

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-1
KOLKATA**

C.P. (CAA) No. 50/KB/2024
CONNECTED WITH
Company Application (CAA) No. 87/KB/2022

*A petition under sections 230 to 232 of the Companies Act, 2013 read with The
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.*

In the matter of:

Read & Rite Marketing Private Limited, (CIN: U36991WB2000PTC092226), a company incorporated under the Companies Act, 1956 and having its registered office at 235/2A A J C Bose Road, 3rd Floor Bhawanipore, Kolkata- 700020.

...Demerged Company/Petitioner No.1

And

C.P Sponge Iron Private Limited, (CIN: U27101WB2002PTC094209), a company incorporated under the Companies Act, 1956 and having its registered office at 37, Shakespeare Sarani, 3rd Floor, S.B. Towers, Kolkata-700017.

.....Resulting Company/Petitioner No. 2

And

In the matter of:

1. Read & Rite Marketing Private Limited
2. C.P Sponge Iron Private Limited

.....Petitioners

**Date of Hearing: 19/06/2024
Date of pronouncement: 01.07.2024**

Coram:

Smt. Bidisha Banerjee	: Member (Judicial)
Shri Balraj Joshi	: Member (Technical)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)**

CP(CAA) 50/KB/2024 connected with
CA (CAA) 87/KB/2022

Appearances - For the Petitioners:

Mr. Ratnanko Banerji, Senior Advocate

Ms. Urmila Chakraborty, Advocate

Mr. Sanjib Dawn, Advocate

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The instant petition has been filed under Sections 230 to 232 of the Companies Act, 2013 (“Act”) for sanction of the Scheme of Arrangement between Read & Rite Marketing Private Limited, being the Petitioner No. 1 above named (“RRMPL” or “Petitioner No. 1”) with C.P Sponge Iron Private Limited, being the Petitioner No.2 above named (“CPSIPL” or “Petitioner No. 2”) and their respective shareholders and creditors. The scheme provides for demerger of the demerged undertaking (Investment Divisions) of the Demerged Company, the Petitioner No. 1 herein with all assets and liabilities relating thereto as a going concern from the Appointed Date, viz 1 April, 2021 to the Resulting Company, the Petitioner No. 2 herein in the manner and on the terms and conditions stated in the said Scheme of Arrangement (“Scheme”).
2. By an order dated 26.08.2022 in Company Application (CAA) No. 87/KB/2022, this Tribunal had made the following directions with regard to meetings of shareholders and creditors under Sections 230 to 232 of the Act.
 - a. **Meetings dispensed:**

Meetings of Equity Shareholders of Petitioner No. 2 and Unsecured Creditors of the Petitioner No.1 &Petitioner No. 2 were dispensed with under Section 230(1) read with Section 232(1) of the Act.
 - b. **Meetings to be held:**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)**

CP(CAA) 50/KB/2024 connected with
CA (CAA) 87/KB/2022

- i. The meeting of the shareholders of the Petitioner No. 1 being the Demerged Company was directed to be convened on **29th September, 2022 at 11am.**
 - ii. The meeting of the Secured Creditor of the Petitioner No. 2 being the Resulting Company was directed to be convened on **29th September, 2022 at 12 Noon.**
3. Ld. Senior Counsel appearing for the Petitioners further submits that the said meetings have duly approved the Scheme by requisite majority and the Chairperson appointed by this Tribunal has also filed his reports in compliance with the directions issued by the Tribunal.
4. The Learned Senior Counsel for the Petitioners submits that in compliance with Sub section 5 of the Section 230 of the Companies Act, 2013 and the order dated August 26, 2022 made in Company Application (CAA) No. 87/KB/2022, notice along with all accompanying documents i.e. a copy of the Scheme, Statement as required under Sub-section 3 of the Section 230 and copy of the order dated August 26, 2022 has already been served upon the Statutory/Sectoral Authorities, the Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; Registrar of Companies, West Bengal; Official Liquidator, High Court, Calcutta and Income Tax Department(s) having jurisdiction over the Petitioners. An affidavit proving service, as aforesaid, has been filed.
5. The Learned Senior Counsel appearing for the Petitioners submits that the Petitioners thus now seek admission of the instant petition presented by them for sanction of the Scheme.
6. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Petitioners, we find that vide order dated 26.08.2022 in Company Application (CAA) No. 87/KB/2022, following meetings were directed to be held :

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)**

CP(CAA) 50/KB/2024 connected with
CA (CAA) 87/KB/2022

- a. The meeting of the shareholders of the Petitioner No. 1 being the Demerged Company was directed to be convened on **29th September, 2022 at 11am.**
 - b. The meeting of the Secured Creditor of the Petitioner No. 2 being the Resulting Company was directed to be convened on **29th September, 2022 at 12 Noon.**
7. It is however stated that while the meeting at ‘a’ above was duly held but the meeting at ‘b’ could not be held on the scheduled date, but was held on a subsequent date i.e. 22nd December 2023, which is after more than one year from the date originally fixed for the meetings.
8. Now the petitioners are seeking admission of the petition alongwith a condonation of 489 days delay in filing the instant petition. Considering the huge delay, it was directed that a supplementary affidavit be filed affirming that no Creditor or Shareholder shall be prejudiced if the delay is condoned.
9. We have heard the Ld. Sr. Counsel appearing for the Petitioner who submits that the only Secured Creditor of the Petitioner no. 2 namely **Indian Bank** had not attended the meeting held on 29th September 2023 and even though the subject meeting was adjourned on 4 occasions, the bank could not make it to the meeting and the same was finally held on 22nd December 2023. The report of the Chairperson Mr. Avijit Ghoshal Advocate has been placed at page 255 of the Petition. The report inter-alia mentions as under :

