

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

C.P.(CAA)/21/MB-V/2024

Connected with

C.A.(CAA)/222/MB-V/2023

In the matter of
Companies Act, 2013

AND

In the matter of
Section 230-232 of the Companies Act, 2013
and other applicable provisions of the
Companies Act, 2013 read with the Companies
(Compromises, Arrangements and
Amalgamations) Rules, 2016;

In the matter of
Scheme of Arrangement between ARK
CHEMICALS PRIVATE LIMITED, the
Demerged Company with ARK SPECIALTY
CHEMICALS INDIA PRIVATE LIMITED,
the Resulting Company

ARK CHEMICALS PRIVATE LIMITED

CIN: U24100MH2007PTC175116

...Petitioner Company No.1

ARK SPECIALTY CHEMICALS INDIA PRIVATE

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LIMITED

CIN: U24290MH2022PTC377981

...Petitioner Company No.2

Order Dated: 15.05.2024

Coram:

Ms. Reeta Kohli : Member (Judicial)

Ms. Madhu Sinha : Member (Technical)

For the Applicants : Mr Ahmed M Chunawala, i/b Rajesh
Shah & Co, Advocates

ORDER

FINAL ORDER:

1. The Bench is conveyed by Physical hearing today.

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2. Heard the Learned Counsel for the Petitioner Companies. No objection has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.
3. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Arrangement between ARK CHEMICALS PRIVATE LIMITED, the Demerged Company with ARK SPECIALTY CHEMICALS INDIA PRIVATE LIMITED, the Resulting Company.
4. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions dated 21st July, 2023 which are annexed to the respective Company Scheme Petitions.
5. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in the Company Scheme Application No. 222 of 2023 of the Hon'ble Tribunal.
6. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per

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directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.

7. The Learned Counsel for the Petitioner Companies states that the Petitioner Company No. 1 is presently carrying on business of dealers in chemicals compounds and chemicals products of any nature and kind, and as wholesale and retail chemists, druggist, analytical chemist, importers, exporters, manufacturing of and dealers in heavy chemicals, acids, alkalis, petrochemicals, chemical compounds and elements of all kinds, solid, liquid and gaseous drugs, medicines, chemicals, fertilizers, whether mixed or granulated, manures and that the Petitioner Company No. 2 is presently carrying on the business of trader, dealer, distributor, importer, exporter, suppliers and manufacturer in all types of industrial and other chemicals, chemical compounds and chemical products of any nature and kind, chemist, druggist, analytical chemist, heavy chemicals, Silicon, acids, alkalis, petrochemicals, chemical compounds and element of all kinds, solid, liquid and gaseous drugs, medicines, chemicals.

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8. The Petitioner Companies submits that the Demerged Company and the Resulting Company has same set of shareholders.
9. The rationale for the Scheme of Arrangement of the Petitioner Companies is in the interest of the stakeholders of these companies and shall result in the following benefits:
- (a) The Demerged Company has two distinct business undertakings, namely.
 - i. DIVISION A Business Undertaking comprises of selling distribution of Commodity chemicals.
 - ii. DIVISION B Business Undertaking comprises of selling distribution of Specialty chemicals.
 - (b) The proposed Scheme is likely to result in the following benefits:
 - (i) The Demerger of the Division B Business (as defined below) of the Demerged Company and vesting of the same in the Resulting Company will enhance efficiencies and combine similar business interest into one corporate entity, resulting in operational synergies, simplification, focused management attention, administrative efficiency, organizational efficiency

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and optimum utilization of various resources being in the similar line of business, provide greater leveraging capability due to financial independence and facilitate strategic and/ or financial investment.

- (ii) The transfer of the Division B Business by the Demerged Company will enable the Demerged Company to focus on its other business undertakings and allow improved allocation of capital, operational efficiency, optimized cash flow and thus contribute to the overall growth prospects of the Demerged Company.
- (iii) The Scheme is expected to enable pooling of resources of the Demerged Company and the Resulting Company and thus result into more productive utilization of the resources and reduction of costs, which would be beneficial for all stakeholders
- (iv) The Scheme is in the interest of both the companies, their respective shareholders, creditors and employees.

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10. The Regional Director has filed his Report dated 12th March, 2024 inter-alia making the following observations in paragraphs 2 (a) to (j) which are reproduced hereunder:

Para	Observation by the Regional Director	Undertaking of the Petitioner Company/Rejoinder
2(a)	<p><i>That on examination of the report of the Registrar of Companies, Mumbai dated 06.03.2024 (Annexed as Annexure A-1) for Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and /or representation regarding the proposed scheme of Arrangement has been received against the Petitioner Companies. Further, Petitioner Companies has filed Financial Statements up to 31.03.2023.</i></p> <p>i. <i>That the ROC Mumbai in its report dated 06.03.2024 stated that No</i></p>	<p>So far as the observation in paragraph 2(a)(i) of the Report of the Regional Director is concerned, the Petitioner Companies submits that it is the facts of the case.</p>

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	<p style="text-align: center;"><i>Inquiry, Inspection, Investigations, Prosecutions and Complaints under Companies Act, 2013 are pending against the Petitioner Companies.</i></p> <p style="text-align: center;"><i>The Petitioner Companies may please be directed to submit reply on the above observations of jurisdictional ROCs.</i></p>	
2(b)	<p><i>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.</i></p>	<p>So far as the observation in paragraph 2 (b) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Transferee Company undertakes that in addition to compliance of AS-14 for accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 as applicable.</p>
2(c)	<p><i>The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an</i></p>	<p>So far as the observation in paragraph 2 (c) of the Report of the</p>

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	<p><i>affidavit to the extent that the Scheme enclosed with the Company Application and Company Petition are one and the same and there is no discrepancy, or no change is made.</i></p>	<p>Regional Director is concerned, the Petitioner Companies undertake that the Scheme enclosed to Company Application and Company Petition, are one and same and there is no discrepancy / any change / changes are made.</p>
2(d)	<p><i>The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities from dealing with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the Petitioner Companies concerned.</i></p>	<p>So far as the observation in paragraph 2 (d) of the Report of the Regional Director is concerned, the Petitioner Companies through their Counsel hereby confirm that notices have been served to the concerned authorities which are likely to be affected by Amalgamation or arrangement and that the decisions of the Sectorial authorities will be binding on Petitioner Companies.</p>
2(e)	<p><i>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of</i></p>	<p>So far as the observation in paragraph 2 (e) of the Report of the Regional Director is concerned, the</p>

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	<i>members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with 7 subsection (3) to (5) of Section 230 of the Act and the Minutes, thereof are duly placed before the Tribunal.</i>	Petitioner Companies undertake that this Scheme is approved by the requisite majority of members and creditors as per the order given by the NCLT.
2(f)	<i>It is submitted that the Petitioner/Demerged Company and Resulting Company be directed to place on the record of the list of assets to be demerged with complete details of its assets and valuation.</i>	So far as the observation in paragraph 2 (f) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the list of Assets and liabilities was given to the office of the Regional Director, Western Region to your office on 9 th January, 2024.
2(g)	<i>It is submitted that the Petitioner/Demerged Company and Resulting Company has stated that the scheme is in compliance of Section 2(19AA), in this regard, petitioner company may be directed to place on record that as to how this scheme is in compliance of Section 2(19AA) of the Income Tax Act, 1961.</i>	So far as the observation in paragraph 2 (g) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Petitioner Company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder and Accounting treatment of the scheme states how

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		the scheme is in compliance of Section 2(19AA) of the Income Tax Act, 1961
2(h)	<p><i>As per Definition of the Scheme.</i></p> <p><i>“Appointed Date” means 1st April, 2023 or such other date as may be agreed between the Board of Directors and approved by the National Company Law Tribunal.</i></p> <p><i>“Effective Date” means the last of the date on which the certified copies of the Orders of the National Company Law Tribunal, sanctioning this Scheme is filed with the Registrar of Companies, by ASCIPL and ACPL.</i></p> <p><i>“Record Date” means the date to be fixed by the Board of Directors of the Demerged Company in consultation with the Resulting Company for the purpose of issue and allotment of equity shares by the Resulting Company to the</i></p>	<p>So far as the observation in paragraph 2 (h) of the Report of the Regional Director is concerned, the Petitioner Companies through their Counsel submits that the Appointed Date is 1st April, 2023. The Counsel further submits that the Petitioner will comply with the requirements as to Appointed Date and clarified vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry.</p>

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	<p><i>shareholders of the Demerged Company.</i></p> <p><i>In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective, and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account of its inherent powers.</i></p> <p><i>The Petitioner Companies shall undertake to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs</i></p>	
2(i)	<p><i>Petitioner Companies shall undertake to comply with the directions of the Income Tax Department & GST Department, if</i></p>	<p>So far as the observation in paragraph 2(i) of the Report of the Regional Director is concerned, the</p>

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	<i>any.</i>	Petitioner Companies undertake to comply with the directions of the Income tax department & GST Authorities.
2(j)	<i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.</i>	So far as the observation in paragraph 2(j) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that there are no sectorial specific regulations applicable to the Petitioner Company and that they would comply with the concerned regulatory authority if so, required at any time

11. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 above.
12. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

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13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 21 of 2024 is made absolute in terms of clauses (a) to (c) of the said Company Scheme Petition
14. Petitioners are directed to file a copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry.
15. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.
16. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.

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17. The Appointed Date is 1st April, 2023.

18. Ordered Accordingly. Pronounced in open court.

Sd/-

Madhu Sinha

Member (Technical)

//VLM//

Sd/-

Reeta Kohli

Member (Judicial)