

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH**

C.P(CAA)/2018/MB/ 2019  
IN  
C.A.(CAA)/1524/MB/2018

In the matter of the Companies Act, 2013

**AND**

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

**AND**

In the matter of Composite Scheme of  
Amalgamation and Arrangement between  
Vyline Glass Works Limited ('the  
Transferor Company 1' or 'VGWL') AND  
Fennel Investment and Finance Private  
Limited ('the Transferor Company 2' or  
'FIFPL') AND Gujarat Borosil Limited  
(('the Transferor Company 3' or 'GBL')  
AND Borosil Glass Works Limited ('the  
Transferee Company' or 'the Demerged  
Company' or 'BGWL') AND Borosil  
Limited ('the Resulting Company' or 'BL')  
AND their respective Shareholders  
(('Scheme')

**VYLINE GLASS WORKS LIMITED**, a  
Company incorporated under the provisions  
of the Companies Act, 1956 having its

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registered address at 107, Famous Cine Studio  
Building, 20, Dr. E. Moses Road, Mahalaxmi,  
Mumbai – 400 011, Maharashtra, India  
CIN: U26109MH1987PLC215465

*.....The Transferor Company 1 / First Petitioner*

**FENNEL INVESTMENT AND FINANCE**

**PRIVATE LIMITED,** a Company

incorporated under the provisions of the  
Companies Act, 1956 having its registered  
address at 1101, Crescenzo, G-Block, Opp.  
MCA Club, Bandra Kurla Complex, Bandra,  
Mumbai, Maharashtra - 400 051, India

CIN: U65993MH2002PTC294528

*.....The Transferor Company 2 / Second Petitioner*

**GUJARAT BOROSIL LIMITED,** a

Company incorporated under the provisions  
of the Companies Act, 1956 having its  
registered address at 1101, Crescenzo, G-  
Block, Opp. MCA Club, Bandra Kurla  
Complex, Bandra, Mumbai, Maharashtra -  
400 051, India

CIN: L26100MH1988PLC316817

*.....The Transferor Company 3 / Third Petitioner*

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**BOROSIL GLASS WORKS LIMITED**, a Company incorporated under the provisions of the Companies Act, 1956 having its registered address at 1101, Crescenzo, G-Block, Opp. MCA Club, Bandra Kurla Complex, Bandra, Mumbai, Maharashtra - 400 051, India  
CIN: L99999MH1962PLC012538

*.....The Transferee / the Demerged / Fourth Petitioner*

**BOROSIL LIMITED (FORMERLY KNOWN AS HOPEWELL TABLEWARE LIMITED)**, a Company incorporated under the provisions of the Companies Act, 1956 having its registered address at 1101, Crescenzo, G-Block, Opp. MCA Club, Bandra Kurla Complex, Bandra, Mumbai, Maharashtra - 400 051, India  
CIN: U26913MH2010PLC292722

*.....the Resulting Company/Fifth Petitioner*

**Order Pronounced On: 15.01.2020**

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**Coram:**

Hon'ble Member (Judicial) : Mr. Rajasekhar V.K.

Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

***Appearances:***

**For the Petitioner(s):** Mr. Hemant Sethi i/b. Hemant Sethi & Co.,

**ORDER**

***Per: Ravikumar Duraisamy, Member (Technical)***

1. Heard Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.
  
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Composite Scheme of Amalgamation and Arrangement amongst Vyline Glass Works Limited ('the Transferor Company 1' or 'VGWL') and Fennel Investment and Finance Private Limited ('the Transferor Company 2' or 'FIFPL') and Gujarat Borosil Limited ('the Transferor Company 3' or 'GBL') and Borosil Glass Works Limited ('the Transferee Company' or 'the Demerged Company' or 'BGWL') and Borosil Limited ('the Resulting Company' or 'BL') and their respective Shareholders ('Scheme'). This Composite Scheme of Amalgamation and Arrangement involves: -

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- (a) Amalgamation of the First Petitioner Company, the Second Petitioner Company and the Third Petitioner Company (collectively hereinafter referred as ‘the Transferor Companies’) with the Fourth Petitioner Company; and
- (b) Demerger of the Scientific and Industrial products and Consumer products business of the Fourth Petitioner Company along with the scientific and industrial products and consumer products business (vested in the Fourth Petitioner Company pursuant to amalgamation of the Transferor Companies with the Fourth Petitioner Company) into Fifth Petitioner Company.
3. The Counsel for the Petitioners states that the resolutions passed by the Board of Directors of the Petitioner Companies in their respective meeting approved the Scheme. The Appointed Date fixed under the Scheme is October 1, 2018.
4. The Petitioner Companies further submits the Introduction and Rationale for the Composite Scheme of Amalgamation and Arrangement: -

**Vyline Glass Works Limited**

The First Petitioner Company is engaged into manufacturing of range of glassware items and sells its products to Borosil Glass Works Limited.

