

NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

C.A.(CAA) / MB/220 /2024

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and rules framed thereunder;

AND

In the matter of Scheme of Arrangement between Vedanta Limited (“**First Non-Applicant Company**” or “**Demerged Company**”) and Vedanta Aluminium Metal Limited (“**Second Non-Applicant Company**” or “**Resulting Company 1**”) and Talwandi Sabo Power Limited (“**Applicant Company**” or “**Resulting Company 2**”) and Malco Energy Limited (“**Third Non-Applicant Company**” or “**Resulting Company 3**”) and Vedanta Base Metals Limited (“**Fourth Non-Applicant Company**” or “**Resulting Company 4**”) and Vedanta Iron and Steel Limited (“**Fifth Non-Applicant Company**” or “**Resulting Company 5**”) and their respective shareholders and creditors (“**Scheme**”).

IN THE MATTER OF:

VEDANTA LIMITED }

A company incorporated under the provisions of the }
Companies Act, 1956, having its registered office at 1st }
floor, C Wing, Unit 103, Corporate Avenue Atul Projects, }
Chakala Andheri (East) Mumbai – 400093. }

CIN: L13209MH1965PLC291394 }

}

.... First Non-Applicant
Company/
Demerged Company

VEDANTA ALUMINIUM METAL LIMITED }

A company incorporated under the provisions of }
the Companies Act, 2013 having its registered office at C- }
103 Atul Projects, Corporate Avenue New Link Chakala }
MIDC, Mumbai – 400093. }

CIN: U24202MH2023PLC411663 }

}

.... Second Non-Applicant
Company / Resulting Company 1

TALWANDI SABO POWER LIMITED }

A company incorporated under the provisions of }
the Companies Act, 1956 having its registered office at C- }
103 Atul Projects, Corporate Avenue New Link, Chakala }
MIDC, Mumbai – 400093. }

CIN: U40101MH2007PLC433557 }

}

.... Applicant Company/ Resulting
Company 2

MALCO ENERGY LIMITED }

A company incorporated under the provisions of the }
Companies Act, 1956 having its registered office at C- }
103 Atul Projects, Corporate Avenue, New Link }
Chakala MIDC, Mumbai – 400093. }
CIN: U31300MH2001PLC428719 }

....Third Non-Applicant
Company/ Resulting Company 3

VEDANTA BASE METALS LIMITED }

A company incorporated under the provisions of the }
Companies Act, 2013 having its registered office at C- }
103 Atul Projects, Corporate Avenue New Link, }
Chakala MIDC, Mumbai – 400093. }
CIN: U43121MH2023PLC411696 }

.... Fourth Non-Applicant
Company/ Resulting Company 4

VEDANTA IRON AND STEEL LIMITED }

A company incorporated under the provisions of the }
Companies Act, 2013 having its registered office at C-103 }
Atul Projects, Corporate Avenue New Link Chakala }
MIDC, Mumbai – 400093. }
CIN: U24109MH2023PLC411777 }

.... Fifth Non-Applicant Company/
Resulting Company 5

The First Non-Applicant Company, Second Non-Applicant Company, Third Non-Applicant Company, Fourth Non-Applicant, and Fifth Non-Applicant shall be collectively referred to as “Non-Applicant Companies”.

Order delivered on 4th March, 2025

Coram:

Hon’ble Ms. Reeta Kohli, Member (Judicial)

Hon’ble Ms. Madhu Sinha, Member (Technical)

For the Applicant: Mr. Hemant Sethi, Ms. Devanshi Sethi, Ms. Tanaya Sethi, Advocates.

