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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 18/NCLT/AHM/2018

Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 21.02.2018**

Name of the Company: Sun Pharmaceutical Industries Ltd.

Section of the Companies Act: Section 230-232 - 234 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	SWATI SOPARKAR	ADVOCATE	APPLICANT	Swati Soparkar
2.				

ORDER

Learned Advocate Mrs. Swati Soparkar present for Petitioner.

Order pronounced in open court. Vide separate sheets.


MANORAMA KUMARI
MEMBER JUDICIAL


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 21st day of February, 2018.

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

CA(CAA) No.18/NCLT/AHM/2018

In the matter of :-

Sun Pharmaceutical Industries Limited
(CIN: L24230GJ1993PLC019050)

A company registered under the
Provisions of Companies Act, 1956
and having its registered office at
SPARC, Tandalja,
Vadodara – 390012,
In the state of Gujarat.

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Applicant Transferee Company

Order delivered on 21st February, 2018

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J)

And

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

Appearance:

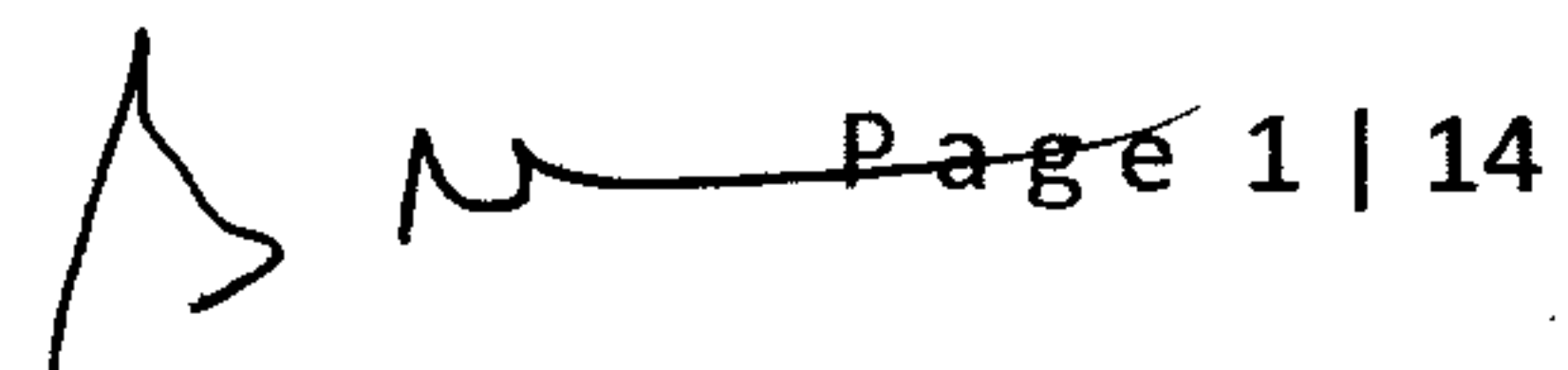
Mr. Saurabh Soparkar, Senior Advocate with Mrs. Swati Soparkar, Advocate
for the Applicant Company.

ORDER

(Per: Bikki Raveendra Babu, Member (J))

1. This Application is filed by Sun Pharmaceutical Industries Limited, the Applicant Transferee Company under Sections 230 to 232 read with Section 234 of the Companies Act, 2013 (hereinafter referred to as 'the Act') read with Companies (Compromise, Arrangement and Amalgamation) Rules, 2016 (hereinafter referred to as 'the rules'). The Scheme of Arrangement is in the nature of De-merger of the Specified Undertaking of Sun Pharma Global FZE, the De-merged/Transferor Company to the Applicant Transferee Company.

