

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH AT MUMBAI

TCSP No.262 OF 2016

CONNECTED WITH

CSP No. 776 OF 2016

In the matter of Companies Act, 2013 and
Companies Act, 1956 as applicable

AND

In the matter of Sections 230 to 232 of the
Companies Act, 2013 (Corresponding Sections 391
to 394 of Companies Act, 1956)

AND

In the matter of the Scheme of Amalgamation of
Dollex Industries Limited (Transferor Company)
into Parvati Sweetners and Power Limited
(Transferee Company) and their respective
Shareholders and Creditors

Dollex Industries Limited

...Petitioner / the Transferor Company

Judgement/order delivered on September 14, 2017

Coram:

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

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

For the Petitioners: Mr. Kunal Mehta i/b M/s Crawford Bayley & Co, Advocate for
Petitioner Company.

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

ORDER

1. Heard learned counsel for 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 Scheme of Amalgamation of Dollex Industries Limited (Transferor Company) into Parvati Sweetners and Power Limited (Transferee Company)

2. The sanction of this Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013 to a

Scheme of Amalgamation of Dollex Industries Limited (Transferor Company) into Parvati Sweetners and Power Limited (Transferee Company) and their respective shareholders and creditors.

3. The Petitioner Company has approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the Company Scheme Petition.

4. The Learned Advocate appearing on behalf of the Petitioner Company states that the petition has been filed in consonance with the Order passed in Company Summons for Directions No. 581 of 2016 by the Hon'ble High Court of Bombay.

5. The Learned Advocate appearing on behalf of the Petitioner Company has stated that they have complied with all requirements as per directions of Hon'ble High Court of Bombay and National Company Law Tribunal, Mumbai Bench and they have filed necessary Affidavits of compliance in the Hon'ble High Court of Bombay and National Company Law Tribunal, Mumbai Bench. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

6. The learned Advocate for the Petitioner Company states that the Petitioner Company is currently engaged in business of manufacturing and dealing in sugar and petroleum products, by – products, derivatives and residues thereof.

7. The learned Advocate for the Petitioner Company further states that the Amalgamation of the Transferor Company and the Transferee Company will have the following benefits:

(a) The combination of the Transferor Company and the Transferee Company bring strengths that each company does not necessarily possess individually;

(b) Both the Transferor and the Transferee Company are in similar lines of business and intend to/ can achieve larger product portfolio, economies of scale, efficiency, optimization of logistics and distribution network

and related economies by consolidating the business operations being managed by different management teams. This Scheme of Amalgamation intends to merge the operations of the Transferor Company with that of the Transferee Company to fulfill this objective;

- (c) The Transferee Company will have the benefit of the combined resources of Transferor Company and the Transferee Company;
- (d) Increase in net worth of Transferee Company, which will facilitate effective and fast mobilization of financial resources for meeting increased capital expenditure.

8. The Regional Director has filed his Report on May 26, 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 (INS AS-8) etc.*
- b) *As per existing practice, the Petitioner Company is required to serve Notice for scheme of Amalgamation to the Income Tax Department for their comments. It appears that the Company vide letter dated 16th December, 2016 has served a copy of Company Petition No. 776 of 2016 along with relevant orders etc., further this Directorate has also issued a reminder on 12th May, 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 of the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
- d) *The Registered Office of M/s. Parvati Sweetners and Power Limited, the Transferee Company is situated in the State of Madhya Pradesh, is outside the jurisdiction of this Hon'ble Tribunal and falls within the jurisdiction of Hon'ble NCLT, at Ahmedabad. Accordingly, similar approval be obtained by the Transferee Company from Hon'ble NCLT at Ahmedabad.*
- e) *regarding clause 11 of the scheme, it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account and deficit if any arising out of the same shall be debited to goodwill*

account and will not be adjusted against the General Reserve / Profit & Loss Account of the Transferee Company.

9. So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Transferee Company undertakes that in addition to compliance of As-14 corresponding (Ind AS- 103) accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5/ corresponding Ind AS -8 etc.

10. So far as the observation in paragraph IV (b) and (c) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Company undertakes to comply with all applicable provisions of the Income-Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.

11. So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Petitioner/Transferor Company through its counsel states that the Transferee Company has filed a similar Scheme before the High Court of Madhya Pradesh, Bench at Indore for approval of the same and which has been transferred to NCLT Ahmedabad. The scheme will become effective from the date on which the Hon'ble NCLT Ahmedabad grants sanction to the scheme in the petition filed by the Transferee Company.

12. So far as the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Petitioner/Transferor Company through its counsel undertakes that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and deficit if any arising shall be debited to goodwill account of Transferee Company.

13. The observations made by the Regional Director are explained by the Petitioner Company in Para 9 to 12 above. The clarifications and undertakings given by the Petitioner Company are accepted by the Tribunal.

14. The Official Liquidator has filed his report on September 13, 2017 in the Transferred Company Scheme Petition Number. 262 of 2016 connected with Company Scheme Petition Number 776 of 2016 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal

15. 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. None of the parties have come forward to oppose the Scheme.

16. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition Number 262 of 2016 connected with Company Scheme Petition Number 776 of 2016 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) to (e).

17. The Petitioner Company to lodge a copy of this order along with the Scheme of Amalgamation duly certified by the Deputy Registrar, 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 the receipt of the order, if any.

18. Petitioner is 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 physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

19. The Petitioner Company to pay costs of Rs. 25,000/- to the Regional Director, Western Region, Mumbai and the Petitioner to pay costs of Rs. 25000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the receipt of the order.

20. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench

Sd/-

V. Nallasenapathy, Member(T)

Sd/-

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