

THE NATIONAL COMPANY LAW TRIBUNAL, COURT-V, NEW DELHI
Company Application No. **CA (CAA) 75 (ND) of 2020**

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,

Essel House, B-IO, Lawrence Road,
Industrial Area, New Delhi -110035

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



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

Company Application No. **CA (CAA) 75/230-232/ND/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,
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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 Annexure 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-
10.5.2020
(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)