ORDER

1. That the present scheme is a Scheme of Arrangement (“**Scheme**”) between Vedanta Limited (“**First Non-Applicant Company**” or “**Demerged Company**”), Vedanta Aluminium Metal Limited (“**Second Non-Applicant Company**” or “**Resulting Company 1**”), Talwandi Sabo Power Limited (“**Applicant Company**” or “**Resulting Company 2**”), Malco Energy Limited (“**Third Non-Applicant Company**” or “**Resulting Company 3**”), Vedanta Base Metals Limited (“**Fourth Non-Applicant Company**” or “**Resulting Company 4**”) and Vedanta Iron and Steel Limited (“**Fifth Non-Applicant Company**” or “**Resulting Company 5**”) and their respective shareholders and creditors under the provisions of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013, and rules framed thereunder.
2. The Demerged Company is a diversified natural resource company engaged in the business of extraction, refining, manufacture and sale of various metals and minerals, generation and sale of power and other businesses including semiconductor manufacturing, display glass manufacturing, etc. The equity shares of the Demerged Company are listed on the BSE Limited (“**BSE**”) and the National Stock Exchange of India Limited (“**NSE**”). The Listed Debt Securities (*as defined in the Scheme*) of the Demerged Company are listed on the BSE.
3. The Resulting Company 2 (Applicant Company) is Talwandi Sabo Power Limited, a wholly owned subsidiary of the Demerged Company. The Resulting Company 2 is authorized by its Memorandum of Association to engage in the business of *inter alia* generation, transmission and distribution of power for supply to the state electricity boards, power utilities, generating companies, transmission companies, distribution companies, etc. Following the coming into effect of Part III of the Scheme, the Resulting Company 2 will carry on the

Merchant Power Business (*as defined in the Scheme*). The Registered office of Applicant Company has been shifted from State of Haryana to State of Maharashtra pursuant to order dated September 30, 2024 passed by the Regional Director, Northern Region, Ministry of Corporate Affairs, accordingly, a separate application is being filed by the Applicant Company before this Hon'ble Tribunal.

4. The Resulting Company 1 is Vedanta Aluminium Metal Limited, a wholly owned subsidiary of the Demerged Company. Following the coming into effect of Part II of the Scheme, the Resulting Company 1 will carry on the Aluminium Business (*as defined in the Scheme*).
5. The Resulting Company 3 is MALCO Energy Limited, a wholly owned subsidiary of the Demerged Company. Following the coming into effect of Part IV of the Scheme, the Resulting Company 3 will carry on the Oil and Gas Business (*as defined in the Scheme*).
6. The Resulting Company 4 is Vedanta Base Metals Limited, a wholly owned subsidiary of the Demerged Company. Following the coming into effect of Part V of the Scheme, the Resulting Company 4 will carry on the Base Metals Business (*as defined in the Scheme*).
7. The Resulting Company 5 is Vedanta Iron and Steel Limited, a wholly owned subsidiary of the Demerged Company. Following the coming into effect of Part VI of the Scheme, the Resulting Company 5 will carry on the Iron Ore Business (*as defined in the Scheme*).
8. The proposed Scheme has been approved by the respective board of directors of the Demerged Company and the Resulting Companies on the following dates:
 - a. Demerged Company: September 29, 2023
 - b. Resulting Company 1: October 13, 2023
 - c. Resulting Company 2 / Applicant Company: October 10, 2023
 - d. Resulting Company 3: October 13, 2023

- e. Resulting Company 4: October 13, 2023
 - f. Resulting Company 5: October 13, 2023
9. The Board of Directors of the Applicant Company and the Non-Applicant Companies have formulated the Scheme for demerger of demerged undertakings viz. Aluminium Undertaking (as defined under the Scheme), the Merchant Power Undertaking (as defined under the Scheme), the Oil and Gas Undertaking (as defined under the Scheme), the Base Metals Undertaking (as defined under the Scheme) and the Iron Ore Undertaking (as defined under the Scheme) from First Non-Applicant Company into Second Non-Applicant Company (Resulting Company 1), Applicant Company (Resulting Company 2), Third Non-Applicant Company (Resulting Company 3), Fourth Non-Applicant Company (Resulting Company 4) and Fifth Non-Applicant Company (Resulting Company 5), respectively.
10. The Appointed Date for the Scheme is the same as the Effective Date (as defined in the Scheme).
11. It is stated that there are no proceedings pending against the Applicant Company under the Insolvency and Bankruptcy Code, 2016 or any winding up proceedings are pending against the Applicant Company under Companies Act, 1956/2013 and no investigation or proceedings under the Companies Act, 1956/ Companies Act, 2013 have been initiated or are pending in relation to the Applicant Company.
12. Learned Counsel for the Applicant Company submits that the rationale of the Scheme is:
- (i) *“Demerged Company has interests in multiple businesses including metals, mining, and exploration of natural resources (zinc-lead-silver, iron ore, steel, copper, aluminium, nickel, and oil and gas) and power generation.*

