

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CSP 911/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Packshield India Private Limited
.....1st Petitioner
(Transferor Company)

M/s. ACG Pharmapack Private Limited
.....2nd Petitioner
(Transferee Company)

Order delivered on : 12.01.2018

Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Hemant Sethi, Advocate i/b. Hemant Sethi & Co. – Advocates for the Petitioners.

For the Regional Director:

Mr. Ramesh Gholap, Dy. Registrar (WR).

Per : Bhaskara Pantula Mohan, Member (J)

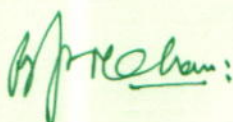
ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, Scheme of Merger by Absorption (hereinafter as **Scheme**) of between M/s. Packshield India Private Limited (Transferor Company) and M/s. ACG Pharmapack Private Limited (Transferee Company) and their respective shareholders.
2. The Transferor Companies and the Transferee Company have approved the said Scheme by passing the Board Resolutions, which are annexed to respective Company Scheme Petitions.
3. The Transferor Company is primarily engaged inter alia in the business of manufacturing and marketing packing films of high barrier property to protect the drug formulations from atmospheric moisture, gases and aromas and manufacturers

Bhaskara Pantula Mohan

of and dealers in all types of raw materials, substances, articles and things of any nature whatsoever used in or capable of being used in the packing of pharmaceutical products.

4. The Transferee Company is primarily engaged inter alia in the business of manufacturing, selling, importing, exporting and trading or dealing in rigid or flexible films/ sheets made from PVC, polypropylene or other plastic materials, empty hard gelatin capsules etc. for packing various pharmaceuticals, food and other products.
5. The proposed Scheme will help to simplify the group structure, minimise cost of administration of two legal entities. Further, the Scheme will lead to better and more economic and efficient management, control and running of the business of the companies concerned and to pool resources of both the companies for growth.
6. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company is ₹ 1,01,00,000/- comprising of 10,10,000 equity shares of ₹ 10/- each.
7. The Authorised Share Capital of the Transferee Company is ₹ 11,00,00,000/- comprising of 15,00,000 equity shares of ₹ 10/- each and 95,00,000 15% Non-Cumulative, Redeemable, Non-Convertible Preference shares of ₹ 10 each whereas the Issued, Subscribed and Paid - up Share Capital of the Transferee Company is ₹ 8,54,62,760/- comprising of 10,58,276 equity shares of ₹ 10/- each, fully paid up and 74,88,000 15% Non-Cumulative, Redeemable, Non-Convertible Preference shares of ₹ 10 each fully paid-up.
8. The averments made in the Petition and the submissions made by the Learned Advocate for the Petitioners are:
 - a) The Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
 - b) The Regional Director has filed his Report dated 12.12.2017 stating therein that save and except the observations stated in paragraph IV (a) to (f) of the report, it appears that Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:



a) *As regards Para No. 6 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.*

b) *The Transferee Company must ensure issuance of Shares in the name of the Trustee only on behalf of Jasjit Singh Family Trust, as the said Trusts is actual owner of the Shares in the Transferor Company, in accordance to the provisions of the Companies Act, 2013 and relevant Trust Act.*

c) *As regards Para No. 8.8 of the Scheme, the Petitioner Companies ensure compliance of the relevant provisions of the Companies Act, 2013 & rules made thereunder and also directions issued by the Hon'ble NCLT, while approval of the Scheme in the matter. Any modification for the implementation of the Scheme shall be done only with the prior approval of the Hon'ble NCLT.*

d) *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;*

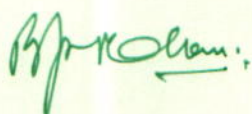
e) *The Tax Implication, if any arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the Tax Return filed by the Transferee Company, after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*

f) *That in view of provisions of proviso to Section 66(3) of the Companies Act, 2013, the Hon'ble Tribunal may kindly direct the Company to submit certificate from the Auditor of the Company to the effect that the Accounting Treatment proposed by the Transferee Company for such reduction is in conformity with the Accounting Standards specified in Section 133 or any other provisions of the Companies Act, 2013.*

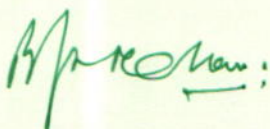


g) In accordance to proviso to Section 232(3) of the Companies Act, 2013, the Petitioners may be directed to file a Certificate from the Company's Auditors to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013.

