

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

I.A No.04 of 2021 in
C.A. (CAA) No.47/BB/2020
Under Rules 11, 32 & 154 of NCLT Rules, 2016

IN THE MATTER OF

M/s. Supangita Engineers Pvt. Ltd.

Regd. Off: No.7C/D,
Bommasandra Industrial Area,
Bengaluru – 560 099.

- Transferor Company/Applicant No.1

AND

**M/s. Cadm Tools and Components
Private Limited**

Regd. Off: No.7C,
Bommasandra Industrial Area,
Bengaluru – 560 099.

- Transferee Company/ Applicant No.2

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Date of Order: 09th February, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through Video Conference):

For the Applicants : Mr. Varun S, Adv.

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. This Application has been jointly filed by the Petitioner Companies under Rules 11, 32 & 154 of NCLT Rules, 2016, by *inter alia* seeking to allow the present Application, modify paragraph 6(ii) of the order dated 16.12.2020 and reschedule

the date of the meeting of the unsecured creditors of the Transferor Company from 03.02.2021 to 12.03.2021, etc.

2. Brief facts of the case, as mentioned in the Application, by inter alia contending as follows:

- (1) The Applicant Companies had filed an application under Sections 230-232 of the Companies Act, 2013 seeking dispensation of the requirement of convening a meeting of the (a) shareholders of the Transferor Company, (b) secured creditors of the Transferor Company, and (c) shareholders of the Transferee Company, as well as the issuance of directions for convening and holding a meeting of the unsecured creditors of the Transferor Company, by means of video-conference, for the purpose of considering and if thought fit, for approving, with or without modifications, the proposed Scheme of Demerger.
- (2) The Order dated 16.12.2020, this Tribunal disposed of the present application, and dispensed with the meetings of the shareholders and sole secured creditor of the Transferor Company and the shareholders of the Transferee Company. This Tribunal directed the convening of the meeting of the unsecured creditors of the Transferor Company on 03.02.2021 at 11 A.M though video-conference and set out other attendant directions for convening and holding such meeting.
- (3) During the end of December 2020 and the beginning of January 2021, the Counsel for the Applicant Companies was affected by ill health and was unable to function in the normal course. He was only able to attend to work intermittently during this period, and given the prevailing pandemic, was forced to take all necessary precautions in this regard. As a result the Counsel was unable to apply for a certified copy of the order dated 16.12.2020, or even access the copy uploaded on the website. He was also unable to contact the Applicant Companies and advise them as to issuance of notice to the creditors, or to make the necessary preparations

in relation to the convening of meetings. Hence, the Counsel could not take steps to comply with the order dated 16.12.2020 in time.

- (4) It was only recently that the Counsel for the Applicant Companies was able to pursue the order dated 16.12.2020. Upon such perusal, the Counsel realised that the Transferor Company would not be able to fulfil the requirement of Rule 6(2) of the Companies (CAA) Rules, 2016, in providing a months' notice to the unsecured creditors to attend the meeting for considering and, if thought fit, approving the Scheme of Demerger.
 - (5) It is also stated that the Transferor Company has a large number of unsecured creditors', it is just and necessary to reschedule the date of the meeting of the unsecured creditors of the Transferor Company from 03.02.2021 to 12.03.2021. Such rescheduling will provide the necessary time to the Transferor Company to undertake all the necessary actions for convening and conducting such meeting in compliance with the applicable provisions. As a result, the Transferor Company will be able to seek approval of the Scheme of Demerger by their unsecured creditors and thereafter benefit from such demerger. In the present financial situation, the interest of the Applicant Companies will be protected if the demerger contemplated in the Scheme is given effect to.
3. The Applicant Companies have filed a memo dated 09.02.2021 that reads as under:
- (1) In order to comply with the requirement of Rule 6(2) of the Companies (CAA) Rules, 2016, in providing a month's notice to the unsecured creditors of the Transferor Company in respect of the meeting and given that the Transferor Company has a large number of unsecured creditors, it is just and necessary to reschedule the date of their meeting from 03.02.2021 to 29.03.2021 by way of video conference. Such rescheduling will provide the necessary time to the Transferor Company to undertake all the necessary



action for convening and conducting such meeting in compliance with the applicable provisions.

- (2) Separately, the scrutinizer mentioned in the order dated 16.02.2020 has expressed difficulty in taking up the assignment and therefore, the Applicant Companies humbly prays to appoint another scrutinizer in respect of the meeting of the unsecured creditors of the Transferor Company.
4. Mr. Varun S., learned Counsel for the Applicants appeared and was heard **through Video Conference**. We have perused the pleadings of the party and the extent provisions of the Rules made thereunder.
5. Mr. Varun S., learned Counsel for the Applicants submits that Counsel for the Applicant Companies was affected by ill health and was unable to function in the normal course and thus the Applicants intend to modify the paragraph 6(ii) of the order dated 16.12.2020 and reschedule the date of the meeting of the unsecured creditors of the Transferor Company from 03.02.2021 to 12.03.2021. He further submits that the Scrutinizer appointed for the said meeting is facing difficulty in taking up the assignment. It would not, in any manner, affect the interests of the any person on account of the present application being allowed.
6. However, it is seen from the Application and the Memo dated 09.02.2021 that the Counsel for the Applicant Companies was unable to apply for a certified copy of the order dated 16.12.2020, or even access the copy uploaded on the website. He was also unable to contact the Applicant Companies and advise them for the issuance of notice to the creditors, or to make necessary preparations in relation to convening of meetings due to his illness and scrutinizer for the meeting of unsecured creditors of the Transferor Company is unable to discharge his duty.
7. Upon hearing the Counsel for the Applicants and having perused the Application and Memo dated 09.02.2021 filed by the Applicant Companies, we are convinced with the reasons cited by the Applicants in the instant Application and are inclined



to allow the Applicants to modify the paragraph 6(ii) of the order dated 16.12.2020 and reschedule the date of the meeting of the unsecured creditors of the Transferor Company from 03.02.2021 to 12.04.2021. Further, Mr. Nagaraj M. O., PCS, having address at No.20, 9th Cross, 6th Main, R. K. Layout, Padmanabhnagar, Near B. P. Petrol Bunk, Bangalore - 560070, Contact No. 9900505028 is hereby appointed as Scrutinizer for the said meeting instead of Ruchira J & Associates, Scrutinizer. The remuneration for Scrutinizer shall be Rs.40,000/-. He is directed to file his reports with Registry of this Tribunal, within two weeks from the date of conclusions of the meeting.

8. Hence I.A. No. 04 of 2021 in C.A.(CAA)No.47/BB/2020 is hereby allowed, as above. No order as to costs.

**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

Amar

**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**