

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Company Application (CAA) No.187/KB/2021

In the Matter of the Companies Act, 2013 - Section 230(1)

And

In the Matter of:

Usha Martin Limited, a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. L31400WB1986PLC091621 and its registered office at 2A, Shakespeare Sarani, Kolkata 700071 in the State of West Bengal.

Transferor Company/ Applicant

Date of Hearing: 08/12/2021

Date of pronouncing the order: 20/12/2021

Coram:

Shri Rajasekhar V K : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Counsel on Record for the Applicants:

For the Applicants: Mr. D N Sharma, Advocate

Ms. Rusha Mitra, Advocate

ORDER

Per Rajasekhar V.K., Member (Judicial):

The Court convened by video conference today

1. The instant application has been filed in the first stage of the proceedings under Section 230(1) of the Companies Act, 2013 (“**Act**”) for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Arrangement proposed to be made between Usha Martin Limited, being the Applicant Company abovenamed (hereinafter also referred to as the “**Company**” / “**Applicant**”) and its shareholders for reduction and reorganization of capital of the Applicant Company pursuant to the provisions of Section 230 and other applicable provisions of

the Act on the terms and conditions fully stated in the said Scheme of Arrangement (“**Scheme**”).

2. It is submitted by Ld. counsel appearing for the Applicant that the shares of the Applicant are listed on the BSE Limited (“**BSE**”) and the National Stock Exchange of India Limited (“**NSE**”). The Global Depository Receipts of the Applicant Company are listed on the Societe de la Bourse de Luxembourg (Luxembourg Stock Exchange). BSE and NSE by their respective letters dated 24 August 2021 have since confirmed that they have ‘no adverse observation’ on the Scheme pursuant to the said SEBI Master Circular.
3. The Applicant has one class of shareholders, viz, Equity Shareholders and two classes of creditors, viz, Secured Creditors and Unsecured Creditors.
4. It is further submitted that all the Secured Creditors of the Applicant constituting 100% in value have consented in writing to the proposed Scheme of Arrangement by way of affidavit and 92.94% in value of the Unsecured Creditors of the Applicant have consented in writing to the proposed Scheme of Arrangement by way of affidavit annexed to the application.
5. It is further submitted that the Applicant being a listed Company has large number of shareholders who are spread all over the country. As on 30th June, 2021, the Applicant had 69,758 Equity Shareholders as per the shareholding pattern. It is necessary that a meeting of the Equity Shareholders of the Applicant be called to consider, and, if thought fit, to approve the said Scheme of Arrangement with or without modification pursuant to Section 230(1) of the Companies Act, 2013.
6. Directions are sought accordingly for (a) dispensing with meetings of the Secured Creditors and Unsecured Creditors of the Applicant and (b) convening of meeting of the Equity Shareholders of the Applicant to consider the Scheme under Section 230(1) of the Act, including the notices to be issued.
7. Upon perusing the records and documents in the instant proceedings including the Supplementary affidavit dated 22nd October 2021 and considering the submissions made on behalf of the Applicant, we allow the instant application and make the following orders: -

