

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (CAA)/82/MB-IV/2024  
IN  
CA (CAA)/266/MB/2023**

*In the matter of  
the 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;*

*AND*

*In the matter of Arrangement  
Between*

**Choksey Chemicals Private Limited**  
*("Demerged Company")*

*And*

**Choksey Chemicals (India) Private  
Limited**  
*("Resulting Company")*

*And*

*their respective Shareholders*

Choksey Chemicals Private Limited ... First Petitioner Company/  
[CIN: U24100MH1943PTC019661]

Choksey Chemicals (India)  
Private Limited ... Second Petitioner Company/  
[CIN: U24299MH2023PTC396848]

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Order delivered on: **12.07.2024**

*Coram:*

Smt. Anu Jagmohan Singh  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances :*

For the Petitioner : CS Ashish O. Lalpuria a/w.  
CS Kala Agarwal, i/b M/s  
Manish Ghia & Associates,  
Practicing Company  
Secretary.

For the Regional Director (WR) : Mr. Tushar Wagh, Deputy  
Director.

**ORDER**

1. Heard the learned Counsel for the Petitioner Companies and the representative of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme nor has any party raised objection in the Petition.
2. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 ('Act') to the Scheme of Arrangement between **Choksey Chemicals Private Limited**, ("Demerged Company") and **Choksey Chemicals (India) Private Limited** ("Resulting Company") and their respective Shareholders ("Scheme").
3. The Petitioner Companies have approved the said Scheme of Arrangement by passing the **Board Resolutions dated 12<sup>th</sup> July, 2023**. The Appointed Date is fixed on **1<sup>st</sup> April, 2023**.

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4. The Petitioner Company 1 is engaged in the business of manufacturing of waterproofing chemicals and various construction chemicals in India. The Petitioner Company No. 2 is incorporated with an objective to engage in the business of manufacturing refining, importing, exporting, buying, selling and dealing and contracts for application in all Kinds of construction chemicals including sealants, waterproofing compounds, admixtures, floor coatings and such other products used by construction industry.
5. The **Rationale** of the Scheme is as under:  
As a part of an overall strategy for the optimum running, growth and development of the businesses of the Demerged Company, it is considered desirable to demerge its Demerged Undertaking, involving the business of manufacturing of waterproofing chemicals and various construction chemicals to the Resulting Company. The Scheme is expected, inter alia, to result in the following benefits:
- A. value unlocking for the businesses of the Demerged Company;
  - B. provide better flexibility in accessing capital and attract business specific partners and investors; and
  - C. focused management approach for pursuing revenue growth and expansion opportunities in the respective business verticals.
6. The Learned Authorized Representative appearing on behalf of the Petitioners states that the Petitioner Companies have been filed in consonance with the **Order dated 1<sup>st</sup> March,**

**2024** passed in the Company Scheme Application No. CA (CAA)/266/MB-IV/2023 of this Bench. Further, the Petitioner Companies have complied with all requirements as per directions of the Tribunal, and they have filed necessary affidavits of compliance before the Tribunal.

7. The Regional Director has filed a Report dated **12<sup>th</sup> June, 2024** praying that this Tribunal may pass such orders, as it thinks fit, save and except as stated in paragraphs. In response to the observation made by the Regional Director, the Petitioner Companies have also given necessary undertakings and clarification vide their rejoinder affidavit dated **15<sup>th</sup> June, 2024**. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:-

<b>Sr. No</b>	<b>RD Report</b>	<b>Response of the Petitioner Companies</b>
2 (a)	<i>That on examination of the report of the Registrar of Companies, Mumbai dated 16.05.2024 (Annexed as Annexure A-1)) for Petitioner Companies fall within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and /or representation regarding proposed scheme of Arrangement has been received against the Petitioner Companies.</i>	

	<p><i>Further, the petitioner companies have filed Financial Statements up to 31.03.2023 further observations in ROC report are as under: -</i></p> <p><i>i. That the ROC Mumbai in his report dated 16.05.2024 has stated that no Inquiry, inspection, investigation, prosecutions, Technical Scrutiny, Complaints under Companies Act, 2013 is pending against the petitioner companies.</i></p> <p><b><i>ii. Interest of the Creditors should be protected.</i></b></p>	<p>(a) Apropos observation of ROC made in paragraph 2 (a) (i) of the report of Regional Director is concerned, the Petitioner Companies submits that the same is self-explanatory and do not require any explanation.</p> <p>(b) Apropos observation of ROC made in paragraph 2 (a) (ii) (a) is concerned, the interest of creditors shall be protected at all times;</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>Apropos observation made in paragraph 2 (b) of the report of Regional Director is concerned, the Petitioner Companies undertakes to comply with AS-14 or IND AS-103 and such applicable accounting standards for Amalgamation and as per other applicable provisions of the Companies Act, 2013 while passing necessary entries in connection with the Scheme including AS-5 or IND AS-8 as applicable.</p>

