

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Through web-based video conferencing platform)

CA (CAA) No.33/BB/2022
U/s. 230(1), 66 &18 of the Companies Act, 2013
R/w Rule (3) of the Companies (CAA) Rules, 2016 and
Rule (11) of NCLT Rules, 2016

IN THE MATTER OF:

M/s Azim Premji Trustee Company Private Limited
Registered office at: No. 134,
Next to Wipro Corporate Office Doddakannelli,
Sarjapur Road,
Bangalore – 560 035

- Applicant Company

Order delivered on: 19th October, 2022

Coram: 1. Hon'ble Shri. Kishore Vemulapalli, Member (Judicial)
2. Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

Present:

For the Applicant Companies : Shri Saji P. John, Adv

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present First Motion Application is filed by Azim Premji Trustee Company Private Limited (described in short as 'Applicant Company) under Sections 230 of the Companies Act, 2013 r/w Rule 3 of Companies (CAA) Rules, 2016 and Rule 11 of NCLT Rules, 2016 seeking to dispense with convening the meeting of the Equity Shareholders.
2. The Scheme of Arrangement between Azim Premji Trustee Company Private Limited and their Respective Shareholders has been placed on record as Annexure D of the Application.
3. The Applicant Company is a private limited company incorporated under the Companies Act, 1956, with Corporate Identification Number

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U74999KA2009PTC051742. Its registered office at: No. 134, Next to Wipro Corporate Office Doddakannelli, Sarjapur Road, Bangalore – 560 035. The true copies of the Certificate of Incorporation dated 04.12.2009, Memorandum of Association and Articles of Association of the Applicant Company is found attached at Annexure A of the Application. As per the Memorandum of Association, the main objects of Applicant Company is as follows:

- a) *“To undertake the office of and act as trustee, judicial trustee, fiscal agent, representant fiduciary, intermediary, administrator, manager, registrar, paying agent, adviser, agent or attorney of or for, any person or persons, company, corporation, Partnerships, Limited Liability Partnerships, association, institution, and all other natural and artificial persons and entities that may be in existence or that may come into existence in future and generally to undertake, perform and discharge any trusts, or trust agency business, or any office of confidence with or without remuneration”*
- b) *To act as executors, administrators and trustees, and to promote, setup and execute trusts of all kinds including declaring the company itself as a trustee, whether private or public including religious or charitable trusts, and generally to carry on what is usually known as trustee and executor business, and in particular and without limiting the generality of the above, to act as trustees for the holders of intellectual Property as well as moveable and immovable properties and to act as receivers, managers, liquidators, agents, guardians of property, committees of the property, depositaries and treasurers and generally to transact all kinds of trust or managing of fiduciary business.*
- c) *To invest, hold and manage the investable assets of the trust in various types of investable assets on behalf of Charitable as well as Non Charitable organizations in India and Outside India and to offer modern professional management techniques and consultancy for the purpose of achieving trust objectives.”*

4. The authorised share capital of the Company is Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of the Company is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs. 10/- each.

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5. The preamble of the proposed Scheme reads as under:-

“The Composite scheme of arrangement provides for reduction of paid-up share capital of the Company from Rs. 1,00,000 to Nil and conversion of the company from ‘company limited by shares’ to ‘company limited by guarantee without capital’ under section 230 read with Section 66 and section 18 of the Companies Act, 2013 and other applicable provisions to the extent applicable.”

6. The Board of Directors of the Applicant Companies has unanimously approved the Scheme vide respective Board Resolutions dated 07.04.2022 subject to the sanctioning of the same by this Tribunal. The appointed date of the scheme states that the date of issue of fresh certificate of Incorporation by the Registrar of Companies upon the approval of the Scheme by the Hon’ble NCLT. The aforesaid Board Resolutions of the Applicant companies is at Annexure - C of the Application.

