

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT- I**

C.A. (CAA) 818/MB/2019

C.A. (CAA) 817/MB/2019

In the matter of

The Companies Act, 2013

And

In the matter of

The Section 232 r/w Section 230 of

The Companies Act, 2013

read with other applicable provisions of The

Companies Act, 2013 and Companies

(Compromises, Arrangements and

Amalgamation) Rules, 2016

and

In the matter of

Scheme of Amalgamation

Count Fabri-Fluidomatics Ltd.

CIN: U29120MH1992PLC064869

...Applicant Company 1/

Transferor Company

Britacel Silicones Limited

CIN: U24230MH1982PLC026989

...Applicant Company 2/

Transferee Company

Order delivered on 04.01.2024

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)

Hon'ble Member (Judicial)



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Appearances (through)

For the Applicant : Mr. Ganesh Shetty, PCS

1. Heard the Ld. Counsel for the Applicant Companies.
2. The present scheme is a scheme of Amalgamation sought u/s 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013 amongst **Count Fabri-Fluidomatics Ltd** (Transferor Company) **Britacel Silicones Limited** (Transferee Company).
3. Under consideration of the Application Nos. in **C.A 19 of 2022, C.A. (CAA) 818/MB/2019, MA 2290/2019; and C.A 430 of 2021 in C.A. (CAA) 817/MB/2019, MA 2293/2019;** filed under **Sections 230 and 232** of the Companies Act, 2013. The prayer made is to dispense with convening, holding and conducting the meeting of Equity Shareholders, and the Creditors of the Transferor and Transferee Companies. **Both the Applications are pertaining to the same Scheme, therefore, are taken together to pass a Common Order.**
4. The Board of Directors of the Applicant companies i.e. Transferor Company & Transferee Companies have approved and amended the appointed date instead of earlier appointed date 01.04.2018 revised the appointed date 01.04.2022 in its meeting held on 25.01.2019 & 01.03.2022. The bench allowed the appointed date to be 01.04.2022 and has taken on record the request of the applicant counsel, this is in compliance of the MCA circular F.No.7/12/2019/CL-I General Circular 09/2019 dated 21.08.2019.



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5. The M/s Count Fabri-Fluidomatics Limited, the Transferor Company is engaged in the business of manufacture, purchase, sell or otherwise lease, import, export, hire, licence, use, dispose of operate, fabricate, construct, distribute, assemble, design, charters, acquire, market, recondition, work upon or otherwise deal in power packs, transformers, hydraulics machines, pneumatic machines, fabrications, fluidomatic machines and Engineering goods.
6. M/s Britacel Silicones Limited, formerly known as M/S ENPEE Pharma Limited, is the Transferee Company is engaged in the business To carry on business as manufactures, exporters, dealers, traders, wholesalers, retailers, processors and agents in full range of silicones, specialty Silicones and non- Silicones formulations polymers, emulsions and compounds for various silicones compositions to various Industry.
7. The share capital of Transferor Company as on March 31, 2018

Authorized Capital	Amount (Rs.)
50,000 Equity Shares of Rs.10/- each	5,00,000/-
Total	5,00,000/-
Issued, Subscribed and Paid-Up Capital	Amount (Rs)
50,000 Equity Shares of Rs. 10/- each fully paid up	5,00,000/-
Total	5,00,000/-

Subsequent to March 31, 2018 there has been no change in the share capital of the Transferor Company 1.

8. The share capital of Transferee Company as on March 31, 2018



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Authorized Capital	Amount (Rs.)
50,000 Equity Shares of Rs.1000/- each	5,00,00,000
Total	5,00,00,000
Issued, Subsribed and Paid-Up Capital	Amount (Rs)
48048 Equity Shares of Rs. 1000/- each fully paid up	4,80,48,000
Total	4,80,48,000

Subsequent to March 31, 2018 there has been no change in the share capital of the Transferor Company.

9. Rationale for the Scheme:

The business activities of the Transferor Company and the Transferee Company complement each other. Therefore, in order to achieve inter-alia economies of scale and efficiency, the merger of the companies is being undertaken.

The amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits:

1. Greater integration, greater financial strength and flexibility for the Transferee Company, which would result in maximising overall shareholder value and will improve the competitive position of the combined entity.
2. Improved organizational capability and leadership, arising from the pooling of resources to complete successfully in an increasingly competitive industry.
3. Greater leverage in operations planning and process optimization and enhanced Flexibility.



