

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**IA 240 of 2017 in CP(CAA) 37/ NCLT/AHM/2017
c.w. CA(CAA) No. 14/NCLT/AHM/2017**

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 29.08.2017**

Name of the Company: Persang Alloy Industries Pvt Ltd.

Section of the Companies Act: Section 230-232 of the Companies Act, 2013

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Aayog doshi			<i>Aayog</i>
2.				

ORDER

Learned Advocate Mr. Aayog Doshi i/b Learned Advocate Mr. Sharvil Majmudar present for Applicant.

Common order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 29th day of August, 2017.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

CP(CAA)36/NCLT/AHM/2017

With

IA 239/NCLT/AHM/2017

And

CP(CAA) No.37/NCLT/AHM/2017

With

IA 240/NCLT/AHM/2017

In the matter of :-

1. Eco Phil Metals Private Limited,
A company incorporated under
The provisions of Companies Act,
1956 and having its registered
Office at 4b-1, Aspen Infrastructure
Limited (SEZ), Pipalia, Waghodia,
Vadodara – 391 760,
in the State of Gujarat. ... Petitioner of C.P. (CAA) 36/2017
(Transferor Company)

AND

1. Persang Alloy Industries Private Limited,
A company incorporated under the
Provisions of Companies Act, 1956
and having its registered office at
188/7, GIDC Estate, Waghodia,
Vadodara – 391 760,
in the State of Gujarat. ... Petitioner of C.P. (CAA) 37/2017
(Transferee Company)

Order delivered on 29th August, 2017

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

Appearance:

Mr. Aayog Doshi, Advocate for Mr. Sharvil Majmudar, Advocate for the
Petitioners.

COMMON ORDER

1. These petitions under Sections 230-232 of the Companies
Act, 2013 have been filed seeking sanction of a proposed Scheme

of Arrangement in the nature of Amalgamation of Eco Phil Metals Private Limited with Persang Alloy Industries Private Limited and their respective shareholders and creditors ('Scheme' of short).

2. The petitioner transferor company, i.e. Eco Phil Metals Private Limited, filed an application before this Tribunal, being CA(CAA) 13/NCLT/AHM/2017, seeking dispensation of the meetings of the Equity Shareholders and Unsecured Creditors of the said Company. There were no Secured Creditors of the petitioner transferor company as on the date of filing the application. This Tribunal vide order dated 30th March, 2017, dispensed with the convening and holding of the meetings of the Equity Shareholders and Unsecured Creditors of the petitioner transferor company in view of the consent letters given by the Equity Shareholders and Unsecured Creditors of the Petitioner Company.

3. The petitioner transferee company, i.e. Persang Alloy Industries Private Limited, filed an application before this Tribunal, being CA(CAA) 14/NCLT/AHM/2017, seeking dispensation of the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the said Company. This Tribunal vide order dated 30th March, 2017, dispensed with the convening and holding of the meetings of the Equity Shareholders as well as Secured and Unsecured Creditors of the petitioner transferee company in view of the consent letters given



by the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Company.

4. Vide the aforesaid order dated 30th March, 2017, this Tribunal also directed the present petitioner companies to send notice in Form CAA3 along with a copy of the Scheme of Amalgamation and Explanatory Statement to statutory authorities, namely, (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, (iii) the concerned Income Tax authorities; and (iv) the Official Liquidator (only in the case of the transferor company) asking them to make representation(s), if any, in case they desired to make, within a period of 30 days from the date of receipt of notice, to this Tribunal. It was also stated in the said orders that in case no representation was received by this Tribunal within the stipulated period of 30 days, it would be presumed that the authorities have no representation to make on the proposed Scheme of Amalgamation.

5. The Petitioner Companies thereafter on 21st April, 2017 filed present petitions before this Tribunal seeking sanction of the Scheme approved by the Board of Directors of the Petitioner Companies. Thereafter, this Tribunal, vide orders dated 3rd July, 2017, admitted the petitions and ordered that notice of hearing of the petitions shall be advertised in English Daily Newspaper, "Indian Express" and Gujarati Daily Newspaper, "Divya Bhaskar"



both having circulation in Baroda not less than ten days before the date fixed for hearing, calling for objections, if any, of the public at large on or before the date of hearing. This Tribunal also ordered both the petitioners to issue notice to the Central Government through the Regional Director and the petitioner in CP (CAA) No. 36 of 2017 to issue notice to the Official Liquidator informing the date of hearing of the petitions.

6. Accordingly, the Petitioner Companies published notice of hearing of CP (CAA) Nos.36 and 37 of 2017 in English Daily, "Indian Express" and Gujarati Daily, "Divya Bhaskar" both Baroda editions on 13th July, 2017. Notices of hearing of the petitions were also served upon the statutory authorities, namely, the Central Government through the Regional Director and the Official Liquidator and affidavits of service and publication dated 14th July, 2017 have been filed by the Director of the Petitioner Companies. It is also stated in the respective Company Petitions on affidavit that the accounting treatment proposed in the Scheme of Arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. The Petitioner Companies have also produced certificates of Statutory Auditors in their respective petitions.

