

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**C.A. No. 384(PB)/2017**

**In**

**CA(CAA)50(PB)/2017**

**IN THE MATTER OF:**

1. **Nirvan Clothing Company Private Limited**  
 Company registered under the Companies Act, 1956  
 Through its authorized representative: Mr. Gaurav Uppal  
 Registered Office:  
 A-41, Maya Puri Industrial Area, Phase-1,  
 New Delhi-110064  
 CIN:U74899DL1996PTC075788     ... Transferor Company no. 1
  
2. **Mikasa Enterprises Private Limited**  
 Company registered under the Companies Act, 1956  
 Through its authorized representative: Mr. Gaurav Uppal  
 Registered Office:  
 A-41, Maya Puri Industrial Area, Phase-1,  
 New Delhi-110064  
 CIN:U74999DL2000PTC103354     ... Transferor Company no. 2
  
3. **Richa Global Exports Private Limited**  
 Company registered under the Companies Act, 1956  
 Through its authorized representative: Mr. Gaurav Uppal  
 Registered Office:  
 A-41, Maya Puri Industrial Area, Phase-1,  
 New Delhi-110064  
 CIN:U00265DL2005PTC137669     ... Transferee Company

**Order delivered on 03.11.2017**

**Coram:**

**CHIEF JUSTICE M.M.KUMAR**  
**Hon'ble President**

**Shri R. Varadharajan,**  
**Hon'ble Member (J)**

**For the Applicant:**

**Shri S.P. Singh, Advocate**

**For the Respondents**

**:**



**ORDER**

The present application presents a piquant situation. Earlier a joint application registered as CA(CAA)-50(PB)/2017 was filed and in the first Motion we have passed an order on 01.06.2017 for holding of various meetings, appointing Chairperson, alternate Chairperson and a scrutinizer. The Chairperson, who is the former Chief Justice of High Court of Meghalaya has submitted the report reporting that the meetings commenced at around 10:55 AM on 21.07.2017. The report of the Chairperson shows that there was no authorization with the proxy to represent the creditors.

2. The report of Scrutinizer also shows that while checking the documents of Secured Creditors, the document related to authorisation of Secured Creditors were not complete as there was no authorisation given to proxy. Therefore, the proxy form was found to be invalid. The aforesaid factual position is evident from reading of Annexure-II with this application. The Chairman in the concluded paras has recorded as under:

“That as per the said order, the quorum fixed for the meeting of Secured Creditors of Transferee Company was 18 in number. The meeting which was scheduled for, at 10:00 AM could



commence only at 10:55 AM because of the non-availability of the scrutinizer. The meeting was postponed for half an hour since the requisite quorum was not available. Thereafter, the meeting was reconvened at 11:25 AM, however, the scrutinizer having not found the documents in order, to his satisfaction was constrained to reject all the proxies. Thus, no vote was allowed to be cast. It is also pertinent to mention that none of the Secured Creditors was present in person and out of 11 proxy letters that were received, 7 were rejected because they were only photocopies/e-mail and the originals thereof were not produced. Further, one of the Secured Creditors HDFC Bank (constituting 2 Secured Creditors) was also not permitted to vote for the reason that officer in charge had only come with an authority letter and did not file any proxy form. Further, proxy on behalf of the Syndicate Bank (constituting 2 Secured Creditors) was also not permitted as no date was mentioned on the proxy form. The proxy was also not able to show that the person issuing the proxy had a proper authority. Therefore, no vote was allowed to be cast in case of Secured Creditors in the absence of proper proxies. Report of the scrutinizer in form of letter was received after 10 days on 29<sup>th</sup> July,





2017. The scrutinizer report/letter is annexed herewith and marked as **Annexure-D.**

That the final result of the poll worked out under my supervision along with the alternate chairperson with the help of the scrutinizer is as under:

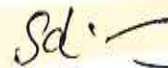
- I. In Total, only 11 Secured Creditors were present in the meeting through their proxies.
- II. All the proxies were found to be invalid in the absence of documents like proper Board Resolution and Authority Letter of Secured Creditors and for that reason, the voting exercise on the proposed resolution could not be undertaken and carried out”.

3. The present application has been filed with the prayer for amendment of order dated 01.06.2017 and then accepting the prayer for dispensing with the requirement of convening, holding and conducting the meeting of the Secured Creditors for the Transferee Company No. 3. It has also been pointed out that the amount of some Secured Creditors has also been paid and the consent affidavit in terms of Section 230 (6) of the Companies Act have been placed on record.

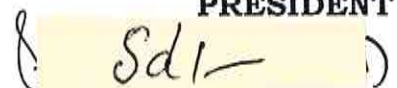


4. Having heard the learned Counsel, we are of the view that the Scheme of Amalgamation, which was presented at the stage of First Motion has not met the approval of the Creditors as per the report of the Chairperson and scrutinizer. The meetings of Creditors were convened on the request made by the applicant in its application of first motion. There is no request in the application for amendment of pleading in the first motion application. The Applicant appears to have further changed the Scheme as payment to certain Secured Creditors has now been made. It would, thus, require presentation of a new Scheme and the present Scheme has not been approved by the Secured Creditors and it would not qualify for an eventual approval of the Tribunal.

5. Therefore, we dismiss the application with the liberty to the Applicant to modify the Scheme and re-start the process by filing a fresh Company petition. No order as to costs.



(CHIEF JUSTICE M.M.KUMAR)  
PRESIDENT



(R. VARADHARAJAN)  
MEMBER(JUDICIAL)