

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

CP (CAA) 1427/230-232/NCLT/MB/MAH/2018

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Under section 230-232 of the Company Act, 2013

In the matter of

M/s. Sawari Plastochem Private Limited

..... Petitioner in CP (CAA) 1428/2018

(Transferor Company)

M/s. Inter Continent Chemicals (India) Limited

..... Petitioner in CP (CAA) 1427/2018

(Transferee Company)

Order Pronounced on : 05.10.2018

Coram :

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

For the Petitioners :

Mrs. Ashwini Shah, PCS i/b. A H S & Co.– Authorised Representative for the Petitioners.

For the Regional Director :

Mr. R. S. Meena – Jt. Director (WR).

For the RoC :

Mr. Neemlambuj – CP RoC.

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. Sawari Plastochem Private Limited (Transferor Company) with M/s. Inter Continent Chemicals (India) 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 Transferor Company does not carry on any business at present but it generates rent income and income through investment in property.
4. The Transferee Company is engaged in the business of construction and real estate development business and it also generates income through investment in property.
5. The Transferor Company and Transferee Company are being controlled by the same management and to eliminate administrative costs involved in running multiple entities and reduce duplication of records, legal and regulatory compliances required at present to be carried out by both the Companies, it is proposed to merge the Transferor Company with the Transferee Company.
6. The Authorised Share Capital of the Transferor Company is ₹20,00,000 comprising of 20,000 Equity Shares of ₹ 100/- each whereas the Issued, subscribed and paid up capital is ₹ 10,00,000 comprising of 10,000 Equity Shares of ₹100/- each.
7. The Authorised Share Capital of the Transferee Company is ₹1,00,00,000 comprising of 10,00,000 Equity share of ₹10/- each whereas the Issued, subscribed and paid up capital is ₹5,00,000 comprising of 50,000 Equity share of ₹10/- each fully paid.
8. 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 15.06.2018 stating therein that, save and except as stated in paragraph IV (a) to (c), 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. Petitioner in clause Part-E. 6 of the scheme has inter alia mentioned that upon the scheme becoming effective authorized

share capital shall stand combined the transferee company shall not be required to pay any fees, stamp duty for its increased authorized share capital. In this regard, petitioner companies have to undertake to comply with section 232(3)(i) of Companies Act, 2013.

- b. It is observed that the Petitioner companies have not submitted a Chairman's Report, admitted copy of the Petition, and Minutes of Order for admission of the Petition. In this regard, the Petitioner has to submit the same for the record of Regional Director.*
- 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 discrepancy or deviation.*
- c) Apropos observation in paragraph IV (a) of the Report of the Regional Director is concerned, the petitioners through their Authorised Representative undertakes to comply with the provisions of the Section 232(3)(i) of the Companies Act, 2013.
- d) Apropos observation in paragraph IV (b) of the report of Regional Director is concerned, it is submitted that the Petitioner Companies has served admitted Copy of the petition along with the Chairman's Report to the Hon'ble Regional Director, Western Region on 20th August, 2018 and the minutes of the order for admission of petition will be submitted with the office of Regional Director once it is uploaded on NCLT website.
- e) Apropos observation in paragraph IV (c) of the report of Regional Director is concerned, the Authorised Representative for the petitioner submits that the scheme as admitted with the Hon'ble NCLT through petition and the scheme which is served to the Regional Director through Company Scheme Application is one and the same and there is no deviation.
- f) The Official Liquidator, High Court Bombay has filed his report dated 21.05.2018 stating therein that the affairs of the Transferor Company have been

conducted in a proper manner and that Transferor Company may ordered to be dissolved without winding-up.

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

9. 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 assets and liabilities including taxes and charges, if any, and duties of the Transferor Company, 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) In lieu of the Consideration of Scheme, the Transferee Company shall issue and allot **275** Equity Share of ₹ 10/- each for every **1** Equity Share of ₹ 100/- each, to the Shareholders of the Transferor Company.

d) The Transferor Company shall be dissolved without winding-up after this Scheme becomes effective.

e) Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, 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 Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

- g) The Petitioner Companies shall 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 Company (i.e. Petitioner in CP (CAA) 1428/2018) shall pay costs of ₹ 25,000/- to the Official Liquidator, High Court Bombay. 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 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 **1st April, 2017**.

10. Ordered Accordingly. To be consigned to Records.

Dated : 05.10.2018

SD/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Avinash