

57. No-56/2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

No. 56/2021
Date of Presentation
of application for Copy 15/12/2021
No. of Pages 50 + 2021 92
Copying Fee 500
Registration & Postage Fee
Total Rs. 2500 + 1500
Date of Receipt & Record of Copy 15/12/2021
Date of Preparation of Copy 15/12/2021
Date of Delivery of Copy 15/12/2021

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER**

**CP(CAA) No. 01/230-232/JPR/2021 connected with
CA(CAA) No. 110/230-232/JPR/2020**

Section: Section 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

**IN THE MATTER OF SCHEME OF AMALGAMATION
OF
ISAGRO (ASIA) AGROCHEMICALS PRIVATE LIMITED
(Transferor Company)**

AND

**PI INDUSTRIES LIMITED
(Transferee Company / Petitioner Company)**

MEMO OF PARTIES

**ISAGRO (ASIA) Agrochemicals Private Limited
Kalpataru Square, Unit No. 32, 3rd Floor,
Kondivita Lane R K Mandir RD, Off Andheri Kurla RD,
Andheri East, Mumbai-400059 (Maharashtra)**

...Transferor Company

AND

**PI Industries Limited
Udaisagar Road, Udaipur- 313001 (Rajasthan)**

... Petitioner Company/ Transferee Company

CP (CAA) No. 04/230/JPR/2021
CA (CAA) No. 72/230/JPR/2020

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[Signature]
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For the Petitioner:

Prakul Khurana, Adv.
Abhinav Mathur, Adv.

Order pronounced on: 06.12.2021

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This is a second motion petition filed by PI Industries Limited ('Petitioner Company' / 'Transferee Company') under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 ('Act') and in terms of Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ('Rules') for sanction of the Scheme of Amalgamation ('Scheme') between ISAGRO (Asia) Agrochemicals Private Limited ('Transferor Company') and the Petitioner/Transferee Company. The registered office of the Transferor Company is in the State of Maharashtra; thus, the jurisdiction of Transferor Company lies with the National Company Law Tribunal, Mumbai Bench. The Transferee Company is situated within the jurisdiction of this Bench.
2. The Petitioner Company filed First Motion Application bearing CA (CAA) No. 110/230-232/JPR/2020 before this Tribunal seeking the following directions:
 - (i) To convene meeting of equity shareholders of Transferee Company through e-voting;

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- (ii) To dispense with the meeting of secured creditors of Transferee Company;
- (iii) To dispense with the meeting of unsecured creditors of Transferee Company or in the alternative, issue directions to convene meeting of unsecured creditors having an individual/distinct outstanding of more than or equal to Rs. 10,00,000 as at 30.06.2020.

Vide order dated 18.12.2020, the meeting of equity shareholders was directed to be held on 06.02.2021 through VC and OAVM. Meetings of secured creditors were dispensed with on receiving consent affidavits and objections were invited for unsecured creditors of the Transferee Company having a value of more than Rs. 10,00,000/-. Further, it is seen that the Petitioner Company has filed First Motion Order passed by NCLT, Mumbai Bench dated 10.11.2020 as Annexure 6 of the Petition.

3. When the petition was listed on 23.03.2021, the following directions were issued: -

- (i) *The date of hearing of the Petition filed by the Petitioner Companies for the approval of the Scheme is fixed on 29.04.2021.*
- (ii) *Notice of the hearing shall be advertised in two Newspapers, namely, Dainik Bhaskar, Udaipur Edition and Economic Times (All India Edition) not less than ten days before the aforesaid date fixed for hearing.*
- (iii) *In addition to above public notices, the Petitioner Company shall serve the notice of the Petition on the following Authorities, namely, Central Government, Jurisdictional Income Tax Authority under which the Petitioner Company is assessed indicating clearly the PAN No.; Registrar of Companies, Jaipur; Securities and Exchange Board of India; Reserve Bank of India;*

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National Stock Exchange of India Ltd.; BSE Ltd.; as well as other Sectoral Regulators, which may govern the working of the Company in the Scheme, at least thirty days before the date fixed for hearing of the above Petition.

