

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH  
TRANSFERRED COMPANY SCHEME PETITION NO 272 of OF 2017  
IN  
HIGH COURT COMPANY SCHEME PETITION NO 792 OF 2016

In the matter of the Companies Act,  
2013;

AND

In the matter of Sections 391 to 394 of  
the Companies Act, 1956 (corresponding  
sections 230 to 231 of the Companies Act  
2013);

AND

In the matter of Scheme of  
Amalgamation of Hi-Build Coatings  
Private Limited (“Transferor Company”)  
with Indigo Paints Private Limited  
 (“Transferee Company”) and their  
respective Shareholders

Hi-Build Coatings Private Limited...Petitioner

**Called for Hearing**

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

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

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

**Date : 2<sup>nd</sup> March 2017**

**MINUTES OF ORDER**

1. Heard the learned counsel for the Petitioner Company. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 and 232 of the Companies Act, 2013, to the Scheme of Amalgamation of Hi-Build Coatings Private Limited with Indigo Paints Private Limited and their respective shareholders.

3. Learned Counsel for the Petitioner further states that since the Petitioner/Transferor Company is wholly owned subsidiary of the Transferee Company and all the shares of the Transferor Company are presently held by the Transferee Company, and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Transferor Company by the Transferee Company and there would be no reorganization of the Share Capital in the Transferee Company and also in view of the judgment of the Hon. Bombay High Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by Indigo Paints Private Limited, the Transferee Company was dispensed with, by an order dated 2<sup>nd</sup> December 2016 passed in CSD No. 792 of 2016.
4. Learned Counsel for the Petitioner states that the Transferor Company is engaged in the business of manufacture and sale of decorative coatings and wood care paints products. The Transferee Company is full-fledged manufacturing entity engaged in manufacture and sale of paints.
5. The rationale for the scheme is that amalgamation of the Transferor Company into the Transferee Company will provide a high level of synergistic integration of operations and better operational management. Further, the amalgamation would facilitate administrative and operational rationalization, organizational efficiencies, reduction in overheads and other expenses and optimal utilization of various resources and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.
6. The Transferor Company and Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the Company Scheme Petition filed by the Petitioner Company.
7. Counsel appearing on behalf of the Petitioner Company further states that the Petitioner Company has complied with all requirements as per directions of the Hon'ble High Court of Judicature at Bombay and has filed necessary affidavit of compliance in the High Court. Moreover, the Petitioner Company through its 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 undertaking given by the Petitioner Company is accepted.

8. The Official Liquidator has filed his report dated 28th day of February, 2017 stating that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.
9. The Regional Director has filed an Report dated 27<sup>th</sup> day of February, 2017 stating therein, save and except as stated in paragraph IV (1) to (9), it appears that the scheme is not prejudicial to the interest of shareholders and public.

In paragraphs IV (1) to (9), of the said Report it is stated that:-

1. *The tax implications in 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.*
2. *According to the provisions of Section 232(10) of the Act, 2013 the Transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished, whereas the Petitioner company has not mentioned.*

*In view of the above, petitioner may be asked to amend the Scheme accordingly.*

3. *Hi-Build Coatings is not a wholly owned subsidiary as per the Audited Balance Sheet as on 31.03.2015. The Transferee Company holds 99.99% of the paid up share capital of the Transferee Company as per the list of shareholders provided by the Transferor Company as on 2<sup>nd</sup> December 2016.*

*In this regard the Transferor Company may be asked to provide a proof of transfer of shares filed before the Registrar of Companies.*

4. *Certificate by the Company's Auditor stating that the accounting treatment if any proposed in the Scheme of compromise or arrangement is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 is not available.*

*Petitioner may be asked to submit the certificate*

5. *Petitioner has inter alia mentioned in clause 16 of the Scheme the combination of Authorised share capital based on the Authorised Share Capital of the Transferor Company as per the unaudited balance sheet as at 31.03.2016 and the Authorised share capital of the Transferee Company as per the unaudited balance sheet as at 31.03.2016*

*Both the Companies may be asked to submit the Audited balance sheet as at 31.03.2016*

6. *A notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar, Official Liquidator issued by the Transferor Company or the Transferee Company is not found*
7. *Objections or suggestions considered by the Companies in their respective general meetings, not found as required under the provisions of Section 233(1)(b) of the Companies Act, 2013*
8. *Declaration of solvency filed by each of the companies involved in the merger, in the prescribed Form in accordance with the provisions of Section 233(1)(c) before the concerned Authority is not available.*
9. *As per the Scheme Appointed date is 01/04/2016. Petitioner submitted Audited balance Sheet and Profit and loss account as on 31<sup>st</sup> March 2015. According to provisions of Section 232(2)(e) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the Scheme is to be circulated for the meeting. Details of approval by the General meeting is not available in the file.*

*Hon'ble NCLT may be requested to decide on observation on poin 6-9 on merits.*

10. As far as the observations made in paragraph IV(1) of the affidavit of Regional Director is concerned, the Petitioner submits that the Petitioner is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
11. In so far as observations made in paragraph IV(2) of the Report of Regional Director is concerned, the Petitioner Company through its Counsel submits that as per Clause 14 of the Scheme of Amalgamation provides for cancellation of

shares held by the Transferee Company in the Transferor Company as the entire share capital of the Transferor Company is held by the Transferee Company.

12. In so far as observations made in paragraph IV(3) of the Report of Regional Director is concerned, the Petitioner Company through its Counsel submits that the copy of the Form MGT-7 i.e. Annual Return and Form MGT-6 and audited balance sheet as on 31<sup>st</sup> March 2016 as filed with and taken on record by the Registrar of Companies, Pune were produced which confirm the fact that the Transferor Company is a Wholly-owned Subsidiary of the Transferee Company.
13. In so far as observations made in paragraph IV(4) of the Report of Regional Director is concerned, the Petitioner Company through its Counsel submits that the copy of the certificate of the Auditors confirming that the Accounting treatment is as per the prescribed Accounting Standards was produced.
14. In so far as observations made in paragraph IV (5) of Report of Regional Director is concerned, the Petitioner Company through its Counsel submits that the Audited Financial Statements of the Transferor and Transferee Companies as on 31<sup>st</sup> March 2016, as filed with and taken on record by the Registrar of Companies were produced.
15. In so far as observations made in paragraph IV (6), (7) and (8) of the Report of Regional Director is concerned, the Petitioner Company through its Counsel submits that the requirements prescribed under these paragraphs are applicable only in cases which are dealt under Section 233 of the Companies Act, 2013 and therefore, no compliance is required in for these paragraphs. Further the Petitioner has not invoked provisions of section 233 of the Companies Act 2013. the scheme was filed under the provisions of Companies Act 1956 (corresponding section 230 to 232 of the Companies Act 2013).
16. In so far as observations made in paragraph IV (9) of Report of Regional Director is concerned, the Petitioner Company through its Counsel submits that dispensation from holding meetings of the shareholders was granted by the Hon'ble Bombay High Court and therefore, question of circulation of financial statements for the meeting does not arise in the present case.
17. The observations made by the Regional Director have been explained by the Petitioner in paragraphs 10 to 16 above. The clarifications and undertakings given by the Petitioner Company are hereby accepted.

18. 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.
19. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No 272 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the Petition.
20. 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.
21. The Petitioner Company to lodge a copy of this order and the Scheme duly authenticated 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.
22. The Petitioner Company to pay cost of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay.
23. Costs to be paid within four weeks from today.
24. Filing and issuance of the drawn up order is dispensed with.
25. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
26. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

SD/-

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