

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD**

CA(CAA) No.34/230/HDB/2017

Date of Order: 08.05.2017

M/s. Blue Ocean Biotech Private Limited
Having Registered Office at
D. No.4-325, G. Ragampet, P.B.No.27,
Samalkot, Peddapuram Mandal - 533 440
East Godavari District, Andhra Pradesh.
Represented by its Managing Director
Mr. Ravikanth Mallina

..... Applicant/Transferor Company

Parties Present:

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

Counsel for applicant/Transferor Company : Mr. V.S. Raju & Mr. V.B. Raju

CORAM

RAJESWARA RAO VITTANALA, MEMBER (JUDICIAL)



ORDER

(As per Rajeswara Rao Vittanala, Member (Judicial))

1. The Company application bearing C. A. (CAA) No. 34 /230/HDB/2017 (referred to as Company application hereinafter) is filed by M/s. Blue Ocean Biotech Private Limited, under sections 230 and 232 and other applicable provisions of Companies Act, 2013 by seeking the following reliefs:
 - (i) To dispense with the meeting of the equity shareholders of the Applicant/Transferor Company;
 - (ii) To convene the meeting of the unsecured creditors of the Applicant/Transferor Company at the registered office of the Company for consideration of the proposed Scheme consequently to appoint a Chairperson for convening and conducting the meeting of the unsecured creditors;
 - (iii) That the quorum be fixed as 2 (two) creditors personally present in the unsecured creditors meeting;
 - (iv) The unsecured Creditors be permitted to exercise their vote at the meeting either in person or through proxies;

- (v) As to the manner of giving the notices of the said meeting, it is sufficient to serve the notices on the unsecured creditors of the Applicant/Transferor Company by Ordinary Post;
- (vi) That the advertisement be directed to be published once in English Edition "The New Indian Express", Visakhapatnam and once in Telugu Edition "Andhra Jyothi", Kakinada Edition;
- (vii) As for the time for the Chairperson of the meeting to file their report to the Hon'ble Tribunal of the result of the meeting, the time be fixed as 10 days from the date of the said meeting etc;

2. Brief pleadings made in the Company application by the Applicant/Transferor Company, and which are relevant to the issue in question, are mentioned hereunder:



(I) M/s Blue Ocean Biotech Private Limited (hereinafter referred to as "Applicant/Transferor Company") was incorporated under the Companies Act, 1956, in the State of Andhra Pradesh in the name of 'Blue Ocean Biotech Private Limited' on 20th day of January, 2011. The Registered Office of the Applicant/Transferor Company is situated at D. No.4-325, G. Ragampet, Peddapuram Mandal – 533440, East Godavari District, Andhra Pradesh.

(II) The main objects and nature of business, in brief, of the Applicant/Transferor Company are set out in the Memorandum of Association, as under:

- i. To carry on the business of production, manufacture of bio diesel, bio fuel, ethanol, bio mass energy co-generation industries, cultivate medicinal plant, contract farming and purchase of agriculture lands, develop nursing, bio manures, rearing, breeding, farming, catching, arranging, to catch, processing, canning, packing, purchasing, selling, exporting, importing and dealing in all kinds and varieties of plants, fish, prawns, frogs, crabs shrimps, shell and other crustacean including all other river water plants and sea water plants which are used for bio diesel.
- ii. To carry on the business of production, manufacture, marketing/ selling & trading, import or export of various grades of maize/corn, starch derivatives, modified starches, liquid glucose, corn syrups, corn oil, dextrose monohydrate, maltodextrin, dextrose syrups, gluten and related by-products from corn/maize, boiling starch (wet milling method), oxidized starch, battery grade starch, esterified starch, pregelatinised maize

starch, Pharma grade starches, marketing and sales of various starch and food products, and related by-products to food and confectionery industries, textile, pharmaceuticals, paper, animal and poultry industry. At present the Applicant/Transferor Company is engaged in the business of production, manufacture of corn starch, liquid glucose, maltodextrine etc.

3. The authorized, issued, subscribed and paid-up share capital of the Applicant/Transferor Company as on 31st March, 2016 was as under:

PARTICULARS	Amount in Rs.
Authorised Share Capital	
60,00,000 Equity Shares of Rs. 10/- each	6,00,00,000
Issued, Subscribed and Paid-up Share Capital	
54,73,209 Equity Shares of Rs.10/- each fully paid-up	5,47,32,090

Subsequent to the above date and till the date of filing the Scheme, there has been no change in the issued, subscribed and paid up capital of the Applicant/Transferor Company.