- (ii) *Each of the varied businesses carried on by Demerged Company by itself or through strategic investments in subsidiaries or through affiliate companies (including demerged undertakings viz. Aluminium Undertaking (as defined under the Scheme), the Merchant Power Undertaking (as defined under the Scheme), the Oil and Gas Undertaking (as defined under the Scheme), the Base Metals Undertaking (as defined under the Scheme) and the Iron Ore Undertaking (as defined under the Scheme) have significant potential for growth and profitability.*
- (iii) *The nature of risk and competition involved in each of these businesses, financial profiles and return ratios are distinct from others and consequently each of the abovementioned business undertakings is capable of attracting a different set of investors, lenders, strategic partners, and other stakeholders. The manner of handling and management of each of the abovementioned businesses is also distinct.*
- (iv) *In order to lend enhanced focus to the operation of identified businesses, Demerged Company proposes to segregate and organize these businesses as separate entities, through demergers of each of the demerged undertakings viz. Aluminium Undertaking (as defined under the Scheme), the Merchant Power Undertaking (as defined under the Scheme), the Oil and Gas Undertaking (as defined under the Scheme), the Base Metals Undertaking (as defined under the Scheme) and the Iron Ore Undertaking (as defined under the Scheme).*
- (v) *The following benefits shall accrue on demergers of the demerged undertakings of the Demerged Company:*
- a. creation of independent global scale companies focusing exclusively on mining, production and/or supply of aluminium, iron-ore, copper, oil & gas and on generation and distribution of power and exploring new opportunities and taking advantage of the growth potential in the said sectors;*

- b. enabling greater focus of management in the relevant businesses thereby allowing new opportunities to be explored for each business efficiently and allowing a focused strategy in operations;*
 - c. each of the independent companies can attract different sets of investors, strategic partners, lenders, and other stakeholders enabling independent collaboration and expansion in these specific companies without committing the existing organization in its entirety;*
 - d. enabling investors to separately hold investments in businesses with different investment characteristics thereby enabling them to select investments which best suit their investment strategies and risk profiles;*
 - e. enabling focused and sharper capital market access (debt and equity) and thereby unlocking the value of the demerged undertakings and creating enhanced value for shareholders.*
- (vi) *The Scheme is in the interests of all stakeholders of the Demerged Company, Resulting Company 1, Applicant Company /Resulting Company 2, Resulting Company 3, Resulting Company 4, and Resulting Company 5.”*

13. The Share Capital of the Demerged Company as on July 20, 2024, is as under:

- (i) The authorised share capital of the Demerged Company / First Non-Applicant Company is INR 74,12,01,00,000 (Indian Rupees Seven Thousand Four Hundred Twelve Crores and One Lakh) divided into 44,02,01,00,000 equity shares of INR 1 (Indian Rupees One) each and 3,01,00,00,000 preference shares of INR 10 (Indian Rupees Ten) each. The issued, subscribed and paid-up share capital of the Demerged Company is INR 3,91,06,86,689 (Indian Rupees Three Hundred Ninety One Crores, Six Lakhs, Eighty Six Thousand Six Hundred Eighty Nine) divided into 3,91,06,86,689 equity shares of INR 1 (Indian Rupees One) each. The

listed capital of the Demerged Company is 3,91,03,88,057 equity shares of INR 1 (Indian Rupee One) each and 2,98,632 shares are under abeyance category which are pending for allotment being sub-judice.

