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IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH

CA (CAA) No. 88/KB/ 2018

In the matter of:

Section 230 to 232 of the Companies Act, 2013 ;

And

In the matter of:

PAHARPUR COOLING TOWERS LIMITED, a company within the meaning of the Companies Act, 2013 and having its registered office at 8/1B, Diamond Harbour Road, Kolkata - 700 027, West Bengal within the aforesaid jurisdiction

... Demerged Company

And

PAHARPUR COOLING TECHNOLOGIES PRIVATE LIMITED, a company incorporated under the Companies Act, 2013 ; and having its registered Office at 8/1B, Diamond Harbour Road, Kolkata - 700 027, West Bengal within the aforesaid jurisdiction

... Resulting Company 1

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And

PAHARPUR BUILDERS PRIVATE LIMITED, a company incorporated under the Companies Act, 2013 ; and having its registered Office at 8/1B, Diamond Harbour Road, Kolkata - 700 027, West Bengal within the aforesaid jurisdiction

... Resulting Company 2

And

PAHARPUR FLEXIBLES PRIVATE LIMITED, a company incorporated under the Companies Act, 2013 ; and having its registered Office at 8/1B, Diamond Harbour Road, Kolkata - 700 027, West Bengal within the aforesaid jurisdiction

... Resulting Company 3

And

1. PAHARPUR COOLING TOWERS LIMITED
2. PAHARPUR COOLING TECHNOLOGIES PRIVATE LIMITED
3. PAHARPUR BUILDERS PRIVATE LIMITED
4. PAHARPUR FLEXIBLES PRIVATE LIMITED

...APPLICANTS

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Coram : Mr. Jinan K.R., Member(Judicial)

For the Applicants:

Mr. DN Sharma, Advocate

Ms. Iram Hassan, Advocate

Date of pronouncement of the order: 09-03-2018

ORDER

Per Jinan K.R.

1. The object of this application is to ultimately obtain sanction of this Tribunal for the Scheme of Arrangement between Paharpur Cooling Towers Limited, Paharpur Cooling Technologies Private Limited, Paharpur Builders Private Limited and Paharpur Flexibles Private Limited, whereby the Cooling Tower Undertaking of Paharpur Cooling Towers Limited shall vest on a slump sale basis with all its assets and liabilities as a going concern with Paharpur Cooling Technologies Private Limited and the Real Estate Undertaking and the Flexible Packaging Undertaking of Paharpur Cooling Towers Limited shall demerge and be transferred to Paharpur Builders Private Limited and Paharpur Flexibles Private Limited respectively, on the terms and conditions fully stated in the said Scheme of Arrangement, a copy whereof is annexed with the Application and marked with "I".

2. It has been stated in the Application that the business of Paharpur Cooling Towers Limited can be divided into five segments (i) Wet Cooling Towers, (ii) Dry Cooling Towers, (iii) Real Estate, (iv) Flexible Packaging and (v) Wind Power Generation.

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3. Each of the businesses carried on by Paharpur Cooling Towers Limited have significant potential for growth. The nature of risk and competition involved in each of these businesses is distinct from one another and consequently each business is capable of attracting different set of investors, strategic partners and other stakeholders.
4. With the objective to have clear focus on each business and for leveraging the strength of each business including attracting investments from private parties, Paharpur Cooling Towers Limited proposes to reorganize and segregate its Wet Cooling Towers Undertaking, Dry Cooling Towers Undertaking, Real Estate Undertaking and Flexible Packaging Undertaking and vesting thereof to Paharpur Cooling Technologies Private Limited, Paharpur Builders Private Limited and Paharpur Flexible Private Limited respectively.
5. The Wind Power Generation Undertaking along with other assets including investments shall continue to remain with Paharpur Cooling Towers Limited.
6. It has been stated in the Application that the proposed restructuring will allow a focused strategy in operations, which would be in the best interest of Paharpur Cooling Towers Limited, its shareholders, creditors and all persons connected with Paharpur Cooling Towers Limited.
7. The proposed transfer/demerger of various undertakings of Paharpur Cooling Towers Limited will unlock value for shareholders, attract investors and provide better flexibility in accessing capital and funds for the respective businesses for facilitating its growth on independent sustainable basis.
8. It has also been stated in the Application that post restructuring activity, Paharpur Cooling Towers Limited shall retain the Wind Power



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Business along with other assets, including investments in various companies, including subsidiaries and associates and the Company will be focusing on the growth and prospect of the said business.

