

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No301
CA(CAA)/14(AHM)2023

Proceedings under Section 230-232 of Co. Act, 2013

IN THE MATTER OF:

Yamuna Bio Energy Pvt Ltd
Kotyark Industries Ltd

.....Applicant

.....Respondent

Order delivered on ..26/04/2023

Coram:

Deep Chandra Joshi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The order is pronounced in the open court, vide separate sheet.

-sd-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

-sd-

**DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH - II**

CA(CAA) NO. 14/NCLT/AHM/2023

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

In the matter of Composite Scheme of Amalgamation

OF

Yamuna Bio Energy Private Limited
(Transferor Company /Applicant No.1)

WITH

Kotyark Industries Ltd
(Transferee Company /Applicant No.2)

AND

Their Respective Shareholders and Creditors

Order Pronounced on: 26/04/2023

CORAM:

Hon'ble Shri Deep Chandra Joshi,
Member (Judicial)

Hon'ble Shri Ajai Das Mehrotra,
Member (Technical)

MEMO OF PARTIES

Yamuna Bio Energy Private Limited, a company
incorporated under the Companies Act, 2013
having its registered office at A-3,
Shree Ganesh Nagar, Chhani
Vadodara, Gujarat, India – 390002.

...Transferor Company /Applicant No. 1

Kotyark Industries Ltd., a company
incorporated under the Companies Act, 2013
having its registered office at A-3, Second Floor,
Shree Ganesh Nagar Housing Society,
Ramakaka Temple Road, Chhani,
Vadodara, Gujarat, India – 391740

...Transferee Company /Applicant No. 2

Appearance: Advocate Mr. Pavan S Godiawala for the Applicant Companies.

ORDER

1. The present joint application is filed under Sections 230-232 of the Companies Act, 2013 (hereinafter referred to as the "**Act**") read with the Companies (Companies, Arrangements and Amalgamation) Rules, 2016 (hereinafter referred to as the "**CAA Rules**") for sanctioning the proposed Scheme of Amalgamation (hereinafter referred to as "the Scheme") of **Yamuna Bio Energy Private Limited** (Applicant No.1/Transferor Company) with **Kotyark Industries Limited** (Applicant No. 2/Transferee Company) and their respective Shareholders and Creditors with effect from the Appointed Date, i.e., 1st April, 2022 as per features set out in the Scheme annexed with the application.

2. It is submitted that the registered office of both the applicant

companies are situated within the territorial jurisdiction of the Registrar of Companies, Ahmedabad, Gujarat, which are falling under the jurisdiction of this Tribunal.

3. It is submitted that Applicant No. 1/Transferor Company was registered with the Registrar of Companies, Ahmedabad, Gujarat State on 11th June, 2014 having its registered office situated in the State of Gujarat at Vadodara having CIN: U40106GJ2014PTC079753.

Particulars	Amount in Rupees (Rs.)
Authorised Capital	
70,00,000 Equity Shares @10Rs. Each	7,00,00,000
Issued, subscribed and paid up capital	
64,94,400 Equity shares@ Rs. 10 Each	6,49,44,000

4. It is submitted that Applicant No. 2/Transferee Company was incorporated on December 30, 2016, with the Registrar of Companies, Gujarat as a Private Limited Company and was subsequently converted from a private limited company to a public limited company vide a Special resolution passed by the Shareholders at the Extra-Ordinary General Meeting held on July 24, 2021, and a fresh certificate of incorporation dated August 05, 2021, issued by the Registrar of Companies, Ahmedabad, Gujarat having CIN: L24100GJ2016PLC094939.

Particulars	Amount in Rupees (Rs.)
Authorised Capital	
90,00,000 Equity Shares @10Rs. Each	9,00,00,000
Issued, subscribed and paid up capital	
82,74,900 Equity shares@ Rs. 10 Each	8,27,49,000

