

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I**

Cont. Application 1060/2020

Under Section 425 of the Companies Act, 2013 r/w Provisions of Contempt of Courts Act, 1971

Ashish O Lalpuria

...Applicant

Kumaka Industries Limited

...Contemnors

Company Application 1106/2020

Under Section 231(1) of the Companies Act, 2013 r/w Rule 22 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016

Ashish O Lalpuria

...Applicant

Kumaka Industries Limited

...Contemnors

In the matter of

CP (CAA) 190 of 2017

Kumaka Industries Limited

...Petitioner

Order delivered on 16.02.2024

Coram:

Shri Prabhat Kumar

Justice V.G. Bisht (Retd.)

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

(Appearances)

For the Applicant (s) : Mr. Ashish Lalpuria

1. This Contempt Application 1060 of 2020 has been filed by Mr. Ashish O Lalpuria seeking seeking initiation of contempt proceedings against the contemnors for wilfully disobeying the

Order of this Tribunal dated 6 July, 2020 in CP (CAA) No. 190 of 2017 captioned as Kumaka Industries Limited.

2. Another Company Application 1106/2020 has been filed by the Applicant Mr. Ashish O Lalpuria against the Respondent Kumaka Industries Limited seeking
 - i. This Hon'ble Tribunal may be pleased to allow the matter to be listed and heard at the earliest in the interest of justice;
 - ii. To direct the respondent and its personnel to give a detailed report as to manner in which they are implementing the scheme along with the proof in a time bound manner.
 - iii. Upon final hearing to hold that the respondent company and its key personnel are guilty of attempting to implement the scheme by violating the law and initiate appropriate proceedings against them and punish them for the wrong doings.
 - iv. Upon final hearing hold that the scheme has not been implemented and direct the company to undo any act that they may have done in pursuance to the order dated 06.07.2020 and give appropriate direction in accordance to the law.
 - v. To grant stay restraining the Company and its agent for implementing the scheme before filing the report to Hon'ble NCLT.
 - vi. To give appropriate direction to the respondent in the manner in which the scheme is to be implemented.
 - vii. In the alternate if the scheme cannot be implemented with or without modification then wind up the affairs of Company.

- viii. Issue strictures against the Company and its key personnel for the manner in which they have implemented the scheme.
 - ix. To pass any other appropriate order as deem fit.
 - x. That this Hon'ble Tribunal may be pleased to grant such other and further reliefs as may be deemed fit and proper, in the interest of justice;
2. The Applicant Ashish O. Lalpuria is a Shareholder of the Contemnor No. 1 and was also an objector in the Original Petition No. 190 of 2017.
- 2.1 The Contemnor No. 1 is the Company which approached the NCLT Mumbai in Petition No. CP(CAA)190 of 2017 praying for the Tribunal's indulgence and direction to approve the Scheme of Arrangement belatedly for ensuring that the company can dilute its promoters shareholding to the mandatory Minimum Public Shareholding requirement of 75% as stipulated by regulation 38 of the SEBI (LODR) Regulations, 2015, read with Rule 19(2) and rule 19A of the Securities Contracts (Regulation) Rules, 1957. The contemnor No. 2 to 5 are the Key Managerial Personal of the Contemnor No. 1 Company and are responsible for ensuring that the scheme approved by the NCLT is implemented and executed as per the direction of the NCLT and undertaking of the Contemnor No. 1 Company during the proceedings in Petition No. CP(CAA) 190 of 2017.
- 2.2 The Contemnor No.1 had filed a Petition for sanction of Scheme of Arrangement under section 230-232 of the Companies Act, 2013 (Section 391-394 of the erstwhile Companies Act, 1956). The contemnor in the said scheme

given before the NCLT proposed to undertake several steps to implement the scheme to ensure no prejudice is caused to any person and prayed that the scheme be allowed to be implemented belatedly in the interest of justice. The following are the material provisions:

