

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH**

**C.P. (CAA) No. 128/ MB -III/2023
CONNECTED WITH
C.A. (CAA) No. 94/ MB-III/2023**

In the matter of the Companies Act,
2013

And

In the matter of Section 230 read with
Section 66 of the Companies Act, 2013
and other applicable provisions of the
Companies Act, 2013 and rules &
regulations framed thereunder

And

In the matter of S P Fabricators Private
Limited (Petitioner Company) and its
shareholders (**'Scheme'**)

S P Fabricators Private Limited,)

a private limited company)
incorporated under the provisions of)
Companies Act, 1956 having its)
registered office at 70, Nagindas,)
Master Road, Fort, Mumbai,)
Maharashtra, 400023.)

CIN: U25192MH1993PTC072591

) ... *Petitioner Company*

Order delivered on 18.04.2024

Coram:

Ms. Lakshmi Gurung : Member (Judicial)
Sh. Charanjeet Singh Gulati : Member (Technical)

Appearances:

For the Petitioners : CA Harsh Ruparelia i/b. ARCH
& Associates

For the Regional Director : Mr. Tushar Wagh, Authorised
Representative on behalf of RD
(WR)

Per: Ms. Lakshmi Gurung, Member (Judicial)

ORDER

1. The sanction of this Tribunal is sought under Sections 230 read with Section 66 and other applicable provisions of the Companies Act, 2013 ('Act') and in the matter of Scheme of Arrangement between S P Fabricators Private Limited ('**Petitioner Company**') and its Shareholders ('**Scheme**') for reorganisation of reserves and reduction in the paid-up equity shares and redeemable preference shares of the Petitioner Company.
2. The Board of the Petitioner Company has approved the said Scheme by passing Resolution on **18.03.2023** which is annexed to the Company Scheme Petition.
3. The Appointed Date of the Scheme is closing business hours of **31st March 2023**.
4. Pursuant to the direction issued by this Bench dated 12.10.2023, the Petitioner Company has served the notice upon the Principal Chief Commissioner of Income Tax, Mumbai (Nodal Officer) by hand delivery along with the email on 13.10.2023.
5. The Authorised Representative for Petitioner Company submits that the Petitioner Company have complied with all the requirements as

per the directions of this Tribunal and have filed necessary affidavits of compliance.

6. **Nature of Business:**

The Authorised Representative for the Petitioner Company submits that the Petitioner Company is primarily engaged in the business of fabrication of architectural aluminium involving curtain walls and structural glazing (facade structure) and also acting as Project Management Consultants, in accordance with its main object clause.

7. The Authorised Representative submitted that the Scheme of Arrangement is expected to yield the Following benefits:

Rationale for the Scheme of Arrangement:

- *The reduction of share capital in the manner proposed in the Scheme would enable the Petitioner Company to rationalize its capital structure and present a true and fair financial position of the Petitioner Company in a better manner, which is commensurate with its business and assets.*
- *The Scheme envisages reduction by way of cancellation of its part of equity share capital and all the redeemable preference shares and subsequent payout against such cancellation so to create a Capital Reduction Reserve which shall be utilized to write off the accumulated losses in the Profit & Loss Account appearing as on the Appointed Date in the books of the Petitioner Company.*
- *The Scheme would not affect the ability or liquidity of the Petitioner Company to meet its obligations / commitments in the normal course of business. Further, this Scheme would also not in any way adversely affect the ordinary operations of the Petitioner Company.*

