

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

7. Transfer Petition/1/2023
CORAM: MS. LAKSHMI GURUNG, MEMBER (J)
SH. CHARANJEET SINGH GULATI, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **24.08.2023**

NAME OF THE PARTIES: ADOR Fontech Limited.
SECTION 230(I) OF COMPANIES ACT, 2013

ORDER

Mr. Hemant Sethi, Advocate for the Petitioner is present.

Heard the Ld. Counsel appearing for the Petitioner and the above petition is
allowed. Detail order would follow:

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

Sd/-
LAKSHMI GURUNG
Member (Judicial)

Shubham



Certified True Copy
Copy Issued "free of cost"
On 06/9/2023

P. S. Sorawong
Deputy Registrar 06/9/2023
National Company Law Tribunal Mumbai Bench
(D. 13093) 06/9/23



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - III**

TP-1/2023

In the matter of the Companies
Act, 2013

AND

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

AND

In the matter of Scheme of
Amalgamation (Merger by
Absorption) of Ador Fontech
Limited ("Transferor Company" or
"ADFL") with Ador Welding Limited
("Transferee Company" or "AWL")
and their respective shareholders.

Ador Fontech Limited,

CIN: L31909KA1974PLC020010

A listed Public Limited Company incorporated
under the provisions of the Companies Act, 1956
and having its registered office at Belview,
7, Haudin Road, Bengaluru - 560042,
Karnataka, India.

..... **Applicant Company / Transferor Company**

Order delivered on: 24th August 2023

**Coram: Ms. Lakshmi Gurung, Hon'ble Member (Judicial)
Shri Charanjeet Singh Gulati, Hon'ble Member (Technical)**

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

Per: MS. LAKSHMI GURUNG, HON'BLE MEMBER (JUDICIAL)



ORDER

1. The registered office of the Transferor Company / Applicant Company is in the jurisdiction of Bengaluru Bench. Therefore, the Applicant Company had filed Company Application before the NCLT Bengaluru Bench seeking directions from the tribunal for convening of meeting of the equity shareholder of the applicant convening under Section 230(1)(b) of the Companies Act, 2013 in accordance with Para 10(a) and 10(b) of SEBI Master Circular No. SEBI/HO/CED/DIL1/CIR/P/2021 dated 23.11.2021 and SEBI Circular dated 03.01.2022 and 01.02.2022 (as amended from time to time) through Video Conferencing / Other Audio-Visual Means (OAVM) read with the applicable circular issued by Ministry of Corporate Affairs from time to time.
2. Thereafter, the applicant had filed a Transfer Petition bearing TA (Co. Act)-10(PB)/2023 before Hon'ble Principal Bench, NCLT Delhi. The Hon'ble Principal Bench considered the submission made by the Applicant Company and vide order dated 17.03.2023 allowed the said application directing the Bengaluru Bench to transfer the petition to Mumbai Bench.
3. The applicant company was incorporated on 22.08.1994 as a private limited company under name style of Cosmics Electronics & Ancillaries Pvt. Ltd. subsequently it changed its name three times. Finally, the company was changed to "Ador Fontech Limited" and fresh incorporate certificate was issued on 11.09.1996. The fresh certificate of incorporation consequent on change of the name is annexed to this petition.
4. The main objects of the Transferor Company are as follows:
 1. *To trade, sell, distribute, import, export and otherwise deal in India and abroad in Semiconductor Devices, light, power, electronic equipment, electromechanical devices and electronics and electronics apparatus.*
 2. *To carry on the business of trading, exporting and importing of all kinds of apparatus, appliances, plants and materials and supplies employed by*



the manufacturers of Semiconductor devices, electrical and electronics equipment and to deal in the same.”

5. It is stated that the Applicant Company is engaged in the business of 'Life enhancement of Industrial Components' which inter-alia includes providing products, services and solutions for reclamation, repairs and maintenance.
6. It is stated that the Transferee Company is presently engaged in the business of manufacturing & selling of various products such as welding and cutting equipment, CNC machines, welding automation products as well as welding accessories. The transferee company is also engaged in the business of Flares & Process Equipment.
7. The present Scheme is a Scheme of Amalgamation (Merger by Absorption) of Ador Fontech Limited ("Transferor Company" or "ADFL") with Ador Welding Limited ("Transferee Company" or "AWL") and their respective shareholders ("the Scheme").
8. The Board of Directors of the Applicant Company in their meeting held on 31st May 2022 have approved the proposed Scheme. The Appointed Date of the Scheme is 1st April 2022.

