

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENCH AT MUMBAI

CSP No.: 307 of 2017

AND

CSP No: 304 of 2017

AND

CSP No.: 306 of 2017

AND

CSP No.: 305 of 2017

AND

CSP No.: 303 of 2017

Under Section 230-233 of the Companies Act, 2013
AND

In the matter of Scheme of Amalgamation of Rath
Brothers Delhi Limited, the First Transferor
Company and Rath Brothers Madras Limited, the
Second Transferor Company and Rath Brothers
Calcutta Limited, the Third Transferor Company
and Rath Brothers Poona Limited, the Fourth
Transferor Company into Rabro Speciality
Chemicals Private Limited, the Transferee
Company and their respective Shareholders.

Rathi Brothers Delhi Limited

...Petitioner / the First Transferor Company

And

Rathi Brothers Madras Limited

...Petitioner / Second Transferor Company

And

Rathi Brothers Calcutta Limited

...Petitioner / Third Transferor Company

And

Rathi Brothers Poona Limited

...Petitioner / Fourth Transferor Company

Into

RabroSpeciality Chemicals Private Limited

...Petitioner / Transferee Company

And

Their respective Shareholders

Judgement/order delivered on September 06, 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: 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 Rathi Brothers Delhi Limited, the First Transferor Company and Rathi Brothers Madras Limited, the Second Transferor Company and Rathi Brothers Calcutta Limited, the Third Transferor Company and Rathi Brothers Poona Limited, the Fourth Transferor Company into Rabro Speciality Chemicals Private Limited, the Transferee Company.
2. The sanction of this Tribunal is sought Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of Rathi Brothers Delhi Limited, the First Transferor Company and Rathi Brothers Madras Limited, the Second Transferor Company and Rathi Brothers Calcutta Limited, the Third Transferor Company and Rathi Brothers Poona Limited, the Fourth Transferor Company into Rabro Speciality Chemicals Private Limited, the Transferee Company and their respective Shareholders.
3. The Petitioner Companies has approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the Company Scheme Petition.
4. The Learned Advocate for the Petitioner Companies states that the petition has been filed in consonance with the Order passed in their Company Scheme Application Nos. 30,31,32,33,34 of 2017 of the National Company Law Tribunal.
5. The Learned Advocate appearing on behalf of the Petitioner Companies has stated that they have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary Affidavits of compliance in the 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, 2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

6. The learned Advocate for the Petitioner Companies states that the First Transferor Company is currently engaged in business of acting as agents, distributors and selling agents of all chemicals and related products and the Second Transferor Company is currently engaged in business of acting as agents, distributors and selling agents of all chemicals and related products and the Third Transferor Company is currently engaged in business of acting as agents, distributors and selling agents of all chemicals and related products and the Fourth Transferor Company is currently engaged in the business of acting as agents, distributors and selling agents of all chemicals and related products and the Transferee Company is currently engaged in the business of acting as agents, distributors and selling agents of all chemicals and related products. As per the opinion of the management of the Transferor Companies and Transferee Company the proposed amalgamation will result in consolidation of the business in one entity and strengthening the position of the merged entity, by enabling it to harness and optimize the synergies of the four companies. Accordingly, it would be in the best interests of the Transferor Companies and the Transferee Company and their respective shareholders. The proposed amalgamation is in line with the global trends to achieve size, scale, integration and greater financial strength and flexibility and in the interests of maximizing shareholder value. The merged entity is likely to achieve higher long-term financial returns than could not be achieved by the companies individually. The Transferor Companies and the Transferee Company believe that the financial, managerial and technical resources, personnel capabilities, skills, expertise and technologies of the Transferor Companies and the Transferee Company pooled in the merged entity, will lead to increased competitive strength, cost reduction and efficiencies, productivity gains, and logistic advantages, thereby significantly contributing to future growth. Therefore, the management of the Transferor Companies and the Transferee Company believe that this Scheme shall

benefit the respective companies and other stake holders of respective companies, inter-alia, on account of the following reasons:

- a. Enable Transferee Company to use the resources of Transferor Companies and generate synergy in operations;
- b. Increase in net worth of Transferee Company, which will facilitate effective and fast mobilization of financial resources for meeting increased capital expenditure;
- c. Reduction of overheads and other expenses, facilitate administrative convenience and ensure optimum utilization of available services and resources.

7. The Regional Director has filed his Report on September 04, 2017, *inter alia*, stating therein that 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 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.*
- d) *In view of the objection raised by the ROC Pune, mentioned at para 11 above. It is submitted that petitioner has to comply with proviso to section 230(7) read with Rule 6(3)(iv)(e) of the Companies (Compromise, Arrangements and the Amalgamations) Rules, 2016 the auditor of the Company to issue Certificate to the effect that Accounting Treatment, if any, propose in the scheme is in conformity with the Accounting Standard prescribed u/s 133 of the Companies Act, 2013. Hon’ble Tribunal may pass appropriate orders as deem fit.*

8. So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies 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.

9. So far as the objection of the Regional Director as stated in paragraph IV (d) of his Report is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have already submitted the required auditor's certificate. As such the objection has been complied with.

10. The observations made by the Regional Director are explained by the Petitioner Companies in Para 8 & 9 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.

11. The Official Liquidator has filed his report on July 19, 2017 in the Company Scheme Petition Number No. 304, 305, 306 & 307 of 2017 inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Tribunal.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 303, 304, 305, 306 & 307 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) to (d).

14. The Petitioner Companies are directed to lodge a copy of this order along with the copy of 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 Companies Act, 2013.

15. The Petitioner Companies are directed to lodge a copy of this order along with a copy of 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.

16. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in Company Scheme Petition Nos. 304, 305, 306 & 307 to pay costs of Rs. 25000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the receipt of the order.

17. 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)