

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSA NO.1086 OF 2017

In the matter of the Companies Act, 2013 (18 of 2013).

AND

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

AND

In the matter of the Scheme of Arrangement between Biostadt India Limited, the Demerged Company and Biostadt Agrosciences Private Limited, the Resulting Company and their respective shareholders.

Biostadt India Limited a Company incorporated)
Under the Companies Act, 1956 and having its Registered)
Office at,602-A Poonam Chambers, A –Wing, 6th Floor,)
Dr. A B Road, Worli, Mumbai 400 018)...Applicant Company

Order delivered on 5th January, 2018

Coram:

Hon'ble M. K. Shrawat, Member (Judicial)

Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

For the Petitioner(s): Nitin Gutka, Practicing Chartered Accountants, for the
Applicant Company.

Per: M. K. Shrawat, Member (J)

ORDER

1. The Counsel for the Applicant Company states that the proposed Scheme is Scheme of Arrangement between Biostadt India Limited, the Demerged Company and Biostadt Agrosciences Private Limited, the Resulting Company and their respective shareholders for demerger of Domestic Crop Care Division of Biostadt India Limited into Biostadt Agrosciences Private

Limited.

2. The Counsel for the Applicant Company further submits that the Applicant Company is presently engaged in manufacturing, trading and sale of high-quality agriculture products, which includes biological, hybrid seeds and aqua products.
3. The circumstances that have necessitated or justified the Scheme of Arrangement are inter alia summarised as under:
 - a) To enable better and more efficient management, control and running of the Domestic Crop Care Division ("Demerged undertaking");
 - b) To achieve operational efficiency and economies of scale;
 - c) To enable a dedicated management focus and to accelerate growth of the business unlocking significant value for the shareholders and investors of both the Companies;
 - d) To enable the Demerged Company to concentrate on its business of operating the Remaining Business; and
 - e) To enable the Resulting Company to concentrate on the business of operating the Demerged Undertaking.
4. That the meeting of the Equity Shareholders of the Applicant Company, be convened and held at Registered Office of the Applicant Company situated at 602-A, Poonam Chambers, A-Wing, 6th Floor, Dr. A B Road, Worli, Mumbai 400018 on Saturday, 10th February, 2018 at 11.00 A.M for the purpose of considering and if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement between Biostadt India Limited, the Demerged Company and Biostadt Agrosiences Private Limited, the Resulting Company and their respective shareholders.

5. That at least one month before the said the meeting of Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting, at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016 and the prescribed Form of Proxy, shall be sent by Registered Post or by courier or by speed post or by hand delivery or through email, (to those Equity Shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices be email), addressed to each of the Equity Shareholders of the Applicant Company, at their respective registered or last known addresses or e-mail addresses as per the records of the Applicant Company.

6. That at least not less than 30 days before the said meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting, indicating the place, day, date and time of the meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid shall be published once each in two local newspapers, viz, "The Free Press Journal" in English and translation thereof in "Navshakti" in Marathi language both having circulation in Mumbai.

7. The Applicant Company undertakes to:



- i. issue Notice convening meeting of the Equity Shareholders as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- ii. issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
- iii. issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and.
- iv. Advertise the notice convening meeting as per Form No. CAA.2 (Rule 7) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

The undertaking is accepted.

8. That Mr. Juzar S. Khorakiwala, Managing Director of the Applicant Company, failing him, Ms Nishreen J. Khorakiwala, Director of the Applicant Company shall be the Chairman for the aforesaid meeting of the Equity Shareholders.
9. That Scrutinizer for the aforesaid meeting of Equity Shareholders shall be Mr. Manish Baldeva, Practicing Company Secretary (M No. 11062)
10. That the quorum for the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
11. That the Chairman appointed for the aforesaid meeting to issue the advertisement and send out notices of the Meeting referred to above. The said Chairman shall have all powers as per the Articles of Association of the Applicant Company and also under the Companies Act, 2013 and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
12. That voting by proxy or authorised representative in case of body corporate

be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at Registered office of the Applicant Company situated at 602-A, Poonam Chambers, A-Wing, 6th Floor, Dr. A B Road, Worli, Mumbai 400018 not later than, 48 hours before the aforesaid meetings as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

13. That the value and number of the shares of each equity shareholders shall be in accordance with the books/ register of the Applicant Company or depository records and where the entries in the books/register/ depository records are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
14. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and to report to this Tribunal that the direction regarding the issue of the notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
15. That the Chairman to report to this Tribunal, the result of the aforesaid meeting within thirty days of the conclusion of the meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
16. That the Counsel for the Applicant Company submits that there are no Secured Creditors in the Applicant Company, as stated in paragraph 19 of the Company Scheme Application therefore the question of sending notices to the Secured Creditors does not arise

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17. That the Counsel for the Applicant Company submits that as stated in paragraph 20 of the Company Scheme Application since the scheme is between the Applicant Company and the Resulting Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230 (1) (b) of the Companies Act, 2013. This bench hereby directs the Applicant Company to issue notice to its Unsecured Creditors having balance of Rs. 1,00,001/- and above representing 95.68% of total value of unsecured creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
18. The Applicant is directed to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, Maharashtra, pursuant to Section 230 (5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the aforesaid authorities within thirty days from the date of receipt of the notice it will be presumed that Regional Director and /or Central Government has no objection to the Proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
19. The Applicant to serve the notice along with copy of the Scheme upon the Concerned Registrar of Companies, pursuant to Section 230 (5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the aforesaid authorities within thirty days from the

date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the Proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

20. The Applicant Company having PAN- AACCB1830G is directed to serve notice on the concerned Income Tax Authority Assistant Commissioner of Income Tax, 6(1)(2), Aaykar Bhavan, Maharishi Karve Road, Mumbai 400 020, within whose jurisdiction the Applicant Company's assessment are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Income Tax Authority within 30 days of the receipt of the notice it will be presumed that Income Tax Authority has no objection to Proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
21. The Applicant Company to file affidavit of service in the Registry proving dispatch of notices upon Unsecured Creditors and notices to Regulatory authorities as stated in clause 17 to 20 above.

Sd/- :

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Dated : 05.01.2018

Sd/-

M.K.SHRAWAT
MEMBER (JUDICIAL)