

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

CP/181/CAA/2017
(TCA(HC)/73/CAA/2017)

Under Sections 391 to 394 read with Sections 100 to
104 of the Companies Act, 1956

In the matter of

M/s. Kothari Safe Deposits Limited
And
Their Shareholders

Order delivered on 9th November, 2017

CORAM

CH. MOHD SHARIEF TARIQ, MEMBER JUDICIAL
S.VIJAYARAGHAVAN, MEMBER TECHNICAL

For Petitioner (s) : Mr. P. H. Arpindh Pandian Sr.
Counsel for Pawan Jhabakh
and Harishankar Mani

For Objector (s)
Mr. Mahendra
Giridharilal Wadhwani : Mr. Balu Sridhar, Counsel

Mr. Dilip Kumar Surana : in person

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (J)

1. Under consideration is Company Petition in
relation to which an Application was filed before Hon'ble
High Court of Madras under Sections 391 to 394 read



with Sections 100 to 104 of the Companies Act, 1956 and it stood transferred to this Bench and renumbered as TCA (HC)/73/CAA/2017. Now, CP/181/CAA/2017 has been filed with the prayer to grant sanction to the Scheme of Arrangement (hereinafter referred to as "Scheme") enclosed as annexure A4 with effect from 01.04.2016 being binding on all the shareholders and creditors of the Petitioner Company viz. M/s. Kothari Safe Deposits Limited.

2. The Applicant Company M/s. Kothari Safe Deposits Limited was got incorporated on 10.01.1936 under the Companies Act 1913, having name and style as 'Madras Safe Deposit Company Limited'. The name of the Company was changed to M/s. Kothari Safe Deposits Limited on 09.07.1996. The registered office of the company is situated at Kothari Building, 116, Nungambakkam High Road, Chennai - 600 034. The Company is engaged in business of renting of safe deposit lockers. The equity shares of the company were listed with the Madras Stock Exchange. The madras Stock Exchange has exited from the Securities and



Exchange Board of India and no longer provides any trading facilities. The Applicant Company submits that the equity share of the company remained unlisted and the company does not require to comply with requirements of the Listing Agreement or any SEBI Rules/Regulations.

3. The Capital Structure of the Company as on 31.03.2016 is as follows:-

Authorised Capital	In Rs.
10,00,000 Equity Shares of Rs.10/- each	10,000,000
Total	10,000,000
Issued, subscribed & paid up capital	
9,00,000 Equity Shares of Rs.10/- each	9,000,000
Total	9,000,000

Subsequent to 31st March 2016, the capital structure of the Company has not been changed or altered.



4. The Board of Directors of the Company under the Scheme of Arrangement desired to provide a liquidity option to the shareholders of the Company by restructuring an exit opportunity for all the equity shareholders at a value of Rupees Sixty for ever equity shareholder in the Company. Thus, in the present Scheme of Arrangement, the Board of Directors of the Company propose to provide an exit route to the shareholders who are given the option of either holding their investments in the company or exercise the option to exit from the Company at the price of Rupees Sixty for every equity share held in the Company under the Scheme.

5. The Scheme provides to reduce the issued, subscribed and paid up capital of the company held by the Shareholders which shall be subject to the Election Option exercised by the shareholders of the Company as provided in the Scheme and upon the reduction and cancellation of the said paid up capital of the Company subject to the Election Option, each of the shareholders



shall receive an amount of Rupees Sixty for every equity share held in the Company. If the shareholders desire to continue with their equity shares, then, they would have to communicate his/her intention to continue with equity shares within the prescribed date of shareholders' meeting and in the event of failure to exercise their option of retaining their equity shares in the company, the equity shares held by such shareholders shall stand cancelled without further act and deed. In short, this Scheme is not contrary to the interests of any shareholders and no prejudice will cause to any of the creditors. The Scheme provides that the "Appointed Date" means the date from which this Scheme shall become operative i.e., 01.04.2016 'Effective Date' means the date on which certified copies of the Order of the Tribunal, sanctioning the Scheme are filed with the Registrar of Companies, Chennai by the Company.

6. The Scheme states that the Company shall issue a written notice to the shareholders along with the explanatory statement under Section 393 of the



Companies Act, 1956 informing them that pursuant to the Scheme they are entitled to get returned their investment under clause 3.1 (b). The shareholders shall have the right to exercises either of the following two options:-

- i. Notify the Company that they wish to receive Cash Payment pursuant to the terms of Clause 3.1; or
- ii. Notify the Company that they wish to retain their equity shares.

In the event such shareholders of the Company does not exercise either of the options provided under clause 3.2(b) or fails to return the signed copy of the option letter within the specified time, it shall be deemed that such shareholders has, by default, exercised the option under clause 3.2(b) (1) i.e. the option to receive the cash payment. The rest is the procedure for payment which for the sake of brevity, has not been stated herein.



7. The Scheme provides that the Company will record the value payable to the equity shareholders for cancelling the equity share pursuant to clause 3.1 of the Scheme to a separate account viz., "Shareholders' Control Account"; the issued, subscribed and paid up equity share capital of the Company shall be reduced to the extent of the face value of the equity shares cancelled; and the difference between the face value of the equity shares cancelled and the Shareholders' Control Account shall be adjusted first against Securities premium, the balance against General reserve.

