

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

CA (CAA) No.25/ALD/2021

In the matter of
The Companies Act, 2013

And

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

And

In the matter of

Dhampur Sugar Mills Limited, having Corporate Identification Number
L15249UP1933PLC000511 and having its registered office situated at Dhampur,
District. Bijnor, Uttar Pradesh-246761.

..Applicant Company No. 1/ “Demerged Company”

And

Dhampur Bio Organics Limited, having Corporate Identification Number
U15100UP2020PLC136939 and having its registered office situated at Sugar Mill
Compound, Village Asmoli Sambhal, Moradabad Uttar Pradesh – 244304.

.....Applicant No. 2 / “Resulting Company”

And

their respective Shareholders and Creditors

**Order reserved on 29.11.2021
Order pronounced on 06.12.2021**

Coram : **Sh. Rajasekhar V.K, Member (Judicial)**
 Sh. Virendra Kumar Gupta, Member (Technical)

Counsel on Record for the petitioners:

For Applicant : Sh. Suyash Agarwal, Adv.

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 (“Act”) for orders and directions with regard to meetings of shareholders and creditors

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in connection with the Scheme of Arrangement between Dhampur Sugar Mills Limited, being the Applicant No.1 above named ("**DSML**" or "**Applicant No.1**") and, Dhampur Bio Organics Limited being the Applicant No.2 above named ("**DBOL**" or "**Applicant No.2**") and their respective shareholders and creditors. The Scheme provides for demerger of the Demerged Undertaking of the Demerged Company and vesting of the same with the Resulting Company from the Appointed Date, viz April 1st 2021 in the manner and on the terms and conditions stated in the said Scheme of Arrangement ("**Scheme**") enclosed as Annexure 1 to the Company Application.

2. It is submitted by Ld. counsel appearing for the Applicants that the shares of the Applicant No.1 are listed on the BSE Limited and the National Stock Exchange of India Limited. The shares of the Applicant No. 2 are not listed on any of the Stock Exchange. Further, all the shares of the Resulting Company are held by the Demerged Company and its nominees and thus the Resulting Company is a wholly owned subsidiary of the Applicant No.1. Further, the Applicants have the following classes of shareholders and creditors: -
 - (a) Applicant No.1: Equity Shareholders, Secured Creditors and Unsecured Creditors.
 - (b) Applicant No.2: Equity Shareholders and Unsecured Creditors
3. It is hereby submitted that the single shareholder (Dhampur Sugar Mills Limited through its nominees) of Applicant No.2 constituting 100% in number and value and the only unsecured creditor (Dhampur Sugar Mills Limited) constituting 100% in number and value have already given their consent to the Scheme by way of affidavits which are annexed to the application. The affidavits of consent of the Equity Shareholders and Unsecured Creditors of the Applicant No.2 are enclosed as Annexures 19 and 22 respectively to the Company Application.
4. Directions are sought accordingly for:

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- (a) convening, holding and conducting of virtual meeting of the Equity Shareholders through two way Video Conferencing ('VC')/Other Audio Visual Means ('OAVM') of Applicant No. 1 to consider the Scheme under Section 230(1) read with Section 232(1) of the Act.
 - (b) convening, holding and conducting of virtual meeting of the Secured Creditors through two way Video Conferencing ('VC')/Other Audio Visual Means ('OAVM') of Applicant No. 1 to consider the Scheme under Section 230(1) read with Section 232(1) of the Act
 - (c) convening, holding and conducting of virtual meeting of the Unsecured Creditors through two way Video Conferencing ('VC')/Other Audio Visual Means ('OAVM') of Applicant No. 1 to consider the Scheme under Section 230(1) read with Section 232(1) of the Act. Further, to exempt the Applicant No.1 to serve individual notice to 556 (Five Hundred Fifty-Six) unsecured creditors having outstanding amount of Rs.61,22,652/- in aggregate which accounts for 0.37% of the total value of unsecured creditors and the general notice published in newspapers may be considered as sufficient compliance of serving individual notices to them
 - (d) dispensing with convening, holding and conducting of meeting of the Equity Shareholders of the Applicant No. 2, who have already given their consent to the Scheme;
 - (e) dispensing with the convening, holding and conducting of meeting of the Secured Creditors of Applicant No. 2 since it has no creditor;
 - (f) dispensing with the convening, holding and conducting meeting of Unsecured Creditors of the Applicant No. 2, who have already given their consent to the Scheme.
5. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicants, we allow the instant application and make the following orders: -
- (a) **Meetings to be held (Dates and Times)**: The following meetings shall be convened and held at the following times *on Saturday, January 29, 2022* for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modification: -