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**Fennel Investment and Finance Private Limited**

The Second Petitioner Company is a Non-Banking Financial Company. Its main business is of making investments. The Second Petitioner Company is registered with the Reserve Bank of India ('RBI').

**Gujarat Borosil Limited**

The Third Petitioner Company manufactures the world's finest textured solar glass. The equity shares of the Third Petitioner Company are listed on BSE Limited ('BSE').

**Borosil Glass Works Limited**

The Fourth Petitioner Company is a market leader for laboratory glassware in India and is also in consumerware business. It undertakes business mainly through 2 divisions, scientific and industrial product division and consumer product division. The shares of the Fourth Petitioner Company are listed on BSE Limited and the National Stock Exchange of India Limited ('NSE').

**Borosil Limited**

The Fifth Petitioner Company is engaged into manufacturing of opal glassware items.

The proposed Composite Scheme will:

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- a. Result in simplification of the group structure by eliminating cross holdings;
  - b. Confer shares in each business to each existing shareholder of all the companies thereby giving them an opportunity to participate in both the businesses i.e. scientific & industrial products and consumer products businesses of BGWL and solar business of GBL. They will be able to decide whether to stay invested or monetize their investment in either of the businesses thereby unlocking value for the shareholders;
  - c. Enable each business to pursue growth opportunities and offer investment opportunities to potential investors; and
  - d. Result in economies in business operations, provide optimal utilization of resources and greater administrative efficiencies.
5. The Learned Advocate for the Petitioners further submits that the Company Scheme Petition is filed in consonance with Sections 230 to 232 of the Companies Act, 2013 along with the Order passed in Company Scheme Application No. 1524 of 2018 by the Tribunal.
6. Pursuant to the directions contained in order dated March 29, 2019, all the Petitioner Companies held and convened meetings as directed in the Company Scheme Application No. 1524 of 2018. The Chairman's Report of the meeting of the Petitioner Companies have been annexed to the Company Scheme Petition.

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7. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.

8. The Regional Director has filed his report dated May 1, 2019, inter alia, stating therein that save and except as stated in paragraph IV of the said report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said report, the Regional Director has stated that:-

*IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:*

*a) The Petitioners under provisions of Section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Amalgamation. Further, the approval of the Scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).*



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- b) *It is observed that the Petitioner Companies have not submitted a Chairman's Report, admitted copy of the Petition, and Minutes of Order for admission of the Petition. In this regard, the Petitioner has to submit the same for the record of Regional Director.*
- c) *The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.*
- d) *In compliance of AS-14 (IND AS – 103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*
- e) *As per the Scheme, "Appointed Date" means the opening of business on 1st October, 2018 or if the Demerged Company and the Resulting Company require any other date or the Court modifies the appointed date. In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.*

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- f) *Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.*
- g) *As per clause 15 of the scheme, the authorized share capital shall be consolidated, in this regards, deponent prays that, petitioner company shall comply with provisions of Sections 13, 14, 16, 61, 62 and 64 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013.*
- h) *As per clause 17 and 31 of the scheme, effective, without any further act or deed, the Transferee Company shall be renamed as “Borosil Renewables Limited” and resulting company shall be renamed as “Borosil Limited”. The approval and consent of the Scheme by the Shareholders of the Transferee Company shall be deemed to be the approval of Shareholders of the Transferee Company by way of special resolution for change of name as contemplated herein under Section 13 of the Companies Act, 2013 (corresponding to Section 21 of the Companies Act, 1956). The sanction of this Scheme by the NCLT shall be deemed to be compliance of Section 13 of the Companies Act, 2013 (Corresponding to Section 21, 23 of the Companies Act, 1956) and other applicable provisions of the Act and the rules framed thereunder. This Deponent prays that, the Petitioner to comply with the provisions of the Companies Act and the rules thereof enabling the change of name.*

