

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT NO. II
Company Application (CAA) No. 134/KB/2024**

*An application under Section 230 read with Section 232 of
the Companies Act, 2013 read with the Companies
(Compromises, Arrangements and Amalgamations) Rules, 2016
and other applicable provisions of the law.*

IN THE MATTER OF:

(A Scheme of Arrangement)

HINDUSTHAN ENGINEERING & INDUSTRIES LIMITED, a Public Limited Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having Corporate Identification No. **U93000WB1998PLC086303** and its registered office at “Mody Building, 27, Sir R N Mukherjee Road, Kolkata- 700001, West Bengal, India”.

..... Demerged Company/Applicant Company No. 1

And

FAIRPLAN CHEMICAL & INDUSTRIES LIMITED, a Public Limited Company incorporated under the Companies Act, 2013 having Corporate Identification No. **U20119WB2024PLC271122** and its registered office at “Mody Building, 27, Sir R N Mukherjee Road, Kolkata- 700001, West Bengal, India”.

..... Resulting Company/ Applicant Company No. 2

And

IN THE MATTER OF:

1. HINDUSTHAN ENGINEERING & INDUSTRIES LIMITED

2. FAIRPLAN CHEMICAL & INDUSTRIES LIMITED

.....APPLICANTS

Date of pronouncement of Order: 15/07/2024

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri Arvind Devanathan, Member (Technical)

Appearances - For the Applicants:

Ms. Khushi Nangalia, Practicing Company Secretary

ORDER

1. This Court is congregated through hybrid mode.
2. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 ("**Act**") for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Arrangement between **Hindusthan Engineering & Industries Limited** being the Applicant Company No. 1 ("**Demerged Company**") and **Fairplan Chemical & Industries Limited**, being the Applicant Company No. 2 ("**Resulting**

Company”) and their respective shareholders and creditors whereby and whereunder the Jute Division, Chemical Division along with Malanpur Unit, Faridabad Unit & Corporate Office with non – core assets of the Demerged Company is proposed to be transferred to and vested in the Resulting Company from the Appointed Date, i.e. **1st April, 2023** in the manner and on the terms and conditions stated in the said Scheme of Arrangement (“**Scheme**”). The Copy of the said Scheme of Arrangement is annexed to the Company Application in **Annexure E** in **Volume II** at **Page No(s). 234 to 269.**

3. The Board of Directors of the Applicant Company No. 1 have, at their Board Meetings held on 25th March, 2024 and 12th June, 2024 and the Board of Directors of the Applicant Company No. 2 at the meeting held on 12th June, 2024 approved and resolved to carry out the said Scheme of Arrangement. The copies of the resolution passed by the Applicant Companies are annexed with the Company Application being **Annexure- D** in **Volume II** at **Page No(s). 229 to 233.**

4. It is submitted by the Ld. Authorised Representative appearing for the Applicants that the shares of the Applicant Companies are not listed on any Stock Exchange. Further, the Applicant Companies have the following classes of Shareholders and Creditors as on:

Sl. No. .	Name of the Company	As on date	No. of Shareholders

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1.	Hindusthan Engineering & Industries Limited	31.03.2024	10,802
2.	Fairplan Chemical & Industries Limited	12.06.2024	7

Sl. No.	Name of the Company	As on date	No. of Creditors
1.	Hindusthan Engineering & Industries Limited	31.03.2024	6 (SECURED) 944 (UNSECURED)
2.	Fairplan Chemical & Industries Limited	12.06.2024	1 (UNSECURED)

5. The certificate from Statutory Auditor confirming the Accounting Treatment contained in the Scheme in compliance with all the applicable Accounting Standards specified under Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies (Accounts) Rules, 2014 is issued at the request of the Applicant Companies pursuant to the requirements under Section 230(7) of the Companies Act, 2013 is annexed with the Company Application in **Annexure K** in **Volume III** at **Page No(s). 360 to 361.**

