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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

TP No. 48/NCLT/AHM/2017 (New)
High Court of Bombay CSP No. 818/2016 c.w. CSD 782/2016 (Old)

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU**
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 14.07.2017

Name of the Company: Cello Pens Pvt. Ltd.

Section of the Companies Act: Sections 391-394 of the Companies Act, 1956; 230-232 of the Companies Act, 2013

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Karan Sanghani (M.R. Bhatt & Co.)	Advocate	Petitioner	
2.				

ORDER

Learned Advocate Mr. Karan Sanghani i/b M R Bhatt & Co. present for Petitioner.

Common Order pronounced in Open Court. Vide Separate Sheet.

Dated this the 14th day of July, 2017.

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH

TP No.48/NCLT/AHM/2017

with

TP No.49/NCLT/AHM/2017

with

TP No.50/NCLT/AHM/2017

with

TP No.51/NCLT/AHM/2017

with

TP No.52/NCLT/AHM/2017

In the matter of :-

1. Cello Pens Private Limited,
   A company incorporated under
   the Companies Act, 1956 and
   having its registered office at
   Survey No.318/1-A,
   Near Government Hospital,
   Kachigam Village, Daman and Diu,
   Daman DD 396210. ... Petitioner of TP No.48/2017
   (First Transferor Company)

2. Cello Tips and Pens Private Limited,
   A company incorporated under
   the Companies Act, 1956 and
   having its registered office at
   Plot No.711/1, 2, 3, 4,
   Somnath Road, Dabhel,
   Daman DD 396210. ... Petitioner of TP No.49/2017
   (Third Transferor Company)

3. Cello Writing Instruments and
   Containers Private Limited,
   A company incorporated under
   the Companies Act, 1956 and
   having its registered office at
   Plot No. D-7, Ringanwada, O.I.D.C.,
   Daman DD 396210. ... Petitioner of TP No.50/2017
   (Fourth Transferor Company)

4. Pentek Pen and Stationery Private Limited,
   A company incorporated under
   the Companies Act, 1956 and
   having its registered office at
   Survey No.327/2, 3, 7A,
   Kachigaon, Chala Road, Kachigaon,

Daman DD 396210. ... Petitioner of TP No.51/2017
(Fifth Transferor Company)

5. Cello Plastic Products Private Limited,
A company incorporated under
the Companies Act, 1956 and
having its registered office at
685/1-A, 1st Floor,
Cello Household Compound,
Somnath Road, Dabhel Daman,
Daman DD 396210. ... Petitioner of TP No.52/2017
(Transferee Company)

Order delivered on 14th July, 2017

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J)

Appearance:

Mr. Manish R. Bhatt, Senior Advocate, with Mr. Karan Sanghani, Advocate, for M/s M. R. Bhat & Co. for the Petitioners.

COMMON FINAL ORDER

1. By these petitions under Sections 230 to 232 of the Companies Act, 2013, the petitioner companies are seeking sanction of the Scheme of Amalgamation of Cello Pens Private Limited ("First Transferor Company"), Cello Stationery Products Private Limited ("Second Transferor Company"), Cello Tips and Pens Private Limited ("Third Transferor Company"), Cello Writing Instruments and Containers Private Limited ("Fourth Transferor Company"), and Pentek Pen and Stationery Private Limited ("Fifth Transferor Company") with Cello Plastic Products Private Limited ("Transferee Company") ["Scheme" for short].

2. The petitioner companies, respectively, filed Company Petition Nos.818 of 2016, 820 of 2016, 821 of 2016, 822 of 2016

and 823 of 2016 before the High Court of Judicature at Bombay, seeking sanction of the Scheme. The Honourable High Court of Judicature at Bombay, by order dated 25th November, 2016, admitted the aforesaid Company Petitions. Thereafter, the Hon'ble High Court of Judicature at Bombay, transferred the abovementioned Company Petitions to NCLT, Mumbai, in light of the Rule 3 of the Companies (Transfer of Pending Proceedings) Rules, 2016. Hon'ble NCLT Mumbai, by communication dated 21.02.2017, transferred the Company Petitions to this Tribunal and the petitions came to be renumbered as TP Nos.48 to 52 of 2017.

