

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
"CHANDIGARH BENCH, CHANDIGARH"**

**CP(CAA)No.15/Chd/Hry/2017**

**Under Sections 230-232  
of the Companies Act, 2013**

**In the matter of:**

Premier Plasmotec Pvt.Ltd.  
having its registered office at  
Plot No.1100, Sector 58,  
Faridabad-121004, Haryana.  
PAN: AAFCP7590N

...Petitioner Company No.1/  
Transferor Company

And

Evershine Plasmotec Pvt.Ltd.  
having its registered office at  
Plot No.1100, Sector 58,  
Faridabad-121004, Haryana.  
PAN: AABCE9049B

...Petitioner Company No.2/  
Transferee Company

**Order delivered on : 09.02.2018**

**Coram: Honble Mr.Justice R.P.Nagrath, Member (Judicial)**

For the Petitioner : 1.Mr. Ajay Garg, Advocate  
2.Mr. Mahesh Sharma, Advocate

For the Regional Director,  
Northern Region, Ministry  
of Corporate Affairs and  
Official Liquidator: Mr. O.P. Sharma, Official Liquidator.

**ORDER (Oral)**

This is a joint Second Motion Petition under Sections 230 to 232 of the Companies Act, 2013 (for short, the 'Act') filed by the petitioner-companies in terms of Rule 15 of the Companies (Compromises, Arrangements and

Amalgamations) Rules, 2016 (for brevity, 'Rules') for the approval of Scheme of Amalgamation (for brevity 'Scheme') of Premier Plasmotec Private Limited (Transferor Company) with Evershine Plasmotec Private Limited (Transferee Company). The joint petition is maintainable in terms of Rule 3(2) of the Rules.

2. The first motion application CA(CAA) No.13/Chd/Hry/2017 for seeking sanction of the Scheme of Amalgamation between the Transferor and Transferee Companies was disposed of on 18.09.2017 with a direction to hold meetings of secured creditors and trade creditors of the Transferor and Transferee Companies. Rest of the meetings were dispensed with. Reports of the Chairperson in respect of all the meetings of both the companies have been received which are attached as Exhibit-1 to Exhibit-4 and thereafter this application has been filed for approval of the Scheme in terms of Rule 15 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

3. The Chairperson has reported that the secured and trade creditors of the Transferor and Transferee Company have unanimously approved the Scheme.

4. While fixing the matter for hearing for 09.02.2018 i.e. today, the following other directions were issued by this Tribunal: -

*“(i) Notice of the hearing shall be advertised in the same newspapers as were mentioned in the first motion petition i.e. “Business Standard” (English, Delhi/NCR Edition) and “Business Standard” (Hindi, Delhi/NCR Edition) not less than 10 days before the aforesaid date fixed for hearing.*

ii) *Further, notice shall also be served to Objector(s) or to their representative as contemplated under sub-section (4) of Section 230 of the Act who may have made representation and who have desired to be heard in their representation along with a copy of the petition and the annexures filed therewith at least 15 days before the date fixed for hearing.*

iii) *In addition to the above public notice, each of the Petitioner shall serve the notice of the petition on the following Authorities namely, (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs (b) Registrar of Companies, NCT of Delhi & Haryana, Ministry of Corporate Affairs (c) the Income Tax Department (d) Official Liquidator along with copy of this petition by speed post immediately and to such other Sectoral Regulator(s) who may govern the working of the respective companies involved in the Scheme.*

iv) *Both the petitioners shall at least 7 days before the date of hearing of the petition file an affidavit of service in relation to paper publication effected as well as service of notices on the authorities specified above including the sectoral regulator as well as to objectors, if any.*

v) *Objections, if any, to the scheme contemplated by the authorities to whom notice has been given on or before the date of hearing fixed herein may be filed, failing which it will be considered that there is no objection to the approval of the Scheme on the part of the authorities by this Tribunal and subject to other condition being satisfied as may be applicable under the Companies Act, 2013 and relevant rules framed thereunder.*

vi) *The petitioner companies shall individually comply with proviso to sub-section (3) of section 232 or proviso to sub-section (7) of Section 230, as may be applicable under the circumstances on or before the date fixed for hearing by filing the certificate of company's auditor.*

vii) *Registry shall also report before the date fixed as to whether any objection has been received to the proposed Scheme in the registry."*

5. As per office report, the affidavit of compliance sworn in by Mr.Ankit Bhatia, authorised representative of both the companies has been

filed along with copies of the newspaper publications and notices sent to the statutory authorities including the Income Tax Department. The office has also made a report that no objection to the Scheme has been received in this Tribunal from any quarter. With this affidavit, the petitioner-companies have also filed certificates from the Auditors, Annexure A-7 and A-8 respectively to the effect that the accounting treatment adopted in the Scheme is in compliance with the applicable accounting standards specified in Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies (Accounts) Rules, 2014.

