

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH**

**NEW DELHI**

**CA (CAA)-88(ND)/2017**

**Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT, 2013**

**In the matter of:**

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

**AND**

**IN THE MATTER OF SCHEME OF AMALGAMATION**

**OF**

**MKS PHARMA LIMITED**

**(APPLICANT COMPANY-1)**

**WITH**



**SKYMAP HEALTHCARE PRIVATE LIMITED**  
**(APPLICANT COMPANY-2)**

**AND**

**Their respective Shareholders and Creditors**

**MEMO OF PARTIES**

**MKS PHARMA LIMITED**

Company registered under the Companies Act, 1956

Having Registered Office at:

302, Narmada Block 5, Pocket D-6, Vasant Kunj

New Delhi-110070

CIN: U24232DL2005PLC139202

.....Applicant Company-1

**SKYMAP HEALTHCARE PRIVATE LIMITED**

Company registered under the Companies Act, 1956

Having Registered Office at:

302, Narmada Block 5, Pocket D-6, Vasant Kunj

New Delhi-110070

CIN: U33116DL2003PTC316235

.....Applicant Company-2

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**For the Applicants: Ms. Taruna Kalra, CS**



## ORDER

**Order Delivered on: 18.08.2017**

1. This is an application which is filed by the applicant companies herein, namely MKS Pharma Limited (for brevity "Applicant Company-1"), and Skymap Healthcare Private Limited (for brevity "Applicant Company-2") under sections 230-232 of Companies Act, 2013,(hereinafter called to brevity The "Act") and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (hereinafter for brevity called the "Rules" in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the "SCHEME" ) proposed between the applicants. The said Scheme is also annexed as Annexure "2" to the application. The applicants above named have preferred the instant application in effect for the following purpose as evident from the reliefs sought for in the Application, namely:-

- Dispensing with requirement for convening the meeting of the Equity Shareholders and Secured and Unsecured Creditors of the Transferor Company and also to dispense with the requirement of issue and publication of notices for the same.
- Dispensing with requirement for convening the meeting of the Equity Shareholders and Secured and Unsecured Creditors of the Transferee



Company and also to dispense with the requirement of issue and publication of notices for the same.

- Issuing/passing necessary directions/orders as it may be deemed for the purpose of convening the meeting of the secured and unsecured creditors and members or any class thereof of the Transferor Company including the requirement of issue and publications of notice for the same.
  - Issuing/passing necessary directions/orders in respect of Transferee Company as it may be deem for the purpose of convening the meeting of the Equity Shareholders, secured and unsecured creditors or members or any class thereof of the Transferee Company including the requirement of issue and publications of notices for the same.
  - Issuing necessary direction for appointment of Chairperson and Scrutinizer for the meeting or meeting to be held and terms of appointment and remuneration for the Chairperson.
  - Issuing necessary direction fixing the time period within which the Chairperson shall report the report of the meeting to this Hon'ble Tribunal.
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- Issuing direction for permitting to filling of application, petition and other documents as may be required, for the purpose of sanctioning the proposed scheme of Amalgamation between MKS PHARMA LIMITED



and SKYMAP HEALTHCARE PRIVATE LIMITED and their respective shareholders and creditors.

- Passing such other and further orders as are deemed necessary in the facts and circumstances of the case.

2. An Affidavit in support of the above application sworn for and on behalf of the Applicant Companies 1 and 2 has been filed by the one Mr. Sanjay Gupta, being the Director of the Applicant Companies along with the application. Counsel for the joint applicants took us through the averments made in the application as well as the typed set of documents annexed there with. Learned Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that a joint application filed by the applicants are maintainable in view of Rule 3(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 and it is also represented that the registered office of all the applicant companies are situated within the territorial jurisdiction of this Tribunal and falling within Registrar of Companies, NCT, New Delhi.