14. The Share Capital of the Applicant Company as on October 3, 2024, is as under:
- (i) The authorised share capital of the Resulting Company 2 / Applicant Company is INR 40,00,00,00,000 (Indian Rupees Four Thousand Crores) divided into 4,00,00,00,000 equity shares of INR 10 (Indian Rupees Ten) each. The issued, subscribed and paid-up share capital of the Resulting Company 2 is INR 32,06,60,96,920 (Indian Rupees Thirty Two Thousand and Six Crores, Sixty Lakhs, Ninety Six Thousand Nine Hundred and Twenty) divided into 3,20,66,09,692 equity shares of INR 10 (Indian Rupees 10) each.
15. The Learned Counsel for the Applicant further submits that the consideration of the Scheme, as determined by the share entitlement ratio dated September 29, 2023, issued by BDO Valuation Advisory LLP is attached to the Company Scheme Application. The share entitlement ratio with respect to the demerger of the Merchant Power Undertaking is as follows:

The consideration for the demerger of the Merchant Power Undertaking shall be the issue by the Resulting Company 2 of 1 (One) fully paid-up equity share of the Resulting Company 2 having face value of INR 10 (Indian Rupees Ten) each for every 1 (One) fully paid-up equity share of INR 1 (Indian Rupee One) each of the Demerged Company.

16. The Counsel for the Applicant submits that the equity shares of Demerged Company are listed on BSE and NSE (together referred as the “**Stock Exchanges**”) and has 17,81,268 (Seventeen Lakhs Eighty One Thousand Two Hundred Sixty Eight) equity shareholders as on July 20, 2024. The Listed Debt Securities (*as defined under the Scheme*) of the Demerged Company are listed on the BSE.

17. Pursuant to the Securities Exchange Board of India (“SEBI”) circular SEBI/HO/CFD/DIL1/CIR/P/2020/249 dated December 22, 2020, as amended from time to time (“SEBI Circular”) read with Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”), the Demerged Company had applied to the Stock Exchanges for their observation letter to file the Scheme for sanction before National Company Law Tribunal (“NCLT”) and received observation letter with no adverse observations dated July 31, 2024, from BSE and observation letter with no objection dated July 30, 2024, from NSE respectively, to file the Scheme with the NCLT. The observation letters are attached to the Company Scheme Application for the Applicant Company.

APPLICANT COMPANY / RESULTING COMPANY 2

18. Learned Counsel for the Applicant Company submits that as on October 03, 2024, the Resulting Company 2 has 7 equity shareholders (including 6 nominee shareholders). A meeting of the equity shareholders of the Resulting Company 2 to approve the scheme be dispensed with since, Resulting Company 2 has received consents from all the equity shareholders in the form of affidavits approving the Scheme. The consent affidavits of the equity shareholders of the Resulting Company 2 are annexed to the Company Scheme Application. Accordingly, the requirement to hold a meeting of the equity shareholders of the Resulting Company 2 is dispensed with.
19. Learned Counsel for the Applicant Company submits that there are 2 secured creditors of the Applicant Company having an outstanding amount of around INR 65,50,84,94,137. A meeting of the secured creditors of the Applicant Company be convened and held within 90 days from the date of receipt of the order. The meeting shall be convened through video conferencing, other audio-visual means or in the physical presence of the secured creditors, for the purpose of considering, and, if thought fit, approving with or without modification(s), the Scheme, wherein the secured creditors of the Applicant Company will be able to cast their

votes electronically. In addition to the above, the Applicant Company shall provide facility of remote e-voting to its secured creditors to cast their votes.

20. Learned Counsel for the Applicant Company submits that there are 212 unsecured creditors of the Applicant Company having an outstanding amount of INR 2,35,88,70,909. A meeting of the unsecured creditors of the Applicant Company be convened held within 90 days from the date of receipt of the order. The meeting shall be convened through video conferencing, other audio-visual means or in the physical presence of unsecured creditors, for the purpose of considering, and, if thought fit, approving with or without modification(s), the Scheme, wherein the unsecured creditors of the Applicant Company will be able to cast their votes electronically. In addition to the above, the Applicant Company shall provide facility of remote e-voting to its unsecured creditors to cast their votes.
21. SEPCO being the Creditor of the Applicant Company vehemently objected to the proposed Scheme presented by TSPL before this Court for approval by contending that the Applicant Company owes the Objector, SEPCO, an amount of Rs. 1251 Crores and their claims have not been properly projected in the present Scheme. The Counsel contended that in view of withholding of material information, the present Scheme deserves to be rejected as neither the Creditors nor the Shareholders in the present set of circumstances shall be able to exercise, their right to vote for or against the proposed Scheme. While elaborating his contentions, the Ld. Counsel submitted that in view of Rule 5 of the Companies (Compromise, Arrangement and Amalgamation) Rules 2016, the Tribunal is specifically conferred with the power to dismissed the 1st Motion Petition at the threshold where all the relevant facts are not disclosed by the Applicant as at the stage of First Motion, the Applicant is duty bound to declare all material information. The Ld. Counsel contended that on the contrary in the present case, the Applicants have very conveniently concealed material information from this Hon'ble Tribunal. The Counsel drew our attention to the list of Unsecured Creditors enclosed with the present Scheme by the Applicant certified by VP Garg and Company Chartered Accountants wherein a total debt of Rs. 235 Crores has been shown to be admitted whereas the case of the Objector is that their