“10. The Chairperson has been given liberty to take a decision on the quorum for the adjourned meeting by virtue of the order dated 26th August 2022 passed by the Hon’ble National Company Law Tribunal, Kolkata Bench vide paragraph No.5(g) thereof. All adjourned meetings of the Secured Creditor were called by the Chairperson prior to notice to the Secured Creditor and finally quorum was present in the meeting held on 22 nd Day of December 2023. Copies of all notices of meetings (Dated 29/09/2022, 21/10/2022, 20/02/2023, 27/06/2023, 24/11/2023) of the Secured Creditor with prescribed schedule Form being No. CAA.2 and report of result of such adjourned meetings (Dated 21/10/2022,

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)**

CP(CAA) 50/KB/2024 connected with
CA (CAA) 87/KB/2022

20/06/2023, 27/06/2023, 24/11/2023) with prescribed schedule Form being No. CAA.4) are attached hereto and collectively marked as **Annexure-B.**”

10. The first issue that falls for consideration is as to how long a Chairperson is authorised to wait for seeking the quorum, which in the instant case is more than 15 Months with as many as 5 adjournments. In the instant case the Chairperson has assumed authority on the basis of para 5(g) of the order directing the said meetings. The same is reproduced below:

g. Quorum and Attendance: The quorum for the said meeting of persons entitled to attend the same shall be determined in accordance with Section 103 of the Companies Act, 2013. For the meeting to be held physically, only attendance of such persons physically at the venue shall be counted for quorum. In case the quorum of any meeting is not present within half an hour from the time appointed for the meeting, the Chairperson may adjourn such meeting to any date/time and take a decision on the quorum for the adjourned meeting.

11. Thus the authority vested by virtue of the order is only to take a decision on the quorum to be determined in accordance with Section 103 of the Companies act and not to adjourn the meetings indefinitely. It would be pertinent to refer to Section 103 which entails the following :

103. Quorum for meetings.—(1) Unless the articles of the company provide for a larger number,—

(a) in case of a public company,—

(i) five members personally present if the number of members as on the date of meeting is not more than one thousand;

(ii) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand;

(iii) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand;

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)**

CP(CAA) 50/KB/2024 connected with
CA (CAA) 87/KB/2022

(b) in the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

(2) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company—

(a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

(b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

(3) If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

12. Here it would be useful to extract following text from the judgement of Karnatka High court in 1981 SCC OnLine Kar 359 : (1982) 1 Kant LJ 198 : (1983) 54 Comp Case 868 dated November 12, 1981, wherein the following has been held:

“4. A perusal of the report of Mr. M. Gopalakrishna Shetty, who was appointed Chairman of the meetings indicates that meetings were held as directed on the date fixed by the Court and at the time specified. It is seen that the unsecured creditors' meeting was the first to be held at 10 A.M. The number of unsecured creditors of the Company was 984, but the meeting could not be continued as only 189 of the unsecured creditors attended personally or by proxy and that fell very much short of the quorum fixed by this Court in its order dated 15-9-1981, which was at 51% of the total number and the value of the credit of unsecured creditors. Similarly, in the secured creditors' meeting,

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)**

CP(CAA) 50/KB/2024 connected with
CA (CAA) 87/KB/2022

which was held at 10-30 A.M., 4 of the 5 secured creditors were present by proxy and voted unanimously against the scheme of amalgamation. That has been recorded by the Chairman. He also reports that the credit value of secured creditors who voted against the amalgamation amounts to Rs. 1,52,19,958.17 ps. The meeting of the shareholders of both equity and preference shares could also not be continued as there were no quorums for those meetings.

*5. In the result, three of the four meetings were **abortive on account of want of quorum** while in one meeting that was held, that of secured creditors, the amalgamation was not approved.”*

13. It follows from the above that when in the first adjourned meeting, the quorum was not present the Chairperson should have aborted the meeting and reported the matter to the Tribunal for seeking directions in light of the above provisions of the Companies Act 2013 rather than adjourning the meetings indefinitely. The meeting held on 22nd December therefore contravenes the provisions of Section 103 of the Companies Act 2013, as brought out herein.
14. The Chairperson & the Scrutinizer appointed for holding the meetings need to take note of this order and act in accordance with the provisions of Companies Act 2013, read with relevant rules, in future.
15. It is also seen that four adjournments granted by the Chairperson have resulted in a delay in the presentation and processing of the scheme, which has in turn resulted in the violation of MCA General Circular dated 21.08.2019 which specifies as follows:

c) Where the ‘appointed date’ is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the ‘appointed date’ is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)**

CP(CAA) 50/KB/2024 connected with
CA (CAA) 87/KB/2022

However, we do not find any justification to that effect in the scheme so presented.

16. Secondly, the valuation for the scheme has been done as on 31st March, 2021 and considering the fact that the three years have elapsed after this date, the financial position and the valuation of the company might have undergone a change. As such the financial position depicted in the scheme may not represent the true picture, which might even be detrimental to the interests of shareholders and creditors. Be that as it may, these are the aspects which are best left to the respective Boards of the Petitioner, who should consider the matter in entirety and fix another Appointed date.
17. For the reasons cited above, the delay of 489 days in filing the scheme cannot be condoned. Let the scheme be re-filed depicting the latest financial position of the companies based on an appointed date which is not significantly ante-dated beyond one year along with an affidavit from the Secured Creditor of the Resulting Company agreeing to the arrangement.
18. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.
19. Post the matter for consideration on **09.08.2024**.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 1st day of July, 2024.

SM(LRA)