

C.P. (CAA)1364/MB/ 2019

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL BENCH,
AT MUMBAI

C.P. (CAA)1364/MB/ 2019

IN

C.A. (CAA)/1670/MB/2018

In the matter of the Companies Act, 2013 (18 of
2013)

AND

In the matter of Sections 230 to 232
and other applicable provisions of the
Companies Act, 2013 and Rules framed
there under as in force from time to
time;

AND

In the matter of Scheme of
Amalgamation (Merger by Absorption) of
EXCEL CROP CARE LIMITED, the
Transferor Company with SUMITOMO
CHEMICAL INDIA LIMITED, the
Transferee Company



EXCEL CROP CARE LIMITED

...Petitioner/ the Transferor
Company

AND

SUMITOMO CHEMICAL INDIA LIMITED

...Petitioner/ the Transferee Company

Order delivered on June 27, 2019

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)

Hon'ble Shri V. Nallasenapathy, Member (T)

For the Petitioner(s):Mr. Chirag Mody, Ms. Prachi Gargwith Ms. Saloni Shahi/b DSK Legal, Advocates for the Petitioners.

For the Regional Director: Mrs. Rupa Sutar, Deputy Director

Per : Bhaskara Pantula Mohan, Member (J)

ORDER

1. Heard learned counsel for Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition to the Scheme of Amalgamation (Merger by Absorption) between EXCEL CROP CARE LIMITED, the Transferor Company and SUMITOMO CHEMICAL INDIA LIMITED, the Transferee Company and their respective shareholders.
2. The sanction of the Tribunal is sought under Sections 230-232 read with other applicable provisions of the Companies Act, 2013 and Rules framed thereunder as in force from time to time to a Scheme of Amalgamation (Merger by Absorption) between EXCEL CROP CARE LIMITED, the Transferor Company and SUMITOMO CHEMICAL INDIA LIMITED, the Transferee Company and their respective shareholders.
3. The Petitioner Companies have approved the said Scheme of Amalgamation (Merger by Absorption) between EXCEL CROP CARE LIMITED, the Transferor Company and SUMITOMO CHEMICAL INDIA LIMITED, the Transferee Company by passing the Board Resolutions which are annexed to the Company Scheme Petition.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Scheme Application No. 1670 of 2018 of the National Company Law Tribunal, Mumbai Bench.



5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all the requirements as per the directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary Affidavits of compliance in the National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Learned Counsel for the Petitioners submits that the Transferor Company is, *inter alia*, engaged in agro chemicals business and manufactures technical grade pesticides and formulations. It also manufactures and markets other agri-inputs like soil enrichers, bio-pesticides, plant growth regulators and soil and plant nutrition products. The Transferee Company is primarily engaged in manufacturing and sales of Household Insecticides, Agricultural pesticides, Public Health Insecticides and Animal Nutrition Products. The amalgamation shall have beneficial results for the companies, their shareholders and all the concerned stakeholders.
7. The Counsel for the Petitioner Companies further submits that the merger by absorption of the Transferor Company into the Transferee Company would inter-alia have the following benefits:
 - I. Consolidation of businesses presently carried on by the Petitioner Companies, which shall create greater operational synergies and efficiencies at multiple levels of business operations and shall provide significant impetus to their growth;



- II. Merger shall result in consolidation of major India operations under one platform which is expected to get undivided attention from the parent company and thereby leveraging capability of the merged entity which in turn will allow the merged entity to undertake future expansion strategies and to tap bigger opportunities;
- III. Creation of value for shareholders of the Companies and other stakeholders, by way of creation of a large asset base, facilitating access to better financial resources, stronger consolidated revenue and profitability, diversification in product portfolio and thereby reducing business risks;
- IV. Pooling of assets, proprietary information, personnel, financial, managerial and technical resources of the Companies, thereby contributing to the future growth of the merged entity;
- V. Consolidating the shareholding and thereby eliminating administrative duplications and consequently reducing the administrative costs of maintaining separate companies;
- VI. The Petitioner Companies operate businesses that complement each other and therefore, can be conveniently combined for mutual benefit of the shareholders of the Petitioner Companies.

8. The Regional Director, Western Region, Mumbai has filed a Report dated 23rd day of April 2019 stating the following:-

“IV. The observations of the Regional directors on the proposed Scheme to be considered by the Hon'ble NCLT are as under:-

- (a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which*



are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.;

(b) **As per Part-A, Definitions Clause- 1.1.4 of the scheme, "The Appointed Date"** means the date from which the provisions of the Scheme shall become operational, i.e. opening of business hours on 01st April, 2018, as assented to and approved by the Board of Directors of the Companies or such other date as may be directed by the NCLT (defined hereinafter) or other Appropriate Authority as may be applicable. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2018;

(c) **As per Part-A, Definitions Clause- 1.1.9 of the scheme, "The Effective Date"** "The Effective Date" or "upon the Scheme becoming effective" or "upon coming into effect of this Scheme" means the last date on which the certified copies of the Order of NCLT sanctioning this Scheme (defined hereinafter) is filed with the Registrar of Companies, Mumbai by the Transferor and Transferee Company, as required under the provisions of the Act;. In this regard it is submitted that the "Effective Date" the scheme shall be deemed to be effective from (1st April, 2018) as per provisions of section 232(6) of the Companies Act, 2013 and not as specified in the above said clause of the scheme.

