

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

**CSP NO. 857 OF 2017
IN
CSA NO. 231 OF 2017
AND
CSP NO. 869 OF 2017
IN
CSA NO. 219 OF 2017**

In the matter of section 230 to 232 of the Companies Act, 2013 and other provisions of the Companies Act, 2013 along with Companies Act, 1956

And

In the matter of Scheme of Amalgamation of JJ Polyplast Pvt. Ltd., the Transferor Company, with Aishwarya Plast Exports Pvt. Ltd., the Transferee Company and their respective shareholders and creditors.

Aishwarya Plast Exports Private Limited

**..Petitioner/
Transferee Company**

AND

JJ Polyplast Private Limited

**... Petitioner/
Transferor Company**

Order delivered on 9th November, 2017

Coram:

Hon'ble B.S.V. Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Mrs. Divya Bahl, Advocate i/b Law Offices of Divya Bahl

Mr. S. Ramakantha, Joint Director in the office of the Regional Director
Mr. Ramesh Gholap, Deputy Registrar in office of Registrar of Companies.
Mr. Santosh Dalvi, Representative of Official Liquidator.

Per: V. Nallasenapathy, Member (T)

ORDER

1. Heard Learned Counsel for the Parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Arrangement of JJ

POLYPLAST PRIVATE LIMITED ('JJPPL' or the 'Transferor Company') with AISHWARYA PLAST EXPORTS PRIVATE LIMITED ('APEPL' or the 'Transferee Company') and their Shareholders.

2. The sanction of this Tribunal is sought under section 230-232 of the Companies Act, 2013 to a Scheme of Arrangement of JJ POLYPLAST PRIVATE LIMITED ('JJPPL' or the 'Transferor Company') with AISHWARYA PLAST EXPORTS PRIVATE LIMITED ('APEPL' or the 'Transferee Company') and their Shareholders.
3. The Petitioner Companies have approved the said Scheme of Arrangement by passing the board resolutions which are annexed to the respective Company Scheme Petitions.
4. The learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all the requirements as per directions of National Company Law Tribunal and have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any as required under the Companies Act, 2013 and the Rules made thereunder, as applicable. The said undertaking is accepted.
5. The Learned Counsel for the Petitioners submits that the Transferor and the Transferee Companies are Group Companies. They have a common Board of Directors and support each other's business on an arm's length basis. The Transferee Company is a 100% Export Oriented Unit registered with the Development Commissioner, Kandla, Special Economic Zone. It operates its business under LOP No. KFTZ/IA/1697/97/10471 dated 27/01/1998 and LOP No. PER: SEEPZ-SEZ/EOU/04/06/2011-12/16487 dated 02/11/2011 issued by the Office of the Development Commissioner, Kandla SEZ. In terms of the LOPs, Transferee Company has a mandatory Export commitment and Net Foreign Exchange (NFE) earning commitment. The Transferee Company meets its export commitments relying upon the manufacturing facilities and labour workforce of the Transferor Company and in the global markets through its group companies established in UK, USA and

Germany to better facilitate the management of its global market. Furthermore, and in the absence of adequate in-house manufacturing facilities, Transferee Company has been constrained to also undertake third party exports in order to fulfil its Export and NFE obligations. The volume of third party exports executed during FY 2015-16 and FY 2016-17 (till July 2016) has been to the extent 1351.017 T & 316.668 T respectively. With the proposed merger with the Transferor Company, the Transferee Company will have adequate in-house capacity to undertake direct exports without reliance on third party exports thereby ensuring strict compliance under its Letters of Permission.

6. The Amalgamation of the Transferor Company with the Transferee Company will lead to:

- Backward integration of business activities, thereby consolidation of business operations
- Greater integration and greater financial strength and flexibility for the amalgamated entity
- Improved competitive position of the combined entity in the domestic and international market
- Greater efficiency in cash management, by cost reduction and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value
- Opportunity to leverage on brand, goodwill and combined assets, build a stronger sustainable business that will enable optimal utilization of existing resources and provide an opportunity to fully leverage capabilities and experience of both the companies
- Accessibility to broader markets and improved organizational capability and leadership arising from pooling of human capital that has diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry
- Consolidation of business of the Transferor Company under the Transferee Company, post completion of the amalgamation

- Long term value unlocking of businesses.
7. The Official Liquidator has filed his report dated September 1, 2017 with this Tribunal and states that the affairs of the Transferor Company have been conducted in a proper manner.
 8. The Regional Director has filed his report with this Tribunal on 4th November, 2017 stating therein, save as stated in paragraph IV of the said report it appears that the scheme is not prejudicial to the interest of the shareholders and public. In paragraph IV of the said report, the Regional Director has stated that:-

“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:

- (a) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the Companies served copy of this Scheme along with relevant orders etc, Further, the Office of the Regional Director (WR), Mumbai has also issued a reminder dated 10th October, 2017*
- (b) The tax implication, if any arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon’ble Court may not deter the Income Tax Authority to scrutinise the tax return filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax authority is binding on the Petitioner Companies.*
- (c) As per Clause 1.3 Definitions of the scheme. “Appointed Date” means April 1, 2016 or such other date as may be approved by the National Company Law Tribunal at Mumbai or any other appropriate authority. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April 2016.*
- (d) Regarding Para No. 6 of the scheme it is submitted that the deficit, if any arising out of the Scheme shall be adjusted in Goodwill Account and any surplus be adjusted into Capital Reserves*

Account as per para 37 of AS-14 but not be permitted to be adjusted against General Reserve of the Transferee Company.

