

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME APPLICATION NO. 648 (MAH) OF 201

In the matter of the Companies Act, 2013

And

In the matter of Section 230 read with Section 232 and other applicable provisions of the
Companies Act, 2013;

And

In the matter of Scheme of Arrangement and Reconstruction involving demerger of
Specified Undertaking of Setco Chemicals (India) Private Limited into CYMK Inks and
Coatings Private Limited and their respective members and creditors

- 1) Setco Chemicals (India) Private Limited
(CIN: U26933MH1985PTC036470)

A company incorporated under the
provisions of Companies Act, 1956 and
having its registered office at B/24,
Basement floor, Bombay Market
Apartments Co-operative Society Ltd,
Tardeo Main Road Mumbai 400034.
In the state of Maharashtra

And

..... **Applicant Transferor
Company**

- 2) CYMK Inks and Coatings Private Limited
(CIN: U24233MH2015PTC270234)

A company incorporated under the
provisions of Companies Act, 2013 and
having its registered office at B/24,
Basement floor, Bombay Market
Apartments Co-operative Society Ltd,
Tardeo Main Road Mumbai 400034
In the state of Maharashtra

..... **Applicant Transferee
Company**

Coram: B. S. V. Prakash Kumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

Present For the Applicant : Mr. Sanjay Udeshi a/w Mr. Darshan Ashar and Mr. Akshay
Udeshi Advocates i/b Sanjay Udeshi & Co, Advocate(s) for Applicant Transferor
Company and Applicant Transferee Company

Dated: 5th July 2017

MINUTES OF ORDER

UPON a joint application filed by the Applicant Transferor Company and Applicant Transferee Company above named **AND UPON HEARING** Shri Sanjay Udeshi, Advocate for the Applicant Transferor Company and Applicant Transferee Company **AND UPON READING** Affidavits dated 24th day of May, 2017 of Mr. Shamit V. Desai, an Authorised Signatory of the Applicant Transferor Company of Mumbai and Mr. Tapan J. Solanki, the Director of the Applicant Transferee Company of Mumbai verified by an Affidavit and the Annexures in support of the Application and the Exhibits therein referred to and upon oral submissions of the Learned Counsel for the Applicant Transferor Company and Applicant Transferee Company, IT IS ORDERED:

- (1) That a meeting of the Equity Shareholders of the Applicant Transferor Company, shall be convened and held at its registered office at B/24, Basement floor, Bombay Market Apartments Co-operative Society Ltd, Tardeo Main Road Mumbai 400034 on Wednesday, 23rd day of August, 2017 at 1:00 pm, for the purpose of considering, and if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement and Reconstruction involving demerger of Specified Undertaking of Setco Chemicals (India) Private Limited into CYMK Inks and Coatings Private Limited and their respective members and creditors (“Scheme of Arrangement and Reconstruction”).
- (2) That at least one month before the meeting of the Equity Shareholders of the Applicant Transferor Company, to be held as aforesaid, a notice convening the said meeting, at the place, date and time as aforesaid, together with copy of the Scheme of Arrangement and Reconstruction, a copy of statement disclosing all material facts as required to be sent under Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 notified on 14th December, 2016 and the prescribed form of Proxy, shall be sent by Courier/ Registered Post/Speed Post/ Hand Delivery or through e-mail (to those shareholders whose e-mail addresses are duly registered with the Applicant Transferor Company for the purpose of receiving such notices by e-mail), addressed to each of the Equity Shareholders of the Applicant Transferor Company at their last known address or e-mail addresses as per the records of the Applicant Transferor Company.

