

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

Company Petition No.28/2016
(Under Section 391-394 of Companies Act, 1956
Presently under Section 230/232 of Companies Act, 2013)

IN THE MATTER OF:

M/s Super Tannery Limited
Registered Office at 187/170,
Jajmau, Kanpur, Uttar Pradesh-208010

.....Transferor/ Applicant No.1

WITH

M/s Amin Tannery Limited
Registered Office at 7/94-J, Tilak Nagar,
UB, Tower 3, B-36, Sector 132,
Kanpur, Uttar Pradesh- 208 002

.....Transferee / Applicant No.2

JUDGMENT/ORDER DELIVERED ON 27.12.2017

CORAM : Sh. Harihar Prakash Chaturvedi, Member (Judicial)

For the Petitioner : Sh. Abhinav Mehrotra, Advocate

For the Central Govt. : Sh. M.K. Bagri, OL

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

ORDER/JUDGMENT

1. The Present Company Petition was filed earlier before the Hon'ble Allahabad High court by the Petitioner Companies under Sections 391/394 of the Companies Act, 1956 seeking prayer for the sanction of a Company Scheme of Arrangement as proposed between **M/s Super Tannery Limited**, (Transferor/ Applicant No.1) with **M/s Amin Tannery Limited**, (Transferee/ Applicant No.2).



2. The Applicant Companies submits that its Board of Directors and shareholders have already approved the present company scheme in its meeting dated **25.01.2016**.
3. The Appointed date of the Proposed Company Scheme initially was **01.04.2015** and later on amended to **01.04.2017** by the Petitioner Companies as per their resolution/ decision taken in their respective board meetings held on 12th September, 2017. The above referred reschedulement of the appointed date of the proposed company scheme has also been approved by this Tribunal vide its order dated 13.12.2107 passed in **CA No.189/2017**.
4. The main object to and rationale of the Proposed Company Scheme of Arrangement are described as under:

- (i) The Demerger of part business of M/s Super Tannery Limited (i.e. Goat Tannery Business) to Amin Tannery Limited will result in increased flexibility and enhance the ability of STL and ATL to undertake their respective projects, thereby contributing to enhancement of future business potential.
- (ii) This Scheme will enable the business comprised in the Demerged Undertaking and the remaining undertaking to be pursued and carried on more conveniently and advantageously with greater focus and attention through two separate companies, i.e. STL and ATL, each having their own management team and setup. The same will facilitate the business considerations and factors applicable to the said businesses to be addressed more effectively and adequately by the respective companies;



- (iii) The transfer and vesting of the Demerged Undertaking into ATL, by the way of demerger, would facilitate focused management attention, provide leadership vision, facilitate efficiency in operations due to individual specialization, provide greater leveraging due to financial independence and facilitate strategic/financial investment;
- (iv) It is believed that the proposed segregation will create/unlock value for shareholders and allow a focused strategy in operations, which would be in the best interest of STL and ATL and their respective shareholders and all person connected with them; and
- (v) The Proposed Scheme is in the interest and benefit of shareholders, creditors and there is no likelihood that any shareholder or creditor of either STL and ATL would be prejudiced as a result of the Scheme of Arrangement.

5. It is contended before us that the Proposed Company Scheme of Arrangement 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 of its creditors and debenture holders or its respective shareholders, in any manner whatsoever.

6. It is further contended that the Proposed Company Scheme of Arrangement 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 Arrangement 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 Proposed Company Scheme for making payment of all its liabilities as and when the same will fall due in the usual course. 7

7. It is submitted that the Auditors of the **M/s Super Tannery Limited** and **M/s Amin Tannery Limited**, in their report have not disclosed any mismanagement in the affairs of both companies (e.g. Transferor/ Applicant No.1 and Transferee/Applicant No.2).

It is further reported that the Transferee /Resulting Company has duly complied with all the Accounting standards as applicable thereto. In support of this, the petitioner companies have obtained necessary certificate from the auditor of the Transferee/Resulting Company certifying this that the accounting treatment under the Scheme is found in compliance with the Accounting Standards, such auditors report/ certificate has been annexed with the previous **Company Application No.28 of 2016** which are now clubbed together with the Present Company Petition.

8. By perusal of the record of the Present Company Petition it can be seen that the applicant companies initially filed the first stage motion Petition (bearing CA.NO 28/2016) before Hon'ble Allahabad High court. Which was allowed vide its order dated 17.08.2016.