7. The instant Application has been filed with prayer for dispensing with the meeting of the Equity Shareholders with the following requirements:

1. *“Dispense with the meeting of the equity shareholders of the Applicant Company under section 230 of the Companies Act, 2013, for the purpose of considering and if thought fit, approving with or without modification(s) the Scheme of Arrangement;*
2. *Pass such further and other orders as may be deemed necessary.”*

8. The Learned Counsel for the Applicant Company has submitted that as per CA Certificate dated 21.04.2022 (Annexure H of the Application) issued by M/s tambakad & goil, Chartered Accountants, the number of equity shareholders of the Company as on 31.12.2021 is 2 (Two). The Applicant Company constituting 100% in shares have approved the Composite Scheme and have consented to dispensing with the meeting of the Equity shareholders of the Company. The consent affidavits dated 22.04.2022 given by equity shareholders of the Company is attached as Annexure H to the Application.

9. The Learned Counsel for the Applicant Company has submitted that as per CA Certificate dated 21.04.2022 (Annexure J of the Application) issued by M/s tambakad & goil, Chartered Accountants, the number of Secured Creditors of the Company as on 31.12.2021 is Nil.

10. The Learned Counsel for the Applicant Company has submitted that as per CA Certificate dated 21.04.2022 (Annexure K of the Application) issued by

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M/s tambakad & goil, Chartered Accountants, the number of Unsecured Creditors of the Company as on 31.12.2021 is Nil.

11. The Learned Counsel for the Applicant Company submits that the Certificates of the auditor has been filed stating that the Accounting Treatment contained in Clause 5 of the scheme is in compliance with the relevant provisions of Companies Act, 2013, and rules made thereunder with reference to the applicable Accounting Standards notified under section 133 of the Companies Act, 2013 and other generally accepted accounting principles, as applicable. The certificate of the Statutory Auditor is attached as Annexure L to the Application.
12. The Learned Counsel for the Applicant Company submits that there are no pending legal proceedings against the Company or its directors under Companies Act, 2013 and Companies Act, 1956 or other statutes. The affidavit issued by the directors of the applicant companies in this regard is attached as Annexure E to the application.
13. The Learned Counsel for the Applicant Company submitted that the company has filed its audited financial statement as on 31.03.2021 and provisional financials as on 31.12.2021. The Audited and Provisional Balance Sheet and financials are found attached as Annexure B and B1 to the Application.
14. The Learned Counsel for the Applicant Company submits that the Scheme does not envisage for corporate debt restructuring but there is reduction of share capital of the Applicant Company pursuant to the Scheme from Rs.1,00,000 to Nil. It is further submitted that the Scheme does not affect the rights and interest of the creditors of the company, and does not contemplate any kind of arrangement with the Creditors of Applicant Company and thereby Corporate Debt Restructuring is not applicable to the Scheme. The affidavit is attached as Annexure F to the Application.
15. The Learned Counsel for the Applicant Company submits that the Directors of the Applicant Company have issued affidavit stating that they are not regulated by any sectorial regulators for which affidavit is attached as Annexure -G. Further, it is stated that notices are to be issued to Regional Director, South eastern region, Ministry of Corporate Affairs, The Registrar of Companies, Karnataka, Ministry of Corporate Affairs and Designated Nodal Officer, Income Tax Department.

16. The Reduction of Share Capital and Conversion of the Company Limited by Shares to Company Limited by Guarantee without share capital is given in Part B & C of the Scheme of Arrangement.
17. Part D Clause 7 of the Scheme states that the Scheme shall not have any adverse impact on the employees of the Company.
18. The petitioners have filed a memo vide dairy no: 3371 dated 04.08.2022 in which the explanation was furnished regarding this Scheme of Arrangement is as under:

“The Scheme of Arrangement contemplated in this Company Application has two components.

1. **Reducing the Paid up Share Capital of Applicant Company to Nil** to enable the conversion to a Company Limited by guarantee as mentioned below: Pursuant to the Scheme, the Equity Share Capital of the Company is reduced from Rs.1,00,000/- consisting of 10,000 equity shares of Rs.10/- each to Nil.

