



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

CA(CAA) 103/KB/2022

An application made under Sections 230(1) and 232(1) of the Companies Act, 2013.

In the matter of:

WISE PROPERTIES PRIVATE LIMITED (hereinafter referred as the Applicant Company), having CIN No. U70109WB2009PTC139016, a Company within the meaning of Companies Act, 2013 having its registered office at 10 Princep Street 2nd Floor Kolkata-700072 in the State of West Bengal.

.....APPLICANT COMPANY

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Satya Ranjan Prasad, Member (Technical)

Appearance:

Ms. Madhuri Pandey, PCS

Date of Hearing: 17.08.2022

Date of pronouncement of the order: 07.09.2022

ORDER

Per Shri Rohit Kapoor, Member (Judicial):

1. This is an application under sections 230(1) of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 filed by the Applicant Company, namely, Wise Properties Private Limited in connection with a proposed Scheme of Arrangement of the Applicant Company. ("Scheme").
2. The Board of Directors of the Applicant Company approved the Scheme of Arrangement of the Applicant Company and its respective shareholders for the Conversion of Equity shares into Preference shares of the Applicant Company, whereby and where under there is a reorganization of Equity Share Capital of the



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Applicant Company. The 310200 number of Equity shares are proposed to be converted into Preference shares as stated in the Scheme of Arrangement. A copy whereof is annexed with the Application and marked as “**Annexure C**”.

3. The circumstances/explanation which justify and necessitate the said Scheme of Arrangement of the Applicant Company are, inter-alia, as follows:
- a) The Scheme of Arrangement of the Applicant Company has been proposed to fulfill the demand of some of the shareholders to get regular dividends on their investments.
 - b) Since the aforesaid shareholders of the Company are not interested in seeking management control or running the operations of the Company therefore, the shareholders want to redeem their investments within a fixed timeframe and also to get regular dividends on the same.
 - c) The said scheme will have beneficial results for the Company concerned, their shareholders, employees and all concerned.
 - d) The said conversion of shares from Equity to Preference Shares, is not barred by any provision of the law, and in fact and in law, such conversion only amounts to reorganization of the Share Capital of the Company which is permissible under section 61 of the Companies Act 2013. In accordance with the relevant provisions of the law and the judicial precedents being relied upon by the Applicant Company, a Scheme of Compromise or Arrangement may involve increase, consolidation, or sub-division of shares or reduction of share capital.
 - e) The section 230 of the Companies Act 2013 (“the Act”) contains provisions concerning compromise or arrangements with creditors and members. According to subsection (1) of section 230, where a compromise or arrangement is proposed—
 - (a) between a company and its creditors or any class of them; or
 - (b) between a company and its members or any class of them,
 - f) Under section 230 of the Act, a scheme of Compromise or Arrangement may be in the form of reorganization of share capital of a company and the explanation



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appended to subsection (1) gives an inclusive definition of the expression 'arrangement' as including 'reorganization of share capital'.

When a word is defined to 'mean' something, the definition is prima facie restrictive and exhaustive, whereas, where the word defined is declared to 'include' a particular meaning, the definition is prima facie extensive or inclusive. The word 'means' is restrictive and the expression 'includes' is expansive. Both the words may however be used simultaneously, and in such a case, it is the restricted meaning which should primarily be assigned. But when the expansive meaning can be applied without violence to the Act, that meaning may be given. "It is common for a statute to contain a provision that certain words and phrases shall, when used in the statute, bear particular meanings. Sometimes, it is provided that a word shall "mean" what the definition section says it shall mean: in this case the word is restricted to the scope indicated in the definition section. Sometimes, however, the word "include" is used in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include. In other words, the word in respect of which "includes" is used bears both its extended statutory meaning in its ordinary, popular, and natural sense whenever that word be properly applicable (Regional Director, Employees' State Insurance Corporation v High Land Coffee Works of P.F.X. Saldanha & Sons 1991 (3) SCR 307: AIR 1992 SC 129: 1991 (3) SCC 617.)

4. It is further submitted that none of the Directors of the Applicant Company have any material interest in the said Scheme except as shareholders in general, the extent of which will appear from the Register of Directors Shareholdings maintained by the Applicant Company.
5. It is further submitted that the assets of the Applicant Company are sufficient to meet all their liabilities and the said scheme will not adversely affect the rights of any of the creditors of any of the Applicant Company in any manner whatsoever. The Applicant Company have made-due provisions for payment of all liabilities as and when the same will fall due. In this connection, we crave leave to refer to the accounts book and records of the Applicant Company at the time of hearing, if necessary.



