

IN THE NATIONAL COMPANY LAW TRIBUNAL

ALLAHABAD BENCH

CP No. 45/2016

(Under Section 391 and 394 of the Companies Act, 1956)

In the matter of

AMRIT AGRO INDUSTRIES LIMITED

(An unlisted public company incorporated under the provision of Companies Act, 1956 having its registered office at CM-28, First Floor, Gagan Enclave, Amrit Nagar, GT Road, Ghaziabad- 201009, Uttar Pradesh)

..... Transferor Company/ Petitioner Company- I

AND

AMRIT BANASPATI COMPANY LIMITED

(An unlisted public company incorporated under the provision of Companies Act, 1956 having its registered office at A-95, Sector-65, Noida -201309, Uttar Pradesh)

.... Transferee Company/ Petitioner Company- II

Judgement/ Order delivered on 19.07.2017

Coram:

Hon'ble...H. P Chaturvedi, Member (J)

For the Petitioner: Shri K.K Arora Advocate for Petitioner.

For the Respondent: Shri M.K Bagri, OL Allahabad for the Regional Director (N.R.), Central Government

As per.... H. P Chaturvedi (Member Judicial)

ORDER

In the present company Petition the petitioner company has filed a memo dated 30.06.2017 (through its authorised signatory supported by an affidavit duly notarised) seeking for withdrawal of present company petition bearing C.P NO 45/2016 which came as transferred case to this Tribunal from Hon'ble High court of Allahabad.

The present company petition was received in this Tribunal as second stage motion petition as per the provision of Section 434(1) of Companies Act, 2013 seeking approval and sanction of the proposed company scheme of arrangement. In the present matter a report of OL and Affidavit of RD (NR) offering comment/observation in respect of sanction of the proposed scheme have earlier

been filed and is now available on record. Therefore, the present case was fixed for further hearing in respect of sanction of the proposed scheme in the petition.

During this stage, as a subsequent development the petitioner company filed the present memo seeking for withdrawal of the present company petition in the light of the observation /comment made by the **Securities and Exchange Board of India (SEBI)** read with further comments of the **National Stock Exchange of India (NSE)** in respect of the petitioner company vide its letter dated April 17th 2017. This communication has been annexed with the supporting affidavit of the present memo.

In view of the above given facts and circumstances of the present case the petitioner company made such request that the present company petition be allowed to be withdrawn with a liberty to file fresh one at appropriate stage before appropriate forum.

We have heard the submission of Shri K.K Arora learned counsel of the petitioner company who drew our attention to Para 1-5 of the present memo seeking withdrawal of the present petition contending as such: -

- (1) That the Applicant company along with the Transferee Company filed a Scheme of Arrangement between the companies and their respective shareholders. The prime objective of the scheme of Arrangement was to provide exit opportunity to the public shareholders of the applicant Company. The Scheme, inter-alia, provided that the Public Shareholders of the Applicant Company will be issued Redeemable Preference shares of Rs 10/- each of the Transferee Company in lieu of their existing Equity Shares of the Applicant Company in the ratio of 1:1 and these Preference shares will be redeemed by the Transferee Company at a premium of Rs.50/- per share (i.e. at the total redemption amount of Rs 60/- per share, being the fair value then determined by the Independent Valuer).
- (2) The said Scheme was approved unanimously by the Shareholders of both the companies in the court convened meeting held on August 20, 2016 and thereafter a petition was presented before the Hon'ble Allahabad High court for Sanction of the Scheme. However, before the scheme could be approved by the Hon'ble Allahabad High Court, the Regional Director, Ministry of corporate Affairs, filed an affidavit, on the basis of the letter dated 17th October, 2016 received from the Securities & Exchange Board of India (SEBI), that the scheme is not in compliance with the SEBI circulars dated 30th November, 2015 and 10th October, 2016;
- (3) The Applicant Company took up the matter with the SEBI and provided the required documents and justification for the exit to the public shareholders offered by the way of Scheme of Arrangement. However, the scheme has not found favour with SEBI and after protracted correspondence and discussions, the Applicant Company has finally received an observation letter dated 17th April, 2017 from National Stock Exchange Ltd stating that the Scheme of Arrangement is not in compliance with SEBI circular dated 10th October, 2016.
- (4) Under the circumstances, the Applicant Company has only two options, namely, (i) list its equity shares on nation-wide stock exchanges' or (ii) to

provide exit to the public shareholders as prescribed in SEBI circular dated 10th October, 2016;

