(2022) 10 NCLT CK 0061

In the National Company Law Tribunal

Case No : CA (CAA) No. 55/Chd/Chd/2022 (First Motion)

Akums Lifesciences Limited Vs

Date of Decision : 31-10-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 30(6), 31(1)
Companies Act, 2013 — Section 133, 206(5), 230, 230(5), 232
Competition Act, 2002 — Section 6(2)
Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 — Regulation 4

Citation : (2022) 10 NCLT CK 0061

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Suman Kumar Jha, S. Shiva

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a first motion application filed by Applicant Company namely; Akums Lifesciences Limited (Transferor Company/Applicant Company) under Sections 230-232 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation between Akums Lifesciences Limited (Transferor Company/Applicant Company) and Pure and Cure Healthcare Private Limited (Transferee Company/Non-Applicant Company). The said Scheme is attached as Annexure A-1 of the Application.

2. The Applicant Company has prayed for dispensing with the meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Transferor Company/Applicant Company.

3. The Applicant Company/ Transferor Company is presently engaged in the business i.e. to deal in active pharmaceuticals ingredients, pharmaceutical formulations, allopathic medicines, drugs, herbal products, ayurvedic medicines,

cosmetics products, creams & ointments, allopathic, ayurvedic, herbal, homeopathic, unani, arabic, etc. including medical and chemical preparations & compounds.

4. It is submitted that the registered office of Applicant Company is situated in Chandigarh and the registered office of Non-Applicant/Transferee Company is situated in the State of Delhi. Therefore, the territorial jurisdiction of only the applicant company falls with this Bench.

5. The rationale of the Scheme is given below:-

? The Transferor Company is a research-based firm specialized in the development, manufacturing & sale of Active Pharmaceutical Ingredients (API) and API intermediates. On the other hand, the Transferee Company is engaged in the manufacturing of pharmaceutical products (Non-Beta Lactam) Oral Solid Dosage, Injectables & Dermatology Formulations.

? Since the APIs manufactured by the Transferor Company are used as inputs in the formulations manufactured by the Transferee Company, the proposed amalgamation of the Transferor Company with the Transferee Company will lead to easy availability of the APIs for the manufacturing of formulations by the Transferee Company which will result in backward integration in the business supply chain of the Transferee Company and also lead to smooth business operations of the Transferee Company.

? Apart from the above, the Transferor Company and Transferee Company are wholly owned subsidiaries of Akums Drugs And Pharmaceuticals Limited and managed by same set of management, hence, after consolidation of both the companies in a single entity, management would be able to effectively manage the Transferor Company and Transferee Company as a single entity, which will provide several benefits including streamlined group structure by reducing the number of legal entities involved in the supply chain, reducing the multiplicity of legal and regulatory compliances, rationalizing costs.

? The amalgamation will contribute in furthering and fulfilling the objectives and business strategies of both the companies thereby accelerating growth, expansion and development of the respective businesses through the Transferee Company. The amalgamation will thus enable further expansion of the Transferee Company and provide a strong and focused base to undertake the business more advantageously. Further, this arrangement would bring concentrated management focus, integration, streamlining of the management structure, seamless implementation of policy changes and shall also help enhance the efficiency and control of the Transferor Company and Transferee Company.

? Further, the independent operations of the Transferor Company and Transferee Company leads to incurrence of significant costs, duplication of administrative & establishment costs and the amalgamation would enable economies of scale by attaining critical mass and achieving cost saving and better financial management of resources. The amalgamation will thus eliminate a multi-layered structure and reduce managerial overlaps, which are necessarily involved in running multiple entities and also prevent cost duplication that can erode financial efficiencies of a holding structure and the resultant operations would be substantially cost-efficient. This Scheme would result in simplified corporate structure of the Transferee Company and its businesses, thereby leading to more efficient utilization of capital and creation of a consolidated base for future growth of the Transferee Company.

? The Amalgamation of Transferor Company and Transferee Company will create synergy benefits for the stakeholders of both the companies and it shall optimize the valuation of the consolidated Transferee Company. The amalgamation would also increase operational efficiency and integrate business functions.

