

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

**T.P.NO. 268/2017**

**IN**

**C.A.NO. 744/2016**

**DATED: FRIDAY THE 31<sup>st</sup> DAY OF MARCH 2017**

***PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL  
SHRI ASHOK KUMAR MISHRA, MEMBER TECHNICAL***

**IN THE MATTER OF COMPANIES ACT, 2013(18 OF 2013);**

**AND**

**IN THE MATTER OF SECTIONS 391 to 394 OF THE COMPANIES ACT, 1956 AND  
SECTION 230-232 OF THE COMPANIES ACT, 2013**

**AND**

**OTHER RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013  
ALONG WITH RULES OF THE COMPANIES (COMPROMISES,  
ARRANGEMENTS AND AMALGAMATIONS) RULES 2016  
AND IN THE MATTER OF  
NAVYA BIOLOGICALS INDIA PRIVATE LIMITED**

**1. Navya Biologicals Private Limited,  
No.126/C, Street Bed 3<sup>rd</sup> Cross  
4<sup>th</sup> Block, Koramangala,  
Bengaluru 560-034**

**APPLICANT/TRANSFEROR COMPANY**

**PARTIES PRESENT :**

**Mr. SHYAM SUNDAR H.V. FOX MANDAL ASSOCIATES  
FM HOUSE.NO.6/12 GURAPPA AVENUE  
PRIMROSE ROAD BANGALORE 560025**

**Heard on: 15.03.2017, 2.03.2017, 28.02.2017, 14.02.2017, 7.02.2017, 25.01.2017**

**O R D E R**

Originally this Company Application has been filed before the Hon'ble High Court of Karnataka by the Applicant Company under Sec 391 of the Companies Act, 1956, being numbered as CA 744/16. Subsequently as per notification No. GSR.111(E) dated 7<sup>th</sup> December 2016 issued by the Ministry of Corporate Affairs, New Delhi, the said case is transferred to this Tribunal and renumbered as T.P. No.268/2017.

This Company Application is filed on behalf of the Applicant Company under Section 391 of the Companies Act, 1956, praying to order for dispensing of the meeting of the Equity Shareholders of the applicant/Transferor Company, Secured Creditors and Unsecured Creditors of the Applicant Company for approving the scheme of Amalgamation, where under the Applicant Company **NAVYA BIOLOGICALS PRIVATE LIMITED** (Transferor

Company) is proposed to be merged with the **SHILPA MEDICARE LIMITED**(Transferee Company) and for purposes of considering the scheme of amalgamation etc.

The averments made in the Company Application are briefly described hereunder:-

The Applicant seeks an order dispensing with convening of separate meeting of equity shareholders and secured & unsecured creditors of the Applicant Company for approving the scheme of amalgamation of the Applicant Company **NAVYA BIOLOGICALS PRIVATE LIMITED** with **SHILPA MEDICARE LIMITED** in terms of Scheme of Amalgamation shown as **Annexure E**.



It is further averred in the Application that the applicant company was incorporated as a private company on 8<sup>th</sup> June, 2006 as per the provisions of the Companies act, 1956 under the name and style of **NAVYA BIOLOGICALS PRIVATE LIMITED** in the state of Karnataka CIN bearing no. **U73200KA2006PTC039657**.

The registered office of the Applicant Company is situated at Navya Biologicals Private Limited No.126/C, Street Bed 3<sup>rd</sup> Cross 4<sup>th</sup> Block, Koramangala Bengaluru 560-034.

The objects of Applicant Company as set out in its Memorandum of Association inter alia, as follows:

- A) To develop, create, establish, buy, sell, trade, deal in, import, export, license out, innovate, import knowledge and act to as; dealers, distributors, commission agents, developers, system consultants, business process outsourcing agents, knowledge process outsourcing agents, data research and mining, system implementation, listening agents, stockists, representative, in Bio Tech application, undertake projects for organizations in India and abroad, and conduct research, in Bio Technology nanotechnology and life sciences with special emphasis on human areas such as human health care and industrial applications, to produce genetically modified organisms, pharmaceuticals products and intermediates, diagnostics and the like.
- B) To develop, manage and market bioinformatics and cheminformatics solutions and products for the life sciences industry.
- C) To undertake Manpower Consultancy and promote, develop, encourage, advice and help enterprises in India and Abroad in the Biotech Field.

The copy of Certificate of Incorporation, Memorandum and Articles of Association of the Applicant Company is shown as **Annexure B**.







The authorised share capital of the Applicant Company as on 31<sup>st</sup> March 2016 Rs.1,00,00,000/- divided into 1,00,000 Equity Shares of Rs.100/-each. The total paid up share capital as on 31<sup>st</sup> March, 2016 is Rs.73,00,000/- divided into 73,000 Equity Shares of Rs.100/- each. The Audited Balance Sheet for the year ending 31.03.2016 of the Applicant Company is shown as **Annexure C** and Provisional financials from 1<sup>st</sup> April, 2016 till 30<sup>th</sup> September, 2016 is shown as **Annexure C1**.

