

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - 5

C.P.(CAA)/1049/2020

Connected with

C.A.(CAA)/1004/2020

In the matter of the Companies
Act, 2013

and

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

and

In the matter of Scheme of Mer-
ger by Absorption of
Blue Circle Organics Private Lim-
ited

("Transferor Company" or
"BCOPL")

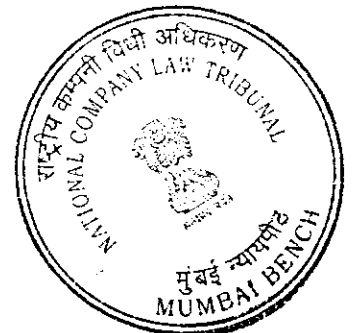
by

Jet Chemicals Private Limited
("Transferee Company" or
"JCPL")

and their respective Sharehold-
ers and Creditors

Blue Circle Organics Private Limited
CIN: U15100MH2003PTC13992

....Petitioner No.1/ Transferor Company



Jet Chemicals Private Limited

CIN: U99999MH1968PTC014154

....Petitioner No.2/ Transferee Company

(Hereinafter to be referred as 'Petitioner Companies')

Order delivered on: 19.11.2020

Coram:

Hon'ble Smt. Suchitra Kanuparthi: Member (Judicial)

Hon'ble Shri. Chandra Bhan Singh: 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

Per: Chandra Bhan Singh, Member (T)

ORDER

1. The Court is convened by videoconference today.
2. Heard Learned Counsel for Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor has any party controverted any averments made in the Petition.
3. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 ("Act"), to the Scheme of Merger by Absorption of Blue Circle Organics Private Limited ("Transferor Company") by Jet Chemicals Private Limited ("Transferee Company") and their respective Shareholders and Creditors ("Scheme").

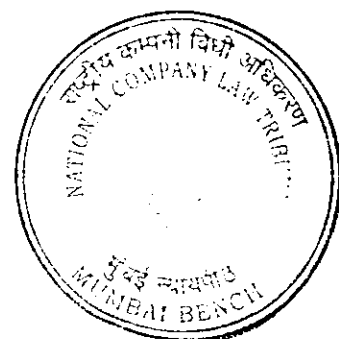


4. The Transferor Company and the Transferee Company are primarily engaged in the business of manufacturing of chemical products.

5. The Learned Counsel for the Petitioner Companies submits that the rationale mentioned in the Scheme is as under:

The proposed Scheme will result into the financial, managerial and technical resources, personnel capabilities, skills, expertise and technologies of the Transferor Company and Transferee Company pooled in the merged entity. The management of both the Transferor and Transferee Company believes that the proposed Scheme will be beneficial, advantageous and not prejudicial to the interest of the shareholders, creditors and other stakeholders, inter-alia, on account of the following reasons:

- o Benefit of pooling of resources, improved allocation of capital and optimization of cash flows contributing to the overall growth prospectus of the combined entity;
- o Clarity of the business operations in the minds of prospective investor;
- o Creation of a larger asset base by consolidation of the assets and facilitation of access to better financial resources;
- o Savings in cost due to rationalisation of administrative expenses, elimination of duplicate work, reduction in overheads, elimination of cross charging etc.;
- o Enable greater / enhanced focus of the management on the business; and
- o Creating enhanced value for shareholders and allow a focused strategy in operations.



6. Both the Petitioner Companies have approved the said Scheme by passing their respective Board Resolutions dated 11th May 2020 and thereafter they have approached the Tribunal for sanction of the Scheme.

7. Learned Counsel for the Petitioner Companies submits that the Petition has been filed in consonance with the order dated 23rd June 2020 passed by this Tribunal in CA(CAA) No. 1004/2020.

8. Learned Counsel for the Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal.

9. The Learned Counsel for the Petitioner Companies states that the shares of the Petitioner Companies are not listed on any stock exchanges.

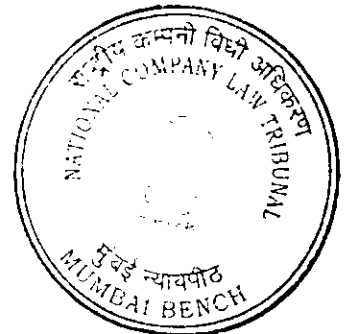
10. The Regional Director has filed its Report dated 17th August 2020 ("Report") praying that this Tribunal may pass such orders as it thinks fit, save and except as stated in Paragraphs IV (a) to (g). In para IV of the Report, Regional Director has stated:

(a) In compliance of AS-14 (IND AS - 103) the Petitioner Companies 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 Definition of the Scheme;

