

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**CP (CAA) 76 of 2018 in
CA(CAA) No. 19/NCLT/AHM/2018**


Coram: **Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 19.09.2018**

Name of the Company: Solvay Specialities India Pvt. Ltd.

Section of the Companies Act: Section 230-232 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.	NANDISH CHUDGAR	Adv	Applicant/Pet	
2.	SHIRAJ KHAMBETE			

ORDER

Advocate Mr. Nandish Chudgar with Advocate Mr. Shiraj khabete is present for the petitioner

The Order is pronounced in the open court, vide separate sheet


**MANORAMA KUMARI
(MEMBER JUDICIAL)**

Dated this the 19th day of September, 2018

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

In the matter of:-

Solvay Specialities India Private Limited,
A company incorporated under the
provisions of Companies Act, 1956
and having its registered
office at Plot No. 3526/27,
GIDC Estate, Panoli, -394116,
Gujarat, India.

Petitioner Transferee Company

Order delivered on 19th September, 2018

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Appearance:

Mr. Nandish Chudgar with Mr. Raheel Patel, Advocates, for M/s. Nanavati Associates, Advocates for the Petitioner Company.

ORDER

1. This petition under Sections 230 to 232 of the Companies Act, 2013 is filed by Solvay Specialities India Private Limited seeking sanction of a Scheme of Arrangement among Rhodia Specialty Chemicals India Private Limited (RSCIPL or Transferor Company) and Solvay Specialities India Private Limited (SSIPL or Applicant Transferee Company) and their respective shareholders and creditors ("Scheme" for short).
2. The Petitioner/Transferee Company i.e. Solvay Specialities India Private Limited had filed Company Application being CA (CAA) NO. 19 OF 2018 before this Bench of the National Company Law Tribunal ('NCLT' or

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'Tribunal'), for seeking dispensation from convening and holding of the meetings of the Equity Shareholders of the Petitioner/Transferee Company and that separate meeting of the Unsecured Creditors of the petitioner Transferee Company be held and convened. This Tribunal vide its order dated 13.03.2018, inter alia, dispensed with the holding and convening of the meeting of the Equity Shareholders and directed convening of separate meeting of the Unsecured Creditors of the Petitioner Transferee Company. This Tribunal vide its order dated 13.03.2018 also noted that there were no Secured Creditors of the Petitioner/Transferee Company as on 08.01.2018.

3. It is stated by the Petitioner/Transferee Company that notice of the meeting was sent individually to the Unsecured Creditors of the Petitioner Transferee Company i.e. Solvay Specialities India Private Limited, pursuant to the order dated 13.03.2018, together with a copy of the Scheme, a copy of the Explanatory Statement required to be furnished under section 230-232 read with section 102 of the Companies Act, 2013 and the prescribed Form of Proxy, amongst others. It is also stated by the Petitioner/Transferee Company that notice of meeting was also advertised as directed by this Tribunal vide its order dated 13.03.2018 in English Daily, "Financial Express" and in Gujarati daily, "Divya Bhaskar" both Gujarat Edition on 23.03.2018, respectively. Mr. Nitinkumar Shantilal Shah, the Chairman of the meeting has filed affidavit dated 24.04.2018 in proof of service of notices and publication of advertisements of the said notice amongst others before this Tribunal. It is further stated by the Petitioner/Transferee Company that arrangement embodied in the scheme was approved unanimously by the Unsecured Creditors of the Petitioner/Transferee Company at the meeting held on 02.05.2018 as per the



Chairman's report dated 03.05.2018 filed before this Tribunal along with the C.P (CAA) No. 76/NCLT/AHM/2018.

4. The Petitioner/Transferee Company thereafter filed C.P (CAA) No. 76/NCLT/AHM/2018, seeking sanction of the Scheme. This Tribunal by its order dated 19.07.2018 admitted the aforesaid Company Petition and directed issuance of notice of hearing of petition to the (i) Regional Director, (ii) Income Tax Authorities. The Tribunal also directed publication of notice of hearing of the petition in English Daily, "Financial Express", and in Gujarati Daily, "Divya Bhaskar".
5. Pursuant to the order dated 19.07.2018 passed by this Tribunal, the Petitioner/Transferee Company i.e. Solvay Specialities India Private Limited published the notice of hearing of the petition in English Daily, "Financial Express" and in Gujarati Daily, "Divya Bhaskar" both Gujarat Edition on 03.08.2018 and the affidavits of service, on behalf of the Petitioner/Transferee Company dated 20.08.2018, were filed before this Tribunal confirming the publication of the notice in the newspapers as directed and also the notice of hearing of the Petition being served upon the aforesaid Statutory Authorities.
6. It is stated by the Petitioner/Transferee Company that in response to the notice to the Regional Director, North Western Region, Ministry of Corporate Affairs, the Regional Director filed a representation dated 01.05.2018.

- (i) In paragraph 2(a) of the said representation, it is mentioned by the Regional Director that during examination of the notice under section 230(5) of the Companies, Act served to this Directorate and

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other Documents submitted by the Company, it is observed that the name of the Transferor Company has wrongly been mentioned as M/s Rhodia Polymers and Specialties India Private Limited in the notice and M/s. Rhodia Speciality India Private Limited in para 2 of the order dated 13.03.2018 passed by this Hon'ble NCLT, instead of correct name of the Transferor Company as "M/s Rhodia Specialty Chemicals India Private Limited". The Hon'ble NCLT may therefore be pleased to direct the companies to undertake to correct the name of the Transferor Company as "M/s. Rhodia Specialty Chemicals India Private Limited" and also place on record all the relevant facts in this regard.

