

(2023) 05 NCLT CK 0036

In the National Company Law Tribunal

Case No : Company Scheme Petition No.232 Of 2022 Connected With Company Scheme Application No.175 Of 2022

Savita Polymers Limited Vs

Date of Decision : 08-05-2023

Acts Referred:

Companies Act, 2013 — Section 66, 230, 230(5), 232, 232(3)(i)

Citation : (2023) 05 NCLT CK 0036

Hon'ble Judges : Kuldip Kumar Kareer, Member (J); Anuradha Sanjay Bhatia, Member (T)

Bench : Division Bench

Advocate : Aayesh Gandhi, Rohan Bhatia, Rupa Sutar

Final Decision : Disposed Of

Judgement

Anuradha Sanjay Bhatia, Member (Technical)

1. Heard Learned Counsel appearing for the Petitioners and the representative of the Regional Director (Western Region). Neither objector has come before this Tribunal to oppose the Scheme, nor has any party controverted any averments made in the Petition.

2. The sanction is sought under Sections 230 to 232 read with Section 66 and other applicable provisions of the Companies Act, 2013 by Savita Polymers Limited (hereinafter referred to as the "Transferor Company" or the "Petitioner No. 1") and Savita Oil Technologies Limited (hereinafter referred to as the "Transferee Company" or the "Petitioner No. 2") for sanctioning the Scheme of Arrangement and Amalgamation between the Transferor Company and the Transferee Company and their respective shareholders (hereinafter referred to as the "Scheme"), pursuant to the provisions of Sections 230-232 read with Section 66, and other relevant provisions of the Companies Act, 2013 (hereinafter referred to as the "Act").

3. The Learned Counsel for the Petitioners states that the Scheme, inter alia, provides for the amalgamation of the Transferor Company into the Transferee

Company with effect from the Appointed Date (as defined in the Scheme), and the consequent dissolution of the Transferor Company without being wound up.

4. The Learned Counsel for the Petitioners states that the Transferor Company is a wholly-owned subsidiary of the Transferee Company and that the entire paid-up share capital of the Transferor Company is owned and controlled by the Transferee Company.

5. The Learned Counsel for the Petitioners states that the Transferor Company is primarily engaged in the business of manufacturing and marketing of inter alia petroleum jellies, chain greases, waxes, oxidised waxes, compressor lubricants, optic fibre and cabin filling compounds, transformer fluids, sanitisers, etc.

6. The Learned Counsel for the Petitioners states that the Transferee Company is in the business of manufacturing and marketing of petroleum specialty products including transformer oil, lubricating oil, liquid paraffin, greases, jellies, waxes and it is also engaged in generation of electricity through wind generating machines.

7. The Learned Counsel for the Petitioners states that the rationale and benefits of the Scheme are as under:

a. The amalgamation of Transferor Company into the Transferee Company, as contemplated under the Scheme, intends to achieve restructuring, consolidation and effective management of the petroleum specialty products and related businesses of the Transferor Company and the Transferee Company in a single entity which will provide synergy benefits, attain efficiencies, and cost competitiveness, as the Transferor Company and the Transferee Company are engaged into complementary business.

b. Streamlining operations, efforts, employees, costs and enable better and more efficient management, control and day to day operations and reducing overheads, administrative, and other expenditure and achieving operational rationalization, organizational efficiency, combining synergies and optimal utilization of resources and manufacturing facilities which will be in the interest of shareholders, employees, creditors, and other stakeholders, post the implementation of the Scheme;

c. Since the Transferor and the Transferee are in similar and/or complementary lines of business, achieving larger and diversified product portfolio, economies of scale, efficiency, optimization of logistics and distribution network and other related economies by consolidating the business operations, post the implementation of the Scheme including enabling the Transferor and Transferee as one combined entity to be a manufacturer of all three types of transformer oils viz. mineral oil, natural ester and synthetic ester and to access the plants and manufacturing facilities post the implementation of the Scheme;

d. Broadening the product portfolio and addition of value added products in one entity and facilitate rapid entry into the emerging areas of alternate transformer

fluids, which is being driven by safety and environmental concerns and in addition to the combining of synergies, post the implementation of the Scheme;

e. Enhancing shareholder value including that of the public shareholders of the Transferee by consolidating entities engaged in similar and/or complementary business and also having inter-se contracts between them, post the implementation of the Scheme;

f. Eliminating multiple accounting, multiple compliances and multiple auditing resulting in reduction of costs, post the implementation of the Scheme;

g. Pooling in administrative synergies and know-how of the holding company and its wholly owned subsidiary, post the implementation of the Scheme.

