

NATIONAL COMPANY LAW TRIBUNAL

COURT – V, MUMBAI BENCH

C.A.(CAA)/183/MB/2022

Connected with

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

In the matter of the Companies Act, 2013;

AND

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

AND

In the matter of Composite Scheme of Amalgamation and Arrangement amongst **DVK Investments Private Limited** (“DVK” or “Transferor Company 1”) and **Aegean Properties Limited** (“APL” or Transferor Company 2”) and **Fermenta Biotech Limited** (“FBL” or “Transferee Company”) and their respective Shareholders

DVK Investments Private Limited

CIN : U67120MH2003PTC141695

..... First Petitioner Company/ Transferor Company 1

Aegean Properties Limited

CIN : U45200MH1995PLC084766

..... Second Petitioner Company/ Transferor Company 2

Fermenta Biotech Limited

CIN : L99999MH1951PLC008485

..... Third Petitioner Company/ Transferee Company
(Collectively referred as to ‘Petitioner Companies’)

Order delivered on: 08.05.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconferencing) :

For the Petitioners : Mr. Hemant Sethi i/b Hemant Sethi &
Co., Advocates

For the Regional Director : Ms. Rupa Sutar, Deputy Director,
Regional Director, MCA (WR), Mumbai

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The Court is convened by videoconference today.
2. Heard Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.
3. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 ("Act") to the said Composite Scheme of Amalgamation and Arrangement amongst **DVK Investments Private Limited** ("DVK" or "Transferor Company 1") and **Aegean Properties Limited** ("APL" or Transferor Company 2") and **Fermenta Biotech Limited** ("FBL" or "Transferee Company") and their respective Shareholders ("Scheme").
4. The Counsel for the Petitioner Companies submits that the First Petitioner Company holds 51.22% in the equity share capital of the Third Petitioner Company and the Second Petitioner Company is a wholly owned subsidiary of the Third Petitioner Company.

5. The Learned Counsel for the Petitioner Companies further submits that the First Petitioner Company is non-systemically important, non-deposit taking, non-banking finance company (as defined under the Non-Systemically Important Non-Deposit Taking Company (Reserve Bank) Directions, 2016, dated 01.09.2016, as amended). The Second Petitioner Company is primarily engaged in the business of renting of properties. The Third Petitioner Company is engaged in the business of manufacturing and marketing of chemicals, active pharmaceutical ingredients, enzymes, pharmaceutical formulations and environmental solution products and is also engaged in the business of renting of properties.
6. The Petitioner Companies have approved the Scheme by passing the Board Resolutions at their respective board meetings held on 31st January, 2022 and have approached the Tribunal for sanction of the Scheme. The Appointed Date fixed under the Scheme is the Effective Date.
7. Learned Counsel for the Petitioner Companies further submits the rationale for the Scheme that:

The Amalgamation of the Transferor Companies with the Transferee Company is sought to be undertaken to achieve the following benefits –

- (i) Simplification of the group structure and consolidation of legal entities;*
- (ii) Reducing the number of legal entities, resulting into lesser administrative and regulatory compliances;*
- (iii) Simplification of the shareholding structure and reduction of shareholding tiers thereby providing greater transparency in relation to the Promoters' direct engagement with the Transferee Company;*
- (iv) Improved allocation of capital and optimization of cash flows contributing to the overall growth prospectus of the combined entity;*
- (v) Creation of a larger asset base by consolidation of the assets and facilitation of access to better financial resources;*

- (vi) The Transferee Company would benefit from freeing up of management time, and related cost savings, as the simplification of the group structure would reduce intra-group transaction reporting requirements that apply to the Transferee Company*
- (vii) Enable greater / enhanced focus of the management on the business; and*
- (viii) Creating enhanced value for Transferee Company's shareholders and allow a focused strategy in operations, which would be in the best interest of all its shareholders, creditors and all other stakeholders.*

8. Learned Counsel for the Petitioner Companies submits that the Company Petition has been filed in consonance with the order passed in Company Scheme Application C.A. (CAA) 183/MB/2022 on 19th July, 2022 and the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal.

9. The Counsel for the Petitioner Companies state that the consideration proposed for amalgamation of First Petitioner Company into Third Petitioner Company is as under:

“1,50,75,318 (One Crore Fifty Lakhs Seventy-Five Thousand Three Hundred and Eighteen Only) fully paid-up equity shares of the face value of INR 5 each of the Transferee Company shall be issued and allotted as fully paid-up equity shares to the equity shareholders of the Transferor Company 1, in proportion to their holding in the Transferor Company 1.”

Further, the Learned Counsel submits that the Second Petitioner Company is wholly owned subsidiary of the Third Petitioner Company and upon effectiveness of Scheme, the entire issued, subscribed and paid-up share capital of Second Petitioner Company shall stand extinguished and cancelled and no new shares shall be issued or allotted pursuant to the Scheme.

