

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP NO. 416 of 2016

CP (TCAA) NO. 63/HDB/2017

U/s 391 to 394 of the Companies Act, 1956

IN THE MATTER OF SCHEME OF ARRANGEMENT

BETWEEN

International Paper APPM Limited

AND

Its Members

International Paper APPM Limited
Registered office at Rajahmundry,
East Godavari District
Andhra Pradesh - 533105

...Petitioner Company

Date of order: 16.11.2018

Coram:

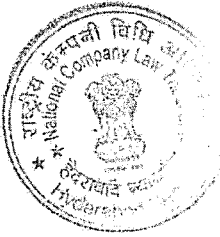
Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / Counsels present:

For the Petitioner Company: Shri Vivek Ganesh, Advocate

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)- Author

Heard on: 20.04.2018, 04.05.2018, 09.05.2018, 02.07.2018,
29.08.2018, 02.11.2018 and 13.11.2018



ORDER

1. At the first instance, this Petition was filed by the Petitioner Company before the Hon'ble High Court of Judicature at Hyderabad under Section 391 R/w Section 394 of the Companies Act, 1956 seeking approval of the Scheme of Arrangement between International Paper APPM Limited and its shareholders, under which the Company proposes to transfer an amount of Rs.288.76 crores lying to the credit of General Reserves to the credit of the Profit & Loss Account to enable the Company to pay out to the Members, under the provisions of the Act. The Petition was subsequently transferred to this Tribunal and renumbered as CP (TCAA) No.63/HDB/2017.
2. Brief averments made in the Company Petition are:-
 - a. The Petitioner Company is a public limited Company incorporated under the Companies Act, 1956 on 29.06.1964 under the name and style of "The Andhra Pradesh paper Mills Limited". Subsequently, the name was changed to International Paper APPM Limited on 16.12.2013.
 - b. The main objects of the Company are to carry on business of manufacturers and dealers in all kinds of paper, board and pulp including writing paper, printing paper, drawing paper etc.
 - c. The authorised, issued, subscribed and paid up share capital of the Company as on 31.03.2016 is as under:-



[Handwritten signature]

A. Authorised Capital	Amount in Rs.
4,00,00,000 equity shares of Rs.10/- each	40,00,00,000
5,00,000 Redeemable cumulative preference shares of Rs.100/- each	5,00,00,000
Total	45,00,00,000
B. Issued, Subscribed and Paid-up Share Capital	Amount in Rs.
3,97,70,039 equity shares of Rs.10/- each	39,77,00,390
Total	39,77,00,390



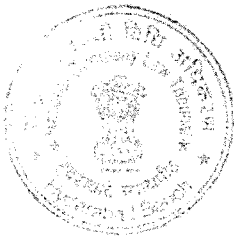
There is no change in the capital structure of the Petitioner Company as on date.

The Rationale for the proposed Scheme are:-

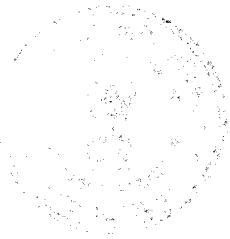
- (a) It enables greater flexibility in utilisation of the excess amounts lying to the credit of the General Reserves which is more than required for current and anticipated operational needs of the Petitioner Company and for funding future growth, giving the Petitioner Company's robust cash generation;
 - (b) It enables in rewarding members and providing liquidity of shareholders' funds as an investor friendly measure.
4. In view of the aforesaid advantages, the Board of Directors of the Petitioner Company at its Board meeting held on 22nd

April, 2016 approved the Scheme of Arrangement between the Petitioner Company and its members. The copy of the resolution passed by the Board of Directors of the Petitioner Company is marked as Exhibit – II.

5. It is averred in the first stage the Hon'ble High Court at Hyderabad vide common order passed in Company Applications No.1531 and 1532 of 2016, directed to convene the meeting of Equity Shareholders (Members) on 21.12.2016 at Rajamundry and dispensed with conducting of meeting of unsecured creditors of the Petitioner Company as the 85% of the unsecured creditors have given their consent to the proposed Scheme of arrangement. The Chairman, appointed by Hon'ble High Court convened the meeting of Members and filed his report on 22.12.2016 and has reported that shareholders holding 75.34% of the total equity shares of the Petitioner Company voted in favour of the proposed Scheme of Arrangement.
6. The Learned Counsel for the Petitioner further avers that on the direction of Hon'ble High Court, notices were served on the Income Tax Department, the Regional Director, South East Region, Hyderabad, SEBI, NSE & BSE Limited. Further as per directions, publication was also carried out in Business Standard, English Daily (Hyderabad Edition) and Andhra Prabha, Telugu Daily (Hyderabad Edition) on 07.03.2017.
7. The Learned Counsel for the Petitioner contended that Income Tax Department filed its report with the Regional Director vide letter reference F.No.Pr.CIT/JDL/APPM/2017-18 dated 27.07.2017 and reported that the proposed Scheme of Arrangement does not have any tax implication.



