

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSP 140 OF 2017

In the matter of the Companies Act, 1956
(1 of 1956);

AND

In the matter of 391 to 394 of the
Companies Act 1956;

AND

In the matter of Scheme of Amalgamation
of Dispo Dyechem Private Limited (the
Transferor Company) with Amarjyot
Chemical Limited (the Transferee
Company) and their respective
Shareholders and Creditors

Amarjyot Chemical Limited ... Petitioner Company

Order delivered on 26th July, 2017.

Coram:

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

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

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co

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

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

Order

1. Heard the learned counsel for the Petitioner Company. No objector has come before the court to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation of Dispo Dyechem Private Limited with Amarjyot Chemical Limited and their respective shareholders and creditors.
3. Learned Counsel for the Petitioner states that the Petitioner Company is a Public Limited Company and engaged in the business of manufacturing and sale of

chemicals The Transferor Company is a private limited company and engaged in the business of manufacture and sale of dyes and dyes intermediates.

4. The rationale for the scheme is that:

- I. Amarjyot is mainly engaged in business of manufacturing and sale of chemicals. Dispo is mainly engaged in business of manufacturer and sale of dyes and dyes intermediates.
 - II. This Scheme will lead to consolidation of business and assets of the Companies, synergy of operations and networks of both the Companies. This will help achieve better and more efficient utilization of available resources, benefits of internal economies and improving organizational efficiency.
5. The Petitioner Company has approved the said Scheme of Amalgamation by passing the Board Resolution, which are annexed to the Company Scheme Petition filed by the Petitioner Company.
6. Counsel appearing on behalf of the Petitioner Company further states that the Petitioner Company has complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. 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 is accepted.
7. The Regional Director has filed his Affidavit on 18th July, 2017 stating therein, save and except as stated in part IV (a) to (e) it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In part IV, of the said affidavit it is stated that:-

- (a) *In addition to compliance of AS-14 (IND AS-103) 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) *The Registered office of M/s Dispo Dychem Private Limited (the Transferor Company) is situated in the State of Gujarat and falls within the jurisdiction of this Hon'ble NCLT Ahmedabad. Accordingly, similar approval be obtained by the Transferee Company from Hon'ble NCLT, at Ahmedabad*
- (c) *As per the 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 letter dated 24th March 2017 has served a copy*

of Company Scheme Application No. 140 of 2017 along with relevant orders etc., further the Regional Director has also issued a reminder on 13th July, 2017 to the 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.*
- (e) As per Definitions and Share Capital Clause 1(b) of the Scheme "The Appointed Date" means 1st January, 2016 or such other date as may be agreed by Amarjyot and Dispo and approved by the Court or such other competent authority as may be applicable. In this regard, it is submitted in terms of provisions of section 232 (6) of the Companies Act, 2013 it should be 1st January, 2016.*
- 8. As far as the observations made in part IV (a) of the report of Regional Director is concerned, the Petitioner through their Counsel clarifies that the Indian Accounting Standard ("IND AS") is not applicable to both the Companies since the Companies have net worth below the prescribed limit i. e. INR 250 Crores as contemplated under roadmap for convergence to IND AS. The Petitioner Company undertakes to that it shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 etc.
- 9. In so far as observations made in paragraph IV (b) of the report of Regional Director is concerned, the Counsel for the Petitioner submits that the Petition filed by the Transferor Company before National Company Law Tribunal, Ahmedabad Bench has been sanctioned on 19th July 2017.
- 10. As far as observations of the Regional Director, as stated in paragraph IV(c) & (d) of his Report is concerned, the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
- 11. In so far as observations made in paragraph IV (e) of the report of Regional Director is concerned, the Counsel for the Petitioner clarifies that the Appointed Date shall be 1st January, 2016.
- 12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 8 to 11 above. The clarifications and undertakings given by the Petitioner Company are hereby accepted.

13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 140 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the Petition.
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 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.
17. The Petitioner Company to pay costs of Rs. 25,000/- to the Regional Director, Western Region, Mumbai.
18. Costs to be paid within four weeks from the date of receipt of order.
19. 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.
20. 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)