- (iv) *Further, notices shall also be served to the Objector(s) or to the representative(s) as contemplated under Sub-section (4) of Section 230 of the Companies Act, 2013 who may have made representations and who have desired to be heard directly or through their representatives, along with a copy of the Petition and the extracts filed therewith, at-least fifteen days before the date fixed for hearing.*
- (v) *The Petitioner Companies shall, at-least seven days before the date of hearing of the Petition, file an affidavit of service in relation to said publication effected as well as service of notice on the authorities mentioned above including the Sectoral Regulator(s) as well as to Objectors, if any,*
- (vi) *Objections, if any, to the Scheme, contemplated by the Authorities to whom notice has been given, may be filed on or before the date of hearing fixed herein, failing which it may be considered by this Tribunal that there is no objection on the part of the Authorities to the approval of the Scheme, by this Tribunal, subject to other conditions being satisfied as may be applicable under the Companies Act, 2013 and Regulations/Rules framed thereunder.*
- (vii) *The Petitioner Company shall comply with proviso to Sub-Section (7) of Section 230 as may be applicable under the circumstances on or before the date fixed for hearing by filing a certificate of the Companies' Auditor.*
- (viii) *The next date of hearing is fixed on 29.04.2021 for consideration of the approval of the Scheme of Arrangement as contemplated between the Companies and their shareholders.*

Due to intervening second wave of COVID-19 pandemic, the matter could not be heard on 29.04.2021. However, the matter was heard on 17.11.2021 and order was reserved.

4. The affidavit of compliance by the authorized signatory of the Petitioner Company was filed vide Diary No. 1010 dated 19.04.2021 along with attested photocopies of newspaper cuttings evidencing publication of

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notice in 'Economic Times' (all India Edition) in English dated 29.03.2021 and 'Dainik Bhaskar' (Rajasthan Edition) in Hindi, dated 28.03.2021. Copies of proof of service of notice to the statutory authorities, namely (a) Central Government through Regional Director (North Western Region), Ministry of Corporate Affairs, Ahmedabad; (b) Registrar of Companies and Official Liquidator, Jaipur; (c) Jurisdictional Income Tax Authority; (d) Securities and Exchange Board of India; (e) National Stock Exchange; (f) Bombay Stock Exchange; and (g) Reserve Bank of India are also part and parcel of the compliance affidavit.

5. The Regional Director had filed its report vide Diary No. 601/2021 dated 05.03.2021 along with the report of the RoC. The observations are as under:

- a. The Petitioner Transferee Company has submitted the draft Scheme with the Stock Exchange pursuant to the SEBI Circular No. CFD/DIL 3/CIR/2017/21 dated 10.03.2017 for the purpose of disclosures.
- b. There are foreign national/ NRI/ Foreign Bodies Corporate holding shares in the Petitioner Transferee Company. The Regional Director is not aware as to whether the petitioner transferee has complied with the provisions of FEMA and RBI guidelines or not, in this regard. Therefore, the Petitioner Transferee company be

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directed to ensure about the compliances of FEMA and RBI guidelines, in the matter, from time to time.

- c. The RD has also stated that the report of the office of the Registrar of Companies, Rajasthan, Jaipur has been received vide letter No. ROC/Amal/2018-19/403 dated 27.01.2021 and as per the said report, there are no complaints against the petitioner transferee company and also there is no complaint / representation against the scheme of amalgamation of the Companies. A copy of ROC report is enclosed and marked as Annexure-A to the letter of the RD.
- d. The Petitioner Company be directed to pay such amount of legal fees / cost to the Central Government which may be considered appropriate.

6. In response to the RD's report, the authorized representative of the Petitioner Company has filed an affidavit vide Diary No. 1910 dated 21.09.2021 stating that the contents of para 1 and para 2 sub-paras (a), (b), (c) and (d) are matters of record. With respect to the observations made in sub-paragraph (e) of paragraph 2, the Petitioner Company has stated that it has duly complied with Section 47 of FEMA, 1999 along with Regulation 4 of Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019. Further, the Petitioner Company undertakes to comply with the requirements/stipulations of FEMA/RBI from time to time. It is further stated that Petitioner

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- Transferee Company had issued notices dated 06.01.2021 and 23.03.2021 to RBI. However, no objection to the scheme was received from the RBI.
7. The Petitioner Company has also not received any objection/representation from Income Tax Department and SEBI.
 8. The Petitioner Company vide CA No. 77/JPR/2021 placed on record the copy of order dated 16.07.2021 whereby NCLT, Mumbai Bench has approved the Scheme of Amalgamation in regards to Transferor Company. Further, the Petitioner Company has filed an affidavit vide Diary No. 266/2021 dated 27.01.2021 stating that neither the Transferor Company nor the Transferee Company satisfies the threshold limit of assets/ turnover as specified under Section 5 of Competition Act, 2002; therefore it is not required to send the notice inviting representation/ objections in respect of the Scheme to the Competition Commission of India.
 9. The date of incorporation, authorized, issued and paid-up share capital, rationale of the Scheme have been discussed in detail in the Order disposing of the First Motion Application on 18.12.2020.
 10. In compliance of the proviso to sub-section (7) of Section 230 of the Companies Act, 2013, the Petitioner Company has placed on record certificate of the Chartered Accountant dated 20.03.2020 as Annexure 16 of First Motion Application.