admitted, unconditional, and unqualified debt is Rs. 1251 Crores as on 31.10.2023 which has deliberately been excluded without any payment and/or adjudication. The Counsel emphasized that the Board of Directors of TSPL approved the Scheme on 10.10.2023 and on this date of approval of the Scheme, the amount of Rs. 1251 Crores was due to SEPCO even as per TSPL's own record.

22. Strangely, this amount of Rs. 1251 Crores has been shown to be admitted debt towards SEPCO in the list of Creditors bearing TSPL Company Seal, Signatures of two Directors of TSPL and that of the Company Secretary of TSPL as well. The said list of Creditors has also been verified to be correct by an affidavit dated 23.11.2023 by a Director of TSPL.
23. It is pertinent to note that the list of Creditors has also been certified to be true by way of Certificate dated 23.11.2023 issued by the Chartered Accountant of TSPL, i.e. VP Garg and Company Chartered Accounts. All these stated documents have been filed by TSPL in the proceedings before Ld. Regional Director, Ministry of Corporate Affairs, for change of registered office of TSPL. Since all these documents were filed before the Regional Director, the Applicant was duty bound to file the same set of documents before the Court as well.
24. The Counsel further emphasized that TSPL has recognized SEPCO as a Creditor, not just as on October 31, 2023, but in balance sheet dating back to FY 2019-2020. In Balance sheet for FY 2022-23, SEPCO's debt was recognized as "foreign currency exposure" of approx. USD 137 million. The said amount arises from a consent award dated 21.05.2016 passed in favor of SEPCO against TSPL wherein TSPL had agreed to pay an amount of USD 138 million and INR 122 Crores.
25. It is vehemently contended by the Ld. Counsel that TSPL has deliberately filed an incorrect list of Creditors so as to exclude SEPCO from meeting of Creditors. It is further stated that these incorrect financials have been presented by TSPL against provisions of law as TSPL is duty bound to disclose all the facts and withholding this material information is bound to cause tremendous prejudice to the interest of all its Creditors and public at large. Counsel further submitted that had the debt due to SEPCO was considered, the valuation would have been

greatly impacted rather the same could have lead to negative net worth post the demerger.

26. To substantiate his contentions, the Ld. Counsel placed on record the affidavit dated 28.09.2024 filed by Director of TSPL wherein it is stated as under:

“That SEPCO has email dated 30.08.2024 raised an objection to the proposed change of registered office which is not liable to be considered by the Ld. Regional Director as there exists a dispute between the Petitioner Company and SEPCO which is subject to arbitration of Singapore, and the final outcome of the said dispute shall be honored whether it is in favor of the Petitioner Company or otherwise, irrespective of the quantum. Sufficient provisioning shall be made by the Petitioner Company after the outcome of the dispute attains finality if the Petitioner Company is held liable to pay any amount to SEPCO. Therefore, the concerns of SEPCO are addressed as on date

27. The Counsel contended that in view of this, affidavit having been filed by the Director of TSPL, making provisioning of the amount due to SEPCO is bound to affect the shareholders and Creditors’ interest to their prejudice and in view of this affidavit, TSPL is duty bound to inform all the Creditor, Shareholders BSE, NSE and this Hon’ble Court about these correct facts and the concealment of this material information deliberately at the hands of TSPL makes them ineligible for grant of any relief by the Hon’ble Court. The Counsel also relied upon the standalone Financial Statements for the period 01.04.2019 to 31.03.2020 placed on record wherein, it is categorically referred as under (page 175 note A):

“During previous year, the Company entered into minutes of meeting with one of its EPC project contractors for pending liabilities. Basis the agreement with contractor, Rs. 745.95 Crore (previous year Rs. 761.35 Crore) has been classified to non-current liability as this is not payable in next 12 months. Further, the contractor agreed for not charging any interest under the contract. Accordingly, Rs. 98.66 Crore interest liability

was written back, out of which Rs. 70.64 Crores pertaining till March 31.03.2019 was booked under the Income”.

