

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

**C.P.No.378/2016
[CP(TCAA)No.41/HDB/2017]**

Date of order: 09.05.2017

Nicomac Clean Rooms Far East Private Limited
Having its registered office at
Flat No.102, Greenland Apartments,
Ameerpet, Hyderabad – 500 016.
Telangana.

.... Petitioner/Transferor Company

Parties Present:

Counsels for the Petitioner	:	Mr. V.S. Raju & V.B. Raju
Counsel for Official Liquidator:		Mr. J. Srinadh Reddy
Counsel for Regional Director:		Mr. B. Appa Rao, Central Govt. Standing Counsel

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

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

ORDER

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

1. The Company Petition bearing CP.No.378/2016 [CP(TCAA)No.41/HDB/2017] is filed by M/s Niocomac Clean Roms Far East Private Limited (Petitioner/Transferor Company) before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh under Sections 391 & 394 of the Companies Act 1956, by inter-alia seeking to sanction scheme of Amalgamation in question so as to be binding on all the Equity Shareholders/Members, Creditors and employees of the Petitioner/Transferor Company.
2. A Gazette Notification GSR 1134(E) dated 14th December, 2016 is issued by the Ministry of Corporate Affairs with effective date of 15th December, 2016, and in terms of Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 & Rule 23A of NCLT Rules R/w Rule 3 of Companies (Transfer of Pending Proceedings) Rules, 2016, jurisdiction is



conferred on this Tribunal in respect of subject cases and thus pending cases also transferred from the Hon'ble High Court to the NCLT. Accordingly, the Hon'ble High Court transferred this case to this Bench. On transfer, case was listed before this Bench on 01.02.2017, 22.02.2017, 10.03.2017, 29.03.2017, 06.04.2017, 19.04.2017, 24.04.2017 and finally on 09.05.2017.

3. Heard, Mr V.S. Raju and V.B. Raju, Learned Counsels for the Petitioner/Transferor Company, Mr. J. Srinadh Reddy, Counsel for the Official Liquidator and Mr. B. Appa Rao, Central Government Standing Counsel and have carefully perused all pleadings along with material papers filed in its support.
4. Facts of case, which are relevant to the issue in question, in brief, are submitted as under:-
 - a. Initially, the Petitioner/Transferor Company has filed Company Application No.1489 of 2016 under Section 391 of the Companies Act, 1956 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh by seeking a direction to dispense with convening of meeting of equity shareholders of the transferor Company for consideration of the proposed scheme of amalgamation of Petitioner/Transferor Company with M/s Nicomac Micro Solutions Private Limited (Transferee Company) as detailed in the Scheme.
 - b. The said Company Application No.1489 of 2016 was disposed of by Hon'ble High Court vide its Order dated 31.10.2016 dispensing with the conducting of meetings of the equity shareholders of Petitioner/Transferor Company. After fulfilling requisite conditions for sanction of scheme in question, the present petition is filed for sanction of the scheme.
 - c. M/s Nicomac Clean Rooms Far East Private Limited (Petitioner/Transferor Company) is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 31.01.2001. Its Registered Office is situated at Flat No.102, Greenland Apartments, Ameerpet, Hyderabad – 500016.



The objects of the Petitioner/Transferor Company is to manufacture, install, establish, conduct, undertake, develop, improve and commission Clean Rooms including fabrication of Clean of Rooms Walls, Ceiling Floor and other components etc.

- d. The Authorized Share Capital of the Petitioner/Transferor Company as on 31.03.2016 is Rs.1,00,00,000/- divided into 10,00,000 Equity Shares of Rs.10/- each and the entire share capital has been issued, subscribed and fully paid up.
- e. M/s Nicomac Micro Solutions Private Limited (Transferee Company) is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 15.04.2011. Its Registered Office is situated at Plot No.6, IDA Bollaram, Miyapur, Hyderabad - 502325. The objects of the Transferee Company is to undertake, promote, assist, procure or otherwise acquire or engage in all kinds of developmental work in the field of Biology, Bio-technology, bio-chemistry, Micro-biology including Molecular and Cellular biology for developing, manufacturing, producing, processing, preparing, treating, buying, selling, importing, exporting, distributing, marketing and generally dealing in all kinds, description and varieties of drugs pharmaceuticals, medical diagnostics, kits, vaccines, and anti-bodies, virulent bacteria, fermenters and other industrial bio-products such as enzymes and gums etc.
- f. The Authorized Share Capital of the Tranferee Company as on 31.03.2016 is Rs.1,00,000/- divided into 10,000 Equity Shares of Rs.10/- each and the entire share capital is issued, subscribed and fully paid up.



