

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

11. C.A.(CAA)/68/MB/2022

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)
SHRI SHYAM BABU GAUTAM, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **07.04.2022**.

NAME OF THE PARTIES: NATIONAL PEROXIDE LIMITED
SECTION 230-232 OF COMPANIES ACT, 2013

ORDER

Counsel for the Applicant, Mr. Zal T. Andhyarujina and counsel for the
unsecured creditor, Ms. Divya Bamna are present through virtual hearing.

C.A.(CAA)/68/2022

Heard counsel appearing for the Applicant, Mr. Zal T Andhyarujina.
The above Application is allowed. Detailed order will follow.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

Sd/-
H.V. SUBBA RAO
Member (Judicial)



Certified True Copy _____
Date of Application 17.05.2022
Number of Pages 1
Fee Paid Rs. 5
Applicant called for collection copy on 18.05.2022
Copy prepared on 18.5.2022
Copy Issued on 18.05.2022


Deputy Registrar 18.5.2022
National Company Law Tribunal, Mumbai Bench

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT - III, MUMBAI

CA (CAA) No. 68/MB/2022

IN THE MATTER OF SECTIONS 230
TO 232 AND OTHER APPLICABLE
PROVISIONS OF THE COMPANIES
ACT, 2013

AND

IN THE MATTER OF THE
COMPOSITE SCHEME OF
ARRANGEMENT AMONGST
NATIONAL PEROXIDE LIMITED
AND NAPEROL INVESTMENTS
LIMITED AND NPL CHEMICALS
LIMITED AND THEIR RESPECTIVE
SHAREHOLDERS

1. **National Peroxide Limited,**)
a company incorporated under the)
Companies Act 1913 having)
Company Identity Number:)
L24299MH1954PLC009254 and)
having its registered office at: Neville)
House, J. N. Heredia Marg, Ballard)
Estate, Mumbai - 400 001)

... First Applicant Company/
Transferee Company /
Demerged Company



2. **Naperol Investments Limited**, a)
company incorporated under the)
Companies Act 1956 having)
Corporate Identity Number:)
U65990MH1980PLC022589 and)
having its registered office at: Neville)
House, J. N. Heredia Marg, Ballard)
Estate, Mumbai - 400 001)

... **Second Applicant Company/
Transferor Company**

3. **NPL Chemicals Limited**, a company)
incorporated under the Companies)
Act 2013 having Company Identity)
Number:)
U24290MH2020PLC342890, and)
having its registered office at: Neville)
House, J. N. Heredia Marg, Ballard)
Estate, Mumbai - 400 001)

... **Third Applicant Company
/ Resulting Company
... collectively referred to as
“Applicant Companies”**

Order pronounced on: 07.04.2022

Coram: Shri H V Subba Rao, Hon'ble Member (Judicial)
Shri Shyam Babu Gautam, Hon'ble Member (Technical)

Appearances (via videoconferencing):

For the Applicants

Mr Zal Andhyarujina, Senior Advocate a/w

Mr Peshwan Jehangir, Mr Mehul Shah,



Mr Haabil Vahanvaty, Mr Aman Yagnik,
Mr Rushabh Gala, Mr Jamsheed Dadachanji
and Mr Ayush Jain i/b Khaitan & Co,
Advocates for the Applicant Companies

Advocate Ms Divya Bamne, i/b M/s. A. R.
Bamne & Co. for GAIL (India) Limited

ORDER

1. The Bench is convened by video conference on 7th April 2022.
2. National Peroxide Limited (hereinafter referred to as the “**First Applicant Company / Transferee Company / Demerged Company**”), Naperol Investments Limited (hereinafter referred to as the “**Second Applicant Company / Transferor Company**”) and NPL Chemicals Limited (hereinafter referred to as the “**Third Applicant Company / Resulting Company**”) are entering into a composite scheme of arrangement. For the sake of convenience, the First Applicant Company, the Second Applicant Company and the Third Applicant Company may be collectively referred to as “**Applicant Companies**” wherever required. The said Scheme provides for demerger, transfer and vesting of the Demerged Undertaking (*as defined in the Scheme*) from the Demerged Company into the Resulting Company on a going concern basis; and thereafter amalgamation (merger by absorption) of the Second Applicant Company into the First Applicant Company (“**Scheme**”). The Board of Directors of each of the Applicant Companies, at their respective board meetings all held on 9 March 2021 approved the said Scheme. The Applicant Companies are part of the same corporate group.
3. The Second Applicant Company and Third Applicant Company are wholly owned subsidiaries of the First Applicant Company. The registered offices of the Applicant Companies are situated in Mumbai, Maharashtra and hence



the subject matter of the Application is within the jurisdiction of the National Company Law Tribunal, Mumbai Bench.

