

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

C.P.(CAA) No. 152/230/HDB/2017
U/s 230 & 232 of Companies Act, 2013

In the matter of

M/s. Venkatarama Chemicals Private Limited
a company incorporated under the
Companies Act, 1956 having its registered
office at Plot No.33, 8-3-229/33,
Tahir Ville, Yousufguda 'X' Road,
Hyderabad - 500 045.
Represented by its Director,
Sri. U. Amarnath.

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

.. Petitioner /
Transferor Company

Date of Order: 27/10/2017

CORAM:

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

Parties Present:

Counsels for the Petitioner : Mr. V.S.Raju & V.B.Raju
Counsel for Regional Director: Mr. B. Appa Rao, Central
Govt. Standing Counsel
Mr. M. Anil Kumar, Official
Liquidator, Standing Counsel

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The Company Petition bearing C.P. (CAA) No. 152/230/HDB/2017 is filed by M/s. Venkatarama Chemicals Private Limited (Petitioner / Transferor Company) under Sections 230 and 232 of the Companies Act, 2013, by inter-alia seeking to sanction scheme of Amalgamation in question, so as to be binding on all the Equity Shareholders / Members, Creditors and employees of the Petitioner / Transferor Company.
2. Brief facts of case, leading to filing of present company petition, are submitted as under:



- a. M/s. Venkatarama Chemicals Private Limited (The Petitioner / Transferor Company) is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 15th day of December, 1981. Its Registered Office is situated at Plot No.33, 8-3-229/33, Tahir Ville, Yousufguda 'X' Road, Hyderabad - 500 045. The objects of the Transferor Company is to manufacture, refine and prepare all classes and kinds of Chemicals such as Guanidine nitrite, Guanidine Hydrochloride, Guanidine sulphate and its other salts and all types of drugs, drug intermediates and Chemicals like oxalic acid etc.,
- b. The present Authorised Share Capital of the Transferor Company as on 31.03.2016 is Rs.1,00,00,000/- divided into 10,00,000 Equity Shares of Rs.10/- each. The issued subscribed and paid up Capital of the Transferor Company is Rs. 32,58,000/- divided into 3,25,800 equity shares of Rs. 10/- each.
- c. M/s. Harika Drugs Private Limited (hereinafter referred to as "HDPL" / Transferee Company) was originally incorporated as a private limited in the State of Karnataka on 13th September, 1985 under the Certificate of Incorporation No. 7147 of 1985-86. Later on the company had changed its registered office from the State of Karnataka to then State of Andhra Pradesh and same was confirmed by the orders of Company Law Board Bench, Southern Region, Chennai vide its orders dated 19th September, 1989 and a fresh certificate of incorporation consequent on change of its Registered Office was issued by the Registrar of Companies, Andhra Pradesh on 19th October, 1989. The Registered Office of the Transferee Company is situated at 5-5-35/145/NR, Plot No.110, Prasanth Nagar, Kukatpally, Hyderabad - 500 072, Telangana. The main objects of the Transferee Company is to carry on business of manufacture, buy, sell, import, export and generally



deal in all types of chemicals, pharmaceuticals, drugs, intermediaries etc.

d. The Authorized Share Capital of the Transferee Company as on 31.03.2016 is Rs. 1,00,00,000/- divided into 10,000 Equity Shares of Rs.1000/- each. The issued subscribed and paid up capital of the Transferee Company is Rs. 62,90,000/- divided into 6,290 equity shares of Rs. 1000/- each fully paid up.

3. Both the Transferor Company and the Transferee Company are engaged in the manufacturer of Bulk drugs, finished drugs and other chemicals etc., the integration, consolidation and amalgamation of the Transferor Company with the Transferee Company would inter-alia have the following

- (i) By merging, the company can get the raw materials at a lesser price by ordering large quantities so that the cost of production will automatically reduce.
- (ii) The merged company can borrow funds at a subsidized rate of interest as the turnover and asset base would be more after merging than individual companies.
- (iii) To increase the finance base of the both the companies invest more in research and development and the merger have more benefits than the individual companies which will lead to better quality of goods for consumers.
- (iv) The merger can reduce competition between companies and can get greater market share.
- (v) The merged company can utilize skilled professionals more efficiently.
- (vi) The merged company can get tax benefits by utilizing MAT credit of Transferor Company.
- (vii) It will increase credit worthiness of the company.
- (viii) The merged company can have access to more customers than individual companies.



