

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA.**

CORAM

**Shri V.P. Singh
Hon'ble Member (Judicial)**

**Shri Jinan K.R.
Hon'ble Member (Judicial)**

Company Petition No. 510/KB/2017

In the matter of :

An application under section 230 of the Companies Act, 2013 read with section 48 and other relevant provisions of the Companies Act, 2013;

-And-

In the matter of :

Microfirm Capital Private Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 24, Park Street, Kolkata - 700016.

.....Petitioner

-And -

In the matter of :

7% Redeemable Cumulative Preference Shareholders Series-III of Microfirm Capital Private Limited.

-And

In the matter of :

Equity Shareholders of Microfirm Capital Private Limited.

Ms. Nitu Poddar, Pr.C.S.

- For the petitioner.

Order delivered on : 11-1-08

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Per Shri V. P Singh, Member (Judicial)

This Company Petition filed by the Petitioner Company under section 230 of the Companies Act, 2013 and section 48 of the said Act read with Company (Compromised, Arrangements and Amalgamations) Rules, 2016 is coming up finally before us on 05.01.2018 for the purpose of sanction of the Scheme of Arrangement as contemplated between the company (Microfirm Capital Private Limited) and its holders of 7% Redeemable Cumulative Preference Shares Series III (class of Members) and equity shareholders. The proposed Scheme of Arrangement is for extension of maturity period of preference shares of the company. It involves a compromise with the current holders of the RCPS, as the company, not having sufficient liquidity and being in the need for long term resources for its business intends to defer the date of redemption of the RCPS by a period of 10 years, and thereby, render original maturity 15 years as against 5 years as originally issued.

2. Initially, the company had filed the first motion application bearing C.A.No. 159/KB/2017. This Tribunal vide its order dated 12.06.2017 had directed meeting of the equity shareholders and 7% Redeemable Cumulative Preference Shareholders, Series III (RCPS) of the applicant, to be called and held under the chairmanship of Ms. Dipti Sen, on 21.07.2017. Other consequential directions had also been passed in this regard as per the provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

3. The applicant company has now initiated the second motion being C.P. NO. 510/KB/2017 for sanction of the Scheme of

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Arrangement as mentioned in Para-1 (Supra). As per averments made in the petition, the petitioner company is the issuer company. It has both equity as well as preference shares in its capital structure. The issuer company has issued 87,000 - 7% Redeemable Cumulative Preference Shares, Series-III, on 30.03.2012 with certain terms and conditions which were partly redeemed before the due date of redemption and the continuing RCPS are 46250 due to be redeemed on 30.03.2017. The original terms and conditions of issue of RCPS, as indicated in Annexure 'A' is extracted below :-

Issuer	Microfirm Softwares Private Limited
Term	5 Years
Aggregate quantity of RCPS	87,000
Face Value per RCPS	Rs.10/-
Subscription Price	Rs.2000/- per RCPS aggregating to Rs.17,40,00,000/-
Dividend Rate	7% per annum on the face value of the RCPS
Redemption Price & Date	The RCPS are redeemable on the expiry of 5 years from the date of allotment at the redemption price of Rs.3290/- (Rupees Thirty Two Hundred and Ninety only) per RCPS and may be redeemed prior to the redemption date subject to the mutual consent of the investor and the issuer on mutually agreed redemption terms and amount.
Transferability	The RCPS shall be freely transferable by way of a duly stamped Transfer Form

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	accompanied by the RCPS certificate(s) evidencing the transfer of RCPS.
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As on 01.03.2012, the following are shown as the RCP holders:

Sl.No.	Name of the Shareholders	Number of Shares	Holding (%)
1.	Surichi Distributors Private Limited, 59,N.S. Road, 3 rd Floor, R.No. 15B, Kolkata-700001.	10,150	21.05
2.	Sargam Lefins Private Limited, 5/1, Clive Row, 3 rd Floor, R. No. 63 Kolkata-700001	7,350	15.89
3.	Unicon Tieup Private Limited, 16B, Madan Chatterjee Lane, 2 nd Floor, Kolkata-700007.	28,750	62.16
Total :		46,250	100.00

4. The reason behind the proposed scheme is due to the present resource needs and business plans of the company and the company at present does not have sufficient profits to redeem the RCPS out of its profits and to issue any further shares. It is stated that the revised terms of issue ensure the same rate of dividend and yield as under the original terms of issue and, therefore, ensure fairness to the holders of the RCPS. The proposed altered terms and conditions of issue of RCPS are as follows :-

