(2020) 12 NCLT CK 0121

In the National Company Law Tribunal

Case No : Company Application No. (CAA) 1154/MB Of 2020

Emcure Pharmaceuticals Limited And Anr. Vs

Date of Decision : 17-12-2020

Acts Referred:
Companies Act, 2013 — Section 230, 230(1)(a), 230(1)(b), 231, 232

Citation : (2020) 12 NCLT CK 0121

Hon'ble Judges : Suchitra Kanuparthi, J;Chandra Bhan Singh, Member (Technical)

Bench : Division Bench

Advocate : Hemant Sethi

Judgement

1. The Court convened by video-conference today 17.12.2020.

2. The Learned Counsel for the Applicant Companies submits that the present Scheme is a Composite Scheme of Arrangement of Emcure

Pharmaceuticals Limited with and Avet Lifesciences Limited and their respective Shareholders under Sections 230 to 232 and other applicable

provisions of the Companies Act, 2013.

3. The Learned Counsel for the Applicant Companies submits that First Applicant Company is engaged in the business of research and developing,

manufacturing and marketing a broad range of pharmaceutical products globally. The Second Applicant is incorporated with the object of research

and developing, manufacturing and marketing a broad range of pharmaceutical products globally.

4. The Learned Counsel for the Applicant Companies submits that the Resulting Company is a wholly owned subsidiary of the Demerged Company.

The Board of Directors of all the Applicant Companies, at their meeting held on November 9, 2020, had approved the composite scheme of arrangement. The rationale and benefits of the demerger and capital reduction are as under:

â?¢ The United States of America is a vast and attractive market but has different characteristics and risk reward ratio than the Remaining

Businesses of the Demerged Company (as defined in the Scheme). Consequently, growth and expansion of the US Market Business (as

defined in the Scheme) requires a differentiated strategy which is aligned to the market dynamics, regulatory considerations and product

portfolio. This will help enhance shareholder value. Further, growth of the US Market Business will require focused investments in research

and development vis-Ã -vis other markets. Given these, it is considered desirable and expedient to demerge the US Market Business (as

defined in the Scheme) of the Demerged Company to the Resulting Company in the manner and on the terms and conditions stated in this

Scheme.

â?¢ The demerger of the US Market Business (as defined in the Scheme) of the Demerged Company into the Resulting Company will, inter

alia, result in the following benefits:

a) Segregation of the Demerged Undertaking to the Resulting Company will unlock the true potential of each business vertical, which

require focused management bandwidth and attention to execute each market segmentâ??s respective vision;

b) Strengthening customer service, distribution network, overall economies of scale for both the businesses; and

c) Provide higher degree of flexibility to evaluate independent business opportunities as well as attract the right set of investors, stra- tegic

partners, lenders and other stakeholders.

â?¢ As stated above, the nature of the two businesses are different and accordingly, the Demerged Company and the Resulting Company

have different characteristics and risk profile. Accordingly, it has been decided that the Identified Shareholders (as defined in the Scheme)

will be provided an exit from the Resulting Company by way of a capital reduction undertaken in the manner as set out in Part IV of the

Scheme immediately after they are issued equity shares of the Resulting Company under Clause 16 of Part III of the Scheme.

â?¢ The capital reduction of the issued, subscribed and paid-up equity share capital of the Resulting Company, held by Identified Share-

holders (as defined in the Scheme), would improve the earnings per share and enhance the shareholdersâ?? value for all remaining share-

holders.

5. The Learned Counsel for the Applicant Companies submits that the Board of Directors of the Applicant Companies vide resolution dated 9th

November 2020, approved the Composite Scheme of Arrangement of Emcure Pharmaceuticals Limited with Avet Lifesciences Limited and their

respective Shareholders. The Appointed Date of the Scheme is 1st April 2021.

6. As consideration, 1 (One) fully paid up equity shares of Rs 10 each of the resulting company shall be issued and allotted for every 10 (Ten) fully

paid up equity share of Rs 10/- each held in the Demerged Company.

7. That there are 47 (Seven) Equity Shareholders in First Applicant Company and that the First Applicant Company having procured the consent

affidavits from all the Equity Shareholders which are annexed as â??Annexure G1 to G47â?? to the Company Application.

8. That there are 7 (Seven) Equity Shareholders (out of which 6 are nominee shareholders) in the Second Applicant Company and that the Second

Applicant Company having procured the consent affidavits from the Equity Shareholder which is annexed as â??Annexure Hâ? to the Company

Application.

9. In view of the fact that all the Equity Shareholders of all the Applicant Companies have given their consent affidavits, the meetings of the Equity

Shareholders of all the Applicant Companies are hereby dispensed with.

10. The Learned Counsel for the Applicant Companies further submits that since the present Scheme is an arrangement between the Applicant

Companies and its shareholders as contemplated in Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies

Act, 2013, as there is no compromise of arrangement with creditors as it does not affect the rights and interests of the Creditors of the Applicant

Companies. Further there is no diminution of liability of any of the Creditors of the Applicant Companies who will be paid off in the ordinary course of

business. In view of above the meetings of the Secured Creditors of the First Applicant Company is dispensed with. However, the First Applicant

Company undertakes to procure consent letters from the Secured Creditors at the time of final hearing of the petition. In so far as Unsecured

Creditors of the First and Second Applicant Company is concerned, the meetings are hereby dispensed with on an undertaking that the Applicant

Companies shall issue individual notices to all the unsecured creditors with the direction that they may submit their representation, if any, to the

Tribunal and copies of such representation shall simultaneously be served upon the Applicant Companies. The notice be sent by Registered Post

AD/Speed Post/Email as may be feasible in view of the lockdown owing to the Covid-19 pandemic.

11. The Learned Counsel for the Applicant Companies submits that there are no Secured Creditors in the Second Applicant Company. Therefore, the

question of sending notices does not arise.

12. The Applicant Companies are directed to serve notices of present Application along with its enclosures upon : - (i) concerned Income Tax

Authority within whose jurisdiction the First Applicant Companyâ??s assessment is made (i.e. PAN : AAACE4574C, Central Circle 2(1), Aayakar

Sadan, Bodhi Towers, Salisbury Park, Room No. 630, 6th Floor, Gultekadi, Pune), Second Applicant Company assessment is made (i.e. PAN :

AATCA9310K, Circle 8, Pratyaksha Bhawan, Akrudi, Pune), (ii) the Central Government through the office of Regional Director, Western region,

Mumbai and (iii) concerned Registrar of Companies, with a direction that they may, if they so wish, submit their representations, if any, within a period

of thirty days (30) from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the

Applicant Companies failing which, it shall be presumed that the authorities have no representations to make on the proposals.

13. The Applicant Companies shall file compliance report with the registry in regard to the directions given in this Order in lieu of customary affidavit

of service, due to lockdown situation prevailing now proving service of no- tices to the regulatory authorities as stated above and do report to this Tri-

bunal that the directions regarding the issue of notices have been duly com- plied with.

14. Order accordingly. Pronounced in open Court today.