

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA (CAA) No. 86/NCLT/AHM/2019

Coram: **Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 05.07.2019**

Name of the Company: HLE Engineers pvt. Ltd.
Swiss Glascoat Equipments Ltd.
yashashvi Agrochemical Pvt. Ltd.

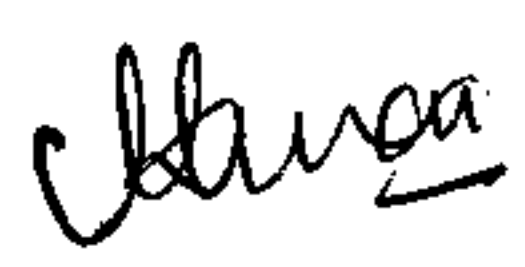
Section of the Companies Act: Section 230-232 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	SWAMI SOPARKAR	ADVOCATE	APPLICANTS	Swami Soparkar
2.				

ORDER

The Applicant is represented through their respective Learned Counsel(s).

The order is pronounced in open court, vide separate sheet.


**MANORAMA KUMARI
MEMBER (JUDICIAL)**

Dated this the 5th day of July, 2019.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 86/NCLT/AHM/2019

In the matter of:

HLE Engineers Private Limited

(CIN: U29100GJ1980PTC003739)

A company registered under the Provisions
of Companies Act, 1956 and

having its registered office at

Survey No. 60/1,

Ground Floor, Plot - 1 & 2,

Near Shukan Bungalow,

Opp. Maheshvari Bhavan,

City Light Area,

Surat - 395 001

Gujarat

...Applicant Demerged/Transferee Company

Swiss Glascoat Equipments Limited

(CIN: L26100GJ1991PLC016173)

A company registered under the Provisions
of Companies Act, 1956 and

having its registered office at

H-106, G.I.D.C. Estate,

Vitthal,

Udyognagar - 388 121

Gujarat

...Applicant Resulting Company

Yashashvi Agrochemical Private Limited

(CIN: U01110GJ2016PTC093104)

A company registered under the Provisions
of Companies Act, 2013 and

having its registered office at

Ground Floor, Plot - 1 & 2,

SY No. 60/1, Paiky TPS - 4, FP - 39,

Maheshvari Bhavan,

City Light,

Surat - 395 001

Gujarat

...Applicant Transferor Company

Order delivered on 5th July, 2019

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Appearance: Advocate Ms. Swati Soparkar is present for the Applicant
Companies

ORDER

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1. The instant joint application is filed by the Applicant Companies under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 in the matter of Composite Scheme of Arrangement involving Demerger and transfer of the Operating Business of HLE Engineers Private Limited, the Applicant Demerged/Transferee Company to Swiss Glascoat Equipments Limited, the Applicant Resulting Company and Amalgamation of Yashashvi Agrochemical Private Limited, the Applicant Transferor Company with HLE Engineers Private Limited, the Applicant Demerged/Transferee Company.
2. The registered offices of all the Applicant Companies are situated in the State of Gujarat. Hence all the Applicant Companies are under the jurisdiction of the National Company Law Tribunal, Bench at Ahmadabad.
3. It is submitted that all the three Applicant Companies are empowered by their respective Memorandum of Association to enter into Scheme of Arrangement. Copies of Memorandum of Association of all the Applicant Companies are annexed with the application and marked as Annexure – **“A”, “C” and “E”**. The Audited Financial Statements of HLE Engineers Private Limited, the Applicant Demerged/Transferee Company and Yashashvi Agrochemical Private Limited, the Applicant Transferor Company as on 31st March, 2018 and the unaudited provisional Financial Statements of HLE Engineers Private Limited, the Applicant Demerged/Transferee Company and Yashashvi Agrochemical Private Limited, the Applicant Transferor Company as at 31st March 2019 as well as the Divisional Balance Sheet of HLE Engineers Private Limited, Applicant Demerged /Transferee Company as on 31st March, 2018 are annexed with the application and marked as **Annexures “B”, “F”, “B-1”, “F-2” and “B-2”**. The audited Financial Statements of Swiss Glascoat Equipments Limited, the Applicant Resulting Company as at 31st March 2019 are annexed with the application and marked as **Annexure “D”**.
4. It is stated that all the Applicant Companies belong to the same group of management and have some common directors. It is stated that the proposed restructuring is in the interest of the shareholders, creditors, employees and other stakeholders of all the Applicant Companies.