- a. Ratification of reduction of 18,09,750 shares by conversion of 24,13,000 partly paid up shares to 6,03,250 fully paid up shares.
- b. Reduction of share capital by cancellation and extinguishment of 10375 fully paid up shares allotted to 406 shareholders and transfer of fully paid up 10375 by the promoters at the rate of 0.005 paise per share to restore the rights of the said 406 shareholders.
- c. Rearranging and numbering the Distinctive Nos. of shares to reconcile the same with the Paid-up Share Capital.
- d. Issue and allotment of 21,04,865 fully paid up shares as Bonus Shares to the public shareholders of the Company other than promoters.
- e. The said petition was opposed by the Regional Director as well as the Applicant on several grounds such as that the proposed scheme is not a Scheme as per the Act and that the Contemnor No.1, the Company, was trying to ratify the acts done by it in violation of the law.
- f. 6. The Tribunal on the basis of the representation of the steps to be followed under the scheme vide its Order dated 6th July, 2020 allowed the said Petition thereby sanctioning the Scheme of Arrangement as filed by the Contemnor No. 1

which the Applicant has challenged before the Hon'ble Appellate Tribunal.

2.3 The Tribunal while passing order dated 6th July, 2020 noted several points in various paragraphs which are as under:

a) In para No. 26, the relevant part is as under:

"Having thus repelled the last vestiges of challenge, we notice from the material on record that the Scheme appears to be fair and reasonable and does not violate any provisions of law and is not contrary to public policy or public interest".

b) In para No. 27, the relevant part is as under:

"Since all the requisite statutory compliances have been fulfilled. CP(CAA) 190/MB.I/2017 is made absolute in terms of prayer clause (a) to (c) of the Petition".

2.4 Vide the said disclosure, the Contemnor also mentioned that it has cancelled and extinguished 10375 fully paid shares allotted to 406 shareholders and transferred 10375 Equity Shares to these 406 shareholders from the holding of the promoters as per the Scheme of Arrangement and have also mentioned that it has made an application to NSDL for obtaining Demat connectivity and have enclosed therewith the shareholding pattern dated 4th August, 2020 furnished by its Registrar and Share Transfer Agent M/s. Link Intime (India) Private Limited.

2.5 As per the material provisions of the Scheme, the Contemnor No. 1 was required to cancel and extinguish 10375 equity shares held by 406 public shareholders as they were allotted illegally and thereafter a similar number of

shares were supposed to be transferred to these shareholders out of the holding of the Promoters of the Contemnor No. 1. However, as per the disclosure made by the Contemnor No. 1 to BSE Ltd, it reveals that either the Contemnor No.1 in connivance with Contemnor No. 2-5 have made false statements to the authorities and public that the promoters shares have been transferred by them in accordance to the scheme or the Contemnors have adopted a method of internal adjustment which has no recognition or sanction of law. In both the circumstances, the Contemnors have breached the scheme and direction of the court to implement the scheme as per the representation made before NCLT by committing a wilful disobedience of the Order dated 6th July, 2020 passed by the NCLT.

- 2.6 The public announcement made to BSE Ltd dated 16th August, 2020 made by the Contemnor No.4 on behalf of the Contemnor No.1 in connivance with other Contemnors is an admission of misdeeds by the Contemnor No.1 as under the current laws, the transfer of shares of public limited Companies can only be effected electronically through the Depositories as per Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 which was notified from 2nd October, 2018. Furthermore, in order to electronically transfer the shares, the Company requires to avail demat connectivity which the Contemnors are seeking after making a claim that the Promoters Shares have been duly transferred to the 406 public shareholders.