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6. It is further submitted that the Board of Directors of the Applicant Company on its Board Meetings held on 07.06.2022 by a resolution passed unanimously, have approved the said Scheme of Conversion of Equity shares into Preference shares. The said resolutions are annexed herewith and can be referred in “**Annexure D**”.
7. It is further submitted that the Applicant Company is having 7 Shareholders holding A Class Equity Shares. Out of 7, approximately 3 are shareholders holding 3,10,200 number equity shares in the Applicant Company. The said shareholders of the Applicant Company have been requesting for regular dividends on their investments since they are not interested in seeking management control or running the operations of the Applicant Company. Considering the shareholding pattern of the Applicant Company it is difficult to pass on the benefit of dividend to these shareholders. The Applicant Company had received requests from some of its shareholders to redeem their investments within a fixed timeframe and also to start paying dividends on such investments on a regular basis. In view of this, it is proposed to convert certain A class Equity Shares into 8% non-cumulative redeemable Preference shares of Rs 10/- each.
8. It is further submitted by the Ld. Authorized Representative of the Petitioner Company that the Applicant Company have made due provisions for payment of all the liabilities as and when the same will fall due.
9. It is further submitted by the Ld. Authorized Representative of the Petitioner Company that the report determining the Equity shares value for the purposed Conversion in the Applicant Company for implementing the terms of the Scheme has been prepared by a Registered Valuer, Mr. Pankaj Parakh having **Regn. No. IBBI/RV/06/2019/11409** and such recommendation has been accepted by the Board of Directors of all the Applicant Company. The said report is annexed with the Application and marked as “**Annexure I**”.
10. It is further stated that there are 7 (Seven) equity shareholders in the Applicant Company.



11. The list of equity shareholders of all the Applicant Company as on 31.03.2021 along with the certificate by the Statutory Auditor verifying the correctness of the same as on that date is annexed with the Application and marked as “**Annexure F**”.
12. Each and every shareholder of the Applicant Company have considered the Scheme of Arrangement and have given their consent in writing agreeing to the Scheme and also consenting to waive the holding of the meeting of the shareholders of the concerned Applicant Company. The copies of the consent affidavits of all the shareholders of the Applicant Company are annexed with the application and collectively marked as “**Annexure-F**”.
13. There are NIL secured Creditors in the Applicant Company.
14. There are 19 (Nineteen) unsecured creditors in the Applicant Company.
15. The Statutory Auditors of the Applicant Company have given certificate certifying the list of secured and unsecured creditors in the Applicant Company as on 31.10.2021. The copies of such certificate along with the list of secured and unsecured creditors drawn as on the dates mentioned above, are annexed with the Application and marked as “**Annexure G**”.
16. The certificate by the Statutory Auditor in respect of all the Applicant Company verifying conformity with Accounting Standard under Section 133 of the Companies Act, 2013 is annexed with the Application and marked as “**Annexure H**”.
17. As held in the matter of Baramati Agro Limited bearing C.P. (CAA) 996/MB-II/2020 connected with C.A. (CAA) 1067/MB-II/2019, the Hon’ble National Company Law Tribunal, Mumbai Bench II has allowed the Conversion of Equity into Preference shares passed *Vide* Order dated 20.09.2021 passed by the said bench in the instant matter.
18. Heard the learned Authorized Representative for the Applicant Company, perused the records, documents annexed the Application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicant, the following orders are passed:



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- a. In view of the fact that all the equity shareholders of the Applicant Company duly consented in writing by way of affidavits, to the proposed Scheme of Arrangement, duly certified by the Statutory Auditor, the requirements of convening and holding of separate meetings of the shareholders of the Applicant Company to ascertain the wishes of the equity shareholders of the Applicant Company for the Scheme of Arrangement, are dispensed with;
- b. In view of the fact that all the Unsecured creditors of the Applicant Company duly consented in writing by way of affidavits, to the proposed Scheme of Arrangement, duly certified by the Statutory Auditor, the requirements of convening and holding of separate meetings of the creditors of the Applicant Company to ascertain the wishes of the creditors of the Applicant Company for the Scheme of Arrangement, are dispensed with.
- c. Let the notice be served by the Applicant Company, as per the requirements of sub-section (5) of Section 230 of the Companies Act, 2013, along with the copy of the Application and all other documents including the copy of the Scheme of Arrangement and the statement disclosing necessary details to the following authorities:
 - i. Central Government, through the Regional Director, Eastern Region
 - ii. Ministry of Corporate Affairs, Registrar of Companies, West Bengal
 - iii. The concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income-Tax with PAN Numbers of the Applicant Company through E-Mail, by Speed Post and special by messenger,
 - iv. Such other relevant sectoral regulators/authorities, if applicable,

which are likely to be affected by the proposed scheme, by sending the same by hand delivery through Special Messenger, by registered post or by Speed Post, and by E-Mail, within ten days from the date of this order for filing their representation, if any, on the Application within 30 days from the date of the notice;



- d. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the Applicant and/or their Advocates, in advance; If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Arrangement. Such notice shall be sent pursuant to section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in Form No. CAA3 of the said Rules with necessary variations, incorporating the directions herein. Objections, if any, to the Scheme contemplated by the authorities to whom notice has been given, may be filed within the time stipulated, failing which it will be considered by this Tribunal that there is no objection to the approval of the Scheme of Arrangement on the part of the Authorities, subject to other conditions being applicable under the Companies Act, 2013 and relevant rules made thereunder;
19. The Company Application bearing **CA(CAA) No. 103/KB/2022** is, accordingly, disposed of.
20. Certified copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.

(Satya Ranjan Prasad)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Signed on this, the 7th day of September, 2022.



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