NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 6th day of February, 2017

C.A.(CAA) No. 2/230-232/NCLT/AHM/2017

In the matter of: -

Grasim Industries Limited,
A company incorporated under
the provisions of the Gwalior Companies
Act (1 of Samvat 1963) and having its
Registered Office at Birlagram,
Nagda, District Ujjain,
Madhya Pradesh – 456 331. ..... Applicant.

Appearance: -

Mr. Mihir Joshi, Senior Advocate, with
Mr. Sandeep Singhi and Mr. Pranjal Buch,
Advocates, for M/s Singhi & Co.,
Advocates, for the Applicant.

FINAL ORDER
(Date: 06.02.2017)

1. Grasim Industries Limited (hereinafter referred to as "Grasim" for short) is a public company limited by shares.

2. Aditya Birla Nuvo Limited (hereinafter referred to as "ABNL" for short) is a public company limited by shares.

3. Aditya Birla Financial Services Limited (hereinafter referred to as "ABFSL" or a "Resulting Company", as the context may admit) is also a public company limited by shares.

4. ABNL along with its wholly owned subsidy, namely, ABNL Investment Limited, holds 100% paid-up share capital of ABFSL.

5. This Company Application is filed by Grasim proposing a composite scheme of arrangement between Grasim, ABNL and ABFSL and their respective shareholders and creditors.

6. In this application, Grasim has prayed to –

(a) permit it to convene and hold separate meetings of its equity shareholders, secured creditors and unsecured creditors and, if thought fit, approve with or without modification, the composite scheme of arrangement between ABNL and Grasim Industries Limited and ABFSL and their respective shareholders and creditors;

(b) issue necessary directions as to the method of convening, holding and conducting of the aforesaid meetings including the fixation of day, date, time and venue of the meetings and for directions as to the notices and advertisements to be issued in that behalf;

(c) appoint Chairman/Chairperson including Scrutinizer for the aforesaid meetings and in respect of adjournments thereof and to direct the Chairman/Chairperson to report the result of the meetings to this Tribunal;

(d) fix the quorum for the said meetings and to lay down the procedure for voting at the meetings, including voting by proxy;

(e) issue necessary directions for publication of notices of the said meetings in Indian Express (All editions) in the English language and a Hindi translation thereof in Nai Dunia (Indore edition) or such other newspaper; and

(f) issue necessary directions in view of the averments made in paragraphs iv.38 to iv.49 of the application.

7. Heard learned Senior Advocate, Mr. Mihir Joshi and learned Advocates Mr. Sandeep Singhi and Mr. Pranjal Buch for M/s Singhi & Company, Advocates for the Applicant-company. Perused the application and the supporting affidavit of Mr. Ashok Malu, President and Company Secretary of the Applicant-company, dated 16.01.2017 and the annexures annexed thereto. * Mrs. Hutokshi Wadia corrected as per order dated 14.2.2017. 14/2/17 MCJ

8. The proposed scheme is for amalgamation of ABNL with Grasim and upon amalgamation of ABNL with Grasim becoming effective, demerger of the financial services business of Grasim and transfer of the same to ABFSL.

9. The proposed scheme shown as Annexure-J to the application along with joint valuation/share exchange ratio/share entitlement ratio report submitted by M/s Bansi S. Mehta & Co. and Price Waterhouse & Co. LLP, Chartered Accountants (hereinafter referred to as "Joint Valuation Report"), in respect of the proposed amalgamation of ABNL with Grasim and the proposed demerger of the demerged undertaking of Grasim (i.e. upon amalgamation of ABNL with Grasim becoming effective) and transfer of the same to ABFSL was placed before the Audit Committee of Grasim in its meeting held on 11th August, 2016. The Audit Committee, based on the material, recommended the scheme to the Board of Directors of Grasim for its consideration and approval and for consideration by the Stock Exchanges and the Securities and Exchange Board of India by its report dated 11th August, 2016.

10. The Board of Directors of Grasim, in its meeting held on 11th August, 2016, approved the scheme. The scheme was also placed before the Board of Directors of ABNL in the meeting held on 11th August, 2016 and the same was approved by its Board of Directors. The scheme was also approved by the Board of Directors of ABFSL in its meeting held on 11th August, 2016. It is stated in the application that no investigation has been instituted or is pending in relation to the companies under Chapter XIV of the Companies Act. It is also

stated in the application that no winding up order has been passed against either Grasim or ABNL or ABFSL under the Companies Act. It is stated that ABNL and Grasim have received no objection/approval/consent from BSE and NSE, in respect of the scheme. That the Competition Commission of India has issued necessary approval for the scheme. It is also stated that the accounting treatment, as proposed in the scheme, is in conformity with the accounting standards prescribed under Section 133 of the Act. It is stated that no arrangement with creditors, either secured or unsecured of Grasim, except to the extent once the scheme becoming effective, is made and the creditors of ABNL shall become the creditors of Grasim in the manner as provided in the scheme. It is also stated that no compromise is offered under the scheme to any of the creditors of Grasim. It is also stated that the creditors of Grasim would, in no way, be affected by the scheme. It is also stated that Grasim has no outstanding towards any public deposits. It is also stated that ABFSL undertakes to engage all the employees of Grasim on the same terms and conditions on which they were engaged by Grasim without any interruption of service and in the manner provided under Clause 17 of Part III of the scheme.

