

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT- II**

C.P.(CAA)/233/MB/2022

IN

C.A.(CAA)/191/MB/2022

In the matter of

The Companies Act, 2013 (18
of 2013)

AND

In the matter of Sections 230 to
232 of the Companies Act,
2013 and other applicable
provisions of Companies Act,
2013 and rules framed
thereunder

AND

In the matter of
Amalgamation of Refnol
Resins and Chemicals Limited
(‘Refnol’ or ‘Transferor
Company’) with Indokem
Limited (‘Indokem’ or
‘Transferee Company’) and
their respective shareholders

Indokem Limited,)
CIN:)
L31300MH1964PLC013088)
A Public Limited Company)
incorporated under the provisions)
of Companies Act, 1956 and)
having its registered office at Plot)

No. 410/411, Khatau House,) ... **Petitioner Company 1/**
Mogul Lane, Mahim, Mumbai –) **Transferee Company**
400016)

Refinol Resins and Chemicals)
Limited)
CIN:)
L24200MH1980PLC023507)
A Public Limited Company)
incorporated under the provisions)
of Companies Act, 1956 and)
having its registered office at Plot)
No. 410/411, Khatau House,) ... **Petitioner Company 2/**
Mogul Lane, Mahim, Mumbai –) **Transferor Company**
400016)

(Hereinafter the Petitioner Company 1 and Petitioner Company 2 are collectively referred to as “Petitioner Companies”)

Order delivered on: 14.07.2023

Coram:

Hon’ble Member (Technical)
Shri Shyam Babu Gautam

Hon’ble Member (Judicial)
Shri Kuldip Kumar Kareer

Appearances:

For the Petitioner Companies

: Mr. Hemant Sethi, Ms. Devanshi Sethi, Ms. Tanaya Sethi i/b Hemant Sethi Co., Advocates

For the Regional Director

: Ms. Rupa Sutar, Authorised Representative of Regional Director, MCA (WR), Mumbai

ORDER

Per: Kuldip Kumar Kareer, Member Judicial

1. Heard the learned Counsel for the Petitioners 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.
2. The sanction of the Tribunal is sought under sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of Amalgamation of Refnol Resins and Chemicals Limited (“Refnol” or “Transferor Company”) with Indokem Limited (“Indokem” or “Transferee Company”) and their respective shareholders (‘Scheme’).
3. The Counsel for the Petitioner Companies further submits that, the Petitioner Company 1 is primarily engaged in the business of manufacturing and dealing in dyes, sizing chemicals, auxiliaries in textile industry and electrical capacitors and the Petitioner Company 2 is primarily engaged in the business of manufacturing and marketing of resins and chemicals.

4. The Counsel for the Petitioner Companies submits that the proposed Amalgamation was approved unanimously by the Board of Directors of the respective Petitioner Companies on 15th January 2022. A certified true copy of Board Resolution of respective Petitioner Companies approving the Scheme are annexed with Company Scheme Petition. The Board of Directors of the respective Petitioner Company believe that the Scheme is in the best interests of the respective entities and their respective stakeholders including its shareholders, employees, and creditors.
5. The Appointed Date for the Scheme of Amalgamation is 1st day of April 2021.
6. The Learned Counsel appearing on behalf of the Petitioner Companies states that the joint Company Petition has been filed in consonance with the order dated 26th August 2022, passed by this Tribunal in the connected Company Scheme Application bearing C.A.(CAA)/191/(MB)/2022.
7. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as may be required under the Companies

Act, 2013 and the Rules made there under. The said undertaking is accepted by the Petitioner Companies.

8. The Learned Counsel for the Petitioner Companies states that, by sanction of this Scheme of Amalgamation the Petitioner Companies will be able to achieve the following rationale:

- The Transferor Company and the Transferee Company are engaged in similar lines of business and complement each other. With an intent to expand the business and achieve larger product portfolio, economies of scale, efficiency, optimization of logistics and distribution network and other related economies by consolidating the business operations being managed by different management teams, the Board of Directors of the Transferor Company and the Transferee Company propose to consolidate the business of the Transferor Company with the Transferee Company. The proposed amalgamation of the Transferor Company with Transferee Company would inter alia have the following benefits:
 - a. Creation of a combined entity, hosting all products under the Transferee Company, thereby resulting in diversified portfolio of products, economies of scale, operational rationalization, efficiency of management and maximizing value for the shareholders.
 - b. Greater synergies between businesses and optimum use of manufacturing facilities, marketing strength, R