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5. It is further stated that Swiss Glascoat Equipments Limited, the Applicant Resulting Company is a public limited company, listed on BSE Limited (BSE). The proposed Composite Scheme of Arrangement was first placed before the Audit Committee of the Applicant Resulting Company and thereafter before the Board of Directors of all the Applicant Companies on 16th January 2019. A copy of the Audit Committee Report of the Applicant Resulting Company is annexed with the application as **Annexure "G"**. The Board of Directors of all the Applicant Companies thereafter passed resolutions for initiating the proceedings before this Tribunal for sanction of the Composite Scheme of Arrangement. Copies of board resolutions of all the Applicant Companies are annexed with the Application and collectively marked as **Annexure "H"**. Pursuant to SEBI guidelines, prescribed under SEBI circular no. CFD/ DIL3/ CIR/ 2017/21 dated March 10, 2017, the Applicant Resulting Company submitted the draft Scheme to the BSE Limited and obtained prior approval in the form of Observation Letter dated 27th May 2019 from BSE Limited. Copy of the Observation Letter received from BSE Limited is annexed with the application and is marked as **Annexure- "I"**. It is submitted that the Applicant Resulting Company undertakes to include the said observations in the Explanatory Statement to be sent to all the Equity Shareholders of the Applicant Resulting Company with the notice for convening and holding the meeting of Equity Shareholders of the Applicant Resulting Company.
6. A copy of the Valuation Report for the proposed Exchange Ratio of Shares to be issued by the Applicant Resulting Company obtained from M/s. R.U. Kamath & Company, Chartered Accountants, dated 15th January, 2019 is annexed with the application and is marked as **Annexure "J"**. A copy of the fairness opinion obtained from Vivro Financial Services Private Limited, the Merchant Bankers, dated 15th January, 2019 is annexed with the application and is marked as **Annexure "K"**. Copy of the Composite Scheme of Arrangement is annexed with the application as **Annexure "L"**.
7. It is stated in the Application that there are no proceedings or investigations pending against any of the Applicant Companies under Sections 210-217, 219, 220, 223 to 227 of the Companies Act, 2013

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and/or under Sections 235 to 251 of the Companies Act, 1956. It is further stated that there are no winding up petitions pending against any of the Applicant Companies. The Statutory Auditors of the Applicant Demerged/Transferee Company and that of the Applicant Resulting Company have provided the certificate confirming the proposed Accounting Treatment being in conformity with the Applicable Accounting Standard for the Applicant Companies. The said certificates are annexed with the application and marked as **Annexure "M-1" & "M-2"**.

8. The following are some of the reliefs prayed by the Applicant Companies:

- (A) THAT meeting of the Equity Shareholders of HLE Engineers Private Limited, the Applicant Demerged/Transferee Company be dispensed with.
- (B) THAT separate meetings of the Secured Creditors and Unsecured Creditors of HLE Engineers Private Limited, the Applicant Demerged/Transferee Company be directed to be convened;
- (C) THAT separate meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of Swiss Glascoat Equipments Limited, the Applicant Resulting Company, be directed to be convened;
- (D) THAT meetings of the Equity Shareholders and sole Unsecured Creditor of Yashashvi Agrochemical Private Limited, the Applicant Transferor Company, be dispensed with.

It is stated that Yashashvi Agrochemical Private Limited, the Applicant Transferor Company, has no Secured Creditors. Hence, it is not necessary to hold the meeting of Secured Creditors of Yashashvi Agrochemical Private Limited, the Applicant Transferor Company.

9. Heard the submissions made in this regard by Mrs. Swati Soparkar, Ld. advocate for the Applicant Companies.

9.1 It is stated that HLE Engineers Private Limited, Applicant Demerged/Transferee Company is a private limited company and has only 9 Equity Shareholders. All the Equity Shareholders of the Applicant Demerged/Transferee Company have given their consent affidavits approving the proposed Scheme and the said affidavits are annexed with the application and marked as **Annexure "O" Colly** along with

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certificate from the Chartered Accountant confirming the number of Equity Shareholders of the Applicant Demerged/Transferee Company and further confirming the receipt of the consent affidavits from the Equity Shareholders of the Applicant Demerged/Transferee Company. In view of the consent affidavits from the Equity Shareholders of the Applicant Demerged/Transferee Company, it is prayed that meeting of the Equity Shareholders of the Applicant Demerged/Transferee Company be dispensed with.

