

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD**

C.P(CAA) No.32/230/HDB/2017
U/s 230 & 232 of Companies Act, 2013

In the matter of

Sainor Laboratories Private Limited
Having its registered office at
Plot No.15/C, (Part), S.V.Co-op.
Industrial Estate, IDA, Jeedimetla
Hyderabad – 500 055.
Telangana.

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

.. Petitioner/Transferee Company.

Date of order:23.08.2017

CORAM:

Hon'ble Shri. Rajeswara Rao Vittanala, Member (Judicial)

Parties Present:

Counsels for the Petitioner:

Mr. V.S.Raju & V.B.Raju,
Advocates

Counsel for Regional Director

:Mr. B. Appa Rao, Central Govt.
Standing Counsel

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The Company Petition bearing C.P (CAA) No. 32 /230/ HDB/ 2017 is filed by M/s. Sainor Laboratories Private Limited (Petitioner/Transferee Company) under Sections 230 & 232 of the Companies Act, 2013, by inter-alia seeking to sanction scheme of Amalgamation which is filed as Annexure A-5 so as to be binding on all the Equity Shareholders/Members, Creditors and employees of the Petitioner/Transferee Company.



2. The case was listed before this Bench on 29.3.2017, 28.04.2017, 09.05.2017, 09.06.2017, 21.06.2017, 05.07.2017, 20.07.2017, 25.07.2017 and finally on 28.07.2017.
3. Facts of case, which are relevant to the issue in question, in brief, are submitted as under:
 - a. M/s.Sainor Laboratories Private Limited (Transferee Company) is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 02.12.2004. Its Registered Office is situated at Plot No.15/C (Part), S.V.Co-op. Industrial Estate, IDA, Jeedimetla, Hyderabad – 500 055.
 - b. The objects of the Petitioner/Transferee Company is to manufacture, produce, process, compound, mix, pack , formulate, condense, distil, rectify, sterilize, pasteurize, steel, evaporate, vaporize, cool, filter, commercialise, develop, treat, in all types of organic, inorganic, industrial, laboratory, photographic, fine, biological, pathological, pharmaceutical and other chemicals, compounds, drugs, Bulk Drugs etc.,
 - c. The Authorized Share Capital of the Transferee Company as on 31.03.2016 is Rs. 3,50,00,000/- divided into 35,00,000 Equity Shares of Rs.10/- each. The issued subscribed and paid up capital of the Transferee Company is Rs.2,60,00,000/- divided into 26,00,000 equity shares of Rs. 10/- each full paid up.
 - d. M/s. Sainor Pharma Private Limited (The Petitioner/ Transferor Company) is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 13.02.2004. Its Registered Office is situated at plot No. 31, Phase-V, IDA Jeedimetla, Hyderabad – 500 055. The objects of the Transferor Company is to manufacture, production, processing, packing, repacking, job work, whole



or retail traders, agents, dealers, distributors, marketing, import and export, warehousing, storage, depot, operations, consignees contractors, collaborators, either on it or on behalf of others, of Bulk Drugs, Pharmaceuticals, Intermediates, Pellets, Chemicals, Formulations, medical compositions, intravenous solutions, proprietary medicines, food supplements etc.,

- e. The present Authorised Share Capital of the Transferor Company as on 31.03.2016 is Rs.4,00,00,000/- divided into 40,00,000 Equity Shares of Rs.10/- each. The issued subscribed paid up Capital of the Transferor Company is Rs. 3,54,00,000/- divided into 35,40,000 equity shares of Rs. 10/- each and the entire share capital has been issued, subscribed and fully paid up.

4. The Directors of both Transferor Company and Transferee Company are of the opinion that the proposed Amalgamation will be for the benefit of both the Companies as follows:

- (i) Both the Transferor Company and the Transferee Company are engaged in the manufacturer of Bulk drugs, finished drugs, pharmaceuticals, fine Pharmaceuticals, chemicals, fine chemicals, enzymes, Intermediates, Pellets, Chemicals, Formulations, Medical compositions, intravenous solutions, proprietary medicines, food supplements, proteins, vitamins, enzymes, compounds, restorative vaccines etc.,
- (ii) Since both the companies are engaged in similar activities, the merged company can get the raw materials at a lesser price so that the products will be competitive.
- (iii) Further both the companies can invest in research and development and utilize the skilled professional more



efficiently and effectively. Further the proposed amalgamation would also strengthen the financial base.

- (iv) Further both the companies can reduce the administrative cost and they will be synergy of operations. The proposed amalgamation would also enable the transferee company to diversify its products in the long run.
- (v) The proposed amalgamation would lead to administrative convenience for both Transferor and Transferee Companies and also it is beneficial to all its shareholders, creditors and employees & workers.

Hence, the Board of Directors of the Transferor and Transferee Companies at their meetings held on 26.09.2016 and 29.08.2016 respectively have approved the scheme of amalgamation of Transferor Company with Transferee Company w.e.f. 01.04.2016 subject to approval of the shareholders and confirmation by the Tribunal.



