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IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH- V

C A (CAA)67(ND) of 2020

IN THE MATTER OF:

Sections 230-232 and 66 of the Companies Act, 2013 read with Companies
(Compromises, Arrangements, and Amalgamations) Rules, 2016.

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

AMONGST

APIS NATURAL PRODUCTS PRIVATE LIMITED,
Village Bhoglannear,
New Grain Market, Rajpura Town,
District Patiala, Punjab 140401

.....Applicant No. 1/Transferor Company No. 1

AND


MODERN HERBALS PRIVATE LIMITED,
18/32, East Patel Nagar,
New Delhi-110008

.....Applicant No. 2/Transferor Company No. 2

WITH

APIS INDIA LIMITED,
18/32, East Patel Nagar,
New Delhi-110008

.....Applicant No. 3/Transferee Company


23/12/21

CA (CAA) 67 (ND) of 2020



ORDER DELIVERED ON: 22.12.2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)
MR. AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

For Petitioner(s): Mr. Abhishek Nahata, CA

ORDER

PER: MR. ABNI RANJAN KUMAR SINHA, MEMBER (Judicial)

1. This is an application filled by the Applicant Companies under Section 230 to 232 and 66 of the Companies Act, 2013 (for brevity "The Act") read with Companies (Compromises, Arrangements and Amalgamation) Rule, 2016 (for brevity "The Rules") in relation to the Scheme of Amalgamation (for brevity the "The Scheme") proposed between the Applicant Companies. In terms of Sections 230 and 232 and 66 of the Act following prayers have been made for orders:-

- a) *Dispense with the requirement of convening the separate meetings of the Equity Shareholders of the Amalgamating Co. 1, as all the Equity Shareholders of the Amalgamating Co.1 have given their consent;*
- b) *Dispense with the requirement of convening the separate meetings of the Secured Creditors of the Amalgamating Co. 1, as the Co. does not have any Secured Creditors;*
- c) *Dispense with the requirement of convening the separate meetings of the Unsecured Creditors of the Amalgamating Co. 1, as the Co. does not have any Unsecured Creditors;*
- d) *Dispense with the requirement of convening the separate meetings of the Equity Shareholders of the Amalgamating Co. 2, as all the*



- Equity Shareholders of the Amalgamating Co 2 have given their consent;*
- e) Dispense with the requirement of convening the separate meetings of the Secured Creditors of the Amalgamating Co. 2, as the Co. does not have any Secured Creditors;*
 - f) Dispense with the requirement of convening the separate meetings of the Unsecured Creditors of the Amalgamating Co. 2, as the Co. does not have any Unsecured Creditors;*
 - g) Dispense with the requirement of convening the separate meetings of the Equity Shareholders of the Amalgamated Co., as 20 out of 21 of the Equity Shareholders of the Co. representing 93.78% of the Equity Share Capital have given their consent;*
 - h) Dispense with the requirement of convening the separate meetings of the Preference Shareholders of the Amalgamated Co., as all the Preference Shareholders of their Amalgamated Co. have given their consent;*
 - i) Direct the Amalgamated Co. to convene and hold the meeting of the Secured Creditors of the Amalgamated Co for the purpose of considering, and if thought fit, approving the Scheme, with or without modification;*
 - j) Dispense with the requirement of convening the separate meetings of the Unsecured Creditors of the Amalgamated Co. as the Unsecured Creditors representing 91.09% in value of the total Unsecured Creditors of the Amalgamated Co. have given their consent;*
 - k) Issue necessary directions to the Amalgamated Co as to the method of convening, holding and conducting the meeting of the Secured Creditors, including day, date and time, and venue of the meeting and as to the notices and advertisement to be issued in respect of the said meeting;*



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- l) *Appoint the Chairman and scrutinizer for the said meeting and in respect of adjournment(s), If any, and further to direct the said Chairman to report the results of the said meeting to the Hon'ble NCLT;*
- m) *Fix the Quorum for the said meeting and the procedure for voting at the meeting, including voting by proxy be laid out;*
- n) *Issue necessary directions to the Amalgamated Co. for the service of notices of the meeting to the concerned statutory authorities;*
- o) *Pass such other or further orders as this Hon'ble NCLT may deem fit and proper in the facts and circumstances of the present case.*

2. Affidavits in support of the application sworn for and on behalf of the Applicant Companies have been filed by Mr. Amit Anand being the authorized signatory.

