

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

CSP NO. 495 OF 2017

IN

CSA NO. 150 OF 2017

(TP NO. CSDL/317/2016)

AND

CSP NO. 494 OF 2017

IN

CSA NO. 151 OF 2017

(TP NO. CSDL/318/2016)

In the matter of section 230 to 232 of the Companies Act, 2013 and other provisions of the Companies Act, 2013 along with Companies Act, 1956

And

In the matter of Scheme of Amalgamation of San Polyplast Exim Pvt. Ltd., the Transferor Company, with Aishwarya Plast Exports Pvt. Ltd., the Transferee Company and their respective shareholders and creditors.

AISHWARYA PLAST EXPORTS PRIVATE LIMITED

... Petitioner/Transferee Company

AND

SAN POLYPLAST EXIM PRIVATE LIMITED

... Petitioner/ Transferor Company

Coram:

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

V. Nallasenapathy, Hon'ble Member (Technical)

For the Petitioner(s). Mrs. Divya Bahl, Advocate i/b Law Offices of Divya Bahl

Mr. S. Ramakantha, Joint Director in the office of the
Regional Director

Judgment / Order delivered on 25th September, 2017

ORDER

1. Heard Learned Counsel for the Parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Arrangement of SAN POLYPLAST EXIM PRIVATE LIMITED ('SPEPL' or the 'Transferor Company') with AISHWARYA PLAST EXPORTS PRIVATE LIMITED ('APEPL' or the 'Transferee Company') and their Shareholders.
2. The sanction of this Tribunal is sought under section 230-232 of the Companies Act, 2013 to a Scheme of Arrangement of SAN POLYPLAST EXIM PRIVATE LIMITED ('SPEPL' or the 'Transferor Company') with AISHWARYA PLAST EXPORTS PRIVATE LIMITED ('APEPL' or the 'Transferee Company') and their Shareholders.
3. The Petitioner Companies have approved the said Scheme of Arrangement by passing the board resolutions which are annexed to the respective Company Scheme Petitions.
4. The learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all the requirements as per directions of National Company Law Tribunal and

have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements, if any as required under the Companies Act, 2013 and the Rules made thereunder, as applicable. The said undertaking is accepted.

5. The Learned Counsel for the Petitioners submits that the Petitioner Companies are 100% Export Oriented Units registered with the Development Commissioner Kandla Special Economic Zone, Gandhidham, Kutch, Gujarat, and have been granted Letters of Permission (LOP) to import virgin plastic waste to be utilised for manufacture of plastic bags and granules for export. In terms of the LOP, the Petitioner Companies have export commitments and commitments of Net Foreign Exchange Earnings. The Transferor Company is a wholly owned subsidiary of the Transferee Company and has been wholly dependent upon the Transferee Company in fulfilling its LOP obligations. With the permission of the Development Commissioner, the Petitioner Companies have common manufacturing facilities and are registered with and have the same excise range falling under the same commissionerate Range at Vadodra, and subject to the permission of the Hon'ble High Court, the Development Commissioner has granted permission for the merger of the Letter of Permission No. KFTZ/IA/1697/97/10471 dated 27/01/1998 issued in favour of the Transferee Company and Letter of Permission No. KFTZ/IA/1654/96/2248 dated 03/06/1997 issued in favour of the Transferor Company in order for both entities to jointly perform and discharge their obligations under their respective LOP(s). In terms of the merged Letter of Permission the Transferee Company is obliged to fulfil the export obligations of the Transferor Company, failing which, the Transferor Company will be in default of its commitment to maintain positive Net Foreign Exchange, thereby jeopardising its License.
6. The Amalgamation of the Transferor Company with the Transferee Company will lead to:

