

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT - 5, MUMBAI BENCH

C.A.(CAA)/4110 /MB/2019
WITH
C.A.(CAA)/ 4111/MB/2019

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

And

In the matter of Scheme of Merger by
Absorption of Marpol Private Limited,
Perma Construction Aids Private
Limited ("the Transferor Companies")

With

Kansai Nerolac Paints Limited ("the
Transferee Company").

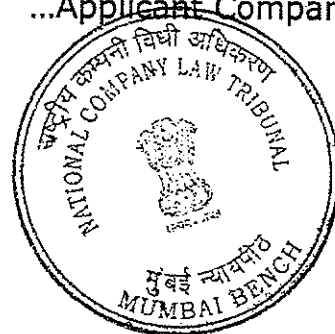
Marpol Private Limited, a company
incorporated under the provisions of
the Companies Act, 1956 having its
registered office at Panandiker
Chambers, 1st Floor, M.L. Furtado
Road, Margao, Goa - 403601.

...Applicant Company / Transferor
Company in
C.A.(C.A.A.)/4111/MB/2019

CIN No. U24222GA1983PTC000532

Kansai Nerolac Paints Limited, a
company incorporated under the
Indian Companies Act, 1913 having

...Applicant Company/ Transferee



its registered office at Nerolac House, Company in
G K Marg, Lower Parel, Mumbai- C.A.(C.A.A.)/4110/MB/2019
400013.

CIN: L24202MH1920PLC000825

Order delivered on :21st February, 2020

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

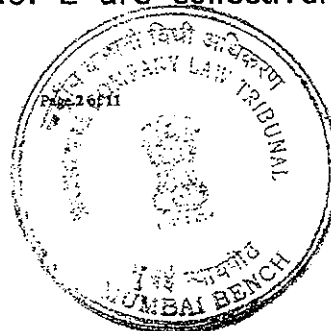
For the Applicant(s): Mr. Ajit Singh Tawar i/b Kanga and Company,
Advocates for the Applicants

Per: Chandra Bhan Singh, Member (Technical)

ORDER

UPON the application of the respective Applicant Companies above named by Company Notices of Admission AND UPON HEARING Mr. Ajit Singh Tawar i/b M/s Kanga and Company, Advocates for the Applicant Companies AND UPON READING the Applications of the respective Applicant Companies along with their Notices of Admission both dated 17th day of December, 2019 of Mr. Prashant Devidas Pai, Director of the Applicant Company in C.A. (CAA) 4111/MB/2019 and of Mr. G. T. Govindarajan, Company Secretary of the Applicant Company in C.A. (CAA) 4110/MB/2019, and Annexures therein referred to, IT IS ORDERED THAT:

1. The Counsel for the Applicant Companies submits that the present Scheme of Merger by absorption is of Marpol Private Limited ("Transferor Company No. 1"), Perma Construction Aids Private Limited ("Transferor Company No. 2") (Transferor Company No. 1 and Transferor Company No. 2 are collectively referred to as "the



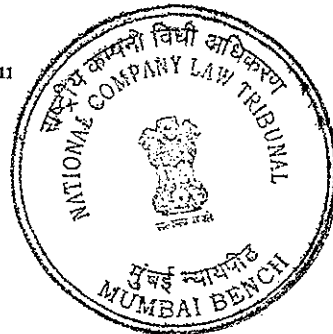
Transferor Companies") with Kansai Nerolac Paints Limited ("the Transferee Company") on a going concern basis ("Scheme of Amalgamation") under the provisions of Sections 230 to 232 of the Companies Act, 2013.

