

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, KOLKATA

C.A. (CAA)No.258/KB/2017

In the Matter of:

An application under Sections 230  
of the Companies Act, 2013 ;

And

In the Matter of:

Tinnevelly Tuticorin Investments  
Limited (CIN  
U45201WB1930PLC006944), a  
company incorporated under the  
provisions of the Companies Act,  
1956, having its Registered Office  
at 31, Netaji Subhas Road, Kolkata  
700001, in the State of West Bengal.  
..... Applicant.

CORAM: Shri V. P. Singh, Member, (Judicial)  
Shri Jinan K. R., Member (Judicial)

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For the Applicant :

1. Ms Manju Bhuteria, Advocate.
2. Mr Nikhil Jhunjhunwala, Advocate

Date of Pronouncing the Order : 17-01-18

Per : Jinan K. R.

ORDER

This is an application filed by the Applicant namely M/s Tinnevely Tuticorin Investments Limited under Section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to a proposed Scheme of Arrangement.

The aforesaid Scheme is annexed as Annexure "C" to the application.

The object of this Application is to ultimately obtain sanction of this Tribunal to the Scheme of Arrangement proposed between the Company and its shareholders for providing exit opportunity to the public shareholders subsequent to the delisting of the Equity Shares of the Company on the Madras Stock Exchange where the said Equity Shares were earlier listed.

The Scheme affords yet another exit opportunity to the public shareholders and is a direct exit opportunity now from the Company at the instance of its equity shareholders to the public shareholders to exit the Company and to receive cash equivalent against their Equity Shareholding in the Company on the terms contained in the Scheme of Arrangement.

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The circumstances and/or reasons and/or grounds that have necessitated and/or justify the present exit opportunity are provided for in the Scheme of Arrangement.

The list of the present public shareholders in the Company is annexed with the Application and marked "D".

A copy each of the letter dated 13-01-2015 from the Madras Stock Exchange, the SEBI Circular No. CIR/MRD/DSA/14/2012 dated 30-05-2012, the SEBI Circular No. CIR/MRD/DSA/05/2015 dated 17-04-2015 and the exit offer letter dated 02-09-2016 from the Promotor to the public shareholders of the Company is annexed with the Application and marked "E".

It is stated in the Application that the Scheme is in line with the guidelines/directions of SEBI, whereby the Promoters of the Company are required to provide reasonable exit opportunity to the public shareholders.

As the earlier exit offer was not subscribed to in full by the public shareholders, the present Scheme of Arrangement offers yet another exit opportunity to the public shareholders.

The Board of Directors of the Company have, at its meeting, by resolution unanimously approved the Scheme of Arrangement.

The copy of the Board resolution is annexed with the Application and marked "F".

It is stated in the Application that the aggregate assets of the Applicant company are more than sufficient to meet all its liabilities and the Scheme

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of Arrangement will not adversely affect the rights of any of the creditors of the company in any manner whatsoever.

There are no secured creditor in the company although there are some unsecured creditors of the Company.

It is further stated in the Application that the Scheme of Arrangement does not involve or concern any of the creditors of the company and no meeting of the creditors is necessary to be convened or held for this purpose.

A list of the creditors of the Applicant Company made as on 31-03-2017, is annexed with the Application and marked "G".

It is stated in the Application that there is no investigation or proceedings against the company under Chapter XIV on Inspection, Inquiry and Investigation comprising Sections 206 to 229 of the Companies Act, 2013.

A supplementary unaudited accounting statement for the period subsequent to the last audited annual accounts of the company, that is to say, from 01-04-2016 to 31-03-2017 is annexed with the Application and marked "H".

It is also stated in the Application that there is, as at present, no scheme of corporate debt restructuring ongoing or pending in relation to the Company.

It is further stated in the Application that the Scheme of Arrangement is not for compulsory acquisition of the minority shareholding provided under Section 236 of the Companies Act, 2013.

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The conversion price offered under the Scheme of Arrangement to the present public shareholders in the Company is, accordingly, not subject to price determination provided under sub-Section(2) of the said Section 236.

It is stated in the Application that the Company perceives the conversion price offered under the Scheme to be fair and reasonable given the fact that it is the second exit opportunity and the conversion price now offered is the discounted price over the first exit price that had been earlier offered by the Promoter of the Company.

The conversion price now offered is fair and reasonable, and is calculated on the basis of two separate valuation reports prepared by a firm of Chartered Accountants and by a SEBI authorised Merchant Bankers.

The copy of the said Valuation reports are annexed with the Application and collectively marked as Annexure "I".

It is further stated in the Application that the Scheme of Arrangement does not entail any special accounting treatment.

A certificate from the Company's Auditors stating that the accounting treatment to be carried out in the books of the Company, pursuant to the Scheme of Arrangement becoming effective shall be in conformity with the relevant Accounting Standard under Section 133 is annexed with the Application and marked "J".

As on 31<sup>st</sup> December, 2017, the Applicant Company had 207 public equity shareholders and 3 promoter equity shareholders.

