

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

**Company Petition No.44/2016
Company Application.25/2016
(Under Section 391-394 of Companies Act, 1956)**

IN THE MATTER OF:

M/s Shyam Biomedicos Limited
Registered Office at 87/171,
Acharya Nagar, Kanpur -208 003 (UP)

.....Transferor Company/Petitioner No.1

AND

M/s Shivanshi Ferrous Private Limited
Registered Office at ITI Road,
Fatehpur-212 601 (UP)

.....Transferor Company/Petitioner No.2

AND

M/s Shyam Sugar Limited
Registered Office at 87/171,
Acharya Nagar, Kanpur-208 003

.....Transferor Company/Petitioner No.3

WITH

M/s Shyam Flour Mills Private Limited
Registered Office at 87/171-A (1)
Acharya Nagar, Kanpur-208 003(UP)

.....Transferee Company/Petitioner No.4

JUDGMENT/ORDER DELIVERED ON 22.11.2017

CORAM

: Sh. Harihar Prakash Chaturvedi, Member (Judicial)

For the Petitioner

: Sh. Suyash Agarwal, Advocate

For the Central Govt.

: Sh. M.K. Bagri, OL



PER SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)

Order/Judgment

1. The Present Company Petition is filed by the Petitioner Companies under Section 391/394 of Companies Act, 1956 seeking prayer for sanction of the Proposed Company Scheme of Amalgamation between **M/s Shyam Biomedicos Private Limited.,** (hereinafter referred to as Transferor

Company 1), M/s Shivanshi Ferrous Private Limited. (Transferor Company 2), M/s Shyam Sugar Limited., (Transferor Company 3), as Amalgamating with M/s Shyam Floor Mills Private Limited., (Transferee Company).

2. The Petitioners in the Present Company Petition have submitted that the Proposed Company Scheme has already been approved by the Board of Directors and shareholders of respective Petitioner Companies as per its EOGM held on **27.04.2016**.
3. As per the Proposed Company Scheme the **Appointed Date** of the scheme is **01.04.2016**.
4. The main object to and rationale of the Proposed Company Scheme of Amalgamation are described as under:

“The Object of the Scheme is to realize the benefits of greater synergies of the businesses of all the four Companies by consolidating the business which is presently being carried on by the transferor and transferee companies as separate legal entities. The Amalgamation of four Separate legal entities into one and consolidation of business of Transferor and Transferee Companies will result in focused management attention, improvement in operational efficiency and business prospects and overall profitability of the transferee company in operational efficiency and business prospects and overall profitability of transferee company, strengthen its balance sheet and provide greater leverage for raising resources to finance growing needs of business, besides savings in common overheads/administrative expenses etc. all this is likely to improve the valuation of shares of transferee company thereby benefitting its shareholders. The interest of the secured and unsecured creditors of all companies will remain unaffected.”



5. It is submitted that the Proposed Company Scheme of Amalgamation is not intended to in any manner, to have any beneficial effect on the managerial interest, if any, of the Directors of the Petitioner Companies, except to the extent of their shareholdings. That the Proposed Scheme will not adversely affect the rights or interest of any creditor and debenture holders of the

(Handwritten signature)

Petitioner Companies or their respective shareholders, in any manner whatsoever.

6. It is also stated that the Proposed Company Scheme of Amalgamation does not involve in any compromise with the creditors and debenture holders of the Petitioner Companies in any manner whatsoever. As such, the Scheme of Amalgamation does not in any manner adversely affect the interests of any creditor and debenture holder of the Petitioner Companies. Further due provisions are made in the Company Scheme for payment of all their liabilities as and when the same will fall due in the usual course.

7. It is also stated that the Auditors of the Shyam Biomedicos Limited, Shivanshi Ferrous Private Limited, Shyam Sugar Limited, Shyam Flour Mills Private Limited, have not disclosed any mis-management in the affairs of respective companies (e.g. Transferor Companies and Transferee Company.)