The following are brief terms of Scheme of Amalgamation:

a) **Transfer and Vesting of Undertaking of Transferor Company**

With effect from the Appointed Date i.e. 01.04.2016, the whole of the Undertaking shall be transferred to and vested in or be deemed to be transferred to and vested in the Transferee Company as a going concern with all the rights, title, interest or obligations of the Transferor Company thereto.

b) **Legal proceedings**

All suits, actions and proceedings of whatsoever nature by or against the Transferor Company on the Appointed Date and till the Effective Date shall be transferred to the name of the Transferee Company and the same shall be continued and enforced by or against the Transferee Company, to the

exclusion of the Transferor Company, as the case may be, etc.,

c) Transferor Company Staff, Workmen and Employees

All the staff, workmen and other employees in the service of the Transferor Company, immediately before the Appointed Date, under this Scheme shall become the staff, workmen and other employees of the Transferee Company, on the basis that their services shall have been continuous and shall not have been interrupted by reason of such transfer as if such transfer is effected under Section 25FF of the Industrial Disputes Act, 1947, etc.

d) Saving of concluded transactions

The transfer of Undertaking under Clause 3 above, the continuance of the effectiveness of contracts and deeds under Clause 4 above and legal proceedings by or against the Transferee Company under Clause 5 above shall not affect any transaction or proceedings or contracts or deeds already concluded by the Transferor Company (a) on or before the Appointed Date and (b) after the Appointed Date till the Effective Date, to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things done and executed by the Transferor Company in respect thereto as done and executed on behalf of itself.

e) Issue of shares by the Transferee Company to shareholders of Transferor Company.

Upon the coming into effect of this Scheme and in consideration of amalgamation of Transferor Company with the Transferee Company, pursuant to the Scheme, the Transferee Company without any further act or deed shall issue and allot 1 (one), equity shares of Rs. 10/- each fully paid to the members of the Transferor Company for every 5 (five) equity shares of Rs. 10/- each held by such members



whose names are appearing in the Registrar of members on the Record Date.

f) **Fractional entitlement**

No fractional certificates, shares will be issued by the Transferee Company in respect of fractional Share entitlement, if any, in terms of the Scheme, Fraction of shares arising out of the aforesaid, if any, shall be rounded off to the nearest one.

g) **Approvals**

The issue and allotment of new equity shares to the shareholders of Transferor Company as provided into his Scheme, is an integral part thereof and shall be deemed to have been carried out without requiring any further act on the part of Transferee Company or its shareholders and as if the procedure laid down under section 62 of the 2013 Act and any other applicable provisions of the 1956 Act/ 2013 Act, as may be applicable and such other statutes or regulations as may be applicable were duly complied with. For the purpose aforesaid, the Transferee Company shall, if and to the extent required, apply for and obtain any approvals including that of Reserve Bank of India and other concerned regulatory authorities for the issue and allotment by the Transferee Company of Shares to the shareholders of the Transferor Company pursuant to the Scheme.

h) **Accounting treatment**

Upon the Scheme becoming effective, the Transferee Company shall record the assets and liabilities of the Transferor Company transferred to Transferee Company pursuant to this Scheme at their respective Book values and account for the amalgamation of the Transferor Companies pursuant to the Scheme in accordance with AS 14 notified by the Companies (Accounting Standards) Rules, 2006, as amended from time to time, under Pooling of interest method. Any difference, whether surplus or shortfall, in the recorded



value of assets in the books of account and liabilities in the books of account of the Transferee Company and the face value of the equity shares allotted thereof by the Transferee Company, in case of surplus, shall be credited to “Capital Reserve Account” (which for all intents and purposes shall be considered as part of net worth of the Transferee Company) or, in case of shortfall, shall be debited to “Goodwill Account”, as the case may be, etc.

i) **Modifications/amendments to the Scheme**

The Transferor Company and the Transferee Company through their respective Boards of Directors including Committees of Directors or other persons, duly authorised by the respective Boards in this regard, may make, or assent to, any alteration or modification to this Scheme or to any conditions or limitations, which the Court or any other Competent Authority may deem fit to direct, approve or impose and may give such directions including an order of dissolution of the Transferor Company without process of winding up as they may consider necessary, to settle any doubt, question or difficulty, arising under the Scheme or in regard to its implementation or in any manner connected therewith and to do and to execute all such acts, deeds, matters and things necessary for putting this Scheme into effect, or to review the portion relating to the satisfaction of the conditions to this Scheme and, if necessary, to waive any of those (to the extent permitted under law) for bringing this Scheme into effect.

j) **Scheme conditional on approvals / sanctions**

This Scheme is conditional on and subject to the sanction or approval under any of law of the Central Government, State Government, or any other agency, department or authorities concerned being obtained and granted in respect of any of the



matters in respect of which such sanction or approval is required etc.

