

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CSP No. 852/230-232/NCLT/MB/MAH/2017

CSP No. 853/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Borax Morarji Limited

.....Petitioner in CSP 852/2017

(Transferor Company)

M/s. The Dharamsi Morarji Chemical Company  
Limited

.....Petitioner in CSP 853/2017

(Transferee Company)

Order delivered on: 18.10.2017

**Coram :**

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

**For the Petitioner :**

Adv. Hemant Sethi, i/b. Hemant Sethi & Co., Advocates for the Petitioners

**For the Regional Director :**

Mr. Ramesh Gholap – Asst. Director (WR).

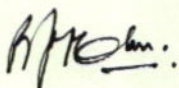
*Per : Bhaskara Pantula Mohan, Member (J)*

**COMMON ORDER**

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, for Scheme of Amalgamation of M/s. Borax Morarji Limited (Transferor Company) with M/s. The Dharamsi Morarji Chemical Company Limited (Transferee Company).
2. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

*Bhaskara Pantula Mohan:*

3. The Transferor Company is currently engaged in the business of manufacturing and trading of Borax and Boric acid.
4. The Transferee Company is engaged in the business of manufacture of acids, salts, tannin extracts, chemical, pigments, industrial and other preparations and articles, compounds, oils, paints, pigments and varnishes, drug, dye-ware paint and others
5. The amalgamation of the Transferor Companies with the Transferee Company would *inter alia* have the following benefits:
  - a) Operational rationalization, organizational efficiency and optimal utilization of various resources due to pooling of management, administrative and technical skills of various resources of both the companies, better administration, and cost reduction, including reduction in managerial, administrative and other common costs;
  - b) Focused attention approach on the businesses and better alignment, coordination and streamlining of day to day operations of both the companies, leading to improvement in overall working culture and environment;
  - c) Creation of value for various stakeholders and shareholders of both the companies, as a result of all of the foregoing; and
  - d) Greater administrative efficiency.
6. The Authorised Share Capital of the Transferor Company is ₹ 20,00,00,000/- comprising of 1,00,00,000 equity shares of ₹ 10/- each and 1,00,00,000 preference shares of ₹ 10/- each.
7. The Issued Share capital of the Transferor Company is ₹ 13,51,97,000/- comprising of 45,19,698 equity shares of ₹ 10/- each, fully paid up and 90,00,000 8% cumulative non-convertible preference shares of ₹ 10/- each, fully paid up.
8. The Authorised Share Capital of the Transferee Company is ₹ 40,00,00,000/- comprising of 3,00,00,000 equity shares of ₹ 10/- each and 10,00,000 preference shares of ₹ 100/- each.
9. The Issued, Subscribed and Paid- up Share Capital of the Transferee Company is ₹ 30,05,78,000/- comprising of 2,12,57,821 equity shares of ₹ 10/- each, fully paid up and 8,80,000 preference shares of ₹ 100/- each, fully paid up.
10. The averments made in the petitions and the submissions made by the Learned Counsel for the Petitioners are:



- a) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
- b) The Regional Director has filed his Report on 13<sup>th</sup> October, 2017 inter alia stating therein that, save and except as stated in paragraph IV of the said report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

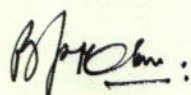
*“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:*

- a) 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.*
- b) As per existing practice, this Directorate has also issued a letter dated 10/10/2017 to IT Department requesting them to file their objections / comments, if any, directly to the Hon'ble NCLT, Mumbai.*
- c) 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 Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
- d) Para 10 of the scheme speaks about Reduction of Securities Premium Account and adjustment of Capital Reserve.*
- e) Para 8 of the scheme speaks about aggregation of Authorized Capital. In this regard Hon 'b/e NCLT may direct Transferee Company to comply with provisions of Section 232 3(i) of the Companies Act, 2013.*
- f) In Para 23 of the ROC Report it has been stated that the transferee company was inspected u/s 209 A of the Companies*

*[Signature]*

*Act, 2013 in the year 2013 and supplementary Inspection is under process.*

- c) Apropos observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioners submits that, the Petitioner Companies undertakes to 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.
- d) Apropos observations made in paragraph IV (c) of the Report of Regional Director is concerned, it is submitted that, the Petitioner Companies undertake to comply with all applicable provisions of the Income-tax Act 1961 and all tax issue arising out of the Scheme will be met and answered in accordance of law.
- e) Apropos observations made in paragraph IV (e) of the Report of Regional Director is concerned, it is submitted that, the Petitioner Transferee Company undertakes to comply with all applicable provisions of section 232 (3) (i) of the Companies Act, 2013.
- f) Apropos observations made in paragraph IV (f) of the Report of Regional Director is concerned, it is submitted that, the Transferee Company will continue to be in existence and shall not be dissolved on the amalgamation. Hence, the Transferee Company will fully support and comply with the procedure required to complete the inspection under section 209A of the Companies Act, 2013.
- g) The Official Liquidator has filed report inter alia, stating therein that, the affairs of the Transferor Companies have been conducted in a proper manner and the said Scheme is not prejudicial to the interest of Public. It is further stated that the Transferor Companies may be ordered to be dissolved without winding up.
- h) Further the Learned Counsel for the Petitioners submitted that, neither the Petitioners nor the Tribunal has received any objection to the said Scheme of Amalgamation between the Transferor Company and Transferee Company.
11. From the material on record, the Scheme of Amalgamation 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 Companies, **do Order that:**

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- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company, shall, pursuant to S. 232 of the Companies 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) Further that, the Transferee Company shall comply with the ongoing supplementary inspection by RoC u/S. 209 A of the Companies Act, 2013.
- d) Transferor Company to be dissolved without winding up from the date of this Scheme becomes effective.
- e) In lieu of consideration of this Scheme, 1 fully paid up Equity Share of ₹ 10/- each of the Transferee Company shall be issued and allotted for every 2 fully paid up equity shares of ₹ 10/- each held in the Transferor Company.
- f) And further, 10 fully paid up Equity Share of ₹ 10/- each of the Transferee Company shall be issued and allotted for every 108 fully paid up preference shares of ₹ 10/- each held in the Transferor Company.
- g) The Authorised Share Capital of the Transferee Company shall stand increased after this Scheme becomes effective.
- h) Further, as the present Authorised Share Capital of the Transferee Company is not meeting up with the requirements after the Amalgamation, hence, the Transferee Company shall, on or before the allotment of shares in the Scheme of Amalgamation, increase its Authorised Share Capital by creation of such number of Equity Shares or Preference Shares of such value as may be necessary to fulfil its obligations under the Scheme. And the Transferee Company shall comply with the applicable provisions of the Act and Rules therein, for raising of its Authorised Share Capital.
- a) Petitioner Companies are directed to file 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 within

*APK*

30 days from the date of issuance of the Order by the Registry, duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.

- b) The Petitioner Companies to lodge a copy of this Order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the Order.
- c) Each Petitioner Companies to pay cost of ₹ 25,000/- (₹ Twenty Five Thousand only) to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- d) The Transferor Company i.e. Petitioner in CSP 852/2017, to pay cost of ₹ 25,000/- (₹ Twenty Five Thousand only) to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- e) All authorities concerned to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- f) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- g) The Scheme is hereby sanctioned and the appointed date of the Scheme is fixed as 1<sup>st</sup> April, 2016.

12. Ordered accordingly. Consigned to Records.

Sd/-

**BHASKARA PANTULA MOHAN**  
MEMBER (JUDICIAL)

Sd/-

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

**Dated : 18<sup>th</sup> October, 2017**