

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

(SPECIAL BENCH)

COURT III

5. C.A. 639/2022

IN

C.A.(CAA)/212/MB/2022

CORAM: SH. KULDIP KUMAR KAREER, MEMBER (J)

SH. SATYA RANJAN PRASAD, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **09.12.2022**

NAME OF THE PARTIES: GRINDWELL NORTON LIMITED.

SECTION 230(I) OF COMPANIES ACT, 2013

ORDER

Mr. Hemant Sethi, counsel for the Applicant is present through virtual hearing.

C.A. 639/2022

Ld. Counsel Mr. Hemant Sethi, appearing for the Applicant and submits that the above application is filed for rectification of typographical error in the order dated 06.10.2022 passed by this Bench wherein, the 5th line of Paragraph 8 of the order, the word “unsecured creditors” shall stand replaced by “Secured Creditors”.

After hearing the submission, the above application is allowed and stand disposed of.

Sd/-
SATYA RANJAN PRASAD
Member (Technical)
//SGP//

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT III

33. C.A.(CAA)/212/MB/2022

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)
SMT ANURADHA SANJAY BHATIA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **06.10.2022**

NAME OF THE PARTIES: GRINDWELL NORTON LIMITED

SECTION 230(I) OF COMPANIES ACT, 2013

ORDER

Mr. Hemant Sethi, counsel for the Petitioner is present through virtual hearing.

C.A. (CAA)/212/MB/2022

Heard the counsel appearing for the Petitioner and the above Application is allowed. Detail order would follow:

Sd/-
ANURADHA SANJAY BHATIA
Member (Technical)
//SGP//

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

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT III**

C.A.(CAA)/212/(MB)/2022

In the matter of the Companies Act, 2013 (18 of
2013)

AND

In the matter of Sections 230 to 232 other
applicable provisions of the Companies Act,
2013 and Rules framed there under as in force
from time to time;

AND

In the matter of Scheme of Amalgamation (by
way of merger by Absorption) of PRS
PERMACEL PRIVATE LIMITED, the
Transferor Company with GRINDWELL
NORTON LIMITED, the Transferee Company.

PRS PERMACEL PRIVATE LIMITED,)
CIN: U74999MH1999PTC120475,)
a company incorporated under the Companies Act,)
1956, having its registered office at: 5th Level,)
Leela Business Park, Marol Andheri-Kurla Road,) First Applicant Company /
Andheri (East), Mumbai 400 059.)Transferor Company

GRINDWELL NORTON LIMITED,)
CIN: L26593MH1950PLC008163,)
a company incorporated under the Companies Act,)
1913, having its registered office at: 5th Level,)
Leela Business Park, Andheri-Kurla Road, Andheri) Second Applicant Company /
(East), Mumbai 400 059.)Transferee Company

(First Applicant Company and Second Applicant Company are together referred to as “Applicant Companies”)

Order pronounced on: 06.10.2022

Coram:

Hon’ble Shri H.V. Subba Rao, Member (Judicial)

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

Appearances (via videoconferencing):

For the Applicants: Mr. Hemant Sethi, Ms. Vidisha Poonja i/b Hemant Sethi & Co.,
Advocates

ORDER

1. The Court convened by videoconference today.
2. The Learned Counsel for the Applicant Companies states that the present Scheme of Merger by Absorption is amalgamation of a wholly owned subsidiary namely, PRS PERMACEL PRIVATE LIMITED (Transferor Company) with its holding company namely Grindwell Norton Limited (‘the Transferee Company’) and their respective Shareholders (‘the Scheme’ or ‘this Scheme’), under the provisions of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and Rules framed thereunder.
3. The Learned Counsel for the Applicant Companies states that the resolutions passed by the Board of Directors of the respective Transferor Company and

Transferee Company in their meeting held on July 29, 2022 approved the Scheme. The Appointed Date fixed under the Scheme is 27th May, 2022.

4. The Learned Counsel for the Applicant Companies further submit that the Transferor Company is a wholly owned subsidiary of the Transferee Company / Second Applicant Company and entire share capital of the Transferor Company is held by the Transferee Company alongwith its nominees. Upon the Scheme being effective the Transferee Company / Second Applicant Company would not be required to issue and allot any shares to the shareholders of the Transferor Company.
5. The Learned Counsel for the Applicant Companies further submits the introduction and rationale for the Scheme:-

The Transferor Company

The Transferor Company is authorized to carry on, inter alia, the business of manufacturing and trading of self-adhesive tapes and labels. The Transferor Company is a wholly owned subsidiary of the Transferee Company / Second Applicant Company.

The Transferee Company

The Transferee Company is a listed company having its shares listed on BSE Limited and National Stock Exchange of India Limited and it is currently engaged in the business of manufacturing of grinding wheels in India as well as business of abrasives, ceramic materials businesses (silicon carbide and performance ceramics and refractories) and performance plastics.