5. The directors of both Transferor Company and Transferee Company are of the opinion that the proposed amalgamation will be for the benefit of both the Companies as follows:
- (i) The Transferee Company will have the benefit of the combined assets, man-power and cash flows of the Transferor Company and the

Transferee Company. The combined resources of the Transferee Company will enhance its capability to face competition in the market place more effectively.

- (ii) The Transferee Company shall benefit from the financial resources, managerial, technical and marketing expertise of the Transferor Company.
- (iii) The proposed amalgamation would ensure and facilitate both the Transferor Company and the Transferee Company to become a collaborative single supplier for all services and solutions.
- (iv) By the proposed amalgamation, the administrative and operational costs will be considerably reduced and the Transferee Company will be able to operate and run the Transferee company more effectively and economically, resulting in better turnover and profits.

Hence, the Board of Directors of the Transferor and Transferee Companies at their meetings held on 08.08.2016 have approved the scheme of amalgamation of Transferor Company with Transferee Company w.e.f. 01.04.2016 subject to approval of the shareholders and confirmation by the Tribunal.

6. The following are brief terms of Scheme of Amalgamation:

a) **Transfer and Vesting of Undertaking of Transferor Company**

With effect from the Appointed Date i.e. 01.04.2016, the whole of the Undertaking shall be transferred to and vested in or be deemed to be transferred to and vested in the Transferee Company as a going concern with all the rights, title, interest or obligations of the Transferor Company therein.

b) **Legal Proceedings**

All suits, actions and proceedings of whatsoever nature by or against the Transferor Company on the Appointed Date and till the Effective Date shall be transferred to the name of the Transferee Company and the same shall be continued and enforced by or against the Transferee Company, to the exclusion of the Transferor Company, as the case may be, etc.



c) **Transferor Company Staff, Workmen and Employees**

All the executives, staff, workmen and other employees in the service of the Transferor Company, immediately before the Appointed Date, under this Scheme shall become the executives, staff, workmen and other employees of the Transferee Company, on the basis that their services shall have been continuous and shall not have been interrupted by reason of such transfer as if such transfer is effected under Section 25FF of the Industrial Disputes Act, 1947, etc.

d) **Saving of concluded transactions**

The transfer of Undertaking under Clause 3 above, the continuance of the effectiveness of contracts and deeds under Clause 4 above and legal proceedings by or against the Transferee Company under Clause 5 above shall not affect any transaction or proceedings or contracts or deeds already concluded by the Transferor Company (a) on or before the Appointed Date and (b) after the Appointed Date till the Effective Date, to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things done and executed by the Transferor Company in respect thereto as done and executed on behalf of itself.

e) **Issue of shares by the Transferee Company to shareholders of Transferor Company**

Upon the coming into effect of this Scheme and in consideration of amalgamation of Transferor Company into the Transferee Company pursuant to the Scheme, the Transferee Company shall without any further application, act, instrument or deed, issue and allot to the equity shareholders of the Transferor Company, whose names are registered in the register of members of Transferor Company on the Record Date (to be fixed by the Board of Directors of the Transferee Company) equity shares of Rs. 10/- (Rupees Ten only) each, credited as fully paid up of the Transferee Company, in the ratio of one equity share of the face value of Rs. 10/- (Rupees Ten only) each of the Transferee Company for every one equity share of the face value of Rs. 10/- (Rupees Ten only)



each credited as fully paid-up held on the Record Date by such equity shareholders or their respective legal heirs, executors or administrators or, as the case may be, successors in the Transferor Company.