6. Ld. Authorised Representative appearing for the Applicant Companies submits that 100% of the Equity Shareholders of the Applicant Company No. 2 have given their consent to the Scheme in writing by way of affidavits for the approval of the proposed Scheme of Arrangement which is annexed with the Company Application being **Annexure I** in **Volume III** at **Page No(s). 342 to 357.**
7. Ld. Authorised Representative appearing for the Applicant Companies submits that 100% in value of the Unsecured Creditor of Applicant Company No. 2 have given their consent to the Scheme in writing by way of affidavits for the approval of the proposed Scheme of Arrangement and which is annexed with the Company Application being **Annexure G** in **Volume III** at **Page No(s). 293 to 339.**
8. Directions are sought accordingly for:
 - i. Dispensing with the meeting of Equity Shareholders of Applicant Company No. 2.
 - ii. Dispensing with the meeting of Unsecured Creditor of Applicant Company No. 2.
 - iii. Convening with the meeting of Equity Shareholders of Applicant Company No. 1.
 - iv. Convening with the meeting of Secured Creditors of Applicant Company No.1.
 - v. Convening with the meeting of Unsecured Creditors of Applicant Company No. 1
9. Heard the Ld. Authorised Representative for the Applicant Companies and upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the

Applicants, we allow the instant application and make the following orders:

A. Meetings dispensed:

Meetings of the Equity Shareholders and Unsecured Creditor of Applicant Company No. 2 are dispensed with under Section 230(1) read with Section 232(1) of the Act.

B. Meeting to be held:

1. The meeting of the Equity Shareholders of the Applicant Company No. 1 as on **31st March, 2024** duly certified by the Statutory Auditor of the said Company shall be convened and held through Video Conferencing or Other Audio Visual Means on 3rd September, 2024 at 1 P.M. for the purpose of considering, and, if thought fit, approving the said scheme, with or without modification.
2. The meeting of the Secured Creditors and Unsecured Creditors of the Applicant Company No. 1 as on **31st March, 2024** duly certified by the Statutory Auditor of the said Company shall be convened and held physically at the Registered Office of the Applicant Company No. 1 at Mody Building, 27 Sir R N Mukherjee Road, Kolkata – 700001, West Bengal on 3rd September, 2024 at 2 P.M. and on 3rd September, 2024 at 3 P.M. respectively, for the purpose of considering, and, if thought fit, approving the said scheme, with or without modification.

C. Advertisement:

At least 30 (thirty) clear days before the meeting to be held, as aforesaid, an advertisement of the notice of meeting, stating that copies of the Scheme and the statement containing necessary details required to be filed pursuant to Section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 is being sent with the notice of meeting, be published once each in the “**Business Standard**” in English and in “**Aajkaal**” in Bengali as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

D. Individual Notices:

At least 30 (thirty) clear days before the date of the meeting to be held, as aforesaid, notice convening the said meeting, along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Companies Act, 2013 shall be sent to each of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company No. 1. The notice to Equity Shareholders shall be sent through electronic mode who have registered their email addresses with the Company or with the Depositories. In accordance with the Virtual Meeting Circulars, the said notice along with accompanying documents shall also be made available to all the Equity Shareholders who have not registered their e-mail addresses with the Company or Depositories by the Applicant Company No. 1 by posting such notice and accompanying documents on the website of the Applicant Company No. 1. The notice to the Secured Creditors and Unsecured Creditors shall be sent through registered post or air mail or courier or email or through personal messenger at their respective or last known addresses. The said notice along with accompanying documents

shall also be displayed on the notice board of concerned Applicant at its registered office and shall also be posted on the website, if any, of such Applicant.

E. Chairperson:

CS Aditi Jhunjunwala having Mobile No. **9874590012** and email-id **aditijhunjunwala23@gmail.com** is appointed as the Chairperson of the meetings to be held, as aforesaid. The Chairperson shall be paid a sum of Rs. **85,000/-** for conducting the aforesaid meeting as Chairperson.

