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THE NATIONAL COMPANY LAW TRIBUNAL

Court-VI

AT NEW DELHI

COMPANY PETITION NO. (CAA)-51(ND)/2020

CONNECTED WITH

COMPANY APPLICATION NO. CA(CAA) – 41/(ND)/2020

Section 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the rules framed under the National Company Law Tribunal Rules, 2016.

In the matter of:

SCHEME OF AMALGAMATION

BETWEEN

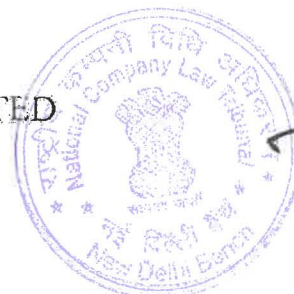
ARVIV LIFESCIENCES PRIVATE LIMITED

A company registered under the
provisions of Companies Act, 1956
and having its registered office at:
M-134, 2nd FLOOR,
CONNAUGHT PLACE
NEW DELHI-110001.

Transferor Company No....1

AND

BARFANI BABA PHARMA PRIVATE LIMITED



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[Handwritten Signature]
12/2021

Company registered under the
provisions of Companies Act, 1956
and having its registered office at:

M-134, 2nd FLOOR,
CONNAUGHT PLACE
NEW DELHI-110001.

Transferor Company No....2

AND

MANVIN HEALTH PRIVATE LIMITED
M-134, 2nd FLOOR,
CONNAUGHT PLACE
NEW DELHI-110001.

Transferor Company No....3

AND

REVIVAA BIOTECH PRIVATE LIMITED
M-134, 2nd FLOOR,
CONNAUGHT PLACE
NEW DELHI-110001

Transferor Company No....4

AND

RAJASTHAN ANTIBIOTICS LIMITED
M-134, 2nd FLOOR,
CONNAUGHT PLACE
NEW DELHI-110001

Transferee Company

Judgment delivered on: 04.03.2021

Coram:

P.S.N. PRASAD

Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ

Hon'ble Member (Technical)



For the Petitioner: Ms. Varsha Banerjee, Advocate.

For the RD: Ms. Tania Sharma, Advocate.

ORDER

P.S.N PRASAD, HON'BLE MEMBER (Judicial)

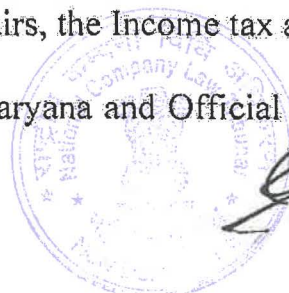
- 1) The "Transferor Company No.1", Arviv Lifesciences Private Limited is a company incorporated on 08.09.2009 under the Companies Act, 1956. The registered office is at M-134, 2nd Floor, Connaught Place New Delhi-110001.
- 2) The "Transferor Company No.2", Barfani Baba Pharma Private Limited is a company incorporated on 29.07.2009 under the Companies Act, 1956. The registered office is at M-134, 2nd Floor, Connaught Place New Delhi-110001.
- 3) The "Transferor Company No.3", Manvin Health Private Limited is a company incorporated on 04.05.2009 under the Companies Act, 1956. The registered office is at M-134, 2nd Floor, Connaught Place New Delhi-110001.
- 4) The "Transferor Company No.4" Revivaa Biotech Private Limited is a company incorporated on 16.4.2010 under the Companies Act, 1956. The registered office is at M-134, 2nd Floor, Connaught Place New Delhi-110001.
- 5) The "Transferee Company", Rajasthan Antibiotics Limited is a company incorporated on 17.03.1986 under the Companies Act, 1956. The registered office is at M-134, 2nd Floor, Connaught Place New Delhi-110001.
- 6) Record of this Tribunal in relation to the First motion joint application filed by the petitioner companies involved in the Scheme of Amalgamation in



(Signature)

company Application no. CA(CAA) no. 41/ND/2020 discloses that based on the representations made in the joint application and also taking into consideration the provisions of Section 230-232 of the Companies Act, 2013, the requirements of meetings of equity shareholders, secured creditor(s) and unsecured creditor(s) in relation to Petitioner Companies got dispensed with vide order dated 22.05.2020. On 02.09.2020 the Petitioner Companies were directed to carry out publication in the newspapers 'Business Standard'(English, Delhi edition) and 'Business Standard' (Hindi, Delhi edition). In addition to the public notice, notices were directed to be served on to the Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, the Income tax authorities, Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator and to other relevant Sectoral Regulators.

