

IN THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT MUMBAI

C.A. (CAA)/832/2019

In the matter of the Companies Act, 2013

AND

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

AND

In the matter of Scheme of Amalgamation of Efferchem Private Limited, the Transferor Company or 'the First Applicant Company' with Vipul Organics Limited, the Transferee Company or 'the Second Applicant Company' and their respective shareholders ("Scheme").

Efferchem Private Limited,)
A Company incorporated under)
the Companies Act, 2013 and)
having its Registered Office at)
Plot No. A/14, M.I.D.C.,)
A.M.P. Road, Ambernath (West),)
Thane Maharashtra 421501)

... First Applicant Company/

Transferor Company

Vipul Organics Limited)
A Company incorporated under)
the Companies Act, 1956 and)



having its Registered Office at)
102, Andheri Industrial Estate,)
Off. Veera Desai Road,)
Andheri (W), Mumbai - 400053)

...Second Applicant Company
/Transferee Company

Order delivered on: 21.08.2019

Coram:

Hon'ble, Smt. Suchitra Kanuparthi, Member (J)

Hon'ble, Shri V. Nallasenapathy, Member(T)

For the Applicant(s):

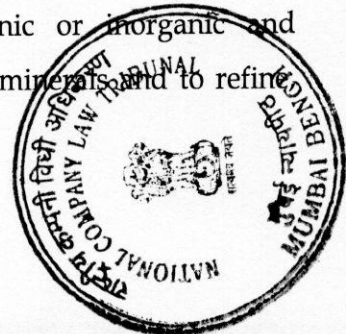
Dr. S. K. Jain, Practicing Company Secretary (S K Jain & Co.);

Mr. Yahya Batatawala, Advocate

Per: Suchitra Kanuparthi, Member (J)

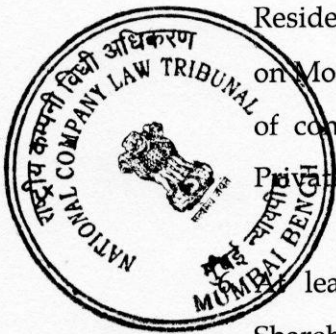
ORDER

1. The Authorised Representative for the Applicant Companies states that the present Scheme is for Merger by Absorption of Efferchem Private Limited ('EPL' or 'the First Applicant Company' or 'Transferor Company') with Vipul Organics Limited ('VOL' or 'the Second Applicant Company' or the Transferee Company).
2. The Authorised Representative for the Applicant Companies further submits that the First Applicant Company/Transferor Company undertakes the business of manufacture, process, purchase, resale, export, import and commission agency of all types of Laboratory fine and heavy chemicals whether organic or inorganic and including dyes acid and intermediates and minerals and to refine



purify derivate, crystallize, process, dry and to carry out such other process or processes, activity or activities to carry out this objects.

3. The Authorised Representative for the Applicant Companies further submits that the Second Applicant Company/Transferee Company undertakes the business of manufacture, process, purchase, resale, export, import and commission agency of all types of Laboratory fine and heavy chemicals whether organic or inorganic and including dyes acid and intermediates and minerals and to refine, purify derivate, crystalise, process, dry and to carry out such other process or processes, activity or activities to carry out this object.
 4. A Meeting of the Equity Shareholders of the First Applicant Company/Transferor Company be convened and held at 104, Andheri Industrial Estate, Off. Veera Desai Road, Andheri (West), Mumbai - 400053, on Monday, 30th day of September, 2019 at 10.00 AM, for the purpose of considering the proposed merger by absorption of Efferchem Private Limited with Vipul Organics Limited.
 5. A Meeting of the Equity Shareholders of the Second Applicant Company/Transferee Company be convened and held at Hotel Karl Residency, 36, Lalubhai Park Road, Andheri West, Mumbai: 400058, on Monday, 30th day of September, 2019 at 4.30 PM., for the purpose of considering the proposed merger by absorption of Efferchem Private Limited with Vipul Organics Limited
- at least 30 clear days before the said Meeting of the Equity Shareholders of the Applicant Companies to be held as aforesaid, a Notice convening the said Meeting at the place, 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 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by registered post or by air mail or by courier or by speed post or by hand delivery to each of the Equity Shareholders of the Applicant Companies at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders as per the records of the Applicant Companies.

