

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

C.P. (CAA)/298/MB-I/2023

c/w

C.A. (CAA)/184/MB-I/2023

In the matter of

The Companies Act, 2013;

And

In the matter of

Sections 232 r/w Section 230 and other

applicable provisions of

The Companies Act, 2013 and Rules made

thereunder as in force from time to time;

And

In the matter of

Scheme of Merger

MPIPL Polyplas India Private Limited

CIN: U25200MH1988PTC050021

...Petitioner Company 1/
Transferor Company

Milton Exports Private Limited

CIN: U51900MH1989PTC052741

...Petitioner Company 2/
Transferee Company

(Hereinafter collectively referred to as “the Petitioner Companies”)

Order delivered on: 23.04.2024

Coram:

Shri. Prabhat Kumar

Hon’ble Member (Technical)

Justice V.G. Bisht (Retd.)

Hon’ble Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. (CAA) / 298 / MB-I / 2023

IN

C.A. (CAA) /184/ MB-I / 2023

Appearances:

For the Petitioner(s):

Mr. Nitin Gutka i/b ZADN &
Associates, Practicing Chartered
Accountants.

For the Regional Director:

Mr. Bhagwati Prasad, Additional
Director, for the Office of Regional
Director, Western Region.

ORDER

1. Heard the Representative 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 and nor has any party controverted any averments made in the Petition to the Scheme.
2. The sanction of the Tribunal is sought under Sections 232 r/w Section 230 and other relevant provisions of the Companies Act, 2013 (“**the Act**”) and the Rules framed thereunder for the Scheme of Merger of **MPIPL Polyplas India Private Limited** (‘Transferor Company’) with **Milton Exports Private Limited** (‘Transferee Company’) and their respective shareholders hereinafter referred as to “Scheme”).
3. The Representative for the Petitioner Companies submits that the Board of Directors of the Petitioner Companies in their respective Board Meetings held on 20th April, 2023 have approved the Scheme.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. (CAA) / 298 / MB-I / 2023

IN

C.A. (CAA) /184/ MB-I / 2023

4. The Petitioner Company 1 is presently engaged in the business of earning profit share in a partnership firm and Investment of surplus funds to earn interest income. The Petitioner Company 2 is presently earns income from renting godown and ancillary amenities provided in the course of renting such godown. Other activities include earning interest and dividend.
5. The rationale of the Scheme of Merger is summarised as follows:
 - a) Implementation of the Scheme shall result in consolidation of business resources and activities, integration of operations under a single unified entity, facilitating optimum utilization of assets and other resources for future growth, avoiding duplication of efforts and resources by economies of scale.
 - b) Both the companies have common shareholders with common management and control. The consolidation of the companies shall simplify the business structure by eliminating multiple entities and creating a single unified entity resulting in integration of operations and simplification of structure while the majority of shareholding remains within the same set of shareholder(s).
 - c) Combined entity would be able to effectively optimize the overall administrative and statutory compliances.
6. The Company Scheme Petitions is filed in consonance with Section 232 r/w Section 230 of the Companies Act, 2013 and in terms of the order dated 4th October, 2023 passed in C.A. (CAA) / 184 / MB-I / 2023 by this Tribunal and the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. (CAA) / 298 / MB-I / 2023

IN

C.A. (CAA) /184/ MB-I / 2023

necessary affidavits of compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made thereunder to give effect to the Scheme.

7. Pursuant to the Scheme the Transferee Company is proposing to issue shares to the shareholders of the Transferor Company as per the below ratio:-

a) *The equity shareholders of the Transferor Company, shall be issued and allotted 11 (Eleven) equity shares of Rs. 100/- (Hundred) each, credited as fully paid up, in the Transferee Company for every 100 (Hundred) equity shares of the face value Rs.100/- (Hundred) each held by them in the Transferor Company.*

b) *The preference shareholders of the Transferor Company shall be issued and allotted 2,62,534 (Two Lakh Sixty Two Thousand Five Hundred and Thirty-Four) 0% Non-Convertible Redeemable Preference Shares of Rs. 100/- (Hundred) each, credited as fully paid up, in the Transferee Company for 8,38,243 (Eight Lakh Thirty-Eight Thousand Two Hundred and Forty-Three) 0% Non-Convertible Redeemable Preference Shares of Rs.100/- (Hundred) each held by them in Transferor Company.*

8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 31st January, 2024 making certain observations and the Petitioner Companies have submitted / undertaken that:

a) The Petitioner Companies shall pass such accounting entries as may be necessary in connection with the Scheme of Merger to

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. (CAA) / 298 / MB-I / 2023

IN

C.A. (CAA) /184/ MB-I / 2023

comply with accounting standards AS-14 (IND AS-103) and any other applicable accounting standards including AS-5 (IND AS-8) to the extent applicable;

- b) The Petitioner Companies submits that the Appointed Date *i.e.* 1st April, 2023 has been clearly indicated in the Scheme in accordance with the provision of Section 232(6) of the Companies Act, 2013 and the scheme shall become operative from the appointed date. Further, the Petitioner Companies have complied with the requirements and clarification of general circular no. 09/2019 having F.No.7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs;
- c) The difference of fees and stamp duty on increasing the authorized capital after setting-off of the fee and stamp duty paid by the Transferor Company while giving effect to increase in the authorized share capital of the Transferee Company;
- d) Petitioner Companies submit that, the Transferee Company undertakes to comply with provisions of section 2(1B) of the Income Tax Act, 1961, as applicable;
- e) The Scheme enclosed to the Company Scheme Application and Company Scheme Petition are one and the same, and there is no discrepancy or deviation or changes; and
- f) The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. (CAA) / 298 / MB-I / 2023

