

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

CA(CAA) No. 44/230/HDB/2017

Date of order: 25.05.2017

M/s Harika Drugs Private Limited  
2<sup>nd</sup> Floor, Classic Arcade Czech Colony,  
Road No.1, Sanathnagar,  
Hyderabad – 500 018,  
Telangana

....Applicant /Transferee Company

**Parties Present:**

Counsel for the Applicant : Shri V. S. Raju & Mr. V.B. Raju

**CORAM:**

Hon'ble Rajeswara Rao Vittanala, Member (Judicial)

**ORDER**

**(As per Rajeswara Rao Vittanala, Member (Judicial))**

1. The present Company Application bearing CA(CAA)No.44/230/HDB/2017, is filed by M/s Harika Drugs Private Limited under Section 230 read with 232 and other applicable provisions of the Companies Act, 2013 by, inter alia, seeking the following directions:
  - a) To dispense with the meeting of the equity shareholders of the Applicant/Transferee Company.
  - b) To convene the meeting of the unsecured creditors of the Applicant/Transferee Company at the registered office of the Company or at any other place as may be directed, for consideration of the proposed scheme consequently.
  - c) To appoint a Chairperson for convening and conducting meeting of the unsecured creditors.
  - d) That the quorum be fixed as 2 (two) creditors personally present in the unsecured creditors meeting.
  - e) The unsecured creditors be permitted to exercise their vote at the meeting either in person or through proxies



- f) As to the manner of giving the notices of the said meeting, it is sufficient to serve the notices on the unsecured creditors of the Applicant/Transferee Company by ordinary post.
  - g) That the advertisement be directed to be published once in English Edition of "The Business Standard" Hyderabad Edition and once in Telugu Edition of "Andhra Bhoomi" Hyderabad Edition.
  - h) As per the time for the Chairperson of the meeting to file their report to the Hon'ble Tribunal of the result of the meeting, the time be fixed as 10 days from the date of the said meeting;
  - i) to issue notices to the Regional Director, South Eastern Region, Registrar of Companies, Andhra Pradesh & Telangana and Income Tax Authorities under Section 230(5) of the Companies Act, 2013.
2. Brief facts of case, which are mentioned in the Company application and are relevant to issue in question, with respect to Transferee Company, are as follows:
- a. M/s Harika Drugs Private Limited (hereinafter referred to as "HDPL"/Transferee Company) was originally incorporated as a private limited company in the State of Karnataka on 13<sup>th</sup> September, 1985 under the Certificate of Incorporation No. 7147 of 1985-86. Later on the company had changed its registered 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 19<sup>th</sup> September, 1989 and a fresh certificate of incorporation was issued by the Registrar of Companies, Andhra Pradesh on 19<sup>th</sup> October, 1989. Its Registered Office is situated at 2<sup>nd</sup> Floor, Classic Arcade Czech Colony, Road No.1, Sanathnagar, Hyderabad – 500 018, Telangana.
  - b. The main objects and nature of the Company as set out in the Memorandum of Association, in brief, are as under:-
    - (i) To carry on business of manufacture, buy, sell, import, export and generally deal in all types of chemicals, pharmaceuticals, drugs and intermediaries.



- (ii) To carry on business of manufacture, buy sell, import, and export and generally deal in all types surgical, medical, pharmaceuticals, scientific equipment, appliances and accessories.
- (iii) It is engaged in the business of manufacturer of Bulk drugs, finished drugs and other chemicals etc.
- c) The authorized, issued, subscribed and paid-up share capital of the Transferee Company as on the date of incorporation i.e. March 31<sup>st</sup> 2016 is as under:

Particulars	Rupees
<b>Authorised Share Capital</b>	
10,000 Equity Shares of Rs. 1000/- each	1,00,00,000
	1,00,00,000
Issued, Subscribed and Paid-up Share Capital - 6,290 equity shares of Rs. 1000/- each, fully paid up Share	62,90,000
Total:	62,90,000

Subsequent to the above date and till the date of filing the scheme, there has been no change in the issued, subscribed and paid up capital of the Applicant /Transferee Company.