It is also reported that the Transferee Company has duly complied with the all accounting standards applicable there to. In support of this, the Petitioner Companies have obtained necessary certificate from the auditor of the Transferee Company certifying that the accounting treatment under the Scheme is found in compliance with the Accounting Standards, and earlier

which was annexed with the previous **Company Application No.25 of 2016** which is now clubbed together with the Present Company Petition.



8. From a perusal of the Present Company Petition it may be seen that the Petitioner Companies initially filed a First Stage Motion Petition before Hon'ble Allahabad High court, later on the matter was transferred to this bench of the NCLT by virtue of Statutory Provision under section 434(1) of Companies, Act, 2013.

[Handwritten signature]

Petitioner Companies in the prayer clause of Company Application (CA No. 25/2016) had earlier sought directions from the Hon'ble Allahabad High court to dispense with the meetings of its shareholders, secured and unsecured creditor. The Hon'ble High court vide its **order dated 09.08.2016** allowed the same by dispensing with the convening of meeting of its Shareholders, secured and unsecured creditors.

9. In addition to the above Hon'ble High court further directed to the Petitioner Companies to issue a notice to the Central Government through the office of Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi Registrar of Companies, Kanpur and The Official Liquidator, Allahabad and for making a paper publication in English and Hindi newspapers.

In Compliance of above such direction of the Hon'ble High court the authorised representative of the applicant companies filed an affidavit of service confirming that such notices are dully published in the English version of **"Financial Express" Lucknow Edition** and in the Hindi version of **"Rashtriya Sahara" Kanpur Edition**. The Petitioners further 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, UP at Kanpur.



10. In response to the above stated notices issued. The Registrar of Companies, Kanpur filed its report, before this Tribunal informing such as no prosecution, is found to be filed against Transferor Companies and Transferee Company nor any proceeding against it under section 235 to 251 of the Act, 1956 is pending nor any violation under section 383A/215 of the Companies Act, 1956 is reported against these Companies.

That apart The ROC in Para 9 of its report has given particulars about the Share Exchange Ratio which may be reproduced here below:

Transferor Co. No.1

The transferee company shall issue and allot 100 equity shares of Rs.100/- each fully paid of the Transferee Company for every 1294 equity shares of face value of Rs.10/- each fully paid up held by the equity shareholders in the transferor company no.1.

Transferor Co. No.2

The transferee company shall issue and allot 100 equity shares of Rs.100/- each fully paid of the Transferee Company for every 1136 equity shares of face value of Rs.10/- each fully paid up held by the equity shareholders in the transferor company no.2.

Transferor Co. No.3

The transferee company shall issue and allot 100 equity shares of Rs.100/- each fully paid of the Transferee Company for every 1261 equity shares of face value of Rs.10/- each fully paid up held by the equity shareholders in the transferor company no.3.



11. In addition to the above, the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, having receipt a report from the Registrar of Companies duly filed his Representation Affidavit in this Tribunal stating such that its office is having no objections to the Proposed Company scheme of Amalgamation as there is no prosecution/ proceeding pending against the Transferor and the Transferee Companies and there is no any kind of violation

of laws under the Companies Act, FEMA, IPC, SEBI Act, RBI Act by the director of the Applicant Companies is reported.

12. As in the present matter The Official Liquidator, Allahabad also filed its report, by describing the detail particulars of Authorized, Issued, Subscribed and Paid up Capital of the Transferor and Transferee Company as on 31/03/2016.

As per para 19 of the OL's report it is informed that under the provisions of section 230-232 of the Companies Act, 2013, his office is required to scrutinize the Books of Accounts and other documents of the Companies to prepare and submit a report. Pursuant, thereto one Shri Satyam Omer being Authorized representative / Company Secretary of Transferor Companies has produced necessary Books of Accounts and statutory records, before the O/o Official Liquidator.

Having made the scrutiny there of The Official Liquidator dully submitted his report stating such that the affairs of the Transferor Companies are not found to be conducted in manner prejudicial to the interest of its shareholder or to the public at large. Further as para 22 of his report he has stated that his office is having no objection for dissolution of the Transferor Companies without being wound under the provisions of Section 230-232 of the Companies Act, 2013 read with rules made there under.



