

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P. NO.267/2017**

IN

C.A. NO 743/2016

**DATED : WEDNESDAY THE 8th DAY OF MARCH 2017
PRESENT : SHRI. RATAKONDA MURALI, MEMBER JUDICIAL
SHRI.ASHOK KUMAR MISHRA, MEMBER TECHNICAL**

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

AND

IN THE MATTER OF SHILPA MEDICARE LIMITED

T.P. NO.267/2017 IN C.A.NO.-743/2016

**1. Shilpa Medicare Limited,
12-6-214/A1, Hyderabad Road
Raichur- 584-135**

- APPLICANT/TRANSFeree COMPANY

PARTIES PRESENT :

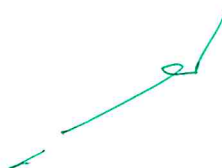
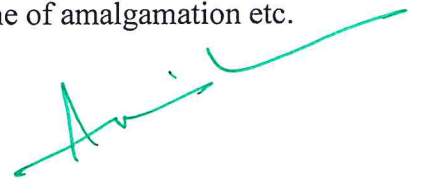
Mr. Shyam Sundar H.V., Advocate
Fox Mandal Associates Fm House.No.6/12 Gurappa
Avenue Primrose Road Bangalore 560025

Heard on: 14.02.2017 and 17.02.2017

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 391-394 of the Companies Act, 1956, being numbered as CA 743/16. Subsequently as per notification No. GSR111(E) dated 7th 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.267/2017.

This Company Application is filed on behalf of the Applicant Company, praying to order for convening of the meeting of the Equity Shareholders of the applicant/Transferee Company and dispensing the meetings of Secured & Unsecured Creditors of the Applicant Company for approving the scheme of Amalgamation, where under the Transferor Company **NAVYA BIOLOGICALS PRIVATE LIMITED** is proposed to be merged with the Applicant Company/ Transferee Company **SHILPA MEDICARE LIMITED** 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 for convening of meeting of equity shareholders and to dispense with the meeting of the Secured & Unsecured Creditors of the Applicant Company for approving the scheme of amalgamation of the **NAVYA BIOLOGICALS PRIVATE LIMITED** (Transferor Company) with the **SHILPA MEDICARE LIMITED** (Transferee Company) in terms of Scheme of Amalgamation shown as **Annexure E**.

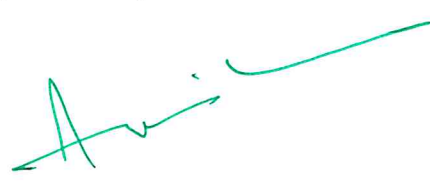
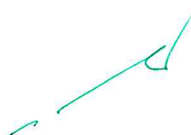
It is further averred in the Application that the applicant company was originally incorporated as a private company under the name and style of Shilpa Antibiotics Private Limited on 20th November, 1987. Subsequently It was converted into Public Limited Company w.e.f. 3rd November, 1993. Later the Applicant Company changed its name to Shilpa Medicare Limited and obtained Fresh Certificate of Incorporation bearing Co.No.08/8739 from the Registrar of Companies, Karnataka on 13th December, 2002 CIN bearing No. L85110KA1987PLC008739.

The registered office of the Applicant Company is situated at **Shilpa Medicare Limited, 12-6-214/A1, Hyderabad Road, Raichur, Karnataka 584-135**.

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

- To carry on India or elsewhere the industry, trade or business of manufacturers, Traders, Dealers, Agents, Suppliers, Licensers, Licensees, Loan Licenses, importers, exporters, Consultants, Discoverers, Inventors, and Producers of Drugs, Bulk Drugs, Pharmaceuticals, Pharmaceuticals formulations, Alcohol, blended Laboratory Preparations and general medical Preparation and on their by-products and packing and repacking of the above.
- To carry on the business of formulating, developing, improving, designing, marketing, selling franchising, exporting and licensing software and program products of any and all and all description.

A copy of Memorandum and Articles of Association of the Applicant Company is shown as **Annexure B** and the Audited Balance Sheet for the year ending 31.03.2016 of the Applicant Company is shown as **Annexure C**.



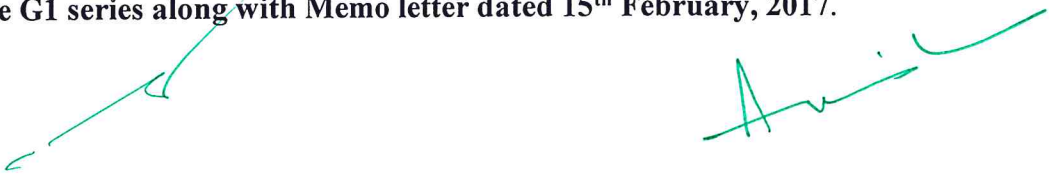
The Counsel for Applicant further produced the Affidavit dated 11th February 2017 of the Director of Applicant Company along with the list of Creditors certified by the Chartered Accountant contending that the total outstanding value of creditors as on 30th September 2016 is INR 245.74 Crores approx. (Secured Lenders & Trade Creditors).

