

NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

COMPANY SCHEME PETITION NO.232 OF 2017.  
CONNECTED WITH  
COMPANY SCHEME APPLICATION NO.93 OF 2017.

NANAVATI CHEMEX PRIVATE LIMITED

...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 215 OF 2017.  
CONNECTED WITH  
COMPANY SCHEME APPLICATION NO.94 OF 2017.

SONERA INVESTMENTS PRIVATE LIMITED

...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 213 OF 2017.  
CONNECTED WITH  
COMPANY SCHEME APPLICATION NO.95 OF 2017.

NANAVATI ELECTRONICS PRIVATE LIMITED

...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 235 OF 2017.  
CONNECTED WITH  
COMPANY SCHEME APPLICATION NO.96 OF 2017.

MEDCHEM TECHNOLOGIES PRIVATE LIMITED

...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 222 OF 2017.  
CONNECTED WITH  
COMPANY SCHEME APPLICATION NO.97 OF 2017.

BEXIM'S TRADING AND CONSULTANCY INDIA PRIVATE LIMITED

...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 211 OF 2017.  
CONNECTED WITH  
COMPANY SCHEME APPLICATION NO.98 OF 2017.

NANAVATI SPECIALITY CHEMICALS PRIVATE LIMITED

...Petitioner Company

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 of the  
Companies Act, 2013 and other applicable  
provisions of the Companies Act, 2013 And rules  
made thereunder;

AND

In the matter of Scheme of Arrangement of NANAVATI CHEMEX PRIVATE LIMITED, The First Transferor Company, SONERA INVESTMENTS PRIVATE LIMITED, The Second Transferor Company, NANAVATI ELECTRONICS PRIVATE LIMITED, The Third Transferor Company, MEDCHEM TECHNOLOGIES PRIVATE LIMITED, The Fourth Transferor Company And BEXIM'S TRADING AND CONSULTANCY INDIA PRIVATE LIMITED, The Fifth Transferor Company With NANAVATI SPECIALITY CHEMICALS PRIVATE LIMITED, the Transferee Company.

CALLED FOR HEARING

Mr. Chandrakant Mhadeshwar, Advocates for the Petitioner Company.

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

Mr. Santosh Dalvi, Representative Official Liquidator.

Coram: Smt. Ina Malhotra Member (J)

Date: 23<sup>rd</sup> June, 2017

**MINUTES OF 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.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Arrangement of NANAVATI CHEMEX PRIVATE LIMITED, The First Transferor Company, SONERA INVESTMENTS PRIVATE LIMITED, The Second Transferor Company, NANAVATI ELECTRONICS PRIVATE LIMITED, The Third Transferor Company, MEDCHEM TECHNOLOGIES PRIVATE LIMITED, The Fourth Transferor Company And BEXIM'S TRADING AND CONSULTANCY INDIA PRIVATE LIMITED, The Fifth Transferor Company With NANAVATI SPECIALITY CHEMICALS PRIVATE LIMITED, the Transferee Company.
3. The Petitioner Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

4. The Learned Advocate appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.

5. The Regional Director has filed his Report, inter alia, stating therein that save and except as stated in paragraphs IV (1) to (5) of the said Report, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

*“(1) That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of income Tax Authority and approval of the scheme by Hon’ble High Court may not deter the Income Tax Authority to scrutinize the Tax returns filed by the petitioner Company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company.*

*(2) Certificate by the Company’s Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is on conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*

*In this regard it is requested that Petitioner may be asked to submit the certificate.*

*(3) As per the valuation report of the Chartered Accountants share exchange ratio for the preference share of SIPL, MTPL and BTCIPL for the purpose of amalgamation is not matching with clause 11 of the Scheme*

*In this regard Petitioner has to clarify and amend the Scheme.*

*(4) The Transferor Companies and the Transferee Company have not submitted the proof of serving notice, upon the Income Tax Authorities for comments.*

*(5) The petitioner Company has not submitted Chairman Report for meeting convened of equity Shareholders.”*

6. In response to the above observations the Transferee Company filed its affidavit in reply to the report of Regional Director.

7. As far as the observation of the Regional Director stated in paragraph IV (1) of his report are concerned, the Petitioner Company submits that the

Petitioner Company undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

8. As far as the observation of the Regional Director stated in paragraph IV (2) of his report is concerned, the Petitioner Company submits that the Petitioner Company has obtained necessary certificate from the Chartered Accountant as per the provision of Section 232(3) of the Companies Act, 2013 and same is annexed to the Company Scheme Petition and also served upon the Regional Director.
9. As far as the observation of the Regional Director stated in paragraph IV (3) of his report is concerned, the Petitioner Company submits that there is typographical mistake in clause 11.5 (ii) of the Scheme. The Transferee Company has filed an Affidavit, inter alia, stating that the exchange ratio for the preference share mentioned in the valuation report is correct. Further the Transferee Company undertakes to issue 1 Preference Share of Rs. 100/- each for every 10 Preference Share of the face value of Rs.10/- each held by the Shareholders in the Fifth Transferor Company.
10. As far as the observation of the Regional Director stated in paragraph IV (4) of his report is concerned, the Petitioner Companies states the all the Petitioner companies have already served copy of the Scheme to the concerned Income Tax Officer and also filed Affidavit of service in the registry. The Petitioner Companies states that no objection so far has been received by them from the concerned Income Tax Office. In any event the Petitioner Company submits that the Petitioner is undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
11. As far as the observation of the Regional Director stated in paragraph IV (5) of his report is concerned, the counsel for the Petitioner Companies

states the all the Petitioner companies have filed their chairman reports in this Tribunal, inter alia, stating that the shareholders of the all Petitioner Companies have unanimously approved the proposed Scheme. Copies of the Chairman Reports are annexed to the respective Petitions and also served upon the Regional Director.

12. The Official Liquidator has filed his report in the Company Scheme Petition Nos. 235 of 2017, 213 of 2017, 232 of 2017, 222 of 2017 and 215 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.
13. From the material on record, the Scheme of Amalgamation 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, Transferred Company Scheme Petition Nos. 235 of 2017, 213 of 2017, 232 of 2017, 222 of 2017, 215 of 2017 and 211 of 2017 are made absolute in terms of prayer clauses (a) and (b) of the respective Petitions.
15. Petitioner Company is directed to file a copy of this Order along with a copy of the Scheme of Amalgamation 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.
16. The Petitioner Company 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. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. The

Petitioners in the Company Scheme Petition Nos. 235 of 2017, 213 of 2017, 232 of 2017, 222 of 2017 and 215 of 2017 to pay costs of Rs.25,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

18. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

Smt. Ina Malhotra Member (J)