

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT - 5

CA(CAA) NO. 227 OF 2021

In the matter of Companies Act, 2013
(18 of 2013)

AND

In the matter of Sections 230,231,232
and other applicable provisions of the
Companies Act, 2013 read with Rule 3
of the Companies (Compromises,
Arrangements, Amalgamations) Rules,
2016, also read with Rules 11,23 and
34 of the National Company Law
Tribunal Rules, 2016

AND

In the matter of Scheme of
Amalgamation between Creative Stylo
Packs Private Limited (Applicant
No.1/Transferor Company) and EPL
Limited (Applicant No.2/ Transferee
Company) and their respective
shareholders and creditors

Creative Stylo Packs Private Limited)
A company incorporated under the)
Companies Act, 1956 having its)
registered address at 205, R.C.)
Church Compound, Dr. Ambedkar)
Road, Dadar, Mumbai – 400 014)

... Applicant No. 1/
Transferor Company

AND

EPL Limited)
(formerly known as Essel Propack)
Limited))
A company incorporated under the)
Companies Act, 1956 having its)
registered office at PO Vasind, Taluka)
Shahapur, District Thane,)
Maharashtra – 421 604.) ... Applicant No. 2/
) Transferee Company

Order delivered on: 09.11.2021

CORAM:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Applicants: Mr. Siddharth Ranade a/w Ms. Samrudhi Chothani and
Ms. Saloni Gupta i/b Trilegal, Advocates for the Applicants

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. The Court is convened by video conference today (09.11.2021).
2. Learned Counsel for the Transferor Company and Transferee Company (collectively referred to as the Applicants) states that the present Scheme is a Scheme of Arrangement for Amalgamation (Scheme) of CREATIVE STYLO PACKS PRIVATE LIMITED (Applicant No. 1/Transferor Company) with EPL LIMITED (Applicant No. 2/ Transferor Company) and

their respective shareholders under sections 230 to 232 of the Companies Act, 2013 (Act) read with Rules 3 and 5 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Rules) and Rule 11 of The National Company Law Tribunal Rules, 2016. This Scheme provides for merger of Applicant No.1/Transferor Company and Applicant No.2/Transferee Company and the Transferee Company will be the surviving entity post the sanction of the Scheme.

3. The Applicant No. 1 is a private limited company (bearing CIN - U21023MH2011PTC219967 and PAN AA ECC4784G) incorporated on 20.07.2011 under the Companies Act, 1956. The Applicant No. 1 is primarily engaged in the business of manufacturing packaging products and services in India in relation to tubes and corrugated boxes. The Applicant No.1 has an authorized share capital of 31,50,000 equity shares of INR 10/- each amounting to INR 3,15,00,000/- and issued, subscribed and paid-up shares capital of 31,50,000 equity shares of INR 10/- each, fully paid up amounting to INR 3,15,00,000/-.

4. The Applicant No.2/Transferee Company is a public limited company (bearing CIN- L74950MH1982PLC028947 and PAN AA ACE1568L) incorporated on 22.12.1982 under the Companies Act, 1956. The address for all communications with the Applicant No. 2 is Top Floor, Times Tower, Kamla City, Senapati Bapat Marg, Lower Parel, Mumbai – 400 013. The Applicant No.2 is primarily engaged in the business of manufacturing packaging products and services in India and globally. The Applicant No.2 has authorized share capital of 35,00,00,000 shares of INR 2/- each amounting to INR 70,00,00,000/-. The Applicant No.2 has issued and subscribed share capital of 31,59,12,803 shares of INR 2/- each amounting to INR 63,18,25,606/- and paid up share capital of 31,58,55,683 shares of INR 2/- each amounting to INR 63,17,11,366/-.