11. Having considered the entire material on record, this Tribunal passes the following order: -

(1) A meeting of the equity shareholders of the Applicant-company shall be convened and held at the registered office of the Applicant-company at Grasim Staff Club, Birlagram, Nagda, District Ujjain, Madhya Pradesh – 456 331 on ~~Monday~~ Thursday, the 6th April, 2017, at 11.00 A.M., for the purpose of considering and, if thought fit, approving with or without modification(s) the scheme.

(2) A meeting of the secured creditors of the Applicant-company shall be convened and held on 6th April, 2017, at 12.00 Noon, at the registered office of the Applicant-company at Grasim Staff Club, Birlagram, Nagda, District Ujjain, Madhya Pradesh – 456 331, for the

purpose of considering and, if thought fit, approving with or without modification(s) the scheme.

(3) A meeting of the unsecured creditors of the Applicant-company shall be held on 6th April, 2017, at 1:00 ~~2.00~~* P.M., at the registered office of the Applicant-company at Grasim Staff Club, Birlagram, Nagda, District Ujjain, Madhya Pradesh – 456 331, for the purpose of considering and, if thought fit, approving with or without modification(s) in the arrangement embodied in the scheme.

14/2/17

* corrected as per order dated 14.2.2017.

(4) In view of Sections 230(4) and 232(1) of the Companies Act, 2013 read with Rules 5 and 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and Rules 20 and 22 of the Companies (Management and Administration) Rules, 2014, the Applicant-company is required to provide the facility of postal ballot and e-voting to its shareholders. Accordingly, voting by equity shareholders of the Applicant-company to the scheme shall be carried out through (i) postal ballot and e-voting; and (ii) electronic voting system or ballot or polling paper at the venue of the meeting to be held on 6th April, 2017. In the case of meetings of secured creditors and unsecured creditors, the voting shall be carried out through ballot/polling paper.

(5) At least one month before 6.4.2017, i.e. the date of aforesaid meetings, an advertisement about convening of the said meetings, indicating the day, date, place and time, as aforesaid, shall be published in Indian Express (All editions in English language) and a Hindi translation thereof in Nai Dunia (Indore edition). The publication shall indicate the time within which copies of the scheme shall be made available to the concerned persons free of charge from the registered office of the company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and the prescribed form of proxy can be obtained free of charge at the registered office of the Applicant-company or at the office of its

Advocates, i.e. M/s. Singhi & Co., 1, Magnet Corporate Park, Near Sola Flyover, S. G. Highway, Ahmedabad – 380 059 in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.

(6) At least one month before 06.04.2017, i.e. the date of aforesaid meetings of equity shareholders, a notice in Form No.CAA.2 convening the said meeting indicating the day, date, place and time aforesaid, containing instructions with regard to postal ballot and e-voting (in case of equity shareholders) together with a copy of the scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the equity shareholders of the Applicant-company at their respective registered or last known addresses either by Registered Post or Speed Post /Airmail or by Courier or e-mail. The aforesaid notice and other documents shall also be placed on the website of the Applicant-company, if any, and the same shall be sent to Securities and Exchange Board of India, BSE and NSE [proviso to Section 230(3)]. The notices shall be sent to the equity shareholders of the Applicant-company with reference to the list of persons appearing on the record of the Applicant-company and its register as on 28.02.2017, being the cut of date as prescribed under Rule 20 of the Companies (Management and Administration) Rules, 2014. The aforesaid cut of date would be the date determining the eligibility to vote by the equity shareholders.

(7) In addition, at least one month before the date of the aforesaid meetings of the secured creditors and unsecured creditors to be held as aforesaid, a notice convening the said meetings, indicating the day, date, place and time, as aforesaid, together with a copy of the scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the secured creditors and the unsecured

creditors of the Applicant-company at their respective registered or last known addresses either by Registered Post or Speed Post/Airmail or by Courier. The notice shall be sent to the secured creditors and the unsecured creditors of the Applicant-company with reference to the list of the persons appearing on the record of the Applicant-company as on 31st January, 2017.