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1. Virtual Meeting of Equity Shareholders of Applicant No.1 at 11:00 A.M. through two-way Video Conferencing ('VC')/Other Audio Visual Means ('OAVM'). The Registered Office of the Company shall be deemed venue.
 2. Virtual Meeting of Secured Creditors of Applicant No.1 at 1:00 P.M. Through two-way Video Conferencing ('VC')/Other Audio Visual Means ('OAVM'). The Registered Office of the Company shall be deemed venue.
 3. Virtual Meeting of Unsecured Creditors of Applicant No.1 at 02:30. through two-way Video Conferencing ('VC')/Other Audio Visual Means ('OAVM'). The Registered Office of the Company shall be the deemed venue.
 4. In the event any meeting, as aforesaid, spills over and is concluded after the time fixed for commencement of the succeeding meeting, such succeeding meeting shall be held immediately after such conclusion of the prior meeting.
- (b) **Meetings dispensed:** Meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant No.2 are dispensed with under Section 230(1) read with Section 232(1) of the Act.
- (c) **Advertisement:** At least 30 (thirty) clear days before the meeting(s) to be held, as aforesaid, an advertisement of the notice of meeting(s) be published once each in the Business Standard, Delhi Edition in English; and Amar Ujala, Meerut Edition in Hindi as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- (d) **Individual Notices:** At least 30 (thirty) clear days before the date of the meeting(s) to be held, as aforesaid, notices convening the said meeting(s), along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Act disclosing necessary details, shall be sent to each of the Equity Shareholders of Applicant No.1 who hold shares as on record date and to the Secured and Unsecured Creditors of the Applicant No. 1 as per the list appended as Annexures 15 and 16 of the Company Application respectively as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 by post or courier at their respective last known addresses or by email

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where email addresses are available. The respective notices along with accompanying documents shall also be posted on the websites of the Applicant No.1. The Chairperson appointed for the said meetings to issue and send the notices of the aforesaid meetings. The Chairman is permitted to issue, through NSDL, only electronic notices to shareholders having dematerialized accounts as on the cut-off date. Postal notices may be sent only to those shareholders who own physical shares on the cut-off date or whose email addresses are not available.

- (e) **Chairperson:** Mr. Rahul Agarwal Advocate (Mobile No. 9453091100) and failing him, Mr. Aman Kr. Dwivedi, Advocate, (Mobile No.8090689493) is appointed as the Chairperson of the meetings to be held, as aforesaid. Each of these persons shall be paid a consolidated sum of ₹1,00,000/- for conducting the aforesaid meetings. The Chairperson shall have all other powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with the other applicable rules and provisions in relation to conduct of the meetings, including for deciding procedural questions that may arise at the meeting or at any adjournment thereof, or any other matter relating to the meetings, including an amendment to the Scheme, if any proposed by any persons.
- (f) **Scrutinizer:** CS Saket Sharma, Practising Company Secretary (Mobile No. 9935388977) is appointed as the Scrutinizer of the meetings to be held, as aforesaid. He shall be paid a consolidated sum of ₹75,000/- for the meetings.
- (g) **Quorum and Attendance:** The quorum for the meetings of the shareholders shall be determined in accordance with Section 103 of the Companies Act, 2013. As the Applicant No. 1 has only 10 (Ten) Secured Creditors, the quorum for the meeting of Secured Creditors shall be 2 (Two) to proceed with the meeting. In case the quorum of any meeting is not present within half an hour from the time appointed for the meeting, the Chairperson may adjourn such meeting to any date/time and take a decision on the quorum for the adjourned meeting or alternatively it may be provided that the shareholders / creditors present shall be deemed to constitute quorum.
- (h) **Mode of Voting:** Facility of voting through electronic voting system shall be made available during VC/OAVM proceedings of the Meetings till 30 minutes after the conclusion of the Meeting. Further, facility of remote e-voting shall also be provided during the period starting from Sunday, January

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23,2022 at 9:00 A.M. to Friday, January 28, 2022 at 5:00 P.M. The facility for remote e-voting shall be disabled at 5:00 pm on January 28, 2022.

