

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

CSP NO. 949 OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of section 230 to 232 and 234 and other applicable provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of Asian Paints (International) Limited ('Transferor Company') with Asian Paints Limited ('Petitioner Company' or 'Transferee Company').

Asian Paints Limited, a company)
incorporated under the Companies Act, 1913)
having its registered office at 6A, Shanti) ...Petitioner Company /
Nagar, Santacruz East, Mumbai 400055) Transferee Company

Order delivered on 29th day of November 2017

Coram:

Hon'ble B.S.V. Prakash Kumar, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner Company: Mr. Chirag Mody i/b AZB & Partners,
Advocates for the Petitioner

Per: B.S.V. Prakash Kumar, Member (J)

Order

1. Heard the learned counsel for the parties. No objector has come before this Tribunal to oppose the Scheme and nor any party has controverted any averments made in the Petition to the merger of Asian Paints (International) Limited ('Transferor Company') with Asian Paints Limited ('Petitioner Company' or 'Transferee Company') pursuant to a scheme of amalgamation between the Transferor Company and the Transferee Company ('Scheme').

2. The Transferor Company is a private company limited by shares incorporated on September 3, 1999 at Mauritius and has its registered office at 10th Floor, Standard Chartered Tower, 19 Cybercity, Ebene, Mauritius. Further, the Transferor Company is a wholly owned subsidiary of the Petitioner Company.
3. The sanction of the Hon'ble Tribunal is sought under section 230 to 232 and section 234 and other applicable provisions of the Companies Act, 2013 to the Scheme involving inbound merger of the Transferor Company having filing number 25494/6184 with Registrar of Companies, Mauritius with the Petitioner Company having CIN L24220MH1945PLC004598.
4. The Transferor Company and the Petitioner Company have approved the Scheme by passing the board resolutions which are annexed to the Company Scheme Petition No. 949 of 2017.
5. The Learned Counsel appearing on behalf of the Petitioner Company states that the Petition has been filed in consonance with the Order of this Tribunal passed in the Company Scheme Application No. 713 of 2017.
6. The Learned Counsel appearing on behalf of the Petitioner further states that the Petitioner Company has complied with all requirements as per directions of the National Company Law Tribunal, Mumbai bench and has filed necessary affidavit of compliance with the National Company Law Tribunal, Mumbai bench. Moreover, Petitioner Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 2013 and the Rules made thereunder, whichever is applicable. The said undertaking is accepted.
7. The Learned Counsel for the Petitioner states that the Transferor Company is currently engaged in the business of investment holding. The Petitioner Company is currently engaged in the business of manufacturing (i) paints, varnishes, enamels or lacquers (ii) surfacing

- preparations; organic composite solvents and thinners, and other related products (iii) organic and inorganic compounds, n.e.c. (iv) metal sanitary ware such as bath, sinks, washbasins and similar articles.
8. The amalgamation of Asian Paints (International) Limited ('Transferor Company') with Asian Paints Limited ('Transferee Company') under the Scheme is expected to give rise to a number of commercial benefits as follows:
- (i) Rationalizing multiple foreign subsidiaries in the group to ensure optimized legal entity structure more aligned with the business by reducing the number of legal entities and reorganizing the legal entities in the group structure so as to obtain significant cost savings and/or simplification benefits;
 - (ii) Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Company and the Transferee Company;
 - (iii) Elimination of administrative functions and multiple record-keeping, thus resulting in reduced expenditure; and
 - (iv) The amalgamation pursuant to this Scheme will create a focused platform for future growth of the Transferee Company.
9. The Regional Director has filed a Report dated 13th day of November, 2017 stating therein, save and except as stated in paragraph IV, 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 directors 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, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 9th August 2017, has served a copy Company Scheme Application No. 713/2017 along with relevant orders etc., further this Directorate has also issued a reminder 23rd October, 2017 to IT Department;*
- (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 transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company;*
- (d) *As per **Part – III Definitions & Interpretations, Clause 1.3 of the Scheme. “The Appointed Date” means 1st January 2017 or such other date as may be approved by the High Court (as defined hereinafter) or such other competent authority as may be applicable. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st January 2017;***
- (e) *As the Transferor company is 100% subsidiary of Transferee Company. Hon'ble Tribunal may kindly direct the companies involved in the scheme to file Solvency Certificate with the Registrar of Companies, Mumbai as required u/s 233(1)(c) read with section 233(12) and 234(1) of the Companies Act, 2013 and pass appropriate order(s) as deem fit;*
- (f) *M/s Asian Paints Limited (the Transferee Company is registered in Mumbai, Hon'ble Tribunal may kindly direct the petitioner to comply with RBI guidelines and FEMA regulations as applicable;*
- (g) *Regarding **Part IV Clause 7.3 of the Scheme. It is mentioned that “The identity of the reserves, excluding share premium, of the Transferor Company shall be preserved and the Transferee Company shall record the reserves, excluding share premium, of the Transferor Company in the same form and at the same***