IN

C.A. (CAA) /184/ MB-I / 2023

- g) The approval of the Scheme by this Tribunal may not deter any such authorities from dealing with any of the issues arising after giving effect to the scheme and the Petitioner Companies submit that any issues arising out of the Scheme will be met and answered in accordance with the law;
- h) The scheme does not contemplate any arrangement or compromise with the creditors of any of the Petitioner Companies. The liabilities towards the creditors of any of the Petitioner Companies are neither being reduced nor being extinguished and, pursuant to the Scheme, all assets and liabilities of the Transferor Company would be transferred to the Transferee Company. Also, the net worth of the Transferor Company and Transferee Company is positive and post-merger the assets of the Transferee Company are more than sufficient to discharge its liabilities of the Petitioner Companies. Accordingly, post-merger, the interest of the creditors is protected.
9. Mr. Bhagwati Prasad, Additional Director for the Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.
10. The Official Liquidator, High Court of Bombay, at Mumbai, has filed its report dated 6th March, 2024 in the consolidated Company Scheme Petition No. C.P.(CAA)/298/MB/2023, inter alia, stating therein that

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. (CAA) / 298 / MB-I / 2023

IN

C.A. (CAA) /184/ MB-I / 2023

the representation of the Official Liquidator may be taken on record by this Tribunal. Further, the Official Liquidator has made certain observations in Para 5 & 6 of his Report and response submitted by the Petitioner Companies as under :

- a. The Transferee Company shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 with regard to the combination of Authorised share capital, where the Transferor Company shall stand dissolved and the fees, if any, paid by the Transferor Company on its Authorised share capital shall be set off against any fees payable by the Transferee Company on its Authorised share capital subsequent to the Merger, the Deficit fee, if any after setting-off the fees already paid by the Transferor Company on their authorized capital, will be paid by the Transferee Company.
- b. The Petitioner Company states that principal business/activities of the Transferor Company is to carry on the business of manufacturers and/or sellers and/or dealers, importers or exporters of various types of plastic goods, domestics as well as industrial. The Transferor Company has invested temporary funds due to pandemic situation and there is no intention to carry on financial business /activities that would require registration with Reserve Bank of India (RBI) as NBFC. The RBI requires that only companies who are predominantly engaged in financial activity should get registered with it. Hence if there are companies engaged in agricultural operations, industrial activity, purchase and sale of

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. (CAA) / 298 / MB-I / 2023

IN

C.A. (CAA) /184/ MB-I / 2023

goods, providing services or purchase, sale or construction of immovable property as their principal business and are doing some financial business in a small way, they will not be regulated by the RBI. Further, it is submitted that Reserve Bank of India on 13/08/2020 issued circular bearing no. RBI/2020-21/24 DoR (NBFC) (PD) CC. No.117/03.10.001 /2020-21 in connection with all the Core Investment Companies wherein in para 8, it is categorically stated that all the Core Investment Companies (a) with an asset size of less than RS. 100 Crores, irrespective of whether accessing public funds or not and (b) with an asset size of Rs. 100 crores and above and not accessing public funds are not required to register with the Bank under Section 45IA of the RBI Act,1934 in terms of notification No. DNBS.PD.221 / CGM (US) 2011 dated 05/01/2011. The Transferor Company has also obtained certificate from the statutory auditors stating that “the Company is not required to be registered under section 45-IA of the Reserve Bank of India Act, 1934 as it is categorized as unregistered CIC. The statutory auditor’s certificate dated 8th March, 2024 is annexed as Annexure “A” to the affidavit dealing with the observation of Official Liquidator dated 11th March,2024.

- 11.** The observations made by the Official Liquidator, High Court of Bombay, at Mumbai, have been explained by the Petitioner Company 1. The Affidavit dated 11th March, 2024 filed by the Petitioner Company 1, the clarifications and undertakings given by the Petitioner Companies are taken on record, and the Petitioner Companies are

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. (CAA) / 298 / MB-I / 2023

IN

C.A. (CAA) /184/ MB-I / 2023

directed to comply with the same. Moreover, the Petitioner Companies will comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made thereunder.

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 the 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 appears to be fair and reasonable and is not violative of any provisions of law, and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.
14. Since all the requisite statutory compliances have been fulfilled, the consolidated Company Scheme Petition in C.P. (CAA) 298 / MB / 2023 filed by Petitioner Companies is made absolute in terms of clause (a) to (e) of the said Company Scheme Petition.
15. The Scheme is hereby sanctioned and the Appointed Date of the Scheme is fixed as 1st April, 2023. The Transferor Company shall be dissolved without winding up.
16. The Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. (CAA) / 298 / MB-I / 2023

IN

C.A. (CAA) /184/ MB-I / 2023

Companies, electronically in E-Form INC-28 within 30 days from the date of receipt of the Order from the Registry.

17. The Petitioner Companies are directed to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy / Assistant Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, payable, if any, within 60 clear working days from the date of receipt of the certified copy of the Order from the Registry of this Tribunal.
18. All concerned regulatory authorities are to act on a copy of this Order duly certified by the Deputy Registrar / Assistant of this Tribunal along with a copy of the Scheme.
19. Ordered accordingly. C.P. (CAA)/298/MB/2023 is allowed and disposed of.

Sd/-
Prabhat Kumar
Member (Technical)

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