

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

Company Application No.173/ALD/2017

*(Under Section 230-232 of the
Companies Act, 2013 r/w the
Companies (Compromises,
Arrangements,
Amalgamations) Rules 2016
& NCLT Rules)*

IN THE MATTER OF THE COMPANIES ACT, 2013

IN THE MATTER OF

G.S. NUTRITION PVT. LTD.

A company incorporated under the
provisions of Companies Act, 1956
vide CINU15490UR2013PTC000883
and having its registered office at
Plot No.58, 59, 66 & 67 Sector 3,
Integrated Industrial Estate, Pant Nagar,
Udham Singh Nagar UK-263 146.

(TRANSFEROR COMPANY)

WITH

G.S. PHARMBUTOR PVT. LTD.

A company incorporated under the
provisions of Companies Act, 1956
vide CINU74899UR1985PTC032852
and having its registered office at
Plot No.58, 59, 66 & 67 Sector 3,
Integrated Industrial Estate (IIE), Pant Nagar,
Udham Singh Nagar UK-263 146.

(TRANSFeree COMPANY)

JUDGMENT/ORDER DELIVERED ON 13.12.2017

Coram	:	Hon'ble Shri H.P. Chaturvedi, Member (J).
For the petitioner	:	Sh. Dhritiman Bhattacharya, Advocate <i>alongwith</i> Sh. Srijan Mehrotra, Advocate.
For the Central Government	:	Sh. M.K. Bagri, OL, Allahabad.

PER: SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)

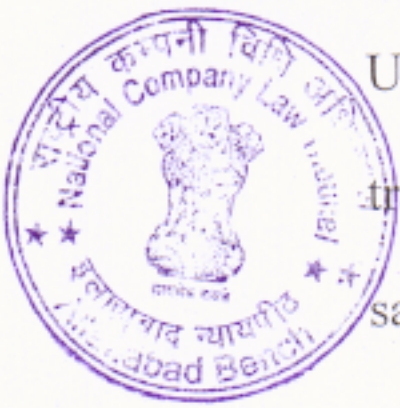


ORDER/JUDGMENT

1. The present application is jointly filed by the applicant companies herein, namely ***G.S. Nutrition Private Limited*** (for brevity "Transferor Company") and ***G.S. Pharmbutor Private Limited*** (for brevity "Transferee Company") as a first motion petition under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in respect of proposed Company Scheme of Amalgamation between the applicants. Such Company Scheme has been annexed with present Company application seeking for following prayer;

i. To dispense with the meetings of the equity shareholders of the First Applicant Company in view of the written consent given by all the equity shareholders of the First Applicant Company through an affidavit.

ii. To issue necessary Direction/Order for convening of separate meetings for Shareholders of the Second Applicant/Transferee Company and further to convene the meetings of Secured and Unsecured Creditors of both the Applicant Companies that is the transferor & transferee companies and further to issue notices for the same.



iii. To issue a direction for publication of notices for convening of such meeting of Shareholders of the 2nd Applicant/transferee company and further meetings of Secured and Unsecured Creditors to appoint the Chairperson of both Transferor and Transferee Company and Scrutinizer for convening such meeting fixed their terms of appointment and remuneration etc.

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- iv. To issue necessary direction to the Chairperson and Scrutinizer for conducting such meetings as per settled practise and procedure in conformity with rules applicable.
 - v. To issue necessary directions for fixing the quorum of each meeting.
 - vi. To issue necessary directions for fixing a time period within which the Chairperson shall report the result of such meetings to this Hon'ble Tribunal.
 - vii. To permit the petitioner to file further application/petition other documents as may be required, for sanctioning of the proposed Company Scheme.
 - viii. And for other relief/direction which this court may deem just and proper.
2. The applicants submit that the Transferor Company is a wholly owned subsidiary of the Transferee Company, therefore upon the Scheme becoming effective the entire share capital of Transferor Company shall stand cancelled and no new shares to be issued by the Transferee Company.
- The applicants' companies in the present petition have stated such that both companies are intending to merge with as per the scheme of company which has been approved by its Board of Directors and if such Scheme is approved by this Court then its entire business and undertaking of the transferor company would stand transferred to and vested in and/ or deemed to be merged with in the transferee company as a going concern from an appointed date i.e. April 1st, 2017.



4. The rationale & salient features of the proposed Company Scheme of Arrangement can be summarized as under:

i. The First Applicant is a wholly owned subsidiary of the Second Applicant engaged in similar and complementary business and it is proposed to merge the First Applicant with the Second Applicant for the following reasons:

- a. To derive the synergies arising out of consolidation of business;
- b. To focus approach to the customers as treatment/products would be available with a single consolidated entity;
- c. To enhance competitiveness of consolidated entity by integrating the manufacturing, sales and other facilities;
- d. To reduce of operative/administrative costs and improve profitability;
- e. To reduce in number of companies and regulatory compliances thereof; and
- f. To manage the businesses more efficiently and effectively and for better co-ordination of the business activities.