- 2.7 In the instant case, the shares of the Contemnor No. 1 are still in physical mode and are yet to be dematerialised. Therefore, the shares could not have been transferred as per law as claimed by the contemnors, raising serious question as to whether any transfer of shares was effected at all? Or the NCLT was taken for a ride in to believing that the Contemnor No. 1 and its officers were acting bonafidely while the contemnors were aware that they would adapt a method not disclosed under the scheme under the garb of the sanction of the NCLT. In any case, the acts of the Contemnors are of a serious nature and deserve scrutiny under the law along with being dealt under the contempt law.
- 2.8 The primary objection of the Applicant in the Original Petition was that the Contemnor No. 1 was using the route of Section 230-232 of Companies Act, 2013 to ratify some illegal acts after nearly 2 decades and which was out of the purview of the said sections. The applicant states that the fear of the applicants have come true as it can be reasonably seen that in the instant case, the Contemnor No. 1 is continuing its legacy of doing the illegal acts i.e. without complying with the provisions of the law of the land and blatantly violating the Order dated 6th July, 2020 passed by this Tribunal.
- 2.9 The Applicant immediately upon realising the violations wrote to the Contemnor No. 1 on 18th August, 2020 enquiring as to how the purported Transfer of Shares to 406 shareholders took place since the extant laws do not provide for transfer of shares in physical form and also pointed out

that it was beyond doubt that the contemnor No.1 in connivance with its Registrar and Transfer Agent i.e., Link Intime (India) Private Limited (Contemnor No.5) has reduced 10,375 shares from the promoter holdings in blatant violations of the material provisions of the Scheme and in case no reply is forthcoming within two days, contempt proceedings shall be initiated without any further intimation.

- 2.10 The Applicant further wrote to the Contemnor No. 1 on 19th August, 2020 requesting them to produce the Register of Members showing the entries of Transfer of Shares from 1st July, 2020 to 18th August, 2020. However, the Contemnor No. 1 is yet to provide the same to the Applicant.
- 2.11 The Applicant also wrote to the Managing Director of Contemnor No. 5 on 19th August, 2020, bringing to his attention about the violation of the Order passed by the Hon. Tribunal and requested for his intervention in order to make good the mistake committed by them. However, till the date of filing this petition, no response has been received.
- 2.12 Since, the Contemnor No. 1 has chosen to maintain a stony silence about the method adopted by them pertaining to the extinguishment of 10,375 shares pertaining to 406 shareholders and transfer of shares from promoters to these 406 shareholders and whether or not it proceeded to cancel and extinguish 10,375 shares from its holdings, which formed a part of the material provisions of the Scheme, the Contemnors have admitted to their wrong doings and therefore Applicant is filing this Contempt Application to seek appropriate remedy.

3. Heard learned Counsel for both sides. Perused record.
4. The alleged disobedience is arising from the fact that shares of the Petitioner No.1 were in physical mode and could not have been transferred unless such shares are first dematerialised. However, we also note that the contemnors had intimated the stock exchanges that 10,375 shares to 406 shareholders have been transferred by the promoters in compliance of the approved scheme. It is the case of the applicant that this communication to the exchange is per se misleading.
 - 4.1 We note from the letter dated 17.08.2020 written by the Respondent No.1 to BSE Limited that “the company has also already made application to NSDL for providing dematerialisation facilities. We enclosed screenshot of the same for your perusal”. It is the case of the Applicant that the approved scheme had stipulated cancellation of existing shares held by 406 shareholders and transfer of equal number of shares by the promoters to such 406 shareholders, whereas the communication made by Respondent No.1 Company suggest that it has only proceeded only to implement the scheme and not implemented the scheme.
 - 4.2 We do not find any merit in the contention of the Applicant because the Respondents have made disclosure and stated the facts unequivocally which could be understood by any person about the exact status of the action taken by the Respondent Company towards implementation of the

scheme. It is noteworthy that applicant has made out this case based on the disclosure documents uploaded on the BSE portal which further validates our conclusion.

4.3 It is undisputed fact that the contempt arises only if there is a wilful disobedience of the order. We do not find any wilful disobedience of the order arising from the disclosure made to BSE. Therefore, the Contempt Petition No. 1060/2020 is liable to be dismissed.

5. Accordingly, there being no merit in the Contempt Application No. 1060/2020 and the same is dismissed and consequently, Application 1106/2020 filed thereunder also stand dismissed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)