

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

CP NO.19/ALD/2018

IN

CA NO.174/ALD/2017

(Under Section 230-232 of Companies Act, 2013)

IN THE MATTER OF :

1. JAI PRAKASH ASSOCIATES LIMITED

.....TRANSFEROR COMPANY

2. JAYPEE INFRASTRUCTURE DEVELOPMENT LIMITED

..... TRANSFEREE COMPANY

..... APPLICANTS

CORAM : SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)

FOR THE APPLICANTS : SH. R.P. AGARWAL, ADVOCATE

PER : SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)

ORDER/JUDGMENT DELIVERED ON 25.12.2017

1. The present company petition has arisen out of an earlier Company Application (No.174/ALD/2017 filed in this Court) and has been filed as a Second Stage Motion Petition, whereby the applicant's companies (being transferor and transferee company) have prayed for Sanction of the Proposed Company Scheme of Arrangement between the Transferor Company *Jaiprakash Associates Limited* with the Transferee Company *M/s Jaypee Infrastructure Development Limited*.



2. This Tribunal in its earlier order dated 08.12.2017 (passed in Company Application No.174/ALD/2017 the First Stage Motion Petition) had issued some direction, which may be stated as under:-

- i. The meetings of the shareholders and the creditors of the Transferee Company are dispensed with, as a Consent affidavit on behalf of the Shri Man Mohan Sibbal, the Secretary of Jai Prakash Associate Limited who is duly empowered by the Board of Directors of the Company vide resolution dated 07.10.2017 has been filed and is annexed as Annexure No.4.
- ii. The meetings of shareholders and Secured and the Unsecured creditors of the Transferor Company are being dispensed with, with such a direction that instead of meetings their approval to be obtained through postal ballot with facility of voting through electronic means (e-voting), where ever possible as per provisions of Section 110(1)(b) of the Companies Act and provision contained in Rule 20 of Companies (Management and Administration) Rules, 2014.
- iii. That the notices for postal ballot and e-voting to shareholders and Secured and Unsecured creditors of the Transferor Company shall be communicated in the manner permitted under Rule 20 of the Companies (CAA) Rules, 2016 by the Authorised Representative of the Transferor Company individually to each of the shareholders and to the Secured and the Unsecured creditors by Registered Post or Speed Post or Courier or through email where email id is available. Such notices shall be sent at least one month before the date fixed for the end of e-voting/last date fixed for submission of postal ballots by the shareholders and the secured and unsecured creditors.
- iv. It is further directed that such notices shall be accompanied by a copy of Scheme of Arrangement, copy of valuation report and fairness opinion report, and a statement disclosing the details as specified in Rule 6(3) of Companies (Compromises, Arrangements, Amalgamations) Rules, 2016) Rules and such other information/documents as may be necessary under any other provisions.
- v. Further **Mr. Nesar Ahmed (PCS) Mobile No.9810044367** and **Dr. Pawan Jaiswal (PCMA) Mobile No.9839441144** is appointed as a Scrutinizer and Alternate Scrutinizer for scrutinizing the postal ballots/e-votes cast by the shareholders and the Secured and the Unsecured Creditors of the Transferor Company and they shall be paid Rs.1,00,000/- (Rs.1 Lacs only) and Rs.75,000/-(Rupees Seventy-Five Thousand only) respectively for rendering professional services. They have to submit a report thereof to this Hon'ble Tribunal within prescribed period with a copy marked to Applicant Companies.
- vi. It is also directed that Notices shall be published in the following newspaper at least one month before the date fixed for the end of e-voting/last date fixed for submission of postal ballots by the shareholders and the secured and unsecured creditors-
 - i. Navbharat Times (Hindi) - Published from Delhi
 - ii. Times of India (English) - Published from Delhi.



