

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

**Company Petition No.1/2016
Company Application.1/2016
(Under Section 391-394 of Companies Act,1956)**

IN THE MATTER OF:

M/s Vishvakarma Tissue Private Limited
(Registered Office at 4.5 Km Ramnagar Road
Kashipur, US Nagar, Uttarakhand-244713).

.....Transferor Company

AND

M/s Vishvakarma Paper and Boards Limited
(Registered Office at 4.5 Km Ramnagar Road
Kashipur, US Nagar, Uttarakhand-244713).

.....Transferee Company

JUDGMENT/ORDER DELIVERED ON 22.11.2017

CORAM : Sh. Harihar Prakash Chaturvedi, Member (Judicial)
For the Petitioner : Sh. Kashif Zaidi, Advocate
For the Central Govt. : Sh. M.K. Bagri, OL

PER: SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)

Order/Judgment

- The Petitioner Companies filed the Present Company Petition under Section 391/394 of Companies Act, 1956 seeking prayer for sanction of the Proposed Company Scheme of Amalgamation between **M/s Vishvakarma Tissue Private Limited.**, (herein after referred to as Transferor Company), with **M/s Vishvakarma Paper & Boards Limited.** (Transferee Company).



It is stated that the Proposed Company Scheme of Amalgamation has already been approved by its Respective Board of Directors of the Companies as per its meeting held on **28.03.2016.**

4. The main object to and rationale of the Proposed Company Scheme are described as under:

- a. *The proposed Scheme of Amalgamation would result in business synergy and consolidation of these Companies into one large Company with a stronger base of assets.*
- b. *The proposed Amalgamation would enable pooling of Physical, financial, human and other resources of these Companies for the most beneficial utilization of these factors in the combined entity.*
- c. *The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large Company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resources and enhancement of overall business efficiency. It will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.*
- d. *The said Scheme of Amalgamation will strengthen, consolidate and stabilize the business of these Companies and will facilitate further expansion and growth of their business. The resulting Amalgamated Company will be able to participate more vigorously and profitably in the competitive market scenario.*
- e. *The proposed Amalgamation would enhance the shareholders' value of both the Transferor and the Transferee Company.*
- f. *The said Scheme of Amalgamation will have beneficial impact on both the Transferor and the Transferee Company, their shareholders, Employees and other Stakeholder's and all concerned.*



5. It is submitted that the Proposed Company Scheme (of Amalgamation) is neither intended to in any manner nor having any beneficial effect on the managerial interest, of the Directors of the Petitioner Company, except to extent of their shareholdings. Further the Proposed Company Scheme does not adversely affect either to rights, or interest of any creditors and debenture

6. It is further submitted that the Proposed Company Scheme of Amalgamation does not make any compromise with the Interest of its creditors and debenture holders of the Petitioner Companies because due provisions are made in the Proposed Company Scheme to make payment of all liabilities as and when it arises and fall due in its usual course.
7. It is further informed that the Auditors of the Vishvakarma Tissue Private Limited and Vishvakarma Paper & Boards Limited, in its report did not disclose any miss-management in the affairs of Transferor Company and Transferee Company.

It is further reported that the Transferee Company has duly complied with all the accounting standards applicable there to. In support of this, the Petitioner Companies have obtained necessary certificate from the auditor of the Transferee Company certifying such that the accounting treatment under the Proposed Company Scheme is found to be in order and inconformity with the Accounting Standards. This Certificate was earlier annexed to the previous **Company Application No.1 of 2016** which is now clubbed together with the Present Company Petition.



A perusal of the averment made in the Present Company Petition show that the Petitioner Companies initially filed the First Stage Motion Petition before Hon'ble High Court, Uttarakhand at Nainital, which accordingly was disposed of. Thereafter the Present Company Petition as Second Stage Motion Petition filed and further came to be transferred to this Bench of the NCLT by virtue of Statutory Provision of section 434(1) of Companies, Act, 2013.

