(2022) 02 NCLT CK 0030

In the National Company Law Tribunal

Case No : CP (CAA) No.28/Chd/Hry/2019 (2ND Motion)

H&S Software Development and Knowledge Management Centre Private Limited	APPELLANT
Vs	
Registrar of Companies	RESPONDENT

Date of Decision : 07-02-2022

Acts Referred:
Companies Act, 2013 — Section 133, 230, 231, 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 16

Citation : (2022) 02 NCLT CK 0030

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

Bench : Division Bench

Advocate : Ravi Sharma, Yogesh Putney

Final Decision : Disposed Of

Judgement

,,,,,,

Subrata Kumar Dash, Member (Technical)",,,,,,

1. This is a joint First Motion Application filed by Applicant Companies i.e. Shire Biotech India Private Limited(Transferor Company No. 1/,,,,,,

Applicant Company No. 1) and Baxalta Bioscience India Private Limited (Transferee Company/Applicant No. 2) under Section 230-232 of,,,,,,

Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamation)",,,,,,

Rules, 2016 in relation to the Scheme of Amalgamation between the Companies namely; Shire Biotech India Private Limited and Takeda",,,,,,

Pharmaceuticals India Private Limited with Baxalta Bioscience India Private Limited. The said Scheme is also attached as Annexure A-10,,,,,, of the Application.,,,,,,

2. The Applicant Companies have prayed for dispensing with the requirement for convening the meeting of the equity shareholders, Secured and",,,,,,

unsecured Creditors of all the Applicant Companies.,,,,,,

3. The Applicant Company No. 1/Transferor Company No.1 and Applicant Company No. 2/Transferee Company are presently engaged in the,,,,,,

business of packers, importers, exporters, purchasers, wholesalers, distributors, suppliers, sellers, dealers, merchants, traders, promoters,",,,,,,

commissioning agents, licensors, marketers (and undertaking any other activities related or incidental to any of the foregoing), in its name and for its",,,,,,

own account, or as an agent, representative or commission merchant, of all kinds of biotechnology products, pharmaceutical products, bio-chemicals,",,,,,,

biopharmaceuticals, medicines, drugs, formulations, veterinary and phytopharmaceutical products and preparations, nutritional supplements and other",,,,,,

chemicals, compounds, biological products and molecules, genetic engineering preparations, medical devices capable of being used for or in relation to",,,,,,

or in connection with medical, pharmaceutical, curative, diagnostic and/or palliative use.",,,,,,

4. It is submitted that the registered office of the Transferor Company No. 2 is situated in the state of Maharashtra whereas Transferor Company No.,,,,,,

1 and Transferee Company are at 6th Floor, Tower C, Building No. 8, DLF Cyber City, DLF Phase II, Gurgaon, Haryana which is situated in the",,,,,,

State of Haryana and, therefore, the territorial jurisdiction of Transferor Company No. 1 and Transferee Company lie with this Bench.",,,,,,

5. The rationale of the scheme is given below:-,,,,,,

(i) Improved Operational Efficiency and Optimum Advantages: Achieve improved operational efficiency and optimum advantages, and achieve",,,,,,

greater efficiency and maximize synergy in operations by combining the activities of the Transferor Companies with the Transferee Company,",,,,,,

including as described in sub-clause (ii) below.,,,,,,

(ii) Consolidation within One Entity for Effective Management: Effectively and efficiently integrate the operations and consolidate the businesses,,,,,,

within one entity and effectively manage the Transferor Companies and the Transferee Company as a single entity, which will provide several",,,,,, benefits, including streamlined corporate group structure which will facilitate increased efficiency across various functional areas by reducing the",,,,,,

number of entities, such as reduction in risk, consistent processes, reduction in regulatory (including tax) compliances, simplified accounting",,,,,,

management, audit processes and management reporting, consolidation of intercorporate and inter-party agreements and third-party contracts,",,,,,,

reduction in the number of required licenses / registrations (including IT licenses), realization of staffing synergies, focused management and business",,,,,,

approach, combined financial resources, and, ultimately rationalization of costs by simplification of structure leading to better administration and",,,,,,

significant cost savings and saving of management time; the restructuring will also lead to simplification of the group structure by eliminating legal,,,,,,

entity redundancies and multiple companies in similar or related businesses, thus enabling focused operational efforts, making business functions and",,,,,,

operations more efficient and align with the business plan of the Takeda group which would help in focusing on core competencies.,,,,,,

