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16/08/2021

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No 140

C.P.(CAA)/16(AHM)2021in
C.A.(CAA) 86 of 2020

Order under Section 230-232 of Co. Act,2013 r.w Rule 15(1)

IN THE MATTER OF:

Dhara Petrochemicals Pvt. Ltd
Axel Polymers Ltd.

.....Applicant

.....Respondent

Order delivered on ..03/08/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Chockalingam Thirunavukkarasu, Hon'ble Member(T)

PRESENT:

For the Applicant : Mr. Ravi Pahwa, Advocate.
For the Respondent :

ORDER

This matter is listed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

Chockalingam

(CHOCKALINGAM THIRUNAVUKKARASU)
MEMBER (TECHNICAL)

Madan B Gosavi

(MADAN B GOSAVI)
MEMBER (JUDICIAL)



**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH - COURT II**

**C.P. (CAA) No.16 OF 2021
CONNECTED WITH
CA(CAA) 86 OF 2020**

In the matter of:

Dhara Petrochemicals Private Limited

A company incorporated under the
Provisions of the Companies Act, 1956
Having its Registered Office at
38, Gautam Nagar Society,
Race Course, Vadodara- 390007,
Gujarat

**....Petitioner Company 1/
Transferor Company**

Axel Polymers Limited,

A Company incorporated under
The Companies Act, 1956
Having its Registered Office at
309, Mokshi, Sankarda- Savli Road,
Taluka Savli, Dist. Vadodara- 391780,
Gujarat

**....Petitioner Company 2/
Transferee Company**

Order reserved on 5th July, 2021

Order pronounced on 3rd August, 2021

Coram:

Mr. Madan Bhalchandra Gosavi, Member (J)

Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance: Mr. Ravi Pahwa, Advocate for the Petitioner
companies.



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ORDER

(PER: BENCH)

1. The instant petition is filed under Sections 230-232 of the Companies Act, 2013, seeking sanction of a Scheme of Amalgamation of Dhara Petrochemicals Private Limited with Axel Polymers Limited and their respective shareholders and creditors.
2. The petitioners filed Company Application being CA (CAA) No. 86/NCLT/AHM/2020 before this Tribunal, inter alia, seeking dispensation of meeting of Equity Shareholders of Petitioner Company 1, while seeking directions for convening and holding of the meetings of Secured Creditors and Unsecured Creditors of Petitioner Company 1 and seeking directions for convening and holding of the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of Petitioner Company 2, for the purpose of considering and if thought fit, approving, with or without modification, a Scheme of Amalgamation of Dhara Petrochemicals Private Limited with Axel Polymers Limited and their respective shareholders and creditors.
3. The Petitioner Companies Vide order dated 18.12.2020 made in CA (CAA) No. 86/NCLT/AHM/2020, this Tribunal directed dispensation of the meeting of Equity Shareholders, convening and holding the meetings of Secured Creditors, Unsecured Creditors of Petitioner



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Company 1 on 18.02.2021 and Meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of Petitioner Company 2 on 17.02.2021 along with other ancillary directions. This Tribunal appointed Shri Gaurv Thanky and in his absence Ms. Pooja Shah as the Chairperson of the meetings of Secured Creditors, Unsecured Creditors of Petitioner Company 1 and appointed Shri A.B. Boodhanwala and in his absence Shri Gaurav Thanky as the Chairperson of the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of Petitioner Company 2 and gave further directions to comply with various stipulations contained in the order including filing of the Chairman's Report.

4. This Tribunal was further pleased to direct issuance of notices to statutory authorities viz. Regional Director, Registrar of Companies, Income-Tax Authorities, Official Liquidator (in case of Petitioner Company 1), BSE, and SEBI (in case of Petitioner Company 2).
5. In compliance of the order dated 18.12.2020 made by this Tribunal in CA (CAA) No. 86 of 2020, the petitioner companies sent notices to statutory authorities as required by the order. The Petitioner Companies also filed affidavit of service of notice to the statutory authorities.
6. In compliance of the order dated 18.12.2020 made by this Tribunal in CA (CAA) No. 86 of 2020, notice of the meetings was sent individually to the Secured Creditors



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and Unsecured Creditors of the Petitioner Company 1 as well as to Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Company 2 as required by the order together with a copy of the Scheme of Arrangement and of the statement required by Section 230 of the Companies Act, 2013.

7. With reference to the order dated 18.12.2020, the petitioners also published advertisement about convening of the meetings in English Daily 'Business Standard' and Gujarati Daily 'Loksatta', having circulation in Ahmedabad on 14.01.2021.
8. The petitioner companies also sent notices to the statutory authorities as required by the order.
9. The Petitioner Companies also filed affidavit of service and publication and affidavit regarding service of notice to the statutory authorities with this Tribunal.
10. Separate meetings of the Secured Creditors and Unsecured Creditors of the Petitioner Company 1 and meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Company 2 were duly convened on 18.02.2021 and 17.02.2021 respectively through Video Conferencing ("VC") / Other Audio-Visual Means ("OVAM"). The Chairperson of the Meetings has filed respective reports.