? The proposed arrangement will provide greater integration and flexibility to the Transferee Company and strengthen its position in the industry, in terms of the asset base, revenues and service range.

? The other benefits the proposed amalgamation include:

I. Optimum and efficient utilization of financial resources and rationalization of capital, resources, assets and facilities;

II. Enhancement of competitive strengths including financial resources;

III. Obtaining synergy benefits;

IV. Better management and focus on growing the businesses; V. Reduction of overheads, administrative, managerial and other expenditure.

VI. Simplify shareholding structure and reduce shareholding tiers.

6. It is stated that the Board of Directors of the Applicant Company in their meeting held on 15.06.2022 have considered and unanimously approved the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The board resolution of the Applicant Company is attached as Annexure A-2 of the application.

7. The appointed date of the Scheme is 01.04.2022 as mentioned in Part 1 Clause 1.4 of Scheme of Amalgamation which is attached as Annexure A-1 of the application.

8. It is stated that the Applicant Company has filed the Audited Financial Statements as on 31.03.2022 which are attached as Annexure A-8 of the application.

9. It is submitted that in pursuance of provisions of Companies Act, 2013, the transferor and transferee company have filed certificates dated 05.08.2022 issued by independent Auditor certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same is attached as Annexure A-12 of the application.

10. It is further submitted by the counsel for applicant company that the valuation report has been submitted by Mr. Sanchit Vijay, Director-Corporate Professionals Valuation Services Private Limited, New Delhi, Registered Valuer having IBBI Registration No: IBBI/RV-E/02/2019/106 which is attached as Annexure A-11 of the application. As per the valuation report, dated 04.06.2022 the following Share Exchange Ratio has been proposed:-

CALCULATION OF EXCHANGE RATIO

Particulars

Akums Lifesciences Limited (Transferor Company)

Pure and Cure

Healthcare Private Limited (Transferee Company)

Equity Value (INR Mn)

1,724.45

22,617.87

No. of Equity Shares as on 31.03.2022

5,000,000

2,500,000

Value Per Share (INR)

344.89

9,047.15

Exchange Ratio

1.00

0.04

Exchange Ration for

100.00

4.00

100 Shares

"Pure and Cure Healthcare Private Limited" shall issue and allot 4 (Four) Equity Shares of Face Value of INR 10/- (INR Ten) each to the Equity Shareholders of "Akums Lifesciences Limited" for every 100 (One Hundred) Equity Share of Face Value of INR 10/- (INR Ten) each held by them in the Transferor Company.

11. It is deposed by way of affidavit that there are no inquiry / investigation proceedings being conducted in respect of the Transferor: Company / Applicant

Company. However, the following matters are pending in respect of the period prior to the order of NCLT, Chandigarh dated 12.01.2021 passed in C.A. NO. 389/2019 in CP (1B) NO. 102/CHD/2018 against the erstwhile management and the Company:- The Regional Director, Ministry of Corporate Affairs, New Delhi had initiated the inspection under section 206(5) of the Companies Act, 2013 against The Transferor Company (formerly known as Parabolic Drugs Ltd.) and the erstwhile management of Parabolic Drugs Ltd, in respect of the period up to 2018. The Current Management of the Transferor Company is not aware of the final Status of the Inspection. The Transferor Company was acquired by its holding company Akums Drugs & Pharmaceuticals Ltd, vide the order of NCLT Chandigarh dated 12.01.2021 passed in CA No. 389/2019 in CP (IB) No. 102/ Chd/2018. In September 2021, the Income Tax Officer sent a notice for Scrutiny to the Transferor Company, for the Financial Year 2016-17. The Transferor Company discharged its full & complete obligations by payment of Income Tax dues of Rs. 1,88,392/- on 19.02.2021. However, the tax authorities passed its order for demand on 26.09.2021.Further, the Transferor Company filed a writ petition under Section 30(6) and Section 31(1) of the Code. The Hon'ble Punjab and Haryana High Court, Chandigarh stayed the proceedings on 25.03.2022.Furthermore, the Transferor Company received a notice dated 31.03.2022 from Income Tax Department for providing certain information under Section 148A(b) in respect of Financial Year 2017-18. The company filed writ petition before the High Court on grounds similar to the previous assessment. The Hon'ble Punjab & Haryana High Court, Chandigarh stayed the proceedings on 24.08.2022 (attached as Annexure A-13 of the application).