3. This Tribunal by respective orders passed in TP Nos. 48, 49, 50, 51 and 52 of 2017 dated 21st April, 2017, fixed the date of hearing of the petitions as 24th May, 2017 and directed all the petitioner companies to issue notice of hearing of petitions by way of advertisement in English and Gujarati Newspapers in which the earlier publications were made pursuant to the order of the Hon'ble High Court of Judicature at Bombay dated 25.11.2016, not less than 10 days before the date fixed for hearing calling for their objections, if any, on or before the date of hearing. The petitioners were also directed to issue individual notices to all its Equity Shareholders, Secured and Unsecured Creditors, not less than 10 days before the date fixed for hearing calling for their objections, if any, on or before the date of hearing. This Tribunal also directed issuance of notice to (i)

Regional Director, Western Region, Mumbai (ii) Registrar of Companies, Goa, (iii) concerned Income Tax Authorities, Mumbai, (iv) Official Liquidator, Gujarat and (v) Reserve Bank of India, asking them to file their representations if any, within 30 days from the date of receipt of notice with a condition that in case no representation is received by this Tribunal, it shall be presumed that the above said authorities have no representation to make on the proposed Scheme of Arrangement.

4. All the petitioner companies have filed affidavits in respect of service of notices to Shareholders and Publications made in the newspapers as well as Affidavit of Service to Regulatory Authorities. In response to such individual notice and the publications made in newspapers, no objection is received either from any shareholder or any creditor. No representation is received from any Regulatory authorities except the Regional Director, Mumbai, which will be taken into consideration hereafter.

5. Heard learned Senior Advocate, Mr. Manish R. Bhatt, appearing with Mr. Karan Sanghani, Advocate, for M/s M. R. Bhatt & Co., Advocates for the petitioner companies.

6. Pursuant to the notice issued by this Tribunal, the Regional Director, Mumbai, filed representation dated 4th May, 2017. In response to the representation of the Regional Director, the Authorised Signatory of the petitioner companies has filed affidavit dated 20th June, 2017. The Authorised Signatory of the petitioner companies earlier filed an affidavit dated 18th April, 2017. Though notice was served on the ROC and OL, Goa, no representation is filed.

7. In paragraph IV(1) of the representation, the Regional Director has observed that the tax implication, if any, arising out of the scheme is subject to final decision of the Income Tax Authorities and the approval of the scheme by this Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the scheme. In response to this, in the affidavit filed on behalf of the petitioner companies, it is stated that the petitioners undertake to comply with all the applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme would be met and answered in accordance with applicable law. In view of the said statement on behalf of the petitioners made on affidavit, this Tribunal is of the view that the observation made by the Regional Director in paragraph IV (1) stands satisfied.

8. In paragraph IV(2) of the representation, the Regional Director has observed that certificate of Company's Auditor stating that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013 is not available. To this, in the reply affidavit filed by the petitioners, it is stated in paragraph 3.b. that the certificate from the Auditors of the petitioner company was already submitted to the Regional Director vide letter dated 4th May, 2017. However, along with the affidavit, the petitioners produced the certificate in original issued by the Auditors of the company. In view of this statement in the affidavit, this Tribunal is of the view that the observation made by the Regional Director in paragraph IV (2) stands satisfied.

9. In paragraph IV(3), the Regional Director has observed that the authorized share capital of the transferee company is not sufficient to issue and allot to the shareholders of the transferor companies as per the scheme and, therefore, the company has to file the concerned form with the Registrar of Companies for increasing the capital as per the provisions of the Companies Act, 2013. In the affidavit filed by the Authorized Signatory, it is stated in paragraph 3.c. that upon the Scheme becoming effective, the authorised share capital of each of the transferor companies shall stand combined with the authorised share capital of the transferee company. According to the

deponent, pursuant to the Scheme becoming effective, there would be surplus authorised share capital available after issuance of share capital to the shareholders of each transferor company. Therefore, the transferee company is not required to increase its authorised share capital. In light of the above, this Tribunal is of the view that the observation made by the Regional Director in paragraph IV (3) stands satisfied.

10. The Regional Director, in paragraph IV (4) of the representation observed that the petitioner, in Clause 12.1 of the Scheme, inter alia, mentioned that upon receiving necessary approvals from the statutory authorities, the name of the transferee company shall be read as "BIC Cello (India) Private Limited" or such other name, as may be approved. However, in clause 12.2, the petitioner mentioned that with effect from the effective date, the name of the transferee company shall forthwith stand changed from "Cello Plastic Products Private Limited" to "BIC Cello (India) Private Limited" without any further act or deed. In the affidavit filed by the Authorised Signatory, it is stated in paragraph 3.d. that the transferee company will change its name upon receiving necessary approval and after complying with the applicable provisions of the Companies Act, 2013 with respect to change in name of the transferee company by filing applicable e-forms with the Registrar of Companies. In light of the above, this Tribunal is of the view that the observation made by the Regional Director in paragraph IV (4) stands satisfied.

