IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.302

C.A.(CAA)/61(AHM)2023

Order under Section 230-232 of Co. Act,2013

IN THE MATTER OF:

Mafatlal Industries Limited **.....Applicant**

.....Respondent

Order delivered on: 19/12/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, AHMEDABAD

CA(CAA)/61(AHM)2023

Application under Sections 230-232 and read with other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016]

In the matter of **Scheme of reduction and reorganization of the capital**

MAFATLAL INDUSTRIES LIMITED
CIN NO: L17110GJ1913PLC000035
Having its office at
301-302, Heritage Horizon, Third Floor,
Off. C.G. Road, Navrangpura, Ahmedabad
Gujarat – 380009

... Applicant Company

Order Pronounced on 19.12.2023

CORAM:

SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:
For Applicant(s): Arjun R. Sheth, Advocate

O R D E R
Per: Bench

1. This is a Company Application Viz., CA(CAA)/61(AHM)/2023 filed by the Applicant Company, namely **Mafatlal Industries Limited** under

section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement (hereinafter referred to as the "SCHEME") proposed by the Applicant Company. The said Scheme is also appended as ***"Annexure –E"*** to the CA/CAA/61 (AHM) 2023.

2. The rationale of the Scheme of reduction and reorganization of the capital of the Applicant Company stated in the proposed Scheme is as under: -

   i. The Company had suffered substantial losses during the past few years, due to which the Company's retained earnings had turned negative.

   ii. During the financial years 2020-21 and 2021-22, the Company implemented several strategic cost control measures, and evolved towards an asset-light model marked by lower overheads and liabilities.

iii. During the financial year 2021-22, the Company further strengthened the effectiveness of its manufacturing operations, improved the inventory turnaround time and widened its marketing cum distribution network.

iv. Despite generating substantial profits during the financial year 2021-22, the Company continues to carry a debit balance of Retained Earnings (as defined hereinbefore under sub-clause 1.1 of clause 1 "Definitions") on its balance sheet as on 31 March 2022. At the same time, the Company has unutilized balances lying under various reserves, which are neither earmarked for any specific purpose, nor have any lien marked thereon and/or obligation attached thereto.

v. In the circumstances, the Company is of the view that the financial statements of the Company are not reflective of its true current financial health and therefore, it is necessary to reduce and reorganize the capital of the Company.

vi. The Scheme proposes to set-off the debit balance of Retained Earnings of the Company as on the Appointed Date against the credit balance lying under various reserves as specified herein.

vii. The proposed reduction and reorganization of the capital is in the interest of the Company, its shareholders, creditors and all concerned stakeholders. If the Scheme is approved, the books of the Company would present a fair representation of the financial position of the company, and would enable the Company to explore opportunities for the benefit of its shareholders.

3. The Applicant Company in this Company Application has sought for the following reliefs;

	EQUITY SHAREHOLDERS MEETING	**SECURED CREDITORS MEETING**	**UNSECURED CREDITORS MEETING**
APPLICANT COMPANY	To order meeting	To dispense with	To dispense with

4. From the certificate of incorporation filed, it is evident that the Applicant Company is a Limited Company incorporated under the provisions of Indian Companies Act, 1882 on 20.01.1913, under the name and style of "The New Shorrock Spinning & Manufacturing Company Limited". The name of the Company was changed to Mafatlal Industries Limited and a fresh Certificate of Incorporation was issued by the Registrar of Companies, Gujarat dated 24.01.1974.

5. The authorized, issued subscribed and paid-up share capital of the Applicant Company as on 31.03.2022 was as under:

PARTICULARS	**AMOUNT (IN RS.)**
AUTHORIZED SHARE CAPITAL	
1,42,45,081 Equity Shares of Rs.10/- each	14,24,50,810
8,57,54,919 Unclassified Shares of Rs. 10/- each	85,75,49,190
Total Authorised Capital	**1,00,00,00,000**

PARTICULARS	**AMOUNT (IN RS.)**
ISSUED CAPITAL:	
1,40,71,386 Equity Shares of Rs. 10/- each	14,07,13,860

Subscribe & Paid Up Capital:	
1,40,71,386 fully paid-up Equity Shares of Rs. 10/- each	14,07,13,860

6. It is stated by the Applicant that the members of the Company, vide ordinary resolution through postal ballot dated 7th November, 2022 had approved reclassification of Authorised share capital and sub-division of equity shares of the Company. 25th November, 2022 was record date for the purpose of new sub-division of equity Shares of the Company. After reclassification of Authorised share capital and sub-division of equity shares of the Company as aforesaid, the capital structure of the Company as on 31st March, 2023 was as under:

