

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

Chief Justice (Retd.) M. M. Kumar
Hon'ble President

Shri Vijay Pratap Singh
Hon'ble Member (J)

Company Application No.36/2017

In the matter of :

Section 230(1) read with section 232 of the Companies Act, 2013
(The Act)

And

In the matter of:

IFGL Refractories Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Sector 'B', Kalunga Industrial Estate, PO: Kalunga 770 031, District- Sundergarh, Orissa, within the aforesaid jurisdiction.

..... Applicant

And

In the matter of:

IFGL Exports Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 3, Netaji Subhas Road, Kolkata – 700 001, within the aforesaid jurisdiction

Counsels on Record:

1. Mrs. Manju Bhuturia, Advocate] For the Applicant
2. Mr. A.P. Agarwalla, Advocate

Date of Pronouncing the order :

ORDER

This is an application filed by the applicant namely M/s. IFGL Refractories Ltd. (in short 'Transferor Company') under Section 230(1) / section

232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation proposed between M/s. IFGL Refractories Ltd. (the applicant) and M/s. IFGL Exports Ltd. (transferee company). The aforesaid Scheme is also annexed as Annexure "E" to the application. The applicant company prays for the following orders:

- a) Necessary directions be given for convening meeting of the equity shareholders of the Petitioner at its registered office at Sector 'B', Kalunga Industrial Estate, Kalunga 770 031, District, Sundergarh, Odisha or at such other place as may be determined by this Hon'ble Tribunal and on such date and at such time as this Hon'ble Tribunal may deem fit and proper and a Chairperson be appointed to preside over the said meeting and report result thereof to this Hon'ble Tribunal;
- b) Mr. Pradeep Bajoria, the Managing Director of the Transferor Company or any other persons deemed appropriate by the Hon'ble Tribunal be appointed Chairperson to preside over the said meeting and suitable time be fixed for filing of report by the said Chairperson as to the result of the said meeting.
- c) Order dispensing with meeting of creditors of the petitioner.

In support of the instant application, an affidavit has been affirmed and filed by one Mr. Rajesh Agarwal, C.S. of M/s. IFGL Refractories Ltd., the applicant, along with the application.

Mr. Manju Bhutoria, Id. Counsel appearing for the applicant took us to the averments made in the application as well as the documents annexed thereto. She further submitted that the applicant company is a listed company

and is listed at BSE and National Stock Exchange Ltd. By and under a letter dated 17.10.2016, NSE has given its no objection to the proposed Scheme of Amalgamation, which has been annexed to the application as Annexure 'K'. BSE by a letter dated 14.10.2016 has given its no objection to the proposed Scheme of Amalgamation, which has been annexed to the application as Annexure 'L'. She further submitted that the registered office of the Transferee Company having been located at Kolkata, Hon'ble High Court at Kolkata vide its Order dated the 5th December, 2016 has dispensed with the meeting of the shareholders of the applicant, in view of the written consent given by all the shareholders of the applicant (the Transferee Company). The registered office of the applicant company is at Sundergarh, Odisha. Accordingly it has also filed an application being COPET No.73 of 2016 before the Hon'ble High Court of Orissa, Cuttack for directions to hold the meeting of its shareholders. During pendency of the said application, a notification dated 7th December, 2016 has been issued by the Ministry of Corporate Affairs (for brevity MCA), which has been notified on 15th December, 2016 as the date on which several provisions of the Act including Sections 230 to 233 came into force dealing with matters of compromises, arrangements and amalgamations. The MCA on 7th December, 2016 also notified the Companies (Transfer of Pending Proceedings) Rules, 2016 to be effective from 15th December, 2016. In view of the aforesaid new dispensation, the instant application being C.A. No.36 of 2017 has been filed on 23.12.2016 before this Tribunal seeking directions for convening meeting of the equity shareholders of the petitioner and also dispensing with the meeting of creditors of the applicant as stated in the preceding paras. She further submitted

that the Hon'ble High Court of Orissa passed an order on 5th January, 2017 for withdrawal of the COPET 73 of 2016, which is reproduced as under:

" A memo has been filed by the petitioner stating that the prayer for amalgamation made in the present application has also been made before the National Company Law Tribunal, Kolkata and therefore, this COPET be permitted to be withdrawn.

Accordingly, this COPET is dismissed as withdrawn."

She also submitted that the secured creditors of the petitioner have consented to the said scheme of amalgamation. The unsecured creditors of the petitioner are fluctuating body on day to day basis and their interests are not adversely affected in any manner by the proposed Scheme of Amalgamation and therefore learned counsel has requested that the meeting of the creditors may be dispensed with. She also submitted that the quorum for the meeting of the equity shareholders of the petitioner may be fixed at 30(thirty) persons present either in person or by proxy in accordance with section 103 of the Companies Act, 2013. According to her the postal ballot is to be conducted in the manner prescribed by the Companies (Management and Administration) Rules, 2014 and Companies (Management and Administration) Amendment Rules 2015.

She has further submitted that as an alternative to voting physically or by postal ballot, e-voting option will also be given to the equity shareholders of the petitioner as provided in the said Rules. E-voting facility will be provided on the electronic platform of either the National Securities Depository Ltd. or Central Depository Services (India) Ltd., as may be arranged by the petitioner in



accordance with the procedure recommended by the relevant depository for such e-voting.

This Tribunal has perused the application of the transferor company, being the applicant herein and have also heard the oral submission of the Id. Counsel appearing for the applicant. Taking into consideration of the above, the following directions are issued in relation to calling, convening and holding of the meeting of the equity shareholders, secured creditors and unsecured creditors of the applicant company.

Further Rule 5 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 provides for issuance of directions by this Tribunal for determining the class or classes of creditors or of holding of members meeting or meetings for considering the proposed compromise or arrangement; or dispensing with such meeting or meetings for any class or classes of creditors in terms of sub section(9) of section 230.

Keeping in view the above provisions, dispensation of the meeting of members of the company cannot be entertained. Taking into consideration the above, the following directions are issued in relation to calling, convening, and holding of the meetings of the equity shareholders, secured creditors and unsecured creditors of the Transferor company as follows :-

- i. The notice for the following meetings shall be issued by the Transferor Company
 - a. Meeting of members of the transferor company at 11 am at the registered office at Sector 'B', Kalunga Industrial Estate, Kalunga – 770

031, District- Sundergarh, Odisha on 03.04.2017 subject to notice of meeting being issued.

b. Meeting of secured creditors of the transferor company at 12 noon at the registered office at Sector 'B', Kalunga Industrial Estate, Kalunga – 770 031, District- Sundergarh, Odisha on 03.04.2017 subject to notice of meeting being issued by the Transferor Company.

c. Meeting of unsecured creditors of the transferor company at 1 pm at the registered office at Sector 'B', Kalunga Industrial Estate, Kalunga – 770 031, District- Sundergarh, Odisha on 03.04.2017 subject to notice of meeting being issued by the Transferor Company.

ii. The quorum for the meeting shall be thirty in number for the equity shareholders meeting of the Transferor Company, the quorum shall also be thirty in number either in person or by proxy in accordance with section 103 of the Companies Act, 2013 and more than twenty per cent in value in terms of the total equity share capital for the equity shareholders meeting.

iii. If the quorum is not present at the commencement of the meeting, the meeting would be adjourned for 30 minutes and thereafter, the members present in person or through proxy who would not less than thirty and twenty percent for the transferor company would be treated as proper quorum.

iv. The quorum for the meeting shall be 1/3rd of the total in number for secured creditors of the Transferor Company.

v. The quorum for the meeting shall be 1/3rd in number for unsecured creditors of the Transferor Company.