5. The Applicant Companies are empowered by their respective Memorandum and Articles of Association to enter into the Scheme of Arrangement. Copies of the Memorandum and Articles of Association of both the Applicant Companies are annexed with the application. The respective copies of the latest audited and provisional Balance sheets of both the Applicant Companies as of 31.03.2022 and 30.12.2022 respectively are annexed with the application.
6. The Board of Directors of both the Applicant Companies have approved the Scheme at their respective Board Meetings held on 10th August, 2022. Copies of the respective Board Resolutions passed on 10th August, 2022 of both the Applicant Companies are placed on record.
7. The object of the Applicant No.1/Transferor Company is to carry on the business of manufacturing, trading, import, export & otherwise deal in Bio-Diesel, Bio-fuels, Oils and fats, De-oiled cakes, Bio-fertilizers, Bio-gas, Bio-mass, Electricity, used oils, fats, organic products, Bio-cosmetics and its related products & to import, export, trade and to establishing and developing of bio methanation- solar waste heat recovery based green energy projects, renewable energy projects, power projects, bio methanation plants, recycling plants, desalination plants and also offering operation and maintenance services.
8. The object of the Applicant No.2/Transferee Company is to manufacture, produce, refined, process, formulate, buy, sell, export, import or otherwise deal in all types of heavy and light chemicals, chemical elements and compounds including without limiting the generally forgoing laboratory and scientific chemical or any nature used capable of being used in the pharmaceutical industries, agricultural chemical

fertilizers, petrochemicals, industries chemicals or any mixtures, derivatives and compound thereof. To establish, organize, manage, run, charter, conduct, contract, develop, handle, own, operate, and do business as transporters and carriers of goods, things, merchandise and commodities of all kinds and descriptions, in any part of India and/or abroad, subject to the law of the place in force, in all its branches on land, water, rail or road and air or by any means of conveyance whatsoever, as an agent or in its own name.

9. The proposed restructuring pursuant to this Scheme is expected, *inter alia* to result in the following benefits:
 - a. The business activities of the Transferor Company and the Transferee Company are similar in nature, it would enable the Transferee Company to leverage its combined assets and to create a more competitive business, both in scale and operations;
 - b. The Scheme will result in consolidation of the value of stakeholders which is in the interest of the shareholders, creditors and employees of the Amalgamating Company and the Amalgamated Company.
 - c. The proposed amalgamation of Applicant No.1/Transferor Company into Applicant No.2/Transferee Company would enable both companies to realize the substantial benefits of greater synergies among their businesses and would enable them to avail the financial resources as well as the managerial, technical, manpower, distribution and marketing resources of each other, leading to a reduction in costs.
 - d. The Amalgamation contemplated in this Scheme will help avoid duplication of administrative functions, resources, systems, skills

and processes, reduce overall cost, improve synergies, enable the achievement of economies of scale, reduce administrative costs entailed by the conduct of businesses through separate entities, eliminate multiple record-keeping, provide enhanced flexibility in the funding of expansion plans, promote management efficiency and optimize the resources of the Amalgamated Company.

- e. Consolidation of entities will result in a significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the companies.
- f. It will lead to cost savings owing to more focused operational efforts, rationalization, standardization and simplification of business processes, elimination of duplication and rationalization of administrative expenses.
- g. It will help in achieving consolidation, greater integration and flexibility that will maximize overall shareholder value and improve the competitive position and negotiating power of the combined entity.
- h. It would enhance operational, organizational and financial efficiencies, and achieve economies of scale by pooling resources and ultimately enhancing overall shareholders' value;
- i. It would achieve synergies in costs (particularly in respect of customer relationship management and establishing sales and marketing channels), operations, stronger and wider capital and financial base for future growth;
- j. It would allow for an integrated and coordinated approach to investment strategies and more efficient allocation of capital and cash management;
- k. It would prevent the overlap of sales and marketing channels of the Transferor Company and the Transferee Company;

1. It would consolidate administrative and managerial functions and elimination of multiple record-keeping, inter alia, other expenditure and optimal utilization of resources by eliminating unnecessary duplication of activities and related costs thus resulting in reduced expenditure.

10. It is submitted that the New Equity Shares to be issued by the Applicant No.2/Transferee Company in lieu thereof shall also be issued in dematerialized form with the New Equity Shares being credited to the existing depository accounts of the members of the Applicant No.1/Transferor Company entitled thereto. Further, submitted that the New Equity Shares of the Applicant No.2/Transferee Company issued in terms of the Scheme shall, subject to applicable regulations, be listed and/or admitted to trading on the relevant stock exchange(s) where the existing Equity Shares of the Transferee Company are listed and/or admitted to trading. Approval of the Scheme by the shareholders of Applicant No.2/Transferee Company shall be deemed to be due compliance with the provisions of Sections 42, 62 and other relevant or applicable provisions of the Act and Rules made thereunder for the issue and allotment of the Equity shares by Applicant No.2/Transferee Company to the shareholders of Applicant No.1/Transferor Company as provided hereinabove. A copy of the valuation report along with the share exchange ratio by the Registered Valuer is attached with the application.

