

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

TCSP NO. 238 OF 2017

AND

TCSP NO 239 OF 2017

TAO PLASTICS PRIVATE LIMITED

...Petitioner/ Transferor Company

AND

HAMILTON WRITING INSTRUMENTS PRIVATE LIMITED

...Petitioner/ Transferee Company

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 read with Section 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Scheme of Amalgamation ('Scheme') of Tao Plastics Private Limited ('the Transferor Company') with Hamilton Writing Instruments Private Limited ('the Transferee Company') and their respective shareholders.

Order delivered on 27<sup>th</sup> July, 2017.

Coram:

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

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

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co  
Mr. Ramesh Golap, Assistant Director in the office of Regional  
Director

Per: **B.S.V. Prakash Kumar, Member (J)**

Order

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of the Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of Tao Plastics Private Limited ('the Transferor

Company') with Hamilton Writing Instruments Private Limited ('the Transferee Company') and their respective shareholders.

3. Learned Counsel for the Petitioner Companies states that the Transferor Company is engaged in the business of manufacturing of goods for domestic and commercial use from PVC sheets, plastic products, chemical products, glass products and metal products. The Transferee Company is engaged in the business of manufacturing of writing instruments such as pens, plastic products and stationery items.
4. The proposed Scheme will lead to integration of the business operations and provide significant drive to the growth of the merged company. The consolidation of the activities by way of a merger will result in economy of scale, synergies of operations, better, efficient and economical management and a stronger capital and financial base for future growth / expansion. Further, the proposed merger will result in reduction in overheads, administrative, managerial and other expenditure, operational rationalization, organizational efficiency, and optimal utilization of various resources.
5. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Directions.
7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the rules made there under whichever is applicable. The said undertaking is accepted.

8. The Regional Director has filed his report dated 25<sup>th</sup> May 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:

- 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 Standard such as AS-5 (IND AS – 8) etc.,*
- b) *As per Clause 1.2, Definitions of the scheme “Appointed Date” means the 1<sup>st</sup> day of July 2016 or such other date as may be approved by the High Court of Judicature at Bombay or any other appropriate authority as may be applicable. In this regard, it is submitted in terms of provisions of section 232 (6) of the Companies Act, 2013 it should be 1<sup>st</sup> day of July 2016.*
- 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 2<sup>nd</sup> November 2016 has served a copy company scheme petition No. 751 & 752 of 2016 along with the relevant orders etc. Further this Directorate has also issued a reminder 30.06.2017 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) *Regarding clause 20 (b) of the Scheme (Residual Provisions) it is stated that “ The Transferee Company shall be entitled to file/revise its income tax returns, TDS Certificates, TDS returns, wealth tax returns and other statutory returns, if required, and shall have right to claim refunds, advance tax, credits, credits of tax deducted at source, credit of foreign taxes paid/withheld etc, if any, and may be required consequent to implementation of this scheme” in this regard it is submitted such action by the Transferee Company is subject to the approval of IT Department.*

9. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Transferee Company through its Counsel undertakes that 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 Standard such as AS-5 (IND AS – 8) etc as may be applicable .
10. In so far as observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel confirms that the Appointed date shall be 1<sup>st</sup> day of July 2016 in terms of provisions of section 232 (6) of the Companies Act, 2013.
11. In so far as observations made in paragraph IV (c), (d) and (e) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
13. The Official Liquidator has filed his report on 23<sup>rd</sup> June 2017 stating therein that the Affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal.
14. 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. None of the parties concerned have come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 238 and 239 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

16. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated 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, if any, on the same within 60 days from the date of receipt of the order.
17. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically, along with e-form INC 28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Company in Company Scheme Petition No 238 and 239 of 2017 to pay sum of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of the Order.
19. All authorities concerned to act on certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
20. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

sd/-  
V. Nallasenapathy, Member (T)

sd/-  
B.S.V Prakash Kumar, Member (J)