Hon'ble High court of Uttarakhand seeking for dispensation with the meetings of its shareholders, secured and unsecured creditors. The Hon'ble Uttarakhand High court vide its **order dated 14.03.2016** has pleased to allow such Prayer by dispensing with the meeting of its Shareholders, secured and unsecured creditors.

9. In addition to this the Hon'ble Uttarakhand High court, pleased further directing the Petitioner Companies to issue formal notice to the Central Government through the offices of Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, Kanpur, The Official Liquidator, Uttarakhand and further to effect necessary paper publication in English and Hindi newspapers.

In Compliance of the above stated direction of the High court an authorised representative of the applicant companies dully filed an affidavit of service confirming such facts that the notices of Present Company Petition have been dully published in the English '**Times of India**' and in the Hindi '**Amar Ujala**' (Udham Singh Nagar Edition). The Petitioner Companies have served a notice of the present Company Petition to the Central Government through the Office of Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi and Registrar of Companies-cum-Official Liquidator, Uttarakhand at Nainital Camp at Kanpur.

In response to the above stated notices issued. The Registrar of Companies-cum- Official Liquidator Uttarakhand also filed its report, before this Tribunal reporting that there is no prosecution, filed against Transferor and Transferee



The Registrar of Companies in para 9 of its report further states that “The Transferor Company is a wholly owned subsidiary of the Transferee Company” and its share Exchange ratio can be described as under:

“On the Scheme becoming effective entire shareholding of 45,90,800 equity shares held by the Transferee Company in the Transferor Company shall stand cancelled and the Transferee Company shall not be required to issue any shares in consideration of such shares under the Scheme. Hence, the investment of Rs.4,59,08,000/- by the Transferee Company shall become Nil.”

In addition to the above the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, having called for a report from the Registrar of Companies has filed a Representation Affidavit of Shri Narendra Kumar Bhola before this Tribunal. He deposes such that his office is having no objections for Sanction of the Present Company scheme, as no prosecution/ proceedings against the Transferor and the Transferee Company or against its Directors are reported Pending for alleged breach of the Companies Act and statutory provisions of FEMA, IPC, SEBI Act, RBI Act in any Court of law.

11. The ROC- cum- Official Liquidator Uttarakhand, also filed his report in the present matter by giving detail particulars of Authorized, Issued, Subscribed and Paid up Capital of the Transferor and Transferee Company as on

31/03/2015.



The OL-cum-ROC, Uttarakhand by his report informed that Shri Manish Kumar Bansal, Adv. being Authorized representative of Transferor and Transferee Company has produced before his office

to have been conducted in any manner prejudicial to the interest of its members or to the public at large. Further in para 6 of its report he informed such that his office is having no objection for dissolution of the Transferor Company without being wound up pursuant to provisions of Section 391/394 of the Companies Act, 1956 and rules made there under.

We have gone through the above stated averments made in the Company Petition. Further we also perused the documents annexed therewith and examined carefully the Representation Affidavit of the RD(NR), Report of ROC-cum-OL filed in the present case. We examined the Merits of the Proposed Company Scheme of Amalgamation in the light of Judicial Trend as settled by the High Court's that *the Court must examine a scheme on its own merits and is not bound to treat the scheme as fait accompli. It is well-settled that in exercising its discretion in according sanction, the court will consider, first, whether the statutory provisions have been complied with; secondly, whether the scheme is such as a man of business would reasonably approve. Bearing in mind these principles, the scheme may be examined.*

In addition to the above this Tribunal is required to consider the circumstances necessary for the Sanction of a Company Scheme. Some of the outstanding circumstances may be illustrated as under:

- a. The proposal for the Scheme was made in good faith;
- b. The Scheme is fair and reasonable;



By following the above narrated legal Principle, we considered the fact and circumstances of the Proposed Company Scheme as per its merits. We are of the view that the proposed scheme does not appear to be contrary to a public policy, nor prejudicial to its shareholders or detrimental to the public Interest at large as the Transferor Company is a Subsidiary of the Transferee Company.

That apart the Board of Directors of the Transferor Companies and Transferee Company have dully considered and approved the proposed Company Scheme of Amalgamation.