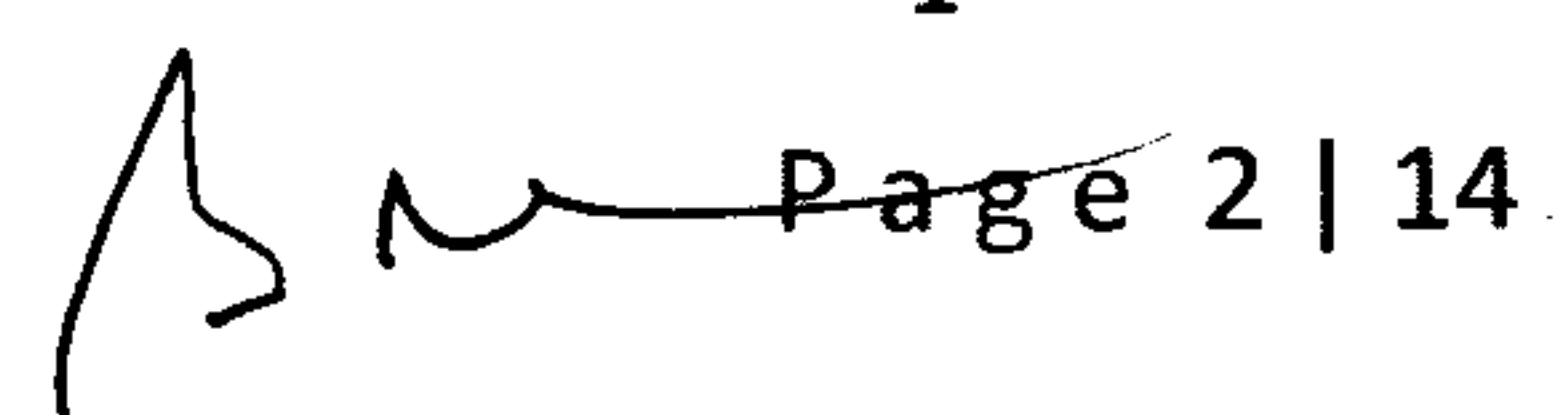
2. The registered office of the Applicant Company is situated in Vadodara in the state of Gujarat, and is under the jurisdiction of

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the National Company Law Tribunal, Bench at Ahmedabad. It has been submitted that the Transferor Company is situated in Sharjah, UAE. It has been further submitted that the Scheme of Arrangement between a foreign company and an Indian company is envisaged under Section 234 of the Companies Act.

3. The Applicant Transferee Company is a listed public limited company and the shares are listed at BSE Ltd and National Stock Exchange of India Limited. The Transferor Company is an unlisted company and an indirect Wholly Owned Subsidiary of the Transferee Company. The Transferor Company viz. Sun Pharma Global, FZE is a wholly owned subsidiary of Sun Pharma Holdings, Mauritius, which in turn is a Wholly Owned subsidiary of the Applicant Transferee Company. It has been therefore submitted that the Scheme does not involve any consideration in form of issue of shares or otherwise. The Applicant Company had submitted the Scheme to the aforesaid stock exchanges for the requisite approval. However, in light of the SEBI Circular No. CFD/DIL3/CIR/2018/2 dated 3rd January 2018, both the stock exchanges have confirmed that it is sufficient to submit the proposed Scheme of Arrangement for the purpose of disclosure and approval is not necessary as the Scheme involves arrangement between the WOS and the Holding Company. Copy of the said circular as well as the communication received from the said stock exchanges has been placed on record as Annexure-H and H-1 at page 136 to 141.

4. In compliance with the provisions of Section 234 of the Companies Act, 2013, the Applicant Transferee Company has also submitted an application to the Reserve Bank of India vide letter dated 4th January 2018, seeking their approval to the proposed arrangement between Sun Pharma Global FZE (Overseas Transferor Company and indirect subsidiary of Sun Pharma) and Sun Pharmaceutical Industries Limited, (Indian Transferee Company). A copy of the same has been placed on

