

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO. 834 OF 2017

AND

CSP NO. 833 OF 2017

Under Section 230-232 of the Companies
Act, 2013

In the matter of Scheme of Amalgamation of
ALKYL SPECIALITY CHEMICALS LIMITED,
the Transferor Company with ALKYL AMINES
CHEMICALS LIMITED, the Transferee
Company.

ALKYL SPECIALITY CHEMICALS LIMITED

....Petitioner/ the Transferor Company

AND

ALKYL AMINES CHEMICALS LIMITED

....Petitioner/ the Transferee Company

Judgement/ order delivered on 28th September, 2017

Coram:

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

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

For the Petitioner(s): Mr. Rajesh Shah with Mr. Ahmed M Chunawala

i/b M/s. Rajesh Shah & Co., Advocate for the Petitioner.

Per : B.S.V. Prakash Kumar Hon'ble Member (J)

ORDER:

1. Heard learned counsel for 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 Amalgamation

of ALKYL SPECIALITY CHEMICALS LIMITED, the Transferor Company with ALKYL AMINES CHEMICALS LIMITED, the Transferee Company.

2. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to a Scheme of Amalgamation of ALKYL SPECIALITY CHEMICALS LIMITED, the Transferor Company with ALKYL AMINES CHEMICALS LIMITED, the Transferee Company.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in their Company Scheme Application Nos. 29 of 2017 and 642 of 2017 of the National Company Law Tribunal.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies 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, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business of manufacture and marketing of chemicals product, namely surfactants such as betaines

and peralizing agents, other Specialty and Chemicals in general and the Transferee Company has been carrying on the business as manufactures and producers of heavy and fine organic and inorganic chemicals such as amines, alcohols, acids, alkalies, pesticides, weedicides, fungicides, insecticides, fertilizers, drugs, pharmaceuticals, rubber chemicals, corrosion-preventing chemicals. As per the opinion of the management all the companies are under the same management and the shareholding owned and controlled by same promoters and that both the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company and that the amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company and that the amalgamated Company will have the benefit of the combined assets and cash flows of the two companies and that the combined resources of the amalgamated company will be conducive to enhance its capability to face competition in the market place more effectively and it will be conducive to better and more efficient and economical control and conduct of the Companies and with the enhanced capabilities and resources at its disposal, the amalgamated Company will have greater flexibility to compete more effectively and a larger and growing Company will mean enhanced financial and growth prospects for the people and organizations connected with the Company.

7. The Regional Director has filed a Report on 25th day of September, 2017 stating therein, 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 (Ind AS-8) etc.,*
- b) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. The Companies have served copy of this Scheme along with relevant orders etc. further, the Regional Director has also issued reminder 13/09/2017*
- 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 to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company*
- d) As per Clause 3.4 Definition of the Scheme. "The Appointed Date" means the 1st day of April, 2016 or such other date as the Hon'ble Court of Judicature at Mumbai or other Competent Authority may otherwise direct/ fix. In this regard, it is submitted in terms of provisions of Section 232(6) of the Companies Act, 2013 it should be 1st Day of April, 2016: and*
- e) In view of the observation of ROC Mumbai, the 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) In accordance to proviso to Section 232(3) of the Companies Act, 2013, the Company may be directed to file a Certificate from the Company's Auditors to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting*

Standards as prescribed under Section 133 of the Companies Act, 2013.

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, if applicable) for 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), if applicable etc.
9. So far as the observation in paragraph IV (b) and (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company /Transferee 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.
10. So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the appointed date will be 1st April, 2016.
11. So far as the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Company have filed the same.
12. So far as the observation in paragraph IV (f) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner

Companies submits that it is already annexed to the Company Scheme petition in the abovementioned Petition.

13. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 12 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
14. The Official Liquidator has filed his report on 13th July, 2017 in the Company Scheme Petition No. 834 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.
15. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law including but not limited to Companies Act, 2013; Income Tax Act; Accounting Standards and various other applicable statutory acts and is not contrary to public policy.
16. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 834 of 2017 is made absolute in terms of prayers clause (a) to (d) thereof and 833 of 2017 is made absolute in terms of prayer clauses (a) to (c) thereof .
17. 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 physical copy, as per the relevant provisions of the Companies Act 2013.

18. The Petitioner Companies to lodge a copy of this Order and the Scheme 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 date of receipt of the order, if any.
19. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition No. 834 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.
20. 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.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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