(2021) 04 NCLT CK 0051

In the National Company Law Tribunal

Case No : Company Application (CAA) No. 36/MB.V Of 2021

Encube Ethicals Private Limited APPELLANT

Vs

Confira Laboratories Private Limited RESPONDENT

Date of Decision : 08-04-2021

Acts Referred:

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

Citation : (2021) 04 NCLT CK 0051

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

Bench : Division Bench

Advocate : Ajit Singh Tawar

Judgement

1. The Court is convened by videoconference today (8th day of April 2021).

2. The Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Arrangement between Encube Ethicals Private Limited

(Demerged Company / First Applicant Company) and Confira Laboratories Private Limited (Resulting Company / Second Applicant Company) and

their respective shareholders (â??the Schemeâ?) under the provisions of Sections 230 to 232 of the Companies Act, 2013 (hereinafter called â??the

Applicant Companiesâ??).

3. The Counsel for the Applicant Companies further submits that the First Applicant Company is engaged in the business of research, development

manufacturing and selling of topical pharmaceuticals and cosmetic formulations. The First Applicant Company also focuses on research and

development of topical dermatological and cosmeceuticals products. The Second Applicant Company is a wholly owned subsidiary of First Applicant

Company and is engaged in the business of marketing and selling of skincare and cosmetic products.

4. The Counsel for the Applicant Companies submits that the Board of Directors of the Applicant Companies in their respective meetings held on 8th

day of September, 2020 have approved the proposed Scheme with the Appointed Date as 1st day of April 2020. The Board Resolution approving the

Scheme for the First Applicant Company and Second Applicant Company are annexed as Exhibit â??Eâ?? and Exhibit â??Fâ?? respectively to the

Company Scheme Application.

5. The appointed date for the Scheme of Arrangement is 1st day of April 2020.

6. The Authorised, 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. 15,00,00,000/- divided into 1,50,00,000 Equity Shares of Rs. 10/- each. Issued,

Subscribed and Paid-up Share Capital of the First Applicant Company is Rs. 9,67,81,800/- divided into 96,78,180 Equity Shares of Rs. 10/- each.

b. The Authorised Share Capital of the Second Applicant Company is Rs. 1,00,00,000 divided into 10,00,000 Equity Shares of Rs.10/- each. Issued,

Subscribed and Paid- up Share Capital of the Second Applicant Company is Rs. 1,00,00,000 divided into 10,00,000 Equity Shares of Rs.10/- each.

7. The Counsel for the Applicant Companies further submits that the rationale for the Scheme are as follow:

Encube is engaged in the business of research, development manufacturing and selling of topical pharmaceuticals and cosmetic formulations. They

help their customers serve global markets with technology driven and cost-effective topical products of the highest quality. Encube also focuses on

research and development of topical dermatological and cosmeceuticals products. Confira, a wholly owned subsidiary of Encube, is engaged in the

business of marketing and selling of skincare and cosmetic products. The management of Encube believes that segregation of the Cosmeceuticals

Undertaking from Encube will achieve the following:

a) Efficient and focused management of the Cosmeceuticals Undertaking which will promote the growth of the Cosmeceuticals Undertaking;

b) Focused growth strategy which would be in the best interests of all stakeholders; and

c) Rationalization of operations with greater degree of operational efficiency and optimum utilization of resources

8. The Counsel for the Applicant Companies submits that upon the Scheme becoming effective and with effect from the Appointed Date, in

consideration of transfer and vesting of Cosmeceuticals Undertaking of Encube into Confira, Confira shall issue its equity shares to the members of

Encube in the following manner â?

â??1 (One) Equity Share of INR 10 (Rupees Ten) each, fully paid-up of Confira shall be issued and allotted for every 100 (Hundred)

Equity Shares of INR 10 (Rupees Ten) each fully paid- up, held in Encube.â??

9. The Counsel for the Applicant Companies states that all the Equity shareholders of the Applicant Companies have given their consent in writing to

the proposed Scheme. The Consent affidavits of the First Applicant Company and Second Applicant Company are annexed as Exhibit â??L1 â?

L14â?? and Exhibit â??N1 â?" N2â?? respectively to the Company Scheme Application.

10. In view of the consent affidavits filed by all the Equity Shareholders of all the Applicant Companies, the meetings of the Equity Shareholders of the

respective Applicant Companies, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) are

hereby dispensed with.