9. In view of the aforesaid, the Board of Directors of the Demerged Company, as well as the Resulting Companies, have considered and proposed the transfer/demerger of the various undertakings and business of the Demerged Company to the Resulting Companies as abovementioned, in order to benefit the stakeholders of both Demerged Company and the respective Resulting Companies.

10. Accordingly, the Boards of Directors of the Companies have formulated the Scheme of Arrangement for the transfer and vesting of the various undertakings and businesses of the Demerged Company to the respective Resulting Companies as abovementioned, pursuant to the provisions of Sections 230 to Section 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013.

11. The respective Boards of Directors of the applicants, by resolution passed unanimously at their respective meetings, had approved the Scheme of Arrangement.

12. The copies of the Board Resolutions of the Demerged Company, the Resulting Company 1, Resulting Company 2 and the Resulting Company 3 are collectively annexed with the Application and marked with letter "J".

13. It has also been stated in the Application that the aggregate assets of the Applicant Companies are more than sufficient to meet all their liabilities and the Scheme of Arrangement will not adversely affect the rights of any of the creditors of the Applicant Companies in any manner whatsoever and due provisions have been made for payment of all the liabilities as and when the same fall due in usual course.

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It has further been stated in the Application that there are no proceedings pending under Sections 210 to 227 of the Companies Act, 2013 against either the Demerged Company, the Resulting Company 1, Resulting Company 2 and the Resulting Company 3.

14. No investigation proceedings are also pending against the Applicant Companies.

15. The valuations of the shares of the Applicant Companies based on which the share entitlement ratio has been arrived at, after careful consideration and after taking into account all the relevant facts, has been carried out and approved by the Chartered Accountant of the Applicant Companies and is bona fide and reasonable, a copy each whereof is annexed with the Application and collectively marked "K".

16. Vide the Supplementary Affidavit dated 16-01-2018 filed by the Applicant Companies, they have submitted all the affidavits of consent of the share holders dispensing the convening and holding of separate meetings of the respective shareholders of the Applicant Companies.

17. The affidavits of consent of all the shareholders dated 27-10-2017 are annexed with the Supplementary Affidavit dated 16-01-2018 filed by the Applicant Companies and are marked collectively with "B".

18. The certificates of the Chartered Accountant certifying the aforesaid class of shareholders are also annexed with the aforesaid Supplementary Affidavit and are marked collectively as "C".

19. In the said Supplementary Affidavit of the Applicants it has been stated that the Applicant Nos. 2, 3 and 4 do not have any creditors and certificates of the Chartered Accountants certifying the same are annexed with the Supplementary Affidavit and are collectively marked with "D".

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20. It has been further stated in the Supplementary Affidavit dated 16-01-2018 that the Applicant No.1 has provided its Corporate Guarantee (no Fund based) for Term Loans and Bank Guarantees facilities availed by its wholly owned subsidiary "Paharpur Cooling Technologies(Sigapore) Pvt. Limited from various Banks and the outstanding in respect of such facilities as on 30-06-2017 is Rs. 84,365.13 lakhs (equivalent to USD 130.75 million). Such Corporate Guarantee is a contingent liability.

21. A copy of the certificate of the Chartered Accountant in above regard is annexed with the Supplementary Affidavit and marked "E".

22. It has been stated in the Supplementary Affidavit dated 16-01-2018 that the Applicant No.1 has both secured and unsecured creditors as on 30-06-2017.

23. A certificate of the Chartered Accountant along with the list of the secured and unsecured creditors are annexed with the Supplementary Affidavit and marked collectively as "F".

24. In view of the facts as stated above, the Applicant Companies have prayed for dispensation of convening and holding of the meetings of the equity shareholders in view of the consent affidavits by the shareholders annexed to the Supplementary Affidavit.

25. Since the Applicant Nos. 2, 3 and 4 do not have any creditors, the Applicant Companies have prayed for directions for convening and holding of the meetings of the secured and the unsecured creditors of the Applicant No.1, namely, Paharpur Cooling Towers Limited.

