

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

**Order Delivered on: 21.12.2017**

**CO. APPL.(M) 145(ND)/2017**

IN THE MATTER OF:

Mankind Pharma Limited .....Applicant No.1/Demerged  
Company

**AND**

Mankind Biosys Private Limited ...ApplicantNo.2/Resulting  
Company

Through: Mr. Rajeev Kumar, Advocate  
Mr.Mahesh Agarwal, Advocate

**CORAM:**

**MS. INA MALHOTRA, MEMBER (JUDICIAL)**

**MR. S.K. MOHAPATRA, MEMBER (TECHNICAL)**

## ORDER

### PER SMT. INA MALHOTRA, MEMBER (J)

This is a joint petition filed by way of a 1<sup>st</sup> Motion under Sections 230-232 of the Companies Act, 2013 (hereinafter referred to as 'the Act') by Mankind Pharma Limited (Applicant No. 1/ Demerged Company) and Mankind Biosys Private Limited (Applicant No.2/Resulting Company) in connection with the Scheme of Arrangement (hereinafter referred to as 'the Scheme') for demerging the business of the Demerged Company with the Resulting Company.

2. As per averments, the registered offices of both the Applicant Companies are situated in the National Capital Territory of Delhi, falling within the jurisdiction of this Court.
3. The Applicant No. 1 / Demerged Company was initially incorporated under the Act on 3<sup>rd</sup> July, 1991 under the name and style of "Mankind Pharma Private Limited". Subsequently the name of the company was changed to its present name and style as "Mankind Pharma Limited" and was incorporated under the Act on 13<sup>th</sup> April, 2006. Its authorized share capital is 41,00,00,000/- while its paid up capital is Rs. 40,05,88,440/- divided into shares of Rs.1/- each.
4. The main objects of Applicant No. 1 Company/ Demerged Company was to carry on the business of manufacturers, importers, exporters, processors, traders, sellers, purchasers,

distributors, agents and dealers in pharmaceuticals, medical, diagnostic, antiseptic and disinfectants chemicals, biological, immunological, contraceptive, therapeutic and health care preparations, substances, products, materials, intermediates, ingredients, and articles of all kinds whether simple, compound or otherwise.

5. The Applicant No. 2 Company / Resulting Company was incorporated under the Act on 20<sup>th</sup> March, 2017. Its authorized and paid up share capital is 10,000 equity shares of Rs. 10/- each.

6. The object of the Resulting Company is to carry on the business of manufacture, compound, prepare, buy, sell, import, export, marketing and deal/ trade in all types of bulk-drugs, pharmaceuticals, medicines, injections and injectable drugs, ointments syrups, surgical equipments and preparations and other preparations and articles formulations in the field of Allopathic, Ayurvedic other preparations and articles formulations in the field of Allopathic, Ayurvedic, Homeopathic and Unani system of medicines for human and veterinary consumption.

To carry on the business of leasing and to provide on lease all types of buildings and real estate for industrial, commercial and residential purposes.

To purchase/sale any land,, plot(s) of land or immovable property or building or commercial space/shops or flats or any right or interest therein either singly or jointly or in partnership with any person(s) or body corporate or LLPs or partnership Firms

and to construct or get the construction done thereon for sale or self use or for earning rental income directly by letting out individual units comprised in such buildings. To lease, let out, hire, exchange or lend otherwise any of the idle assets of the Company.

7. Copies of the Memoranda of Association and Articles of Association along with their audited Balance Sheets, as on 31.03.2017 and reports of the auditors of both the Applicant Companies have been filed on record.

The Memorandum and Articles of Association of each company provides for a entering into a Scheme of such Arrangement.

8. The Resulting Company is currently a wholly owned Subsidiary of demerged Company and intends to engage in Leasing business.

9. It has been stated on behalf of the Applicant Companies that the Scheme of Demerger is necessitated and justified on grounds of:-

- a. The Demerger will enable better and more efficient management and control of Leasing business;
- b. The Proposed demerger will enable two business segments to grow independently with their focused vision, strategies and operations;

- c. The demerger will enable investors to separately hold investments which best suit their investment strategies and risk profiles;
- d. The demerger will enable Demerged company to focus and enhance its remaining business operations by streamlining operations and ensuring better and more efficient management control;
- e. The demerger will provide an exit opportunity to two shareholders (Cairnhill CIPEF Limited and Cairnhill CGPE limited) by discharging their consideration by way of cash payment pursuant to demerger of demerged undertaking;
- f. The Scheme shall be beneficial for the interest of the Companies, their shareholders , creditors and employees;

**10.** With a view to achieve greater management focus and keeping in mind the paramount and overall interest of the shareholders, the Board of Directors of the Demerged Company held a meeting on 25th October, 2017 and unanimously approved the proposed Scheme of Arrangement with the Transferee Company. The Demerged Company has 10 shareholders who have given their consent affidavits to the proposed Scheme of Arrangement. The Demerged Company has 2 secured creditors who has given their consent vide affidavits. The Demerged Company has 1940 unsecured creditors, Consent of unsecured creditors having value of more than 90% equity has been placed on record.

