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(2021) 10 NCLT CK 0056

In the National Company Law Tribunal

Case No : CA (CAA)/25/MB-IV/2021

Emil Pharmaceutical Industries Pvt Ltd Vs

Date of Decision : 18-10-2021

Acts Referred:

Companies Act, 2013 — Section 103, 230, 230(1)(a), 230(1)(b), 230(3), 230(5), 231, 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 8

Citation : (2021) 10 NCLT CK 0056

Hon'ble Judges : Suchitra Kanuparthi, Member (J);Rajesh Sharma, Member (T)

Bench : Division Bench

Advocate : ?Gauraj Shah, C.S. Siddharth Doshi

Final Decision : Disposed Of

Judgement

Rajesh Sharma, Member (Technical)

1. This Bench is convened through video conferencing today.

2. The Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Merger by Absorption of Medibios Laboratories Limited (First Applicant Company/Transferor Company) and Emil Pharmaceuticals Industries Private Limited (Second Applicant Company/Transferee Company) and their respective Shareholders ("the Scheme") under the provisions of Sections 230 to 232 of the Companies Act, 2013.

3. The Counsel for the Applicant Companies further submits that the First Applicant Company and Second Applicant Company are engaged in the business of manufacturing, trading, importing and exporting of medicines drugs chemical and pharmaceuticals and manufacture of bulk drugs, pharmaceuticals, other chemicals veterinary products, cosmetic products chemist, druggist, importers, processors, buyers, sellers, retailers and manufacturing or marketing products for others.

4. The Counsel for the Applicant Companies submits that the Board of Directors of the Applicant Companies in their respective meetings held on 7th day of

December, 2020 have approved the proposed Scheme with the Appointed Date as 1st day of April 2020. The Board Resolution approving the Scheme for the Applicant Companies are annexed as Annexure D & Annexure D1 respectively to the Company Scheme Application.

5. The appointed date for the Scheme of Merger by Absorption is 1st day of April 2020.

6. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on 31st day of March, 2020 is as under:

a. The Authorised Share Capital of the First Applicant Company is Rs. 10,00,00,000/- divided into 1,00,00,000 Equity Shares of Rs. 10/-each. Issued, Subscribed and Paid-up Share Capital of the First Applicant Company is Rs. 7,10,46,000/- divided into 71,04,600 Equity Shares of Rs. 10/- each.

b. The Authorised Share Capital of the Second Applicant Company is Rs. 10,00,00,000/- divided into 1000,000 Equity Shares of Rs.10/- each. Issued, Subscribed and Paid-up Share Capital of the Second Applicant Company is Rs.7,64,56,140/- divided into 76,45,614 Equity Shares of Rs.10/- each.

7. The Merger of First Applicant with Second Applicant Company would inter alia have the following benefits:

i. Given that the Transferor Company and the Transferee are engaged in identical businesses, the amalgamation will enable the promoters of the Transferor Company and the Transferee Company to consolidate the businesses, reduce the number of companies under the same management and thus lead to reduction in administration efforts.

ii. It would be advantageous to combine the activities and operations of all the Transferor Company and the Transferee Company into a single company for leveraging operational resources and for the benefit of lesser compliance obligations.

iii. The Scheme will result in cost saving from more focused operational efforts, rationalization, standardization and simplification of business processes, and the elimination of duplication, and rationalization of administrative expenses and is expected to result in administrative efficiency for the Transferee Company.

iv. Greater ability of the Transferee company to raise financial resources, either as equity or debt, based on combined financials.

v. Greater efficiency in cash management of the Transferee Company, and unfettered access to cash flows generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholders value.

vi. Greater integration and greater financial strength and flexibility for the Transferee company which would result in maximizing overall shareholders value

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and will improve the competitive position of the combined entity.

8. The Counsel for the Applicant Companies submits that upon the Scheme being effective the Transferee Company shall, without any further act or deed, issue and allot equity shares in the Transferee Company to each equity shareholder of the Transferor Company whose name is recorded in the

register of members of the Transferor Company on the Appointed Date or their respective heirs, executors or other legal representatives or the successors in title as the case may be, in the following ratio (the "Share Entitlement Ratio")

For every 1000 share of MLL (Transferor Company) 672 shares of EMIL (Transferee Company) will be issued.

9. That the meeting of the Equity Shareholders of the First Applicant Company be convened (either physically or virtually as per the circumstances prevailing due to Covid) and held at 102, Shree Mangalam, 1st Floor, Kulupwadi, Borivali (E) Mumbai-400066, Maharashtra India on Tuesday, 23rd November, 2021 at 11:00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme of Merger by Absorption Medibios Laboratories Limited (First Applicant Company/Transferor Company) and Emil Pharmaceuticals Industries Private Limited (Second Applicant Company/Transferee Company) and their respective Shareholders.

