

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 86 /NCLT/AHM/2018

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, 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 31.08.2018**

Name of the Company: FTF Pharma 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 the Applicant.

The Order is pronounced in the open court, vide separate sheet.

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MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 31st day of August, 2018


HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

CA(CAA) No. 86/NCLT/AHM/2018

In the matter of

FTF Pharma Private Limited

Having its registered office at:
A-044, Orchid Park,
Nr. Anjani Tower, Ramdevnagar,
Satellite,
Ahmedabad-380015
Gujarat

.... Applicant Transferee Company

Order delivered on 31st August, 2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, (Member Judicial)
Hon'ble Ms. Manorama Kumari, (Member Judicial)**

Appearance: PCS Mr. Trivedi Niraj is present for the Applicant Company

ORDER

[Per: Hon'ble Ms. Manorama Kumari, Member (J)]

1. The instant Applications is filed by the Applicant Transferee Company under sections 230-232 of the Companies Act, 2013 (hereinafter referred to as 'the Act') read with Companies (Compromise, Arrangement and Amalgamation) Rules, 2016 (herein after referred to as 'the Company Rules'). The Scheme of Arrangement is in the nature of merger of Celestys Pharmaceuticals Private Limited, the Transferor Company with FTF Pharma Private Limited, the Applicant Transferee Company ["Scheme" for short].

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2. The registered office of the Applicant Transferee Company is situated in the State of Gujarat and is thus under the jurisdiction of this Tribunal.
3. As on 31st March 2017, Issued, Subscribed and Paid up Share Capital of the Applicant Transferee Company is Rs. 28,80,000/- divided into 2,88,000 equity shares of Rs. 10/- each.
4. According to the Applicant Transferee Company, the present Scheme is proposed to consolidate the business in one entity, thereby resulting into strengthening the position of the combined entity by enabling it to combine and optimize the synergies of the two companies, which would be in the best interests of both the Companies and their respective shareholders. The management of these companies believes that merger will be more beneficial to the stakeholders, inter alia on account of the following grounds:
 - 4.1 Greater financial strength and flexibility for the combined entities, which would result in maximizing overall shareholders value and improve the economic and competitive position of the combined entity.
 - 4.2 Opportunities to strengthen leverage for raising resources to finance business needs and strengthen the financial position of the combined entity for future growth and expansion and to create a business structure, which is geared to take advantage of possible growth opportunities.
 - 4.3 Achieve greater efficiencies in operations with optimum utilization of resources. Increased cost savings are expected to flow from focused operation efforts, rationalization, standardization and simplification of business processes and optimum utilization of human resources.

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- 4.4 Reduction of overheads and other expenses, consolidation of businesses under one roof will facilitate administrative convenience on account of reduction in number of entities and reduced regulatory compliance thereof;
- 4.5 Additional thrust to the combined entity in terms of proximity of trading facilities enabling optimum use of the resources resulting in growth prospects and expansion plans.
- 4.6 Better financial, business and operational prospects including but not limited to efficient management of costs and improved administrative control of the combined entity.
- 4.7 Optimum usage of unutilized resources of the transfer company to achieve better strength in all respects.
5. The Board of Directors of the Applicant Transferee Company in its Board meeting held on 31st May 2018 passed resolution approving the proposed Scheme placed before the Board. A Copy of the resolution of the Board of Directors dated 31st May, 2018 is annexed by the Applicant Transferee Company with its application.
6. The Applicant Transferee Company has also filed its Audited Balance Sheet for the year ended 31st March, 2017 and Provisional / Management Certified Balance Sheet as on 31st March, 2018 is annexed with its Application as Annexure A-2 and A-2.1. The Applicant Transferee Company has also filed certificate of the Auditors certifying compliance with section 133 of the Companies Act, 2013. A copy of certificate of the Auditor of the Applicant Transferee Company is annexed as Annexure A-9.



7. It is also stated in the application that the Applicant Company is not a non-banking financial institution and hence, notice to RBI is not required. It is also stated that the activities of the Applicant Transferee Company shall not be violating the provisions of the Competition Act, 2002 and hence, no notice to Competition Commission of India is required to be issued. It is further stated that there is no investigation instituted or pending in relation to the Applicant Company under Section 210 of the Companies Act, 2013. The Applicant Company has also stated that no winding up proceedings have been filed or pending against the Applicant Transferee Company.
8. It is stated in the application of the Applicant Transferee Company that there are 2 (two) Equity Shareholders in Applicant Transferee Company and all the Equity Shareholders have given their confirmation in the form of written consent letters approving the Scheme. A list of Equity Shareholders of the Applicant Transferee Company and their consent letters certified by the Practicing Company Secretary certifying that the Equity Shareholders of the Applicant Transferee Company have given their consent letters consenting to the proposed Scheme are annexed as Annexure A-6 of the Application. In view of the consent letters of all the Equity Shareholders, the meeting of Equity Shareholders for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) deserves to be dispensed with and is hereby dispensed with.
9. Further, it is stated in the application of the Applicant Transferee Company that there are 2 (two) Secured Creditors in the Applicant Transferee Company and both the Secured Creditors have given their consent approving the Scheme. A certificate of Chartered Accountant is also annexed verifying the same and is annexed as Annexure A-7. In view of the



consent letters of all the Secured Creditors, the meeting of Secured Creditors for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) deserves to be dispensed with and is hereby dispensed with.

