

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

Argument heard on 23.03.2017
Order passed on 31.03.2017

TRANSFERRED COMPANY PETITION NO. TP (HC)/7/CAA/2017
[Connected with CP No. 157 of 2016]

**In the matter of Sections 391 to 394 of the Companies Act, 1956 and the
Corresponding Sections 230 to 232 of the Companies Act, 2013**

And

In the matter of Scheme of Amalgamation of

Bruker Daltonics India Private Limited

And

Bruker AXS- Analytical Private Limited

And

Bruker (India) Suppliers Private Limited
(Collectively, Transferor Companies)

With

Bruker India Scientific Private Limited
(Transferee Company)

Represented by: Counsel Harishankar Mani, Cibi Vishnu and Pawan Jhabakh

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**ANANTHA PADMANABHA SWAMY AND CH. MOHD SHARIEF TARIQ
MEMBERS (JUDICIAL)**

ORDER

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL): ORAL

1. Under consideration is the Company Petition No. 157 of 2016 which has been transferred from the Hon'ble High Court of Madras to this Tribunal and renumbered as TP (HC)/7/CAA/2017. The Hon'ble Madras High Court has already dispensed with calling of a meeting of the equity shareholders vide its order dated 21.03.2016 in CA No. 276 of 2016. The Petitioner Company has

prayed for the sanction to the Scheme of Amalgamation (hereinafter referred to as '**Scheme**') of Bruker Daltonics India Private Limited (hereinafter referred as '**Petitioner/Transferor Company**') having its registered office at Shakti Towers, Block-1, A2, 7th Floor, Anna Salai, Chennai- 600002 and Bruker AXS-Analytical Private Limited (hereinafter referred as '**Transferor Company 1**') and Bruker India Suppliers Private Limited (hereinafter referred as '**Transferor Company 2**'), as a going concern **with** Bruker India Scientific Private Limited (hereinafter referred as '**Transferee Company**'), as a going concern, all later three Companies having its registered offices at 3, Daya Sagar, Gokuldham, Goregaon (E), Mumbai- 400063.

2. At the outset, it would be apposite to take stock of the background facts under which the said Scheme of Amalgamation needs determination. It is pertinent to mention herein that the Hon'ble NCLT, Mumbai bench by its Order dated 25.01.2017 has already approved a Scheme of Amalgamation filed by above mentioned Companies in the Company Petition No. 231 of 2016. It is also necessary to state that neither any objection has come before this bench to oppose the said Scheme nor any party has controverted any averments made in the Company Petition. The reports of the Evaluator (SMC Capitals Ltd.), the Registrar of Companies, Chennai and the Regional Director, Southern Region have not indicated any objection with regard to the said Scheme of Amalgamation. However, the Official Liquidator (In short, '**the OL**') has only one objection with regards to the terms of issuance of the Redeemable Preference Shares as proposed in the said Scheme and we will deal this issue in later paras of this order.

3. The salient features of the said scheme of Amalgamation are as follows:-

Part-I deals with definitions and share capital of the Transferor Companies and the Transferee Company including Effective and Appointed date;

Part-II deals with Amalgamation of the Transferor Company 1, the Transferor Company 2 and the Transferor Company 3 with the Transferee Company including transfer and vesting of undertaking, legal proceedings, Contracts, staff and employees of the Transferor Companies, declaration of dividend, treatment of taxes, saving of concluded transaction etc.;

Finally, Part-III deals with the general terms and conditions applicable to this scheme including application to the Hon'ble Courts, filing of returns, effect of non-approval, dissolution of transferor companies, validity of existing resolution, modification to the scheme, cost & stamp duty, change of name etc.

4. The learned Counsel for the Petitioner Company submits that all the Transferor Companies and the Transferee Company are presently engaged in the business of manufacturing, supplying and distributing Laboratory, scientific and surgical instruments and the Board of Directors of the Transferor Company have approved the said Scheme of Amalgamation in its board meeting by its resolution dated 18th November, 2015.
5. The learned Counsel for the Petitioner Company further submits that rationale of the said Scheme is that Bruker Group proposes to optimize its Indian operations and consolidate its Indian holdings by way of the said Scheme of amalgamation. The business activities of the Transferee Company and all the Transferor

Companies complement each other and moreover, Transferee Company already holds hundred percent of stakes in the Transferor Company 2. Therefore, with a view to maintain a simple corporate structure and eliminate duplicate corporate procedures, it is desirable to merge and amalgamate all the Transferor Companies into the Transferee Company. The amalgamation of the Transferor Companies into the Transferee Company shall facilitate consolidation of all the Indian undertakings of the Bruker Group and will enable effective management and unified control of operations. Further, the said amalgamation would create economies of scale in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances. The said Amalgamation of the Transferor Companies with the Transferee Company would inter alia have several benefits viz. Simplified corporate structure and improved management, Greater integration and greater financial strength and flexibility for the amalgamated entity, Rationalisation of administrative, operating and marketing costs, Greater efficiency in cash management of the amalgamated entity and access to cash flow generated by the combined business, Greater access by the Transferee Company to different market segments, Expected cost savings to flow, Achieving economies of scale, Facilitating improvement in organisational capabilities arising from the pooling of human resources with diverse skills, talent and vast experiences and the combined operations are expected to give rise to capital efficiency and improved cash flow.

