

(202) 07 NCLT CK 0005

National Company Law Tribunal, Mumbai Bench Court II

Case No: Company Scheme Petition No. 147 of 2021 Connected with Company
Application No. CA(CAA)-797/230-232/(MB)/2018

Himratna Terpenes Private
Limited

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision: July 29, 2022

Acts Referred:

- Companies Act, 2013 - Section 230, 230(1), 230(3), 230(4), 230(5), 232, 232(3)(i), 232(6), 233
- Income Tax Act, 1961 - Section 2(1B)

Hon'ble Judges: P.N. Deshmukh, Member (J); Shyam Babu Gautam, Member (T)

Bench: Division Bench

Advocate: Sanjay Lalit, Rupa Sutar

Final Decision: Disposed Of

Judgement

Authorized, Amount (Rs.)

25,000 Equity Shares of Rs.100/-each, "25,00,000

TOTAL, "25,00,000

Issued, Subscribed & Paid-up",

25,000 Equity Shares of Rs. 100/-each fully Paid-up", "25,00,000

TOTAL, "25,00,000

10. In response to the report of the Regional Director, the Petitioner Companies have filed Affidavit in Reply/Rejoinder dated 31st January, 2022 &",

Additional Affidavit dated 27th June, 2022 submitted with NCLT vide e-filing No.- 2709138040882021 and have clarified as under:",

a) As regards observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies undertakes that in addition to",
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. to the extent applicable.,

b) As regards observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Companies in so far as observations made in",
paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Companies clarify that the scheme shall be effective from the Appointed Date which is",

a specific date i.e., 03-01-2018. The scheme shall be effective from such Appointed Date but operative from Effective Date as defined in the Scheme. Further the",

scheme is in compliance with the circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs, as the Scheme stated Appointed",

Date - 03-01-2018 in the present Scheme of Amalgamation. The Petitioner Companies again confirm that there is specific calendar date as "appointed date" in the,

captioned matter which was also confirmed by the NCLT Order dated 8th June, 2021 of Court No. 2 in Company Application (CA) 50/2021 In C.A. (CAA)",

797/MB/2018, which was attached as an "Annexure -1" to the Affidavit in Reply/Rejoinder dated 31st January, 2021 submitted with NCLT, wherein Hon'ble",

NCLT -Court No. 2 recorded the following observations;

Further he brought to our notice that the appointed date was mentioned as 01.04.2019 be deleted which has been inadvertently noted and the correct",

appointed date is 03.01.2018 as per the scheme and be read as in the order. This prayer is also accepted by this Bench, in the Order dated 08.03.2019 henceforth",

the appointed date be read as 03.01.2018 instead of 01.04.2019."",

Accordingly, the Petitioner Companies request to keep the Appointed Date as 03-01-2018. The Petitioner Companies confirm that the financial accounts of the",

Transferor Company have been merged with the Transferee Company w.e.f. 31st March, 2018 and "the Transferee Company" is continuous filing merged",

accounts of the Transferor & Transferee Company w.e.f. from the financial years ending/ended on 31-3-2018 with the Offices of Registrar of Companies &

Income Tax and whereas ""the Transferor Company"" is also filing Zero/Nil returns w.e.f. from the financial years ending/ended on 31-3-2018 with the Offices of",
Registrar of Companies & Income Tax .,

As regards observations of the Regional Director, as stated in paragraph IV (b) of the Supplementary Report of Regional Director is concerned, the Petitioner",

Companies confirm that that the appointed date is 03.01.2018.,

c) As regards observations made in paragraph IV (c) of the Report of Regional Director is concerned, the 2nd Petitioner Company undertakes to comply with section",

232(3)(i) of Companies Act, 2013 as regards to the combination of Authorized share Capital, where the transferor company is dissolved, the fee, if any, paid by the",

transferor company on its authorized capital shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the,

amalgamation and therefore, the Second Petitioner affirms that it shall comply with the provisions of the said section;"",

d) As regards observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies submits that in accordance with the",

directions of NCLT vide order dated 8th March, 2019:"",

(i) On the 12/04/2019, meeting of equity shareholders of Petitioner/ Petitioner Companies was duly convened in accordance with the said NCLT Order, at the",