3. In relation to MKS Pharma Limited being the Applicant Company-1, in the Scheme marked as Annexure – “2”, it represented that it is having 7 Equity Shareholders .It is further represented by the counsel for Applicants that the Applicant Company-1



as on 31.03.2017 has one Secured Creditor. In relation to the shareholders and secured creditors of the Applicant Company-1, the Applicant Company-1 seeks dispensation from convening and holding of the meetings in view of consent affidavit being obtained and are placed on record. The Applicant Company-1 is an unlisted public Company.

4. In relation to Skymap Healthcare Private Limited being the Applicant Company-2 in the Scheme marked as Annexure-“2”, Learned Counsel represents that company is having 3 (Three) Equity Shareholders. It is further represented by the counsel for Applicants that the Applicant Company-2 as on 31.03.2017 has no secured creditor and 7 Unsecured Creditors. In relation to the Equity Shareholders and Secured creditors of the Applicant Company-2, Applicant/ Company-2 seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent being obtained and are placed on record or there being none which obviates the necessity of convening a meeting.

5. Learned Counsel for the Applicants also represents that the provisions of Section 233 of 2013 Act will not apply as the Scheme is a composite Scheme. The above joint application has been filed on 05.07.2017 and hence this tribunal proceeds to entertain the above joint application filed under the 2013 Act. Further, the registered office of all the applicant Companies are situated within New Delhi and are subject to the



jurisdiction Registrar of Companies, NCT, New Delhi and hence are amenable to the territorial jurisdiction of this Tribunal.

6. We have perused the joint application and the connected documents / papers filed therewith including the Scheme of Amalgamation contemplated between the Applicant companies.
7. From the certificate of incorporation filed, it is evident that Applicant Company-1 was incorporated in the name of MKS Pharma Limited on 31<sup>st</sup> August, 2005 under the Companies Act, 1956 in the NCT of Delhi.
8. The Authorized Share Capital of the Applicant/ Amalgamating Company-1 is Rs.2,00,00,000/- divided into 20,00,000 Equity Shares of Rs.10/- each and the Issued, Subscribed and Paid-up Share Capital of the Applicant Company-1 is Rs.1,00,00,000/- divided into 10,00,000 Equity Shares of Rs.10/- each.
9. The main objects of the Applicant Company-1 are as follows:
  - To carry on the business as manufacturers, producer, processor, makers, converters, importers, exporters, traders, buyers, sellers, retailers, whole seller, suppliers, indentors, packers, movers, preservers, stockiest, agents, sub-agents, merchants, distributors, consignors, jobbers, brokers,

concessionaires, and to provide storage facilities to others on rental basis or otherwise deal in veterinary and pharmaceuticals products such as syrups, tablets, capsules, injections, mixtures, ointments, tinctures, liniments and all products and buy products thereof perfumes, cosmetics indigenous drugs, ayurvedic preparation, pharmaceutical and bio-logical preparations, disinfectants basis pharmaceuticals chemical drugs and by products thereof and basic pharmaceuticals chemicals food and tonics to starch and to deal in surgical and scientific material apparatus, instruments and machinery and also to deal in dental, optical and similar goods antiseptic cotton, dressing, lozenges, bottles, tins and other wares and appliances pertaining to laboratory and to manufacturer ayurvedic preparations and the formulation thereof.

- To carry on as distributors agent, marketing agent, wholesale dealers and suppliers of all kinds of pharmaceutical medicines, drugs and all other kinds of medicines.
- Manufacturing and Trading of Air curtains to be used for Operation Theater.
- Manufacturing and riding of wheel chairs for the physically handicapped persons.
- Manufacturing & Trading of hearing aids for dumb.





- Developing and facilitating Pathological Laboratories for curing the right diseases and to take all steps in this regard.
- Developing & facilitating Mother Craft & Child welfare Centers.
- To develop, provide, facilitate medical awareness in the rural masses in the interest of the country.
- Helping, facilitating and taking all steps for the development of Primary health centre in the rural areas.
- To provide, trade, manufacture, import and export zero effect no PREGNANCY tablets for the family planning.
- To conduct medical research in the concerned areas for the fulfillment of objects of the company.