- (ix) Diversification of the products, and long-term prospects of the merged company business.
- (x) The merged company can reduce Fixed and variable overheads through shared marketing budgets, increased purchasing power and lower costs.
- (xi) Businesses in the same sector or location can combine resources to reduce costs, eliminate duplicated facilities or departments and increase revenue.
- (xii) The proposed amalgamation would result in an enhanced shareholder value.

6. The Directors of both Transferor and Transferee Companies are of the opinion that the proposed Amalgamation will be for the benefit of both the Companies.

Hence, the Board of Directors of the Transferor and Transferee Companies at their meetings held on 27.02.2017 and 28.02.2017 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.

7. The following are brief terms of Scheme of Amalgamation:

a) **Transfer and Vesting of Undertaking**

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**

If any suit, appeal or other proceedings of whatever nature by or against any of the Transferor Company is pending, including those arising on account of taxation laws and other allied laws, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of the arrangement by anything contained in this Scheme, but the suit, appeal or other legal



proceedings may be continued, prosecuted and enforced by or against the Transferee Company, in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Companies, as if this Scheme had not been made.

c) **Transferor Company Staff, Workmen and Employees**

On the Scheme becoming effective, all staff, workmen and employees of the Transferor Company in service on the Effective Date shall be deemed to have become staff, workmen and employees of the Transferee Company with effect from the Appointed Date or the date of joining whichever is later, without any break or interruption in their service and on the basis of continuity of service, and the terms and conditions of their employment with the Transferee Company (i.e. cost-to-company basis, in monetary terms) shall not be less favourable than those applicable to them with reference to their employment with the Transferor Company on the Effective Date. It is hereby clarified that the Transferee Company may standardize the policies across locations which shall not adversely affect the employee benefits subsisting on the said date 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) **Dissolution of Transferor Company:**

Subject to orders being passed by this Tribunal at Hyderabad under Section 232 of the Act, on the scheme becoming effective in accordance with the provisions of the Act and the rules made there under, the Transferor Company shall stand dissolved, without going through the process of winding up.



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

Upon the Scheme coming into effect and in consideration of the merger of Transferor Company with the Transferee Company, the Transferee Company without any further act or deed shall issue and allot 1 (One) equity share of Rs. 1000/- each fully paid to the members of "VCPL" for every 38 (Thirty Eight) equity shares of Rs.10/- each held by such members of Transferor Company whose names are appearing in the register of members on the Record Date.

The equity Shares to be issued and allotted pursuant to Clause 10(a) of the Scheme shall, in all respects, rank pari passu with the existing equity shares of the Transferee Company, for dividend, voting power and all other benefits and in all respects with effect from the date of their allotment.

No fractional certificates shall be issued by the transferee company in respect of fractional entitlements, if any, to which the members of the transferor company may be entitled on issue and allotment of the shares and of the transferee company as aforesaid any fractions arising there from shall be rounded off to nearest one.

- f) **Accounting treatment in the books of Transferee Company**

Upon the Scheme becoming effective, Transferee Company shall record the assets and liabilities of the Transferor Company transferred to Transferee Company pursuant to this Scheme, as determined by the Board of Directors of Transferee Company, and account for the amalgamation of the Transferor Company pursuant to the Scheme in accordance with the "Pooling of Interest Method" prescribed by



Accounting Standard 14 notified by the Companies (Accounting Standards) Rules, 2006, as amended from time to time.

The Transferee Company shall account for the amalgamation by incorporating the assets and liabilities of the Transferor Company at their existing carrying amounts. The excess or deficit between Consideration (equity shares and cash as per Clause 9) and the book value of net assets taken over shall be transferred to Goodwill or Capital Reserve Account.

g) Modifications or Amendments to the Scheme

The Transferee Company and the Transferor Company by their respective Board of Directors, or any person(s) or committee authorised/ appointed by them, may carry out or assent to any modifications/ amendments to the Scheme or to any conditions or limitations that the NCLT and/ or any other Government Authorities may deem fit to direct or impose or which may otherwise be considered necessary, desirable or appropriate by them (i.e., the Board of Directors or the person(s)/ committee). The Transferee Company and the Transferor Company by their respective Board of Directors, or any person(s) or committee authorised/ appointed by them, shall be authorised to take all such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions whether by reason of any directive or orders of any Government / regulatory Authorities or otherwise howsoever arising out of or under or by virtue of the Scheme and / or any matter concerned or connected therewith.

h) Conditional of the Scheme

This Scheme is and shall be conditional upon and subject to:

- i. Approval by the Hon'ble National Company Law Tribunal;