- & D facilities, Certifications resulting in productivity gains thereby maximizing value for the shareholders.
- c. Optimum use of infrastructure and organizational efficiency by pooling of financial, managerial, and technical resources, personnel, capabilities, skills, expertise and technologies of Transferor Company and Transferee Company thereby significantly contributing to the future growth and maximizing shareholder value.
 - d. Better financial leverage, resulting in greater efficiency in cash and debt management and unfettered access to cash flow generated by the combined business, which can be deployed more efficiently, to realize higher profits for the combined entity.
 - e. Improved organizational capability and leadership, arising from the pooling of human capital, who have the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.
 - f. Cost savings because of standardization and simplification of business processes, elimination of duplication and rationalization of administrative expenses.
 - g. Reduction in regulatory and legal compliances and avoidance of multiple records keeping.
 - h. Strengthening ability to face increasing competitive, regulatory, environmental and global risks; thereby

resulting in sustainable and profitable long-term growth for the combined entity.

9. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its Report dated 13th January 2023, inter alia stating that, save and except the observations as stated in paragraph 2 of the report, this Tribunal may pass such order or orders as deemed fit and proper in the facts and merits of the case. The Petitioner Companies have filed an Affidavit in rejoinder to the report filed by the Regional Director with this Tribunal on 19th January 2022 providing clarification/undertakings to the observations made by the Regional Director. The clarifications and undertakings given by the Petitioner Companies are accepted.
10. The observations made by the Regional Director and the clarifications/undertakings given by the Petitioner Companies are summarized in the table below:

Para	RD Report / Observations dated 13th January 2023	Response of the Petitioner Companies
(a)	In compliance of AS-14 (IND – AS 103), the Petitioner Companies shall pass such accounting entries which are	As regards the observation made in Paragraph 2 (a) of the said Report it is concerned, it is submitted that in addition to

	<p>necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS – 5 (IND-AS 8), etc.</p>	<p>compliance with IND AS-103 (AS-14 not applicable), in connection with the Scheme, the First Petitioner Company being the Transferee Company shall pass such accounting entries which are necessary to comply with all other applicable Indian Accounting Standards to the extent applicable</p>
<p>(b)</p>	<p>As per Definition of the Scheme, <i>“Appointed Date” means April 01, 2021 or such other date as may be fixed or approved by Hon’ble National Company Law Tribunal; And</i> <i>“Effective Date” means the last of the dates on which the authenticated copies or certified copies of the Order of NCLT under Section 230-232 of the Act sanctioning the Scheme is filed with Registrar of Companies by the</i></p>	<p>As regards the observation made in Paragraph 2 (b) of this Report is concerned , the Petitioner Companies confirm that the Appointed Date is 1 April 2021 as mentioned in the Scheme which is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall take effect from such Appointed Date. The Petitioner Companies undertakes to comply with the requirements clarified vide circular No.7/12/2019/CL-I</p>

	<p><i>Transferor Company and Transferee Company. References in this Scheme to the date of “coming into effect of the Scheme” or “upon the Scheme becoming effective”, or “effective-ness of the Scheme” and other similar expressions mean the Effective Date;</i></p> <p>In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon’ble Tribunal taking into account its inherent powers.</p> <p>The Petitioners may be asked to comply with the requirements</p>	<p>dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>
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	as clarified vide circular no. F. No. 7/12/2019CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs	
(c)	Petitioner Company have to undertake to comply with Section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee and the stamp duty paid by the transferor company on its authorized capital shall be set-off against the fees and stamp duty payable by the transferee company on its authorized capital subsequent to amalgamation and therefore, petitioners to undertake that the transferee company shall pay the difference of fees and stamp duty.	As regards the observation made in Paragraph 2 (c) of the said Report it is concerned, the Petitioner Companies undertake to comply with the provisions set out in Section 232(3)(i) of the Companies Act, 2013 and that the fee, if any, paid by the Transferor Company on its authorized share capital shall be set off against any fees payable by the Transferee Company on its authorized share capital subsequent to the Merger, if applicable and the Transferee Company shall pay the difference of fees and stamp duty, if any.
(d)	The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the	As regards the observation made in Paragraph 2(d) of the said Report, it is concerned, the

	requisite majority of members and creditors as per Section 230(6) of the Act in meeting duly held in terms of Section 230(1) read with 7 subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed be-fore the Tribunal.	Petitioner Companies undertakes that Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meeting duly held in terms of Section 230(1) read with 7 subsection (3) to (5) of Section 230 of the Act. Minutes of the meeting has been submitted by the Chairperson as a part of affidavit on 17 th October 2022.
(e)	The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regards, the petitioner company shall ensure compliance of all the provisions of the Income Tax Act and Rules thereunder;	As regards the observation made in Paragraph 2(e) of the said Report, it is concerned, the Petitioner Companies undertakes that it shall ensure compliance of all the provisions of the Income Tax Act and Rules thereunder including provisions of Section 2(1B) of the Income Tax Act, 1961.
(f)	It is observed that both company are listed company therefore, petitioner company	As regards the observation made in Paragraph 2 (f) of the said Report is concerned, the