f) **Fractional entitlement**

No fractional shares shall be issued by the Transferee Company in respect of fractional Share entitlement, if any, in terms of the Scheme. Fraction of shares arising out of the aforesaid, if any, shall be rounded off to the nearest whole number.

g) **Approvals**

The issue and allotment of new equity shares to the shareholders of Transferor Company as provided in this Scheme, is an integral part thereof and shall be deemed to have been carried out without requiring any further act on the part of Transferee Company or its shareholders and as if the procedure laid down under section 62 of the 2013 Act and any other applicable provisions of the 1956 Act/ 2013 Act, as may be applicable and such other statutes or regulations as may be applicable were duly complied with. For the purpose aforesaid, the Transferee Company shall, if and to the extent required, apply for and obtain any approvals including that of Reserve Bank of India and other concerned regulatory authorities for the issue and allotment by the Transferee Company of Shares to the shareholders of the Transferor Company pursuant to the Scheme.

h) **Accounting treatment**

Upon the Scheme becoming effective, the Transferee Company shall record the assets and liabilities of the Transferor Company transferred to Transferee Company pursuant to this Scheme at their respective fair values and account for the amalgamation of the Transferor Companies pursuant to the Scheme in accordance with AS 14 notified by the Companies (Accounting Standards) Rules, 2006, as amended from time to time, under Purchase method. Any difference, whether surplus or shortfall, in the recorded value of assets in the books of account and



liabilities in the books of account of the Transferee Company and the face value of the equity shares allotted thereof by the Transferee Company, in case of surplus, shall be credited to “Capital Reserve Account” (which for all intents and purposes shall be considered as part of net worth of the Transferee Company) or, in case of shortfall, shall be debited to “Goodwill Account”, as the case may be, etc.

i) **Modifications/amendments to the Scheme**

The Transferor Company and the Transferee Company through their respective Boards of Directors including Committees of Directors or other persons, duly authorised by the respective Boards in this regard, may make, or assent to, any alteration or modification to this Scheme or to any conditions or limitations, which the Court or any other Competent Authority may deem fit to direct, approve or impose and may give such directions including an order of dissolution of the Transferor Company without process of winding up as they may consider necessary, to settle any doubt, question or difficulty, arising under the Scheme or in regard to its implementation or in any manner connected therewith and to do and to execute all such acts, deeds, matters and things necessary for putting this Scheme into effect, or to review the portion relating to the satisfaction of the conditions to this Scheme and, if necessary, to waive any of those (to the extent permitted under law) for bringing this Scheme into effect.



j) **Scheme conditional on approvals/sanctions**

This Scheme is conditional on and subject to the sanction or approval under any law of the Central Government, State Government, or any other agency, department or authorities concerned being obtained and granted in respect of any of the matters in respect of which such sanction or approval is required, etc.

k) **Effect of non-receipt of approvals/sanctions**

In the event of the Scheme not being sanctioned by the Court and/or the order or orders not being passed as aforesaid, the Scheme shall become fully null and void and in that event no rights and liabilities shall accrue to or be inter-se by Transferor Company and the Transferee Company in terms of the Scheme, save and except in respect of any act or deed done prior thereto as is contemplated hereunder or as to any rights and/or liabilities which might have arisen or accrued pursuant thereto and which shall be governed and be preserved or worked out as is specifically provided in the Scheme or as may otherwise arise in law. In such event, each party shall bear and pay its respective costs, charges and expenses for and/or in connection with the Scheme.

1) **Costs, charges and expenses**

All costs, charges, levies, fees, duties and expenses of the Transferor Company and the Transferee Company respectively in relation to or in connection with negotiations leading up to the Scheme and of carrying out and completing the terms and provisions of this Scheme and in relation to or in connection with the Scheme shall be borne and paid by the Transferee Company.



The Learned Counsel submitted that as per the directions of the Hon'ble High Court, the petitioner got published in Newspaper advertisement of the "Notice of Petition" in English Daily (Business Standard – Hyderabad Edition) and Telugu Daily (Andhra Bhoomi – Hyderabad Edition) on 25.11.2016 and filed a proof of the same before the Hon'ble High Court on 27.12.2016. In pursuance to said notification, no objections/oppositions were received about the scheme in question.