11. In response to the observation made by the Regional Director in paragraph IV(5) that the petitioner transferee company has to comply with the applicable provisions of the Companies Act, 2013 read with the Rules for the purpose of shifting its registered office, it is stated in paragraph 3.e. of the affidavit filed by the Authorised Signatory that the transferee company will comply with the applicable provisions of the Companies Act, 2013 with respect to change in the registered office of the transferee company by filing necessary e-forms with the Registrar of Companies. In light of the above, this Tribunal is of the view that the observation made by the Regional Director in paragraph IV (5) stands satisfied.

12. The Regional Director, in paragraph IV(6) of the representation observed that, according to the shareholders' list produced by the petitioner companies, there are foreign/ non-resident shareholders in all the transferor companies as well as the transferee company. Therefore, the petitioner has to furnish the proof of serving notice to the Reserve Bank of India. In this regard, it is stated in the affidavit filed on behalf of the petitioner companies that, pursuant to the order of this Tribunal dated 21st April, 2017, notice and a copy of the petition have been served on the Reserve Bank of India vide letter dated 25th April, 2017. However, no comments have been received from the Reserve Bank of India on the proposed Scheme till date. It is also stated

in the affidavit that transferor and the transferee companies are carrying on similar business of manufacturing and sales of pens, refills and other allied products and that the aforesaid business activities of the transferor and transferee companies fall under the automatic route under the extant Foreign Exchange Management Act, 1999 and 100% foreign direct investment is permitted in the petitioner companies without the need for any prior approval of or intimation to the Reserve Bank of India. However, it is stated in the affidavit that, upon the Scheme become effective, the transferee company undertakes to comply with the conditions prescribed under the extant FEMA laws including filing requisite forms with the Reserve Bank of India pursuant to the issuance of shares by the transferee company to the shareholders of the transferor companies. In light of the above, this Tribunal is of the view that the observations made by the Regional Director in paragraph IV (6) stand satisfied.

13. As far as the observation of the Regional Director in paragraph IV(7) of the representation is concerned, it is stated in the affidavit that no observation/comment has been received on the proposed Scheme from the Income Tax Authorities and, therefore, it could be deemed that the Income Tax Authorities have no representation to make on the Scheme.

14. Learned counsel for the petitioners submitted that the Second Transferor Company, which has its registered office at Goregaon East, Mumbai, filed Company Scheme Petition No.819 of 2016 for sanction of the Scheme. The said petition came to be transferred to NCLT, Mumbai Bench, where the same came to be renumbered as Transferred Company Scheme Petition No.295 of 2017. NCLT, Mumbai Bench, thereafter, by order dated 13th April, 2017, sanctioned the Scheme subject to the sanction of the Scheme by this Tribunal in the petitions filed by the transferee company and other transferor companies. A copy of the said order of NCLT, Mumbai Bench is produced on record by the learned counsel for the petitioners.

15. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record, it appears that all the requirements of section 230 and 232 of the Companies Act, 2013 are satisfied. The Scheme appears to be genuine and *bona fide* and in the interest of the shareholders and creditors as well as in the public interest and the same deserves to be sanctioned.

16. In the result, these petitions are allowed. The Scheme, which is at Exhibit-A to TP Nos. 48, 49, 50 and 51 of 2017 and at Exhibit-M to TP No.52 of 2017, is hereby sanctioned and it is declared that the same shall be binding on the petitioner

companies, viz. Cello Pens Private Limited, Cello Tips and Pens Private Limited, Cello Writing Instruments and Containers Private Limited, Pentek Pen and Stationery Private Limited and Cello Plastic Products Private Limited, their shareholders, creditors and all concerned under the scheme. It is also declared that the four Transferor Companies viz. Cello Pens Private Limited, Cello Tips and Pens Private Limited, Cello Writing Instruments and Containers Private Limited, Pentek Pen and Stationery Private Limited shall stand dissolved without winding up.

17. Filing and issuance of drawn up orders is hereby dispensed with. All concerned authorities to act on a copy of this order along with the scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the authenticated copy of this order along with Scheme immediately.

18. These petitions are disposed of accordingly.

Signature:-..... 16.2.17
[Bikki Raveendra Babu, Member (J)]

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