(8) Mr. Shailendra K. Jain, a Director of the Applicant-company and, in his absence, Mr. M. L. Apte, an Independent Director of the Applicant-company and, in his absence, Mr. Sushil Agarwal, Whole Time Director and Chief Financial Officer of the Applicant-company shall be the Chairman/Chairperson of the aforesaid meetings to be held on 06.4.2017 and in respect of any adjournment or adjournments thereof.

(9) Mr. Ashish Garg, a Practising Company Secretary, is appointed as the Scrutinizer for the meeting of the equity shareholders (which includes public shareholders) of the Applicant-company including for conducting the postal ballot and e-voting process and also for the meeting of the secured creditors and unsecured creditors of the Applicant-company.

(10) The Chairman or Chairperson appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meetings referred to above. The Chairman/Chairperson is free to avail the services of the Applicant-company or any agency for carrying out the aforesaid directions. The Chairman or Chairperson shall have all powers under the Articles of Association of the Applicant-company and also under the Rules in relation to the conduct of meetings, including for deciding any procedural questions that may arise at the meetings or adjournments thereof proposed at the said meetings, amendment(s) to the aforesaid scheme or resolutions, if any, proposed at the aforesaid meetings by any person(s) and to ascertain the decision of the sense of the meeting of equity shareholders by (i) postal ballot and e-voting; and (ii) electronic

voting system or ballot or polling paper at the venue of the meeting of the equity shareholders and for the secured creditors and the unsecured creditors by polling paper/ballot.

(11) The quorum for the meeting of equity shareholders shall be 30 (thirty) persons present in person. The quorum for the meeting of the secured creditors shall be 2 (two) persons present in person. The quorum for the meeting of the unsecured creditors shall be 5 (five) persons present in person.

(12) Voting by proxy/authorised representative is permitted, provided that the proxy in the prescribed form/authorisation duly signed by the person entitled to attend and vote at the aforesaid meetings is filed with the Applicant-company at its registered office at Birlagram, Nagda, District Ujjain, Madhya Pradesh – 456 331 not later than 48 hours before the meetings vide Rule 10 of Companies (CAA) Rules, 2016 read with Section 105 of the Companies Act.

(13) The number and value of equity shares of the equity shareholders or the value of the debts of the secured creditors and unsecured creditors, as the case may be, shall be in accordance with the records or registers of the Applicant-company and where the entries in the records or registers are disputed, the Chairman of the meetings shall determine the number or value, as the case may be, for purposes of the meetings.

(14) The Chairman/Chairperson to file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of Companies (CAA) Rules, 2016.

(15) It is further ordered that the Chairman or Chairperson shall, report to this Tribunal on the result of the meeting in Form No.CAA.4,

verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in Form No.CAA.4.

(16) In compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (CAA) Rules, 2016, the Applicant-company shall send a notice of meeting under sub-section (3) of Section 230 read with Rule 6 of the Companies (CAA) Rules, 2016 in Form No.CAA.3 along with a copy of the scheme or arrangement, the explanatory statement, copy of this order and the disclosures mentioned under Rule 6, to (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, Madhya Pradesh, (iii) the Income-tax authorities, (iv) the Reserve Bank of India, (v) the Securities and Exchange Board of India, (vi) the Competition Commission of India, (vii) BSE Limited, (viii) NSE Limited and (ix) the Official Liquidator concerned stating that representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed scheme. The said notice shall be sent forthwith after notice is sent to the members or creditors of the company by registered post or by speed post or by courier or by hand delivery at the office of the authority as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230, shall sent the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which it will be deemed that they have no representation to make on the proposed arrangement.

(17) SEBI Circular No. CIR/CFD/CMD/16/2015 dated 30th November, 2015 requires that the scheme shall be approved by the public shareholders of the Applicant-company. The voting in respect of the same is to be carried out through postal ballot and e-voting. Since the Applicant-company is directed to convene a meeting of equity shareholders, which includes public shareholders, and the voting in respect of equity shareholders which includes public

shareholders is through postal ballot and e-voting, it is sufficient compliance of SEBI Circular dated 30.11.2015 referred to above. However, the Scrutinizer appointed for the meeting of equity shareholders shall submit a separate report to the Chairman of the Applicant-company with regard to the result of the postal ballot and e-voting in respect of public shareholders. The said report to be submitted by the Scrutinizer shall be in addition to the report submitted by the Scrutinizer to the Chairman or Chairperson of the meeting with regard to the result of the postal ballot and e-voting in respect of the equity shareholders and the report with regard to the result of the ballot paper/poll paper cast at the meeting in respect of the secured creditors and the unsecured creditors.

This Company Application is disposed of accordingly.

6/2/17

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on this
6th day of February, 2017.