Statements for the period 01.04.2021 to 31.03.2022 stating as under:

“The Company signed minutes of meeting with one of its EPC project contractors for pending liabilities. Basis the agreement with contractor, Rs. 769.19 Crore (previous year Rs. 745.95 Crore) has been classified to non current liability as this is not payable in 12 months. No interest liability exists for the said settlement”

Also, the Financial Statements for the period 01.04.2022 to 31.03.2023 stating as under:

“TSPL had entered a contract with SEPCO for set up of power plant for 1980 MW. While the plant has been commissioned and is in operational certain aspects like ESP modifications are pending to be completed by Vendor. As per the last MoM dated 15th February, 2020 signed with SEPCO, payments would be due post completion of the ESP modification, PG testing and closure of other points. During the current year, it was reviewed that the Company is currently having it's foreign currency exposure w.r.t. SEPCO amounting to USD 137.24 Mn. While no USD payment has been made to SEPCO since FY 2019-20, we were incurring- INR 40 Cr. every year on account of forward premium There is significantly uncertainty in the timing and amount that would finally be settled in respect of SEPCO. Considering there would not be any foreign exchange outgo in next 2 years, it was decided to cancel the forex cover pertaining to project creditor liability in full.

<i>Financial Liabilities</i>		<i>(Rs. In (Crore)</i>
	<i>As at March 31, 2023</i>	<i>As at March 31, 2022</i>

USD	1127.59	1279.91
-----	---------	---------

28. In view of the above, the Counsel contended that the facts projected by the Ld. Counsel before the Court for approval of the 1st Motion are not true and correct and, on this ground, the present Petition deserves to be rejected at the outset.
29. To substantiate his contention, the Counsel also relied upon the judgment of the Hon’ble Supreme Court in the case of “**Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal and another 2021 (6 SCC 366)**” wherein the Hon’ble Court has been pleased to hold as under:

“21.....The natural inference to be drawn from the balance sheet is that the closing balance due to the creditor at the end of the previous year will be carried forward as the opening balance due to him at the beginning of the next year. In each balance sheet there is thus an admission of a subsisting liability to continue the relation of debtor and creditor and a definite representation of a present intention to keep the liability alive until it is lawfully determined by payment or otherwise.....”

30. The Counsel also placed reliance on the judgment **in M/s Mist Direct Sales Private Limited and Unsecured Creditors (CA 10 of 2024)**, wherein it was held as under:

“11.....all relevant material facts, including the latest financial position of the Company, any pending investigations or proceedings, and the effect of these on the Scheme are required to be disclosed to the Stakeholders. The scheme should not result in the oppression of any group which have not been included in the Scheme, but are however, an integral part of the overall project concerned nor should it be prejudicial to the public interest.”

“14. Further it is observed that the petitioner has made only a partial disclosure in its petitioner under Section 230 of the Companies Act,

2013. The full disclosure of all relevant material facts is imperative for a fair and thorough examination of the scheme of compromise and arrangement by the allottees. The absence of complete information, including any pending investigations or proceedings, and their potential impact on stakeholders, undermines the transparency and fairness required in such matters in the interest of the stakeholders for whom the scheme has been proposed. Without full disclosure, this Tribunal also cannot adequately assess whether the scheme is equitable, reasonable, and not prejudicial to any class of stakeholders or the public interest.

“19.Before us is a petitioner filed for sanctioning a scheme of Compromise and Arrangement wherein it is observed that there are many shortcomings which are essential requirements in a first motion petition. The very purpose of taking permission from this Tribunal for convening a meeting is to ensure that the scheme is not prejudicial to the interests of any class of stakeholders involved and that all classes of stakeholders who will be affected by the Scheme have been made to participate in its approval. Most importantly, all relevant material facts any pending investigations or proceedings, and the effect of these on the Scheme are disclosed to all those stakeholders who will decide regarding approval of the scheme. The same is not the case here and therefore this judgment does not render any help to the Petitioner.”