6. In response to the notices issued in this Company Petition, the Regional Director, Southern Region in its affidavit dated 08.12.2016 has given no objection and submitted that the said Company Petition may be disposed of on its merits. The OL in its report dated 17th March, 2017 submitted that M/s Muthuram Associates, Chartered Accountants appointed by the Hon'ble Madras High Court have observed that the Transferor Company have maintained and written up all the statutory books in accordance with normally accepted accounting principle, has no unpaid dividends and also the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or to public interest and therefore the said petition may be decided appropriately. However, OL submits that M/s Muthuram Associates, Chartered Accountants have not made any observations as regards to the share exchange ratio mentioned in clause 14 of the scheme of the Transferor Company and the Transferee Company. As per the observation of the OL, the subject scheme is silent as regards to the terms of issuance of the proposed Redeemable Preference Shares, the Petitioner Company may be directed to specify the issue price of Redeemable Preference Shares and in redemption, premium and dividend payable to the concerned shareholders.
7. With regard to the above observation of the OL, the Counsel for the Petitioner Companies submits that as stated in Clause 14 of the Scheme, option/choice has been given to the shareholders to opt for either equity or Redeemable Preference Shares. Further in Clause 14.2 of the Scheme it is clarified that notwithstanding anything set out in Clause 14.1, in the light of the provisions of the Foreign Exchange Management Act, 1999 (for brevity 'FEMA') and the rules and

regulations made thereunder, issuance of Redeemable Preference Shares to non-residents shall be subject to obtaining an approval from the Reserve Bank of India and such other approvals/declarations/undertakings as may be required by other government authorities under applicable laws for such issuance. In case RBI does not accord its approval for issuance of Redeemable Preference Shares to non-resident shareholders electing to receive such shares, then such non-resident shareholders shall receive Equity Shares in such ratio as is specified in Clause 14.1 of the Scheme and if the shareholders who do not make election or do not convey their preference to either receive Equity Shares or Redeemable Preference Shares, then such shareholders shall by default be issued Equity Shares in such ratio as is specified in Clause 14.1 of the said Scheme. Therefore, the Counsel for the Petitioner submits that to the extent the shareholders opt for Preference Shares, the Transferee Company undertakes to comply with 'AS- 14 Purchase Method' as applicable in the facts of the present Company Petition, instead of 'Pooling of Interest Method' and if the Equity Shares are allotted, in that event the Transferee Company will adopt 'Pooling of Interest Method'. The Counsel for the Petitioner further submits that as per Clause 14 of the proposed scheme, each shareholder is entitled to make an election of the kind of the shares/securities they wish to receive as consideration i.e. either Equity Shares or Redeemable Preference Shares. This election will be made by shareholders upon sanction of the scheme by this Bench and in accordance with any approval granted by the RBI under FEMA. The Transferee Company undertakes to comply with the statutory requirements of AS- 14 under section 133 of the Companies Act, 2013 and accordingly further undertakes that:


- 1) If any shareholder elects to receive Redeemable Preference Shares then the Transferee Company will adopt 'Purchase Method'; and
 - 2) If any shareholder does not elect to receive Redeemable Preference Shares then the Transferee Company will adopt 'Pooling of Interest Method'.
8. The Transferee Company through their Counsel undertakes to follow AS- 14 as applicable for time being in force and therefore the undertakings based on para 7 are accepted as it seems to be reasonable and not opposed to any provisions of the Companies Act, 2013 or any other law.
9. In Clause 14.9 of the said Scheme, it has been specified that the Transferee Company shall notify and send an election notice to the members of the Transferor Company and the Transferor Company 1 to enable them to elect the Election securities within 7 working days from the merger record date. But in our opinion, the said period of notice is not reasonable, therefore the Transferee Company is directed to modify it to 15 working days instead of 7 working days.
10. We have heard the Counsel for the Petitioner and have perused the said Scheme alongwith records placed on the file. Clause 9 of the said scheme gives detail about the accounting treatment which seems to be in conformity with the well-established accounting standards. In short, there is no apprehension that any creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of amalgamation will not cost any additional burden on the shareholders of any of the companies involved in the said scheme and also it will not prejudicially affect the interests of any classes of the creditors in any manner. The Appointed date of the said Scheme is 1st April, 2016.

11. We do not feel that any modification is required in the said Scheme of amalgamation as the same appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. Since all the statutory compliances have been fulfilled, the Company Petition is allowed and the scheme of amalgamation is hereby sanctioned which shall be binding on all the Transferor Companies, the Transferee Company and secured & unsecured creditors both. This order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law. The Petitioner Companies to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.

12. The Petitioner Companies do file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.

13. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 as has been notified on 14th December, 2016.


(ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)


(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)