PARTICULARS	**AMOUNT (IN RS.)**
AUTHORIZED SHARE CAPITAL	
35,00,00,000 Equity Shares of Rs.2/- each	70,00,00,000
3,00,00,000 Preferential Shares of Rs. 10/- each	30,00,00,000
Total Authorised Capital	**1,00,00,00,000**

PARTICULARS	**AMOUNT (IN RS.)**
ISSUED CAPITAL:	

7,05,97,430 Equity Shares of Rs. 2/- each	14,11,94,860
Subscribe & Paid Up Capital:	
7,04,82,430 fully paid-up Equity Shares of Rs. 2/- each	14,11,94,860

7. It is submitted by the Applicant that the Company has allotted 1,17,000 equity shares of Rs. 2/- each on 2nd August 2023 under ESOP- 2017 scheme. The present capital structure of the Company after such allotment is as under;

PARTICULARS	**AMOUNT (IN RS.)**
AUTHORIZED SHARE CAPITAL	
35,00,00,000 Equity Shares of Rs.2/- each	70,00,00,000
3,00,00,000 Preferential Shares of Rs. 10/- each	30,00,00,000
Total Authorised Capital	**1,00,00,00,000**

PARTICULARS	**AMOUNT (IN RS.)**
ISSUED CAPITAL:	
7,05,97,430 Equity Shares of Rs. 2/- each	14,11,94,860
Subscribe & Paid Up Capital:	
7,04,82,430 fully paid-up Equity Shares of Rs. 2/- each	14,11,94,860

8. Affidavit in support of the above application was sworn for and on behalf of the Applicant Company by Mr. Amish Shah in the capacity of Compliance Officer for the Applicant Company along with the application and it is also represented that the Registered office of the Applicant Company is situated at 301-302, Heritage Horizon, 3rd Floor, CG Road, Navrangpura, Ahmedabad-380009 within the territorial jurisdiction of the Bench of this Tribunal and falling within the purview of Registrar of Companies Ahmedabad.

9. The Other facts are as under:

(i) There are **66,045 (Sixty-Six Thousand Forty-five)** Equity Shareholders and list of shareholders to this effect is placed at Page No. 611 to 612 of the typed set filed with the application; the consent of Equity shareholders has not been obtained and Applicant sought for convening, holding and conducting of the meeting.

(ii) There are **7(Seven)** Secured Creditors and details of certificate of auditor, certifying No. of Secured Creditors and total Secured Credit Value to this

effect is placed at Page Nos. 613 to 615 of the typed set filed with the application and consent by way of Affidavits given by the Secured Creditors is placed on Page Nos.616-628 and sought for dispensation with the holding of meeting. However, the consent affidavits are not affirmed on Stamp paper.

(iii) There are **1,038** Unsecured Creditors and details of certificate of auditor, certifying No. of Unsecured Creditors and total Unsecured Credit Value to this effect is placed at Page No. 629 to 634 of the typed set filed with the application; Consent of the Unsecured Creditors has not been obtained, however the Applicant states that the creditors are not being affected by the proposed scheme of reduction and reorganization of the capital as there is no reduction in amount payable to any of the creditors and sought for dispensation with the holding of meeting.

10. We have heard the Ld. Counsel for the Applicant and perused the application and the connected documents / papers filed therewith including the Scheme contemplated by the Applicant Company.

11. The Applicant Company has filed its Memorandum and Articles of Association *inter alia* delineating its object clauses as well as their last available Audited Annual Accounts for the year ended 31.03.2023 and Provisional/ Unaudited Financial Statements for the period ended on 30.06.2023.

12. The Board of Directors of the Applicant Company vide meeting held on **14th November 2022** had unanimously approved the proposed Scheme as contemplated above and copies of resolutions passed thereon have been placed on record by the Applicant Company.

13. The Appointed date as specified in the Scheme is **01.04.2022**.

14. The Statutory Auditor of the Applicant Company have examined the Scheme in terms of provisions of Sec. 232 of Companies Act, 2013 and the rules made thereunder and certified that the Accounting Standards are in compliance with Section 133 of the Companies Act,

2013.The said Certificates of the Statutory Auditors in this regard is placed at ***"Annexure S"*** of the Applicant Company typed set of Documents filed along with the application.

15. It is submitted by the Applicant that the Applicant Company's Equity Shares are listed on the Bombay Stock Exchange Ltd.(**"BSE"**). Applicant had by the letter dated 23.11.2022 addressed to BSE, sought their in-principal approval to the said Scheme pursuant to Regulation 37 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulation, 2015. BSE accorded their in-principal approval for the said scheme vide their letter bearing Ref No. DCS/AMAI/PB/R37/2879/2023-2024 dated 22.08.2023. A copy of the said approval dated 22.08.2023 is placed at **"Annexure H"** of the Application.