11. With respect to Applicant No.1/Transferor Company, it is stated that:-
 - a. There are three (3) equity shareholders and a certificate from the Chartered Accountant certifying the list of equity shareholders is annexed with the application. Hence, the

Company is seeking to hold and convene the meeting of the equity shareholders.

- b. There are 2 (Two) unsecured creditors with total value of debt being Rs. 62,74,875/- as of 31.01.2023 and a certificate from the Chartered Accountant certifying the list of unsecured creditors is annexed with the application. Hence, the Company is seeking to hold and convene the meeting of unsecured creditors.
- c. There is 1 (One) secured creditor as of 31.01.2023 with total debt of Rs.15,89,52,158/- and a certificate from the Chartered Accountant certifying the list of secured creditors is annexed with the application and the sole secured creditor has given his consent by way of affidavit for the proposed Scheme which is annexed with the application. Hence, the Company is seeking dispensation for holding the meeting of the secured creditor.

12. With respect to Applicant No.2/Transferee Company, it is stated that:-

- a. There are 1294 (One Thousand Two Hundred Ninety-Four) equity shareholders and a certificate from the Chartered Accountant certifying the list of equity shareholders is annexed with the application. Hence, the Company is seeking to hold and convene the meeting of the equity shareholders.
- b. There are 2 (Two) unsecured creditors as of 31.01.2023 with total value of debt of Rs. 36,20,121/- and a certificate from the Chartered Accountant certifying the number and value of debt of unsecured creditors is furnished and the said unsecured creditors have given their

consent by way of consent affidavits for the proposed Scheme. Hence, the Company is seeking dispensation for holding the meeting of the unsecured creditors.

- c. There is 1 (One) secured creditor as of 31.01.2023 amounting to Rs. 2,66,05,825/- and a certificate from the Chartered Accountant certifying the number and value of debt of secured creditor is furnished, and the said secured creditor has given his consent affidavit consenting to the Proposed Scheme. Hence, the company is seeking dispensation for holding the meeting of the secured creditor.

13. Taking into consideration the submissions and documents filed therewith, we issue the following directions with respect to convening or dispensing the meeting of Equity Shareholders, Secured/Unsecured Creditors as well as the issue of notices:

i. In relation to Applicant No.1/Transferor Company:

a. With respect to Equity Shareholders:

The meeting of the Equity Shareholders of the Company shall be convened on Friday, 9th June, 2023 at 1:00 P.M.

b. With respect to Unsecured Creditors:

The meeting of the Unsecured Creditors of the Company shall be convened on Friday, 9th June, 2023 at 2:00 P.M.

c. With respect to Secured Creditors:

Convening of the meeting of secured creditors of the Company is hereby dispensed with, in view of consent affidavit received from the sole secured

creditor.

ii. In relation to the Applicant Company No./2 Transferee Company:

a) With respect to Equity Shareholders:

The meeting of the Equity Shareholders of the Company shall be convened on Friday, 9th June, 2023 at 11:00 A.M.

b) With respect to Unsecured Creditors:

Convening of the meeting of unsecured creditors of the Company is hereby dispensed with, in view of the 100% consent affidavits received from the unsecured creditors.

c) With respect to Secured Creditors:

Convening of the meeting of secured creditors of the Company is hereby dispensed with, in view of the consent affidavit received from the sole secured creditor.

14. The quorum of the said meetings of both Applicant Companies shall be as prescribed in the Companies Act, 2013 and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
15. The venue of the meetings of the unsecured creditors and equity shareholders of Applicant No. 1/Transferor Company at A-3, Shree Ganesh Nagar, Chhani, Vadodara 390002 Gujarat and the venue of the meetings of the equity shareholders of the Applicant No. 2/Transferee Company at A-3, Second Floor, Shree Ganesh Nagar

Housing Society, Ramakaka Temple Road, Chhani, Vadodara, Gujarat, 391740.

16. Individual notice(s) convening the aforesaid meetings shall be separately sent by the concerned Applicant Companies to their respective stakeholders as aforementioned, by post/air-mail, courier/messenger/e-mail / hand delivery, at their particular last known addresses on record of the Applicant Companies, at least 30 (thirty) clear days in advance before the scheduled date of the meeting, indicating the day, date, place and the time as above-stated. The respective notices shall be sent together with a copy of the Scheme of Amalgamation, a copy of the explanatory statement disclosing necessary details and the prescribed form of proxy, as required to be sent under the Companies Act, 2013. Additionally, any other document, as may be prescribed under the Act or Rules, or which may be needed for instruction/elaboration, such as guidelines for the ballot, voting, proxy, etc. shall be also sent along with the corresponding notices. The notices shall be sent in reference to the list of the creditors appearing on the record of the Applicant Companies and the voting percentage of such creditors as per the list is to be decided after considering the amount of debt as on the date of voting, which is to be ensured by the Chairperson.
17. The Applicant Companies shall publish an advertisement with a clear gap of at least 30 days prior to/before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in “Free Press”, English daily and “Lokmitra”, Gujarati daily, both Vadodara Editions. The publication shall also indicate that the copies of the Scheme of Amalgamation, 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 to the concerned persons.

