

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

CSP 493/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Chinrav Investments Limited  
..... 1<sup>st</sup> Petitioner  
(1<sup>st</sup> Transferor Company)

M/s. Pace Laboratories Limited  
..... 2<sup>nd</sup> Petitioner  
(2<sup>nd</sup> Transferor Company)

M/s. Millennium Herbal Care Limited  
..... 3<sup>rd</sup> Petitioner  
(Transferee Company)

Order delivered on: 07.09.2017

**Coram :**

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

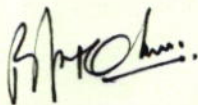
**For the Petitioner :**

Mr. Parthiv Kamdar, Practicing Company Secretary i/b. Deloitte Haskins & Sells LLP,  
Authorised Representatives for the Petitioners

*Per : Bhaskara Pantula Mohan, Member (J)*

**ORDER**

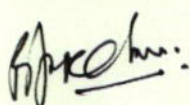
1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation between M/s Chinrav Investments Limited (1<sup>st</sup> Transferor Company) and M/s. Pace Laboratories Limited (2<sup>nd</sup> Transferor Company) with M/s Millennium Herbal Care Limited, (Transferee Company).
2. The Transferor Companies and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The first transferor company is involved in business of investment holding whereas the second petitioner company is involved in business of marketing of herbal





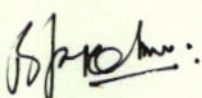
medicines. The transferee company is involved in business of formulating, manufacturing and marketing herbal medicines.

4. The rationale of the Scheme of Amalgamation is, it will consolidate the businesses of the Group, reduction in number of companies and regulatory compliances thereof. Further there will be ease of management of the companies. It will also result in saving of administrative cost. This scheme will also provide greater financial strength and flexibility for the merged entity.
5. The Authorised share capital of the 1<sup>st</sup> Transferor Company is ₹ 25,00,000/- comprising of 25,000 equity shares of ₹ 100/- each. And the Issued, Paid-up and Subscribed share capital is ₹ 22,50,700/- comprising of 22,507 equity shares of ₹ 100/- each.
6. The Authorised share capital of the 2<sup>nd</sup> Transferor Company is ₹ 25,00,000/- comprising of 25,000 equity shares of ₹ 100/- each. And the Issued, Paid-up and Subscribed share capital is ₹ 23,85,000/- comprising of 23,850 equity shares of ₹ 100/- each.
7. The Authorised share capital of the Transferee Company is ₹ 1,50,00,000/- comprising of 15,00,000 equity shares of ₹ 10/- each. And the Issued, Paid-up and Subscribed share capital is ₹ 1,09,90,000/- comprising of 10,99,000 equity shares of ₹ 10/- each.
8. The averments made in the petitions and the submissions made by the Learned Representative for the Petitioners are:
  - a) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
  - b) The Regional Director has filed his report dated 24<sup>th</sup> August, 2017 stating therein that, save and except as stated below, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, it is stated that:



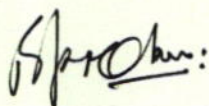


- (a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc;*
- (b) *As per Clause 1.2 Definitions of the scheme "Appointed Date" means 1<sup>st</sup> April, 2016 or such other date as may be fixed or approved by the Competent Authority. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1<sup>st</sup> April, 2016;*
- (c) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It appears that the company vide letter dated 5<sup>th</sup> may 2017 has served a copy Company Scheme Application No. 261 of 2017 along with relevant orders etc., further the Regional Director has also issued a reminder 17<sup>th</sup> August, 2017, to IT Department.*
- (d) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
- (e) *Taking into account the consideration to be paid by the Transferee Company as stated in clause 5 of the scheme, it is observed that the Transferee has proposed to allot 4 Fully Paid Up Preference Shares of the Transferee Company to both the Transferor Companies. However, the present Share Capital of the Transferee Company does not indicate/classify Preference Shares Capital. Hence, Transferee Company may be directed to increase and/or reclassify the authorized Shares Capital before issue of shares as per the Scheme.*
- c) *Apropos observations made in paragraph IV (a) of the Report of Regional Director is concerned, it is submitted that, the Transferee Company undertakes that, in addition to compliance of AS-14(IND AS-103), the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (Ind AS-8) etc.*





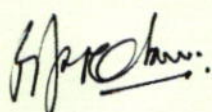
- d) Apropos observations made in paragraph IV (b) of the Report of Regional Director is concerned, it is submitted that, the appointed date of the Scheme will be 1<sup>st</sup> April, 2016 and there will not be any other date.
  - e) Apropos observations made in paragraph IV (c) and (d) of the Report of Regional Director is concerned, it is submitted that, the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
  - f) Apropos observations made in paragraph IV (e) of the Report of Regional Director is concerned, it is submitted that, the Transferee Company undertakes to take necessary approvals for issuance of Preference Shares, from the regulatory authorities to the extent applicable.
  - g) The Official Liquidator has filed his report stating therein that, the affairs of the Transferor Company have been conducted in a proper manner and accordingly the Transferor Company can be dissolved without winding up. Further it is submitted that, the Scheme is not prejudicial to the interest of public or shareholders.
  - h) No objector has approached, neither to the Petitioners nor before Tribunal, to oppose this Scheme of Amalgamation.
9. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this Bench, to the Petitioner Companies, **do Order that:**
- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Companies be transferred to the Transferee Company and accordingly the same shall pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
  - b) The clarifications and undertakings given by the Learned Representative for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted.





Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.

- c) The consideration for the said amalgamation is as follows :
  - a. 4 (Four) fully paid-up Preference Shares of the Transferee Company shall be issued and allotted for every 1 (One) Equity Shares of ₹ 100/- each held by such Member in 1<sup>st</sup> Transferor Company.
  - b. 4 (Four) fully paid-up Preference Shares of the Transferee Company shall be issued and allotted for every 1 (One) Equity shares of ₹ 100/- each held by such Member in 2<sup>nd</sup> Transferor Company.
- d) Further this Bench hereby orders that, as the present Authorised Share Capital of the Transferee Company is not meeting up with the requirement after the Amalgamation, hence, the Transferee Company shall, on or before the allotment of shares in the Scheme of Amalgamation, increase its Authorized Share Capital by creation of such number of new Equity Shares or Preference Shares, as the case may be, of such value, as may be necessary to fulfil its obligations under the said clause of Scheme including filing of prescribed form on increase of capital as per the Act, read with the rules, if any.
- e) Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the Order by the Registry, duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- f) The Petitioner Companies to lodge a copy of this Order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the Order.
- g) Each Petitioner Companies to pay cost of ₹ 25,000/- to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.





- h) Each Transferor Company to pay cost of ₹ 25,000/- to the Official Liquidator, Mumbai, to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- i) All authorities concerned, to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- j) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- k) The Scheme is sanctioned and the appointed date of the Scheme is fixed as, 1<sup>st</sup> April, 2016.

10. Ordered accordingly.

Sd/-

**BHASKARA PANTULA MOHAN**  
**MEMBER (JUDICIAL)**

Sd/-

**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**

**Dated : 07<sup>th</sup> September, 2017**