

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH  
AT HYDERABAD  
(ORDINARY ORIGINAL/CIVIL JURISDICTION)

FRIDAY, THE TWENTY FIFTH DAY OF MARCH  
TWO THOUSAND AND FIVE

PRESENT  
THE HON'BLE MR JUSTICE S.ANANDA REDDY

COMPANY PETITION NOS.216 & 217 of 2004

C.P. NO. 216 OF 2004:

IN THE MATTER OF THE COMPANIES ACT (1 of 1956)  
AND  
IN THE MATTER OF SCHEME OF AMALGAMATION BETWEEN  
NAGARJUNA PALMA INDIA LTD.,  
AND  
NAGARJUNA FERTILIZERS AND CHEMICALS LTD.

Between:

NAGARJUNA PALMA INDIA LTD., Rep. by its Director Mr.D. Srinath  
Raju, O/o Nagarjuna Hills, Panjagutta,  
Hyderbaad.

..... PETITIONER/TRANSFEROR COMPANY

Petition under section 394 of the Companies Act, 1956 R/w Rule  
79 of the Companies (court) Rules, 1959 to sanction the Scheme of  
Amalgamation, praying that this High Court may be pleased to order that

The said Scheme of Arrangement may be sanctioned by the Hon'ble  
Court so as to be binding on all the shareholders and creditors of the  
petitioner company and on the Transferee Company.

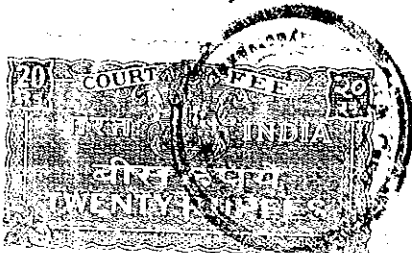
C.P. NO. 217 OF 2004:

IN THE MATTER OF THE COMPANIES ACT (1 of 1956)  
AND  
IN THE MATTER OF NAGARJUNA PALMA INDIA LTD.,  
AND  
NAGARJUNA FERTILIZERS AND CHEMICALS LTD.

Between:

NAGARJUNA FERTILIZERS AND CHEMICALS LTD., Rep. by its rep.  
by its Secretary, Mr.M.Ramakanth, O/o Nagarjuna Hills, Panjagutta,  
Hyderbaad.

..... PETITIONER/TRANSFEE COMPANY



Petition under section 394 of the Companies Act, 1956 R/w Rule 79 of the Companies (court) Rules, 1959 to sanction the Scheme of Amalgamation, praying that this High Court may be pleased to order that

The said Scheme of Arrangement may be sanctioned by the Hon'ble Court so as to be binding on all the shareholders and creditors of the petitioner company and on the Transferee Company.

These petitions coming on for orders upon reading the Judge's Summons and the Affidavit dated 23-12-2004 and filed by Mr.D.Srinath Raju, Director of the Petitioner company in C.P. No. 216 of 2004 and affidavit filed by Mr.M.Ramakanth, Company Secretary of the Petitioner company in C.P. No. 217 of 2004 in support of these petitions and upon hearing the arguments of Mr.Ravi.S, Advocate for the petitioner Transferor and Transferee Companies

The Court made the following Common Order:-




COMPANY PETITION Nos.216 and 217 of 2004

COMMON ORDER :


These two Company Petitions are filed by the Transferor and Transferee Companies seeking approval of this Court the scheme of amalgamation of the first petitioner company (Transferor Company) with the second petitioner company (Transferee Company) which will be binding on all the members, creditors and employees of the petitioner companies and all concerned.

The first petitioner company viz., Nagarjuna Palma India Limited (Transferor Company), which is a Public Limited Company, was incorporated on 6-10-1994 in the State of Andhra Pradesh. The registered office of the first petitioner company (Transferor Company) is situated Nagarjuna Hills, Punjagutta, Hyderabad-500082, Andhra Pradesh. The authorised share capital of the Transferor company is Rs.14,00,00,000/- (Rupees fourteen crores only) divided into 1,40,00,000 Equity Shares of Rs.10/- (Rupees ten only) each. The issued, subscribed and paid up share capital is Rs.13,95,15,350/- (Rupees thirteen crores ninety five



lacs fifteen thousand three hundred and fifty only) divided into 1,39,51,535 Equity Shares of Rs.10/- (Rupees ten only) each. The company was incorporated with the object of carrying on the business of manufacturing, producing, assembling, marketing, dealing, distributing, importing, exporting, installation and assembling of irrigation equipment; to carry on the business of manufacturing, formulating, refining, processing of fertigation systems etc. It is stated that the proposed amalgamation was approved by the Board of Directors of the company at its meeting held on 9-10-2004.