18. The respective statutory auditors of both the applicants certified individually that, there is compliance with Section 133 of the Companies Act, 2013 by the Applicant Companies. Copies of the certificate of the auditors of the applicant companies are attached with the application.
19. It is submitted that the notice to the National Stock Exchange of India Limited and Securities and Exchange Board of India in case of the Transferee Company /Applicant No. 2 be exempted as already the concerned Stock Exchange principally gave approval before circulating the present first stage application. A copy of the Letter issued by the NSE is marked as **Annexure "H"** to the application.
20. None of the companies are non-banking financial institutions and hence notice to RBI is not required. The activities of the applicant companies pursuant to the scheme shall not be violating the provisions of the Competition Act, 2002 and hence notice to the Competition Commission of India is also not required to be issued.
21. There is no investigation instituted or pending in relation to the Companies under Chapter XIV of the Act or under the corresponding provisions of Section 235 to 251 of the Companies Act, 1956. Further, no proceedings are pending under the Act or under the corresponding provisions of the Companies Act, 1956 against any of the Companies.
22. The Applicant Company No. 2 / Transferee Company in terms of section 230(2a) of the Companies Act, 2013 and the Observation Letter of

National Stock Exchange of India Limited, states that there are no ongoing adjudication & recovery proceedings, no prosecution initiated or other enforcement action taken against the Applicant Company no. 2/ Transferree Company, its promoters and directors. No winding up petition is pending against the Applicant Companies.

23. Mr. Mehul Rajput, Advocate is hereby appointed as a Chairperson of the aforesaid meetings, failing which Mr. Riddhesh Trivedi, Advocate shall act as a Chairperson and Mr. Gaurang Shah, Company Secretary shall act as the Scrutinizer of the aforesaid meetings and in respect of any adjournment thereof.
24. The Chairperson appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meetings referred to above.
25. The Chairperson shall file an affidavit not less than 7(seven) days before the date fixed for the holding of the meetings and report to this Tribunal that the directions regarding issuance of notices and advertisement of the meeting have been duly complied with as per Rule 12 of the Companies (CAA) Rules, 2016.
26. It is further ordered that the Chairperson appointed for the aforesaid meetings shall report to this Tribunal the result of the meeting in Form No. CAA.4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in from No. CAA.4 within seven days after the conclusion of the meeting.
27. Voting by proxy/authorized representative is permitted in physical mode provided that the proxy is in the prescribed form/authorization, duly signed by the person entitled to attend and vote at the aforesaid meeting, is

filed with the applicant companies not later than 48 hours before the said meeting, vide Rule 10 of the Companies (CAA) Rules, 2016 read with section 105 of the Act.

28. The number and value of debt of the Secured /Unsecured Creditors of the Applicant Companies, as the case may be, shall be in accordance with the entries in the books of accounts of both the Applicant Companies for Secured/Unsecured Creditors and where the entries in the records are disputed, the Chairperson of the meetings shall determine the value for the purpose(s) of the meetings.

29. In compliance with sub-section (5) of section 230 and Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016, the Applicant Companies shall send a notice in Form No. CAA. 3 along with explanatory statement and disclosures mentioned under Rule 6, to (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, Gujarat, Dadra and Nagar Haveli (iii) to the concerned Income Tax Department along with full details of assessing officer and PAN numbers of all the applicant companies (iv) to the concerned Office of the Official Liquidator in respect of the Applicant No.1/Transferor Company and (v) to the SEBI, stating that representations, if any, to be made by them be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed scheme of arrangement. The said notices shall be sent by registered post or by speed post or by courier or by hand delivery at the office of the aforesaid statutory authorities as required by sub-rule(2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid statutory authorities who desire to make any representation under Sub-section (5) of Section 230

shall send the same to this Tribunal with a copy of the same to the Applicant Companies within a period of 30 days from the date of such service.

30. The Application is allowed and disposed of in terms of the above directions.

S/d-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

S/d-

DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)

RAHUL SINGH
LRA