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11. As per the Chairman Report of meeting of Secured Creditors of the Petitioner Company 1, the sole Secured Creditor representing INR 15,13,79,522/- (Indian Rupees Fifteen Crores Thirteen Lakhs Seventy Nine Thousand Five Hundred Twenty Two only) in value of debt of the Petitioner Company 1 unanimously approved the Scheme of Amalgamation.
12. As per the Chairman Report of meeting of Unsecured Creditors of the Petitioner Company 1, 26 (Twenty-Six) Unsecured Creditors representing INR 5,64,69,806/- (Indian Rupees Five Crores Sixty Four Lakhs Sixty Nine Thousand Eight Hundred and Six only) in value of debt of the Petitioner Company 1 unanimously approved the Scheme of Amalgamation.
13. As per the Chairman Report of meeting of Equity Shareholders of the Petitioner Company 2, Shareholders holding 12,32,372 (Twelve Lakhs Thirty Two Thousand Three Hundred Seventy Two) Equity Shares representing INR 1,23,23,720 (Rupees One Crore Twenty Three Lakhs Twenty Three Thousand Seven Hundred Twenty only) of the Petitioner Company 2 unanimously approved the Scheme of Amalgamation.
14. As per the Chairman Report of meeting of Secured Creditors of the Petitioner Company 2, the sole Secured Creditor representing INR 8,67,32,992/- (Indian Rupees Eight Crores Sixty Seven Lakhs Thirty Two Thousand Nine



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Hundred Ninety Two only) in value of debt of the Petitioner Company 2 unanimously approved the Scheme of Amalgamation.

15. As per the Chairman Report of meeting of Unsecured Creditors of the Petitioner Company 2, 9 (Nine) Unsecured Creditors representing INR 8,13,67,555/- (Indian Rupees Eight Crores Thirteen Lakhs Sixty Seven Thousand Five Hundred Fifty Five only) in value of debt of the Petitioner Company 2 unanimously approved the Scheme of Amalgamation.
16. It is submitted that the Petitioner Company No. 2 is a listed company. The Petitioner Company 2 submitted the Scheme of Amalgamation of Dhara Petrochemicals Private Limited with Axel Polymers Limited and their respective shareholders and creditors with Bombay Stock Exchange for its approval, as per SEBI circular No. CFD/DIL3/CIR /2017 /21dated 10th March, 2017. In pursuance to the same, Bombay Stock Exchange vide its communication dated 19.06.2020 has intimated that SEBI vide its email dated 19.06.2020 has given certain comments on the Scheme of Amalgamation. Based on the comments offered by SEBI, Bombay Stock Exchange advised the Petitioner Company 2 to make certain compliances. The Petitioner Company 2 has accordingly complied with the stipulations contained in the aforesaid letter.



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17. With reference to the order dated 18.12.2020, Regional Director made a representation vide letter dated 11.03.2021 making certain observations:

- a. The first observation relates to Appointed Date being 01.04.2019 and the time gap of more than one year between the appointed date and the date of filing of application.
- b. The second observation is with regards to compliance with the provisions of FEMA and RBI guidelines by petitioner Transferor Company.
- c. The third observation is with regards to outstanding demand of Rs. 4406/- for AY 2009-10 in respect of Transferee Company.
- d. The fourth observation is with regards to observations of ROC.
- e. The last observation is with regards to payment of legal fees/ cost to the Central Government.

18. In response to the representation dated 11.03.2021, an affidavit dated 12.04.2021 has been filed by the Petitioner Companies.

- a. With regards to first observation, it is submitted that the Scheme was approved by the respective Board of



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Directors of the Petitioner Companies on 21st August 2019. The Transferee Company, being a listed company, as required by law, filed the relevant documents/information with the BSE Ltd. vide letter dated 23rd October 2019. While the queries raised by the BSE Ltd. was being resolved, the on-going pandemic delayed the process of the sanction of the no-objection by the BSE Ltd. The no-objection letter was eventually issued by the BSE Ltd. vide letter dated 19th June 2020. Thereafter, the Petitioner Companies were attempting to seek consent affidavits from its secured creditors. Even after following up for almost 6 months, since the consent affidavits were not provided by the secured creditors, the Petitioner Companies filed the Company Applications with the Hon'ble NCLT on 4th December 2020. While the Petitioner Companies admit that due to procedural concerns, the time taken to file the application with the Hon'ble NCLT after obtaining the sanction from the BSE Ltd. is longer than what is generally envisaged, the on-going pandemic has also lead to slowing down of the process and causing further delays. In view of the above, it is prayed to this Tribunal to order the Appointed Date to continue as 01.04.2019. This Tribunal however directs the Applicant Companies to treat the appointed date as 01.04.2020.