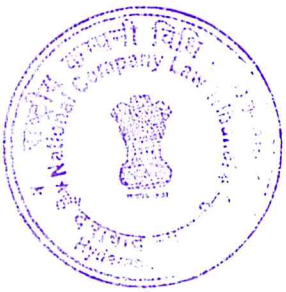
Initially, the Petitioner/Transferee Company has filed Company Application No. 1595 of 2016 under Section 391 of the Companies Act, 1956 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh by seeking a direction to dispense with meeting of Equity Shareholders and to direct to convene the meeting of Unsecured/Trade Creditors of the transferee Company for consideration of the proposed scheme of amalgamation of M/s. Sainor Pharma Private Limited (Transferor Company) with Petitioner/Transferee Company as detailed in the Scheme. Accordingly, CAs No. 1594 & 1595 of 2016 were disposed of by common order dated 30.11.2016, by dispensing with the conducting of meetings of the equity shareholders of Petitioner/Transferee Company and convening the meeting of Unsecured/Trade Creditors of the Petitioner Company. Accordingly, meeting was duly convened on 7th January, 2017 and the Scheme in question was approved unanimously by all the Unsecured/Trade Creditors. The Chairperson had filed his report on 2nd January, 2017. After fulfilling requisite conditions for sanction of scheme in question, the present petition is filed for sanction of the scheme.



6. Heard, Mr. V.S.Raju and V.B.Raju, Learned Counsels for the Petitioner/Transferee Company and Mr. B. Appa Rao, Central Government Standing Counsel and have carefully gone through all the pleadings along with material papers filed in its support.
7. The Learned Counsel submitted that as per the directions of the Bench, the Petitioner got published in Newspaper advertisement of the "Notice of Petition" in English Daily (Business Standard – Hyderabad Edition) and Telugu Daily (Andhra Bhoomi – Hyderabad Edition) on 25.04.2017 and filed a proof of the same before this Bench on 26.04.2017. In pursuance to said notification, no objections / oppositions were received about the scheme in

question. Notices were also issued to the Registrar of Companies, Regional Director (SER), and The Income Tax Department.

8. The Regional Director (SER), Hyderabad has filed a common affidavit dated 03.06.2017 in both C.P. Nos. 33/230/HDB/2017 and 32/230/HDB/2017, by inter alia stating that the Petitioner Companies are having secured creditors and it may be asked to submit the consent of those secured creditors before this Bench. It is further stated that the Petitioner Company is regular in filing statutory returns and no complaints, no investigations and no inspections are pending against it.
9. The Learned Counsel for the Petitioner, had filed a Memo dated 21.06.2017 enclosing a copy of the no objection letter dated 12.06.2017 received from secured creditor of the Petitioner Company namely Union Bank of India, SME Branch, S.R.Nagar. Further, stated that the Petitioner Company has also served notice on the Income Tax Department on 25.04.2017. However, no comments / objections of the Income Tax Department were received in response to the said notice till date. So, no objections from anybody to the scheme in question. He, therefore submit the petition may be allowed as prayed for.
10. I have carefully through the pleadings, Report of the Regional Director (SER) and also relevant provisions of Companies Act, 2013. I am convinced that the Petitioner /Transferee Company has complied with all statutory requirements as required under Section 230 & 232 and other relevant provisions of Companies Act, 2013 as detailed supra. The Board of Directors of the Petitioner Company, at its meeting held on 29.08.2016, have duly considered the pros and cons of Scheme of Amalgamation in question, after considering various reports on the issue, and found it is advantageous and beneficial to the Company, its members, the Secured Creditors and all other concerned parties of the Company, and thus, it was approved. I am satisfied that the Scheme of Amalgamation in question is in the interest of the Petitioner Company, its shareholders and other stake holders. It is to be mentioned herein that the Scheme in question is not opposed by any authorities and



the Petitioner / Transferee Company is admittedly following all rules / regulations of Companies Act, as stated by Regional Director. Hence, I am of considered view that the Company Petition deserved to be allowed as prayed for.

11. In the result, the C.P. (CAA) No.32/230/HDB/2017 is allowed with the following directions:-

- a) Sanctioned the Scheme of Amalgamation (enclosed at Page No. 143 to 161 of the Petition) and it is ordered that the same is binding on all the Equity Shareholders/Members and Creditors (Secured & Unsecured) of the Petitioner Company/Transferee Company.
- b) The Petitioner Company is permitted to submit a certified copy of this order along with scheme to the Registrar of companies within 30 days from the date of receipt of Copy of this order.
- c) The Petitioner/Transferee Company is directed to issue newspaper publication with respect to approval of scheme of amalgamation, in the same newspapers, in which previous publications were issued, in order to ensure transparency/dissemination of complete information to all concerned parties about the approval granted by the Tribunal for the Scheme as proposed.
- d) The Petitioner/Transferee Company is further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Amalgamation under the Provisions of the Act.
- e) Liberty is granted to any party/parties, who are aggrieved by this order to seek any direction(s) by way of filing miscellaneous application in the present Company Petition.



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केस नम्बर
CASE NUMBER C.P. (CAA) No. 32/230/HDB/2017

दिनांक पर निर्णय
DATE OF JUDGEMENT 23-8-2017

नसि तैयार नसि तैयार नसि
COPY MADE READY ON 19-9-2017

For Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)