

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
PRINCIPAL BENCH
NEW DELHI**

Company Application No.CA (CAA) 112/PB/2019

Judgment dated: 21.08.2019

Coram:

CHIEF JUSTICE (Rtd.) SHRI M.M. KUMAR,

HON'BLE PRESIDENT

&

MS. SUMITA PURKAYASTHA,

MEMBER (TECHNICAL)

In the matter of:

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

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT

AMONGST

1. BEST AGROCHEM PRIVATE LIMITED

...Transferor Company No. 1/Applicant Company No. 1



AND

2. SAHYOG MULTIBASE LIMITED

... Transferee Company/ Applicant Company No. 2

For the Applicants: Mr Suman Kumar Jha, Advocate.

ORDER

M.M. KUMAR, PRESIDENT

1. This is an application filed by the applicant companies under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (for brevity 'The Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'The Rules') in relation to the Scheme (for brevity the "SCHEME") proposed between the applicants.
2. An Affidavit in support of the application sworn for and on behalf of all Applicant Companies has been filed by one Mr. Shuvendu Kumar Satpathy and one Mr. Vishesh Gupta being the authorized representative.
3. It is represented that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act.



Learned Counsel has taken us through the averments made in the application as well as the typed set of documents annexed there with.

It is further represented that the application filed by the applicants is maintainable in view of Rule 3(2) of the Rules.

4. In relation to the Applicant Company No. 1 in the Scheme it has been represented that there are 42 equity shareholders 40 out of which amounting to 99.97% have placed their consents in form of affidavits. We are further apprised that there are 4 Secured Creditors and 41 Unsecured Creditors. In relation to the Shareholders and Creditors, Applicant Company No. 1 seeks a direction for convening and holding of meetings of both secured and unsecured creditors for the purpose of obtaining their approval to the proposed Scheme.
5. In relation to the Applicant Company No. 2, it has been represented that the transferee company has 622 shareholders. We are further apprised that there are no secured creditors and 26 unsecured creditors, 90% of whom have filed their consents in form of affidavits. In relation to the Shareholders, Applicant Company No. 2 seeks a direction for convening the meetings for the purpose of obtaining their approval to the proposed Scheme.
6. The above application has been placed before us and this Tribunal proceeds to entertain the same. We have perused the application and the connected

documents filed along with the Scheme contemplated amongst the Applicant Companies.

7. Applicant Company No.1 was incorporated under the provisions of the Companies Act, 1956 under the name “BEST AGROCHEM PRIVATE LIMITED”. The authorised share capital of the Company is Rs.10,00,00,000/- and issued, subscribed and paid-up share capital of the Applicant Company-1 is Rs.5,73,71,400/- divided into 57,37,140 equity shares of Rs. 10/- each.
8. Applicant Company No. 2 was incorporated under the provisions of Companies Act, 1956 under the name “SAHYOG MULTIBASE *LIMITED*”. The authorised share capital of the company is Rs.8,70,00,000/- and the Issued subscribed and paid-up share capital of the Applicant Company- 2 is Rs.7,97,60,720/- divided into 79,76,072 equity shares of Rs.10/- each.
9. The Board of Directors of the Applicant Companies vide separate meetings have unanimously passed resolutions and approved the proposed Scheme of Arrangement as contemplated above and copies of resolutions have also been placed on record by the Companies.
10. Taking into consideration the application and the documents filed therewith, we propose to issue the following directions with respect to calling,



convening and holding of the meetings of the Shareholders, Secured and Unsecured Creditors or dispensing with the same which are as follows:-

A. In relation to the Transferor/ Applicant No. 1:

i. With respect to Shareholders:

It is represented by the Company that the Shareholders in the Company who have already placed their consent affidavits on record. Hence, the necessity of convening and holding a meeting is obviated.

ii. With respect to Secured Creditors:

Meeting of the Secured Creditors is to be held on 12.10.2019 at 11.00 a.m at the venue to be decided by the parties. The Quorum of the meeting shall be 2.

iii. With respect to Unsecured Creditors:

Meeting of the Unsecured Creditors to be held on 12.10.2019 at 12.30 p.m at the venue to be decided by the parties. The Quorum of the meeting shall be 2.

B. In relation to the Transferee/ Applicant No. 2:

i. With respect to Shareholders:



It is represented by the Company that the company has 622 shareholders. Meeting to be held on 12.10.2019 at 12.00 noon at the venue to be decided by the parties. The Quorum of the meeting shall be 300.

ii. With respect to Secured Creditors:

Since it is represented by the Company that there are no Secured Creditors, the necessity of convening and holding a meeting is obviated.

iii. With respect to Unsecured Creditors:

It is represented by the Company that 91.43% of Unsecured Creditors in the Company have already placed their consent in form of affidavits, the necessity of convening and holding a meeting is obviated.

C. In case the Quorum as noted above for the above meetings of the applicant companies are not present, in the meetings, then the meetings shall be adjourned for half an hour, and thereafter, the person present shall be deemed to constitute the quorum. For the purpose of computing the quorum, the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, are duly filed with registered office of the applicant companies at least 48



hours before the meetings. The Chairperson and the Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained.

D. Sh. Vivek Goel CA, (9815522553) is appointed as the Chairperson Sh. Ajay Bhagwati (9816002722) appointed as Alternative Chairperson for the meetings of Applicant Companies as has been directed to be convened by this Tribunal.

E. The fee for the Chairperson for the aforesaid meetings shall be INR1,50,000/- and the fee for the Alternate Chairperson shall be INR 1,00,000/- in addition to meeting their incidental expenses. Sh. Suresh Goyal, CA (9417006611) is appointed as a Scrutinizer for Applicant Companies and would be entitled to fee of INR 1,00,000/- for his services in addition to meeting his incidental expenses. The Chairperson will file their reports within two weeks from the date of holding of the above said meeting.

F. The individual notices of the said meetings shall be sent as required and prescribed by the Companies Act, 2013 through registered post or speed post or through courier or through e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, place and time as



aforesaid, together with a copy of scheme of arrangement, a copy of explanatory statement. The prescribed form of proxy shall be sent along with and in addition to the above documents, any other documents as may be prescribed under the Act may also be duly sent with the notice.

G. That the applicant companies shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date, place and time as aforesaid, to be published in the English Daily '**Indian Express**' and Hindi Daily '**Jansatta**' stating the copies of Scheme, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies.

H. Voting shall be allowed on the proposed Scheme by voting in person or by proxy, as may be applicable to the respective companies under the Act and rules framed there under. The Chairperson shall be responsible to report the result of the meeting to this Tribunal within two weeks of the conclusion of the meeting with regard to the proposed scheme.


I. The Companies shall individually send notice to the Central Government, the Income Tax Authorities, concerned Registrar of Companies, NCT of Delhi & Haryana, Official Liquidator, Income Tax Department and any

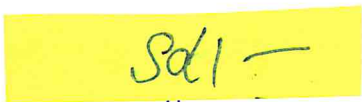


sectoral regulators who may have significant bearing on the operation of the applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

J. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

The application stands allowed in the aforesaid terms.


(M.M. KUMAR) 21.08.2019
PRESIDENT


(SUMITA PURKAYASTHA)
MEMBER (TECHNICAL)

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21.08.2019