- 3 The following are brief facts with respect to M/s Venkatarama Chemicals Private Limited (“transferor Company”):

- a) M/s Venkatarama Chemicals Private Limited (hereinafter referred to as “Applicant/Transferor Company”) was incorporated under the Companies Act, 1956, in the State of Andhra Pradesh on 15<sup>th</sup> day of December, 1981 under Certificate of Incorporation No. 3322 of 1981-82. Later on the Company had converted itself into Private Limited Company and a Fresh Certificate of Incorporation was issued by the Registrar of Companies, Andhra Pradesh on 18/10/2011. Its Registered Office is situated at 36/A, Vengalrao Nagar, Hyderabad – 500 038, Telangana.





b) Its main objects and nature of business of Company , in brief, as set out in the Memorandum of Association, are as follows :-

- (i) 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.
- (ii) To manufacture and or deal in the preparations of all types of Ayurvedic drugs and formulations, all types of organic and inorganic fine chemicals.
- (iii) At present , it is engaged in the manufacturer of Bulk drugs, finished drugs and other chemicals etc.,

c) The authorized, issued, subscribed and paid-up share capital of the Applicant/Transferor Company as on 31<sup>st</sup> March, 2016 was as under:

PARTICULARS	Amount in Rs.
<b>Authorised Share Capital</b>	
10,00,000 Equity Shares of Rs. 10/- each (Previous Year 10,00,000 Equity Shares of Rs.10/- each)	1,00,00,000
<b>Issued, Subscribed and Paid-up Share Capital</b>	
3,25,800 Equity Shares of Rs. 10/- each fully paid-up	32,58,000

Subsequent to the above date and till the date of filing the scheme, there has been no change in the issued, subscribed and paid up capital of the applicant/transferor company.

d) The proposed Scheme, in general, would have the following benefits:

- i. raw materials will be available at a lesser prices 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. It will increase credit worthiness of the Company.



- iii. Businesses in the same sector or location can combine resources to reduce costs, eliminate duplicated facilities or departments and increase revenue etc.

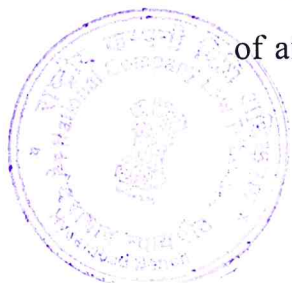
4. In view of the various advantages of proposed scheme , the Board of Directors of the Applicant / Transferee Company vide its meeting dated 28<sup>th</sup> February, 2017 approved the Scheme of Amalgamation of M/s Venkatarama Chemicals Private Limited with M/s Harika Drugs Private Limited and their respective Shareholders.
5. Prime salient/material features of the proposed Scheme, which will come into force from appointed date, are as under:
  - a) Subject to the provisions of this Scheme as specified hereinafter and with effect from the Appointed Date, the entire business and undertakings of the Transferor Company including all the debts, liabilities, duties and obligations, including those arising on account of taxation laws and other allied laws, of the Transferor Company of every description and also including, without limitation, all the movable and immovable properties and other assets (whether tangible or intangible) of the Transferor Company comprising, , shall, under the provisions of Sections 391 to 394 of the Act, and pursuant to the orders of the NCLT sanctioning this Scheme and without any further act, instrument or deed, but subject to the charges affecting the same as on the Effective Date, be transferred and/or deemed to be transferred to and vested in the Transferee Company, so as to become the properties, assets, rights, business and undertaking(s) of the Transferee Company.
  - b) The amalgamation of the Transferor Company with the Transferee Company, pursuant to and in accordance with this Scheme, shall take place with effect from the Appointed Date and shall be in accordance with Section 2(1B) of the Income-Tax Act, 1961. If any terms or a provision of Part B of this Scheme is/are inconsistent with the provisions of Section 2(1B) of the Income-tax Act, 1961, the provisions of Section 2(1B) the Income-tax Act, 1961, shall prevail and the Scheme shall stand modified to the extent necessary to comply with Section 2(1B) of the Income-tax Act, 1961. Such modifications will however, not affect the other parts of the Scheme.
  - c) 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 "VCL"





for every 38 (Thirty Eight) equity shares of Rs.10/- each held by such members in Transferor Company whose names are appearing in the register of members on the Record Date.

- d) 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.
  - e) 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) 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.
  - g) 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.
  - h) The Transferor Company shall stand dissolved, without going through the process of winding up.
6. It is stated that no investigation or proceedings have been instituted or are pending against the Applicant/Transferee Company and Transferor Company. The Transferee Company is an unlisted Company.
7. There are 4 (Four) Shareholders in the Applicant/Transferee Company and all of them have given their consent to the proposed scheme of Amalgamation by means of affidavits. A copy of the list of Equity Shareholders and the consent affidavits



obtained from the said Equity Shareholders of the Applicant/Transferee Company is filed.