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It is submitted in the application that the meeting of the Equity Shareholders of the Applicant Company be called to consider and if thought fit to approve the said Scheme of Arrangement, with or without modification.

Subsequently, the Applicant has also filed a Supplementary Affidavit affirmed on 12<sup>th</sup> January, 2018, wherein, the Applicant has annexed the list of shareholders of the Applicant Company duly certified by the Chartered Accountants.

In the Supplementary Affidavit, the Applicant has also annexed a certificate from the Chartered Accountants certifying that there are no secured and unsecured creditors in the Applicant as on 31<sup>st</sup> December, 2017.

It is submitted that accordingly, the meeting of the creditors of the Applicant Company be dispensed with.

Heard the learned Counsel for the applicant, perused the records, documents annexed to the application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicant, the following orders are passed :

(1) Meeting of the public equity shareholders of Tinnevely Tuticorin Investments Limited shall be convened and held at Duncan House, 31 Netaji Subhas Road, 4<sup>th</sup> Floor Kolkata 700 001 on Tuesday, the 6<sup>th</sup> day of March, 2018 at 11 A.M. for the purpose of considering, and if thought fit approving, with or without modification, the proposed Scheme of Arrangement of the Applicant Company ;

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(2) Mr. ....*S. M. Gupta*....., (Mobile Number.....)  
is appointed as the Chairperson for the meeting of the public equity  
Shareholders of the Applicant Company to be held as aforesaid, at a  
consolidated remuneration of lump sum Rs. *50,000*.....( Rupees  
*Fifty thousand*.....only).

(3) That the Chairperson appointed for the said meetings or any person  
authorised by him do issue and send out the notice of the said meetings referred  
to above.

(4) The Chairperson or Authorized Representative of the Chairperson shall  
Furnish an Affidavit of Service of Notice of meeting and of advertisement and  
compliance of all directions contained herein at least a week before the  
proposed meeting.

(5) At least one month before the aforesaid date of the said meeting of the  
Public Equity Shareholders of the Applicant Company, an advertisement  
about convening of the meeting of the public equity shareholders, indicating  
the place, day, date and time, as aforesaid, shall be published in the  
"Financial Express" in the English Daily and "Pratidin", in the Bengali Daily.  
The publication shall indicate the time within which copies of the Scheme of  
Arrangement shall be made available to the concerned persons free of  
charge from the registered office of the Applicant or from the Office of the  
Advocates of the Applicant Company, M/s. Khaitan & Co. LLP. The  
publication shall also indicate that the Statement containing necessary  
details required to be furnished pursuant to Section 102 read with Sections 230  
of the Companies Act, 2013 and the prescribed form of proxy can be  
obtained free of charge at the registered office of the Applicant in  
accordance with second proviso to sub-section (3) of Section 230 of the Act

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and Rule 7 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 ["Companies (CAA) Rules, 2016"].

(6) At least one month before the aforesaid date of the said meeting of the public shareholders of the Applicant, a notice convening meeting in Form C.A.A.2 indicating the day, date, place and times as aforesaid together with a copy of the Scheme of Arrangement, copy of statement required to be furnished pursuant to Section 102 of the Act read with section 230 of the Act and Rule 6 of Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the public shareholders of the Applicant at their respective registered or last known addresses either by registered post or speed post / Airmail or through courier or through e-mail. The notice shall be sent to the public shareholders with reference to the list of persons appearing on the record of Applicant Company as on 31<sup>st</sup> December, 2017.

(7) To serve the notice as per requirements of sub-section (5) of Section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme of Arrangement and the Statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal; and the concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income-Tax with PAN numbers of the Applicant Companies having jurisdiction over the Applicant Companies and such other relevant sectoral regulators/ authorities, if applicable, which are likely to be affected by the proposed scheme of Arrangement, by sending the same by hand delivery through , through E-Mail and by Speed Post, special messenger or by registered post, both, within 14 days from the date of this order for filing their representation, if any, within 30 days from the date of notice. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation

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being sent simultaneously to the applicants and/or their Advocates. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Arrangement. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 and Companies (Compromises, Arrangements & Arrangement) Rules, 2016 with necessary variations incorporating the directions therein.

(8) That voting by proxy be permitted, provided that a proxy in the prescribed form duly signed by the person(s) entitled to attend and vote at the meeting, is filed with the concerned Applicant Company at their Registered Office not later than forty eight hours before the meetings. The Chairperson shall have the power to adjourn the meeting, if necessary, and to conduct the procedure for the adjourned meeting as deemed necessary under the Act.

(9) That the Chairperson do report to this Court the results of the said meetings within four weeks from the date of the conclusion of the meeting and his report shall be verified by his affidavit.

The Application bearing No. CA(CAA) No. 258/KB/2017 is, accordingly, disposed of.

Parties and the Chairpersons to act on the order.

Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

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(V. P. Singh)  
Member(Judicial)

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(Jinan K. R.)  
Member(Judicial)

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