3. It is represented that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that the application filed by the Applicant Companies is maintainable in view of Rule 3(2) of the Rules and it is also represented that the registered office of the Transferor Company No. 2 and Transferee Company are situated within the territorial jurisdiction of this Tribunal and falls within the domain of Registrar of Companies, NCT, New Delhi. In respect of the Transferor Company No. 1, it is stated that the registered office is situated in Punjab. However, Principal Bench vide order dated 24.09.2019 has allowed the Transferor Company No. 1, namely, APIS Natural Products Private limited to file a consolidated petition along with Transferor Company No. 2 and Transferee Company in NCLT Delhi.

4. It is submitted that the proposed amalgamation is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013 and



the same if sanctioned by this Tribunal the appointed date as provided in the Scheme shall be 01.04.2019.

5. In relation to the Transferor Company No. 1, it has been represented that the company has 3 Equity Shareholders and consent affidavits from all the shareholders have been obtained constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. We are further apprised that the Transferor Company No. 1 has NIL Secured and Unsecured Creditors. In relation to the shareholders, the Transferor Company No. 1 seeks dispensation from convening and holding of their respective meetings, on the ground that all the shareholders have given their consent affidavits in favour of the Scheme.

6. In relation to the Transferor Company No. 2, it has been represented that the company has 3 Equity Shareholders and consent affidavits from all the shareholders have been obtained constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. We are further apprised that the Transferor Company No. 2 has NIL Secured and Unsecured Creditors. In relation to the shareholders, the Transferor Company No. 2 seeks dispensation from convening and holding of their respective meetings, on the ground that all the shareholders have given their consent affidavits in favour of the Scheme.

7. In relation to the Transferee Company, it has been represented that the company has 21 Equity Shareholders and 2 Preference Shareholders and consent affidavits from 20 Equity Shareholders holding 93.78% of the equity share capital as well as both the Preference Shareholders have been obtained. The consent affidavits of each of the members have been placed on record. We are further apprised that the Transferee Company has 4 Secured Creditors whose consent certificates have not been obtained. Further, the Transferee Company has 1262 Unsecured Creditors out of which the consent affidavits of



51 Unsecured Creditors constituting 91.09% of the total value have been placed on record. In relation to the shareholders and unsecured creditors, the Transferee Company seeks dispensation from convening and holding of their respective meetings. In respect of Secured Creditors, the Transferee Company has prayed to convene the meeting.

8. We have heard the Ld. Counsel for the Applicant Companies and perused the application and the connected documents filed along with the Scheme of Amalgamation contemplated between the Companies.

9. Transferor Company No. 1- APIS NATURAL PRODUCTS PRIVATE LIMITED was incorporated on 18.11.1997 in the state of Punjab under the provisions of Companies Act, 1956. The authorised share capital of the Company is Rs. 10,00,000/- divided into 1,00,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of the Company is Rs. 1,60,400 divided into 16,040 equity shares of Rs. 10/- each.

10. Transferor Company No. 2- MODERN HERBALS PRIVATE LIMITED was incorporated on 24.01.2000 in the state of Delhi under the provisions of Companies Act, 1956. The authorised share capital of the Company is Rs. 50,00,000/- only divided into 5,00,000 /- equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of the Company is Rs. 16,32,000/- divided into 1,63,200 equity shares of Rs. 10/- each.

11. Transferee Company- APIS INDIA LIMITED was incorporated on 22.03.1983 in the state of Delhi under the provisions of Companies Act, 1956. The authorised share capital of the Company is Rs. 9,20,00,000 divided into 92,00,000 equity shares of Rs. 10/- each and Rs. 3,50,00,000 divided into 3,50,000 4% Non-Convertible, Non-Cumulative, Redeemable Preference Shares of Rs. 100 each. The issued, subscribed and paid-up share capital of



the Company is Rs. 5,51,00,760 divided into 55,10,076 equity shares of Rs. 10/- each.

12. It is seen that the Board of Directors of all the Applicant Companies vide meetings held on 23.05.2019, 24.05.2019 and 30.05.2019 have unanimously approved the proposed Scheme of Amalgamation. Copies of such resolutions passed thereat have been placed on record.

13. The Applicant Companies have filed the Audited Financial Statements for the financial year ended 31st March, 2019.

14. The Applicant Companies have submitted vide Affidavit dt. 11.11.2021 that no inspection, inquiry or investigation is pending against any of the Applicant Companies.

15. Certificate of respective statutory auditors of the Applicant Companies have been placed on record confirming that the accounting treatment in the scheme is in conformity with Section 133 of the Companies Act, 2013.

16. Share Entitlement Report and Fairness Opinion dated 29.05.2019 obtained from Registered Valuers have also been placed on record.

