

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

CSP 1051/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Oaknet Life Sciences Private Limited
.....1st Petitioner
(Transferor Company)

M/s. Oaknet Healthcare Private Limited
.....2nd Petitioner
(Transferee Company)

Order delivered on : 12.01.2018

Coram :

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

For the Petitioner :

Mr. Hemant Sethi, Advocate i/b. Hemant Sethi & Co. – Advocates for the Petitioners.

For the Regional Director:

Mr. Ramesh Gholap, Dy. Registrar (WR).

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, Scheme of Merger by Absorption (hereinafter as **Scheme**) of between M/s. Oaknet Life Sciences Private Limited (Transferor Company) and M/s. Oaknet Healthcare Private Limited (Transferee Company) and their respective shareholders.
2. The Transferor Companies and the Transferee Company have approved the said Scheme by passing the Board Resolutions, which are annexed to respective Company Scheme Petitions.
3. Transferor Company is engaged in business of pharmaceutical and related activities.

4. The Transferee Company is engaged in providing healthcare related transactional support services to its group companies and sale of healthcare related products.
5. The proposed Scheme will help to simplify the group structure, minimise cost of administration of two legal entities. Further, the Scheme will lead to better and more economic and efficient management, control and running of the business of the companies concerned and to pool resources of both the companies for growth.
6. The Authorised share capital of the Transferor Company as on date is ₹ 13,63,30,000 comprising of 40,00,000 equity shares of ₹ 10/- each, 70,00,000 compulsorily convertible cumulative preference shares of ₹ 10/- each and 26,33,000 non-convertible cumulative preference shares of ₹ 10/- each.
7. The Authorised share capital of the Transferee Company as on date is ₹ 3,05,00,00,000 comprising of 30,50,00,000 equity shares of ₹ 10/- each.
8. The averments made in the Petition and the submissions made by the Learned Advocate for the Petitioners are:
 - a) The Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the 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 04.01.2018 stating therein that save and except the observations stated in paragraph IV (a) to (f) of the report, it appears that Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

a) *As per Clause 1.2 Definitions of the Scheme. "The Appointed Date" means the 1st April, 2017 or such other date as may be approved by the National Company Law Tribunal or any other Competent Authority. In this regard, it is submitted in terms of provisions of Section 232(6) of the Companies Act, 2013 it should be 1st day of April, 2017;*

b) *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*

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Authority to scrutinize the Tax Returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Company;

c) As regards Para No. 9 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Amalgamation for setting-off fees paid by the Transferor Company on its Authorized Share Capital in accordance to the provisions of Section 232(3)(i) of the Companies Act, 2013;

d) The Transferee Company has insufficient Authorized Share Capital beyond the combined Authorized Share Capital to issue the Shareholders of the Transferor Company in lieu of consideration for implementation of the Scheme, therefore, the said Company shall pay requisite fees as per Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014 and applicable Stamp duty for further increase in Authorized Share Capital;

e) 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.;

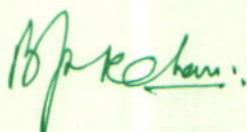
f) In accordance to proviso to Section 232(3) of the Companies Act, 2013, the Transferee Company may be directed to file a Certificate from the Company's Auditors to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013.

c) Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned, it is submitted that the Appointed Date shall be 1st April, 2017.

d) Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report is concerned, it is submitted that the Transferee Company undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

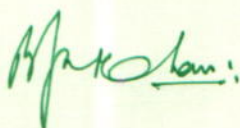
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- e) Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his report is concerned, it is submitted that the Transferee Company undertakes that the Authorized Share Capital of Transferor Company shall be merged with that of the Transferee Company in terms of Clause 7 of the Scheme in accordance with the provision of Section 232(3) (i) of the Companies Act, 2013.
- f) Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his report is concerned, it is stated that the Transferee Company agrees to increase its authorized share capital to the extent required and also to comply with the provisions of Companies Act, 1956 and Companies Act, 2013 in respect of filing of necessary forms with the Registrar of Companies and making payment of necessary filing fee and stamp duty as applicable on the said forms.
- g) Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of his report is concerned, it is submitted that the Transferee Company undertakes to comply with the Accounting Standard-14 (Ind AS-103). Further, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other Accounting Standard such as Accounting Standard-5 (Ind AS-8) etc., to the extent applicable.
- h) Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (f) of his report is concerned, it is submitted that the certificate from the Statutory Auditors of the Transferee Company has been annexed to the Company Scheme Application No. 848 of 2017 as Exhibit H and a copy of the said certificate has also been filed by the Transferee Company with the Regional Director's office via letter dated 22.09.2017.
- i) It is further submitted that, no objector has approached, neither to the Petitioner nor before the Tribunal, to oppose this Scheme.
- j) The Official Liquidator has filed his report dated 28.11.2017 inter alia stating therein that, the affairs of the Transferor Company have been conducted in proper manner and further that the Transferor Company may be ordered to dissolve without winding up.



9. From the material on record, the Scheme 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, 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 Counsel 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) In lieu of the consideration of the Scheme, 1,33,63,823 fully paid Equity Shares of ₹ 10/- each of the Transferee Company shall be issued to the equity shareholders of the Transferor Company in the proportion of their holdings in the Transferor Company and 5,66,42,177 Compulsorily Convertible Cumulative Preference Shares of ₹ 10/- each of the Transferee Company shall be issued to the Compulsorily Convertible Cumulative Preference shareholders of the Transferor Company in the proportion of their holdings in the Transferor Company. Further, upon the Scheme becoming effective, equity shares held by the Transferee Company in the Transferor Company shall stand automatically cancelled.
- d) Further, during the course of hearing it is noticed that, the said Scheme is not a Scheme of Amalgamation as titled but contrary it is a Scheme of Merger by Absorption, hence, a liberty is granted to the Petitioners to amend the Scheme appropriately.
- e) The Transferor Company to be dissolved without winding-up after Scheme becomes effective.
- f) The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated 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) Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme 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.
- h) The Petitioner Companies to pay costs of ₹ 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of receipt of this order.
- i) The Transferor Company (i.e. 1st Petitioner) to pay cost of ₹ 25,000/- to the Official Liquidator, Mumbai. Costs to be paid within four weeks from the date of receipt of this order.
- j) All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
- k) Any person interested is at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- l) Any concerned Authority is at liberty to approach this Bench for any further clarification/direction under this Scheme.
- m) The Scheme is sanctioned hereby on above terms and directions. Further, the appointed date of the Scheme is fixed as 1st April, 2017.

10. Ordered accordingly. To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated: 12.01.2018