

THE NATIONAL COMPANY LAW TRIBUNAL, COURT-V, NEW DELHI

Company Application No. **CA (CAA) 75 (ND) of 2020**

Under Sections **230-232** and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

In the Matter of:

QUICKCALLS PVT. LTD,

Having its registered office at:-
C-61/2nd Floor, Arjun Nagar, Behind B-7,
Safdarjung Enclave,
New Delhi-110029

Applicant No. 1

AND

BHILWARA TELENET SERVICES PVT. LTD,

Having its registered office at:-
C-61/2nd Floor, Arjun Nagar, Behind B-7,
Safdarjung Enclave,
New Delhi-110029

Applicant No. 2

AND

SMARTALK PVT. LTD,

Having its registered office at:-
C-61/2nd Floor, Arjun Nagar, Behind B-7,
Safdarjung Enclave,
New Delhi-110029

Applicant No. 3

AND

PROCALL PVT. LTD,

Having its registered office at:-
C-61/2nd Floor, Arjun Nagar, Behind B-7,
Safdarjung Enclave,
New Delhi-110029

Applicant No. 4





AND

ARRAY TEAM CALL PVT. LTD,

Having its registered office at:-
1005, Plot No.7, Roots Tower,
Laxmi Nagar District Center,
New Delhi-110092

Applicant No. 5

Order delivered on:- 14.07.2021

Coram:-

Hon'ble Abhi Ranjan Kumar Sinha, Member (J)

Hon'ble K.K. Vohra, Member (T)

Present:-

For the Applicant: Mr. Vikrant Rohilla, Advocate

ORAL ORDER BY THE BENCH
(DICTATED IN OPEN TRIBUNAL)

1. This matter was earlier heard before the Bench comprising of Sh. Abni Ranjan Kumar Sinha, Member (Judicial) and Sh. K. K. Vohra, Member (Technical), NCLT, New Delhi.
2. Both the Members differ on certain points and on the basis of that, the matter was referred to the Hon'ble Acting President, NCLT, New Delhi under the provision of Section 419 (5) of the Companies Act, 2013 for constituting a larger bench to decide the issue in question..
3. The Hon'ble Acting President, NCLT, New Delhi instead of referring the matter to the third member, himself decided the matter and passed the following order with the main order:-

“In view thereby, I hereby agree with the view taken by Shri K. K. Vohra, Hon'ble Member (Technical) holding that NCLT cannot dispense with holding meetings under Section 230 (1) of the Companies Act, 2013.”



4. Hence, the order passed by the majority will prevail.
5. The orders dated 06.10.2020 passed by the Bench comprising of Sh. K. K. Vohra, Member (Technical) and Sh. Abni Ranjan Kumar Sinha, Member (Judicial), are being annexed herewith as **Annexure - A & B** respectively.
6. The order dated 31.05.2021 passed by Hon'ble Acting President, NCLT New Delhi is being annexed herewith as **Annexure - C**; all three orders (Annexures - A, B & C) shall form part of this order.
7. The petitioners are directed to convene the meeting of the shareholders on 31/08/2021, as per the directions given in the order passed by Sh. K.K. Vohra, Member (Technical) on 06.10.2020 (Annexure - A), at the place, shown in the amended Memo of Parties, through the Video Conferencing.
8. The petition is fixed for hearing on **20.09.2021**.

Sd/-
(K.K. VOHRA)
MEMBER (T)

Sd/-
(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

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U/S 230-232 and other provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

In the Matter of:

QUICKCALLS PVT. LTD,
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Applicant No. 1

AND

BHILWARA TELENET SERVICES PVT. LTD,
Essel House, B-IO, Lawrence Rd, Indl Area, N Delhi -35

Applicant No. 2

AND

SMARTALK PVT. LTD,
Essel House, B-IO, Lawrence Rd, Indl Area, N Delhi -35

Applicant No. 3

AND

PROCALL PVT. LTD,
Essel House, B-IO, Lawrence Rd, Indl Area, N Delhi -35

Applicant No. 4

AND

ARRAY TEAM CALL PVT. LTD,
1005, Plot 7, Roots Tower, Laxmi Nagar Dist Center, N Delhi-110092

Applicant No. 5

Order Delivered on: 06.10.2020

Coram:

Hon'ble Abni Ranjan Kumar Sinha, Member (J)

Hon'ble K.K. Vohra, Member (T)

Present:

For the Applicant: Mr. Vikrant, Advocate

ORDER

Per: K.K. Vohra, Member (T)

1. This is an Application filed jointly by the Applicant Companies (Cos) named above under section 230-232 of Companies Act, 2013 (the Act)

and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Arrangement. The said Scheme is also annexed as Annexure "A-1" to the Application. The Applicants above named have prayed for dispensation of separate meetings of the (a) Equity Shareholders of the Applicant Companies (Cos); (b) Secured Creditors of the Applicant Cos; and (c) the Unsecured Creditors of the Applicant Cos, for the purposes of consideration and approval of the composite Scheme of arrangement in the nature of demerger and amalgamation (Scheme) among the Applicant Cos and their respective Shareholders.

2. The proposed Scheme provides for a) the demerger / hive off respective Public Mobile Radio Trunking Service (PMRTS) Divisions of Applicant N. 1 to 4 and merging/ vesting the same with Applicant No. 5; and b) consequent to the demerger and vesting of the respective PMRTS Divisions, amalgamation of Applicants No. 1 to 3 with Applicant No. 4.
3. Affidavits in support of the above Application sworn for and on behalf of the Applicant Cos by Mr. Pushkar Dutt Bansal for Applicant nos. 1 to 4 and Mr. Gaurav Kumar for Applicant no. 5, have been filed, being the Authorized Signatories. It is represented that a Joint Application filed by the Applicants is maintainable in view of Rule 3(2) of the Rules.
4. The Applicants have furnished the details of the Shareholders, Secured Creditors and Unsecured Creditors as follow:

S. No.	Company	Shareholders	Secured Creditors	Unsecured Creditors
1.	Applicant No.1	03	NIL	06
2.	Applicant No. 2	03	NIL	05
3.	Applicant No.3	03	NIL	03
4.	Applicant No.4	02	NIL	06
5.	Applicant No.5	02	NIL	NIL

5. The Applicant Cos contend that all the Equity Shareholders have given their consent for the Scheme and necessary affidavits have been filed and seek dispensation from convening and conducting the meetings of the Shareholders. The Applicant Cos plead that there is no need to conduct meetings of the Secured Creditors as all the Applicant Cos have 'NIL' Secured Creditors. In relation to Applicant Cos No. 1 to 4, the consent affidavits of all the Unsecured Creditors of the Cos in favour of the Scheme have been filed. The Applicant Cos further plead that there

is no need to conduct meeting of the Unsecured Creditor of Applicant no.5 as there are 'NIL' Unsecured Creditors in the Co.