Registered Office of the company wherein National Company Law Tribunal, Mumbai Bench by an order dated 8-3-2019 was pleased to issue directions for convening",

of the meeting of the shareholders & secured creditors, to be presided over by Mr Shishir Anil Agarwal, as Chairman of the meeting. Accordingly, Mr. Shishir Anil",

Agarwal was the Chairperson in the meetings of equity shareholders and also one meeting of Secured Creditors of 2nd Petitioner Company and the Scrutinizer for the, said meetings of the above Petitioner Companies were Mrs. Taruna Kumbhar, Practicing Company Secretary."",

(ii) The Petitioner Companies have reported the result of the meeting of equity shareholders of all the Petitioner Companies and meeting of Secured & Unsecured,

Creditors of 2nd Petitioner Company/ Transferee Company to this Hon'ble Tribunal on 26.4.2019 wherein copies of the Chairman Reports of the said meetings of the,

equity shareholders and one meeting of Secured Creditors of 2nd Petitioner Company was annexed as an,

Exhibit-'D' with the Company Scheme Petition 147 of 2021. In accordance with the Meeting of the Equity shareholders convened by NCLT of all the respective,

Petitioner Companies & and Secured Creditors of Transferee Company held on 12th April 2019, the respective Petitioner Companies have approved the Scheme of",

Amalgamation subject to the sanction of the National Company Law Tribunal, Mumbai Bench.",

(e) As regards observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies to comply with Accounting Standard",

14, such that the surplus if any arising out of the scheme that would be credited to the Capital Reserve Account arising out of amalgamation shall not be considered",

as free reserve and will not be available for distribution of dividend.,

(f) As regards observations of the Regional Director, as stated in paragraph IV (f) of the Report of Regional Director is concerned, Section 2(1B) of the Income Tax",

Act, 1961 states that ""amalgamation"", in relation to companies, means the merger of one or more companies with another company or the merger of two or more",

companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with,

which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner thatâ€",

(i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of,

the amalgamation;,

(ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of,

the amalgamation;,

(iii) shareholders holding not less than three-fourths in value of the shares in the amalgamating/transferor company (other than shares already held therein,

immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated/transferee",

company by virtue of the amalgamation, otherwise than as a result of the acquisition of the property of one company by another company pursuant to the

purchase",

of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the Transferor company.,

In this regard, Petitioner Companies confirm and clarify that the Transferee Company shall issue and allot its equity shares to the shareholders of the Transferor",

Company in the following proportion;

“Upon the Scheme becoming finally effective, in consideration of the transfer and vesting of the Undertaking of the Transferor Company in the Transferee",

Company in terms of the Scheme ,the Transferee Company shall, subject to the provisions of the Scheme and without any further application or deed, issue at Par",

and allot 23 (Twenty Three) Equity Share (s) of the face value of Rs.100/-(One Hundred) each credited as fully Paid up in the Capital of the Transferee 'Company,

to the Shareholders of the Transferor Company whose names are recorded in its Register of Members, on a date to be fixed by the Board of Directors of the",

Transferee Company, for Every 5(Five) Equity Shares of the face value of Rs.100/-(Rupees One Hundred) each held by the said Shareholders in the Transferor",

Company.”,

Therefore, pursuant to the Amalgamation all the shareholders of the Amalgamating Company shall become shareholders in the Amalgamated Company. Further as",

per clause 5(b) of the scheme provisions of Section 2(1B) of the Income Tax Act, 1961 shall prevail and the Scheme shall stand modified to the extent necessary to",

comply with Section 2(1B) of the Income Tax Act, 1961; such modifications to not affect other parts of the scheme. Hence, the scheme is fully in compliance of the",

Section 2(1B) of the Income Tax Act,1961.",

(g) As regards observations of the Regional Director, as stated in paragraph IV (g) of the Report of Regional Director is concerned, the Petitioner Companies confirm",

that the accounts of the Transferor Company have been merged with the Transferee,