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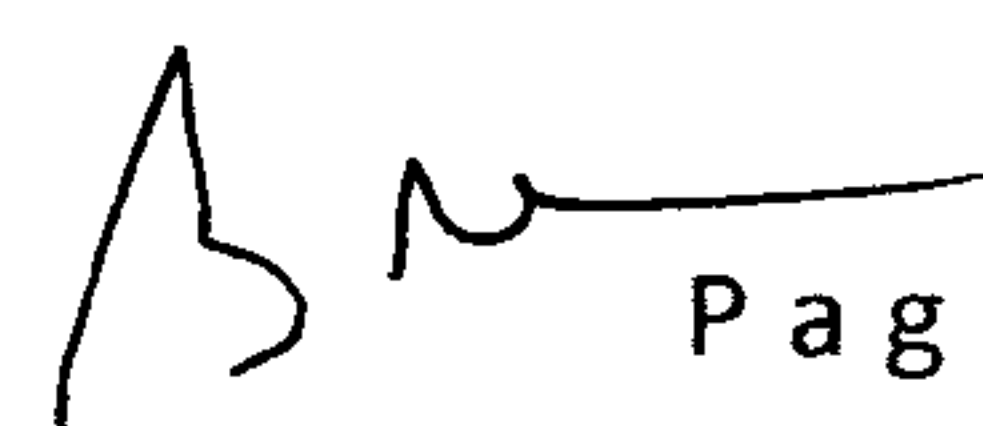
record as Annexure- J at page 160. It is stated that the company has not yet received the approval or any response from the Reserve Bank of India till date.

5. Rationale of this Scheme of Arrangement has been set out in the application as under:

The Applicant Transferee Company is a leading pharmaceutical company in India, engaged in the business of development, manufacture, marketing, sale, trading, and export of various generic drug formulations and the manufacture of drugs and pharmaceutical products. As per the latest audited balance sheet for the financial year 2016-17, the revenue of the company was more than Rs. 80,000 millions on stand alone basis and more than Rs. 300,000 millions on consolidated basis. It is a dividend paying company with immense scope for future growth.

The main business of the Transferor Company inter alia is to engage in developing, manufacturing, trading and exporting pharmaceutical formulations and also investment, financing and other related activities. The products of the Transferor Company are sold in USA and various other markets of the world. As per the latest audited balance sheet for the financial year 2016-17, the revenue of the company was more than 500 million US \$ equivalent to more than Rs. 35000 millions.

Under the present Scheme it is proposed that the Specified Undertaking of the Transferor Company, defined as all specified business activities of developing, manufacturing, trading and exporting pharmaceutical formulations in relation to Generic Products (excluding Branded Products) of the Company is proposed to be transferred to the Parent Holding Company. It is envisaged that the proposed demerger of the Specified Undertaking of the Transferor Company into the Transferee Company would inter alia have the following benefits:



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(a) The said Specified Business shall be integrated and consolidated with business in relation to Generic Products carried out by the Transferee Company resulting in strengthening of the business, synergistic benefits, economies of scale, faster decision making, integration of supply chain, reduction in operating costs, strengthening the focus, enhancing the ability to deal with regulatory challenges, long-term growth, increasing profitability, higher market share, better customer service, increased ability to face the competitive regulatory environment, risks and policies and consolidating the financial, management and operational resources.

(b) The Transferor Company shall have focussed management time and operation attention to its Remaining Business since it has significantly different risk reward profile and manage the Remaining Business more effectively.

(c) The proposed arrangement shall also enable the Transferor Company to address the competitive regulatory environment, risks and policies, better management of supply chain, better product profiling, greater differentiation, ability to strategize the Remaining Business for long term growth, consolidation and creation of shareholder value without committing the entire organisation.

(d) The demerger of the Specified Business from the Transferor Company to the Transferee Company within the Group, will also help retain and increase the competitive strength of Group thereby directly and indirectly strengthening the reputation, goodwill, customer service, customer recall, distribution network, overall economies of scale for the respective businesses of the Transferor Company and the Transferee Company.

