



GlaxoSmithKline Consumer Healthcare Ltd.
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February 26, 2020

To,
The Manager Listing,
BSE Limited
Phiroze Jeejeebhoy Towers,
Dalal Street,
Fort,
Mumbai – 400 023

To,
The Manager Listing,
National Stock Exchange of India Limited
Exchange Plaza,
Plot no. C/1, G Block,
Bandra-Kurla Complex
Bandra (E), Mumbai - 400 051

Sub: Update on Scheme of amalgamation and arrangement between GlaxoSmithKline Consumer Healthcare Limited and Hindustan Unilever Limited and their respective shareholders and creditors

Dear Sir / Madam,

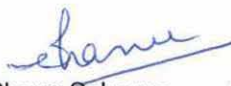
Pursuant to Regulation 30(7) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, we are pleased to inform you that Hon'ble National Company Law Tribunal (NCLT), Chandigarh Bench, vide its order dated February 26, 2020, has sanctioned the scheme of amalgamation and arrangement between GlaxoSmithKline Consumer Healthcare Limited ("**Transferor Company**") and Hindustan Unilever Limited ("**Transferee Company**") and their respective shareholders and creditors under Section 230 to 232 of the Companies Act, 2013 ("**Scheme**"). A copy of the order of Hon'ble NCLT is enclosed.

The effective date of the merger will be communicated to the stock exchanges upon being finalized in accordance with the procedure stated under the approved Scheme of Amalgamation.

Kindly take the same on record.

Thanking You,

For GlaxoSmithKline
Consumer Healthcare Limited


Shanu Saksena
Company Secretary

**NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

CP (CAA) No. 17/Chd/Pb/2019

**Under Sections 230 to 232 of
the Companies Act, 2013**

IN THE MATTER OF SCHEME OF AMALGAMATION:

**GlaxoSmithKline Consumer
Healthcare Limited**

having its registered office at
Patiala Road, Nabha-147201
CIN: L24231PB1958PLC002257
PAN: AACCS0144E

... Petitioner Company/Transferor Company

With

Hindustan Unilever Limited

having its registered office at
Unilever House, B D Sawant Marg
Chakala, Andheri East,
Mumbai, Maharashtra
CIN: L15140MH1933PLC002030
PAN : AAACH1004N

... Transferee Company

Judgment delivered on: 26.02.2020

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

For the Applicant Companies: 1). Mr. Sanjeev Puri, Senior Advocate
2). Mr. Ankit Tandon, Advocate
3). Ms. Vatsala Rai, Advocate
4). Mr. Rohit Khanna, Advocate
5). Mr. Tanmay Sharma, Advocate
6). Mr. Raghav Kapoor, Advocate

For the Income
Tax Department

: 1). Mr. Yogesh Putney, Advocate
2). Mr. Harveet Singh Sehgal, Advocate

For the Official
Liquidator

: 1). Mr. O.P. Sharma, Official Liquidator in person
2). Mr. Vibhor Sharma, Advocate

For the Registrar of
Companies and
Regional Director

: Mr. Shyam Sunder, Registrar of Companies

For the Workers Union
-respondent

: 1). Mr. Labh Singh Sandhu, Advocate
2). Mr. Shashi Bhushan Gulav, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT

This is a petition filed by GlaxoSmithKline Consumer Healthcare Limited ("**Transferor Company**" or "**Petitioner Company** ") under Sections 230 to 232 of the Companies Act, 2013 ("**Act**") and in terms of Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ("**Rules**") for the approval of the Scheme of Amalgamation and Arrangement (for brevity, "**Scheme**") between the Petitioner Company and Hindustan Unilever Limited ("**Transferee Company**"). The joint petition is maintainable in terms of Rule 3 (2) of the Rules.

2. The Petitioner Company filed First Motion Application bearing CA (CAA) No.4/Chd/Pb/2019 ("**First Motion Application**") before this Tribunal for seeking directions to convene the meetings of equity shareholders and the unsecured creditors of Transferor Company as well as

for seeking dispensation of the meetings of secured creditors in Transferor Company.

3. The First Motion Application was disposed of vide order dated 12.04.2019 with direction to hold the meetings of equity shareholders and unsecured creditors of Transferor Company. Further, meeting of secured creditors in Transferor Company was dispensed with as mentioned in the order dated 12.04.2019 attached at Annexure A-28 of the petition.