The Company has adopted Table A of Schedule I of the erstwhile Companies Act, 1956 (Table F of Schedule I of new Companies Act, 2013. Article 46 provides for reduction of capital as follows:

Article 46: The Company may, by special resolution, reduce in any manner and with, and subject to, any incident authorized and consent required by law,-

- (a) Its share capital;
- (b) Any capital redemption reserve account; or
- (c) Any share premium account.

Since the Company is proposed to be converted to a Company Limited by guarantee without share capital, 10,000 (Ten Thousand) Equity Shares shall also stand cancelled and necessary accounting treatment as per the applicable Accounting Standards shall be applied for treatment of such reduction of share capital.

This Scheme is being presented under Section 230 of the Act and upon the effectiveness of the Scheme, it shall have the effect of having obtained the sanction/approval of NCLT, pursuant to the provisions

contained in Section 66 of the Act dealing with reduction of capital and all other consequential and incidental compliances as contemplated under the Act.

This is the reason why Section 66 is being relied on in the Cause Title of the Application as well as in the Scheme of Arrangement.

2. Conversion of the Applicant Company from a Company Limited by shares to a Company Limited by Guarantee: After the Reduction of Paid up Share Capital under Section 230 r/w Section 66 as mentioned above the Applicant Company will be converted to a Company Limited by Guarantee.

As on the appointed date, upon sanction of the Scheme, the Company shall be a company limited by guarantee.

The holding thus would stand as follows:

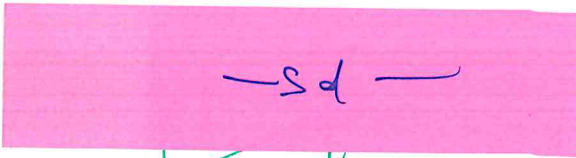
Names of the Members	Percentage	Amount of Guarantee
Azim Hasham Premji	99.99%	99,990
Yasmeen Azim Premji	0.01%	10
Total	100%	1,00,000

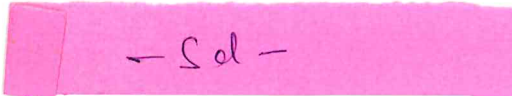
Accordingly, the Memorandum of Association of the Company shall be in the form of Table-B of Schedule I and the Articles of Association of the Company henceforth shall be in the form of Table H of Schedule I of the Companies Act, 2013 or such other forms as applicable with effect from the date of filing of the Order of NCLT with the Registrar of Companies along with amended Memorandum of Association of the Company.

Section 18 of the Companies Act provides for Conversion of a Company from One class to another. This is the reason why Section 18 is being relied on with Section 230 in the Cause Title of the Application as well as the Scheme of Arrangement.”

19. We have heard the learned Counsel for the Applicant Company and have perused the records and the supporting documents/papers filed along with the “Scheme” contemplated by the Applicant Company with the assistance of learned Counsel for the Applicant Company.

20. In view of the above, following directions are issued with respect to dispensation of calling and convening the meeting of Equity Shareholders, Secured Creditors and unsecured creditors of Applicant Company are as follows:
- (a). Since 2 Equity Shareholders of Applicant Company, constituting 100% in shares have given consent to the Scheme, the meeting of the Equity shareholders of the company is dispensed.
 - (b). Since there are no Secured Creditors in the company there is nothing to convene the meeting.
 - (c). Since there are no Unsecured Creditors in the company there is nothing to convene the meeting.
21. In view of the above, the First Motion Application bearing CA (CAA) No. 33/BB/2022 stands allowed, giving liberty to the Applicant Company to file Second Motion Petition with the direction that the Applicant Company shall make specific prayer for sending notice to the (1) Central Government, (2) Registrar of Companies, (3) Jurisdictional Income Tax Authorities by disclosing the PAN numbers of the Applicant Companies in the title of the Second Motion Petition, and (4) Reserve Bank of India.
22. A Copy of this order be supplied to the Learned Counsel for the Applicant Company.


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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)


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(KISHORE VEMULAPALLI)
MEMBER (JUDICIAL)