2(c)	<i>The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed with the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.</i>	Apropos observation made in paragraph 2 (c) of the Report of the Regional Director is concerned, the Petitioner Companies submits that Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one and the same and there is no discrepancy or deviation.
2(d)	<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>	Apropos observation made in paragraph 2 (d) of the report of Regional Director is concerned, the Petitioner Companies submits that notices were served upon the concerned regulatory authorities in accordance with the provisions of section 230(5) of the Companies Act, 2013. The Petitioners further submits that approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities shall be binding on the Petitioner Companies subject to right of appeal, if available.
2(e)	<i>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite</i>	Apropos observation made in paragraph 2 (e) of the report of Regional Director is concerned, the Petitioner

	<p><i>majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with 7 sub section (3) to (5) of Section 230 of the Act and the Minutes, thereof are duly placed before the Tribunal.</i></p>	<p>Companies states that the meetings of members and creditors were dispensed with by the Hon'ble Tribunal vide its Order dated 1st March, 2024. Therefore, the requirement of holding the meetings and furnishing the minutes thereof are not applicable in the present matter.</p>
2(f)	<p><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></p>	<p>Apropos observation made in paragraph 2 (f) of the report of Regional Director is concerned the Petitioner Companies submits the scheme is in compliance with section 2 (19-AA) of the Income Tax Act, 1961. A copy of the certificate issued by the Auditors confirming that the Scheme is in compliance with section 2 (19-AA) of the Income Tax Act, 1961 is annexed as <b>Annexure A</b> to the affidavit in rejoinder.</p>
2(g)	<p><b>As per Definition of the Scheme,</b></p> <p><b>"Appointed Date"</b> the opening business hours of 1st April 2023; <b>"Effective Date"</b> means the date on which the last of the conditions specified in Clause 18 (Conditions</p>	<p>Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2 (g) of his report concerned, the Petitioners Companies confirms that the definition "Appointed Date" means 1st April, 2023. Further, Clause 1.1 of the Scheme specifies that the</p>

<p><i>Precedent) of this Scheme are complied with. Reference in this Scheme to the date of "coming into effect of this Scheme" or "effectiveness of this Scheme" or "effect of this Scheme" or upon the Scheme becoming effective" shall mean the Effective Date;</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>	<p>appointed date shall be 1st day of April, 2023. Further, the Petitioners confirms that the "Effective Date" means the date on which certified copies of the Order(s) of the Tribunal are filed with the Registrar of Companies, Maharashtra, Mumbai by the Petitioner Companies. The Petitioner Companies are in compliance with the circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>
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2(h)	<i>Petitioner Companies shall undertake to comply with the directions of the Income Tax Department &amp; GST Department, if any.</i>	Apropos observation made in paragraph 2 (h) of the report of Regional Director is concerned, the Petitioner Companies undertakes to ensure compliance with the directions of Income Tax Department & GST Department, if any in accordance with the law
2(i)	<i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.</i>	Apropos observation of the Regional Director, Western Region, Mumbai made in paragraph 2(i) of the report of Regional Director concerned, the petitioner Companies hereby undertakes to comply with the directions of the concerned sectoral Regulatory, as applicable, from time to time as may be required.
2(j)	<i>Petitioner Company proposed at clause 9 of the scheme for issue of Compulsory Convertible Debenture (CCDs)of the resulting company which is as follows: Immediately upon Part II of the Scheme coming into effect and subject to the provisions of this Scheme, the Resulting Company shall, without any further application, act, deed,</i>	Apropos observation made in paragraph 2 (j) of the report of Regional Director is concerned, the Petitioner Companies undertakes to comply with the applicable provisions of Companies Act, 2013

*consent, acts, instrument or deed, issue and allot, on a proportionate basis to the CCD holders of the Demerged company, whose name is recorded in the register of CCD holders of the Demerged Company as on the Record Date, as under:*

*The Resulting Company shall issue and allot, on a proportionate basis to the CCD holders of the Demerged Company, whose name is recorded in the register of debenture holders of Demerged Company as on the Record Date, 1,804 (One thousand Eight Hundred Four only) fully paid up 0.0001 % Compulsorily Convertible Debentures of INR 1,000 (Indian Rupees One Thousand Only) each of the Resulting Company, credited as fully paid up for every 1 (One) Compulsorily Convertible Debenture of INR 1,000 (Indian Rupees One Thousand Only) each of the Demerged Company.*

*In this regard, Petitioner Companies shall undertake to comply with the*

	<i>provisions of the Companies Act, 2013.</i>	
2(k)	<p><i>Petitioner Company proposed at clause 10 of the scheme for increase in authorised capital of the resulting company which is as follows :-</i></p> <p><i>Upon the Scheme becoming effective but prior to the issue of New Equity Shares by the Resulting Company, the authorised share capital of the Resulting Company shall stand altered, reclassified and increased from INR 100,000 (Indian Rupees One Lac Only) divided into 10,000 (Ten Thousand) Equity shares of INR 10 (India Rupees Ten Only) each to INR 1,00,00,000 (Indian Rupees One Crore Only) divided into 10,000 (Ten Thousand) Equity shares of INR 1,000 (Indian Rupees One Thousand Only) each by addition of 9900 (Nine Thousand Nine Hundred) Equity shares of INR 1,000 (Indian Rupees One Thousand Only) each, by filing the requisite forms along with the applicable registration fees and stamp</i></p>	<p>Apropos observation made in paragraph 2 (k) of the report of Regional Director is concerned, the Petitioner Companies undertakes to comply with the applicable provisions of Companies Act, 2013 and would pay the necessary ROC fees and Stamp Duty and shall file the requisite forms with the ROC.</p>

*duty; payable thereon with the Appropriate Authorities and no separate procedure shall be required to be followed under the Act. Consequently, the existing capital clause 5 of the Memorandum of Association of the resulting Company shall without any act, instrument or deed be and stand altered, modified and amended and be replaced by the following clause:*

*The share capital of the Company is INR 1,00,00,000 (Indian Rupees One Crore Only) divided into 10,000 (Ten Thousand) Equity shares of INR 1,000 (Indian Rupees One Thousand Only) each.*

*In this regard, Petitioner Companies shall undertake to comply with provisions of section 13, 61, 64 and other applicable provisions of the Companies Act, 2013. In this regard, the Resulting Company shall pay the requisite stamp duty and ROC fees and shall file the E-forms along with amended copy of MOA.*

2(l)	<p><i>It is observed from financial statements of Petitioner Companies as on 31.03.2023 that the Petitioner Companies has issued shares at Security Premium and collected total premium as follows:</i></p>		<p>Apropos observation made in paragraph 2 (l) of the report of Regional Director is concerned, it is submitted that the Petitioner Company 1 has issued shares at Premium and has filed all return of allotments with the Registrar of Companies.</p>
	<p><i>Sr . No.</i></p>	<p><i>Name of Company</i></p>	<p>Details thereof are annexed as <b>Annexure B</b> to the affidavit in Rejoinder.</p>
1	<p><i>Choksey Chemicals Private Limited</i></p>	<p><i>Total Amount of Securities Premium Collected</i> Rs. 61.16 lakhs</p>	<p>The Petitioner Companies also confirm that the Petitioner Company 1 is in compliance of Section 68 of Income Tax Act, 1961 for</p>
<p><i>The company may clarify the status of filling of return of allotment.</i></p> <p><i>Further, the Petitioner Companies shall also satisfy the Hon'ble Bench about assessment of share capital u/s. 68 of the Income Tax Act, 1961, for issue of shares at fair value in order to confirm compliance of Income Tax Laws or Hon'ble NCLT may seek the comments from Income Tax department, if any, on this issue as matter falls under domain of Income Tax Department.</i></p>		<p>issue of shares at fair value and there are no pending assessments.</p>	

2(m)	<i>It is observed from Financial Statements as on 31.03.2023 of Petitioner Companies, details of shareholding is as follows:</i>				Apropos observation made in paragraph 2 (m) of the report of Regional Director is concerned, the Petitioner Companies submits that Form BEN -2 has been filed by the Petitioner Companies vide SRN F96162482 on 14 <sup>th</sup> June, 2024 in compliance with Section 90 of the Companies Act, 2013 read with Companies (Significant Beneficial Owners) Amendment Rules, 2019. Copies of Form BEN-2 together with e-filing challans are annexed as <b>Annexure C</b> to the Rejoinder.
	<b>Peti tion Co mp any</b>	<b>Na me of Sh are hol der</b>	<b>S h a r e s h e l d</b>	<b>% of sh are s h e l d</b>	<b>Remar k</b>
1	Cho kse y Che mic als (Indi a) Priv ate Limi ted	Cho kse y Che mic als Priv ate Lim ited	E q ui ty S h a r e s	100 %	No Form BEN-2 has been filed by the Petitio ner Compa nies as per record s availa ble at MCA21 Portal
<i>No Form BEN-2 has been filed by any of the Petitioner Companies as per records available at MCA21 Portal, hence Petitioner Companies</i>					

<p><i>shall undertake to comply with the provisions of section 90 of Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder and to file Form BEN-2 for declaring name of the significant beneficial owner with concerned ROC.</i></p>	
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8. That the Authorised Representative for the Regional Director appeared and submitted that their observations/ objections have been satisfactorily explained by the Petitioner Company and are acceptable to them. Hence, the Regional Director does not have any further objection to the proposed Scheme Company Petition.
9. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
10. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing *C.P.(CAA)/82(MB)/2024* is made absolute in terms of the prayer clauses of the said Company Scheme Petition. Consequently, the present Scheme of Demerger of the Petitioner Companies and their respective Shareholders are hereby sanctioned and approved.
11. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with

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e-form INC-28 within 30 days from the date of receipt of the Order.

12. The Petitioner Companies to lodge a copy of this Order along with the Scheme duly authenticated/certified by the Joint Registrar or the Assistant Registrar, as the case may be, of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified Order.
13. All concerned Regulatory Authorities to act on a copy of this Order duly certified by the Registrar of Tribunal, along with a copy of the Scheme.
14. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.
15. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
16. Ordered Accordingly. *C.P.(CAA)/82/2024* is **allowed** and disposed-off.

Sd/-

**Anu Jagmohan Singh**  
**Member (Technical)**

/Dubey/

Sd/-

**Kishore Vemulapalli**  
**Member (Judicial)**