

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

CSP NO 851 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 Arrangement between PAM Indtech
Machines Private Limited ("Transferor Company") and ACG
Pharma Technologies Private Limited ("Transferee Company")
and their respective shareholders

PAM Indtech Machines Private Limited First Petitioner Company / Transferor Company
AND
ACG Pharma Technologies Private Limited...Second Petitioner Company / Transferee Company

Judgment/Order delivered on 4th January, 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 Hemant Sethi & Co
Mr. S Ramakantha, Joint Director in the office of Regional Director
Mr. Parvez Naikwadi Assistant Registrar of Companies, Mumbai

Per: **V. Nallasenapathy, Member (T)**

Order

1. Heard the learned counsel for the Petitioner Companies. None appears today before this Tribunal either to oppose the Scheme or to contravene averments made in the Petition of Scheme of Arrangement between PAM Indtech Machines Private Limited ("Transferor Company") and ACG Pharma Technologies Private Limited ("Transferee Company") 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 Arrangement between PAM Indtech Machines Private Limited and ACG Pharma Technologies Private Limited and their respective shareholders.

3. The learned Counsel for the Petitioner Companies submit that the Transferor Company is primarily incorporated for carrying on the business of manufacturing, fabricating, assembling, repairing, buying, selling, reselling, exchanging, altering, importing, exporting, hiring, letting on hire or distributing or dealing in industrial machinery and components, spare parts, fittings and accessories thereof including packaging machines for pharmaceutical, cosmetics and food industry. The Transferee Company is primarily incorporated for carrying on the business of manufacturing FBE (Fluid Bed Equipment), fluid bed processors and tablet-coating systems for India and some selected international markets.
4. The objective of amalgamation of the Transferor Company with the Transferee Company is to ensure simplification of structure by elimination of multiple entity and to achieve greater administrative efficiency, elimination of administrative functions and multiple record keeping, thus resulting in reduced expenditure, and significant reduction in the multiplicity of regulatory compliances.
5. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the Company Scheme Petition.
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 orders 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 its Report dated January 02, 2018, stating therein that save and except as stated in paragraph IV (a) to (e), 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:

(a) As Ajit Singh Family Trust and Jasjit Singh Family Trust are the members of the Transferor Company, the Transferee Company must ensure

issuance of Shares in the name of the concerned Trustee i.e. Shri Ajit Singh and Shri Jasjit Singh on behalf of these Trusts, as the said Trusts are actual owner of the Shares in the Transferor Company, in accordance to the provisions of the Companies Act, 2013 and relevant Trust Act.

- (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) 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.*
 - (d) That in view of provisions of proviso to Section 66(3) of the Companies Act, 2013, the Hon'ble Tribunal may 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.*
 - (e) The tax implication, if any arising out of the Scheme is subject to the 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.*
9. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Second Petitioner Company undertakes to issue Shares in the name of concerned Trustee i.e., Shri Ajit Singh and Shri Jasjit Singh on behalf of the two Trusts, 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.
 10. In so far as observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Second Petitioner Company undertakes to comply with other applicable Accounting Standards such as AS-5 (IND AS-8), etc.

11. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Second Petitioner Company undertakes to comply with provisions of Section 232(3)(i) of the Companies Act, 2013 and submit the requisite forms under the Companies Act, 2013 in respect of combination of capital.
12. In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Second Petitioner Company hereby states that certificate from Auditor of the Company to the effect that the Accounting Treatment proposed by the Transferee Company for reduction is in conformity with the Accounting Standards specified in Section 133 or any other provisions of the Companies Act, 2013 is already submitted to Hon'ble Tribunal and is attached as "Annexure-K" to the Company Scheme Application No. 719 of 2017.
13. In so far as observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies 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.
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 Registrar of Companies, Maharashtra has filed its Report dated September 13, 2017 wherein the RoC has mentioned that there are no complaints, prosecution and scrutiny and matter may be decided on merits.
16. The Official Liquidator has filed its report stating therein that the affairs of the Transferor Company has been conducted in a proper manner and the Transferor Company may be ordered to be dissolved without winding up.
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. 851 of 2017 filed by the Petitioner Companies is 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 receipt of the order.
21. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. First Petitioner in Company Scheme Petition No. 851 of 2017 to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date 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.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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

Date: 04.01.2018