4. The affidavits dated 21.05.2019 of the authorized representative of the petitioner company with regard to the compliance of all the directions given in the order dated 12.04.2019 was filed vide Diary No. 2608 dated 22.05.2019.

5. The report dated 06.06.2019 of the Chairperson alongwith the report of the Scrutinizer in respect of the meetings of the equity shareholders and unsecured creditors of the petitioner company was filed by Diary Nos. 2891 and 2895 dated 07.06.2019.

6. The Chairperson has reported that the Scheme was approved by 100% of the unsecured creditors of the petitioner/Transferor Company and 99.9% of the equity shareholders of the petitioner/Transferor Company present and voting. Thereupon, the instant petition was filed for approval of the Scheme in terms of Rule 15 of the Rules.

7. The main objects, date of incorporation, authorized and paid-up share capital and rationale of the Scheme were already discussed in detail in First Motion Order dated 12.04.2019 passed by this Tribunal.

8. It is further submitted that the Certificates of Statutory Auditors of the petitioner company has been placed as Annexure A-6 of the petition, stating that the accounting treatment specified in Clause 22 of Part III of the "Scheme" with regard to Amalgamation of Transferor with Transferee Company, is in compliance with the applicable Accounting Standards notified under Section 133 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rules, 2015 as amended and other Generally Accepted Accounting Principles.

9. The audited financials of the petitioner company as on 31.03.2019 and copy of report of the Audit Committee of petitioner company dated 03.12.2018 are attached as Annexure A-3 and A-4 respectively of the petition.

10. As per the Scheme, the Appointed Date shall mean the same date as the Effective Date or such other date i.e. mutually agreed in writing between the Transferor and the Transferee Company. The effective date, as stated in the Scheme is as below:-

"Effective Date" means the date of the Board meetings of the Transferor Company and the Transferee Company held to declare this Scheme effective, which will be no later than 5 (Five) days (unless extended by mutual written agreement between the Transferor Company and the Transferee Company), following satisfaction or waiver (to the extent possible under Applicable Law) of the conditions set out in Clause 26 (other than those conditions that by their nature are to be satisfied on the Effective Date);

Reference in this Scheme to the date of "coming into effect of this Scheme" or "effectiveness of this Scheme" shall mean the Effective Date;"

11. The Share Exchange Ratio under the "Scheme" has been determined in accordance with the report of SRBC & Co. LLP dated 02.12.2018 (Annexure A-23 of the petition). The Share Exchange Ratio is as follows:-

"439 (four hundred and thirty nine) equity shares of HUL (of INR 1/- each fully paid up) for 100 (hundred) equity shares held in GSK CH (of INR 10/- each fully paid up)."

12. When the petition was listed on 09.12.2019, the following directions were issued:-

"8. The petition be listed for hearing on 16.01.2020. Notice of hearing be advertised in the same newspapers as in the first motion petition i.e. 'Financial Express' (English) Punjab Edition and 'Punjabi Tribune' (Punjabi), Chandigarh Edition not less than 10 days before the aforesaid date fixed for hearing.

9. Notice be also served upon the Objector(s) or their representatives as contemplated under sub-section (4) of Section 230 of the Act who may have made representation and who have desired to be heard in their representation along with a copy of the petition and the annexures filed therewith at least 15 days before the date fixed for hearing. It be specified in the notices that the objections, if any, to the Scheme contemplated by the authorities to whom notice has been given on or before the date of hearing fixed herein may be filed within thirty days from the date of the receipt of the notice, failing which it will be considered that there is no objection to the approval of the Scheme on the part of the authorities by this Tribunal and subject to other conditions being satisfied as may be applicable under the Companies Act, 2013 and relevant rules framed thereunder.

10. In addition to the above public notice, Petitioner Transferor Company shall serve the notice of the petition on the following Authorities namely, (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs (b) Registrar of Companies, Punjab and Chandigarh (c) Income Tax Department through the Nodal Officer - Principal Chief Commissioner of Income Tax, NWR, Aaykar Bhawan, Sector 17-E, Chandigarh by

mentioning the PAN of the companies (d) Official Liquidator, Punjab, Haryana and Chandigarh (e) Reserve Bank of India (f) SEBI (g) BSE (h) NSE (i) CCI along with copy of this petition by speed post immediately and to such other Sectoral Regulator(s) who may govern the working of the Petitioner Transferor Company.

