

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH**

CSA NO. 834 OF 2017

AND

CSA NO. 839 OF 2017

Under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and Rules framed thereunder as in force from time to time

In the matter of Scheme of Amalgamation of DOW CORNING INDIA PRIVATE LIMITED, the Transferor Company with DOW CHEMICAL INTERNATIONAL PRIVATE LIMITED, (the Transferee Company)

DOW CORNING INDIA PVT. LTD

... Applicant Company / the Transferor Company

Order delivered on 13<sup>th</sup> September, 2017

Coram:

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

Hon'ble Mr. V. Nallasenapathy Hon'ble Member (T)

For the Applicant : Mr. Janak Dwarkadas, Senior Counsel, Mr. Gaurav Joshi, Senior Counsel, i/b Ms. Shiraz C. Patodia, Mr. Ashish Singh and Ms. Divya Sharma, Advocates for the Applicant.

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

ORDER

**UPON** the application of the Applicant Company above named **AND UPON HEARING** Mr. Janak Dwarkadas, Senior Counsel, Mr. Gaurav Joshi, Senior Counsel i/b Ms. Shiraz C. Patodia, Mr. Ashish Singh and Ms. Divya Sharma, Advocates for the Applicant, **IT IS ORDERED THAT:**

1. A meeting of the Equity Shareholders of the Applicant Company, be convened and held at Amethyst, 02, Block B, 1<sup>st</sup> Floor, Godrej Business District, L B S Marg, Vikhroli West, Mumbai 400079, on Monday, October 23, 2017 at 11.30 a.m. for the purpose of considering and, if thought fit, approving, with or without modification(s), the arrangement embodied in the Scheme of Amalgamation of Dow Corning India Private Limited the Applicant Company with Dow Chemical International Private Limited the Transferee Company.
2. At least 30 clear days, before the said meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by Registered Post or by Air Mail or by courier or by speed post or by hand delivery to each of the Equity Shareholders of the Applicant Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders as per the records of the Applicant Company. The said undertaking is accepted.
3. At least 30 clear days, before the Meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting, at the place, date and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and shall also be published once each in 'Free Press Journal' in English and 'Navshakti' in Marathi, both having circulation in Mumbai.
4. The Applicant Company undertakes to:
  - i) issue Notice convening meeting of the equity shareholders as per Form No. CAA.2 (Rule 6) of the Companies (Compromises,



Arrangements and Amalgamations) Rules, 2016

- ii) issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
- iii) issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and
- iv) advertise the Notice convening meeting as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertaking is accepted.

- 5. Mr. Devendra Palav - Director, failing whom Mr. Pramod Deo - Director of the Applicant Company is appointed as the Chairperson for the meeting of Equity Shareholders. The Scrutinizer for the meeting shall be Mr. Ashish Bhatt, Practicing Company Secretary (Membership No. FCS 4650), failing whom Mr. Tejas Pandya, Company Secretary.
- 6. The Chairperson appointed for the aforesaid Equity Shareholders Meeting to issue the advertisement and send out the notices of the meeting referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or Resolution, if any, proposed at the meeting by any person(s) and to ascertain the decision of or the sense of the meeting by a poll.
- 7. The quorum for the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
- 8. The voting by proxy or authorised representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Registered



Office at 1<sup>st</sup> Floor, Block B, 02 Godrej Business District, Phirojshanagar, LBS Marg, Vikhroli West, Mumbai – 400 079, not later than, 48 hours before the aforesaid Equity Shareholders meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

9. The value and number of the shares of each member shall be in accordance with the books/ register of the Applicant Company or depository records as on the date of this order and where the entries in the books / register / depository records are disputed, the Chairperson of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
10. 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 the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
11. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within seven days of the conclusion of the meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
12. As on date, there are no Secured Creditors of the Applicant Company as stated in paragraph 22 of the Company Application bearing CSA No. 839 of 2017.
13. After hearing the submission advanced on behalf of the Applicant Company and keeping in view that the Scheme is an arrangement between the Applicant Company and their respective shareholders, this Bench directs that only a meeting of the Equity Shareholders be convened in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. This Bench hereby directs the Applicant



Company to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company at 1st Floor, Block B, 02 Godrej Business District, Phirojshanagar, LBS Marg, Vikhroli West, Mumbai – 400 079.

14. The Applicant to serve the notice upon:- (i) concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessment are made (ii) the Central Government through the office of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority and/ or Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
15. The Applicant to serve the notice upon the concerned Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal and the copy of such representation shall simultaneously be served upon the Applicant Company pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
16. At least 30 clear days before the date fixed for hearing, Applicant Company to serve the notice of hearing of Petition upon the Official



Liquidator, High Court, Bombay pursuant to Section 230(5) of the Companies Act, 2013. The Tribunal is appointing Chartered Account, M/s. Saket Shantilal Jain and Associates, with remuneration of Rs.2,00,000/- to assist the Official Liquidator to scrutinize books of accounts of the Applicant Company. Remuneration of the Chartered Accountant shall be paid by the Applicant Company within period of two weeks from today. If no response is received by this Tribunal from Official Liquidator within 30 days it may be presumed that Official Liquidator, High Court, Bombay has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

17. The Applicant to file an affidavit of service of the directions given by the Tribunal not less than seven days before the date fixed for the holding of the meetings and do report to this Tribunal that the direction regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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