6. Details of the capital structure of the Cos are given as follow:

S. No.	Company	Date of Incorporation	Authorized Share Capital (Rs)	Issued, paid up, subscribed share cap (Rs)	CIN No.
1.	Applicant No. 1	03.01.1995	Rs. 6,00,00,000 divided into 60,00,000 Equity shares of Rs. 10 each	Rs. 5,21,65,280 -52,16,528 Equity shares of Rs. 10 each	U748 99DL 1995 PTC 063989
2.	Applicant No. 2	02.01.1995	Rs. 5,00,00,000 -50,00,000 Equity shares of Rs. 10 each	Rs.4,47,26,270-44,72,627 Equity shares of Rs. 10 each	U74899DL 1995PTC0 63954
3.	Applicant No. 3	03.01.1995	Rs. 7,00,00,000 - 70,00,000 Equity shares of Rs. 10/- each	Rs.5,21,65,570-52,16,557Equity shares of Rs. 10 each	U74899DL 1995PTC0 63990
4.	Applicant No. 4	03.01.1995	Rs. 15,00,00,000-1,50,00,000 Equity shares of Rs. 10 each	Rs.10,96,08,000 -1,09,60,800 Equity shares of Rs. 10 each	U74899DL 1995PTC0 63992
5.	Applicant No. 5	20.01.2017	Rs.1,00,000-10,000 Eq shares of Rs. 10 each	Rs.1,00,000-10,000 Eq shares of Rs. 10 each	U74999DL 2017PTC 310866

7. All the Applicants have filed their respective Memorandum and Articles of Association and Audited Annual Accounts for the year ended 31.03.2019.
8. The Boards of Directors of the Applicant Cos have unanimously approved the proposed Scheme on 06.01.2020 and copies of resolutions passed thereon have been placed on record.
9. The Applicant Cos have stated that no investigation proceedings have been instituted or are pending in relation to any of the Applicant Cos under Sec 235 to 251 of the Companies Act, 1956 or under Sec 210-227 of the Act.
10. The Applicant Cos have, in pursuance of the proviso to Sec 230 (7) and Section 232 (3) of the Act, filed the certificates dated 06.01.2020 of the

respective Company's Auditors in relation to compliance with the Accounting Standards under section 133 of the Act.

11. The Valuation Report dated 04.01.2020 (page 757-760, Vol IV) in respect of share valuation and exchange ratio does not give the details of method used and calculation for share valuation. The Applicants are directed to file complete Valuation Report with the second motion petition.

12. A prayer has been made for dispensation from holding and convening Shareholder meetings of the Applicant Cos on the ground that the Shareholders have given their written consent in favour of the Scheme. **The applicants have made an alternate prayer for issuance of directions for convening of meetings of the Shareholders of the applicant Cos (Page 99 onwards of Paper book).**

Heard the submissions of the Ld. Counsel for the Applicant Cos.

13. Hon'ble NCLAT in the matter of *Ambee Conbuild Private Limited*, Company Appeal (AT) 253 of 2018 vide order dated 29.08.2018 has held as follows:

"...First Motion Application itself makes alternative prayers of dispensing or alternatively calling the meetings and the NCLT has granted the alternative prayer, reading the First Motion as a whole, to call Meeting of preferential shareholders, fault cannot be found. Even if the Affidavits are taken, it would still be discretion of NCLT looking to the nature of the litigation to take a decision and it can still direct calling for meeting to be held of a particular class of shareholders"

14. The relevant part of **Sec 230** of the Act is reproduced below:

*"(1) Where a compromise or arrangement is proposed—
(a) between a company and its creditors or any class of them; or
(b) between a company and its members or any class of them,*

the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator [appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be,] order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

.....

(9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement."

Sec 230 (9) does not refer to dispensation of meetings of

Shareholders even if consent of Shareholders has been obtained.

15. The need of holding Shareholder meetings needs to be considered. A three Member Bench (first two Members had taken opposite views on the subject, necessitating reference to the third Member) in the case of CA No.11/2017 of NCLT, Kolkata had considered the aspect of meeting of the Shareholders in their decision on 17th May, 2017. This was referred in Hon'ble NCLAT decision dated 19th Aug, 2019 in Co Appeal (AT-No. 180 of 2019) wherein, among other things, NCLAT had referred back the case to Chandigarh Bench of NCLT. NCLAT did not give any decision that Shareholders' meetings should be dispensed with. Further, the spirit of NCLAT decision was that NCLT Benches should give due consideration to the settled position of law and decisions of Coordinate Benches.
16. In the recent times, it has come to our notice that Special Bench of NCLT New Delhi vide order dated 19th June, 2020 in the matter of *Lifestyle Magazines Pvt Ltd and Ors., CA. CAA. 40 (ND)/2019* expressed the view that the meetings of the Shareholders should be convened in view of the mandatory provisions of the Act. The same view was held by Principal Bench of NCLT in *Jachana Estate Pvt Ltd and Ors CA.CAA. 81(PB) 2019* in which directions were issued on 15th May, 2020 for convening of meetings.
17. Keeping in view the spirit of NCLAT decision referred to above, regarding due consideration to the decisions of the Coordinate Benches and in view of the dispensation from holding meetings of Creditors only mentioned in Section 230(9) of the Act, it is appropriate that these facts should be given due consideration.
18. Further, **Rule 5** of the Rules envisages that:
"Directions at hearing of the application. – Upon hearing the application under sub-section (1) of section 230 of the Act, the Tribunal shall, unless it thinks fit for any reason to dismiss the application, give such directions as it may think necessary in respect of the following matters:-
(a) *determining the class or classes of creditors or of members whose meeting or meetings have to be held for considering the proposed compromise or arrangement; or dispensing with the meeting or meetings for any class or classes of creditors in terms of sub-section (9) of section 230*"

The Rule does not provide for any kind of dispensation for meetings of Shareholders. The Rule specifically refers back to the Act.

19. It may be appropriate to refer the decision reported in the case of *Nathi Devi v. Radha Devi Gupta* 2005 (2) SCC 271, wherein Hon'ble **Supreme Court** in Para 14 of the judgment held that:

"It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors."

Further, Hon'ble **Supreme Court** in the case of *CIT Vs. Pawan Kumar Laddha*, (2010) 13 SCC page 294 has laid down that *"The Courts have to be careful in reading into the Act such dis-enabling provisions as that would tantamount to judicial legislation which the Courts must eschew..."*

It is specifically mentioned in Section 230 (9) of the Act that meetings can be dispensed in case of Creditors. Sec 230 (1) of the Act refers to meetings of Shareholders and Creditors. In view of this, there is no option but to hold that meetings of Shareholders should be convened. The principle about the legislative intent by Apex Court has also been held by this bench in the case of *G Trans Logistics (India) Private Limited V/s Emtex Engineering Pvt Ltd.*, (IB) 1093(ND)/2018.

20. The inherent power of the Tribunal as provided under Rule 11 of the NCLT Rules, 2016, can be exercised in order to meet the ends of justice and to prevent any abuse of process of the Tribunal. When the Act [S 230(9)] expressly provided dispensation in respect of one class of stakeholders and did not mention about other class of stakeholders, we need cautions in dealing with dispensation of such other class. Rule 24 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) has also been examined which says that the Tribunal can dispense any procedure mentioned in Rules except specifically provided in the Act. The order for convening meetings of Shareholders are passed in terms of the provisions of Section 230 of the Act. The liberty under Rule 24 can be exercised in relation to the Rules only.
21. Therefore, in light of statutory provisions of Section 230 of the Act, it is appropriate that meetings of Shareholders are not dispensed with in the present application. In respect of Secured Creditors, since there is no

Secured Creditor in any of the Applicant Cos, the prayer for dispensation is allowed. In relation to the Unsecured Creditors, the Applicant no.5 has no Unsecured Creditor and all the Unsecured Creditors of Applicant no.1 to 4 have given their consent affidavits in favour of the Scheme; hence the prayer for dispensation is allowed.