11. The Petitioner Transferor Company is directed to file specific affidavits of the authorized representatives to the effect that there is no other sectoral regulator(s) governing the business of the Petitioner Transferor Company and the Petitioner Transferor Company shall also file the affidavit at least two days before the date fixed to the effect that no objections to the Scheme have been received by the petitioner-companies.

12. The Petitioner Transferor Company shall at least two days before the date of hearing of the petition file an affidavit of service regarding paper publication as well as service of notices on the authorities specified above including the sectoral regulator as well as to objectors, if any."

13. Learned counsel for the petitioner company filed compliance affidavit of Mr. Devdas Baliga, Authorized Signatory of the petitioner company dated 09.01.2020 (Diary No. 255 dated 10.01.2020). Copies of newspaper publications in 'Financial Express' (English), Punjab Edition and 'Punjabi Tribune' (Punjabi), Chandigarh Edition, both dated 06.01.2020 annexed as Annexure-2 Colly of Diary 255. Copies of speed post receipt alongwith tracking reports and courier receipts evidencing service of notices by the petitioner company through courier to all the above mentioned statutory authorities are also a part of Diary No. 255.

14. It is also submitted in this affidavit that as on the date of affidavit, the petitioner company has not received any representations from any objectors, expressing their desire to be heard by this Tribunal in relation to

the Scheme. As per the report dated 10.01.2020, the Registry has reported that no objections have been received as per order dated 09.12.2019 in relation to the present Scheme of amalgamation between the Transferor and Transferee Company.

15. It is deposed that there are no other statutory authorities/sectoral regulators governing the business of the petitioner company. It is further submitted that apart from the statutory authorities/sectoral regulators as mentioned in Annexure-18 of the First Motion Application, there are no statutory authorities/sectoral regulators available for the purposes of issuance of notice. It is also submitted that no objections to the Scheme have been received by the petitioner company from any of the sectoral regulators/statutory authorities or from any other person. The affidavit in this regard is a part of Diary No. 256 dated 10.01.2020. The Registry vide report dated 13.01.2020 reported that no objections have been received in relation to the Scheme as per the order dated 09.12.2019.

16. We have heard the learned Senior Counsel for the petitioner company, Income Tax Department, Workers Union and Official Liquidator alongwith its counsel as well as Registrar of Companies and have perused the records carefully.

17. Mr. Shyam Sundar, Registrar of Companies(RoC), Punjab and Chandigarh also representing the Regional Director(RD), Northern Region has submitted that they do not intent to file any separate report and the earlier report filed by them vide Diary No. 5437 dated 09.10.2019 may be considered in response to the Second Motion Petition as well. It was

submitted in the report that as per the report of ROC, no prosecution has been filed and no inspection or investigation has been conducted in respect of the Transferor Company. It is also stated that as per Para 25 of the ROC report that as per Section 232(3) of the Companies Act, 2013, the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fee payable by the Transferee Company on its authorized capital subsequent to amalgamation. It is also reported by the ROC that litigations are pending in various matters in respect of indirect and direct taxes.

18. The petitioner company has filed a reply vide Dairy No. 254 dated 10.01.2020. It is submitted that Clause 20 of Part III of the Scheme is in consonance and compliance with the relevant law, in particular, Section 232(3)(i) of the Act and reiterates the statutory prescription that the Transferee Company shall be entitled to a merger of the Authorized Share Capital of the Transferor Company, along with a credit of statutory fees paid to the ROC by the Transferor Company in this regard. With respect to the second observation made by in the Reports, it is further submitted that Clause 15 of Part II of the Scheme is in consonance and compliance with the relevant law, and all Tax assessment proceedings and appeals of whatsoever nature by or against the Transferor Company, pending or arising as at the Effective Date, shall be continued and/or enforced by or against the Transferee Company in the same manner and to the same extent as would or might have been continued and enforced by or against the Transferor Company.

19. Mr. O.P. Sharma, Official Liquidator (OL) has submitted that they have filed their report vide Diary No. 6000 dated 31.10.2019 and the same may be considered as report to this Second Motion Petition as well. In its report, the OL has largely touched upon the contents of the petition and has prayed that this matter may be decided on merits of the case.

