

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSA No. 887 OF 2017

Under Sections 230 to 232 of Companies Act,
2013

And

In the matter of Scheme of Amalgamation of Hopewell Tableware Private Limited ('HTPL' or 'the Transferor Company 1') AND Vyline Glass Works Limited ('VGWL' or 'the Transferor Company 2') AND Fennel Investment and Finance Private Limited ('FIFPL' or 'the Transferor Company 3') WITH Borosil Glass Works Limited ('BGWL' or 'the Transferee Company') And their respective Shareholders and Creditors

HOPEWELL TABLEWARE PRIVATE LIMITED, a company incorporated under the provisions of Companies Act, 1956 having its registered address at 1101, Crescenzo, G-Block, Opp. MCA Club, Bandra Kurla Complex, Bandra, Mumbai, Maharashtra - 400 051, India

.....The Transferor Company 1 / First Applicant

VYLINE GLASS WORKS LIMITED, a company incorporated under the provisions of Companies Act, 1956 having its registered address at 107, Famous Cine Studio Building, 20, Dr. E. Moses Road, Mahalaxmi, Mumbai, Maharashtra - 400 011, India

.....The Transferor Company 2/ Second Applicant

FENNEL INVESTMENT AND FINANCE PRIVATE LIMITED, a company incorporated under the provisions of Companies Act, 1956 having its registered address at 1101, Crescenzo, G-Block, Opp. MCA Club, Bandra Kurla Complex, Bandra, Mumbai, Maharashtra - 400 051, India

.....The Transferor Company 3 / Third Applicant

BOROSIL GLASS WORKS LIMITED, a company incorporated under the provisions of Companies

Act, 1956 having its registered address at Khanna
Construction House, 44, Dr. R. G. Thadani Marg,
Worli, Mumbai, Maharashtra – 400 018, India

.....The Transferee Company / Fourth Applicant

Order delivered on 22nd September, 2017

Coram:

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

Hon'ble Shri. **V. Nallasenapathy**, Member (T)

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

Per: Shri. V. Nallasenapathy, Member, (T)

ORDER

1. The Counsel for the Applicant states that the present Scheme is a Scheme of Amalgamation of Hopewell Tableware Private Limited ('HTPL' or 'the Transferor Company 1') AND Vyline Glass Works Limited ('VGWL' or 'the Transferor Company 2') AND Fennel Investment and Finance Private Limited ('FIFPL' or 'the Transferor Company 3') WITH Borosil Glass Works Limited ('BGWL' or 'the Transferee Company') And their respective Shareholders and Creditors. This Scheme of Amalgamation is proposed to merge HTPL, VGWL, and FIFPL with BGWL without winding up the Transferor Companies pursuant to the relevant provisions of the Companies Act.
2. The Counsel for the Applicants further submits that HTPL is engaged into manufacturing of opal and melamine glassware items. VGWL is engaged into manufacturing of range of glassware items and sells its products to BGWL. FIFPL is a Non- Banking Financial Company. Its main business is of making investments and BGWL is a market leader for laboratory glassware and microwavable kitchenware in India. It undertakes business mainly through 2 divisions, scientific and industrial product division and consumer product division.
3. The Counsel of the Applicants further submits that the rationale for the merger of HTPL, VGWL and FIFPL with BGWL is as under:
 - The merger of HTPL, FIFPL and VGWL would lead to consolidation of entities and business operations of HTPL and VGWL with BGWL which would result in the following benefits:

- Reduction of administrative, operative and marketing costs;
 - Reduction of legal and regulatory compliances;
 - Greater administrative efficiency; and
 - Operational rationalization, organizational efficiency and optimal utilization of various resources
- The merger of FIFPL would also result in elimination of cross holdings between the group companies, thereby simplifying the group structure.
4. That the meeting of the Equity Shareholders of HTPL be convened and held at 1101, Crescenzo, G-Block, Opp. MCA Club, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra – 400 051 on Thursday, November 16, 2017 at 10:30 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation of HTPL, VGWL, FIFPL with BGWL and their respective shareholders and creditors.
 5. That the meeting of the Sole Preference Shareholder of HTPL be convened and held at 1101, Crescenzo, G-Block, Opp. MCA Club, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra – 400 051 on Thursday, November 16, 2017 at 11.00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation of HTPL, VGWL, FIFPL with BGWL and their respective shareholders and creditors. The Quorum of the meeting of the Preference Shareholder shall be 1 (One).
 6. That the meeting of the Equity Shareholders of VGWL be convened and held at 1101, Crescenzo, G-Block, Opp. MCA Club, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra – 400 051 on Thursday, November 16, 2017 at 11:30 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Scheme of Amalgamation of HTPL, VGWL, FIFPL with BGWL and their respective shareholders and creditors.
 7. That the meeting of the Equity Shareholders of FIFPL be convened and held at 1101, Crescenzo, G-Block, Opp. MCA Club, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra – 400 051 on Thursday, November 16, 2017 at 12:30 p.m. for the purpose of considering and, if thought fit, approving with or without

modification(s) the proposed merger embodied in the Scheme of Amalgamation of HTPL, VGWL, FIFPL with BGWL and their respective shareholders and creditors.