22. Following directions are issued with respect to calling, convening and holding of the meetings:

A) Applicant CoNo.1:

(i) With respect to Equity Shareholders:

The Meeting of the Shareholders shall be convened on 20.11.2020 at 10:00 am at registered office of the Applicant No. 5 at 1005, Plot 7, Roots Tower, Laxmi Nagar Dist Center, N Delhi-110092. The quorum of the meeting shall be 3 in number.

(ii) With respect to Secured Creditors:

Since it is represented that there are no Secured Creditors, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented that all the Unsecured Creditors have given consent affidavits in favour of the Scheme, the requirement of convening of their meeting is dispensed with.

B) Applicant Company No. 2:

(i) With respect to Equity Shareholders:

The Meeting of the Shareholders shall be convened on 20.11.2020 at 11:00 am at registered office of the Applicant No. 5 at 1005, Plot 7, Roots Tower, Laxmi Nagar Dist Center, N Delhi-110092. The quorum of the meeting shall be 3 in number.

(ii) With respect to Secured Creditors:

Since it is represented that there are no Secured Creditors, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented that all the Unsecured Creditors have given consent affidavits in favour of the Scheme, the requirement of convening of their meeting is dispensed with.

C) Applicant Co No. 3:

(i) With respect to Equity Shareholders:

The Meeting of the Shareholders shall be convened on 20.11.2020 at 12:00 pm at registered office of the Applicant No. 5 at 1005, Plot 7, Roots Tower, Laxmi Nagar Dist Center, N Delhi-110092. The quorum of the meeting shall be 3 in number.

(ii) With respect to Secured Creditors:

Since it is represented that there are no Secured Creditors, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented that all the Unsecured Creditors have given consent affidavits in favour of the Scheme, the requirement of convening of their meeting is dispensed with.

D) Applicant Co No. 4:

(i) With respect to Equity Shareholders:

The Meeting of the Shareholders shall be convened on 20.11.2020 at 01:00 pm at registered office of the Applicant No. 5 at 1005, Plot 7, Roots Tower, Laxmi Nagar Dist Center, N Delhi-110092. The quorum of the meeting shall be 2 in number.

(ii) With respect to Secured Creditors:

Since, it is represented that there are no Secured Creditors, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented that all the Unsecured Creditors have given consent affidavits in favour of the Scheme, the requirement of convening of their meeting is dispensed with.

E) Applicant Co No. 5:

(i) With respect to Equity Shareholders:

The Meeting of the Shareholders shall be convened on 20.11.2020 at 03:00 pm at registered office of the Applicant No. 5 at 1005, Plot 7, Roots Tower, Laxmi Nagar Dist Center, N Delhi-110092. The quorum of the meeting shall be 2 in number.

(ii) With respect to Secured Creditors:

Since, it is represented that there are no Secured Creditors, the necessity of convening a meeting does not arise.



(iii) With respect to Unsecured Creditors:

Since, it is represented that there is no Unsecured Creditor, the necessity of convening a meeting does not arise.

23. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be applicable for the respective meetings of the Applicant Cos under the Act and Rules framed there under. Applicant Cos may organise the meetings through Video Conferencing with remote e-voting facility, in strict compliance with the guidelines issued by the MCA in this regard.
24. Mr. Gulshan Gaba, CA (cagulshangaba@yahoo.com) is appointed as the Chairperson and Mr.Pawan K. Goel (pawankgoel1@gmail.com) is appointed as Scrutinizer for the aforementioned meetings to be convened.
25. In case the quorum as noted above for the above meetings are not present at the meetings, the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum, the valid proxies shall also be considered, if the proxy in the prescribed Form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the Applicant Cos at least 48 hours before the meetings. The Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained.
26. The fee of the Chairperson for the aforesaid meetings shall be Rs. 50,000. The fee of the Scrutinizer shall be Rs. 40,000. These fees will be in addition to incidental expenses. The Chairpersons will file their reports within a week from the date of holding of the meetings.
27. Individual notices of the said meetings shall be sent by the Applicant Companies through speed post and e-mail, 30 days in advance of the date of meetings, indicating the day, date, place and the time, together with a copy of Scheme, copy of explanatory statement, required to be sent under the Act. The prescribed Form of proxy shall also be sent, along with any other document as may be prescribed under the Act or Rules.
28. The Applicant Cos shall publish advertisement at least 30 days before the date of aforesaid meetings, indicating the day, date, the place and time as aforesaid, to be published in Delhi editions of 'Business Standard' both English and Hindi stating the copies of Scheme, the

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explanatory statement required to be furnished pursuant to Section 230 of the Act and the Form of proxy shall be provided free of charge at the registered offices of the Applicant Companies.

29. The authorized representative/s of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.
30. In addition to the public notice, the Petitioner Cos shall serve the notice of the Petition by all modes (Email, Speed Post etc.) on the following Authorities namely,
- Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryavaran Bhavan, CGO Complex, New Delhi-110003;
 - Registrar of Companies, MCA, 4th Floor, IFCI Tower, 61 Nehru place, New Delhi-110019;
 - Income Tax Dept, at DCIT (HC Cell), 428, Lawyer's Chamber, Block 1, Delhi High Court, N Delhi-110001;
 - Official Liquidator attached to the HC at Lok Nayak Bhavan, 8th Floor, Khan Market, New Delhi 110001;
 - Ministry of Communications, through Department of Telecommunications at Sanchar Bhawan, 20 Ashoka Road, New Delhi 110001; and
 - Such other Sectoral Regulatory Authorities who are likely to be affected by the Scheme within 7 days from the date of this order. The said authorities are directed to send their representations if any, within 30 days from the date of receipt of such notice as per the provisions of sub-section 5 of Section 230 of the Act.
31. All the aforesaid directions (including submission of complete Share Valuation Report as per para 11 above) are to be complied with strictly in accordance with the applicable law including Forms and Formats contained in the Rules as well as the provisions of the Act by the Applicants.
32. The Application stands allowed on the aforesaid terms.

-Sd-

(K. K. VOHRA)
MEMBER (T)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

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Under Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

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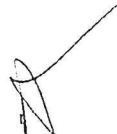
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Applicant No. 4

AND

ARRAY TEAM CALL PVT. LTD,
1005, Plot No.7, Roots Tower,
Laxmi Nagar District Center,
110092..