(e) The Transferee Company would be in a position to

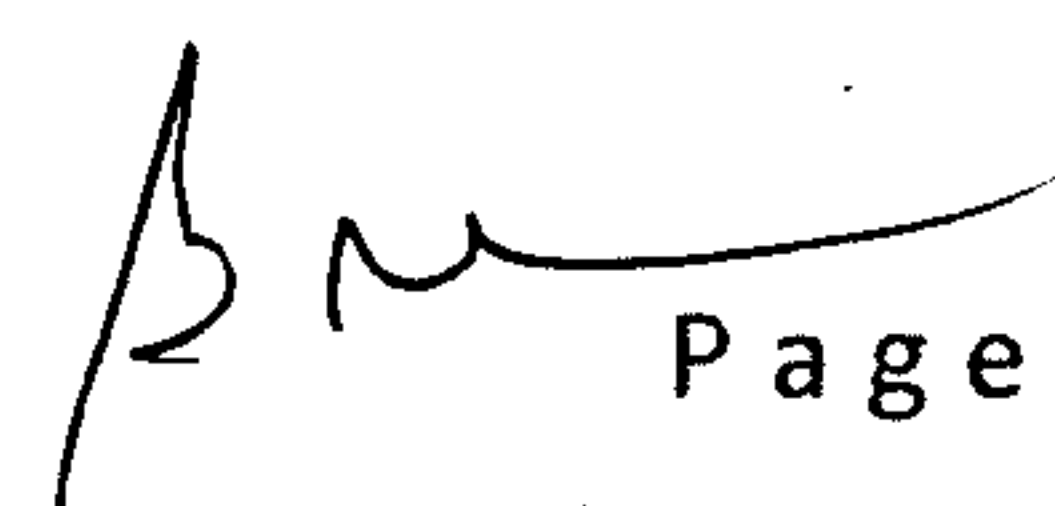
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consolidate operations including the integration of supply chain through optimum utilization of its resources and avoidance of duplication. The Transferee Company would be in a position to achieve cost efficiencies in manpower and other costs in relation to the Specified Business. Simultaneously, the Transferor Company would also be in a position to achieve cost efficiencies in manpower and other costs in relation to the Remaining Business.

(f) The demerger may also provide scope for independent collaboration and expansion of the Remaining Undertaking / business of the Transferor Company without committing the existing organization in its entirety.

(g) The Boards of Transferor Company as well as Transferee Company believe that this demerger will contribute to smooth integration of relevant undertakings of both the Companies and would benefit the shareholders, employees and other stakeholders of the Transferor Company and the Transferee Company.

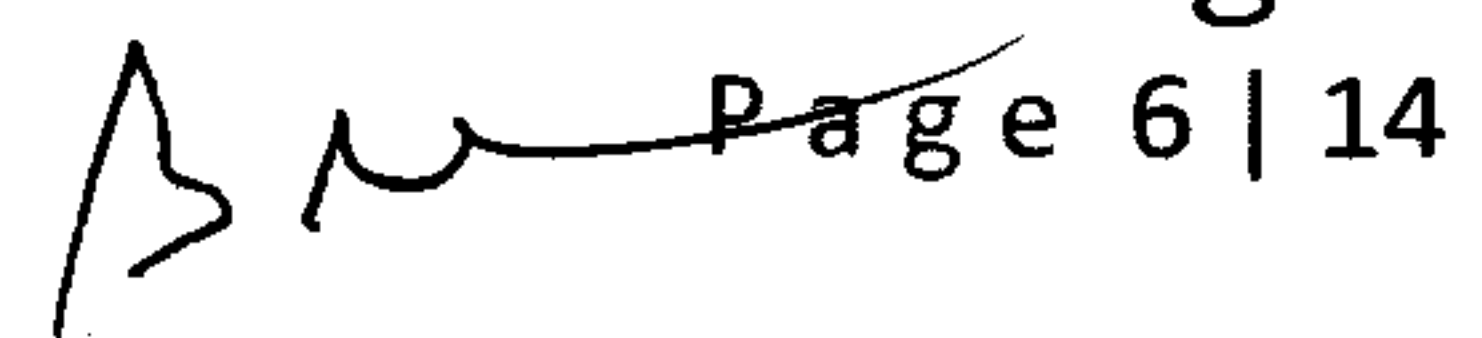
6. The proposed Scheme of Arrangement was placed before the Board of Directors of Transferor Company on 13th November, 2017. The proposed Scheme of Arrangement was placed before the Audit Committee meeting of Applicant Transferee Company held on 14th November, 2017 for consideration and on receipt of the recommendation of the Audit Committee; the same was placed before the Board of Directors of Applicant Transferee Company. The Board of Directors of the Applicant Transferee Company passed a resolution by which it was resolved that the Scheme of Arrangement placed before the Board be submitted to this Tribunal for its sanction. Copies of these resolutions are annexed to the Application as Annexure E, F and F-1 at page 121 to 131.