2

- vii. *The Cut-off date for the purpose of preparation of the list of shareholders of the Transferor Company for sending notices is 17.11.2017 and for sending notices to the Secured and Unsecured creditors is 15.10.2017. The individual notices need not be sent to unsecured creditors whose dues are upto Rs.2 lacs as per Rule 5(e) of the Companies (CAA) Rules, 2016.*
- viii. *It is further directed that the Transferor Company shall place these notices on its website at least one month before the date fixed for the end of e-voting/last date fixed for submission of postal ballots and shall also forward the notices to SEBI and the recognized stock exchanges where the securities of the company are listed so that the notices are placed on their web sites also;*
- ix. *The Transferor Company shall also place the proposed Scheme of Arrangement and all other documents, which are required to be hosted on the website under the Companies Act, 2013 read with Companies (CAA) Rules, 2016, are so hosted on its website within the prescribed time and the same are kept open.*
- x. *The Applicant companies shall send notice of the proposed Company Scheme to the **Union of India** (Central Government) through the office(s) of the **Secretary, Ministry of Corporate Affairs, New Delhi Registrar of Companies (UP), Kanpur, Regional Director, (Northern Region), Ministry of Corporate Affairs.** Further it shall have sent notice to such **other regulatory bodies who may have significant bearing on the proposed company scheme and on the operation of the present applicants' companies.** The applicant companies shall communicate a copy of this order along with copy of the present application and necessary enclosures of documents and disclosures as required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.*
- xi. *The Applicant Companies also to serve a notice on the concerned **Income Tax Authority** within whose jurisdiction the Applicant Companies being assessed, pursuant to Companies Act, 2013 and Companies (Compromise, Arrangements and Amalgamations) Rule, 2016.*
- xii. *In addition to above, since it is matter of record that the applicant Companies have enclosed a copy of the orders passed/interim direction issued by the Hon'ble Apex Court in pending Writ Petition(s) (Civil) No(s).744/2017: Chitra Sharma & Ors. versus Union of India, therefore, we feel appropriate that the Applicant Companies to forward a copy of present application along with copy of this order to Advocate Mr. Pawan Shree Agarwal the Amicus Curie as appointed by the Hon'ble Supreme Court in the above stated matter and further to Sh. Shekhar Naphade, the learned Senior Advocate alongwith Ms. Shubhangi Tuli, (AOR) who are made participants in the Meeting of Committee of Creditor of Jaypee Infratech Limited (Corporate Debtor under Corporate Insolvency Resolution Process)so as to safeguard the*



2

interest of the home buyers as per the order dated 11.09.2017 of the Hon'ble Apex Court.

- xiii. It is further directed that the Authorised Representative of the Transferor Company shall file Affidavit of Service before this Tribunal at least seven days before the date fixed for the end of e-voting/last date fixed for submission of postal ballots by the shareholders and the Secured and the Unsecured Creditors, stating that the directions regarding dispatch and publication of notices, as above, have been duly complied with.*
- xiv. A Copy of this order be communicated to the Scrutinizer as well as to the Alternate Scrutinizers appointed in the present matter by this registry as well as by the Applicant Companies.*
- xv. Further, the Applicants' Companies are at liberty to file Second Motion Petition at Appropriate Stage before this court.*
- xvi. The Present Company Application to be clubbed with Second Motion Company Petition, if filed.*

3. The applicant's companies by reporting compliance of the aforesaid directions of this Court have moved the present company petition and informed that necessary notices as directed above, have been issued to the concern Parties/Regulatory Bodies/Government Departments.
4. Further, since there is a pending writ petition [No(s).744/2017: *Chitra Sharma & Ors. versus Union of India*] in respect of the protection of home buyer's interest and is subjudice before the Hon'ble Supreme Court. Therefore, a copy of such company application was directed to be forwarded to the Union of India/the Secretary, Ministry of Corporate Affairs, New Delhi, the Regional Director (Northern Region), MCA, New Delhi and the Registrar of Companies, Kanpur. That apart a copy of the petition was further sent to the Jurisdictional Commissioner of Income Tax/Income Tax Authorities, Noida as well as to the National Stock Exchange of India Limited and Bombay Stock Exchange Limited.



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5. In addition to the above, a copy of such company application alongwith annexures was also forwarded to the Ld. Amicus Curiae as appointed by the Hon'ble Supreme Court in the above referred matter (Chitra Sharma & Ors. versus Union of India), namely to Sh. Pawan Shree Agarwal, Ld. Amicus Curiae, Sh. Shekhar Naphade, Ld. Senior Advocate and Ms. Shubhangi Tuli, Ld. Advocate on record, so as to safeguard the interest, if any, of the home buyers in the present matter.
6. This Tribunal by its earlier order, further appointed Sh. Nesar Ahmad, PCS as Scrutinizer and Dr. Pawan Jaiswal, PCMA as an Alternate Scrutinizer to complete the work assigned for convening the meetings and to conduct e-voting, postal ballot of shareholders, secured & unsecured creditors of applicant's companies.
7. The applicant's companies through present company petition have submitted that this Court's directions are now complied with. In support of such, an affidavit of Sh. Man Mohan Sibbal, being authorized representative of applicant's companies has been filed alongwith the present petition.
8. Thus, the applicant's companies through the present company petition have made such prayer to hear the Company Scheme Petition for **Sanction of the Proposed Company Scheme of Arrangement between the Transferor and Transferee Companies.**



