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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 12/NCLT/AHM/2018

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 16.02.2018**

Name of the Company: Shanku's Bioscience 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>
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ORDER

None present for Applicant.

Order pronounced in open Court. Vide separate sheets.


**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 16th day of February , 2018.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

CA (CAA) No.12/NCLT/AHM/2018

In the matter of :-

Shanku's Biosciences Pvt. Ltd.(SBPL),
A company registered under the
Companies Act, 1956 and having
its registered office at
Ahmedabad-Mehsana
Highway, At & Post Amipura,
Mehsana, Gujarat – 384435.

... Applicant
(Transferee Company)

Order delivered on 16th February, 2018

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

Appearance:

Mr. Chetan Patel, PCS for the Applicant Company.

ORDER

1. M/S Shanku's Biosciences Pvt. Ltd. (Transferee Company) has filed this application under section 230 to 232 of the Companies Act, 2013 seeking dispensation of meeting of equity shareholders and directions for convening meetings of secured and unsecured creditors of the Applicant Transferee Company for the purpose of considering and, if thought fit, approving, with or without modification(s), a scheme of arrangement in the nature of amalgamation of Shanku's Biosciences Pvt. Ltd. (Transferor Company) with Shanku's Biosciences Pvt. Ltd.(Transferee Company) ["Scheme" for short].

2. The Applicant Transferee Company is a private limited company. Issued, subscribed and paid-up share capital of the

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Applicant Transferor Company, as per the audited financial statements for the year ended on 31st March, 2017, is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each.

3. Board of Directors of the Applicant Company, in its meeting held on 12th December, 2017, unanimously approved the Scheme. A copy of the resolution of the Board is produced as Annexure "G2".
4. It is stated in the application that the accounting treatment as proposed in the scheme is in conformity with the accounting standards prescribed under section 133 of the Act. The Applicant Transferee Company has produced the certificate dated 5th December, 2017 issued by the Statutory Auditors of the Company as Annexure "N".
5. It is stated in the application that there are no proceedings pending under Sections 210 to 227 of the Companies Act, 2013 either against the Transferor Company or against the Transferee Company.
6. It is submitted that the Applicant Company has Sixteen (16) equity shareholders and all the equity shareholders of the Applicant Company have given their consent by way of affidavit

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approving the Scheme and waiving their right to convene the meeting of equity shareholders. The original consent affidavits of all the equity shareholders of the Applicant Company are produced as "K1" to J16". The Applicant has also produced certificate of Chartered Accountant certifying that all the equity shareholders of the Applicant Company have given their consent in writing.

7. In view of the consent affidavits given by all the equity shareholders of the Applicant Company, meeting of equity shareholders of the Applicant Company for the purpose of considering and, if thought fit, approving the Scheme with or without modification (s) is dispensed with.

8. So far as the secured creditors are concerned, it is stated that there are four secured creditors of the Applicant Company. In support of this statement, the Applicant Company has produced certificate issued by Chartered Accountant (Annexure-M) certifying that there were four secured creditors (Bank Loan) as on 30th November, 2017 of the Applicant Company. As the Applicant Company could not obtain consent of the secured creditors, the Applicant has sought necessary directions for convening the meeting of secured creditors of the Applicant Company.

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9. The Applicant Company has stated that, as on 30th November, 2017, there were 133 unsecured creditors and the Applicant Company has sought requisite directions for convening the meeting of unsecured creditors of the Applicant Company, as the Applicant Company could not obtain their consent in writing. Certificate of Chartered Accountant of the Applicant Company is also produced as Annexure "L".
10. In the circumstances and having considered the entire material on record, the Tribunal passes the following order:-
- (a) A meeting of secured creditors, the Applicant Transferee Company shall be convened and held at the registered office of the Company, i.e. Ahmedabad-Mehsana Highway, At & Post Amipura, Dist. Mehsana Amipura, Gujarat 384435, on Tuesday, the 20th day of March 2018 at 10.30 A.M. for the purpose of considering, and if thought fit, approving the Scheme with or without modification(s).
 - (b) A meeting of unsecured creditors, the Applicant Transferee Company shall be convened and held at the registered office of the Company, i.e. Ahmedabad-Mehsana Highway, At & Post Amipura, Dist. Mehsana Amipura, Gujarat 384435, on Tuesday, the 20th day of March 2018 at 11.00 A.M. for the purpose of considering, and if thought fit, approving the Scheme with or without modification(s).