8. Para V of the Scheme provides for Change of Status of Company and the General Terms and Conditions to the Scheme. The para further provides that upon the Scheme coming into effect, the status of the Company shall be converted from "Public Limited Company" to "Private Limited Company", as an integral part of the Scheme without any further act or deed provided the number of members excluding present and



past employees falls below 200 and accordingly the name of the Company shall get changed from "Public Limited Company" to "Private Limited Company".

9. At the time of hearing, the Counsel for the Applicant Company submitted that para V of the Scheme is not pressed for grant of sanction. The Applicant Company shall proceed separately for change of the status of the Company under Section 14(1) of the Companies Act, 2013. Therefore, para V of the Scheme does not require consideration.

10. The objections have been raised by the some of the shareholders viz., Mr. Mahendra Giridharilal Wadhwani and Mr. Dilip Kumar Surana against the Scheme under consideration. But, during the course arguments, the Counsel representing Mr. Mahendra Giridharilal Wadhwani submitted that there has been delay on the part of the shareholder to exercise the option as provided in the Scheme. However, the shareholder wants to continue in the Company to which the Counsel

for the Applicant Company submitted that in case the



shareholder wants to continue with the Company, the Applicant Company has no objection. Therefore, we condone the delay caused in exercising the option by Mr. Mahendra Giridharilal Wadhwani and order the Applicant Company to continue him as shareholder in the Applicant Company in the light of the Scheme as if he had exercised the option to continue as shareholder in the Applicant Company, within the stipulated time.

11. Mr. Dilip Kumar Surana is the second objector who has also shown his willingness to continue to remain in the Company as shareholder subject to the condition that he be provided a period of at least one year from the date the Scheme becomes effective for tendering his shares to the promoters at the same final price at which the earlier acceptance of shares was made.

12. It is on record that the Applicant Company is one of the exclusively listed Companies of derecognised/non-operational/exited stock exchanges.



In this regard, we may refer to the circular dated 17.04.2015 of the Securities and Exchange Board of India which provides as follows:-

"1. SEBI vide circular dated May 30, 2012 (Exit Circular) issued guidelines for exit of De-recognized/Non-operational stock exchanges. Subsequently, vide circular dated May 22, 2014, SEBI issued directions to the stock exchanges to address issues faced by companies exclusively listed in non-operational stock exchanges.

2. As per the above referred circulars, inter-alia, the exclusively listed companies which fail to obtain listing in any other nationwide stock exchange will cease to be a listed company and will be moved to the dissemination board by the exiting stock exchange."

From the language of the circular stated above, it emerges that the Applicant Company, being listed with the Madras Stock Exchange which exited from SEBI, and the Applicant Company has not been listed on any of the Operational Stock Exchanges has moved to the 'Dissemination Board' and ceased to be a listed company. Therefore, the company is not under obligation to provide the period of one year to the shareholder/objector for tendering his shares as has

been contended.



13. The Regional Director has also submitted the report on 20.10.2017 wherein some observations have been made pertaining to the Scheme under reference. It has been submitted that para V of the Scheme is not worth consideration. The Regional Director has also referred to the complaint that has been filed by the shareholder/objector Mr. Dilip Kumar Surana. In relation to both of these issues, we have already dealt with in detail, hereinabove. The Regional Director also raised an objection that the promoter shall directly and indirectly cannot employ the funds of the Company to finance an exit opportunity. However, under para 12 of the Report, the Regional Director has decided not to make any objection except the observations made under paras 8 to 11 of his Report. Since, the Regional Director did not object to the Scheme, so we are not required to discuss his observations anymore.

14. Mr. P. S. Balasubramaniam, who has been appointed by this Bench to act as Chairman of the meeting of the equity shareholders of the Applicant,



Company viz. M/s. Kothari Safe Deposits Limited has submitted his report stating that the meeting was attended either personally or by proxy by 69 members who were present at the venue of the meeting representing 70.44% of the total value of the equity shares of the said Company and who have cast their votes in favour of the Resolution through ballot papers, and no vote was cast against the Resolution passed for approving the Scheme. All the shareholders present/or represented by their proxies, have unanimously voted in favour of the Scheme. It is worthwhile to mention that the objectors viz., Mr. Mahendra Giridharilal Wadhwani and Mr. Dilip Kumar Surana did not participate in the meeting inspite of the receipt of the notice of the meeting. The receipt of the notice has been acknowledged by them in the final hearing.

15. In the light of the unanimous voting in favour of the Scheme by the shareholders, we do not see any impediment except para V in granting sanction to the Scheme under reference. Accordingly,



the Scheme stands sanctioned which shall be binding on the shareholders and creditors of the Applicant Company.

16. However, while approving the Scheme as above, we further clarify that this order will not be construed as an Order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.

17. The Applicant Company is directed to file the amended Memorandum of Association and Articles of Association with the concerned RoC, for records, upon being the Scheme effective and reduction of capital.


18. The Applicant Company to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.



19. The Applicant Company shall file with the RoC the certified copy of this Order within 30 days of the receipt of the Order.

20. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.


21. Accordingly, the Scheme stands sanctioned and CP/181/CAA/2017 stands disposed of.


(S. VIJAYARAGHAVAN)
(MEMBER (JUDICIAL))
PAM


(CH. MOHD. SHARIEF TARIQ)
(MEMBER (JUDICIAL))



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