

**N THE NATIONAL COMPANY LAW TRIBUNAL
BENCH AT NEW DELHI**

CA (CAA) NO. 118/ND/2020

Under Sections 230 to 232 of the Companies Act, 2013 r.w. Companies
(Compromises, Arrangements, Amalgamations) Rules 2016

In the Matter Of

Outotec India Private Limited

('Demerged Company')

AND

Metso India Private Limited

('Resulting Company')

Judgement delivered on: 23.12.2020

Coram:

SHRI. P.S.N. PRASAD

Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ

Hon'ble Member (Technical)

For the Applicants: **D. Bhattacharyya, Advocate**
Deeti Ojha, Advocate

ORDER

SHRI. P.S.N. PRASAD, HON'BLE MEMBER (J)

1. This is a joint First Motion application filed by the applicant companies herein, namely; Outotec India Private Limited, ('Demerged Company') and Metso India Private Limited ('Resulting Company'), jointly described as 'Applicant Companies'; under sections 230-232 and other applicable provisions of the Companies Act, 2013 (for brevity the 'Act'), read with

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Companies (Compromises, Arrangements, Amalgamations) Rules 2016 (for brevity the 'Rules') for sanctioning the proposed Scheme of Arrangement (for short the '**Scheme**') annexed as Annexure 'A'.

2. As per averment, the registered offices of both the Applicant Companies are situated in New Delhi, therefore, the matter falls within the territorial jurisdiction of the National Company Law Tribunal, New Delhi.
3. The First Applicant Company was originally incorporated under Companies Act, 1956 on the 5th day of July, 2007. The CIN of the Demerged Company is U28113DL2007PTC165536. Its authorized capital is Rs. 27,50,00,000 divided into 2,75,00,000 equity shares of Rs.10/- each and its issued, subscribed and paid-up share capital is Rs. 25,79,44,920 divided into 2,57,94,492 equity shares of Rs.10/- each.
4. The Resulting Company was originally incorporated under Companies Act, 1956 in the NCT of Delhi on the 2nd day of November 1992. The CIN of the Resulting Company is U74899DL1992FTC050834. Its authorized capital is Rs. 1,10,00,00,000 divided into 11,00,00,000 equity shares of Rs.10/- each and its issued, subscribed and paid-up share capital is Rs. 93,00,00,000 divided into 9,30,00,000 equity shares of Rs.10/- each.
5. The objects of the Applicant Companies are set out in the Memorandum of Association which have been filed along with the audited Balance Sheet as on 31.3.2020 and unaudited provisional statements as on 31.08.2020. The statutory auditor's certificate of each Applicant Company certifying that



the accounting treatment proposed under the Scheme is in compliance with the Accounting Standards prescribed u/s 133 of the Companies Act 2013 has also been filed with the Company Application.

6. It is stated that the Board of Directors of the Resulting Company and Demerged Company at their separate meetings held on 8.9.2020 and 15.09.2020 unanimously approved the Scheme subject to sanctioning of the same by this Tribunal. The copies of such the Board Resolutions passed thereat have been placed on record by the Applicant Companies.
7. Further, it is also stated that no investigation or proceedings under the Companies Act, 1956/Companies Act, 2013 have been instituted or are pending against any of the Applicant Companies. It is also stated in the application that in terms of section 230 (2) of the Act, representing that the Scheme does not envisage reduction of share capital of the Second Applicant Company/Transferee Company and the proposed Scheme is not a corporate debt restructuring scheme.
8. The Rational for the Scheme is reproduced below:

“a.The Global ultimate parents, Outotec Oyj and Metso Oyj of Demerged Company and Resulting Company respectively, joined hands globally by way of combination of Metso Oyj’s minerals business with Outotec Oyj through a partial demerger of Metso Oyj. The combination has been completed on 30 June 2020 and the new company, Metso Outotec Oyj was established on 1st day of July 2020.

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b.As a step to consolidate the business at India level, Demerged Company and Resulting Company have decided to streamline the business of Indian entities. As part of the process, the entire business of the Demerged Company i.e. Alumina, Smelting and Hydrometallurgy, Acid & off Gas Technology etc., except for the aluminum business, would be demerged and transferred to the Resulting Company. Only the aluminum business shall be retained with Demerged Company.”

9. The applicant has furnished the details of the Shareholders, Secured Creditors, and Unsecured Creditors in the Scheme marked as Annexure “A1”, of the applicant companies as on date which are as follows;

Company	Share holders	Consent	Secured Creditor	Consent	UnSecured Creditors	Consent
A-1 Company Outotec India P. Ltd.	2	All	Nil	N.A.	79	8
A-2 Company Metso India P. Ltd	2	All	Nil	N.A.	1619	252

10. It is pertinent to mention here that as per the order dated 11.12.2020, this Tribunal dispensed with the meeting of the equity shareholders of both the Applicant Companies in view of the written consent given by all the equity shareholders by way of affidavit and also directed to convene the meeting of unsecured creditor of both the company. Further there being no secured creditor of either of the Applicant Companies, the requirement of convening the meeting of secured creditors of any of the Applicant Companies does not arise.

11. Further the applicant has prayed that the requirement of sending individual notices to the unsecured creditors of resulting company having value less than 10 lacs (total unsecured debt represented by such creditors is below 2.5%) or 5 lacs (total unsecured debt represented by such creditors is below 1.21%) may be dispense with. Hence, the requirement of sending notices to the unsecured creditors of resulting company having value less than 5 lacs (total unsecured debt represented by such creditors is below 1.21%) is also dispense with.