(d) **As per Part - C - Clause - 5.1 of the scheme (Change in the Registered Office)** the petitioner proposes change/shifting of the Registered Office, Accordingly, it is stated that "Prior to the Effective Date, the Transferee Company may, at its discretion, initiate and complete the procedure for a change in its registered office. In this regard, the Transferee Company may execute such deeds and documents as may be required". In this regard it is submitted that as the Appointed Date and the scheme shall be deemed to be effective from such date and not a date subsequent to Appointed Date i.e. 1st April 2018 the date not later than appointed date in terms of provisions of section 232(6) of the Companies Act, 2013. The approval of Scheme by this Hon'ble Bench dates back to the Appointed Date the petitioners are not entitled to shift the registered office before filing the said order with ROC Mumbai, as both the companies, on the date of hearing are have registered office situated within the jurisdiction of this Hon'ble Bench. Hence, the said clause needs to be deleted;

(e) **As per Part - C - Clause - 6.2 of the scheme (Modification in the MOA of the Transferee Company - Aggregation and increase of Authorised Share Capital. The**



fee payable by the Transferee Company shall be in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013;

(f) As per Part - C - Clause - 6.4 of the scheme for increase in authorized share capital of if any the transferee company shall file necessary e forms and pay necessary filing fee and stamp duty to the as applicable;

(g) Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy/any change/changes are made, for changes if any, liberty be given to Central Government to file further report if any required;"

9. In so far as the observation made in paragraph IV (a) of the Report of the Regional Director is concerned, the Petitioner Company No. 2 undertakes through its Counsel that in addition to compliance of IND-103, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with the other applicable Accounting Standards such as IND-8, etc.
10. In so far as the observation made in paragraph IV (b) of the Report of the Regional Director is concerned, the Petitioner Companies undertake through its Counsel that the Appointed Date of the Scheme shall be the opening hours of April 1, 2018.
11. In so far as the observation made in paragraph IV (c) of the Report of the Regional Director is concerned, the Petitioner Companies undertake through its Counsel that as mentioned in Clause 3 of the Scheme, the Scheme shall be come into force from the Effective Date, i.e., the date of filing of the final minutes of the Order of this NCLT with Registrar of Companies but shall be effective from the Appointed Date i.e., opening hours of April 1, 2018.
12. In so far as the observation made in paragraph IV (d) of the Report of the Regional Director is concerned, the Petitioner



Companies confirm and undertake through its Counsel that the registered office of the Petitioner Companies have been situated within the State of Maharashtra since April 1, 2018 and there shall be no change in the registered office address of the Petitioner Companies until the sanction of the Scheme and filing of this Order with the Registrar of Companies, Mumbai is completed.

13. In so far as the observation made in paragraph IV (e) of the Report of the Regional Director is concerned, the Petitioner Company No. 2 undertakes through its Counsel that the fee payable by the Transferee Company shall be in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.
14. In so far as the observation made in paragraph IV (f) of the Report of the Regional Director is concerned, the Petitioner Company No. 2 undertakes through its Counsel that the Transferee Company shall file necessary e-forms and pay the necessary filing fee and stamp duty, as may be applicable for the increase in the authorized share capital of the Transferee Company, if required, so as to make its authorised share capital sufficient for allotment of shares to the shareholders of the Transferor Company in consideration of the Amalgamation after considering the combined Authorised Share Capital.
15. In so far as the observation made in paragraph IV (g) of the Report of the Regional Director is concerned, the Petitioner Companies confirm and undertake through its Counsel that there is no change in the Scheme enclosed to the Company Scheme Application and the Company Scheme Petition.
16. The observations made by the Regional Director have been explained by the Petitioner Companies in Paras 9 to 15 above. The clarifications and undertakings given by the Petitioner Companies are accepted.



17. The Official Liquidator has filed his report dated March 19, 2019 in the Company Scheme Petition No. 1364 of 2019 *inter alia*, stating therein that the affairs of the Transferor Company have been conducted in a proper manner.
18. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law.
19. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 1364 of 2019 filed by the Petitioner Companies is made absolute in terms of prayer clause (a) of the said Petition.
20. Petitioners are directed to lodge a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of issuance of the certified copy of this Order by the Registry, duly certified by the Deputy Registrar or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
21. The Petitioner Companies to lodge a certified copy of this Order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps within 60 days from the date of receipt of the certified copy of this Order, for the purpose of adjudication of stamp duty payable, if any on the above.
22. The Petitioner Companies to pay cost of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai within four weeks from the date of receipt of the certified copy of this Order.
23. The Transferor Company to pay cost of Rs. Rs. 25,000/- to the Official Liquidator, High Court, Bombay within four weeks from the date of receipt of the certified copy of this Order.



24. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
25. Any person interest shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
26. The Scheme of Amalgamation is sanctioned and the appointed date of the Scheme of Amalgamation is fixed as April 1, 2018.
27. Ordered accordingly.

Sd/-
V. Nallasenapathy,
Member (T)

Sd/-
Bhaskara Pantula Mohan
Member (J)



Certified True Copy
Date of Application 28/6/2019
Number of Pages 9
Fee Paid Rs. 45
Applicant called for collection copy on 22/8/2019
Copy prepared on 22/8/2019
Copy Issued on 22/8/2019

Assistant Registrar
National Company Law Tribunal, Mumbai Bench