20. Learned counsel for the Income Tax Department submitted that the department has filed reports vide Diary No. 442 dated 17.01.2020 and Diary No. 851 dated 31.01.2020 (in respect of Transferee Company). It is submitted that all the assessment proceedings in respect of the Assessment Years, which were barred by limitation as on 31.12.2019 have been completed and the draft assessment orders have been passed for Assessment Years 2011-12, 2012-13 and 2016-17. It is also submitted that the final order has been passed for the Assessment Years 2015-16 and the assessee has filed objections against the draft order passed for Assessment Years 2011-12 and 2012-13 before DRP and it is most likely that the assessee will not accept the draft assessment order for the Assessment Years 2016-17. It is also submitted that all these cases will be referred to DRP and time barred by limitation by 30.09.2020 for final assessment. It is also mentioned that after the amalgamation, the proceedings as described above will stand transferred to the Assessing Officer of the Transferee Company. It is further stated that there is a huge tax demand pending against the Transferor Company, the recovery of which will be subject to outcome of ongoing litigation with Appellate Authorities and it will be the

responsibility of the Assessing Officer of the Transferee Company to recover the demand.

21. In respect of Transferee Company, the Income Tax Department has reported that as per the Scheme of Amalgamation while referring to Para 18 of the "Scheme", the Transferee Company will be issuing 439 shares per share of Transferor Company and it is not specified as to whether any other consideration is being paid to the shareholders of Transferor Company in addition to shares and it can be assumed that no other payment is being made to the shareholders of the Transferor Company. Further while referring to Para 15 of the Amalgamation Scheme treatment of taxes is given and it is stated that the Transferor and Transferee Company notwithstanding what is stated between them, any claim of expenses or deductions will be allowed as per the provisions of the Income Tax Act, 1961 and permitted under specific Sections relating to Amalgamation. It was also requested to make a noting to this effect in the order of Amalgamation.

22. Learned counsel for the Income Tax Department also submitted that the applicant companies may be directed to submit an undertaking in respect of the observations made in the Income Tax Reports and also may be directed to comply with the provisions of the law.

23. Learned Senior Counsel appearing for the petitioner company submits that they have already filed affidavit vide Diary No. 7343 dated 23.12.2019 and Diary No. 281 dated 13.01.2020 and a reply vide Diary No. 791 dated 29.01.2020 along with an affidavit of the Transferee Company dated 09.01.2020 undertaking that they will honour and remain bound by the

liabilities in respect of any current, pending or future income tax demands placed on the Transferee Company.

24. National Stock Exchange of India Limited (NSE) has forwarded an observation letter dated 15.02.2019 (Annexure A11 of petition). It is submitted that the company shall ensure that additional information, if any, submitted by the company, after filing the Scheme with Stock Exchange and from the date of receipt of this letter is displayed on the website of the listed company. It is also stated that the company shall duly comply with various provisions of SEBI Circular No. CFD/DIL3-CIR/2017/20 dated March 10,2017. It is also stated that the petitions are filed by the company before NCLT after processing and communication of comments/observations on draft scheme by SEBI/Stock Exchange, therefore, the 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/representations. It is further submitted that NSE has granted no objection in terms of Regulation 94 of SEBI (LODR) Regulation, 2015 for the present Scheme of Amalgamation.

25. BSE Limited has forwarded a letter dated 15.02.2019 (Annexure A12 of petition) wherein the same observations as of NSE have been reiterated.

26. The Petitioner Company has filed affidavit dated 10.01.2020 in relation to compliance with the observations of NSE and BSE, vide Diary No. 257 dated 10.01.2020 wherein the Petitioner Company has confirmed that it has complied with all the requirements of SEBI Circulars/Stock Exchange

guidelines and securities law, as applicable, until this stage and will continue to comply with the same as may be applicable after the sanction of the Scheme by this Tribunal. A screen shot from the website displaying the additional information is found annexed with the affidavit marked as Annexure-7 of Diary No. 257 and a tabular summary showing the status of compliance with the applicable provisions of the SEBI Circular is marked as Annexure-4 of Diary No. 257.

27. The Competition Commission of India vide its letter dated 23.01.2019 (Annexure-5 Colly of Diary No. 257) has stated that they have considered the proposed combination and approved the same under Section 31(1) of the Act and vide Letter dated 22.05.2019, it was informed that the merger/amalgamation referred to has been approved by the Commission on 23.01.2019 under the provisions of the Competition Act, 2002.

28. There has been no representation from the sectoral regulators namely Reserve Bank of India (RBI) and Securities and Exchange Board of India (SEBI) in respect of the notices sent to them. The speed post receipts along with tracking report showing successful service of notices to SEBI and RBI are a part of Diary No. 255.

