

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

CP (CAA) 1425/230-232/NCLT/MB/MAH/2018

CP (CAA) 1426/230-232/NCLT/MB/MAH/2018

Under section 230-232 of the Company Act, 2013

In the matter of

M/s. Volga Organics Private Limited

..... Petitioner in CP (CAA) 1426/2018

(Transferor Company)

M/s. Black Gold Developers Private Limited

..... Petitioner in CP (CAA) 1425/2018

(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. Volga Organics Private Limited (1<sup>st</sup> Transferor Company) with M/s. Black Gold Developers 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 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 ₹ 3,00,00,000 comprising of 30,00,000 Equity Shares of ₹ 10/- each whereas the Issued, subscribed and paid up capital is ₹ 1,90,25,000 comprising of 19,02,500 Equity Shares of ₹ 10/- each.
7. The Authorised Share Capital of the Transferee Company is ₹ 10,00,00,000 comprising of 1,00,00,000 Equity share of ₹ 10/- each whereas the Issued, subscribed and paid up capital is ₹ 10,00,00,000 comprising of 1,00,00,000 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 13.06.2018 stating therein that, save and except as stated in paragraph IV (a) to (e), 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 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. *It is observed that the Petitioner companies have not submitted admitted copy of the Petition, and Minutes of Order for admission of the Petition. In this regard, petitioner companies has to undertake to submit the same for the record of Regional Director and also to undertake that the scheme as admitted with the Hon'ble NCLT through company petition and the scheme which is served to the Regional Director through company application is one and same, and in case of deviation, if any, shall be brought to the notice of the Regional Director.*
- c. *As per Clause A.2 of the Scheme, Appointed Date means 1st April, 2017 or such other date as may be approved by the Hon'ble National Company Law Tribunal at Mumbai or such other competent authority having jurisdiction to sanction the Scheme. In this regard, 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.*
- d. *In addition to compliance of AS-14 (IND A S-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-5 (IND AS-8) etc.*
- e. *As regards Para No. E. 6 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.*

- c) Apropos observation in paragraph IV (a) of the Report of the Regional Director is concerned, it is submitted that the Petitioner Companies have served notices to all the concerned authorities as directed by the Hon'ble National Company Law Tribunal, Mumbai bench by its order dated February 16, 2018. The Petitioner companies further undertake that all the issues arising out of the Scheme from such authorities shall be answered in accordance with law.
- d) Apropos observation in paragraph IV (b) of the report of Regional Director is concerned, it is submitted that the Company has served admitted copy of the petition 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. The Authorised Representative for the petitioner further 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.
- e) Apropos observation in paragraph IV (c) of the report of Regional Director is concerned, the petitioners through their Authorised Representative submits that the Scheme shall be effective from the "Appointed Date" i.e., 1st April, 2017 and shall not be subsequent to that date as per the provisions of sec 232(6) of the Companies Act, 2013.
- f) Apropos the observation in paragraph IV (d) of the report of Regional Director is concerned, the Authorised Representative for the petitioner submits that the petitioner has submitted Notice before Income Tax Authorities and hereby undertakes to comply with all applicable provisions of Income Tax Act and it is submitted by the petitioner Companies that they undertake to pass such accounting entries which are necessary in connection with the scheme to comply with applicable Accounting Standards including AS- 14 & AS-5. Petitioner Companies have also filed the statutory auditors certificate u/s 133 of the Companies Act, 2013 to the effect that accounting treatment proposed in the Scheme of Amalgamation is in compliance with the Accounting Standards.

- g) Apropos observation in paragraph IV (e) of the report of Regional Director, the petitioners through their Authorised Representative undertakes to comply with the provisions of the Section 232(3)(i) of the Companies Act, 2013.
- h) The Official Liquidator, High Court Bombay has filed his report dated 04.05.2018 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.
- i) 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 2<sup>nd</sup> 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 1 Equity Share of ₹ 10/- each for every 2 Equity Shares of ₹ 10/- 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) 1426/2018) 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 **1<sup>st</sup> April, 2017**.

10. Ordered Accordingly. To be consigned to Records.

**Dated : 05.10.2018**

SD/ -

**M. K. SHRAWAT  
MEMBER (JUDICIAL)**

Avinash