

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.A.(CAA) No. 823(MB)/2019

Under Sections 230 to 232 read with
Sections, 55, 66, 48 of the Companies
Act, 2013.

In the matter of Scheme of
Arrangement between Shree
Manufacturing Company Limited, the
Applicant Company and their
respective Shareholders

Order delivered on: 28.05.2019

Coram: Hon'ble Shri. M.K. Shrawat, Member (J)

For the Applicant: Mr. Naser Ali Rizvi i/b Dua Associates AOR,
Mumbai, Advocates for Applicant

Per: M.K. Shrawat, Member (Judicial)

ORDER

1. The present application is filed under Sections 230 to 232 read with Sections 55, 66, 48 and other applicable provisions, if any, of the Companies Act, 2013 by Shree Manufacturing Company Ltd., a company incorporated under the Companies Act, 1956, having its registered office at Suite #712, Prasad Chambers, Opera House, Mumbai – 400 004, before this Hon'ble Tribunal for directions for holding meeting of equity shareholders of Applicant Company for approval of the Scheme of Arrangement for undertaking financial restructuring and reconstruction of Shree Manufacturing Company Limited ("The Company" or "SMCL") whereby SMCL would convert Preference Shares into Equity Shares as detailed in the Scheme of Arrangement.
2. The SMCL / Applicant Company was originally incorporated with the object of acquiring all the assets and liabilities of Indian Copper Corporation Limited. The Company was engaged as manufacturers, producers, dealers, purchasers, sellers, processors, importers, exporters, traders and retailers of all kinds of papers, boards and articles made from paper and

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materials used in manufacture of paper. The Company had also carried on the business of spinners, weavers, manufacturers, balers and press of jute, jute cuttings, jute rejections, flex, hemp and any other fibrous materials as stated in paragraph 7 of the Company Application. However, there is no significant activities in the recent past and have not generated any revenue from its operations during the last year.

3. The Board of Directors at their meeting held on 15th September, 1999, after consent from the Shareholders, issued and allotted 2,87,000 12% Cumulative Redeemable Preference shares of Rs.100/- each aggregating to Rs.2,87,00,000/- on conversion of term loan into Preference shares. Due to financial constraints the company could not able to redeem these Preference shares on due dates and is still outstanding in the books of the Company. As per the provisions of Section 55 of Companies act 2013, the last date for redemption is 14th September, 2019. However, due to heavy losses incurred by the Company during last few years, the capital of the company has been eroded and the net worth has become negative, the company is not in a position to raise the funds by way of issue of fresh shares for redemption of preference shares. The promoter of the Company has therefore planned strategy to revive the Company with the financial help of promoters / preference shareholder.
4. The Board of Directors of the Company accordingly proposes to convert Preference shares into Equity shares in accordance with the scheme formulated under Sections 230-232 read with Sections 55, 66, 48 and other applicable provisions, if any, of the Companies Act, 2013. The conversion of Preference capital in the manner proposed under the Scheme would enable the Company to keep its working capital and cash flow liquidity intact and give correct picture of the financial health of the Company, to have a rational capital structure which is commensurate with its remaining business

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and assets and will benefit the Company and its shareholders, creditors and all concerned as a whole.

5. The equity shares of the applicant company are listed on BSE Limited and the shares are not frequently traded. The applicant company has filed an Additional Affidavit dated 20th May 2019 and annexed copy of valuation report dated 26th September, 2018 obtained from M/s. S A G S & Associates, Chartered Accountants and the Fairness Opinion dated 26th September 2018 from M/s. Corporate Capital Ventures Private Limited, a Merchant Banker. The Applicant Company further says that pursuant to SEBI Circular no. CFD/DIL3/CIR/2017/21 dated 10th March, 2017 and SEBI Circular No. CFD/ DIL3/ CIR/ 2017/26 dated 23rd March, 2017, the date of the Board Meeting in which the Scheme is approved, is the relevant date i.e. 26th September, 2018 and there was no trading between the last twenty six (26) weeks prior to the relevant date (28.03.2018 to 25.09.2018). Thus, in view of Regulation 76A of SEBI (ICDR) Regulations, 2009, the Book value, comparable trading multiples and such other parameters as are customary for valuation of shares are considered and the valuer has recommended a ratio of 1 equity share of SMCL of INR 10/- each fully paid up for every 1.025 Preference shares of SMCL of INR 100/- each fully paid up. Thus 28,00,000 Equity shares of Rs.10/- each at a price of Rs.10.25/- per share shall be issued and allotted for 2,87,000 Preference Shares of Rs.100/- each aggregating to Rs.2,87,00,000/-.
6. The Applicant Company is a listed Company and obtained in-principal approval / no-objection Certificate from the BSE Limited on 30th January 2019 annexed at Exhibit-G to the proposed Scheme of Arrangement between Shree Manufacturing Company Limited and their respective Shareholders for conversion of Preference Shares into Equity Shares ("Scheme") and enabled the Applicant to file the Scheme for approval of National Company Law Tribunal. It is also observed that

pursuant to the scheme, the promotor shareholding will be increased from 62.04% to 74.85% i.e. by 12.81%. The Applicant is therefore desirous of holding meeting of its shareholder for seeking approval to the proposed Scheme of Arrangement between Shree Manufacturing Company Limited and their respective Shareholders for conversion of Preference Shares into Equity Shares ("Scheme").

