

C.P.(CAA)/2954/MB/2018  
&  
C.P.(CAA)/2955/MB/2018

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH**

C.P.(CAA)/2955/MB/2018

IN

C.A. (CAA)/570/ MB/2018

AND

C.A. (CAA)/572/ MB/ 2018

Dow Chemical International Private Limited

...Petitioner /Demerged Company

ALONG WITH

C.P.(CAA)/2954/MB/2018

IN

C.A. (CAA)/571/MB/2018

DDP Speciality Products India Private Limited

...Petitioner / Resulting Company

In the matter of Companies Act,  
2013

AND

In the matter of Sections 230 to 232  
of the Companies Act, 2013 and  
other applicable provisions of the  
Companies Act, 2013

AND

In the matter of Scheme of  
Arrangement between Dow Chemical  
International Private Limited (the  
Demerged Company) and DDP  
Speciality Products India Private  
Limited (formerly known as TULP  
Operations India Trading Private  
Limited) (the Resulting Company)

Order delivered on: 27<sup>th</sup> September, 2018

**Coram:**

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy Hon'ble Member (T)

For the Petitioner(s): Mr. Gaurav Joshi, Senior Counsel, i/b Ms. Shiraz C Patodia, Mr. Ashish Singh and Ms. Divya Sharma, Advocates for the Petitioner Companies.

*Per: Bhaskara Pantula Mohan, Member (J)*

**ORDER:**

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Arrangement between DOW CHEMICAL INTERNATIONAL PRIVATE LIMITED, the Demerged Company and DDP SPECIALITY PRODUCTS INDIA PRIVATE LIMITED (formerly known as TULP Operations India Trading Private Limited), the Resulting Company.
2. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to a Scheme of Arrangement between DOW CHEMICAL INTERNATIONAL PRIVATE LIMITED, the Demerged Company and DDP SPECIALITY PRODUCTS INDIA PRIVATE LIMITED (formerly known as TULP Operations India Trading Private Limited), the Resulting Company.
3. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Petitions.
4. The Learned Senior Counsel appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order dated 02nd July 2018 passed by this Hon'ble Tribunal in their Company Applications bearing nos. C.A.(CAA)/571/MB/2018 and C.A.(CAA)/570/MB/2018 and C.A.(CAA)/572/MB/2018.

5. The Learned Senior Counsel appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions issued by this Hon'ble Tribunal and they have filed necessary affidavits of compliance before this Hon'ble Tribunal as well. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under, as applicable. The said undertaking is accepted.
6. The Learned Senior Counsel for the Petitioners states that the Demerged Company is a subsidiary of the Dow Chemical Pacific (Singapore) Pte Ltd which through a chain of holding is ultimately a subsidiary of The Dow Chemical Company ("**TDCC**"). Demerged Company is a Materials Science Company *inter alia* engaged in the business of manufacturing and selling chemicals and allied products used in areas of infrastructure, transportation, energy, consumer and lifestyle. It is further submitted that the Resulting Company is a newly incorporated Agrochemical company and is a subsidiary of the DSP Singapore Holdings Pte Ltd, which is a 100% subsidiary of RH Denmark Dongguan Holding Company ApS, which is ultimately a subsidiary of TDCC.
7. The Learned Senior Counsel for the Petitioners states that the ultimate parent company of the Demerged Company i.e. TDCC contemplated a global merger by an Agreement and Plan of Merger dated 11 December 2015, with E. I. du Pont de Nemours and Company ("**DuPont**"). Pursuant to the said Agreement and Plan of Merger, the merger of TDCC and DuPont was consummated in late 2017, resulting into DowDuPont Inc. ("**DowDuPont**"). It is further submitted that as per the said public announcement, the ultimate merged entity i.e. DowDuPont will, subject to board approval, separate into three independent public entities namely, Materials Science, Agriculture and Specialty Products companies. To enable this separation, the respective businesses of the both heritage TDCC and DuPont entities have to be segregated into separate Materials Science, Agriculture and Specialty Products entities at each geographical level so as to enable consolidation at the global level.

8. The Learned Senior Counsel for the Petitioners further states that the Demerged Company carries on its operations in India in both Materials Science and Specialty Products business. In order to separate the two in the most efficient manner, it is proposed to enter into a Scheme of Arrangement, such that the Specialty Products Business is separated and hived off to the Resulting Company, while the Materials Science Business remains with the Demerged Company. The Demerged Company's Specialty Products Business Comprises of Water and Process Solutions business, part of Automotive business, Food and Pharma business (consumer solutions) business Microbial Control business and part of Silicones business which aggregates to around 12% of the total turnover of Demerged Company.
9. The Learned Senior Counsel for the Petitioners further states that it is due to the aforesaid reasons, the proposed Scheme of Arrangement will be executed between the Demerged and the Resulting Company, provided the said Scheme is approved by this Hon'ble Tribunal.
10. The Regional Director has filed a Report on 25<sup>th</sup> September, 2018 stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that :-
- "IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:*
- a. The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or Amalgamation. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company (s).*
- b. In addition to compliance of AS-14 (IND AS-103) the Petitioner Companies shall pass such accounting entries which are*

*necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS -8) etc.*

- c. The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same there is no discrepancy or deviation.*
  - d. As per Clause 1.3 of the scheme, Appointed Date means 1<sup>st</sup> April, 2018 or such other date as may be approved by the National Company Law Tribunal (Tribunal) or other competent authority may otherwise direct / fix. In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.*
  - e. As per clause 7 of the Scheme, upon the Scheme becoming effective, the existing main objects of the Resulting Company shall be replaced and shall be altered, without any separate approval of the shareholders of the Resulting Company. In this regard, Petitioner Company undertake to comply with section 13 of the Companies Act, 2013."*
11. So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Senior Counsel for the Petitioner Companies submits that the notices have been served to concerned authorities and that the sanction of the scheme by this Hon'ble Tribunal may not deter any authorities to deal with any of the issues arising after giving effect to the scheme and that the decision of authorities is binding on the Petitioner Company(s).
  12. So far as the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Senior Counsel for the Petitioner Companies submits that in addition to Compliance of IND AS-103, the Petitioner Companies shall pass such accounting entries

which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.

13. So far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Senior Counsel for the Petitioner Companies submits that the Petitioner undertakes that Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one and the same there is no discrepancy or deviation except the change of name of the Resulting Company.
14. So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Senior Counsel for the Petitioner Companies submits that the Appointed Date is 1<sup>st</sup> April 2018.
15. So far as the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Senior Counsel for the Petitioner Companies submits that the Petitioner Company undertake to comply with Section 13 of the Companies Act, 2013 regarding alteration of main objects of the Resulting Company.
16. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 11 to 15 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
17. Since all the requisite statutory compliances have been fulfilled, C.P.(CAA)/2955/MB/2018 is made absolute in terms of prayers clause (a) to (d) thereof and C.P.(CAA)/2954/MB/2018 is made absolute in terms of prayer clauses (a) to (d) thereof.
18. Petitioners are directed to lodge a copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 2013.
19. The Petitioner Companies to lodge a copy of this Order and the Scheme duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of

Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the order, if any.

20. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of receipt of the certified copy of the Order.
21. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly authenticated by the Assistant Registrar, National Company Law Tribunal, Mumbai.

SD/-

V. Nallasenapathy,  
Member (T)

SD/-

Bhaskara Pantula Mohan  
Member (J)