- 7) It is seen from the records that the Petitioners have filed an affidavit on affirming compliance of the order passed by the Tribunal dated 02.09.2020. A perusal of the affidavit discloses that the petitioners have effected the newspaper publication as directed in newspapers 'Business Standard'(English, Delhi edition) and 'Business Standard' (Hindi, Delhi edition) on 11.09.2020 in relation to the date of hearing of the petition. Further, the copies of petition have been duly served to the Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, the Income tax authorities, Registrar of Companies, NCT of Delhi and Haryana and Official Liquidator



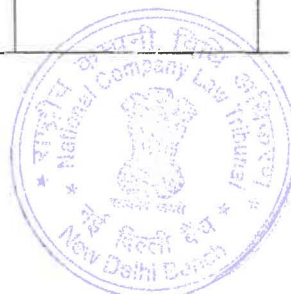
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(Delhi) compliance of the order and in proof of service has also been placed on record.

8) The Regional Director (Northern Region) has filed its representation pointing out the following issues/objections:

- (i) All the Transferor Companies namely Aviv Lifesciences Pvt. Ltd., Barfani Baba Pharma Pvt. Ltd. and Manvin Health Pvt. Ltd. have stated in the scheme that there are no secured creditors in any of the Transferor Companies. However, as per MCA portal, active secured charges exist against all of the Transferor Companies. These charges are not shown by the Transferor Companies in their balance sheets as on 31.03.2019.
- (ii) The brief summary of financial assets and income from the financial assets of the Petitioner Companies is as follows:

As on 30.09.2019	Arviv Lifesciences	Barfani Baba Pharma	Manvin Health
Financial Assets	5,20,63,380/-	3,03,07,397/-	2,43,27,184/-
Total Assets	5,21,52,739/-	3,03,80,039/-	2,43,67,585/-
Income from Financial assets	NIL	NIL	NIL
Total Income	NIL	NIL	NIL



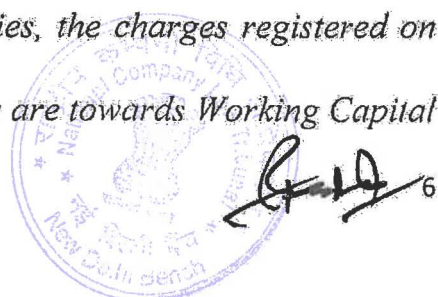
As apparent from the table shown above, the financial assets of all these three companies exceed 50% of the total assets of these companies and the income from financial assets also exceeds 50% of the total income of the respective company. Hence, these three companies fulfill the criteria for being called as NBFCs and hence, the Reserve Bank of India ('RBI') be directed to look into the scheme as these companies are not registered with the RBI.

(iii) As per clause 10 of the scheme, it is proposed that the name of the Transferee Company, i.e. "Rajasthan Antibiotics Limited" shall be changed to "RAL Lifesciences Limited". The name change is a separate procedure laid down under Section 13 of the Companies Act, 2013 ('Companies Act') and hence the name change/approval is subject to compliance of the said provision.

(iv) As per Clause 9 of the Scheme, the Transferee Company may kindly be directed to comply with the provision of Section 232(3)(i) of the Companies Act in regard to fee payable on its revised authorized share capital.

9) In response to the aforesaid observations of the Regional Director the petitioners have filed an affidavit and submitted as follows:

"4. It is reiterated that there are no creditors, either secured or unsecured, in the Transferor Companies, the charges registered on the assets of the Transferor Companies are towards Working Capital



facilities of Rs. 75.50 Crores availed by the Transferee Company from consortium of banks comprising of State bank of India ('SBI') and Allahabad Bank, wherein SBI is the lead Bank. Similarly, the Transferee Company has also availed Credit Limits of Rs. 4.00 Crores from SBI under sole banking arrangement. The said facilities have been revised/renewed from time to time, based on which the instruments/agreements have been revised/renewed between the parties from time to time.

5. The Transferor Companies, who are otherwise related parties of the Transferee Company, have stood as Corporate Guarantors to the said facilities. In this regard, the Transferor Companies executed Deed of Guarantees from time to time, similarly the latest Deed of Guarantee was executed by the Transferor Companies on 03.02.2020 (latest guarantee agreement), thereby guaranteeing payment of the principal sum of Rs. 75.50 Crores to the lenders under the Working Capital Facilities. Similarly, for the amount of Rs. 4.00 Crores under Credit Limits, the Transferor Companies have executed Deed of Guarantee dated 03.02.2020 (latest guarantee agreement), thereby guaranteeing payment of Rs. 4.00 Crores to the lender. Copy of Deed of Guarantee dated 03.02.2020 qua the Working Capital Facilities and Deed of Guarantee dated 03.02.2020 qua the Credit Limits are



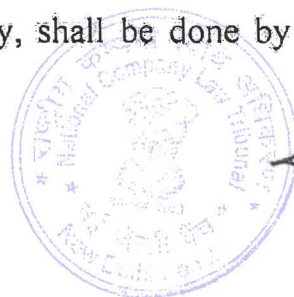
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annexed herewith and collectively marked as ANNEXURE A-1 (COLLY).

7. *Before proceeding to revert to the issue raised by the RD, it must also be noted that that mere registration or a charge against the assets of a company is not sufficient to establish a debt, or to term such charge holder as the creditor of the Company. Charge is defined in Sub-section (16) of Section 2 to mean "an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage". The definition itself suggests that creation of a charge on a company's assets does not necessarily mean that such company is a debtor of the charge holder.*

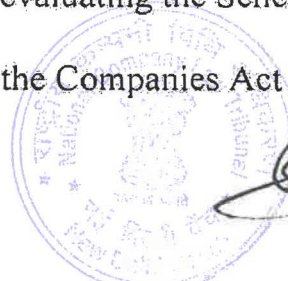
10. *Keeping the above in view, it is clear that the assets charged to the banks are not extinguishing, in fact the same shall, on sanction of Scheme, form part of the assets of the Transferee Company. Needless to say, that when there is no value depletion of the assets, the existing charges on the assets of the Transferor Company ought not to be seen as any impediment on the present Scheme of Amalgamation."*

10) In view of the clarification, the observation raised by Regional Director stands satisfied. It is however clarified that the relevant statutory compliances under Companies Act, 2013 in respect of Section 232(3)(i) of the Companies Act and name change of company, if any, shall be done by the petitioner company.



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- 11) Despite service of notice, no report has been filed by the Official Liquidator as well as Income Tax Department. It is pertinent to mention here that under Section 230(5) if no objection/response has been filed by authority within 30 days, it will presume that the authority has no objection against the Scheme.
- 12) It is pertinent to mention here that as per the affidavit dated 30.01.2021 the petitioner company has undertaken to comply with in accordance with the provisions of Income Tax Act.
- 13) In the joint petition it has also been affirmed that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 are pending against the Petitioner Companies.
- 14) Certificates of respective Statutory auditors of all the petitioner companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013.
- 15) The shareholders of the applicant companies are the best Judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by Tribunal for the reason that it is not a part of judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme of which sanction is sought under Section 230-232 of the Companies Act of 2013 will



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not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.

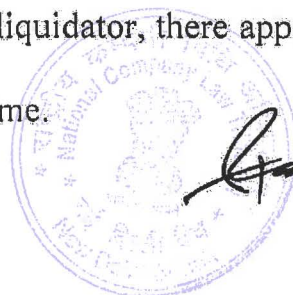
16) In the case of Hindustan Lever Employees Union V. Hindustan Lever Limited (1995) 5 SCC 491 the three judges Bench of Hon'ble Supreme Court held that:

'A company court does not exercise appellate jurisdiction over a scheme and its jurisdiction is limited to ascertaining fairness, justness and reasonableness of the Scheme and to ensure that neither any law has been violated or public interest compromised in the process.'

17) Right to apply for the sanction of the Scheme has been statutorily provided under Section 230-234 of the Companies Act, 2013 and therefore, it is open to the applicant companies to avail the benefits extended by statutory provisions and the Rules.

18) It has also been affirmed in the petition that the Scheme is in the interest of all the transferor companies and the transferee company including their shareholders, creditors, employees and all concerned.

19) In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs and the report of official liquidator, there appears to be no impediment in sanctioning the present Scheme.



20) Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

21) The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

22) Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

23) While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

24) **THIS TRIBUNAL DO FURTHER ORDER**

1. *That all the Transferor Companies shall stand dissolved without following the process of winding-up; and*

2. *That all the property, rights and powers of all the Transferor Companies, be transferred without further act or deed, to the transferee company and accordingly the same shall pursuant to Section 232*



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of the Companies Act, 2013, be transferred to and vest in the transferee company.

3. *That all the liabilities and duties of all the Transferor Companies, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and*
4. *That all proceedings now pending by or against all the Transferor Companies, be continued by or against the transferee company; and*
5. *That all the employees of all Transferor Companies in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the transferee company on such date without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the concerned Transferor Companies on the said date.*
6. *That Petitioner companies shall within thirty*

days of the date of the receipt of this order cause a



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certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered to the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies registered with him on the file kept by him in relation to the transferee company and the files relating to all the petitioner companies shall be consolidated accordingly; and

7. *That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.*

The petition stands disposed of in the above terms.

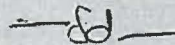
Let copy of the order be served to the parties.



(DR. V.K.SUBBURAJ)

MEMBER (TECHNICAL)





(P.S.N PRASAD)

MEMBER (JUDICIAL)


05.02.2024
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003