The Applicants company in the prayer clause of this company application (CA No.28/2016) made prayer for issue of some directions from the Hon'ble Allahabad High Court for convening the meeting of shareholders, secured and unsecured creditor of the Transferor Company/Demerged Company (**M/s Super Tannery Limited**) and further to dispense with the meetings of its shareholders, secured and unsecured creditor of Transferee company/Resulting Company (**M/s Amin Tannery Limited**). The Petitioner

Companies also made such prayer for appointment of Chairman/ Alternate Chairman to conduct such meetings. By considering such prayer, the Hon'ble High Court by its **order dated 17.08.2016** allowed the same for holding such meeting **Shri Ravinder Singh and Ms. Shreya Gupta** were appointed as chairman and Alternate chairman for the purpose of shareholders and further **Shri Amitabh Singh, Advocate and Shri Rishabh Agrawal, Advocates** were appointed as chairman/ alternate chairman for the purpose secured and unsecured creditors of the Transferor/ Demerged Company (**M/s Super Tannery Limited**). Such meetings were scheduled to be held on **26th September, 2016** at their registered office at Kanpur. The Hon'ble High Court was pleased also to dispense with the convening of meetings of its shareholders, secured and unsecured creditors of Transferee Company/ Resulting Company (**M/s Amin Tannery Limited**). The Hon'ble High court vide its same order further directed to the petitioner company to get published the notice in the prescribed format of such meeting in two newspapers e.g. Nav Bharat Times(Hindi) and The Pioneer (English) Kanpur Edition by prescribing minimum 21 days from date of convening of such meeting.

By perusal of Present Company Petition it seems that management of the Petitioner Companies practically found difficult to hold such meetings of the Transferee Company/ Demerged Company within given time frame by the High Court hence, the Petitioner company filed another Civil Misc. Application for seeking extension of time and to re-schedule the date to conduct such meetings. The Hon'ble Allahabad High Court granted such extension vide its order dated **23.09.2016 (passed in Application No-289805/2016)** by permitting the applicant Transferor Company/demerged Company (**M/s Super Tannery Limited**) for convening such meetings of



(Shareholders and Secured/Unsecured Creditors) on 5th December, 2016 in continuance of its previous order dated 17.08.2017.

9. In compliance of the above, the respective chairman/ alternate chairman duly convened the meeting. The same was properly conducted by the respective chairman/ alternate chairman of such meeting, who have submitted their reports before the High Court (under Rule 76 of the Companies (Court) Rules, 1959) certifying this the Proposed Company Scheme stood approved by its shareholder, creditors (secured and unsecured) of petitioner applicant company by a majority, such report is made available with the record of the court for perusal.
10. Such being the factual position in the present matter, it came to be transferred to this bench for further hearing and disposal. This bench also by its order dated **29.03.2017** issued further notice to RD(NR) and the OL, Allahabad inviting their response/ comments on the proposed company scheme for approval and sanction from this court.
11. In addition to the above, the notices were issued by the Registry of this bench as well as by the petitioner companies to the concerned Regulatory Authorities inviting their response/comments on Sanction of Proposed Scheme of Arrangement.



In response to above, The Registrar of Companies, Kanpur filed such report, observing that no prosecution, is found to be filed against Transferor Company and Transferee Company nor any proceeding against it under section 235 to 251 of the Act, is pending nor any violation under section 383A/215 of the Companies Act, 1956 is reported against these Companies.

The ROC in Para 9 of its report provided some particulars about the Share Exchange Ratio which may be reproduced here below:

“The Transferee Company M/s. Amin Tannery Limited will issue 10,79,73,360 equity shares of Rs.1/- each to the registered fully paid-up equity shareholders of the Transferor Company M/s Super Tannery Limited in the ratio of 1:1, 1(one) equity shares of Rs.1/- each credit as fully paid up in ATL for every 1 (one) equity shares of Rs.1/- each fully paid up held by them in STL”

The ROC in Para 22 of its report has further pointed out certain aspects of the Applicant Companies those have bearing on the present application and are stated as under:

“In point no.7.12 of the Scheme, it is informed by the company that subsequent to the sanction of the scheme, ATL will make an application for list of its equity shares, including the new shares on all the stock exchanges in which the shares of STL are listed in pursuance to the relevant regulation including SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015 read with Circular No.CTR/CFD/CM/16/2015 dated 30.11.2015”.

12. That apart, The Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, having received a report from the Registrar of Companies filed his Representation Affidavit before this bench stating in para 5 that **NRI Holding (101) of petitioner companies is 665834 Equity Shares of Rs.1 which Comprises 0.62% of total shareholding as on 31.03.2016.** Therefore, The R.D has suggested that the petitioner companies may be directed to comply with the provision of FEMA/RBI.



The RD (NR) further in its Representation affidavit has stated that “Its office is having no objections to the Proposed Company scheme of Arrangement 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”.