29. Learned Counsel for the Petitioner Company has referred to the Clause 14(i) of the Scheme which provides that upon coming effect of this Scheme, all the Transferor Company Employees shall become the employees of the Transferee Company, subject to the provisions hereof without any break in their service and on basis of continuity of service and, on terms and conditions no less favourable than those on which they are

engaged by the Transferor Company and without any interruption of service as a result of the Amalgamation.

30. Mr. Labh Singh Sandhu, the learned counsel appearing for the Milk Food Workers Union ("**Union**") filed its objections vide Diary No. 287/2020 dated 13.01.2020, which are as under:-

- (a)(i) The Workers Union was not consulted while preparing the Scheme. The employees of the Transferor Company cannot be transferred to another company without indicating and specifying the effect of the Scheme on the service conditions of its employees vis-à-vis the service conditions of the Transferee Company.
- (ii) A dispute between the Workers Union and the Transferor Company is pending adjudication before the competent Labour Commissioner at SAS Nagar, Mohali, Punjab and the said fact was not only concealed in the Scheme but also not explained how the same will be dealt with after the Transferor Company amalgamates with the Transferee Company.
- (iii) The Workers Union want that an undertaking be filed by the Transferor Company that its employees, after the merger with the Transferee Company shall not be terminated and that they will be continued, with the same benefits, terms and conditions.

(iv) Reliance was placed on a decision of the Hon'ble Bombay High Court in *Air India Employee's Union & others Vs. Air India Limited & others*, 2014(1) LLN 364.

(b)(i) Mr. Sanjeev Puri, the learned Senior Counsel appearing for the applicant companies while drawing our attention to Para 14(i) of the Scheme of Amalgamation submits that as long as the service conditions of the employees of the Transferor Company are not changed in any manner, even after amalgamation with the Transferee Company, the Employees/Workers cannot have any objection for the Scheme. The learned Senior Counsel placed reliance on the decision of the Hon'ble Apex Court in *Hindustan Lever Employees' Union Vs. Hindustan Lever Limited and others*, AIR 1995 SC 470 and also on the decision of Hon'ble High Court of Gujarat in *Gujarat Nylons Ltd. Vs. Gujarat State Fertilizers Co. Ltd.*, Company Petition No. 143 and 144 of 1990 dated 07.03.1991, MANU/GJ/0448/1991.

(c) Para 14 of the Scheme of Amalgamation reads as under:-

"(i) Upon the coming into effect of this Scheme, all Transferor Company Employees shall become the employees of the Transferee Company, subject to the provisions hereof without any break in their service and on the basis of continuity of service and, on terms and conditions no less favourable than those on which they are engaged by the Transferor Company and without any interruption of service as a result of the Amalgamation. For the purpose of payment of any compensation, gratuity and other terminal benefits, the uninterrupted past services of such Transferor Company Employees

with the Transferor Company shall also be taken into account, and paid (as and when payable) by the Transferee Company.

- (ii) *In so far as the Employee Benefit Funds created by the Transferor Company or in respect of which the Transferor Company makes contributions, for the Transferor Company Employees, all amounts standing to the credit of the Transferor Company Employees in such Employee Benefit Funds and investments made by such Employee Benefit Funds shall be transferred to such Employee Benefit Funds nominated by the Transferee Company and/or such new Employee Benefit Funds to be established and caused to be recognized by appropriate Governmental Authorities, by the Transferee Company.*
- (iii) *In relation to those Transferor Company Employees who are not covered under the provident fund trust of the Transferor Company or who do not enjoy the benefit of any other provident fund trust, and for whom the Transferor Company is make contributions to the government provident fund, the Transferee Company shall stand substituted for the Transferor Company, for all purposes whatsoever, including relating to the obligation to make contributions to the said fund in accordance with the provisions of such fund, bye laws, etc. in respect of such employees, such that all the rights, duties, powers and obligations of the Transferor Company in relation to such provident fund trust shall become those of the Transferee Company.*
- (iv) *Pending the transfer as aforesaid, the Employee Benefit Fund dues of the Transferor Company Employees would be continued to be deposited in the existing Employee Benefit Funds of the Transferor Company. It is clarified that upon transfer of the aforesaid funds to the respective funds of the Transferee Company, the existing trusts created for such funds by the Transferor Company shall stand dissolved.*
- (v) *Notwithstanding the aforesaid, the Board of the Transferee Company, if it deems fit and subject to Applicable Law, shall be entitled to:*