11. The Counsel for the Applicant Companies submits that the Applicant Companies do not have any Secured Creditors, therefore, the question of

convening and holding of the meeting of Secured Creditors of the Applicant Companies does not arise.

12. The Counsel for the Applicant Companies submits that the First Applicant Company has 1567 (One Thousand Five Hundred Sixty Seven)

Unsecured Creditors as on 30th September, 2020 amounting to Rs. 85,52,17,905/- (Rupees Eighty Five Crore Fifty Two Lakh Seventeen Thousand

Nine Hundred Five only). The list of Unsecured Creditors of the First Applicant Company is annexed as Exhibit â??P2â?? to the Company Scheme

Application.

13. The Counsel for Applicant Companies submits that since the proposed Scheme is an arrangement between the First Applicant Company, Second

Applicant Company and their 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 as there is no compromise and/or arrangement with the Unsecured creditors as their rights are not affected and the

Unsecured creditors of the First Applicant Company would be paid off in the ordinary course of business by the First Applicant Company. Therefore,

no meeting of the Unsecured Creditors of the First Applicant Company is required to be convened. The First Applicant Company undertakes to

intimate about the proposed Scheme to those Unsecured Creditors who have outstanding balance of INR 1,00,000/- and above by Post / Courier /

Email/ Hand- delivery of the proposed Scheme with a direction that they may submit their representations, if any, within a period of thirty days from

the date of receipt of such intimation to the Tribunal with copy of such representations shall simultaneously be served upon the First Applicant

Company, failing which, it shall be presumed that they have no representations to make on the proposals.

14. The Counsel for the Applicant Companies submits that the Second Applicant Company has 11 (Eleven) Unsecured Creditors as on 30th

September, 2020 amounting to Rs. 1,97,68,692/- (Rupees One Crore Ninety Lakh Sixty Eight Thousand Six Hundred Ninety Two only). The list of

Unsecured Creditors of the Second Applicant Company is annexed as Exhibit â?? R2â?? to the Company Scheme Application.

15. The Counsel for the Second Applicant Company submits that since the proposed Scheme is an arrangement between the First Applicant

Company, Second Applicant Company and their 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 as there is no compromise and/or arrangement with the Unsecured creditors of the Second Applicant

Company as their rights are not affected and all the Unsecured creditors would be paid off in the ordinary course business by the Second Applicant

Company. Therefore, no meeting of the Unsecured Creditors of the Second Applicant Company is required to be convened. The Second Applicant

Company undertakes to intimate all its Unsecured Creditors by Post / Courier / Email/ Hand-delivery of the proposed Scheme with a direction that

they may submit their representations, if any, within a period of thirty days from the date of receipt of such intimation to the Tribunal with copy of such representations shall simultaneously be served upon the Second Applicant Company, failing which, it shall be presumed that they have no

representations to make on the proposals.

16. The First Applicant Company is directed to serve notice of the present Application complete with enclosures on â?" (1) Central Government

through the office of Regional Director (Western region), Mumbai; (2) Registrar of Companies, Maharashtra, Mumbai; (3) Income Tax Authority

within whose jurisdiction the First Applicant Company is assessed to tax, bearing PAN number AAACE1408R having IT ward jurisdiction Circle 1(3)

(1), Aayakar Bhawan, Mumbai ; and (4) GST Authority within whose jurisdiction the Demerged Company is assessed to GST, bearing GSTIN

27AAACE1408R1ZH having jurisdiction of Dvision LTU-1, Range Mumbai-LTU-509, Zone South West, Mumbai, Maharashtra 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.

17. The Second Applicant Company / Resulting Company to serve notice of the present Application complete with enclosures on â?" (1) Central

Government through the office of Regional Director (Western region), Mumbai; (2) Registrar of Companies, Maharashtra, Mumbai; (3) Income Tax

Authority within whose jurisdiction the Transferor Company are assessed to tax, bearing PAN number AAHCC9609D having IT ward jurisdiction

ward 9(2)(1), Aayakar Bhawan, Mumbai; and (4) GST Authority within whose jurisdiction the Transferee Company is assessed to GST, bearing

GSTIN 27AAHCC9609D1ZM having jurisdiction Division Andheri, Range East-704, Andheri, Zone North West, Mumbai, Maharashtra 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.

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

19. That the Applicant Companies to file Affidavits of Service respectively, with the Registry proving dispatch of notices to unsecured creditors and

regulatory authorities as stated above, and report to this Tribunal that the directions have been duly complied with.

20. Ordered accordingly.