It is stated that this Court by order dated 19-11-2004 in C.A.No.2333 of 2004 directed for holding of a meeting of the shareholders of the first petitioner company (Transferor Company) for approval of the scheme of amalgamation while appointing Sri Posani Venkateshwarlu, Advocate, as Chairman of the meeting. Pursuant to the orders of this Court, the said Chairman convened the meeting of the shareholders on 23-12-2004 after issuing individual notices to the shareholders and also got published the notice of the proposed meeting in two newspapers viz., 'Times of India' dated 26-11-2004 in nine (9) editions covering major cities

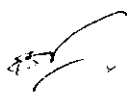


and 'Eenadu Telugu Daily' dated 26-11-2004 of all editions, fixing the date of meeting. Pursuant to the said notices, twelve (12) shareholders, holding 1,39,51,535 Equity Shares of Rs.10/- (Rupees ten only) each of the value of Rs.13,95,15,350/- (Rupees thirteen crores, ninety five lakhs, fifteen thousand, three hundred and fifty only) appeared and all of them voted in favour for approval of the scheme of amalgamation and the Chairperson has filed a report to that effect.

The second petitioner is the Nagarjuna Fertilizers and Chemicals Limited (Transferee Company), which is a Public Limited Company, incorporated on 28-1-1976 in the State of Andhra Pradesh. Its registered office is situated at the same address as that of the Transferor Company. The authorised share capital of the company is Rs.800 Crores (Rupees eight hundred crores only) comprising of 60 Crores Equity Shares of Rs.10/- (Rupees ten only) each of the value of Rs.600 Crores (Rupees six hundred crores only) and 2 Crores Preferential Shares of Rs.100/- (Rupees one hundred only) each of the value of Rs.200 Crores (Rupees two hundred crores only). The subscribed share capital is Rs.417.02 Crores (Rupees four hundred seventeen crores and two

lakhs only) divided into 41,70,20,593 Equity Shares of Rs.10/- (Rupees ten only) each and paid up share capital is Rs.416.60 Crores (Rupees four hundred and sixteen crores and sixty lakhs only) divided into 41,70,20,593 Equity Shares of Rs.10/- (Rupees ten only) each. The paid up share capital is Rs.416.60 Crores (Rupees four hundred sixteen crores sixty lakhs only) besides an amount of Rs.41.27 Lakhs (Rupees forty one lakhs twenty seven thousand only) towards arrears of allotment money. The Transferee Company was incorporated with the object to carry on the business of manufacturing or producing, refining, mixing or preparing, mining or otherwise acquiring, trading and dealing in and with any and all classes and kinds of fertilizers, manures; to carry on the business of manufacture, importers and exporters of and dealers in dyes and dyestuffs, petro-chemicals, chemicals, agrochemicals, heavy chemicals etc. The proposed scheme was approved by the Board of Directors of the Transferee Company at its meeting held on 9-10-2004.

It is stated that this Court by order dated 19-11-2004 in C.A.No.2334 of 2004 directed for holding of a meeting of the shareholders of the second petitioner company (Transferee

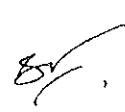


Company for approval of the scheme of amalgamation while appointing Sri Justice A.Hanumanthu, former Judge of High Court of Andhra Pradesh, as Chairman of the meeting. Pursuant to the orders of this Court, the said Chairman convened the meeting of the shareholders on 23-12-2004 after issuing individual notices to the shareholders and publishing the notice of the meeting in the daily two newspapers viz., 'Times of India' dated 26-11-2004 in nine (9) editions covering major cities and 'Eenadu Telugu Daily' dated 26-11-2004 of all editions, fixing the date of meeting. A report is filed by the Chairperson stating that in pursuance of the notices issued to the shareholders individually as well as publication of the notice of the proposed meeting to be held for consideration of the proposed scheme of amalgamation, six hundred and fourteen (614) shareholders appeared i.e., 388 members personally appeared, who were holding 20,43,28,473 Equity Shares of Rs.10/- (Rupees ten only) each and 226 members attended by proxies, who were holding 7,23,340 shares of Rs.10/- (Rupees ten only) aggregating to Rs.205,07,18,130/- (Rupees two hundred and five crores, seven lakhs eighteen thousand one hundred and thirty only). It is further stated that out of the members participated in the voting, 571 members including