8. The registered office of the Petitioner Company is situated in Mumbai, Maharashtra and hence the subject matter of the Petition is within the jurisdiction of this Bench.
9. The shares of the Petitioner Company are not listed on any stock exchange.
10. The Company Scheme Petition has been filed in consonance with the order dated 12.04.2023 passed by this Tribunal in CA(CAA)/94/MB/2023 and inter-alia, allowed the following:
 - a) Dispensation of convening the meetings of equity shareholders of the Petitioner Company on the ground of procurement of 100% consent affidavits;
 - b) Dispensation of convening the meetings of Preference Shareholders of the Petitioner Company on the ground of procurement of 100% consent affidavits;
 - c) Dispensation of convening the meetings of the Unsecured creditors of the Petitioner Company on the ground of procurement of 91.88% consent affidavits.
11. As consent affidavits were obtained from creditors constituting 91.88% of value of creditors and no notice was given to the balance creditors. On 18.01.2024 this Tribunal sought clarification from the Professional for Petitioner Company to comply with section 66 of the Companies Act 2013 as composite application was filed under section 230-232 read with section 66 of the Companies Act, 2013. Also, this Tribunal direct the Petitioner Company to serve the notice of this application to all creditors who had not given their consent affidavits.

12. Accordingly, the Petitioner Company issued notices through speed post on 30.01.2024 to 40 unsecured creditors. The copy of list of unsecured creditors as on 31.12.2022 and proof of delivery is attached to a compliance Affidavit as per direction of this Tribunal.
13. There are no secured creditors in the Petitioner Company. Therefore, the question of convening and holding the meetings of secured creditors of the Petitioner Company did not arise.
14. The Regional Director has filed Report dated **12.07.2023**. Petitioner Company has filed Affidavit in reply dated **13.07.2023**. In response to the observations of the Regional Director, the Petitioner Company has undertaken submitted/undertaken that:
- i) The ROC Mumbai in his report dated **12.07.2023** inter alia has stated that, No Inquiry, Inspection, Investigations, Prosecutions, Technical Scrutiny, Complaints under Companies Act, 2013 have been pending against the Petitioner Company.*
 - ii) The Audited Financial Statement for the year 2022 at the time of filing the Application with NCLT Mumbai, dated March 28, 2023. It is important to note that the Borrowings reflected in the Financial Statement for the year 2022, amounting to INR 11,616.64 lakhs, and INR 10,657.48 lakhs for the year 2021, pertain to the Liability component of the Preference Share Capital and not to the unsecured creditor. For your convenience, I have annexed the Audited Financial Statements for the year 2022 to the Affidavit in reply to observations of the Regional Director.*
 - iii) it is submitted that as it is the Scheme of Arrangement between S P Fabricators Private Limited ('The Petitioner Company') and its Shareholders ('Scheme') is presented under Section 230 read with Section 66 and other applicable provisions of the Companies Act, 2013, the provision mandating the submission of a list*

of creditors within a 15-day timeframe prior to the date of filing the application is not applicable with respect to Schemes presented under Section 230 of the Companies Act, 2013. Such requirement is applicable, when the application is filed under Section 66 of the Companies Act, 2013.

- iv) the Petitioner Company has already submitted the Audited Financial Statements for the year 2022 at the time of filing the Application with the Hon'ble NCLT, dated March 28, 2023 and the copy of the entire set of Company Scheme Application is served vide Notice dated 24th April 2023 to the office of the Registrar of Companies, Maharashtra at Mumbai. Further, the valuation report is based on the Audited Financial statements for the year 2022. The Copy of the Audited Financial Statements for the Financial year ended 31st March 2022 is annexed to the Company Scheme Petition and Valuation Report is annexed to the Company Scheme Petition.*
- v) it is submitted that this Scheme of Arrangement is presented under Section 230 read with Section 66 and other applicable provisions of the Companies Act, 2013 and the rules framed and regulations thereunder for reorganization of reserves and reduction of the share capital of the Petitioner Company. Hence, the Company shall account for the reduction of share capital in its books of accounts in accordance with Section 133 of the Act and under any other relevant Indian Accounting Standard prescribed under the Companies (Indian Accounting Standard) Rules, 2015, issued by Ministry of Corporate Affairs as may be amended from time to time.*
- vi) it is submitted that there have been no alterations or modifications made to the Scheme enclosed with the Company Scheme Application and Company Scheme Petition, which are one and the same. There are no discrepancies or changes made in the Scheme.*

vii) it is submitted that the Petitioner Company has served the notices to the concerned authorities which are likely to be affected by the Scheme of Arrangement under the provisions of section 230(5) of the Companies Act, 2013. Further, the Petitioner Company affirm that the approval of the Scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the Scheme. The Petitioner Company affirm that the decisions of such authorities shall be binding on the Petitioner Company.