7. A meeting of the Equity Shareholders of the Applicant Company be convened and held at Suite # 712, Prasad Chambers, Opera House, Mumbai - 400 004 on Friday the 19th July, 2019 at 11.00 A.M. for the of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme.
8. That at least 30 clear days before the said Meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, arrangements and amalgamations) Rule, 2016 and the prescribed Form of Proxy, shall be sent by Registered Post or by courier or by speed post or by hand delivery to each of the Equity Shareholders of the Applicant Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders as per the records of the Applicant Company.
9. That At least 30 clear days before the Meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting indicating the place, date and time aforesaid and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and

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Amalgamations) Rule, 2016 and that the form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid, be published once each in 'Free Press Journal' in English and 'Navshakti' in Marathi, both circulated in Mumbai not less than thirty (30) days before the date fixed for the meeting.

10. The Applicant Company undertakes to:

- i. issue Notice convening meeting of the equity shareholders as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
- ii. issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
- iii. issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and
- iv. advertise the Notice convening meeting as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertaking is accepted.

11. Mr. Vishal Dedhia, Director of the Applicant Company and failing him, Ms. Namrata Malu, Director of the Applicant Company shall be the Chairman for the aforesaid meeting of Equity Shareholders of the Applicant Company or any adjournments thereof.

12. The Scrutinizer for the meeting or any adjournments thereof and for Postal Ballot and e-voting shall be Ms. Payal Tachak, Proprietor M/s. Payal Tachak & Associates (Membership No. 38016) Company Secretaries in practice.

13. The Chairman appointed for the aforesaid Meeting of the Applicant Company to issue the notices of the Meeting of the Equity Shareholders referred to above. The said Chairman shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
14. The quorum for the aforesaid meeting of the Equity Shareholders of the Applicant Company shall be as prescribed under Section 103 of the Companies Act, 2013.
15. That the voting shall be allowed on the proposed Scheme by voting in person, by proxy or through postal ballot or through electronic means. The voting by proxy or authorised representative in case of body corporate be permitted, provided that a proxy in the prescribed form / authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Registered Office at Suite # 712, Prasad Chambers, Opera House, Mumbai 400 004, not later than, 48 hours before the aforesaid meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
16. That the value and number of the shares of each member shall be in accordance with the books / register of the Applicant Company or depository records and where the entries in the books / register/ depository records are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
17. The Chairman to file an affidavit not less than seven days before the date fixed for the holding of the meeting of the

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Applicant Company and do report this Tribunal that the direction regarding the issue of notices and advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Chairman to report to this Tribunal, the result of the aforesaid meeting within ten days of the conclusion of the meeting of the Applicant Company, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
19. The counsel for the applicant Company submits that there is only one (1) Preference Shareholder in the Applicant Company and the said Preference Shareholder has given its no objection in the form of Consent affidavit dated 21.02.2019 which is annexed as Exhibit I to the Company Application and hence the meeting of the Preference shareholder is dispensed with and also there is no need issue notice to the said preference shareholder.
20. The Counsel for the Applicant Company submits that there are no Secured Creditors in the company as certified by the Auditor's Certificate annexed at Exhibit-J to the Application and hence question of sending notices to secured creditors does not arise.
21. The Counsel for the Applicant Company submits that since the scheme is an Arrangement between the Company and its respective shareholders as contemplated under Section 230 (1) (b) and not in accordance with the provisions of Section 230 (1) (a) of the Companies Act, 2013 as there is no Compromise and/or Arrangement with the Creditors as no sacrifice is called for and therefore, this bench hereby directs the Applicant Company to issue notice to all its Unsecured Creditors as on 31st December, 2018 by Registered Post /Speed Post / courier

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/ Airmail / email / hand-delivery as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit within 30 days of the date of receipt of the notice, their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.

22. The Applicant Company to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
23. The Applicant Company to serve the notice upon the concerned Registrar of Companies, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
24. The Applicant Company (PAN NO. AADCS5577Q) to serve the notice on the concerned Income Tax Authority, The DC / ACIT Circle 10 (2), Kolkata having address at P-7, Aaykar Bhavan, 3rd Floor, Chowringhee Square, M. K. Road, Kolkata – 700 069, within whose jurisdiction the respective Applicant Company's assessment are made, pursuant to Section 230(5)

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of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

25. The Applicant Company to serve the notice upon the Securities and Exchange Board of India, BSE Limited and the Calcutta Stock Exchange of India Limited pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Securities and Exchange Board of India, BSE Limited and the Calcutta Stock Exchange of India Limited within 30 days of the date of receipt of the notice it will be presumed that the Securities and Exchange Board of India, BSE Limited and the Calcutta Stock Exchange of India Limited has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

26. The Applicant Company to file an Affidavit of Service of the directions given by the Tribunal not less than seven days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices have been duly complied with.

Sd/-
M.K. SHRAWAT
MEMBER (JUDICIAL)

Date: 28.05.2019
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