Applicant No. 5



CORAM:

Hon'ble Abni Ranjan Kumar Sinha, Member (J)

Hon'ble K.K. Vohra, Member (T)

Present:

For the Applicant: Mr. Vikrant for applicant, Mr. Shankari for OL & RD

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. I have had the opportunity to go through the order prepared by the Hon'ble Technical (Member), NCLT, Bench-V New Delhi.
2. With due respect and humility, I agree with the order, prepared by Hon'ble Technical (Member), except the finding given by him on the point of convening the meeting of the shareholder in para 13, 15, 16, 17, 18,20 and 21 of the order.
3. Hon'ble Technical (Member) in para 13 referred the decision of Hon'ble NCLAT in the matter of *Ambee Conbuild Private Limited*, Company Appeal (AT) 253 of 2018 in which Hon'ble NCLAT vide order dated 29.08.2018 has held as follows:
"...First Motion Application itself makes alternative prayers of dispensing or alternatively calling the meetings and the NCLT has granted the alternative prayer, reading the First Motion as a whole, to call Meeting of preferential shareholders, fault cannot be found. Even if the Affidavits are taken, it would still be discretion of NCLT looking to the nature of the litigation to take a decision and it can still direct calling for meeting to be held of a particular class of shareholders".
4. I have gone through the aforesaid decision and I find, in that case vide order dt.17/11/2017, NCLT, Delhi Bench, dispensed with the convening the meeting of equity shareholders and unsecured creditor of all the Companies, but directed to convene meeting of preference shareholders on the ground that when the order dt. 17/11/2017 was passed , no prayer was made for dispensation of the



meeting of preference shareholders in the main application and so, though the Tribunal dispensed with the convening of meeting of equity shareholders but directed to convene the meeting of preference shareholders and subsequently by filing an application prayer was made to dispense with the convening the meeting of preference shareholders, which was rejected by the NCLT New Delhi and against that the aforesaid Appeal was filed. Therefore in the aforesaid Appeal the issue was not power of Tribunal to dispense with the convening of equity shareholders, because that prayer has already been allowed by the NCLT, Delhi Bench. Hence in my opinion, this decision is in favour of dispensed with the meeting of equity shareholders and not against this.

5. I further noticed that in para 15 and 17 of the order Hon'ble Technical Member referred the decision of three members Bench of NCLT Calcutta Bench in CA-11/2017 decided on 14.03.2017 and the decision of Hon'ble NCLAT dated 19.08.2019 in Company Appeal (AT) No. 180/2019, while discussing the decision of Hon'ble NCLAT in para 15, he observed that "*NCLAT did not give any decision that the shareholders meeting should be dispensed with. Further, the spirit of NCLAT decision was that the NCLAT Benches should give due consideration to decision of the co-ordinated benches*" and in para 16 of the Judgement, Hon'ble Technical (Member) considered the Division Bench decision of Special Bench *NCLT New Delhi decided on 19.06.2020 in the matter of Lifestyle Magazines Pvt Ltd and Ors, in CA. CAA. 40 (ND)/2019 and decision of Hon'ble Principal Bench of NCLT New Delhi in the case of Jachana Estate Private Limited and Ors. CA. CAA. 81(PB) 2019 decided on 15.05.2020* and in para 17, Hon'ble Technical (Member) held that "Keeping in view the spirit of NCLAT decision referred to above, regarding due consideration to the decisions of the Coordinate Benches and in view of the dispensation from holding meetings of Creditors only mentioned in Section 230(9) of the Act, it is appropriate that these facts should be given due consideration." And on the basis of these two decisions and after discussing the Rule 11 of the NCLT Rules and Rule



24 and Rule 5(a) of Companies (Compromise, Arrangement and Amalgamation) Rules, 2016 direct the company to convene the meeting of the shareholders.

6. I further noticed that the two earlier decisions, which have been decided by this Bench i.e. *Yahoo Properties Private Limited and others in CA(CAA) No. 57/2020 and Alankit Associate Pvt Ltd and Others in CA(CAA) No. 60/2020*, in these two decisions, this Bench had applied the principle laid down by the Hon'ble Principal Bench of NCLT New Delhi in the case of Jachana Estate Private Limited and Ors. CA. CAA. 81(PB) 2019 and special Bench of NCLT New Delhi vide order dated 19.06.2020 in matter of Lifestyle Magazines Pvt Ltd and Ors, CA. CAA. 40 (ND)/2019.
7. At this juncture, I would also like to mention this fact though the decision of NCLT Calcutta Bench has been referred, in para 15 of the order but the ratio decided by the NCLT Calcutta Bench in CA-11/2017 has not been discussed by the Hon'ble Technical (Member) that is the reason, I would like to discuss the order of Full Bench of Calcutta NCLT on this particular subject in CA No. 11 of 2017 connected with CA No. 896/2016 as well as the decision of the Hon'ble NCLAT in Company Appeal (AT) No. 180 of 2019.
8. At this juncture, I would like to refer the finding given by Hon'ble NCLAT in para 8 and 9 held that "Keeping in view the foregoing and all relevant considerations as also the settled law on the subject, the impugned order falling within the purview of per incuriam cannot be supported. The Tribunal should have applied its mind in the light of judicial precedents brought to its notice by way of an affidavit, and in the event of the views expressed by the Coordinate or Larger Benches being squarely applicable, followed the same. Such application of mind being abysmally absent, the impugned order is unsustainable and has to be set aside to the extent it relates to directions for convening of the meetings of Unsecured Creditors of



Appellant No. 4 and the meetings of the Equity Shareholders,
Secured and Unsecured Creditors of Appellant No.5.

9. The appeal is allowed and the impugned order is set aside to the extent indicated here in above and directions passed thereunder. The matter is remanded to the Tribunal for fresh consideration of the first joint motion”.
10. The Hon'ble NCLAT in that appeal held that the impugned order falling within the purview of per incuriam cannot be supported, therefore, set aside the order, remanded the matter to the NCLT Chandigarh to give the finding in the light of view expressed by the Co-ordinate or Larger Benches referred in the Judgement passed by the Hon,ble NCLAT and not the other co-ordinate Bench as referred by the Honble Member Technical in the order.
11. At this juncture, I would like to mention this fact that the decision of the NCLT Calcutta Bench has not been discussed. Admittedly, all the decisions referred by the Hon'ble Technical (Member) in para 16 and the two decisions, which I have referred in the aforementioned paras, the decision of the Hon'ble NCLT Calcutta Bench has not been discussed, and all these four are decided by the Division Bench, whereas the decision of Hon'ble NCLT Calcutta Bench is decided by the three Members Bench i.e. Full Bench, so, the judgment of the NCLT Calcutta Bench given by the larger bench, whereas all other judgments are given by the smaller bench, therefore, at this juncture, I would like to formulate the following points:-

(i). Ratio decided in a case is binding or not ?

(ii). The Judgement of the larger bench on the same point is binding upon the smaller bench or not ?

12. So far the ratio is concerned, at this juncture, I would like to refer the decision of Hon'ble Supreme Court in the case of *Arun Kumar Agarwal Vs. State of Madhya Pradesh and Others decided on 02.09.2011 reported as MANU/SC/1011/2011, the Hon'ble Supreme Court in*



para 30 of the Judgment, after quoting the decision of Girnar Traders Vs. State of Maharashtra reported as MANU/SC/3521/2007 : (2007) 7 SCC 555 held that “Hence, in light of the aforementioned judicial pronouncements, which have well settled the proposition that only the ratio decidendi can act as the binding or authoritative precedent, it is clear that the reliance placed on mere general observations or casual expressions of the Court, is not of much avail to the Respondents”.