16. Taking into consideration the application filed by the Applicant Company and the documents filed therewith

as well as the position of law, this Tribunal proposes to issue the following directions: -

i. **With respect to Equity shareholders:**

As it is seen from the Application that the Consent Affidavits has not been obtained. Therefore, A meeting of the Equity Shareholders of the Applicant Company is directed to be held on **24/01/2024 at 11:00 AM** at the Registered Office address of the Applicant Company or through video conferencing or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices, for the purpose of considering and if thought fit, approving with or without modification, the Scheme of Arrangement. Individual notices may be served by the Applicant to Shareholders through E-mail.

ii. **With respect to Secured Creditors:**

As it is seen from the Application that the Consent Affidavits are not affirmed on the Stamp Paper. therefore, A meeting of the Secured Creditors of the Applicant Company is directed to be held on **24/01/2024 at 01:00 PM** at the Registered Office address of the Applicant Company or through video conferencing or if not convenient at any other suitable

place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices, for the purpose of considering and if thought fit, approving with or without modification, the Scheme of Arrangement. Individual notices may be served by the Applicant to Creditors through E-mail.

iii. **With respect to Unsecured Creditors:**

As it is seen from the Application that the Consent Affidavits has not been obtained. Therefore, A meeting of the Unsecured Creditors of the Applicant Company is directed to be held on **24/01/2024 at 02:00 PM** at the Registered Office address of the Applicant Company or through video conferencing or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices, for the purpose of considering and if thought fit, approving with or without modification, the Scheme of Arrangement. Individual notices may be served by the Applicant to the Creditors through E-mail.

17. The quorum for the meeting of the Applicant Company shall be as per section 103 of the Companies Act, 2013 as follows;

For the Applicant Company:

S.NO	CLASS	QUORUM
1	EQUITY SHAREHOLDERS	50
2	SECURED CREDITORS	3
3	UNSECURED CREDITORS	30

i) The Chairperson appointed for the above-mentioned meetings shall be **Mr**. **Anil Kumar,** Advocate (Mobile No. 8129270036). The Fee of the Chairperson for the aforesaid meeting shall be ***Rs.75000/- (Rupees Seventy-Five Thousand only)*** in addition to meeting his incidental expenses. The Chairperson(s) will file the reports of the meeting within a week from the date of holding of the above-said meetings.

ii) **Mr. Hitesh Buch**, Practicing Company Secretary (Mobile No. 9825443440), is appointed as a Scrutinizer and would be entitled to a fee of ***Rs. 35000/- (Rupees Thirty-Five Thousand Only)*** for services in addition to meeting incidental expenses.

iii) In case the quorum as noted above, for the above meeting of the Applicant Company, is not present at the meeting, then the meeting shall be adjourned by

half an hour, and thereafter the person(s) present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum, the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the Applicant Company at least 48 hours before the meeting. The Chairperson appointed herein along with the Scrutinizer shall ensure that the proxy registers are properly maintained. However, every endeavour should be made by the Applicant Company to attain at least the quorum fixed, if not more in relation to approval of the scheme.

iv) The meetings shall be conducted as per the applicable procedure prescribed under the MCA Circular MCA General Circular Nos. (i) 20/2020 dated 5th May, 2020 (AGM Circular), (ii) 14/2020, dated 08.04.2020 (EGM Circular-I) and (iii) 17/2020 dated 13.04.2020 (EGM Circular-II);

v) That individual notices of the above said meetings shall be sent by the Applicant Company through registered post or speed post or through courier or e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid, together with a copy of

Scheme, copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above any other documents as may be prescribed under the Act or rules may also be duly sent with the notice.

vi) That the Applicant Company shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in the English Daily ***"Financial Express" (All India Edition)***, and ***"Financial Express" (Gujarat Edition)*** in Vernacular stating the copies of Scheme, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the respective Applicant Company.

vii) The Chairperson shall as aforestated be responsible for reporting the result of the meeting within a period of 3 days of the conclusion of the meeting with details of voting on the proposed scheme.

viii) In compliance with sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, 2016, the Applicant Company shall individually

send notice to the concerned **(i) Regional Director**, **MCA (ii) Registrar of Companies Ahmedabad**, **(iii) Official Liquidator**, **(iv) the Income Tax Authorities, and (v) Reserve bank of India, and** as well as **other Sectoral regulators** who may have significant bearing on the operation of the Applicant Company or the Scheme *per se* along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

ix) The Applicant Company shall further furnish a copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor or member of the Applicant Company entitled to attend the meetings as aforesaid.

x) The Authorized Representative of the Applicant Company shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

xi) All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements,

Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

xii) The Registry and the Applicant is directed to communicate a copy of this order to the Chairperson and Scrutinizer, within three working days after the pronouncement of the order.

18. The Applications stand **allowed** on the aforesaid terms.

-SD-	**-SD-**
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Shubhanshu/LRA