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NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

T.P. No. 71/NCLT/AHM/2017 (New)  
Madhya Pradesh High Court Gwalior Bench C.P. No. 2/2016 (Old)

Coram:

Present: Hon'ble Ms. MANORAMA KUMARI  
MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 15.12.2017**

Name of the Company:

Vectus Industries Ltd.

Section of the Companies Act:

Section 391-394 of the Companies Act, 1956

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

**ORDER**

None present for Petitioner.

Common Order pronounced in open Court. Vide separate sheets.



**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 15th day of December, 2017.

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

**TP (CAA) No.70/NCLT/AHM/2017**

**With**

**TP (CAA) No.71/NCLT/AHM/2017**

In the matter of:-

1. Waterwell Containers Private Limited  
A company having its registered office  
at "Kanchan", Near Achleshwar Temple,  
MPEB Lane, Gwalior, M.P.

...

Petitioner of T.P. No. 70 of 2017  
(Transferor Company)

AND

2. Vectus Industries Limited  
A company having its registered office  
At 262, Jivaji Nagar, Thatipur,  
Gwalior, MP- 474011

...

Petitioner of T.P. No. 71 of 2017  
(Transferee Company)

Order delivered on 15<sup>th</sup> December, 2017

**Coram: Hon'ble Ms. Manorama Kumari , Member (J)**

**Appearance:**

Mr. Ravi Kapoor, Practicing Company Secretary for the applicant companies.

**COMMON ORDER**

1. These petitions under Sections 391-394 of the Companies Act, 1956 have been filed seeking sanction of a proposed Scheme of Arrangement ("Scheme" for short) in the nature of amalgamation of Waterwell Containers Private Limited (Transferor Company) with Vectus Industries Limited (Transferee Company).

*Manar*

2. The petitioner of T.P. No. 70/NCLT/AHM.2017, i.e. Waterwell Containers Private Limited, and the petitioner of T.P. No. 71/NCLT/AHM.2017, i.e. Vectus Industries Limited had filed an application in the Honourable High Court of Madhya Pradesh, Gwalior Bench, being Company Application No. 8 of 2015, seeking dispensation of the meetings of Equity Shareholders of Transferor Company and Transferee Company. The Honourable High Court, vide order dated 6<sup>th</sup> January, 2016, dispensed with the convening and holding of the meetings of the Equity Shareholders of both the Transferor and Transferee Company. Further, The Honourable High Court, vide order dated 6<sup>th</sup> January, 2016 ordered for meeting of Secured and Unsecured Creditors of the Transferor and Transferee Companies and also ordered for News Paper Advertisement in Hindustan Times (English) and Nai Duniya (Hindi) at least 21 days before the meeting. The said advertisements were published on 11<sup>th</sup> February, 2016 and necessary affidavit filed before the Court. Subsequently, Meeting of Secured and Unsecured Creditors of petitioner Transferor Company were convened on 5<sup>th</sup> March, 2016. Since on the date of meeting there were no Secured Creditors on the books of Petitioner Transferor Company, meeting of Secured Creditors was not held. Meeting of the unsecured creditors of Petitioner Transferor Company was held on 5<sup>th</sup> March 2016 and necessary resolution for approval of the Scheme was passed with requisite majority by unsecured



creditors of Petitioner Transferor Company. Based on Scrutinizers Report, Chairman of the meeting filed her report before the Court on 14<sup>th</sup> March 2016.

3. Meeting of the Secured and Unsecured creditors of Petitioner Transferee Company was held on 6<sup>th</sup> March 2016 and necessary resolution for approval of the Scheme was passed with requisite majority by both Secured and Unsecured creditors of Petitioner Transferee Company. Based on Scrutinizers Report, Chairman of the meeting filed her report before the Court on 14<sup>th</sup> March 2016.

4. In response to the notice to the Regional Director, Ministry of Corporate Affairs, the Regional Director filed a common affidavit dated 23<sup>rd</sup> August, 2016 making certain observations including observation with regard to corrections and amendment required in the petition and the Scheme.

5. In response to the notice to the Official Liquidator, the Official Liquidator filed a representation dated 9<sup>th</sup> August 2016. However, there are no adverse observations made in the report.

6. The petitioners, thereafter, filed Company Petitions no. 1 and 2 of 2016 in the Honourable High Court of Madhya Pradesh, Gwalior, seeking sanction of the Scheme. The Honourable High Court, by its orders, dated 16<sup>th</sup> September 2016 directed

*Almai*

publication of notice of hearing of the petitions in English Daily Newspaper "Times of India" and Hindi Daily Newspaper "Dainik Bhaskar" having all India circulation.

7. Pursuant to the order dated 16<sup>th</sup> September 2016 passed by the Honourable High Court, the petitioner- companies published the notice of hearing of the petitions in English Daily Newspaper "Times of India" and Hindi Daily Newspaper "Dainik Bhaskar" on 20<sup>th</sup> October 2016, in respect of final hearing scheduled on 11<sup>th</sup> November 2016.

8. The petitioners filed a reply dated 18<sup>th</sup> November 2016 to the report of Regional Director, inter alia, stating that without prejudice, the petitioner companies undertake to comply with the Accounting Standards-14. So far as the observation with regard to corrections in petition and scheme, petitioner company filed a separate 18<sup>th</sup> November 2016.