proxies holding 20,50,58,418 shares voted in favour of the proposed scheme, while 7 shareholders including proxies holding 4,300 shares voted against the scheme. As per the voting pattern, it is reported that the scheme was approved by 92.99% of the shareholders present and voted. It is also stated that on behalf of the State Government, which is also holding some shares, the Deputy Secretary to the Government of Andhra Pradesh, Department of Industries and Commerce, representing the Governor of Andhra Pradesh, attended the meeting and casted his vote in favour of the scheme, but, however, submitted a letter, which reads as follows:-

"As per the poll paper given to me, I am directed to cast my vote in favour of merger subject to obtaining of clearance from Government of Andhra Pradesh. To the above extent, my dissent note may be noted on record."

The main objects of the proposed scheme of amalgamation is to have synergetic benefits through the operational expertise and the excellent network of Transferor and Transferee Companies in the Agricultural market in India, as both the companies are working under the same management and carrying on almost identical business. Further both the companies are having their registered offices in the same premises and in order to avoid





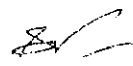
duplication and also to reduce the expenditure and maintenance of the offices of the Transferor and the Transferee Companies, the scheme of amalgamation is proposed and a copy of the scheme is filed as material papers.

In the scheme of amalgamation, at paragraph-6, provision has been made protecting the interest of the staff, workmen and other employees as under;-

**6. TRANSFEROR COMPANY'S STAFF, WORKMEN AND EMPLOYEES:**

With effect from the Effective Date, all the staff, workmen, employees, in the service of the Transferor Company immediately before the Effective Date shall become the staff, workmen, employees, as the case may be of the Transferee Company subject however to compliance of the Act wherever necessary on the basis that :

- 6.1 their service shall have been continuous and shall not have been interrupted by reason of the vesting of the Undertaking as per the Scheme;
- 6.2 the terms and conditions of service applicable to the said staff, workmen, employees, shall not in any way be less favourable to them than those applicable to them immediately before the Effective Date; and
- 6.3 it is expressly provided that as far as provident fund, gratuity fund, superannuation fund or any other special fund created or existing for the benefit of the staff, workmen and other employees of the Transferor Company as aforesaid are concerned, upon the Scheme becoming effective with effect from the Effective Date, the Transferee Company shall stand substituted for the Transferor Company for all purposes whatsoever relating to the administration or operation of such funds or in relation to the obligation to make contributions to the said funds in accordance with



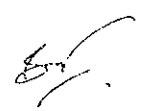
provisions of such funds as per the terms provided in the respective trust deeds. All the rights, duties, powers and obligations of the Transferor Company in relation to such funds shall become those of the Transferee Company and all the rights, duties and benefits of the employees employed in different units of the Transferor Company under such funds and trusts shall be governed by the funds in the name of the Transferee Company, without any interruption, or diminution or adverse variation. It is clarified that for the purpose of this Clause, the service of the employees of the Transferor Company will also be treated as having been continuous for the purpose of the aforesaid funds or provisions."

On amalgamation, the shares to be allowed to the shareholders of the Transferor Company is provided in paragraph 8.1, which reads as under:-

**"ISSUE OF SHARES BY THE TRANSFEE COMPANY:**

8.1 With effect from the Effective Date, in consideration of the vesting of the Undertaking consequent to amalgamation of the Transferor Company in the Transferee Company in terms of the scheme, the Transferee Company shall, subject to the provisions of the Scheme and without any further application or deed, issue and allot 4 (four) Equity Shares of Rs.10/- each credited as fully paid up in the share capital of the Transferee Company to the shareholders of the Transferor Company whose names appear in its Register of Shareholders, in the Record Date to be fixed by the Board of Directors of the Transferee Company, for every 5 (five) Equity Shares of the face value of Rs.10/- each fully paid up and held by the shareholders in the Transferor Company. Such shares held in the Transferor Company shall stand cancelled upon the allotment of Equity Shares in the Transferee Company as aforesaid.

