



NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

32. C.A.(CAA)/82/MB/2023

CORAM: SHRI. H.V. SUBBA RAO, MEMBER (J)
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **11.05.2023**

NAME OF THE PARTIES: Zuari Sugar & Power Limited.

SECTION 230 (I) OF COMPANIES ACT, 2013

ORDER

Mr. Ahmed Chunawala, counsel appearing for the Applicant is present
through physical hearing.

C.A.(CAA)/82/MB/2023

Heard the argument of counsel appearing for the Applicant and the above
C.A.(CAA)/82/MB/2023 is **allowed**. Detail order would follow:

Sd/-
MADHU SINHA
Member (Technical)
//SKS//

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

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

C.A. (CAA)/82/MB-III/2023

In the matter of
Companies Act, 2013

AND

In the matter of
Companies Act, 2013 (18 of 2013) and
Section 230-232 of the Companies Act,
2013 and other applicable provisions
of the Companies Act, 2013 read with
the Companies (Compromises,
Arrangements and Amalgamations)
Rules, 2016;

In the matter of
Scheme of Amalgamation of ZUARI
SUGAR & POWER LIMITED, the
Transferor Company with ZUARI
INDUSTRIES LIMITED, the Transferee
Company and their respective
shareholders and their respective
creditors

M/S. ZUARI SUGAR & POWER)
LIMITED, a company incorporated)
under the Companies Act, 1956)
having its registered office at Jai)
Kisaan Bhawan, Zuarinagar, Goa-)
403726, India.)
CIN: U65100GA2008PLC007282)...Applicant Company No.1

ZUARI INDUSTRIES LIMITED, a)
company incorporated under the)
Companies Act, 1956 having its)
registered office at Jai Kisaan)
Bhawan, Zuarinagar, Goa-403726,)
India.)
CIN: L65921GA1967PLC000157)...Applicant Company No.2

Order delivered on: 11.05.2023

Coram: Shri. H.V. Subba Rao, Hon'ble Member (Judicial)
Smt. Madhu Sinha, Hon'ble Member (Technical)

Appearances (via videoconferencing):

For the Applicants : Mr Ahmed M Chunawala, i/b Rajesh Shah & Co,
Advocates

ORDER

1. The Bench is convened by videoconference.
2. Learned Counsel for the Transferor Company and Transferee Company (collectively referred to as 'Applicant Companies') states that the present Scheme is a Scheme of Amalgamation of ZUARI SUGAR & POWER LIMITED, the Transferor Company with ZUARI INDUSTRIES LIMITED, the Transferee Company and their respective shareholders and their respective creditors under sections 230 to 232 of the Companies Act, 2013 ('Scheme').

3. Learned Counsel for the Applicant Companies states that the Board of Directors of the Transferor Company and Transferee Company have approved the Scheme on 31st January, 2023 and 13th February 2023, in their respective meetings. The Appointed Date fixed under the Scheme is April 1, 2022.
4. The rationale for the proposed Scheme is as under:
 - (a) Greater integration, greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder value and will improve the competitive position of the combined entity.
 - (b) Improved organizational capability and leadership, arising from the pooling of resources to compete successfully in an increasingly competitive industry.
 - (c) Strengthening of brand “Zuari” leading to a stronger market presence.
 - (d) Greater leverage in operations planning and process optimization and enhanced flexibility.
 - (e) Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, administration, finance, accounts, legal, and other related functions,

leading to elimination of duplication and rationalization of administrative expenses.

- (f) Simplification of group structure by eliminating duplication of work, multiple entities in similar business thus enabling focus on core competencies and achieve group synergies.
- (g) Proposed business re-alignment will create enhanced value for the stakeholders of both the Companies. This Scheme is not expected to be in any manner prejudicial to the interest of the concerned shareholders, members, creditors, employees or general public at large.