17. There are two decisions of three members Bench of NCLT, on the point of dispensation of the meeting of the shareholders, viz. the decision dt. 17.05.2017 of NCLT Kolkata Bench in **Jupiter Alloys & Steel India Limited in TA No. 11/2017** and the decision dt. 31.05.2021 of NCLT New Delhi in **Quick Calls Pvt Ltd CA (CAA) No. 75/230-232/ND/2020**. In both the aforementioned decisions, contradictory view has been taken.

18. However, recently the Hon'ble NCLAT, vide judgment dt. 06.04.2021 in the matter of **Ambuja Cements Ltd. Company Appeal (AT) No. 19 of 2021**, held that:

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37. From the above Judgment of the Hon'ble High Court of Bombay in the matter of **'Mahaamba Investments Ltd.'vs 'IDI Ltd.'**, whereby it is clear that an Application filed by the Transferor Company or Transferee Company, a separate Application is not necessary by the Transferee/Transferor Company. Further, this Tribunal in the matter of **'DLF Phase -IV Commercial Developers Ltd. & Ors'**. dispensed with the meetings of the Creditors and shareholders. However, the facts of the DLF matter are little different i.e. in the DLF matter the written consent was obtained by way of an 'Affidavit'. This Tribunal allowed the Appeal by setting aside the order of the Tribunal where the Learned Tribunal rejected the approval seeking the dispensation of the meetings of creditors and shareholders. However, in the present case we are of the view that the Learned Tribunal ought to have dispensed with the meetings of the Equity shareholders and Creditors of the Appellant Company. The only objection taken by the Learned NCLT that no written consent by way of an Affidavit' of the Shareholders and Creditors, were filed.

38. We are of the view that as held by the Hon'ble Supreme Court that a Coordinate Bench of a court cannot pronounce Judgement contrary to declaration of law by another Bench. In the Present case, the Tribunal (NCLT) Ahmedabad Bench erred in not following its own order passed in **'Vodafone Idea Ltd'**, Wherein similar facts are involved in both the cases.

Conclusion:

39. In view of the forgoing reasons we set aside the order of the Learned NCLT dated 10.12.2020 in CA (CAA) No. 50 of 2020. Accordingly, we dispense with the meetings of the Equity




shareholder, Secured and Unsecured Creditors of the Appellant Company. The matter is remanded back to the NCLT for further Consideration."

19. Further, the above view was reiterated in the judgment dt. 28.06.2021 of Hon'ble NCLAT in the matter of **Mohit Agro Commodities Processing Pvt. Ltd. Company Appeal (AT) No. 59 of 2021**. The relevant para is quoted below:-

"20. This Tribunal has placed reliance in '**DLF Phase IV, Commercial Developers Limited and Ors.**' in **Company Appeal (AT) No. 180 of 2019** and observed that the scheme would not prejudicially affect the Creditors or Shareholders of the Appellant Company when an Application is filed by the 'Transferor Company' or 'Transferee Company', a separate Application is not necessary and dispensed with the meeting of the equity Shareholders and Creditors of the Appellant Company. At the cost of repetition, keeping in view that the financial position of the 'Transferee Company' is highly positive, the merger does not involve any compromise/arrangement with any Creditor of the Company, that there would be a positive net worth and Creditors would not be compromised, the Tribunal ought to have exercised the discretion in dispensing with the requirement of convening the meeting which would facilitate ease of doing business and save time and resources. To reiterate, we observe that the rights and liabilities of Secured and Unsecured Creditors were not getting affected in any manner by way of the proposed scheme as no new shares are being issued by the 'Transferor Company' and no compromise is offered to any Secured and Unsecured Creditors of the 'Transferee Company'. Therefore, we are of the considered view that when the 'Transferor and Transferee Company' involve



a parent Company and a Wholly Owned Subsidiary the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors can be dispensed with as the facts of this case substantiate that the rights of the Equity Shareholders of the 'Transferee Company' are not being affected."

20. In sequel to above and in our considered view, the Tribunal, in view of the settled law, is empowered to dispense with the meeting of shareholders if they have given their consent. Further, in view of Section 230(9) of the Companies Act, 2013, the Tribunal is empowered to dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement. Accordingly, the following directions are given: -

A. In relation to the Transferor Company No. 1:

i. With respect to Shareholders:

It is represented by the Transferor Company No. 1 that all the shareholders have already placed their consent-affidavits on record. Therefore, the necessity of convening and holding a meeting is dispensed with.

ii. With respect to Secured Creditors:

It is represented by the Transferor Company No. 1 that there are NIL Secured Creditors. Therefore, the necessity of convening and holding a meeting does not arise.

iii. With respect to Unsecured Creditors:

It is represented by the Transferor Company No. 1 that there are NIL Unsecured Creditors. Therefore, the necessity of convening and holding a meeting does not arise.



