

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**BENCH, AT MUMBAI**

**TRANSFERRED COMPANY SCHEME PETITION NO. 270 OF 2017**

**CONNECTED WITH**

**COMPANY SCHEME PETITION NO. 786 OF 2016**

**(HIGH COURT TRANSFERRED PETITION)**

Nandi Seeds Private Limited, ...Petitioner Company

**AND**

**TRANSFERRED COMPANY SCHEME PETITION NO. 271 OF 2017**

**CONNECTED WITH**

**COMPANY SCHEME PETITION NO. 787 OF 2016**

**(HIGH COURT TRANSFERRED PETITION)**

Biostadt MHseeds Private Limited, .....Petitioner Company

In the matter of Companies Act, 2013;

AND

In the matter of Sections 230 to 232 read with  
Rule 15(1) of Companies (Compromises,  
Arrangements and Amalgamations) Rules,  
2016 and other applicable provisions of  
Companies Act, 2013;

AND

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

AND

In the matter of Scheme of Amalgamation  
between Nandi Seeds Private Limited,  
("Transferor Company") AND Biostadt MHseeds  
Private Limited ("Transferee Company") AND their  
respective shareholders and creditors

**Called for Hearing**

Mr. Rajesh Shah i/b. Rajesh Shah & Co., Advocates for the Petitioner Company

Mr. S. Ramakantha, Joint Director for the Regional Director.

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

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

**DATE: 19<sup>th</sup> April, 2017**

1. Heard learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions.
2. The sanction of the Tribunal is sought under Sections 391 to 394 of the Companies Act 1956 and Sections 230 to 232 read with Rule 15(1) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and other applicable provisions of Companies Act, 2013, to a Scheme of Amalgamation between Nandi Seeds Private Limited, ("Transferor Company") AND Biostadt MHseeds Private Limited, ("Transferee Company") AND Their respective shareholders and creditors.
3. The Learned Counsel for the Petitioners states that, the Transferor Company is engaged in the business of carrying on the research and development, production, processing, marketing of seeds, whether by trading, producing of all types and nature without any limitation as to technology employed and activities of all types and kind of agriculture, horticulture, farm produce and products including seeds, plants flowers, vegetables, fruits. Whereas the Transferee Company is engaged in the business of carrying on to develop, grow, manufacture, produce, breed, treat, process, evaluate, market, buy, sell, supply, distribute,

multiply, maintain, outsource, identify, commercialize, import, export, research and otherwise deal in agricultural seeds, hybrid seeds, mega hybrid seeds, commercial seeds, genetic product of all kinds and to add value to commercializable products through genetic engineering, other biotech methods and to collect genetic material, categorize and maintain for use different classes of germ plasm in breeding program.

4. The proposed Scheme of Amalgamation will lead to consolidation of companies within the group, reduction of intra-group transactions and compliance requirements under various laws, reduction of operating and compliance costs and achievement of administrative, operative and management efficiencies.
5. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Resolutions which are annexed to the respective Company Scheme Petitions.
6. Learned Counsel for the Petitioners further states that, by an order dated 6<sup>th</sup> day of February, 2017 by the National Company Law Tribunal, Mumbai Bench. The Transferee Company i.e. Biostadt MHseeds Limited has converted itself from Public Limited Company to Private Limited Company. The certified true copy of order was received on 24<sup>th</sup> day of March, 2017 from the Hon'ble Tribunal. The Transferee Company has filed order of Hon'ble Tribunal in form INC -27 with the Registrar of Companies, Mumbai vide SRN no. G40732463 on 12<sup>th</sup> day of April, 2017 and the said form is approved on 18<sup>th</sup> day of April, 2017.
7. Learned Counsel for the Petitioners further states the petition has been filed in consonance with the order passed in their Company Summons for Direction No. 756 of 2016, and 757 of 2016 of Hon'ble Bombay High Court.