7. The following are the reliefs prayed by the Applicant Company;

- A. THAT meeting of the Equity Shareholders of the Applicant Company be dispensed with;
- B. THAT meeting of the Secured Creditors of the Applicant Company be dispensed with;
- C. That meeting of the Unsecured Creditors of the Applicant Company be dispensed with;
- D. THAT in the alternate, directions be issued to convene and hold requisite meetings of the Equity Shareholders of the Applicant Company, if dispensation is not granted by the Hon'ble Tribunal.
- E. THAT a meeting of the Unsecured Creditors of the Applicant Transferee Company be directed to be convened and held in order to obtain their approval to the proposed Scheme of Arrangement, with or without modification, if dispensation is not granted by the Hon'ble Tribunal.

8. Heard the submissions made in this regard by Mrs. Swati Soparkar, learned Advocate for the Applicant Company as well as Mr. Saurabh Soparkar, Senior Counsel, appearing with Mrs. Soparkar. It has been submitted that since the arrangement is between the Wholly Owned Subsidiary and the Holding Company, and no shares are proposed to be issued, the rights and interests of the shareholders of the Transferee Company are not being adversely affected and in view of the same, their approval to the Scheme shall not be necessary. The Applicant has therefore prayed for dispensation of the meeting of the shareholders of the Transferee Company. It has also made the alternate prayers for directions to send the individual notice to all the shareholders and invite their objections to the Scheme, if any, in specified period of time. However, in view of the provisions of the Companies Act, 2013, this Tribunal is not inclined to grant


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the aforesaid prayers and in light of the further alternate prayers, the directions are being issued to convene and hold meeting of the Equity Shareholders of the Applicant Company to consider and approve the proposed Scheme of Arrangement, with or without any modification.

9. It has been submitted that the approval of the Reserve Bank of India as envisaged under the provisions of Section 234 is required to be obtained and placed on record before the Tribunal, not at this stage, but before the final sanction of the Scheme. However, this Tribunal may direct the Applicant Company to obtain the same before final hearing of the Petition, or alternatively before filing of the Petition and that this fact may be brought to the notice of the shareholders in the explanatory statement as also at the meeting being convened for the purpose of their approval to the Scheme. During the course of hearing, the Applicant Transferee Company has left it to this Authority to decide as to the above two courses of action, which action be followed by the Applicant. Having regard to the submissions made it is directed that the petitioner company is not entitled to file a petition for sanction of the Scheme even if the proposed Scheme is approved by the shareholders and creditors unless it is in a position to place on record the approval of RBI for the proposed Scheme as required by Section 234(2) of the Companies Act, 2013.

10. It has been submitted that the Applicant Company had 4 Secured creditors as on 31st December 2017 as certified by the Chartered Accountant. However, all except one has been paid off by the Applicant Company as on date. The said contention is supported by a certificate from a Chartered Accountant. The sole Secured Creditor has given its consent to the Scheme along with the appropriate authorization. The certificate of Chartered Accountant and consent letter from the said Secured Creditor are annexed to the Application as Annexure-L and M at page 164 to

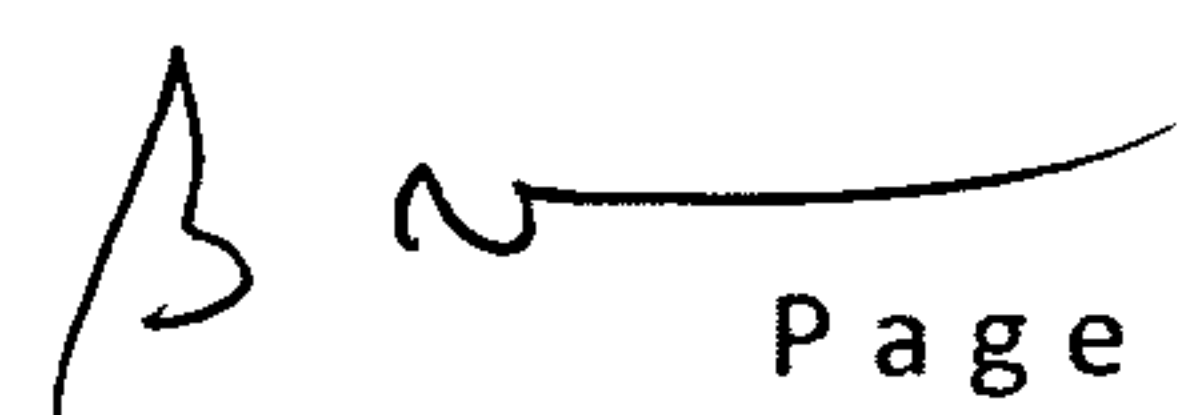
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168. In view of the, same the meeting of the Secured Creditors is hereby dispensed with.