8. The Regional Director filed four reply Affidavits. In the first Affidavit dated 01.06.2017, the Regional Director enclosed the reports received from NSE dated 05.05.2017 and stated NSE has no objection for the proposed Scheme. However, IT Department vide its report dated 26.04.2017, stated that the Petitioner Company should prove to the satisfaction of this Tribunal that all the reserves proposed to be transferred to the credit of the profit and loss account **suffered taxation earlier**, subject to the fulfilment of which, the reclassification can be permitted.
9. The Regional Director vide his Additional Affidavit dated 21.11.2017 reported that the decision to utilise general reserve in the manner deemed fit, is at the discretion of the shareholders of the Company and not be a subject to any judicial determination / intervention/ judicial oversight and if voluntary transfer is resorted to by the Company, then it has to submit itself to Companies (Declaration of Dividends from Reserves) Rules, 2014 (referred to as Rules, 2014), which implies that where the Reserves comprise of Statutory transfers made earlier, the same shall not be subjected to the Rules, 2014 and accordingly, the compulsory transfer to Reserves made in accordance with the Rules, 1956 should not be subjected to the rigorous of the Rules 2014. The Regional Director vide his subsequent additional affidavits dated 15.12.2017 and 04.05.2018 stated it is of the view that the Scheme is not maintainable for the reasons mentioned in the Affidavit dated 21.11.2017 and the case laws relied on by the Petitioner are not relevant to the subject matter of the Petition.



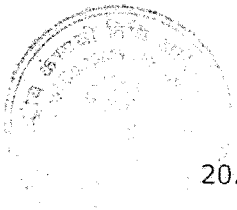
10. The Petitioner Company has enclosed valuation report of Deloitte Haskins & Sells, Chartered Accountant dated 06.06.2016 which is filed along with memo dated 16.04.2018. A certificate of the Chartered Accountant on the Accounting Treatment is enclosed and marked as Annexure III to the memo.
11. The Scheme provides appointed date as 31.03.2016.
12. The Learned Counsel for the Petitioner Company therefore urged this Tribunal to approve the Scheme of Arrangement between the Petitioner Company and its members.
13. I have heard the Counsel for Petitioner Company and CGSC for Regional Director.
14. This Petition is filed for approval of Scheme of Arrangement entered between the Company and its shareholders. The Petition was originally filed under Section 391-394 of Companies Act, 1956 before Hon'ble High Court for the States of Andhra Pradesh & Telangana. Subsequent to conferring jurisdiction on the Tribunal pursuant to the notification of Companies (Removal of Difficulties) Fourth Order, 2016 and Companies (Transfer of Pending Proceedings) Rules, 2016 by the Ministry of Corporate Affairs, New Delhi in the Gazette of India, dated 07.12.2016 with effect from 15.12.2016, this case was transferred to this Tribunal and it is renumbered as CP (TCAA) No.63/HDB/2017.
15. At the first instance in a common order in CA Nos. 1531 & 1532 of 2016 dated 07.11.2016, Hon'ble High Court dispensed with convening meeting of Creditors but ordered for convening meeting of shareholders. The Chairperson appointed by the Hon'ble High Court conducted meeting of members of the Petitioner Company and filed his report. It

is shown at page Nos 213-215. The meeting decided by majority to approve this scheme.

16. The Scheme envisages for approval of transfer of money lying in General Reserves which is about Rs.288.76 crores to the Profit and Loss Account. The balance in the General Reserve as per audited balance sheet of Petitioner Company, as on the appointed date was Rs. 288.76 crores. The Scheme provides for reclassification and for utilization of General Reserve by transferring it to Profit & Loss Account.
17. It is the case of Petitioner Company, amount lying in the General Reserves was built up over the years through transfer of profits. The Scheme envisages upon transfer and upon re-classification of the amount standing to the credit of General Reserve and there after credit to the Profit and Loss Account may be paid out to the members of the Petitioner Company from time to time.
18. The Petitioner Company has filed Accounting Treatment certificate issued by Deloitte Haskins & Sells. They confirmed the proposed Accounting Treatment contained in approved Scheme is in compliance with other generally accepted Accounting Principles in India, SEBI (Listing obligations and Disclosure Requirements) Regulations, 2015 and Circulars issued thereunder.
19. The Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad filed his report on 05.06.2017. He has stated in the first report that notice was issued to IT Department for submitting its comments. The IT Officer (HQrs-II) (i/c), O/o Principal Commissioner of Income Tax, Rajahmundry vide letter dated 26.04.2017 submitted observations/comments on the Scheme. A



