

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

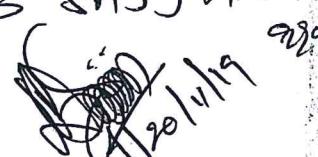
ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 20.11.2019

CAUSE LIST - 2

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(CAA)No. 65/BB/2018	For hearing	Sec 230- 232 of CA 2013	M/s Alcon CTL Testing Pvt Ltd	B B Deshpande, D B Sajjanar, PCA		

ADVOCATE FOR PETITIONER/s:

D B SAJJANAR

 20/11/19 9200080770

ADVOCATE FOR RESPONDENT/s:

ORDER

Heard Shri D. B. Sajjanar, learned Counsel for the Petitioner.
C.P(CAA)No.65/BB/2018 is disposed of by separate order.



MEMBER (T)



MEMBER (J)

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

CP (CAA) No.65/BB/2018
Under Sections 230 to 232 of Companies Act, 2013
and other applicable provisions of Companies Act, 2013
R/w Companies (CAA) Rules, 2016

IN THE MATTER OF THE
SCHEME OF MERGER/AMALGAMATION
OF
ALCON CONSULTING ENGINEERS (INDIA) PRIVATE LIMITED
(Petitioner No.1/Transferee Company)
AND
ALCON CTL TESTING PRIVATE LIMITED
(Petitioner No.2/Transferor Company)
AND
THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Date of Order: 20th November, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
 2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Alcon Consulting Engineers (India) Private Limited
No. 35, 4th Main, 4th Stage,
Opp. Trinity Motors, Industrial Town,
Basaveshwar Nagar,
Bangalore – 560 079. - Petitioner No.1/Transferee Company

Alcon CTL Testing Private Limited
No. 35, 4th Main, 4th Stage,
Opp. Trinity Motors, Industrial Town,
Basaveshwar Nagar,
Bangalore – 560 079. - Petitioner No.2/Transferor Company

Parties/Counsels Present:

For the Petitioners : Mr. D.B. Sajjanar, PCA

For the ROC : Smt. Prema Hatti, Standing Counsel

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. This Company Petition has been jointly filed by the Petitioner Companies under Sections 230 to 232 of the Companies Act, 2013 ('Act') R/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 by inter alia seeking that the compromise or arrangement may be sanctioned by this Tribunal as to be binding on all the members and the Creditors on whom the compromise or arrangement is to be binding on the Transferee Company and on the Transferor Company.
2. Brief facts of the case, as mentioned in the Company Petition as well as in the Synopsis, which are relevant to the issue in question, are as follows:
 - (a) **M/s. Alcon Consulting Engineers (India) Private Limited** (hereinafter referred to as 'Petitioner/Transferee Company') was originally incorporated as '*Alcon Surveys Private Limited*' on 21.05.2003 under the Companies Act, 1956 with the Registrar of Companies, Karnataka and subsequently the name of the Company was changed to its present name i.e. 'Alcon Consulting Engineers (India) Private Limited' w.e.f. 29.10.2012 with Corporate Identity Number: U74210KA2003PTC031967 and having its registered office as per the Petition is at No.35, 4th Main, 4th Stage, Opp. Trinity Motors, Industrial Town Basaveshwar Nagar, Bangalore-560079. Its Authorised Share Capital is Rs.5,00,00,000/- divided into 50,00,000 Equity Shares of Rs.10/- each and the present issued, subscribed and paid-up capital is Rs.4,53,34,980/- divided into 45,33,497 Equity Shares of 10/- each. Its main objects *inter alia* are to '*carry on the business of Land Survey of Government and private properties, to carry on the business of consultancy in civil engineering and project management, etc.*
 - (b) The Board of Directors of the Transferee Company at their meeting held on 13.06.2017 had inter alia resolved as under: (Annexure-E of the Petition)

"CERTIFIED EXTRACT OF THE MINUTES OF THE BOARD OF DIRECTORS OF ALCON CONSULTING ENGINEERS (INDIA) PRIVATE LIMITED HELD ON 13th JUNE, 2017 AT THE REGISTERED OFFICE OF THE COMPANY.