11. It has been submitted that the rights and interests of the unsecured creditors of the Applicant Transferee Company are not likely to be adversely affected. No compromise is proposed to any of the creditors. No liabilities of the creditors of the Applicant Transferee Company are being reduced or extinguished. The net worth of the Applicant Transferee Company as on 31st March, 2017 in Pre Scheme scenario is as high as Rs. 208,715.1 million and in Post Scheme scenario it shall be Rs. 226,161.5 million. The said contention is also supported by the certificate from Chartered Accountant placed on record as Annexure-O at page 170-174. However, in view of the provisions of the Companies Act, 2013, this Tribunal is not inclined to grant the aforesaid prayers and in light of the further alternate prayers, the directions are being issued to convene and hold meeting of the Unsecured Creditors of the Applicant Company to consider and approve the proposed Scheme of Arrangement, with or without any modification. It is stated that there are around 4689 unsecured creditors of the Applicant Transferee Company as on 31st December, 2017 having the total value of debt at Rs.98744.48 million as per the Books of Accounts. A certificate from Chartered Accountant confirming the summary details of unsecured creditors as on 31st December, 2017 is annexed herewith as ANNEXURE – N at page 169.

12. It is stated in the Application that there are no proceedings or investigations pending against the Applicant Company. The Applicant Company has filed copy of the Audited balance sheets as on 31st March 2017 as well as unaudited financial statements as at 30th September 2017. The Applicant Company has filed the Certificate of the Statutory Auditor conforming the compliance with the Accounting Standards vide Annexure-K at page 162-163.


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13. Having perused the entire material on record, this Tribunal passes the following order;

(i) Meeting of the sole Secured Creditor of the Applicant Company is dispensed with in view of the written consent letter on affidavit.

(ii) A meeting of the Equity Shareholders of Sun Pharmaceutical Industries Limited, the Applicant Transferee Company shall be convened and held at Prof. Chandravadan C. Mehta Auditorium – General Education Center, Maharaja Sayajirao University of Baroda, Near D. N. Hall, Pratap Gunj, Vadodara-390002, Gujarat, as the registered office of the Applicant Company is situated in Vadodara, on Friday, 1st day of June 2018, at 10.15 a.m., for the purpose of considering and, if thought fit, approving the proposed Scheme of Arrangement, with or without modifications;

(iii) A meeting of the Unsecured Creditors of Sun Pharmaceutical Industries Limited, the Applicant Transferee Company shall be convened and held at Prof. Chandravadan C. Mehta Auditorium – General Education Center, Maharaja Sayajirao University of Baroda, Near D. N. Hall, Pratap Gunj, Vadodara-390002, Gujarat, as the registered office of the Applicant Company is situated in Vadodara; on Friday, 1st day of June 2018, at 11.15 a.m., for the purpose of considering and, if thought fit, approving the proposed Scheme of Arrangement, with or without modifications;