In addition to the above the shareholders secured and unsecured creditors of both the Companies have given consent and expressed their no objection for approval of the Proposed Company Scheme.

It may also be seen that adequate measures are taken in the Proposed Company Scheme of Amalgamation to provide certain provision to secure the Interest of the Company and its shareholders, creditors, stakeholders and the employee which reads as under:

- (a) *All the assets and labilities of the subsidiary Transferor Company(s) will be transferred to and vest with the Transferee Company.*
- (b) *The Scheme of amalgamation shall take effect from 30th September, 2015 or such other date, as the Tribunal may approve.*
- (c) *All the employees of the Transferor Companies shall become employee of the Transferee Company without any change in their respective service condition and with their continuity of service.*



14 issued by the Institute of Chartered Accountants of India to the instant Scheme.

- (e) That the Transferor Company and the Transferee Company have accordingly, arrived at the proposed Scheme of Amalgamation/Merger with effect from **30.09.2015** Certified Copy of all the Transferor Company and the Transferee Company are annexed with Company Application No.1 of 2016. A true copy of the Scheme of Amalgamation has been annexed with the Present Petition.
- (f) That the meetings of the Board of Directors of the Transferor Company as well as of the Transferee Company having been duly approved the proposed Scheme of Amalgamation, which includes the share exchange ratio. A copy of the Share Valuation report is annexed with present petition/ application.
- (g) That the Transferor Companies are subsidiary of the Transferee Company by virtue of Section 2(87) of the Companies Act, 2013 and no further shares shall be issued by the Transferee Company, as company cannot issue shares to itself, henceforth, all the Equity Shares, held by the Transferee Company and its nominees, if any, in the Transferor Companies shall be cancelled and share certificates extinguished, accordingly, there will be no issue and allotment of Equity Shares of the Transferee Company to the Shareholders of the Transferor Companies upon this Scheme becomes effective.

12. Thus, In the light of the above stated factual position of the Companies and of the Proposed Company Scheme all the Statutory compliance either seems to have been complied with or, are further undertaken to be complied with by Petitioner Companies as per undertaking in Affidavit. Therefore, the Proposed Company Scheme, seems to be reasonable and fair, inconformity with statutory provisions. Hence it deserves approval. Accordingly, the Present Company petition is allowed in terms of its Prayer Clause.

Consequently, the Company Scheme of Arrangement/Amalgamation as annexed to the present Company Petition is hereby sanctioned, and to be upon by the Petitioner Companies as per the terms and condition



13. Consequent upon approval and sanction of the Company Scheme, all the property, rights and powers of the transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of Act, be transferred to and vested in the Transferee Company for all intents and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same.
14. All the liabilities of the Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company.
15. Notwithstanding the above, while sanctioning the above Company Scheme, we make to clarify further that this order should not be meant for an order in any way for granting exemption from payment of stamp duty, taxes. Statutory charges or other payment in accordance with law or in respect to any relaxation, compliance with any other requirement which may be specifically required under the law.
16. That Petitioner Companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and the Transferor Companies on such certified copy being so delivered shall deemed to be dissolved. The Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on file kept by him in relation to the Transferee Company and files relating to the Petitioner Companies shall be



17. Further a cost of Rs.25,000/- is awarded in favour of the Central Government through the office of the Registrar of Companies (Kanpur), Regional Director (NR) as the case may be towards Legal Expenses incurred which is payable by the Petitioner companies within four weeks from the receipt of an authentic copy of this order.
18. The Petitioner counsel to furnish a copy of draft order of sanction of the Scheme in the prescribed format under Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 read with other rules for scrutiny and authentication to be made by the Registry of this Tribunal.
19. All Concerned Regulatory Authorities to act on an Authentic copy of this order annexed with the Company Scheme and duly authenticated by the Registry of this Tribunal.



Dated- 22/11/2017

Typed by:
Aman Kumar Dwivedi
 (Law Research Associate)

— Sd —

H.P. Chatuṛvedi
Member (Judicial)