

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**T.P. No. 38/NCLT/AHM/2017 (New)
C.P. No. 428/2016 with C.A. No. 299/2016 (Old)**

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 15.03.2017**

Name of the Company: Ashinsha Alloys Pvt. 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> |
|--------------|--|--------------------|-----------------------|------------------|
| 1. | NAVIN PAHWLA FOR TNAUKAR & PAHWLA, ADVS. | ADV | Petitioner | Natasha |
| 2. | | | | |

ORDER

Learned Advocate Mr. Navin Pahwa with Learned Advocate Ms. Natasha Sutaria present for the Petitioner.

This petition is filed by Ashinsha Alloys Pvt. Ltd. under section 391-394 of the Companies Act, 1956 for approval of the proposed arrangement in the nature of demerger of the demerger undertaking of the demerger company into resulting company i.e. Ashinsha Alloys Pvt Ltd.

Petitioner company filed CA 299/2016 under section 391 to 394 of the Companies Act, 1956 before the Hon'ble High Court of Gujarat.

The Hon'ble High Court of Gujarat by its order dated 11.07.2016 made in CA 299/2016 directed the petitioner company to conduct the meetings of equity shareholders.

The petitioner company filed CP 428 of 2016 before the Hon'ble High Court of Gujarat for sanction of the scheme the said petition was admitted by the Hon'ble High Court by its order dated 16.09.2016 and directed the petitioner company to publish notice of hearing and to give notice to Regional Director. Petitioner company complied with those directions.

In view of the notification no. S.O 3677(E) dated 07.12.2016 issued by the Ministry of Corporate Affairs section 230 except sub sections (11) and (12) and section 231 to 233 came into force with effect from 15.12.2016.

The Hon'ble High Court of Gujarat by its order dated 10.02.2017 transferred CP 428/2016 to this Tribunal, in view of rule 3 of companies (Transfer of pending proceedings) Rules 2016.

It is contended by the learned counsel for the petitioner that no further notice is to be published in the newspaper and no further notice need be sent to Regional Director.

Petitioner filed affidavit on 07.03.2017 stating that no notice to be issued to Reserve Bank of India and Competition Commission of India. It is further stated that it learnt by the petitioner that the office of the Regional Director has already called for comments of Income Tax Department.

The hearing on the petition seeking sanction of the arrangement of demerger of the demerger undertaking of the demerged company into resulting company shall take place on 21.04.2017.

This petition is filed before Hon'ble High Court of Gujarat on 12.09.2016. The date of hearing was fixed by Hon'ble High Court of Gujarat on 21.10.2016. it appears that hearing could not take place before Hon'ble High Court of Gujarat till 27.12.2016 by which date section 230-232 of the Companies Act, 2013 came into force.

The substance of the publication in the newspaper and as well as the notice given to the statutory authorities was in compliance of the Company Court Rules, i.e., calling for objections from the public and the reports of the Regional Director.

In the Application stage, no notice was prescribed to the statutory authorities under the Company Court Rules 1959.

Rule 16(1) of the Companies (Compromise, Arrangements and Amalgamation) Rules 2016 says that the Tribunal shall fix a date for hearing of the matter, and notice of hearing shall be advertised in newspapers, not less than ten days before the date of hearing. Rule 16(2) says that notice for hearing in the Tribunal shall also be served by the Tribunal to the objectors or their representatives under sub-section (4) of section 230 of Companies Act, 2013 and to the Central Government and other authorities who have made representation under Rule 8.

The contention of the Learned Counsel for Petitioner is that already publication of notice in the newspapers were made and already notice given to the Regional Director and it is sufficient compliance of Rules 16(1) and (2).

The publication in the newspapers and the notice given to the Regional Director is for hearing date 21.10.2016 before the Hon'ble High Court of Gujarat. The hearing did not take place on 21.10.2016 and thereafter till 27.12.2016 before the Hon'ble High Court of Gujarat. In view of Rule 3 of Companies (Transfer of Pending Proceedings) Rules, 2016, the matter was transferred to this Tribunal on 10.02.2017.

Irrespective of the fact whether any objections were filed or not, irrespective of the fact whether Regional Director filed any report or not, the principles of natural justice require that a notice shall go to public at large and the statutory authorities about the transfer of this Petition from the Hon'ble High Court to this Tribunal and about the date of hearing in continuation of the publication made and notice issued to the Regional Director.

In view of the above said view of this Tribunal-

(a) Petitioner is hereby directed to publish a notice in the newspapers in which already publication has been made, informing the date of hearing and with specific mention that it is in continuation of public notice issued as per the order of the Hon'ble High Court dated 16.09.2016 and published in "Indian Express" dated 05.10.2016 and in "Sandesh" dated 05.10.2016. Publication of notice shall appear in the newspapers, at least, 10 days before the date of hearing so fixed.

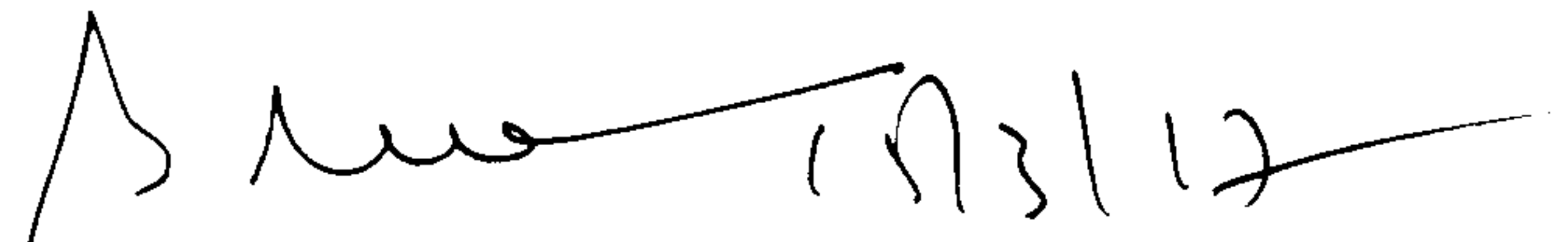
(b) Petitioner is also directed to serve a notice on the Regional Director and Registrar of Companies informing the date of hearing and making a mention that it is in continuation of notice issued in pursuance of order of the Hon'ble High Court dated 17.10.2016, at least 10 days before the date of hearing.

Petitioner is also directed to send notice to the reserve Bank of India and Income Tax department as required by section 230(5) of the Companies Act, 2013.

Petitioner shall send notice to creditors, if any informing the date of hearing and calling for their objections, if any, to the scheme.

Petitioner to file proof of compliance of above-said directions.

The date of hearing is now fixed as 21.04.2017.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 15th day of March, 2017.