12. Taking into consideration the application filed jointly by the Applicant Companies the following directions are issued:

A. In relation to First Applicant Company (Outotec India P. Ltd.)

- i. The meeting of Equity Shareholders is dispensed with as there are only 2 equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.

ii. The meeting of Secured creditors is also dispensed with because there is no Secured creditor in the company and therefore, the requirement of convening meeting of Secured creditors does not arise.

iii. Meeting of unsecured creditors be convened on 1stFebruary 2021 through video conferencing at 2.30 pm, subject to notice of meeting being issued. The quorum of the meeting of the unsecured creditor of the Applicant Company 1 shall be 45 in number.

B. In relation to Applicant Company 2 (Metso India P. Ltd.)

i. The meeting of Equity Shareholders is dispensed with as there are only 2 equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.

ii. The meeting of Secured creditors is also dispensed with because there is no Secured creditor in the company and therefore, the requirement of convening meeting of Secured creditors does not arise.

iii. Meeting of unsecured creditors be convened on 1stFebruary 2021 through video conferencing at 11.30 am, subject to notice of meeting being issued. The quorum of the meeting of the unsecured creditor of the Applicant Company 2 shall be 500 in number.

C. In case the quorum of the aforesaid meetings, as noted above is not present, the meeting shall be adjourned by 30 minutes and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purposes of



constituting the quorum, the valid proxies shall also be considered if the proxy is in prescribed form, duly signed by the person entitled to attend and vote at the meeting, filed with the registered office at least 48 hours before the meeting. The Chairperson and Alternate Chairperson appointed herein along with the Scrutinizer shall ensure that the proxy register is properly maintained.

D. Rajiv Shankar Divedi, AOR (Mobile No.9313061263) is appointed as the Chairperson for the meetings to be called under this Order. He shall be paid a lumpsum fee of Rs. 1,50,000/- (One Lakh Fifty-Thousand) for his services as the Chairperson.

E.Mr. Soyansh (Mobile No.8800879009) is appointed as the Alternate Chairperson for the meetings to be called under this Order. He shall be paid a lumpsum fee of Rs. 1,25,000/- (One Lakh Twenty-Five Thousand) for his services as the Alternate Chairperson.

F.Mr. Inderjeet Singh (Mobile No.9818285641) is appointed as the Scrutiniser for the meetings to be called under this Order. He shall be paid a lumpsum fee of Rs. Rs. 1,25,000/- (One Lakh Twenty-Five Thousand) for his services as the Scrutiniser.

G.It is further directed that individual notices of the said meetings, shall be sent by the Applicant Companies to all the unsecured creditors as per the list filed with the joint application, through email as per record of the respective Applicant Company at least 30 days in advance before the scheduled date of meeting indicating the Date, Time and VC Details (Link) of the meeting, together with the

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copy of the Scheme, Explanatory Statement required to be sent under the Companies Act, 2013 and the Companies (Compromise, Arrangements and Amalgamations), Rules, 2016 along with Proxy Forms and other documents as prescribed under the Act and the Rules.

H.The Applicant Companies shall jointly publish advertisement in the Indian Express (English, Delhi Edition) and Jansatta (Hindi, Delhi Edition), at least 30 clear days in advance before the aforesaid meeting, in the form prescribed under the Companies (Compromise Arrangement and Amalgamation) Rules, 2016. It be stated in the advertisements that copy of the Scheme, the Explanatory Statement required to be published pursuant to Sections 230-232 of the Act and the forms of proxy shall be provided free of charge at the registered office of the Applicant Companies. The Applicant Companies shall also publish the notice on the respective websites, if any.

I.It shall be the responsibility of the Applicant Companies to ensure that the notices are sent under the signature and supervision of the authorized representative of the company on the basis of Board resolutions.

J.The Applicant Companies shall provide the unsecured creditors the remote e-voting or e-voting facility to cast their votes. Voting shall be allowed in person or by proxy and the same will be considered for the purpose of counting of quorum of the aforesaid meetings, provided that the proxy in the prescribed form and duly signed by the person entitled to attend and vote at the said meeting or



by his authorized representative is filed with the registered office of the Applicant Companies.

K. The Chairperson shall file a report regarding the result of the meetings in form No. CAA4, as per Rule 14 of the Rules within 3 days of the conclusion of the meetings.

L. The Applicant Companies shall individually and in compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form CAA3 along with the copy of the Scheme, the Explanatory Statement and the disclosures mentioned in Rule 6 of the Rules to (i) the Central Government, through the Regional Director, Ministry of Corporate Affairs, Northern Region; (ii) the Registrar of Companies, NCT of Delhi & Haryana; (iii) Income Tax Authorities, and to such other regulators having significant bearing on the operation of the Applicant Companies stating that representations, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representations shall be simultaneously sent to the concerned companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

M. The Applicant Companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by any creditor shareholder entitled to attend the meetings as aforesaid.

N.The authorized representatives of the Applicant Companies shall furnish affidavit of service of notices of meeting and publication of advertisement in newspapers and all directions contained herein at least 7 days before the date of the meeting.

O.All the directions shall be complied in accordance with the Companies Act, 2013 r.w. Companies (Compromise Arrangement and Amalgamation) Rules, 2016 and the formats prescribed thereunder.

List on the date fixed.

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(DR. V.K.SUBBURAJ)
MEMBER (TECHNICAL)

— S d —

(P.S.N PRASAD)
MEMBER (JUDICIAL)