9.2 It is further stated by the Applicant Demerged/Transferee Company that as on 30th April, 2019, the Applicant Demerged/Transferee Company has 4 Secured Creditors and value of Secured Debt is about Rs. 49.80 crores. Further, the Applicant Demerged/Transferee Company has 539 Unsecured Creditors and the total value of Unsecured Debt is about Rs. 75.24 crores. The details of Secured Creditors and Unsecured Creditors of the Applicant Demerged/Transferee Company are provided in the form of Summary Statements certified by the Chartered Accountant and annexed with the application collectively as **Annexure "P"**. Separate meetings of the Secured Creditors and Unsecured Creditors of the Applicant Demerged/Transferee Company are sought to be convened and held to obtain the approval of the Secured Creditors and Unsecured Creditors of the Applicant Demerged/Transferee Company to the proposed Scheme.

9.3 It is stated that Swiss Glascoat Equipments Limited, the Applicant Resulting Company is a listed public limited company and has more than 4,000 Equity Shareholders as at 30th April 2019. The company has large size of operations. As per the books of the Applicant Resulting Company as on 30th April 2019, the Applicant Resulting Company has only 1 Secured Creditor and value of the Secured Debt is about Rs. 11.21crores. Further, the Applicant Resulting Company has 462 Unsecured Creditors and the total value of Unsecured Debt is about Rs. 46.63 crores. Statements indicating the summary of Shareholding Pattern of the Applicant Resulting Company as on 31st March, 2019 and brief summary of the Secured Creditors and Unsecured Creditors of the Applicant Resulting Company as on 30th April, 2019, as certified by Chartered Accountant, are annexed with the application and marked collectively as **Annexure "Q"**. Separate meetings of the Equity Shareholders, Secured Creditors and Unsecured

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Creditors of the Applicant Resulting Company are sought to be convened and held to obtain the approval of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Resulting to the proposed Scheme.

9.4 It is stated that Yashashvi Agrochemical Private Limited, the Applicant Transferor Company is the wholly owned subsidiary of HLE Engineers Private Limited, the Applicant Demerged/Transferee Company and has only 2 Equity Shareholders. The Applicant Transferor Company has no Secured Creditors and has only one Unsecured Creditor. All the Equity Shareholders and the sole Unsecured Creditor of the Applicant Transferor Company have given their consent on affidavit approving the proposed Scheme. The affidavits received from the Equity Shareholders and the sole Unsecured Creditor of the Applicant Transferor Company are annexed with the application and collectively marked as **Annexure "R"** and **"S"** along with certificates from Chartered Accountant confirming the number of Equity Shareholders and the Unsecured Creditors and further confirming the receipt of the consent affidavits from the Equity Shareholders and the Sole Unsecured Creditor of the Applicant Transferor Company. The Applicant Transferor Company has no Secured Creditors and the same is confirmed by a certificate from Chartered Accountant annexed with the application and marked as **Annexure "T"**. In view of the consent affidavits received from the Equity Shareholders and the sole Unsecured Creditor of the Applicant Transferor Company, dispensation is sought from convening and holding the meetings of the Equity Shareholders and Unsecured Creditors of the Applicant Transferor Company.

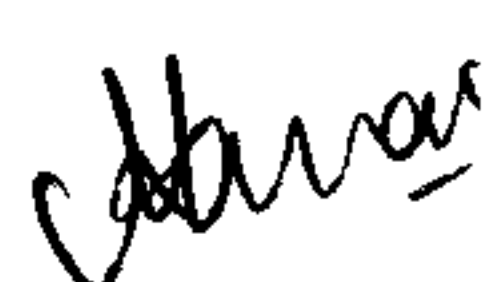
10. Having perused the application and the documents placed on record, this Tribunal passes the following order;

- (i) Meeting of the Equity Shareholders of HLE Engineers Private Limited, the Applicant Demerged/Transferee Company is hereby dispensed with.
- (ii) Separate meetings of the Secured Creditors and Unsecured Creditors of HLE Engineers Private Limited, the Applicant Demerged/Transferee Company, shall be convened and held at its registered office at Survey No.60/1, Ground Floor, Plot-1 & 2, Nr.