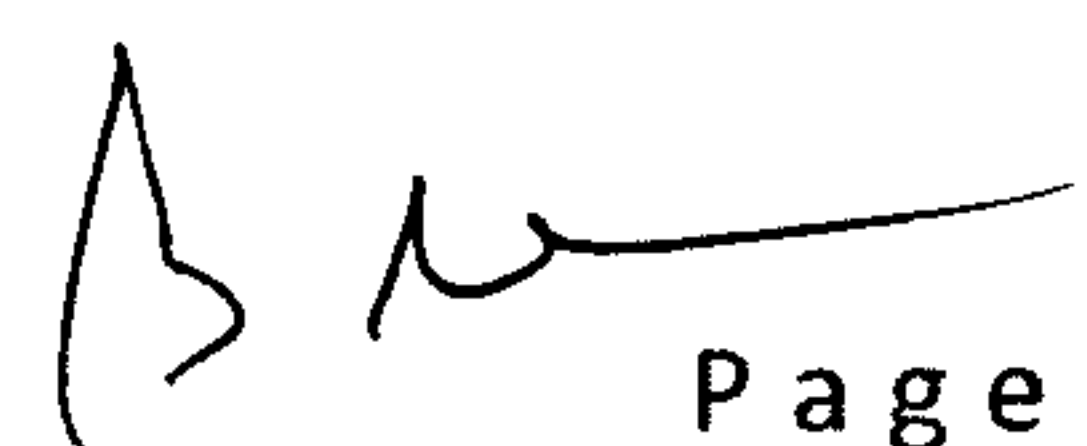
(iv) The Applicant Company being a listed public limited company, is governed by the SEBI circular no. CFD/DIL3/CIR/2017/21 dated March 10, 2017 and in view of Sections 230 (4) of the Act, it is required to provide facility for Postal Ballot. However, in the present scheme, since no shares are to be issued by the Applicant Company, compliance of Para (I)(A)(9)(a) of Annexure I of SEBI Circular



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no. CFD/DIL3/CIR/2017/21 is not necessary for the Applicant Transferee Company. Similarly, separate vote from the public shareholders shall not be required to be obtained. The Applicant Transferee Company has already submitted the requisite Undertaking and the Auditor's certificate to BSE Limited and National Stock Exchange of India Limited. In view of the same, the Applicant Company is directed to carry out voting through (i) remote e voting and (ii) electronic voting system at the venue of the meeting to be held on 1st June 2018. In case of Unsecured Creditors of the Applicant Transferee Company, voting shall be carried out through ballot/polling paper at the venue of the meeting.

(v) At least one month before 1st June 2018, the date of meetings of the Equity Shareholders and Unsecured creditors, a notice in Form No. CAA 2 convening the said meetings indicating the day, the date, the place and the time as aforesaid containing instructions with regard to e-voting (in case of Equity Shareholders), 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 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 Equity Shareholders and Unsecured Creditors 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 Applicant Company and the same shall be sent to SEBI. The notices shall be sent to all the Equity Shareholders of the Applicant Transferee Company with reference to the list of the members provided by the depository as on 31st March 2018. The notices shall be sent to unsecured creditors of the Applicant Transferee Company with reference to the list of the persons appearing



on record of the Applicant Company as on 28th February 2018.

(vi) At least one month before 1st June 2018, date of meetings of the Equity Shareholders and Unsecured creditors, an advertisement about convening the said meetings, indicating the day, the date, the place and the time as aforesaid, shall be published once in English Daily 'Financial Express' Ahmedabad Edition and Gujarati translation thereof in Gujarati daily 'Sandesh' Vadodara edition. 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 Company or at the office of its 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.

(vii) Mr. Gaurang Parikh, Partner of Gaurang Parikh, Chartered Accountants, an independent professional shall be the Chairman of the aforesaid meetings to be held on 1st June 2018 and in respect of any adjournment or adjournments thereof.

(viii) Mr. C. J. Goswami, proprietor of C. J. Goswami and Associates, the practicing Company Secretaries, is appointed as the scrutiniser for the said meetings.

(ix) The Chairman appointed for the aforesaid meetings shall issue advertisements and send out notices of the said meetings referred to above. The chairman is free to avail the

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services of the Applicant Company or any agency for carrying out the aforesaid directions. The Chairman of the meetings shall have all powers under the Articles of Association of the Applicant Company and also under 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 meeting by any person(s); and to ascertain the decision of the meeting of Equity Shareholders by (i) e voting and (ii) electronic voting system at the venue of the meeting of the Equity Shareholders and for the meeting of Unsecured Creditors on a poll i.e. by polling paper/ballot.

(x) The quorum for the meeting of Equity Shareholders shall be 30 (Thirty) persons present in person and Unsecured Creditors shall be 5 (Five) persons present in person.

(xi) 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 Applicant Company at its registered office at SPARC, Tandalja, Vadodara- 390 012, in the state of Gujarat not later than 48 hours before the said meetings.