2. The Counsel for the Applicant Companies states that, the registered office of Perma Construction Aids Private Limited, Transferor Company No.2 is situated in the state of Gujarat and that Transferor Company No.2 has filed a separate Company Scheme Application before the National Company Law Tribunal at Ahmedabad for obtaining Sanction to the Scheme of Amalgamation.
3. The Counsel for the Applicant Companies submit that, Marpol Private Limited i.e. Transferor Company No. 1 is principally engaged in manufacture of powder coatings and that Kansai Nerolac Paints Limited i.e. the Transferee Company is principally engaged in the manufacture of paints.
4. The Authorised, Issued, Subscribed and Paid-up Share Capital of both the Applicant Companies as on the Appointed date i.e. 1st July 2019 is as under:
 - a. The Authorised Share Capital of Transferor Company No.1 is Rs. 5,00,00,000/- divided into 50,00,000 Equity Shares of Rs.10/- each and the Issued, Subscribed and Paid-up Share Capital of Transferor Company No.1 is Rs. 2,99,52,000/- divided into 29,95,200 Equity Shares of Rs.10/- each.
 - b. The Authorised Share Capital of the Transferee Company is Rs. 60,00,00,000 divided into 60,00,00,000 Equity Shares of Re.1 each and the Issued, Subscribed and Paid-up Share Capital of the



Transferee Company is Rs. 53,89,19,720/- divided into 53,89,19,720 Equity Shares of Re.1 each.

5. The Counsel for the Applicant Companies further submits that the Merger will provide benefits of synergy, economies of scale, growth and expansion.
6. The Counsel for the Applicant Companies submits that the Board of Directors of the Transferor Company No. 1 in their meeting held on 25th July 2019 and the Board of Directors of the Transferee Company in their meeting held on 29th July 2019 have approved the Scheme of Amalgamation with Appointed Date 1st July, 2019. The Board Resolution approving Scheme for the Applicant Companies is annexed as Annexure C to their respective Application.
7. The Counsel for Transferor Company No.1 submits that Transferor Company No.1 is a wholly owned subsidiary of the Transferee Company and the entire issued, subscribed and paid up share capital of Transferor Company No.1 is held by the Transferee Company and its nominee and upon the Scheme becoming effective the entire Paid up Equity Share Capital of Transferor Company No.1 shall stand automatically cancelled and there will not be any issue and allotment of shares of the Transferee Company.
8. Both the Equity Shareholders of Transferor Company No.1 have filed their original consent affidavits approving the Scheme of Amalgamation and in view of fact that both the Equity Shareholders of Transferor Company No. 1 have given their written consent to the Scheme of Amalgamation, the meeting of the Equity Shareholders of Transferor Company No.1, for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation, deserves to be dispensed with and is



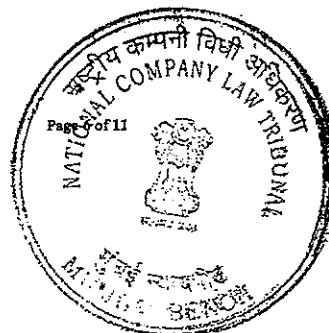
hereby dispensed with. The Original Consent Affidavits are annexed and marked as Annexures E-1 and E-2 to the Company Scheme Application of Transferor Company No. 1.

9. The meeting of the Equity Shareholders of the Transferee Company, be convened and held at Walchand Hirachand Hall, 4th Floor, IMC Chamber of Commerce & Industry, IMC Building, IMC Marg, Churchgate, Mumbai 400 020 on Monday, 22nd June, 2020, at 11.00 a.m. for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Merger by Absorption amongst Marpol Private Limited, Perma Construction Aids Private Limited with Kansai Nerolac Paints Limited.
10. The Counsel for Transferor Company No.1 submits that as on 30th September 2019 it has only 1 Secured Creditor being HDFC Bank Ltd for an amount of Rs. 13,52,46,595/- Transferor Company No.1 undertakes to obtain the consent of the Secured Creditor and file the same along with the petition for sanction of the Scheme of Amalgamation. In view of the undertaking giving by Transferor Company No.1, the meeting of the Secured Creditor of Transferor Company No.1, for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation is hereby dispensed with.
11. The Counsel for the Transferee Company submits that the Transferee Company does not have any Secured Creditors, therefore, the question of convening and holding of the meeting of Secured Creditors of the Transferee Company does not arise.
12. The Counsel for Transferor Company No.1 and the Transferee Company submits that since the Scheme of Amalgamation amongst Marpol Private Limited, Perma Construction Aids Private Limited (the

