

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

CSP NO. 520 OF 2017

AND

CSP NO. 525 OF 2017

AND

CSP NO. 530 OF 2017

AND

CSP NO. 533 OF 2017

AND

CSP NO. 510 OF 2017

AND

CSP NO. 514 OF 2017

Under Section 230-232 of the Companies  
Act, 2013

In the matter of Composite Scheme of  
Arrangement between STANDARD GREEN  
BIO ENERGY PRIVATE LIMITED ('SG Bio or  
'Demerged Company 1' or 'Transferor  
Company 1') and SKY BIO PHARMA (INDIA)  
LIMITED ('Sky Bio' or 'Demerged Company 2'  
or 'Transferor Company 2') and UNITED  
ADDITIVES PRIVATE LIMITED ('United  
Additives or 'Transferor Company 3') and  
STANDARD OILS & GREASES PRIVATE  
LIMITED ('SOGPL' or 'Resulting Company 1')  
and S. G. PROPERTIES PRIVATE LIMITED  
(('SGPPL' or 'Resulting Company 2') and  
ATLANTIC LUBRICANTS & SPECIALITIES  
PRIVATE LIMITED ('ALSPL' or 'Transferee  
Company') and their respective shareholders

STANDARD GREEN BIO ENERGY PRIVATE LIMITED

....Petitioner/ the Demerged Company 1/ the Transferor Company 1

AND

SKY BIO PHARMA (INDIA) LIMITED

....Petitioner/ the Demerged Company 2/ the Transferor Company 2

AND

UNITED ADDITIVES PRIVATE LIMITED

....Petitioner/ the Transferor Company 3  
AND

STANDARD OILS AND GREASES PRIVATE LIMITED

....Petitioner/ the Resulting Company 1  
AND

S.G. PROPERTIES PRIVATE LIMITED

....Petitioner/ the Resulting Company 2  
AND

ATLANTIC LUBRICANTS & SPECIALITIES PRIVATE LIMITED

....Petitioner/ the Transferee Company

Judgement/ order delivered on 14<sup>th</sup> September 2017

Coram:

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

SH. 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 : SH. 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 Composite Scheme of Arrangement between STANDARD GREEN BIO ENERGY PRIVATE LIMITED ('SG Bio' or 'Demerged Company 1' or 'Transferor Company 1') and SKY BIO PHARMA (INDIA) LIMITED ('Sky Bio' or 'Demerged Company 2' or 'Transferor Company 2') and UNITED ADDITIVES



PRIVATE LIMITED ('United Additives or 'Transferor Company 3') and STANDARD OILS & GREASES PRIVATE LIMITED ('SOGPL' or 'Resulting Company 1') and S. G. PROPERTIES PRIVATE LIMITED ('SGPPL' or 'Resulting Company 2') and ATLANTIC LUBRICANTS & SPECIALITIES PRIVATE LIMITED ('ALSPL' or 'Transferee Company') and their respective shareholders.

2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to a Composite Scheme of Arrangement between STANDARD GREEN BIO ENERGY PRIVATE LIMITED ('SG Bio or 'Demerged Company 1' or 'Transferor Company 1') and SKY BIO PHARMA (INDIA) LIMITED ('Sky Bio' or 'Demerged Company 2' or 'Transferor Company 2') and UNITED ADDITIVES PRIVATE LIMITED ('United Additives or 'Transferor Company 3') and STANDARD OILS & GREASES PRIVATE LIMITED ('SOGPL' or 'Resulting Company 1') and S. G. PROPERTIES PRIVATE LIMITED ('SGPPL' or 'Resulting Company 2') and ATLANTIC LUBRICANTS & SPECIALITIES PRIVATE LIMITED ('ALSPL' or 'Transferee Company') and their respective shareholders
3. The Petitioner Companies have approved the said Composite 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 states that the Petitions have been filed in consonance with the order passed in their Company Scheme Application Nos. 379 of 2017, 401 of 2017, 382 of 2017, 400 of 2017, 383 of 2017 and 362 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 direction 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, 1956/2013 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 1 at present is in the business growing, trees and plantations which can be used for manufacturing of bio fuel and energy and eco-friendly generation, transmission, distribution of power and electricity. It also has a business undertaking comprising of Bio Energy Plantations for development of Alternate Fuels & Bio Lubricants for Industrial & non industrial uses located at Madurai. The Transferor Company 2 at present is in the business of trading and manufacturing of Components and Compounds. Additionally, it also has a Lease Undertaking located at MIDC. The Transferee Company at present is in the business of manufacture and trading of lubricants, greases, coolants and brake fluids As per the opinion of the management, the Demerger of the Demerged Undertakings of the Demerged Companies to the Resulting Companies and amalgamation of the Transferor Companies with Transferee Company pursuant to this Scheme shall, inter alia, result in the following benefits:

- a. Simplification / streamlining of the holding structure;
- b. Stronger business focus on individual businesses / projects / market as the business risks and growth strategies related to these businesses / projects / market are significantly different;



- c. Enable unlocking of value of the businesses, as and when required;
  - d. Building strong capability to effectively meet future challenges in competitive business environment; and
  - e. Facilitate investment and strategic partnership for individual businesses / projects.
7. The Regional Director has filed a Report on 1<sup>st</sup> 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:*

- 1 The tax implications 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.*
- 2 It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 03.05.2017. The office of the Directorate also has issued a reminder dated 28.08.2017.*
- 3 As per Clause 1.2 Definitions of the Scheme, “Appointed Date” means the close of business hours of March 31, 2017 or any other date as may be decided by the respective Board of Directors of the Transferor Company and the Resulting Companies, being the time and date with effect from which this Scheme shall be deemed to be effective. In this regard, it is submitted in terms of provisions of Section 232(6) of the Companies Act, 2013 it should be 31st March, 2017;*
- 4 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.

