

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSP No. 915/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of Scheme of Arrangement and
Reconstruction between

Setco Chemicals (India) Private Limited
.... Petitioner / Transferor Company

CYMK Inks and Coatings Private Limited
.... Petitioner/ Transferee Company

Judgement delivered on: 10.01.2018

Coram:

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

V. Nallasenapathy, Member (Technical)

For the Petitioner :

Adv. Sanjay Udeshi, Adv. Darshan Ashar, and Mr. Akshay B. Udeshi i/b.
Sanjay Udeshi & Co., Advocates for the Petitioners

For the Registrar of Companies :

Mr. Parvez Naikwadi, Assistant in the office of Registrar of Companies.

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

ORDER:

1. Heard learned counsel for parties. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Arrangement and Reconstruction between Setco Chemicals (India) Private Limited ("Transferor Company") and CYMK Inks and Coatings Private Limited ("Transferee Company") and their respective members and creditors ("Scheme of Arrangement and Reconstruction" / "Scheme")

2. The Petitioner Companies have approved the said Scheme of Arrangement and Reconstruction by passing the Board Resolutions which are annexed to the Company Scheme Petition.
3. The Learned Advocate appearing for the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Scheme Application No. 648 of 2017 of the National Company Law Tribunal.
4. The Transferor Company is engaged in the business of development, manufacture, sale, trading, and export of inks, resins, adhesive and paints. The inks and resin products of the Transferor Company are sold in India and various countries of the world. The Specified Undertaking and the Remaining Undertaking (both as defined in the Scheme) have potential of continuous growth both horizontally and vertically. The Transferor Company needs to give focused and strategic attention to various parts/aspects of both the undertakings for maintaining this growth momentum as the same is an opportunity as well as a challenge. The demerger of Specified Undertaking from the Transferor Company to the Transferee Company is expected to bring clear focus on operations of each undertaking and also accountability of operations of each undertaking. Besides bringing focus and accountability, the demerger is expected to strengthen and sustain the long-term growth, profitability, market share, customer service, and face the competitive regulatory environment, risks and policies etc. Both undertakings require focused management attention, different skill sets and resources and have different profiles requiring different kind of focus and attention to meet the ever-expanding market / geography and growth opportunities, varied regulatory requirements, risks, litigation etc.
5. The averments made in the petitions and the submissions made by the Learned Representative for the Petitioners are:
 - 1) Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.

- 2) The Regional Director has filed his Report dated 27th day of December, 2017 stating therein save and except as stated in para IV (a) to (c) it appears that the Scheme is not prejudicial to the interest of shareholders and public. In Paragraph IV (a) to (c) of the said Report, the Regional Director has stated that :
- a. *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation/ Arrangements to the Income Tax Department for their representation. It appears that the company vide letter dated 10th August, 2017 has served a copy of Company Scheme Application No. 648 of 2017 along with relevant orders etc.,*
 - b. *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 filled by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
 - a. *As per Clause b Definitions of the scheme. **"Appointed Date"** means **April 1, 2016** or such other date as may be approved by the Tribunal. In this regard, it is submitted that in terms of provisions of section 232(6) of the Companies Act, 2013, it should be **April 1, 2016***
- 3) As far as the observations made in paragraph IV (a) and (b) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that, the copy of the Scheme is already served upon the Income Tax Department and till date no response is received from the Income Tax Department. The Transferor Company and the Transferee Company also undertakes to comply with all applicable provisions of Income Tax Act and all the Tax issues arising out of the scheme and the same will be met in accordance with law.
- 4) As far as the observation made in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that, the Appointed Date for the said Scheme of Arrangement and Reconstruction shall be April 1, 2016 as mentioned in the Clause 1(b) of the Scheme of Arrangement and Reconstruction and reiterated by the Regional Director in its Report.

- 5) The observations made by the Regional Director have been explained by the Petitioners in paragraphs 3 and 4 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
- 6) No objection has come before the Tribunal so far, to oppose the scheme.
6. From the material on record, the Scheme of Arrangement and Reconstruction 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.
7. Since all the requisite statutory compliance have been fulfilled Company Scheme Petition No. 915 of 2017 is made absolute in terms of prayer clause (1).
8. The Petitioner Companies are directed to lodge a copy of this Order along with a copy of the Scheme of Arrangement and Reconstruction with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy, within the time limits as prescribed under the Companies Act, 2013.
9. The Petitioner Company 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.
10. Each Petitioner Companies to pay cost of Rs. 25,000/- (Rupees Twenty Five Thousand only) to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of this Order.
11. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member
(Technical)

Sd/-

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