F. Scrutinizer:

Adv Saloni Agarwal having Mobile No. **9062148221** and email-id **Advsaloniagarwal@gmail.com** is appointed as the Scrutinizer of the meetings to be held, as aforesaid. The Scrutinizer shall be paid a sum of Rs. **75,000 /-** for conducting the aforesaid meeting as Scrutinizer.

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 meetings to be held through virtual mode and physically, only attendance of such persons present in virtual mode/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 in the adjourned meeting.

H. Cut-off date:

The cut-off date for determining the eligibility to vote and value of votes shall be **31st March, 2024** for the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the

Applicant Company No. 1. The value of the votes cast shall be reckoned and scrutinized with reference to the said dates.

I. Mode of Voting:

1. Voting in the meeting held through Virtual Mode shall be conducted by way of E-voting Facility in case of meeting of Equity Shareholders of the Applicant Company No. 1, in accordance with the Companies (Management & Administration) Rules, 2014.
2. At the venue of the meeting of Secured Creditors and Unsecured Creditors of the Applicant Company No. 1 held physically, voting shall be conducted physically by polling paper, shall be in accordance with the Companies (Management & Administration) Rules, 2014, and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for the approval of Scheme.

J. Proxies & Board Resolution:

A person, including a Body Corporate, entitled to attend and vote at the meeting, as aforesaid, may do so personally or by proxy, provided the proxies in the prescribed form duly signed by such person and/or the certified copy of resolution of the Board of Directors or other governing body of such person, where it is a Body Corporate, authorizing its representative to attend and vote at such meeting on its behalf, as the case may be, is deposited at the registered office of the Applicant Company No. 1 or emailed to the Scrutinizer appointed herein. Provided that the proxy forms shall be deposited at the Registered Office of the Applicant Company No. 1 or emailed to the Scrutinizer appointed herein, not later than 48 (forty-eight) hours before the commencement of the meeting.

- K.** That the Chairperson appointed for the said meeting or any person authorised by the Chairperson do issue and send the notice of the aforesaid meeting.
- L.** The resolution for approval of the Scheme of Arrangement put to a meeting shall, if passed by a majority in number representing three-fourths in value of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company No. 1 casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under Section 230(1) read with Section 232(1) of the Companies Act, 2013.
- M.** The Chairperson do report to this Tribunal the results of the said meeting within four weeks from the date of the conclusion of the said meeting. Such report shall be in Form No. CAA-4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.
- N.** The votes cast shall be scrutinized by the Scrutinizer. The Scrutinizer shall prepare and submit the respective reports on the meeting along with all papers relating to the voting to the chairperson of the meeting at the Scrutinizer's earliest convenience and in any case within 3 days of the conclusion of the meeting. The Chairperson shall declare the results of the meeting after submission of the report of the Scrutinizer. The declaration of result by the Chairperson shall also be displayed on the Notice Board of the concerned Applicant at its registered office and shall also be posted on the website, if any, of such Applicant.
- O.** The value of each of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company No. 1 shall be in accordance with its books and records, where entries in the

books are disputed, the chairperson shall determine the value for purpose of the said meeting.

P. The Applicant Companies to serve a notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall be served on:

- the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;
- the Registrar of Companies, Kolkata;
- the Income Tax Department having jurisdiction over the Applicants

by sending the same through hand delivery through special messenger or by post and by email within two weeks from the date of receiving this order. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Authorised Representative of the said Applicants. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme of Arrangement. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in Form No. CAA 3 of the said Rules with necessary variations, incorporating the directions herein.

10. The Applicant Companies shall file an Affidavit of Service, to report to this Tribunal that the directions regarding the issuance of notices have been duly complied with.
11. The application being **C.A. (CAA) No. 134/KB/2024** is **disposed of** accordingly.
12. Urgent Certified Copy of the order may be issued, if applied for, be supplied to parties upon compliance with all the requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee)
Member (Judicial)

Order signed On 15th July , 2024

NKS(LRA)