*“24. We are therefore of the view that the Scheme suffers from lack of disclosure of material facts which are essential for the allottees/constituents of the meeting to consider and excludes some class of creditors who are integral to this project and should have a say in the decision making. It is a conditional scheme fraught with too many uncertainties. In the light of the foregoing discussions, the petition stands **dismissed.**”*

31. On the issue of the Applicant being the necessary party who deserve to be allowed to intervene, the Ld. Counsel placed reliance upon the judgment of Hon'ble

NCLT, Kolkata Bench in the case of **Shristi Infrastructure Development Corporation Limited in CP 737 of 2017**, wherein the Hon'ble Court has been pleased to hold as under:

“14. The applicant has made substantial claim against the R1. Thus, the question is whether the claim of the applicant under consideration before the Arbitration Tribunal stand affected by the approval of the scheme in the CP. If it affects necessarily the applicant is an interested party allowed to intervene.”

The Counsel also placed reliance on the para 17 of the aforesaid judgment, wherein it was held as under:

“17. According to him the applicant comes under the purview of contingent creditors as per Indian Accounting Standard and therefore the R1 is obliged to show its liability arise out of SHA in the financial statement and it deliberately not shown in it for avoiding notice under section 230(3) of the Act to the applicant. I find some fore in the above said argument advanced on the side of the applicant.

32. On the other hand, the Ld. Counsel for the Applicant not only strongly opposed the intervention by the Intervenor at this stage but also stated that the Hon'ble Court has very limited right at the time of First Motion and even if the Intervenor is to be allowed to intervene, he should be granted permission at the time of approval of the Scheme as the meeting of shareholders and Creditors is yet to happen. The Counsel relied upon the judgment in the case of **Rainbow Denim v. Rama Petrochemical [(2002) 10 SCC 249]**. It was also emphasized by the Ld. Counsel for the Applicant that the Tribunal is not to examined the merits of the Scheme at the stage of First Motion where the issue is only on holding of meeting of the Creditors / members qua the proposed arrangement and any interference by the Tribunal at this stage is without jurisdiction. Reliance has been placed upon the judgments of Hon'ble NCALT in the matter of **MEL Windmills Private Limited Vs. Minerals Enterprises Private Limited [(2019) SCC OnLine NCLAT 900]**. Reliance was also placed upon the various judgments stating that an

Objector cannot object to a Scheme of Arrangement relying on a disputed claim and the proceedings before the Tribunal cannot be used as a weapon to recover any claims. The Counsel has also relied upon the judgment of the Hon'ble NCLAT in the matter of *Ericsson India Private Limited (Company Appeal No. 148 of 2021)* passed with respect to the issue of the requirements of disclosures. Further, on the issue that the notes to Balance-Sheets have to be read together, the Ld. Counsel has relied on the judgment in the case of the *State of Bihar Vs. M/s Ziqitza Healthcare Limited [2024 SCC Online SC 2553]*.

33. After having considered all the objections raised by the Ld. Counsel for the Parties and perusing the judgments relied upon, it deserves to be clarified at the outset that the Objector, by way of filing the objections, has not sought adjudication or repayment of its debt, nor has dwelled upon the merits of the Scheme. Rather, the Objector has highlighted the procedural non-compliances on the part of the Applicants and the concealment of material facts that would cause prejudice to the interests of the Creditors/Members of the Applicant Company.
34. It is the mandate of law under Section 230 (2)(a) of the Companies Act, 2013, that all the material facts relating to the Company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company have to be disclosed before the Tribunal. In the present case, the Objector has brought to our attention that material information with respect to the pending dues of SEPCO, which was duly reflected in the balance sheets of the Applicant Company since 2019 until the approval of the Scheme by the Directors, have been altered to the prejudice of the Objector. From the perusal of the documents available on record, it is an undisputed position that the Intervenor SEPCO is a Creditor of TSPL. However, TSPL has conveniently excluded SEPCO from the process of consideration and approval of the Scheme by not projecting SEPCO as a Creditor to the extent of Rs. 1251 Crores. This has been done deliberately to defeat SEPCO's rights. SEPCO was listed as an Unsecured Creditor to the extent of Rs. 1251 Crores, which would constitute more than 75% of the Unsecured Debt by value and as a result of the same, the vote by SEPCO