13. At this juncture, I would like to refer the issue which was before the Full Bench of the NCLT Calcutta Bench i.e. “whether the Tribunal has power to grant dispensation of the shareholders meeting regarding the proposed scheme of amalgamation where all the shareholders have given their consent, whereas the Companies Act 2013 has authorised only for the dispensation of the meeting of the creditors where creditors having at least 90% value agreed and confirmed by way of an affidavit scheme of compromise or arrangement?”
14. The aforesaid issue was considered by the Division Bench of the Hon’ble NCLT Calcutta Bench and when there was difference in opinion in the finding given by the Two Hon’ble Members, thereafter, the matter was referred under Section 419(5) of the Companies Act, 2013 to the Hon’ble President NCLT New Delhi and Hon’ble President had referred the matter to the third member, who after considering the matter supported the view of one of the member, therefore, a Bench consisting of three Members gives the findings in affirmative by holding that the Tribunal has power to grant dispensation of the shareholders meeting regarding the proposed scheme of amalgamation where all the shareholders have given their consent and accordingly dispensed with convening the shareholders meeting regarding the proposed scheme of amalgamation.
15. When I shall consider the issue involved in the case in hand in the light of decision of the NCLT Calcutta Bench then I find, Calcutta Bench



has already discussed the provision contained under Section 230(9) of the Companies Act, 2013, as well as Rule 11 of the NCLT Rules and Rule 24 and Rule 5(a) of Companies (Compromise, Arrangement and Amalgamation) Rules, 2016 and dispense with the convening the meeting of shareholders, whereas Hon'ble Technical (Member) in this order has also considered the aforesaid provisions and decision of Hon'ble NCLT Calcutta Bench as well as decisions of Hon'ble NCLAT and on the basis of that, he refused to dispense with the calling of the meeting of the shareholders and directed the company to convene the meeting of the shareholders.

16. As I have already discussed the binding nature of principle of ratio and the Hon'ble Apex Court in the catena of the decisions including the decision, which I have referred in the aforementioned para held that the ratio decided by the Coordinate bench is binding. Hence, I find and hold ratio decided by Full Bench Calcutta is binding. Accordingly, point no.1 is decided in affirmative.
17. Now, the second question is whether the decision given by the larger bench is binding upon the smaller bench or not?
18. At this juncture, I would like to refer the decision of Hon'ble Supreme Court decided on 06.12.2019 in the case of Unicorn Industries Vs. Union of India and Others reported as (2020) 3 SCC 492, MANU/SC/1683/2019, the Hon'ble Supreme Court in this case while considering the issue regarding the binding nature of the decision of the larger bench on the smaller bench in para 42 of the Judgement held that "***The decision of larger bench is binding on the smaller bench has been held by this Court in several decisions such as Mahanagar Railway Vendors' Union v. Union of India and Ors. (1994) Suppl. 1 SCC 609, State of Maharashtra and Ors. v. Mana Adim Jamat Mandal MANU/SC/8017/2006 : AIR 2006 SC 3446 and State of Uttar Pradesh and Ors. v. Ajay Kumar Sharma and Ors. MANU/SC/1379/2015 : (2016) 15 SCC 289. The decision rendered in***



ignorance of a binding precedent and/or ignorance of a provision has been held to be per incuriam in Subhash Chandra and Ors. v. Delhi Subordinate Services Selection Board and Ors. MANU/SC/1460/2009 : (2009) 15 SCC 458, Dashrath Rupsingh Rathod v. State of Maharashtra MANU/SC/0655/2014 : (2014) 9 SCC 129, and Central Board of Dawoodi Bohra Community and Ors. v. State of Maharashtra and Ors. MANU/SC/1069/2004 : (2005) 2 SCC 673. It was held that a smaller bench could not disagree with the view taken by a larger bench and in para 43 further held that Thus, it is clear that before the Division Bench deciding SRD Nutrients Private Limited and Bajaj Auto Limited (supra), the previous binding decisions of three-Judge Bench in Modi Rubber (supra) and Rita Textiles Private Limited (supra) were not placed for consideration. Thus, the decisions in SRD Nutrients Private Limited and Bajaj Auto Limited (supra) are clearly per incuriam. The decisions in Modi Rubber (supra) and Rita Textiles Private Limited (supra) are binding on us being of Coordinate Bench, and we respectfully follow them. We did not find any ground to take a different view.”

19. In the light of the aforesaid decisions, when I shall consider the case in hand, then I am of the considered view that in view of the settled principle of law the Division Bench could not disagree with the view taken by the larger bench, hence, the ratio decided by the Full Bench (3 Members Bench) of NCLT Calcutta Bench is binding upon all the Co-ordinate NCLT Benches unless and until the different view has been taken by the larger bench, so, under such circumstances, I respectfully disagree with the finding given by the Hon'ble Technical (Member) on the point of convening and holding of meeting of the shareholders and in view of the decision of the Hon'ble NCLT Calcutta Bench consisting of three Members Bench, I have no hesitation to hold that findings given by this Bench in Yahoo Properties Private Limited and others in CA(CAA) No. 57/2020 and Alankit



Associate Pvt Ltd and Others in CA(CAA) No. 60/2020 and finding given in CA. CAA. 81(PB) 2019 decided by the Hon'ble Principal Bench of NCLT New Delhi and CA. CAA. 40 (ND)/2019 decided by the special Bench of NCLT New Delhi, are also hit by the principle of doctrine of per incuriam.

20. *At this juncture, I would also like to discuss the decisions referred by the Hon'ble Technical Member in para 19 of the order, in my opinion, in view of the settled principle of Law that finding given by the larger Bench is binding upon smaller Bench, while sitting in smaller Bench, we have no option but to follow the settled principle of law and we can not interpret the law and that is the finding of the Hon'ble NCLAT in Company Appeal (AT) No. 180/2019, which has been referred by the Hon'ble Technical Member in this order.*

21. For the reason discussed above, and in view of the decisions of NCLT Calcutta Bench, and Hon'ble NCLAT in Company Appeal (AT) No. 180/2019, since all the shareholders have given their consent, so I think it proper to dispense with the convening the meeting of the shareholders, accordingly, This Tribunal issues the following **directions** with respect to calling, convening and holding of the meetings:

Applicant Company No. 1:

(i) With respect to Equity shareholders:

The Meeting of the shareholders is dispensed with because all the shareholders have already given their consent by way of affidavits as Annxure A-29

Applicant Company No. 2:

(i) With respect to Equity shareholders:



The Meeting of the shareholders is dispensed with because all the shareholders have already given their consent by way of affidavits as Annxure A-33

Applicant Company No. 3:

(i) With respect to Equity shareholders:

The Meeting of the shareholders is dispensed with because all the shareholders have already given their consent by way of affidavits as Annxure A-37

Applicant Company No. 4:

(i) With respect to Equity shareholders:

The Meeting of the shareholders is dispensed with because all the shareholders have already given their consent by way of affidavits as Annxure A-41

Applicant Company No. 5:

(i) With respect to Equity shareholders:

The Meeting of the shareholders is dispensed with because all the shareholders have already given their consent by way of affidavits as Annxure A-45

17. *Except the aforesaid finding, I agree with the other findings given by the Hon'ble Member (Technical).*

-Sd- *a*
10 5-2022
(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

Sec. 230 - Dispensing with meeting of shareholders

Since, there are difference of opinion in respect of holding of the meeting of the shareholders in view of the Full Bench decision of the **NCLT Calcutta Bench in CA-11/2017 decided on 14.03.2017 and the decision of Hon'ble NCLAT dated 19.08.2019 in Company Appeal (AT) No. 180/2019** and the Hon'ble Member (Technical) has taken different view and Hon'ble Member (Judicial) has taken different view.

