

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

C.P.(CAA) No. 151/230/HDB/2017
U/s 230 & 232 of Companies Act, 2013

In the matter of

M/s. Harika Drugs Private Limited
a company incorporated under the
Companies Act, 1956 having its registered
office at 5-5-35/145/NR, Plot No.110, Prasanth Nagar,
Kukatpally, Hyderabad - 500 072.

Represented by its Director
Smt. U .Vijaya

.. Petitioner /
Transferee Company

Date of order: 27.10.2017

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. 151/230/HDB/2017 is filed by M/s. Harika Drugs Private Limited (Petitioner / Transferee 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 / Transferee Company.
2. Brief facts of case, leading to filing of the present company petition are as under:-



- a. 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. 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. Its registered office 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.
- b. 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.
- c. M/s.Venkatarama Chemicals Private Limited (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.,



d. 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.

3. 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. The integration, consolidation and amalgamation of the Transferor Company with the Transferee Company would inter-alia have the following benefits:-

- (i) Both the Transferor Company and the Transferee Company are engaged in the manufacturer of Bulk drugs, finished drugs and other chemicals etc. 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 utilising 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.



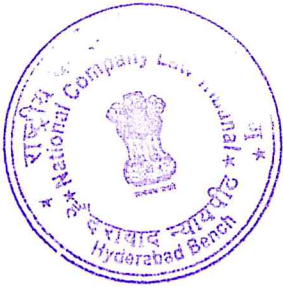
- (x) The merged company can reduce Fixed and variable overheads through shared marketing budgets, increased purchasing power and lower costs.
 - (xi) Businesses in the same sector or location can combine resources to reduce costs, eliminate duplicated facilities or departments and increase revenue.
4. In view of the above benefits, the proposed amalgamation would result in an enhanced shareholder value. 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.
5. 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 affected under Section 25FF of the Industrial Disputes Act, 1947 etc.

d) **Dissolution of Transferor Company:**

Subject to orders being passed by this tribunal 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.



6. The case was listed before this Bench on 01.08.2017, 14.08.2017, 12.09.2017 and finally on 27.10.2017.
7. Heard, Mr. V.S.Raju and V.B.Raju, Learned Counsels for the Petitioner Company, Mr. B. Appa Rao, Central Government Standing Counsel and have carefully perused all pleadings along with material papers filed in its support.
8. Earlier, the Petitioner Company has filed CA.(CCA) No.44 / 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 and to convene the Meeting of Unsecured Creditors of the Transferee Company for consideration of the proposed scheme of amalgamation of Transferor Company with M/s. Harika Drugs Private Limited (Transferee Company) as detailed in the Scheme. The same was disposed of by Tribunal vide its Order dated 25.05.2017 dispensing with the conducting of meetings of the equity shareholders and a direction for convening the meeting of Unsecured Creditors of Petitioner / Transferee Company. In consonance with the said directions, meeting of Unsecured creditors was duly convened and all the participants in the meeting have unanimously approved the scheme in question.

The Chairman has filed his report on 25.07.2017. After fulfilling requisite conditions for sanction of scheme in question, the present petition is filed for sanction of the scheme.

9. He further submits 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 on 08.09.2017. In pursuance to said notification, no objections / oppositions were received about the scheme in question. He further submits that pursuant to the Orders dated 14.08.2017 of this Tribunal; notices were also issued to the Registrar of Companies, Regional Director (SER), the Official Liquidator and The Income Tax Department. However, no comments / objections of the Income Tax Department were received in response to the said notice till date.
10. In pursuant to the directions of the Regional Director (SER), dated 26.10.2017 in C.P.(CAA) No.151/230/HDB/2017 and 152/230/HDB/2017 the Counsel for the Petitioner submitted that Petitioner Company has obtained the consent from the Secured creditor viz. ICICI Bank Limited and same was also filed by means of a Memo on 27.10.2017. Also stated that the Petitioner Companies are regular in filing the statutory returns and no compliance no investigations and no inspections are pending against the petitioner companies.
11. 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 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 28.02.2017 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. It is to be mentioned herein that the Scheme in question is not opposed by any authorities and the Petitioner Company is admittedly following all rules / regulations of Companies Act as stated by Regional Director and Official Liquidator. Hence, I am of the considered view that the Company Petition deserved to be allowed as prayed for.

12. In the result, the C.P.(CAA) No.151/230/HDB/2017 is disposed of with the following directions:-

- a) Hereby Sanctioned the Scheme of Amalgamation (enclosed at Page No. 163 to 185 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 (Secured and Unsecured) of the Petitioner Company.
- b) The Petitioner / Transferee 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 / 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 CP.



Sd/-

RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

[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. 151/230/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT 27.10.2017
प्रति हेतु किये गये तारीख
MADE READY ON 1.12.2017