

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
BENCH, MUMBAI**

TRANSFERRED COMPANY SCHEME PETITION NO 248 OF 2017

TRANSFERRED FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO 762 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 612 OF 2016

Fine Research and Development Centre Private Limited ...Transferor Company

CONNECTED WITH

TRANSFERRED COMPANY SCHEME PETITION NO 249 OF 2017

TRANSFERRED FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO 763 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 613 OF 2016

Fine Speciality Surfactants Private Limited ...Transferor Company

CONNECTED WITH

TRANSFERRED COMPANY SCHEME PETITION NO 250 OF 2017

TRANSFERRED FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 764 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 614 OF 2016

Fine Organic Industries Private Limited

... Transferee Company

In the matter of the Companies Act, 1956;

And

In the matter of Sections 391 to 394 and other applicable provisions of the Companies Act, 1956 and the Companies Act, 2013;

And

In the matter of the Scheme of Amalgamation under sections 391 to 394 of the Companies Act, 1956 and other applicable provisions of the Companies Act, 1956 and the Companies Act, 2013, of Fine Research and Development Centre Private Limited, Fine Speciality Surfactants Private Limited and Fine Organic Industries Private Limited and their respective shareholders and creditors

Called for Hearing

Mr. Peshwan Jehangir, Mr. Himanshu Vidhani, Ms Sanika Gokhale i/b Khaitan & Co, Advocates for the Transferor Companies and the Transferee Company.

Mr. Ramesh Gholap, Assistant for the Regional Director in the petitions.

Coram: Ms Ina Malhotra (J)

Date: 19th June 2017

1. Heard Learned Counsel for the Parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 as amended and the corresponding provisions of the Companies Act, 2013 for the Scheme of Amalgamation between Fine Research and Development Centre Private Limited, i.e. **Transferor Company No. 1** and Fine Speciality Surfactants Private Limited, i.e. **Transferor Company No. 2** (i.e. Transferor Company No. 1 and Transferor Company No. 2 collectively referred to as the "**Transferor Companies**") and Fine Organic Industries Private Limited, i.e. **Transferee Company** (all collectively referred to as the "**Petitioner Companies**") and their respective shareholders and creditors ("**Scheme**").

3. The Learned Counsel for the Petitioner Companies states that the Transferor Company No.1 is presently, *inter alia*, engaged in the business of the business of chemical research and development sector; the Transferor Company No.2 is presently, *inter alia*, engaged in the business of the chemical manufacturing; and the Transferee Company is presently, *inter alia*, engaged in the business of manufacturing, processing, supplying, distributing, dealing, importing, exporting of flavours, perfumes and flavouring chemicals, oil and colours, surface active agents, emulsifiers, preservatives, clouding agents, textile auxiliaries, lubricants, Oleo chemicals and their derivatives, fatty acids and their derivatives, salt and esters.

4. The Learned Counsel for the Petitioner Companies states that proposed Scheme is beneficial since, *inter alia*, through the proposed Amalgamation, the financial, managerial and technical resources, personnel capabilities, skills, expertise and technologies of the Transferor Companies and the Transferee Company, pooled in the merged entity, will lead to increased competitive

strength, cost reduction and efficiencies, productivity gains, and logistic advantages, thereby significantly contributing to future growth.

5. The Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the Company Scheme Petitions.
6. The Learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the order passed in the respective Company Summons for Directions.
7. The Learned Counsel appearing on behalf of the Petitioner Companies has further stated that the Petitioner Companies have complied with all the requirements as per directions of the Hon'ble Bombay High Court and also of this Hon'ble Tribunal and they have filed necessary affidavits of compliance. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, under the Companies Act, 1956 and 2013, and rules made thereunder, whichever is applicable. The said undertaking is accepted.
8. The Regional Director has filed his report on 11 April 2017 with respect to the Petitioner Companies ("**Report of the Regional Director**") which states that save and except as provided in the objections listed under paragraphs III (a) to (d), it appears that the Scheme is not prejudicial to the interest of shareholders and public.

“.....

- (a) *In addition to compliance of AS-14 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 Part – I Definitions & Share Capital 1.1.3 of the Scheme. “The Appointed Date” means 1st April 2015 or such other date as may be decided by the High Court. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2015;*
- (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 letters dated 24.11.2016 has served a copy company petition No 762 to 7642016 along with relevant orders etc., to IT Department. Further this Directorate has also issued a reminders dated 05.04.2017, 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.
.....”*

9. As far as the observation in paragraph III(a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that the Transferee Company undertakes to comply with all applicable Accounting Standards prescribed under the Companies Act, 2013. The above undertaking is accepted.