4. M/s Blue Ocean Biotech Private Limited closes its financials every year on 31st March. The financial summary of the Transferor Company as at 31st March, 2016 is given below:



		(Amount in Rs.)
I. EQUITY AND LIABILITIES		
(1) Shareholder's Funds,		
(a)	Share Capital	54,732,090
(b)	Reserves and Surplus	263,249,067

		317,981,157
(2) Non-Current Liabilities		
(a)	Long-Term Borrowings	103,163,023
(b)	Long Term Provisions	1,336,586

		104,499,609
(3) Current Liabilities		
(a)	Short term borrowings	231,479,936
(b)	Trade Payables	185,868,649
(c)	Other current liabilities	73,396,800
(d)	Short term provisions	977,222

		491,722,607

Total:		914,203,373

II. ASSETS**(1) Non-current assets****(a) Fixed assets**

(i) Tangible assets	502,537,303
(ii) Intangible assets	1,517,662
(iii) Capital work in progress	6,287,380
(iv) Deferred Tax Asset (Net)	4,723,750
(v) Loans and Advances	4,234,662
(vi) Other Non-Current Assets	1,300,000

530,600,756

(2) Current Assets

(a) Inventories	219,262,371
(b) Trade receivables	121,336,636
(c) Cash and bank balance	15,719,067
(d) Loans and Advances	26,099,923
(e) Other current assets	1,184,620

383,602,618

Total 914,203,373



5. M/s Gowthami Bio-Energies Private Limited/Transferee Company/GBPL was originally incorporated as a Public Limited Company under the Companies Act, 1956 in the then State of Andhra Pradesh on 26th day of February, 1999 under certificate of Incorporation Number-01-31221. Later on, it was converted into a Private Limited Company by a special Resolution passed on 18th day of February 2004 and Fresh certificate of Incorporation consequent on its conversion under Section 31/44 of the Companies Act, 1956 was issued by the Registrar of Companies, A.P. on 16th day of March, 2004. The Registered Office of the Transferee Company is situated at P.B.No.7, Pydiparru, Tanuku - 534211, West Godavari District, Andhra Pradesh.

6. The Main objects and business, in brief, of the Transferee Company are-set out in the Memorandum of Association are as under:-

- (i) To generate, accumulate, transmit, distribute, harness, supply Electricity power or any other energy from conventional, non-conventional or energy sources on a commercial basis by setting up Power Plants for the purpose of light, heat, motive power and for all other purposes for which Electric Energy

can be employed, to carry on and generate power supply either by Hydro, Thermal, Oil, Gas, Air, Sea energy, Diesel Oil, etc.

(ii) To construct, establish, operate, maintain, manage Power Stations, Boiler Houses, Steam Turbines, Gas Turbines, Diesel Generators, Switch Yards, Transformer Yards, Substations, Transmission lines, Accumulators, Workshops Dams, Reservoirs, etc. required for Hydro Projects etc.

(iii) To acquire concessions or licenses granted by or to enter into contracts with Government of India, or any State Governments, Municipal or Local Authorities, company or person in India for the Construction Operation and maintenance of any Electric Power for lighting , heating, signalling, etc.

(iv) The Transferee Company is engaged in the business of generation of electricity from Biomass.

7. The authorized, issued, subscribed and paid-up share capital of the Transferee Company as on March 31st 2016 is as under:

Particulars	Rupees
Authorised Share Capital	
70,00,000 Equity Shares of Rs.10/- each	7,00,00,000
Issued, Subscribed and Paid-up Share Capital	6,82,00,000
68,20,000 equity shares of Rs.10/- each, fully paid up Share Capital by allotment	

M/s Gowthami Bio-Energies Private Limited closes its financials every year on 31st March. The financial summary of the Transferee Company as at 31st March, 2016 is given below:

Amount in Rs.

I. EQUITY AND LIABILITIES

(1) Shareholder's Funds,

(a) Share Capital	68,200,000
(b) Reserves and Surplus	318,348,765

(2) Non-Current Liabilities

(a) Long-Term Borrowings	1,375,550
(b) Deferred tax liabilities (net)	8,471,421

(3) Current Liabilities

(a) Short term borrowings	6,216,526
(b) Trade payables	3,956,790
(c) Other current liabilities	1,491,213
(d) Short term provisions	---

Total: 408,060,266

II. ASSETS

(1) Non-current assets

(a) Fixed assets

(i) Tangible assets	49,610,369
(ii) Non-current investments	91,364,340

(b) Long term loans and advances	3,343,110
----------------------------------	-----------

(2) Current Assets

(a) Inventories	29,506,419
(b) Trade receivables	109,740,595
(c) Cash and bank balance	3,670,385
(d) Short term loans and advances	120,181,950
(e) Other current assets	643,098

