

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT- I**

C.P. (CAA)95/MB/2024

In

C.A. (CAA) 818/MB/2019

c/w

C.P. (CAA)92/MB/2024

In

C.A. (CAA) 817/MB/2019

In the matter of

The Companies Act, 2013

And

In the matter of

The Section 232 r/w Section 230 of

The Companies Act, 2013

read with other applicable provisions of The

Companies Act, 2013 and Companies

(Compromises, Arrangements and

Amalgamation) Rules, 2016

and

In the matter of

Scheme of Amalgamation

Count Fabri-Fluidomatics Ltd.

CIN: U29120MH1992PLC064869

... Transferor Company

Britacel Silicones Limited

CIN: U24230MH1982PLC026989

... Transferee Company

(Collectively referred to as 'the Petitioner Companies')

Order delivered on 18.07.2024

Coram:

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Shri Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)

Hon'ble Member (Judicial)

Appearances (through)

For the Petitioner : Mr. Ganesh Shetty, PCS
For the Regional Director : Mr. Bhagwati Prasad, Deputy
Director, Western Region,
Mumbai, MCA

ORDER

1. Heard the learned Authorized Representative for the Petitioner as well as the Authorized Representative of the Office of the Regional Director, Western Region, Mumbai. Neither any objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition, except otherwise stated thereunder.
2. The present scheme is a scheme of Amalgamation sought u/s 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013 amongst **Count Fabri-Fluidomatics Ltd** (Transferor Company) **Britacel Silicones Limited** (Transferee Company).
3. The Board of Directors of the Applicant companies i.e. Transferor Company & Transferee Companies have approved and amended the appointed date instead of earlier appointed date 01.04.2018 revised the appointed date 01.04.2022 in its meeting held on 25.01.2019 &

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01.03.2022. The bench allowed the appointed date to be 01.04.2022 and has taken on record the request of the applicant counsel, this is in compliance of the MCA circular F.No.7/12/2019/CL-1 General Circular 09/2019 dated 21.08.2019.

4. M/s Count Fabri-Fluidomatics Limited, the Transferor Company is engaged in the business of manufacture, purchase, sell or otherwise lease, import, export, hire, licence, use, dispose of operate, fabricate, construct, distribute, assemble, design, charters, acquire, market, recondition, work upon or otherwise deal in power packs, transformers, hydraulics machines, pneumatic machines, fabrications, fluidomatic machines and Engineering goods.
5. M/s Britacel Silicones Limited, formerly known as M/S ENPEE Pharma Limited, is the Transferee Company is engaged in the business To carry on business as manufactures, exporters, dealers, traders, wholesalers, retailers, processors and agents in full range of silicones, specialty Silicones and non- Silicones formulations polymers, emulsions and compounds for various silicones compositions to various Industry.
6. Rationale for the Scheme:

The business activities of the Transferor Company and the Transferee Company complement each other. Therefore, in order to achieve inter-alia economies of scale and efficiency, the merger of the companies is being undertaken.

The amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits:

1. Greater integration, greater financial strength and flexibility for the Transferee Company, which would result in maximising overall shareholder value and will improve the competitive position of the combined entity.
2. Improved organizational capability and leadership, arising from the pooling of resources to complete successfully in an increasingly competitive industry.
3. Greater leverage in operations planning and process optimization and enhanced Flexibility.
4. Cost savings are expected to flow from more focused operational efforts, rationalization, standardisation and simplification of business processes, administration, finance, accounts, legal, audit, compliances and other related functions, leading to elimination of duplication and rationalization of administrative expenses.
5. To enable the group to attract and retain talent in a cost-effective manner by consolidating its operations across geographical locations.
6. Simplification of group structure by eliminating duplication of work, multiple entities in similar business thus enabling focus on core competencies and unlocking of value through operating independence of each vertical.

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7. Upon the sanction of the Scheme of Amalgamation, Transferee Company shall, without any application or deed, issue and allot equity shares, credited as fully paid up, to the extent indicated below, to the members of Transferor Company holding fully paid-up equity shares in Transferor Company and whose names appear in the Register of members of Transferor Company, on the Effective Date or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of Transferor Company in the following proportion viz.:

"1332" fully paid up equity shares of Rs.1000/- each of Transferee Company shall be issued and allotted for even 50,000 equity shares of Rs.10/- each held in Transferor Company (hereinafter referred to as "New Equity Shares")

8. The Petitioners further submits that the present Company Petition is filed in consonance with Section 230-232 of the Companies Act, 2013 and in terms of order pronounced on 04.01.2024 in **C.A. (CAA) 818/MB/2019 with C.A. (CAA) 817/MB/2019** and have complied with all requirements as per directions of this Tribunal and they have made requisite filings to demonstrate compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements required under the Companies Act, 2013 and the rules made thereunder. The said undertaking is accepted.

9. The Regional Director has filed his Report dated 03.07.2024 making certain observations and the Petitioner Companies have undertaken/made following submission that: -
- i. The Petitioner Companies shall comply with the provisions of section 232(3)(i) of the Companies Act, 2013 regarding set-off of fees paid by the Transferor Companies against any fees payable by the Transferee Company on its authorized capital subsequent to the Scheme.
 - ii. The interest of the creditors shall be duly protected under scheme.
 - iii. The Scheme enclosed in the Company Application and Company Petition are one and the same and there is no discrepancy, or no change is made.
 - iv. The bench allowed the appointed date to be 01.04.2022 and has taken on record the request of the applicant counsel, this is in compliance of the MCA circular F.No.7/12/2019/CL-1 General Circular 09/2019 dated 21.08.2019.
 - v. The approval of the Scheme by this Tribunal may not deter the sectoral regulators to deal with any issues arising after giving effect to the Scheme and all issues arising shall be met and answered in accordance with law.
 - vi. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.

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10. Mr. Bhagwati Prasad from the Office of Regional Director (WR), Mumbai, appeared on the date of hearing and submitted that the above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.
11. The Official Liquidator has filed his Report dated 8th May, 2024 inter-alia stating that the affairs of the Transferor Company have been conducted in proper manner.
12. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of Income Tax Act, it shall be open to the Income tax authorities to take necessary action as possible under the Income Tax Law.
13. From the material on record, the Scheme annexed to the Company Scheme Petition appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. Since all the requisite statutory compliances have been fulfilled, C.P. (CAA)/ 92(MB) 2024 & C.P. (CAA)/ 95(MB) 2024 and is made absolute in terms of the prayer clauses of the said Company Scheme Petition.
14. The Scheme is sanctioned hereby, and the Appointed Date of the Scheme is fixed as 1st April, 2022. The Transferor Company shall be dissolved without winding up.

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15. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies electronically along with e-form INC-28 within 30 days from the date of receipt of the certified copy of Order by the Petitioner Companies. The Scheme will become effective on filing of the copy of this order with the concerned Registrar of Companies.
16. The Petitioner Companies to lodge a copy of this Order along with the Scheme duly authenticated/ certified by the Joint or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified Order from the Registry of this Tribunal.
17. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the Joint or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.
18. Ordered accordingly.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)