22

# NATIONAL COMPANY LAW TRIBUNAL
## AHMEDABAD BENCH
## AHMEDABAD

**C.P. No. 492/2016 in C.A. No. 486/2016 (Old)**
**T.P. No. 5/391-394/NCLT/AHM/2017 (New)**

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU**
**MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 15.03.2017**

Name of the Company: Zydus Healthcare Ltd.

Section of the Companies Act: Sections 391-394 of the Companies Act, 1956

| S.NO. | NAME (CAPITAL LETTERS) | DESIGNATION | REPRESENTATION | SIGNATURE |
|---|---|---|---|---|
| 1. | Sandeep Singhi | Advocate | Petitioner | |
| 2. | Pranjal Buch | " | " | |

**ORDER**

Learned Advocate Mr. Sandeep Singhi with Learned Advocate Mr. Pranjal Buch present for petitioner.

Order pronounced in open Court vide separate sheet.

15/3/17
**BIKKI RAVEENDRA BABU**
**MEMBER JUDICIAL**

Dated this the 15th day of March, 2017.

# NATIONAL COMPANY LAW TRIBUNAL
# AHMEDABAD BENCH
# AHMEDABAD

**CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**

**Date: 15th day of March, 2017**

**T.P. No.4/230-232/NCLT/AHM/2017 (New)**

**C.P. No.491 of 2016 (Old)**

**in**

**C.A. No. 485 of 2016 (Old)**

**With**

**T.P. No.5/230-232/NCLT/AHM/2017 (New)**

**C.P. No.492 of 2016 (Old)**

**in**

**C.A. No. 486 of 2016 (Old)**

In the matter of :-

Biochem Pharmaceutical Industries Limited,
A company incorporated under
the provisions of the Companies
Act, 1956 and having its Registered
Office at Zydus Tower,
Satellite Cross Roads,
Sarkhej-Gandhinagar Highway,
Ahmedabad - 380 015. ... Petitioner Transferor Company

Zydus Healthcare Limited,
A company incorporated under
the provisions of the Companies
Act, 1956 and having its Registered
Office at Zydus Tower,
Satellite Cross Roads,
Sarkhej-Gandhinagar Highway,
Ahmedabad - 380 015. ... Petitioner Transferee Company

**Appearance:-**

1. Mr. Sandeep Singhi and Mr. Pranjlal Buch,
   Advocates, for M/s Singhi & Co.,
   Advocates, for the Petitioner-companies.
2. Ms. Bhoomi M. Thakore, Advocate, for the Official Liquidator,
   Gujarat High Court, in both the matters.

FINAL ORDER
(Date:15.03.2017)

1. Heard Mr. Sandeep Singhi with Mr. Pranjlal Buch, Advocates for M/s Singhi & Co., Advocates, for the petitioner-companies and Ms. Bhoomi M. Thakore, Advocate, appearing for the Official Liquidator.

2. These petitions have been filed by the two petitioner-companies for sanctioning of the scheme of amalgamation of Biochem Pharmaceutical Industries Limited (Transferor Company) with Zydus Healthcare Limited (Transferee Company) ["Scheme" for short].

3. The petitioner of T. P. No.4 of 2017, i.e. Biochem Pharmaceutical Industries Limited, had filed an application in the Honourable High Court of Gujarat, being Company Application No.485 of 2016, for dispensing with the convening and holding of the meetings of the equity shareholders and creditors of the said company. The Honourable High Court, vide its order dated 16th November, 2016, dispensed with the convening and holding of the meeting of equity shareholders of the petitioner-company in view of the consent affidavits to the Scheme given by the equity shareholders. The Honourable High Court, vide its aforesaid order dated 16th November, 2016, also dispensed with the meetings of creditors of the petitioner-company. The Honourable High Court also dispensed with publication of notice in the Government Gazette.

4. The petitioner of T. P. No.5 of 2017, i.e. Zydus Healthcare Limited, had filed an application in the Honourable High Court of Gujarat, being Company Application No.486 of 2016, for dispensing with the convening and holding of the meetings of the equity shareholders, preference shareholders and unsecured creditors of the said company. The Honourable High Court, vide its order dated 16th November, 2016, dispensed with the convening and holding of the meeting of equity shareholders and preference shareholders of

the petitioner-company in view of the consent affidavits to the Scheme given by the equity shareholders. The Honourable High Court, vide its aforesaid order dated 16th November, 2016, also dispensed with the meeting of unsecured creditors of the petitioner-company. The Honourable High Court also dispensed with publication of notice in the Government Gazette.