Rationale of the Scheme:

The objects/ rationale of the proposed Scheme is as under:

- With the ultimate objective of acquiring the ongoing business carried on by the Transferor Company and thereby broadening the product portfolio and alignment with global business interests, the Transferee Company entered into a Share Purchase Agreement dated 12th May, 2022 with the erstwhile shareholders of Transferor Company to acquire 100% of the equity shares

of the Transferor Company. This acquisition was completed on 27th May 2022 as a stepping-stone towards acquisition of the business undertaken by the Transferor Company.

- Pursuant to the above referred acquisition, the main objective of Transferor Company is similar to one of the main objectives of Transferee Company and they form part of the same management. Thus, with a view to achieve the main objective of consolidation of business carried on by the Transferor Company and in order to maintain a simple corporate structure and eliminate duplicate corporate procedures, it is desirable to amalgamate Transferor Company into the Transferee Company.
 - The amalgamation of Transferor Company into the Transferee Company shall enable effective management and unified control of operations. Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.
 - The Scheme will neither impose any additional burden on the shareholders of the Transferor Company, nor will it adversely affect the interests of any of the shareholders or creditors of the Transferor Company and Transferee Company. Further, the Scheme is only for merger by absorption of the Transferor Company with the Transferee Company and is not an arrangement with the creditors of any of the entities involved.
6. The Learned Counsel for the Applicant Companies submits that there are 7 (seven) Equity Shareholders (including 6 nominee shareholders) in the First Applicant Company and that the First Applicant Company has procured the consent affidavits from all the Equity Shareholders of the First Applicant Company which have been filed with the Company Application and are annexed to the Joint Company Scheme 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 Learned Counsel for the Applicant Companies submits that as on June 30, 2022 there are 2 (two) Secured Creditors of value Rs 12,98,04,638/- in the First Applicant Company. As per Section 230(9) of the Companies Act, 2013, we hereby direct the Applicant Companies to obtain consent of at least ninety percent (90%) of the value of unsecured creditors before the final hearing of the Application or is directed to hold meeting as per Section 230(3) of the Companies Act, 2013.
9. The Learned Counsel for the Applicant Companies submits that as on June 30, 2022 there are 1 (one) Secured Creditor of value Rs 90,33,561/- in the Second Applicant Company/Transferee Company and that the Second Applicant Company has procured their consent affidavit from such Sole Secured creditor which has been filed before this Tribunal *vide* Additional Affidavit dated 26 August 2022.
10. The Learned Counsel for the Applicant Companies submits that as on June 30, 2022 there are 230 (Two Hundred and Thirty) Unsecured Creditors having aggregate value of Rs. 21,61,39,112/- of the First Applicant Company / Transferor Company and there are 1,845 (One Thousand Eight Hundred and Forty-Five) Unsecured Creditors of the value of Rs. 2,49,31,46,256/- of the Second Applicant Company / Transferee Company as on 30 June 2022. The Learned Counsel for the Applicant Companies further submits that the present Scheme is an arrangement between Applicant Companies and their respective shareholders as contemplated under section 230(1)(b) of the Companies Act, 2013 as there is no compromise or arrangement with any of the creditors and the rights of creditors are not affected, all the unsecured creditors would be paid off in the ordinary course of business. Therefore, no meeting of unsecured creditors of the Transferor Company is required to be convened. The Transferor Company undertakes to intimate all its unsecured creditors as on 30, June by sending notices through R.P.A.D or by Email or by Speed Post or Registered Post or by Courier or Hand Delivery of the proposed scheme with a direction that they may submit their representations, if any, within a period of 30 (thirty) days from the date of receipt of such intimation to the Tribunal with copy of such representations shall simultaneously be served upon the

respective Applicant Company, failing which, it shall be presumed that they have no representations to make on the proposed Scheme.

11. The Learned Counsel for the Transferee Company / Second Applicant Company respectfully further submits that:
 - a. The entire share capital of the Transferor Company is directly held by the Transferee Company / Second Applicant Company along with its nominees. Thus, the entire economic interest of the Transferor Company is held by the Transferee Company / Second Applicant Company;
 - b. In case of Transferor Company; being a merger of wholly owned subsidiary company into its holding company, no shares would be issued or allotted pursuant to the Scheme;
 - c. The rights of the creditors of the Transferee Company / Second Applicant Company are not affected since there will be no reduction in their claims and the assets of the Transferee Company / Second Applicant Company, post-merger, will be more than sufficient to discharge their claims;
 - d. The net worth of the Transferee Company / Second Applicant Company is and will continue to remain highly positive. Further, the net worth of the Transferee Company / Second Applicant Company is highly positive in comparison to the net worth of the Transferor Company;
 - e. Further, under the Scheme there is no compromise or arrangement with the shareholders or the creditors of the Transferee Company / Second Applicant Company. Therefore, the proposed Scheme is not prejudicial to the interest of the shareholders or the creditors of the Transferee Company / Second Applicant Company.