Issuer	Microfirm Softwares Private Limited
Term	15 years
Aggregate quantity of RCPS	46,250
Face Value per RCPS	Rs.10/-
Premium Payable per RCPS	Rs.1990 (Rupees One Thousand Nine Hundred and Ninety only)
Dividend Rate	7% per annum on the face value of the RCPS

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Redemption Price & Date	The RCPS are redeemable on the expiry of 15 years from the date of allotment at annualised yield of 10.05% at the redemption price of Rs.8920/- (Rupees Eight Thousand Nine Hundred and Twenty only) per RCPS, at same rate of dividend and yield and may be redeemed prior to the redemption date subject to the discounting at twenty per cent per annum or such rate as may be mutually agreed between the investor and the issuer, whichever is higher.
Transferability	The RCPS shall be freely transferable by way of a duly stamped Transfer Form accompanied by the RCPS certificate(s) evidencing the transfer of RCPS.

It is stated that the proposed scheme is a variation in terms of the issue of existing preference shares and there is no new issue of securities and hence, the present scheme does not call for any specific accounting treatment and the requisite disclosures of the required terms of issue will be given in the company's financial statements subsequent to the sanctioning of the scheme. The company is an unlisted public company and their securities are not listed on any stock exchanges. The proposed scheme has been approved by the Board of Directors of the company in its meeting held on 27.03.2017.

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5. The applicant company in its affidavit dated 02.08.2017 (Annexure-I to petition) has stated that in terms of of the directions given in its order dated 12.06.2017, notices dated 15.06.2017 for the meetings were sent to all the equity shareholders as well as 7% RCPS of the company, as on 15.06.2017. Notice of the meeting was also published in the English Newspaper "The Business Standard" and Bengali Newspaper "Aajkal" on 16.06.2017. The Chairperson in her separate reports dated 24.07.2017 has sated that :-

(a) Meeting of Equity Shareholders of the company held on 21.07.2017, was attended either personally or by proxy by 4(four) members, of the said company entitled together to 11,67,600 total number and 1,16,76,000 value of shares, representing 100% of total value of equity shares of the company

The following members attended the meeting and voted in favour of the proposed scheme of compromise or arrangement:

Name of Member	Address	No. Of equity shared held	Number of votes
Vanita Chamria	22/1, Belvedere Road Alipore, Kolkata-700027	1,00,663	1,00,663
Banwarilal Chamria & Others (HUF)	22/1, Belvedere Road Alipore, Kolkata-700027	3,94,119	3,94,119
Sanjay Chamria (HUF)	22/1, Belvedere Road Alipore, Kolkata-700027	89,018	89,018
Kalpana Poddar	24, Park Street, P.O. Park Street, Kolkata- 700016	5,83,800	5,83,800
Total:		11,67,600	11,67,600

None of the equity shareholders voted against the proposed scheme.

(b) Meeting of 7% Redeemable Cumulative Preference Shareholders - Series III (RCPS holders) of the company held on 21.07.2017, was attended personally or by proxy all the 3 (three) RCPS holders of the said company entitled together to 46,250 total number, representing 100% of total value of 7% preference shares of the company.

The following RCPS holders attended the meeting and voted the meeting and voted in favour of the proposed scheme of compromise or arrangement.

Name of preference shareholders	Address	No.of preference shares held	Number of votes
Surichi Distributors Privae Limited	59, N.S. Road, 3 rd Floor, R.No. 15B, Kolkata-700001.	10,150	10,150
Sargam Lefins Private Limited	5/1, Clive Row, 3 rd Floor, R. No. 63, Kolkata-700001.	7,350	7,350
Unicon Tieup Private Limited	16B, Madan Chatterjee Lane, 2 nd Floor, Kolkata-700007	28,750	28,750
Total :		46,250	46,250

None of the RCPS holders voted against the proposed scheme.

6. By an order dated 11.10.2017, the petitioner company was directed to carry out publication of notice in English and Bengali newspapers and also to issue notice to the Central Government and concerned Regulatory Sectoral Authorities as per Rule 15 of the

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

7. In compliance with the aforesaid directions of this Tribunal, an affidavit dated 27.10.2017 has been filed confirming the publication of notice in "The Business Standard" (English Daily) and "Aajkal" (Bengali Daily) on 21.10.2017 and also issued notice dated 20.10.2017 to the Regional Director (Eastern Region), the Registrar of Companies, West Bengal, the Income Tax Authority, DCIT, Circle-8(1), Kolkata and also the Official Liquidator, Kolkata.

