

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

COMPANY SCHEME PETITION NO 81 OF 2017

Trans Agro India Private Limited

.....Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO 82 OF 2017

Transworld Furtichem Private Limited

.....Petitioner/Transferee Company

In the matter of Sections 230 - 232 and any other applicable provisions of the Companies Act, 2013 read with Companies (Compromise, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Scheme of Amalgamation between Trans Agro India Private Limited and Transworld Furtichem Private Limited and their respective shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner Companies.

Mrs. P Sheela, Joint Director in the office of the Regional Director

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

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

V. Nallasenapathy, Member (Technical)

Date: 27th April 2017

MINUTES OF ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petitions and nor any party has controverted any averments made in the Petitions.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation between Trans Agro India Private Limited and Transworld Furtichem Private Limited and their respective shareholders.

3. The Counsel for the Petitioner Companies submits that the Transferor Company is engaged in the business of wholesale and retail distribution of pesticides, fertilizers, agricultural chemicals and other farm supplies under the trademark 'NUTRIFEED'. The Transferee Company is engaged in manufacturing and export of fertilizers and other allied chemicals from its various production and storage facilities in India.

4. The Counsel for the Petitioner Companies submits that the rationale for the scheme is that the proposed Scheme of Amalgamation is aimed at achieving the following business and commercial objectives:

(a) The trademark 'NUTRIFEED' used by the Transferor Company for marketing its products is well established in the domestic market and has high penetration in rural areas. The water soluble fertilizers, straight fertilizers and other related products marketed under the said trademark has tremendous potential for extending its reach in both domestic and global markets and scaling up of operations. The Transferor Company also holds licenses, strong distribution network and wide customer base in over 14 states across India.

(b) The Transferee Company has in-house manufacturing capabilities, marketing and wide distribution network in overseas countries. Thus, direct participation and capabilities of the Transferee Company would support in unveiling 'NUTRIFEED' with its myriad prospects and harnessing its potential into the domestic as well as global arena more successfully. The amalgamation will enable the amalgamated entity to grow the trademark 'NUTRIFEED' and pursue such business and other opportunities in the chemical and fertilizer segment more effectively, worldwide.

(c) The amalgamation of all the undertakings of the Transferor Company with the Transferee Company would help in maintaining a simple corporate structure and eliminate duplicate corporate procedures.

(d) The consolidation of operations of the Transferor Company and the Transferee Company by way of amalgamation will lead to a more efficient utilization of capital, superior deployment of intangibles like trademark, customer and distribution network, sales and distribution strategies and create a consolidated and diversified base for future growth of the amalgamated entity with a wider presence in the domestic and global markets. The amalgamation, would facilitate greater cohesiveness to gain market share with increased customer recognition. The amalgamation will result in administrative and operational rationalization and promote organizational efficiencies. It will prevent cost duplication that can erode financial efficiencies of the holding structure and the resultant operations will be more cost-efficient with the achievement of greater economies of scale, reduction in overheads and improvement in various other operating parameters.

(e) Amalgamation of the Transferor Company with the Transferee Company will provide an opportunity to leverage the combined assets and also bring on records certain intangible assets like trademark, customer and distributor network, customer database, subsidy enlistment under Nutrient Based Subsidy ('NBS') scheme of Government, etc. (collectively referred to as 'Trademarks') which are currently not recorded in the books of the Transferor Company, in order to build a stronger sustainable business.

(f) It would also be advantageous to combine the activities and operations of the Petitioner Companies for synergetic linkages and for the benefit of combined financial resources, manpower, customers, distributors, etc.

5. The Counsel for the Petitioner Companies further states that upon this Scheme becoming effective and in consideration for the amalgamation of the Transferor Company with the Transferee Company, the Transferee Company shall issue and allot shares credited as fully paid-up, 1 (One) fully paid-up equity share having face value of Rs. 10 each for every 10 (Ten) equity shares of Rs. 10 each in the

Transferor Company to the members of the Transferor Company and whose names appear in the Register of Members of the Transferor Company, on the Record Date or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of the Transferor Company.

6. The Counsel for the Petitioner Companies submits that the Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.
7. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction No. 846 of 2016 in the case of the Transferor Company and Company Summons for Direction No.847 of 2016 in the case of the Transferee Company, by the Hon'ble Bombay High Court and that the Company Scheme Petition has been filed in consonance with the orders passed in abovementioned Company Summons for Direction.
8. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Court / Tribunal and they have filed necessary affidavits of compliance in the Court / Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes 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 undertakings given by the Petitioner Companies are accepted.
9. The Official Liquidator has filed his report on 5th April 2017 stating therein that the affairs of the Transferor Company has been conducted in a proper manner and the Transferor Company may be ordered to be dissolved.
10. The Regional Director has filed a Report dated 12th April 2017 stating therein, save and except as stated in paragraph IV(1) to (4), it appears that the Scheme is

not prejudicial to the interest of shareholders and public. In paragraph IV, of the said Report it is 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 Companies.*
- 2) *The Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities for comments as on 25.2.2017. This Directorate has also issued reminder letter to the Income Tax Authority dated 11.04.2017.*
- 3) *Petitioner in clause 11 of the scheme inter alia has mentioned that Fractional shares shall be ignored.*
- 4) *Petitioner in clause 12 of the scheme inter alia has mentioned that the Transferee Company shall, record all the assets (i.e. all assets excluding intangible assets not recorded in the books as on 31st March 2015) and all external liabilities (i.e. all liabilities excluding reserves, accumulated and current year profits), of the Transferor Company, vested in it pursuant to this Scheme, at their respective book values as on the Appointed Date whereas petitioner company has adopted purchase method.*

Further it is mentioned that in addition to the above, intangible assets like trademark, customer and distributor network, customer database, subsidy enlistment under NBS, etc. (collectively referred to as 'Trademarks') not recorded in the books of the Transferor Company as on 31st March 2015, shall be recorded at Rs. 15,92,00,000/- (Rupees Fifteen Crores Ninety Two Lakhs Only), i.e., at the value determined by an independent valuer, in the books of the Transferee Company (Amalgamated).