- values as they appear in the financial statements of the Transferor Company. In this regard it is submitted that M/s Asian Paints Limited, the Transferee Company shall record all the Reserves of M/s Asian Paints (International) Limited the Transferor Company in the same form and at the same values as they appear in the financial statements of the Transferor Company at the close of business of the day immediately preceding the Appointed Date (i.e. 31st December 2016);*
- (h) *The Registered Office of the M/s Asian Paints (International) Limited the Transferor Company is incorporated under the provisions of the Mauritius Companies Act 2001 and is situated in Mauritius is outside the jurisdiction of this Hon'ble Tribunal and falls within the jurisdiction of Mauritius. Accordingly, similar approval be obtained by the Transferor Company as per the laws of Mauritius governing business combinations, Amalgamations, Mergers, Acquisitions etc.;*
- (i) *Regarding **Part-V General Terms and Conditions. Clause 10 of the Scheme (Employees)**. It is submitted that the interest of all the employees are to be protected as per the labor laws and other laws of Mauritius;*
- (j) *In view of the objection raised by the ROC Mumbai, mentioned at para 11(i) above it is stated that "The conditions to be complied with as imposed by RBI (Foreign Exchange Department) while giving their prior approval vide their letter dated 12.06.2017 may please be incorporated in the order sanctioning the Scheme" in this regard Hon'ble Tribunal may kindly pass appropriate orders / orders as deem fit.*
- (k) *It is submitted that M/s Asian Paints (International) Limited the Transferor Company is incorporated under the provisions of the Mauritius Companies Act 2001 and is situated in Mauritius. Hence, the dissolution of the said Transferor Company shall be as per the Mauritius Companies Act 2001. Accordingly, an affidavit shall be filed by the said Transferor Company to the effect that its dissolution shall be as per Mauritius Companies Act 2001."*

10. So far as the observation in paragraph IV (a) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company undertakes to pass such accounting entries as may be necessary in connection with the Scheme to comply with applicable Accounting Standards such as AS-5 (IND AS-8) etc.
11. So far as the observation in paragraph IV (b) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company has duly served notices to the Income Tax authorities with respect to the Scheme for their comments. The Deputy Commissioner of Income Tax – LUT-1, Mumbai had written a letter to the Petitioner Company dated October 4, 2017 seeking certain information / documents as mentioned therein. The Petitioner Company duly responded to the said letter by its letter dated October 12, 2017 and has not received any further comments / representations from the Income Tax authorities thereafter.
12. So far as the observation in paragraph IV (c) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company submits that the Petitioner Company undertakes to comply with all applicable provisions of the Income Tax Act, 1961 and all tax implications, if any, arising out of the Scheme.
13. So far as the observation in paragraph IV (d) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company undertakes that the Appointed Date for the purposes of the Scheme shall be 1st January, 2017.
14. So far as the observation in paragraph IV (e) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the present Scheme is between an Indian company and its foreign wholly owned subsidiary company under sections 230 – 232 and 234 of the Companies Act, 2013 and accordingly, the provision of section 233(1)(c) of the Companies Act, 2013 is not applicable to the present Scheme. Therefore, the Transferor Company and the Petitioner /

Transferee Company, are not required to file a solvency certificate with the Registrar of Companies, Mumbai.