(iii) Capitalize Combined Resources for Future Growth: In a fast changing and highly competitive environment, this amalgamation shall strengthen the",,,,,,

businesses of the Transferor Companies and the Transferee Company by pooling and capitalizing on their combined resources, business expertise,",,,,,,

business processes and assets towards a common purpose and future growth potential, and hence, efficient and optimum utilization.",,,,,,

(iv) Best Advantage of All Stakeholders: The synergies that exist between the entities in terms of operations and resources can be maximized and put,,,,,,

to the best advantage of all stakeholders; the amalgamation would also provide the Transferee Company a strong and focused base to undertake,,,,,,

business more advantageously and achieve other operational objectives.,,,,,,

6. It is stated that the Board of Directors of the Transferor Company No. 1 and Transferee Company in their respective meetings held on 20.10.2021,,,,,,

have considered and approved the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The Board Resolutions of the,,,,,,

Transferor Company No.1 and Transferee Company are attached as Annexure A-11 of the application. The Transferor Company No. 1 and,,,,,,

Transferee Company, in their respective meetings have authorized directors of the companies, to do all acts and deeds and things in relation to the",,,,,, Scheme. The affidavit of Mr. Gopal Agarwal, on behalf of the Transferor Company No. 1 and Transferee Company, has been filed in support of the",,,,,,

contents of the application for seeking appropriate orders/directions.,,,,,,

7. The appointed date of the Scheme is 01.10.2022 as mentioned in the Clause 1.1.3 of Scheme of Amalgamation as attached as Annexure A-10.,,,,,,

8. It is stated that the Transferor Company No. 1 and Transferee Company have filed the audited financial statements as on 31.03.2021 and,,,,,,

provisional financial statements as on 30.06.2021 as Annexure- A-2 and Annexure A-4, respectively of the application.",,,,,,

9. It is submitted that no proceedings under Sections 235 to 251 of the Companies Act, 1956 and/or under Section 206 to 229 of the Companies Act,",,,,,,

2013 are pending or instituted against any of the Companies and no proceedings or investigation is pending against the Companies under the,,,,,,

Companies Act, 1956/2013.",,,,,,

10. It is further submitted that in pursuance of the proviso to Section 230-232 of the Act, the Applicant Companies have filed the certificate dated",,,,,,

28.10.2021 issued by Statutory Auditors of Applicant Companies certifying that the Scheme is in compliance with the Accounting Standards under,,,,,,

Section 133 of the Act and the same are attached as Annexure A-26 (colly) of the application.,,,,,,

11. It is averred by the counsel for applicant companies that as per Valuation Report dated 18.10.2021 submitted by CA Amit Kumar Singh,",,,,,,

Registered Valuer registered with the Insolvency & Bankruptcy Board of India vide Registration No. IBBI/RV/14/2019/12357 (Annexure A-25 of the,,,,,,

application) the following Share Exchange Ratio has been proposed:-,,,,,,

â??46, 262 equity shares of Baxalta India of Rs. 10/- each fully paid-up for every 99 equity shares of Shire India of Rs. 10/- each fully paid-up 17 equity shares of",,,,,,

Baxalta India of Rs. 10/- each fully paid-up for every 8 equity shares of Takeda India of Rs. 10/- each fully paid-up.â??,,,,,,

12. It is submitted by the learned counsel that the Scheme (Annexure A10) also takes care of the interests of the staff/workers and employees of the,,,,,,

Transferor Companies. By virtue of Clause 7.1, it is stated that Upon the Scheme becoming effective and with effect from the Appointed Date, any",,,,,, and / or all employees (including all employees that may be on leave, notice period or in probation period) of the Transferor Companies who are in",,,,,,

Name of the

Applicant

Companies","Shareholders along

with their consent on

affidavit",,"Creditors along with their consents on

affidavit",,,

,"Equity

Shareholder","Consent

submitted

on

Affidavit","Secured

Creditors","Consent

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Creditors","Consent

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Biotech India

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Creditors

(100% in

value)

Bioscience Sharehold Unsecur Unsecured,,,,,,

India ers ed Creditors (,,,,,,

Private Creditor 93.43% in,,,,,,

Limited s value),,,,,,

18. It is submitted that all Equity Shareholders of Applicant Company No. 1/ Transferor Company No. 1 have given their consent by way of affidavit,,,,,,

to the proposed scheme and the same are attached as Annexure A-13 (colly) of the application. The list of Secured and Unsecured Creditors of,,,,,,