12. It is deposed by way of affidavit that notice under Section 230 (5) of the Companies Act, 2013, if required, shall be issued to- Regional Director (Northern Region); Registrar of Companies (Chandigarh); Official Liquidator (Attached to High Court of Punjab and Haryana) and Income Tax Department. Apart from the above authorities, Transferor Company does not fall within the ambit of any sector specific Regulator. Hence, the requirement to serve notice to any Sectoral Regulator under Section 230(5) of the Companies Act, 2013 1s not applicable in the present case. The No Objection Certificate of Competition Commission of India (CCI) is not required in the present case as the Transferor Company as well as the Transferee Company are the wholly owned Subsidiaries of Akums Drugs And Pharmaceuticals Limited being the common and sole shareholder of both companies holding the entire shareholding. Accordingly, in view of Regulation 4 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, a notice under Section 6(2) of the Competition Act, 2002 is not required to be filed with the CCI as the instant case is covered under Clause 9 of the categories of combinations mentioned in Schedule I to the said Regulations (attached as Annexure A-14 of the application).

13. It is stated that the Scheme also takes care of the interests of the staff/ workers and employees of the Companies by virtue of Clause –7 of the Scheme

[Annexure A-1 of the application].

14. The applicant company have furnished the following documents:-

i. Proposed Scheme of Amalgamation (Annexure A-1 of the application)

ii. Copy of Memorandum and Articles of Association of the applicant company (Annexure A-3 of the application).

iii. List of Equity Shareholders as on 05.09.2022 of the Applicant Company duly certified by Dharamvir Malik, Director of Applicant Company along with consent furnished on affidavit (Annexure A-4 of the application)

iv. List of Secured Creditors of Applicant Company as on 30.06.2022 duly certified by V.P. Gupta & Co., Chartered Accountants along with their consent affidavits (Annexure A-5 of the application).

v. List of Unsecured Creditors of Applicant Company as on 30.06.2022 duly certified by V.P. Gupta & Co., Chartered Accountants along with consent furnished on affidavits (Annexure A-6 of the application).

vi. Certificate of independent Auditor of Applicant Company to the effect that Accounting treatment proposed in the Scheme is inconformity with Section 133 of Companies Act, 2013 (Annexure A-12 of the application).

vii. Share exchange ratio and Valuation Report (Annexure A-11 of the application).

viii. Audited Financial Statements as on 31.03.2022 of the Applicant Company (Annexure A-8 of the application).

ix. Affidavit regarding pending proceeding for inspection, inquiry or investigation against Applicant Company (Annexure-A-13 of the application)

15. The Applicant Company have furnished the details of the Equity Shareholders, Secured Creditor and Unsecured Creditors along with consent on affidavits which are as follows:

Name of the Applicant

Companies

Shareholders along with their consent

Creditors along with their consent

Equity Shareholders

Consent submitted on

affidavit

Secured Creditor

Consent submitte d on

affidavit

Unsecured Creditors

Consent submitted on affidavit

Applicant Company

7(Seven) Equity Shareholder

100%

(in value)

2(Two)

100%

(in value).

318

93.51%

(in value)

16. Accordingly, the directions of this Bench in the present case are as under:-

I. In relation to the Transferor Company/Applicant Company:

a. The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent of all Equity Shareholders have been received by way of affidavits.

b. The meetings of both Secured Creditors of the Applicant Company are dispensed with as consent of both Secured Creditors have been received by way of affidavits.

c. The meetings of the Unsecured Creditors of the Applicant Company are dispensed with as consent of Unsecured Creditors 93.51% (in value) have been received by way of affidavits.

17. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition with a direction that the Applicant Companies shall make specific prayer for sending notices to the (a) Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, (b) concerned Registrar of Companies and (c) Official Liquidator; and (d) Income Tax Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition.