
(2021) 12 NCLT CK 0020

In the National Company Law Tribunal

Case No : CA(CAA)/67/MB/2021

Borchers India Chemicals Private Limited Vs

Date of Decision : 09-12-2021

Acts Referred:

Companies Act, 2013 — Section 230, 230(1)(a), 230(1)(b), 230(5), 231, 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2021) 12 NCLT CK 0020

Hon'ble Judges : Suchitra Kanuparthi, Member (J); Rajesh Sharma, Member (T)

Bench : Division Bench

Advocate : Hemant Sethi, Vidisha Poonja

Final Decision : Disposed Of

Judgement

Rajesh Sharma, Member (Technical)

1. The Bench is convened through video conferencing today.
2. The Counsel for the Applicant Companies states that the present Scheme is a Merger by Absorption of wholly owned subsidiary namely, Borchers India Chemicals Private Limited (Transferor Company) with the holding Company namely Milliken Chemical & Textile (India) Co. Private Limited (Transferee Company) and their respective shareholders under the provisions of Sections 230 to 232 of the Companies Act, 2013.
3. The Counsel for the Applicant Companies submits that it is a merger of a wholly owned subsidiary company into its holding company, no shares of the Transferee Company shall be allotted in lieu or exchange of the holding of the Transferee Company in the Transferor Company (held directly and jointly with the nominee shareholders). The proposed Scheme will not result in any dilution in shareholding of the Transferee Company.
4. The Counsel for the Applicant Companies further submitted that the First Applicant Company is engaged in marketing of all kinds of chemical specialty, organic and inorganic products for industrial use and the Second Applicant Company is set up to import, export, warehouse, market and sell chemical and

textile products in India, to manufacture related products, to establish laboratory facilities for technical support to customers & to carry on any other business as manufacturers and/or dealers in chemical or textile products. Transferee Company also provides coordination and liaisoning services to its parent company - Milliken Design, Inc.

5. The Counsel for the Applicant Companies further submits that the proposed merger will be beneficial to the Applicant Companies, their respective shareholders and creditors, employees and other stakeholders and they will have following benefits:

- i. Integration of business operations.
- ii. Synergies in operation arising from consolidation of various projects leading to efficient utilization of resources.
- iii. Greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities.
- iv. Garner the benefits arising out of economies of large scale and lower operating costs.
- v. Pooling of talents in terms of manpower, management, administration etc. to result in savings of costs.
- vi. Avoidance of duplication of administrative functions, reduction in multiplicity of legal and regulatory compliances.
- vii. Integrated operational and marketing strategies, inter-transfer of resources / costs will result in optimum utilization of assets.
- viii. Bring uniformity in corporate policy.
- ix. Benefit of operational synergies to the combined entity and greater leverage in operations, planning and process optimization.

The proposed corporate restructuring mechanism by way of a scheme of merger by absorption under the provisions of the Act will be beneficial, advantageous and not prejudicial to the interests of the shareholders, creditors and other stakeholders of the Applicant Companies.

6. The Counsel for the Applicant Companies further submitted that the Board of Directors in their respective meeting held on 08th January, 2021 approved the Scheme. The Appointed Date of the Scheme is 1st April 2021.

7. The Issued, Subscribed and Paid-Up Share Capital of the First Applicant Company as on 31st March, 2020 is as under:

Particulars

Amount in Rs.

Authorised Capital

15,00,000 Equity Shares of Rs.10 each

1,50,00,000

Total

1,50,00,000

Issued, Subscribed and Paid-Up Share Capital

15,00,000 Equity Shares of Rs.10 each

1,50,00,000

Total

1,50,00,000

8. The Issued, Subscribed and Paid-Up Share Capital of the Second Applicant Company as on 31st March, 2020 is as under:

Particulars

Amount in Rs.

Authorised Capital

35,00,000 Ordinary (Equity) Shares of Rs.10
each

3,50,00,000

Total

3,50,00,000

Issued, Subscribed and Paid-Up Share Capital

32,26,761 Ordinary (Equity) Shares of Rs.10
each

3,22,67,610

Total

3,22,67,610

9. The financial details/summary of the First Applicant Company as on 30th November, 2020 is as under:

Year

Revenue

Profit/Loss

2019

3,62,08,760

40,66,906

2020

2,30,77,909

22,67,409

10. The financial details/summary of the Second Applicant Company as on 30th November, 2020 is as under:

Year

Revenue

Profit/Loss

2019

1,01,07,21,000

7,01,66,000

2020

54,70,74,000

4,54,51,000

11. The Counsel for the Applicant Companies respectfully submits that in the First Applicant Company there are two (2) Equity Shareholders.

