

A-3
**NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD
Court 2**

CA(CAA)/8(MP)2021

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 16.04.2021**

Name of the Company: Commercial Engineers & Body Builders
Co Ltd

Section 230-232 of Companies Act.

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER
(through video conferencing)

None appeared on behalf of Applicant.

The order is pronounced in the open court vide separate sheet.



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 16th day of April, 2021



**MANORAMA KUMARI
MEMBER JUDICIAL**

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
AT AHMEDABAD**

CA (CAA) 08 of 2021

(An Application under section 230-232 of the Companies Act, 2013)

In the matter of: -

M/S COMMERCIAL ENGINEERS & BODY BUILDERS CO. LTD.

CIN NO: 128100MP1979PLC049375

A company incorporated under the Companies Act, 1956

Having its registered office at;

48, Vandana Vihar, Narmada Road,

Gorakhpur, Jabalpur- 482001

Madhya Pradesh

.....Applicant/ Transferee/ Amalgamated Company

Order delivered on 16.04.2021

Coram:

Hon'ble Ms. Manorama Kumari, Member (J)

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Ld. PCS Chetan B Patel a.w CS Shruti Singhania appeared for the applicant amalgamated Company.

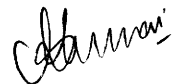
ORDER

(Through video conferencing)

[Per: Ms. Manorama Kumari, Member (Judicial)]

1. The instant application has filed by the applicant/ amalgamated company under sections 230-232 of the Companies Act, 2013 (hereinafter referred to as "**the act**") read with companies (compromise, arrangement, and amalgamation) rules, 2016 (hereinafter referred to as "**CAA rules**") seeking dispensation of the meeting of the preference shareholder, and further seeking direction from this Tribunal for holding and convening the meetings of equity shareholders, secure and unsecured creditors of applicant amalgamated company for the purpose of considering and thought fit for the proposed scheme of amalgamation. The scheme of arrangement is in the nature of amalgamation of M/s Jupiter Wagons Limited (Transferor Company) situated at Kolkata





(W.B) with M/s Commercial Engineers & Body Builders Co. Ltd. (Transferee/ amalgamated Company) hereinabove.

2. The Registered Offices of the applicant Transferee company is situated at Jabalpur in the state of Madhya Pradesh thus under the jurisdiction of this Tribunal. The registered office of amalgamating company is situated in Kolkata in the state of West Bengal hence the separate application is filed before the respective bench for the necessary directions in respect of amalgamating company for the proposed scheme of amalgamation.
3. The Ld. PCS of the applicant amalgamated company has submitted that the issued, subscribed, and paid share capital of the applicant amalgamated company are as under;
 - I. Rs. 89,48,26,570 (Rupees Eighty-Nine Crores forty-Eight lakhs Twenty Six thousand five hundred and seventy) divided into 8,94,82,657/- (Eight Crores ninety-four lakhs eighty-two thousand six hundred and forty- seven) equity shares of Rs. 10/- each.
 - II. Rs. 67,48,22,900/- (Rupees Sixty-seven crores forty-eight lakh twenty-two thousand nine hundred only) divided into 67,48,229 (Sixty-seven Lakh forty-eight thousand two hundred and twenty-nine) 0.001% non-convertible redeemable preference shares of Rs. 100/- each.
4. It is further submitted that the present scheme is proposed to integrate and combine the businesses of the applicant amalgamated company. It will lead to greater and optimal utilization of resources, reduction in administrative costs, effective internal economies, and optimized profitability. This will be beneficial to both the Transferor Company and Transferee Company and all other stakeholders and will be in the long-term interest of both companies.

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5. It is submitted by the learned PCS for the applicant amalgamated company that the Board of Directors of both amalgamated as well as amalgamating companies in their respective board meetings held on 28th September 2020 passed a resolution approving the proposed scheme. A copy of each of the board resolutions dated 28th September 2020 is annexed as Annexure **D & E**.
6. The Applicant amalgamated Company has filed its audited balance sheet for the year ended 31st March 2020 and provisional balance sheet as of 31st December 2020. The copy of the audited balance sheet, as well as the provisional balance sheet of the applicant amalgamated company, is annexed with the application as **Annexure P-2 & Q**. The applicant amalgamated company has also filed certificates of its auditor certifying compliance with Section 133 of the companies act, 2013. A copy of the certificate of the auditor of the respective applicant companies is annexed as Annexure L.
7. The applicant amalgamated company sent a copy of the proposed scheme of amalgamation to the BSE and NSE being a listed company. In response to the proposed scheme sent by the applicant company, the BSE has made its observations vide its letter dated 14.12.2020, and NSE has made its representation vide its letter dated 10.12.2020, wherein, both the said authorities have not made any adverse representation against the proposed scheme.
8. The applicant amalgamated company submitted that there is/ are no proceedings pending under the provisions of section 235 and 250A of the Companies Act, 1956 or applicable provisions of the Companies Act, 2013 against the amalgamating company as well as amalgamated company.
9. Neither the amalgamated nor amalgamating companies are registered as non-banking financial companies.