Approval of the Scheme of Merger of Alcon CTL Testing Private Limited with the Company

RESOLVED THAT Pursuant to the provisions of Sections 391 to 394 and other applicable provisions, if any of the Companies Act, 1956, as amended and the corresponding provisions of Section 230-232 of the Companies Act, 2013, other applicable provisions if any of the Memorandum and Articles of Association of the Company and subject to the approval of Members/ Creditors and compliance with all applicable laws and regulations and receipt and all consents, the Scheme of Merger of ALCON CTL Testing Private Limited with the Company in terms of the draft placed before this meeting and duly initialed by the Chairman for the purpose of identification, be and is hereby considered and approved for the Merger by way of transfer of the Undertaking (as defined in the Scheme) i.e., ALCON CTL Testing Private Limited with the Company with effect from 1st day of April 2017 being the Appointed Date or such other date as may be determined by the Board of Directors of the Company and ALCON CTL Testing Private Limited."

And the same has been brought before this Tribunal for approval under Sections 230 to 232 and other relevant provisions of the Act.

- (c) M/s. Alcon CTL Testing Private Limited (hereinafter referred to as 'Petitioner/Transferor Company') was incorporated as a Private Limited Company on 11.05.2010 under the provisions of Companies Act, 1956 with the Registrar of Companies, Karnataka bearing CIN: U74900KA2010PTC053574 and having its registered office situated at No. 35, 4th Main, 4th Stage, Opp. Trinity Motors, Industrial Town Basaveshwar Nagar, Bangalore-560079. Its Authorised Share Capital is Rs.30,00,000/- divided into 30,000 Equity Shares of Rs.100/- each and the Issued, Subscribed and Paid-up Share Capital is Rs.30,00,000/- divided into 30,000 Equity Shares of Rs.100/- each. Its main objects *inter alia* are to 'design and develop Geo Technical Engineering Services in connection with the Public health, water

supply, sanitation engineering, sewer treatment, irrigation and water management, etc.

- (d) The Board of Directors of the Transferor Company at their meeting held on 14.06.2017 had *inter alia* resolved as under: (Annexure-I of the Petition)

"CERTIFIED EXTRACT OF THE MINUTES OF THE BOARD OF DIRECTORS OF ALCON CTL TESTING PRIVATE LIMITED HELD ON 14th JUNE, 2017 AT THE REGISTERED OFFICE OF THE COMPANY

Approval of the Scheme of Merger with – ALCON Consulting Engineers (India) Private Limited

RESOLVED THAT Pursuant to the provisions of Sections 391 to 394 and other applicable provisions, if any of the Companies Act, 1956, as amended and the corresponding provisions of Section 230-232 of the Companies Act, 2013 upon their notification (including any statutory modification(s) or re-enactment(s) thereof, other applicable provisions if any of the Memorandum and Articles of Association of the Company and subject to the approval of Members/Creditors and compliance with all applicable laws and regulations and receipt and all consents, the Scheme of Merger of the Company with ALCON Consulting Engineers (India) Private Limited in terms of the draft placed before this meeting and duly initialed by the Chairman for the purpose of identification, be and is hereby considered and approved for the Merger by way of a transfer of the Undertaking (as defined in the Scheme) i.e., ALCON CTL Testing Private Limited with ALCON Consulting Engineers (India) Private Limited with effect from 1st April, 2017 being the Appointed date or such other date as may be determined by the Board of Directors of the Company and ALCON Consulting Engineers (India) Private Limited."

And the same has been brought before this Tribunal for approval under Sections 230 to 232 and other relevant provisions of the Act.

- (e) It is stated that the Scheme of Merger is necessitated for strengthening of the single brand leading to a stronger market presence, providing customers with a seamless on-board experience, and removing any other brand perceptions/distinctions in customers' minds; more focused operational efforts, realizing synergies in terms of compliance, governance, administration and cost synergies. The proposed

amalgamation would enhance the shareholders' value of the Petitioners.

- (f) It is further stated that all the assets and liabilities including income tax and all other statutory liabilities, if any, of the Transferor Companies will be transferred to and shall vest in the Transferee Company.
- (g) It is further stated the Statutory Auditors of the Petitioner Companies have issued Certificates dated 11.06.2018 by inter alia stating that the accounting treatment to be adopted, will be as under:
 - (i) Upon the Draft Scheme becoming effective, the Transferee Company shall record the assets and liabilities of the Transferor Company at their respective book values recorded in books pursuant to this Scheme, and account for the amalgamation of the Transferor Company pursuant to this Scheme, in accordance with Accounting Standard 14 – Accounting for Amalgamations (AS 14) under Pooling of Interest Method.
 - (ii) Equity Shares held by the Transferee Company in the Transferor Company as on the effective date shall get cancelled.
 - (iii) Inter-corporate deposits, loans and advances, outstanding balances or other obligations between the Transferor Company and the Transferee Company, shall be cancelled and there shall be no obligation/outstanding in that behalf.
 - (iv) The difference between the aggregate of recorded value and liabilities in the books of account of the Transferee Company and the value of investments in shares of Transferor Company held by Transferee Company and any 'surplus' or 'shortfall' arising therefrom shall be adjusted to reserves.
 - (v) In case of Transferee Company and the Transferor Company, the impact of the differential accounting policies till the appointed date will be quantified and recorded in accordance with the applicable accounting standards notified under the act to ensure that the financial statements of the Transferee Company, reflect the financial position on the basis of consistent accounting policy.



- (h) Petitioner Companies have filed a Memo dated 04.12.2019 by enclosing the Scheme wherein Clause 6 pertaining to the 'Accounting Treatment' states that on the Scheme taking effect the Transferee Company shall account for merger of the Transferor Company with Transferee Company in its books of account with effect from the Appointed date as under:
- (i) Merger of the Transferor Company with the Transferee Company shall be accounted for in accordance with 'Pooling of Interests Method' of accounting as per the Accounting Standard – 14 as notified under Section 133 of the Companies Act, 2013.
 - (ii) All assets and liabilities recorded in the books of the Transferor Company as on the Appointed Date and transferred to and vested in the Transferee Company pursuant to the Scheme shall be recorded by the Transferee Company at their respective book values and in the same form.
 - (iii) The inter-corporate investments/deposits/loans and advances between the Transferee Company and the Transferor Company as on the Effective Date will stand cancelled and there shall be no further obligation in that behalf;
 - (iv) The difference between the value of assets and liabilities recorded as per sub para (ii) above, adjusted for the cancellation of inter se balances as per sub para (iii) above shall be included in the Capital Reserve Account in the books of the Transferee Company. Such reserve will be a reserve arising pursuant to the Scheme and will not constitute a reserve created by the Transferee Company.
 - (v) In case of any differences in accounting policy between the Transferee Company and the Transferor Company, the accounting policies followed by the Transferee Company will prevail and the difference in recognition of assets and liabilities which are appearing or should appear in the books of the Transferor Company on the Appointed Date, as the case may be will be quantified and adjusted in the General Reserve of the Transferee

Company to ensure that the financial statements of the Transferee Company reflect the financial position on the basis of consistent accounting policy.

- (i) Clause 5 of the Scheme of Merger/Amalgamation pertaining to the Consideration for Amalgamation states that the Transferee Company shall allot to the Equity Shareholders of the Transferor Company, Equity Shares of Rs.10/- (Rupees Ten Only) each, credited as fully paid up of the Transferee, in the ratio of 1 (One) Equity Share of Face Value of Rs.10/- each of the Transferee Company with rights attached thereto as mentioned in the Scheme for every 4 (Four) Equity Shares of Face Value of Rs.100/- (Rupees Hundred Only) each in the Transferor Company, each credited as fully paid-up.
 - (j) It is stated that transfer of Shares in Transferor Company by M/s.Sachina Engineering Private Limited to Smt. Neela Pullareddy on 02.06.2016 has led to common control of interest in both the Companies by way of Common Directors (Mr. Mruthyunjaya Drthimma Reddy and Smt. Neela Pullareddy) in the Board and also Common Shareholders (Mr. Mruthyunjaya Drthimma Reddy and Smt. Neela Pullareddy) in view of the same Board of Directors and Shareholders have intended to merge both the Companies to carry on the business more effectively and efficiently.
 - (k) Directors of the Petitioner Companies have filed respective Affidavits dated 12.10.2018 by inter alia declaring that no investigation or proceedings and enquiry under Sections 206 to 213 are pending against the Petitioner Companies.
3. It is stated that the Petitioner Companies had filed C.A. (CAA) No.66/BB/2017 before this Tribunal seeking for dispensation with the convening of the respective meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company and Transferee Company. This Tribunal vide its Order dated 21.12.2017 dispensed with the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company and Transferee Company.

4. This Tribunal vide its Order dated 28.06.2019 directed the Petitioner Companies to issue Notice to the Regional Director (SER), Registrar of Companies, Karnataka, Official Liquidator, Designated Nodal Officer of Income Tax Department, Principal Chief Commissioner of Income Tax, and the Competition Commission of India and to file proof of the same.
5. Pursuant to the same, the Counsel for the Petitioners has filed a letter dated 22.07.2019 affirming compliance of the Order passed by the Tribunal dated 28.06.2019.
6. The Regional Director, SER, Hyderabad and Registrar of Companies, Karnataka vide Letter bearing No.ROCB/Legal/C.P(CAA)NO.65/BB/2018 dated 19.11.2019 have filed a Common Report by *inter alia* observing that though in the Scheme Appointed Date is mentioned as 01.04.2017, no Effective Date as such is mentioned and that the appointed date mentioned is more than 2 ½ years old, Clubbing of Authorised Capital is not mentioned in the Scheme hence, the Transferee Company shall comply with Section 232(3)(i) of the Companies Act, 2013 and pay the difference fee, after setting off the fee already paid by the Transferor Company on its respective Capital, and that both the Petitioner Companies have common Shareholders and Directors. Further, there are no prosecutions, complaints, technical scrutiny/inspections pending in this office against the Petitioner Companies. The Petition may be decided on merits.
7. Official Liquidator has filed OLR No.113 of 2019 dated 20.09.2019 in C.P. (CAA) No.65/BB/2018 by *inter alia* stating that the Official Liquidator for scrutiny of the books of accounts and records of the Transferor Company has engaged Krishna Prasad B.K., Chartered Accountant, who after examining the affairs of the Transferor Company, has *inter alia* concluded as under in his report dated 17.09.2019:

"We have obtained all the information and explanations which to the best of our knowledge and belief were necessary for the purpose of this report and based on the same we reported that:



On verification of the books of accounts and records maintained and according to the information and explanation obtained from the company, we are of the opinion that (a) The Company has maintained proper books, statutory registers and records as required by the Companies Act, 2013. (b) The Affairs of the Company have not been conducted in a manner prejudicial to the interest of its members or general public."

8. The Competition Commission of India vide its letter bearing No.N-20(5)/NF-140/2019/CD/9527 dated 20.08.2019 has inter alia stated that the Scheme has not been filed with the Commission under the provisions of the Act and that an undertaking may be sought from the Companies involved that CCI approval is not required for the said Scheme.
9. Pursuant thereto, the Authorised Signatory of both the Petitioner Companies has filed an Undertaking Affidavit inter alia stating that neither the Transferee Company nor the Transferor Company as an individual Enterprise do not come up to the threshold limit prescribed under the Competition Act, 2002 (as enhanced by Central Government vide Notification No.SO 675 (E) dated 04.03.2016).
10. Office of the Income Tax Officer, Ward-1(1)(1) vide letter bearing F.No.1/Amalgamation/Ward/1(1)(1)/2019-20 dated 03.09.2019 has submitted that there is no outstanding demand in the case of M/s. Alcon CTL Testing Private Limited (PAN AAICA5319F) and no income tax proceedings are pending as on date, and in the case of M/s. Alcon Consulting Engineers (India) Private Limited (PAN AAFCA0506P), demand of Rs.9.98 lakhs for A.Y.2014-15 is outstanding as on date and re-opened assessment proceedings are pending for A.Y.s 2016-17 and 2017-18.
11. The Petitioners have filed I.A. No.449 of 2018 in C.P. (CAA) No.65/BB/2018 by inter alia seeking to condone the delay in preferring the Company Petition and this Tribunal vide Order dated 21.12.2018 has allowed the said I.A. by condoning the delay in preferring the Company Petition U/s 230 to 232 of the Companies Act, 2013.