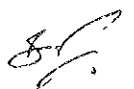
In respect of 99,12,815 Equity Shares of Rs.10/- each held by the Transferee Company in the Transferor Company, the



Transferee Company shall issue and allot 79,30,252 Equity Shares of Rs.10/- each in favour of Nagarjuna Employees Foundation, a Company incorporated under Section 25 of the Companies Act, 1956, with its Registered Office at Nagarjuna Hills, Panjagutta, Hyderabad 500082, for the welfare of the employees of Nagarjuna Fertilizers and Chemicals Limited."

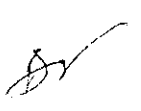
In pursuance of the present petition, this Court ordered notice both to the Central Government as well as to the Official Liquidator. While ordering notice, this Court also directed the petitioner companies to issue publication of notice of the proposed amalgamation in 'Eenadu' and 'Times of India' of all editions, as contemplated under Rule 80 of Company (Court) Rules, 1959. In pursuance of the said order of this Court, notices were published on behalf of both the companies separately and proof of publication was also filed before this Court.

Pursuant to the order of notice, the Official Liquidator has filed a report stating that the Transferor Company did not conduct their business in the manner prejudicial to the interests of its members or to the public interest. He raised certain objections stating that there are some cases pending against the Transferor Company before different Courts and that the shares held by the Transferee Company in the Transferor Company should be



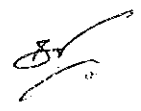
extinguished. In the common affidavit filed on behalf of the Central Government by the Registrar of Companies, it is stated that the main objects of the Transferor Company is not similar to that of the Transferee Company. Hence, the Transferee Company has to amend its objects suitably. One Mr. Tamal Kumar Majumder, a shareholder of the Transferee Company has filed objections for the proposed scheme of amalgamation stating that he was not provided with a copy of the Valuation Report and that the valuation is incorrect. He also stated that the Memorandum and Articles of Association of the Company does not contain the copy of the order of amalgamation of the Transferee Company with M/s.Ganesh Anand Petro Chemicals Limited.

A reply has been filed on behalf of the companies. With reference to the objection raised by the Registrar of Companies, it is stated that there was an inadvertent error in the scheme and the same has been modified by substituting the word 'Transferee' in place of 'Transferor' by the order of this Court dated 22-2-2005 in C.A.Nos.45 and 46 of 2005 and therefore, the Transferee Company is authorised to carry on the business which was earlier carried on by the Transferor Company. Insofar as the objection raised by the



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Official Liquidator, it is stated that since it is the decision of the shareholders there is no illegality in allotting the Equity Shares in favour of Nagarjuna Employees Welfare Foundation, which is a company licenced under Section 25 of the Companies Act. The Official Liquidator has raised an objection that he has got information that there are certain complaints/cases filed against the Transferor Company, which are pending before the District Consumer Disputes Redressal Forum and also the State Consumer Disputes Redressal Forum in addition to certain other cases before the other Courts. The counsel appearing for the petitioners has represented that on the scheme being sanctioned, the Transferee Company would take the responsibility by itself not only as to the liability of the Transferor Company but also undertakes to get itself substituted in all the proceedings that are instituted either by the Transferor Company or against it for taking appropriate action. It is also made clear that if there are any claims against the Transferor Company, for such claims, the claimants can proceed against the Transferee Company as if they are proceeding against the Transferor Company notwithstanding the fact that the Transferor Company is ordered to be wound up. This condition is being imposed in order to protect the claims, if any, against the



Transferor Company. It is also represented by the learned counsel for the petitioners that Clause-(5) of the scheme also provides for the same.

