

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSA No.: 731/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

The Borax Morarji Ltd..

Prospect Chambers, 317/321, D.N. Road,

Fort, Mumbai – 400 001

..... Applicant
(Transferor Company)

Judgement delivered on: 10.07.2017

Coram:

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

Hon'ble Dr. Ashok Kumar Mishra, Member (T)

For the Applicant: Mr. Hemant Sethi, Advocate

Per: Dr. Ashok Kumar Mishra, Member (T)

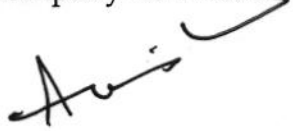
ORDER

The Applicant Counsel has sought following reliefs:

1. Convening the meeting of the Equity Shareholders.
2. Convening meeting of Preference Shareholders.
3. Exempting the meeting of limited Unsecured Creditors and Secured Creditors.

The averment made in the Petition are as follows:

1. The Authorized Share Capital of the Applicant Company is Rs. 20 crores comprising of equity shares and preference shares and issued, subscribed and paid-up share capital is Rs. 13,51,96,980/-.
2. The Board of Directors of the Applicant company on 2nd March 2017 has approved the scheme and so approved by the Board be submitted before the NCLT for amalgamation of Applicant Company Borax Morarji Ltd. with the Transferee Company i.e. Dharamsi Morarji Chemical Co. Ltd.



3. The statutory Auditor has certified the accounting statement proposed in the scheme.
4. The proposed amalgamation would enable the company to focus and create more competitive business both in skill and operation. The transferee Company would develop long-term corporate strategies and financial policies with respect to the combined business and harness synergies on consolidation of business, thus enabling better management and accelerated growth of the Transferor Company.

The Applicant Counsel has submitted that reduction of security premium account will be met in line with the provisions of section 66 read with section 52 of the Companies Act, 2013. The Applicant Counsel has also mentioned that the observation of BSE has communicated vide their letter dated 31.05.2017 will be complied with by the Applicant Company.

After going through the submissions made by the Counsel and averment made in the Petition and without commenting on the proposed scheme the following directions are issued to the Applicant Company:

1. The meeting of secured creditors and unsecured creditors exceeding Rs. 10,000/- each case has to be convened by the Applicant company as the creditors should know the financial health of the company post-amalgamation. Otherwise, the Applicant company has submitted through an affidavit the consent of the creditors in line with provisions of Section 230(9)/230(6) of the Companies Act, 2013.
2. The meeting be convened on 28.08.2017 at 10.00 a.m. at Indian Merchant Chamber, (Walchand Hirachand Hall), IMC Marg, Churchgate, Mumbai – 400 020 under the Chairmanship of Mr. Laxmikumar Narottam Goculdas, Director of Applicant Company failing whom Mr. Bimal Lalitsingh Goculdas, CEO of the Applicant Company and submit their approval or disapproval or modification to the NCLT, Mumbai. The Scrutinizer for the meeting shall be Mr. Jatin Popat, Practicing Company Secretary, of JSP Associates.
3. A meeting of the Equity Shareholders of the Applicant Company be convened and held at Indian Merchant's Chamber, Conference Hall (Walchand Hirachand Hall), IMC Marg, Churchgate, Mumbai 400 020, on Monday, 28th August, 2017 at



1300 hrs. for the purpose of considering and, if thought fit, approving, with or without modifications(s), the proposed Scheme of Arrangement between Borax Morarji Ltd. ("the transferor Company") and the Dharamsi Morarji Chemical Company Limited (the Transferee Company") and their respective Shareholders. Mr. Laxmikumar Narottam Goculdas, failing whom Mr. Bimal Lalitsingh Goculdas, failing whom Ms. Mitika Laxmikumar Goculdas, failing whom Mr. Dilip Trimbak Gokhale is appointed as the Chairperson for the meeting of Equity Shareholders. The Scrutinizer for the meeting shall be Mr. Jatin Popat, Practicing Company Secretary, of JSP Associates.

4. A meeting of the Preference Shareholders of the Applicant Company be convened and held at Indian Merchants' Chamber, Conference Hall (Walchand Hirachand Hall), IMC Marg, Churchgate, Mumbai 400 020, on Monday, 28th August, 2017 at 1500 hrs. for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement between Borax Morarji Limited ("the Transferor Company") and The Dharamsi Morarji Chemical Company Limited ("the Transferee Company") and their respective Shareholders. Mr. Laxmikumar Narottam Goculdas (Director) failing whom Mr. Bimal Lalitsingh Goculdas (CEO), failing whom Ms. Mitika Laxmikumar Goculdas (Director) failing whom Mr. Dilip Trimbak Gokhale (Company Secretary), is appointed as the Chairperson for the meeting of Preference Shareholders. The Scrutinizer for the meeting shall be Mr. Jatin Popat, Practicing Company Secretary of JSP Associates.
5. The Applicant Company is directed to serve notices along with copy of Scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Applicant Company's assessments are made, (ii) to the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies and (iv) other Regulators, if applicable, as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with the direction that they may submit their representations, if any, within a period of thirty days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served to the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.



6. The Chairperson to file an affidavit not less than seven days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
7. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within 30 days of the conclusion of the meeting as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
8. The Applicant Company is also directed to serve notice along with copy of scheme upon Official Liquidator. M/s. Dalal & Kala, Associates, Chartered Accountants are appointed to assist the Official Liquidator to scrutinize books or accounts of the Applicant Company for the last 5 years. The fees of the Chartered Accountant is fixed at Rs. 20,000/- per annum. The official Liquidator may submit his representations, if any, within a period of thirty days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served to the Applicant Company, failing which, it shall be presumed that the Official Liquidator has no representations to make on the proposal.
9. The Notice of the meetings shall be advertised in two local newspapers one in English and one in vernacular language i.e. Marathi with wide circulation in Mumbai, not less than 30 days before the date of fixed for the meeting.
10. The Applicant Company to file an affidavit of service in the Registry proving dispatch of notices to the preference shareholders, Creditors, publication of notices in newspapers and to the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.
11. Ordered Accordingly.

Sd/-
DR. ASHOK KUMAR MISHRA
Member (Technical)

Sd/-
M.K. SHRAWAT
Member (Judicial)