9. **The rationale for the Scheme is as follows:**

The Transferor Company and the Transferee Company are engaged in similar lines of business and complement each other. With an intent to expand the business and achieve larger product portfolio, economies of scale, efficiency, optimization of logistics and distribution network and other related economies by consolidating the business operations, the Board of Directors of the Transferor Company and the Transferee Company proposed to consolidate the business of the Transferor Company with the Transferee Company. The proposed amalgamation of the Transferor Company with the Transferee Company would, inter alia, have the following benefits:



1. *Enable the consolidation of the Welding business of the Transferor Company with the Transferee Company to create one of the largest welding and cutting product manufacturer and refurbishment player in the industry.*
2. *Creation of a combined entity, hosting all products under the Transferee Company, thereby resulting in diversified portfolio of products, economies of scale, operational rationalization, efficiency of management, broader and deeper market presence and maximizing value for the shareholders.*
3. *Greater synergies between businesses and optimum use of manufacturing facilities, marketing strength, R & D facilities, optimized production, streamlining of supply chains, enhancing customer delight, brand strengthening and certifications resulting in productivity gains, thereby maximizing value for the shareholders.*
4. *Enable greater access to different market segments in conduct of its business and addition of new products in the portfolio would improve the competitive position of the combined entity.*
5. *Optimum use of infrastructure and organizational efficiency by pooling of financial, managerial, and technical resources, personnel, capabilities, skills, expertise and technologies of the Transferor Company and the Transferee Company, thereby significantly contributing to the future growth and maximizing shareholder value.*
6. *Better financial leverage, resulting in greater efficiency in cash and debt management and access to cash flow generated by the combined business, which can be deployed more efficiently to realize higher profits/margins for the combined entity.*
7. *Improved organizational capability and leadership, arising from the pooling of human capital, who have the diverse skills, talent and vast experience, to compete successfully in an increasingly competitive industry.*
8. *Cost savings because of standardization and simplification of business processes, elimination of duplication and rationalization of*



administrative expenses.

9. *Reduction in regulatory and legal compliances and avoidance of multiple records keeping.*

10. *Strengthening ability to face increasing competitive, regulatory, environmental and global risks, thereby resulting in sustainable and profitable long-term growth for the combined entity.*

In view of the aforesaid, it is proposed to amalgamate the entire undertaking and business of the Transferor Company with the Transferee Company. Accordingly, this Scheme of Amalgamation is formulated for the transfer and vesting of the entire undertaking and business of the Transferor Company within and into the Transferee Company, pursuant to the provisions of Sections 230 to 232 and other relevant provisions of the Act.

10. The Share Exchange / Entitlement Ratio for the Scheme is as under:

“5 (Five) equity shares of AWL having a face value of INR 10/- each fully paid-up shall be issued for every 46 (Forty-six) equity shares held in ADFL having a face value of INR 2/- each fully paid-up.”

11. The Share Capital structure of the Applicant Company as on 31st December 2022 is as follows:

Particulars	Amount (INR)
Authorised Share Capital	
5,00,00,000 Equity Shares of INR 2/- each	10,00,00,000/-
Total	10,00,00,000/-
Issued, Subscribed and Paid-up Share Capital	
3,50,00,000 Equity Shares of INR 2/- each fully paid up	7,00,00,000/-
Total	7,00,00,000/-



MEETING OF THE EQUITY SHAREHOLDERS

12. It is stated that the Applicant Company has 13,806 (Thirteen Thousand Eight Hundred and Six) Equity Shareholders and a list of equity shareholders of the Applicant Company certified by a Practicing Chartered Accountant is annexed as **Annexure -O** to the Company Scheme Application. However, upon analysis of Annexure -O, it is seen that Annexure O is not a list of shareholders but it is shareholding pattern and give details as follows:

Sr. No.	Type of shareholders	Number of shareholders	Number of shares	Shareholding (%)
1.	Promoters/Promoter group	14	1,37,29,064	39.23
2.	Foreign Portfolio Investors	1	67,525	0.19
3.	Overseas Corporate Bodies	-	-	-
4.	Directors and their relatives (excluding independent directors and nominee directors)	4	2,35,398	0.67
5.	Key Managerial Personnel	1	5,000	0.01
6.	Resident Individuals holding nominal share capital up to Rs. 2 lakhs	13,317	1,49,36,274	42.68
7.	Resident Individuals holding nominal share capital in excess of Rs. 2 lakhs	23	44,36,435	12.68
8.	Bodies Corporate	93	6,10,070	1.74
9.	Non-Resident Indians/Foreign Nationals	346	4,07,412	1.16
10.	Clearing Members	6	2,598	0.01
11.	Investor Education Protection Fund (IEPF)	1	5,70,224	1.63
Total		13,806	3,50,00,000	100.00