12. The Learned Counsel for the Applicant Companies respectfully submits that in view of the above, no reconstruction or arrangement is proposed by the Transferee Company / Second Applicant Company either with its shareholders or with its creditors, and thus, it does not require to hold either shareholders meeting or creditors meeting for approval of the proposed Scheme. It is respectfully submitted that the Hon'ble High Court of Judicature at Bombay in the case of Mahaamba Investments Limited V/s. IDI Limited (2001) 105 Company Cases page 16 to 18 inter alia observed and held that if the Scheme

of Amalgamation provides for no issue of equity shares to the members of the transferor company, being a wholly owned subsidiary of the transferee company and the creditors of the transferee company, are not likely to be affected by the scheme, a separate Petition by the transferee company was not necessary. The Hon'ble National Company Law Appellate Tribunal in the case of DLF Phase-IV Commercial Developers Limited & Ors, In Company Appeal (AT) No. 180 of 2019, Ambuja Cements Limited, In Company Appeal (AT) No. 19 of 2022, and Patel Engineering Limited, In Company Appeal (AT) No. 137 of 2022, Eurokids India Private Limited in CSA No. 911 of 2014 passed by SJ Kathawalla, J of Bombay High Court in the similar facts have taken similar view. The facts in the present case are similar to the facts of the above cases.

13. Based on the above, this Bench is of the view that the meeting of the Shareholders and Creditors of the Transferee Company / Second Applicant Company are hereby dispensed with since the Transferor Company are wholly-owned subsidiaries of the Transferee Company / Second Applicant Company. The Learned Counsel for the Transferee Company / Second Applicant Company further clarifies that the Transferee Company / Second Applicant Company will file petition and comply with the provisions of service of notices upon all the concerned Regulatory Authorities by sending notices through R.P.A.D or by Email or by Speed Post or Registered Post or by Courier or Hand Delivery of the proposed scheme with a direction that they may submit their representations, if any, within a period of 30 (thirty) days from the date of receipt of such intimation to the Tribunal with copy of such representations shall simultaneously be served upon the respective Applicant Company, failing which, it shall be presumed that they have no representations to make on the proposed Scheme .
14. The Applicant Companies are accordingly directed to serve notices along with copy of scheme upon:-
 - i. Concerned Income Tax Authorities within whose jurisdiction the Applicant Company's assessments are made i.e. for the Transferor Company at AO Circle1(2)(1), Range 412 AAYKAR BHAWAN, New

Marine Lines, Mumbai 400 020, Mumbai, having PAN No. AABCP4401A, for the Transferee Company, at Dy. Commissioner of Income Tax Circle (1)(3)(1) 5th floor Aayakar Bhawan New Marine Lines Mumbai 400020, having PAN No. 020AAACG8725B,

- ii. The Central Government through the office of Regional Director, Western Region, Mumbai,
- iii. Registrar of Companies, Mumbai
- iv. Securities and Exchange Board of India (SEBI) (only in case of the Transferee Company / Second Applicant Company),
- v. BSE Limited (only in case of the Transferee Company / Second Applicant Company) and
- vi. National Stock Exchange of India Limited (NSE) (only in case of the Transferee Company / Second Applicant Company),

pursuant to sub-section (5) of Section 230 of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, through R.P.A.D or by Email or by Speed Post or Registered Post or by Courier or Hand Delivery with a direction that they may submit their representations, if any, within a period of 30 (thirty) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the respective Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposed Scheme.

15. The Transferor Company is also directed to serve notice upon Official Liquidator, High Court, Bombay, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 through R.P.A.D or by Email or by Speed Post or Registered Post or by Courier or Hand Delivery. The Tribunal is appointing the Chartered Accountant Mr. Subhodh Bhandari; having address at B-106, Nittal Tower, Free Press Journal Marg, Nariman Point, Mumbai - 400 021; having Mobile No. (+91) 9820830065 and Email: subodhis@gmail.com to assist the Official Liquidator to scrutinize the books of accounts of the said Transferor Company for the last three years and submit its report to the Tribunal. The Transferor Company to pay fees of Rs. 2,00,000/- for this

purpose. If no representation/response is received by the Tribunal from Official Liquidator, High Court, Bombay within a period of 30 (thirty) days from the date of receipt of such notice, it will be presumed that he 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 file affidavit of service in the Registry proving dispatch of notices to the Regulatory Authorities and dispatch of notices to creditors of the Transferor Company and to report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

H.V. Subba Rao
Member (Judicial)