7. In response to the notice to the Regional Director, Ministry of Corporate Affairs, the Regional Director filed a common



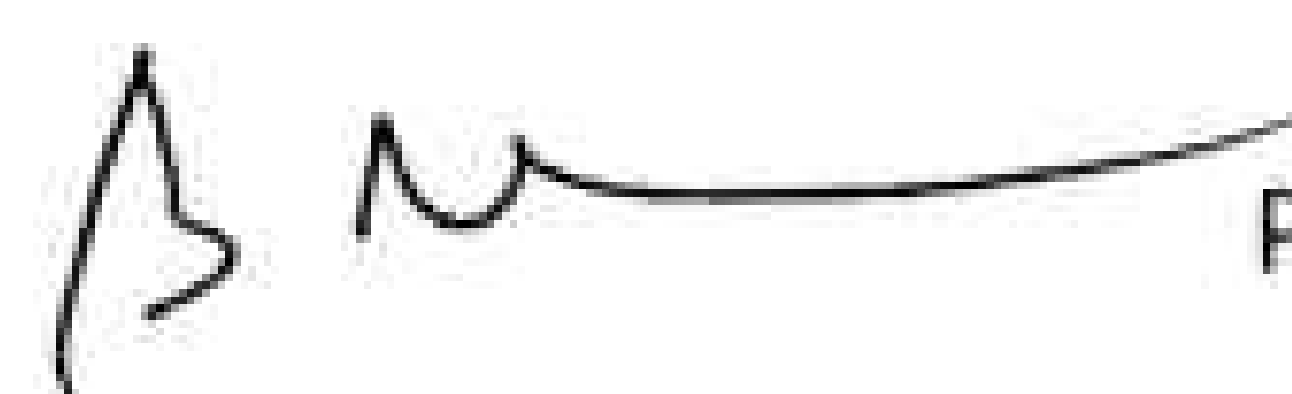
representation dated 13th June, 2017. The Official Liquidator filed a representation dated 27th June, 2017. However, no representation has been received from the Income Tax Authorities before this Tribunal. Similarly, pursuant to the publication of notice of hearing of the petitions in the newspapers, no objection to the Scheme has been received from the public at large.

8. The Regional Director has, in the representation dated 13th June, 2017, stated that, as per the report received from the Registrar of Companies, Gujarat, there were no complaints against the petitioner companies including any complaint/representation against the Scheme of Arrangement of the petitioner companies. The petitioners have, therefore, not filed any reply to the representation of the Regional Director.

9. In response to the representation dated 27th June, 2017 filed by the Official Liquidator, the petitioner transferor company has filed a reply affidavit dated 11th July, 2017.

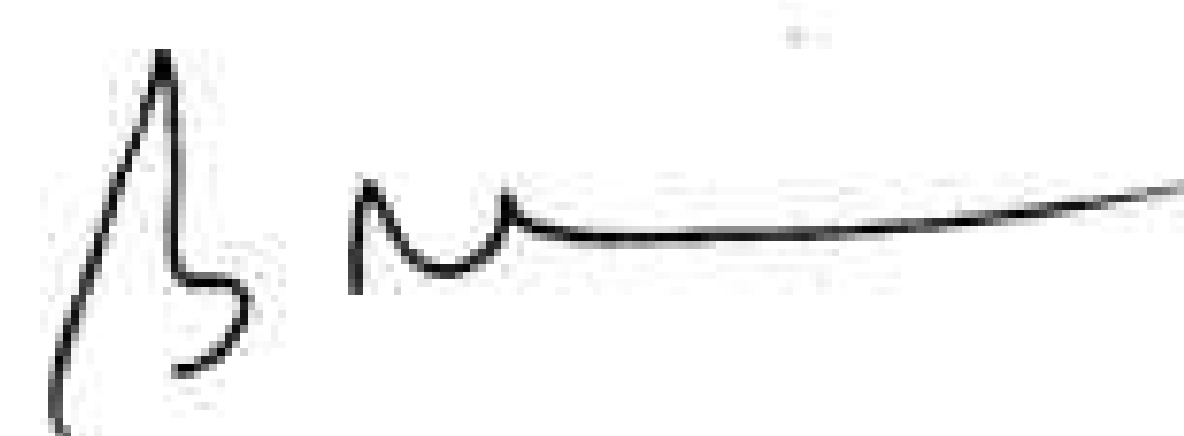
10. Heard learned Advocate Mr. Aayog Doshi for Mr. Sharvil Majmudar, Advocate for the Petitioner Companies.