letter was also addressed to SEBI, with a copy to National Stock Exchange for submitting their comments / objections. The Regional Director has stated in his report that NSE vide its letter dated 05.05.2017 reported that no objection was already issued vide NSE letter dated 02.08.2016. He requested the Tribunal to consider above submissions and to dispose of the Petition. He has enclosed the copy of letter received from NSE dated 02.08.2016 reporting no objections for the Scheme. He has also enclosed copy of the letter sent by the Principal Commissioner of Income Tax. IT officer has observed in his report at para 2.7 that Petitioner Company to prove to the Tribunal that the Reserves to be transferred to the credit of profit and loss account suffered taxation earlier, subject to fulfilment of which, reclassification may be permitted and Petitioner Company be directed to file all details before the Assessing Officer. So, the basic point raised by IT officer that Petitioner Company to explain that whatever amount is lying in general reserves was earlier subjected to taxation.



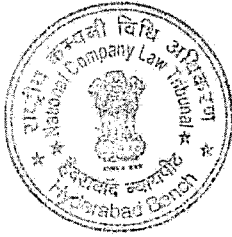
20. The Regional Director has filed second Affidavit /report dated 21.11.2017. In the additional Affidavit / report wherein the Regional Director observed that general reserves is a part of shareholder funds. He has categorically stated in the report that there is neither an express nor implied prohibition either in the Accounting Standards or Generally accepted Accounting Principles and Practices (GAPP) nor in the format of Balance Sheet prescribed under the Companies Act to transfer back the General Reserves to the Credit of Profit & Loss Account. He observed that the decision to utilise general reserves in the

manner deemed fit is best left to the shareholders of the Company and not be subjected to any judicial determination. He observed that earlier under Companies Act, 1956 it was mandatory for the Companies to transfer a prescribed percentage of profits to the reserves, if the company proposes to declare dividend exceeding 10%, whereas the Companies Act, 2013 does not mandate any such transfer. So, the position now is that Companies can distribute entire post tax profits including any carry forward balance, including in the profit and loss account, to the shareholders as dividends.

21. In the 3rd Additional Affidavit/Report dated 15.12.2017, the Regional Director stated the Scheme cannot be considered under Section 230-232 of Companies Act, 2013 since he has raised his objection in the Additional Affidavit dated 21.11.2017. Similarly, he has held the same view in the fourth Additional report dated 04.05.2018.
22. On the other hand, Learned Counsel for Petitioner Company filed memo dated 13.07.2017. It is stated in the memo that the amounts in general reserve was built up in view of provisions contained in Section 205 (2A) of Companies Act, 1956 as it was mandatory for a Company to transfer certain portion of current profits to the general reserves before declaring dividends. This provision was in force till Companies Act, 1956 is replaced by Companies Act 2013. Section 123 (1) of the Companies Act, 2013 makes it optional for a Company to transfer any amount to general reserve before declaring dividends in any Financial Year. Therefore, he contended that the Arrangement can be permitted. He relied on the decision reported in *Alembic Ltd (2008) 144 Comp Cas 105 (Guj)* of Hon'ble Gujarat

High Court. In this decision Hon'ble High Court held, the amounts lying to the credit of general reserves to be utilised against the debt of the profit & Loss account. The Counsel for the Petitioner Company would contend, there is debit balance of Rs. 65.68 crores in the profit & loss account and after transfer of money from general reserves to the profit & loss account, the debt balance will be written off and balance would remain to the credit of profit and loss account. The Counsel contended the Scheme has been approved by the shareholders, SEBI and stock exchanges. Therefore, he contended the Scheme may be approved. He relied on the certificate issued by Deloitte Haskins & Sells, Chartered Accountant.

23. The Learned Counsel also filed memo dated 02.12.2017 and cited following decisions:-



- (a) Jaques vs The Federal Commissioner of Taxation
- (b) Navjivan Mills Co Ltd, Kalol
- (c) Vasant Investment Corporation Ltd vs. State of Maharashtra
- (d) Larsen & Toubro Limited
- (e) Tatanet Services Ltd and Tata Services Limited
- (f) Balakrishna Industries Ltd.