- (i) **Cut-off date:** The cut -off date for determining the eligibility to vote and value of votes shall be (i) January 5, 2022 as per Explanation II (ii) of Rule (20)(2) of the Companies (Management and Administration) Rules, 2014 i.e. a date not earlier than seven days before the date of general meeting for determining the eligibility to vote by electronic means or in the general meeting for the meeting of Equity Shareholders of Applicant No.1, and (ii) August 31, 2021, being the date of the list of Secured and Unsecured Creditors of the Applicant No.1 (as per relevant Annexures 15 and 16 of this Company Application) for the respective meeting(s) of Creditors. The value of the votes cast shall be reckoned and scrutinized with reference to the said dates. The value of each Secured and Unsecured Creditors of Applicant No. 1 shall be in accordance with the books and records of the Applicants as on the cut-off date as stated above and, where entries in the books are disputed, the Chairperson shall determine the value for purposes of the said meetings.
- (j) **Voting procedure:** Subject to the directions and matters dealt with herein, the procedure for voting by e-voting in so far is the same as prescribed by the Companies (Management & Administration) Rules, 2014 (“**the said Rules**”). Persons who are entitled and have an option to vote on the resolution put to a meeting by (a) remote e-voting or (b) e-voting at the meeting, may opt to exercise their votes only in one of such modes. In case, they cast their votes by remote e-voting, as aforesaid, they will not be entitled to vote again at the meeting, whether in person or by authorized representative. If they do so, the votes so cast by them at the meeting shall be treated as invalid. It is clarified that such persons choosing to cast their votes by remote e-voting shall nevertheless be entitled to attend and participate in the discussions in such meeting but shall not be entitled to vote again at such meeting.
- (k) **Proxies & Board Resolutions:** Since the meeting to be convened through VC/ OAVM, the requirement to appoint proxy is dispensed. A person, including a Body Corporate, entitled to attend and vote at the venue of a meeting, as aforesaid, may do so personally or through authorized representatives, provided the certified copy of resolution of the Board of Directors or other governing body of such person, where it is a Body Corporate, authorizing its representative to attend and vote at such meeting

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on its behalf, as the case may be, is deposited at the registered office of the concerned Applicant Company not later than 48 (forty eight) hours before the time for holding such meeting. If a Body Corporate chooses to vote by remote e-voting a scanned copy of such board resolution shall be sent by email to the Scrutinizer.

- (l) **Scrutiniser's Report:** The votes cast shall be scrutinized by the Scrutiniser. Votes cast in all the modes shall be consolidated. The Scrutiniser shall prepare and submit the respective reports on the meetings along with all papers relating to the voting to the Chairperson of the meetings within three days in the case of meetings of the Secured and Unsecured Creditors of the Applicant No. 1 and within 48 hours in the case of meeting of Equity shareholders of Applicant No.1 after the conclusion of the respective meetings. The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutiniser.
- (m) **Declaration of Results:** The resolution for approval of the Scheme of Arrangement put to a meeting shall, if approved by a majority in number representing three-fourths in value of the respective Secured and Unsecured Creditors of Applicant No. 1 shall be deemed to have been duly passed on the date of such meeting under Section 230(1) read with Section 232(1) of the Companies Act, 2013. However, in case of Equity Shareholders of Applicant No. 1, if a majority in number representing three fourth in value of the equity shareholders agree to the Scheme under Section 230(1) read with Section 232(1) of the Companies Act, 2013. And, if votes cast by the public shareholders in favour of the proposal are more than the number of votes cast by the public shareholders against it shall be deemed to have been duly passed on the date of such meetings per Part-I(A)(10)(a) and (b) of SEBI Master Circular dated December 22, 2020. The declaration of results by the Chairperson shall be displayed on the Notice Board of the Applicant No. 1 at its registered office, and shall also be posted on the websites of the Applicant No. 1. Further, such declaration of results of the meeting of Equity Shareholders and Creditors of Applicant No.1 shall also be posted on the website of the Agency providing the facility for e-voting. In addition to the aforesaid, all other requirements with regard to publication and communication of Scrutiniser's report and Chairperson's declaration of results, as prescribed under the Securities and Exchange Board of India

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(Listing Obligations and Disclosure Requirements) Regulations, 2015 should also be complied with in case of Applicant No. 1.

(n) The Chairperson to report to this Tribunal the results of the said meetings within two weeks from the date of the conclusion of the said meetings. Such report shall be in Form No. CAA4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

6. Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall also be served on the (i) Central Government through the Regional Director, Northern Region, Ministry of Corporate Affairs; (ii) Registrar of Companies, Uttar Pradesh within whose jurisdiction the Applicant No. 1 and Applicant No.2 are registered; (iii) Income- Tax Authorities within whose jurisdiction the Applicants are assessed; (iv) Securities and Exchange Board of India by sending the same by hand delivery or by registered / speed post or by email forthwith after the notices are sent to the shareholders and creditors, as aforesaid. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Advocate of the said Applicants. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme of Arrangement. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA3 of the said Rules with necessary variations, incorporating the directions herein.
7. The Applicants to file an affidavit proving service of notices of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the meetings to be held.

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ALLAHABAD BENCH

CA (CAA) NO.25/ALD/2021

8. The application being Company Application (CAA) No.25/ALD/2021 is disposed of accordingly.

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Virendra Kumar Gupta
Member (Technical)

Shubham Kr.Singh
(Private Secretary)

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Rajasekhar V.K.
Member (Judicial)