7. At least 30 clear days before the Meeting of the Equity Shareholders of the Applicant Companies to be held as aforesaid, a Notice convening the said Meeting, at the place, date and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of Proxy can be obtained free of charge at the registered office of the Applicant Companies as aforesaid and shall also be published once each in 'Business Standard' in English and 'Navshakti' in Marathi.

8. The Applicant Companies undertake 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. Issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and
- iv. Advertise the Notice convening Meeting as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertakings are accepted.

9. Mr. Vipul Pravinchandra Shah (DIN: 00181636), Director failing him Mr. Mihir Vipul Shah (DIN: 05126125), Director of the First Applicant Company is appointed as the Chairperson for the Meeting of Equity Shareholders of the First Applicant Company. The Scrutinizer for the Meeting shall be CS Manish Baldeva, Practicing Company Secretary (Membership No. FCS F6180) and his remuneration is fixed as Rs. 10,000/- per Meeting excluding taxes.

10. Mr. Vipul Pravinchandra Shah (DIN: 00181636), Director failing him Mr. Prasannakumar B. Gawde (DIN: 01456510), Director of the Second Applicant Company is appointed as the Chairperson for the Meeting of Equity Shareholders of the Second Applicant Company. The Scrutinizer for the Meeting shall be CS Manish Baldeva, Practicing Company Secretary (Membership No. FCS F6180) and his remuneration is fixed as Rs. 20,000/- per Meeting excluding taxes.

11. The Chairpersons appointed for the aforesaid Meeting to issue the Notices of the Meeting referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the Meeting(s), including for deciding procedural questions that may arise 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).



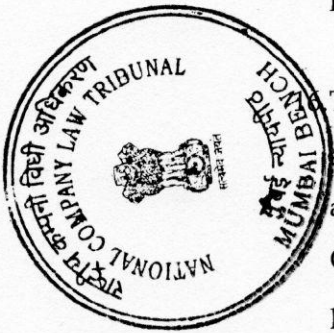
12. The quorum for the aforesaid Meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.

13. In case if the Quorum as noted above is not present at the Meetings, then the Meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the

quorum. For the purpose of quorum valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the persons entitled to attend and vote at the Meeting is filed with the registered office of the Applicant Companies at least 48 hours before the Meetings.

14. The voting by proxy or authorised representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the Meeting, is filed with the Applicant Companies at its Registered Office, not later than, 48 hours before the aforesaid Meeting as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

15. The Authorised Representative of the Applicant Company undertakes to provide e-Voting facility to the Members of the Second Applicant Company/Transferee Company/VOL in accordance with the provisions of Section 108 of the Companies Act, 2013 read with Rules made thereunder. The Notice of the Meeting of the Members of the Second Applicant Company shall also provide procedure for e-voting in the notes to the Notice thereof.



The value and number of the shares of each member shall be in accordance with the books/ register of the Applicant Companies and where the entries in the books / register 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 Chairpersons to file an Affidavit not less than seven days before the date fixed for the holding of the Meetings and do report this

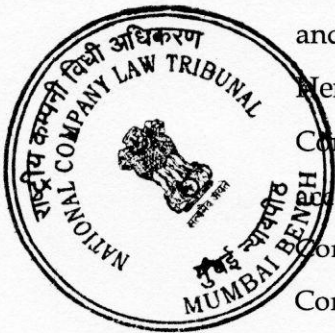
Tribunal that the direction regarding the issue of Notices and advertisements have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Chairpersons of the Meetings of all the Applicant Companies to report to this Tribunal, the result of the Meeting within 30 (Thirty) of the conclusion of the Meetings, and the said report shall be filed as per the Form CAA. 4 under the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

19. The Authorised Representative for the Applicant Companies submits that there are no Secured Creditors in the First Applicant Company, therefore the question of sending Notices to the Secured Creditors of the First Applicant does not arise.

20. The Authorised Representative further submits that present Scheme is an arrangement between First Applicant Company/Transferor Company/EPL and the Second Applicant Company/Transferee Company/VOL and its shareholders as contemplated under Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no Compromise and/or Arrangement with the creditors as no sacrifice is called for.

