

U.K. Paints (Overseas) Limited Vs

Court: National Company Law Tribunal, Chandigarh Bench

Date of Decision: May 21, 2024

Acts Referred: Companies Act, 2013 " Section 133, 230, 230(2), 230(5), 232, 234
 Competition Act, 2002 " Section 5(c), 5(d)
 Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 " Rule 8

Hon'ble Judges: Dr. P.S.N Prasad, Member (J); Umesh Kumar Shukla, Member (T)

Bench: Division Bench

Advocate: Karanveer Jindal

Final Decision: Allowed

Judgement

,,,,,

1. This is a First Motion Application filed through authorised signatories, under section 234 read with sections 230 to 232 and other applicable",,,,,,

provisions of the Companies Act, 2013 (hereinafter referred to as the "Act" read with Rule 3 and 18 of the Companies (Compromise, " ,,,,,,

Arrangements and Amalgamations) Rules, 2016 (hereinafter referred to as the "CAA Rules" and other applicable provisions of the National",,,,,,

Company Law Tribunal Rules, 2016 (hereinafter referred to as the "NCLT Rules" in respect of the proposed scheme of Amalgamation" ,,,,,,

(hereinafter referred to as the "Scheme") embodying amalgamation of U. K. Paints (Overseas) Limited (hereinafter referred to as "Transferor" ,,,,,,

Company-1 or "Non-Applicant Company No. I" and B.J.N. Holdings (I) Limited (hereinafter referred to as "Transferor Company-2" or ,,,,,,

"Non-Applicant Company No. II" with and into UK Paints (India) Private Limited (hereinafter referred to as "Transferee Company" or ,,,,,,

"Applicant Company"). The copy of the Scheme has been annexed with the Application as Annexure-A ,,,,,,

2. The Applicant Company has prayed for seeking directions for dispensation from the requirement of convening and holding the meeting of Equity ,,,,,,

Shareholders, Class " Equity Shareholders without voting rights, Secured Creditors and Unsecured Creditors of the Applicant Company and" ,,,,,,

issue of notices to the Statutory Authorities in terms of section 230(5) of the Act read with Rule 8 of the Rules. ,,,,,,

3. The registered office of the Applicant Company is situated in Gurugram, Haryana. Therefore, the subject matter of the Application is within the",,,,,,

jurisdiction of this Bench.,,,,,,

4. The Facts of the Case, as stated in the Application, are as below:" ,,,,,,

(i) Transferor Company-I i.e. U. K. Paints (Overseas) Limited is a private company limited by shares incorporated under the provisions of Companies (Jersey) Law, " ,,,,,,

1991 (as amended) on 21.11.1991, with registration number 51469 and having its registered office at 28, Esplanade, St. Relier, Jersey, JE2 3QA. It was established with" ,,,,,,

prior approval of Government of India and Reserve Bank of India as an operating company in the field of trading business for trading chemicals and other allied,,,,,

consumer products. Its principal activity is investing in paint manufacturing companies via its subsidiaries. A certified true copy of its Memorandum and Articles of ,,,,,,

Association has been annexed with the Application as Annexure-B1 (Colly.). As on 31.03.2023, its authorised share capital is ₹1,000,000/- divided into 1,000,000" ,,,,,,

ordinary shares of ₹1 each and issued, subscribed & paid-up share capital is ₹927,142/- divided into 927,142 ordinary shares of ₹1 each. Its entire paid-up share" ,,,,,,

capital is directly held by the Transferee Company making it a direct wholly owned subsidiary of the Transferee Company. A list of equity shareholders of the,,,,,

Transferor Company-I as on 21.09.2023 has been annexed with the Application as Annexure-B3.,,,,,,

(ii) Transferor Company-II i.e. B.J.N. Holdings (I) Limited is a private company limited by shares incorporated under the provisions of Companies (Jersey) Law, 1991" ,,,,,,

(as amended) on 27.10.2009 with registration number 104274 and having its registered office at 28 Esplanade, St. Belier, Jersey, JE2 3QA. It is engaged in the business" ,,,,,,

as an investment holding company as its principal activity. A certified true copy of its Memorandum and Articles of Association has been annexed with the,,,,,

