

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COURT-IV

20. C.P.(CAA)/2(MB)2024
IN
C.A.(CAA)/189(MB)2023

CORAM:

MS. ANU JAGMOHAN SINGH
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **04.04.2024**

Name of the Party: TCPL Packaging Limited

Section 230-232 of Companies Act, 2013

ORDER

1. Mr. Ajit Singh Tawar, Ld. Counsel for the Petitioner present.
2. Petition Admitted. Petition fixed for hearing and final disposal on **06.06.2024**.
3. The Learned Counsel for the Petitioner Companies states that pursuant to the directions contained in the order dated 6th day of October 2023, passed by this Tribunal in the C.A.(CAA)/189/MB-IV/2023, the meetings of the Equity Shareholders of the First Petitioner Company was dispensed-with in view of the fact that consent affidavits were obtained from all the Equity Shareholders of the First Petitioner Company and for the Second Petitioner Company in view of the fact that the Scheme is a merger between Wholly Owned Subsidiary into its Holding Company and therefore no reconstruction or arrangement is proposed with its shareholders or creditors, it is not required to hold either shareholder's meeting or creditor's meeting or send notices to its shareholders or creditors for approval of the proposed Scheme, in view of ratio laid down by this Tribunal in *CSA No 243 of 2017 in the matter of Housing Development Finance Corporation Limited and by the NCLAT in Ambuja Cements Ltd.*

4. The Learned Counsel for the First Petitioner Company states that pursuant to the directions contained in the order, the meeting of the Secured Creditors of the First Petitioner Company was dispensed-with in view of the fact that 100% No Objection Certificate was obtained from such Secured Creditor(s) of the First Petitioner Company. The meeting of the Unsecured Creditors of the First Petitioner Company was dispensed-with in view of the fact that consent affidavit was obtained from one such unsecured creditor constituting 97% of the balance amount due as on 22nd June 2023 of the First Petitioner Company with a direction to serve notice of application to remaining Unsecured Creditors of the First Petitioner Company as on 22nd June 2023, by Registered Post-AD/ Speed Post and through email (whose email addresses are duly registered with the First Petitioner Company for the purpose of serving such notice), with instructions that they may submit their representation, if any to the Tribunal within a period of 30 days from the date of receipt of such notice, and copy of such representation shall simultaneously be served upon the First Petitioner Company. On 23rd October, 2023, the First Petitioner Company completed the service of notices on its unsecured creditors by speed post and e-mail.
5. The Learned Counsel for the Second Petitioner Company states that pursuant to the directions contained in the order, the meeting of the Secured Creditors of the Second Petitioner Company was dispensed with a direction to serve notice of application to all its Secured Creditors of the Second Petitioner Company as on 22nd June 2023, by Registered Post-AD/ Speed Post and through email (whose email addresses are duly registered with the Second Petitioner Company for the purpose of serving such notice), with instructions that they may submit their representation, if any to the Tribunal within a period of 30 days from the date of receipt of such notice, and copy of such representation shall simultaneously be served upon the Second Petitioner Company. On 27th October, 2023, the Second Petitioner

Company completed the service of notices on its Secured Creditors by speed post and e-mail. The meeting of the Unsecured Creditors of the Second Petitioner Company was dispensed with a direction to serve notice of application to all its Unsecured Creditors of the Second Petitioner Company as on 22nd June 2023, by Registered Post-AD/ Speed Post and through email (whose email addresses are duly registered with the Second Petitioner Company for the purpose of serving such notice), with instructions that they may submit their representation, if any to the Tribunal within a period of 30 days from the date of receipt of such notice, and copy of such representation shall simultaneously be served upon the Second Petitioner Company. On 27th October, 2023, the Second Petitioner Company completed the service of notices on its Unsecured Creditors by speed post and e-mail.

6. The Learned Counsel further submits that the since the proper service of notice could not be effected on few creditors and therefore the Tribunal by order dated 15th January 2024 directed the meeting of Secured and Unsecured Creditors of the Second Petitioner Company and also directed to Issue Notice convening meeting(s) of the Secured and Unsecured Creditors of the Second Petitioner Company and further directed to issue notice of the said meetings at least one month before the respective meeting and directed to issue Statement containing all the particulars as per Section 230(3) of the Companies Act, 2013, and to Advertise the Notice convening said meeting(s) in two newspapers viz “Financial Express” in English and translation thereof in “Navshakti” in Marathi, both circulated in the State of Maharashtra not less than one month before the date fixed for the meeting. The Second Petitioner Company has issued Notice convening meeting along with the statements as per Section 230(3) of the Companies Act, 2013 on all its Secured and Unsecured Creditors via Speed Post and email (to those Secured and Unsecured Creditors whose email addresses are duly registered with the Second Petitioner Company for the purpose of receiving such notices by email), and also published the advertisement in “Financial Express” in English and “Navshakti” in