8. The Learned Counsel for the Petitioners states that the Board of Directors of the Transferor Company and the Transferee Company in their respective meetings held on May 30, 2022 have approved the proposed Scheme.

9. The Company Scheme Petition is filed in consonance with Sections 230 to 232 of the Act along with the order dated July 08, 2022 passed in CA(CAA) No.175/MB/2022 by this Tribunal.

10. The Learned Counsel for the Petitioners states that the Petitioners have complied with all the requirements as per the directions of this Tribunal and have filed the necessary affidavit(s) with this Tribunal showing compliance.

11. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated March 15, 2023 setting out his observations on the Scheme as stated in Paragraph 2(a) to 2(h) of the Report. In response to the observations made by the Regional Director, the Petitioner Companies have given necessary clarifications and undertakings by way of a Joint Affidavit dated March 23, 2023. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Para

Observations in the Report

Response of the Petitioner Companies

2. (a)

(i)

On examination of the report of the Registrar of Companies, Mumbai dated 20/01/2023 for Petitioner Companies that the Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and/ or representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, the Petitioner Companies

has filed Financial Statements up to 31/03/2021. The ROC has further submitted that in his report dated 20/01/2023 which are as under:-

i. That the RoC Mumbai in his report dated 20/01/2023 has also stated that No Inquiry, Inspection, Investigations, Prosecution and Complaints under CA, 2013 have been pending against the Petitioner Companies.

2. (a) ii (a)

Further ROC has mentioned as follows:

Form GNL-1 not filed by the Petitioner Companies.

Form GNL-1 has been filed with the Registrar of Companies on 21st March 2023 for both, the Transferor as well as Transferee Companies. Copies of the challans issued in that regard are annexed as Exhibits "A" and "B" to the Affidavit.

2. (a) ii (b)

Paid up share capital of the Transferee company does not match with the scheme and master data.

The amount of authorised and paid-up share capital of the Transferee Company set out in the Scheme is as on the date of approval of the Scheme by the Board of Directors of the Petitioner Companies i.e. 30th May 2022. Subsequent to the approving the Scheme by the Board of Directors and filing of the same with the Hon'ble Tribunal, the Board of Directors of the Transferee Company at its meeting held on 21st June 2022 approved the sub-division of equity shares of the Transferee Company in the ratio of 1:5 i.e. 1 equity share of the Transferee Company of INR 10 each into 5 equity shares of the Transferee company of INR 2 each. During the pendency of the captioned matter, the corporate action of sub-division has taken place. It is pertinent to note that (i) such sub-division does not change the overall share capital position of the Transferee Company and is merely in the nature of a sub- division, , and (ii) such sub- division does not impact the proposed amalgamation in any manner given that since the Transferor Company is a wholly owned subsidiary of the Transferee Company and as such, no shares or securities of the Transferee Company are to be issued as part of the proposed amalgamation.

2. (a) ii (c)

Form CAA-2 and explanatory statement not enclosed with Form CAA-3.

Vide order dated 8th July 2022, this Hon'ble Tribunal had dispensed with the requirement of holding meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Companies, the

question of enclosing CAA-2 along with Form CAA-3 does not arise.

2. (a) ii (d)

Transferee is a listed company, hence, NOC from BSE and NSE to be obtained.

Since the Scheme provides for an amalgamation of the wholly owned subsidiary i.e. Transferor Company, into the parent company i.e. the Transferee Company, no prior permissions and/ or NOC of Securities and Exchange Board of India and/ or Bombay Stock Exchange ["BSE"] or National Stock Exchange ["NSE"] is required. However, pursuant to Regulation 37(6) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended from time to time, the Transferee Company has by way of two separate letters dated 30th May 2022 addressed to BSE and NSE has disclosed and informed that the Board of Directors of the Transferee Company has approved the Scheme in respect of the proposed amalgamation of the Transferor Company and the Transferee Company. The Transferee Company's aforesaid letter, dated 30th May 2022 is annexed at Exhibit "R" to the Company Scheme Petition.