Application as Annexure-C1 (Colly). Its authorized share capital is ₹10,000/- divided into 10,000 ordinary shares of ₹1 each and issued, subscribed & paid-up" ,,,,,,

share capital is ₹10,000/- divided into 10,000 ordinary shares of ₹1 each. Its entire paid-up share capital is held by Transferor Company-I making it a direct wholly" ,,,,,,

owned subsidiary of Transferor Company-I and indirect/ step down wholly owned subsidiary of the Transferee Company. A list of equity shareholders of the,,,,,

Transferor Company-II as on 21.09.2023 has been annexed with the Application as Annexure-C3.,,,,,,

(iii) Transferor Companies are amenable to the laws of Jersey and are required to obtain the necessary approval for the proposed amalgamation amongst the,,,,,

Transferor Companies and Transferee Company from appropriate authorities under the applicable provisions of Companies (Jersey) Law, 1991 (the "Jersey Law"). In" ,,,,,,

accordance with the applicable provisions of Jersey Law, the Transferor Companies are required to fulfil the following requirements:" ,,,,,,

(a) The Board of Directors of the Transferor Companies must approve this Scheme, Merger Agreement (as defined in the Scheme) and a solvency statement in" ,,,,,,

pursuance of the applicable provisions of Jersey Law.....,

(b) TheÃ, shareholdersÃ, ofÃ, theÃ, TransferorÃ, CompaniesÃ, must,Ã, byÃ, special resolution pursuant to Jersey Law and their constitutional documents, " ,,,,,,

approve the Merger Agreement and merger pursuant to the same.....,

(c) Within 21 days of the approval of the shareholders of the Transferor Companies pursuant to clause (b) above, written notice of the intention to merge pursuant to" ,,,,,,

the Merger Agreement must be given by each of the Transferor Companies to all creditors, if any, who have a claim against either Transferor Companies and a notice" ,,,,,,

must be published in a newspaper in Jersey, each in accordance with the requirements of Jersey Law." ,,,,,,

(d) An application in respect of the merger must be submitted to the Jersey Financial Services Commission (Ã¢â¬ÅJFSCÃ¢â¬) jointly by the companies, alongside such" ,,,,,,

documents, as the JFSC may require in pursuance of the Jersey Law." ,,,,,,

(e) The JFSC must consent to the merger as contemplated by the merger agreement and in accordance with the requirements of Jersey Law (Ã¢â¬ÅConsentÃ¢â¬).....,

(f) Upon the Scheme becoming effective in accordance with its terms; all relevant Indian law requirements to effect the Scheme (and associated merger) having been.....,

satisfied; and JFSC having given its consent and receipt of such documents, and the Registrar having registered the merger pursuant to law, the Transferor" ,,,,,,

Companies will be accordingly removed from the register maintained by the Registrar.....,

(g) Transferor Companies undertake to file necessary applications before JFSC and to do all such acts, deeds, matters and things as may be required or considered" ,,,,,,

necessary in relation to the proposed Scheme under the applicable provisions of Jersey law.....,

(iv) Transferee Company or Applicant Company i.e. UK Paints (India) Private Limited is an unlisted private limited company incorporated on 05.06.1979 under the.....,

provisions of the Companies Act, 1956 under the name and style of 'UK Paints (India) Private Limited' with its registered office situated in the National Capital" ,,,,,,

Territory ("NCT") of Delhi. Subsequently, in the year 1985, the status of the company was converted from private limited company to public limited company and a" ,,,,,,

fresh certificate of incorporation was issued by the Registrar of Companies, Delhi on 31.08.1985. In the year 2002, its status was re-converted from public limited" ,,,,,,

company to private limited company and a fresh certificate of incorporation was issued by Registrar of Companies, Delhi on 06.02.2002. Subsequently, it was" ,,,,,,

reconverted from private limited company to public limited company on 05.10.2012 and was again reconverted from public limited company to private limited company.....,

and a fresh certificate of incorporation was issued by Registrar of Companies on May 29, 2015. Lastly, in the year 2021, its registered office was shifted from the NCT" ,,,,,,

of Delhi to the State of Haryana and accordingly, a certificate confirming the shifting of registered office was issued by the Registrar of Companies on 01.10.2021. Its" ,,,,,,

registered office is presently situated at 2nd Floor, Shopping Arcade, Malibu Town, Sohna Road, Sec-47, Gurugram, Haryana-122018. The copy of master data of the" ,,,,,,

Applicant Company has been annexed along with the memo of parties of the Application.,,,,,,