10. It is also submitted by the applicant amalgamated company that neither the amalgamated company nor amalgamating company is a shell company and none of the directors of the said companies are disqualified under section 164 of the Companies Act, 2013.

11. The following are the reliefs prayed by the applicant / amalgamated company;

I. This Tribunal may please to direct for holding and convening of the meetings of the equity shareholders of amalgamated companies.

II. This Tribunal may please to dispense with the meetings of preference shareholders of the applicant amalgamated company.

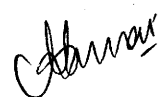
III. This Tribunal may please to direct for holding and convening of the meetings of secured as well unsecured creditors of applicant amalgamated company.

IV. This Tribunal may kindly direct to issue notices to the statutory authorities under section 230 (5) of the Companies Act, 2013;

12. Heard the learned PCS for the applicant amalgamated company and gone through the record;

I. On perusal of the record, it is found that there are 10886 Equity Shareholders in Applicant amalgamated Company. A list of equity shareholders of the applicant amalgamated company certified by the chartered accountant and their affidavits are annexed as **Annexure H**.

II. It is also noted that the applicant amalgamated company has only one non-convertible cumulative redeemable preference shareholder which is JWL/ amalgamating company. The copy of the list of preference shareholders of




the amalgamated company is annexed with the application as Annexure -I. The preference shareholder has given its consent for the proposed scheme of amalgamation. The consent affidavit of preference shareholder of applicant amalgamated company is annexed with the application as **Annexure- J.**

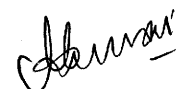
III. On perusal of the record, it is found that there are 4 Secured Creditors in the Applicant amalgamated Company for the value of Rs. 44,23,40,652.08/- and there are 558 unsecured creditors for the value of debt to the tune of Rs. 66,82,45,220.30/-. The list of secured and unsecured creditors certified by the chartered accountant is annexed with the application as Annexure -R.

13. Considering the submission made by the counsel of the applicant amalgamated company and entire material on record, this tribunal passes the following order;

- I. The meetings of the non-convertible cumulative redeemable preference shareholders are hereby dispensed with in the view of the consent affidavit given by the preference shareholder of the applicant company.
- II. The meetings of the Equity Shareholders of the Applicant amalgamated Company shall be convened and held through VC/OAVM, on 25th June 2021 at 3 p.m. (1500 hours), for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme;
- III. Meeting of the Secured Creditors of the Applicant amalgamated Company shall be convened and held through VC/OAVM, on 25th June 2021 at 11 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme;

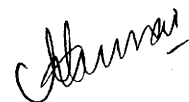



- IV. Meeting of the Unsecured Creditors of the Applicant Company shall be convened and held through VC/OAVM, on 25th June 2021 at 1 p.m., for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme;
- V. In light of the MCA Circulars and Circulars issued by SEBI, it is directed that the voting by the Equity Shareholders of the applicant amalgamated Company to the Scheme, shall be carried out through remote e-voting and e-voting at the time of the VC/OAVM meeting (Insta Poll). It is further directed that the voting for the meetings of the Secured Creditors and the Unsecured Creditors shall also be carried out through remote e-voting and e-voting at the time of the VC/OAVM meeting (Insta Poll);
- VI. At least one month before VC/OAVM meeting, an advertisement about the convening of the said meetings, indicating the day, the date, and time shall be published in English Daily, "**Financial Express**" (All editions), and a Hindi translation thereof in "**Raj Express**" (All Edition). The publication shall indicate the time within which the copies of the Scheme shall be made available to the concerned persons free of charge from the registered office of the Applicant Company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Section 230-232 of the Act can be obtained free of charge at the registered office of the Applicant amalgamated Company in accordance with the second proviso to sub-section (3) of Section 230 of the Act and Rule 7 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 (hereinafter referred to as the "**CAA Rules**");