26. Heard the learned Counsel for the applicants, perused the records, documents annexed to the Application and affidavits filed in the instant

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proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed :

- i) In view of the fact that all the equity shareholders of the Applicant Companies duly consented in writing by way of affidavits, to the proposed Scheme of Arrangement, as certified by the Chartered Accountant, the requirements of convening and holding of separate meetings of the shareholders of the Applicant Companies to ascertain the wishes of the equity shareholders of all the Applicant Companies for the Scheme of Arrangement, are dispensed with ;
- ii) Since there are no creditors of the Applicant Company Nos.2, 3 and 4, as certified by the respective Chartered Accountant, convening and holding of separate meetings of the Secured and the Unsecured creditors of the Applicant Company Nos. 2, 3 and 4, does not arise ;
- iii) The Meeting of the secured creditors of the Applicant No.1, the Demerged Company, namely, Paharpur Cooling Towers Limited, shall be convened and held at the registered Office of the Applicant Company No.1 on Thursday, the 26<sup>th</sup> April, 2018 at 12.30 P.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Arrangement.
- iv) The Meeting of the unsecured creditors of the Applicant No.1, the Demerged Company, namely, Paharpur Cooling Towers Limited, shall be convened and held at the registered Office of the Applicant Company No.1 on Thursday, the <sup>27</sup>26<sup>th</sup> April, 2018 at 12.30 P.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Arrangement.

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- v) That at least 30 (thirty) clear days before the date of the said separate meetings of the secured creditors and the unsecured creditors of the Applicant Company No.1, namely, Paharpur Cooling Towers Limited, an advertisement convening the meetings and stating that copies of the said Scheme of Arrangement and of the Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and a form of proxy can be obtained free of charge at the Registered Office of the concerned applicant company or at the office of their Solicitors & Advocates, M/s. Fox Mondal, be inserted once each in the in the "Financial Express" in the English Daily and "Pratidin", in the Bengali Daily.
- vi) That in addition, at least 30 (thirty) clear days before the separate meetings to be held as aforesaid, a notice convening the said meetings of the secured creditors and the unsecured creditors of Paharpur Cooling Towers Limited at the place and time as aforesaid together with a copy of the said Scheme of Arrangement, a copy of the Statement required to be sent under the Act and the prescribed form of Proxy be sent by registered post or by hand or by courier or by e-mail, both, addressed to each of the secured creditors and the unsecured creditors of the Applicant Company No.1, namely, Paharpur Cooling Towers Limited at their respective or last known addresses.
- vii) To serve the notice as per requirements of sub-section (5) of Section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme of Arrangement and the Statement disclosing necessary details on the Central Government, through the Regional Director,

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Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal; and the concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income-Tax with PAN numbers of the Applicant Companies having jurisdiction over the Applicant Companies and such other relevant sectoral regulators/ authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by hand delivery, through E-Mail and by Speed Post, special messenger or by registered post, both, within 14 days from the date of this order for filing their representation, if any, within 30 days from the date of notice. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the applicants and/or their Advocates. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Arrangement. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 and Companies (Compromises, Arrangements & Arrangement) Rules, 2016 with necessary variations incorporating the directions therein.

- viii) <sup>TIWARI</sup> <sup>9831686686</sup>  
SAILENDRA KUMAR....., (Mobile No. ....), is appointed as the Chairperson for the meetings to be held, as aforesaid at a consolidated remuneration of Rs. 50,000..... (Rupees ₹ ).

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- ix) That the Chairperson appointed for the said meetings or any person authorised by him do issue and send out the notice of the said meetings referred to above.
- x) The quorum for the meetings of the Secured and the Unsecured creditors of Paharpur Cooling Towers Limited be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy.
- xi) That voting by proxy be permitted, provided that a proxy in the prescribed form duly signed by the person(s) entitled to attend and vote at the meeting, is filed with the concerned Applicant Company No. 1 at their Registered Office not later than forty eight hours before the meetings. The Chairperson shall have the power to adjourn the meeting, if necessary, and to conduct the procedure for the adjourned meeting as deemed necessary under the Act.
- xii) That the value of each creditor shall be in accordance with the respective books of the concerned applicant Company No.1 and where entries in the books are disputed, the Chairperson concerned shall determine the value for the purpose of the meeting.
- xiii) That the Chairperson do report to this Court the results of the said meetings within four weeks from the date of the conclusion of the respective meetings and his report shall be verified by his affidavit.



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27. The Application bearing No. CA(CAA) No. 88/KB/2018 is, accordingly, disposed of.

28. Parties and the Chairpersons to act on the order.

29. Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

A green rectangular box containing the handwritten signature 'Sd' in blue ink.

(Jinan K.R.)  
Member(Judicial)

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