"Appointed Date" means 1st day of April, 2019 or any other date as may be fixed or approved by the National Company Law Tribunal or such competent authority;

"Effective Date" means the last of the dates on which the certified or authenticated copies of the orders of the Tribunal sanctioning

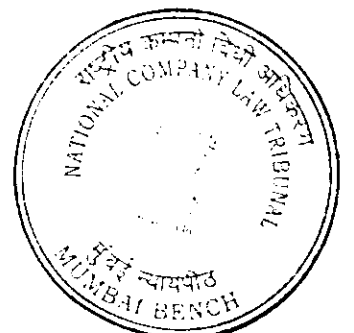


the Scheme are filed with the Registrar of Companies by the Transferor Company and the Transferee Company. Any references in this Scheme to "date of coming into effect of this Scheme" or "effectiveness of this Scheme" or "Scheme taking effect" shall mean the Effective Date.

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 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. F. No 7/12/2019/CL-I dated 21-08-2019 issued by the Ministry of Corporate Affairs.

- (c) Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fee payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioner to affirm that they comply the provisions of the section.
- (d) 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 meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.



(e) As per Clause-15 of the Scheme (Change of Name) In this regard it is submitted that the same is subject to compliance with the provisions of section 13, Section 14 and Section 16 of the Companies Act, 2013 r/w relevant rule(s) of the Company (Incorporation) Rules, 2014;

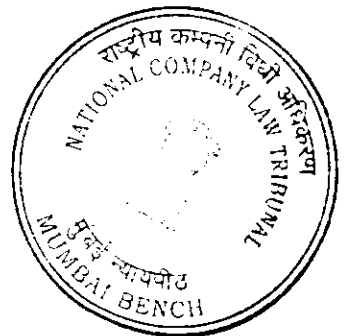
(f) Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy / any change/ changes are made,

(g) It is observed that Petitioner Companies have not submitted a admitted copy of Petition, Minutes of Order for admission of the Petition. In this regard, the Petitioners has to submit the same for record of Regional Director.

11. In response to the above observations of the Regional Director, the Petitioner Companies have filed Affidavit in rejoinder dated 11th November 2020 and clarified as follows:

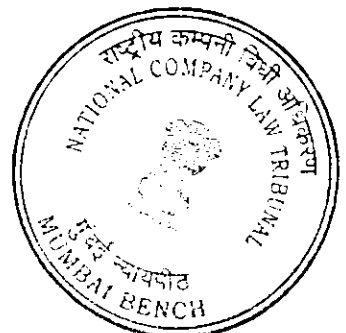
(a) In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Transferee Company undertakes that it shall pass necessary accounting entries in connection with the Scheme as per AS -14 as well as comply with other applicable Accounting Standards such as AS-5 (IND AS-8), etc. to the extent applicable.

(b) In so far as observations of the Regional Director made in paragraph IV (b) is concerned, the Petitioner Companies clarify that the Appointed Date shall be 01st April 2019 and the Scheme shall



take effect from the Appointed Date in terms of provisions of Section 232(6) of the Companies Act, 2013. Further, the Petitioner Companies undertakes that they would comply with the provisions and requirements clarified vide circular no. F. No 7/12/2019/CL-I dated 21-08-2019 issued by the Ministry of Corporate Affairs, if required.

- (c) In so far as observations of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his report are concerned, the Petitioner Companies undertakes to comply with all applicable provisions of section 232(3)(i) of the Companies Act, 2013.
- (d) In so far as observations of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his report are concerned, the meeting of members and creditors of the Petitioner Companies were dispensed with by the Order of the Hon'ble Tribunal dated 23rd June 2020 and therefore, the requirement of submission of Minutes of meeting are not applicable.
- (e) In so far as observations of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of his report are concerned, the Petitioner Companies state that clause 15 of the Scheme shall not be given effect to and the Scheme shall stand modified to that effect. Therefore, there will be no change in the name of the Transferee Company and the name of the Transferee Company shall remain as is i.e 'Jet Chemicals Private Limited'.
- (f) In so far as observations of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (f) of his report are con-



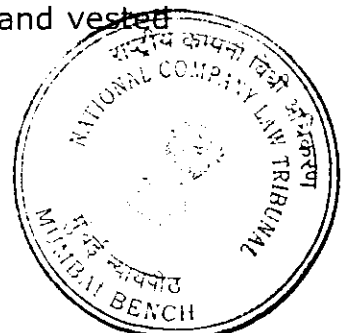
cerned, the Petitioner Companies submits that the Scheme enclosed to the Company Application and Company Petition is one and same and there is no discrepancy/deviation in the same.