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11. The audited financial statements of the Transferee Company as on 31.03.2021 are attached as Annexure 1 of CA No. 70/JPR/2021.
12. As per the Scheme, the Appointed Date shall mean 27.12.2019 or such other date as may be proposed and approved by this Tribunal. The effective date, as stated in the Scheme is as below: -

"Effective Date" means the last of the dates on which all the conditions and matters referred to in Clause 17 hereof have been fulfilled or such other date as may be fixed or approved by the NCLT or other Appropriate Authority. References in this scheme to the date of 'coming into effect of this scheme' or 'effectiveness of this scheme' shall mean the Effective Date;

13. We have heard the Learned Counsel for the Petitioner Company and perused the documents placed on record and also considering the approval accorded by the members and creditors of the Petitioner Company to the proposed Scheme, and the affidavits/ no objection filed by the respective statutory authorities, there appears no impediment in sanctioning the present Scheme. The Petitioner Company shall however remain bound to comply with the statutory requirements in accordance with law, as pointed by the Regional Director.
16. The Scheme (Annexure 1) is approved and we hereby declare the same to be binding on all the shareholders and creditors of the Petitioner Company and on all concerned. While approving the Scheme, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes, or any other

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charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

AND THIS TRIBUNAL DOES FURTHER ORDER:

- i) Subject to Clause 4 in the Scheme, with respect to the assets of the Transferor Company, including all rights, titles and interests in the agreements, immovable property held in the name of the Transferor Company shall, without any further act, instrument or deed, be transferred to and vested in and / or be deemed to be transferred to and vested in the Transferee Company, with effect from the Appointed Date by operation of law, as the case may be, in favour of Transferee Company;
- ii) All the debts, liabilities, duties and obligations of every kind of the Transferor Company shall, without any further act or deed, be transferred to, and vested in, and / or deemed to have been transferred to, and vested in, the Transferee Company;
- iii) All proceedings now pending by or against the Transferor Company shall be continued by or against the Transferee Company;
- iv) All the employees of the Transferor Company in service on the Effective Date shall become the employees of the Transferee Company on the same terms and conditions on which they are

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engaged by the Transferor Company without treating it as a break, discontinuance or interruption in service on the said date;

- v) The Transferor Company being a wholly owned subsidiary of the Transferee Company, the Transferee Company shall not be required to issue any shares or pay any consideration in lieu of the amalgamation. Upon the Scheme becoming effective, all the equity shares issued by the Transferor Company and held by the Transferee Company shall stand cancelled without the requirement of any further act or deed for the cancellation.
- vi) With effect from the Appointed Date and upon the Scheme becoming effective from Effective Date, all taxes/ cess/ duties paid, payable, received or receivable by or on behalf of the Transferor Company including all or any refunds, credits claims or entitlements shall, for all purposes, be treated as the tax/ cess/ duty, liabilities or refunds, credits, claims or entitlements of the Transferee Company.
- vii) Upon the Scheme coming into effect, the Transferor Company shall stand dissolved without winding-up, and the Board of Transferor Company shall without any further act, instrument or deed be and stand dissolved.
- viii) The Petitioner Company within 30 days after the date of receipt of the certified copy of this Order, cause a certified copy of this Order to be delivered to the respective Registrar of Companies of Maharashtra &

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Rajasthan, for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The Scheme will become effective on filing of the certified copy of this order with both the involved Registrars of Companies. The concerned Registrar of Companies shall transfer all documents relating to the Transferor Company registered with him to the file jurisdiction relating to the said Transferee Company and thus the files relating to the Transferor and Transferee Companies shall be consolidated accordingly, as the case may be;

- ix) That the Transferee Company shall deposit an amount of Rs. 25,000/- in favour of "The Prime Minister's National Relief Fund" and Rs. 30,000/- to be paid in the Online Miscellaneous fee account of Ministry of Corporate Affairs, within a period of four weeks from the date of receipt of certified copy of this Order; and
- x) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
17. As per the above directions, Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the petitioner company on filing of the Schedule of Property i.e., (i) freehold property of the concerned Company; and (ii)

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leasehold property of the concerned Company by way of affidavit of the Petitioner Company, respectively.

18. Copy of this order be communicated to the Counsel for the Petitioner Company.

Sd/-
(Raghu Nayyar)
Technical Member

Sd/-
(Deep Chandra Joshi)
Judicial Member


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