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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

IA.No.24/2017 In
CP(CAA) No. 11/NCLT/AHM/2017(New)

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 01.03.2017

Name of the Company: Heavy Metal and Tubes Ltd.

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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	SWATI SOPARKAR	ADVOCATE	APPLICANT	Swati Soparkar
2.				

ORDER

Learned Advocate Mrs. Swati Soparkar present for petitioner.

Order pronounced in open Court vide separate sheet.

1.3.17

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 1st day of March, 2017.

NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 1st day of March, 2017

I.A. No. 24 of 2017

IN

CP(CAA) No.11/NCLT/AHM/2017

In the matter of :-

Heavy Metal and Tubes Limited,
A company registered under the
Companies Act, 1956 and having
its registered office at
201, Ashwarath Complex,
Ashram Road, Usmanpura,
Ahmedabad – 380 013. ... Applicant
(Petitioner)

Appearance:-

Mr. Saurabh Soparkar, Senior Advocate, with
Mrs. Swati Sorparkar for the Applicant-Petitioner.

ORDER
(Date:01.03.2017)

1. This application is filed by the transferor-company under Rule 15 of the NCLT Rules, 2016, seeking condonation of delay in filing CP (CAA) No.11 of 2017 before this Bench under Sections 230 to 232 of the Companies Act, 2013.

2. The applicant transferor-company moved the Honourable High Court of Gujarat vide Company Application No. 413 of 2016, seeking directions for conducting meetings of equity shareholders, preference shareholders as well as secured and unsecured. The Honourable High Court of Gujarat, by it order dated 15.09.2016, directed the

applicant to conduct meetings of equity shareholders, preference shareholders as well as secured and unsecured creditors. The Honourable High Court also appointed Chairman of the meetings. Thereafter, with effect from 15.12.2016, Sections 230 to 233 of the Companies Act, 2013 came into force except sub-sections (11) and (12) of Section 230. The Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 (hereinafter referred to as the "Companies (CAA) Rules") also came into force with effect from 15.12.2016. Rule 15 of the Companies (CAA) Rules says that the company shall present a petition to the Tribunal within seven days of the filing of the report by the Chairperson. The applicant presented CP(CAA) No.11 of 2017 on 25th January, 2017. The Chairman filed his report on 29th December, 2016. Therefore, in view of Rule 15 of the Companies (CAA) Rules, the applicant ought to have presented the petition within seven days from 29.12.2016.

3. In the application, it is stated that the Ministry of Corporate Affairs, by notification dated 7th December, 2016, brought Sections 230 to 233 into force with effect from 15.12.2016. The Companies (CAA) Rules were brought into force from 15.12.2016 by a notification dated 14.12.2016. The applicant was required to prepare fresh set of documents, viz. Supplementary Financial Statements and Audited Balance Sheet related to a financial year ending more than six months before the first meeting of the company for approval of the scheme, as per provisions of the Companies Act, 2013. The applicant-company was also required to produce the Auditor's

Certificate confirming the proposed Accounting Treatment being in conformity with the applicable Accounting Standards. It is stated in the application that the applicant-company consumed some time in preparation of and for obtaining such documents. It is also stated in the application that since it was a transition stage, there was no clarity whether the petition has to be filed before the Honourable High Court or before this Tribunal. It is further stated that since the offices of NCLT and the High Court of Gujarat remained closed for Christmas vacation and Winter vacation, respectively, the applicant's access to these offices for such clarification was limited. According to the applicant, the delay of 20 days in presenting the petition before this Tribunal is neither wilful nor intentional and there is sufficient cause for condoning the delay.

4. It is Rule 15 of the Companies (CAA) Rules that provides seven days period for presenting a petition before the Tribunal from the date on which the report of the Chairperson was filed. Rule 15 of the National Company Law Tribunal Rules, 2016 ("NCLT Rules" for short) enables this Tribunal to extend the time appointed by those rules or fixed by any order, for doing any act or taking any proceedings upon such terms, as the justice of the case may require. No doubt, the period of seven days is not fixed by the NCLT Rules, but it is fixed by the Companies (CAA) Rules. Sub-rule (3) of Rule 15 of the Companies (CAA) Rules says that where the company fails to present the petition for confirmation of the compromise or arrangement under Sub-rule (1) of Rule 15, it shall be open to any creditor or member to present

a petition for confirmation of the compromise or arrangement with the leave of the Tribunal. No period of limitation is prescribed under sub-rule (3) of Rule 15 for presenting a petition for confirmation of the compromise or arrangement by any creditor or member. That means, in case the company fails to present a petition within the time given under sub-rule (1) of Rule 15, then a member or creditor can present such petition. Hence, the period of limitation of seven days provided under sub-rule (1) of Rule 15 is not a period which cannot be condoned by this Tribunal, provided there is sufficient cause.

5. Rule 14 of the NCLT Rules empower the Tribunal, on sufficient cause being shown, to exempt the parties from compliance with any requirement of the said rules and to give such directions in matters of practice and procedure, as it may consider just and expedient, on an application moved in that behalf to render substantial justice.

6. Rule 11 of the NCLT Rules says that nothing in the said rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice.

7. In the application, the applicant has stated more than one reason, which are already narrated in the paragraph No.3, for the delay caused in presenting the petition before this Tribunal. Those reasons are sufficient reasons for condoning the delay that has caused in presenting the petition. If the delay is not condoned in

spite of there being sufficient cause, untold hardship and substantial loss would be caused to the applicant. Moreover, in order to do substantial justice, in the considered view of this Tribunal, the delay caused in presenting the petition deserves to be condoned since there is sufficient cause for the delay.

8. In view of the above discussion, this application is allowed. Delay of 20 days caused in presenting CA (CAA) 11 of 2017 is condoned. No costs.

1.3.17

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced in open court on
this 1st day of March, 2017.

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