9. No other complaint or observation was received by the Court against the Petition.

10. The said application to amend the petition and the scheme was allowed by order dated 2<sup>nd</sup> December 2016 and amended petition was filed.

*Answer*

11. Subsequently, the Honourable High Court in view of Rule 3 of The Companies (Transfer of Pending Proceedings) Rules, 2016 vide orders dated 28<sup>th</sup> April 2017, transferred the aforesaid Company Petitions to this Tribunal and they came to be renumbered as T.P. Nos. 70 and 71 of 2017.

12. Thereafter, this Tribunal vide orders dated 10<sup>th</sup> October 2017, directed the petitioner-companies to publish notice in the newspaper in which already publication had been made informing the date of hearing. The petitioner-companies were also directed to give notice to the following statutory authorities:-

- a. The Central Government through the Regional Director, Gujarat; and
- b. The Registrar of Companies, Gujarat;

The petitioner-company in T.P. No. 70 of 2017 was also directed to serve notice on the Official Liquidator. The Tribunal also directed issuance of individual notices to equity shareholders, secured creditors and unsecured creditors in case of both the Companies at least 10 days before the date of hearing.

13. In pursuance to order dated 10.10.2017, the petitioner-companies published separate notices of hearing of T.P. Nos. 70 and 71 of 2017 in English daily "Times of India", and Hindi Daily "Dainik Bhaskar", on 23<sup>rd</sup> October 2017 and 19<sup>th</sup> October, 2017,

respectively. Notices of hearing of the petitions were also served upon statutory authorities, namely, (i) the Central Government through the Regional Director (ii) the Registrar of Companies, Madhya Pradesh and (iii) the Official Liquidator.

14. The petitioners also served individual notices to equity shareholders, secured and unsecured creditors in case of both the Companies.

15. Affidavits of service dated 7<sup>th</sup> November 2017 were filed by the authorized signatory of the Petitioner-Companies. Pursuant to these notices, no representations are received from (i) the Central Government through the Regional Director, (ii) the Registrar of Companies, Madhya Pradesh, (iii) the Official Liquidator.

16. In response to the notice sent by Transferee Company to the unsecured creditors, a representation/ objection was received by this bench on 6<sup>th</sup> November 2017 from one of the unsecured creditors of Transferee Company.

17. Thereafter, this Tribunal vide orders dated 20<sup>th</sup> November 2017, directed the Petitioner- Transferee Company to give notice to the Mr. Suresh Singh, Proprietor of Rajasthan Freight Movers,



informing him about final hearing on proposed amalgamation to be held on 7<sup>th</sup> December 2017.

18. In pursuance to order dated 20<sup>th</sup> November 2017, the Petitioner-Transferee Company has served notice of hearing of the petitions to Mr. Suresh Singh, Proprietor of Rajasthan Freight Movers and an affidavits of service dated 23<sup>rd</sup> November 2017 have been filed by the authorized signatory of the Petitioner-Companies.

19. Heard learned PCS, Mr. Ravi Kapoor, for the petitioner-companies.

20. Mr. Ravi Kapoor provided a copy of the proof that delivery of the notice to Mr. Suresh Singh, Proprietor of Rajasthan Freight Movers was made on 25<sup>th</sup> November 2017. He also informed this Tribunal that the total outstanding of the creditors is less than 0.01% of the total outstanding of creditors of the Company and accordingly in view of the proviso to Sec. 230(4) of the Companies Act, 2013 an objection can be made only by person having outstanding debt amounting to not less than five per cent of the total outstanding debts as per the latest outstanding financial statement. Since the debt of the creditor is less than 5% he is not entitled to raise any objection. He also relied on the decision of the Bombay High Court in the matter of **Zee Interactive**

*Chitwan*



**Multimedia Ltd. [2002]50 CLA 20 (Bom.)** where in Hon'ble High Court observed that *"it must be remembered that a scheme under section 391 of the Act is not a tool in the hands of a creditor to recover money or to coerse the company to pay. The objecting creditor must show to the court that the scheme is mala fide or fraudulent is likely to adversely affect him or interest of creditors of any class of them are likely to be adversely affected if the scheme is sanctioned without securing him or any or all the creditors. No argument was advanced as to how the scheme is mala fide or fraudulent or would adversely affect creditors of the transferee- company. In the circumstances the, objection raised by the creditors are rejected."*

21. 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 391-394 of the Companies Act, 1956 are satisfied. The Scheme appears to be genuine and *bona fide* and in the interest of the shareholders and creditors.


22. In the result, these petitions are allowed. The Scheme of Arrangement as enclosed with the affidavit dated 19<sup>th</sup> July 2017, is hereby sanctioned and it is declared that the same shall be binding on the petitioner- companies namely, Waterwell Containers Private Limited and Vectus Industries Limited, their



equity shareholders, creditors and all concerned under the Scheme.

23. Filing and issuance of drawn up orders are 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 Petitions are disposed of accordingly.

Signature.....  
[Ms. Manorama Kumari , Member (J)]

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