

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH

CP 305/KB/2017 connected with CA  
No.769/KB/2016

In the matter of :

A petition under Sections 391(2) and 394 of the  
Companies Act, 1956 and sections 230, 232 of  
the Companies Act, 2013 and other applicable  
provisions of the Companies Act, 2013 read  
with Companies (Compromise, Arrangement  
and Amalgamation) Rules 2016;

And

In the matter of :

MSP Metallica Limited

Petitioner

CORAM : Shri Jinan K.R., Member(Judicial)

Date of Pronouncement of Order : 31-1-18



For the Applicant:

1. Mrs. Manju Bhuteria, Advocate
2. Mr. Debargha Basu, Advocate
3. Ms. Meenakshi Manot, Advocate

#### ORDER

Per Shri Jinan K.R.

The object of this Petition is to obtain sanction of this Tribunal to the Scheme of Compromise and Arrangement between MSP Metallics Limited, being the petitioner herein and its unsecured loan creditors whereby the unsecured loan creditors are to be paid off by the company in the manner as indicated in the modified Scheme of Compromise and Arrangement propounded by the Company, a true copy whereof is annexed with the Petition and marked "A".

The Board of Directors of the Company have, at its meeting unanimously approved the proposed Scheme of Compromise and Arrangement, copy whereof is annexed with the Petition and marked as "F".

By an order dated 5<sup>th</sup> October 2016 passed by the Hon'ble High Court at Calcutta in Company Application No. 769 of 2016, the Hon'ble High Court at Calcutta



directed a meeting of the unsecured loan creditors of the petitioner be convened and held for the purpose of considering and, if thought fit, approving, with or without modification, the proposed Scheme of Compromise and Arrangement.

A copy of the Order dated 05-10-2016 of the Hon'ble High Court, Calcutta is annexed with the Petition and marked "H".

It has been stated in the petition that the notice of the said meeting were served individually by speed post upon each of the said unsecured loan creditors of the petitioner as required by the said order together with a copy of each of the proposed Scheme of Compromise and Arrangement and of the Statement required under section 393 of the Companies Act, 1956 and a form of Proxy.

The notice of the said meetings were also advertised, separately, as directed by the said order in "The Financial Express", Kolkata in its issue dated 15-11-2016 and in "Pratidin", Kolkata in its issue dated 15-11-2016.

On 09-12-2016, the said meeting of the unsecured loan creditors of the Petitioner was held but was adjourned till 9<sup>th</sup> February, 2017.

On 09-02-2017, the said meeting was duly held and was again adjourned till 7<sup>th</sup> April, 2017.

Sd



On 07-04-2017, the said meeting was duly held and convened in accordance with the said Order of the Hon'ble High Court, Calcutta.

The said meeting unanimously approved the said Scheme with the modification and the following resolution was passed :

"RESOLVED that the Scheme of Compromise and Arrangement between MSP Metallica Limited and its unsecured loan creditors, being Annexure "C" to the Company Application No. 769 of 2016, a copy whereof is placed before this meeting and initialed by the Chairperson for the purpose of identification, be and is hereby approved with the modification as follows -

Schedule B of the Scheme is modified and shall read as follows :

Outstanding unsecured loan to MSP Metallica Limited shall be repaid as follows :

- 1) 1% Non-Cumulative optional convertible Redeemable preference shares (OCRPS) of MSP Metallica Limited will be issued to all unsecured loan creditor to the extent of their outstanding as on 31<sup>st</sup> March, 2017 and shall be redeemable or converted to equity after 15 years by the Company.
- 2) Any fraction amount left over after issuance of preference shares will be paid in cash."

The Chairperson of the meeting has reported the result of the said meeting through a Final Report dated 12<sup>th</sup> April, 2017 which is annexed to the petition as Annexure "I".

Sd



The petitioner has filed the present petition for confirmation of the Scheme of Compromise and Arrangement.

The Petitioner has stated that there are no proceedings pending under Sections 206 to 213 of the Companies Act, 2013 against the petitioner.

The petitioner has further stated that no one will be prejudiced if the said Scheme of Compromise and Arrangement is sanctioned and the sanction of the said Scheme will benefit and will be in the interest of the said Companies, their shareholders, creditors, employees and all concerned.

Heard the learned Counsel for the petitioner, perused the records, documents annexed to the petition and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the petitioner, the following orders are passed :

- a) Let the notice be served by the Petitioner, as per the requirements of sub-section (5) of Section 230 of the Companies Act, 2013, along with the copy of the petition and all other documents including the copy of the Scheme of Compromise and Arrangement and the statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata,

Sd



Registrar of Companies, West Bengal, and the concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income-TAX with PAN Number of the Petitioner Company, as also on the Official Liquidator attached to the Hon'ble High Court, Calcutta, having jurisdiction over the Petitioner company and such other relevant sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by hand delivery through Special Messenger or by registered post or by Speed Post and E-mail, both, within seven days from the date of this order for filing their representation, if any, on the application within 30 days from the date of the notice ;

b) The petitioner is to file affidavit within 7 days regarding service of notice.

c) The Petitioner is further directed to send notice through e-mail also and file copies of the mails along with an affidavit. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the Petitioner and/or their Advocates. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Compromise and



Arrangement. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 in Form No. CAA. 3 of the Companies (Compromises, Arrangements & Amalgamation) Rules, 2016 with necessary variations incorporating the directions therein.

- d) Let the advertisement of the hearing of this petition be published once in English Newspaper, 'The Financial Express, Kolkata' and once in Bengali Newspaper, "Pratidin, Kolkata" stating the PAN number of the Petitioner Company, ten (10) days before the date fixed for hearing pursuant to Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016 with necessary variations.

The petition is fixed for hearing on 20<sup>th</sup> March 2018.

Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

Sd

(Jinan K. R.)

Member(Judicial)

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