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4. Cost savings are expected to flow from more focused operational efforts, rationalization, standardisation and simplification of business processes, administration, finance, accounts, legal, audit, compliances and other related functions, leading to elimination of duplication and rationalization of administrative expenses.
 5. To enable the group to attract and retain talent in a cost-effective manner by consolidating its operations across geographical locations.
 6. Simplification of group structure by eliminating duplication of work, multiple entities in similar business thus enabling focus on core competencies and unlocking of value through operating independence of each vertical.
10. Upon the sanction of the Scheme of Amalgamation, Transferee Company shall, without any application or deed, issue and allot equity shares, credited as fully paid up, to the extent indicated below, to the members of Transferor Company holding fully paid-up equity shares in Transferor Company and whose names appear in the Register of members of Transferor Company, on the Effective Date or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of Directors of Transferor Company in the following proportion viz.:

"1332" fully paid up equity shares of Rs.1000/- each of Transferee Company shall be issued and allotted for even 50,000 equity shares of Rs.10/- each held in Transferor Company (hereinafter referred to as "New Equity Shares")



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11. The Transferor Company submits that there are 7(seven) Equity Shareholders holding 50,000 Equity Shares of Rs.10/- each aggregating to Rs. 5,00,000/-. The Transferor Company has obtained consent from all the equity shareholders for approval of the scheme. Therefore, the meeting of the Equity Shareholders of the Transferor Company 1 is dispensed with.
12. The Transferor Company submits that there are no secured creditors. Further the Transferor Company submits that there were 3 (Three) Unsecured Creditors and 2 (Two) Trade Creditors as on 31st March 2018, in respect to this 100% payment has been made and file CA certificate to that effect, which shows that as of now there are no unsecured creditors remains. In view of the fact that there are secured as well as unsecured creditors, the meeting is hereby dispensed with.
13. The Transferee Company submits that there are 7(seven) Equity Shareholders holding 48,048 Equity Shares of Rs.10/- each aggregating to Rs. 4,80,480/-. The Transferee Company has obtained consent from all the equity shareholders for approval of the scheme. Therefore, the meeting of the Equity Shareholders of the Transferee Company is dispensed with.
14. The Transferee Company submits that there is one secured creditor in the Company i.e. Yes Bank Limited having outstanding amount of **Rs. 43,56,33,266**, who has given its consent for approval of the scheme. Subsequently the Secured Creditors outstanding as on appointed date were settled in full.
15. Further the Transferee Company submits that there are 264 (Two Hundred and Sixty Four) **Trade Creditors** as on 31st March 2018, in respect to this 100% payment has been made to all Outstanding Trade Creditors and there are no unsecured creditors



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in the Transferee Company. In view of the fact that there are secured as well as unsecured creditors, the meeting is hereby dispensed with.

16. The applicant company has discharged payment to its Secured, Unsecured and Trade Creditors in view of the revised Appointed Date i.e 01.04.2022, are as under:

Secured Creditors

Sl. No.	Particulars	Amount in Rs.
1	Yes Bank Ltd FCNRB	13,41,15,255
2	Yes Bank Ltd CC	4,91,91,707
3	Tata Finance Ltd	3,70,68,943
	Total	22,03,75,905

Unsecured Creditors (From Directors)

Sl. No.	Particulars	Amount in Rs.
1	Naishadh Desai	10,75,000
2	Ketan Desai	2,21,78,353
3	Manasvvi Desai	1,00,000
4	Prassami Desai	1,00,000
	Total	2,34,53,353

Trade Creditors

Sl. No.	Particulars	Amount in Rs.
1	Goods and Service	22,61,21,457
	Total	22,61,21,457

Therefore, the meetings of the Creditors are allowed to be dispensed with under sub-section (9) of the Section 230 of the Companies Act, 2013.

17. This Bench has perused the Misc. Applications and Company Applications filed by the Applicant Companies for dispensation of



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meeting. We feel that since the 100% of the secured as well as unsecured creditors have been paid in the Transferor Company 1 and 2 and Transferee Company; and more than 90% of the Trade Creditors have been paid in Transferee Company, this Bench feels it appropriate to dispense with the meeting of the creditors in the applicant companies. However, the Transferee Company is directed to serve notices to remaining Trade Creditors, who have not paid, by RPAD, Speed Post and Hand Delivery /email. In view of this directions, the Company Applications and Misc. Application are allowed.

18. The Applicant Companies shall serve the Notice in terms of Section 230 (5) of the Companies Act, 2013, upon -

- a. The Central Government, through Regional Director, Everest, 5th Floor, 100 Marine Drive, Mumbai-400002;
- b. The Registrar of Companies, Mumbai;
- c. GST Department;
- d. Jurisdictional Income Tax Authorities; within whose jurisdiction; the Applicant Company's assessment are made; and the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in];
- e. Official Liquidator, High Court of Bombay.
- f. Any other sectoral regulator as may be directed by this Hon'ble Tribunal.



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19. The Notice shall be served through by Registered Post-AD, Speed Post and email along with copy of Scheme and state that *"If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme"*. It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.
20. The Applicant Companies will submit –
- i. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.
 - ii. List of pending IBC cases, if any, along with all other litigation;
 - iii. pending against the Applicant Companies having material impact on the proposed Scheme.
 - iv. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.
21. 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.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)

Certified True Copy
Copy Issued "free of cost"
On 15.01.2024

R.S. Sonawane
16.01.2024
Deputy Registrar

National Company Law Tribunal Mumbai Bench

(D-0745) 10/1/24

