

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

Argument heard on 23.03.2017

Order passed on 30.03.2017

**TRANSFERRED COMPANY PETITION NO. TP (HC)/CAA/45/2017
[Connected with CA Nos. 1072 to 1075 of 2016]**

**In the matter of Sections 391 to 394 of the Companies Act, 1956 and the
Corresponding Sections 230 to 232 r/w section 52 of the Companies Act, 2013**

And

In the matter of Scheme of Amalgamation of

M/s Chemfab Alkalis Limited
(Transferor Company)

With

M/s Teamec Chlorates Limited
(Transferee Company)

Represented by: Counsel Harishankar Mani & Pawan Jhabakh

CORAM

ANANTHA PADMANABHA SWAMY AND CH. MOHD SHARIEF TARIQ

MEMBERS (JUDICIAL)

ORDER

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

1. Under consideration is the Company Application Nos. 1072 to 1075 of 2016 which have been transferred from the Hon'ble High Court of Madras to this Tribunal and renumbered as TP (HC)/CAA/45/2017. The Hon'ble Madras High Court vide its order dated 24.11.2016 in CA No. 1072 of 2016 ordered for holding the meeting of the shareholders of the Transferor Company and dispensed with convening the meeting of the equity shareholders of the Transferee Company. The Transferor Company complied with the direction. The Petitioner Companies have prayed for the sanction to

the Scheme of Amalgamation (hereinafter referred to as '**Scheme**') of M/s. Chemfab Alkalis Limited (hereinafter referred as '**Transferor Company**') as a going concern, having its registered office at Team House, GST Salai, Nandalur, Chennai- 600048 **with** M/s. Teamec Chlorates Limited (hereinafter referred as '**Transferee Company**') as a going concern, having its registered office at Team House, GST Salai, Nandalur, Chennai- 600048.

2. At the outset, it would be apposite to know the background facts under which the said Scheme of Amalgamation needs determination. The Evaluator (M/s. Bansi S. Mehta & Co. Chartered Accountants), the Registrar of Companies, Chennai, the Official Liquidator attached with the Hon'ble Madras High Court (In short, '**the OL**') and the Income Tax authority have not raised any objection with regard to the said Scheme of Amalgamation. However, the Regional Director, Southern Region (For brevity, '**the RD**') has raised certain objections in his report. The RD contends that the Petitioner Company seeks dissolution without winding up and there is report of non-compliance by the Transferor Company.
3. Before we proceed with this matter, it is necessary to know the salient features of the said scheme of Amalgamation which are as follows:-

Part-A deals with introduction and definitions including definitions of share capital, the Transferor Company, the Transferee Company, Effective and Appointed date;

Part-B deals with Capital Reduction of TCL.

Part-C deals with Amalgamation of Transferor Company with Transferee Company including transfer & vesting, consideration, accounting treatment in the books of the Transferee Company, combination of authorised capital, taxes etc.

Finally, Part-D deals with the general terms and conditions including conduct of business of Transferor Company till effective date, employees, legal proceedings, contracts, saving of concluded transactions, conditionality of the scheme, costs & expenses, etc.

4. The learned Counsel for the Petitioner Company submits that the Transferor Company and the Transferee Company are presently engaged in the business of manufacturing, developing and acquiring organic, inorganic and biochemical substances and formulations of various descriptions and notations such as Alkalis, Acids, Bases, Solvents, Aldehydes, Ketones etc. and the Board of Directors of the Transferor Company have approved the said Scheme of Amalgamation in its board meeting held on 31st May, 2016.
5. The learned Counsel for the Petitioner Companies further submits that rationale of the said Scheme is that there are common interests and factors which compliment both the companies. The said Scheme would enable consolidation of business, facilitate synergy benefits, Increase the net worth of the Transferor Company, Reduce the number of entities and regulatory compliances thereof, Reduce the operating/administrative costs & and also streamline the holding structure and would be in the best interest of the shareholders, creditors, stakeholders and employees, as it would enable a focused business approach for the maximisation of benefits to all the stakeholders and for the purpose of synergies of business.
6. In response to the notices issued in this Company Petition, Income Tax Authority has not raised any objection to the said scheme and submitted that the Company Petition be disposed of on its merits.

7. The RD in its report affidavit dated 29.03.2017 submitted that the MCA had ordered inspection of the Transferor Company under section 206(5) of the Companies Act, 2013 in the normal course and the Inspecting Officer has reported 7 counts of non-compliances of the provisions of sections 211/129 read with Schedule VI/Schedule III and Accounting standards of the Companies Act, 1956/2013 in his report. The Inspecting Officer has also reported non-compliance of Section 227/143 of the Act 1956/2013 in respect of the auditors and the said inspection report is being sent to the MCA. The RD further submits that Clause 10.1 of the scheme has proposed that the name of the Transferee Company will be changed to that of the Transferor Company. In this connection, the Transferee Company may be directed to file necessary forms with the Registrar of Companies, Chennai, as stipulated under the Companies Act, 2013 and Rules made thereunder.
8. With regard to the above observation of the RD, the Counsel for the Petitioner Company submits that the Company has furnished an affidavit citing Clause 14.2 of the scheme wherein the scheme provides that the Transferee Company undertakes to bear the liabilities in respect of the litigations, if any initiated against the Transferor Company. The Counsel for the Petitioner Company further undertakes that the Transferee Company will comply with any direction given by the MCA and will fulfil any other statutory requirements of the Companies Act, 1956/2013, whenever required. With regard to objections of RD relating to Clause 10.1 of the scheme, the Counsel for the Petitioner Company submits that the company will follow the procedures as per the rules and provisions of the Companies Act, 2013.
9. The OL in its report dated 17th March, 2017 submitted that M/s. Annamalai Associates, Chartered Accountants appointed by the OL have observed that the Transferor

Company has 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, the OL by its report dated 17.03.2017 has prayed that the Petitioner Company should be directed to deposit within stipulated period remuneration/fee payable to the Auditor who have investigated into the affairs of the Transferor Company as directed by this Tribunal. Since the submission of the OL seems reasonable, the Petitioner Company is directed to deposit Rs. 30,000/- to the OL within 7 days of receipt of this Order for making payment to the Auditor.

10. We have heard the Counsel for the Petitioner Companies and have perused the said Scheme alongwith records placed on the file. Clause 7 of the said scheme gives detail about the accounting treatment which seems to be in conformity with the 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 class of the creditors in any manner. The Appointed date of the said Scheme is 1st April, 2014.

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. All the statutory compliances have been fulfilled and the Company further by way of affidavit undertakes to bear the liabilities in respect

of the litigations and to comply with any directions given by the MCA. Taking into consideration all the above, the Company Petition is allowed and the scheme of amalgamation annexed as Annexure- A4 is hereby sanctioned which shall be binding on the Transferor Company, the Transferee Company and secured & unsecured creditors both.

12. While approving the scheme as above, we further clarify that 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.
13. 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.
14. 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)**