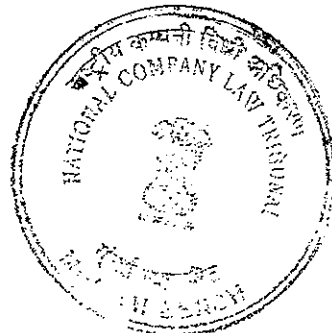


Transferor Companies') with Kansai Nerolac Paints Limited ('the Transferee Company') is in accordance with the provisions of Section 230(1)(a) of the Companies Act 2013, this Bench hereby directs Transferor Company No.1 and the Transferee Company to issue notice to all their Unsecured Creditors as required under section 230 (3) of the Companies Act, 2013 by registered post or speed post or by courier or by email or by hand delivery with a direction that they may submit their representations, if any, to the Tribunal within a period of 30 (thirty) days from the date of receipt of such notice and a copy of such representation shall simultaneously be served upon Transferor Company No.1 and the Transferee Company. In view of the above, the meeting of the Unsecured Creditors of Transferor Company No.1 and the Transferee Company, for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation is hereby dispensed with.

13. That at least one month before the said meeting of the Equity Shareholders of the Transferee Company to be held as aforesaid, a notice of convening the said meeting, at the place, day, date and time aforesaid, together with a copy of the Scheme of Amalgamation and a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the prescribed form of proxy, shall be sent by registered post or speed post or by courier or by email or by hand delivery addressed to each of the Equity Shareholders of the Transferee Company at their respective registered or last known addresses or by e-mail to the registered e-mail addresses of the Equity Shareholders as per the records of the Transferee Company.



14. That at least one month before the meeting of the Equity Shareholders of the Transferee Company to be held as aforesaid, a notice convening the said Meeting, indicating the place, date and time of the meeting as aforesaid be published in newspapers stating that a copy of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Transferee Company as aforesaid.
15. That the notice of the Meeting of the Equity Shareholders of the Transferee Company shall be published/advertised in two local newspapers viz. "Free Press Journal" in English and "Navshakti" in Marathi, both circulating in Mumbai not less than 30 days before the date fixed for the meeting.
16. The Transferee Company undertakes to:
 - i. Issue Notice convening meeting of the Equity shareholders in Form No. CAA.2 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
 - ii. Issue Explanatory Statement containing all the particulars as per Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
 - iii. Issue Form of Proxy in Form No. MGT-11 as per Rule 19 of the Companies (Management and Administration) Rules, 2014; and
 - iv. Advertise the Notice convening meeting in Form No. CAA.2 as per Rule 7 of the Companies (Compromises, Arrangements and



Amalgamations) Rules, 2016.

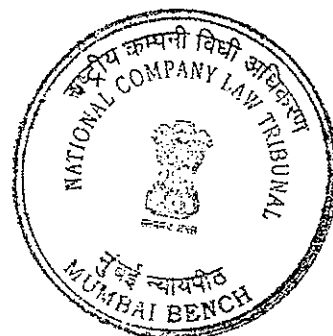
The said undertaking given by the Transferee Company is accepted.

17. The Tribunal hereby appoints Mr. Pradip Panalal Shah, Chairman of the Board of Directors and failing him, Mr. Harishchandra Meghraj Bharuka, Vice Chairman and Managing Director and failing him Mr. Noel Naval Tata, Independent Director as the Chairperson for the aforesaid meeting of the Equity Shareholders of the Transferee Company to be held at Walchand Hirachand Hall, 4th Floor, IMC Chamber of Commerce & Industry, IMC Building, IMC Marg, Churchgate, Mumbai 400 020 on Monday, 22nd June, 2020, at 11.00 a.m. or any adjournment or adjournments thereof.
18. The Chairperson appointed for the aforesaid meeting shall issue the advertisements and send out the notices of the meeting referred to above. The said Chairperson shall have all powers as per Articles of Association of the Transferee Company and also 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).
19. The quorum for the said meeting of the Equity shareholders of the Transferee Company shall be 30 equity shareholders present either in person or proxy or by authorized representative. If the quorum is not present within half an hour from the time appointed for the holding of the meeting, the members present shall be the quorum and the meeting shall be held. The Transferee Company shall provide the Equity Shareholders the facility to either vote by (i) Postal ballot or (ii) remote e-voting or (iii) ballot paper at the venue of the meeting as



prescribed under the Companies Act, 2013 and the rules made thereunder.

