

IN THE NATIONAL COMPANY LAW TRIBUNAL
"MUMBAI BENCH"

CSA No. 884 OF 2017

Under Sections 230 to 232 of Companies Act, 2013
AND

In the matter of Scheme of Amalgamation between Saldhar Investments and Trading Company Private Limited having CIN U67120MH1979PTC021881 ('Transferor Company' or 'Saldhar') and Apcotex Industries Limited having CIN L99999MH1986PLC039199 ('Transferee Company' or 'Apcotex') and their respective Shareholders

SALDHAR INVESTMENTS AND TRADING COMPANY PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956, having its registered office at N K Mehta International House, 178 Backbay Reclamation, Babubhai M Chinnai Marg, Mumbai - 400 020, Maharashtra

.....Applicant Company

Order delivered on 22nd September, 2017

Coram:

Hon'ble Sh. **B.S.V. Prakash Kumar**, Member (J)
Hon'ble Sh. **V. Nallasenapathy**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co

Per: Sh. **B.S.V. Prakash Kumar**

Order

1. The Counsel for the Applicant states that the present Scheme is a Scheme of Amalgamation between Saldhar Investments And Trading Company Private Limited and Apcotex Industries Limited and their respective shareholders. This Scheme of Amalgamation is proposed to merge the Transferor Company with the Transferee Company without winding up the Transferor Company pursuant to the relevant provisions of the Companies Act.

2. The Counsel for the Applicant Company further submits that the Applicant Company is engaged in the business of investment in shares and securities. Further, the Transferee Company is one of the leading producers of Synthetic Rubber (High Styrene Rubber, Nitrile Butadiene Rubber, NBR Powder, and Nitrile Polyblends) and Synthetic Latex (Vinyl Pyridine Latex, Carboxylated Styrene Butadiene Latex, Styrene Acrylic Latex, Nitrile Latex, etc.) in India.
3. The Counsel for the Applicant Company further submits that it is proposed to merge the Transferor Company with the Transferee Company without winding up of the Transferor Company. As a result of the proposed amalgamation, the shareholders of Saldhar viz. the promoters of Saldhar (who are also the promoters of Apcotex), shall directly hold shares in Apcotex. This will lead not only to simplification of the shareholding structure and reduction of shareholding tiers but also demonstrate the promoter group's direct commitment to and engagement with Apcotex. The amalgamation would result in more effective utilization of resources of both Saldhar and Apcotex, including pooling of financial resources of Saldhar and Apcotex, leading to more effective and centralized management of funds, greater economies of scale and reduction in administrative expenses, which are presently being multiplied being separate entities. Therefore, with a view to effect such plan, the Board of Directors of the Applicant Company proposes to merge the Applicant Company with the Transferee Company without winding up of the Applicant Company.
4. That the meeting of the Equity Shareholders of the Applicant Company be convened and held at the registered office of the Applicant Company at N K Mehta International House, 178 Backbay Reclamation, Babubhai M Chinnai Marg, Mumbai - 400 020, Maharashtra on Monday, 20th day of November, 2017 at 4.30 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in Scheme of Amalgamation

between Saldhar Investments And Trading Company Private Limited and Apcotex Industries Limited and their respective shareholders.

5. That at least one month 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, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Hand Delivery / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.
6. That at least one month before the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
7. That the Notice of the Meeting shall be advertised in two local newspapers viz. 'Free Press Journal' in English and 'Navshakti' in Marathi, both circulated in Mumbai not less 30 days before the date fixed for the meeting.

8. That Mr. Abhiraj Atul Choksey, Director of the Applicant Company and failing him, Mr. Atul Champaklal Choksey, Director of the Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Applicant Company to be held at N K Mehta International House, 178 Backbay Reclamation, Babubhai M Chinnai Marg, Mumbai - 400 020, Maharashtra on Monday, 20th day of November, 2017 at 4.30 p.m. or any adjournment or adjournments thereof.
9. That the Chairman appointed for the aforesaid Meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meeting by any person(s).
10. That the quorum of the aforesaid meeting of the Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
11. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meeting, are filed with the Applicant Company at their Registered Office not later than 48 hours before the aforesaid meeting, at the registered office of the Applicant Company situated at N K Mehta International House, 178 Backbay Reclamation, Babubhai M Chinnai Marg, Mumbai - 400 020, Maharashtra.
12. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the

Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.

13. That Mr. Mahesh Hurgat, Practicing Company Secretary, is hereby appointed as Scrutinizer of the meeting of the Equity shareholders of the Applicant Company proposed to be held at N K Mehta International House, 178 Backbay Reclamation, Babubhai M Chinnai Marg, Mumbai - 400 020, Maharashtra on Monday, 20th day of November, 2017 at 4.30 p.m.
14. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
15. That the Chairman of the meeting to report to this Tribunal, the results of the aforesaid meeting within thirty days of the conclusion of the meeting.
16. The Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Mumbai, and (v) Reserve Bank of India 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 with copy of such representations shall simultaneously be served upon the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
17. The Applicant Company is also directed to serve notice along with copy of scheme upon Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013. M/s. Dalal & Kala Associates, Chartered Accountants are appointed with a

remuneration of Rs. 15,000/- for the services. If no response is received by the Tribunal from Official Liquidator within thirty days of the date of receipt of notice, it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Counsel for the Applicant Company further submits that there are no Secured Creditors in the Applicant Company, therefore the question of sending notices to the Secured Creditors does not arise.

19. The Counsel for the Applicant Company submits that since the Scheme is an arrangement between the Applicant Company and their respective shareholders only, a meeting of the Equity Shareholders of the Applicant Company is proposed to be held 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 all its Unsecured Creditors 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.

20. The Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, unsecured creditors, regulatory authorities, as stated in clause 16 and 17 above, and publication of notices in newspapers and to report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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