It is further stated that, the Board of directors of the Applicant Company has approved and adopted scheme of Amalgamation at its meeting held on 27th June 2016 by virtue of which the Transferor Company is proposed to be merged with the Applicant Company. It is further stated that, the proposed scheme of amalgamation, would enable the Transferee Company to utilize the new R&D Technologies to achieve economies of scale and other benefits which would be beneficial for both the Companies, their shareholders and all concerned. A copy of the Board resolution of the Applicant Company is shown as **Annexure F**.

We have heard the counsel appearing for the Transferee /Applicant Company, which has filed the application for convening of meeting of the shareholders and dispensing with Meeting of Creditors for considering the scheme of Amalgamation. Navya Biologicals Private Limited is proposed to be merged with the Applicant /Transferee Company, as per the scheme of Amalgamation shown as **Annexure E**.

The Applicant is seeking an order to dispense with convening of meeting of Secured & Unsecured Creditors on the ground that there are three Secured Lenders amounting to INR 88.80 Crores approx. and One hundred and eighty nine Trade Creditors (Unsecured Creditors) amounting to INR 156.93. Crores approx. and 95.07% of the Secured and Unsecured Creditors amounting to INR 233.62 Crores approx in total have given their consent to the scheme. The Chartered Accountant certified the names and number of Creditors of the Applicant Company shown in Additional Affidavit dated 11/02/2017 at Page no.5-12.

We have also seen the consent letters issued by the Secured & Unsecured creditors of the applicant company giving consent to the scheme and waiving their right to receive notice(s) of any meetings of Secured & Unsecured creditors shown as **Annexure G1 series along with Memo letter dated 15th February, 2017.**



After hearing the counsel and after perusing the documents filed, we pass the following order.

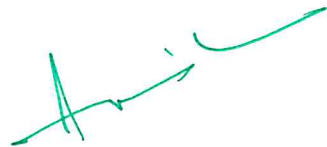
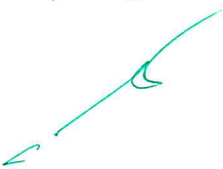
The meeting of the Equity Shareholders of the Applicant Company be convened and held at **SHILPA MEDICARE LIMITED, 12-6-214/A1, Hyderabad Road, Raichur, Karnataka 584-135**, on **Saturday the 29th April, 2017 at 10.30 A.M.** for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed scheme of amalgamation of **NAVYA BIOLOGICALS PRIVATE LIMITED** (Transferor Company) with the **SHILPA MEDICARE LIMITED** (Transferee/Applicant Company).

Shri D.S. Rao, Practicing Company Secretary failing whom **Shri Omprakash Inani, Chairman** of Shilpa Medicare Limited as proposed by the Applicant Company is appointed as Chairperson and **Shri V.Ajay, Practicing Company Secretary** as Scrutinizer is appointed for the Shareholders Meeting. The remuneration of Chairperson and Scrutinizer is fixed at Rs 20,000/- and Rs 10,000/- respectively for convening the shareholders meeting.

The quorum for the Meeting of the shareholders is thirty as proposed by the Applicant Company in accordance with Section 103 of the Companies Act, 2013.

The Notice of the Meeting of the Equity Shareholders shall be published in an English Daily of "The Hindu" and in Kannada Daily "Kannada Prabha".

The Applicant Company or its authorized signatory is directed to issue notice(s) to the shareholders by Registered or Speed Post; or Courier; or Air Mail; or email; or hand delivery to their last known address at least 30 clear days before the said meeting of the Equity Shareholders as per Form No.CAA2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ensuing convening the said Equity Meeting at the place, day, date and time, along with a copy of scheme of amalgamation, a copy of Explanatory Statement, pursuant to be sent under the Section 230 of the Companies Act, 2013 and the form of Proxy as per Form No. MGT-11 (Rule19) of the Companies (Management and Administration) Rules, 2014.


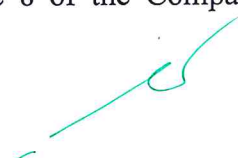


The Applicant Company is directed at least 30 clear days before the Meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting, at the place, date and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid.

