

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO 781 OF 2017

In The Matter Of The Companies Act, 2013;

And

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

And

In the matter of Scheme of Amalgamation of Multichem Specialities Private Limited ("Multichem Specialities" or "Amalgamated Company" or "Transferee Company") and Manish Tradelink Private Limited ("Manish Tradelink" or "Amalgamating Company" or "Transferor Company") and their respective shareholders.

Multichem Specialities Private Limited ... Transferee / Amalgamated Company
AND
Manish Tradelink Private LimitedTransferor / Amalgamating Company

Judgment/Order delivered on 24th January, 2018

Coram:

Hon'ble **B.S.V. PRAKASH KUMAR**, Member (J)

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

For the Petitioner(s):	Mr. Mahesh Darji – Authorised Representative of the Petitioner Companies / Practicing Company Secretary.
For the Regional Director	Mr. Ramesh Gholap, Assistant Director in the office of Regional Director
For the Official Liquidator	Mr. Santosh Dalvi, Representative of Official Liquidator

Per: **B.S.V. PRAKASH KUMAR**, Member (J)

ORDER

1. Heard the learned counsel for the Petitioner Companies. None appears before this Tribunal either to oppose the Scheme or to contravene averments made in the Petition of Scheme of Amalgamation between Multichem Specialities Private Limited and Manish Tradelink Private Limited and their respective shareholders.
2. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation between Multichem

Specialities Private Limited and Manish Tradelink Private Limited and their respective shareholders.

3. The learned Counsel for the Petitioners submits that the Transferor Company engaged in the business of trading, buying, selling and marketing of Fast Moving Consumer Goods and the Transferee Company are engaged in the business of production and dealing in pharmaceutical chemical, chemical products and their verities and apart of this they also act as refiner, processor, exporter, importer and act as indenting agent.
4. The scheme of Amalgamation would *inter alia* have the following benefits:
 - a. Both the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company. The amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company.
 - b. The amalgamated Company will have the benefit of the combined assets and cash flows of the two companies. The combined resources of the amalgamated company will be conducive to enhance its capability to face competition in the market place more effectively.
 - c. The amalgamated Company will result in cost savings for both the Companies as they are capitalizing on each other's core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.
 - d. It will be conducive to better, more efficient and economical control and conduct of the Companies. The amalgamation would enable optimal utilization of resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of both companies.
 - e. With the enhanced capabilities and resources at its disposal, the amalgamated Company will have greater flexibility to compete more effectively.
 - f. A larger and growing Company will mean enhanced financial and growth prospects for the people and organizations connected with the Company.
 - g. The Amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Amalgamating Company and the Amalgamated Company.

- h. Enhance value of all stakeholders in the long run.
5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
 6. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in Company Scheme Application and that the Company Scheme Petition have been filed in consonance with the order passed in Company Scheme Application.
 7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the rules made there under. The said undertaking is accepted.
 8. The Regional Director has filed his Report dated 16th January, 2018, stating therein that save and except as stated in paragraph IV (1) to (5), it appears that the Scheme is not prejudicial to the interest of 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 Authority is binding on the Petitioner Company.*
 2. *Petitioner in Clause 14 of the Scheme has inter alia mentioned that consequent upon the Amalgamation, the authorised share capital of the Transferee Company will be as under: The Authorised Share Capital of the Transferee Company is Rs. 4,00,00,000/- (Rupees Four Crores Only) comprising of 40,00,000 (Forty Lakhs) Equity Shares of Rs. 10/- each.*

In This regard, petitioner Companies have to undertake to comply with provisions of Section 232(3)(i) of the Companies Act, 2013.

3. *Petitioner Companies in the Scheme has not mentioned about treatment of taxes under Section 2(1B) of the Income Tax Act, 1961. In this regards, petitioner Companies have to undertake to comply with the same.*
 4. *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 submit the same for the record of Regional Director.*
 5. *Petitioner Companies have to undertake to mention the accounting treatment to be followed whether AS-14 / IND AS-103 as the case may be along with the method to be followed including for adopting uniform accounting policy and state that the net assets after adjustments will be credited to Capital reserve.*
9. In so far as observations made in paragraph IV (1) of the Report of the Regional Director is concerned, the Petitioner Companies through authorised representative undertakes to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
 10. In so far as observations made in paragraph IV (2) of the Report of the Regional Director is concerned, the Petitioner Companies through authorised representative undertakes to comply with the provisions of section 232 (3)(i) of the Companies Act, 2013 in relation to authorised capital.
 11. In so far as observations made in paragraph IV (3) of the Report of the Regional Director is concerned, the Petitioner Companies through authorised representative undertake to comply with the provisions of section 2 (1B) of the Income-tax Act, 1961 in relation to treatment of taxes.
 12. In so far as observations made in paragraph IV (4) of the Report of the Regional Director is concerned, the Petitioner Companies through authorised

representative undertakes to submit the required documents to the office of the Regional Director.

13. In so far as observations made in paragraph IV (5) of the Report of Regional Director is concerned, the Petitioner Companies through authorised representative undertakes to comply with AS 14 / IND AS-103 as the case may be and other applicable Accounting Standards by adopting Pooling of Interest method i.e. at book value. The Petitioner Company through authorised representative further states that the surplus / deficit arising out of the Scheme, if any, shall be credited / debited to Capital Reserve Account / Goodwill Account, as the case maybe.
14. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
15. The Official Liquidator has filed his report in Company Scheme Petition No. 781 of 2017 inter-alia, stating there in that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be Ordered to be dissolved without winding up by this Hon'ble Tribunal.
16. The Registrar of Companies, Maharashtra has filed his Report wherein the ROC has mentioned that there are no complaints, prosecution and scrutiny and matter may be decided on merits.
17. 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. None of the parties concerned have come forward to oppose the Scheme.
18. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 781 of 2017 filed by the Petitioner Companies are accordingly made absolute.

19. Petitioner Companies 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.
20. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme 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 Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and The Transferor Company to Pay costs of Rs.25,000/- to the Official Liquidator, High Court Bombay. The costs to be paid within four weeks from the date of receipt of Order.
22. 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.
23. 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)

Date: 25.01.2018