

(2020) 06 NCLT CK 0010

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 33/230-232/NCLT/AHM Of 2020

Shiva Pharmachem Limited

APPELLANT

Vs

Shiva Performance Materials Private Limited

RESPONDENT

Date of Decision : 30-06-2020

Acts Referred:

Companies (Compromises, Arrangements And Amalgamations) Rules, 2016 — Rule 6, 7, 8, 8(2), 12, 14
Companies Act, 2013 — Section 66, 102, 210, 211, 212, 213, 214, 215, 216, 217, 219, 220, 223, 224, 225, 226, 227, 230, 230(3), 230(5), 231, 232
Companies Act, 1956 — Section 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251

Citation : (2020) 06 NCLT CK 0010

Hon'ble Judges : M.B. Gosavi, J;Virendra Kumar Gupta, Member (Technical)

Bench : Division Bench

Advocate : Swati Soparkar

Final Decision : Disposed Of

Judgement

M.B. Gosavi, J

1. This joint Application is filed by two Applicant Companies under Sections 230 to 232 read with Section 66 and other applicable provisions of the Companies Act, 2013. The proposed Scheme of Arrangement involves De-merger and transfer of the De-merged Undertaking viz. Performance Business and ancillary and support services of Shiva Pharmachem Limited, the Applicant De-merged Company to Shiva Performance Materials Private Limited, the Applicant Resulting Company.

2. The registered office of both the Applicant Companies situated at Vadodara in the State of Gujarat, and hence both the Applicant Companies are under the jurisdiction of the National Company Law Tribunal, Bench at Ahmedabad.

3. Both the Companies are empowered by their respective Memorandum of Associations to enter into Scheme of Arrangement. Copies of Memorandum of

Association of both the Companies are placed on record. The Audited Financial Statements of all the companies as at 31st March 2019 and the unaudited Provisional Financial statements as on 31st January 2020 are placed on record. Additionally, a divisional breakup of the Assets and Liabilities of the De-merged Undertaking and remaining business is also provided and placed on record as Annexure-B-2.

4. It has been submitted that both the Companies are part of the same management group and the rationale for the proposed scheme has been explained in the Application as under:

The Demerged Company is a well-established specialty chemicals manufacturing company having business which can be broadly categorized into two parts:

(i) business of manufacturing of intermediates for the pharmaceutical and agrochemical industry; ("Pharma and Specialty Chemicals Business") and

(ii) business of manufacturing polymers and polymer compounds being performance chemicals ("Performance Business").

The Resulting Company is having the main object of carrying on the business of manufacturing, processing and dealing in chemicals and polymers.

The Pharma and Specialty Chemicals Business and the Performance Business of SPL address completely different market segments and are also at different stages of their growth. Further, the businesses also have very different risk profiles and variables affecting them. Considering the same, it is considered appropriate that different management team and different legal entities are assigned the responsibility of managing these businesses separately then it would be possible to have focused attention to respective businesses and this has been the primary objective of the demerger of Performance Business from SPL.

Copies of Board Resolutions of all the companies are placed on record as Annexure- 'F'.

5. A Copy of the Valuation Report for the proposed Exchange Ratio of Shares to be issued by the Resulting Company, obtained from M/s. Snehal Shah & Associates, Chartered Accountant and Registered Valuer are placed on record as Annexure 'E'. Copy of the Scheme of Arrangement is placed on record as Annexure-'G'.

6. It is stated in the Application that there are no proceedings or investigations pending against the Applicant Companies under Sections 210-217, 219, 220, 223 to 227 of the Companies Act, 2013 and/or under Sections 235 to 251 of the Companies Act, 1956. There are no winding up petitions pending against any of the Applicant Companies. The Statutory Auditors of the De-merged Company and the Resulting Company have provided the certificate confirming the proposed Accounting Treatment being in conformity with the Applicable Accounting Standards. The said certificates are placed on record collectively as Annexure- 'H'.