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- i) *As per clause 19 and 32 of the scheme, On and from the Effective Date, the objects of the Transferee Company and resulting company shall be deemed to have been altered by replacing existing Clause 1 with the new clause in the object clause (III) (A) of the Memorandum of Association of the Transferee Company and Resulting Company shall be deemed to have been altered by replacing Clause 1 and substituting with the new clauses in the objects Clause III. In this regards, deponent prays that, Petitioner Company shall comply with applicable provisions of the Companies Act, 2013.*
- j) *As per Clause 30 of the Scheme, Upon the coming into effect of the Scheme, the Resulting Company shall take necessary steps to formulate new employee stock option scheme(s) by adopting the Borosil ESOS of the Demerged Company modified, in this regards, deponent prays that, petitioner company shall comply with the provisions of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013.*
- k) *It is observed that the Petitioner Companies has foreign / non-resident shareholders. The Petitioner Companies must observe the FEMA guidelines for allotment of shares by Petitioner Companies.*
- l) *Observation letter received from BSE dated 05.11.2018 and NSE dated 06.11.2018 by the petitioner companies, in this regard, deponent prays that, the petitioner companies shall undertake to comply with the observations made by BSE and NSE.*

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9. In response to the observations made by the Regional Director, the Petitioner Companies has filed an affidavit in rejoinder dated October 25, 2019 and has clarified as under:
- a) So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Petitioner Companies submit that in accordance with Section 230 (5) of the Companies Act, 2013 and Order passed by the Tribunal on March 29, 2019, the Petitioner Companies have served notices to all such relevant regulatory authorities. Also, the Petitioners have filed Affidavit of Service with the Tribunal in this regard. Further, the Petitioner Companies also undertake that any issues arising out of the Scheme will be met and answered in accordance with law.
  - b) So far as the observation of the Regional Director, as stated in IV(b) above is concerned, the Petitioner Companies have filed a copy of the admitted petition with the Regional Director on October 18, 2019.
  - c) So far as the observation of the Regional Director, as stated in IV(c) above is concerned, the Petitioner Companies states that the Scheme enclosed to the Company Scheme Application and Company Scheme Petition are one and same and there is no discrepancy or deviation.

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- d) So far as the observation of the Regional Director, as stated in IV(d) above is concerned, in compliance of IND AS – 103, the Petitioner Companies undertake to pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as IND AS-8 etc.
- e) So far as the observation of the Regional Director, as stated in IV(e) above is concerned, the Petitioner Companies undertake that the Appointed Date would be October 1, 2018 as mentioned in Clause 1.3 of Definition Clause of the Scheme which is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall take effect from such Appointed Date.
- f) So far as the observation of the Regional Director, as stated in IV(f) above is concerned, the Transferee Company undertakes that the Authorized Share Capital of the Transferor Companies shall be merged with that of the Transferee Company and undertakes to comply with Section 232(3)(i) of the Companies Act, 2013.
- g) So far as the observation of the Regional Director, as stated in IV(g) above is concerned, the Transferee Company undertakes that the Authorized Share Capital of the Transferor Companies shall be consolidated with that of the Transferee Company in

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terms of Clause 15 of the Scheme and undertakes to comply with the provisions of Section 13, 14, 16, 61, 62 and 64 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013.

- h) So far as the observation of the Regional Director, as stated in IV(h) above is concerned, the Transferee Company undertakes to comply with the relevant provisions of the Companies Act, 2013 in respect of change of name of the Transferee Company. Further, the name of the Resulting Company i.e. Borosil Limited (formerly known as 'Hopewell Tableware Limited') has been already changed on November 20, 2018.
  
- i) So far as the observation of the Regional Director, as stated in IV(i) above is concerned, on and from the Effective Date, the objects of the Transferee Company and resulting company shall be deemed to have been altered by replacing existing Clause III 1(a) and (b) with the new clause in the object clause III1 of the Memorandum of Association of the Transferee Company and Resulting Company shall be deemed to have been altered by replacing Clause III A and substituting with the new clause in the objects Clause III A. In this regards, the Transferee Company and the Resulting Company undertake to comply with applicable provisions of the Companies Act, 2013 by filing amended copy of

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Memorandum & Articles of Association with the concerned Registrar of Companies.