5. The Business Clause is as follows:

- i. The Applicant Company No.1 was incorporated to carry on the business of sugar manufacture and refinery and the manufacture of any other that may be decided upon by or on behalf of the Company and the business of buyers, sellers, importers, exporters, Commission Agents and dealers of any goods or merchandise whatsoever and to transact all manufacturing or treating and preparing processes and mercantile business that may be necessary or expedient and to purchase and vend the raw material and manufactured articles and ancillary matters.

ii. The Applicant Company No.2 has been carrying on the following businesses:

(a). To carry on agri related businesses for the manufacture of sugar, refined sugar, artificial sweeteners, pharma sugar, sugar cubes/sachets, branded sugar, fortified sugar and all value added sugar products and related products (including but not limiting) and to generally carry out all activities and business as may be needed or incidental for the manufacture of sugar and related products as permitted by law.

(b). To manufacture, trade, buy, sell, exploit or deal in all by-products and products of whatever nature derived from the process of manufacture of sugar and those arising out of the objects specified above.

(c). To carry on the business of distillery, generation of power for captive consumption and supply, sale or export of electric power, whether by the use of bio-mass, bagasse, any other feed stock or from any other substances (including but not limiting).

(d). To manufacture bio-fertilizers and bio-products of all types and descriptions which can be advantageously derived from the by products derived

from the manufacture of sugar and to buy, sell, import, export or otherwise deal in the same.

(e). To carry on business of contractors, erectors, construction of buildings, houses, apartments, structures etc.

6. The Counsel for the Transferor Company, being the wholly-owned subsidiary of the Transferee Company, submits that there are 7 Equity shareholders in the Transferor Company i.e., the Transferee Company and its 6 nominees are the shareholders. All the 7 Equity Shareholders of the Transferor Company have given their consent Affidavits for approval of the scheme and for dispensation of the shareholders meeting of the Transferor Company. The Consent Affidavits of all the shareholders of the Transferor Company are annexed to the Joint Application.
7. In view of the fact that all the Equity shareholders of the Transferor Company have given their consent affidavits, the meetings of the Equity Shareholders of the Transferor Company is hereby dispensed with.
8. The Counsel for the Transferee Company respectfully submits that:
 - a. The entire share capital of the Transferor Company is directly held by the Transferee Company and its

nominees. Thus, the entire economic interest of the Transferor Company is held by the Transferee Company.

- b. Since it is a merger of wholly owned subsidiary company into its holding company, no shares would be issued or allotted as consideration pursuant to the merger and consequently, the proposed Scheme will not result in any change in the share capital of the Transferee Company;
- c. The present Scheme is an arrangement between the Transferee Company and its Shareholders, the Scheme does not propose any Compromise and/or Arrangement with the Creditors of the Transferee Company. The rights of the creditors of the Transferee Company are not affected since there will be no reduction in their claims, and the assets of the Transferee Company, post-merger. Further, the Transferee Company in this merger is a company having positive net worth and consequently, the ability to discharge the claims in the normal course of business would not be adversely impacted. Therefore, the creditors of the Transferee Company would not be affected by the approval of the Scheme;
- d. The Scheme does not propose any transfer of asset/liability of the Transferee Company;

- e. The net worth of the Transferee Company is highly positive. The assets of the Transferee Company are more than sufficient to discharge its liabilities;
- f. Further, there is no compromise or arrangement with the members or creditors of the Transferee Company. Therefore, the proposed Scheme of Merger by Absorption is not prejudicial to the interest of the shareholders or the creditors of the Transferee Company;

The Counsel for the Transferee Company submits that in view of above, no reconstruction or arrangement is contemplated with its shareholders or creditors, and thus, it does not require to hold either shareholders' meeting or creditors' meeting for approval of the proposed Scheme in view of ratio laid down by this Tribunal in **CSA No. 243 of 2017** in the matter of **Housing Development Finance Corporation Limited, in CSA No. 915 of 2017** in the matter of **Godrej Consumer Products Limited, in CSA No. 899 of 2017** in case of **Mahindra CIE Automotive Limited, in CSA No. 1019 of 2017** in case of **Godrej Properties Limited, in CSA No. 1290 of 2019** in case of **ATC Infrastructure Services Private Limited**. The Meeting of the Equity Shareholder; Preference Shareholders; Secured Creditors and Unsecured Creditors of the Applicant Company No. 2 is

dispensed with. The Counsel for the Transferee Company further clarifies that the Transferee Company will file petition and comply with the provisions of service of notices upon all Regulatory authorities.

