

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

CP (CAA) 1114/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Company Act, 2013

In the matter of

M/s. Parex Group Construction Products  
Private Limited

.....1<sup>st</sup> Petitioner Company  
(1<sup>st</sup> Transferor Company)

M/s. Constro Technologies Private Limited

.....2<sup>nd</sup> Petitioner Company  
(2<sup>nd</sup> Transferor Company)

M/s. Apurva India Private Limited

.....3<sup>rd</sup> Petitioner Company  
(Transferee Company)

Order Pronounced on : 29.08.2018

**Coram :**

Hon'ble M. K. Shrawat, Member (J)

**For the Petitioners :**

Mr. Hemant Sethi, Advocate i/b. Hemant Sethi & Co. – Advocates for the Petitioners.

**For the Regional Director :**

Mr. R. S. Meena – Jt. Director (WR).

**For the Official Liquidator :**

Mr. Santosh Dalavi – Representative of OL.

*Per : M. K. Shrawat, Member (J)*

**COMMON ORDER**

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Company Act, 2013, to a Scheme of Merger by Absorption of M/s. Parex Group Construction Products Private Limited (1<sup>st</sup> Transferor Company) and M/s. Constro Technologies Private Limited (2<sup>nd</sup> Transferor Company) with M/s. Apurva India Private Limited (Transferee Company) and their respective shareholders.
2. The Petitioner Companies have approved the said Scheme of Merger by Absorption by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.

3. The rationale for the Scheme is that since all the Companies are group companies this merger will result in the consolidation of business of all companies and will reduce the procedural formalities which are to be done. It is also stated that the 2<sup>nd</sup> Transferor Company is wholly owned subsidiary of the Transferee Company.
4. The 1<sup>st</sup> and 2<sup>nd</sup> Transferor Company are engaged in the business of design, manufacture and sale of specialty dry mix solutions, including renders, ceramic tile adhesives and grouts, waterproofing systems and repair mortars.
5. Transferee Company is a specialist supplier of construction chemical products with its core competency in resin based technologies. It is a leader in the flooring products segment more specifically Epoxy and Polyurethane systems. The business and operations of the ParexGroup in India is carried out through these two entities viz. the First Transferor Company and the Transferee Company. The Equity Shares of the Transferee Company are held by ParexGroup (through ParexGroup Pte. Ltd. Singapore) and the Kate Family, respectively. Second Transferor Company is a non-operating company holding 20% equity stake in First Transferor Company.
6. The rationale of the Scheme of Amalgamation is –
  - i. acceleration of the penetration of the ParexGroup products in the Indian market by leveraging the existing customer base of the Transferee Company;
  - ii. consolidated base for future growth of business of ParexGroup in the Indian market with a wider presence in the business of waterproofing solutions and flooring systems;
  - iii. creation of meaningful value to the various stakeholders including respective shareholders, customers, employees amongst others, as the combined business would benefit from increased scale, wider product diversification, and stronger balance sheet;
  - iv. simplification and streamlining of the management structure, leading to better administration and a reduction in costs;
  - v. more focused operational efforts;
  - vi. rationalization, standardization and simplification of business processes; and
  - vii. elimination of duplication and rationalization of administrative expenses.

7. The Authorised share capital of the 1<sup>st</sup> Transferor Company is ₹ 1,000,000/- comprising of 100,000 equity shares of ₹ 10/- each. The Issued, Paid-up and Subscribed share capital is ₹ 625,000/- comprising of 62,500 equity shares of ₹ 10/- each.
8. The Authorised share capital of the 2<sup>nd</sup> Transferor Company is ₹ 100,000/- comprising of 10,000 equity shares of ₹ 10/- each. The Issued, Paid-up and Subscribed share capital is ₹ 100,000/- comprising of 10,000 equity shares of ₹ 10/- each.
9. The Authorised share capital of the Transferee Company is ₹ 75,000,000/- comprising of 7,500,000/- equity shares of ₹ 10/- each. The Issued, Paid-up and Subscribed share capital is ₹ 52,740,720/- comprising of 5,274,072 equity shares of ₹ 10/- each.
10. The averments made in the Petition and the submissions made by the Learned Representative for the Petitioners are:
  - a) The Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertake to comply with all the statutory requirements if any, as required under the Company Act, 2013 and the Rules made there under whichever is applicable.
  - b) The Regional Director has filed his Report dated 10.05.2018 stating therein that, save and except as stated in paragraph IV (a) to (i), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

*IV. The observation of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:*

- a) *The petitioner 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 Standard 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 and same and there is no discrepancy or deviation.*
- d) *As per clause 8.d of the Scheme, "Appointed Date" means 1 April, 2017 or such other date as may be fixed or approved by NCLT in relation to the Amalgamation. In this regards, 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. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.*
- e) *As per Para No. 16 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*
- f) *Petitioner Companies have not submitted a copy of the admitted petition, minutes of order and chairman's report. In this regard, the Petitioner has to undertake to submit the same for the record of Regional Director.*
- g) *It is observed that the petitioner Companies have foreign / non-resident shareholders. The Transferee Company must observe the FEMA guidelines for allotment of shares to the shareholder of the Transferor Company in the Transferee Company*
- h) *Petitioner in the clause 14.4 and 14.5 of the scheme has inter alia mentioned that any that any excess / deficit amounts after such*