itself would have been against the Scheme, potentially impacting the interest of TSPL. Furthermore, there is merit in the contentions of the Ld. Counsel for the Intervenor with respect to the net worth of TSPL prior to and post demerger of the Scheme. The calculation of net worth bereft of the claim of the Intervenor cannot be stated to be the correct calculation which is bound to prejudice the interest of the Creditors and of Members. The non-disclosure of the amount due to be paid to the Intervenor not only is bound to affect the net worth but also the valuation having been arrived at as while calculating “*Fair Exchange Share Ratio*”, the valuer has not carried out any independent valuation thereby not factoring the dues of Rs. 1251 Crores of SEPCO. These dues would have a great impact on any valuation and are bound to impacting the public interest at large.

35. On the other hand, the Ld. Counsel for the Applicant, TSPL, has vehemently contended that the dues of SEPCO are contingent and subject to the adjudication, the same deserves no consideration at this stage. In this regard, it deserves to be taken note of that since 2019, the dues are duly reflected in the Balance-Sheet of TSPL. At the time of shifting of the registered office on the objection of SEPCO, the Director of TSPL made a statement on oath stating that sufficient provisioning shall be made by the Petitioner Company after the outcome of the dispute attains finality if the Petitioner Company is held liable to pay any amount to SEPCO. In view of the fact that the TSPL is well aware of the huge liability towards SEPCO, they are duty bound to inform the Shareholders and also the Creditor with respect to this liability (Even if contingent) as the same is subsequently bound to affect the interests of the Shareholders and also the Creditors. The concealment of this fact on the part of the TSPL is a matter of grave concern for the Tribunal.
36. Additionally, the timing of the Arbitration Proceedings having been initiated by the Applicant against the SEPCO too cannot be ignored. The amount due to SEPCO arises out of the settlement agreement having been arrived at between the parties in 2016. The said settlement was made binding in terms of the consent award dated 21.05.2016 passed by the Arbitral Tribunal. At the time of approval of the Scheme of TSPL by the Board of Directors on 10.10.2023, SEPCO has been shown as a Creditor on 10.10.2023. SEPCO was sent an email notifying it

as a Creditor about the proposed change in the place of registered office and the SEPCO was called upon to provide a No Objection. The documents submitted before the Ld. Registrar included list of Creditors clearly stating that an amount of Rs. 1251 Crores is payable to SEPCO, there is no condition qualification or caveat attached to the said payment. A certificate by Chartered Accountant certifying this list of Creditors and also the affidavit of Director certifying the list of Creditors was enclosed.

37. It is pertinent to note that till this time, the said amount was not stated to be contingent. It is only once SEPCO submitted its objection before the Regional Directors that TSPL permitted the contracts and this unilateral termination of contract is subsequently reflected in balance-sheet for the Financial Year ended on 31.03.2024 and it is only after this that TSPL had issued a notice of Arbitration on SEPCO on 31.06.2024.
38. Therefore, keeping the totality of circumstances and also gone through the judgments referred by the Ld. Counsel for the Applicant, we deem it appropriate to hold that none of the judgments are relevant to the facts of the instant case as the present one is a case where material facts have not been disclosed by the Applicant Company, violating Section 230 (2)(a) of the Companies Act, 2013, which in our considered opinion is bound to prejudice the public interest at large. It is made clear that the merits of the Scheme proposed by the Applicant has not been gone into and the objections raised by the Objector and considered by the Tribunal are only to the extent of the disclosures which the Applicant Company is required to make in terms of law. Therefore, keeping in view of the facts and circumstances of the present case, we deem it appropriate to reject the Scheme presented by the Applicant under Section 230 of the Companies Act.

Sd/-
Madhu Sinha
Member (T)

Sd/-
Reeta Kohli
Member (J)