

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

COMPANY SCHEME PETITION NO. 78 OF 2017

Imkemex India Private Limited

...Petitioner/First Transferor Company  
AND

COMPANY SCHEME PETITION NO. 79 OF 2017

Imkemex International Private Limited

...Petitioner/Second Transferor Company  
AND

COMPANY SCHEME PETITION NO. 80 OF 2017

Imkemex Marketing Private Limited

...Petitioner/ Transferee Company

In the matter of the Companies Act, 2013 other  
relevant provision of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 read with  
Sections 100 to 103 of the Companies Act, 1956  
and other applicable provisions of Companies Act  
1956 (corresponding section 230 to 232 of the  
Companies Act, 2013);

AND

In the matter of Scheme of Arrangement and  
Amalgamation of Imkemex India Private Limited  
and Imkemex International Private Limited and  
Imkemex Marketing Private Limited and their  
respective shareholders and creditors.

**CALLED FOR HEARING**

Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co., Advocate for the Petitioners in  
both Petitions.

Mr. Ramesh Gholap, Assistant Director in the office of Regional Director

**CORAM: Shri B.S.V. Prakash Kumar, Member (Judicial)**

**Shri V. Nallasenapathy, Member (Technical)**

**DATE: 19<sup>th</sup> April, 2017**

**MINUTES OF ORDER**

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the court to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Arrangement and Amalgamation of Imkemex India Private Limited ('First Transferor Company') and Imkemex

International Private Limited ('Second Transferor Company') and Imkemex Marketing Private Limited ('Transferee Company') and their respective shareholders and creditors.

3. Learned Counsel for the Petitioners states that the First Petitioner Company and the Transferee Company are engaged in business of import of goods or merchandise of any description whereas the Second Transferor Company is engaged in business of distribution of chemicals.
4. The Petitioner Companies have approved the said Scheme of Arrangement and Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
5. The Learned Counsel appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the orders passed in their respective Company Summons for Directions Nos. 853 of 2016, 854 of 2016 and 855 of 2016.
6. The learned Counsel appearing on behalf of the Petitioners has stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies undertake 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.
7. The Official Liquidator has filed his report on 7<sup>th</sup> March, 2017 inter alia, stating therein that the affairs of the First Petitioner Company and the Second Petitioner Company have been conducted in a proper manner and that the First Petitioner Company and the Second Petitioner Company may be ordered to be dissolved.

8. The Regional Director has filed his report on 12<sup>th</sup> April, 2017, *inter alia*, stating therein that save and except as stated in paragraph IV of the said report, 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:-

“

- 1) *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.*
- 2) *The Transferor Companies and the Transferee Company have submitted the proof of serving notice, upon the Income Tax Authorities for comments dated 14.02.2017 and 03.02.2017. This Directorate has also issued a reminder letter to the Income Tax Department dated 05.04.2017.*
- 3) *Certificate by the Company's Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*
- 4) *Petitioner in clause 5.2 of the scheme inter alia mentioned that the Transferee Company shall issue Redeemable Non-Cumulative Preference Shares to the members holding less than five percent of fully paid up share capital First Transferor Company and second Transferor Company and pursuant to this clause 5 unless otherwise notified in writing to receive equity shares, by the shareholders of the First Transferor Company to the Transferee Company within 30 days from the effective date.*  
*In this regard, Petitioner Company has to clarify as to why option is given only to shareholders of first transferor company.”*

9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(1) and (2) of his report is concerned, the Petitioner Company submits that the Petitioner Company is bound 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. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (3) of his report is concerned, the Petitioner Company submits that the Petitioner Company has obtained accounting certificate from the Statutory Auditor stating that the scheme is conformity with the accounting standard under section 133 of the Companies Act, 2013 and the same has been filed with Regional Director on 18<sup>th</sup> April, 2017.
11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (4) of his report is concerned, the Petitioner Company submits that the Scheme provides an option to all the public shareholders of First Transferor Company by giving them an opportunity either to encash their holding by opting for preference shares or else if they wish to continue with the Transferee Company, they can opt for equity shares of the Transferee Company. The same has not been provided to the equity shareholders of Second Transferor Company as in any case the shareholders of the Second Transferor Company are part of the promoters group.
12. The observation made by the Regional Director have been explained by this Petitioner/Transferee Company in paragraph 9 to 11 above. The clarifications and undertakings given by the Petitioner/Transferee Company are hereby accepted.
13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 78 of 2017, 79 of 2017 and 80 of 2017 filed by the

Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

15. Petitioners are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with e-Form INC-28, in addition to physical copy, within 30 days from the date of issuance of the order by the Registry.
16. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by 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. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and Petitioner Company in Company Scheme Petition No. 78 of 2017 and 79 of 2017 to pay cost of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of receipt of the order.
18. All authorities concerned to act on a certified copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
19. 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**  
(Technical)

Sd/-

**B.S.V. Prakash Kumar, Member**  
(Judicial)