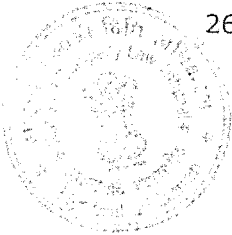
24. The Learned Counsel for Petitioner Company has also filed one more memo dated 22.01.2018. He relied on the decision of Hon'ble High Court of Karnataka in the matter of United Spirits Limited. This decision is shown at pages 6-12.

25. The contention of the Learned Counsel for Petitioner Company that the present arrangement is permissible under law. He relied on the following definition as provided

under Section 390 (1) (b) of Companies Act, 1956 which is as follows:-

"the expression "arrangement" includes a reorganization of the share capital of the Company by the consolidation of shares of different classes, or by the division of shares into shares of different classes or, by both those methods".

The Learned Counsel contended there is no definition for "Arrangement" in Companies Act 2013 and relied upon sub-section (2) of Section 465 of Companies Act, 2013 and contended that definition given in Companies Act, 1956 for "Arrangement" is to be taken into account. The Learned Counsel has relied on the decision of Hon'ble High Court of Gujarat in Navjivan Mills Col. Ltd, Kalol .



26. Section 230 of the Companies Act, 2013 provides for Arrangement between the Company and its members or any class of them. Now, the Petition is filed by the Company stating that there is an Arrangement between the Company and its members. The Company Petition is filed by the Company. An Arrangement can be made between the Company and its members. The present Scheme is an arrangement between the Company and its members for transfer of amounts lying in the general reserve to the profit and loss account. The amount is lying in the general reserve account built up over the years because of statutory directions. Now under Companies Act, 2013, it is not compulsory to transfer some portion of the profit to the General Reserve. Now Company wanted to pay out the amount to its members by transferring the money from

general reserve to the profit and loss account. This Arrangement is approved by the shareholders.

27. The Learned Counsel for Applicant Company relied on the decisions:-

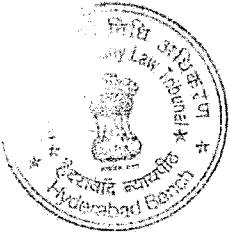
1. Navjivan Mills Co Ltd, Kalol
2. Vasant Investment Corporation Ltd vs. State of Maharashtra
3. Larsen & Toubro Limited

28. The contention of the Learned Counsel for Petitioner Company that the decision cited in Navjivan Mills Co Ltd, Kalal Hon'ble High Court of Gujarat considered the definition of "Arrangement" and held as follows:-

"The word "arrangement" may not be so narrowly construed. The word "arrangement" is such that where even there is no dispute, arrangement can be brought in. "Compromise" postulates existence of a dispute and giving and taking on either side. "Arrangement", on the other hand, is something by which parties agree to do a certain thing notwithstanding the fact that there was no dispute between the parties".

29. The Learned Counsel also relied on the decision reported in Vasant Investment Corporation Limited V. State of Maharashtra (1982) 52 Comp. Cas 139; CDJ 1978 BHC 227 in paragraph (5) of the judgement order as follows:-

"It has further been argued by the official liquidator that the proposed scheme is not a scheme or an arrangement contemplated under Section 391 of the Companies Act because the Scheme does not propose any arrangement or rearrangement

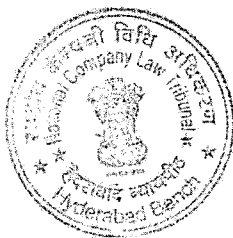


regarding the rights of the creditors or shareholders of the Company. It is, however, not necessary that an arrangement under Section 391 should be an arrangement with creditors of the Company or should involve any change in the rights of the shareholders of the Company”.

30. The Learned Counsel for Petitioner Company also relied on the decision of Hon'ble High Court of Gujarat in re Alembic Ltd (2008) 144 Comp Cas 105 (Guj) wherein the Hon'ble High Court has approved the Scheme for transferring an amount not exceeding Rs.102.58 crores out of General Reserve to be utilised against the debit of Profit and Loss Account of the Petitioner Company. The Learned Counsel also relied on the decision reported in United Spirits Limited of Hon'ble High Court of Karnataka in Company Petition No.170 of 2014 and contended that the matter which falls within the purview of powers of Board under Section 293 of the Companies Act, 1956 or Section 180 of Companies Act, 2013 can very well form the subject matter of Scheme of Arrangement, which could be sanctioned in an Application filed under Section 391-394 of Companies Act, 1956. Thus, Learned Counsel contended, the Arrangement for transfer of amount lying in the General Reserve after reclassification to the profit and loss account can very well be approved by the Tribunal.
31. It is true the definition "Arrangement" in Section 390 (1) (b) of Companies Act is wide enough to include the proposed arrangement, wherein the Petitioner Company is seeking approval for transfer of funds in the general reserve after reclassification to Profit and Loss account.



32. The contention of Learned Counsel, the arrangement proposed involves re-classification of amount standing in the general reserve to the credit balance of profit and loss account of Petitioner Company. The amounts in general reserve arose out of transfer of certain percentage of the current profits of the Petitioner Company in compliance with Section 205 (2A) of Companies Act 1956, read with the Companies (Transfer of Profits to Reserves) Rules, 1975. The contention of the Learned Counsel that it was mandatory for a Company to transfer a certain portion of current profits to the General Reserve before declaring equity dividend. Thus, an amount of Rs. 288.76 crores is accumulated in the General Reserve of the Petitioner Company.
33. The contention of the Learned Counsel, Section 123 (1) of the Companies Act, 2013 however makes it optional for a Company to transfer any amount to the General Reserve before declaring any dividend in a Financial year. The contention of the Learned Counsel, the Arrangement is only for transfer of money from general reserve to the credit of profit and loss account. Since the amount is accumulated in the General Reserve over the years, it is thought fit to transfer this amount to the Profit and Loss Account by means of an Arrangement after re-classification and amount lying debit side in the profit and loss account will be written off.
34. Now, the transfer of certain amount to the General Reserve whenever dividend is declared is not made compulsory under the provisions of Companies Act 2013. It is only optional. The transfer of funds from General Reserve to the profit and Loss account can be by way of Arrangement

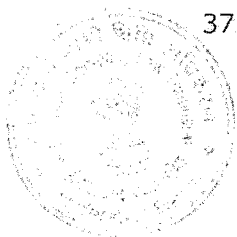


between the Company and its members. The Arrangement is a broad term and the proposed transfer is well within four corners of Arrangement. So the same can be approved.

35. The Learned Counsel for Petitioner Company filed a memo dated 14.11.2018 along with no objection issued by BSE & NSE. However, as per letter issued by BSE, the Petitioner Company after approval by the Tribunal has to comply the directions issued by BSE in the letter dated 01.08.2016.

36. So, in the light of my above discussions, the Arrangement can be approved subject to compliance of directions issued by BSE in the letter dated 01.08.2016. Further The Scheme is not opposed to public policy and no objection received from shareholders or creditors. Therefore, the Scheme of Arrangement can be approved.

37. After hearing the Counsel for the Petitioner Company and considering the material on record, this Tribunal passed the following order:

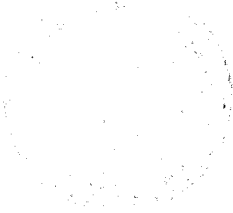


(a) While Approving the Scheme of Arrangement, I made it clear that this order should not be construed as an order in anyway granting exemption from payment of Stamp Duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specially required under any law.

(b) The Scheme of Arrangement as consented by the Equity Shareholders of Petitioner Company, is sanctioned and confirmed so as to be binding on all the members, creditors, employees, concerned statutory and regulatory authorities and all other

stakeholders of the Petitioner Company. The Appointed date of the Scheme of Arrangement is 31.03.2016

- (c) It is further ordered the Petitioner Company do within 30 days after the date of receipt of certified copy of the orders, cause a certified copy to be delivered to the Registrar of Companies, Andhra Pradesh and Telangana, Hyderabad for registration and on such certified copy being delivered, Registrar of Companies, Andhra Pradesh and Telangana, Hyderabad shall take all necessary consequential action in respect of the Petitioner Companies.
- (d) The tax implications, if any, arising out of the scheme is subject to final decision of Concerned Tax Authorities and the decision of the Concerned Tax Authorities shall be binding.
- (e) The Petitioner Company after approval of the Scheme of Arrangement has to comply the directions of the BSE.
- (f) Any person is at the liberty to apply to the Tribunal in the above matter for any directions that may be necessary.



P. Kalyan
By. Regr. Asst. Regr. Court Officer
National Company Law Tribunal, Hyderabad Bench
Binnu

16.11.18
RATAKONDA MURALI
MEMBER (JUDICIAL)

प्रमाणित प्रति
CERTIFIED TRUE COPY (CP NO. 416 of 2016)
केस नम्बर
CASE NUMBER... CP (TCAA) NO. 63/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT... 16.11.2018
प्रति तैयार किया गया तारीख
COPY MADE READY ON... 19.11.2018