8. The Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata has earlier filed his affidavit dated 24.08.2017 in response to notice issued in respect of C.A. No. 510/KB/2017. As per the said report, the observations of the Central Government on the scheme are as under :

a) That it is submitted that on examination of the report of Registrar Companies, West Bengal, it appears that no complaint and / or representation has been received against the proposed scheme of arrangement. The petitioner companies are also updated in filing their statutory returns. It is further submitted that on examination of the proposed scheme of arrangement, it appears that the proposed scheme is not prejudicial to the interest of members/shareholders and/or public. The Central Government has, therefore, decided that the instant petition / scheme need not be opposed.

9. The Official Liquidator , High Court at Calcutta, has also filed his report dated 01.11.2017 stating that they have analysed the

scheme of arrangement between M/s Microfirm Capital Private Limited and its shareholders as submitted by the company along with relevant annexures thereto and that the company intends to increase the term of redemption from 5 years to 15 years of the 7% Redeemable Cumulative Preference shareholders of the company. It has also been stated that his office does not have any objection on the scheme being approved.

10. No reply/response has been received from the Income Tax Department in response to the notice dated 20.10.2017 issued by the petitioner company through its authorised representative.

11. In terms of the order dated 12.12.2017, a supplementary affidavit dated 19.12.2017 has been filed along with an affirmed affidavit of service dated 19.12.2017 and also an Auditor's certificate dated 18.12.2017 from M/s Jain Sarawgee & Company, C.A as per section 230(7) and 232(3) of the Companies Act, 2013. The Auditors have certified that "the Scheme of Arrangement ('Scheme') in the matter of Microfirm Capital Private Limited, as filed with the Hon'ble NCLT Kolkata Bench, pertains to variation in the terms of issue of existing 7% Redeemable Cumulative Preference Shares. As already mentioned in part IV, Para 4.1 of the Scheme, since no security will be issued after the said Scheme being approved by the Hon'ble Bench, the Scheme does not call for any specific accounting treatment. Thus, requirement of Auditor's certificate as per section 230(7) and 232(3) of the Companies Act, 2013, certifying the conformity of accounting treatment with the accounting standards prescribed under section 133 of the Companies Act, 2013 does not arise in the present case."

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12. We have heard the Ld. Pr.C.S., appearing on behalf of the petitioner company, considered the affidavit of the Regional Director (Eastern Region) representing the Central Government and the report of the Official Liquidator, High Court at Calcutta and also perused the materials on record.

13. In view of the foregoing and upon considering approval accorded by the equity shareholders as well as 7% Redeemable Cumulative Preference shareholders of the company as per reports of Chairperson (Annexure 'F' & 'G' to petition) and also that there is no objection raised from any quarter. There is no impediment in sanctioning the Scheme of Arrangement (Annexure 'A' to petition). Consequently, we do hereby sanction the Scheme of Arrangement (Annexure 'A' to the petition) under section 230 of the Companies Act, 2013. The sanctioned scheme shall be binding between the company and its holders of 7% RCPS Series III as well as equity shareholders. The petitioner shall also remain bound to comply with the statutory requirements in accordance with law.

14. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal to the Scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioner company.

15. While approving the scheme as mentioned above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamps duty, taxes including Income Tax and GST etc. any other charges, if any, and payment in accordance with law or in respect to any permission / compliance with

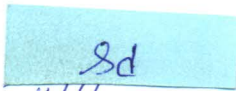
any other requirements which may be specifically required under any law.

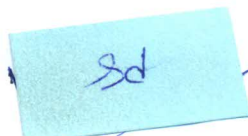
16. In the event of the petitioner supply legible computerized printout of the Scheme of Arrangement in acceptable form to the Department, the Department will append such computerized printout, upon verification to the certified copy of the order.

17. C.P. No. 510/KB/2017 is accordingly decided on the above terms.

18. There shall be no order as to costs.

19. Urgent certified copy of this order, if applied for, be supplied to the party upon compliance with all requisite formalities.


(Jinan K.R.)
Member (Judicial)


(V.P. Singh)
Member (Judicial)

Signed on this day of *11th day* January, 2018.