9. Before considering this, Second Stage Motion Petition, we are of the view that a notice is again required to be issued to the Union of India/Central Government through the office of the Secretary, MCA, the Regional Director (NR), ROC, Kanpur and to the other Sectoral

5

Regulatory Authorities like Jurisdictional Commissioner, Income Tax and other Statutory Bodies i.e. SEBI and BSE so as to invite their response, comments/objection, if any, on Sanction of the Proposed Company Scheme. Further, a paper publication to be effected in respect of notice of hearing of the present company petition by inviting response/objection, if any, from public concern.

10. Notwithstanding the above, this Bench is conscious enough that the Hon'ble Supreme Court has now seized of the issue of protecting the interest of the home buyers in respect of the Corporate Debtor Company J.P. Infrastructure (which is now under the CIRP) in the matter of (Chitra Sharma & Ors. versus Union of India), wherein the Hon'ble Apex Court has pleased to issue appropriate direction time to time to the Directors of the company. A copy of these orders have earlier been annexed by the applicant's companies in the Company Application.
11. Thus, by considering such circumstances of the present case, we feel appropriate that a copy of the present company petition further be forwarded to the Ld. Amicus Curiae (as appointed by the Hon'ble Supreme Court) Sh. Pawan Shree Agarwal, Ld. Amicus Curiae, Sh. Shekhar Naphade, Ld. Senior Advocate and Ms. Shubhangi Tuli, Ld. Advocate on record. So that, if they feel appropriate may apprise of Hon'ble Supreme Court about filing of the present company petition in this Bench seeking for Sanction of the Proposed Company Scheme, so that the Hon'ble Court, if feel necessary, may be kind enough to issue direction to this Court, if feel appropriate in the matter. The Ld. Amicus Curiae may file their objection/comments, if feel necessary, in respect of the Sanction of the Proposed Company Scheme and on such issue as



to whether it is expedient for applicant's companies to seek formal leave from the Hon'ble Supreme Court to move the present company petition before this Bench on a similar footing that the RBI has also sought leave from the Hon'ble Supreme Court for filing a petition under the I & B Code before the NCLT by filing an application in the same matter, which is under consideration and subjudice as per the Hon'ble Supreme Court's order dated 10.01.2018.

12. Further, it is equally expected from the applicant's companies to apprise of the Hon'ble Supreme Court in the pending matter of (Chitra Sharma & Ors. versus Union of India), about filing of the present company petition, seeking for Sanction of the Proposed Company Scheme, so that the Hon'ble Supreme Court, if feel appropriate may issue suitable direction to this Bench in the matter.

13. For the above stated reason, we feel appropriate to direct the applicant's companies to forward a copy of the present company petition alongwith the Proposed Company Scheme to the office of the Ld. Additional Solicitor General of India, High Court of Allahabad with such request to assist this Court expressing the view/stand of the Central Government on Sanction of the proposed Company Scheme and whether it have some bearing on the issue subjudice before the Hon'ble Supreme Court. Hence, whether a prior permission/formal leave from the Hon'ble Supreme Court for filing the present company petition is legally expected or otherwise from the applicants or matter to be decided on its merits.



14. It would not be out of context to mention here since the Reserve Bank of India has already moved an application in the above pending writ

petition before the Hon'ble Supreme Court by seeking a permission from the Hon'ble Supreme Court to move an application under the I & B Code before the NCLT. Hence, the issue that may arise for consideration of this Court as to whether on similar footing, the present applicant's companies are expected to obtain leave from the Hon'ble Supreme Court for moving the present petition for Sanction of the Proposed Company Scheme during the pendency of the above referred matter (Chitra Sharma & Ors. versus Union of India). Hence, we need effective assistance from the Ld. ASG on behalf of Central Government. Further, a copy of this company petition alongwith complete annexures and previous company application be forwarded to the zonal office of Reserve Bank of India to furnish its comments, on the issue involved in the present company petition.

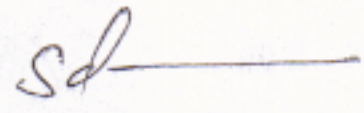
15. The applicant's companies are directed to comply with the above stated directions at the earliest.



The matter be listed on 15th February, 2018.

Dated: 25.12.2017

Typed by:
Kavya Prakash Srivastava
(Stenographer)


H.P. CHATURVEDI,
MEMBER (JUDICIAL)