

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, MUMBAI

CP (CAA) 925/MB.V/2020
Connected with
CA (CAA) 3748/MB.V/2019

In the matter of
The Companies Act, 2013;

AND

In the matter of
Sections 230 to 232 and other
applicable provisions of the
Companies Act, 2013;

AND

In the matter of
Composite Scheme of
Arrangement & Amalgamation
amongst

Fairchem Speciality Limited
(*Demerged/ Transferee Company*)

and

Fairchem Organics Limited
(*Resulting Company*)

and

Privi Organics India Limited
(*Transferor Company*)

and their respective shareholders

Fairchem Speciality Limited
CIN: L15140MH1985PLC286828 ...

Petitioner No.1/

Demerged/Transferee Company

Fairchem Organics Limited
[CIN: U24200MH2019PLC323176] ...

Petitioner No.2/

Resulting Company

Privy Organics India Limited
CIN: U24220MH2016PLC283393 ...

Petitioner No.3/
Transferor Company

Order pronounced on: 30th June, 2020

Coram:

Shri Rajasekhar V.K. : Member (Judicial)
Shri V. Nallasenapathy : Member (Technical)

Appearances (via videoconferencing):

For the Petitioners : Mr Hemant Sethi i/b Hemant
Sethi & Co., Advocates
For the Regional Director (WR) : Ms Rupa Sutar, Deputy Director
For DGFT : Mr Ashish Mehta a/w Ms
Pradhyna Deshmukh, Advocates

ORDER

Per: V. Nallasenapathy, Member (Technical)

1. The Court is convened by videoconferencing today.
2. Heard the Learned Counsel for the Petitioner Companies and Representative of the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.
3. The sanction of the Tribunal is sought under sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016 to the Composite Scheme of Arrangement and Amalgamation (*the Scheme*) between

Fairchem Speciality Limited (*Demerged/Transferee Company/First Petitioner*) and Fairchem Organics Limited (*Resulting Company/Second Petitioner*) and Privi Organics India Limited (*Transferor Company/Third Petitioner*) and their respective Shareholders.

4. The Petitioner Companies have approved the said Composite Scheme of Arrangement and Amalgamation by passing the board resolutions at their respective meetings held on 22 May 2019 which are annexed to the Company Petition.
5. The Learned Counsel for the Petitioner Companies submits that the Company Scheme Petition is filed in consonance with the Order dated 22.01.2020 passed by this Tribunal in the connected Company Application bearing CA(CAA) No.3748/MB.V/2019.
6. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary affidavits of compliance with Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.
7. Learned Counsel for the Petitioner Companies submits that First Petitioner Company is engaged in the business of manufacturing, supplying and exporting of speciality oleo chemicals (natural source) and nutraceuticals (natural source) made from by-products generated from processing of crude vegetable oil refineries, including vegetable

oil based fatty acid distillate and acid oils. The Second Petitioner Company is authorised by its memorandum of association to inter alia carry on the business of processing by-products / waste products generated during refining of any kind of edible or non-edible vegetable oils and manufacture various kinds of fatty acids, nutraceuticals intermediates and / or their derivatives utilising chemical, solvents, catalysts or physical process. The Second Petitioner Company is an unlisted public company and the entire share capital of the Second Petitioner Company is held by the First Petitioner Company and its nominees. The Second Petitioner Company has not yet commenced any business operations. The Third Petitioner Company is in the business of development, manufacture and processing of aroma chemicals and to supply and export aroma chemicals which are used mainly in the flavor and fragrance industry.

8. The Regional Director has filed his report dated June 16 2020, *inter alia*, stating therein that save and except as stated in paragraph IV (a) to (i) of the said report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said report, the Regional Director has stated that:-

(a) In addition to compliance of AS-14 (Ind AS-103), the transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(Ind AS-8) etc.

(b) As per Part A Definitions Clause 1(1.3) of the scheme.

'Appointed date 1' means the closing of business hours of 31 March 2019 or such other date as may be approved by the NCLT, or any other competent authority.

'Appointed date 2' means the opening of business hours of 1 April 2019 or such other date as may be approved by the NCLT, or any other competent authority.