- (a) *retain separate trusts or funds within the Transferee Company for the erstwhile fund(s) of the Transferor Company; or*
 - (b) *merge the pre-existing funds of the Transferor Company with other similar funds of the Transferee Company."*
- (d) A bare perusal of the above paragraph clearly shows that the Scheme does not propose any change of any service condition of the employees of the Transferor Company, after its merger with the Transferee Company. Hence, the employees of the Transferor Company cannot have any objection for the Scheme as no change in their service conditions is proposed in the Scheme.
- (e) Since it is also provided under the Scheme that all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company, any proceedings pending as on date, including the proceeding pending before the competent Labour Commissioner, as referred by the Workers Union, shall be continued against the Transferee Company and any orders passed thereon shall be binding on the Transferee Company and hence, this objection of the Workers Union also unacceptable.
- (f) The Hon'ble Supreme Court of India in ***Hindustan Lever Employees' Union (supra)*** held as under:-

"79. Next it was argued on behalf of the employees of TOMCO that the Scheme will adversely affect them. This argument is not understandable. The Scheme has fully safeguarded the interest of the employees by providing that the terms and conditions of their service will be continuous and uninterrupted service and their service conditions will not be prejudicially affected by reason of the Scheme. The grievance made, however, is that there is no job security of the workers, after the amalgamation of the two Companies. It has been argued that there should have been a clause in the Scheme ensuring that no retrenchment will be effected after the amalgamation of the two Companies. There was no assurance on behalf of the TOMCO that the workers will never be retrenched. In fact, the performance of TOMCO over the last three years was alarming for the workers. It cannot be said that after the amalgamation they will be in a worse position than they were before the amalgamation.

80. We do not find that the amalgamation has caused any prejudice to the workers of TOMCO. The stand of the employees of HLL is equally incomprehensible. It has been stated that if the TOMCO employees continue to enjoy the terms and conditions of their service as before, then two classes of employees will come into existence, Terms and conditions of HLL employees were much worse than that of TOMCO employees. If there are two sets of terms and conditions under the same company, then a case of discrimination will arise against the HLL employees.

81. We do not find any substance in this contention. The TOMCO employees will continue to remain on the same terms and conditions as before. Because of this arrangement, it cannot be said that a prejudice has been caused to HLL employees. They will still be getting what they were getting earlier. TOMCO employees who were working under better terms and conditions, will continue to enjoy their old service conditions under the new management.

Xxx xxx xxx xxx

83. No one can envisage what will happen in the long run. But on this hypothetical question, the Scheme cannot be rejected. As of now, it has not been shown how the workers are prejudiced by the Scheme."

(g) The Hon'ble High Court of *Gujarat in Gujarat Nylons Ltd.*

(*Supra*), held as under:-

"27. I have heard Mr. K.S. Zaveri, the learned counsel appearing for the employees of the transferor Company at length. However, I do not find any substance in any of the contentions raised by him. In my opinion, conjoint reading of Sections 391 and 394 of the Act make it amply clear that the workmen of the Transferor Company have no legal or statutory right of holding meeting and to express their opinion on the question of amalgamation. There is statutory provision to that effect. No judgment has been shown to me wherein such a view has been taken by the court that a meeting of the workmen is a condition precedent in the proceeding of amalgamation of scheme under Section 394 of the Act.

Xxx xxxx xxxx xxx

36. Mr. Zaveri further contended that if there is amalgamation of transferor Company with the Transferee Company and if the workmen of the transferor Company are deemed to be workers of the transferee Company with effect from a particular date, all the workmen can be said to be only of one company, i.e. transferee Company from that date. They cannot, therefore, be treated unequally, and there should not be any discrimination between the workers similarly situated. Mr. Raval, on the other hand, has submitted that this is not a question which can be agitated, dealt with or decided in the present proceedings by the company court. In amalgamation proceedings, interests of the workmen are required to be protected at the time of amalgamation as held by Division Bench of this Court in *Jitendra Sukhadia v. Alembic Chemical Works Co.* reported in MANU/GJ/0010/1988 : 64 Company Cases 206. He also submitted that the classification can always be made on the basis of geographical situation of the Unit, educational qualifications of the workmen, nature of work to be performed by the employees, and the like. The Company Judge in the exercise of powers under Sections 391 and 394 of the Act is not concerned with all these matters. It is always open to the workers of the Company if they feel aggrieved by any action of the Company to raise a demand, dispute or claim in an appropriate proceeding. On the ground of potential liability, sanction cannot be