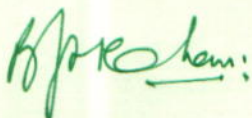
- c) Apropos observations made in paragraph IV (a) of the Report of Regional Director is concerned, it is stated that the Transferee Company undertakes to comply with provisions of Section 232(3)(i) of the Companies Act, 2013.
- d) Apropos observations made in paragraph IV (b) of the Report of Regional Director is concerned, it is submitted that the Transferee Company undertakes to issue Shares in the name of concerned Trustee i.e., Shri Ajit Singh and Shri Jasjit Singh on behalf of Ajit Singh Family Trust and Jasjit Singh Family Trust respectively, as the said Trusts are actual owner of the Shares in the Transferor Company, so as to comply with the provisions of the Companies Act, 2013 and relevant Trust Act.
- e) Apropos observations made in paragraph IV (c) of the Report of Regional Director is concerned, it is stated that the Petitioner Companies undertakes to ensure compliance of the relevant provisions of the Companies Act, 2013 & rules made thereunder and also directions issued by the Hon'ble NCLT. Further, Petitioner Companies also undertakes that any modification for the implementation of the Scheme, if any, shall be done only with the prior approval of the Hon'ble NCLT.
- f) Apropos observations made in paragraph IV (d) of the Report of Regional Director is concerned, it is submitted that the Transferee Company undertakes to comply with other applicable Accounting Standards such as AS 14 (IND AS 103), AS-5 (IND AS-8), etc.
- g) Apropos observations made in paragraph IV (e) of the Report of Regional Director is concerned, it is stated that the Transferee Company 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.



- h) Apropos observations made in paragraph IV (f) and (g) of the Report of Regional Director is concerned, it is submitted that the Transferee Company has obtained certificate from Auditor to the effect that the Accounting Treatment proposed in the Scheme by the Transferee Company for reduction and for amalgamation is in conformity with the Accounting Standards specified in Section 133 or any other provisions of the Companies Act, 2013 and is already submitted to Hon'ble Tribunal and is attached as "Annexure-L" to the Company Scheme Application.
 - i) It is further submitted that, no objector has approached, neither to the Petitioner nor before the Tribunal, to oppose this Scheme.
 - j) The Official Liquidator has filed his report inter alia stating therein that, the affairs of the Transferor Company have been conducted in proper manner and further that the Transferor Company may be ordered to dissolve without winding up.
9. 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. And hereby this bench, to the Petitioner Companies, **do Order that:**
- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Companies, shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
 - b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
 - c) In lieu of the consideration of the Scheme, 5,39,720 fully paid up Equity Share of ₹ 10/- each of the Transferee Company shall be issued to the equity shareholders of the Transferor Company in proportion of their holdings in the Transferor Company and 9,18,300 fully paid up 10% Redeemable Preference Shares of the face value of ₹ 10/- each of the Transferee Company will be issued to the equity shareholders of the Transferor Company in proportion of their holdings in the Transferor Company.



- d) Further, during the course of hearing it is noticed that, the said Scheme is not a Scheme of Amalgamation as titled but contrary it is a Scheme of Merger by Absorption, hence, a liberty is granted to the Petitioners to amend the Scheme appropriately.
- e) The Transferor Company to be dissolved without winding-up after Scheme becomes effective.
- f) The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director or the Assistant Registrar, as the case may be, 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.
- g) 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, duly certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- h) The Petitioner Companies to pay costs of ₹ 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of receipt of this order.
- i) The Transferor Company (i.e. 1st Petitioner) to pay cost of ₹ 25,000/- to the Official Liquidator, Mumbai. Costs to be paid within four weeks from the date of receipt of this order.
- j) 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.
- k) Any person interested is at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.



l) Any concerned Authority is at liberty to approach this Bench for any further clarification/direction under this Scheme.

m) The Scheme is sanctioned hereby on above terms and directions. Further, the appointed date of the Scheme is fixed as 1st April, 2017.

10. Ordered accordingly. To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated: 12.01.2018

Avinash