20. The voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/authorization duly signed by the person entitled to attend and vote at the meeting, is filed with the Transferee Company at its Registered Office, not later than, 48 hours before the aforesaid meeting as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.
21. The value and number of the shares of each member shall be in accordance with the respective books/register of the Transferee Company depository records or books of accounts and where the entries in the books/register/depository records or books of accounts are disputed, the Chairperson for the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf shall be final.
22. The Chairperson to file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meeting and to report to the Tribunal that the directions 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.
23. The Chairperson to report to the Tribunal, the result of the aforesaid meeting within 15 (fifteen) working days of the conclusion of the meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.



24. That the Scrutinizer for the Meeting of the Equity Shareholders shall be Mr. J. H. Ranade, Membership No. F4317 and Certificate of Practice No. 2520 or failing him Mr. Sohan J. Ranade, Membership No. A33416 and Certificate of Practice No. 12520 or failing him Ms. Tejaswi A. Zope, Membership No. A29608 and Certificate of Practice No.14839, Partners of JHR & Associates, Company Secretaries in Practice, for a remuneration as mutually agreed between the Applicant Company and scrutinizer for his/her services.
25. The Applicant Companies are directed to serve notices along with copy of scheme upon: - (i) concerned Income Tax Authorities i.e. Income-tax ward: S(709) (1), AO AS, SPL Range, Aayakar Bhavan, Panaji, Goa of Transferor Company No. 1 having PAN AACCM2018D and Income-tax ward: Range 6(3)(1), Aaykar Bhavan, Maharshi Karve Road, Churchgate, Mumbai, Maharashtra 400020 of the Transferee Company having PAN AAACG1376N (ii) the Central Government through the office of Regional Director, Western region, Mumbai and (iii) Registrar of Companies, Mumbai and any other concerned regulatory authority with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal and 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 proposals.
26. Transferor Company No. 1 is also directed to serve notice along with copy of scheme upon Official Liquidator attached to the Hon'ble Bombay High Court. The Tribunal is appointing M/s. Shah & Gutka, Accountants with remuneration of Rs. 2,00,000/- along with the applicable taxes for the services to assist the Official Liquidator to scrutinize books of accounts of the Transferor Company for the last



five years. The Official Liquidator may submit his representations, if any, within a period of thirty (30) days from the date of the receipt of such notice to the Tribunal and a copy of such representation shall simultaneously be served upon the Transferor Company, failing which, it shall be presumed that the Official Liquidator has no representation to make on the proposals.

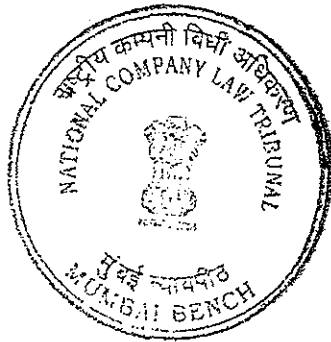
27. The Applicant Companies to file affidavit of service in not less than seven days before the date fixed for holding of meeting, in the Registry with regard to proving dispatch of notices to the Equity Shareholders of the Transferee Company, the Unsecured Creditors and Regulatory Authorities as stated in clauses 13, 12 and 25 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

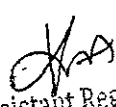
Sd/-

CHANDRA BHAN SINGH
Member (Technical)

Sd/-

SUCHITRA KANUPARTHI
Member (Judicial)



Certified True Copy
Copy Issued "free of cost"
On 02.03.2020

Assistant Registrar
National Company Law Tribunal Mumbai Bench