- j) So far as the observation of the Regional Director, as stated in IV(j) above is concerned, the Resulting Company undertakes to formulate new employee stock option scheme(s) by adopting the Borosil ESOS in terms of Clause 30 of the Scheme, and undertakes to comply with the provisions of the Companies Act, 2013 in this regard and other applicable provisions of the Companies Act, 2013, and to comply with applicable provision of SEBI (Share Based Employee Benefits) Regulations, 2014.
- k) So far as the observation of the Regional Director, as stated in IV(k) above is concerned, the Petitioner Companies undertake that it shall comply with all the applicable rules, regulations, to the extent applicable, under FEMA guidelines for allotment of shares to foreign / non-resident shareholders.
- l) So far as the observation of the Regional Director, as stated in IV(l) above is concerned, the Petitioner Companies submits before this Hon'ble Tribunal that the Petitioner Companies shall comply with the observations/directions conveyed by BSE and NSE to the Petitioner Companies. Further, the Petitioner Companies has served the notice on 18<sup>th</sup> October, 2019 upon BSE & NSE upon admission of the above petition.

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10. The Regional Director has filed his supplementary report dated November 6, 2019 and has stated that the reply filed by the Petitioner Companies is satisfactory.
11. The observations made by the Regional Director have been explained in Para 8 above. The clarifications and undertakings given by the Petitioner Companies have been explained in Para 9 above. The affidavit in rejoinder filed by the Petitioner Companies and the supplementary report filed by the Regional Director in response to the said affidavit, are accepted by the Tribunal.
12. The Official Liquidator has filed his report dated 2<sup>nd</sup> day of May, 2019 in Company Scheme Application Nos. 1524 of 2018 inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved without winding up by the Hon'ble Tribunal.
13. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.
14. In terms of Clause 5 and 21 of the Scheme dealing with Considerations:  
**On amalgamation of the Transferor Company 1 with the Transferee Company**



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200 (Two Hundred) fully paid up Equity Shares of Re. 1 each of Transferee Company shall be issued and allotted as fully paid up for every 81 (Eighty-One) Equity Shares of Rs. 10 each fully paid up held in the Transferor Company 1.

**On amalgamation of the Transferor Company 2 with the Transferee Company**

200 (Two Hundred) fully paid up Equity Shares of Re. 1 each of Transferee Company shall be issued and allotted as fully paid up for every 109 (One Hundred and Nine) Equity Shares of Rs. 10 each fully paid up held in the Transferor Company 2.

**On amalgamation of the Transferor Company 3 with the Transferee Company**

1 (One) fully paid up Equity Share of Re. 1 each of Transferee Company shall be issued and allotted as fully paid up for every 2 (Two) Equity Shares of Rs.5 each fully paid up held in the Transferor Company 3.

**On demerger**

1 (One) fully paid up Equity Share of Re. 1 each of the Resulting Company shall be issued and allotted as fully paid up for every 1 (One) Equity Share of Re. 1 each fully paid up held in the Demerged Company.

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15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 2018 of 2019 are made absolute in terms of prayer clause 119 of the Company Scheme Petition.
16. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the Order duly certified by the Deputy/Assistant Registrar, of the National Company Law Tribunal, Mumbai Bench.
17. The Petitioner Companies to lodge a copy of this order duly certified by the Deputy/Assistant Registrar, of the National Company Law Tribunal, Mumbai Bench, along with the scheme with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within a period of 60 days from the date of receipt of the Order.
18. Each Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Transferor Companies to pay costs of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the receipt of the duly certified copy of this order.

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19. All concerned regulatory authorities to act on a copy of this order duly certified by the Deputy/Assistant Registrar, of the National Company Law Tribunal, Mumbai Bench along with the Scheme.
20. The Scheme is sanctioned hereby, and the appointed date of the Scheme is fixed as October 1, 2018.
21. Ordered Accordingly.

SD/-

**RAVIKUMAR DURAISAMY**  
**MEMBER (TECHNICAL)**

SD/-

**RAJASEKHAR V.K.**  
**MEMBER (JUDICIAL)**