10. The Regional Director has filed its Report dated 17th October 2022 (“Report”) praying that this Tribunal may pass such orders as it thinks fit, save and except as stated in Paragraph 2. The observations of Regional Director and the replies given by Petitioner Companies vide Affidavit dated 16th January 2023 and Additional Affidavit dated 23rd February 2023 are as follows:

Para No.	Regional Director’s Observations	Petitioner Companies’ Responses
2(a)(ii)(a)	As per MCA Master data the paid-up Share Capital of the Transferee Company is Rs. 14,42,37,000/- which does not agree with the scheme. As per Scheme, the paid-up Share Capital is Rs. 14,71,54,935/-	In so far as observations made in paragraph 2(a)(ii)(a) of the Report of Regional Director is concerned, the Petitioner Companies would like to submit that the paid-up share capital of the Third Petitioner Company as per the Scheme and as per the master data of MCA website is INR 14,71,54,935. There is no discrepancy in the share capital amount as per the Scheme and the MCA website. The same may be referred from clause 7.3 of the Scheme. Further, the copy of master data reflecting the share capital is annexed as Annexure A to the affidavit.
2(a)(ii)(b)	As per Balance sheet as on 31/03/2022 of the Transferor Co. No. 2, the Company has Trade Payables & Current liabilities of Rs. 16,500/- & 26,371/-	In this regard, the Transferor Company 2 confirms that it has Trade Payables & Current liabilities of Rs. 16,500/- & 26,371/- in the Balance Sheet as on 31st March 2022.

2(a)(ii)(c)	<p>As per Balance sheet as on 31/03/2022 of the Transferee company, the Co is having Financial Liabilities as Borrowings of Rs. 11,468.25/-, Lease liabilities of Rs. 371.77/- and Trade Payables as Dues to MSME of Rs. 4331.92/- & to Creditors of Rs. 1,275.59/- (rs in Lakhs). Also, the Company has various litigations against it and the same are attached as ANNEXURE-1 with the Scheme.</p>	<p>In so far as observations made in paragraph 2(a)(ii)(c) of the Report of Regional Director is concerned, the Transferee Company confirms that it has Financial Liabilities as Borrowings of Rs. 11,468.25/-, Lease liabilities of Rs. 371.77/- and Trade Payables as Dues to MSME of Rs. 4331.92/- & to Creditors of Rs. 1,275.59/- (Rs. in lakhs).</p> <p>The list of litigations against the Transferee Company is attached as Annexure W to the Joint Company Application filed by the companies.</p>
2(a)(ii)(d)	<p>As per the provisions of Section 232(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, has to be paid by the transferee company on the increased authorized capital subsequent to the amalgamation.</p>	<p>In so far as observations made in paragraph 2(a)(ii)(d) of the Report of Regional Director is concerned, the Petitioner Companies would like to submit that the Petitioner Companies undertakes to comply with all applicable provisions of section 232(3)(i) of Companies Act, 2013.</p>

2(a)(ii)(e)	Interest of Creditors should be protected	In so far as observations made in paragraph 2(a)(ii)(e) of the Report of Regional Director is concerned, the Petitioner Companies undertakes to protect the interest of the Creditors
2(b)	Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies.	In so far as the observation of the Regional Director made in Paragraph 2(b) is concerned, the Transferee Company undertakes to comply with all applicable provisions of section 232(3)(i) of Companies Act, 2013, as mentioned in the response of point 2(a)(ii)(d) above.
2(c)	In compliance of Accounting Standard 14 or IND-AS 103, as may be applicable, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.	In so far as observations made in paragraph 2(c) of the Report of Regional Director is concerned, the Transferee Company undertake that it shall pass necessary accounting entries in connection with the Scheme as well as comply with other applicable Accounting Standards such as AS-5 or IND AS-8, etc. to the extent applicable.
2(d)	The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.	In so far as observations made in paragraph 2(d) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Scheme enclosed in Company Application and Company Petition is one and same and there is no discrepancy/deviation in the same.