10. As far as the observation in paragraph III(b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that it has been correctly pointed out that Scheme records Appointed Date as 1 April 2015 or such other date as may be decided by the High Court. The Learned Counsel for the Petitioner Companies states that unless this Hon'ble Tribunal directs, the Appointed Date of the Scheme shall be 1 April 2015.

11. As far as the observation in paragraph III(c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that, pursuant to the Order dated 27 October 2016 of the Hon'ble Bombay High Court, the Petitioner Companies had, on 24 November 2016, served upon the concerned Income Tax Authority the Company Scheme Petitions, the affidavits in support thereof and notice of the hearing. The said Order dated 27 October 2016 also provides that if no response is received by the concerned Regional Director from the Income Tax Department within 15 days it may be presumed that Income Tax Department has no objection to the Scheme. Thereafter, pursuant to an Order dated 16 January 2017 of this Hon'ble Tribunal, the Petitioner Companies had, on 20 January 2017, once again served upon the concerned Income Tax Authority the notice of the hearing. Thereafter, it appears that the office of the Regional Director has also issued notice to the Income Tax Authority on 5 April 2017. No objections have been received to the Scheme from the Income Tax Department.

12. As far as the observation in paragraph III(d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that the Petitioner Companies are bound to comply with all applicable

provisions of the Income Tax Act and that all tax issues arising out of the Scheme will be met and answered in the ordinary course and in accordance with law.

13. The Official Liquidator has filed his report on 3 April 2017 stating therein that the affairs of both Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.
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.
15. The Learned Counsel for the Petitioner Companies submits that subsequent to filing the Scheme with the Hon'ble High Court, it was noticed that there was an inadvertent typographical error in the clause 2.3.1 of the Scheme. The Learned Counsel for the Petitioner Companies submits that the Scheme (including the consideration clause therein) had been approved by the Board of Directors of the Company, *inter alia*, based on the valuation report dated 18 January 2016 prepared by D.B. Shah & Associates, Chartered Accountants. The said Valuation Report, *inter alia*, provides that 406 fully paid equity shares of INR 10/- in the Transferee Company, i.e. Fine Organic Industries Private Limited be issued and allotted for every 10 equity shares of INR 100/- each in Fine Speciality Surfactants Private Limited, however, Clause 2.3.1 of the Scheme annexed to the Petition inadvertently records that 406 fully paid equity shares of INR 10/- in the Transferee Company, i.e. Fine Organic Industries Private Limited be issued and allotted for every 100 equity shares of INR 100/-, instead of 10 equity shares. The Counsel for the Petitioner Companies says that pursuant to the authority granted to the respective authorized representatives of

the Petitioner Companies under their respective Board Resolutions, have *vide* their respective letters all dated 8 March 2017, corrected the typographical error and approved the modification of clause 2.3.1 of the Scheme to correctly read “**10 (ten) equity shares**”. The Petitioner Companies have *vide* their respective Affidavits dated 9 March 2017, also placed on record the corrected Scheme (being Annexure D to the Affidavits dated 9 March 2017) along with the said letters dated 8 March 2017. The aforesaid correction to Clause 2.3.1 was informed to all the equity shareholders of all the Petitioner Companies, all of whom have *vide* their respective Consent Affidavits approved and consented to such modification. The Affidavits filed by all the equity shareholders and the Authorised Representatives of each of the Petitioner Companies have been placed before this Hon’ble Tribunal. The Learned Counsel for the Petitioner Companies further submits that such modification in the Scheme is necessary for the proper implementation of the Scheme.

16. Since all the requisite statutory compliances have been fulfilled, the amended Scheme, being Exhibit D to the Affidavits dated 9 March 2017, is hereby approved and sanctioned and the Company Scheme Petitions are made absolute in terms of prayer clauses (a) to (c) and (e) of each of the Company Scheme Petitions.
17. The Petitioner Companies to lodge a copy of this order and the Scheme, with the concerned Superintendent of Stamps, for purposes of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.
18. The 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 21/INC28, in addition to physical copy, as per relevant provisions of the Companies Act, 1956 and the Companies Act, 2013 and Rules made thereunder, whichever are applicable.

19. The Petitioner Companies are directed to pay a cost of Rs 25,000/- each to the Regional Director, Western Region, Mumbai and the Transferor Companies are directed to pay a cost of Rs 25,000/- to the Official Liquidator. Costs to be paid within four weeks from the date of the order.

20. All concerned regulatory authorities to act on a copy of this order along with Scheme attached thereto, duly authenticated by the Company Registrar, National Company Law Tribunal, Mumbai.

Sd/-

Ina Malhotra, Member (J)