10. Further, it is stated in the application of the Applicant Transferee Company that there are 120 (one hundred twenty) Unsecured Creditors in the Applicant Transferee Company. A certificate of Chartered Accountant is also obtained verifying the same and is annexed as Annexure A-7 and has requested for convening and holding of the meeting of the Unsecured Creditors for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s).

11. Heard the submissions made in this regard by Mr. Trivedi Niraj, PCS for the Applicant Transferee Company and perused the documents annexed with the application. This Tribunal passes the following order;

- I. A meeting of unsecured creditors shall be held on 15th October 2018 for the purpose of considering and, if thought fit, approving the Scheme with or without modifications (s).
- II. In view of sections 230(4) and 232(1) of the Companies Act, 2013 read with Rules 5 and 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016, the Applicant Transferee Company is required to provide the facility of Ballot papers or polling paper at the venue of the meeting to be held on 15th October, 2018.
- III. At least one month before 15th October 2018, i.e. the date of aforesaid meeting, an advertisement about convening of the said meeting, indicating the day, date, place and time, as aforesaid, shall be published in Indian

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Express (all editions in English language) and a Gujarati translation thereof in Sandesh (Ahmedabad 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 Applicant Transferee Company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Section 230 to 232 of the Act and such persons can cast their vote/poll through Authorized representative.

IV. At least one month before 15th October 2018 i.e. the date of aforesaid meeting of Unsecured Creditors, a notice in Form No. CAA. 2 convening the said meeting indicating the day, date, place and time aforesaid, containing instructions with regard to ballot/polling paper 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 to the unsecured Creditors at their respective registered or last known address either by Registered Post or Speed Post/ Airmail or by Courier or e-mail. The notice shall be sent to the Unsecured Secured Creditors of the Applicant Transferee Company with reference to the list of the persons appearing on the record of the Applicant Transferee Company as on date of filing of the application before this Tribunal.

V. Mr. Anshuman Mohapatra failing him Mr. Pavan Ghodiawala shall be the Chairman of the aforesaid meeting to be held on 15th October 2018 and in respect of any adjournment thereof.

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[Signature]

- VI. CS Ashish Tripathi, Practicing Company Secretary is appointed as the Scrutinizer for the meeting of the Unsecured Creditors of the Applicant Transferee Company for conducting Poll/ Ballots papers.
- VII. The Chairman appointed for the aforesaid meeting shall issue the advertisements and send out the notices of the meetings referred to above. The Chairman is free to avail the services of the Applicant Transferee Company. The Chairman shall have all the powers under the Articles of the Applicant Transferee Company and also under the rules in relation to procedural questions that may arise at the meetings or adjournments thereof proposed at the meeting or amendments to the aforesaid Scheme or resolutions, if any.
- VIII. The quorum for the meeting of Unsecured Creditors shall be 5 (five) persons present in person.
- IX. The number of Unsecured Creditors and value of Debt of the Unsecured Creditors, as the case may be, shall be in accordance with the records or registers. The Chairman of the meeting shall determine the numbers or value, as the case may be, for purposes of the meetings.
- X. The Chairman to file an affidavit not less than 7(seven) days before the date fixed for the holding of the meeting and to report to this Tribunal that the directions regarding issuances of notices and advertisement of the meeting have been duly complied with as per Rule 12 of Companies (CAA) Rules, 2016.
- XI. It is further ordered that the Chairman shall report to this Tribunal on the result of the meeting in Form CAA.4, verified by his Affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 within seven days after conclusion of meeting.

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12. In compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (CAA) Rules 2016, the Applicant Transferee Company shall send a notice in Form No. CAA.3 along with a copy of the Scheme of Arrangement, the 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, (iii) Concerned 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 shall be sent by hand delivery through special messenger or by registered post or speed post within 10 days from the date of this order for filing their representation, if any, within 30 days from the date of notice. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the Applicant Transferee Company and/or its advocate. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation.

13. This Company Application is disposed of accordingly.


Ms. Manorama Kumari
Member (Judicial)


Harihar Prakash Chaturvedi
Member (Judicial)