**11.** Similarly, the Board of Directors of the Resulting Company in its separate meeting held on 25<sup>th</sup> October, 2017 has unanimously approved the proposed Scheme. The Resulting Company has 2 shareholders who have given their consent vide their affidavits. The Resulting Company does not have any secured and unsecured creditor.

**12.** The details pertaining to the Secured/ Unsecured Creditors have been duly certified by the Statutory Auditors.

Copies of the separate Resolutions dated 25<sup>th</sup> October, 2017 by the Board of Directors of each of the Applicant Companies, approving the scheme have been filed with the application and the same are on record.

**13.** So far as the Share Exchange Ratio is concerned, in terms of scheme, it has been determined in accordance with the Report on Valuation of Shares & Share Exchange Ratio dated 24<sup>th</sup> October 2017, issued by Walker Chandiook & Co. LLP, Chartered Accountants, New Delhi, as per the settled principles of valuation.

**14.** The proposed scheme provides for all assets and liabilities including Income Tax And all other statutory liabilities, if any, of Investment Business (the Amalgamated Business) of the Transferor Company to be transferred to vest in the Transferee Company.

**15.** All the employees of the Transferor Company employed in the activities relating to the Demerged Business, in service on the Effective Date shall become the employees of the Transferee Company on and from such date without any break or interruption

in service and upon terms and conditions not less favorable than those applicable to them in the Amalgamated Business of the Transferor Company, from the Effective Date.

The copy of the Scheme has been filed along with the application. The Salient features of the Scheme in brief are:-

1. The Appointed date shall be 1<sup>st</sup> April, 2018;
2. The Scheme does not include reduction of share capital of the applicant Companies;
3. The Scheme is not a corporate debt restructuring Scheme.

**16.** That the Applicants submits that the provisions relating to the accounting treatment for the proposed amalgamation, as contained in the Scheme of Amalgamation, is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. The Statutory Auditors of the Transferee Company have confirmed the same.

**17.** The said written consents Affidavits have been placed on record of all the Shareholders and the Secured Creditors of the Demerged Company and have been examined and found to be in order.

**18.** The pray of the applicants is for dispensing with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of both the Applicant Companies

for approving the proposed Scheme, as well as for effecting any publication.

**19.** In view of the aforesaid facts, it directed:-

**A. In respect of the Demerged Company:-**

- As all the 10 shareholders have accorded their consent vide affidavits placed on record, the requirement for convening meetings of the equity shareholders of the Demerged Company is hereby dispensed with.
- There are 2 Secured creditors of the Demerged Company. Therefore, the requirement of convening their meeting does not arise.
- 1940 Unsecured creditors of the Demerged Company, Consent of creditors having value of more than 90% credit has been given by way of Affidavits. Therefore the convening a meeting for the unsecured creditors is dispensed with.

**B. In respect to the Resulting Company:-**

- Consent of its 2 Shareholders is on record. Convening their meeting therefore is dispensed with.
- Further there are no secured and unsecured creditor of the Resulting Company. Therefore, the requirement of holding the meeting does not arise.



In view of the above, the requirement for effecting publication is also dispensed with.

**20.** The companies shall individually send notices to the Central Government, through the Regional Director, the Income Tax Authorities and Registrar of Companies NCT Delhi & Haryana along with copy of the Scheme and other required documents and as disclosures required under the provisions of 'The Act', read with 'The Rules'.

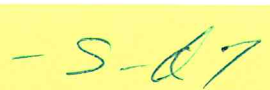
**21.** The applicant company shall further furnish a copy of the Scheme, free of charge within one day of any requisition for The Scheme made by any creditor or member of all the companies.

**22.** The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice on all concerned.

**23.** All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the 'The Rules' as well as the provisions of the 'The Act' by the Applicants.

The application stands allowed in the aforesaid terms.

  
**(S.K Mohapatra)**  
**Member Technical**

  
**(Ina Malhotra)**  
**Member Judicial**