8. It is stated that there is only one secured creditor namely ICICI bank Limited, S D Road Branch, Secunderabad and the Company has approached it and stated that there would be no objection from them to proposed scheme.
9. A certificate dated nil issued by Pavuluri & Co., Chartered Accountants, is filed by enclosing a list of un-secured Loans/Trade Creditors as on 31.03.2017. The list shows un-secured Loans are LIC Loan Rs.4,857,133 and Transferor Chemicals Rs.66,147,860/- and Trade Creditors as on 31.03.2017 totaling 135 for a total amount of Rs.138,623,094.79.
10. I have heard Mr. V. S. Raju and V. B. Raju, learned Counsels for the applicant/Transferee Company, have carefully perused all documents filed in support of various pleadings made in the Company application along with extant provisions of Company Law.
11. As stated supra, there are four shareholders of Transferee Company namely U. Amarnanath (51.35%), U. Vijaya (43.56%), A.V. Rama Krishna Rao (3.82%) and Adusumilli Madhuri (1.27%). All the four have given their consent to the proposed Scheme of Amalgamation by way of separate notarized affidavits and those are enclosed to the Company Application. Hence, there would no purpose to order to hold meeting of those shareholders and they are entitled for dispensation of holding their meeting. So far as lone secured Creditor (ICIC Bank) is concerned, they can obtain their consent and file at the time of filing a petition for sanction of Scheme in question.
12. So far as un-secured/trade creditors are concerned, it is necessary to direct to hold meeting for them to ascertain their views on the proposed Scheme in question.
13. In view of the above facts and circumstance of the case, I am convinced that the proposed scheme is initiated for the best interest of both Companies and its shareholders, secured/unsecured and trade creditors and all the relevant rules have





been followed to seek directions as mentioned above and thus the Company is entitled for the relief as they sought for.

14. In the result, the Company application bearing CA(CAA)No.44/230/HDB/2017 is allowed with the following directions:

- a) Hereby dispensed with conducting meeting of the equity shareholders of the Applicant /Transferee Company;
- b) Hereby ordered to convene a meeting of the Unsecured Creditors/Trade Creditors of the Applicant/Transferee Company on 13.07.2017 at 11.00 AM, at its registered office i.e. 2<sup>nd</sup> Floor, Classic Arcade Czech Coloney, Road No. 1, Sanathnagar, Hyderabad for consideration of the proposed scheme.
- c) Appointed Mr. B. Prakasam, Advocate (Flat No.317, Quality Life Style Apartment, Old Pallavi Theatre, Saidabad, Hyderabad – 500059; Mobile No.8106719134) as Chairperson for convening and conducting meeting of the unsecured creditors/trade creditors.
- d) That the quorum of meeting is fixed as 15 (fifteen) creditors personally present or through proxy in the unsecured creditors/trade creditors meeting. The unsecured creditors/trade creditors are permitted to exercise their vote at the meeting either in person or through proxies.
- e) It is ordered notices be sent all unsecured creditors/trade creditors involved in the scheme individually at the address registered with the Company, through standard mode of communication exist in the Company, and such notice shall be accompanied by a statement disclosing the details of scheme of Amalgamation in question along with material documents, if any. It can also put on website of Company's website.
- f) Issue notices informing about the meeting to all concerned Statutory Authorities i.e. the Regional Director (SER), Registrar of Companies, Andhra Pradesh & Telangana and Income Tax Authorities etc.





- g) That the advertisement be directed to be published once in English in "The Business Standard", Hyderabad Edition and once in Telugu "Andhra Bhoomi", Hyderabad Edition about said meeting.
- h) The Company is directed, to ensure at least  $\frac{3}{4}$  of value of unsecured Creditors should express their consent for the Scheme in question, in order to have fair representation about acceptance of it.
- i) Ten days' time is granted for the Chairperson of the meeting to file his report in the Registry of this Bench.
- j) Fee for Chairperson is fixed at Rs.75,000/-(Rupees Seventy Five Thousand) which is agreed to be paid by the Company.

Sd/-

**Rajeswara Rao Vittanala**  
**Member (J)**



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केस संख्या  
CASE NUMBER.....  
निर्णय का तारीख  
DATE OF JUDGEMENT.....  
प्रति तैयार किया गया तारीख  
COPY MADE READY ON.....

*V. Annapoorna*  
**V. ANNA POORNA**  
Asst. DIRECTOR  
NCLT, HYDERABAD - 68