13. It is stated that the equity shares of the Applicant Company are listed on BSE Ltd., accordingly, the meeting of the Equity Shareholders of the Applicant Company be convened and held on 30th October 2023 at 11:00 am for the purpose of considering, and if thought fit, approving the proposed Scheme, through video conferencing and/ or other audio visual means in accordance with SEBI Master Circular No. SEBI/HO/CED/DIL1/CIR/P/2021 dated 23.11.2021 and SEBI Circular dated 03.01.2022 and 01.02.2022 (as amended from time to time) read with the applicable circulars issued by Ministry of Corporate Affairs from time to time in relation to "Clarification on passing of ordinary and special resolutions by Companies under the Companies Act, 2013 and the rules made thereunder.
14. In view of provisions of Section 230(4) read with Section 108 of the Companies Act 2013 read with Rule 20 and other applicable provisions of the Companies (Management and Administration) Rules, 2014 and in accordance with Regulation 44(1) of the SEBI (Listing obligations and Disclosure Requirements) Regulations, 2015, the Applicant Company proposes to provide the facility of remote e-voting to the Equity Shareholders in respect of the resolution to be passed at the aforesaid meeting.

MEETING OF THE SECURED CREDITORS

15. It is stated that there are no Secured Creditors. The certificate issued by a Practicing Chartered Accountant stating that the Applicant Company has no Secured Creditors is annexed to the Company Scheme Application. In view of the fact that there are no Secured Creditors of the Applicant Company, question of convening and holding a meeting of the Secured Creditors of the Applicant Company does not arise.

MEETING OF THE UNSECURED CREDITORS

16. It is stated that the Applicant Company has 761 (Seven Hundred and Sixty-One) Unsecured Creditors amounting to INR 24,78,10,778/- (INR



Twenty-Four Crores Seventy-Eight Lakhs Ten Thousand Seven Hundred and Seventy-Eight only). The Learned Counsel of the Applicant Company further submits that since the present Scheme is an arrangement between the Applicant Company and its shareholders as contemplated in Section 230(1)(b) Companies Act, 2013 and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no compromise or arrangement with creditors as it does not affect the rights and interests of the Unsecured Creditors of the Applicant Company. Further there is no diminution of liability of any of the Unsecured Creditors of the Applicant Company who will be paid off in the ordinary course of business.

17. The counsel has relied upon the Judgment passed by the Hon'ble Calcutta High Court in the case of **Bengal Tea Industries Ltd. & Ors. Vs. Union of India & Anr in Appeal No. 418/1986** and also the order passed by this bench in the case of **Inox Leisure Limited bearing CA(CAA) 201/MB/2022**, the meeting of the **Unsecured Creditors** of Applicant Company was **dispensed with**.
18. Taking into consideration, the submissions and the documents filed therewith the following directions are issued in respect of convening/holding or dispensing with the meetings of the Shareholders, Secured and Unsecured Creditors as well as issue of notices including by way of paper publication as follows:

A. With Regard to Equity Shareholders:

- i. The Equity Shareholders of the Applicant Company are allowed to avail the facility of e-voting during the aforesaid meeting to be held through video conferencing and / or other audio-visual means on 30th October 2023 at 11:00 am. The e-voting facility for the Equity Shareholders of the Applicant Company shall be provided in compliance with the conditions specified under the Companies (Management and Administration) Rules, 2014, Regulation 44 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Secretarial Standard on General Meeting



(SS2) issued by the Institute of Company Secretaries of India, as applicable and in accordance with SEBI Master Circular No. SEBI/HO/CED/DIL1/CIR/P/2021 dated 23.11.2021 and SEBI Circular dated 03.01.2022 and 01.02.2022 (as amended from time to time) read with the applicable circulars issued by Ministry of Corporate Affairs from time to time as permissible under the law.

- ii. That at least 30 clear days before the said meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting at the day, date and time as aforesaid, together with a copy of the Scheme, 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) Rule, 2016 shall be sent by Registered Post / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the Applicant Company, at their last known address or email addresses as per the records of the Applicant Company, as on cut-off date determined by the Board of Directors of the Applicant Company.
- iii. **Shri. V Nallasenapathy**, former Member of NCLT (nspathy1963@gmail.com) is hereby appointed as the **Chairman** of the applicant company and **Ms. Shruti Kelji** (advocateshrutikelji@gmail.com) is appointed as **Alternate Chairperson** of the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid. The applicant company shall pay an amount of Rs. 1,00,000/- to the Chairman and Rs. 75,000/- to the alternate Chairperson for this purposes.
- iv. The Scrutinizer for the aforesaid meeting of Equity shareholders of Applicant Company shall be **Mr. Kannan S**, Practicing Company



Secretary of S Kannan and Associates, (FCS No. 6261) (PCS No. 13016) (cs.skannan@gmail.com) with a remuneration as may be decided by the Board of Directors of the Applicant Company, for the services rendered.