Marathi both circulated in the State of Maharashtra on 6th day of February, 2024. The Meetings of Secured and Unsecured Creditors of Third Petitioner Company was held on Thursday, 7th March, 2024 at 3.30 P.M. (IST) & Thursday, 7th March, 2024 at 4.30 P.M. (IST) respectively and the requisite quorum was present and the Scheme was approved unanimously without modification by the Secured and Unsecured Creditors present and voting at the respective meeting. The Chairman appointed for the respective meeting of the Secured and Unsecured Creditors of the Second Petitioner Company have filed the respective reports with the Tribunal on 13th Day of March, 2024.

7. Pursuant to the directions contained in the said Order dated 6th October, 2023 made by the National Company Law Tribunal at Mumbai, the list of Performance Guarantee and other contingent liabilities for the First and Second Petitioner Companies were also provided that are annexed to the Company Scheme petition.
8. The Petitioner Companies have served notices upon all the Regulatory Authorities. The Petitioner Companies have annexed the Affidavit of Service to this Company Scheme Petition, providing the proof of service of notices on Secured Creditors by Second Petitioner Company, on all its Unsecured Creditors by the Petitioner Companies and providing service of notices upon all the Regulatory Authorities as mentioned above in the foregoing paragraphs. Further the Second Petitioner Company has filed another Affidavit of Service complying with the directions of the Order dated 15th January 2024 with the Tribunal on 28th day of February 2024.
9. The Petitioner Companies further confirms:
 - i. That there are no litigations pending that have material impact on this Scheme under Income Tax Act, 1961, Companies Act, 2013 / Companies Act, 1956 or proceedings under the Insolvency and Bankruptcy Code, 2016 or any other law in force against the Petitioner Companies.

- ii. That the Petitioner Companies do not have any type of Letters of Credit sanctioned and utilized and there are no Margin Money utilised by any of the Petitioner Companies.
10. The Learned Counsel for the Petitioner Companies submit that, the Company Scheme Petition is filed in consonance with Section 232 read with Section 230 of the Companies Act, 2013 and in terms of the order passed in Company Scheme Application No. C.A.(CAA)/189/MB-IV/2023 by this Tribunal.
 11. At least 10 (ten) days before the date fixed for final hearing, the Petitioner Companies shall publish the joint notice indicating the date of final hearing of the Petition in two leading newspapers one in “**Financial Express**” in English and the translation thereof in “**Navasakti**” in vernacular language, both having wide circulation in the State of Maharashtra, and their respective online editions.
 12. The Petitioner Companies shall host the notice indicating the date of hearing along with the copy of the Scheme on their respective websites, if any.
 13. The Petitioner Companies are further directed to intimate the date of final hearing of Company Scheme Petition to all the Regulatory Authorities, namely:
 - a. Central Government through the office of Regional Director (Western region), Mumbai
 - b. Jurisdictional Registrar of Companies, Maharashtra, Mumbai;
 - c. The Ministry of Corporate Affairs, New Delhi
 - d. Jurisdictional Income Tax Authority within whose jurisdiction the Applicant Company’s assessment are made; and the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e.; Pr. CCIT, Mumbai, Address: - 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in]; and

- e. Jurisdictional GST Authority(s) (proper officer), within whose jurisdiction such companies are assessed to tax under GST law.
14. The Transferor Company is also directed to intimate the date of final hearing of Company Scheme Petition upon the Official Liquidator, pursuant to Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Petitioner Companies may send the notice to above mentioned Regulator Authorities either by Registered Post AD/ Speed Post and by e-mail. The said notice(s) shall contain as statement that *“If no response is received by this Tribunal from the concerned Regulatory Authority, it will be presumed that the said Authorities have no objection to the proposed Scheme”*.
15. The Petitioner Companies shall file an Affidavit of Service and Compliance regarding the directions given by this Tribunal at least 3 (three) days before the date fixed for final hearing and report to this Tribunal that the directions regarding the publication of advertisement of the notice of hearing in the newspapers as well as on the websites of the company, if any have been duly complied with.

Sd/-

ANU JAGMOHAN SINGH
Member (Technical)

/Dubey/

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)