

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - III

CA(CAA)/47/MB/2023

In the matter of the Companies
Act, 2013

AND

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

AND

In the matter of Scheme of Amal-
gamation (Merger by Absorption) of
Ador Fontech Limited (“Transferor
Company” or “ADFL”) with Ador
Welding Limited (“Transferee Com-
pany” or “AWL”) and their respec-
tive shareholders

Ador Welding Limited,

A listed Public Limited Company incorporated
under the provisions of Indian Companies Act,
VII of 1913 and having its registered office at:
Ador House, 6, K. Dubash Marg, Fort,
Mumbai 400001, Maharashtra, India
CIN: L70100MH1951PLC008647

Applicant Company / Transferee Company

Order delivered on: 18th May 2023

Coram:

Sh. H.V. Subba Rao: Member (Judicial)

Ms. Madhu Sinha: Member (Technical)

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

ORDER

1. The Court is convened by video conference today.
2. The Learned Counsel for the Applicant Company submits that 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”).
3. The Learned Counsel for the Applicant Company states that the Applicant Company is 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.
4. The Learned Counsel for the Applicant Company states that 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.
5. The Learned Counsel for the Applicant Company states that 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.

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

Particulars	Amount (Rs.)
Authorised Share Capital	
3,00,00,000 Equity Shares of Rs. 10/- each	30,00,00,000
Total	30,00,00,000
Issued, Subscribed and Paid-up Share Capital	
1,35,98,467 Equity Shares of Rs. 10/- each fully paid up	13,59,84,670
Total	13,59,84,670

8. The Learned Counsel for the Applicant Company submits that there are 18,228 (Eighteen Thousand Two Hundred and Twenty Eight) Equity Shareholders in the Applicant Company the list of shareholders certified by the management is annexed to the Company Scheme Application.
9. The Learned Counsel for the Applicant Company submits that as on 31st December 2022 there are 2 (Two) Secured Creditors amounting to INR 14,91,26,625.50/- (INR Fourteen Crores Ninety One Lakhs Twenty Six Thousand Six Hundred Twenty Five and Fifty Paise Only) and that the Applicant Company has procured the consent affidavit from the said Secured Creditors. The list of secured creditors certified by Chartered Accountant and the consent affidavits are annexed to the Company Scheme Application. In view of the fact that the Secured Creditors of the Applicant Company have given their consent affidavits, convening and holding a meeting of the Secured Creditors of the Applicant Company is hereby dispensed with.
10. The Learned Counsel for the Applicant Company submits that as on 31st December, 2022 the Applicant Company has 738 (Seven Hundred and Thirty Eight) Unsecured Creditors amounting to INR 78,79,70,787/- (INR Seventy Eight Crores Seventy Nine Lakhs Seventy Thousand Seven Hundred and Eighty Seven 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) 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. In view of above, the meeting of the Unsecured Creditors of Applicant Company is hereby dispensed with. However, the Applicant Company, are hereby directed to issue notices to Unsecured Creditors having value above INR

1,00,000/-. Above notices shall be issued by Registered Post AD/Speed Post AD/Hand Delivery/Courier/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 the notice be sent by Registered Post-AD/Speed Post and Email to respective Creditors of the Applicant Company.

11. 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.

12. The Learned Counsel for the Applicant Company states that the equity shares of the Applicant Company are listed on BSE Ltd and National Stock Exchange Limited. Accordingly, the meeting of the Equity Shareholders of the Applicant Company be convened and held on 10th August 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, without holding a general meeting requiring the physical presence of shareholders at a common venue in accordance with Ministry of Corporate Affairs (MCA) General Circular No. 14/2020 dated April 8, 2020, General Circular No. 17/2020 dated April 13, 2020, General Circular No. 22/2020 dated June 15, 2020, General Circular No. 33/2020 dated September 28, 2020, General Circular No. 39/2020 dated December 31, 2020, General Circular No. 10/2021 dated June 23, 2021, General Circular No. 20/2021 dated December 08, 2021 and General Circular No. 3/2022 dated May 05, 2022 in relation to “Clarification on passing of ordinary and special resolutions by Companies under the Companies Act, 2013 and the rules made thereunder on account of the threat posed by Covid-19.

13. 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. The Equity Shareholders of the Applicant Company are also 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 07th July 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.
14. That at least 30 (thirty) 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 Courier/ Registered Post / Hand Delivery / 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.

15. Mr. Aditya T. Malkani, Managing Director of the Applicant Company, failing him Mrs. Ninotchka Malkani Nagpal, Executive Director of the Applicant Company, failing him Mr. Suryakant Sethia, Chief Financial Officer of the Applicant Company shall be the Chairman of the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid or any adjournments thereof.
16. The Scrutinizer for the aforesaid meeting of Equity shareholders of Applicant Company shall be Mr. Gopal Malpani, Advocate, Bombay High Court (+91 9892019085) with a remuneration as may be decided by the Board of Directors of the Applicant Company, for the services rendered.
17. 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).
18. The quorum of the aforesaid meeting of Equity Shareholders of the Applicant Company shall be as prescribed under Section 103 of the Companies Act, 2013, 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.
19. 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.

20. 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.
21. The Chairman of the meeting of the Applicant Company to report to this Tribunal, the results of the aforesaid meeting within 30 (thirty) days of the conclusion of the meeting of the Equity Shareholders and the said report shall be verified by his Affidavit.
22. 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. "Business Standard" in English circulated in India and translation thereof in "Mumbai Lakshadeep" in Marathi circulated in the State in which registered office of the Companies are situated, not less than 30 (thirty) days before the date fixed for the meeting. The Applicant Company shall host the notices of meeting as directed herein, on their websites.
23. The Applicant Company is directed to serve notices along with copy of the Scheme through Speed Post/ Registered AD or Hand Delivery with acknowledgment obtained or by E-mail upon: - (i) the Central Government through the office of Regional Director, Western Region, Mumbai; (ii) Registrar of Companies, Mumbai; (iii) BSE Ltd; (iii) National Stock Exchange Limited and (iv) Income Tax Authority Tax office within whose jurisdiction the Applicant Company is assessed to tax i.e. at Circle 2(1)(1), Mumbai having PAN AAACA9076B and (v) Securities and Exchange Board of India.

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 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.

24. 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.
25. The Applicant Companies 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 notices have been duly complied with.
26. Order accordingly.

Sd/-

Madhu Sinha
Member (Technical)

Sd/-

H.V. Subba Rao
Member (Judicial)