- (a) Meeting dispensed: Meetings of the Secured Creditors and Unsecured Creditors of the Applicant is dispensed with under Section 230(1) of the Act.
- (b) Meeting to be held | Date and Time; The meeting of the Equity Shareholders shall be convened and held on 29/01/2022 at 11 A.M. for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modification.
- (c) Mode of meeting: Considering the unprecedented COVID-19 pandemic, the meeting referred, as above, shall be convened and held virtually via video conferencing or other audio visual mode (“**Virtual Mode**”) and not in physical presence of the Equity Shareholders as the same shall not be safe due to the on-going COVID-19 pandemic. Such meeting, as aforesaid, shall be held virtually following the operating procedure (with requisite modifications as may be required) which had been provided therefor in the Ministry of Corporate Affairs General Circular No.14/2020 dated 8th April, 2020, as clarified from time to time, including by General Circulars bearing No.17/2020 dated 13th April, 2020, No. 20/2020 dated 5th May, 2020, No.22/2020 dated 15th June, 2020, No.33/2020 dated 28th September, 2020, No.39/2020 dated 31st December, 2020, No. 02/2021 dated 13th January, 2021 and No.10/2021 dated 23rd June, 2021 (“**Virtual Meeting Circulars**”). It is clarified that the framework provided in such Virtual Meeting Circulars for general meetings shall be followed with necessary variations for the meeting directed to be held by this order. In addition to the above, the Applicant shall also provide facility for e-voting including remote e-voting to each of its equity shareholders for casting their votes. Such facility of voting by way of remote e-voting shall be provided during the period from 26/01/2022 (9:00 A.M., IST) to 28/01/2022 (5:00 P.M., IST). The facility for remote e-voting shall be disabled at 5:00 P.M., IST, on 28th January 2022
- (d) Advertisement: At least 30 (thirty) clear days before the meeting to be held, as aforesaid, an advertisement of the notice of meeting be published once

each in the “Financial Express” in English and “Aajkal” in Bengali as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

- (e) Individual Notices: At least 30 (thirty) clear days before the date of the meeting to be held, as aforesaid, notice convening the said meeting, along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Act disclosing necessary details shall be sent to all the Equity Shareholders of the Applicant by electronic mail (“**email**”) to their respective email addresses registered with the Company/ Depositories / Registrars and Share Transfer Agents (RTA) of the Company.
- (f) As per provisions of Section 230(3) of the Companies Act, 2013, read with Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, the above Notice to the Equity Shareholders shall also be placed on the website of the Applicant and these documents shall also be sent to Securities Exchange Board of India (“**SEBI**”), BSE and NSE where the securities of the Applicant are listed for placing on their websites in addition to the newspaper publication.
- (g) Chairperson: Mr Jishnu Choudhury, Advocate (Mobile No. 9830015791) and failing him Mr Anuj Singh, Advocate (Mobile No.9830202752) is appointed as the Chairperson of the meeting to be held, as aforesaid. The Chairperson shall be paid a consolidated sum of Rs.1,00,000/- for conducting the aforesaid meeting as Chairperson.
- (h) Scrutinizer: Mr Atul Kumar Labh, Practising Company Secretary (Mobile No. 9830055689) and failing him Ms Madhuri Pandey (Mobile No.9674518556) is appointed as the Scrutinizer of the meeting to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of Rs. 75,000/- for acting as Scrutinizer.
- (i) Quorum and Attendance: The quorum for the said meeting of persons entitled to attend the same shall be determined in accordance with Section 103 of the Act. For the meeting to be held in the Virtual Mode, attendance

of such persons in Virtual Mode shall be counted for the purpose of quorum. Attendance at such meeting shall be recorded in the minutes of the meeting instead of taking physical attendance slips.

- (j) In case the quorum of any meeting is not present within half an hour from the time appointed for the meeting, the Chairperson may adjourn such meeting to any date/time and take a decision on the quorum for the adjourned meeting.
- (k) In case the quorum of any meeting is not present within half an hour from the time appointed for the meeting, the Chairperson may adjourn such meeting to any date/time and take a decision on the quorum for the adjourned meeting. It is clarified that if the meeting is held in Virtual Mode, attendance of such persons in Virtual Mode shall be counted for the purpose of quorum. Attendance at such meeting shall be recorded in the minutes of the meeting.
- (l) Cut-off date: The cut-off date for determining the eligibility to vote and value of votes shall be 21/01/2022 for the meeting of Equity Shareholders. The value of the votes cast shall be reckoned and scrutinized with reference to the said date.
- (m) Voting procedure and mode: Subject to the directions and matters dealt with herein, the procedure for e-voting and conduct of voting, in so far as the same is prescribed by the Virtual Meeting Circulars and Companies (Management & Administration) Rules, 2014 (“**the said Rules**”), and the forms thereunder shall be followed, as the case may be, with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.
- (n) Persons entitled and having an option to vote on the resolution put at the aforesaid meeting by (a) remote e-voting or (b) by e-voting at the meeting, as above, may opt to exercise their votes only in one of such modes. It is clarified that such persons choosing to cast their votes by remote e-voting shall nevertheless be entitled to attend and participate in the discussions in the virtual Meeting. However, such persons or their authorized