Both the Shareholders have given consent affidavit which are annexed as "Annexure F2 and F3" to the Joint Company Scheme Application. In view of the fact that, the First Applicant Company has obtained the

Consent Affidavits from all its Shareholders, the meeting of the Equity Shareholders of the First Applicant Company is hereby dispensed with.

12. The Counsel for the Applicant Companies respectfully submits that in the Second Applicant Company there are two (2) Equity Shareholders. Both the Shareholders have given consent affidavit which are annexed as "Annexure G1 and G2" to the Joint Company Scheme Application. In view of the fact that, the First Applicant Company has obtained the Consent Affidavits from all its shareholders, the meeting of the Equity Shareholders of the First Applicant Company is hereby dispensed with.

13. The Counsel for the Applicant Companies submits that there are no Secured Creditors in the First Applicant Company and Second Applicant Company and

therefore the question of convening meeting of Secured Creditors does not arise.

14. The Counsel for the Applicant Companies submits that there are 5 (five) Unsecured Creditors in the First Applicant Company having total outstanding of Rs.12,61,164/-. Since the Scheme is an Arrangement between the Applicant Companies and their respective shareholders as contemplated under Section 230(1)(b) and not in accordance with the provisions of Section. 230(1)(a) of the Companies Act, 2013 and as there is no Compromise and/or Arrangement with the creditors and as no sacrifice is called for, the meeting of the unsecured creditors is dispensed with. The First Applicant Company shall issue notice to all its Unsecured Creditors by Registered Post-AD/Speed Post and through Email (to those creditors whose email addresses are duly registered with the First Applicant Company for the purpose of receiving such notices by email), at their last known address as per the records of the First Applicant Company, with a direction that they may submit their representations, if any, to the Tribunal within 30 days and copy of such representations shall simultaneously be served upon the First Applicant Company.

15. The Counsel for the Applicant Companies submits that there are 33 (thirty-three) Unsecured Creditors in the Second Applicant Company having total outstanding of Rs.15,86,89,000/-. The Counsel for the Second Applicant Company is directed to issue Notices along with brief of the Scheme by Registered Post-AD/Speed Post and through Email (to those creditors whose email addresses are duly registered with the Second Applicant Company for the purpose of receiving such notices by email) upon the Unsecured Creditors of the Second Applicant Company with a direction that they may submit their representations, if any, to the Tribunal within 30 days and copy of such representations shall simultaneously be served upon the Second Applicant Company.

16. That the Applicant Companies are directed to serve notices along with copy of scheme by Registered Post-AD/Speed Post and Hand Delivery upon:- (i) concerned Income Tax Authority within whose jurisdiction the Applicant Companies' assessments are made i.e. for the First Applicant Company PAN AAHCB0226B - Income-tax Officer Ward 25(2)(1), Pratyakshakar Bhavan, Bandra (E), Mumbai-400051 and for the Second Applicant Company PAN AAFCM3724R - Office of the Deputy Commissioner of Income Tax, Circle 7, Salisbury Park, 7th, Shankar Rao Lohane Marg, Gultekdi, Pune - 411037; (ii) the Central Government through the office of Regional Director, Western region, Mumbai; and (iii) Registrar of Companies (iv) GST Authorities concern with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice, to the Tribunal with copy of such representations simultaneously served upon the Applicant Companies, failing which, it shall be presumed that the authorities have no representations to make.

17. The Applicant Companies to serve the notice by Registered Post-AD/Speed Post and Hand delivery upon the Goods and Service Tax Authority are concerned,

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 Goods and Service Tax Authority within 30 days from the date of receipt of the notice it will be presumed that Goods and Service Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. Additionally, First Applicant Company is also directed to serve notice of the meeting by Registered Post-AD/Speed Post and Hand Delivery upon Official Liquidator, High Court, Bombay, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. This Tribunal hereby appoints Mr. Manish Lalji Dawda; Address: A 402, Vikas Apartment, 64 DCB Lane Parel, above Bank of Maharashtra, Mumbai City, Maharashtra-400012; E-mail: dawdamanish@gmail.com; Chartered Accountants to assist the Official Liquidator to scrutinize the books of accounts of the First Applicant/Transferor Company for the last three years and submit its representation to the Tribunal. The First Applicant Company shall pay a fee of Rs.2,00,000/- (Rupees Two Lakhs only) for this purpose. If no representation is received by the Tribunal from Official Liquidator, High Court, 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.

19. That the Applicant Companies to file an affidavit of service with the Registry proving dispatch of notices as stated above, and report to this Tribunal that the directions have been duly complied with.

20. Ordered accordingly.