'Effective Date' means the date which is the later of (i) the last of the dates on which all the conditions and matters referred to in Clause 28.1 to 28.4 have been fulfilled, obtained or waived, as applicable or (ii) the last of the dates on which the certified or authenticated copies of the orders of the NCLT sanctioning this Scheme is filed with the relevant Registrar of Companies. Any reference of this Scheme to the 'date of coming into effect of this Scheme' or 'effectiveness of the Scheme' or 'Scheme taking effect' shall mean the Effective Date.

'Record Date' means the date to be fixed by the Board of the Resulting Company for the purpose of determining the equity shareholders of the Demerged Company to whom equity shares of the Resulting Company shall be allotted pursuant to demerger under this Scheme.

In this regard, it is submitted that section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

Further, the petitioners may be asked to comply with the requirements and clarified vide circular No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

- (c) *The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company*

Application and Company Petition are one & same and there is no discrepancy/any changes are made, for changes if any, liberty be given to Central Government to file further report if any required;

(d) The Petitioners 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 Amalgamation. Further, the approval of the scheme by this 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 is binding on the Petitioner Company(s).

(e) In view of the Observation raised by the ROC Mumbai, mentioned at para 23 above as under:-

1. e-form MGT-14 not filed by both Demerged and Resulting Companies

2. Interest of the Creditors should be protected.

May be decided on merits.

However, e-form MGT-14 filed by the Demerged Company vide SRNR35059059 on 09-03-2020 and e-form MGT-14 is not filed by Resulting Company.

(f) Fairchem Specialty Limited (the Demerged Company/Transferee Company) is a listed company, in view of the provisions of section 230(5) of the Companies Act, 2013 r/w rule 8 of the Companies (Compromise, Arrangement and Amalgamations) Rules, 2016. Hon'ble NCLT may kindly issue notice to other sectoral regulators or authorities (The Securities and Exchange Board of India, Bombay Stock Exchange Limited and National Stock Exchange of India and/or pass appropriate order/orders as deem fit;

(g) As per Part -C, Clause - 22 of the Scheme - Increase in the Authorised Share Capital. In this regard it is submitted that the stamp duty and fee payable by the Transferee Company to the State and Central Government

respectively shall be accordance with law and is subject to the provisions of Section 232(3)(i) of the Companies Act, 2013;

- (h) As per Part-D-Clause 29(29.1 &29.2) name of the Transferee Company, the name of the Transferee Company shall stand amended to “Privi Speciality Chemicals Limited” or such other name which is available and approved by the Registrar of Companies. In this regard it is submitted that the same is subject to compliance with the provisions of section 13, Section 14 or any other provision of the Companies Act, 2013.*
- (i) The Hon’ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meeting duly held in terms of Section 230(1) read with subsection (3) to (5) of section 230 of the Act and Minutes thereof are duly placed before the Tribunal.*

9. Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned the Transferee Company undertakes that in addition compliance of AS-14, (Ind AS -103) the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (Ind AS-8), to the extent applicable.
10. Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report is concerned the Petitioner Companies through their Counsel submit that the Appointed Date 1 in relation to Demerger shall be closing of business hours of 31 March 2019 and Appointed Date 2 in relation of Amalgamation shall be opening of business hours of 1st day of April, 2019 which is in compliance with section 232(6) of the

Companies Act, 2013 and the Scheme shall be deemed to be effective from such Appointed Date. Thus, Petitioner Companies will be complying with requirements clarified *vide* circular No.7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs to the extent applicable.

11. Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his report is concerned the Petitioner Companies clarify that that the Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.
12. Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his report is concerned, the Petitioner Companies state that the notice to all the applicable regulatory authorities under section 230(5) of the Companies Act, 2013 have already been served. Further the Petitioners clarify that *vide* letter dated 28.06.2020, the Directorate General of Foreign Trade (**DGFT**) have also given their no objection to the said Scheme.
13. Apropos the observations made by ROC as reproduced in paragraph 23(1) of the report of Regional Director as stated in paragraph IV(e) of his report is concerned, the Petitioners submit that in so far as Resulting company is concerned, the company inadvertently failed to file e-form MGT-14 within the stipulated period of 300 days from passing of the resolution with the ROC. In view of the same the Resulting Company has filed an application for condonation of delay before the Central Government. The Petitioners undertake to

file e-form MGT-14 as soon as the delay is condoned by the Central Government.