- Consolidation of business of the Transferor Company under the Transferee Company, post completion of acquisition;
 - Preserving the entitlements of the Transferor Company under the Letter of Permission bearing No. KFTZ/IA/1654/96/2248 dated 04.06.1997;
 - Fulfilment of the export commitments of the Transferor Company; and
 - Long term value unlocking of businesses.
7. The Development Commissioner, Kandla Special Economic Zone, Ministry of Commerce and Industry, Gandhidham Kutch, being the administrative authority for the Petitioner Companies, has filed his no-objection with the Tribunal to the Scheme of Amalgamation vide his letter bearing No. KASEZ/100% EOU/II/48/2001-02/Volume IV/1753 dated 15th May, 2017.
 8. The Official Liquidator has filed his report with this Tribunal and states that the affairs of the Transferor Company have been conducted in a proper manner.
 9. The Regional Director has filed his report on 19th September 2017 stating therein, save as stated in paragraph IV of the said report it appears that the scheme is not prejudicial to the interest of the 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 (IND AS-8) etc.,

(b) As per Clause 1.3 Definitions of the scheme. “Appointed Date” means 1st April, 2015 or such other date as may be approved by the High Court of Judicature at Bombay or any other appropriate

authority. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be **1st April 2015**;

- (c) *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 1st April 2017 has served a copy Company scheme application no 150 & 151 of 2017 along with relevant orders etc., further this Directorate has also issued a reminder 15/09/2017 to IT Department.*
- (d) *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 Court 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.*
- (e) *M/s. San Polyplast Exim Pvt. Ltd. (the Transferor Company) is a wholly owned subsidiary of M/s. Aishwarya Plast Exports Private Limited (the Transferee Company) (the Transferee Company). Hence, this 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) of the Companies Act, 2013 and pass appropriate order(s) as deem fit.*
- (f) *It is submitted that the Petitioner has to comply with proviso to section 230(7) read with Rule 6(3)(ix)(e) of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 the auditor of the Company to issue a Certificate to the effect that the Accounting Treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the Accounting Standard prescribed u/s 133 of the Companies Act, 2013.*

Save and except as stated in para IV (a) & (f) it appears that the Scheme is not prejudicial to the interests of the shareholders and

public and the Regional Director, Incharge prays that this Hon'ble Tribunal may pass orders to comply with the provisions of the Companies Act, and the Rules thereof.

10. So far as the observations made in paragraph IV(a) of the Report of the Regional Director are concerned, the Petitioner Companies undertake that they 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.
11. So far as observations made in paragraph IV(b) of the Report of the Regional Director are concerned, the Petitioner Companies confirm that there will be no change in the Appointed Date which shall be 1st April, 2015.
12. So far as observations made in paragraph IV(c) and (d) of the Report of the Regional Director are concerned, the Counsel for the Petitioner Companies submits that the Petitioner Companies undertake to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
13. So far as observations made in paragraph IV(e) of the Report of the Regional Director are concerned, the Petitioner Companies confirm that the audited financial statements together with the Declarations of Solvency by Directors of each Petitioner Company were available for scrutiny by the shareholders and creditors of each Company, at the respective registered offices of the Petitioner Companies and the Petitioner Companies undertake to comply with the provisions of the Companies Act, 2013 and file requisite forms including the Solvency Certificate as required u/s 233(1)(c) read with section 233(12) of the Companies Act, 2013 with the Registrar of Companies.
14. So far as observations made in paragraph IV(f) of the Report of the Regional Director are concerned, the Petitioner Companies undertake to comply with the provisions of the Companies Act, 2013. The Counsel for the Petitioner Companies submits that they have submitted to the Registrar of Companies the Certificate from the Auditor - R. Devrajan &

- Co. confirming that the Accounting Treatment in the Scheme of Arrangement is in conformity with the Accounting Standards prescribed u/s 133 of the Companies Act, 2013.
15. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 10 to 14 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
 16. 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.
 17. Since all the requisite statutory compliances have been fulfilled, CSP 494 of 2017 and CSP 495 of 2017 are made absolute in terms of prayer clauses (a) and (b).
 18. Petitioners are 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 the physical copy, as per the relevant provisions of the Companies Act, 2013.
 19. The Petitioner Companies to lodge a copy of this Order and the Scheme duly certified by the Deputy Director, 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 date of receipt of the Order, if any.
 20. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from date of receipt of the Order.
 21. 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 Bench.

Sd/-

Sd/-

V. Nallasenapathy, Member, (T)

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