8. That the meeting of the Equity Shareholders of BGWL be convened and held at Textiles Committee Auditorium, Textiles Committee Building, P. Balu Road, Near Tata Press, Prabhadevi Chowk, Mumbai, Maharashtra – 400 025 on Thursday, November 16, 2017 at 02:30 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Scheme of Amalgamation of HTPL, VGWL, FIFPL with BGWL and their respective shareholders and creditors.
9. That at least one month before the said Meeting of the Equity Shareholders of HTPL, VGWL, FIFPL and BGWL 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 Air Mail / Courier / Registered Post / Hand Delivery / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the Company for the purpose of receiving such notices by email), addressed to each of the shareholders, at their last known address or email addresses as per the records of the respective company.
10. That at least one month before the meeting of the Equity Shareholders of HTPL, VGWL, FIFPL and BGWL 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 HTPL, VGWL, FIFPL and BGWL as aforesaid and / or at the office of its Advocates, M/s. Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400 071.
11. 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.

12. That Mr. P. K. Kheruka, Director of HTPL and failing him, Mr. Shreevar Kheruka, Director of HTPL, shall be the Chairman of the aforesaid meeting of the Equity & Preference Shareholders of HTPL to be held at 1101, Crescenzo, G-Block, Opp. MCA Club, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra - 400 051 on Thursday, November 16, 2017 at 10:30 a.m. and 11:00 a.m. respectively or any adjournment or adjournments thereof. The Scrutinizer for the meeting of the Equity & Preference Shareholders of HTPL shall be Mr. Virendra Bhatt, Practicing Company Secretary (Membership No. 1157).
13. That Mr. S. C. Mehta, Director of VGWL and failing him, Mr. Dharmesh Naik, Director of VGWL, shall be the Chairman of the aforesaid meeting of the Equity Shareholders of VGWL to be held at 1101, Crescenzo, G-Block, Opp. MCA Club, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra - 400 051 on Thursday, November 16, 2017 at 11:30 a.m. or any adjournment or adjournments thereof. The Scrutinizer for the meeting shall be Mr. Virendra Bhatt, Practicing Company Secretary (Membership No. 1157).
14. That Mr. B. L. Kheruka, Director of FIFPL and failing him, Mr. P. K. Kheruka, Director of FIFPL, shall be the Chairman of the aforesaid meeting of the Equity Shareholders of FIFPL to be held at 1101, Crescenzo, G-Block, Opp. MCA Club, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra - 400 051 on Thursday, November 16, 2017 at 12:30 p.m. or any adjournment or adjournments thereof. The Scrutinizer for the meeting shall be Mr. Virendra Bhatt, Practicing Company Secretary (Membership No. 1157).
15. That Mr. B. L. Kheruka, Executive Chairman of BGWL and failing him, Mr. P. K. Kheruka, Non-Executive Vice Chairman of BGWL, shall be the Chairman of the aforesaid meeting of the Equity Shareholders of BGWL to be held at Textiles Committee Auditorium, Textiles Committee Building, P. Balu Road, near Tata Press, Prabhadevi Chowk, Mumbai, Maharashtra - 400 025 on Thursday, November 16, 2017 at 2:30 p.m. or any adjournment or adjournments thereof. The Scrutinizer for the meeting shall be Mr. Virendra Bhatt, Practicing Company Secretary (Membership No. 1157).

16. 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).
17. That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
18. 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 Applicants at their respective Registered Office(s) not later than 48 hours before the aforesaid meeting.
19. That the value and number of the shares of each shareholder shall be in accordance with the books / register of HTPL, VGWL, FIFPL and BGWL 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.
20. 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.
21. 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.
22. HTPL, VGWL, and FIFPL are also directed to serve notice along with copy of scheme upon Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013. The Tribunal is appointing Chartered Accountant, M/s. S. P. Sakhala & Co. with remuneration of Rs. 50,000/- 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.

23. HTPL and VGWL are 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) the Official Liquidator, Mumbai (iv) 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 with copy of such representations shall simultaneously be served upon HTPL and VGWL, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
24. FIFPL 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) The Reserve Bank of India, Mumbai (iv) the Official Liquidator, Mumbai (v) 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 with copy of such representations shall simultaneously be served upon FIFPL, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
25. BGWL 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) Securities and Exchange Board of India (SEBI) (iv) BSE Limited (v) 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 with copy of such representations shall simultaneously be served upon BGWL, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
26. The Counsel for FIFPL and BGWL submits that there are no secured creditors in FIFPL and BGWL. The Counsel for HTPL, VGWL, FIFPL and BGWL further submits that since the Scheme is an arrangement between the Applicant Companies and their respective shareholders only, a meeting of the shareholders of HTPL, VGWL, FIFPL and

BGWL are proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. This bench hereby directs the HTPL to issue notice to all Secured Creditors and to Unsecured Creditors having an outstanding balance of Rupees two lakh and above. This bench hereby also directs the VGWL to issue notice to all Secured Creditors and to such Unsecured Creditors having an outstanding balance of Rupees two lakh and above. This bench hereby also directs the FIFPL to issue notice to all Unsecured Creditors. Further, this bench hereby also directs the BGWL to issue notice to all such Unsecured Creditors having an outstanding balance of Rupees two lakh and above, 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 respective companies.

27. Petitioners to file affidavit of service in the Registry proving dispatch of notices to the shareholders, secured creditors (as applicable) and unsecured creditors, publication of notices in newspapers and notices to the regulatory authorities as stated above and do 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 Kumār, Member (J)