14. Apropos the observations made by ROC as reproduced in paragraph 23(2) of the report of Regional Director as stated in paragraph IV(e) of his report is concerned, the Petitioners submit that the interest of the creditors, if any and all stakeholders and government revenue will be protected as well as outstanding statutory dues, if any would be paid off in the ordinary course of business by the Transferee Company Further all creditors will be paid off in the ordinary course of business.
15. Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(f) of his report is concerned, the Petitioner Companies state that the First Petitioner Company is a listed Company and confirms that notice to all the applicable regulatory authorities under Section 230 (5) of the Companies Act, 2013 have already been served including The Securities and Exchange Board of India, Bombay Stock Exchange Limited and National Stock Exchange of India. The Petitioner Companies further undertake that all issues arising out of the Scheme from such authorities shall be answered in accordance with law.
16. Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (g) of his report is concerned the Petitioner Companies state that the Transferee Company/ First Petitioner Company will be eligible for set-off of fees on the authorised share capital paid by the Transferor Company/Third

Petitioner Company and thus comply with the provisions of section 232(3)(i) of the Companies Act, 2013.

17. Apropos the observation of the Regional Director, Western Region, Mumbai as stated in paragraph IV (h) of his report is concerned the Petitioner Companies submit that an order sanctioning the scheme of amalgamation by this Tribunal is a comprehensive arrangement and is a single window clearance. Hence, once the scheme is considered and approved by the Tribunal, no further or separate procedure is required. The Petitioner further undertakes to file requisite forms as may be applicable with the concerned Registrar of Companies.
18. Apropos the observation of the Regional Director stated in paragraph IV (i) of his report is concerned, the Petitioner Companies submits that in pursuance of an Order dated 22.01.2020 passed by this Tribunal in CA(CAA) No.3748/MB.V/2019, in so far as the Equity Shareholders of First Petitioner Company are concerned, the said Scheme was approved by the requisite majority of the shareholders without any modification in their meeting held on 25 February 2020. In so far as the Equity Shareholders of the Second and Third Petitioner companies are concerned the requirement to convene meeting of the Equity Shareholders were dispensed with in view of the consent affidavits obtained from all the Equity Shareholders of the Second and Third Petitioner Companies. Further the requirement to convene meeting of the creditors was dispensed with. Individual notices have been given to all the Creditors of the First and Third Petitioner Companies.

19. The observations made by the Regional Director have been explained by the Petitioners in Para 9 to 18 above. The clarifications and undertakings given by the Petitioners are accepted.
20. The Official Liquidator has filed his report dated 20thFebruary, 2020,*inter alia* stating therein that the affairs of the Transferor Company have been conducted in a proper manner, not prejudicial to the interest of the shareholders of the Transferor Company. The Transferor Company may be ordered to be dissolved.
21. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
22. Since all the requisite statutory compliances have been fulfilled, the Company Petition CP(CAA) No.925/MB.V/2020 is made absolute in terms of the prayers thereof.
23. The Transferor Company be dissolved without the process of winding up.
24. The Petitioner Companies are directed to lodge a certified copy of this Order and this Scheme with the concerned Superintendent of Stamps, within 60 working days from the date of receipt of certified copy of order, for adjudication of stamp duty payable, if any, on the above.
25. The Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically in Form INC-28,

in addition to physical copy, within 30 days from the date of issue of the Order duly certified by the Registry, duly certified by the Deputy/Assistant Registrar of this Tribunal.

26. All concerned regulatory authorities to act on a copy of this Order duly certified by the Deputy/Assistant Registrar, of this Tribunal along with a copy of the Scheme.
27. Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
28. Pronounced today (30.06.2020) in Open Court. File be consigned to records.

Sd/-

V. Nallasenapathy
Member (Technical)

Sd/-

Rajasekhar V.K
Member (Judicial)