10. From the certificate of incorporation filed, it is evident that the Applicant Company-2 was initially incorporated on 4<sup>th</sup> April, 2003 under the Companies Act, 1956 under the name and style of "Kolns Pipes Private Limited" in the state of Maharashtra and later the name of the company was changed to its present name on 20<sup>th</sup> January, 2016 by Registrar of Companies, Mumbai. The company has shifted its registered office from state of Maharashtra to NCT of Delhi on 18<sup>th</sup> April, 2017 by the order of the Regional Director.



11. The Authorized Share Capital of the Applicant Company-2 is Rs.50,00,000/- divided into 50,000 Equity Shares of Rs.100/- each and the Issued, Subscribed and Paid-up Share Capital of the Applicant Company-2 is Rs.43,60,000/- divided into 43,600 Equity Shares of Rs.100/- each.

12. The main objects of the Applicant Company-2 :

- To carry on the business as traders, manufacturers, contractors agents, importers, exporters, , buyers, sellers, whole sellers and distributors of drugs and pharmaceuticals of every description and application with indigenous and/or imported technology pharmaceutical formulations, surgical and health aids of varied nature like syringes, gloves, surgical, sanitary towels, napkins pharma based cosmetics and also to act as environment management systems.
- To carry on the business to manufacturer, process, buy, sell, import, export or otherwise deal in all kinds of plastic packing, plythene packing, containers, bottles, hollow wares, whether made of leather plastic H.D.P., Polypropylene, Plastic pipes, Sections, Fittings, cores, Paper Tubes, Pipes, Cores or any other similar items and other man made fibrous materials.

13. Both the applicants have filed their respective Memorandum and Articles of Association as well as their last available audited financial statements for the year

ended 31.03.2016 for Applicant. In addition the Applicant companies has provided the provisional financial statements for the period ending 31.03.2017

19. The appointed date as specified in the Scheme is 01.04.2017 subject to the directions of this Tribunal.

20. The Board of Directors of the Applicant companies vide separate meetings held on 02.05.2017, have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions passed thereat have been placed on record by the companies.

21. Both the companies have submitted that no investigation proceedings are pending against them under Sections 210 or any other applicable provisions of the Companies Act, 2013.

22. Taking into consideration the application filed jointly by the Applicant Companies and the documents filed therewith, this Tribunal propose to issue the following directions with respect to calling, convening and holding of the meetings of the shareholders, secured and Unsecured Creditors, or dispensing with the same as well as issue of notices including by way of paper publication as follows:-



**A) In relation to the Applicant Company-1:**

**(i) With respect to Equity shareholders:**

Since it is represented by the Applicant Company-1 that there are only 7 Equity shareholders in the Company whose consents by way of affidavit have been obtained and are placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

**(ii) With respect to Secured Creditors:**

Since it is represented by the Applicant Company-1 that there is only one Secured Creditor in the Company, whose consent by way of affidavit has been obtained and are placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

**(iii) With respect to Unsecured Creditors:**

Since it is represented by the Applicant Company-1 that consents by way of affidavit have been obtained from unsecured creditors and are placed on record, the necessity of convening and holding

a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

**B) In relation to Applicant Company-2:**

(i) With respect to Equity shareholders:

Since it is represented by the Applicant Company-2 that there are only 3 (Three) Equity shareholders in the Company whose consents by way of affidavit have been obtained and are placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.


(ii) With respect to Secured Creditors:

Since it is represented by the Applicant Company-2 that there is no Secured Creditor in the Company, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Applicant Company-2 that there are only 7 unsecured creditors in the Company whose consents by way of affidavit have been obtained and are placed on record, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

The application stands allowed on the aforesaid terms.

(  ) / 18.08.17  
(R.VARADHARAJAN)  
MEMBER (JUDICIAL)

**U.D Mehta**