

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO 1086 OF 2017
AND
CSP NO 1085 OF 2017

SALDHAR INVESTMENTS AND TRADING COMPANY PRIVATE LIMITED
...Transferor /Petitioner Company

APCOTEX INDUSTRIES LIMITED
...Transferee /Petitioner Company

Under Sections 230 to 232 of the Companies Act, 2013
And

In the matter of Scheme of Amalgamation between
Saldhar Investments and Trading Company Private
Limited having CIN U67120MH1979PTC021881
(‘Transferor Company’ or ‘Saldhar’) and Apcotex
Industries Limited having CIN
L99999MH1986PLC039199 (‘Transferee Company’
or ‘Apcotex’) and their respective Shareholders

Order delivered on 1st February, 2018

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 M/s. Hemant Sethi & Co., for the
Petitioner.

Mr. S. Ramakantha , Joint Director in the office of Regional Director.

Mr. Manjesh Jadhav, Assistant Registrar of Companies, Mumbai

Mr. Santosh Dalvi, Assistant in the office of Official Liquidator.

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

ORDER

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation between Saldhar Investments And Trading Company Private Limited and Apcotex Industries Limited and their respective shareholders.

3. Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business of investment in shares and securities. Learned Counsel for the Petitioners further states that the Transferee Company is one of the leading producers of Synthetic Rubber (High Styrene Rubber, Nitrile Butadiene Rubber, NBR Powder, and Nitrile Polyblends) and Synthetic Latex (Vinyl Pyridine Latex, Carboxylated Styrene Butadiene Latex, Styrene Acrylic Latex, Nitrile Latex, etc.) in India.
4. Learned Counsel for the Petitioners further states that the scheme envisages the amalgamation of the Transferor Company with the Transferee Company and the amalgamation shall have the following benefits: i. Saldhar forms part of the Promoter Group of Apcotex. It presently holds 1,07,24,300 equity shares in Apcotex constituting 51.72% of Apcotex's paid up share capital; ii. It is proposed to amalgamate Saldhar into Apcotex by this Scheme, as a result of which, shareholders of Saldhar viz. the promoters of Saldhar (who are also the promoters of Apcotex), shall directly hold shares in Apcotex; iii. This will lead not only to simplification of the shareholding structure and reduction of shareholding tiers but also demonstrate the promoter group's direct commitment to and engagement with Apcotex; iv. The amalgamation would result in more effective utilization of resources of both Saldhar and Apcotex, including pooling of financial resources of Saldhar and Apcotex, leading to more effective and centralized management of funds, greater economies of scale and reduction in administrative expenses, which are presently being multiplied being separate entities, v. Pursuant to the amalgamation, there would be no change in the promoter shareholding of Apcotex. The promoters would continue to hold the same percentage of shares in Apcotex, pre and post amalgamation of Saldhar in Apcotex.
5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing respective Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Petitions have been filed in consonance with the order passed in

Company Scheme Application Nos. 884 of 2017 and 883 of 2017 of the Hon'ble Tribunal.

7. The Learned Counsel appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary Affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioner Companies undertake 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, Western Region, Mumbai has filed his Report dated 29th December, 2017, stating therein that save and except as stated in paragraph IV of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public:-
 - (a) *As per Clause 1.3 of Par-A "Definitions" of the Scheme. "The Appointed Date" means March 31, 2017 or such other date as may be fixed by the National Company Law Tribunal. In this regard, it is submitted in terms of provisions of Section 232(6) of the Companies Act, 2013 it should be specific as 31st March, 2017;*
 - (b) *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.;*
 - (c) *It is stated in Para No. 12.3 of the Scheme amongst others that the Reserves created in the Books of Saldhar as per the Reserve Bank of India Act will be taken over and merged in General Reserves in the Books of Apcotex. In this regard, the Transferee Company may ensure compliance of Rules & Regulation, if any applicable in the matter and approval of Reserve Bank of India, if any required;*
 - (d) *As regards Para No. 16 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Amalgamation for setting-off of fees paid by the Transferor Company on its Authorized Share Capital in accordance to the provisions of Section 232(3)(i) of the Companies Act, 2013;*
 - (e) *The tax implication, if any arising out of the Scheme is subject to final decision of the 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;

- (f) *ROC, Mumbai has reported in his Report that the Transferee Company does not contain objectives of the Transferor Company to continue business of the Transferor Company. The Transferee Company may be directed to make compliance of Section 12 of the Companies Act, 2013 and rules made thereunder by filing requisite e-forms paying requisite fees with the Office of the Registrar of Companies, Mumbai in respect of alteration of objects of the said Company, after approval of the Scheme by the Hon'ble NCLT;*
 - (g) *ROC, Mumbai has reported that the Transferor Company has not filed its Financial Statements for the year 2016-17. In this regard, the Petitioners must ensure filing of its Audited Financial Statements for the Financial year 2016-17 with Registrar of Companies, Mumbai under Section 137 of the Companies Act, 2013 in the prescribed e-form and payment of fees, before filing of order for merger, if any with the said ROC.*
 - (h) *In accordance to proviso to Section 232(3) of the Companies Act, 2013, the Company may be directed to file a Certificate from the Company's Auditors to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013.*
9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned, the Petitioner Companies submits that the Appointed Date shall be 31st March, 2017.
 10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report are concerned, Transferee Company through their Counsel undertakes that 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., to the extent applicable.
 11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of the report is concerned, the Transferee Company through its Counsel undertakes that it shall comply with all the applicable rules, regulation, to the extent applicable, for merging the Reserves of the Transferor Company created as per Reserve Bank of India Act, 1934, with the General Reserves of the Transferee Company.

- 12.As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of the report is concerned, the Transferee Company through its Counsel undertakes that the Authorized Share Capital of Transferor Company shall be merged with that of the Transferee Company in terms of Para No. 16 of the Scheme in accordance with the provision of Section 232(3)(i) of the Companies Act, 2013.
- 13.As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of his report is concerned, the Transferee Company through its Counsel undertakes that it shall 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.
- 14.As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (f) of his report is concerned, the Transferee Company through its Counsel submits that in the event the Transferee Company continues with the business of the Transferor Company, in that event it will suitably amend its object clause in accordance with law by complying with the relevant provisions of the Companies Act, 2013 and rules made thereunder.
- 15.As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (g) of his report is concerned and the observation made by Registrar of Companies, Mumbai in their report which forms a part of the report of the Regional Director, the Transferor Company through its Counsel submits that it has filed its standalone and consolidated financial statements for the financial year ended 31st March, 2017, with the Office of the Registrar of Companies, Mumbai, on 10th January, 2018 and 11th January, 2018 vide SRN No. G73173700 and SRN No. G73279234 respectively.
- 16.As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (h) of his report is concerned, the Transferee Company through its Counsel submits that the certificate from the Statutory Auditors of the Transferee Company has been annexed to the Company Scheme Application No. 883 of 2017 as Exhibit F and a copy of the said

certificate has also been filed by the Transferee Company with the Regional Director's office via letter dated 27th October, 2017.

17. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 to 16 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
18. The Official Liquidator has filed his report dated 3rd January, 2018 *inter alia*, stating therein 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 being wound up.
19. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.
20. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 1086 and 1085 of 2017 are made absolute in terms of prayer clauses (a) to (f).
21. The Petitioner Companies are 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 physical copy, within 30 days from the date of receipt of the order from the Registry.
22. The Transferee 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, within a period of 60 days from the date of receipt of the order.
23. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Transferor Company to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay.
24. Costs to be paid within four weeks from the date of the receipt of the order.
25. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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

Date:- 1.02.2018