11. In response to the notice to the Official Liquidator in CA (CAA) No.13 of 2017, the Official Liquidator has filed his



representation dated 27th June, 2017. On perusal of the said representation, the Official Liquidator in Paragraphs 9, 10 and 13 has observed that the Scheme should be applicable to "all the employees" instead of "all permanent employees" and has requested the Tribunal to direct the Petitioner Companies to amend the Clause 6.1 of the Scheme. In response to the said observation made by the Official Liquidator in the representation, in Paragraph No. 11 of the affidavit dated 11th July, 2017 filed by the Petitioner Companies, it is stated that the applicant company has absolutely no objection if this Tribunal directs the applicant company to modify Clause 6.1 of the Scheme to the effect that the Scheme should be applicable to "*all the employees*" instead of "*all permanent employees*". It is also stated in the reply affidavit that Clause 17.1 of the Scheme empowers the Board of Directors of the petitioner companies or any delegate thereof to make, from time to time, any modifications or amendments or additions to the Scheme. Along with the reply affidavit, a copy of resolution passed by the Board of Directors of the transferor company on 10th July, 2017 giving consent for modification of Clause 6.1 of the Scheme is produced as Annexure-A.

12. With regard to the observation made by the Official Liquidator at Paragraph 14 of the representation, in Paragraph 15 of the affidavit dated 11th July, 2017, it is stated that the Petitioner Transferor Company undertakes to preserve books of accounts, papers and records and shall not dispose them of



without the prior permission of the Central Government as per the provision of Section 239 of the Companies Act, 2013.

13. In Paragraph 15 of the representation, the Official Liquidator has requested the Tribunal to direct the petitioner transferor company to ensure statutory compliance of all applicable laws and also on sanctioning of the Scheme, the petitioner Company shall not be absolved from any of its statutory liability in any manner. In reply given in Paragraph 16 of the affidavit, the petitioner transferor company has stated that the petitioner transferor company ensures statutory compliance of all applicable laws and that the petitioner transferor companies shall not be absolved from any of its statutory liabilities. However, it is observed that upon sanctioning of the Scheme, the petitioner transferor companies shall not be absolved from any of its statutory liabilities, in any manner.

14. The Official Liquidator has further observed that the petitioner transferor companies may be dissolved without following the process of winding-up in terms of sub Section 3(d) of Section 232 of the Companies Act, 2013.

15. In Paragraph 17 of the representation, the Official Liquidator has requested the Tribunal to direct the petitioner transferor Company to comply with Rule 17(3) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

with respect to filing of Order for Confirmation of the Scheme in Form No. INC-28 with the Registrar of Companies. In the reply given by the petitioner transferor company, in Paragraph 18, the petitioner transferor company has stated that it undertakes to comply with Rule 17(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with respect to filing of the Order of Confirmation of the Scheme in Form No. INC-28 with the Registrar of Companies.

16. In light of the aforesaid, this Tribunal is of the view that the observations made by the Official Liquidator in his representation, stand satisfied.

17. The Official Liquidator has also requested the Tribunal to direct the petitioner transferor Company to pay cost of Rs. 10,000/- to the office of the Official Liquidator.

18. No objection has been received from the public at large pursuant to publication of notice of hearing in newspapers.

19. The petitioners, thereafter, filed applications, being IA 239/NCLT/AHM/2017 and IA 240/NCLT/AHM/2017 seeking permission of this Tribunal to amend Clause 6.1 of the Scheme to the effect that the Scheme should be applicable to **“all the employees”** instead of **“all permanent employees”**. In the applications, it is stated that the applicant transferor company

vide clarification letter dated 17.6.2017, addressed to the Official Liquidator has already assented that *"upon coming into effect of the scheme all the employees of the transferor company as on effective date shall become the employees of the transferee company.* It is also stated that the applicant companies have absolutely no objection in amending Clause 6.1 of the Scheme to the effect that the Scheme should be applicable to *"all the employees"* instead of *"all permanent employees"*. The applicant companies have also annexed resolutions passed by the Board of Directors of the applicant companies at Annexure-D to the applications. Considering the averments made in the applications and the resolutions passed by the Board of Directors of both the companies, this Tribunal is of the view that the Interlocutory Applications deserve to be allowed.

20. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record, it appears that the requirements of the provisions of Sections 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.

21. In the result, these Petitions and the Interlocutory Applications are allowed. The petitioners are permitted to amend Clause 6.1 of the Scheme to the effect that the Scheme should be applicable to *"all the employees"* instead of *"all permanent*

employees". The Scheme of Arrangement, which is produced as Annexure-E to the Interlocutory Applications, is hereby sanctioned and it is declared that the same shall be binding on the Petitioner Companies namely, Eco Phil Metals Private Limited and Persang Alloy Industries Private Limited, their equity shareholders, creditors and all concerned under the Scheme. It is also declared that the Petitioner Transferor Company, namely Persang Alloy Industries Private Limited shall stand dissolved without winding up.

22. The fees of the Official Liquidator are quantified at Rs. 10,000/- in respect of CP (CAA) Nos. 36 of 2017. The said fees to the Official Liquidator shall be paid by the Transferee Company.

23. Filing and issuance of drawn up orders as 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 certified copy of this order along with the Scheme immediately.

24. These Company Petitions are disposed of accordingly.

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