6. The facts of the matter in details about the Scheme, the effect on the employees of the Transferor Company, the Authorised and Paid-up Capital of both the companies have been elaborated in the order dated 18.09.2017 while disposing of the first motion application CA(CAA)13/Chd/Hry/2017, decided on 18.09.2017.

7. The circumstances which justify and/or necessitate the proposed amalgamation of the Transferor Company with the Transferee Company are, inter alia, as follows;

*“a. That both the Transferor and Transferee Companies are un-listed Group Companies under common shareholding, management and control. The proposed amalgamation of the Transferor Company into the Transferee Company would result in business synergy, consolidation and pooling off their resources.*

*b. The proposed scheme would help to simplify the business structure, rationalise business processes, reduce administrative financial and operation costs due to similar business activities and would thereby benefit all stakeholders.*

*c. In order to simplify management structure, leading to better administration and reduction in costs from more focussed operational efforts, rationalisation, standardisation and simplification of business processes and the elimination of duplication and rationalisation of administrative expenses.*

*d. Simplify shareholding structure and reduce shareholding tiers.*

*e. Direct and indirect tax efficiencies.*

*f. The merger will result in economy of scales, reduction in overheads including administrative, managerial and other expenditure, operational rationalisation, organisational efficiency and optimal utilisation of resources.*

*g. To achieve greater integration and greater financial strength and flexibility, to maximize overall shareholder value and improve the competitive position of the combined entity.”*

8. I have heard the learned counsel for the petitioners and Mr.O.P.Sharma, Official Liquidator for himself and for the Regional Director, Northern Region, Ministry of Corporate Affairs.

9. As per the Scheme the appointed date is 01.04.2016 or such other date as may be approved by the Tribunal. The Scheme provides for the manner in respect of share exchange ratio for which valuation report was also filed. The Share Exchange Ratio under the Scheme has been determined in accordance with the Report on Valuation of Shares dated 08.09.2016 determining the share exchange ratio issued by M/s B N Kedia & Co., Chartered Accountants, New Delhi, as per the settled principles of valuation attached as Annexure C-I to the First Motion Application. It was ultimately determined by the valuers that the fractional value has been ignored on the brevity that shareholders in both the companies are common and there is no outside shareholding and all the shareholders are family members. Therefore, for the

convenience of calculation, it was recommended for the approval of the Board of respective companies to accept the share exchange ratio of 5:6 (i.e., issue of five equity shares in Evershine Plasmotec Private Limited in exchange of six shares held in Premier Plasmotec Private Limited). This is further certified that above value of equity share is not less than fair valuation of Equity Share as per the guidelines issued by erstwhile Controller of Capital Issues.”

10. Annexure-P4 is attached as the certificate dated 16.05.2017 of M/s Dass Gupta & Associates, Chartered Accountants, the Auditors of the Transferor Company and also a certificate from M/s B.N.Kedia & Co. dated 16.05.2017 in respect of Transferee Company stating therein that the accounting treatment provided in the Scheme is in compliance with the Accounting Standards specified under Section 133 of the Companies Act, 2013 read with Rule 7 of Companies (Accounts) Rules, 2014 and other generally accepted accounting principles.

11. The proposed Scheme of amalgamation does not envisage any corporate debt restructuring. There is no proposal to restructure or vary the debt obligation of the Transferor Company or the Transferee Company towards their respective creditors. The proposed Scheme of Amalgamation will not adversely affect the rights of any of the creditors of the Transferor Company and of the Transferee Company in any manner whatsoever.

12. The proposed Scheme of Amalgamation does not envisage any buy back of shares. There is no proposal for reduction of share capital

except to the extent of cancellation of any cross holding of shares between the Transferor Company and the Transferee Company, as the case may be.