Therefore, **in view of Section 419(5) of the Companies Act, 2013, since there are difference of opinion on the following points:-**

- (i). Ratio decided in a case is binding or not?
- (ii). Judgment of the Larger Bench on the same point is binding upon the smaller bench or not and if so the the Full Bench decision of Calcutta NCLT in CA-11/2017 decided on 14.03.2017 is binding upon all the coordinate Bench of NCLT or not?

Hence, the matter is hereby referred to the Hon'ble Acting President, NCLT, New Delhi to decide the the points given below by one or more of other members of the Tribunal as the Hon'ble Acting President, NCLT, New Delhi may deem fit and proper.

:-

- (i). Ratio decided in a case is binding or not?
- (ii). Judgment of the Larger Bench on the same point is binding upon the smaller bench or not and if so the the Full Bench decision of Calcutta NCLT in CA-11/2017 decided on 14.03.2017 is binding upon all the coordinate Bench of NCLT or not?
and related matters to main subject.

The Registrar NCLT, New Delhi Bench is requested to place the matter before the Hon'ble Acting President NCLT New Delhi for deciding the aforesaid point in view of Section 419(5) of Companies Act,

Office is directed to send the copy of orders alongwith reference letter to the Registrar NCLT New Delhi.

Sd/-

(K. K. VOHRA)
MEMBER (T)

Sd/-

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

Annexure-C

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
CA(CAA) - 75(ND)/ 2020**

In the matter of:

*Sections 230-232 and other applicable provisions of the Companies Act, 2013
read with the Companies, (Compromises, Arrangements and Amalgamations)
Rules, 2016*

AND

IN THE MATTER OF COMPOSITE SCHEME OF ARRANGEMENT

BETWEEN

QUICKCALLS PRIVATE LIMITED

... Petitioner Company 1

BHILWARA TELENET PRIVATE LIMITED

... Petitioner Company 2

SMARTALK PRIVATE LIMITED

... Petitioner Company 3

PROCALL PRIVATE LIMITED

... Petitioner Company 4

ARRAY TEAM CALL PRIVATE LIMITED

... Petitioner Company 5

Order Pronounced On: 31.05.2021

CORAM:

SH. B.S.V. PRAKASH KUMAR

HON'BLE ACTG. PRESIDENT

For the Petitioners: Mr. Vikrant Advocate

For the RD & OL : Ms.Shankari Mishra, Advocate

ORDER

It is a case referred to single Bench on the dissent order passed by Shri Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial) to the order passed by Shri K.K. Vohra, Hon'ble Member (Technical). The contention in between the members is that the Hon'ble Judicial Member held that shareholder's meetings could be dispensed with u/s 230 of the Companies Act, 2013 against the order passed by the Hon'ble Technical Member holding that shareholder's meeting should not be dispensed with u/s 230 of Companies Act because it is a mandate given under the statute to hold shareholders meeting as and when a proposal for either arrangement or demerger or merger or amalgamation is placed by the applicant companies before NCLT.

Order dictated by Shri K.K. Vohra, Hon'ble Member(Technical)

"19. It may be appropriate to refer the decision reported in the case of Nathi Devi v. Rahda Devi Gupta 2005 (2) SCC 271, wherein Hon'ble Supreme Court in Para 14 of the judgment held that:

"It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by

the legislature. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors.”

*Further, Hon’ble **Supreme Court** in the case of CIT v. Pawan Kumar Laddha, (2010) 13 SCC page 294 has laid down that “The Courts have to be careful in reading into the Act such dis-enabling provisions as that would tantamount to judicial legislation which the Courts must eschew...”*

It is specifically mentioned in Section 230(9) of the Act that meetings can be dispensed in case of Creditors. Section 230 (1) of the Act refers to meetings of Shareholders and Creditors. In view of this, there is no option but to hold that meetings of Shareholders should be convened. The principle about the legislative intent by Apex Court has also been held by this bench in the case of G Trans Logistics (India) Private Limited V/s. Emtex Engineering Pvt. Ltd., (IB)-1093(ND)/2018.”

2. Against this order, the judicial member Shri Abni Ranjan Kumar Sinha wrote the dissent order stating that in the past, for three judge Bench of Calcutta NCLT in CA 11/2017 having held that the Tribunal has power to grant dispensation of the shareholders meeting if all the shareholders have given their consent for the scheme, it shall be binding on other NCLT Benches. And he has also referred to NCLAT order in Company Appeal (AT) No 180/2019 to say that if the Coordinate Bench or larger Bench already decided an issue, that ratio shall be followed by other Benches. The Judicial Member relied upon **Arun Kumar Agarwal vs. State of Madhya Pradesh & Others (MANU/SC/1011/2011)** to

say that ratio decidendi will act as binding principle but not the general observations made by the Court. He has also referred to ***Unicorn Industries v. Union of India, (2020) 3 SCC 492*** referring the para below:

“31. The Division Bench of this Court has rendered both the above decisions. The most unfortunate part is that the binding decision of the larger Bench consisting of three Judges of this Court in Union of India v. Modi Rubber Ltd. [Union of India v. Modi Rubber Ltd., (1986) 4 SCC 66: 1986 SCC (Tax) 781], dealing with the similar issue, was not placed for consideration before this Court when the above mentioned decisions came to be rendered.”

3. In view thereof, the Honourable Judicial Member has held that this NCLT cannot differ with the ruling given by three Judge Bench of NCLT Calcutta, therefore shareholders meeting could be dispensed with.

4. Now the point for consideration before this bench is ***whether or not shareholders’ meetings could be dispensed with in the first motion of the Scheme Application.***

5. Before going into the merit whether larger bench decision is binding upon Division Bench or Coordinate Bench, it is essential to

look into the mandate given u/s 230 so as to figure out whether section of law has given any judicial discretion to dispense with holding shareholders meeting. For which let us read the language of the section in the way it is couched.

230. Power to compromise or make arrangements with creditors and members

(1) Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them;

or

(b) between a company and its members or any class of them,

the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

6. As we all know scheme cases are taken up in two stages, first one is called first motion seeking a direction u/s 230 (1) of the The Companies Act 2013 (the Act) to hold meetings of the stakeholders as stated in the Act, upon such order, once the meeting ordered is held, on the report of the Chairman/Chairmen of the meeting/meetings, second motion will be initiated for admission, after admission, at the final hearing, Tribunal will adjudicate on the scheme petition finally heard. Why all these checkmates arranged at first motion is, if any body has any objection to seek for approval

of the shareholders, the objectors can raise their objection at the time of conducting shareholders meeting itself.

7. As per Sub Section 230 (1), the relief that is presumed to be sought is for an order to hold stakeholders meetings, the applicant cannot ask any other relief other than the relief for holding meetings, because section is couched in such a way that the Court upon consideration what all it has to do is either to order for meetings, or to reject the relief seeking for meetings, except this nothing is mentioned in the subsection. I will discuss Section 230 (9) context later.

8. It is a known fact that it is a Tribunal limited to deal with powers conferred upon it by the parent statute, in a sense the wide powers conferred upon courts u/s 9 of CPC are not conferred upon Tribunals. For that matter, courts especially other than constitutional courts also cannot go beyond the scope given in the section, the discretion that we talk about is judicial discretion left open to the courts/Tribunals to deal with within the scope of the section or at the most the statute. If we go outside of the section ignoring the mandate given in the section, it cannot be called

judicial discretion, indeed it is, with all humility, called arbitrary exercise of discretion. If you see any statute, mostly reliefs are discretionary in nature. While reading the mandate of a section present in discretionary nature, so long as it is applied positively, there may not be negative bearing over the purpose for which the provision has come into existence.