8. The Learned Counsel for the Petitioner further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Bombay High Court and Hon'ble NCLT, Mumbai Bench and they have filed necessary affidavits of compliance with the Hon'ble NCLT, Mumbai Bench. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
9. The Official Liquidator filed his report on 6<sup>th</sup> day of March, 2017 stating that the affairs of the Transferor Company have been conducted in proper manner and that the Transferor Company may be ordered to be dissolved.
10. The Regional Director has filed his report dated 11<sup>th</sup> day of April, 2017 and has stated that save and except as stated in Paragraph IV (a) and (f) of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph IV of the said report, the Regional Director has 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) *As per 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 5<sup>th</sup> December, 2016 has served a copy company petition No. 786-787/2016 along with relevant orders etc. further*

*this Directorate has also issued a reminder 30.03.2017 to IT Department.*

*(c) The Tax implication if any arising out of scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court/Tribunal 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.*

*(d) As per Clause 3. 2, Definition of the scheme "The Appointed Date" means the 1 April 2016 or such other date as may be approved by the court. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1<sup>st</sup> April 2016.*

*(e) Clause 17 of the scheme, upon the scheme becoming effective name of the Transferee Company shall stand Change to M/s Nandi Seeds Private Limited subject to such approvals as may be necessary. In this regard it is submitted that the same to subject to compliance with the provisions of section 4(2) & (3) of the Companies Act 2013 r/w rule 8(8) of the Company (Incorporation) Rules, 2014*

*(f) As per Clause 6 Definitions of the scheme of Transferee Company M/s Biostadt MHseeds Limited has initiated process for **converting itself from a Public Company to Private Limited Company**. In this regard it is submitted that the Transferee Company to comply with the provisions of section 2(68), 14, 18 etc., of the Companies Act, 2013 and the relevant rules contained in Companies (Incorporation) Rules, 2014 as applicable.*

11. As far as the observations made in in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies submits that the Transferor Company undertakes to comply with the passing of the accounting treatment given in the scheme, the Transferee Company shall pass such accounting entries as may be necessary in connection with the scheme to comply with the accounting standards.
12. As far as the observations made in in paragraph IV (b) of the Report of Regional Director is concerned, the PetitionerCompanies have noted comments in this regards and have already served notices to the Income Tax authorities. Further the petitioner companies submits that it has appropriately clarified/ replied to the queries raised by Income Tax Authorities.
13. As far as the observations made in in paragraph IV (c) of the Report of Regional Director is concerned, the PetitionerCompanies submits that the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act and all tax implications, if any, arising out of the Scheme.
14. As far as the observation in paragraph IV (d) of the report of Regional Director is concerned, the learned Counsel for the Petitioner Companies submits that the appointed date mentioned in the scheme is 1<sup>st</sup> April, 2016.
15. As far as the observation in paragraph IV (e) of the report of Regional Director is concerned, the learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes to change its name to Nandi Seeds Private Limited and follow the procedure for change of name



prescribed under the provisions of section 4(2) & (3) of the Companies Act 2013 r/w rule 8(8) of the Company (Incorporation) Rules, 2014.

16. As far as the observation in paragraph IV (f) of the report of Regional Director is concerned, the learned Counsel for the Petitioner Companies submits that M/s Biostadt MHseeds Limited has converted itself from a Public Company to Private Limited Company, in this regards the National Company Law Tribunal, Mumbai Bench has passed a order dated 6<sup>th</sup> February, 2017 for converting M/s Biostadt MHseeds Limited to M/s Biostadt MHseeds Private Limited (Converted from Public Limited Company to Private Limited Company)the Transferee Company undertakes to comply with the provisions of section 2(68), 14, 18 etc., of the Companies Act, 2013 and the relevant rules contained in Companies (Incorporation) Rules, 2014 as applicable.

17. The Observation made by the Regional Director have been explained by the petitioner Companies in Paragraph 11 to 16 above. The clarifications and undertakings given by the Petitioner Companies are accepted.

18. From the material on record, the scheme appears to be fair and reasonable and is not in violation of any provisions of Law and is not contrary to public policy.

19. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No. 270, and 271 of 2017 are made absolute in terms of prayers stated in the respective petitions.

20. The Petitioner Companies are directed to file a certified / authenticated copy of this order and the scheme with the concerned Superintendent of Stamps, within 60 days from the date of the receipt of Order, for the purpose of adjudication of stamp duty payable, if any, on the same.

21. The Petitioner Companies are directed to file a certified / authenticated copy of order and the scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28 in addition to physical copy as per the relevant provisions of the Companies Act, 2013.
22. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the Order.
23. The Transferor Company to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay, Mumbai. Costs to be paid within four weeks from the date of the Order.
24. All concerned regulatory authorities to act on a copy of this order along with Scheme duly certified by the Registrar, National Company Law Tribunal, Mumbai Bench.

Sd/-  
V. Nallasenapathy, Member (T)

Sd/-  
B.S.V. Prakash Kumar, Member (J)