8. The Learned Counsel further submits that pursuant to the Orders dated 14.11.2016 of the Hon'ble High Court, notices were also issued to the Registrar of Companies, Regional Director (SER) and Official Liquidator.

9. The Regional Director (SER), Hyderabad has filed a common affidavit dated 06.02.2017 in C.P.Nos.378/2016 and 379/2016, by inter alia stating that the Petitioner Company is regular in filing statutory returns and no complaints, no investigations and no inspections are pending against it. He further stated that in pursuant to the General Circular No.1/2014 dated 15.01.2014 issued by the Ministry of Corporate Affairs, New Delhi, wherein comments of Income Tax Department is required to be sought under Section 391 or 394 of the Companies Act, 1956, a letter dated 13.12.2016 was issued to the Income Tax Department for submitting their comments/objections, if any, within 15 days. However, no comments/objections of the Income Tax Department were received in response to the said notice till date. Therefore, he submitted that Tribunal can consider the case as per merits and pass appropriate orders.
10. The Official Liquidator attached to the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh vide his report dated 08.02.2017 inter-alia stated that the affairs of the Petitioner Company appears to have not been conducted in a manner prejudicial to the interests of the members or to public interest.
11. The Petitioner/Transferor Company has filed C.A.No.64/2017 by seeking to substitute appointed date as 01.04.2017 instead of 01.04.2016. Since, the Companies involved have closed their books of accounts for financial year ended 31.03.2016, the Board of Directors at their meeting held on 23.07.2017 approved the said change.



12. I have carefully gone through all the pleadings, Report of the Regional Director (SER), Official Liquidator and also relevant provisions of Companies, 1956. I am convinced that the Petitioner/Transferor Company has complied with all statutory requirements as required under Section 391 & 394 and other relevant provisions of Companies Act, 1956 as detailed supra. The Board of Directors of the Petitioner Company at its meeting held on 08.08.2016 have duly considered the pros and cons of Scheme of Amalgamation in question, after perusing various reports on the issue, and found it is advantageous and beneficial to the Company, its Members, the Secured Creditors and all other

concerned parties of the Company, and thus it was approved. I am satisfied that the Scheme of Amalgamation in question is on bonafide reasons meant for favour of all concerned parties of the Companies in question in particular and public in general. It is to be mentioned herein that the Scheme in question is not opposed by any authorities and the Petitioner/Transferor Company is admittedly following all rules/regulations of Companies Act as stated by Regional Director. Hence, I am of considered view that the Company Petition deserved to be allowed as prayed for.

13. I have perused the grounds for change of appointed date and I am convinced and I hereby allow the Company Application, by substituting the Date of Appoint as 01.04.2017 instead of 01.04.2016 for implementing the Scheme of Amalgamation.
14. In the result, the C.P.No.378/2016 [CP(TCAA)No.41/HDB/2017] is allowed with the following directions:-
 - a) Sanctioned the Scheme of Amalgamation (enclosed at Page No.142 to 162 with the petition) with modification of appointed date as 01.04.2017 instead of 01.04.2016 as proposed originally, and it is ordered that the same is binding on all the Equity Shareholders/Members and Creditors (Secured & Unsecured) of the Petitioner Transferor Company/Transferee Company.
 - b) The Petitioner Company is directed to take appropriate steps to submit the said scheme to Registrar of Companies within 30 days from the date of receipt of Copy of this order.
 - c) The Petitioner/Transferor Company is directed to issue newspaper publication with respect to approval of scheme of amalgamation, in the same newspapers in which previous publications were issued in order to ensure transparency/dissemination of complete information to all concerned parties about the approval granted by the Tribunal for the Scheme as proposed.



- d) The petitioner/Transferor Company is further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Amalgamation under the Provisions of the Act.
- e) Liberty is granted to any party/parties, who are aggrieved by this order, to seek any direction(s) by way of filing miscellaneous application in the present CP.



Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

*Order received by
the Registry on: 27-06-17*

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

V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD.