

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

**CSA NO. 713 OF 2017**

Under Section Sections 391 to 394 of the Companies Act, 1956 and Sections 230 - 232 and 234 of the Companies Act, 2013

In the matter of Scheme of Amalgamation between Asian Paints Limited ("**Applicant Company**" or "**Transferee Company**") and Asian Paints (International) Limited ("**Transferor Company**") and their respective shareholders and creditors.

Asian Paints (International) Limited	.... <b>Transferor Company</b>
Asian Paints Limited	... <b>Applicant Company/ Transferee Company</b>

Judgement/Order delivered on July 27, 2017

Coram:

Hon'ble Mr. B.S.V. Prakash Kumar, Member (J)

Hon'ble Mr. V Nallasenapathy, Member (T)

For the Applicant Company: Mr. Chirag Mody i/b AZB & Partners

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

**ORDER**

**UPON** the application of the Applicant Company abovenamed by a Notice of Admission **AND UPON HEARING** Mr. Chirag Mody, instructed by AZB & Partners, Advocates for the Applicant Company, **AND UPON READING** the Company Application along with Notice of Admission dated June 20, 2017 of Mr. Sanjeev Ahuja, General Manager- Legal of the Applicant



Company, in support of Notice of Admission along with Company Application and Exhibits therein referred to, **IT IS ORDERED THAT:**

1. The proposed Scheme of Amalgamation between Asian Paints Limited ("**Applicant Company**" or "**Transferee Company**") and Asian Paints (International) Limited ("**Transferor Company**") ("**Scheme**") provides for the transfer of the entire business of the Transferor Company to, and vesting thereof in, the Transferee Company, as a "going concern", in accordance with the terms of the Scheme and pursuant to the provisions of Sections 230-232 and 234 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as amended. The Transferor Company is a foreign company incorporated under the provisions of the Mauritius Companies Act and is a wholly owned subsidiary of the Applicant Company. The proposed Scheme will result in the following benefits: (a) rationalizing multiple foreign subsidiaries in the group to ensure optimized legal entity structure more aligned with the business by reducing the number of legal entities and reorganizing the legal entities in the group structure so as to obtain significant cost savings and/or simplification benefits; (b) significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Company and the Applicant Company; (c) elimination of administrative functions and multiple record-keeping, thus resulting in reduced expenditure; and (d) the amalgamation pursuant to the Scheme will create a focused platform for future growth of the Applicant Company. The Scheme does not affect the rights and interests of the members or creditors of the Applicant Company and does not involve any re-organisation of share capital of the Applicant Company. As on date, the assets of the Applicant Company exceed its liabilities and would be sufficient to discharge the said liabilities in future. The assets and liabilities of the Transferor Company will be appropriated under the Scheme by the Applicant Company and the shareholding and other rights of the members of the Applicant Company will remain unaffected as no new shares are being issued and there is no change in the capital structure. Both the Applicant Company and the Transferor Company have a positive Net-worth and the proposed amalgamation will not affect or adversely impact the rights of the creditors of the Applicant



Company in view of the strength of the financial position of the Applicant Company and the Transferor Company.

2. Pursuant to the notification of Section 234 of the Companies Act, 2013 and Rule 25A of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 ("**NCLT Scheme Rules**"), the Reserve Bank of India ("**RBI**") has on April 26, 2017 issued draft regulations being viz., Foreign Exchange Management (Cross border Merger) Regulations, 2017 ("**Cross Border Draft Regulations**"). Regulation 4 of the Cross Border Draft Regulations sets out the conditions that need to be complied with in case of merger of a foreign company with an Indian Company. Regulation 7 of the Cross Border Regulations provides that all transactions arising due to cross border merger are to be reported to the RBI in the same manner in which it is otherwise required to be reported under FEMA or rules or regulations framed thereunder. The Indian company and the foreign company involved in the cross border merger shall be required to furnish reports as may be prescribed by the RBI. Regulation 8 of the Cross Border Regulations states that all transactions undertaken in accordance with the Cross Border Regulations shall be deemed to be approved by the RBI as required under Rule 25A of the NCLT Scheme Rules.
3. The Applicant Company filed an application with the RBI on April 25, 2017 seeking approval under Section 234 of the Companies Act, 2013 read with Rule 25A of the NCLT Scheme Rules. The RBI conveyed its "No-objection" from Foreign Exchange Management Act, 1999 ("**FEMA**") angle to the Applicant Company by its letter dated June 12, 2017, which has been marked and annexed as Exhibit "U" to the Company Scheme Application No. 713 of 2017, subject to the following conditions:
  - (a) Any issue or transfer of security by the resultant company to a person resident outside India shall be in accordance with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000. (Resultant company means an Indian company or a foreign company which is established or formed or is proposed to be established or formed on sanction of the Scheme of cross border merger, (b) Any borrowing or impending



borrowing of the foreign company from overseas sources which becomes the borrowing of the resultant company or any borrowing from overseas sources entering into the books of resultant company arising shall conform to the External Commercial Borrowing norms or Trade Credit norms or other foreign borrowing norms, as laid down under Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 or Foreign Exchange Management (Guarantee) Regulations, 2000, as applicable, (c) the resultant company may acquire and hold any asset outside India which an Indian company is permitted to acquire under the provisions of the FEMA, rules or regulations framed thereunder. Such assets can be transferred in any manner for undertaking a transaction permissible under FEMA or rules or regulations framed thereunder, (d) the valuation of the Indian Company and the foreign Company for the purpose of cross border merger shall be done as per internationally accepted pricing methodology for valuation of shares on arm's length basis which could be duly certified by the Chartered Accountant/public accountant/merchant banker authorise to do so in either jurisdiction. Further, the Applicant Company, while reporting the transaction must (i) confirm the reconciliation of all the remittances under the UIN BYWRB19990180; and (ii) report online the disinvestment in RBI web portal after completion of above compliances. The Applicant Company undertakes to comply with the aforementioned conditions mentioned in the RBI's No-objection letter.

4. A meeting of the Equity Shareholders of the Applicant Company, be convened and held at Patkar Hall, Nathibai Thackersey Road, New Marine Lines, Mumbai – 400 020 on Thursday, 14<sup>th</sup> September, 2017 at 11.00 a.m., for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme.
5. The Applicant Company will also obtain approval of its Equity Shareholders to the said Scheme of Arrangement through Postal Ballot and e – voting, in addition to the voting facility proposed to be provided at the venue of the Meeting.
6. At least 30 clear days before the said meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, day, date and time



aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013, prescribed Form of Proxy and any other document as may be prescribed, shall be sent by Registered Post or by Air Mail or by courier or by speed post or by hand delivery to each of the Equity Shareholders of the Applicant Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders as per the records of the Applicant Company.

7. At least 30 clear days before the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, an advertisement of notice convening the said meeting at the place, date and time aforesaid and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the Form of proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid, shall be published once each in 'Free Press Journal' in English and 'Navshakti' in Marathi, both circulated at Mumbai.
8. The Applicant Company undertakes to:
  - (i) issue notice convening meeting of the equity shareholders as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as amended;
  - (ii) issue statement containing all the particulars as per Section 230 of the Companies Act, 2013;
  - (iii) issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and
  - (iv) advertise the Notice convening meeting as per Form No. CAA 2 (Rule 7) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as amended.

The undertaking is accepted



9. Mr. Ashwin Choksi, Chairman of the Applicant Company or Mr. Ashwin Dani, Vice - Chairman of the Applicant Company or Mr. KBS Anand, Managing Director & CEO, is appointed as the Chairperson for the meeting of the Equity Shareholders to be held at Patkar Hall, Nathibai Thackersey Road, New Marine Lines, Mumbai – 400 020 on Thursday, 14<sup>th</sup> September, 2017 at 11.00 a.m. or any adjournment or adjournments thereof. The scrutinizer for the meeting shall be Mr. S. N. Ananthasubramanian (Certificate of Practice No. 1774) and failing him Ms. Aparna Gadgil (Certificate of Practice No. 8430).
10. The Chairperson appointed for the aforesaid Meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairperson shall have all powers as per the Articles of Association of the Applicant Company and also under the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as amended, in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise at the meeting or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
11. The quorum for the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
12. The voting by proxy or authorised representative in case of body corporate be permitted, provided that a proxy in the prescribed form/authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Registered Office at 6A, Shantinagar, Santacruz East, Mumbai – 400 055, not later than, 48 hours before the aforesaid meeting as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as amended.
13. The number of the shares of each member shall be in accordance with the books/register of the Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the Meeting shall determine



the number of shares for the purpose of the aforesaid meeting and his decision in that would be final.

14. The Chairperson to file an affidavit not less than seven days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as amended.
15. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within seven days of the conclusion of the meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as amended.
16. This Bench hereby directs the Applicant Company to issue notice to all secured creditors as required 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 Applicant Company, failing which, it shall be presumed that the Secured Creditors have no representations to make on the proposals.
17. This Bench hereby also directs the Applicant Company to issue notice to all unsecured creditors as required 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 Applicant Company, failing which, it shall be presumed that the unsecured creditors have no representations to make on the proposals.
18. The Applicant Company, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, is directed to serve notices along with a copy of the Scheme upon: (i) the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, (ii) Registrar of Companies, (iii) Income Tax Authority within whose jurisdiction the Applicant Company's



assessment are made, (iv) Securities and Exchange Board of India, (v) BSE Limited, (vi) The National Stock Exchange of India Limited, and (vii) Reserve Bank of India, with a direction that they may submit their representations, if any, within thirty days of the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Company, failing which it will be presumed that the aforesaid authorities have no representations to make on the proposals.

19. The Applicant Company to file an affidavit of service of notices issued to Equity Shareholders, Secured Creditors, Unsecured Creditors, and relevant regulatory authorities and the publication in newspapers, not less than seven days before the date fixed for the holding of the meetings and do report to this Tribunal that the direction regarding the issue of notices have been duly complied with.

Sd/-

**V. Nallasenapathy, Member (T)**

Sd/-

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