- (c) At least one month before the date of the aforesaid meetings, an advertisement about convening of the said meetings, indicating the date, place and time as aforesaid, shall be published in English daily "The Times of India", Gujarat edition and a translation thereof in Gujarati Daily "Navgujarat Samay", Mehsana edition. The publication shall indicate the time within which copies of the Scheme shall be made available to the concerned persons free of charge from the registered office of the Company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and the prescribed form of proxy can be obtained free of charge from the registered office of the applicant company.
- (d) In addition, at least one month before the date of the aforesaid meetings of Secured and Unsecured Creditors of the Applicant Company to be held as aforesaid, a notice convening the said meetings indicating the day, date, place and time aforesaid, together with a copy of the scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Section 230 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 the Applicant Company at their respective registered or last known addresses either by registered post or speed post or air mail or by courier. The



notices shall be sent to the Secured and Unsecured Creditors appearing on the record of Applicant Company as on the date of filing of the application.

- (e) Mr. Amish Khandar, Chartered Accountant shall be the Chairperson of the meetings of Secured and Unsecured Creditors to be held on 20th March 2018 and in any adjourned meeting(s).
- (f) Mr. Dixit Shah, a Practicing Company Secretary, is appointed as Scrutinizer for the meetings of Secured and Unsecured Creditors of the Applicant Company.
- (g) The Chairperson appointed for the aforesaid meeting shall issue advertisements and send out notice of the meetings referred to above. The Chairperson is free to avail the services of the applicant company or any agency for carrying out the aforesaid directions. The Chairperson shall have all powers under the Articles of Association of the Applicant Company and also under the Rules in relation to the conduct of meetings, including for deciding any procedural question that may arise at the meetings or adjournment thereof proposed at the said meetings, amendment(s) to the aforesaid scheme or resolutions, if any, proposed at the aforesaid meeting by any person(s) and to ascertain the decision of the sense of the meetings of Secured and Unsecured Creditors by polling paper/ ballot.

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- (h) The quorum for the meeting of Secured Creditors of the Applicant Company shall be 1 (one) and the quorum for the meeting of Unsecured creditors of the Applicant Company shall be 3 (three) persons present in person.
- (i) Voting by proxy or by authorised 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 applicant company at its registered office not later than 48 hours before the meetings vide Rule 10 of Companies (CAA) Rules, 2016 read with Section 105 of the Companies Act.
- (j) The number and value of Secured and Unsecured Creditors of the Applicant Company shall be in accordance with the records or registers of the Applicant Company and where the entries in the records or registers are disputed, the Chairperson of the meetings shall determine the number or value, as the case may be, for the purposes of the meetings.
- (k) The Chairperson to file an affidavit not less than 7 (seven) days before the date fixed for holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisements of meeting have been duly complied with as per Rule 12 of Companies (CAA) Rules, 2016.




- (l) It is further ordered that the Chairperson shall report to this Tribunal on the results of the meetings in Form CAA 4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in Form CAA 4 within 7 (seven) days after conclusion of the meetings.
- (m) In compliance of subsection (5) of Section 230 and Rule 18 of the Companies (CAA) Rules, 2016, the Applicant Company shall send a notice of meeting under sub-section (3) of Section 230 read with Rule 6 of the Companies (CAA) Rules, 2016 in Form No. CAA.3 along with a copy of the Scheme of Amalgamation, explanatory statement and the disclosures mentioned under Rule 6 to (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, and (iii) the Income Tax Authorities stating that representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed Scheme. The said notice (s) shall be sent forthwith after notice is sent to the Secured and Unsecured Creditors of the Applicant Company by registered post or by speed post or by courier or by hand delivery at the office of the concerned authority as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230 shall send the same to the Tribunal within a period of 30 days



from the date of receipt of such notice, failing which it shall be deemed that they have no representation to make on the proposed amalgamation.

11. This Company Application is disposed of accordingly.

Signature.....
Ms. Manorama Kumari, Member (J)

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