- (ii) In paragraph 2(d) of the said representation it is mentioned by the Regional Director that capital clause of the Transferee Company shall be amended through this Scheme under the accepted principle of Single Window Clearance as per Clause 14 of the Scheme. As per the Clause 14.1 the authorized share capital of the Transferor Company aggregate amounting to Rs 5,00,00,000/- will be added in the authorized share capital of the Petitioner/Transferee Company and the Consolidated Authorized Share Capital of the Transferee Company will be arrived to Rs. 3,30,00,00,000/-. In this regard section 232(3)(i) of the Companies Act, 2013 is reproduced as under:
- "(i) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation; and"*

In view of the above, the Petitioner/Transferee Company will be required to pay the difference of amount of fees which is payable on the enhanced Authorized Capital of Rs. 3,30,00,00,000/- as on date

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and the total payable amount of fees which have already been paid by all the Petitioner Companies at the time of registration/ increase in authorized capital, as the case may be. The Hon'ble NCLT may therefore be pleased to direct the Companies to undertake the compliance of section 232(3)(i) of the Companies Act, 2013 and to pay fees accordingly.

(iii) In paragraph 2(e) of the said representation it is mentioned by the Regional Director that this Tribunal be pleased to direct the Petitioner Company to comply with the requirement of Ind AS 103 and that the excess of assets over liabilities shall be credited to Amalgamation Reserve Account on amalgamation being of capital nature.

(iv) In paragraph 2(f) of the said representation, it is mentioned by the Regional Director that the petitioner Company should comply with the guidelines of FEMA and RBI from time to time.

(v) In paragraph 2(g) of the said representation, it is mentioned by the Regional Director that Hon'ble NCLT may be pleased to direct the applicant company to pay such amount of legal fees/ cost to the Central Government which may be considered appropriate.

7. In reply to the representation dated 01.05.2018 received from the office of the Regional Director, North Western Region, Ministry of Corporate Affairs, Mr. Nandish Chudgar, the Ld. Counsel for the Petitioner/Transferee Company stated that Petitioner/Transferee Company has filed affidavit dated 30.08.2018 and the replies are as under:

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- (i) The Petitioner/Transferee Company in paragraph 4 of its reply has, inter alia, stated that as far as observation made by the Regional Director in paragraph no. 2(a) of the representation in relation to incorrect name of the Transferor Company and the Petitioner/Transferee Company in para 2 of the Order dated 13.03.2018 of this Tribunal, submitted that the same has been amended vide the Order dated 19th July, 2018 passed by this Tribunal. In view of the aforesaid, the observation of the Regional Director at paragraph 2(a) of the Representation stand satisfied.
- (ii) The petitioner Company in paragraph 6 of its reply has, inter alia, stated that in paragraph no. 2(d) of the Regional Director's Representation in relation to consolidation of the authorized Share Capital of Transferor Company with the Authorized Share Capital of the Petitioner Company under the Scheme, that the existing Para 14.3 of the Scheme already provides that the fees paid by the Transferor Company on the Authorized Share Capital of the Transferor Company shall, without any act or deed, be available as a set-off to the Petitioner Company in terms of section 232(3)(i) of the Companies Act, 2013 for the aforesaid consolidation of the Authorized Share Capital in relation to set-off of fees payable by the Petitioner Company on increase of its authorized share capital subsequent to the Scheme coming into effect.
- (iii) The petitioner Company, in response to observation made in paragraph 2(e), has replied in paragraph 7 of its reply and inter alia, stated that the Petitioner Company shall comply with and adhere to the provision of Ind AS-103 and other applicable accounting standards for accounting for the Scheme in the books of the Petitioner Company and the excess of assets over liabilities pursuant to the Scheme shall be credited to




Amalgamation Reserve Account shown separately in the Balance Sheet of the Petitioner Company once the Scheme comes into effect.

- (iv) The Petitioner Company, in response to observation made in paragraph 2(f), has replied in paragraph 8 of its reply and inter alia, stated that the existing clause 7.4 of the Scheme of Amalgamation already provides that in the event, New Shares are required to be issued and allotted to the Shareholders of the Transferor Company, being non-resident, the issue of such shares shall be in accordance with the provisions of the FEMA and the applicable rules and regulations made there under (For the time being in force, including, any statutory modifications, re-enactments or amendments made thereto from time to time) and the Petitioner Company undertakes that any such issue of shares by the Petitioner Company to any foreign body Corporate Shareholders of the Petitioner Company shall be according to the applicable provision of FEMA and RBI guidelines.
8. In view of the above, this Tribunal is of the view that the observations made by the Regional Director stand satisfied.
9. Heard Mr. Nandish Chudgar, Ld. Counsel on behalf of the Petitioner Transferee Company and perused the documents submitted during the proceedings.
10. Under the facts and circumstances as discussed above, the instant petition is allowed. The Composite Scheme of Arrangement, which is annexed with the petition as **Annexure - F** is hereby sanctioned and it is declared that the same shall be binding on the Petitioner/Transferee Company and on Rhodia Specialty Chemicals Private Limited, their Equity Shareholders and Unsecured Creditors and all concerned under the

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Scheme. It is clarified that with regard to the Transferor Company, the Scheme of the merger has already been sanctioned by the Hon'ble National Company Law Tribunal Bench at Mumbai vide order dated 12.07.2018.

11. Fees of Regional Director are quantified at Rs. 25,000/- in C.P (CAA) 76/NCLT/AHM/2018. The said fees would be paid by Solvay Specialities India Private Limited.
12. Filing and issuance of drawn up orders are dispensed with. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme immediately.
13. The Company Petition is disposed of accordingly.


**Ms. Manoram Kumari
(Member Judicial)**