IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No. 307

CA(CAA)/49(AHM)2023

Order under Section 230-232 of Co Act, 2013

In The Matter Of:

Sodium Metal Pvt. Ltd. **.....Applicant**
Kalpsutra Chemical Pvt. Ltd.

.....Respondent

Order delivered on: 02/04/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT- I, AHMEDABAD

CA(CAA)/49 (AHM)2023

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

In the matter of **Scheme of Merger by Absorption**

SODIUM METAL PRIVATE LIMITED
CIN NO: U24231GJ1970PTC001715
Having its registered office at
21, GIDC Chemical Complex,
Nandesari, Baroda, Gujarart-391340

... Applicant / Transferor Company

KALPSUTRA CHEMICAL PRIVATE LIMITED
CIN NO: U26102MH1986PTC041296
Having its registered office at
NR Oils, 312/313, Parardise
Complex, Sayajigunj, Vadodara,
Gujarart-390020

... Applicant/Transferee Company
and

Their Respective Shareholders and Creditors

Order Pronounced on 02.04.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)
SH. SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For Applicant(s): Mr. Ravi Pahwa, Advocate a. w. Mr. Nipun Singhvi, Advocate, Mr. Mayur Jugtawat, Advocate, Mr. Rahul Bhavsar, Advocate

O R D E R

Per: Bench.

1. This is a Joint Company Application Viz., CA(CAA)/49(AHM)/2023 filed by the Applicant Companies, namely **Sodium Metal Private Limited** (for brevity "Transferor Company"), **Kalpsutra Chemical Private Limited** (for brevity "Transferee Company") under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 in relation to the Scheme of Merger by Absorption (hereinafter referred to as the "SCHEME") proposed by the Applicant Companies. The said Scheme is also appended as ***"Exhibit-E"*** to the typed set filed along with the Application.

2. The rationale of the Scheme of Merger by Absorption stated in the proposed Scheme is as under: -

2.1 The Transferor Company and the Transferee Company are under the same control and management and thereto the business activities are similar and co-generic. The amalgamation of the Transferor Company with the Transferee Company would, inter alia, have the following benefits:

- Given that the Transferor Company and the Transferee are engaged in identical businesses, the amalgamation will enable the promoters of the Transferor Company and the Transferee Company to consolidate the businesses, reduce the number of companies under the same management and thus lead to reduction in administration efforts.
- It would be advantageous to combine the activities and operations of all the Transferor Company and the Transferee Company into a single company for leveraging operational resources and for the benefit of lesser compliance obligations.

- The Scheme will result in cost saving from more focused operational efforts, rationalization, standardization and simplification of business processes, and the elimination of duplication, and rationalization of administrative expenses and is expected to result in administrative efficiency for the Transferee Company.
- Greater ability of the Transferee company to raise financial resources, either as equity or debt, based on combined financials
- Greater efficiency in cash management of the Transferee Company, and unfettered access to cash flows generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholders value.
- Greater integration and greater financial strength and flexibility for the Transferee company which would result in maximizing overall shareholders value and

will improve the competitive position of the combined entity.

3. The Applicant Companies in this Company Application has sought for the following reliefs;

	EQUITY SHAREHOLDERS MEETING	PREFERNCE SHAREHOLDERS MEETING	SECURED CREDITORS MEETING	UNSECURED CREDITORS MEETING
TRANSFEROR COMPANY	**To order Meeting**	**N.A**	**To dispense with**	**To order Meeting**
TRANSFEREE COMPANY	**To order Meeting**	**N.A**	**To dispense with**	**To order Meeting**

4. From the certificate of incorporation filed, it is evident that the Transferor Company is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 31.03.1970 with the Registrar of Companies, Gujarat, under the name and style of "**Sodium Metal Private Limited** ".

5. The authorized, issued subscribed and paid-up share capital of the Transferor Company as on 31.03.2023 is as under:

AUTHORIZED SHARE CAPITAL	AMOUNT (IN RS.)
1,45,000 Equity Shares of Rs.100/- each and 5,000 Redeemable cumulative preferences of Rs. 100/- each	1,50,00,000
Total	**1,50,00,000**
ISSUED, SUBSCRIBED AND PAID-UP SHARE CAPITAL	**AMOUNT (IN RS.)**
1,40,000 Equity Shares of Rs.100/- each	1,40,00,000
Total	**1,40,00,000**

6. From the certificate of incorporation filed, it is evident that the Transferee Company is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 20.10.1986 with the Registrar of Companies, Gujarat, under the name and style of "**Allwin Fibreglass & Plastics Private Limited** ". The name of the Company then changed to "**Kalpsutra Chemicals Private Limited"** with effect from 06.08.2004**.**

7. The authorized, issued subscribed and paid-up share capital of the Transferee Company as on 31.03.2023 is as under:

AUTHORIZED SHARE CAPITAL	AMOUNT (IN RS.)
300,000 Equity Shares of Rs.10/- each and 30,000 6% Preference Shares of Rs. 100/-	60,00,000
Total	**60,00,000**
ISSUED, SUBSCRIBED AND PAID-UP SHARE CAPITAL	**AMOUNT (IN RS.)**
2,11,004 Equity Shares of Rs. 10/-each	21,10,040
Total	**21,10,040**

