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**IN THE NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH, CHENNAI**

CP/166 & 167/CAA/2018

In

CA/161 & 162/CAA/2018

Under Section 230 to 232 of the Companies Act 2013

In the matter of Scheme of Amalgamation

Between

M/s. Faaber Paints Private Limited

(Transferor Company)

And

M/s. Verven Coatings Private Limited

(Transferee Company)

And

THEIR RESPECTIVE SHAREHOLDERS

Order delivered on: 31st August 2018

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CH. MOHD SHARIEF TARIQ, MEMBER (J)

For the Petitioner(s): Mr. M. Rathinakumar, PCS

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (J)

1. Under Consideration are Company Petition Nos. 166 & 167/CAA/2018 filed under Section 230 to 232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016. The instant Petitions pertain to the proposed Scheme of Amalgamation

by virtue of which M/s. Faaber Paints Private Limited (hereinafter referred to as **'Transferor Company'**) is proposed to be transferred, amalgamated and vested with M/s. **Verven Coatings Private Limited** (hereinafter referred to as **'Transferee Company'**) as a going concern.

2. The Transferor Company is a private limited company, incorporated on 11.04.1986 under the provisions of the Companies Act, 1956, having its registered office at Shed No. 210 & 211 SIDCO industrial estate, Thirumazhisai Chennai-602107. The Transferee Company is also a private limited company, incorporated on 10.05.2006 under the provisions of the Companies Act, 1956, having its registered office at Shed No. 210 & 211 SIDCO industrial estate, Thirumazhisai Chennai-602107.
3. The petitioner companies are engaged in the business of Manufacture of paints, emulsions, varnishes, thinners, resins, adhesives, dyes, chemicals and other surface coating products etc. ✓

4. This Bench vide its Order dated 25.09.2017, in CA/161/CAA/2018 and CA/162/CAA/2017 dispensed with the convening and holding of the meeting of the Equity Shareholders, Secured and Unsecured Creditors of the Transferor Company and the Transferee Company. The Petitioner Companies have complied with all the Orders passed by this Bench.

5. The Counsel appearing for the Petitioner Companies submitted the reasons and circumstances leading to and justifying the proposed Scheme of Amalgamation. He has submitted that the scheme is beneficial for both the Companies concerned, including their members and creditors. The Amalgamation will result in the formation of a stronger company with a larger capital and asset base and enable the combined business to be pursued more conveniently and advantageously.

6. The Scheme provides that the whole of the undertakings of the Transferor Company comprising their entire business, all assets and liabilities of whatsoever nature and wheresoever situated, including the immovable


properties, shall be transferred to and vested in the Transferee Company as a going concern.

7. The Regional Director, Southern Region (for short, '**RD**') in his Affidavit dated 15.03.2018 submitted that Clause 11 of Part II of the Scheme of the Companies provides for the protection of the interest of the employees of the Transferor Company.

8. The RD further submitted that as per report of the RoC, Chennai, the Transferor and Transferee Companies are regular in filling the statutory returns. No prosecution filed, no complaints pending and no inspection/investigation has been conducted in respect of the petitioner companies.

9. In Para 9 of its report, RD has submitted that clause 6.1 to 6.3 of the scheme has stated that the authorised capital of the Transferor Company will be merged with the authorised capital of the Transferee Company. The RD has suggested that the Transferee Company may be directed to file the amendment MOA and AOA with the RoC, Chennai

for his records. The RD has also suggested that as per the clause (i) to sub Section (3) of Section 232 of the Companies Act, 2013 the Transferee Company has to pay the fees, if any, for the enhanced authorised capital subsequent to the Amalgamation after setting off the fees paid by the Transferor Company. In the light of the above the Transferee Company may be directed to comply with the above provisions of the Act by making an application with the RoC, Chennai for payment of the balance fee as applicable under the provisions of the Act and rules framed thereunder. In this regard, an authorised representative of the Transferee Company has filed an affidavit deposing therein that the Transferee Company undertakes to file the amended MOA and AOA and pay any amount as fees in an appropriate manner if required and as may be applicable.

10. The Official Liquidator (In short, '**OL**') in his Report dated 07.08.2018, submitted that as per Order dated 25.09.2017 he has nominated M/s. A. Ambalatharasan & Associates, Chartered Accountants, Chennai, who is one 

of the empanelled Auditors by the Hon'ble High Court of Madras to look into the Scheme of Amalgamation and to scrutinize the books and accounts of the Transferor Company and to file their report on the affairs of the Transferor Company. The Auditor has broadly reviewed and observed that under Clause 11 of Part-II of the proposed Scheme, the interest of all the staff, workmen and other employees in the service of the Transferor Company is safeguarded. As per clause 7.1 of part II of the Scheme, upon scheme coming into effect, in consideration of the transfer of and vesting of the undertaking of the Transferor Company in the Transferee Company in terms of this Scheme, the share certificates in relation to the shares held by the Transferee Company in the Transferor Company shall be deemed to have been automatically cancelled.

11. The OL has stated that the Chartered Accountant have examined the statement of Profit and Loss Accounts, Balance Sheet and other relevant books and records of the transferor company for the year ending 2014-15, 2015-16

and 2016-17. It has further been submitted that, the Chartered Accountants have also scrutinized all the statutory registers, books and records maintained by the Transferor Company and found that they have maintained proper books of accounts and that all entries have been made in the statutory registers in accordance with the requirements of the Companies Act, 2013

12. The OL has stated that the Chartered Accountants also scrutinized the various records of the Transferor Company maintained at their registered office and the files containing correspondence with the Registrar of Companies, Tamil Nadu and nothing adverse or objectionable affecting the interests of the Transferor Company or its members or prejudicial to the public interest was noticed. The Transferor Company is regular in filing the tax returns and there are no arrears of disputed and undisputed tax. The Transferor Company has no unpaid and unclaimed dividends outstanding in its books.

13. The OL has submitted that the Chartered Accountants have concluded that the business of the Transferor Company has not been carried on with intent to defraud the creditors of the Transferor Company or any other person, or for any fraudulent purpose attracting the provisions of the Companies Act, 2013. The affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of its members or to public interest.

14. As per Clause 8, Part II of the Scheme of Amalgamation, all the proposed accounting treatment is in conformity with the accounting principles laid down under the Companies Act, 2013, and to this effect the CA's Certificate is annexed to the Petition.

15. The Scheme will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. There is no requirement to modify the proposed Scheme. The Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not

violative of any provisions of law. All the statutory compliances have been made under section 230 to 232 of the Companies Act, 2013.

16. Therefore, the Scheme annexed with Petition stands sanctioned which shall be binding on all the Equity Shareholders, the Creditors of the companies and their respective employees. The Scheme shall become effective from the Appointed Date viz., 01.07.2016.

17. However, it is further clarified that this Order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.

18. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.

19. The Petitioner Companies shall file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
20. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies.
21. Upon receiving the certified copy of this order, the RoC, Chennai, is directed to place all documents relating to the Transferor Company with that of the transferee Company and the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company.
22. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.

23. Thus, the Scheme stands sanctioned and CP/166/CAA/2018 and CP/167/CAA/2018 stand **disposed of.**


(CH. MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)

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