4. Learned Counsel for the Applicant Companies submits that the circumstances and/or reasons and/or grounds that have necessitated and/or justified the Scheme and some of the major benefits which would accrue from the Scheme are extracted from the Scheme and stated below:

“RATIONALE FOR THIS SCHEME

- (i) *The Transferee/ Demerged Company is engaged in business of manufacturing of and dealing in peroxygen chemicals and is one of the largest manufacturer of hydrogen peroxide in India, with an installed capacity of 150 KTPA on 50% w/w basis. The Transferee/ Demerged Company also owns certain strategic investments and is also engaged in the business of making long term investments and corporate lending directly and also through its wholly owned subsidiary viz., the Transferor Company.*
- (ii) *The nature and competition involved in each of the aforementioned businesses is distinct and it is capable of attracting a different set of investors, strategic partners, lenders and other stakeholders.*
- (iii) *Further for growth and expansion of the said chemical business and the investment and corporate lending business, differentiated strategy is required to be aligned to the industry specific risks, market dynamics and growth trajectory.*
- (iv) *With a view to reorganise the businesses of the Transferee/ Demerged Company, it is proposed to bring the said chemical business of the Demerged/ Transferee Company under the aegis of the Resulting Company and amalgamate the Transferor Company, engaged in the business of long term investment and corporate*



lending, with the Transferee Company. This, inter alia, result in the following benefits:

- (a) unlocking the value of each of the businesses for the shareholders of the Transferee/ Demerged Company, attracting investors and providing better flexibility in accessing capital;*
- (b) segregating different businesses having different risk and return profiles, and providing investors with better flexibility to select investments which best suit their investment strategies and risk profile; and*
- (c) enabling focused growth strategy for each of the businesses for exploiting opportunities specific to each business.*

The Scheme (as defined hereinafter) is in the best interests of the shareholders, employees and the creditors of each of the Parties (as defined hereinafter)."

5. The Appointed Date as mentioned in the Scheme means the opening business hours of 1 October 2020.
6. The consideration for the Scheme is as set out below:

For demerger, transfer and vesting of the Demerged Undertaking from the First Applicant Company / Demerged Company into the Third Applicant Company / Resulting Company on a going concern basis (in terms of Clause 9 of the Scheme):

1 (One) fully paid up equity share of INR 10 (Indian Rupees Ten only) each of the Resulting Company, credited as fully paid up, for every 1 (One) equity share of INR 10/- (Indian Rupees Ten only) each of the Demerged Company.



For amalgamation (merger by absorption) of the Second Applicant Company / Transferor Company with the First Applicant Company / Transferee Company (Clause 17):

“

17.1 *The Transferor Company is a wholly owned subsidiary of the Transferee Company and therefore there shall be no issue of shares by the Transferee Company as consideration for the amalgamation of the Transferor Company with the Transferee Company.*

17.2 *Upon Part III of this Scheme becoming effective, all shares of the Transferor Company held by the Transferee Company (held either directly or through its nominees) shall stand cancelled without any further application, act or deed.”*

7. As on 31 December 2021, the First Applicant Company had 20,109 equity shareholders holding 57,47,000 equity shares of the First Applicant Company. A meeting of the Equity Shareholders of the First Applicant Company be convened and held on 02 June 2022 at 3:30 p.m. through video conferencing or other audio-visual means, for the purpose of considering, and, if thought fit, approving, with or without modification(s), the proposed Scheme. In addition to the above, the Applicant Company shall provide facility of remote e-voting to each of its Equity Shareholders to cast their vote.