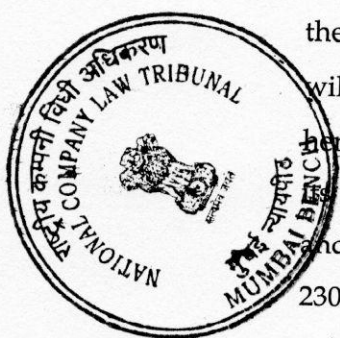
Hence, only a Meeting of the Equity Shareholders of the Transferor Company and the Transferee Company are proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. The Bench hereby directs the Applicant Companies to issue Notice of the Meeting of the Equity Shareholders to all their Unsecured Creditors and Secured Creditors (in case of the Second Applicant Company/Transferee Company). The Notice shall send via Courier/ Air Mail / Registered Post/



Speed Post/ Hand Delivery/ Email as required under section 230(3) of the Companies Act 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Companies.

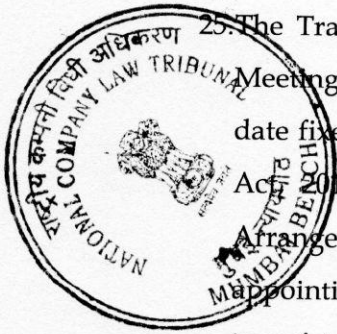
21. The Authorised Representative further submits that the rights of the creditors of the First Applicant Company will not be affected by the proposed Scheme since post Scheme, the assets of First Applicant Company/Transferor Company/EPL and the Second Applicant Company/Transferee Company/VOL will be sufficient to discharge their respective liabilities. This Bench hereby directs the First Applicant Company to issue Notice to all its Unsecured Creditors to whom the amount is due and payable, as on 30th September, 2018, as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Second Applicant Company.

22. The Authorised Representative further submits that the rights of the creditors of the Second Applicant Company will not be affected by the proposed Scheme since post Scheme, the assets of EPL and VOL will be sufficient to discharge their respective liabilities. This Bench hereby directs the Second Applicant Company to issue Notice to all Secured and Unsecured Creditors to whom the amount is due and payable, as on 30th September, 2018, as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Second Applicant Company.



23. The Applicant Companies to serve the Notice 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.

24. The Applicant Companies to serve the Notice upon the concerned Registrar of Companies, 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 & Amalgamations) Rules, 2016.



25. The Transferor Company are also directed to serve Notice of the Meeting upon Official Liquidator at least 30 clear days before the date fixed for hearing, 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 Tribunal is appointing M/s. Dalal and Kala Associates, Chartered Accountant, to assist the Official Liquidator to scrutinize the books of accounts of the said Transferor Company since incorporation and submit its representation/ report to the Tribunal. The aforesaid Company to pay fees of Rs. 20,000/- for this purpose. If no representation/

response is received by the Tribunal from Official Liquidator, Bombay 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.

26. The Applicant Companies to serve the Notice on the concerned Income Tax Authority within whose jurisdiction, The First Applicant Company PAN:- AAECE4331P having its address at Income Tax Officer and Ward: 2 (1) KALYAN - 421301. The Second Applicant Company PAN:- AAACV1710B having its address at Income Tax Officer, Deputy Commissioner of Income-tax-8(3)(2), Room No. 615, 6th Floor, Aayakar Bhavan, Maharshi Karve Road, Churchgate, Mumbai, Maharashtra 400020. The Applicant Company's assessments are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. 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 Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.



27. The Applicant Companies to serve the Notice on Securities and Exchange Board of India (SEBI) and the BSE Ltd., where the securities of the Second Applicant Company are listed, 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 SEBI and BSE Ltd. within 30 days of the date of receipt of the Notice it

will be presumed that SEBI and BSE Ltd. have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

28. That the Chairperson of the respective Applicant Companies to file an Affidavit of Service as per Rule 12 of Company (Compromises, Arrangements and Amalgamations) Rules, 2016, not less than 7 (Seven) days before the date fixed for the holding of the Meetings and do report this Tribunal that the direction regarding issue of Notices and the advertisement have been duly complied with.

29. Appointed Date is 1st day of April, 2017.

SD/-

SUCHITRA KANUPARTHI
MEMBER, (J)

SD/-

V. NALLASENAPATHY
MEMBER, (T)

/n/



Certified True Copy
Copy Issued "free of cost"

On 20/01/19

Assistant Registrar

National Company Law Tribunal Mumbai Bench