Total	408,060,266
-------	-------------

8. It is stated that both the Transferor/Transferee Companies are engaged in the production of electricity from renewable sources. The Transferor Company is an associate Company of the Transferee Company. The Transferee Company is holding 22.5% share capital of the Transferor Company. The Scheme of Amalgamation will benefit the Transferor Company, the Transferee Company and their respective shareholders. The rationale and reasons for the proposed Scheme of Amalgamation, inter alia, are summarized below:

- Simplify management structure, leading to better administration and reduction in costs from more focused operational efforts, rationalization, standardization and simplification of business processes, elimination of duplication and rationalization of administrative expenses.
- Will result in creation of a single larger unified entity in place of various entities under the same management and control, thus resulting in efficient synergies of operations and streamlined business transactions.
- Management and financial resources of Transferee Company will help the transferor company in setting up the green field manufacturing facility with appropriate international quality standards.

In view of the above benefits, the proposed amalgamation would result in an enhanced shareholder value.



9. In view of the aforesaid advantages, the Board of Directors of the Applicant/Transferor Company vide its meeting dated 28th December, 2016 approved the Scheme of Amalgamation of M/s Blue Ocean Bio-Tech Private Limited with Gowthami Bio-Energies Private Limited and their respective Shareholders.
10. Some of the salient / material features of the proposed Scheme are as under:
- With effect from the Appointed Date, the entire business and Undertaking(s) of the Transferor Company, including all secured and unsecured debts, liabilities, losses, duties and obligations and all the assets, properties, rights, titles and benefits, whether movable or immovable, real or personal etc, be transferred and/or deemed to be transferred to and vested in the Transferee Company, so as to become the properties, assets, rights, business and Undertaking(s) of the Transferee Company.
 - The assets of the Transferor company, including cash and bank balances, as are movable in nature or are otherwise capable of transfer by manual delivery, by paying over or by endorsement and delivery or otherwise, the same shall be so transferred by the Transferor company to the Transferee company, without requiring any deed or instrument of conveyance for the same and shall become the property of the Transferee company as an integral part of the assets of the Transferee Company, with effect from the Appointed Date.
 - All inter-party transactions between the Transferor Company and the Transferee Company shall be considered as intraparty transactions for all purposes.
 - The amalgamation of the Transferor Company with the Transferee Company, pursuant to and in accordance with this Scheme, shall take place with effect from the Appointed Date and shall be in accordance with Section 2(1B) of the Income Tax Act, 1961. If any terms or provisions of the Scheme is / are inconsistent with the provisions of section 2(1B) of the Income Tax Act, 1961, the provisions of section 2(1B) shall prevail and the Scheme shall stand modified to the extent necessary to comply with such provisions. Such modifications will however not affect the other parts of the Scheme;
 - The Transferee company shall, upon coming into effect of the scheme, and in consideration for the transfer of and vesting of the entire undertaking of the Transferor Company shall issue and allot 1 (One only) equity share of Rs.10/- each for every 5 equity shares Rs. 10/- each held by shareholders in BOBPL /



Transferor Company, other than the shares held by the Transferee Company, whose names appear in the Register of Members of the Transferor company, as on the Record Date to their shareholders or such of their respective heirs, executors, administrators or other legal representatives or other successors in title, as may be recognized by the Board of Directors. The shares held by the Transferee Company in the Transferor Company get cancelled.

f) The Equity Shares in the Transferee Company to be issued to the members of the Transferor Company pursuant to Clause 3.1 above shall be subject to the Memorandum and Articles of Association of the Transferee Company. The Equity Shares so issued shall rank pari-passu in all respects with the existing shares of the Transferee Company and any fractions, arising thereof shall be rounded off to nearest integer.

g) Accordingly in terms of this Scheme, the authorized share capital of the Transferee company shall stand enhanced by an amount of Rs.6,00,00,000 (Rupees Six crore only) divided into 60,00,000 (sixty Lakhs) equity shares of Rs. 10/- (Rupees Ten only) each and the capital clause being Clause V (a) of the Memorandum of Association of the Transferee Company shall stand substituted to read as follows:

"V (a).The authorised share capital of the company is Rs.13,00,00,000/- (Rupees Thirteen Crores only) divided into 1,30,00,000 (One Crore Thirty Lakhs only) equity shares atRs.10/- (Rupees Ten) each".

h) The Scheme on becoming effective, all taxes payable by the Transferor Company under the Income-tax Act, 1961, Customs Act 1962, Central Excise Act, 1944 State Sales Tax laws, Central Sales Tax Act, 1956 or the applicable laws/regulations dealing with taxes/duties/levies (hereinafter referred to as "Tax Laws") shall be to the account of the Transferee Company.

i) All cheques and other negotiable instruments and payment orders received in the name of the Transferor Company after the Effective Date shall be accepted by the bankers of the Transferee Company and credited to the account of the Transferee Company. Similarly, the bankers of the Transferee Company shall honour cheques issued by the Transferor Company for payment on or after the Appointed Date and presented after the Effective Date.

j) On the scheme becoming effective, the accounting for the amalgamation would be done in accordance with the "Pooling of Interest Method" referred to in Accounting Standard 14 - Accounting for Amalgamations (AS 14)



issued by the Ministry of Corporate Affairs, as amended from time to time, which inter alia provides for the following:

On the Scheme becoming effective, the Transferor Company shall stand dissolved, without going through the process of winding up.

11. It is stated that no investigation or proceedings have been instituted or are pending against the Applicant/Transferor Company and Transferee Company. Transferor Company is an unlisted Company.
12. It is stated that there are 8 (eight) Shareholders in the Applicant/Transferor Company and all of them have given their consent to the proposed scheme of Amalgamation by means of affidavits. And there are only 3 (three) secured creditors. There are Unsecured/Trade creditors in the Applicant / Transferor Company.
13. I have heard Mr. V.S.Raju and Mr. V.B.Raju, learned Counsels for Applicant/Transferor Company, and have carefully considered the proposed scheme of Amalgamation in question along with all pleadings made in the present application and relevant Sections/Rules as provided in the Companies Act, 2013 and NCLT Rules, 2016, which confers powers on this Tribunal.
14. As stated briefly stated supra, the proposed scheme of Amalgamation is initiated by the Board of Directors for good and sufficient reasons for the benefit of all stake holders of Companies involved in the Scheme in question, and also for the benefit of Companies involved. The proposed scheme contains all precautions so as to protect interests of all parties concerned, and all the public interest in general. In any case, stake holders of Companies involved are ultimate masters for approving or not any scheme, however, subject to fulfilment of relevant provisions of Companies, 2013 and NCLT Rules, 2016. The scheme prima facie shows it is for the benefit of all stake holders and provide all safeguards for them. Hence, the scheme can be put to approval of un-secured creditors, as Equity shareholders have already given their consent for the scheme.
15. In view of the above facts and circumstances-of the case, and in the interest of justice, I am of the considered view that the Applicant/Transferor Company is entitled to grant dispensation of meeting of equity shareholders, and it is also necessary to appoint a chairperson to convene a meeting of un-secured creditors of Company.



16. Hence, I hereby disposed of the Company application bearing CA(CAA)No.34/230/HDB/2017 with the following directions:

- i. Dispensed with convening of the meeting of the equity shareholders of the Applicant/Transferor Company.
- ii. Appointed Sri K.Rama Murthy, Advocate (Off & Res. H.No.2-2/7, FCI Colony, Miyapur, Hyderabad – 500 049 – Mobile No.9440412810) as Chairperson for convening and conducting a meeting of the unsecured creditors' of the Applicant/Transferor Company at the registered office of the Company viz D. No.4-325, G. Ragampet, P.B.No.27, Samalkot, Peddapuram Mandal - 533 440 East Godavari District, Andhra Pradesh, for consideration of the proposed Scheme.
- iii. Meeting to be held on 01st July, 2017 at 10.30 A.M., at the Registered Office of the Applicant/Transferor Company. That the quorum of meeting is fixed as 2 (two) unsecured creditors personally present in the unsecured creditors meeting.
- iv. The unsecured Creditors are permitted to exercise their vote at the meeting either in person or through proxies.
- v. It is ordered that notices be sent to all unsecured creditors involved in the scheme individually at the address registered with the Company, through standard mode of communication exist in the Company, and such notice shall be accompanied by a statement disclosing the details of scheme of Amalgamation in question along with material documents, if any. And also inform about the meeting to all concerned Statutory Authorities. It can also put on Company's website.
- vi. That the advertisement be directed to be published once in English Edition "The New Indian Express", Visakhapatnam and once in Telugu Edition "Andhra Jyothi", Kakinada Edition about said meeting.
- vii. The Company is directed, to ensure at least 3/4th of value of unsecured Creditors should express their consent for the Scheme in question, in order to have fair representation about acceptance of it.
- viii. Ten days time is granted for the Chairperson of the meeting to file his report in the Registry of this Bench.
- ix. Fee for Chairperson is fixed at Rs.75,000/- (Rupees Seventy Five Thousand only) which is agreed to be paid by the Company.



CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68

Sd/-

Rajeswara Rao Vittanala
Member (Judicial)