13. In the present matter, The RBI, The Competition Commission of India (CCI), The Securities and Exchange Board of India (SEBI), The Bombay Stock Exchange (BSE) on receiving notices from this bench as well as from the Petitioner Companies, have offered and sent their comments to the Registry of this Tribunal on the issue of the Proposed Company Scheme of Arrangement.

As per the record, the RBI vide its letter dated **30.05.2017** clarified that **M/s Super Tannery Limited** (A Transferor/Demerged Company of the Proposed Company Scheme) does not come under the category Non- Banking Finance Company **(NBFC)** as per provision of Section 45 IA of RBI Act, 1934.

While, the Bombay Stock Exchange **(BSE)** made no adverse comments in its report about the Sanction of the Proposed Scheme of Arrangement between Transferor/ Demerged Company (**M/s Super Tannery Limited which is listed Company**) with Transferee/ Resulting Company (**M/s Amin Tannery Limited**).

Further, the SEBI also gave its no objection to Proposed Scheme but with observation that Petitioner Companies shall comply with various provision of the Circulars.

In addition to this, the Competition Commission of India vide its letter dated 22.05.2017 gave suggestion to obtain an undertaking from the petitioner companies by making declaration that CCI approval is not required for the Present Proposed Company Scheme.

14. That apart, the Official Liquidator, Allahabad in the present matter filed his report and furnished the detail particulars of Authorized, Issued, Subscribed



and Paid up Capital as on 31/03/2016 about the Transferor/ Demerged and Transferee Company which are stated as under:

Details of Share Capital of the Transferor/ Demerged Company:

Share Capital	Amount (in Rupees)
Authorized Capital 11,00,00,000 Equity shares of Rs.1/- each.	11,00,00,000/-
Issued Capital 10,79,73,360 Equity shares of Rs.1/- Each fully paid up.	10,79,73,360/-
Subscribed and Paid up share Capital 10,79,73,360 Equity shares of Rs.1/- each fully paid up.	10,79,73,360/-

Details of Share Capital of the Transferee/ Resulting Company:

Share Capital	Amount (in Rupees)
Authorized Capital 5,00,000 Equity shares of Rs.1/- each.	5,00,000/-
Issued Capital 5,00,000 Equity shares of Rs.1/- Each fully paid up.	5,00,000/-
Subscribed and Paid up share Capital 5,00,000 Equity shares of Rs.1/- each fully paid up.	5,00,000/-

As per para 11 of such report, the office of the Official Liquidator made scrutiny of the Books of Accounts and related documents of the Companies which are produced by Shri R.K. Awasthi, being authorized representative/Company Secretary of Transferor Company before it for preparation of his report.

Having made such scrutiny of the records/ documents produced before the Official Liquidator submit his report informing that **“the affairs of the**



Transferor Company are not found to be conducted in manner prejudicial to the interest of its shareholder or to the public at large”.

In the light of the above given facts and circumstances we examined the contents of the Present Company Petition by perusing the documents annexed therewith. We have gone through the Representation Affidavit of the RD(NR) and report of ROC and O.L, the R.B.I and the Competition Commission of India as produced before us in the present case.

By perusal of the above referred documents we find 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.

Moreover, the Board of Directors Transferor Company and Transferee Company have previously considered and dully approved the Proposed Company Scheme of Arrangement between the Transferor and the Transferee Company.

15. This Bench in its previous decision in the matter of *Auxin Engineering Limited with Oasis Grassland Private Limited (59/ALD/2017)* placed reliance on a decision of Hon'ble Gujrat High Court *In Re: (Kril Standard Products ... vs Unknown) dated 24 August, 1973 Reported in: (1976 46 CompCas 203 Guj, (1974) 0 GLR 810)* and specifically by quoting the observation of Hon'ble Justice D.A. Desai (as then his Lordship was) The same is equally relevant for the disposal of present petition. Hence, such observation as made in para 33 to 37 of the reference judgement may be reproduced here under:

33. - *There is enough material on record to come to the conclusion that the statutory provisions have been complied with. The board of directors of the transferor-*



company adopted a resolution in which the scheme of amalgamation was proposed. Direction of the court were sought under section 391(1). Full disclosures were made at the time of seeking directions of the court under section 391(1). There were no averments in the petition that the requirements of the proviso to section 391(2) have been complied with. Mr. Nanavati agreed to file an affidavit of the directors, Mr. K. M. D. Thackersey, to which he would annex the latest balance-sheet of the transferor-company and the affidavit would contain express statement that no investigation is pending against the transferor-company either under section 235 or any other section of the Companies Act. It would thus appear that the statutory provisions have been properly complied with.