8. At least one month before the said meeting of the Equity Shareholders of the First Applicant Company to be held as aforesaid, a notice convening the said meeting, through video conferencing or other audio-visual means, on the day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December,

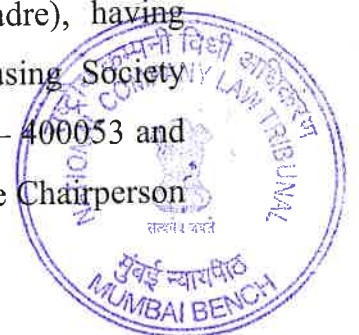


2016, shall be sent to the Equity Shareholders of the First Applicant Company through e-mail to their registered or last known e-mail address or addresses as per the records of the First Applicant Company / Depositories and in accordance with various circulars issued by SEBI / stock exchange and the Ministry of Corporate Affairs, to the extent applicable.

9. At least 30 (thirty) clear days before the meeting of the Equity Shareholders of the First Applicant Company to be held as aforesaid, a notice convening the said meeting, at the date and time aforesaid be published once each in 'Economic Times' in English, and 'Navshakti' in Marathi, respectively, having circulation in the State of Maharashtra, stating that copies of the Scheme and the said statement required to be furnished pursuant to Section 230 (3) of the Companies Act, 2013 can be obtained free of charge by emailing the First Applicant Company at secretarial@naperol.com.
10. The First Applicant Company undertakes to:
- (i) Issue notice convening meeting of the Equity Shareholders as per Form No CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
 - (ii) Issue statement containing all the particulars as per Section 230 of the Companies Act, 2013;
 - (iii) Advertise the notice convening meeting as per Form No. CAA.2 (Rule 7) of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016; and
 - (iv) Publish the notice convening the meeting on the website of the First Applicant Company.

The undertaking is accepted.

11. Mr. Harnam Singh (Retd. IAS Officer – Maharashtra Cadre), having registered address at: Flat No. 22, Ritu Co-Operative Housing Society Limited, Juhu Versova Link Road, Andheri (West), Mumbai – 400053 and Contact Number (+91) 9930063941, is hereby appointed as the Chairperson



for the meeting of the Equity Shareholders of the First Applicant Company. The fees of the Chairperson are fixed at INR 3,00,000/- and shall be paid by the First Applicant Company.

12. Mr. Nilesh Shah (Membership No.: F4554) or Mr. Mahesh Darji (Membership No.: F7175) or Ms. Hetal Shah (Membership No.: F8063) of M/s. Nilesh Shah & Associates, Practicing Company Secretaries and failing whom, Mr. Keyul M. Dedhia (Membership No. 7756) of M/s. Keyul M. Dedhia & Associates, Practicing Company Secretaries is hereby appointed as a Scrutinizer of the meeting of Equity Shareholders of the First Applicant Company.
13. The Chairperson appointed for the aforesaid meeting of the First Applicant Company to issue notices of the meeting of the Equity Shareholders referred to above. The Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as may be applicable for meeting of shareholders through video conferencing or other audio-visual means mode, in relation to the conduct of the meeting including for deciding procedural questions that may arise at the meeting or at any adjournment thereof or any other matter including, an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
14. Since the meeting is being held through video conferencing or other audio-visual means mode, physical attendance of members has been dispensed with. Accordingly, the facility for appointment of proxies by the members will not be available for the meeting and hence the requirement to send the proxy form and attendance slip along with the notice of the meeting is dispensed with. However, the Equity Shareholders of the First Applicant Company who are body corporates are entitled to appoint authorised representatives to attend the meeting through video conferencing or other audio-visual means and participate there at and cast their votes through e-voting.



15. The quorum for the aforesaid meeting of the Equity Shareholders of the First Applicant Company shall be as prescribed under Section 103 of the Companies Act, 2013.
16. The value and number of the equity shares of each member shall be in accordance with the books/register of the First Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
17. The Chairperson shall file an affidavit not less than 7 (seven) days before the date fixed for holding of the meeting of the First Applicant Company and report to this Tribunal that the directions regarding the issue of notices and advertisements have been duly complied with, as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
18. The Chairperson shall report to this Tribunal, the result of the aforesaid meeting within 10 (ten) days of the conclusion of the said meeting of the Equity Shareholders of the First Applicant Company, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
19. The Learned Counsel for the Applicant Companies submits that the Second Applicant Company and Third Applicant Company have received consent affidavits from all its Equity Shareholders, whereby the said Equity Shareholders have given their consent and approval to the Scheme. The Consent Affidavits of the Equity Shareholders of the Second Applicant Company are annexed to the present Application. The Consent Affidavits of the Equity Shareholders of the Third Applicant Company are annexed to the present Application. Accordingly, the requirement to hold meeting(s) of the



Equity Shareholders of the Second Applicant Company and the Third Applicant Company are dispensed with.