Transferor Company No.1 duly certified by the Statutory Auditors are attached as Annexure A-14 and A-15, respectively of the application. As per",,,,,,

the certificate dated 16.10.2021 issued by Statutory Auditors, there are Nil secured creditor and (two) unsecured Creditors of the Transferor",,,,,,

Company No. 1 as on 30.06.2021. The consents of both the unsecured creditors of the Transferor Company No. 1 by way of affidavit have been,,,,,,

received and the same are attached as Annexure A-16 of the application.,,,,,,

19. It is further submitted that all the Equity Shareholders of the Applicant Company no. 2/Transferee Company have given their consent by way of,,,,,,

affidavit to the proposed scheme and the same are attached as Annexure-21 of the application. The list of Secured and Unsecured Creditors of,,,,,,

Transferee Company duly certified by the Statutory Auditors attached as Annexure A-22 and A-23, respectively of the application. As per the",,,,,,

certificate dated 13.10.2021 issued by Statutory Auditors, there are Nil secured creditors and vide certificate dated 18.10.2021 issued by Statutory",,,,,,

Auditors, there are 58 (Fifty Eight) unsecured Creditors of the Transferee Company as on 30.06.2021. The consents of 8 unsecured creditors holding",,,,,,

93.43% in value out of total unsecured creditors of the Transferee Company by way of affidavit have been received and the same are attached as,,,,,,

Annexure A-24 of the application.,,,,,,

20. This Bench has decided the issue of dispensation of meeting of shareholders in the cases of: CA (CAA) No.2/Chd/Hry/2021 Goibibo Group,,,,,,

Private Limited & Ors. Dated 23.12.2021; CA No.189/2021 & CA (CAA) No.41/ Chd/Pb/2021 G.N.A Transmissions Pvt. Ltd. & Ors. Dated,,,,,,

23.12.2021; and CA (CAA) No.35/Chd/Hry/2021 NAM Estates Private Limited dated 23.12.2021. In the aforementioned orders, after discussing",,,,,,

the differing views of coordinate Benches, this Bench has followed the decisions of the Honâ??ble NCLAT in DLF Phase-IV Commercial",,,,,,

Developers Limited and others with DLF Limited, (Company Appeal (AT) No. 180 of 2019) dated 19.08.2019 and Alovera Tradelink Pvt. Limited",,,,,,

and others Vs. Ostwal Physchem (India) Limited in Company Appeal (AT) No. 178/2019 decided on 06.08.2019 on this issue and has held that,,,,,,

â??depending on the facts and circumstances of each case, the NCLT has the powers to dispense with the meetings of shareholders and",,,,,,

others by using judicial discretionâ??.,,,,,,

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

I. In relation to the Applicant Company No. 1/Transferor Company No. 1:,,,,,,

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 by way of affidavit have been received.,,,,,,

b) Since, there are no Secured Creditors in the Applicant Company No. 1/ Transferor Company No. 1. Therefore, there is no scope for any meeting.",,,,,,

c) The meeting of the Unsecured Creditors of the Applicant Company No. 1/ Transferor Company No. 1 is dispensed with as it has two (2),,,,,,

Unsecured Creditors and the both the unsecured creditors have given their consent by way of affidavit.,,,,,,

II. In relation to the Applicant Company No. 2/Transferee 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 by way of affidavit have been received.,,,,,,

b) Since, there are no Secured Creditors in the Applicant Company No. 2/ Transferee Company. Therefore, there is no scope for any meeting.",,,,,,

c) The meeting of the Unsecured Creditors of the Applicant Company No. 2/ Transferee Company is dispensed with as it has 58 (Fifty Eight),,,,,,

Unsecured Creditors and 8 unsecured creditors holding 93.43% in value have given their consent by way of affidavit.,,,,,,

22. 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 Central Government, Registrar of Companies, Official",,,,,,

Liquidator, Central Licensing Approving Authority, Drug Controller General of India and Income Tax Authorities by disclosing the PAN numbers of",,,,,,

all the Applicant Companies in the title of the Second Motion Petition. The Applicant Companies shall file the latest Financial Statements up to,,,,,,

31.12.2021 or upto a later date while filing Second Motion Petition.,,,,,,