34. The report of the Chairman shows that at the meeting of the secured creditors three secured creditors were present and all of them unanimously voted in favour of the scheme of amalgamation. It further shows that at the meeting of unsecured creditors 9 unsecured creditors were present having total claim of Rs. 97,545 and all the nine voted in favour of the scheme of amalgamation. As the transferor-company is a wholly-owned subsidiary company of the transferor-company, meaning thereby all the equity shares of the transferor-company are held by the transferee-company or its nominees, no question arises of convening a meeting of the members of the transferor-company. Their consent is implied in their conduct in moving for sanction of the scheme of amalgamation of the transferor-company with the transferee-company. Thus, the statutory provisions are properly complied with.
35. At the meeting of the secured creditors, all the secured creditors attended the meeting. There were in all 214 unsecured creditors and none attended and unanimously voted in favour of the scheme and, therefore, classes were fairly represented.
36. "Last question is whether this court should accord sanction to the scheme of amalgamation. The matter is within the discretion of the court. In exercising this discretion, the court will examine the scheme as a man of business would reasonably evaluate it. I have been often told that the court should not try to substitute its judgment for the commercial judgment of those interested in the company as expressed in various meetings. That apart, the court still has discretion in the matter and the court is not a mere rubber stamp because the scheme has been approved by a statutory majority in various meetings". The zeal with which attempt is made to acquire controlling block of shares in companies, it is not difficult for the industrialists to push through the scheme with the majority at their back and call, but the court cannot abrogate the discretion in favour of such a



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majority. Therefore, the court must and should examine the scheme on its own merits. I would, however, not dilate upon this, for this reason that by the scheme of amalgamation, a wholly-owned subsidiary company merges into the holding company. The factual merger is now being converted into a legal and total merger. Further, both the companies are private limited companies, meaning thereby that they are something like a family concern. In this background, I need not examine the scheme in all its details.

37. Having given my anxious thought to the scheme, I would accord sanction to the scheme of arrangement for amalgamation of the transferor-company with the transferee-company, with this condition that the scheme shall not take effect and be operative until and unless it is sanctioned in an appropriate proceeding to be taken by the transferee-company in the High Court having jurisdiction to be invoked by the transferee-company. Subject however to this specific reservation, the consequential orders, as are required to be made under section 394 prayed for in prayers (i) to (iv) of paragraph 12 of the petition, including the one that on scheme of amalgamation becoming effective, the transferor-company should be deemed to have been dissolved without winding up, are hereby made.

16. By following the above referred Judicial Precedent and by considering the factual aspect and legal position of the Petitioner Companies in respect of the proposed company scheme, we feel that the statutory compliances either seems to have been complied with or, are further undertaken to be complied with by Petitioner Companies. Hence by perusing the undertaking given in affidavit, the proposed company scheme, appears to be reasonable, fair and is found in conformity with statutory provisions. Hence, the scheme deserves approval. Accordingly, the Present Company petition is allowed in terms of Prayer Clause.

Consequently, the proposed company scheme of arrangement as annexed with the present Company Petition is hereby sanctioned. The Petitioner Companies as well as all concerned parties to act upon as per the terms and condition contained therein.



17. Consequent upon the approval and sanction of the Present Company Scheme of Arrangement, all the property, rights and powers of the Demerged undertaking of the Transferor/ Demerged Company shall be transferred to and vested in Transferee/Resulting Company and accordingly the same shall pursuant to Section 232 of Act, be transferred to and vested in the Transferee/Resulting Company for all intents and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same.
18. All the liabilities of the Demerged undertaking of Transferor/Demerged Company be transferred without further act or deed to the Transferee/Resulting 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.
19. 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.
20. 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 demerged undertaking of the Transferor Company on such certified copy being so delivered shall deemed to be dissolved. The Registrar of Companies shall place all documents relating to the demerged undertaking of Transferor Company and registered



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with him on file kept by him in relation to the Transferee Company and files relating to the Petitioner Companies shall be consolidated accordingly.

21. A cost of Rs. 25,000/- (Rupee Twenty-Five Thousand Only) is further 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.
22. The Petitioner counsel is advised to furnish a draft order in the prescribed format under Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with other rules of the sanctioned company scheme for the purpose of scrutiny and authentication by the Registry of this Tribunal.
23. The Authentic copy of this order annexed with the Present Company Scheme by the Registry of this Tribunal, to be acted upon by all the concern and Regulatory Authorities.



Dated-27.12.2017

Typed by:
Aman Kumar Dwivedi
(Law Research Associate)

H.P. Chaturvedi,
Member (Judicial)