20. The Learned Counsel for the Applicant Companies submits that there are no Preference Shareholders of First Applicant Company, Second Applicant Company, and Third Applicant Company. Thus, the question of convening and holding of a meeting of the Preference Shareholders of the First Applicant Company, Second Applicant Company, and Third Applicant Company to consider and approve the proposed Scheme does not arise.
21. The Learned Counsel for the Applicant Companies submits that the First Applicant Company has only 1 (one) Secured Creditor as on 31 January 2022 with an aggregate outstanding amounting to INR 100,58,15,625. The Learned Counsel for the Applicant Companies submits that the First Applicant Company is not required to hold / convene meetings of its sole Secured Creditor for approval of the Scheme. It is submitted that the First Applicant Company has a positive net-worth and the demerger of the Demerged Undertaking of the First Applicant Company to the Third Applicant Company and thereafter the amalgamation of the Second Applicant Company with the First Applicant Company will not affect or adversely impact the rights of the said Secured Creditor of the First Applicant Company. It is further submitted that pursuant to the proposed Scheme, the Secured Creditor of the First Applicant Company including its Secured Creditor(s) pertaining to the Demerged Undertaking to be transferred to the Third Applicant Company (if any), will be paid off in the ordinary course of business as and when their dues are payable by the First Applicant Company / Third Applicant Company, as the case maybe. Accordingly, the rights of the Secured Creditor(s) of the First Applicant Company, will not be adversely impacted post implementation of the proposed Scheme. The First Applicant Company undertakes to issue individual notice to the said Secured Creditor of the First Applicant Company. Accordingly, the First Applicant Company is directed to issue notice to its sole Secured Creditor as on 31 January 2022.



inviting representations, if any, thereto by email. Representations, if any, shall be filed before this Tribunal with a copy to the First Applicant Company within 30 (thirty) days from the date of receipt of such notice.

22. The Learned Counsel for the Applicant Companies submits that there are no Secured Creditors of the Second Applicant Company and the Third Applicant Company. Thus, the question of convening and holding of a meeting of the secured creditors of the Second Applicant Company and the Third Applicant Company to consider and approve the proposed Scheme does not arise.
23. The Learned Counsel for the Applicant Companies submits that the First Applicant Company is not required to hold / convene meetings of its Unsecured Creditors for approval of the Scheme. It is submitted that the First Applicant Company has obtained consents of its Unsecured Creditors representing 71.27% out of the total aggregate outstanding, as on 31 January 2022. The Learned Counsel for GAIL (India) Limited, one of the Unsecured Creditors of the First Applicant Company (“GAIL”) which represents 22.27% out of the total aggregate outstanding has appeared before us today and on instructions submitted that GAIL has no objection to the present Scheme. Accordingly, Unsecured Creditors representing over 90% of the aggregate outstanding as on 31 January 2022, have given their consents / no objection to the Scheme. It is submitted that the First Applicant Company has a positive net-worth and the demerger of the Demerged Undertaking of the First Applicant Company to the Third Applicant Company and thereafter the amalgamation of the Second Applicant Company with the First Applicant Company will not affect or adversely impact the rights of the said Unsecured Creditors of the First Applicant Company. It is further submitted that pursuant to the proposed Scheme, the Unsecured Creditors of the First Applicant Company including its Unsecured Creditors(s) pertaining to the Demerged Undertaking to be transferred to the Third Applicant Company (if any), will be paid off in the ordinary course of business as and when their dues are payable by the First Applicant Company / Third Applicant



Company, as the case maybe. Accordingly, the rights of the Unsecured Creditors of the First Applicant Company, will not be adversely impacted post implementation of the proposed Scheme. The First Applicant Company undertakes to issue notice to those Unsecured Creditors of the First Applicant Company whose consent has not already been obtained. Accordingly, the First Applicant Company is directed to issue notice to the said Unsecured Creditors as on 31 January 2022, inviting representations, if any, through RPED, Speed Post and Email. Representations, if any, shall be filed before this Tribunal with a copy to the First Applicant Company within 30 (thirty) days from the date of receipt of such notice.