2. (a) ii (e)

Form PAS-6 cannot be accessed in the MCA Portal.

the Transferor Company has filed the necessary Form PAS-6 vide SRN No. F39860861 dated 4th November 2022 with the Registrar of Companies for submitting the Transferor Company's Reconciliation of Share Capital Audit Report as on 30th September 2022.

Furthermore, the inability to access Form PAS-6 on the MCA Portal is a technical issue and the same shall have no effect on the proposed Scheme. Copy of the said filed Form PAS-6 dated 4th November 2022 is annexed as Exhibit "C" to the Affidavit.

2. (a) ii (f)

As per the provision of section 232 (3)(i) of CA, 2013 where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting off the fees already paid by the transferor company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to the amalgamation.

The Petitioner Companies undertake to pay the applicable fee on the increase of authorised share capital, if any.

2. (a) ii (g)

Interest of creditors should be protected.

Hence, the Petitioner Companies shall undertake to provide detail reply against observations mentioned above.

The Scheme does not contemplate any arrangement or compromise with the creditors of any of the Petitioner Companies. The liabilities towards the creditors of any of the Petitioner Companies are neither being reduced nor being extinguished. In the circumstances, it is submitted that the interest of the creditors of each of the Petitioner Companies are protected under the Scheme.

2. (b)

Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies.

The Petitioner Companies undertake to pay the applicable fee on the increase of authorised share capital, if any.

2. (c)

In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the transferee company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.

The Transferee Company undertake to pass such accounting entries which are necessary in connection with the Scheme to comply with the other applicable Accounting Standards such as AS-5 or IND AS-8), etc.

2. (d)

The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.

The copies the Scheme annexed to Company Scheme Application No. 175 of 2022 and Company Scheme Petition No.232 of 2022 are one and the same and that there is no discrepancy, or any change being made to the Scheme.

2. (e)

The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the

approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned.

Each of the Petitioner Companies have served notices under Section 230 (5) of the Companies Act, 2013 to the concerned authorities as directed by this Hon'ble Tribunal by way of its order dated July 8, 2022 passed in the captioned Company Scheme Application. The Petitioner Companies have jointly filed Affidavit of Service showing compliance of the directions issued by this Hon'ble Tribunal. Rest of the contents of the paragraph under reply are general and does not require any comments.

2. (f)

As per Definition of the Scheme,

"Appointed Date" means start

of business hours in Mumbai, India on April 1, 2022 or any other date as may be determined by the Board of Directors of the Parties and approved by the hon'ble NCLT:

"Effective Date" means a date on which all the conditions (taken together) specified under Clause 18.1 of this Scheme stands satisfied;

It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

The present Scheme is in compliance with the requirements of circular no.F.No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs and that the Petitioner Companies undertake to comply with the same.

2. (g)

Petitioner Companies shall undertake to comply with the directions of Income tax department, if any.

The Petitioner Companies undertake to comply with the directions of the Income Tax Department, if any.

2. (h)

Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.

The Petitioner Companies undertake to comply with the directions, if any, of the concerned sectoral regulatory, in accordance

with law.

12. Ms. Rupa Sutar, Authorised representative of the Regional Director, MCA (WR), Mumbai, who was present at the time of Final hearing has submitted that the clarifications, submissions and undertakings given by the Petitioner Companies are hereby accepted and that they have no objection for approving the scheme by the Tribunal.

13. The Learned Counsel for the Petitioner Companies states that the Official Liquidator has filed its report dated 28th February 2023 inter alia stating therein that the affairs of the Transferor Company have been conducted in a proper manner and not prejudicial to the interest of the shareholders of the Transferor Company.

14. From the material on record, the Scheme annexed as Exhibit M to the Company Scheme Petition appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

15. Since all the requisite statutory compliances have been fulfilled, C.P. (CAA) 232/MB/2022 is made absolute in terms of prayer made therein. Hence ordered.

16. The Petitioners are directed to lodge a copy of this Order and Scheme duly certified by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable on the same, if any, within 60 (sixty) days from the date of receipt of the certified copy of the Order and Scheme.

17. The Petitioners are further directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies electronically along with E-Form INC 28 as per the relevant provisions of the Companies Act, 2013 within 30 days from the date of receipt of certified copy of this Order.

18. All concerned regulatory authorities to act on a copy of this Order along with the Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench.

19. Ordered accordingly.