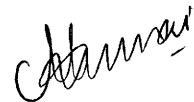
VII. At least one month before the aforesaid meeting of the Equity Shareholders, secured and unsecured creditor, a notice convening the said meeting, indicating the day, the date, and time aforesaid containing instructions with regard to remote e-voting and e-voting at the time of VC/OAVM meetings, together with a copy of the Scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with the provisions of Sections 230 – 232 of the Act and Rule 6 of the Rules, shall be sent to each of the Equity Shareholders, secured and unsecured, of the Applicant amalgamated Company at their respective registered or last known addresses either by Registered Post or Speed Post or by Courier or e-mail. The notice shall be sent to those Equity Shareholders, secured and unsecured of the applicant amalgamated Company whose names appear in the register of members/list of beneficial owners as on 26.02.2021 as per annexure-H. Further, it is directed to fix 18th June 2021, being the cut-off date as prescribed under rule 20 of the Companies (Management and Administration) Rules, 2014 for determining the eligibility of shareholders entitled to vote through remote e-voting and e-voting at the meeting. The Equity Shareholders of the Transferor Company holding shares either in physical form or in a dematerialized form, as on the cut-off date, would be entitled to cast their vote by remote e-voting and e-voting at the VC/OAVM meeting. The notice shall be sent to the Secured Creditors and Unsecured Creditors of the Applicant amalgamated Company with reference to the list of the Secured Creditors and Unsecured Creditors appearing on the record of the Applicant Company as on December 31, 2020. The aforesaid date of December 31, 2020, would be the date determining the eligibility to vote by the Secured Creditors and Unsecured Creditors.

VIII. **Ms. Vineeta Shriwani**, Independent Director of the Applicant amalgamated Company, and in his absence, **Mr. M.V. Raja Rao**, Independent Director of the Applicant amalgamated Company



shall be the Chairman of the aforesaid meetings and in respect of any adjournment or adjournments thereof;

- IX. **CS Sonam Agarwal** (Membership No. A46428 C.P. No. 16978), a Practising Company Secretary, is appointed as Scrutinizer for the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant amalgamated Company;
- X. The Chairman appointed for the aforesaid meetings shall issue the advertisements and sent out the notices of the meetings referred to above. The Chairman is free to avail the services of the Applicant Company or any agency for carrying out the aforesaid directions. The Chairman of the meetings shall have all powers under the Articles of Association of the Applicant Company and also under the Rules in relation to conduct of meetings, including for deciding any procedural questions that may arise at the meetings or at adjournment or adjournments thereof proposed at the said meetings, amendment(s) to the aforesaid Scheme or resolution, if any, proposed at the aforesaid meetings by any person(s) and to ascertain the decision of the sense of the aforesaid meetings of by remote e-voting and e-voting at the VC/OAVM meetings;
- XI. The quorum for the meeting of the Equity Shareholders shall be determined in accordance with Section 103 of the Companies Act, 2013. The quorum for the meeting of the Secured Creditors shall be 1 (one) person. The quorum for the meeting of the Unsecured Creditors shall be 1 (one) person. Equity Shareholders/creditors attending the meetings through VC/OAVM shall be counted for the purpose of reckoning the quorum under Section 103 of the Act;

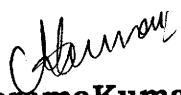


- XII. Remote e-voting and e-voting at the meetings (Insta Poll) by the authorized representative is permitted, provided that the resolution/authorization, etc authorizing its representative to attend the aforesaid respective meetings through VC/OAVM on its behalf and to vote through remote e-voting is sent to the Applicant Company, before the VC/OAVM meetings or before the remote e-voting, as the case may be. Further, it is directed that since the meetings would be held through VC/OAVM, the facility for appointment of proxies will not be available;
- XIII. The number and value of the equity shares of the Equity Shareholders or the value of the debts of the Secured Creditors and Unsecured Creditors as the case may be, shall be in accordance with the records or registers of the Applicant amalgamated Company and where the entries in the records or registers are disputed, the Chairman of the meetings shall determine the number or value, as the case may be, for purposes of the meetings, subject to the orders of this Tribunal in the petition seeking sanction of the Scheme;
- XIV. Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report to this Tribunal that the directions regarding the issue of notices and the advertisement of the meetings shall be duly complied with as per Rule 12 of the Rules;
- XV. It is further ordered that the Chairman shall report to this Tribunal on the result of the said meetings in Form No. CAA.4, verified by his affidavit as per Rule 14 of the Rules in Form No. CAA.4 within 7 (seven) days after the conclusion of the meetings. The report of Chairman shall be filed before this Tribunal by the Chairman himself; and



XVI. In compliance with subsection (5) of Section 230 of the Act and Rule 8 of the Rules, the Applicant Company shall send the notice of meeting under sub-section (5) of Section 230 of the Act read with Rule 6 of the Rules in Form No. CAA.3 along with the copy of the Scheme, the explanatory statement, and the disclosures mentioned under Rule 6 of the Rules to (i) Central Government through Regional Director, North-Western Region; (ii) Registrar of Companies, Madhya Pradesh; (iii) concerned Income-Tax Authorities; (iv) BSE, (v) NSE stating that representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed Scheme. The said notice shall be sent forthwith after notice is sent to the members or creditors of the Applicant Company by registered post or by speed post or by courier or by hand delivery or e-mail at the office of the authority as required by sub-rule (2) of Rule 8 of the Rules. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230 of the Act, shall send the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which it will be deemed that they have no representation to make on the proposed arrangement.


Chockalingam Thirunavukkarasu
Member (Technical)


Ms. Manorama Kumari
Member (Judicial)

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