viii) it is submitted that the Appointed Date i.e., 31st March 2023 has been indicated in the Scheme in accordance with provisions of section 230(6) of the Companies Act 2013 and the scheme shall become effective from the Appointed Date.

Further, the Petitioner Company hereby submit that they are in compliance with the applicable requirements of the General Circular No. 9/2019 dated 21/08/2019 issued vide F. No. 7/12/2019/CL-I by the Ministry of Corporate Affairs by clearly specifying the Appointed Date and Effective Date in the Scheme. Without prejudice to the above, the Petitioner Company has undertaken to comply with the requirements clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

ix) it is submitted that the Petitioner Company has undertaken to comply with the directions of Income tax department if any.

x) it is submitted that the Petitioner Company has undertaken to comply with the directions of the concerned sectoral Regulatory, if any.

Further, the Regional Director observe the following:

H. Petitioner Company proposes at Part II clause 8 of the scheme of Reduction of Share Capital by way of repayment of Equity Share Capital and Preference Share Capital.”

- 8.1. *With effect from the Appointed Date, 4,49,000 number of Equity Shares (having face value of Rs 100 each shall stand extinguished and cancelled through capital reduction held by the Shareholders of the Equity Shares as on the Effective Date, for a Nil consideration, as determined vide Valuation Report dated 17th March 2023, issued by an Independent Registered Valuer, bearing registration number IBBI/RV/05/2019/11106.*
- 8.2. *With effect from the Appointed Date, 2,91,30,000 number of RPS (having face value of Rs 100 each shall stand extinguished and cancelled through capital reduction held by the Shareholders of the RPS as on the Effective Date, for a consideration of INR 0.1 per RPS, as determined vide Valuation Report dated 17th March 2023, issued by an Independent Registered Valuer, bearing registration number IBBI/RV/05/2019/11106, amounting to total payout of INR 29,13,000.*
- In this regard, Petitioner Company shall undertake to comply with the provisions of Section 66 r/w. 230-232 of the Companies Act, 2013 and other applicable provisions of Companies Act, 2013,***

In Response to the Regional director, the Petitioner Company has submitted as under:

- i) *The Petitioner Company has undertaken to comply with the provisions of Section 230 read with Section 66 of the Companies Act, 2013 and other applicable provisions of Companies Act, 2013.*

Further, the Regional Director observe the following:

“As per shareholding pattern as on 31.03.2022 submitted by the Petitioner company, details of shareholding are as follows”

| Sr. No. | Petitioner company | Name of the Shareholder | % of shares held | Remark |
|---------|---------------------------------|-------------------------------------|------------------|--|
| 1 | S P Fabricators Private Limited | SP Aluminum Systems Private Limited | 100% | No Form BEN-2 has been filed by any of the Petitioner Company as per records available at MCA21 Portal |

“No Form BEN-2 has been filed by any of the Petitioner Company as per records available at MCA21 Portal, hence Petitioner Company shall undertake to comply with the provisions of section 90 of Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder and to file Form BEN-2 for declaring name of the significant beneficial owner with concerned ROC”

In Response to the Regional director, the Petitioner Company has submitted that:

- i) *If the Regional Director or the Registrar of Companies opines that the Petitioner Company has not complied with the aforesaid provisions, liberty is given to the concerned Registrar of Companies to separately deal with the above issue, subject to appropriate remedies available to the Petitioner Company under the applicable laws and regulations. Further, the Petitioner Company undertakes to comply with the provisions of Section 90 of the Companies Act, 2013 read with the Companies (Significant Beneficial Owners) Rules, 2018, if and to the extent applicable. All issues arising thereunder shall be decided in accordance with law. Without prejudice to the above, the Petitioner Company shall continue to remain in existence, post the Scheme becoming effective, since the Scheme provides for arrangement with the Shareholders and approval of this Scheme shall not have any prejudicial impact.*