	<p>may be directed to provide copy of prior notice served to SEBI.</p>	<p>Petitioner Companies submit that notice have been duly served upon the Securities Exchange Board of India. Further the compliance report proving the dispatch of the notices has been filed with this Tribunal.</p>
(g)	<p>It is observed that petitioner company has provided observation letter received from BSE vide letter dated 30.05.2022, therefore, petitioner company may be directed to undertake that all requirements as per the said letter has been complied with.</p>	<p>As regards the observation made in Paragraph 2 (g) of the said Report is concerned, the Petitioner Companies undertakes that all the requirements as per the observation letter received from BSE vide letter dated 30th May 2022 will be complied with.</p>
(h)	<p>It is observed that the Transferor Company have non-residential / foreign shareholder, therefore, petitioner company may be directed to place on record the prior notice served to RBI regarding issuing the shares to foreign Shareholders and may also be directed to undertake</p>	<p>As regards the observation made in Paragraph 2 (h) of the said report is concerned, it is submitted that issuance of shares by Transferee Company pursuant to amalgamation to non-resident shareholders of Transferor Company is allowed under automatic route and no</p>

	that all compliance with respect to FEMA/RBI guidelines have been complied with.	approval of RBI would be required (Relevant extract of the FEMA guidelines is annexed herewith as Annexure 1). Further, the Petitioner Companies undertakes to comply with all applicable provisions of FEMA/RBI guidelines while implementing the scheme.
(i)	That on examination of the report of the Registrar of Companies, Mumbai dated 04.01.2023 (Annexed as Annexure A-1) that all the Petitioner Companies fall within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and / or representation regarding the proposed Scheme of Amalgamation has been received against the Petitioner Companies. Further, the petitioner companies have filed Financial Statements up to	As regards the observation made in Paragraph 2 (i)(i) of the said Report is concerned, it is submitted that the observation made by the ROC is merely factual in nature and no further response is required to that extent. As regards the observation made in Paragraph 2 (i)(ii) of the said Report is concerned, it is submitted that the observation made by the ROC is merely factual in nature and

<p>31.03.2022 further observations in ROC report are as under:</p> <p>i. That the ROC Mumbai in his report dated 04.01.2023 has stated that no Inquiry, inspection, investigation & prosecution is pending against the subject applicant companies.</p> <p>ii. As per MCA portal in Transferor Company there are charges shown as “Open” detailed as under:</p>	<p>no further response in required to that extent. However, it is submitted that the status of the following charges is closed as per the MCA records (hereto annexed as Annexure 2) about has been erroneously considered as open by the ROC:</p>																												
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Charge ID</th> <th style="width: 15%;">Date of Creation</th> <th style="width: 15%;">Date of Last modification</th> <th style="width: 15%;">Amount Secured (In Rs.)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">100480205</td> <td style="text-align: center;">04.09.2021</td> <td></td> <td style="text-align: right;">3,000,000.00</td> </tr> <tr> <td style="text-align: center;">90225511</td> <td style="text-align: center;">26.04.1984</td> <td style="text-align: center;">30.03.1992</td> <td style="text-align: right;">1,500,000.00</td> </tr> <tr> <td style="text-align: center;">90225471</td> <td style="text-align: center;">19.08.1981</td> <td style="text-align: center;">05.03.1990</td> <td style="text-align: right;">1,665,000.00</td> </tr> </tbody> </table>	Charge ID	Date of Creation	Date of Last modification	Amount Secured (In Rs.)	100480205	04.09.2021		3,000,000.00	90225511	26.04.1984	30.03.1992	1,500,000.00	90225471	19.08.1981	05.03.1990	1,665,000.00	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Charge ID</th> <th style="width: 15%;">Date of Creation</th> <th style="width: 15%;">Date of Last modification</th> <th style="width: 15%;">Amount Secured</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">90225511</td> <td style="text-align: center;">26.04.1984</td> <td style="text-align: center;">30.03.1992</td> <td style="text-align: right;">15,00,000.00</td> </tr> <tr> <td style="text-align: center;">90226079</td> <td style="text-align: center;">18.06.1996</td> <td></td> <td style="text-align: right;">6,60,000.00</td> </tr> </tbody> </table>	Charge ID	Date of Creation	Date of Last modification	Amount Secured	90225511	26.04.1984	30.03.1992	15,00,000.00	90226079	18.06.1996		6,60,000.00
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	9022592 8	28.10. 1993		1,800,0 00.00	90225 920	20.08 .1993		70,00,000 .00
	9022570 2	10.10. 1989		92,610, 00	90226 062	23.03 .1996	29.07.200 6	9,65,00,0 00.00
	9022623 7	23.03. 1999	08.12.201 5	65,000, 000.00	90225 881	12.11 .1992	22.03.199 6	28,00,000 .00
	9022585 2	31.03. 1992		1,000,0 00.00	10163 736	15.06 .2009		50,00,000 .00
	9022592 0	20.08. 1993		7,000,0 00.00	10014 021	29.07 .2006	14.10.200 6	1,75,00,0 00.00
	9022548 5	25.05. 1982	02.03.198 4	450,000 .00	10019 6675	26.07 .2018		8,01,800. 00
	9022606 2	23.03. 1996	29.07.200 6	96,500, 000.00	10036 9127	02.09 .2020		29,99,340 .93
	9022588 1	12.11. 1992	22.03.199 6	2,800,0 00.00				
	1016373 6	15.06. 2009		5,000,0 00.00				
	1001402 1	29.07. 2006	14.10.200 6	17,500, 000.00				
	9022548 4	12.05. 1982	14.05.198 3	450,000 .00				
	1004161 27	30.10. 2020	09.02.202 2	85,000, 000.00				
	1001966 75	26.07. 2018		801,800 .00				