5. The petitioners, thereafter, filed Company Petitions Nos. 491 and 492 of 2016 in the High Court of Gujarat seeking sanction of the Scheme. The Honourable High Court, by its orders, both dated 21st November, 2016, admitted the aforesaid Company Petitions and directed the issuance of notice to the Regional Director in Company Petitions No.491 and 492 of 2016 and to the Official Liquidator in Company Petition No.491 of 2016. The High Court also directed publication of notice of hearing of the petitions in the English daily newspaper "Indian Express" and the Gujarati daily newspaper "Sandesh", both Ahmedabad editions. The High Court also dispensed with publication of notice in the Gujarat Government Gazette.

6. Pursuant to the order dated 21st November, 2016 passed by the Honourable High Court, the petitioners of Company Petitions Nos.491 and 492 of 2016 published the notice of hearing of the petitions in the English daily newspaper, "Indian Express", Ahmedabad edition and in Gujarati daily newspaper, "Sandesh", Ahmedabad edition on 24th November, 2016. Affidavits of service, on behalf of the petitioner-companies, both dated 29th November, 2016, were filed. The notices of hearing of the Company Petitions were served upon the Regional Director and the notice of hearing in respect of Company Petition No.491 of 2016 was served upon the Official Liquidator and affidavits to that effect were also filed on behalf of the petitioner-companies.

7. Subsequently, the Honourable High Court, in view of Rule 3 of The Companies (Transfer of Pending Proceedings) Rules, 2016, vide

orders dated 21st December, 2016, transferred the aforesaid Company Petitions to this Tribunal and they came to be renumbered as T.P. Nos.4 and 5 of 2017. Thereafter, this Tribunal vide orders dated 23rd January, 2017, directed the petitioner-companies in T.P. Nos.4 and 5 of 2017 to publish notice in the newspapers in which already publication had been made informing the date of hearing. The petitioner-companies were also directed to serve notice on the Regional Director and the Official Liquidator. Affidavits of service, on behalf of the petitioner-companies, dated 2nd February, 2017 have been filed.

8. In response to the notice to the Regional Director, Ministry of Corporate Affairs, the Regional Director has filed a common representation dated 24th January, 2017. In paragraph 2(e) of the said common affidavit, it is mentioned by the Regional Director that this Tribunal be pleased to direct the petitioner-companies to strictly comply with the requirements of Accounting Standard – 14 and to give an undertaking that the reserves created, if any, pursuant to the sanctioning of the Scheme, shall not be available for distribution of dividend. It is also mentioned by the Regional Director in paragraph 2(f) of the said common affidavit that this Tribunal be pleased to direct the petitioner-companies to place on record all the relevant facts in the matter and to satisfy that the contingent liabilities, in case they get invoked, will not affect the financial position of the company adversely so as to impact the liquidity of the company and its continuance/going concern concept. In paragraph 2(g) of the common affidavit, it is further mentioned by the Regional Director that this Tribunal be pleased to direct the petitioner-companies to undertake compliance of the Income Tax Act and the Rules.

9. Learned Advocate, Mr. Sandeep Singhi, appearing for the petitioner-companies states that one of the petitioner-companies, namely, Zydus Healthcare Limited has filed the necessary affidavit-in-reply dated 9th February, 2017 to the common representation dated 24th January, 2017, by the Regional Director.

10. In respect of the observations made by the Regional Director at paragraph 2(e), Mr. Singhi submits that the petitioner-company in paragraph 3 of its reply has, inter alia, stated that the accounting treatment as provided in the Scheme is in accordance with AS-14. It is also stated in the said paragraph of the reply that upon the sanctioning of the Scheme, there would be no creation of reserves as sought to be alleged. It is further stated in the reply that the accounting treatment as mentioned in the Scheme is in compliance with the provisions of Section 133 of the Companies Act, 2013. In the petition, in paragraph 14Q., it is stated as follows :-

"Q. Upon the Scheme being effective and with effect from the Appointed Date, the Transferee Company shall account for amalgamation in its books, as per the "Purchase Method" under the Accounting Standard 14 "Accounting for Amalgamation" issued by the Institute of Chartered Accountants of India, as specified hereunder :-

a. The assets and liabilities of the Undertaking of the Transferor Company, as may be determined by the management, shall be recorded by the Transferee Company in its books of accounts at their fair values as may be determined by the management in consultation with the independent valuer and suitable effect thereof may be given, including but not restricted to, application of uniform accounting policies and methods;

b. The inter-corporate deposits/loans and advances outstanding between the Transferee Company and the Transferor Company inter-se shall stand cancelled and there shall be no further obligation/outstanding in that behalf.

c. The difference, if any, arising, between the fair value of the equity shares allotted by Transferee Company as per Clause 10.1(a) of the Scheme and the fair value of the net assets of the Transferor Company as recorded by the Transferee Company, shall be recorded as Goodwill in the books of the Transferee Company, as the case may be, which shall be amortized over its useful life of 10 years."

