

(7)
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

CA(CAA) 7/230-232/NCLT/AHM/2020


Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
 Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY LAW TRIBUNAL ,
 AHMEDABAD BENCH ON 18.03.2020**

Name of the Company: Prema Constructions Pvt Ltd

Section: Section 230-232 of Companies Act

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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1.	ANU J. K. TRIVEDI	ADVOCATE	PETITIONER	
2.				

ORDER

The Applicant is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.


 (PRASANTA KUMAR MOHANTY)
 MEMBER (TECHNICAL)


 (HARIHAR PRAKASH CHATURVEDI)
 MEMBER (JUDICIAL)

Dated this the 18th day of March, 2020.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA (CAA) No. 07/230-232/NCLT/AHM/2020

[An Application is filed under Section 230-232 of the Companies Act, 2013]

In the matter of:

PERMA CONSTRUCTION AIDS PVT. LTD

Having registered office at:

Unit-II Plot, No. 3102, GIDC,

Sarigam, Valsad, Gujarat-396155

CIN No. U45201GJ1997PTC032104

(Transferor Company/Applicant Company)

Coarm: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER TECHNICAL

Appearance:

Applicant- Learned Counsel Mr. Anuj Trivedi

Order pronounced in open Court on 18th March, 2020

ORDER

[Per: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)**]

1. By the present Company Application, the Applicant Transferor (**Perma Construction Aids Pvt. Ltd.**) has sought for direction from this Court for dispensation of meetings of its equity shareholders(2) secured creditor(1) and unsecured creditors (193) for issuance of notice to its

unsecured creditors by inviting their response, if any, on the proposed Company Scheme of Amalgamation as undertaken by the Applicant in Point No. 11 and 12 of para III of the present Application.

2. It further sought a direction from this Court to send notice to the Statutory Authorities as per Section 230(5) of the Act and Rule 8 of the Companies (Companies, Arrangements and Amalgamation) Rules, 2016.
3. The Applicants Company for seeking the above stated direction has submitted following reasons:
 - I. It is further submitted that the Applicant Transferor Companies (**Perma Construction Aids Ltd**) is the wholly owned subsidiary of the Transferee Company, i.e., **M/s. Kansai Nerolac Paints Ltd.** hence, convening and holding of the meeting of the equity shareholders of the Applicant Company for consideration and approval of the proposed Company Scheme of Amalgamation be dispensed with in view of such fact that Transferee Company **Kansai Nerolac Paints Limited** and its nominee have given their consent in writing for approval of the proposed company scheme of Amalgamation amongst **Marpol Private Limited and Perma Construction Ids Pvt Ltd. with Kansai Nerolac Paints Limited**, under Section 230 to 232 of the Companies Act, 2013.
 - ii. It is further submitted that the applicant company as on 30th September, 2019 is having only one secured creditor, therefore, the applicant company undertakes to issue notice under Section 230(3) of the Act to its Secured Creditor with such direction that it may submit its representation to this Tribunal, if any, within a period of 30 days from the date of receipt of such notice, with a copy of the representation simultaneously to be served upon the Applicant Company. Therefore, in view of the undertaking given by the Applicant

Company for issuance of such notices, the convening and holding of the meeting of the Secured Creditor of the Applicant Company be dispensed with.

iii It is further informed that the applicant company is having **193 (one hundred ninety three)** Unsecured Creditors. Hence, the Transferor Company undertakes to issue notice under Section 230(3) of the Act to all its Unsecured Secured Creditors with such direction that they can submit their representation/objection, if any, to this Tribunal within a period of 30 (thirty) days from the receipt of such notice, further a copy of such representation submitted, if any, to be served upon the Applicant Company. By taking into consideration of such undertakings of the Applicant Company for issuance of notices, the convening and holding of the meeting of the unsecured creditors of the applicant company should be dispensed with.

4. Thus, for the aforesaid reasons the Applicant has sought for dispensation with the meetings of its Equity Shareholder as well as of Secured and Unsecured Creditor.
5. It is informed that the Applicants Companies have duly proposed a Company Scheme of Amalgamation between the **Marpol Pvt Ltd Transferor Company No. 1 and the present Applicant Company (Perma Construction Aids Pvt. Ltd) with the Transferee Company (Kansai Nerolac Paints Limited.)**
6. It is reported that respective Board of Directors of the Applicant Transferor Company has approved the proposed Company Scheme in its Board meeting dated 26.07.2019.
7. It is reported that the Board of Director of another Transferor Company **M/s Marpol Pvt Ltd and the**


Transferee M/s. Kansai Nerolac Paints, which are situated at Mumbai have already approved the proposed company scheme of Amalgamation through their respective Boards Meetings dated 25.07.2019 and 29.07.2019.


8. It is further reported that there are only two equity shareholders of the Applicant Transferor Company, namely, **Kansai Nerolac Paints Ltd and Joint share of Kansai Nerolac Paints Ltd** with **Mr. Prasant Devidas pai**, the Director of the Company. Both of shareholders have given their consent affidavits for approval of the scheme and thus have waived their right to convene their meetings.
9. We heard the Advocate Mr. Anuj Trivedi, the leaned counsel for the Applicants Transferor Company and Transferee Company. We have gone through the contents of the present application and perused the documents annexed there with.
10. Having perused the same, it is found that both shareholders of the Transferor Company have given their consent for approval of the proposed company scheme through their Affidavits, and thus have waived their right for convening of such meeting. Hence, in our view, there remains no necessity to convene their formal meeting and such meetings deserves to be dispensed with.

That apart the Applicants (Company) have undertaken to issue a formal and proper notice to its sole Secured Creditor **(the Bank of Baroda)** as well as to its 193 Unsecured Creditors. Hence, the relief as being sought for in the present company application appears to be reasonable and *bona fides*, Hence, formal meetings of Equity Shareholder/Secured Creditors/Unsecured Creditors of the Company are here by dispensed with.

11. However, the Applicant Company is further directed to issue a formal notice about proposed company scheme to its Secured and Unsecured Creditors so as to invite their response/objection, if any, to the proposed Company Scheme for consideration of this Tribunal at the time hearing of the proposed company scheme petition.
12. The Applicant Company is hereby further directed to issue notice in sub-Section (5) of Section 230 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 in Form CAA No. 3 along with disclosures mentioned under Rule 6 to (i) the Central Government through the Regional Director, Official Liquidator and to the concerned authority including Income Tax Department, so as to invite their response/objection, if any, on the proposed Company Scheme by stating that representations, if any, to be made by them should be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they are having no objection to make on the proposed company scheme.
13. Having completed the above stated procedural formalities, the applicant company is at liberty to move for Second Stage Motion Company Petition, seeking for approval of the proposed Company Scheme.
14. However, it would be advisable that such company petition to be moved after sanction of the proposed scheme by the NCLT, Mumbai, because the Registered Office of the one of the Transferor Company, i.e., **Marpol Pvt. Ltd**, is situated at **Goa** and Transferee Company, i.e., **Kansai Nerolac Paints Ltd**. is situated at **Mumbai**. Hence, both of them fall within the territorial jurisdiction of the NCLT Mumbai.

15. The proceedings of the present case to be clubbed together as when the 2nd stage motion/company petition is moved before this Bench.
16. With the aforesaid observations, the **CA(CAA) No. 7/230-232/NCLT/AHM/2020** is allowed accordingly stands disposed of.


(Prasanta Kumar Mohanty)
Adjudicating Authority
&
Member (T)


(Harihar Prakash Chaturvedi)
Adjudicating Authority
&
Member (J)

Vc/sen