

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

C.P.(C.A.A.)/1776/MB/2018

In the matter of the Companies Act, 2013;

AND

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

AND

In the matter of Scheme of Merger (by absorption) of Malladi Industries Private Limited ('the Transferor Company') and Embio Limited ('the Transferee Company') and their respective Shareholders

Malladi Industries Private Limited, a Company }
Incorporated under the provisions of Companies Act 1956 }
having its registered office at 501, Sentinel, 5th Floor, }
Hiranandani Gardens, Powai, Mumbai - 400 07, }
Maharashtra }
..... First Petitioner /Transferor Company

AND

Embio Limited, a Company }
Incorporated under the provisions of Companies Act 1956 }
having its registered office at 501, Sentinel, 5th Floor, }
Hiranandani Gardens, Powai, Mumbai - 400 07, }
Maharashtra }
..... Second Petitioner/Transferee Company

Order delivered on: 11TH September, 2018.

CORAM: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)
Hon'ble V Nallasenapathy, Member (Technical)

For the Petitioners : Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates

Per: V Nallasenapathy, Member (Technical)

ORDER

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Merger (by absorption) of Malladi Industries Private Limited ('the Transferor Company') and Embio Limited ('the Transferee Company') and their respective Shareholders.
3. The Learned Counsel for the Petitioners submits that the first Petitioner Company does not carry on any business operations. The entire share capital of the First Petitioner Company is held by the promoters of First Petitioner Company who are also the promoters of Second Petitioner Company. The second Petitioner Company is a pharmaceutical company engaged in manufacture of Active Pharmaceutical Ingredients & Intermediates.
4. Learned Counsel for the Petitioners further states that the scheme envisages the merger of the Transferor Company with the Transferee Company as a result of which the shareholders of Transferor Company viz. the promoters of Transferor Company (who are also the promoters of Transferee Company) shall directly hold shares in Transferee Company and the following benefits shall, inter alia, accrue to the Companies and to the respective shareholders and stakeholders of the Companies ie to obtain benefit of combined resources to build a stronger sustainable business and to maximize shareholder value and the amalgamation will result in the promoters of EMBIO directly holding shares in EMBIO, which will lead not only to simplification of the shareholding structure and reduction of shareholding tiers but also demonstrate the promoter group's direct commitment to and engagement with EMBIO.
5. The Petitioners have approved the said Scheme of Merger by passing respective Board Resolutions which are annexed to the respective Company Scheme Petition.
6. The Learned Counsel appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in Company Scheme Application Nos. 32 of 2018 of the Hon'ble Tribunal.
7. The Learned Counsel appearing on behalf of the Petitioners states that the Petitioners have complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioners undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.

8. The Regional Director, Western Region, Mumbai has filed his Report dated 14th August, 2018, stating therein that save and except as stated in paragraph IV of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public:-

- (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 (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 the Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancies or deviation.*
- (d) *Petitioner companies have not submitted a copy of the admitted petition along with its minutes of order of tire admission of the petition. In this regard, the Petitioner has to undertake to submit the same for the record of Regional Director.*
- (e) *As regards Para No.12 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Amalgamation for setting-off of fees paid by the Transferor Company on its Authorized Share Capital in accordance with the provisions of Section 232(3) (i) of the Companies Act, 2013.*

9. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned, the Petitioners through its Counsel submit that in accordance with Section 230 (5) of the Companies Act, 2013 and Order passed by the Hon'ble Tribunal the Petitioners have served notices to all such relevant authorities:- concerned Income Tax Authorities with in whose jurisdiction the Petitioners assessments are made (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Mumbai and (iv) to the Official Liquidator, High Court, Bombay. Further the Petitioners through their Counsel submit that the approval of the scheme may not deter such authorities to deal with any issues arising after giving effect to the scheme as per law and the decision of such authorities is binding on the petitioner companies.

10. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report are concerned, Transferee Company through their Counsel undertakes that in addition to compliance of AS-14 (IND AS-103),

the Transferee Company 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., to the extent applicable.

11. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioners through its Counsel confirms and undertakes that the scheme of Merger enclosed to the Company Application and the scheme of Amalgamation enclosed to the Company Petition are same and there is no discrepancy or deviation therein.
12. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioners through its Counsel states that copy of petition has been submitted to the office of Regional Director on 25th July 2018 and copy of Chairman's report is annexed to the Petition. Though, the petition has been admitted by this Tribunal minutes of order of admission of petition has not been uploaded, as and when the same is made available the same shall be submitted with the office of Regional Director.
13. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioners through its Counsel submits that Transferee Company undertakes to comply with section 232(3)(i) of Companies Act, 2013, where the Transferor Company is dissolved, the fee, if any, paid by the Transferor Company on its authorized capital be set off against any fees payable by the Transferee company on its authorized capital subsequent to the merger and the petitioners undertake to comply the provisions of section 232(3)(i) have been complied with.
14. The observations made by the Regional Director have been explained by the Petitioners in Para 9 to 13 above. The clarifications and undertakings given by the Petitioners are accepted.
15. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
16. Since all the requisite statutory compliances have been fulfilled, Joint Company Scheme Petition filed by the Petitioners are made absolute in terms of prayer clause (a) of the Petition.
17. Petitioners are directed to file a copy of this order along with a copy of the Scheme of Merger with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.
18. The Petitioners 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, if any, on the same within 60 days from the date of receipt of the order.

19. The Petitioners to pay cost of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. Transferor Company to pay sum of Rs. 25,000/- to the Official Liquidator, Bombay.
20. Costs to be paid within four weeks from date of receipt of order.
21. All authorities concerned to act on a copy of this order along with Scheme duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.
22. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
23. The Scheme of Arrangement is sanctioned and the appointed date of the Scheme of Arrangement is fixed as, 1st April, 2017.
24. Ordered accordingly.

SD/-

V. Nallasenapathy, Member (T)

SD/-

Bhaskara Pantula Mohan, Member (J)