(v) Applicant Company is primarily engaged in the business of manufacturing and trading of paint containers and job works on paints. It is also engaged in certain.,,,,,,

incidental objects such as investments in shares & securities, to acquire on lease or purchase real estate properties and to provide inter-corporate deposits. Its main",,,,,,

objects, as set out in Clause III(A) of the Memorandum of Association are, inter-alia, as under:",,,,,,

“To acquire and takeover the running business with all assets and liabilities now being carried on in India by UK Paints Industries on such terms and conditions.,,,,,,

as may be agreed upon and said firm shall cease to exist after such takeover.,,,,,,

To carry on the business of manufacture and dealers in all kinds of paints, colors, pigments, varnishes, distempers, enamels, dyes, adhesives, solvents, thinners, ",,,,,,

lacquers, surfaces and all other allied and similar products connected with above mentioned products.",,,,,,

To carry on the business of manufacture and dealers in while lead, printing, inks, linseed oil, brushes, glass and all kinds of material relating to painters, glitters, ",,,,,,

artists and decorations.,,,,,,

To import and export paints, pigments, varnishes, chemical, preparations, colors, grinders, oils, dyes, distempers, enamels, solvents, compounds and other allied",,,,,,

products.,”,,,,,

A certified copy of its Memorandum and Articles of Association has been annexed with the application as Annexure-D1 (Colly.).,,,,,

(vi) The authorized share capital of Applicant Company is Rs.23,00,00,000/-divided into 22,58,000 equity shares of Rs.100/- each, 37,000 Class-A equity shares without",,,,,,

voting rights (differential voting rights) of Rs.100/-each and 5,000 12% non-cumulative preference shares of Rs.100/- each and its issued subscribed & paid-up share",,,,,,

capital is Rs.2,81,30,100/-divided into 2,53,178 equity shares of Rs.100/- each and 28,123 Class-A equity shares without voting rights (differential voting rights) of",,,,,,

Rs.100/-each. The shares of the Applicant Company have never been listed on any stock exchange.,,,,,,

(vii) Subsequent to 31.03.2023 and till the date of filing of this application, there is no change in the authorized as well as issued, subscribed and paid-up share capital",,,,,,

of the Transferor Company-1, Transferor Company-2 and the Transferee Company.",,,,,,

(viii) The certified true copy of audited financial statements for the financial year ended on 31.03.2023 of Transferor Company-1 and Transferor Company-2 have been.,,,,,,

annexed with the Application as Annexure-B2, Annexure-C2 respectively, whereas the certified true copy of audited financial statements of the Transferee Company",,,,,,

for the financial year ended on 31.03.2022 along with provisional financial statements for the period from 01.04.2022 to 31.03.2023 have been annexed with the.,,,,,,

Application as Annexure-D2.,,,,,,

(ix) The Board of Directors of Transferor Company-1 and Transferor Company-2 in their meeting held on 21.09.2023 have approved the Scheme and the certified true.,,,,,,

copy of their Board Resolutions approving the Scheme along with the list of directors as on 21.09.2023 have been annexed with the Application as Annexure-B4,,,,,,

(Colly.) and Annexure-C4 (Colly.) respectively. The Board of Directors of Transferee Company in its meeting held on 23.06.2023 have approved the Scheme and the,,,,,,

certified true copy of the board resolution along with list of directors & KMPs as on 01.07.2023 have been annexed with the Application as Annexure-D3.,,,,,,

(x) The rationale of the Scheme is as under:,,,,,,

Particulars,"Transferor Company-

1/ Non-Applicant

Company No. I",,"Transferor Company-

2/ Non-Applicant

Company No. II",,"Transferee Company/

Applicant Company",

,Total No.,Consent,Total No.,Consent,"Total

Nos.",Consent

Equity

Shareholders", "1

holding

927142

shares", "Not

Applicable

being non-

applicant

in the

Scheme", "1 holding

10000

shares", "Not

Applicable

being non-

applicant

in the

Scheme", "14 holding

253178 shares", "14 holding

100% in

value

Class 'A'

Equity

Shareholders

without

voting rights", "Not

Applicable", "Not

Applicable", "14 holding

28123 shares", "14 holding

100% in

value

''''''

''''''

Secured

Creditors",,,,,Nil,"Not

Applicable

Unsecured

Creditors",,,,,"401 having

outstanding of

Rs.1284915155/-", "22 having

92.67% of

outstanding

debt