

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH, AT MUMBAI

CSP NO. 867 OF 2017,  
CSP NO. 868 OF 2017,  
CSP NO. 891 OF 2017,  
CSP NO. 892 OF 2017,

In the matter of Sections 230 to 232 of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of BARKUR SURFACTANTS PRIVATE LIMITED, The First Transferor Company, BARKUR TRADING AND FINANCE PRIVATE LIMITED, The Second Transferor Company, TECHNO PRODUCTS BOMBAY PRIVATE LIMITED, The Third Transferor Company With UNITOP CHEMICALS PRIVATE LIMITED, the Transferee Company.

BARKUR SURFACTANTS PRIVATE LIMITED

.... Petitioner/Transferor Company.

AND

BARKUR TRADING AND FINANCE PRIVATE LIMITED

.... Petitioner/Transferee Company.

AND

TECHNO PRODUCTS BOMBAY PRIVATE LIMITED

.... Petitioner/Transferor Company.

AND

UNITOP CHEMICALS PRIVATE LIMITED

..... Petitioner/Transferee Company.

Order delivered on : 04<sup>th</sup> January, 2018

**Coram:**

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

Hon'ble V. Nallasenapathy, Member (J)

**For the Applicant:**

1) Mr. Chandrakant Mhadeshwar, Advocate

**For the Regional Director:**

2) Mr. S. Ramakanth, Joint Director

**For ROC:**

3) Mr. Parvez Naikwadi, Asst. ROC

Per:- V. Nallasenapathy, Member (T)

**MINUTES OF ORDER**

1. Heard learned Counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation of BARKUR SURFACTANTS PRIVATE LIMITED, The First Transferor Company, BARKUR TRADING AND FINANCE PRIVATE LIMITED, The Second Transferor Company, TECHNO PRODUCTS BOMBAY PRIVATE LIMITED, The Third Transferor Company With UNITOP CHEMICALS PRIVATE LIMITED, the Transferee Company.
3. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
5. The amalgamation of the Transferor Companies with the Transferee Company would have the benefits that The Transferor Companies and the Transferee Company are part of Unitop group of companies, which are engaged in a chemical manufacturing and related business. Further the Petitioner company has also invested its surplus money in the fixed deposit of bank and unit of mutual funds and The group has adopted a entity reduction program to identify and eliminate (through liquidations and mergers), entities which do not serve a useful purpose or whose



operations could be combined with those of other companies in the group towards the end of achieving operational efficiency and cost minimization through the reduction in the number of legal entities around the world that make up the Unitop group.

6. The Regional Director has filed his Report, inter alia, stating therein that save and except as stated in paragraphs IV (1) to (6) of the said Report, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has 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 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 Authorities is binding on the petitioner Company.*

*2. It is submitted that the Petitioner Companies have not submitted the proof of serving notice upon the Income Tax Authorities. In this regard petitioner has to submit the proof of serving the notice to Income Tax Authorities as per provision of the Section 230 (5) of the Act, 2013.*

*3. Petitioner Companies not submitted admitted Copy of the Petition, minutes of order of the Hon'ble NCLT, Chairman's Report of the meeting. In this regard Petitioner to undertake to submits the same for the record of Regional Director.*

*4. Certificate 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 read with Rules not submitted. In this regard petitioners undertake to submit the same.*

*5. Petitioner Companies have to undertake to submit copy of the Affidavit duly notarized under section 230 (2) of the Companies Act, 2013.*

*6. Petitioner in clause 14 of the scheme has inter alia mentioned that upon sanction of the scheme the authorised share capital of the transferee company shall automatically stand increased without any act, instruments or deed including therein payment of fees, stamp duty. The combined authorised share capital shall be 1,10,000 equity shares of Rs. 100/- each amounting to Rs, 1,10,00,000/- and accordingly clause V of the Memorandum of Association of the company shall stand altered. It is also mentioned that fee including payment duty, if any, paid by the transferor company shall be set off against any fees including stamp duty if, any payable by the transferee company on its authorised share capital subsequent to amalgamation.*

*In this regards, Petitioner Companies have to undertake to comply with provision of section 232 (3) (i) of the Companies Act, 2013.*

7. *ROC has observed the Transferor Company – 2 appears to be a NBFC and hence notice to RBI is to be served."*

7. As far as the observation of the Regional Director stated in paragraph IV (1) of his report are concerned, the Petitioner Companies states that the Petitioner Companies undertake 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.
8. As far as the observation of the Regional Director stated in paragraph IV (2) of his report are concerned, the Petitioner Companies states the all Petitioner Companies have served notice to concerned Income Tax Authorities on 1<sup>st</sup> August, 2017 and copy of the same is filed on 29<sup>th</sup> September, 2017 with Regional Director and Petitioner Companies again served copy of the same to the Regional Director on 04<sup>th</sup> January, 2018.
9. As far as the observation of the Regional Director stated in paragraph IV (3) of his report are concerned, the Petitioner Company states that the Petitioner Company have already submitted the copy of Petition, chairman report and minutes of order on 8<sup>th</sup> November, 2017 and Petitioner Companies again served copy of the same to the Regional Director on 04<sup>th</sup> January, 2018.
10. As far as the observation of the Regional Director stated in paragraph IV (4) of his report are concerned, the Petitioner Company states that the Petitioner Company have annexed the Copy of the Certificate 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 to the Company Scheme Application and Company Scheme Petition. The Petitioner Companies again served copy of the same to the Regional Director on 04<sup>th</sup> January, 2018



11. As far as the observation of the Regional Director stated in paragraph IV (5) of his report are concerned, the Petitioner Company states that Petitioner Companies already filed an Affidavit of disclosures as per Section 230 (2) of the Companies to the Tribunal in Company Scheme Application and Petitioner Companies again served copy of the same to the Regional Director on 04<sup>th</sup> January, 2018.
12. As far as the observation of the Regional Director stated in paragraph IV (6) of his report are concerned, the Petitioner Companies undertake to comply with provision of section 232 (3) (i) of the Companies Act, 2013.
13. As far as the observation of the Regional Director stated in paragraph IV (7) of his report are concerned, the Petitioner Companies through counsel submits that the financial assets of Applicant Company includes investment in mutual funds and in group companies and the company has only received dividend on its investment in group Companies which is nominal in nature i.e. Rs. 57,500/-. In view thereof the 2<sup>nd</sup> Transferor Company is not doing any NBFC activity. However, the Petitioner Company undertake to file copy of the Scheme and order with Reserve Bank of India within 30 days from the date of receipt of this order.
14. The Official Liquidator has filed his report in the Scheme Petition Nos. 712 of 2017, 733 of 2017 and 734 of 2017 inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.
15. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
16. Since all the requisite statutory compliances have been fulfilled, Scheme Petition Nos. 867 of 2017, 868 of 2017, 891 of 2017 and 892 of 2017

are made absolute in terms of prayer clauses (a) and (b) of the respective Petitions.

17. 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.
18. 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.
19. The Petitioners in both the Company Scheme Petitions to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner in the Scheme Petition Nos. 867 of 2017, 868 of 2017, and 891 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.
20. 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.

**Sd/-**

V. Nallasenapathy, Member (T)

**Sd/-**

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

Dated: - 04-01-2018