representatives who have cast their votes by remote e-voting will not be eligible to cast their votes by e-voting during the virtual Meeting. If they do so, the votes so cast by them at the virtual Meeting shall be treated as invalid.

- (o) Authorised Representations & Board Resolutions: A person, including a Body Corporate, entitled to attend and vote at the virtual meeting, as aforesaid, may do so personally or by authorised corporate representative, as the case may be and the certified copy of resolution of the Board of Directors or other governing body of such person, where it is a Body Corporate, authorising its representative to attend and vote at such virtual meeting on its behalf, as the case may be, is deposited at the registered office of the Applicant or may be sent by email to the service provider who shall be appointed by the Applicant for e-voting services or to the Scrutinizer before the e-voting period commences before such virtual meeting. It is clarified that since the meeting would be held in Virtual Mode, facility for appointment and voting by proxies shall not be available.
- (p) That the Chairperson appointed for the said meeting or any person authorised by the Chairperson do issue and send the notices of the aforesaid meeting. Further, the Chairperson shall have all other powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with the other applicable rules and provisions in relation to conduct of the meeting held virtually through video conferencing or through other audio visual means, including for deciding procedural questions that may arise at the meeting or at any adjournment thereof, or any other matter relating to the meeting, including an amendment to the Scheme, if any proposed by any persons.
- (q) Scrutinizer's Report/ Declaration of Results: The votes cast shall be scrutinized by the Scrutinizer. Votes cast in all the modes shall be consolidated. The Scrutinizer shall prepare and submit the report on the meeting along with all papers relating to the voting to the Chairperson of

the meeting within 48 hours of the conclusion of the meeting. The Chairperson shall declare the results of the meeting after submission of the report by the Scrutinizer. The declaration of results by the Chairperson shall be displayed on the Notice Board of the Applicant at its registered office and its head office as well as corporate office, if any, and shall also be posted on the website of the Applicant. Further, such declaration of results shall also be posted on the website of the Agency providing the facility for e-voting. In addition to the aforesaid, all other requirements with regard to publication and communication of Scrutinizer's report and Chairperson's declaration of results, as prescribed under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 should also be complied with.

- (r) The value of voting right of each equity share held by an Equity Shareholder shall be in accordance with the books and records of the Applicant and, where entries in the books are disputed, the chairperson shall determine the value for purposes of the said meeting and his decision in that behalf would be final.
 - (s) The resolution for approval of the Scheme of Arrangement put to a meeting shall, if passed by a majority in number representing three-fourths in value of the shareholders casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under Section 230(1) of the Act.
 - (t) The Chairperson do report to this Tribunal the results of the said meeting within four weeks from the date of the conclusion of the said meeting. Such report shall be in Form No. CAA4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.
8. Notice under Section 230(5) of the Act along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Act shall also be served on the:

- (a) Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;
- (b) Registrar of Companies, Kolkata;
- (c) SEBI, BSE, NSE; and
- (d) Income Tax Department having jurisdiction over the Applicant, by sending the same by hand delivery through special messenger or by post or by email forthwith after the notices are sent to the Equity Shareholders, as aforesaid.

The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Advocates of the said Applicant. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme of Amalgamation. 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.

- 9. The Applicant to file an affidavit proving service of notices of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the meeting to be held.
- 10. The application being Company Application (CAA) No.187/KB/2021 is disposed of accordingly.

(Balraj Joshi)
Member (Technical)

(Rajasekhar V K)
Member (Judicial)

Date of Order: 20/12/2021