- (3) That at least one month before the meeting of the Equity Shareholders of the Applicant Transferor Company, 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 the copies of the Scheme of Arrangement and Reconstruction, the Statement required to be furnished pursuant to Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 and form of proxy can be obtained free of charge from the registered office of the Applicant Transferor Company as aforesaid and/or at its Advocates office M/s Sanjay Udeshi & Co. at 402-B, Vikas Building, Top Floor, N.G.N. Vaidya Road, Fort, Mumbai- 400001.
- (4) That the Notice of the meeting shall be advertised in two local Newspapers viz 'Free Press Journal' in English language and 'Navshakti' in Marathi language both having circulation in Mumbai, not less than 30 days before the date fixed for the meeting.
- (5) That Ms. Reshma Solanki, Authorised Person of the Applicant Transferor Company, and failing her, Mr. Yogesh Solanki, Managing Director of the Applicant Transferor Company, and failing him, Mr. Jayant Solanki, Director of the Applicant Transferor Company shall be the Chairperson of the meeting of the Equity shareholders of the Applicant Transferor Company to be held at B/24, Basement floor, Bombay Market Apartments Co-operative Society Ltd, Tardeo Main Road Mumbai 400034 on Wednesday, 23rd day of August, 2017 at 1:00 pm, or at any adjournment or adjournments thereof.
- (6) That Mrs. Sandhya Malhotra, Practising Company Secretary, is hereby appointed as Scrutinizer of the meeting of Equity Shareholders of the Applicant Transferor Company to be held at B/24, Basement floor, Bombay Market Apartments Co-operative Society Ltd, Tardeo Main Road Mumbai 400034 on Wednesday, 23rd day of August, 2017 at 1:00 pm, or at any adjournment or adjournments thereof.
- (7) That the Chairperson appointed for the aforesaid meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairperson shall have all powers as per Article 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 any

or other matter including an amendment to the Scheme of Arrangement and Reconstruction, if any, proposed at the meeting by any person(s).

- (8) That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under section 103 of the Companies Act, 2013.
- (9) That voting by proxy or Authorised representative in case of body corporate be permitted, provided that a proxy in the prescribe form/ Authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Transferor Company at its registered office at B/24, Basement floor, Bombay Market Apartments Co-operative Society Ltd, Tardeo Main Road Mumbai- 400 034 not later than 48 hours before the aforesaid meeting.
- (10) That the value and number of the shares of each Equity Shareholder shall be in accordance with the book/ register of the Applicant Transferor Company and where the entries in the books/ register are disputed, the Chairperson of the meeting shall determine the value for the purpose of the aforesaid meeting and his / her decision in that behalf would be final.
- (11) That the Chairperson 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.
- (12) That the Chairperson of the meeting to report to this Tribunal, the results of the aforesaid meeting within thirty (30) days of the conclusion of the meeting.
- (13) That Counsel for the Applicant Company submit that since the Scheme is an Arrangement and Reconstruction between the Applicant Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby directs the Applicant Transferor Company to issue notice to secured creditors 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 Applicant Company. This bench hereby also directs the Applicant Transferor Company to issue notice to unsecured creditors 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 Applicant Transferor Company.

- (14) The Applicant Company is directed to serve notices alongwith copy of Scheme of Arrangement and Reconstruction, the explanatory statement and the disclosures mentioned under Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 upon: (i) Concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Transferor Company, failing which, it shall be presumed that the Authorities have no representations to make on the proposal.
- (15) Applicant Transferor Company to file Affidavit of Service in the Registry proving dispatch of notices upon shareholders, creditors, notices to regulatory authorities as stated in Clause 15 above and publication of notices in newspapers.
- (16) That a meeting of the Equity Shareholders of the Applicant Transferee Company, shall be convened and held at registered office at B/24, Basement floor, Bombay Market Apartments Co-operative Society Ltd, Tardeo Main Road Mumbai 400034 on Wednesday, 23rd day of August, 2017 at 3:00 pm, for the purpose of considering, and if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement and Reconstruction involving demerger of Specified Undertaking of Setco Chemicals (India) Private Limited into CYMK Inks and Coatings Private Limited and their respective members and creditors ('Scheme of Arrangement and Reconstruction').
- (17) That at least one month before the meeting of the Equity Shareholders of the Applicant Transferee Company, to be held as aforesaid, a notice convening the said meeting, at the place, date and time as aforesaid, together with copy of the Scheme of Arrangement and Reconstruction, a copy of statement disclosing all material facts as required to be sent under Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangement and

Amalgamations) Rules, 2016 notified on 14th December, 2016 and the prescribed form of Proxy, shall be sent by Courier/ Registered Post/Speed Post/ Hand Delivery or through e-mail (to those shareholders whose e-mail addresses are duly registered with the Applicant Transferee Company for the purpose of receiving such notices by e-mail), addressed to each of the Equity Shareholders of the Applicant Transferee Company at their last known address or e-mail addresses as per the records of the Applicant Transferee Company.

- (18) That at least one month before the meeting of the Equity Shareholders of the Applicant Transferee Company, 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 the copies of the Scheme of Arrangement and Reconstruction, the Statement required to be furnished pursuant to Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 and form of proxy can be obtained free of charge from the registered office of the Applicant Transferee Company as aforesaid and/or at its Advocates office M/s Sanjay Udeshi & Co. at 402-B, Vikas Building, Top Floor, N.G.N. Vaidya Road, Fort, Mumbai- 400001.
- (19) That the Notice of the meeting shall be advertised in two local Newspapers viz 'Free Press Journal' in English language and Navshakti in Marathi language both having circulation in Mumbai, not less than 30 days before the date fixed for the meeting.
- (20) That Mr. Tapan Solanki, Director of the Applicant Transferee Company, and failing him, Mr. Jayant Solanki, Director of the Applicant Transferee Company, and failing him, Ms. Vandana Solanki, Director of the Applicant Transferee Company shall be the Chairperson of the meeting of the Equity shareholders to be held at B/24, Basement floor, Bombay Market Apartments Co-operative Society Ltd, Tardeo Main Road Mumbai 400034 on Wednesday, 23rd day of August, 2017 at 3:00 pm, or at any adjournment or adjournments thereof.
- (21) That Mrs. Sandhya Malhotra, Practising Company Secretary, is hereby appointed as Scrutinizer of the meeting of Equity Shareholders of the Applicant Transferee Company to be held at B/24, Basement floor, Bombay Market Apartments Co-operative Society Ltd, Tardeo Main Road Mumbai 400034 on Wednesday, 23rd day of August, 2017 at 3:00 pm, or at any adjournment or adjournments thereof.

- (22) That the Chairperson appointed for the aforesaid meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairperson shall have all powers as per Article 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 any or other matter including an amendment to the Scheme of Arrangement and Reconstruction, if any, proposed at the meeting by any person(s).
- (23) That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under section 103 of the Companies Act, 2013.
- (24) That voting by proxy or Authorised representative in case of body corporate be permitted, provided that a proxy in the prescribe form/ Authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Transferee Company at its registered office at B/24, Basement floor, Bombay Market Apartments Co-operative Society Ltd, Tardeo Main Road Mumbai- 400 034 not later than 48 hours before the aforesaid meeting.
- (25) That the value and number of the shares of each Equity Shareholder shall be in accordance with the book/ register of the Applicant Transferee Company and where the entries in the books/ register are disputed, the Chairperson of the meeting shall determine the value for the purpose of the aforesaid meeting and his / her decision in that behalf would be final.
- (26) That the Chairperson 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.
- (27) That the Chairperson of the meeting to report to this Tribunal, the results of the aforesaid meeting within thirty (30) days of the conclusion of the meeting.
- (28) That since there are no Secured Creditors in the Applicant Transferee Company, as stated in the averment made in paragraph 21 of the Application, the question of sending them notices does not arise.

- (29) That Counsel for the Applicant Company submit that since the Scheme is an Arrangement and Reconstruction between the Applicant Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby also directs the Applicant Transferee Company to issue notice to unsecured creditors 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 Applicant Transferor Company.
- (30) The Applicant Transferee Company is directed to serve notices along with copy of Scheme of Arrangement and Reconstruction, the explanatory statement and the disclosures mentioned under Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 upon: (i) Concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Company, failing which, it shall be presumed that the Authorities have no representations to make on the proposal.
- (31) Applicant Transferor Company to file Affidavit of Service in the Registry proving dispatch of notices upon shareholders, creditors, notices to regulatory authorities as stated in Clause 30 above and publication of notices in newspapers.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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