(2021) 02 NCLT CK 0099

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 1170/MB-V Of 2020

Addpol Chemspecialities Pvt. Ltd. And Ors. Vs

Date of Decision : 18-02-2021

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 8
Companies Act, 2013 — Section 230, 230(3), 230(5), 231, 232

Citation : (2021) 02 NCLT CK 0099

Hon'ble Judges : Suchitra Kanuparthi, J;Chandra Bhan Singh, Member (Technical)

Bench : Division Bench

Advocate : Ahmed M Chunawala, Rajesh Shah

Judgement

1. The Bench is convened by videoconference today.

2. Learned Counsel for the Transferor Companies and Transferee Company (collectively referred to as 'Applicant Companies') states that the present Scheme is a Scheme of Amalgamation of ADDPOL CHEMSPECIALITIES PRIVATE LIMITED, the First Transferor Company and MONACHEM ADDITIVES PRIVATE LIMITED, the Second Transferor Company with IMCD INDIA PRIVATE LIMITED, the Transferee Company under sections 230 to 232 of the Companies Act, 2013 ('Scheme').

3. Learned Counsel for the Applicant Companies states that the Board of Directors of the Transferor Companies and Transferee Company in their respective meetings conducted on 8th December, 2020 for the Transferor Companies and the Transferee Company have approved the Scheme. The Appointed Date fixed under the Scheme is April 1, 2020.

4. The rationale for the proposed Scheme is as under:

(i) Consolidation: The amalgamation will enable consolidation of the business of all the entities into one single entity which will facilitate in focused growth, operational efficiency, integration synergies and better supervision of the business of the group. The amalgamation would also reduce layers of shareholding wherein the present shareholders of the Transferee Company would on amalgamation hold the business of the Companies through one entity.

(ii) Pooling of resources: The amalgamation will enable pooling of resources of the Transferor Companies with the resources of the Transferee Company to their advantage, resulting in more productive utilization of said resources, and cost and operational efficiency which would be beneficial to all stakeholders.

(iii) Scaling of operations: The amalgamation would facilitate scaling of operations, reduce administrative and management costs and gamer greater visibility in the market. The amalgamation would also facilitate "ease of business".

(iv) Future expansion: The amalgamation of the Transferor Companies with the Transferee Company will help in creation of a platform for future business activities, and to act as a gateway for growth and expanding business operations wherein the business activities of the Transferor Companies can be advantageously combined with the business activities of the Transferee Company thus leading to substantial growth opportunities.

(v) Implementation of policy changes: The amalgamation will also enable smoother implementation of policy changes at a higher level from a management perspective and shall also help enhance the efficiency and control of the entities. There is no likelihood that interests of any shareholder or creditor of either the Transferor Companies or the Transferee Company would be prejudiced as burden on the members of the Transferor Companies or the Transferee Company.

(vi) Operational efficiency: The amalgamation will result in combining the technology capabilities of each of the entities and utilizing the same in providing an end-to- end portfolio of solutions to the customers. It will also bring about operational efficiencies and reduction of administrative and managerial overheads as well as multiplicity of legal compliances.

5. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of ADDPOL CHEMSPECIALITIES PRIVATE LIMITED, the First Transferor Company and MONACHEM ADDITIVES PRIVATE LIMITED, the Second Transferor Company with IMCD INDIA PRIVATE LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the two Equity Shareholders of the Applicant Company No.1, which are annexed as 'Exhibit L-1 and L-2' to the Company Scheme Application.

6. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of ADDPOL CHEMSPECIALITIES PRIVATE LIMITED, the First Transferor Company and MONACHEM ADDITIVES PRIVATE LIMITED, the Second Transferor Company with IMCD INDIA PRIVATE LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the two

Equity Shareholders of the Applicant Company No.2, which are annexed as 'Exhibit M-1 and M-2' to the Company Scheme Application.

7. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.3 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Scheme of Amalgamation of ADDPOL CHEMSPECIALITIES PRIVATE LIMITED, the First Transferor Company and MONACHEM ADDITIVES PRIVATE LIMITED, the Second Transferor Company with IMCD INDIA PRIVATE LIMITED, the Transferee Company is dispensed with in view of the consent affidavits given by the two Equity Shareholders of the Applicant Company No.3, which are annexed as 'Exhibit N-1 and N-2' to the Company Scheme Application.

8. That the counsel for the Applicant Companies submits that there are no Secured Creditors in the Applicant Companies as mentioned in Para 28 to 30 of the Application.

9. That Counsel for the Applicant Company No. 1 submits that so far as Unsecured Creditors of the Applicant Company No. 1 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 1 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 1 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.1 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 3 shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs the Applicant Company No.1 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No.1.

10. That Counsel for the Applicant Company No. 2 submits that so far as Unsecured Creditors of the Applicant Company No. 2 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 2 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 2 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No. 2 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 3 shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs the Applicant Company No.2 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such

representations shall simultaneously be served upon the Applicant Company No. 2.

11. That Counsel for the Applicant Company No. 3 submits that so far as Unsecured Creditors of the Applicant Company No. 3 are concerned most of them are in the nature of loan/sundry/trade creditors for activities of the Applicant Company No. 3 and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Applicant Company No. 3 and hence they will in no way be affected by the Scheme of Arrangement. It is further submitted that the Applicant Company No.3 is meeting the amounts payable to its creditors from its activities and upon the Scheme becoming effective, the Applicant Company No. 3 shall continue with its existence and shall accordingly continue to meet the liabilities of its unsecured creditors as they arise in the normal course. Hence, this bench hereby directs the Applicant Company No.3 to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company No. 3.

12. The Applicant Companies to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

13. The Applicant Companies to serve the notice upon the Registrar of Companies, Mumbai, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules. 2016.

14. The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction, The Applicant Company No. 1 PAN: AAGCA9859E having his address at The Income Tax Officer, Ward (1)(1)(1), Aayakar Bhawan, Baroda, Gujarat - 390007. The Applicant Company No. 2 PAN: AAFCM2738M having his address at The Deputy Commissioner of Income-Tax, Circle (2)(1)(1), Aayakar Bhawan, Baroda, Gujarat - 390007. The Applicant Company No. 3 PAN: AADCI6794B having his address at The Deputy Commissioner of Income Tax, (14)(2)(1), Aayakar Bhawan, Church gate, Mumbai-400020. The Applicant Company's assessments are made, pursuant to

Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

15. The Transferor Companies are also directed to serve intimations of the Scheme upon Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing M/s. Dalal & Kala Associates, Chartered Accountant, to assist the Official Liquidator to scrutinize the books of accounts of the said Transferor Company for the last 5 years and submit its representation / report to the Tribunal. The aforesaid Companies to pay fees of Rs. 2,00,000/- for this purpose. If no representation / response is received by the Tribunal from Official Liquidator, Bombay within a period of thirty days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

16. The Applicant Companies to file an affidavit of service within 10 working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

17. The Appointed Date is 01.04.2020