

BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL, 1,
HYDERABAD BENCH, AT: HYDERABAD

C.P (CAA) No. 7/230/232/HDB/2017

FREE OF COST COPY

Date of order: 15.05.17

SMS PHARMACEUTICALS LTD.

Reg. Off: Plot No.19-III, Road No.71

Opp. Bharatiya Vidya Bhavan School

Jubilee Hills, Hyderabad – 500096

State of Telangana represented by its

Chairman & Managing Director,

Mr. Ramesh Babu Potluri

....Petitioner /Transferor/Demerged Company

AND

SMS LIFESCIENCES INDIA LTD.

Reg. Off: Plot No.265Q

Road No.10, Jubilee Hills

Hyderabad – 500033, State of Telangana

represented by its Director

Mr.T.V.V.S.N. Murthy

....Petitioner/Transferee/Resulting Company

Counsels for the Petitioners: Dr. S.V. Rama Krishna, Mr. S.V. Vanshi Krishna
& Ms. Deepa Sree

CORAM:

HON'BLE Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDICIAL)

HON'BLE Mr. RAVIKUMAR DURAISAMY, MEMBER (TECHNICAL)



COMMON ORDER

(As per Rajeswara Rao Vittanala, Member (Judicial))

1. The Company Petition bearing CP(CAA) No. 7/230/232/HDB/2017 was filed by the Petitioners Companies under Sections 230 and 232 and other applicable provisions of the Companies Act 2013, by seeking the Tribunal to sanction scheme of Arrangement in question as to be binding on all the Equity Shareholders/Members and Creditors (Secured & Unsecured) of both the Transferor/Demerged Company and Transferee/Resulting Companies etc.

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2. Heard Dr. S. Rama Krishna, the learned counsel for the Petitioners and 2. perused all pleadings along with material papers filed in their support.
3. Brief facts of case, which are relevant to the issue in question, are submitted:
 - a) Initially, both the Transferor/Demerged Company and Transferee /Resulting Company filed separate Company Application Nos. 1504 of 2016 and 1505 of 2016 respectively before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh for the sanction of the Scheme of Arrangement, under the provisions of Sections 391-394 of the Companies Act, 1956, by way of Demerger of the 3 out of 5 Units of the Demerged Company to the Resulting Company as detailed in the Scheme
 - b) The said Company Application No. 1505 of 16 was disposed of by Hon'ble High Court. Vide its Orders dated 31st October, 2016 by dispensed with the conducting of meetings of the shareholders and creditors of Transferee/Resulting Company which is an unlisted company. In the case of C.A.No.1504 of 2016 pertaining to the Transferor/Demerged Company, the Hon'ble High Court ordered meetings of shareholders and creditors to be convened and conducted under the Court Appointed Chairpersons, Smt. H. Sita Devi, Advocate for shareholders meeting and Ms. Ammaji Nettem, Advocate for creditors meetings both held on 17.12.2016 at 11.00 a.m. and 3 p.m. respectively. The Chairpersons submitted their Reports/Affidavits to the Hon'ble High Court and on 19.12.2016, and thus closed said C.A.No.1504 of 2016. Hence, the present petition is filed for sanction of the scheme in question by the Tribunal.
 - c) With the passing of Gazette Notification GSR 1134(E) dated 14th December, 2016 by the Ministry of Corporate Affairs with effective date of 15th December, 2016 and in terms of Rule 15 of the "Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, & Rule 23A of NCLT Rules R/w Rule 3 of Companies (Transfer of Pending Proceedings) Rules, 2016, jurisdiction is conferred on this Tribunal in respect of subject cases and thus pending cases also transferred from the Hon'ble High Court to the NCLT.
 - d) Joint Company Petition by Transferor/Demerged Company & Transferee/Resulting Company before NCLT:



The present Company Petition is filed as a Joint Company Petition 3. under Rule 23A of NCLT Rules, 2016, by both the Transferor / Demerged Company and the Transferee/ Demerged Company before this Tribunal as the cause of action and nature of relief prayed for is having common interest in the matter of demerger under the present Scheme of Amalgamation.

e) The object of Scheme of Arrangement (by way of Demerger) is as follows::

(i) For transfer of the Semi Regulated Units namely I, IV and V and other assets (defined as Demerged undertaking) of the Transferor/Demerged Company as a going concern to the Transferee/Resulting Company, a wholly-owned subsidiary of the Transferor/Demerged Company and consequential restructure of its share capital in form of Utilisation of General Reserve Account of the Transferor/Demerged Company.

(ii) The Transferor/Demerged Company has presently operating five units out of which three units are Semi-Regulated Units namely Unit I (i.e. Khazipally Unit), which is located at Sy. No. 180/2, IDA Kazipally Village, JinnaramMandal, Medak Dist., Hyderabad, Telangana State; Unit IV (i.e. Jeedimetla Unit), which is located at Plot No. 66/B-2, Phase-1, IDA Jeedimetla, Hyderabad, Telangana State and Unit V (i.e. Bollaram Unit) which is located at Sy. No. 296/7/4, S.V. Cooperative Industrial Estate I.D.A., Bollaram, Medak District, Hyderabad, Telangana State and the rest of the Units are Regulated Units. With a view to reduce the impact of semi-regulated units on regulated units, achieving operational efficiencies, site synergies and streamlining its current structure, the Transferor/Demerged Company has decided to demerge its Unit Nos. I, IV and V and transfer to the Transferee/Resulting Company along with other assets and Investments with primary intention to bifurcate its units which are semi regulated under FDA (Food and Drug Administration) norms and transfer them to a separate Company.

(iii) The circumstances, reasons and/or grounds that have necessitated and/or justified the Scheme and the advantages thereof are, inter alia, as follows:



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- (a) The nature of risk and return involved in the business of Semi-Regulated units is distinct from the Regulated Units of the Transferor/Demerged Company. Hence, transfer of all the Semi-Regulated units under one umbrella would enable these Units to run independently and in a more cohesive manner so as to run more profitably and attract potential collaborators for future growth and development of business by the Transferee/Resulting Company, without impacting the Transferor/Demerged Company.
- (b) The transfer and vesting of the de-merged undertaking of the Transferor/Demerged Company to the Transferee/Resulting Company through this Scheme is with a view to unlock the economic value of both the Companies.
- (c) The said transfer of Undertaking would provide greater flexibility and visibility on the operational and financial performance of the semi-regulated units and would provide higher degree of independence as well as accountability.
- (d) The Board of Directors of the Transferor/Demerged Company is of the opinion that the Scheme of Arrangement would benefit the shareholders, creditors, employees and other stakeholders of both the Companies.



4. It is stated that SMS Pharmaceuticals Limited (“Transferor /Demerged Company”) is a public limited company incorporated under the provisions of the Companies Act, 1956 on 14th day of December, 1987 originally in the name of “S.M.S. Pharmaceuticals Private Limited” and subsequently converted into a Public Limited Company in the name of “S.M.S. Pharmaceuticals Limited” on 2nd November, 1994. The name of the Company has been changed further from S.M.S. Pharmaceuticals Limited to SMS Pharmaceuticals Limited with effect from 12th April, 2004. The Registered Office of the Company is situated at Plot No.19-III, Road No.71, Opp. Bharatiya Vidya Bhavan Public School, Jubilee Hills, Hyderabad 500 096. It is engaged in the business of manufacturing and sale of active pharmaceutical ingredients and intermediates. The Equity Shares of Transferor Company are listed on BSE Limited (‘BSE’) having Security Code: “532815” and National Stock Exchange of India Limited (‘NSE’) having Symbol “SMSPHARMA”. The Corporate Identity Number of the Company is L24239AP1987PLC008066.

The present Authorized Share Capital of the company is Rs.12,00,00,000/- 5. (Rupees twelve crores only) divided into 12,00,00,000 (Twelve crores only) Equity Shares of Rs.1/- each. The Issued, subscribed & Paid up capital of the company is Rs.8, 46, 52,030/- (Rupees eight crores forty six lakhs fifty two thousand and thirty only) divided into 8,46,52,030 (Eight crores forty six lakhs fifty two thousand and thirty only) Equity Shares of Rs.1/- each.

5. It is stated SMS Life sciences India Limited (“Transferee/Demerged Company”) is a public limited company incorporated under the provisions of the Companies Act, 1956, on 31st day of May, 2006, originally as Private Limited Company in the name of “Potluri Real Estate Private Limited” and subsequently changed its name to “Potluri Packaging Industries Private Limited” on 6th November, 2013. Thereafter the Company had changed its name as “SMS Lifesciences India Private Limited” on 4th August, 2014 and subsequently converted as Public Limited Company with effect from 22nd June, 2016. The registered office of the company is situated at Plot No. 265Q, Road No. 10, Jubilee Hills, Hyderabad and its Corporate Identity No. is U74930TG2006PLC050223. The Transferee/Resulting Company is a wholly owned Subsidiary of the Transferor Company and is presently engaged in the business of manufacturing, buying, selling, offering consultancy, importing and exporting, acting as commission agents and generally dealing with of all types of Organic & Inorganic Chemicals, Pharmaceuticals, Active Pharmaceutical Ingredients (API) and Intermediates.



The present Authorised Share Capital of the company is Rs.25,00,000/- (Rupees twenty five lakhs) divided into 2,50,000 (Two lakhs fifty thousand only) Equity Shares of Rs.10/- each. The Issued, Subscribed & Paid up capital of the company is Rs.1,00,000/- (Rupees one lakh only) divided into 10,000 (Ten thousand only) Equity Shares of Rs.10/- each.

6. The Main Objects, in brief, as set forth in the company’s Memorandum of Association in respect of Transferor/Demerged Company are - to manufacture buy, sell, offer consultancy import & export, act as commission agents and generally deal with all types of Organic & Inorganic Chemicals, Pharmaceuticals, Drugs and Intermediates; to undertake research work in developing marketing newer indigenous technologies for various medicines and also newer medicines for various therapeutics uses. To fabricate,

manufacture, buy, sell, import, export and generally deal in all types of chemicals, surgical, medical, pharmaceutical and scientific equipment, appliances and accessories etc. 6.

And that of Transferee/Resulting Company are to - To manufacture buy, sell, offer consultancy import & export, act as commission agents and generally deal with all types of Organic & Inorganic Chemicals, Pharmaceuticals, Drugs and Intermediates; to undertake research work in developing marketing newer indigenous technologies for various medicines and also newer medicines for various therapeutics uses; to fabricate, manufacture, buy, sell, import, export and generally deal in all types of chemicals, surgical, medical, pharmaceutical and scientific equipment, appliances and accessories etc

7. The Scheme of Arrangement in question contemplate the following benefits/advantages::

- i) The nature of risk and return involved in the business of Semi-Regulated units is distinct from the Regulated Units of the Transferor Company. Hence, transfer of all the Semi-Regulated units under one umbrella would enable these Units to run independently and in a more cohesive manner so as to run more profitably and attract potential collaborators for future growth and development of business by the Transferee/Resulting Company, without impacting the Transferor Company.
- ii) The transfer and vesting of the de-merged undertaking of the Transferor Company to the Transferee Company through this Scheme is with a view to unlock the economic value of both the Companies.
- iii) The said transfer of Undertaking would provide greater flexibility and visibility on the operational and financial performance of the semi-regulated units and would provide higher degree of independence as well as accountability.
- iv) The Board of Directors of the Transferor Company is of the opinion that the Scheme of Arrangement would benefit the shareholders, creditors, employees and other stakeholders of both the Companies.

8. The following are Terms of Scheme of Arrangement :



- 7.
- (i) The Scheme provides for transfer of Transferor/Demerged undertaking to the Transferee/Resulting Company, according to the applicable provisions of the Act and/or any other applicable laws.
 - (ii) The Transferor/Demerged Company will continue its interests in the Remaining Undertaking as is presently being carried out but with greater focus on growth opportunities.
 - (iii) The Transferee/Resulting Company shall issue and allot equity shares to all the shareholders of the Transferor/Demerged Company as consideration for the transfer of the Transferor/Demerged Undertaking, in proportion of their shareholding in the Transferor/Demerged Company as per the share entitlement ratio. Simultaneously with issuance of equity shares, in the books of the Transferee/Resulting Company, all the equity shares held by the Transferor/Demerged Company shall, without further deed, act or approvals, stand cancelled, extinguished and annulled on and from the Effective Date.
 - (iv) The Equity Shares issued by the Transferee/Resulting Company to the shareholders of the Transferor/Demerged Company shall be listed on BSE and NSE subject to Listing Regulations.
 - (v) The Demerger of the Demerged Undertaking in accordance with this Scheme shall take effect from the Appointed Date in accordance of the provisions of Sections 391-394 of the Act read with Sections 100-103 of the Companies Act, 1956 and Sections 230 and 232 of the Companies Act, 2013 as may be applicable and shall be in accordance with Section 2 (19AA) of the Income Tax Act, 1961, such that:
 - a) all the assets relatable to the Demerged Undertaking being transferred by the Transferor/Demerged Company, as on the Appointed Date shall become the properties of the Transferee/Resulting Company by virtue of this Scheme;
 - b) all the liabilities relatable to the Demerged Undertaking, as on the Appointed Date shall become the liabilities of the Transferee/Resulting Company by virtue of this Scheme;
 - c) all the assets and the liabilities relatable to the Demerged Undertaking being transferred by the Transferor/Demerged Company shall be transferred to the Transferee/Resulting Company, on a going concern basis, at the value appearing in the books of account of the Transferor/Demerged Company immediately before the Demerger;



- d) the Transferee/Resulting Company shall issue, in consideration of the Demerger Undertaking, its Equity Shares to the shareholders of the Transferor/Demerged Company as on the Record Date as per the share entitlement ratio; and
- e) all the shareholders of the Transferor/Demerged Company as on the Record Date shall become the shareholders of the Transferee/Resulting Company by virtue of the Demerger.

9. It is further declared that the Scheme in question in strictly in compliance with the applicable SEBI Guidelines, Regulations including Listing Regulations, SCRR and the Circular No. CIR/CFD/CMD/16/2015 dated November 30, 2015 any subsequent amendments thereof ("SEBI Circular").

10. It is further stated that notice of meetings served on shareholders and creditors and also published in newspapers as per direction of Hon'ble High Court, notices of court convened shareholders meetings and creditors meetings were sent individually to all the shareholders and creditors (both secured and unsecured) of the Transferor/Demerged Company and also published in newspapers as directed by the Hon'ble Court in Andhra Bhoomi (Telugu daily) and Business Standard (English daily) circulated in Hyderabad on the 26.11.2016 and necessary reports were submitted to the Hon'ble High Court and taken on record by the Hon'ble High Court.



11. It is further stated that meeting of the Equity Shareholders of the company was attended by 93 Members in person. Out of members present, 4 member's votes are invalid and 9 members did not participate in the voting. Another 9 members cast their vote by e-voting and as well as ballot provided at the meeting which were considered under e-voting. Hence, the total valid votes polled at the meeting were only 71 members representing 65,69,621 equity shares of the company. 101 Members participated through remote e-voting representing 6,08,28,155 equity shares of the company.

12. The Scheme of Arrangement was read and explained by the Chairperson of the meeting and it was resolved with requisite majority that the total 172 members have participated in the voting (both remote e-voting and voting at the venue) representing 6, 73, 97,776 equity shares of the company, out which 168 members representing 6, 73,93,966 equity shares have cast their

vote in FAVOUR and 7 members representing 3,810 equity shares 9. AGAINST the Scheme. In the result, 99.99% is in FAVOUR and 0.01% is AGAINST the resolution for approval of the Scheme. The meeting of the Creditors of the company was attended by 71 Creditors in person representing an amount of Rs.273,82,10,347/-.The Scheme of Arrangement was read and explained by the Chairperson of the meeting and it was resolved unanimously by the Creditors in favour of the Scheme.

13. So far as the points raised by the Bench regarding issue of three-fourth value of members voting at the Court convened meetings is concerned, Dr. S.V.Rama Krishna, learned counsel for the Respondent relied upon the following cases in his support of his contention:

- (i) *In Re: Hindusthan General Electric Corporation Ltd. AIR 1959 Cal 679* (refer to para 5 of judgment)
- (ii) *Kirloskar Electric Co. Ltd. Re, (2003) 116 Com Cases 413: (2003) 4 Comp LJ 13.* (refer para 35 of judgment)

14. Dr. S.V.Rama Krishna further clarified with regard to compliance of Rule 19(2)(b) of the Securities Contracts (Regulation) Rules, 1957. Rule 19 (1) deals with requirements of submission of certain documents along with Application for Listing purpose. Sub section (2) (a) of the said Rule 19 deals with further compliances to the satisfaction of the "Stock Exchange" where the shares are going to be listed. Sub section 2(b) of the said Rule 19 mandates that "*at least 10 percent of each class or kind of securities issued by a company was offered to the public for subscription through advertisement in newspapers for a period not less than two days and that applications received in pursuance of such offer were allotted subject to the following conditions:*"

In the present, the Transferor/Demerged Company, SMS Pharmaceuticals Ltd. is already a Listed Company in two Stock Exchanges i.e. BSE and NSE and its shares are actively traded and are scrupulously complying with all the Rules governing it. As regards the Transferee/Demerged Company is concerned, it would comply with all such necessary requirements as per the governing Rules of SEBI/ Stock Exchanges/ Companies Act, 2013 etc. after



the present Scheme of Arrangement (Demerger) is approved by this Hon'ble Tribunal. /D.

15. The Learned counsel further clarified that SEBI Circular dated 30.11.2015 mandates all Listed Entities who have listed their equity and convertibles. Annexure I, Part II(a) outlines the Requirements after the Scheme is Sanctioned by the Hon'ble High Court (now by Hon'ble NCLT). Thus, it is a pre-requisite to get the Scheme of Arrangement sanctioned by Tribunal before complying with or seeking exemption u/s Rule 19(2)(b) of SCRR, 1957 supra. One of the pre-requisite for submission of documents to the Stock Exchanges is "copy of the High Court approved Scheme" (ref. Part II A(2)(a) and (e) of the SEBI Circular dated 30.11.2015 supra.
16. The Learned Counsel further clarified with regard to mentioning an "Appointed Date" in the Company Petition and submit that Petitioners scrupulously followed the prescribed Form No. CAA.5 (pursuant to Section 230 and Rule 15 (1) of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 which is a very welcome Format in the said Rules, 2016. Accordingly, the prayer is incorporated in the petition in Form No.CAA.5. "Appointed Date" is defined in part I of the Scheme of Arrangement as "opening business hours of 1st April, 2016" (ref. page 316 of the Joint Company Petition).
He therefore, submitted that the appointed date of 1st April, 2016 as part and parcel of the Scheme of Arrangement and on its approval by this Hon'ble Tribunal, the same also stands approved for the purposes of the Scheme.
17. The learned counsel submitted that as per the directions of Tribunal passed on 6.2.17, the petitioner got published in Newspaper advertisement of the "Notice of Petition" on 17th February, 2017 in English Daily (Business Standard – Hyderabad) and Telugu Daily (Andhra Bhoomi – Hyderabad) and a memo dated 1st March, 2017 is also filed by enclosing notifications. The learned counsel further submit that in pursuance to said notification, no objection(s) have been received from anybody about the scheme in question.
18. The learned counsel further submits that notice was also issued to the Registrar of Companies and Income Tax Department as per rules.



19. The Regional Director, SER, Hyderabad has submitted a report dated 27th February, 2017 by inter alia stating that during the meeting convened, all the secured and unsecured creditors have unanimously voted in favour of the scheme of arrangement for the said companies. It is also stated that the petitioner companies are regular in filing statutory returns and no complaints, no investigations and no inspections are pending against them. Therefore, he submit that Tribunal can consider the case as per merits and pass appropriate orders. //
20. The Dy. Commissioner of Income Tax, Central Circle-1(3), Hyderabad, by its letter bearing No.F.No.CC-1(3)/2016-17, dated 08.03.2017, has also expressed no objection for the proposed demerger of the company by way of transfer of semi-regulatory units of M/s SMS Pharmaceuticals Ltd to M/s SMS Life science India Ltd, and the scheme can be considered by the Tribunal.
21. We have carefully gone through all the pleadings, and also relevant provisions of Companies Act, 1956/2013. We are convinced that the petitioner Companies have complied with all statutory requirements as required under Section 230, 232 and other relevant provisions of Companies Act, 2013 as detailed supra. The Board of Directors of the Companies at its adjourned meeting held on 13th August, 2016 have duly considered the pros and cons of Scheme of Arrangement in question, after perusing various reports on the issue, and found it is advantageous and beneficial to the Company, its Members the Secured Creditors and other stake holders of the Company and thus it was approved. We are satisfied that the Scheme of Arrangement in question is for bonafide reason meant for favour of all stake holders of the Companies in particular, and public in general. It is to be mentioned herein that the Scheme in question is not opposed by any authorities. And the Companies in question are admittedly following all rules/regulations of Companies Acts. Hence, we are of considered view that the Company petition deserved to be allowed as prayed for.
22. In the result, the Company Petition bearing No.7/230/232/HDB/ 2017 is allowed by sanctioning the Scheme of Arrangement and fix appointment date as 01.04.2016. Which is filed as Annexure F page 311-347, and also ordered



that the same is binding on all the Equity Shareholders/Members and Creditors (Secured & Unsecured) of both the Transferor / Demerged Company and Transferee /Resulting Companies. The petitioners are directed to take appropriate steps to submit the said scheme to Registrar of Companies within 30 days from the date of receipt of Copy of this order.

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23. The Petitioners are directed to issue newspaper publication with respect to approval of scheme of arrangement, in the same newspapers in which previous publications were issued. The same is to ensure transparency/dissemination of complete information to all stake holders about the approval granted by the Tribunal for the Scheme as proposed. The petitioners are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Arrangement under the Provisions of the Act.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

RAJESWARA RAO VITTANALA
Member (Judicial)



V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68

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CASE NUMBER C.P(CEAA) NO. 7/230/232/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT 15-5-2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON 15-5-2017

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