5 Petitioner in clause 4.I has inter alia mentioned in line 3 that Demerged undertaking- 1, 2 and 3 will be transferred to the resulting company.

In this regard it is submitted that the scheme is Composite Scheme of Arrangement and Amalgamation between Standard Green Bio-Energy Private Limited , Demerged I transferor company-] , Sky Bio-Pharma Limited, Demerged I transferor company-2 , United Additives Private Limited, the Transferor Company, with Standard Oils & Creases Private limited, the Resulting company-}, S.G. Properties Private limited, the Resulting company -2 and Atlantic Lubricants And Specialties Private Limited , the transferee company and their respective shareholders pursuant to the provisions of section 230-232 of the Companies Act, 2013. There is no demerged undertaking -3 and hence it is submitted that the Petitioner may be directed to make necessary corrections in the scheme

6 Petitioner in clause 4.5 has inter alia mentioned that main object of the Memorandum and Association of the Resulting Company-1 shall stand altered by inserting two clauses as mentioned in the scheme. In this regard it is submitted that, the petitioner resulting company - 1 have to undertake tofile requisite forms before the Registrar of Companies for alteration of Memorandum of Association with complying provisions of Companies Act read with rules.

7 Petitioner in clause 5.3 and 11.3 of the scheme has inter alia mentioned that the Resulting Companies/Transferee Company shall and to the extent required, increase their Authorized Share Capital to facilitate issue of equity shares under this Scheme

In this regard, petitioner companies have to undertake to comply with provisions of Companies Act read with rules also file requisite forms with Registrar.

8 Petitioner in Part A: Definitions and Share Capital Details vide point no. F of the scheme has inter alia mentioned that Atlantic Lubricants & Specialities Private Limited is a company incorporated under the Companies Act, 1956 with corporate identification number U2320JMH2002PTC 138368 and having its registered office at 301,



*Ketan Apartments, 233 R B Mehta Marg, Ghatkopar (East), Mumbai - 400 077 (" Resulting Company 2 ").*

*The Deponent prays that Petitioner may be directed to make necessary corrections and substitute "Transferee Company" in place of "Resulting Company 2 ".*

9      *Petitioner in Clause 4.1.m of the scheme has inter alia mentioned that upon the scheme coming into effect, the Demerged Companies and the Resulting companies shall be entitled to file/ revise/reopen their respective financial statements (including balance sheet and profit and loss statement) and its statutory/tax returns and related tax payment certificates and to claim refunds/credits and advance tax / TDS / minimum alternate tax credits as may be required consequent to the implementation of the Scheme.*

*It is submitted .that the Petitioner Company may be directed that any changes vide filing/revising/reopening of respective financial statements (including balance sheet and profit and loss statement) and its statutory/tax returns and related tax payment certificates and to claim refunds/credits and advance tax/TDS/minimum alternate tax credits as may be required consequent to the implementation of the scheme should be in accordance with the provisions of the Income Tax Act, 1961; Companies Act, 1956 and 2013 and other acts as applicable and rules thereof*

8.    So far as observations made in paragraph IV(1) and (2) of the Report of Regional Director are concerned, the Counsel for the Petitioners submit that that the Petitioner Companies undertake to comply with all applicable provisions of the Income-tax Act 1961 and all tax issue arising out of the Scheme will be met and answered in accordance of law.
9.    So far as observations made in paragraph IV(3) of the Report of Regional Director are concerned, the Petitioner Companies confirm

that there will not be any change in the Appointed Date which shall be the close of business hours of 31 March, 2017

10. So far as observations made in paragraph IV(4) of the Report of 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(5) of the Report of Regional Director are concerned, the Petitioner Companies submit that the same has been corrected by way of Miscellaneous Application No. 389 of 2017.
12. So far as observations made in paragraph IV(6) of the Report of Regional Director are concerned, the Petitioner Companies undertake to comply with the relevant sections of the Companies Act, 2013 read with rules and to file the requisite forms with the Registrar of Companies for alteration of the Memorandum of Association
13. So far as observations made in paragraph IV(7) of the Report of Regional Director are concerned, the Petitioner Companies undertake to comply with the provisions of the Companies Act and file requisite forms with the Registrar of Companies.
14. So far as observations made in paragraph IV(8) of the Report of Regional Director are concerned, the Petitioner Companies submit that the same has been corrected by way of Miscellaneous Application No. 389 of 2017.
15. So far as observations made in paragraph IV(9) of the Report of Regional Director are concerned, the Petitioner Companies submits



- that they shall comply with the provisions of Income Tax Act, 1961, and other acts as applicable and rules thereof in the course of filing / revising / reopening of respective statutory/tax returns, payment certificates, etc. The Companies further submit that they would not be re-opening their respective financial statement under Companies Act, 1956 and 2013
16. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 15 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
  17. The Official Liquidator has filed his report on 23 June, 2017 in the Company Scheme Petition Nos. 520, 525 & 530 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.
  18. 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.
  19. Since all the requisite statutory compliances have been fulfilled, Company Petition Nos. 520, 525, 530, 533, 510 and 514 of 2017 is made absolute in terms of prayers clause (a) to (c).
  20. Petitioners are directed to lodge a copy of this order along with a copy of the Composite Scheme of Arrangement 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 1956 / 2013.

21. 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 the date of receipt of the order, if any.
22. 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 Nos. 520, 525 & 530 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.
23. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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

Date : 14/09/2017