In light of the aforesaid, this Tribunal is of the view that the observations of the Regional Director at paragraph 2(e) of the common representation stand satisfied.

11. So far as the observations at paragraph 2(f) of the common representation of the Regional Director are concerned, the petitioner-company has stated in paragraph 4 of the reply affidavit that the contingent liabilities mentioned in the said paragraph 2(f) would not affect the financial position of the petitioner-company. It is stated that the said contingent liabilities are not the debts due and payable either by transferor-company or by the transferee-company. It is also stated in the reply affidavit that, as on 31.10.2016, the transferee-company's assets are in excess of the its liabilities to the tune of Rs.4180 crores. It is, therefore, stated in the reply affidavit that, even assuming that any such contingent liabilities crystalizes, the petitioner-company would be in a position to discharge such liabilities in its ordinary course of business. In light of the aforesaid, this Tribunal is of the view that the observations of the Regional Director at paragraph 2(f) of the common representation stand satisfied.

12. The Regional Director, in paragraph 2(g) of the common representation, stated that pursuant to the circular of the Ministry of Corporate Affairs bearing No.2 / 1/ 2014 dated 15.01.2014, he invited specific comments from the Income Tax Department giving 15 days' time to the Income Tax Department to state their objections, if any, for the proposed scheme. It is stated by the Regional Director

in the said paragraph that no reply has been received by the Directorate from the Income Tax Department. Therefore, there is substantial compliance of sub-section (5) of Section 230 of the Companies Act, 2013. The Regional Director, therefore, requested this Tribunal to direct the petitioner-companies to undertake compliance of provisions of the Income Tax Act and the Rules. In the reply, it is stated by the petitioner-company that the scheme is in compliance with the provisions of Section 2(1B) of the Income Tax Act, 1961. In light of the above reply, this Tribunal is of the view that the observations of the Regional Director at paragraph 2(g) of the common representation stand satisfied.

13. In response to the notice to the Official Liquidator in Company Petition No.491 of 2016 (T.P. No. 4 of 2017), the Official Liquidator has filed his report dated 3rd February, 2017. On perusal of the said report, the Official Liquidator, at paragraph 18, has submitted that the affairs of the transferor-company have not been conducted in a manner prejudicial to the interest of its members or to the public interest. With regard to the observations made by the Official Liquidator at paragraph 20 of the report, the petitioner-company has filed its reply affidavit dated 9th February, 2017, ensuring compliance in respect of the same. In respect of the observations made at paragraph 21 of the report, it is stated in paragraph 5 of the reply affidavit that the accounting treatment proposed in the scheme is in conformity with the accounting standards prescribed under the provisions of Section 133 of the Companies Act, 2013. With regard to the observations made at paragraph 22 of the report, it is stated in paragraph 6 of the reply affidavit that the Scheme nowhere proposes absolving the petitioner-company from any of its statutory liability. No objections received from public and creditors questioning the proposed Scheme.

14. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record, it appears that the requirements of the provisions of Sections 241 and

242 of the Companies Act, 1956 are satisfied. The Scheme appears to be genuine and *bona fide* and in the interest of the shareholders and creditors.

15. In the result, these petitions are allowed. The scheme of amalgamation, which is at Annexure-E to these petitions is hereby sanctioned and it is declared that the same shall be binding on the petitioner-company, Biochem Pharmaceutical Industries Ltd., and its equity shareholders, creditors and all concerned under the scheme as also Zydus Healthcare Ltd., its equity shareholders, preference shareholders, unsecured creditors and all concerned under the scheme. It is also declared that Biochem Pharmaceutical Industries Ltd. shall stand dissolved without winding up.

16. The fees of the Official Liquidator are quantified at Rs. 10,000/- in respect of T.P. No.4 of 2017. The said fees to the Official Liquidator shall be paid by the Transferee Company.

17. Filing and issuance of drawn up orders are dispensed with. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme immediately.

15.3.17

**BIKKI RAVEENDRA BABU**
**MEMBER JUDICIAL**

Pronounced by me in open court on this
15th day of March, 2017.

*gt*