2(e)	<p>The Petitioner Companies under provisions of Section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned.</p>	<p>In so far as observations made in paragraph 2(e) of the Report of the Regional Director is concerned, the Petitioner Companies submits that an affidavit of service, stating that the notices have been served to concerned authorities as required under Section 230(5) of the Companies Act, 2013, have been annexed with the Company Scheme Petition. The approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the Scheme and the same will be dealt by the Petitioner Companies in accordance with the applicable laws under the respective Acts.</p>
2(f)	<p>As per the Definition of the Scheme, “Appointed Date” means the Effective Date or such other date as may be fixed or approved by the NCLT or such other competent authority. “Effective date” means the date on which the Scheme shall become effective upon the filing, as contemplated under clause 18.1(vi) hereof, of certified copies of the order of the NCLT approving the Scheme. Any references in this Scheme to</p>	<p>In so far as observations made in paragraph 2(f) of the Report of the Regional Director is concerned, the Petitioner Companies clarify that the Appointed Date specified in the Scheme is Effective Date. As per Circular No. F.No.7/12/2019/CL – I dated 21-08-2019 issued by Ministry of Corporate Affairs, Appointed Date can be tied to an occurrence of event and need not necessarily be a specific calendar date. In the present case, the Appointed Date is linked to the event of filing certified copies of the Order of Hon'ble Tribunal with the</p>

	<p>“coming into effect of this Scheme” or “upon this Scheme becoming effective” or “effectiveness of this Scheme” or “after this Scheme becomes effective” means and refers to the Effective Date.</p> <p>It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs and appointed dated should be prior to 08/09/2021 as application before the Hon’ble NCLT filed on 09/09/2022.</p>	<p>Registrar of Companies, Mumbai and therefore, is in compliance with the provisions of Section 232(6). Further, the Petitioner Companies undertakes that they would comply with the provisions and requirements clarified vide circular no. F. No 7/12/2019/CL-I dated 21-08-2019 issued by the Ministry of Corporate Affairs, if required.</p>
2(g)	<p>Petitioner Companies shall undertake to comply with the directions of the Income tax department, if any</p>	<p>In so far as observations made in paragraph 2(g) of the Report of the Regional Director is concerned, the Petitioner Companies undertake to comply with the directions of Income-tax department, to the extent applicable and in compliance with the applicable laws.</p>
2(h)	<p>Petitioner Companies shall undertake to comply with the directions of the concerned sector Regulator, is so required.</p>	<p>In so far as observations made in paragraph 2(h) of the Report of the Regional Director is concerned, the Petitioner Companies undertake to comply with the directions of the concerned sectoral regulatory, to the extent applicable and required.</p>

2(i)	Petitioner Companies (Transferor Co no-2 is Public Limited and Transferee Company is Listed) need to undertake comply with the directions of the BSE letter dated 30/05/2022 as attached.	In so far as observations made in paragraph 2(i) of the Report of the Regional Director is concerned, the Petitioner Companies hereby submits that Transferor Company 2 is a public limited company but unlisted company. The observation letter issued by BSE Limited requires compliance by the Transferee Company, i.e. the listed entity. Therefore, the Transferee Company undertakes to comply with the directions of BSE letter dated 30th May, 2022.
2(j)	Petitioner company (Transferor Company no-1) is required to comply with directions of the RBI NOC letter dated 02/05/2022, as attached with the scheme.	In so far as observations made in paragraph 2(j) of the Report of the Regional Director is concerned, Transferor Company 1 undertakes to comply with the directions of RBI NOC dated 02nd May, 2022.
2(k)	Petitioner Company (Transferor Company-2) is required to submit approvals of RERA, if needed or if the company has launched any real estate project with the RERA registration till date.	In so far as observations made in paragraph 2(k) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Transferor Company 2 is engaged in the business of renting of immovable properties. It has not launched any real estate project till date which requires approval of RERA. Therefore, the requirement of this point is not applicable on the Transferor Company 2.

11. The clarifications and undertakings given by the Petitioner Companies are accepted by this Tribunal. Ms. Rupa Sutar, Authorised representative of

the Regional Director, MCA (WR), Mumbai, who was present at the time of Final hearing has submitted that the clarifications, submissions and undertakings given by the Petitioner Companies are hereby accepted and that they have no objection for approving the scheme by the Tribunal.

12. The Official Liquidator has filed his report dated 07th October 2022 and has stated that the affairs of the First and the Second Petitioner Company have been conducted in a proper manner and not prejudicial to the interest of its members or to the public interest and there are no instances of misapplication/ misappropriation and breach of trust on the part of the management.
13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, C.P.(CAA) 191/MB/2022 connected with C.A.(CAA)/183/MB/2022 is made absolute in terms of the prayer clauses of the said Company Scheme Petition.
15. The Scheme is hereby sanctioned, with the Appointed Date as Effective date.
16. The First and the Second Petitioner Company be dissolved without winding up.
17. The Petitioner Companies are directed to lodge 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, within 30 days from the date of receipt of the certified copy of order by Petitioner Companies.

18. The Petitioner Companies are directed 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 adjudication of stamp duty payable, if any, within 60 days from the date of receipt of certified copy of the certified order from the Registry of this Tribunal.
19. All concerned regulatory authorities to act on a copy of this Order duly certified by the Designated Registrar of this Tribunal along with copy of the Scheme.
20. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.
21. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
22. Ordered Accordingly.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)