Company w.e.f. 31st March, 2018 and "the Transferee Company" is continuous filing merged accounts of the Transferor & Transferee Company w.e.f. from the",

financial years ending/ended on 31-3-2018 with the Offices of Registrar of Companies & Income Tax and whereas "the Transferor Company" is also filing

Zero/Nil",

return w.e.f. from the financial years ending/ended on 31-3-2018 with the Offices of Registrar of Companies & Income Tax . The Petitioner Companies confirm that, they are filing merged accounts & continuously complying with the provisions of Companies Act & Income Tax Provisions as the Transferor Company has no, revenue in its books of accounts.,

As regards observations of the Regional Director, as stated in paragraph IV (g) of the Supplementary Report of Regional Director is concerned, the Petitioner",

Companies confirm that initially in the year 2012, the Petitioner Companies had planned to establish the new chemical manufacturing facility in the Transferor",

Company with the purchase of Agricultural land with an aggregate purchase consideration of Rs. 43,43,500. Thereafter, the Transferor Company was required to start",

the production in the said agricultural land within a period 10 years i.e. latest by the year 2022- 23, after completing the all the procedural & regulatory compliances",

including change of land use to industrial use otherwise the said agricultural land would have vested with the State Government with penalty to the Transferor,

Company & its Directors for non- starting the manufacturing activities by the year 2022- 23. Keeping in view of the size of the business of the Companies & to reduce,

the costs of the new project, the combination of the activities of the Transferor Company with the Transferee Company would result in administration and operational",

rationalisation, rationalisation in economics of scale, reduction in overheads and other expenses and more optimal utilization of various resources, as both the",

Companies are under the same Management and it would be advantageous to combine the activities and operations in a single Company. The amalgamation will,

enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base. The Transferee Company is,

also an MSME company vide Udyog Aadhaar Memorandum - MH18A0001628 and the Petitioner Companies are part of same Family. There is no outsider,

shareholding in the Petitioner Companies and the public interest are not affected at all. In order to take various regulatory & statutory approvals and business loans,

from HDFC Bank, the Petitioner Companies had to merge the financial statements/accounts of Transferor Company with Transferee Company which is subject to",

approval of NCLT Mumbai Bench in due course. Along with merging of these accounts, the transferor company has also maintained their separate accounts which",

were regularly filed with ROC Mumbai. Earlier, Business Loan was applied to Yes Bank but Yes Bank refused to sanction the loan on project due to the fact that Land",

was not in the name of Transferee Company. Hence, the Petitioner Companies approached HDFC Bank & they agreed if land is merged in name of Transferee",

Company by giving the Collateral Security since Plant is to be put on this land only & then HDFC Bank sanctioned the loan of INR 10.00 crore on 04/05/2019. Hence,

due to compulsion from the sanctioning bank, the Petitioner Companies have merged the account of Transferor Company with Transferee Company & also",

maintained separate accounts of Transferor Company for its filing with ROC office since the Petitioner Companies have already placed the order for plant &,

machinery etc.,

After merging of the abovesaid financial statements/accounts of Transferor Company with Transferee Company, the Transferee Company obtained business loans",

from HDFC Bank on 04/05/2019 and took regulatory approvals from Directorate of Maharashtra Fire Safety, MSEDCL, Maharashtra Pollution Control Board, Change of",

Land Use Permission from Agricultural to Industrial Use, NOC for Ground Water Abstraction from Government of India, Ministry of Jal Shakti, Department of Water",

Resources, Gram Panchayat, Jamghar village, Vada Tehsil, Dist. Palghar, Water Sewage (CGWA), Collector Wada, Factory License (already applied) Directors of",

Boilers, ESIC & PF, ,Professional Tax, Factory Layout Nagar Rachna & Director of Industrial Safety & Health, Legal Metrology Department etc. Initially, as the",

Petitioner Companies were Small Companies, they had applied for fast track merger in accordance with the Section 233 of Companies Act to the office of Regional",