- (5) Therefore, the Board of Directors of our Company and the promoters have decided to provide exit to the Public Shareholders of the Applicant Company by offering to buy back the shares held by public shareholders, in terms of SEBI circular dated 10th October, 2016 and withdraw the petition for Amalgamation of the Applicant Company with the Transferee Company.

We have also perused the letter of **National Stock Exchange of India (NSE)** dated 17th April 2017 where in it observed that the company scheme subject matter of the present petition is not in conformity with **Securities and Exchange Board of India** circular dated 10th October 2016 which provides a process to be followed for exit option to Shareholders of the Exclusively listed Companies of derecognised Stock exchanges. In view of this **National Stock Exchange of India (NSE)** has suggested for the following route to be adopted by the petitioner company.

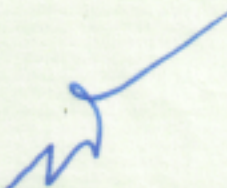
- (a) Either list equity shares on Nationwide or Stock Exchange or
- (b) Provide exit to the shareholder as provided in Securities and Exchange Board of India (SEBI) circular dated

We perused the affidavit of the Regional Director (NR) filed in this respect by offering its comments on sanction of the proposed scheme. The RD has also raised the same issue in his affidavit by referring to the circular of Securities and Exchange Board of India (SEBI) dated 10th October 2016 read with previous SEBI circular **CIR/CFD/CMD/16/1915/2015** which mandates as such that the draft scheme along with documents received are to be submitted first to the Stock Exchange which in return forward such scheme to the Securities and Exchange Board of India (SEBI) for its consideration and comments.

It is further reported that, the Securities and Exchange Board of India (SEBI) has observed as such that petitioner company didn't follow the above circular read with another circular **SEBI/HO/MRD/DSA/CIR/P/2016/110** in its right perspective which reportedly are not found to be complied with before filing of the present company petition in the Hon'ble High Court. Thus prima facie, Securities and Exchange Board of India (SEBI) observed as such the proposed scheme is not entitled for sanction for want of compliance of its above referred circulars.

Keeping view of above stated legal and factual position of the case. The petitioner company was required to fulfil all its legal formalities and to comply with provision of Securities and Exchange Board of India (SEBI) failing which the present petition cannot be sanctioned and petition could be disallowed on such ground alone.

Notwithstanding the above and keeping in view a subsequent development that took place in the present matter as the petitioner company has sought for withdrawal of present company petition and by granting necessary permission for the same with appropriate direction that may be deemed fit by this court.



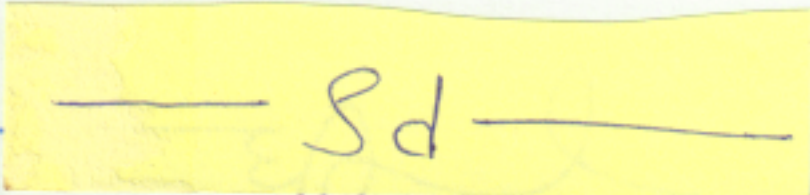
Hence, we feel that withdrawal of the present petition deserve to be allowed subject to such observation that petitioner company shall comply with legal provision of Securities and Exchange Board of India (SEBI) circular and National Stock Exchange of India (NSE) letter dated April 17th 2017 and to fulfil other statutory obligation as observed in the affidavit of RD dated 20.10.2016 in case if it proposes to file fresh company petition before this Tribunal for sanction of present company scheme of arrangement.

If the petitioner company wishes to file fresh petition after making statutory compliance, then a liberty is granted to file the same at appropriate stage and before appropriate forum.

Accordingly, the Memo filed by the company is conditionally allowed and disposed of.

Consequently, the CP NO 45/2016 also stand disposed of as withdrawn.

No order as to cost.


H.P Chaturvedi (Member J)

Date- 19/07/2017