9. That the counsel for the Transferor Company submits that there are no Secured Creditors in the Transferor Company as mentioned in Para 25 of the Application.
10. That the Counsel for the Transferor Company submits that there are 191 (One Hundred and Ninety One) Unsecured Creditors having outstanding Rs. 1,11,64,73,620/- (Rupees One Hundred Eleven Crores Sixty Four Lakhs Seventy Three Thousand Six Hundred and Twenty) as on December 31, 2022. The Counsel for the Transferor Company submits that so far as Unsecured Creditors of the Transferor Company are concerned, most of them are in the nature of loan/sundry/trade creditors for activities of the Transferor Company and the scheme of amalgamation does not envisage any compromise or arrangement with the Unsecured Creditors of the Transferor Company and hence they will in no way be affected by the Scheme of Amalgamation. It is further submitted that the Transferor Company is meeting the amounts payable to its creditors from its activities. Therefore, the meeting of the Unsecured Creditors of the Transferor Company is

dispensed with. However, this Bench hereby directs the Transferor Company to obtain consent affidavits of at least ninety percent of value of total Unsecured Creditors as on December 31, 2022, as per Section 230(9) of the Companies Act, 2013 **before the final hearing.**

11. The Applicant Companies to serve the notice along with copy of scheme by Registered Post-AD/Speed Post and hand delivery along with its enclosures upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
12. The Applicant Companies to serve the notice along with copy of scheme by Registered Post-AD/Speed Post and hand delivery along with its enclosures upon the Registrar of Companies, Goa, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and

Amalgamations) Rules, 2016, If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules. 2016.

13. The Applicant Companies to serve the notice along with copy of scheme by Registered Post-AD/Speed Post and hand delivery along with its enclosures on the concerned Income Tax Authority within whose jurisdiction the Applicant Companies' assessments are made, pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Jurisdictional Assessing Officer of Applicant Company No. 1, (PAN: AAACZ3381Q) is having its address at Circle 25(1)(1), CR Building, Delhi and the Jurisdictional Assessing Officer of Applicant Company No. 2 (PAN: AAACZ0306P) having its address at Circle 1(1), Aayakar Bhavan, Panaji, Goa. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

14. The Applicant Companies are directed to serve the notice along with copy of scheme by Registered Post-AD/Speed Post and hand delivery along with its enclosures to the concerned GST Authorities (if registered) as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the GST Authority within 30 days of the date of receipt of the notice it will be presumed that GST Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

15. The Transferor Company is directed to serve the notice along with copy of scheme by Registered Post-AD/Speed Post and hand delivery along with its enclosures upon Official Liquidator, High Court, Goa, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no representation / response is received by the Tribunal from Official Liquidator, Goa within a period of thirty days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

16. The Applicant Companies to serve the notice along with copy of scheme by Registered Post-AD/Speed Post and hand delivery along with its enclosures upon the Securities Exchange Board of India (SEBI), pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, If no response is received by the Tribunal from the Securities Exchange Board of India (SEBI) within 30 days of the date of receipt of the notice it will be presumed that SEBI has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules. 2016.

17. The Applicant Companies to serve the notice along with copy of scheme by Registered Post-AD/Speed Post and hand delivery along with its enclosures upon the Bombay Stock Exchange (BSE), pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, If no response is received by the Tribunal from the Bombay Stock Exchange (BSE) within 30 days of the date of receipt of the notice it will be presumed that BSE has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules. 2016.

18. The Applicant Companies to serve the notice along with copy of scheme by Registered Post-AD/Speed Post and hand delivery along with its enclosures upon the National Stock Exchange of India (NSE), pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, If no response is received by the Tribunal from the National Stock Exchange of India (NSE) within 30 days of the date of receipt of the notice it will be presumed that NSE has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules. 2016.
19. The Applicant Companies to file an affidavit of service within 10 working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.
20. The Appointed Date is 1st April, 2022.
21. Ordered accordingly.

SD/-

**MADHU SINHA
MEMBER (TECHNICAL)**

SD/-

**H.V.SUBBA RAO
MEMBER (JUDICIAL)**