refused. In this connection, Mr. Raval drew my attention to the decision of the Supreme Court in the case of Union of India v. Alembic Sarabhai Enterprise, reported in 55 Company Cases 623 and of the Karnataka High Court in the case of Mysore Electrical Works Ltd. v. I.T.O., Bangalore, reported in 52 Company Cases 32. In the latter case, it was specifically held by the High Court of Karnataka that the direction by the Company Court cannot relate to matters outside the scheme and obviously it is so. When the Company Court exercises jurisdiction under the Act, it has to decide the matter in accordance with the provisions of that Act. It is neither deciding any question nor expressing any opinion on the points which do not strictly fall within the preview of the Scheme of amalgamation. Therefore, if the employees of the transferee Company feel aggrieved in connection with payment of wages or other conditions of service, it is always open to them to approach an appropriate forum in accordance with law and all those questions will be decided in those proceedings. Granting of sanction of amalgamation of companies by this court would not come in the way of workmen, while deciding the question which may be raised in those proceedings. Even though this legal position is abundantly clear, Mr. Raval stated that if the employees of the transferee company feel aggrieved, they can approach an appropriate forum if so advised and those proceedings will be disposed of in accordance with law by appropriate authorities under the relevant statutes."

- (h) In view of the various provisions of law governing the Scheme of Amalgamation of companies and the above referred decision of the Hon'ble Supreme Court of India and Hon'ble Gujarat High Court, the various grounds raised on behalf of the Workers Union are rejected. The facts in ***Air India Employee's Union & others (supra)*** are not applicable to the present case and does not support the submissions made on behalf of the Workers Union.

31. In view of the above discussion, we conclude that the objections/observations to the Scheme received from RD, RoC, OL, BSE, NSE, IT Department and the Workers Union have been adequately replied by the Petitioner Company and hence, there is no impediment in the sanction of the Scheme.

32. The Scheme is approved and we hereby declare the same to be binding on all the shareholders and creditors of the Petitioner Companies and on all concerned. While approving the Scheme, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law. With the sanction of the Scheme, the Transferor Companies shall stand dissolved without undergoing the process of winding up. The Issued, Subscribed and Paid-up Share Capital of the Transferor Companies shall stand cancelled and extinguished. Further, no shares would be issued and allotted by the Transferee Company upon the amalgamation of the Transferor Companies with the Transferee Company.

THIS TRIBUNAL DO FURTHER ORDER:

- i) That all the property, rights and powers of the 'Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall, pursuant to Section 230 to 232 of the Companies Act,

2013 be transferred to and vested in the Transferee Company for all estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and

- ii) That all the liabilities and duties of the Transferor Company be transferred without further act or deed, to the Transferee Company and accordingly, the same shall, pursuant to Section 230 to 232 of the Act, be transferred to and become the liabilities of the Transferee Company; and
- iii) That all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and
- iv) That all the employees of the Transferor Company shall be transferred to the Transferee Company in terms of the 'Scheme'; and
- v) The authorized share capital of the Transferee Company shall stand increased and that of Transferor Company shall stand cancelled and extinguished as provided in the Scheme; and
- vi) That the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme'; and

- vii) That the Petitioner Company do, within 30 days after the date of receipt of the order of this Tribunal, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up and the concerned Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept in relation to the Transferee Company and the files relating to the said Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and
- viii) That the Transferor Company shall deposit an amount of ₹1,00,000/- (Rupees One Lac only) with the Pay & Accounts Officer in respect of the Regional Director, Northern Region, Ministry of Corporate Affairs within a period of three weeks from the receipt of the certified copy of this order.
- ix) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary, and
- x) The approval / sanctioning of the scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act,

2013 and that the authorities under both the Acts, are at liberty to take appropriate action, in accordance with law, if so advised.

34. As per the above directions and Form No. CAA.7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the petitioner filing the schedule of properties i.e. (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company by way of affidavit.

Copy of this order be communicated to the counsel for the Petitioner Company.

Sd/-

(Pradeep R. Sethi)
Member (Technical)

Sd/-

(Ajay Kumar Vatsavayi)
Member (Judicial)

February 26th, 2020
Yashpal