9. If for any reason Tribunal ignores the mandate given in a section, then effect will negate the purpose and object of the enactment. In any section of law, if the mandate of the section is couched with auxiliary verb “shall”, it is normally taken in as mandatory direction upon the court to order the relief set out in the respective section, if the mandate of the section is couched with auxiliary verb “may”, it is normally taken in as discretion left open to courts to apply judicial discretion either to allow or dismiss the relief set out in the respective section, but not to grant a relief that is not set out in the section. What relief set out in the section 230 (1) is, **may order meeting**, meaning thereby the court may order or may not order meeting, **but not to dispense with meeting. Discretion is either to order or not to order for calling**

meetings, not otherwise. The Tribunal cannot read dispensation of calling and holding shareholders meeting into Subsection 230 (1) that is conspicuously absent in the section, rather it is a provision for calling meeting and thereafter to proceed with consequential steps carved out in the ensuing subsections for issuing notices to the stakeholders and all regulators governing the applicant company for holding meeting based on the order passed by the Tribunal. If shareholders meeting is dispensed with, it will not only nullify Section 230 (1) but also make other consequential subsections redundant. In way as stated in the citation in between ***CIT v. Pawan Kumar Laddha, (2010) 13 SCC page 294***, NCLT has attempted to legislate the section of law by incorporation of something by implication that is not present in the subsection, As to subsection 230 (9) (dispensation of holding creditors meeting provided 90 percent consent is given by way of filing affidavits) is a standalone provision, it cannot be understood that this stand alone provision can even permit dispensation of shareholders meeting. If such is the discretion contemplated in Subsection 230 (1), the legislature would not have carved out a standalone provision for

dispensation of creditors meeting under sub section 230 (9) of the Act.

10. In the present section, the word “*may*” employed in sub section 1 of section 230 gives discretion either to order or not to order holding meetings. Since in Subsection 230 (2) it has been stated that the application filed under Subsection 230 (1) shall be in compliance of the mandate given under subsection 230 (2), it is an obligation upon the Tribunal to verify as to whether or not the application filed is in compliance of subsection 230 (2) and to verify other aspects whether or not the applicant company is burdened with other infirmities, If the verb “*may*” is used as auxiliary verb before the main verb, it is generally taken in as discretion left to the courts to apply its wisdom within the parameters of the same section, or by taking in preceding or ensuing sections into consideration for passing orders in the section.

11. If we read section 230 (1), we will not find any ambiguity in it to travel beyond the section of law. In the sub section, it is clear, that there shall be an application by a company and that

application shall be filed for calling meetings either for compromise or for arrangement in between the members or the creditors of the applicant company as the case may be and to proceed with such purpose, the company, as per section, shall ask only one relief that is for calling meetings. Upon such application, **this Tribunal may order a meeting of the respective shareholders and the creditors to take a decision over the proposal placed by the Board of Directors of the applicant company.**

12. The work assigned to the Tribunal u/s 230(1) is to examine the application and verify the application to ensure that all factual elements mentioned in Sub-Section 230 (2) of the Act are provided by the applicant company because subsection 230 (2) says disclosure of the information mentioned therein is mandatory in nature, so before passing an order u/s 230 (1) of the Act, Tribunal shall verify as to whether or not the applicant company has provided all that information. Suppose information is not provided as envisaged u/s 230 (2), Tribunal has to apply its discretion not to grant the prayer asked by the applicant company. What order expected in subsection 230 (1) is order for meetings, it means that

application u/s 230 (1) is intended for taking approval of this Tribunal to call and hold meetings.

13. By close scrutiny of subsection 230 (1), it is obvious that the applicant company is not at liberty to seek dispensation of meetings, it is also obvious that the Tribunal has no discretion to dispense with meetings of the shareholders. As to creditors meetings, subsection 230 (9) is a proviso to sub-section 230 (1), such proviso cannot be stretched out to apply to shareholders meetings as well.

14. To make it more clearer, I shall reiterate subsection 230 (1), it says **“may order a meeting of the creditors or the class of creditors or members or class of members, as the case may be, to be called, held and conducted in such manner as Tribunal directs.** The direction mentioned at the end of the section speaks about the manner in which meeting is to be called, to be held and conducted. The Tribunal has discretion to decide the mode of calling meeting, the Tribunal has discretion how to hold the meeting, the Tribunal has discretion how to conduct the meeting,

but not to dispense with shareholders meetings. By seeing this discretion in relation to the manner of calling, holding and conducting meeting, one cannot misconstrue that since the word “may” is used somewhere in the section, meeting itself need not be called and held owing to the discretion conferred upon NCLT by usage of the word “may”.

15. The difficulties likely to emerge out of not calling, holding and conducting meeting is, the problem is notice will not go to the stakeholders, who are the persons ultimately to decide the direction and destiny of the applicant company. By which, the statement of compromise or arrangement, copy of the valuation report, explanation in respect to effect of this scheme upon creditors, and other stakeholders and the effect of the material interest, if any, of the directors and debenture trustees, which are to be accompanied along with notice will not go to them.

16. If the directors of a company wants to do mischievous act, they may file fake consent letters. I have come across a case filed by one of the shareholders before Chennai NCLT u/s 241 of the Companies Act stating that the company got scheme approved by

NCLT behind the back of him by dispensation of meeting, which adversely affected the economic interest of him. If such situation arises, whether NCLT with authority can say that NCLT having dispensed meetings of the shareholders, he can not question the approval. But that could be said if approval is taken after sending notices along with information and then after holding meeting of the shareholders. Suppose investors are NRI's, they may not come to know of it immediately because they are not within the vicinity where company is situated. What is the big thing to call for meetings? As to expenses, when law says such and such procedure is to be followed to take approval, the approval shall be taken only through such procedure, NCLT cannot devise a new procedure. Problems can be umpteen, we will not be at present aware of all those, unless they happen, one solution for all is to call and hold meetings in the procedure provided in the Act .

17. What prompted Parliament to go for new enactment is, so many frauds have taken place in the past making the Companies Act 1956 as decorative rather than effective, so in order to bring transparency, investor-friendly approach and expeditious actions in

relation to the affairs of the Company, instead of going for an amendment to the 1956 Act, the Parliament overhauled and has given new enactment which is more effective and relevant to the times and to the times to come.

18. In that process, Parliament Standing Committee, on Companies Bill 2011, recommended for dispensation of holding shareholders meeting as well saying as below:

Clause	Suggestion by standing committee	Comments of ministry
230 (9) Dispensing with the meeting of creditors in compromise	<i>A similar provision may be provided dispensing with the meeting of shareholders of closely held companies if they agree and confirm by Affidavit the Scheme of Compromise and arrangement</i>	The members and creditors stand on different footing so far as protection of their interest are concerned. The meetings of members are considered to be essential for such important matters to ensure corporate democracy and principle of participation in important decision makings.