In this regard it is submitted that petitioner has to postpone the appointed date if financial statement for the year ended 31.3.2016 has been filed.

11. In so far as observations made in paragraph IV(1) and IV(2) of the Report of Regional Director are concerned, the Petitioner Companies through their Counsel submits that such observations are general in nature and shall not have any bearing on the present Scheme of Amalgamation. However, the Counsel

for the Petitioner Companies also submits that the Petitioner Companies undertake to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.

12. In so far as observation made in paragraph IV(3) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submits that the shareholders of the Transferor Company and the Transferee Company have given their unanimous consents to the subject Scheme of Amalgamation. Accordingly, the proposal that the fractional shares arising pursuant to the approval of the subject Scheme of Amalgamation shall be ignored, has also been duly accepted and consented to by all the shareholders of the Transferor and the Transferee Company and hence, is in no manner prejudicial to their interests.
13. In so far as observation made in paragraph IV(4) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submits that the Appointed date is only a cut-off date on which the assets and liabilities would be transferred to the Transferee Company and filing of audited balance sheet as on 31.03.2016 does not have any bearing on the present Scheme of Amalgamation. Further, the Scheme with the Appointed Date as 1st April 2015 has been unanimously approved by all the shareholders of the Petitioner Companies and any change in the Appointed Date would invalidate the valuation undertaken by the independent valuer basis which the share exchange ratio has been determined for the purposes of the subject Scheme of Amalgamation. In this regard, the Learned Counsel also places reliance on the decisions of the Hon'ble High Court of Gujarat in the case of *Gujarat Narmada Valley Fertilizers Co Ltd – Petitioner (s) vs Respondent – Company* Petition No. 137/2011 and *Sun Pharma Advanced Research Company Ltd. – Applicant (s) vs Registrar of Companies and Regional Director – Respondent (s) – Company Application No. 74/2009* and Punjab and Haryana High Court

in the case of *Highway Cycle Industries Ltd. and Anr. – Company Appeal Nos. 1 to 3 of 2000*. The Hon'ble High Courts in the aforementioned cases have upheld the principle that fixation of the appointed date is within the domain of the Company as per the settled legal position and the Companies are free to choose the appointed date depending upon their commercial needs and exigencies and it is management's prerogative to regulate its affairs.

14. Further, with respect to the acquisition of intangibles assets collectively referred to as 'Trademarks' by the Transferee Company, but not recorded in the books of Transferor Company is concerned, the Petitioner Companies through their Counsel submits that as per Para 12 of the Accounting Standard 14 ('Accounting for Amalgamations'), under the purchase method, the transferee company can account for the amalgamation either by incorporating the assets and liabilities at their existing carrying amounts or by allocating the consideration to individual identifiable assets and liabilities of the transferor company on the basis of their fair values at the date of the amalgamation. The identifiable assets and liabilities may include assets and liabilities not recorded in the financial statements of the transferor company.

The Counsel for the Petitioners further submits that as per Para 27 to 32 of the Accounting Standard 26 ('Intangible Assets'), an intangible asset acquired in an amalgamation in the nature of purchase shall be accounted for in accordance with Accounting Standard 14. Even further, as per Para 31 of the said AS, a transferee can record an intangible asset that meets the recognition criteria, even if that intangible asset had not been recognised in the financial statements of the transferor.

15. Accordingly, the Petitioner Companies through their Counsel submits that the Transferee Company would account for the amalgamation under purchase method as per Accounting Standard 14, the intangible assets, i.e., Trademarks, not appearing in the books of the Transferor Company is proposed to be

acquired by the Transferee Company for and recorded in its books at Rs. 15,92,00,000/- based on the valuation report issued by an independent valuer and such accounting treatment is in accordance with Accounting Standard 14 ('Accounting for Amalgamation'). The said accounting treatment has also been confirmed by the statutory auditors of the Petitioner Companies in their certificates issued in compliance with sections 230 and 232 of the Companies Act, 2013.

16. The observations made by the Regional Director have been explained by the Petitioners in paragraphs 11 to 15 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
17. 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.
18. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 81 of 2017 filed by the Transferor Company has been made absolute in terms of prayer clause (a) of the Petition and Company Scheme Petition No. 82 of 2017 filed by the Transferee Company is made absolute in terms of prayer clauses (a) to (c) of the Petition.
19. 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.
20. The Petitioner Company to lodge a copy of this order and the Scheme duly certified 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.
21. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Transferor Company to pay cost of Rs. 25,000/- to the Official Liquidator, High Court Bombay.

22. Costs to be paid within four weeks from the date of receipt of the order.
23. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
24. 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 (T)

Sd/-

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