13. As per Scheme the Paragraph No-9 of Part-II on page 94 of the petition *“Upon coming into effect of this Scheme, the name of the Transferee /Remaining Entity shall be changed to **Premier Plasmotec Private Limited**. Statutory compliances, if any, will be taken care of in relation to the change of name after approval of merger.”*

14. The Official Liquidator filed his report dated 17.01.2018; the Regional Director, Mr. S.B. Gautam filed his report by way of affidavit dated 02.02.2018 and the report of Registrar of Companies, NCT of Delhi and Haryana is dated 17.11.2017.

15. The Official Liquidator in his report stated that the Transferor Company is a profit making company and that there is no investigation/inspection pending against the company under the provisions of the Companies Act, 1956 and the Companies Act, 2013.

16. Mr.S.B.Gautam, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report with affidavit which is based on the factual report sent by the Registrar of Companies. There are no adverse remarks made by the Regional Director except making two observations which have been highlighted by the Official Liquidator during the course of arguments. One of the objections raised is that both the companies have not filed their Balance Sheets for the year ending 31.03.2017. Learned counsel for the petitioner-companies submits that this report is based on the report of

the Registrar of Companies dated 17.11.2017. Learned counsel, however, handed over latest master data in respect of both the companies showing that the Balance Sheets have been filed by both the companies up to the financial year ending 31.03.2017 for which Annual General Meeting of both the companies were held in the month of September, 2017. Learned counsel has also handed over copies of Balance Sheets filed with the Registrar of Companies on 19.01.2018. Let the same be taken on record.

17. The other objection to which the Official Liquidator representing himself and the Regional Director submits that the petitioner companies may be directed to give an undertaking to pay the stamp duty as may be applicable consequent upon the transfer of assets. For this, learned counsel for the petitioner-companies has handed over the undertaking of authorised representative of both the companies with regard to the payment of due stamp duty. Let the same be taken on record. In any case, the order is issued to both the companies to be liable to pay the due amount of stamp duty and abide by the provisions of FEMA, SEBI Act, RBI Act, Income Tax Act and other guidelines as may be applicable.

18. In the report of the Registrar of Companies it is stated that there are no proceedings pending against any of the petitioner companies. Also, no inspection has been carried out against any of the companies.

19. There is a specific prayer made in the Scheme of Amalgamation that after the sanction is granted for this Scheme, the Transferee Company shall henceforth carry the name of the Transferor Company i.e. "Premier Plasmotec Private Limited".



20. In view of the above, there is no impediment in the sanction of the Scheme. The Scheme (Annexure A-1) is approved. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law. With the sanction of the Scheme, all the equity shares held by the Transferee Company and its nominees in the Transferor company shall stand cancelled and the Transferor Company shall stand dissolved with the process of winding up.

**THIS TRIBUNAL DO FURTHER ORDER:**

1. That all the property, rights and powers of the Transferor Company (P-1) stand transferred, without further act or deed, to the Transferee Company (P-2) and accordingly, the same shall pursuant to sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company but subject nevertheless to all charges now affecting the same; and
2. That all the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and

3. On amalgamation the name of Transferee Company stand changed to “Premier Plasmotec Private Limited” and
4. That all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and
5. That all the employees of the Transferor Company shall be transferred to the Transferee Company in terms of the ‘Scheme’; and
6. That the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the ‘Scheme’; and
7. That the Petitioner Companies do, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the Transferee Company and files relating to the said Transferor, Transferee Companies shall be consolidated accordingly, as the case may be; and
8. That the Transferee Company shall deposit an amount of ₹40,000/- (Rupees forty thousand only) with the Pay &

Accounts Office in respect of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi and ₹40,000/- (Rupees forty thousand only) in favour of "The Company Law Tribunal Bar Association" Chandigarh within a period of five weeks from the date of receipt of certified copy of this order; and

9. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

21. As per the above directions Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 formal orders be issued on the petitioners on filing of the Schedule of Property i.e. (i) freehold property of the Transferor-Company; and (ii) leasehold property of the Transferor-Company by way of affidavit of the Transferor Company.

Sd/-  
(Justice R.P.Nagrath)  
Member (Judicial)

February 09, 2018  
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