10. That the meeting of the Equity Shareholders of the Second Applicant Company be convened (either physically or virtually as per the circumstances prevailing due to COVID-19) and held at Emil Pharmaceutical Industries Private Limited, is a Private Limited Company bearing CIN U24230MH1986PTC039809, a company incorporated under the Companies Act, 1956 having its registered Office situated at 101, Shree Mangalam, Kulupwadi, Near National Park, Borivali (East), Mumbai-400066, Maharashtra India on Tuesday, 23rd day of November, 2021 at 1:00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme of Merger by Absorption Medibios Laboratories Limited (First Applicant Company/Transferor Company) and Emil Pharmaceuticals Industries Private Limited (Second Applicant Company/ Transferee Company) and their respective Shareholders

11. That at least 30 days prior to the said Meetings of the Equity Shareholders of the Applicant Companies to be held as aforesaid, a notice convening the said Meeting at the place date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the prescribed Form of Proxy, shall be sent by Hand delivery/ Registered Post / Speed Post and through Email (to those shareholders whose email addresses are duly registered with the Applicant Companies for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the Applicant Companies, at their last known address and email addresses as per the records

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of the Applicant Companies.

12. That at least 30 days prior to the Meetings of the Equity Shareholders of the Applicant Companies to be held as aforesaid, a notice convening the said Meetings, indicating the place, date and time of meetings as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Companies as aforesaid .

13. That the Notices of the Meetings of the Equity Shareholders of the Applicant Companies shall be advertised in two local newspapers viz. in "Free Press Journal" in English and "Navshakti" in Marathi, both circulated in Mumbai, not less than 30 (Thirty) days before the date fixed for the meetings by the respective Applicant Company.

14. That Mr. Tushar Anil Korday, Managing Director of the First Applicant Company shall be the Chairman of the aforesaid Meeting of the Equity Shareholders of the First Applicant Company to be held at 102, Shree Mangalam, 1st Floor, Kulupwadi, Borivali (E) Mumbai-400066, Maharashtra India on Tuesday, 23rd November, 2021 at 11:00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme of Merger by Absorption Medibios Laboratories Limited (First Applicant Company/Transferor Company) and Emil Pharmaceuticals Industries Private Limited (Second Applicant Company/Transferee Company) and their respective Shareholders

15. That Mr. Tushar Anil Korday, Director of the Second Applicant Company shall be the Chairman of the aforesaid Meeting of the Equity Shareholders of the Second Applicant Company to be held at 101, Shree Mangalam, Kulupwadi, Near National Park, Borivali (East),Mumbai-400066, Maharashtra India on Tuesday, 23rd day of November, 2021 at 1:00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme of Merger by Absorption Medibios Laboratories Limited (First Applicant Company/Transferor Company) and Emil Pharmaceuticals Industries Private Limited (Second Applicant Company /Transferee Company) and their respective Shareholders.

16. That the respective Chairman appointed for the aforesaid Meetings of the Shareholders to issue the advertisements and send out the notices of the meetings referred to above. The said respective Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meetings by any person(s).

17. The Scrutinizer for the aforesaid meeting(s) shall be CS Pooja Gandhi, Membership No. ACS 22838, Company Secretaries, who shall be paid an amount

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of Rs. 20,000/- (Rupees Thirty Thousand Only) per meeting for the services.

18. That the quorum of the aforesaid meetings of the Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.

19. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form / authorization duly signed by the person entitled to attend and vote at the meeting, are filed with the respective Applicant Companies at their respective Registered Office(s) not later than 48 hours before the aforesaid meetings as per the provisions of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.

20. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the respective Applicant Company and where the entries in the books / register / are disputed, the Chairman of the meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.

21. The Counsel for the Applicant Companies submits that the First Applicant Company has 1 Secured Creditor amounting to Rs.11,90,40,711/- (Rupees Eleven Crores Ninety Lakhs Forty Thousand Seven Hundred and Eleven only) and 2 Secured Creditors in the Second Applicant Company amounting to Rs.10,55,52,580/- (Rupees Ten Crores Fifty-Five Lakhs Fifty-Two Thousand Five Hundred and Eighty only) as on 30th September 2020. It further submits that a written consent affidavits shall be obtained from all the Secured Creditors of both the Applicant Companies in due course of time but not later than submission of Company Petition (CP) for the said merger scheme and be submitted with Hon'ble Bench for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme of Merger by Absorption Medibios Laboratories Limited (First Applicant Company/Transferor Company) and Emil Pharmaceuticals Industries Private Limited (Second Applicant Company/ Transferee Company) and their respective Shareholders. Hence, in view of the above the meeting of Secured Creditors be dispensed with.

