

C.A. No. KB/2020
In
CA(CAA) No. 254/KB/2020
M/s.Cimmco Ltd & Ors

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C. A. No KB/2020
In
CA(CAA) No. 254/KB/2020

In the matter of:

Sections 230 to 232 and other applicable provisions of the Companies Act, 2013.

And

In the matter of:

The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

And

In the matter of:

M/s. CIMMCO Limited, an existing company within the meaning of the Companies Act, 2013 having its registered office at 756, Anandapur, E.M. Bypass, Kolkata 700107 within the aforesaid jurisdiction.

Applicant Company No. 1

And

In the matter of:

M/s. Titagarh Capital Private Limited, an existing company within the meaning of the Companies Act, 2013 and having its registered office at 756, Anandapur, E.M. Bypass, Kolkata 700107, within the aforesaid jurisdiction.

Applicant Company No. 2

And

In the matter of:

M/s. Titagarh Wagons Limited, an existing company within the meaning of the Companies Act, 2013 and having its registered office at 756, Anandapur, E.M. Bypass, Kolkata 700107, within the aforesaid jurisdiction.

Applicant Company No. 3

And

- 1. CIMMCO LIMITED and]**
- 2. TITAGARH CAPITAL PRIVATE LIMITED] Transferor Companies**
- 3. TITAGARH WAGONS LIMITED] Transferee Company**

Applicants

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

Date of hearing: 22.04.2020

Order delivered on: 22.04.2020

Counsel appeared:

For the Applicants:-

1. Mr. Ratnanko Banerjee, Senior Advocate
2. Ms. Swapna Choubey
3. Mr. Sayantan Bose

ORDER

Per Jinan K.R. Member (Judicial)

1. This un-numbered I.A. filed by the Applicants in C.A.(CAA) No. 254/KB/2020 has taken up for hearing on today through Video Conference. Because of the Corona Virus outbreak, the Government declared lock down and thereby the meeting ordered to be convened on 30.03.2020 could not be convened and accordingly filed this application for an urgent hearing and for issuing the following directions:-

- a) An order be passed modifying the order dated 12th March 2020 allowing all the meetings dated 30th March 2020 to be conducted

through video conferencing or postal ballot through e-voting in accordance with general Circulars No. 14/2020 dated 08.04.2020 and 17/2020 dated 13.04.2020.

- b) Notice of the adjourned meeting be permitted to be published in the Financial Express” and “Aajkal” including their digital versions in terms of General Circular No. 17 dated 13.04.2020.
- c) Presence of the Equity Shareholders and creditors may be permitted to be recorded in the minutes of the meeting instead of such attendance being recorded by way of attendance slip.
- d) Chairperson appointed for the meeting be directed to accept scanned copies of Board Resolutions/Authority letters/proxy forms by way of electronic mail or where the same is not possible by reason of COVID-19 situation accept instead of Board Resolutions/Authority letters/proxy forms by authorization by electronic mail as may be required for the purpose of conducting meeting upon an undertaking to provide original copies of such documents to the nominated Chairpersons within a week from the date when the situation is back to normal.
- e) Time for the Chairperson to file their report be extended to 7 days from the commencement of normal functioning of the

Hon' ble Tribunal or by any other mode as may be permitted by the Hon' ble Tribunal.

- f) Leave be given to the Applicants to e-file this application in view of the prevailing pandemic (Covid-19), upon the undertaking of the applicants to file a duly affirmed copy of the same with Court Fees before the Registry of this Hon' ble NCLT within 7 days from re opening of the Hon' ble NCLT and this application be kindly heard by the Hon' ble NCLT by video conferencing at its earliest convenience.

2. The urgency set up being found satisfactory, this application was taken up for hearing on today via VC. Ld. Sr. Counsel Mr. Ratnanko Banerjee and Ad. Mr. Sayantan Bose was heard.

3. C.A.(CAA) No. 254/KB/2020 is an application filed under Section 230-232 for issuing direction for convening meetings of the Equity Shareholders, secured and unsecured creditors respectively of the Applicant Company Nos. 1 & 3 and for dispensation of meeting of shareholders and creditors of the Applicant No. 2. By order dated 19th February, 2020 the Kolkata Bench allowed the application directing to convene the meeting as prayed for by appointing Chairpersons referred to in the order and the chairpersons issued notice of meeting scheduled to be held on 30.03.2020. It is that meeting could be adjourned because of the lock down and to be held on 29.04.2020 as submitted by the

Ld.Sr.Counsel for the applicant. According to him as per proviso to section 103 of the Companies Act,2013 an adjourned meeting can be held by giving notice not less than 3 days and therefore convening meeting by electronic means as provided under section 108 of the Act is perfectly legal and proper.

4. Being satisfied that the Corona Virus outbreak is affecting all the peoples in the Country and that no meeting could be convened on 30.03.2020 and having perused the application and the annexes and upon hearing the submissions on the side of the Ld. Counsel on behalf of the applicants the prayer for adjournment of meeting and to conduct the meeting by way of Video Conference or postal ballot through e-voting in accordance with the Circulars already issued by the Chairperson appointed in the case in hand is to be allowed upon the following orders:-

(1) Leave is granted to the Applicants to e-file this application in view of the prevailing pandemic (Covid-19), upon the undertaking of the applicants to file a duly affirmed copy of the same with Court Fees before the Registry of this Hon'ble NCLT within 7 days from re-opening of the Hon'ble NCLT.

(2) The order dated 19th February 2020 is further modified thereby permitting the meetings dated 30th March 2020 to be conducted through video conferencing on April 29, 2020 at the

times to be stated in the notices of the meeting as directed hereby and shareholders and creditors are permitted to cast their votes through e-voting or by postal ballot by e-voting.

(3) Notice of the adjourned meeting shall be published in the 'Financial Express' and 'Aajkaal' including their digital versions by 25.04.2020.

(4) Notice of the adjourned meeting shall also be given in the website of the company and also in the SEBI website for the applicants no. 1 and 3.

(5) Presence of the Equity Shareholders and creditors are permitted to be recorded by the respective chairpersons in the minutes of the meeting instead of such attendance being recorded by way of attendance slip;

(6) Chairpersons appointed for the meetings are directed to accept scanned copies of Board Resolutions/Authority letters/proxy forms by way of electronic mail or where the same is not possible by reason of COVID-19 situation accept instead of Board Resolutions/Authority letters/proxy forms and authorization by electronic mail as may be required for the purpose of conducting meeting upon an undertaking to provide original copies of such documents to the nominated Chairpersons within a week from the date when the situation is back to normal.

(7) Time for the Chairperson to file their report be extended to 7 days from the commencement of normal functioning of the Hon'ble Tribunal.

(8) The earlier order dated 19.02.2020 as modified is further modified in terms of the directions above.

The application is, accordingly, disposed of.

There shall be no orders as to costs.

Copy of the order is to be uploaded forth with and serve a copy through e-mail to the applicant. Registry is directed to see that fee payable by the applicant is to be collected and an undertaking (by way of e-mail to the registry) to the effect that fee will be paid with in one weeks as agreed to be obtained before serving copy of the order to the applicant.

Sd/-

(Jinan K.R)
Member (Judicial)

Signed on this, the 22nd day of April, 2020.

VC