We have gone through the above stated averments made in the Present Company Petition and perused the documents annexed therewith. We read the Representation Affidavit of the RD (NR) along with Report of ROC and O.L filed in the present case. We examined the merits of the proposed Company scheme of Amalgamation in the light of Judicial Trend settled by the Hon'ble

High Court observing such that *the Court must examine the 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 required to consider circumstance necessary for the Sanction of a Proposed Company Scheme. Some of the outstanding circumstances for sanction of a Company Scheme may be discussed as under:

- a. The proposal for the Scheme was made in good faith;
- b. The Scheme is fair and reasonable;
- c. The Scheme will yield to smooth and satisfactory working;
- d. The Scheme does not offend public or commercial morality;
- e. The Scheme is not detrimental to the interests of the creditors or members or public interest.

By following the above narrated legal Principle. We are of the view that the proposed scheme does not seems to be contrary to the public policy, nor prejudicial to the its shareholders and detrimental to public at large as the Transferor Companies are stated to be Subsidiaries of the Transferee Company.



That apart the Board of Directors 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 their consent and expressed their no objection in favour of the 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:

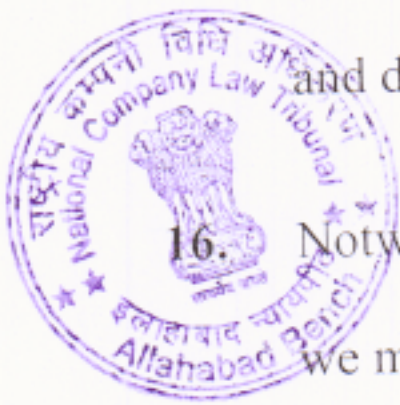
- (a) *All the assets and liabilities of the subsidiary Transferor Company(s) will be transferred to and vest with the Transferee Company.*
- (b) *The Scheme of amalgamation shall take effect from 1st April, 2016 or such other date, as the Tribunal may approve.*
- (c) *All the employees of the Transferor Companies shall become employee of the Transferee Company without any change in their respective service condition and with their continuity of service.*
- (d) *That subsequent to the date of the audited accounts for the year ended on 31.03.2016, there has been no substantial change in the financial position of the Transferor Companies No.1, 2 & 3 except those arising or resulting from normal course of business. The petitioners undertake to comply with the Accounting Standard-14 issued by the Institute of Chartered Accountants of India to the instant Scheme.*
- (e) *That the Transferor Companies and the Transferee Company have accordingly, arrived at the proposed Scheme of Amalgamation/Merger with effect from 1st of April, 2016 Certified Copy of all the Transferor Companies and the Transferee Company are annexed with Company Application No.25 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 Companies as well as of the Transferee Company having been duly approved the proposed Scheme of Amalgamation, which includes the exchange ratio have been determined by Prasad Gupta J & Co., Chartered Accountants. 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.*



13. Thus, in the light of the above stated factual position of Petitioner Companies and of the proposed 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, the Proposed Company Scheme, seems to be reasonable, fair and in conformity with statutory provisions. Hence it deserves approval. Accordingly, the Present Company petition is allowed in terms of Prayer Clause. In the result, the Company Scheme of Arrangement/amalgamation annexed to the present Company Petition is hereby sanctioned, and to be acted upon by the Petitioner Companies and all concerned parties as per the terms and condition contained therein.

14. Consequent upon the approval and sanction of the Present Company Scheme, all the property, rights and powers 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 Act, be transferred to and vested in the Transferee Company for all intents and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same.
15. 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.



16. Notwithstanding, the above while sanctioning the above company scheme, we make it to clarify further that this order should not be meant for an order in any way for grant of 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.

[Handwritten signature]

17. 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 consolidated accordingly.

18. Further, a cost of Rs. 25,000/- is awarded in favour of the Central Government through the office of the Registrar of Companies (Kanpur), towards Legal Expenses incurred by the government which is payable by the Petitioner companies within four weeks from the receipt of an authentic copy of this order.

19. 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.



20. 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)

**H.P. Chaturvedi,
Member (Judicial)**