1003691 27	02.09. 2020		2,999,3 40.93	<p>iii. It is submitted that as per the provisions of Section 230(3)(i) of the Companies Act, 2013, where the Transferor Company is dissolved, 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 amalgamation. Therefore, remaining fee, if any, after setting-off the fees already paid by the transferor company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to the amalgamation.</p> <p>iv. Interest of the Creditors should be protected</p> <p>v. May be decided on its merits.</p>	<p>As regards the observation made in Paragraph 2 (i)(iii) of the said Report it is concerned, the Petitioner Companies undertake to comply with the provisions set out in Section 232(3)(i) of the Companies Act, 2013 and that the fee, if any, paid by the Transferor Company on its authorized share capital shall be set off against any fees payable by the Transferee Company on its authorized share capital subsequent to the Merger, if applicable and the Transferee Company shall pay the difference of fees and stamp duty, if any.</p> <p>As regards the observation made in Paragraph 2 (i)(iv) of</p>
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	<p>Petitioner company may be directed to give reply to the above observations of ROC, Mumbai.”</p>	<p>the said Report it is concerned, the Petitioner Companies undertake that the interest of the creditors shall be duly protected under the Scheme.</p>
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11. The Official Liquidator has filed his report on 19th January 2023, inter alia stating therein that the affairs of the Transferor Company have been conducted in a proper manner. Accordingly, the Transferor Company may be ordered to be dissolved without winding up.

12. Upon this Scheme becoming effective and upon Amalgamation of Refnol with Indokem in terms of this Scheme, Indokem shall, following such transfer and vesting of the Undertaking of Refnol into Indokem without any application or deed, issue and allot Equity shares, credited as fully paid up, to the extent indicated below, to the equity shareholders of Transferor Company whose names appear in the register of members of Transferor Company (except Transferee Company or its subsidiaries held directly or jointly with its nominee shareholders), on the Record Date or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title in the following proportion viz.:

“1,153 (One Thousand One Hundred and Fifty-Three) equity shares of Indokem having face value of INR 10 each fully paid up shall be issued for every 1,000 (One Thousand) equity shares held in Refnol having face value of INR 10 each fully paid up”

13. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P.(CAA)/233(MB)2022 filed by the Petitioner Companies are made absolute in terms of prayers clause of the said Company Scheme Petition.
15. The Scheme of Amalgamation is hereby sanctioned, and the appointed date of the Scheme is fixed as 1st day of April 2021.
16. The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-Form INC-28 in addition to physical copy, within 30 days from the date of receipt of order, duly certified by the Designated Registrar of this Tribunal.
17. The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Designated Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty

payable, if any, on the same within 60 days from the date of receipt of the certified copy of order.

18. All concerned regulatory authorities to act on a copy of this Order duly certified by the Registry of this Tribunal, along with a copy of the Scheme.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)