Shukan Bungalow, Opp. Maheshvari Bhavan, City Light Area, Surat 395001, in the state of Gujarat, on Saturday, the 24th day of August 2019 at 2.00 p.m. and 3.00 p.m. respectively; for the purpose of considering and, if thought fit, approving the proposed Composite Scheme of Arrangement, with or without modifications;

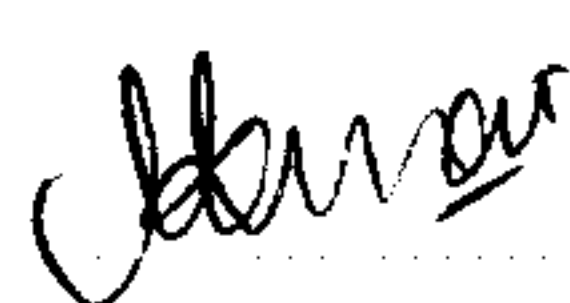
- (iii) Separate meetings of the Equity Shareholders, Secured Creditors as well as Unsecured Creditors of Swiss Glascoat Equipments Limited, the Applicant Resulting Company, shall be convened and held at its registered office at H-106, G.I.D.C. Estate, Vitthal, Udyognagar 388121, in the State of Gujarat on Friday, the 23rd August 2019 at 2.00 p.m., 3.00 p.m. and 4.00 p.m. respectively; for the purpose of considering and, if thought fit, approving the proposed Composite Scheme of Arrangement, with or without modifications.
- (iv) The meetings of the Equity Shareholders and the sole Unsecured Creditor of Yashashvi Agrochemical Private Limited, the Applicant Transferor Company are dispensed with, in the light of consent affidavits from the Equity Shareholders and the sole Unsecured Creditor of the Applicant Transferor Company.
- (v) This Tribunal is of the view that that since Yashashvi Agrochemical Private Limited, the Applicant Transferor Company has no Secured Creditors, there is no requirement to convene and hold the meeting of Secured Creditors of the Applicant Transferor Company;
- (vi) Swiss Glascoat Equipments Limited, the Applicant Resulting Company, being a listed public limited company, it is required to provide facility for Postal Ballot and remote e-voting to its shareholders. The Applicant Resulting Company is directed to carry out voting through (i) Postal Ballot (ii) remote e-voting, and (iii) Ballot Paper at the venue of the meeting of Equity Shareholders of the Applicant Resulting Company to be held on Friday, the 23rd August, 2019. Voting in the case of meetings of Secured Creditors and Unsecured Creditors shall be carried out through ballot/polling paper at the venue of the meetings.
- (vii) At least one month before the date of the meetings, a notice in Form No. CAA 2 convening the said meetings indicating the day, the date,



the place and the time as aforesaid, together with a copy of the Scheme of Arrangement, copy of the Explanatory Statement required to be sent under Section 102 of the Act, read with Sections 230 and to 232 of the Act and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed Form of Proxy shall be sent to each of the Secured and Unsecured Creditors of HLE Engineers Private Limited, the Applicant Demerged/Transferee Company and to each of the Equity Shareholders, Secured Creditors and Unsecured Creditors of Swiss Glascoat Equipments Limited, the Applicant Resulting Company, at their respective or last known addresses either by Registered Post/Speed Post or by Courier or by e mail. The aforesaid notice and other documents shall also be placed on the website of the respective Applicant Companies, if any. The notices shall be sent to all the concerned Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Companies, as applicable, with reference to the said lists as on 30th April, 2019.

(viii) At least one month before the date of meetings, publication about convening and holding the aforesaid meetings, indicating the day, the date, the place and the time as aforesaid, shall be made once in English Daily 'Times of India' Ahmedabad Edition having circulation both in Surat and Anand and Gujarati translation thereof in Gujarati daily 'Sandesh' Surat Edition for HLE Engineers Private Limited and 'Sandesh' Vadodara edition for Swiss Glascoat Equipments Limited for aforesaid meetings. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act, read with Sections 230 and 232 of the Act and the prescribed proxy can be obtained free of charge at the Registered Office of the Applicant Companies or at the office of their Advocate, i.e. Mrs. Swati Saurabh Soparkar, 301, Shivalik-10, Opp. SBI Zonal Office, S. M. Road, Ambavadi, Ahmedabad 380 015 in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.

(ix) Mr. Manish Kagathara, Independent Practicing Chartered Accountant; failing him (ii) Mr. Anil Kagathara, Independent Practicing Chartered Accountant, and failing him (iii) Mr. Nimish Mehta, Independent Practicing Company Secretary, shall be the Chairman of the said meetings of the Equity Shareholders, Secured Creditors and



Unsecured Creditors of Swiss Glascoat Equipments Limited, the Applicant Resulting Company to be held at Anand on 23rd August ,2019 as well as the meetings of the Secured Creditors and Unsecured Creditors of HLE Engineers Private Limited, the Applicant Demerged/Transferee Company to be held at Surat on 24th August 2019, and in respect of any adjournment or adjournments thereof.

(x) Mr. Dineshkumar G. Bhimani, having CP No. 6628, Proprietor of M/s. D. G. Bhimani & Associates, Practicing Company Secretaries, shall act as the scrutiniser for the said meetings.