5. The current position of the Applicant companies vis-à-vis their shareholders and creditors can be summarized as per the chart below:-

COMPANY	NO. OF SHAREHOLDER	NO. OF UNSECURED CREDITORS	NO. OF SECURED CREDITORS
Transferor Company	2 As per Annexure G page no.110 Consent Given: All Annexure I	37 As per Annexure J Of the applicant	1 As per Annexure K
Transferee Company	46 As per Annexure Q	555 As Annexure R	6 As Annexure S

6. We have gone through the contents of the present Company Application and perused the documents annexed therewith.
7. Having heard the submission of **Shri Srijan Mehrotra**, the learned counsel for the Applicants Companies, in respect of relief being sought for in the present Company Application, we feel that the present Company Application deserves to be allowed. Hence, the same is allowed in terms of its '**Prayer Clause**'/**Relief Clause**' with the following directions.
 - i. The meetings of the equity shareholders of the First Applicant Company (Transferor Company) is hereby dispensed with. In view of the written consent given by all its shareholders through an affidavit.
 - ii. The Quorum, Venue & Time for convening of such meetings of the shareholders of the Second Applicant Company (Transferee Company), the secured and unsecured creditors of both the Applicant Companies can be decided by the Chairman in active consultation with Alternate Chairman and the Scrutinizer and through discussion with the Management/Board of the Company and thereafter may fix mutually agreed date for such meeting.
 - iii. **Shri Diptiman Singh**, Advocate (Mobile No.9935214676) is hereby appointed as the Chairman. **Mr. Siddharth Singhal**, Advocate (Mobile No.9026510121) is further appointed as an Alternative Chairman. **Shri S.K. Gupta**, Practising Company Secretary (Mobile No.9415042137) is appointed as Scrutinizer to convene such meeting(s) in terms of the order of this Court as per the existing practise and procedure and in accordance with rules applicable. The



applicant companies shall make payment of Rupees One Lakh (Rs.1,00,000/-) to the Chairman and Rupees Seventy-Five Thousand (Rs.75,000/-) to the Alternate Chairman and Scrutinizer respectively, in addition to the above, they shall further be entitled to receive payment of necessary travel/administrative expenses. The Applicants' Companies shall make necessary arrangement in this respect.

- iv. That the individual notices for above stated meetings to be sent by the Applicants' Companies through the Registered Post or Speed Post or Courier or through email (where email id is available) to shareholders of the Transferee Company and Secured and Unsecured Creditors of applicants' companies and it shall be communicated in the manner permitted under the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016. Such notices shall be sent at least one month before the schedule date for aforesaid meetings, indicating the date, venue and time of such meetings. Further, the Chairman has to submit a report thereof to this Hon'ble Tribunal within prescribed period with a copy marked to Applicants' Companies.



It is further directed that such notices to be accompanied by a copy of Scheme of Arrangement, copy of valuation report and fairness opinion report, and a statement disclosing the details as specified in **Rule 6(3) of Companies (Compromises, Arrangements, Amalgamations) Rules, 2016** and such other information/documents as may be necessary under any other provisions.

- vi. That the Applicant Companies shall make joint publication of such meeting(s) by prescribing minimum 30 clear days before the scheduled date of meetings and by giving detail particulars of venue, time & date of meeting, which should be published in newspapers an

English Daily and Hindi Daily having wide publication over the area, wherein the registered office of Companies is situated. It is to be further informed that the form of proxy shall be provided free of charge at the registered office of the Applicant Companies.

- vii. The applicant companies further to furnish a copy of the Scheme free of charge within a day of receipt of a requisition by its creditors/members /shareholder of both companies who are entitled to attend the aforesaid meetings.
- viii. The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.
- ix. The Applicant companies are further directed to send a notice regarding hearing of the proposed Company Scheme petition alongwith a copy of the proposed Company Scheme to the *Registrar of Companies* (UP), Kanpur, *Regional Director*, (Northern Region), Ministry of Corporate Affairs. Further it shall have sent notice to such *other regulatory bodies who may have significant bearing on the proposed company scheme and on the operation of the present applicants' companies.*
- x. The Applicant Companies further to serve a notice on the concerned *Income Tax Authority* within whose jurisdiction the Applicant Companies are being assessed, pursuant to Companies Act, 2013 and Companies (Compromise, Arrangements and Amalgamations) Rule, 2016.



- xi. Further, a copy of this order be communicated to the Chairman, Alternative Chairman and Scrutinizer appointed by this Court in the present matter by the registry of this Tribunal as well as by the Applicants' Companies.
- xii. The Applicants' Companies are at liberty to file Second Motion Petition at Appropriate Stage before this Bench.
- xiii. The Present Company Application to be clubbed together, if the Second Motion Company Petition is filed.
- xiv. The present company application is disposed of accordingly.

— Sd —

Date.13.12.2017

H.P. Chaturvedi,
Member (Judicial)

Typed by:
Kavya Prakash Srivastava
(Stenographer)