- (e) In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such Accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.,*
- (f) In accordance to proviso to Section 232(3) of the Companies Act, 2013, the Transferee Company may be directed to file a certificate from Company's Auditors to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013.*
- (g) As regards Para No. 7 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorised Share Capital, subsequent to the Amalgamation for setting-off of fees paid by the Transferor Company on its Authorised Share Capital in accordance with the provisions of Section 232(3)(i) the Companies Act, 2013.*
- (h) As the Transferee Company has in-sufficient Authorised Share Capital for making payment of consideration to the Shareholders of the Transferor Company after combination of Share Capital of both the companies, the Transferee Company shall pay requisite fees as per Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014 and applicable Stamp duty for further increase in Authorised Share Capital.*

Save and except as stated in para IV (a) to (h) it appears that the Scheme is not prejudicial to the interests of the shareholders and public and the Regional Director, In-charge prays that this Hon'ble Tribunal may pass orders to comply with the provisions of the Companies Act, and the Rules thereof.

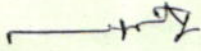
9. So far as the observations made in paragraph IV(a) of the Report of the Regional Director are concerned, the Petitioner Companies confirm that the Notice for Scheme of Amalgamation in Form CAA-3 has been

served, on behalf of each Petitioner Company, upon the Income Tax Department on July 14, 2017 along with a copy of Explanatory Statement, Scheme of Amalgamation, Valuation Report, Board Resolution approving Scheme and Order of the Hon'ble National Company Law Tribunal dated June 20, 2017.

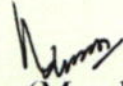
10. So far as observations made in paragraph IV(b) of the Report of the Regional Director are concerned, the Counsel for the Petitioner Companies submits that the Petitioner Companies undertake to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
11. So far as observations made in paragraph IV(c) of the Report of the Regional Director are concerned, the Petitioner Companies confirm that there will be no change in the Appointed Date which shall be 1st April, 2016.
12. So far as observations made in paragraph IV (d) of the Report of the Regional Director are concerned, the Petitioner Companies undertake to adjust the deficit, if any, arising out of the Scheme in Goodwill Account and to adjust any surplus in the Capital Reserves Account as per para 37 of AS-14 and shall not adjust any deficit or surplus against General Reserve of the Transferee Company.
13. So far as observations made in paragraph IV (e) of the Report of the Regional Director are concerned, the Petitioner Companies undertake that they shall pass such accounting entries which are necessary in connection with the Scheme to comply with AS-14 (IND AS-103) and with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.
14. So far as observations made in paragraph IV (f) of the Report of the Regional Director are concerned, the Petitioner Companies undertake to comply with the provisions of the Companies Act, 2013. The Counsel for the Petitioner Companies submits that on October 24, 2017 they have filed with the Hon'ble National Company Law Tribunal, and on October 18, 2017 submitted to the Registrar of Companies and Regional Director

- the Certificate from the Auditor - R. Devrajan & Co. confirming that the Accounting Treatment in the Scheme of Arrangement is in conformity with the Accounting Standards prescribed u/s 133 of the Companies Act, 2013.
15. So far as observations made in paragraph IV (g) and (h) of the Report of the Regional Director are concerned, the Petitioner Companies undertake to comply with the provisions of Companies Act, 2013 and to pay the requisite fees for increase in Authorised Share Capital and the applicable stamp duty payable for the same.
 16. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 10 to 15 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
 17. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
 17. Since all the requisite statutory compliances have been fulfilled, Petition and CSP 857 of 2017 and CSP 869 of 2017 are made absolute in terms of prayer clauses (a) and (b).
 18. Petitioners are directed to lodge a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with e-Form INC-28, in addition to the physical copy, as per the relevant provisions of the Companies Act, 2013.
 19. The Petitioner Companies to lodge a copy of this Order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, within 60 days from date of receipt of the Order, if any.
 20. The Petitioner Companies to pay costs of Rs. 25,000 each to the Regional Director, Western Region, Mumbai. The Transferor Company to pay cost of Rs. 25,000 to the Official Liquidator. Costs to be paid within four weeks from date of receipt of the Order.

21. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.



V. Nallasenapathy, Member (T)



B.S.V. Prakash Kumar (Member (J))