(xi) The Chairman appointed for the aforesaid meetings shall make publication and issuance of notices of the aforesaid meetings. The Chairman is free to avail the services of the Applicant Companies or any agency for carrying out the aforesaid directions. The Chairman of the meetings shall have all the powers, under the Articles of Association of the respective Applicant Companies and also under applicable rules, including for deciding any procedural questions, that may arise at the meetings or adjournment(s) thereof, proposed at the said meetings, amendment(s) to the aforesaid Scheme or resolution, if any, proposed at the aforesaid meetings by any person(s), and to ascertain the decision of the respective meetings through e-voting, postal ballot or on a poll i.e. by polling paper/ballot.

(xii) The quorum for the meetings of the HLE Engineers Private Limited, the Applicant Demerged/Transferee Company, shall be 2 (Two) Secured Creditors for the meeting of Secured Creditors and for the meeting of Unsecured Creditors, the quorum shall be 15 (Fifteen) Unsecured Creditors, present in person or by authorized representative or by proxy.

For the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of Swiss Glascoat Equipments Limited, the Applicant Resulting Company, the quorum shall be 15 (Fifteen) Equity Shareholders for Equity Shareholders meeting, 1 (One) Secured Creditor for Secured Creditors' meeting and 15 (Fifteen) Unsecured Creditors for Unsecured Creditors' Meetings respectively, present in person or by authorized representative or by proxy.

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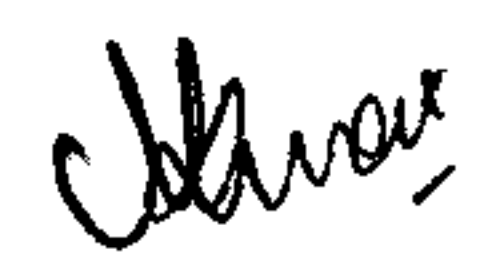
- (xiii) Voting by proxy/authorized representative is permitted provided that the proxy in the prescribed form/authorization duly signed by the person entitled to attend and vote at the aforesaid meetings, is filed with the respective Applicant Companies at the respective registered office of the Applicant Companies not later than 48 hours before the aforesaid meetings.
- (xiv) The number and value of the vote of each Equity Shareholder and the value of debt of the Secured Creditors and Unsecured Creditors of the Applicant Companies, as the case may be, shall be in accordance with the register or records of the Applicant Companies for Equity Shareholders and as per the entries in the books of accounts of the Applicant Companies for Secured Creditors and Unsecured Creditors and where the entries in the records are disputed, the Chairman of the meetings shall determine the value for the purpose(s) of the meetings.
- (xv) The Chairman shall file an affidavit not less than 7(seven) days before the date fixed for the holding of the aforesaid meetings and to report to this Tribunal that the directions regarding publication and issuance of notices of the aforesaid meetings have been duly complied with as per Rule 12 of the Companies (CAA) Rules, 2016.
- (xvi) It is further ordered that the Chairman shall report to this Tribunal on the result of the aforesaid meetings in Form No CAA4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 within 20 (Twenty) days of the conclusion of the last of the meetings.
11. In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, the Applicant Companies shall send a Notice of meeting in Form No. CAA 3 with a copy of the Scheme of Arrangement, the Explanatory Statement and the disclosures mentioned under Rule 6 (to the extent applicable) to:
- (i) (a) Central Government through the Regional Director, North Western Region,
(b) the Registrar of Companies, Gujarat; and
(c) the Income Tax Authorities;
for all the Applicant Companies;
- (ii) (a) Reserve Bank of India;



(b) BSE Limited;
(c) Securities and Exchange Board of India;
for the for Applicant Resulting Company;

(iii) (a) Official Liquidator **for Applicant Transferor Company only;** stating that representations, if any, to be made by them shall be made within a period of 30 (Thirty) days from the date of receipt of such notice, failing which it will be deemed that they have no objection to make on the proposed Scheme of Arrangement. The said notices shall be sent forthwith after the notice for the meetings are sent to the Equity Shareholders, Secured Creditors and Unsecured Creditors of the concerned Applicant Companies, either by Registered Post or by Speed Post or by Courier or by Hand Delivery at the offices of the aforesaid statutory authorities as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid statutory authorities, who desire to make any representation under sub-section (5) of Section 230 shall send the same to this Tribunal with a copy of the same to be supplied to the Applicant Company within a period of 30 (Thirty) days from the date of such service.

12. This Company Application is disposed of accordingly.


Ms. Manorama Kumari
Member (Judicial)

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