*transfer and issue of New Equity shares by the Transferee Company shall be adjusted in the reserves of the Company and the difference between the Equity Share capital of PCPPL and investment made in the Equity share capital of PCPPL as recorded in the books of CTPL shall be adjusted in the Reserves of the Transferee Company. In this regard, the Deponent prays that the above said excess / deficit and the difference shall be adjusted in the Capital Reserves Account instead of Reserves of the Transferee Company*

- i) *Transferor Company No. 1 and Transferee Company are defaulting in filing of the Annual Returns and Financial Statements for the financial year 2016-2017. In this regard, the Deponent prays that no approval can be granted to a Defaulting companies till the filing is made read with proviso of rule 7 of the Companies (Registration Office and Fees) Rules, 2014*
- c) Apropos observations made in paragraph IV (a) of the Report of Regional Director is concerned, it is submitted that the petitioner Companies have served notices required under provisions of Section 230(5) of the Companies Act, 2013 to concerned authorities which are likely to be affected by Compromise or amalgamation.
- d) Apropos observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel submits that in addition to compliance of AS-14 (IND AS - 103), the Transferee Company shall pass necessary Accounting Entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 (IND AS- 8) etc.
- e) Apropos observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies through its counsel submits that the scheme enclosed to the Company Application and the Scheme enclosed to the Company petition are one and same and there is no discrepancy or deviation.
- f) Apropos observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Counsel for the Petitioner Companies clarifies that the Appointed Date shall be 1 April, 2017. Further, the Counsel for the Petitioner

Companies clarifies that the Scheme shall take effect from the Appointed Date as per section 232(6) of the Companies Act, 2013.

- g) Apropos observations made in paragraph IV(e) of the Report of Regional Director is concerned, it is submitted that, the Transferee Company will be eligible for set-off of fees on the authorized share capital paid by the Transferor company in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.
- h) Apropos observations made in paragraph IV (f) of the Report of Regional Director is concerned, the Counsel for the Petitioner Companies submits that the Petitioner Companies has submitted a copy of the admitted petition, minutes of order and chairman's report for the record of Regional Director on 20<sup>th</sup> June 2018.
- i) Apropos observations made in paragraph IV (g) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner Companies have obtained necessary approvals (as required under the Foreign Exchange Management Act, 1999) at the time of issue of shares to its non-resident shareholders. Furthermore, the Transferee Company undertakes to apply to Reserve Bank of India at the time of issue and allotment by Transferee Company of New Equity Shares to the members of the Transferor Company under the scheme.
- j) Apropos observations made in paragraph IV (h) of the Report of Regional Director is concerned, the Petitioners through its counsel submits that any excess / deficit amounts after such transfer and issue of New Equity shares by the Transferee Company shall be adjusted in the Capital reserves of the Company and the difference between the Equity Share capital of PCPPL and investment made in the Equity share capital of PCPPL as recorded in the books of CTPL shall be adjusted in the Capital Reserves of the Transferee Company.
- k) Apropos observations made in paragraph IV (i) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel submits that Transferor Company No. 1 and Transferee Company have filed the Annual Returns and Financial Statements for the financial year 2016-2017 and have submitted the same to the records of Regional Director on 21<sup>st</sup> June 2018.
- l) It is also stated that, the Official Liquidator has filed its report stating that, the business of Transferor Companies are conducted in a proper manner and this

Scheme is not prejudicial to the interest of the Public. Consequently, the Transferor Companies may ordered to be dissolved without winding-up.

m) It is also stated that no objector has approached neither to the Petitioner nor before this Tribunal to oppose the Scheme.

11. From the material on record, the Scheme of Merger by Absorption appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this bench, to the Petitioner Company, **do Order that:**

a) All the liabilities including taxes and charges, if any, and duties of the Transferor Companies, shall, pursuant to S. 232 of the Company Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.

b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.

c) The consideration of the Scheme shall be as follows :

i) To the Shareholders of the 1<sup>st</sup> Transferor Company the Transferee Company shall issue and allot **45** Equity Shares, credited as fully paid-up, of ₹ 10/- each for every **100** Equity Shares, credited as fully paid-up, of ₹ 10/- each.

ii) To the Shareholders of the 2<sup>nd</sup> Transferor Company the Transferee Company shall issue and allot **45** Equity Shares, credited as fully paid-up, of ₹ 10/- each for every **100** Equity Shares, credited as fully paid-up, of ₹ 10/- each.

d) The Transferor Companies shall be dissolved without Winding-up.

e) The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director or the Assistant Registrar, as the case may be, 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.

f) Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Company, 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, duly certified by the Deputy

Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.

- g) The Petitioner Companies to pay costs of ₹ 25,000/- to the Regional Director, Western Region, Mumbai. The cost is to be paid within four weeks from the date of the receipt of Order.
- h) The Transferor Companies (i.e. 1<sup>st</sup> and 2<sup>nd</sup> Petitioner) to pay costs of ₹ 25,000/- to the Official Liquidator, Mumbai. The cost is to be paid within four weeks from the date of the receipt of Order.
- i) All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- j) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- k) Any concerned Authority (i.e. RD, RoC, OL, Income Tax Authority, RERA etc.) is at liberty to approach this Bench for any clarification/directions under this Scheme.
- l) The sanctioning of this Scheme shall not deter any concerned Authority (i.e. RD, RoC, OL, Income Tax Authority etc.) from assessing transactions arising out of this Scheme, if need be.
- m) The Scheme is sanctioned hereby, and the appointed date of the Scheme is fixed as **1<sup>st</sup> April, 2017**.

12. Ordered Accordingly. To be consigned to Records.

**Dated : 29.08.2018**

SD/-  
**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**

Avinash