12. In conclusion, it has been stated by the Regional Director that, on a consideration of the materials on record, the Scheme appears to be fair, reasonable and is not detrimental against the Members or Creditors or contrary to public policy and the same can be approved.
13. We have considered the facts of the case as mentioned in the Petition, the common report of the Regional Director, MCA and ROC Karnataka, and the relevant provisions contained in the Companies Act, 2013 and other related Acts and Rules. In his report, the Regional Director, MCA has concluded that the Scheme appears to be fair, reasonable and not detrimental against the Members or Creditors or contrary to public policy and the same can be approved.
14. An examination of the facts of the case mentioned in the foregoing paragraphs, we find from the Resolutions passed by the Transferor and the Transferee Companies, respectively, that the merger has been essentially proposed to strengthen the single brand for stronger market presence, providing customers with a seamless on-board experience, more focused operations, realizing synergies in terms of compliance, governance, administration and cost synergies; and enhancing value in the hands of the shareholders. This appears plausible since both the Transferee and Transferor Companies are engaged in businesses that supplement and complement each other.
15. On a consideration of the facts of the case as mentioned in the preceding paragraphs, which are not elaborated here again to avoid duplication and repetition, we are satisfied that the procedure specified in sub-sections (1) and (2) of Section 232 of the Companies Act, 2013 has been complied with. Hence, the Scheme of Amalgamation, as approved by the Boards of both the Transferor and Transferee Company, is hereby sanctioned, as prayed, and in view whereof, this Tribunal passes the following further order:

(1) *Sanctioning the Scheme of Merger/Amalgamation should not be construed as an order in any way granting exemption from payment of Stamp Duty, taxes or other charges, if any, and*

payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specially required under any law, and the same shall be dealt with by the respective Authority in accordance with the extant Laws and Rules governing such Duty, taxes or other charges, as applicable; and

- (2) *The entire Undertaking of Transferor Company be transferred without further act or deed to the Transferee Company and accordingly, the same shall, pursuant to section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the state and interest of the Transferor therein, but subject nevertheless, to all the charges now affecting the same; and*
- (3) *All liabilities, including Central and State taxes, duties, levies and charges, if any, and duties of the Transferor Company, including those as may arise from this merger, be transferred without further act or deed to the Transferee Company and accordingly the same shall, pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of and be binding on the Transferee Company; and*
- (4) *All the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company, if any; and*
- (5) *The Petitioner Companies shall within thirty days of the date of the receipt of this Order cause a certified copy of this Order along with a copy of the Scheme of Merger/Amalgamation to be delivered to the Registrar of Companies for registration in accordance with applicable rules and regulations;*
- (6) *The Petitioner Companies shall comply with all the Regulations of RBI and FEMA, if applicable;*



- (7) *The Petitioner Companies shall forthwith file all the due Statutory Returns, if any;*
- (8) *The Petitioner Companies shall ensure all compliances and will submit Quarterly/Annual Status of compliances through an Affidavit by Managing Director/Director of the Company along with CA/ICWA/CS Certificate till the compliance is ensured.*
- (9) *The Appointed Date shall be 01st April, 2017;*
- (10) *The Transferor/Transferee Companies shall apply for compounding of offences under Section 135 of Companies Act, 2013, if applicable.*
- (11) *Transferor Company or its Authorized Signatories are directed that after the completion of the process of arrangement to handover the possession of the Books of Accounts and other relevant documents of the Transferor Company to the Transferee Company for the purpose of section 239 of the Companies Act, 2013.*
- (12) *This Order is limited to the Scheme of Merger/Amalgamation, and it will not come in the way of Registrar of Companies or any other authority to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the Company or any of its personnel prior or during the approval of the Scheme.*
- (13) *If any of the Companies party to this Scheme contravene any of the provisions of section 232, they shall be liable to be punished with fine as contemplated in section 232(8).*
- (14) *Any person shall be at the liberty to apply to the Tribunal in the above matter for any directions that may be necessary.*
- (15) *Pending IAs, if any, also stands disposed of.*

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

Amar

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL