

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

C.P.(CAA) No.154/230/HDB/2017
U/s 230 & 232 of the Companies Act, 2013

In the matter of

Indu Drugs Private Limited
5-5-35/278 & 279, Prashanthi Nagar
IDA, Kukatpaly Hyderabad
Telangana - 500072

... Petitioner /
Transferee Company

Date of order: 27.10.2017

CORAM:

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

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

Parties Present:

Counsels for the Petitioner:
Counsel for Regional Director:

Mr. Venkata Rami Reddy
Mr. B. Appa Rao, Central
Govt. Standing Counsel

Per Rajeswara Rao Vittanala, Member (Judicial)

ORDER



1. The present Company Petition bearing CP (CAA) 154/230/HDB/2017, is filed by Indu Drugs Private Limited (Petitioner/ Transferee Company) under Sections 230 & 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 and the Transferor Company, etc.
2. Brief facts, leading to filing of present Company Petition, are as follows:-
 - (A) **INDU DRUGS PRIVATE LIMITED (Transferee Company)**
 - (a) Indu Drugs Private Limited (Transferee Company) is originally incorporated under Part IX of the Companies Act, 1956 (by Conversion of existing Partnership Firm "Indu Drugs" in to company) under the name and style as "INDU DRUGS PRIVATE LIMITED" on 04th April 2012. Its Registered office is

at 5-5-35/278 & 279, Prashanthi Nagar, IDA, Kukatpally Hyderabad, Telangana - 500072.

- (b) The Present Authorized Share Capital of the Transferee Company is Rs.3,00,00,000/- (Rupees Three Crores Only) divided into 30,00,000 (Thirty Lakh only) Equity Shares of Rs.10/- (Rupees Ten Only) each. The Issued, Subscribed and Paid-Up Capital is Rs.2,51,68,100/- (Rupees Two Crore Fifty One Lakh Sixty Eight Thousand and One Hundred only) divided into 25,16,810 (Twenty Five Lakh Sixteen Thousand Eight Hundred and Ten only) Equity Shares of Rs.10/- (Rupees Ten only) each.
- (c) The main objects of the Transferee Company, as set out in its Memorandum of Association, are to manufacture, formulate, process, develop, refine, import, export, wholesale and/or retail trade all kinds of pharmaceuticals, antibiotics, drugs, medicines, biological, nutraceuticals, healthcare, ayurvedic and dietary supplement products, undertake the manufacture of any product developed, discovered or improved and/or to give licenses for the manufacture for the same to other and ether to market the same or to grant licenses to other to market the same on such terms as may be deemed fit, to provide, encourage, initiate or promote facilities for the discovery, improvement or development of new method of diagnosis, understanding and treatment of diseases.
- (d) The Transferee Company closes its financial year on 31st March each year. The latest financial summary of the Transferee Company as on 31st March 2017 as per the Provisional Balance Sheet is given below:

(In Rupees)

31.03.2017 31.03.2016

EQUITY AND LIABILITIES	31.03.2017	31.03.2016
Shareholders' Funds		
Share Capital	25,168,100	25,168,100



Reserves and Surplus	26,822,009	19,229,112
Share Application Money	--	--
Non-Current Liabilities:		
a. Long-term borrowings	468,109	3,060,334
b. Deferred Tax Liability	--	--
c. Other Long-term Liabilities	--	--
d. Long-term Provisions	--	--
	1,264,154	1,473,898
Current Liabilities:		
a. Short-term borrowings	3,856,966	9,796,145
b. Trade Payables	22,995,056	20,163,551
c. Other current liabilities	6,498,214	3,545,571
d. Short-term Provisions	435,483	2,758,636
TOTAL	87,508,091	85,195,347
ASSETS:		
Non-current Assets		
Fixed Assets:		
Tangible assets	16,860,562	11,782,746
Intangible assets	--	10,512
Capital work-in-progress	--	--
Non-current Investments	--	--
Deferred Tax Liabilities (net)	--	--
Long-term loans and advances	381,753	316,980
Other non-current assets	248,494	522,987
	--	--
Current Assets		
Inventories	12,442,528	11,292,712
Trade Receivables	38,584,007	42,077,692
Cash & cash equivalents	7,755,562	11,141,703
Short-term loans & advances	--	--
Other current assets	11,235,185	8,050,375
TOTAL	87,508,091	85,195,347



- (e) Sub-clause 9 in Clause III (B) of Memorandum of Association of the Petitioner / Transferee Company provides for Amalgamation/Merger.
- (f) The Board of Directors of the Petitioner / Transferee Company, in its meeting held on 22nd April, 2017 passed a resolution approving the Scheme of

Amalgamation to be effective from 01st April 2016 subject to the approval/directions of this Tribunal.

(B) INDU FORMULATIONS PRIVATE LIMITED (TRANSFEROR COMPANY)

- (a) Indu Formulations Private Limited (Transferor Company) was originally incorporated under the Companies Act, 1956 under the name and style as "INDU FORMULATIONS PRIVATE LIMITED" on 11.09.1997 and its Registered Office is situated at 5-5-35/281, Prasanthi Nagar IDA, Kukatpally, Hyderabad, Telangana - 500072.
- (b) The Authorised Share Capital of the Transferor Company is Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) divided into 2,50,000 (Two Lakh Fifty Thousand only) Equity Shares of Rs.10/- (Rupees Ten Only) each. The Issued, Subscribed and Paid-Up Capital is Rs.23,40,000/- (Rupees Twenty Three Lakh Forty Thousand Only) divided into 2,34,000 (Two Lakh Thirty Four Thousand only) fully paid up Equity Shares Rs.10/- (Rupees Ten only) each.
- (c) The main objects of the Transferor Company, as set out in its Memorandum of Association, are to manufacture, produce, refine, process, formulate, buy, sell, export, import or otherwise deal in all types of drugs, medicines, pharmaceuticals, parental drugs, infusion drugs, tablets, liquids, capsules, infusion sets, surgical goods, surgical instruments, basic and bulk drugs; to establish, provide, maintain and conduct or otherwise subsidise research and experiments and carry on with all scientific and technical research, experiments, Government bodies and also to carry on the profession of pathologists and examiners of soils, materials etc; to carry on in India or elsewhere the industry, trade or business of manufacturers, Traders, Dealers, Agents, Suppliers, Licensers, Licensees, Loan Licenses, Importers, Exporters, Consultants.
- (d) The Transferor Company closes its financial year on 31st March each year. The latest financial summary



of the Transferor Company as on 31st March 2017 as
per the Provisional Balance Sheet is given below:

(In Rupees)

31.03.2017 31.03.2016

EQUITY AND LIABILITIES		
Shareholders' Funds		
Share Capital	2,340,000	2,340,000
Reserves and Surplus	34,734,808	31,595,838
Share Application Money	--	--
Non-Current Liabilities:		
Long-term borrowings	1,164,600	2,376,147
Deferred Tax Liability (net)	(210,967)	(216,505)
Long-term Provisions	1,064,557	1,128,475
Current Liabilities:		
Short-term borrowings	2,453,999	4,036,253
Trade Payables	7,635,036	5,917,290
Other current liabilities	2,262,168	1,748,474
Short-term Provisions	1,380,125	2,676,893
TOTAL	52,824,326	51,602,865
ASSETS:		
Non-current Assets		
Fixed Assets:		
Tangible assets	9,576,353	9,967,294
Capital work in process	--	398,115
Long-term loans and advance	116,820	123,020
Current Assets		
Inventories	5,387,898	7,621,803
Trade Receivables	14,124,725	12,262,960
Cash & cash equivalents	19,289,775	15,834,271
Short-term loans & advances	1,900,000	3,000,000
Other current assets	2,428,755	2,395,402
TOTAL	52,824,326	51,602,865

3. The objects / benefits of the proposed Scheme of Amalgamation are as follows:

- i) To fully integrate as single entity so as to provide more manufacturing facility of both Transferor Company and Transferee Company under one roof.
 - ii) Both Transferor and Transferee Companies share common management and board which triggered the possibility of merger of both entities so as to reap maximum production and benefit out of such merger. To enhance the scale of operations thereby providing significant impetus to the growth of both the Companies, since they are engaged in line of business that could draw upon synergies between both Transferor Company and Transferee Companies.
 - iii) The Scheme of Amalgamation enables to have more market share and therefore it is in a position to set higher volume of business and make more profit and increase market share.
 - iv) Hence, the Board of Directors of the Transferor Company at the meeting held on 22nd April, 2017 approved the Scheme of Amalgamation with effect from April 1, 2016 (Appointed date) subject to the approval of the shareholders, creditors and confirmation by this Tribunal.
6. The following are brief terms of Scheme of Amalgamation:
- a) **Transfer and Vesting of Undertaking of Transferor Company**
Upon the Scheme coming into effect and with effect from the Appointed Date, the undertaking of the Transferor Company shall, pursuant to the sanction of this Scheme by the NCLT and pursuant to the provisions of Section 232 read with Section 230 and other applicable provisions, if any, of the Act, be and stand transferred to and vested in or be deemed to have been transferred to and vested in the Transferee Company, as a going concern without any further act, instrument, deed, matter or thing so as to become, as and from the Appointed Date, the undertaking of the Transferee Company by virtue of and in the manner provided in the Scheme.
 - b) **Legal proceedings**
All suits, actions and legal proceedings by or against the Transferor Company or 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.

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

All the staff, workmen and other employees in service of the Transferor Company immediately before the appointed date under the 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.

d) **Issue of shares by Transferee Company to the Shareholders of Transferor Company**

Upon coming into effect of this Scheme and in consideration of the transfer and vesting of the Transferor Company in the Transferee Company the Transferee Company shall, without any further act or deed, issue and allot Equity Shares to the members of the Transferor Company whose names appear in the register of members of the Transferor Company as on the Record Date in the following manner:

“8 (Eight) Equity shares of the face value of Rs.10/- each of Indu Drugs Private Limited credited as fully paid-up for every 1(one) Equity Share of the face value of Rs. 10/- each of Indu Formulations Private Limited”.

e) **Accounting treatment**

On the Scheme becoming effective, all the assets and liabilities as on the Appointed Date, recorded in the books of the Transferor Company shall be recorded by the Transferee Company at their book values as appearing in the books of the Transferor Company.

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

The Transferor Company and the Transferee Company, by their respective Boards, may make and consent to any modification(s) or amendment(s) to this Scheme or to any conditions or limitations that the NCLT or any other authority may deem fit to direct or impose or which may otherwise be considered necessary, desirable or appropriate by them, provided that any such modification(s) or amendment(s) to this Scheme after the approval of this Scheme by the NCLT shall be subject to the prior approval of the NCLT. The Transferor Company and the Transferee Company by their respective Boards, 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 other authorities or otherwise howsoever arising out of or under or by virtue of this Scheme or any matter concerned or connected therewith.

g. Scheme conditional on approvals / sanctions

This Scheme is conditional upon and subject to the sanction or approval of requisite majority of members of both the companies and approval of the scheme in question by this Tribunal.

7. It is submitted that the total number of members in the Petitioner Company are 7 (seven). Details of shareholding pattern is given below:



S No	Name of the Share Holder	No of Equity Shares	%
1	Hariprasada Rao Talasila	12,58,380	49.9990
2	Rajeswari Talasila	12,58,380	49.9990
3	Venkateswara Rao Talasila	10	0.0004
4	Lakshmi Kumari Talasila	10	0.0004
5	Talasila Sai Kumar	10	0.0004
6	Myneni Vinukondaiah	10	0.0004
7	Peram Nageswara Rao	10	0.0004
	TOTAL	25,16,810	100

All the seven (07) members have given their written consent/affidavits for the proposed Scheme of Amalgamation

8. The Petitioner/Transferee Company has no secured creditors. However, it has the following Unsecured, Sundry and Trade Creditors as on 30.04.2017.

Sl. No.	Particulars	Amount in Rs.	Total Amount in Rs.
01.	Secured Loans: a) Working capital from Canara Bank	NIL	NIL
02.	Trade Creditors : a) Arunodaya Print Pack Pvt.	6,94,469	

	b) Lee Pharma Ltd c) Skills Life Sciences Pvt. Ltd d) Legency Remedies Pvt Ltd e) Aarti Drugs Ltd f) Covalent Laboratories Pvt Ltd g) Aurobindo Pharma Ltd h) Nishchem International Pvt Ltd	6,63,863 6,94,859 7,17,402 11,70,450 25,84,575 79,90,189 6,99,109	1,52,14,916
03.	Non-Current Liabilities i)Sales tax deferment ii)Unsecured loan from Directors a) Talasila Hari Prasada Rao b) Talasila Rajeswari c) Talasila Sai Kumar d) T.V.N.S.Pujitha	30,60,334 7,17,495 7,17,495 2,43,988 2,60,751	30,60,334 19,39,729
04.	Current Liabilities a) Audit fee Payable	1,26,000	1,26,000



The Unsecured, Sundry and Trade Creditors of Petitioner/Transferee Company have given their no objection / Affidavit for the Scheme of Amalgamation. The Scheme of Amalgamation is in the interest of both Transferor and Transferee Companies including their members and all concerned. The Directors of the Petitioner / Transferee Company have no material interest in the proposed Scheme of Amalgamation except as shareholders in general.

9. The assets of the both Transferor Company and Transferee Companies are sufficient to meet all the liabilities. The Scheme of Amalgamation does not involve any compromise with any Creditors of the Petitioner/ Transferee Company and will not affect any of the Creditors of the Company in any manner whatsoever. The Transferor Company and Transferee Company are closely held companies.
10. It is further submitted that no petition under section 230 to 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements & Amalgamations) Rules, 2016, has been filed by the Petitioner / Transferee Company and there has been no material change in the affairs of the Petitioner / Transferee Company, except for what was done in the normal course of business. There are no investigation proceedings pending pursuant to the provisions of the Companies Act against the Petitioner / Transferee Company under Section 206 to 212 of the Companies Act, 2013. Further, there are no winding up

proceedings pending or initiated against the Petitioner / Transferee Company before this Tribunal.

11. Initially, the Petitioner / Transferee Company has filed C.A. (CAA) No. 42/230/HDB/2017 under Section 230 of the Companies Act, 2013, before this Tribunal by seeking a direction to dispense with the meetings of Shareholders / Unsecured Creditors of the Petitioner / Transferee Company for consideration of the Scheme of Amalgamation of Petitioner / Transferee Company and Indu Formulations Private Limited (Transferor Company) as detailed in the Scheme. The said C.A. (CAA) No. 42/230/HDB/2017 was disposed of by this Tribunal vide its Order dated 25.05.2017 by dispensing with the meetings of Shareholders / Unsecured Creditors. After fulfilling requisite conditions for sanction of scheme in question, the present petition is filed.
12. The case was listed before this Bench on 14.08.2017, 12.09.2017, 06.10.2017 and finally on 27.10.2017.
13. Heard Mr. V. Venkata Rami Reddy, Learned Counsel for the Petitioner / Transferee Company and have carefully perused all pleadings along with extant provisions of Companies Act.
14. The Learned Counsel submitted that as per the directions of the Tribunal dated 14.08.2017, the Petitioner got published Newspaper advertisement of the "Notice of Petition" in English Daily (Business Standard) and Telugu Daily (Nava Telangana- from Hyderabad Editions) on 17.08.2017 and filed a proof of the same before this Tribunal on 08.09.2017. In pursuance to said notification, no objections / oppositions were received about the scheme in question. He further submits that notices were also issued to the Registrar of Companies, Regional Director (SER), the Income Tax Department and Commercial Tax Department. No comments / objections of the Income Tax Department were received in response to the said notice till date.
15. The Regional Director (SER), Hyderabad has filed an affidavit dated 08.09.2017, by inter-alia confirming the averments made by the Petitioner Company and has further stated the Petitioner Company is regular in filing the statutory returns and no complaints and investigation and no inspections are pending against the Company.
16. However, the Commercial Tax Officer, Balanagar Circle, Hyderabad vide their letter Rc.No.NCR961/2017 dated 17.08.2017 submitted that the Transferor Company (Indu Formulation Private



Limited) availed tax deferment and certain conditions were imposed at the time of sanctioning amount vide reference Ltr No. 10/2/9/1143/1143/ID dated 30.07.1999 and the two conditions that were stipulated by the Department are that, there should not be change in location of the business and change in Management. The Managing Director of the Transferee Company (Indu Drugs Private Limited) filed an undertaking through an affidavit dated 04.09.2017 to abide with the conditions stipulated by the Commercial Tax Department, Government of Telangana with regard to differed tax liability.

17. I have carefully gone through all 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 22.04.2017 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 Unsecured 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 / Transferee Company is admittedly following all rules / regulations of Companies Act as stated by the Regional Director. Hence, I am of the considered view that the Company Petition deserved to be allowed as prayed for.
18. In the result, the C.P. (CAA) No.154/230/HDB/2017 is disposed of with the following directions:-
- Sanctioned the Scheme of Amalgamation as attached here (pages 164-181), so as to be binding on all the shareholders, creditors and employees of the Petitioner/Transferee Company and the Transferor Company and all concerned.
 - Hereby ordered that the Transferor Company shall be dissolved without going through the process of winding up.
 - 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 Registrar of Companies within 30 days from the date of receipt of Copy of this Order.



- d. 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.
- e. Hereby ordered that all the records of the *Transferor* Company shall be merged with the records of Transferee Company in the Data base maintained by the Registrar of Companies without any further application for such master data corrections if any up on registration/approval of Form No. INC-28 by the Registrar of Companies, Hyderabad.
- f. 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.
- g. Liberty is granted to any party / parties, who are aggrieved by this order to seek any direction(s) by way of filing miscellaneous in the present CP.



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OF THE ORIGINAL

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

[Signature]
RAJESWARĀ RAO VITTANALA
MEMBER (JUDICIAL)

प्रमाणित प्रति
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केस संख्या
CASE NUMBER *C.P.(CAA) No. 154/230/HDB/2017*
निर्णय का तारीख
DATE OF JUDGEMENT... *27.10.2017*
प्रति तैयार किया गया तारीख
COPY MADE READY ON... *4.12.2017*