8. Affidavit in support of the above application was sworn on behalf of the applicant Companies and has been filed by Mr. Ketan Kapasi for the Transferor Company, and by one Mr. Ashokkumar Vasantlal Shah for the Transferee Company along with the application and it is also represented that the Registered office of the Transferor Company is situated at 21, GIDC Chemical Complex Nandesari Baroda Gujarat- 391340 and the Registered office of the Transferee Company is situated at NR Oils, 312/313, Paradise Complex Sayajigunj, Vadodara, Gujarat- 390020 within the territorial jurisdiction of the Bench of this Tribunal and falling within the purview of Registrar of Companies, Gujarat.

9. **Sodium Metal Private Limited**

TRANSFEROR COMPANY

i. There are **4(Four)** Equity Shareholders and the certificate issued by the Chartered Accountant to this effect is placed at **Annexure A-4 Colly** of the Affidavit dated 06.03.2024. The Applicant has sought for convening, holding, and conducting of meeting.

ii. There are **Nil** Preferential Shareholders and hence the necessity of convening, holding, and conducting the meeting does not arise.

iii. There are **Nil** Secured Creditors and the certificate issued by the Chartered Accountant to this effect is placed at **Annexure A-4 Colly** of the Affidavit dated 06.03.2024. Hence the necessity of convening, holding and conducting the meeting does not arise.

iv. There are **240(Two hundred and Forty)** Unsecured Creditors having an outstanding amount of Rs. **33,43,74,579** and the certificate issued by the Chartered Accountant to this effect is placed at

Annexure A-4 Colly of the Affidavit dated 06.03.2024. Applicant has sought for convening, holding and conducting of meeting.

10. **Kalpsutra Chemical Private Limited**

TRANSFEREE COMPANY

v. There are **2(Two)** Equity Shareholders and the certificate issued by the Chartered Accountant to this effect is placed at **Annexure A-4 Colly** of the Affidavit dated 06.03.2024. The Applicant has sought for convening, holding, and conducting of meeting.

vi. There are **Nil** Preferential Shareholders and hence the necessity of convening, holding and conducting the meeting does not arise.

vii. There are **Nil** Secured Creditors and the certificate issued by the Chartered Accountant to this effect is placed at **Annexure A-4 Colly** of the Affidavit dated 06.03.2024. Hence the necessity of convening, holding and conducting the meeting does not arise.

viii. There are **92(Ninety-two)** Unsecured Creditors having an outstanding amount of Rs. **74,83,49,554** and the certificate issued by the Chartered Accountant to this effect is placed at **Annexure A-4 Colly** of the Affidavit dated 06.03.2024. The Applicant has sought for convening, holding and conducting of meeting.

11. We have perused the application and the connected documents/papers filed therewith including the Scheme contemplated by the applicant companies.

12. The Applicant Companies has filed its Memorandum and Articles of Association *inter alia* delineating its object clauses as well as their last available Audited Annual Accounts for the year ended **31.03.2023** and Provisional/ Unaudited Financial Statements for the period ended on **30.06.2023**.

13. The Board of Directors of the Applicant Companies vide meeting held on **27th March 2024** for all the Applicant Companies had unanimously approved the proposed Scheme as contemplated above and copies of resolutions

passed thereon have been placed on record by the applicant companies.

14. The Statutory Auditors of the Transferor and Transferee Companies have examined the Scheme in terms of provisions of Sec. 232 of the Companies Act, 2013 and the rules made thereunder and certified that the Accounting Standards are in compliance with Section 133 of the Companies Act, 2013. The said Certificates of the Statutory Auditors in this regard are placed at ***Annexure-A5*** of Both Companies placed at the Affidavit dated 06.03.2024.

15. The copy of the valuation report dated 24.03.2023 by the Registered Valuer is annexed at ***Exhibit-K*** with the Company Application.

16. Taking into consideration the application filed by the Applicant Company and the documents filed therewith as well as the position of law, this Tribunal proposes to issue the following directions: -

A. IN RELATION TO THE TRANSFEROR COMPANY:

i. **With respect to Equity shareholders:**

A meeting of the Equity Shareholders of the Transferor Company is directed to be held on **17/05/2024 at 10:00 AM** at the Registered Office address of the Transferee Company or through video conferencing or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices, for the purpose of considering and if thought fit, approving with or without modification, the Scheme of Merger.

ii. **With respect to Preferential shareholders:**

Since it is represented by the Transferor Company that there are **NIL** Preferential shareholders in the Company, the necessity of Convening, holding and conducting a meeting ***does not arise.***

iii. **With respect to Secured Creditors:**

Since it is represented by the Transferor Company that there are **NIL** Secured Creditors in the Company,

the necessity of Convening, holding and conducting a meeting ***does not arise.***

iv. **With respect to Unsecured Creditors:**

A meeting of the Unsecured Creditors of the Transferor Company is directed to be held on **17/05/2024 at 10:30 AM** at the Registered Office address of the Transferee Company or through video conferencing or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices, for the purpose of considering and if thought fit, approving with or without modification, the Scheme of Merger.

B. IN RELATION TO THE TRANSFEREE COMPANY:

i. With respect to Equity shareholders:

A meeting of the Equity Shareholder of the Transferee Company is directed to be held on **17/05/2024 at 11:00 AM** at the Registered Office address of the Transferor Company or through video conferencing or if not convenient at any other suitable place for which

prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices, for the purpose of considering and if thought fit, approving with or without modification, the Scheme of Merger.

ii. **With respect to Preferential shareholders:**

Since it is represented by the Transferee Company that there are **NIL** Preferential shareholders in the Company, the necessity of Convening, holding and conducting a meeting ***does not arise.***

iii. **With respect to Secured Creditors:**

Since it is represented by the Transferee Company that there are **NIL** Secured Creditors in the Company, the necessity of Convening, holding and conducting a meeting ***does not arise.***

iv. **With respect to Unsecured Creditors:**

A meeting of the Unsecured Creditors of the Transferee Company is directed to be held on **17/05/2024 at 12:00 hours** at the Registered Office address of the Transferee Company or through video conferencing or

if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices, for the purpose of considering and if thought fit, approving with or without modification, the Scheme of Merger.

17. The quorum for the meeting of the Applicant Transferor Company and Transferee Company shall be as per section 103 of the Companies Act, 2013 as follows;

For the Transferor Company:

S.No	Class	Quorum
1	Equity Shareholders	2
2	Unsecured Creditors	15

For Transferee Company:

S.No	Class	Quorum
1	Equity Shareholders	1
2	Unsecured Creditors	10

18. The Chairperson appointed for the above-mentioned meetings shall be **Mr. Anil Kumar (8129270036)**. The Fee of the Chairperson for the aforesaid meeting shall be

Rs. 75,000/- (Rupees Seventy-Five Thousand only) in addition to meeting his incidental expenses. The Chairperson(s) will file the reports of the meeting within a week from the date of holding of the above-said meetings.

19. **Mr. Vinit Nagar, PCS (9727247477)** is appointed as a Scrutinizer and would be entitled to a fee of ***Rs. 35,000/- (Rupees Thirty-Five Thousand Only)*** for services in addition to meeting incidental expenses.

20. In case the quorum as noted above, for the above meeting of the Applicant Companies, is not present at the meeting, then the meeting shall be adjourned by half an hour, and thereafter the person(s) present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum, the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the applicant companies at least 48 hours before the

meeting. The Chairperson appointed herein along with the Scrutinizer shall ensure that the proxy registers are properly maintained. However, every endeavour should be made by the applicant companies to attain at least the quorum fixed, if not more in relation to approval of the scheme.

21. The meetings shall be conducted as per the applicable procedure prescribed under the MCA Circular MCA General Circular Nos. (i) 20/2020 dated 5th May, 2020 (AGM Circular), (ii) 14/2020, dated 08.04.2020 (EGM Circular-I) and (iii) 17/2020 dated 13.04.2020 (EGM Circular-II);

22. That individual notices of the above said meetings shall be sent by the Applicant Company through registered post or speed post or through courier or e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme, copy of explanatory statement, required to be sent under the

Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above any other documents as may be prescribed under the Act or rules may also be duly sent with the notice.

23. That the Applicant Company shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in the English Daily ***"Financial Express"(Vadodara)*** and ***"Sandesh" (Vadodara)*** in Vernacular stating the copies of Scheme, 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 respective Applicant Companies.

24. The Chairperson shall as aforestated be responsible for reporting the result of the meeting within a period of 3 days of the conclusion of the meeting with details of voting on the proposed scheme.

25. In compliance with sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, 2016, the Applicant companies shall individually send notice to the concerned **(i) Regional Director**, **MCA (ii) Registrar of Companies, Gujarat**, **(iii) Official Liquidator (for Transferor Company)**, **and (iv) the Income Tax Authorities, and** as well as **other Sectoral regulators** who may have a significant bearing on the operation of the applicant companies or the Scheme *per se* along with a copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

26. The Applicant Companies are required to serve notice pursuant to Section 230(5) of the Companies Act, 2013 to the regulatory authorities which are likely to be affected.

27. The applicant companies shall further furnish a copy of the Scheme free of charge within 1 day of any requisition

for the Scheme made by every creditor or member of the applicant companies entitled to attend the meetings as aforesaid.

28. The Authorized Representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

29. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.

30. The Registry and the Applicant is directed to communicate a copy of this order to the Chairperson and Scrutinizer, within three working days after the pronouncement of the order.

31. The Applications stand **allowed** on the aforesaid terms.

-SD-	**-SD-**
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Shubhanshu/LRA