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- b. With regards to second observation, it is submitted that for the purpose of proposing a Scheme of Amalgamation, no separate compliance of any provisions of FEMA or RBI Guidelines is necessary as there are no foreign shareholders of Transferor Company. So far as allotment of fresh shares by the Transferee Company to the shareholders of the Transferor Company upon sanction of the Scheme is concerned, it is submitted that no approval of Reserve Bank of India is necessary since both the Companies are covered in Sectors under the automatic route. The petitioners have relied upon Clause 4 of the FDI Policy dated 28.08.2017. It is further submitted that the Transferee Company undertakes to comply with FEMA guidelines to the extent applicable.
- c. With regards to third observation, it is submitted that the Petitioner Transferee Company has paid the outstanding demand of Rs. 4,406/- with the Income Tax Department. A copy of receipt evidencing payment made by Transferee Company is produced on record.
- d. With regards to fourth observation, it is submitted that the observations made by the ROC is self-explanatory and therefore, no further relevant facts are required to be placed on record. It is submitted that as admitted by the Regional Director, the ROC has stated in its report that there are no complaints against the Petitioner



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Companies and there is no complaint/ representation against the Scheme of Amalgamation of the Petitioner Companies. The Petitioner Companies have also submitted their reply dated 12.02.2021 in response to the report of ROC.

- e. With regards to last observation, it is submitted that the petitioner Transferee Company undertakes to pay the requisite fees to the Regional Director as may be quantified by this Tribunal.

There are no other observations.

19. With reference to the order dated 18.12.2020, Official Liquidator made a representation vide letter dated 08.03.2021. There is no adverse representation or observation made by the Official Liquidator in the aforesaid report.
20. No representations have been received from any other statutory authorities.
21. The petitioners, thereafter, filed Petition being CP (CAA) No. 16/NCLT/AHM/2021 before this Tribunal seeking sanction of the Scheme.
22. This Tribunal, by order dated 30.03.2021 admitted the aforesaid petition and directed issuance of notices to Regional Director, ROC, income tax authorities and



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Official Liquidator (in case of Transferor Company) informing the date of hearing. The Tribunal also directed publication of notice of hearing of the petition in the English Daily "Business Standard" and Gujarati Daily "Lok Satta", both having circulation in Vadodara not less than 10 days before the date fixed for hearing, calling for objections, if any, on or before the date of hearing.

23. Pursuant to the order dated 30.03.2021 passed by the Tribunal, the petitioner-companies published the notice of hearing of the petition in the English Daily "Business Standard" and Gujarati Daily "Lok Satta" both having circulation in Vadodara. The notice in respect of hearing of the Company Petition was served upon all concerned statutory authorities. Affidavit to that effect is also filed on behalf of the petitioner-companies.
24. Pursuant to the order dated 30.03.2021 and issuance of notices to the statutory authorities and publication of the notice in the local dailies, no representation is received.
25. Heard Learned Advocate Mr. Ravi Pahwa, for the petitioner-companies.
26. Considering the entire facts and circumstances of the case and on perusal of the Scheme, the documents produced on record, the representation made by the Regional Director, Registrar of Companies and the Official Liquidator and the reply(s) thereof by the petitioner



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companies, this Tribunal is of the opinion that the requirements of the provisions of Sections 230 and 232 of the Companies Act, 2013 are satisfied. The reply given by the petitioner companies to the representation of the Regional Director, Registrar of Companies and the Official Liquidator stand satisfied. This Tribunal also directs the Applicant Companies to treat the appointed date in the Scheme as 01.04.2020.

27. In the result, the petition is allowed. The Scheme of Amalgamation as placed at Annexure-G to CP(CAA) No. 16/NCLT/AHM/2021 is hereby sanctioned and it is declared that the same shall be binding on the petitioner-companies namely, Dhara Petrochemicals Private Limited and Axel Polymers Limited and their respective shareholders and creditors.
28. The sanction/approval of scheme does not come on the way of any Competent Authority(ies) to take any action in the event of violation of any law for the time being in force.
29. The legal fees/ expenses of the office of the Regional Director are quantified at Rs. 25,000/- and the legal fees/ expenses of Official Liquidator are quantified at Rs. 10,000/- in respect of the petitioner Transferor Company. The said fees to the Regional Director and Official Liquidator shall be paid by the Petitioner Company 2/Transferee Company.



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30. Filing and issuance of drawn up orders are dispensed with. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme immediately.
31. The petitioner companies are further directed to file a copy of this order along with the copy of the Scheme with the concerned Registrar of Companies, electronically, along with INC-28 in addition to physical copy as per relevant provisions of the Act.
32. This Company Petition is allowed and disposed of accordingly.

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(CHOCKALINGAM THIRUNAVUKKARASU)
MEMBER (TECHNICAL)

Madan B. Gosavi

(MADAN B. GOSAVI)
MEMBER (JUDICIAL)



Certified to be True Copy of the Original

Raj Vaibha
Assistant Registrar
NCLT, Ahmedabad Bench
Ahmedabad
10/08/21

Date of pronouncement of Order: 03/08/21
Date on which application for Certified Copy was made: 13/08/21
Date on which Certified Copy was ready: 15/08/21
Date on which Certified Copy delivered: 15/08/21