15. Mr. Tushar Wagh, representing the Regional Director's Office, submitted that the explanations and undertakings given by the Petitioner Company is found satisfactory and that the Regional Director has no objections to the Scheme. However, it is made clear that mere sanctioning of this Scheme will not prevent the Registrar of Companies from taking any action against the Company, in accordance with applicable law.
16. The Petitioner Company has submitted that, with effect from the Appointed Date i.e., 31st March 2023, total 4,49,000 Equity shares having face value of INR 100 each shall stand extinguished and cancelled through capital reduction held by the shareholders of the Equity Shares for a Nil Consideration.
17. The Petitioner Company has further submitted that, with effect from the Appointed Date i.e., 31st March 2023, 2,91,30,000 number of RPS having face value of INR 100 each shall stand extinguished and cancelled through capital reduction held by the shareholders of the RPS for a consideration of INR 0.1 per RPS.
18. No objections have been received by the Tribunal opposing the Company Scheme Petition and nor has any party controverted any averments made in the Company Scheme Petition.
19. It has been submitted that no investigation proceedings are pending against the Petitioner Company under the Companies Act.
20. The Statutory Auditors of the Transferee Company have examined the Scheme in terms of provisions of Sections 230 read with Section 66 and certified that the accounting treatment specified in the

Scheme is in compliance with all applicable accounting standards specified under section 133 of the Companies Act, 2013.

21. The shareholders and Creditors of the Petitioner Company are the best judges of their interest. Their decision should not be ordinarily interfered with by the Tribunal as per the decision of Hon'ble Supreme Court in **Miheer H. Mafatlal vs. Mafatlal Industries Ltd [JT 1996 (8) 205]** wherein it was held as follows:

“It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the usefulness and propriety of the scheme by supporting it by the requisite majority vote.”

22. From the material on record, the Scheme to the Company Scheme Petition appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
23. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner Company to the proposed Scheme, the affidavit filed by the Regional Director, the rejoinder and undertakings of the Petitioner Company, there appears to be no impediment in sanctioning the present Scheme.
24. The Scheme annexed to the Company Scheme Petition is hereby sanctioned, and the Appointed Date of the Scheme is closing business hours of 31st March 2023. It shall be binding on the Petitioner Company involved in the Scheme and all concerned including their respective Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors, Employees and/or any other stakeholders concerned.

25. Consequently, sanction is hereby **granted** to the Scheme under Sections 230 read with Section 66 of the Companies Act, 2013 with the following directions:

- a) While approving the Scheme, we clarify that this Order should not, in any way, be construed as an Order granting exemption from payment of stamp duty, taxes or other charges, if any, and payment in accordance with law or in respect of any permission or compliance with other requirements which may be specifically required under any law.
- b) The Income Tax Department will be at liberty to examine the aspect of any tax payable because of this scheme and it shall be open to the income tax authorities to take necessary action as permissible under the Income Tax Law.
- c) The Petitioner Company is directed to file a copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the Certified copy of the Order from the Registry.
- d) Certified copy of this Order be also submitted to all the concerned statutory authorities.
- e) The Petitioner Company to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from

the date of receipt of the Certified copy of the Order from the Registry.

- f) All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.
 - g) Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
 - h) Any concerned authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
26. Ordered Accordingly. Thus, the Company Scheme Petition with C.P. (CAA) /128 /MB /2023 in C.A. (CAA) /94 /MB /2023 shall stand to be **disposed of**.

“To be Consigned to the Files”

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)
(Saayli, LRA)

Sd/-

LAKSHMI GURUNG
MEMBER (JUDICIAL)