22. The Counsel for the Applicant Companies submits that the First Applicant Company has 234 (Two Hundred and Thirty-Four) Unsecured Creditors as on 30th September, 2020 amounting to Rs. 10,11,96,739/- (Rupees Ten Crores Eleven Lakhs Ninety-Six Thousand Seven Hundred and Thirty-Nine only) List of Unsecured Creditors of the First Applicant Company is annexed as Annexure I to the Company Scheme Application.

23. The Counsel for the First Applicant Company submits that since the Scheme is an Arrangement between the First Applicant Company and its shareholders as contemplated under Section 230(1)(b) and not in accordance with the provisions of Section. 230(1)(a) of the Companies Act, 2013 and as there is no Compromise and/or Arrangement with the creditors and as no sacrifice is called for, the meeting of the unsecured creditors is dispensed with. The First Applicant Company will issue notice to all its unsecured Creditors by Registered Post- AD/

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Speed Post and through Email (to those creditors whose email addresses are duly registered with the First Applicant Company for the purpose of receiving such notices by email), at their last known address as per the records of the First Applicant Company, with a direction that they may submit their representations, if any, to the Tribunal within 30 days and copy of such representations shall simultaneously be served upon the First Applicant Company.

24. The Counsel for the Applicant Companies submits that the Second Applicant Company has 199 (One Hundred and Ninety-Nine) Unsecured Creditors as on 30th September, 2020 amounting to Rs. 14,21,12,376/-(Rupees Fourteen Crores Twenty-One Lakhs Twelve Thousand Three Hundred and Seventy-Six only) List of Unsecured Creditors of the Second Applicant Company is annexed as Annexure I1 to the Company Scheme Application.

25. The Counsel for the Second Applicant Company submits that since the Scheme is an Arrangement between the Second Applicant Company and its shareholders as contemplated under Section 230(1)(b) and not in accordance with the provisions of Section. 230(1)(a) of the Companies Act, 2013 and as there is no Compromise and/or Arrangement with the creditors and as no sacrifice is called for, the meeting of the unsecured creditors is dispensed with. The Second Applicant Company will issue notice to all its unsecured Creditors by Registered Post- AD/Speed Post and through Email (to those creditors whose email addresses are duly registered with the Second Applicant Company for the purpose of receiving such notices by email), at their last known address as per the records of the Second Applicant Company, with a direction that they may submit their representations, if any, to the Tribunal within 30 days and copy of such representations shall simultaneously be served upon the Second Applicant Company.

26. The First Applicant Company / Transferor Company to serve notice of the present Application complete with enclosures by Registered Post- AD/ Speed Post and Hand delivery on - (1) the Regional Director (Western region), Ministry of Corporate Affairs, Mumbai; (2) Registrar of Companies, Maharashtra, Mumbai; (3) Official Liquidator, High Court Bombay and (4) Income Tax Authority within whose jurisdiction the Transferor Company are assessed to tax, bearing PAN number AABCM4875D having IT ward jurisdiction circle R/C Ward Aaykar bhavan Mumbai. (5) Concerned GST Authorities of respective Companies. Pursuant to section 230(5) of the Companies Act, 2013 and rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

27. The Tribunal is appointing, M/s CA Hemant K Shah of Hemant K. Shah & Associates, Chartered Accountants, having their office at, Shop No. 15, Shreeji Plaza, Plot No. 24 Sector 25 Nerul, Mumbai-400706, Mobile No. 9004037902, [Email: shahhemant@yahoo.com] to assist the Official Liquidator to scrutinize

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the books of accounts of the Transferor Company for the last five (5) years to pay a consolidated fees of INR 2,20,000/- for this purpose. The Official Liquidator may submit his representations, if any, within a period of thirty (30) days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Transferor Company.

28. The Second Applicant Company / Transferee Company to serve notice of the present Application complete with enclosures on - (1) the Regional Director (Western region), Ministry of Corporate Affairs, Mumbai; (2) Registrar of Companies, Maharashtra, Mumbai; and (3) Income Tax Authority within whose jurisdiction the Transferor Company are assessed to tax, bearing PAN number AAACE0922A having IT ward jurisdiction circle R/C Ward, Aaykar bhavan Mumbai; pursuant to section 230(5) of the Companies Act, 2013 and rule 8 of the Companies (Compromises Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

29. The Applicant Companies shall host the notices directed herein, on their respective websites, if any.

30. That the Applicant Companies to file affidavit of service with the Registry proving dispatch of notices to creditors and regulatory authorities as stated above, and report to this Tribunal that the directions have been duly complied with.

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