

IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, COURT No-I

KOLKATA

Company Application (CAA) No. 29/ KB /2024

Application under section 230 read with section 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions of law.

In the matter of:

A Scheme of Amalgamation(First Motion):

ABHISHEK AGRO INDUSTRIES PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act,1956(CIN: U74899WB1983PTC266154) and having its Registered Office at 8/1, HARDUTARI CHAMARIA ROAD, HOWRAH - 711101 in the State of West Bengal .

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

- And -

In the Matter of:

ABDOS CONSUMER CARE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 (CIN: U24241WB1995PLC068554) and having its Registered Office at 13A, GOVT PLACE (EAST), 2ND FLOOR KOLKATA - 700069 in the State of West Bengal.

***** Transferee Company /Applicant No.2.

-And-

In the matter of:

1. ABHISHEK AGRO INDUSTRIES PRIVATE LIMITED;
2. ABDOS CONSUMER CARE LIMITED;

.... **APPLICANTS**

Date of pronouncing the order:23/04/2024

Coram:

Rohit Kapoor : **Member (Judicial)**
Balraj Joshi : **Member (Technical)**

For the Applicants : 1. Ms. Manju Bhuteria, Advocate
2. Ms. Aisha Amin, Advocate

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 (“Act”) for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Amalgamation of Abhishek Agro Industries Private Limited Transferor Company / Applicant No.1 with Abdos Consumer Care Limited - Transferee Company / Applicant No 2, from the **Appointed Date 01st April, 2023** as defined in the Scheme, in the manner and on the terms and conditions stated in the said **Scheme of Amalgamation**(“Scheme”). A copy of the said Scheme is annexed to the Company Application marked – **Annexure – E** in VOL I at Page No 141 to 167.
2. It is submitted by Ld. counsel appearing for the Applicant(s) that as per the Scheme the **Appointed Date is 01st April, 2023**.
3. It is submitted by Ld. Counsel appearing for the Applicant(s) that **none** of the Applicant Companies involved in the Scheme are **NBFC** Company.
4. It is submitted by Ld. counsel appearing for the Applicant(s) that the Board of Directors of the Applicant Companies have at their respective meeting held on 27th December, 2023 have passed resolution adopting the proposed Scheme of Amalgamation . A copy of the Resolution passed by the Board of Directors of the Applicant Companies are all collectively annexed to the Company Application marked – **Annexure – F** in VOL I at Page No 168 to 171.

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5. It is submitted by Ld. counsel appearing for the Applicant(s) that the Valuation Report dated 20th December, 2023 recommending the Swap Ratio has been prepared by Mr. VISHAL GUPTA, having IBBI Regn. No.IBBI/RV/05/2019/12704 a Registered Valuer. A copy of the said Report is annexed to the Company Application marked – **Annexure – G** in VOL I at Page No 172 to 183.
6. It is submitted by Ld. counsel appearing for the Applicant(s) that the statutory auditors of the Applicant Companies have all by their certificate dated 28-12-2023 confirmed that the Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013 and Rules made there under. A copy of the said Certificate issued by Statutory Auditor of the Applicant Companies are all collectively annexed to the Company Application marked – **Annexure – J** in VOL II at Page No 297 to 300.
7. It is submitted by Ld. counsel appearing for the Applicant(s) that, the Applicant(s) have the following classes of shareholders and creditors:-

PARTICULARS	AS ON 30 TH NOVEMBER, 2023			
	EQUITY SHARE HOLDERS	PREFERENCE SHARE HOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
TRANSFEROR COMPANY / APPLICANT NO.1	11	NIL	NIL	NIL
TRANSFeree COMPANY / APPLICANT NO.2	13	NIL	1	29

8. It is submitted by Ld. counsel appearing for the Applicant(s) that, the Auditors Certificate , the Affidavit of Consents, the calculation of percentage of consents are as below :

	Nos	% of Consent	Annexure	Auditors Certificate Page no	Affidavit Of Consent Page no
EQUITY SHAREHOLDERS					
TRANSFEROR COMPANY / APPLICANT NO.1	11	100	H	VOL II 184	VOL III 185 TO 227
TRANSFeree COMPANY / APPLICANT NO.2	13	100	H1	VOL II 228	VOL II 229 TO 278

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	Nos	% of Consent	Annexure	Auditors Certificate Page no	Affidavit Of Consent Page no
SECURED CREDITORS					
TRANSFEROR COMPANY / APPLICANT NO.1	NIL	N.A	I	VOL II PAGE NO 279	N.A
TRANSFEREE COMPANY / APPLICANT NO.2	1	100	II	VOL II PAGE NO 280	VOL II PAGE NO 284 TO 288
UNSECURED CREDITORS					
TRANSFEROR COMPANY / APPLICANT NO.1	NIL	N.A	I	VOL II PAGE NO 279	N.A
TRANSFEREE COMPANY / APPLICANT NO.2 **	29	94.78	II	VOL II PAGE NO 280 TO 281	VOL II PAGE NO 284 TO 288
NOTE : ** % Calculation at page No 282 to 283					

9. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant(s), we allow the instant application and make the following orders:-

a. Meetings dispensed:

Equity Shareholders

Meeting of Equity Shareholders of the Applicant Companies for considering the Scheme are dispensed with in view of shareholder representing 100% in value of shares of Applicant Companies having respectively given their consent to the Scheme by way of affidavits without seeking modification(s).

Secured Creditors

Meeting of Secured Creditors of the Applicant No 2 for considering the Scheme are dispensed with in view of consent by 100% in value of Secured Creditors of Applicant No 2 having respectively given their consent to the Scheme by way of affidavits.

Unsecured Creditors

Meeting of Unsecured Creditors of the Applicant No 2 for considering the Scheme are dispensed with in view of consent by 94.78% in value of

Unsecured Creditors of Applicant No 2 having respectively given their consent to the Scheme by way of affidavits

b. No requirement of Meetings

Secured Creditors

No requirement of Meeting of Secured Creditors of Applicant No 1 – NIL
Creditors duly verified by auditors certificate.

Unsecured Creditors

No requirement of Meeting of Unsecured Creditors of Applicant No 1 – NIL
Creditors duly verified by auditors certificate.

c. Meetings to be held

No meeting is required to be held

10. Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall also be served on the :

- a. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;
- b. Registrar of Companies , West Bengal ,Kolkata
- c. Official Liquidator; High Court Calcutta
- d. Income Tax Department having jurisdiction over the Applicant(s)

These notices shall be sent by hand delivery through special messenger or by Speed post/ Regd. AD & also by email within two weeks from the date of receiving this order. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Authorized Representative of the said Applicant(s). If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme of Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

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11. The Applicant(s) to file an affidavit proving service of notice including that of Email service and compliance of all directions contained herein alongwith the connected Petition.
12. The application being **Company Application CA (CAA) No. 29 / KB / 2024** is disposed of accordingly.
13. Certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

Balraj Joshi
Member(Technical)

Rohit Kapoor
Member(Judicial)

Signed on this, the 23rd Day of April, 2024.

BD