Insofar as the objections raised by one of the shareholders of the Transferee Company, it is stated that all details were furnished in the statement given under Section 393 of the Companies Act. Further it is stated that majority of the shareholders have approved the share exchange ratio and hence there is no error in the valuation report. It is also stated that though copy of the Valuation Report was not furnished, it was offered for inspection. However, as per the Division Bench Judgment of this Court in **VADLAMUDI RAMA RAO v. ASIAN COFFEE LTD. (A.P.)**<sup>1</sup> a shareholder is not entitled to the valuation report. Insofar as the objection as to the exchange ratio of the shares i.e., the allotment of shares of the Transferee Company to the shareholders of the Transferor Company, a shareholder raised an objection as to the valuation and according to him, the exchange ratio, as fixed, was not proper and just. But the contention of the petitioners is that the exchange ratio of the shares of the Transferee Company to that

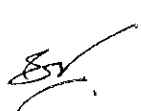
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<sup>1</sup> 2002 (109) Company Cases 337



of the shares of the Transferor Company was fixed based on the valuation made by the competent and qualified chartered valuers and when such valuation has been made by the qualified experts, it is not open for a single shareholder to raise any objection and the objection raised is also too vague without any specific details where the illegality or the irregularity, if any, committed in the valuation. In the absence of any such specific particulars and when the exchange ratio is based on the valuation made by the qualified valuers, the objection raised by one of the shareholders is devoid of merit, especially when the exchange ratio of shares have already been approved by majority of the shareholders present and voted at the special meeting called for, for approval of the scheme of amalgamation.

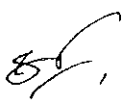
After the matter was heard and reserved for orders, it was noticed that the Transferor Company has not obtained the consent of the creditors for the proposed scheme of amalgamation, therefore, the matter was reposted and when it is brought to the notice of the counsel appearing for the petitioners, an affidavit is filed today i.e., on 23-3-2005 along with copies of the approval of the secured creditors viz., Industrial Development Bank of India



(IDBI) and ICICI Bank and also stated that there are no unsecured creditors of the Transferor Company.

The provision made in Para 8.5 of the scheme for allotment of Rs.1,11,61,228/- equity shares of Rs.10/- each to the shareholders of the Transferor Company on a preferential basis shall be subject to the compliance of the provisions contained in Sec.81 and other relevant provisions of the Companies Act, 1956. It is also further made clear that if there are any existing agreements or Memorandum of Understandings entered into by or on behalf of the Transferor Company, the scheme, as sanctioned hereunder, shall be deemed not to have been sanctioned by this Court.

Further, as the proposed amalgamation has already been approved by the majority of shareholders of both the companies and no other objections, except those which are already considered, have been received by this Court, there cannot be any objection as to the sanction for the proposed scheme of amalgamation.





Under the above circumstances, the scheme of amalgamation, as submitted for sanction, is approved. On coming into effect the scheme of amalgamation, as approved by this Court, the Transferor Company stands dissolved without an order of winding up.

The Company Petitions are accordingly allowed. No costs.

Sd/- BH.SADASIVA SARMA  
JOINT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. Sri D.Srinath Raju, Director, Nagarjuna Palma India Limited., Regd. office at Nagarjuna Hills, Punjagutta, Hyderabad
2. Mr.M.Ramakanth, Secretary Nagarjuna Fertilizers and Chemicals Ltd., Regd. Office at Nagarjuna Hills, Punjagutta, Hyderabad
3. The Registrar of Companies, 3-5-398, C.P.W.D. Building, Kendriya Sadan, Koti, Sulthan Bazar, Hyderabad.
4. The Official Liquidator, Kendriya Sadan, 3-5-398, C.P.W.D. Building, Koti, Sulthan Bazar, Hyderabad.
- ✓ 5. One CC to the S.O. O.S. Section, High Court of A.P., Hyderabad.
6. The Regional Director, Company Law Board, Southern Region, Chennai.
7. Two CD Copies.
8. One CC to Mr.S.Ravi, Advocate (OPUC).
9. One CC to Mr.Kanthi Narahari, Advocate (OPUC).

AB

*[Signature]*  
SUPERINTENDENT  
COPYIST DEPARTMENT  
HIGH COURT OF A.P.  
HYDERABAD

07  
HIGH COURT

DATED: 25-3-2005

ORDER

CP. NOS: 216 & 217 OF 2004

ALLOWING THE COMPANY PETITIONS  
WITHOUT COSTS

RPS  
10 copies  
17/4/05

THE HIGH COURT OF ANDHRA PRADESH HYDERABAD.	
C.A. No	255 of 2005
Application made	25-3-2005
Application returned	2005
Application represented	2005
Stamps called for	6-4-2005
Stamps deposited	7-4-2005
Adl. Stamps called for	2005
All Stamps deposited	7-4-2005
Copy ready	2005
Copy delivered	2005

*[Signature]*