Rationale of the Scheme:

5. The Learned Counsel stated that the transfer and vesting of business of the Transferor Companies pursuant to this Scheme *inter alia* result in the following benefits amongst others:

- a. the Transferor Company and the Transferee Company are engaged in complementary business of manufacturing items which are similar and synergistic to each other. Upon the Scheme coming into effect, the synergistic benefits arising from the amalgamation of the Transferor Company and the Transferee Company would result in greater efficiency, cost management, centralization of resources and technologies and cost effectiveness in the functioning and operation of the Transferee Company;
- b. the Transferor Company has a good share of customers in the packaging business and therefore, the customer pool of the Transferee Company shall also increase after the amalgamation of the Transferor Company with the Transferee Company. The amalgamation will strengthen the Transferee Company's capabilities in high-end decoration of plastic tubes;
- c. the Scheme will assist in achieving higher long-term financial return that would have been achieved by the Transferor Company and the Transferee Company as separate entities. This is because the amalgamation will make available assets, financial, managerial and technical resources, personnel capabilities, skills, expertise and technologies of the Transferor Company and the Transferee Company, leading to synergistic benefits, enhancement of future business potential, cost reduction and enhance efficiencies, productivity gains and logistical advantages, thereby contributing to future growth and enhancement of shareholder value;

- d. the Scheme will result in cost saving by reduction of administrative and other overhead costs, avoidance of duplication and pooling of managerial skills; and
 - e. the Scheme will result in economies of scale and consolidation of opportunities offered by the Scheme which will contribute to make the Transferee Company, pursuant to the sanctioning of the Scheme, the Transferor Company will stand dissolved without winding-up, consequently, there would be lesser regulatory and legal compliance obligations including accounting, reporting requirements, statutory and internal audit requirements, tax filings, company law requirements, etc. and therefore reduction in administrative costs.
6. There is no adverse effect of Scheme on the Directors, Key Management Personnel, shareholders, creditors and employees of Transferor Companies and Transferee Company. The Scheme would be in the best interest of all stakeholders.
7. The Counsel for the Applicants submitted that the Board of Directors of the Transferor Company in their meetings held on 12.11.2020 have approved the Scheme of Amalgamation with appointed dated as 01.02.2021. The Board Resolution approving the Scheme for the Applicant companies is annexed as Annexure L and M to the Application.
8. The Transferor Company has four shareholders, namely [i] Applicant No. 2/EPL Limited; [ii] Mr. Bhavik Shah; [iii] Mr. Darshan Shah and [iv] Ms. Jyoti Shah. The Counsel for the Applicants submitted that the shareholders of the Transferor Company have issued their consents to the Scheme and therefore, the meeting of the equity shareholders of the Transferor Company for the purpose of considering, and if thought fit, approving, with or without modifications the Scheme, may be dispensed with. The consent

affidavits of the shareholders are annexed as Annexures Q-1 to Q-4 to the application. In view of the consent given by the equity shareholders, the Bench hereby directs that the meeting of the equity shareholders of the Transferor Company, for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme is hereby dispensed with.

9. The Counsel for the Applicants submitted that the meeting of the equity shareholders of the Transferee Company, be convened and held *via* video-conference or through other audio-visual means and not in physical presence of shareholders on 05.01.2022 at 11.00 am for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Merger by Amalgamation amongst the Transferor Company and the Transferee Company. The Transferee Company shall provide facility of e-voting including remote e-voting through electronic means to each of its equity shareholders to cast their vote.

10. That at least one month before the said meeting of the equity shareholders of the Transferee Company to be held as aforesaid, a notice of convening the said meeting *via* video-conference, at the date and time aforesaid, together with a copy of the Scheme of the Scheme and a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 shall be sent by e-mail to each of the equity shareholders of the Transferee Company at their respective registered e-mail addresses as per the records of the Transferee Company or alternative where registered e-mail addresses are not available, by courier or post at their registered addresses as per the Transferee Company's records.

11. That at least one month before the meeting of the equity shareholders of the Transferee Company to be held as aforesaid, a notice

convening the said Meeting, indicating the date and time of the meeting as aforesaid be published in newspapers stating that a copy 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 Amalgamations) Rules, 2016.

12. That the notice of the Meeting of the equity shareholders of the Transferee Company shall be published/advertised in two local newspapers viz. Business Standard in English and Nav Shakti in Marathi, both circulating in Mumbai not less than 30 days before the date fixed for the meeting.

13. The Transferee Company undertakes to:

- a. issue Notice convening meeting of the equity shareholders in Form No. CAA.2 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- b. issue Explanatory Statement containing all the particulars as per Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016; and
- c. advertise the Notice convening meeting in Form No. CAA.2 as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The said undertaking given by the Transferee Company is accepted.

14. The Tribunal hereby appoints Anand Kripalu, CEO and Managing Director of the Applicant No. 2/Transferee Company and failing him, Mr. Suresh Savaliya, Senior Vice-President, Legal and Company Secretary as the Chairperson for the aforesaid meeting of the equity shareholders of the Transferee Company to be held *via* video conference on 05.01.2022 at 11.00 am or any adjournment or adjournments thereof.

15. The Chairperson appointed for the aforesaid meeting shall issue the advertisements and send out the notices of the meeting referred to above. The said Chairperson shall have all powers as per Articles of Association of the Transferee Company and also 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 matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

16. The quorum for the said meeting of the equity shareholders of the Transferee Company shall be as prescribed under Section 103 of the Companies Act 2013. The value and number of each equity shareholder shall be in accordance with the books/register of the Transferee Company or depository records and where the entries in books/depository records are disputed, the Chairperson 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 voting for the meetings of equity shareholders of the Transferee Company shall be allowed by mechanism of e-voting by the shareholders or their authorized representative(s). The voting by authorized representative in case of a body corporate be permitted, provided that the authorization duly signed by the person entitled to attend and vote at the meeting is filed with the Transferee Company, in physical or electronic mode, at its registered office, at least 48 (forty-eight) hours before the aforesaid meeting, as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The value and number of the shares of each member shall be in accordance with the respective books/register of the Transferee Company

depository records or books of accounts and where the entries in the books/register/depository records or books of accounts are disputed, the Chairperson for the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf shall be final.

19. The Chairperson to file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meeting and to report to the Tribunal that the directions regarding the issue of notices and advertisements have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

20. The Chairperson to report to the Tribunal, the result of the aforesaid meeting within 15 (fifteen) working days of the conclusion of the meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

21. That the Scrutinizer for the meeting of the equity shareholders shall be Company Secretary Ms. Tehseen Fatima Khatri of T.F. Khatri & Associates, Practicing Company Secretary, ICSI Membership No. F9093 and Certificate of Practice No. 10417 for a remuneration of INR 35,000/- as directed.

22. The Counsel for the Applicants submitted that the Transferor Company has two secured creditors as on 30.09.2021, namely [i] Axis Bank; and [ii] UBS Bank. The secured creditor, Axis Bank, representing 90% in value has issued its consent to the Scheme and therefore, the meeting of the secured creditors of the Transferor Company for the purpose of considering, and if thought fit, approving, with or without modification(s) the Scheme, may be dispensed with. The consent affidavit of the secured

creditor of the Transferor Company has been annexed as Annexure T to the Application. In view of the consent given by the secured creditor of the Transferor Company representing 90% in value the requirement of meeting of the secured creditors of the Transferor Company, for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme is hereby dispensed with. This Bench hereby directs the Transferor Company to issue notice to UBS Bank as required under Section 230(3) of the Companies Act, 2013 by registered post or speed post or by courier or by e-mail with a direction that they may submit their representations, if any, to the Tribunal within a period of 30 (thirty) days from the date of receipt of such notice and a copy of such representation shall simultaneously be served upon the Transferor Company.

23. The Counsel for the Applicants further submitted that the Transferor Company has 179 unsecured creditors as on 30.09.2021 aggregating to INR 25,63,66,727/-. The Counsel further submitted that the Applicant No. 2/Transferee Company has a positive net worth, both presently as well as post-approval of the Scheme and the Scheme does not impact the rights and interests of the unsecured creditors of the Transferor Company in any matter. The scheme contemplates no compromise with the unsecured creditors and there is no sacrifice of any amounts due to the unsecured creditors and will therefore not affect the rights of the unsecured creditors. The certificate from the Chartered Accountants depicting that the Applicant No. 2/Transferee Company has a positive net worth both, pre-approval as well as post-approval of the Scheme is annexed as Annexure W to the Application. Accordingly, the meeting of unsecured creditors is not required to be convened subject to the Transferor Company issuing notices to the unsecured creditors having outstanding debt above INR 50,000/- as required under Section 230(3) of the Companies Act, 2013 with a direction that the unsecured creditors may submit their representations, if any, to the Hon'ble Tribunal and copy of such representations simultaneously be

served upon the Transferor Copy. In view of the this, the Bench hereby directs the Transferor Company to issue notice to all unsecured creditors having outstanding debt over INR 50,000/- as required under Section 230(3) of the Companies Act by registered post or speed post or by courier or by e-mail with a direction that they may submit their representations, if any, to the Tribunal within a period of 30 (thirty) days from the date of receipt of such notice and a copy of such representation shall simultaneously be served upon the Transferor Company.

24. The Counsel for the Applicants submitted that the Transferee Company has one secured creditor as on 30.09.2021, namely DBS Bank India Limited. DBS Bank India Limited, representing 100% in value has issued its consent to the Scheme and therefore, the meeting of the secured creditors of the Transferee Company may be dispensed with. In view of the consent given by the secured creditors of the Transferee Company, the requirement of meeting of the secured creditors of the Transferee Company for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme is hereby dispensed with.

25. The Counsel for the Transferee Company further submitted that the Transferee Company has 590 unsecured creditors as on 30.09.2021 aggregating to INR 238,94,49,320/-. The Counsel also submitted that the Applicant No. 2/Transferee Company has a positive net worth, both presently as well as post-approval of the Scheme and the Scheme does not impact the rights and interests of the unsecured creditors of the Transferee Company in any manner. The scheme contemplates no compromise with the unsecured creditors and there is no sacrifice of any amounts due to the unsecured creditors and will therefore not affect the rights of the unsecured creditors. Accordingly, the meeting of the unsecured creditors is not required to be convened subject to the Transferee Company issuing notices to the unsecured creditors having outstanding debt above INR 1,00,000/-

as required under Section 230(3) of the Companies Act, 2013 with a direction that the unsecured creditors may submit their representations, if any, to the Hon'ble Tribunal and copy of such representations shall simultaneously be served upon the Transferee Company. In view of this, this Bench hereby directs the Transferee Company to issue notice to all unsecured creditors having outstanding debt over INR 1,00,000/- as required under Section 230(3) of the Companies Act by registered post or speed post or by courier or by e-mail with a direction that they may submit their representations, if any, to the Tribunal within a period of 30 (thirty) days from the date of receipt of such notice and a copy of such representation shall simultaneously be served upon the Transferee Company.

26. The Applicants are directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority i.e. Income-tax ward: Range 6(1)(1), Aaykar Bhavan, Maharshi Karve Road, Churchgate, Mumbai, Maharashtra 400 020 (Transferor Company PAN – AAEC784G and Transferee Company PAN – AAACE1568L; (ii) the Central Government through the office of Regional Director, Western region, Mumbai; (iii) Registrar of Companies, Mumbai; (iv) Securities Exchange Board of India; and (v) Bombay Stock Exchange, with a direction that they may submit their representations, if any, within a period of third days from the date of receipt of such notice to the Tribunal and a copy of such representations shall simultaneously be served upon the respective Applicant Company, failing which, it shall be presumed that the Authorities have no representations to make on the proposal.

27. In light of the observation letter received from the National Stock Exchange (NSE) of India Limited dated 30.09.2021 wherein the National Stock Exchange of India Limited has waived off the requirement to send

notice for representation as mandated under Section 230(5) of the Companies Act, 2013, the same is not required.

28. The Transferor Company is also directed to serve notice along with copy of scheme upon Official Liquidator attached to the Hon'ble Bombay High Court. The Tribunal hereby appoints M/s. M V Ghelani & Company, Chartered Accountants with remuneration of INR 2,00,000/- along with the applicable taxes for the services to assist Official Liquidator to scrutinize books of accounts of the Transferor Company for the last five years. The Official Liquidator may submit his representations, if any, within a period of thirty (30) days from the date of the receipt of such notice to the Tribunal and a copy of such representation shall simultaneously be served upon the Transferor Company, failing which, it shall be presumed that the Official Liquidator has no representation to make on the proposals.

29. The Applicant companies to file affidavits of service in not less than seven days before the date fixed for holding of meeting, in the Registry with regard to providing dispatch of notices to the equity shareholders of the Transferee Company, the unsecured creditors and regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

SD/-

Anuradha Sanjay Bhatia
Member (T)

SD/-

Suchitra Kanuparthi
Member (J)