7. The following are the reliefs prayed by the Applicant Companies;

- a) THAT meetings of the Equity Shareholders of both the Applicant Companies be dispensed with;
- b) THAT meeting of sole Unsecured Creditor of SPMPL, the Applicant Resulting Company be dispensed with;
- c) THAT meeting of the Secured Creditors of SPMPL, the Applicant Resulting Company are not necessary.
- d) THAT separate meetings of the Secured Creditors and Unsecured Creditors of SPL, the Applicant De-merged Company be directed to be convened to obtain the approval to the Scheme and necessary directions for convening and conducting the said meetings be issued.
- e) THAT necessary directions be issued to the Applicant Companies for the service of notices to the concerned statutory authorities.

8. We heard the submissions of Learned Counsel Mrs. Swati Soparkar, for the Applicant Companies.

8.1 It has been submitted that the Applicant De-merged Company is a closely held public limited company and the Applicant Resulting Company is a private limited company. The number of shareholders of both the companies are less than 10 and all the Equity Shareholders of both the Applicant Companies have given their written consent on affidavits approving the proposed Scheme. The same are placed on record respectively as Annexure- '1-1' & '1-2'. Certificates from the Chartered Accountant confirming the list of shareholders and further confirming the receipt of the consent letters is placed on record as Annexure- 'J-1' & 'J- 2'. In view of the same, it is prayed that meetings of the Equity Shareholders of the said Applicant Companies be dispensed with.

8.2 (i) It has been further submitted that as per the books of the said Applicant De-merged company as on 31st January 2020, as confirmed by certificate of C.A., there are six Secured Creditors of SPL having the total value of debt at Rs. 179.39 crores. Further, there are 638 Unsecured Creditors having the total value of debt at Rs. 79.79 crores. Copy of the certificate from C.A. is placed on record as Annexure-'K'. It will be necessary to convene separate meetings of the Secured Creditors and Unsecured Creditors of the Applicant De-merged Company to obtain the approval to the Scheme.

8.3 (i) The Applicant Resulting Company has no Secured Creditors and has only two Unsecured Creditors as on 31st January 2020, as confirmed by C.A. Both the Unsecured Creditors have approved the Scheme by way of consent letters on affidavit. The C.A. certificates confirming the status of the Secured creditors and receipt of consent letters from two Unsecured Creditors are placed on record as Annexure-'L-1' & 'L-2' Hence, the meeting of the Secured Creditors of the Applicant Resulting Company is not necessary and that of the Unsecured

Creditors be dispensed with.

9. Having perused the entire material on record, this Tribunal passes the following order;

i. Meetings of the Equity Shareholders of both the Applicant Companies viz. SPL and SPMPL, are hereby dispensed with, in light of the consent letters on affidavit from all of them, placed on record.

ii. Meeting of the Secured Creditors of SPMPL, the Applicant Resulting Company is not necessary as there are no Secured Creditors.

iii. The meeting of the Unsecured creditors of SPMPL, the Applicant Resulting Company is hereby dispensed with, in light of the consent letters on affidavit from all of them, placed on record.

iv. Separate meetings of the Secured Creditors and Unsecured Creditors of SPL, the Applicant De-merged Company shall be convened and held at Red Earth Gallery, ABS Towers, Old Padra Road, Vadodara - 390 007 in the state of Gujarat, on Friday, 7th day of August 2020 at 12.00 noon and 4.00 p.m. respectively; for the purpose of considering and, if thought fit, approving the proposed Scheme of Arrangement, with or without modifications;

v. At the said meetings of Secured Creditors and Unsecured Creditors of the said Applicant De-merged Company, voting shall be carried out through ballot / polling paper at the venue of the meeting.

vi. At least one month before the date of the meetings, a notice in Form No. CAA 2 convening the said meetings indicating the day, the date, the place and the time as aforesaid, together with a copy of the Scheme of Arrangement, copy of the Explanatory Statement required to be sent under Section 102 of the Act, read with Sections 230 and to 232 of the Act and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed Form of Proxy shall be sent to each of the Secured Creditors and Unsecured Creditors of Shiva Pharmachem Limited, the Applicant Demerged Company; at their respective or last known addresses either by Registered Post/Speed Post or by Courier or by e mail. The notice shall be sent to all the Secured creditors and Unsecured Creditors of the Applicant De-merged Company, as on 31st March 2020.

