

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME APPLICATION NO 617 (MAH) OF 2017

In the matter of the Companies Act, 2013;

AND

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

AND

In the matter of Scheme of Amalgamation of Intercat Equipment (Mumbai) Private Limited and Johnson Matthey Chemicals India Private Limited and their respective Shareholders

Intercat Equipment (Mumbai) Private Limited, a Company }  
incorporated under the provisions of Companies }  
Act 1956 having its registered office at Plot No - 6A }  
MIDC Industrial Estate, Talaja, Maharashtra – 410208 }

...First Applicant Company

AND

Johnson Matthey Chemicals India Private Limited, a }  
Company incorporated under the provisions of Companies }  
Act 1956 having its registered office at Plot No - 6A }  
MIDC Industrial Estate, Talaja, Maharashtra – 410208 }

...Second Applicant Company

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates for the Applicant Company

**CORAM: Ina Malhotra, Member (Judicial)**

**DATED : 23<sup>rd</sup> day of June 2017**

**MINUTES OF THE ORDER**

1. The Counsel for the Applicants states that the present Scheme is an Amalgamation of Intercat Equipment (Mumbai) Private Limited ('the Transferor Company') and Johnson Matthey Chemicals Private Limited ('the Transferee Company') and their respective Shareholders.

2. The Counsel for the Applicants further submit that the Transferor Company is engaged in the business of design, manufacture, fabrication, assembly, development, marketing, sale and leasing of pressure vessels and related equipment used to store and inject chemical additives used in the refining of petroleum. It also provides technical services connected therewith. The Transferee Company is engaged in the business of manufacturing and trading of catalysts and advanced materials. The Company's primary business segments comprise of Process Technologies (AMOG segment), Fine Chemicals and Precious Metals in line with the global business structure.
3. The rationale for the Scheme is that the proposed amalgamation will enable consolidation of the business and operations of the Transferor Company and the Transferee Company which will provide significant impetus to growth, enable synergies, reduce operational costs, increase operational efficiencies and greater focus and enable optimal utilization of various resources as the Transferor Company and the Transferee Company are engaged in the same line of business. The amalgamation will also lead to reduction in overheads, administrative, managerial and other expenditure, and optimal utilization of various resources due to consolidation of activities.
4. That the meeting of the Equity Shareholders of the First Applicant Company be convened and held at Plot No – 6A MIDC Industrial Estate, Taloja, Maharashtra – 410208 on 8<sup>th</sup> August, 2017 at 11:30 AM for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Arrangement embodied in the Scheme of Amalgamation of Intercat Equipment (Mumbai) Private Limited and Johnson Matthey Chemicals India Private Limited and their respective Shareholders.
5. That the meeting of the Equity Shareholders of the Second Applicant Company be convened and held at Plot No - 6A MIDC Industrial Estate, Taloja, Maharashtra – 410208 on 8<sup>th</sup> August, 2017 at 11:00 AM for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Scheme of Amalgamation of Intercat Equipment (Mumbai) Private Limited and Johnson Matthey Chemicals India Private Limited and their respective Shareholders.
6. That at least one month before the said Meetings of the Shareholders of the First and Second Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations)

Rule, 2016 notified on 14<sup>th</sup> December 2016 and the prescribed Form of Proxy, shall be sent by Hand Delivery/ Courier / Registered Post / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the First and the Second Applicant Company for the purpose of receiving such notices by email), addressed to each of the Shareholders of the First and the Second Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.

7. That at least one month before the meetings of the Shareholders of the First and Second Applicant Company to be held as aforesaid, a notice convening the said Meetings, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the First and Second Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
8. That the Notice of the Meetings shall be advertised in two local newspapers viz. “Free Press Journal” in English and “Nav Shakti” in Marathi, both circulated in Mumbai not less than 30 days before the date fixed for the meeting.
9. That Mr. Alok Khetan, Director of the First Applicant Company, and failing him, Mr. Rohit Vats, Company Secretary of the First Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the First Applicant to be held at Plot No - 6A MIDC Industrial Estate, Talaja, Maharashtra – 410208 on 8<sup>th</sup> August 2017 at 11:30 AM or any adjournment or adjournments thereof.
10. That Mr. Alok Khetan, Director of the Second Applicant Company, and failing him, Mr. Saumendra Tripathy, also a Director of the Second Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Second Applicant to be held at Plot No - 6A MIDC Industrial Estate, Talaja, Maharashtra – 410208 on 8<sup>th</sup> August 2017 at 11:00 AM or any adjournment or adjournments thereof.
11. That the Chairman appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the Meetings referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act 2013 in relation to the conduct of the meetings,

including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).

12. That the quorum of the aforesaid meetings of the Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
13. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form / authorization duly signed by the person entitled to attend and vote at the meetings, are filed with the First Applicant Company at its Registered Office at Plot No - 6A, MIDC Industrial Estate, Taloja, Maharashtra – 410208 and the Second Applicant Company at its Registered Office Plot No. Plot No - 6A MIDC Industrial Estate, Taloja, Maharashtra – 410208, respectively, not later than 48 hours before the aforesaid meeting.
14. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the First and Second Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.
15. That Mr. Robert Pavrey is hereby appointed as Scrutinizer of the meetings of the Equity shareholders of the First Applicant Company proposed to be held on 8<sup>th</sup> August 2017 at Plot No - 6A, MIDC Industrial Estate, Taloja, Maharashtra – 410208 and the Second Applicant Company proposed to be held on 8<sup>th</sup> August 2017 at Plot No - 6A, MIDC Industrial Estate, Taloja, Maharashtra – 410208, Maharashtra, respectively and his remuneration is fixed as Rs. 10,000/-
16. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
17. That the Chairman of the meetings to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings.
18. The First Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Mumbai, with a direction that they

may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the First Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

19. The First, Applicant Company are also directed to serve notice along with copy of scheme upon Official Liquidator. M/s. S. U. Buch & Co., Chartered Accountants are appointed to assist the Official Liquidator to scrutinize books of accounts of the First Applicant Company for the last 5 years. The First Applicant Company to pay fees of Rs. 2,00,000/-.
20. The Second Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Second Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, Mumbai, with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
21. The Counsel for the First Applicant Company submits that there are no Secured Creditors in the First Applicant Company, therefore the question of sending notices to Secured Creditors does not arise. The Counsel for the First Applicant Company further submits that since the Scheme is an amalgamation 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 First Applicant Company to issue notice to all its Unsecured Creditors 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 First Applicant Company.
22. The Counsel for the Second Applicant Company further submits that since the Scheme is an amalgamation 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 Second Applicant

Company to issue notice to all its Secured Creditors and to its Unsecured Creditors of the value of Rs.1,00,000/- and above 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 Second Applicant Company.

23. The First and Second Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, Creditors, publication of notices in newspapers and to the regulatory authorities as stated in clauses 18 to 20 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

**Ina Malhotra, Member (Judicial)**