19. Upon which, the Government has rejected the standing committee recommendation for dispensation of shareholders meeting stating that members and creditors stand on different footing, in view thereof, it is essential to hold shareholders meeting to ensure corporate democracy and principle of participation, on

such consideration by the Government, enactment has come, after all these happened, how NCLT can now ignore or re-legislate the Companies Act by giving a tweak to the provision of law by saying previously dispensation was provided. After repeal of the old enactment, the old regime cannot be seen as still in force, while reading the provisions, wholesome idea and spirit behind the legislation is to be seen.

20. If the chronology of Section 230 is read, it is evident that NCLT at the outset shall look into compromise or arrangement proposal on the application filed by the company. On filing such application, if at all it is of the view that proposal shall be examined and allow the company to call and hold meeting as per subsection 230 (6), it shall issue notices to the creditors as well as members of the company individually at the address registered with the company, along with those notices, the applicant companies are under obligation to send statement disclosing the details of the compromise or arrangement, copy of the valuation report and the effect of such proposal upon the creditors and members and other stakeholders and such notices shall be disclosed even on the

website of the company, apart from that, same notice shall be sent to other Regulating Authorities as mentioned in subsection 230 (5) of the Act. The purpose of sending notices to these people is to inform the proposal to all the stakeholders of the company so that they can take an informed decision in the meeting to be held as proposed under subsection 3 of the Companies Act, 2013.

21. Explanation to Subsection 230 (1) and other Sub sections of Section 230 to the extent relevant to this point are mentioned below:

Explanation:— For the purposes of this sub-section arrangement includes a reorganization of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

22. This explanation part has been added for inclusion of reorganization of company share capital as part of arrangement falling within the aforesaid section, which was not there in the old Act. Sub section 2 speaks of the essentials required to include in the Application. Subsections 3 -5 speaking of notices have been placed here.

Continuation of the section:

(2) The company or any other person, by whom an application is made under subsection (1), shall disclose to the Tribunal by affidavit—

(a) all 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;

(b) reduction of share capital of the company, if any, included in the compromise or arrangement;

(c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent of the secured creditors in value, including—

- (i) a creditor's responsibility statement in the prescribed form;
- (ii) safeguards for the protection of other secured and unsecured creditors;
- (iii) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;
- (iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and
- (v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

(3) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining the effect on creditors, key

managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:

Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed:

Provided further that where the notice for the meetings also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent of the shareholding or having outstanding debt amounting to not less than five per cent of the total outstanding debt as per the latest audited financial statement.

(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty (30) days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

23. If we come to Section 232, it is discern-able that it does not talk about procedural mandate in respect to holding meetings, voting patterns and disclosure mandates, therefore there cannot be any occasion to understand that mergers and amalgamations can have its own procedure for calling meetings. Perhaps Parliament is of the view that even for creditors meeting, unless sanction is there from NCLT, 90% consent in value cannot be automatically applicable. If we see subsection 3 of this section, it is evident that the Tribunal can order for sanction of scheme only after it has been satisfied with accomplishment of compliance laid out under subsection (1) & (2) of section 230. As we know already that for mergers and amalgamations, the procedures given in subsections 1-6 of section 230 shall apply mutatis mutandis and there being additional disclosures under sub-section (2) of section 232, NCLT could sanction post compliance as mentioned in Section 232. Therefore, the applicant cannot invoke a procedure that is not present in subsections (1) & (2) of Section 230 for sanction of the scheme falling under Section 232 as well. As to rest of subsections of this section (section 232), they only talk of actions of post

sanction of the scheme; hence we believe that the applicant is not permitted to import something other than the procedure given for grant of approval for holding meetings u/s 230 as well as u/s 232 of the Act.

24. As to dispensation, it has been mentioned in subsection 9 of Section 230, the Tribunal is given discretion to dispense with calling of a creditors meeting or class of creditors meetings, where such creditors or class of creditors having at least 90% value agree and confirm by way of affidavit to the scheme of compromise or arrangement. But this grant of dispensation has not been extended to the shareholders either in subsection 9 or any other subsection of Section 230 of the Companies Act, 2013. The discretion given to NCLT to dispense with meetings is only limited to creditors meetings but not to shareholders meetings when mandate is such, I don't know how NCLT will get discretion to dispense with holding shareholders meetings. If at all shareholder's meeting is not held, it is quite obvious notice will not go to various regulating authorities to the proposal given by the company. Because of this, the

Regulating Authorities will not get a chance to raise their objections before a decision is taken by the company (shareholders) to pass a resolution to the scheme proposed by the Board of Directors. If we look into Section 230(5), it is evident that notice shall go to all the Regulating Authorities within 30 days before the meeting to be held. If the shareholder's meeting is not held as stated under Section 230(3) whole process envisaged under Section 230(3)(4)(5)(6) will become redundant, the proposal of dispensation of shareholders meeting is in violation of the procedure laid under Section 230 of the Companies Act, 2013.

25. Second point to be answered is as to whether this concept of two judges and three judges is applicable to NCLT.

26. NCLT is only a fact finding Tribunal constituted under Companies Act 2013, wherein it is categorically mentioned that NCLT shall be constituted with one judicial member and one technical member. When such is the case, is there any scope to constitute three member bench by NCLT on its own? It has to act according to the jurisdiction given to it. It is not a constitutional court and not even a court having jurisdiction under section 9 of

CPC to temper its powers beyond the scope and ambit of the Companies Act. The Act 2013 even envisages how to go about when difference of opinion comes in between judicial member and technical member.

27. Therefore NCLT is not supposed to overreach its jurisdiction by constituting with more than two members, which is repugnant to the spirit of Section 419 (3) of the Companies Act 2013. Fact finding courts are normally to decide cases on the facts available looking at the statute. And if any ratio is decided in a judgement of the constitutional court, it is because they are constitutional courts empowered by the constitution to decide the question of law. If NCLT is adherent to this concept of two member or three member bench, there wont be any end to it. It has no jurisdiction to constitute such Benches. Moreover if any aberration of applicability of law comes anywhere from the orders of NCLT, it does not mean other NCLT Benches also to follow it. NCLT cases are dependent on multiple facts with different different logical ends, for NCLT - one guiding principle is the statute under which it is working.

28. This concept of ratio decidendi is a common law doctrine to be applied to the cases where statutory guidance is absent, but not in the cases where section is so telltale leaving no scope to doubt its mandate. Here we cannot simply proceed blindfolded shirking the duty of implementing the law given by the people through legislative bodies just by looking at orders passed by some other Bench of NCLT.

29. Of course in Service Tribunal cases, there is a ratio that orders should not be variant on one circular or memorandum given by any Government. Normally Service Tribunals pass orders saying covered case if facts are on the same circular or memorandum. It cannot be so with NCLT because facts in each case are different. It is understandable if any Bench passes an order dealing with an aspect that is not present in the statute, then it could be said that NCLT coordinate Bench order will have persuading effect. The citations of the supreme court referred by the honourable judicial member are in relation to the citations of the High Courts and Supreme Court but not on NCLT jurisdiction.

30. In view thereof, I hereby agree with the view taken by Shri K.K. Vohra, Hon'ble Member (Technical) holding that NCLT cannot dispense with holding meetings under section 230 (1) of the Companies Act 2013.

31. Accordingly, this issue is hereby decided by agreeing with the view of the Technical Member with liberty to the applicant company to take directions from the respective Bench over the application seeking a prayer for holding meetings.

Sd/-

(B. S. V. PRAKASH KUMAR)
ACTG. PRESIDENT

31.05.2021