vii. At least one month before the date of meetings, an advertisement about convening the said meetings, indicating the day, the date, the place and the time as aforesaid, shall be published once in English Daily 'Indian Express' Vadodara Edition and Gujarati translation thereof in Gujarati daily 'Sandesh', Vadodara Edition. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act, read with Sections 230 and 232 of the Act and the prescribed proxy can be obtained free of charge at the Registered Office of the Applicant Company or at the office of the Advocate, i.e. Mrs. Swati Saurabh Soparkar, 301, Shivalik-10, Opp. SBI Zonal Office, S. M. Road, Ambavadi, Ahmedabad 380 015 in accordance with second proviso to

subsection (3) of Section 230 and Rule 7 of the Companies (CAA) 4 Rules, 2016.

viii. Mr. Suresh Sisodia, an Independent Practising Chartered Accountant or failing him Mr. Hemang Mehta, an Independent Practising Company Secretary, shall be the Chairman of the said meetings of the Secured Creditors and Unsecured Creditors of SPL, the Applicant Transferee Company to be held on 7th August, 2020, and in respect of any adjournment or adjournments thereof.

ix. Mr. Devesh Pathak of M/s. Devesh Pathak & Associates, Practicing Company Secretaries Mr. Nihar Sheth, practicing Company secretary, having the Membership No. 4559, shall act as the scrutinizer for the said meetings.

x. The Chairman appointed for the aforesaid meetings shall issue advertisements and send out notices of the said meetings referred to above. The Chairman is free to avail the services of the Applicant Company or any agency for carrying out the aforesaid directions. The Chairman of the meetings shall have all powers under the Articles of Association of the Applicant Company and also under applicable rules, including for deciding any procedural questions, that may arise at the meeting or adjournment(s) thereof proposed at the said meeting, amendment(s) to the aforesaid Scheme or resolution, if any, proposed at the aforesaid meeting by any person(s); and to ascertain the decision of the meetings through a poll i.e. by polling paper/ballot.

xi. The quorum shall be 3 (Three) for the said meeting of Secured Creditors and 20 (Twenty) for the meeting of Unsecured Creditors, present in person or by authorized representative or by proxy.

xii. Voting by proxy / authorized representative is permitted provided that the proxy in the prescribed form/authorization duly signed by the person entitled to attend and vote at the aforesaid meetings, is filed with the Applicant Company at the registered office not later than 48 hours before the said meetings. The number and value of the vote of each Secured Creditor and Unsecured Creditor of the Applicant Transferee Company, shall be in accordance with the entries in the books of accounts of the said Applicant Company; and where the entries in the records are disputed, the Chairman of the meeting shall determine the value for the purposes of the meeting.

xiii. The Chairman shall file an affidavit not less than 7(seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of the Companies (CAA) Rules, 2016.

xiv. It is further ordered that the Chairman shall report to this Tribunal on the result of the said meeting in Form No CAA4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 within 20 (Twenty) days of the conclusion of the meetings.

10. In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, all the Applicant Companies shall send a Notice of

meeting in Form No. CAA 3 with a copy of the Scheme of Arrangement, the Explanatory Statement and the disclosures mentioned under Rule 6 (to the extent applicable) to:

- a) Central Government through the Regional Director, North Western Region,
- b) the Registrar of Companies, Gujarat;
- c) the Income Tax Authorities;

Stating that representations, if any, to be made by them shall be made within a period of 30 (Thirty) days from the date of receipt of such notice, failing which it will be deemed that they have no objection to make on the proposed Scheme of Arrangement. The said notices shall be sent forthwith after the notice for the meetings are sent to the concerned Secured and Unsecured Creditors of the Applicant De-merged Company, either by Registered Post or by Speed Post or by Courier or by Hand Delivery at the offices of the authorities as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230 shall send the same to this Tribunal with a copy of the same to be supplied to the Applicant Companies within a period of 30 (Thirty) days from the date of such service.

The CA(CAA) No. 33 of 2020 is disposed off accordingly.