It is further stated that, the Board of Directors of the Applicant Company has approved and adopted a scheme of Amalgamation at its meeting held on 27<sup>th</sup> June 2016 by virtue of which the Applicant Company is proposed to be merged with the Transferee Company Shilpa Medicare Limited. It is stated that, the proposed scheme of amalgamation is for the purposes of economic and efficient running of the businesses of both the companies concerned and in order to pool the resources of the companies concerned for optimum growth and development of the businesses of both the companies and tap the new developments in R&D areas potential thereof. It is considered desirable and expedient to amalgamate the Applicant Company. A copy of the Board resolution of the Applicant Company is shown as **Annexure F**.

We have heard the counsel appearing for the Transferor /applicant company who has filed the application for dispensing with convening of meeting(s) of the shareholders and secured & unsecured creditors for considering the scheme of Amalgamation. The applicant Company is the transferor Company which is proposed to be merged with Shilpa Medicare Limited as per the scheme of Amalgamation shown as **Annexure E**.

The Applicant is seeking an order to dispense with convening of meeting of Shareholders and Creditors on the ground that there are 4 (Four) Shareholders and 99.04% of the Secured and Unsecured Creditors in value have given their consent to the scheme. The Certificate of Chartered Accountant certifying the name and number of shareholders is shown as Annexure A and Secured & Unsecured creditors containing details are shown in the **Memo Dated 14<sup>th</sup> March, 2017** filed by the Applicant Company.

We have also seen the consent letters of the four shareholders i.e. (i) Vinay Konaje holding 25,538 equity shares of Rs.100/- each constituting 34.98% of the paid up capital, (ii) Rajyashri Karur Ramakrishnan, holding 25,538 equity shares of Rs.100/- each constituting 34.98% of the paid up capital, (iii) Lalitha Krishnamurthy holding 10,962 equity shares of Rs.100/-each



constituting 15.02% of the paid up capital iv) Geetha Nagesh Konaje holding 10,962 equity shares of Rs.100/- constituting 15.02% of the paid up capital of the applicant company. The consent letters of Shareholders are shown as **Annexure A1**.

We have seen the Memo Dated 14<sup>th</sup> March, 2017 issued by the Chartered Accountant having 'List of Creditors of Navya Biologicals Private Limited' certifying that the Applicant Company has 1 (one) secured creditor, 2 (two) unsecured Loans and 24 (twenty-four) trade creditors. The total amount due to all the class of creditors is Rs.3,53,63,860/- as on 30<sup>th</sup> September 2016 and creditors whose debt due amounting to Rs.3,50,23,093/- i.e. 99.04% have given no objection certificate to the scheme .

The counsel for the Applicant Company has filed **Memo dated 31<sup>st</sup> March, 2017** stating that the remaining creditors have also given no objection certificate to the scheme. The copies of no objection certificate has been produced along with this Memo.

We have seen the letters issued by the Secured & Unsecured Creditors of the Applicant Company as certified by the Chartered Account, giving consent to the scheme and waiving their right to receive notice(s) of any meetings of Secured & Unsecured creditors shown as **Annexure G1**.

Thus the Applicant Company has obtained consent of the four Shareholders and 100% of the Secured & Unsecured Creditors in value and Board of Directors have passed the resolution approving the scheme of amalgamation.

The Applicant Company has disclosed all relevant materials in the Company Application and there is no impediment in law to grant the prayer sought for in the Company Application. Hence the Tribunal is of considered view that the prayers sought for deserves to be granted.

The Applicant Company has obtained consent of shareholders, which is 100% .The Applicant Company is praying to dispense with convening of meeting of shareholders as all the shareholders have given their consent to the scheme. It is the contention of the counsel that no useful purpose would be served if meeting of shareholders is ordered as they have already given consent to the scheme. When there is consent of all the shareholders, convening of meeting of shareholders would be futile exercise. It is true when all the shareholders have given consent for the scheme then no useful purpose would be served by convening meeting of Shareholders.



Therefore Applicant Company is permitted to dispense with convening of meeting of shareholders.

Section 230 (9) of the Companies Act, 2013 provides if creditors having atleast 90% value agree and confirm by way of affidavit to the scheme or arrangement, the Tribunal may dispense with calling of meeting of creditors or class of creditors. Before transfer to the tribunal the Applicant Company has filed consent letters obtained from the Secured & Unsecured Creditors as per the procedure followed in the Hon'ble High Court of Karnataka. Thus relying on the same procedure and related provisions of the Companies Act, 2013, the meeting of Secured & Unsecured can be dispensed with.

In the result, the application is allowed and holding of meeting of the Equity Shareholders and Secured & Unsecured Creditors is dispensed with. In any eventuality when the Applicant Company approaches this Tribunal for seeking approval of the Scheme it would be open for any person who are interested in the Scheme of Amalgamation to put forth their contentions before the Tribunal.

  
(RATAKONDA MURALI)  
MEMBER JUDICIAL

  
(ASHOK KUMAR MISHRA)  
MEMBER TECHNICAL

DATED THIS THE 31<sup>st</sup> DAY OF MARCH, 2017