(g) In so far as observations of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (g) of his report are concerned, the Petitioner Companies submits that the copy of Petition along with the Minutes of Order for admission of Petition has been submitted by the Petitioner Companies vide letter dated 04th November 2020 for the record of Regional Director, Western Region, Mumbai.

12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraph 11 above. The clarifications and undertakings given by the Petitioner Companies are accepted by this Tribunal.

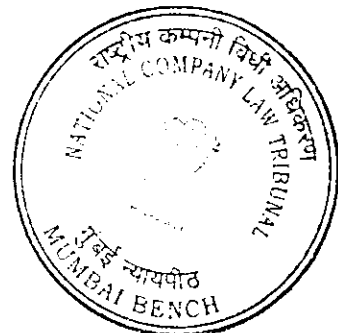
13. The Official Liquidator, High Court, Bombay, has filed his report dated 17th November 2020, in C.P.(CAA)/1049/MB/2020, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner, not prejudicial to the interest of the shareholders of the Transferor Company and that the Transferor Company may be ordered to be dissolved without winding up by this Tribunal.

14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. All the assets and properties comprised in the Undertaking of whatsoever nature and wheresoever situated, shall, under the provisions of Sections 230 to 232 and all other applicable provisions, if any, of the Act, without any further act or deed, be and stand transferred to and vested in the Transferee Company or be deemed to be transferred to and vested



in the Transferee Company as a going concern so as to become the assets and properties of the Transferee Company. Further, upon the coming into effect of this Scheme and with effect from the Appointed Date, all liabilities relating to and comprised in the Undertaking including all secured and unsecured debts (whether in Indian rupees or foreign currency), sundry creditors, liabilities (including contingent liabilities), duties and obligations and undertakings of the Transferor Company of every kind, nature and description whatsoever and howsoever arising, raised or incurred or utilised for its business activities and operations shall, pursuant to the sanction of this Scheme by the NCLT under and in accordance with the provisions of Sections 230 to 232 and other applicable provisions, if any, of the Act, without any further act, instrument, deed, matter or thing, be transferred to and vested in or be deemed to have been transferred to and vested in the Transferee Company, along with any charge, encumbrance, lien or security thereon, and the same shall be assumed by the Transferee Company to the extent they are outstanding as on the Effective Date so as to become as and from the Appointed Date the liabilities of the Transferee Company on the same terms and conditions as were applicable to the Transferor Company, and the Transferee Company shall meet, discharge and satisfy the same and further it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such Liabilities have arisen in order to give effect to the provisions of this Clause.

15. As a consideration, the Transferee Company shall issue and allot to the shareholders of the Transferor Company, 540 (Five Hundred Forty) fully paid up Equity Shares of Rs.100 (Rupees Hundred) each in the Transferee Company for every 1,000 (One Thousand) fully paid up Equity Shares of Rs. 10/- (Rupees Ten) each held in the Transferor Company. Further, in case of Preference Shares, the Transferee Company shall issue and allot to



the preference shareholders of the Transferor Company, 1 (One) Preference Share of Rs.10 (Rupees Ten) each in the Transferee Company for every 1 (One) Preference Share of Rs. 10/- (Rupees Ten) each held in the Transferor Company.

16. Since all the requisite statutory compliances have been fulfilled, CP(CAA) 1049/MB /2020 is made absolute in terms of the prayer clauses of the said Company Scheme Petition.

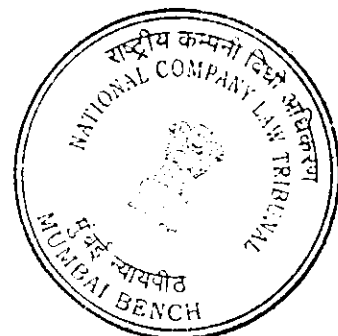
17. The Scheme is hereby sanctioned with the Appointed Date of 01st April 2019.

18. The Petitioner Companies are 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 within 30 days from the date of receipt of the certified copy of Order by the Petitioner Companies.

19. The Transferee Company to lodge a copy of this Order along with the Scheme duly authenticated/certified by the Deputy Director or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified Order from the Registry of this Tribunal.

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

21. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.



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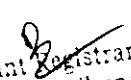
22. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.

23. Ordered accordingly.

SD/-
Chandra Bhan Singh
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)

Certified True Copy
Date of Application 19.11.2020
Number of Pages 10/11
Fee Paid Rs 35
Applicant called for production copy on 10.12.2020
Copy prepared on 10.12.2020
Copy issued on 10.12.2020


Joint Registrar
National Company Law Tribunal Mumbai Bench