The Applicant Company to serve the notice upon the Regional Director, Southern Region, Ministry of Corporate Affairs, Hyderabad pursuant to Section 230(5) of the Companies Act as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise Arrangements and Amalgamations) Rules, 2016.

The Applicant Company to serve the notice upon the Registrar of Companies, Karnataka. Bangalore pursuant to Section 230(5) of the Companies Act as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Registrar of Companies, Karnataka. Bangalore within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies, Karnataka. Bangalore has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise Arrangements and Amalgamations) Rules, 2016.

The Applicant Company to serve the notice upon the Income Tax Authority, within whose jurisdiction that Applicant Company's Assessment are made, pursuant to Section 230(5) of the Companies Act as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise Arrangements and Amalgamations) Rules, 2016.




The Applicant Company to serve the notice upon the Reserve Bank of India, pursuant to Section 230(5) of the Companies Act as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Reserve Bank of India within 30 days of the date of receipt of the notice it will be presumed that Reserve Bank of India has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise Arrangements and Amalgamations) Rules, 2016.

The Applicant Company to serve the notice upon the Securities and Exchange Board of India, pursuant to Section 230(5) of the Companies Act as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Securities and Exchange Board of India within 30 days of the date of receipt of the notice it will be presumed that Securities and Exchange Board of India has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise Arrangements and Amalgamations) Rules, 2016.

The Applicant Company to serve the notice upon the National Stock Exchange, pursuant to Section 230(5) of the Companies Act as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from National Stock Exchange within 30 days of the date of receipt of the notice it will be presumed that National Stock Exchange has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise Arrangements and Amalgamations) Rules, 2016.

The Applicant Company to serve the notice upon the Bombay Stock Exchange, pursuant to Section 230(5) of the Companies Act as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Bombay Stock Exchange within 30 days of the date of receipt of the notice it will be presumed that Bombay Stock Exchange has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise Arrangements and Amalgamations) Rules, 2016.

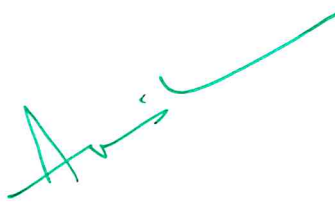
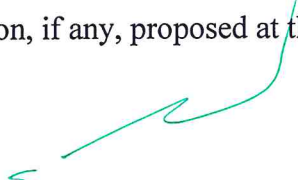


The Applicant Company to serve the notice upon the Competition Commission of India, if applicable pursuant to Section 230(5) of the Companies Act as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from the Competition Commission of India within 30 days of the date of receipt of the notice it will be presumed that the Competition Commission of India has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise Arrangements and Amalgamations) Rules, 2016.

The Applicant Company to serve the notice upon the Central Drugs Standard Control Organization pursuant to Section 230(5) of the Companies Act as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from the Central Drugs Standard Control Organization within 30 days of the date of receipt of the notice it will be presumed that the Central Drugs Standard Control Organization has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise Arrangements and Amalgamations) Rules, 2016.

The Applicant Company to serve the notice upon the other sectoral regulators, stock exchange and authorities if any, pursuant to Section 230(5) of the Companies Act as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from the other sectoral regulators and authorities if any, within 30 days of the date of receipt of the notice it will be presumed that the other sectoral regulators and authorities if any, has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise Arrangements and Amalgamations) Rules, 2016.

The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise before or at any adjournment thereof or any other matter including an amendment to the scheme or resolution, if any, proposed at the meeting by any person(s).



The voting shall be in person or by proxy or authorized representative in case be permitted, provided that the proxy in the Form No. MGT-11 authorization duly signed by the person entitled to attend and vote at the meeting, is to be filed with the Applicant Company at its Registered Office, not later than, forty Eight hours before the aforesaid meeting in accordance with Rule 10 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The value and number of the shares of each member shall be in accordance with the books/register of the Applicant Company or depository records and where the entries in the books/register/depository records are disputed, the Chairperson of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.

The said Chairperson to file an affidavit not less than seven days before the day fixed for the holding of the meeting and do report to this tribunal that the direction regarding convening and issuance of notice(s) to all the necessary parties have been duly complied with in conformity with the relevant Provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The Chairman shall report the conclusion of the aforesaid meeting as per the Rule 14 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 before the Tribunal on or before 2nd May 2017.

The Meeting of the Creditors is dispensed with accordingly, and the Applicant Company is hereby directed to issue notice(s) under section 230 (3) of the Companies Act, 2013 to the non-consenting creditors with a direction that they may submit their representations, if any, to the Tribunal and copy of such representation shall simultaneously be served upon the Applicant Company.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 8th DAY OF MARCH, 2017