

DIVISION BENCH
COURT - I

S-8

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P.(CAA)/107(KB)2024
IN
C.A.(CAA)/13(KB)2024

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI BALRAJ JOSHI**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 04TH JULY 2024

IN THE MATTER OF	PRABHU SWITCHGEAR PRIVATE LIMITED
UNDER SECTION	SEC. 230-232 - SECOND MOTION

Appearances (via video conferencing/physically)

Mr. Sonal Shah, Adv. : For Petitioner
Mr. Aniket Choudhary, Adv.

ORDER

1. Ld. Counsel for the petitioner present.
2. The instant application has been filed in the Second stage of the proceedings under Section 230 (1) read with Section 232(1) of the Companies Act, 2013 (hereinafter referred as "Act") for orders and directions with regard to Publication of the notice of hearing in respect of the **SCHEME OF AMALGAMATION of Prabhu Switchgear Private Limited, being the Petitioner no. 1 (Transferor company) with Prabhu Industrial Udyog Private Limited, being the Petitioner No. 2** above named (**Transferee Company**) whereby and whereunder the Transferor Company is proposed to be amalgamated with the Transferee Company from the Appointed Date **1st Day of April, 2023** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (hereinafter referred as "**Scheme**"). The Copy of the Scheme of Amalgamation is annexed to the Company Application being **Annexure – A at page 24 -38**.

3. It is submitted by Ld. Counsel appearing for the Petitioners that the shares of the Petitioner No.1 to are not listed in any stock exchanges and that they have only equity shareholders.
4. The Board of Directors of the Petitioner companies has approved the scheme in their respective board meeting held on 4th September, 2023. Copy of the Board Resolution is annexed to the Company Application being **Annexure-F and G at Page 161 - 164.**
5. It is submitted by Ld. Counsel appearing for the Petitioners that the Valuation Report regarding Exchange Ratio has been prepared by Chartered Accountants Agarwal Vishwanath & Associates. A copy of the same is annexed to the Company Application and marked as **Annexure-H at pages 165 to 168.**
6. It is further submitted by the Advocates for the Petitioners that the statutory auditor of the Petitioner Companies certified the Accounting Treatments in the proposed Scheme of Amalgamation is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013.
7. It is submitted that 100 per cent of the Equity Shareholders of the Petitioner Companies have already given their consent to the Scheme by way of affidavits.
8. It is further submitted that Petitioner No. 1 and 2 have NIL creditor (Secured) and therefore convening and holding of separate meetings of Creditors of the Petitioner No. 1 and 2 does not arise.
9. It is further submitted that Petitioner No. 1 has 25 Unsecured trade creditors while the Petitioner no. 2 has 32 unsecured trade creditors of the Petitioner No. 2 as on 31st March, 2023. It is also submitted that such Unsecured Trade Creditors have been paid off during the financial year 2023-2024 and a certificate from the Chartered Accountant has been annexed at **Annexure "O" page 4 and 5 of the Supplementary Affidavit.**
10. It is submitted by the Ld. Counsel appearing for the Petitioner(s) that, by an order dated 24th April, 2024, in Company Application No. C.A (CAA) NO.13/KB/2024this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) of the Act:-

i. Meetings dispensed

Equity Shareholders

Meeting of Equity Shareholders of the Petitioner Companies for considering the Scheme are dispensed with in view of all shareholders of Petitioner Companies having respectively given their consent to the Scheme by way of affidavits.

Unsecured Creditors

Meeting of Unsecured Creditors of the Petitioner Companies for considering the Scheme are dispensed with in view of the Petitioner companies having exhausted their liabilities against such Unsecured Trade Creditors in the current accounting year and a certificate of the Chartered Accountant being Annexed to the supplementary affidavit as Annexure O at pages 4 and 5 has been filed to such effect.

ii. No requirement of Meetings

Secured Creditors

Since the Secured Creditors of Petitioner No 1 & 2 as verified by auditors' certificate is NIL there is no requirement of Meeting.

iii. Meetings to be held

No meeting is required to be held.”

11. The Learned Counsel for the Petitioner(s) further submits that in compliance with Section 230(5) of the Companies Act, 2013 and the said order dated 24th April, 2024, in Company Application No. C.A (CAA) NO. 13/KB/2024 notice along with all accompanying documents has already been served on the Statutory / Sectoral Authorities, as directed by the said order as below :

NAME OF THE REGULATORY AUTHORITY	AFFIDAVIT OF SERVICE		
	BY POST	BY HAND	BY EMAIL
Regional Director, Eastern Region, Kolkata	02-05-2024	02-05-2024	21-05-2024
Income Tax Authorities Ward No. 10	02-05-2024	02-05-2024	21-05-2024
Official Liquidator , High Court Kolkata	02-05-2024	02-05-2024	21-05-2024
Superintendent of CGST & CX Range II	02-05-2024	02-05-2024	21-05-2024

An affidavit duly affirmed on 22nd May, 2024 has also been filed with the Registry. Copy of the acknowledgements are all annexed to the Company Petition being **Annexure – K at pages No 181 to 194**. The Authorities, as aforesaid, have not filed their representation so far.

12. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Petitioner(s), we admit the instant petition and fix the next date of hearing on **31/07/2024**.
13. At least 10 (ten) clear days before the said date fixed for hearing, the Petitioner(s) shall cause notice of hearing to be advertised in the **BUSINESS STANDARD** in English and Bengali translation thereof in **AAJKAL** in Kolkata Edition as per Rule 16(1) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (“CAA Rules”).
14. Another notice pursuant to Section 230(5) of the Companies Act, 2013 along with accompanying documents, including the copies of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013, as sent earlier, shall be served again on the aforesaid Statutory Authorities by sending the same to them by hand delivery through special messenger, by Registered AD/Speed Post with tracking report and also by email within one week from the date of receiving this order. The notice shall specify the next date of hearing of the petition, as aforesaid, and state that representation, if any, and if not already filed, should be filed before this Tribunal no later than 7 (seven) days before the next date of hearing of the petition and a copy of such representation should be simultaneously sent to the Authorised Representative of the said Petitioner(s). 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. Such notice shall be sent in Form No. CAA3 of the CAA Rules with necessary variations, incorporating the directions herein.
15. The Petitioner(s) to file an affidavit confirming compliance of the abovementioned directions of this Tribunal, 3 (Three) days before the next date of hearing.

16. The Petitioner(s) may also file their rejoinder affidavit(s) dealing with the objections/ observations, if any, of the Authorities, 2 (Two) days before the next date of hearing.
17. Urgent Certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.
18. Post this matter on **31/07/2024**.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)