B. In relation to the Transferor Company No. 2:

i. With respect to Shareholders:

It is represented by the Transferor Company No. 2 that all the shareholders have already placed their consent-affidavits on record. Therefore, the necessity of convening and holding a meeting is dispensed with.

ii. With respect to Secured Creditors:

It is represented by the Transferor Company No. 2 that there are NIL Secured Creditors. Therefore, the necessity of convening and holding a meeting does not arise.

iii. With respect to Unsecured Creditors:

It is represented by the Transferor Company No. 2 that there are NIL Unsecured Creditors. Therefore, the necessity of convening and holding a meeting does not arise.

C. In relation to the Transferee Company:

i. With respect to Shareholders:

It is represented by the Transferee Company that 20 out of 21 Equity Shareholders holding 93.78% of the equity share capital as well as both the Preference Shareholders have already placed their consent-affidavits on record. Therefore, the necessity of convening and holding a meeting is dispensed with.

ii. With respect to Secured Creditors:

The meeting of Secured Creditors of Transferee Company is directed to be held through Video Conferencing/Other Audio Visuals Means within 30 days of this order. The Quorum of the meeting shall be 75% in value.



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iii. With respect to Unsecured Creditors:

It is represented by the Transferee Company that 51 out of 1262 Unsecured Creditors constituting 91.09% of the total value have already placed their consent-affidavits on record. Therefore, the necessity of convening and holding a meeting is dispensed with.

- D. In case the quorum as noted above for the aforesaid meeting are not present at the meeting, then the meeting shall be adjourned by half an hour, thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum, the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting is filled with the Registered Office of the Transferee Company at least 48 hours before the meeting. The Chairperson and Alternate Chairperson appointed herein alongwith the Scrutinizer shall ensure that the proxy registers are properly maintained.
- E. Mr. Rajeev Kumar, Advocate (Mobile No. 9910483619) is appointed as the Chairperson, Mr. Amarnath, Advocate (Mobile No. 9811604658) is appointed as Alternate Chairman and Mr. Sanjeev Sharma, Practicing Company Secretary (Mobile No. 9811025546) as Scrutinizer for the aforesaid meeting in terms of the direction issued herein.
- F. The fee of the Chairperson for the aforesaid meeting shall be Rs. 75,000/-, The fee of the Alternate Chairperson shall be Rs. 75,000/- and the fee of the Scrutinizer shall be Rs. 50,000/- in addition to meeting their incidental expenses.
- G. The individual notices of the said meeting shall be sent as required and prescribed by the Companies Act, 2013 through registered post or speed post or through courier or through e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, place and time as aforesaid, together with a copy of scheme of amalgamation



and a copy of explanatory statement. The notice convening meeting shall be uploaded on the website of the respective Applicant Companies. The prescribed form of proxy shall be sent along with and in addition to the above documents, any other documents as may be prescribed under the Act.

- H. That the Transferee Company shall publish advertisement with a gap of at least 30 days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in Delhi Editions of "Business Standard" both English and Hindi stating that the Copies of the Scheme, the Explanatory Statement required to be furnish pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provide free of charge at the Registered office of the Transferee Company.
- I. Voting Shall be allowed on the proposed Scheme by voting in person or by proxy or through electronic means as may be applicable to the respective company under the Act and rules framed there under. The Chairperson shall be responsible to report the result of the meeting to this Tribunal within two weeks of the conclusion of the meeting with regard to the proposed scheme.
- J. Notice of this Meeting shall also be served on the following authorities:-
- The Central Government through the office of the Regional Director (Northern Region), Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Pt. Deen Dayal Antodaya Bhawan, CGO Complex, Lodhi Road, New Delhi-110 003;
 - The Registrar of Companies, NCT of Delhi, Ministry of Corporate Affairs, 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;
 - The Official Liquidator, Ministry of Corporate Affairs, 8th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110001;
 - The Income Tax Department, through the Nodal Office- DCIT (High Court Cell), Room No. 428 & 429, Lawyer's Chambers, Block No. 1, Delhi High Court, New Delhi. The notices to Income Tax authorities




shall disclose sufficient details like PAN card numbers, ward numbers and assessing officers so that timely and proper reply may be filed.

e. Such other Sectoral Regulatory Authorities who may have significant bearing on the operation of the company.

K. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

21. Accordingly, in terms of the above order, CA (CAA) 67 (ND) of 2020 is allowed.

Sd/-

22/12/2021

(AVINASH K. SRIVASTAVA)

Member (T)

Sd/-

(ABNI RANJAN KUMAR SINHA)

Member (J)



Sd/-
23/12/2021

सहायक न्यायाधीश
ASSISTANT REGISTRAR
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