- v. The Chairman appointed for the aforesaid meeting to issue the advertisement and send out the notices of the meeting referred to above. The said Chairman of the meeting shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise at the aforesaid meeting 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).
- vi. The quorum of the aforesaid meeting of Equity Shareholders of the Applicant Company shall be 1000 in number present through video conferencing and/or other audio-visual means. 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.
- vii. The voting by authorized representative in case of body corporate be permitted, provided that authorization duly signed by the person entitled to attend and vote at the meeting is filed with the Applicant Company at the Registered Office not later than 48 hours before the aforesaid meeting.
- viii. The value and number of the shares of each shareholder of the Applicant Company shall be in accordance with the books / register of the Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the meeting shall determine the value



for the purpose of the aforesaid meeting and his decision in that behalf would be final.

- ix. The Chairman of the meeting of the Applicant Company to report to this Tribunal, the results of the aforesaid meeting within Seven days of the conclusion of the meeting of the Equity Shareholders and the said report shall be verified by his Affidavit.
- x. The notice of the aforesaid meeting of the Equity Shareholders of the Applicant Company shall be advertised in Form No. CAA.2 as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in two newspapers viz. "Economic Times" in English circulated in India and translation thereof in "Udayavani" in Kannada circulated in the State in which registered office of the Company is situated, not less than 30 days before the date fixed for the meeting. The Applicant Company shall host the notice of meeting as directed herein, on its website.

B. With regard to Secured Creditors

- i. As there are no Secured Creditors of the Applicant Company, the question of convening and holding a meeting of the Secured Creditors of the Applicant Company does not arise.

C. With regard to Unsecured Creditors

- ii. Since present Scheme is an arrangement between the Applicant Company and its shareholders as contemplated in Section 230(1)(b) Companies Act, 2013 and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no compromise or arrangement with creditors as it does not affect the rights and interests of the Unsecured Creditors of the Applicant Company and also in view of the Judgment passed by the Hon'ble Calcutta High Court in the case of ***Bengal Tea Industries Ltd. & Ors. Vs. Union of India & Anr in Appeal No. 418/1986*** and also the order passed by this bench in the case



of Inox Leisure Limited bearing CA(CAA) 201/MB/2022, the meeting of the Unsecured Creditors of Applicant Company is dispensed with.

- iii. However, the Applicant Company is hereby directed to issue notices to all the Unsecured Creditors. Above notices shall be issued by Registered Post AD/Speed Post AD and Email with the direction that they may submit their representation, if any, to the Tribunal and copies of such representation shall simultaneously be served upon the Applicant Company. It is clear that, if there is no representation / objection is received from the above notices within a period of 30 days, it will be presumed that, they have no objection for approval of the scheme.

19. This bench further directs that the notice of this application along with copy of the Scheme shall also be served through Speed Post / Registered AD or by E-mail on the following:

- i. The Central Government through the office of Regional Director;
- ii. Registrar of Companies, Bengaluru;
- iii. BSE Ltd
- iv. Income Tax Authority Tax office within whose jurisdiction the Applicant Company is assessed to tax i.e. at Circle 1(1)(1), Bengaluru having PAN AABCA1724H;
- v. Nodal Officer at C.R. Building No. 1, Queen's Road, Bengaluru - 560001 and
- vi. Securities and Exchange Board of India.

20. The above notices shall be issued with a direction that the above mentioned authorities may submit their representations, if any, within a period of 30 (thirty) days from the date of receipt of such notice to the



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Tribunal with copy of such representations shall simultaneously be served upon the Applicant Company failing which, it shall be presumed that the authorities have no representations to make on the proposed Scheme, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

21. The Chairman appointed for the meeting shall file an Affidavit not less than 7 (seven) days before the date fixed for the holding of meeting of Equity Shareholders of the Applicant Company and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.
22. The Applicant Company to file an affidavit of service within 10 (ten) working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notice have been duly complied with.
23. Order accordingly.

Sd/-

CHARANJEET SINGH GULATI
Member (Technical)

Sd/-

MS. LAKSHMI GURUNG
Member (Judicial)



Certified True Copy

Copy Issued "free of cost"

On 06/9/2023

P. S. Somani
Deputy Registrar 06/9/2023

National Company Law Tribunal Mumbai Bench
(D.13093) 06/9/23