24. The Learned Counsel for the Applicant Companies submits that the Second Applicant Company has no Secured Creditor and only 1 (one) Unsecured Creditor as on 31 January 2022 with an aggregate outstanding amounting to INR 590. As on date, the Second Applicant Company has discharged the amount due to the said Secured and Unsecured Creditor and there are no outstanding dues as on date. Accordingly, the requirement to hold meetings of the Unsecured Creditors of the Second Applicant Company is dispensed with.
25. The Learned Counsel for the Applicant Companies submits that there are no Secured and Unsecured Creditors of the Third Applicant Company. Thus, the question of convening and holding of a meeting of the Secured and Unsecured Creditors of the Third Applicant Company to consider and approve the proposed Scheme does not arise.
26. The Applicant Companies to serve notice along with the copy of Scheme upon (i) the Central Government through the Regional Director, Western Region, Ministry of Corporate Affairs; (ii) the Registrar of Companies at Mumbai; (iii) the Income Tax Authority at Circle 2(2)(1), Mumbai (for the First Applicant Company having PAN AABCN7072K), at Circle 2(2)(3)



Mumbai (for the Second Applicant Company having PAN AAACN2636A) and at Circle 1(2)(1), Mumbai (for the Third Applicant Company having PAN AAHCN0737D) within whose jurisdiction the respective Applicant Company's assessments are made; (iv) Bombay Stock Exchange Limited; (v) Securities and Exchange Board of India and (v) the GST Authority at State – Maharashtra, Zone-Mumbai South East, Division - Mumbai-LTU-4, Charge - Mumbai-LTU-538 (for the First Applicant Company), and at Commissionerate – Mumbai South, Division – Division II, Range – IV, Maharashtra (for the Third Applicant Company), pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 (thirty) days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

27. Additionally, the Second Applicant Company is directed to serve notice along with a copy of the Scheme upon the Official Liquidator, High Court, Bombay, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. M/s Bagaria & Company LLP, having address at: 701, Stanford Junction of S.V. Road and C. D. Burfiwala Lane, Andheri (W), Mumbai 400058, Email address: rahul@bagariaco.com and Contact Number: (+91) 9820511363/ 022 62505600 are appointed to assist the Official Liquidator to scrutinize the books of the Second Applicant Company for the last 5 years. The fee of the Chartered Accountant is fixed at INR 2,00,000/- inclusive of all taxes which shall be paid by the Second Applicant Company. The Official Liquidator shall make representation to the Tribunal within 30 (Thirty) days of the date of receipt of such notice, failing which it shall be presumed that the Official Liquidator has no



objection to the proposed Scheme. A copy of the Report shall simultaneously be served upon the Second Applicant Company.

28. The Learned Counsel for the Applicant Companies submits that the shares of the First Applicant Company are listed on BSE Limited (“**BSE**”). The Securities and Exchange Board of India (“**SEBI**”) has through its letter to BSE dated 18 November 2021 has observed that the present Company Scheme Application has been filed by the First Applicant Company after processing and communication of comments / observations on the draft Scheme by SEBI and the stock exchange. Hence, the First Applicant Company is not required to send notice for representation as mandated under Section 230(5) of the Companies Act, 2013 to SEBI again for its comments / observations / representations. Hence, the requirement to issue notices to SEBI is dispensed with. The First Applicant Company is directed to serve notices upon BSE pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Responses, if any, from the stock exchange shall be filed before this Tribunal within 30 (thirty) days from the date of receipt.
29. The Second Applicant Company is registered with the Reserve Bank of India as a non-banking financial institution. By letter dated 8 February 2022, the RBI has granted it’s no objection to the Scheme. Hence, the requirement to issue notices to the Reserve Bank of India is dispensed with.
30. The Applicant Companies to service notices upon any other sectoral authorities, if applicable, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the concerned sectoral authorities or authorities within 30 (Thirty) days of



the date of receipt of the notice, it will be presumed that the concerned sectoral regulators or authorities have no objection to the proposed Scheme.

Sd/-

Shri Shyam Babu Gautam
Hon'ble Member (T)

Sd/-

Shri H V Subba Rao
Hon'ble Member (J)



Certified True Copy _____
Date of Application 17.05.2022
Number of Pages 15
Fee Paid Rs. 75
Applicant called for collection copy on 18.05.2022
Copy prepared on 18.5.2022
Copy Issued on 18.05.2022


Deputy Registrar 18.5.2022

National Company Law Tribunal, Mumbai Bench