Director vide SRN: G79222337 dated 13-03-2018. Even ROC office had given report to the RD office that the Petitioner Companies were Small Companies but due to,

some technical issue RD took a view that the Petitioner Companies were not Small Companies, hence the Petitioner Companies submitted the merger in accordance",

with the Section 230-232 of Companies Act to this Hon'ble NCLT Bench in 2018. Keeping in view of above requirements, the Petitioner Companies merged their",

financial statements. Hence, the scheme is fully in compliance of the law of the India, as the manufacturing activities were required to be commenced by year 2022-

23",

in the said matter.,

(h) As regards observation of the Regional Director, as stated in paragraph IV (h) of the Report of Regional Director is concerned, the Petitioner Companies confirms",

and undertakes to protect the interest of its creditors. The Petitioner Companies further submits that the sanction of the Scheme of Arrangement will be for the benefit,

all the stakeholders of the Petitioner companies. The interests of the creditors of the Petitioner Companies will not be affected. The interests of both the secured and,

unsecured creditors, as stated hereinabove are not affected by the Scheme of Arrangement as no compromise or sacrifice has been called from the said creditors.",

11. The Regional Director has filed its Supplementary Report dated 4th March, 2022 and stated that the Petitioner Companies have replied",

satisfactory to all the observations of Para IV -a, c, d, e, f, h. Further the Regional Director had stated in the report that the Regional Director is not",

convinced with the reply filed by the Petitioner Companies with regard to para IV- b & g and to be considered on merit by the Tribunal. The,

observations made by the Regional Director mentioned in para IV- b & g have been explained by the Petitioner Companies in para 12 (b) & 12 (g),

above. Further, the Petitioner Companies have also filed affidavit in rejoinder dated 31-01-2022 to the report of Regional Director. The clarifications",

and undertakings given by the Petitioner Companies are accepted by the Tribunal.,

12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraph 12 above. The Representative of,

the RD has submitted that the explanation and clarifications given by the Petitioner Companies are found satisfactory and they have no objection to,

the Scheme. The Affidavit dated 31st January, 2022 filed by the Petitioner Companies, the clarifications and undertakings given by the Petitioner",

Companies are accepted by this Tribunal, and the Petitioner Companies are directed to comply with the same.",

13. The Official Liquidator, High Court, Bombay (OL) has filed his Report dated 1st February, 2022 stating that the affairs of the Petitioner Company",

1 have been conducted in a proper manner. Further, the Learned Counsel for the Petitioner Companies submits that neither the Petitioner Companies",

nor the Tribunal has received any objection to the said Scheme of Amalgamation between the Transferor Companies and the Transferee Company.,

14. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not in violative of any provisions of law and is",

not contrary to public policy. And hereby this bench, to the Petitioner Companies, do order that:",

a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company shall, pursuant to Section 232 of the Companies Act,"

2013, be transferred to and become the liabilities and duties of the Transferee Company.",

b) The clarifications and undertakings given by the Learned Counsel for the Petitioner Companies to the observations made in the Report of the,

Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this Bench hereby directs Petitioners to comply with",

the provisions / statements, which the Petitioners undertakes herein.",

c) The Transferor Company to be dissolved without winding up from the date of said Scheme becomes effective.,

d) The Petitioner Companies are directed to file a copy of this order along with the Scheme of Amalgamation with the concerned Registrar of,

Companies, electronically, along with e-form INC-28 in addition to the physical copy within 30 days from the date of issuance of the Order by the",

Registry, duly certified by the Deputy Director or the Assistant Director/Registrar, as the case may be, of the National Company Law Tribunal,"

Mumbai Bench.,

e) The Petitioner Companies to lodge a copy of this Order and the Scheme of Amalgamation duly certified by the Deputy Director or the Assistant,

Director/Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench with the concerned Collector of Stamps/Superintendent of",

Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 working days from the date of the receipt of the Order.",

f) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modifications that may be necessary.,

g) The Scheme is hereby sanctioned and the appointed date of the Scheme is fixed as 3rd January 2018.,

Ordered accordingly.,