15. So far as the observation in paragraph IV (f) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company undertakes to comply with RBI guidelines and FEMA regulations as applicable.
16. So far as the observation in paragraph IV (g) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company undertakes to record all the Reserves of Asian Paints (International) Limited, the Transferor Company in the same form and at the same values as they appear in the financial statements of the Transferor Company at the close of business of the day immediately preceding the Appointed Date (i.e. 31st December, 2016).
17. So far as the observation in paragraph IV (h) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company undertakes to cause the Transferor Company to obtain necessary approvals, as applicable, as may be required as per the laws of Mauritius governing business combinations, amalgamations, mergers, acquisitions etc.
18. So far as the observation in paragraph IV (i) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company undertakes that the interest of all the employees of the Transferor Company shall be protected as per labour laws and other laws of Mauritius.
19. So far as the observation in paragraph IV (j) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company undertakes to comply with the conditions as imposed by RBI (Foreign Exchange Department) while granting their no objection from Foreign Exchange Management Act,

1999, angle vide their letter dated June 12, 2017 which are reproduced as follows:

“(a) Any issue or transfer of security by the resultant company to a person resident outside India shall be in accordance with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000. (Resultant company means an Indian company or a foreign company which is established or formed or is proposed to be established or formed on sanction of the Scheme of cross border merger,

(b) Any borrowing or impending borrowing of the foreign company from overseas sources which becomes the borrowing of the resultant company or any borrowing from overseas sources entering into the books of resultant company arising shall conform to the External Commercial Borrowing norms or Trade Credit norms or other foreign borrowing norms, as laid down under Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 or Foreign Exchange Management (Guarantee) Regulations, 2000, as applicable.

(c) the resultant company may acquire and hold any asset outside India which an Indian company is permitted to acquire under the provisions of the FEMA, rules or regulations framed thereunder. Such assets can be transferred in any manner for undertaking a transaction permissible under FEMA or rules or regulations framed thereunder.

(d) the valuation of the Indian Company and the foreign Company for the purpose of cross border merger shall be done as per internationally accepted pricing methodology for valuation of shares on arm's length basis which could be duly certified by the Chartered Accountant/public accountant/merchant banker authorise to do so in either jurisdiction.

2. Further, we advise you as under while reporting the transaction: (i) confirm the reconciliation of all the remittances under the captioned

UIN; (ii) report online, the disinvestment in our web portal after completion of above compliances.”

20. So far as the observation in paragraph IV (k) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company has submitted an affidavit of the Transferor Company dated November 21, 2017, to the effect that its dissolution shall be as per Mauritius Companies Act 2001.
21. The observations made by the Regional Director have been explained by the Petitioner Company in para 10 to 20 above. The clarifications and undertakings given by the Petitioner Company are accepted by the Tribunal.
22. From the material on record, the Scheme appears to be fair and reasonable and is not contrary to public policy.
23. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 949 of 2017 is made absolute in terms of prayers at clause 57 (a) and (b) thereof.
24. The Petitioner Company is directed to lodge a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with E-form INC – 28, in addition to physical copy, as per the relevant provisions of the Companies Act, 2013, within 30 days from the date of receipt of the Order.
25. The Petitioner Company is directed to lodge a copy of this Order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai bench, with the concerned Superintendent of Stamps, within 60 days from the date of receipt of the Order, for the purposes of adjudication of stamp duty payable, if any, on the same.
26. The Petitioner Company to pay costs of Rs. 25,000/- to the Regional Director, Western Region, Mumbai in the Company Scheme Petition

No. 949 of 2017. Cost to be paid within four weeks from the date of receipt of the Order.

27. 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.

Sd/-

Sd/-

V. Nallasenapathy, Member (T) BSV Prakash Kumar, Member (J)