorities as stated in clause 15 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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