- ii. The certified copies of the orders of the National Company Law Tribunal sanctioning the Scheme are filed with the Registrar of companies, Andhra Pradesh & Telangana, Hyderabad by both the Companies which are a party to this Scheme; and
 - iii. Compliance with such other conditions as may be imposed by the National Company Law Tribunal.
7. The Learned Counsel submitted that as per the directions of the Tribunal, 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 19.08.2017 and filed a proof of the same before this Bench on 08.09.2017. In pursuance to said notification, no objections / oppositions were received about the scheme in question. He submits that in pursuant to the Orders dated 14.08.2017 of the Bench, notices were also issued to the Registrar of Companies, Regional Director (SER), the Official Liquidator and The Income Tax Department.
8. The Income Tax Department was also served notice on 23.08.2017. However, there are no comments / objections received from them.
9. The Regional Director (SER), Hyderabad has filed a common affidavit dated 26.10.2017 in C.P.(CAA) No.151/230/HDB/2017 and 152/230/HDB/2017 by inter alia stating that the Petitioner Company is having one secured creditor(ICICI Bank) in Transferee Company and they may be directed to submit no objection certificate. He further stated that the Petitioner Companies are regular in filing the statutory returns, and no complaints, no investigations and no inspections are pending against the petitioner company. Further, the Counsel for Central Government submitted that the Tribunal can consider the case as per the merits and pass appropriate orders.



10. The Official Liquidator, Hyderabad attached to this Hon'ble Tribunal filed his report dated 26.09.2017 in C.P(CAA)No. 152/230/HDB/2017 by inter alia stating that the Petitioner Company's affairs appears to have not been conducted in the manner prejudicial to the interests of the members or to public interest. Therefore, the Counsel for the Official Liquidator submitted that the Tribunal can consider the case as per the merits and pass appropriate orders.
11. The Petitioner / Transferor Company has filed CA.(CCA) No.43 / 230 / HDB / 2017 under Section 230 and 232 of the Companies Act, 2013 before the Tribunal, by seeking a direction to dispense with the meeting of Equity Shareholders of the Transferor Company for consideration of the proposed scheme of amalgamation of Petitioner / Transferor Company with M/s. Harika Drugs Private Limited (Transferee Company) as detailed in the Scheme. The said Company Application was disposed of by the Tribunal vide its Order dated 25.05.2017 dispensing with the conducting of meetings of the equity shareholders of Petitioner / Transferor Company. After fulfilling requisite conditions for sanction of scheme in question, the present petition is filed for sanction of the scheme.
12. The case was listed before this Bench on 01.08.2017, 14.08.2017, 12.09.2017 and finally on 27.10.2017.
13. Heard Mr. V.S.Raju and V.B.Raju, Learned Counsels for the Petitioner / Transferor Company, Mr. B. Appa Rao, Central Government Standing Counsel and Mr. M. Anil Kumar, Counsel for Official Liquidator.
14. I have carefully gone through all the pleadings, Report of the Regional Director (SER), Official Liquidator and also relevant provisions of Companies Act, 2013. I am convinced that the Petitioner / Transferor 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 27.02.2017 have duly



considered the pros and cons of Scheme of Amalgamation in question, after perusing 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 beneficial to Company in particular and also public in general. It is noted that the Scheme in question is not opposed by any authorities, and the Petitioner / Transferor Company is admittedly following all rules / regulations of Companies Act as stated by Regional Director and Official Liquidator. Hence, I am of considered view that the Company Petition deserved to be allowed as prayed for.

12. In the result, the C.P. (CAA) No.152/230/HDB/2017 is disposed of with the following directions:-
- a) Hereby Sanctioned the Scheme of Amalgamation (enclosed at Page No. 162 to 184 of the Petition) with appointed date as 01.04.2016 and it is ordered that the same is binding on all the Equity Shareholders / Members and Creditors of the Petitioner /Transferor Company.
 - b) The Petitioner / Transferor Company is permitted to cause a certified copy of this order along with all necessary documents including scheme of amalgamation to be delivered to the Registrar of Companies within 30 days from the date of receipt of Copy of this order.
 - c) The Petitioner / Transferor 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 / Transferor 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 CP.

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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

[Signature]
Dy. Regr./Asst. Regr/Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER *C.P.(CAA) No. 152/230/HDB/2017*
निर्णय का तारीख
DATE OF JUDGEMENT *27.10.2017*
प्रति तैयार किया गया तारीख
COPY MADE READY ON *4.12.2017*