(xii) The number and value of the vote of each Equity Shareholders or the value of debt of the Unsecured Creditor of the Company, as the case may be, shall be in accordance with the register or records of the Applicant Company for Equity Shareholders and as per the entries in the books of accounts of the Applicant Company for the Unsecured Creditors; and where the entries in the records are disputed, the Chairman of the meetings shall determine the value for the purposes of the meetings.

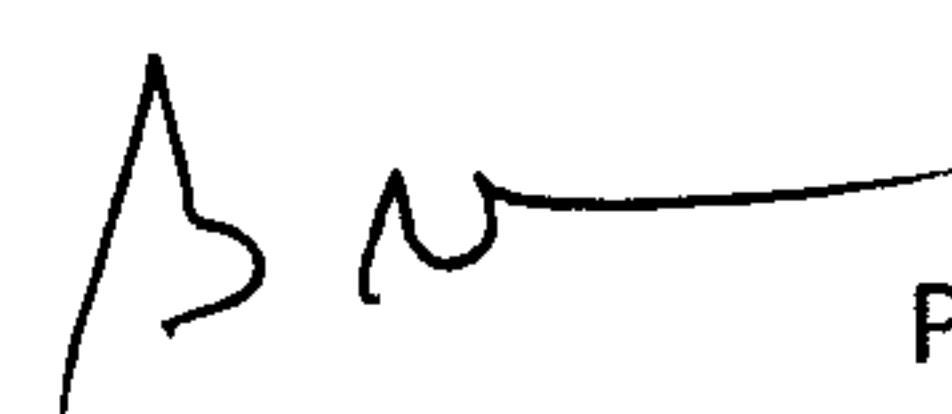
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(xiii) The Chairman shall file an affidavit not less than 7(Seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of the Companies (CAA) Rules, 2016.

(xiv) It is further ordered that the Chairman shall report to this Tribunal on the result of the said meetings in Form No CAA4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 within 7 (seven) days of the conclusion of the meetings.

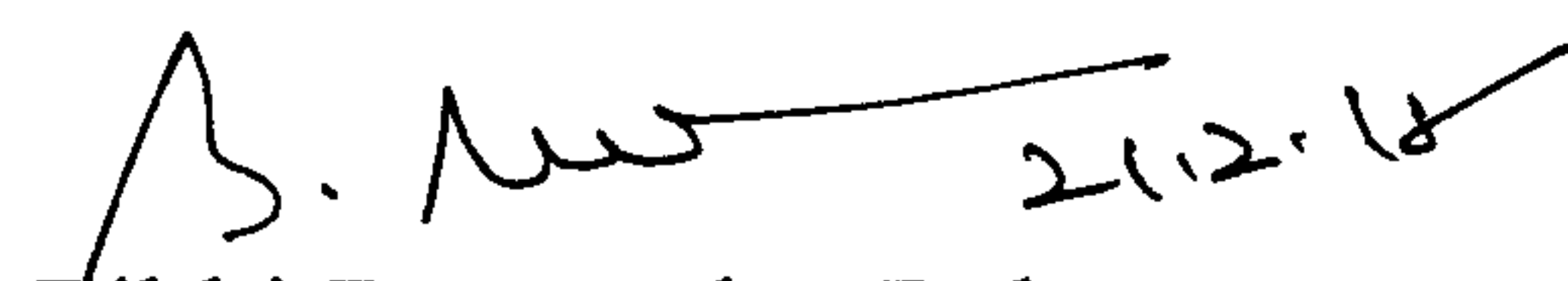
14. In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, the Applicant Transferee Company shall send a Notice of meeting in Form No. CAA 3 with a copy of the Scheme of Arrangement, the Explanatory Statement and the disclosures mentioned under Rule 6 to (1) Central Government through the Regional Director, North Western Region, (2) the Registrar of Companies, Gujarat; and (3) the Income Tax Authorities, (iv) BSE Limited, (v) National Stock Exchange of India Limited, (vi) SEBI, and (vii) Reserve Bank of India; 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 Secured and unsecured creditors of the Company, either by Registered Post or by Speed Post or by Courier or by Hand Delivery at the offices of the authorities 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 this Tribunal with a copy of the same to be supplied to the Applicant Company.

15. This Company Application is disposed of accordingly.



Ms. Manorama Kumari,
Member (J)



Bikki Raveendra Babu,
Member (J)

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