

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
(Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOURTEEN

PRESENT:
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

COMPANY PETITION NO: 144 of 2014
CONNECTED WITH
COMPANY APPLICATION NO : 709 OF 2014

IN THE MATTER OF THE COMPANIES ACT, 1956 (1 OF 1956)

AND
IN THE MATTER OF SECTIONS 391 TO 394 OF
THE COMPANIES ACT, 1956

AND
IN THE MATTER OF AUCTUS PHARMA LIMITED
AND

IN THE MATTER OF SCHEME OF ARRANGEMENT
BETWEEN

AUCTUS PHARMA LIMITED ...Transferor Company

AND

GRANULES INDIA LIMITEDTransferee Company

AND

THEIR RESPECTIVE SHAREHOLDERS

Between:

Auctus Pharma Limited, A Company incorporated under the Companies Act,
1956, and having its registered office at 2nd Floor, 3rd Block, My Home Hub,
Madhapur, Hyderabad 500 081 Represented by its Director, Sri VVS Murthy

..... Petitioner Company

Petition to sanction the Scheme of Arrangement under Section
391(2) read with Section 394 of the Companies Act, 1956, praying:

i) the Scheme of Arrangement may be sanctioned by this Hon'ble
Court, so as to be binding on all the shareholders and creditors of the Petitioner
Company and of Transferee Company respectively, and on the said Petitioner
Company with effect from the Appointed Date.

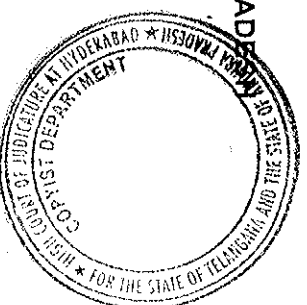
ii) the notice to Central Government under Section 394A of the
Companies Act, 1956 be, issued to the Regional Director, South Eastern
Region, Ministry of Corporate Affairs, Hyderabad, the Registrar of Companies,
at Hyderabad and the Official Liquidator, High Court of Judicature at Hyderabad
for the State of Telangana and for the State of Andhra Pradesh.

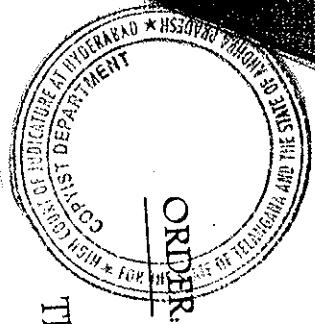
iii) the Notice of Petition be directed to be published in Hyderabad
edition of the "Business Standard" the English daily newspaper and in the
Hyderabad edition of "Surya", the Telugu daily newspaper.

iv) the Petitioner Company be dissolved without winding up with
effect from the Effective Date as per the Scheme of Arrangement.

This Petition coming on for orders upon reading the Company Petition and
the affidavit dated 04/07/2014 filed by Sri.V.V.S.Murthy, Director of the
Petitioner Company in support of the petition, and upon hearing the arguments
of Sri.L.V.Vijyer Advocate, for the Petitioner, and of Sri.M.Anil Kumar, counsel
for the Official Liquidator, and of Sri.M.B.Appa Rao, Advocate, appearing for
Sri.M.Narayana Reddy, Assistant Solicitor General, for Central Government.

The Court made the following Order :-

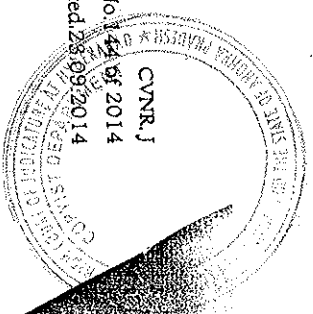




ORDER.

This Company Petition is filed by M/s Auctus Pharma Limited (transferor Company) for sanction of the proposed scheme of amalgamation under Section-391(2) read with Section 394 of the Companies Act, 1956 (for short 'the Act').

The petitioner averred that it was incorporated under the Act on 25.04.2000 under the name and style of M/s Sharp Organics Private Limited and later, its name was changed to M/s Auctus Pharma Private Limited and subsequently, its name was changed as M/s Auctus Pharma Limited; that its authorized share capital is Rs.4,50,00,000/- divided into 45,00,000 equity shares of Rs.10/- each; that its issued, subscribed and paid up capital is Rs.3,90,00,000/- divided into 39,00,000 equity shares of Rs.10/- each; that its main objects are to carry on the business as manufacturers, sellers, importers, exporters, distributors, agents and or otherwise deal as wholesalers or retailers in drugs, bulk drugs, drug intermediate, medicines, pharmaceuticals and all other chemicals, etc; that it seeks to amalgamate itself with M/s Granules India Limited (transferee Company); that its Board of Directors in its meeting held on 20.02.2014 has approved the proposed scheme of amalgamation (filed as Exhibit III); and that the appointed date is 01.04.2013. ;



The petitioner further averred that it is a wholly owned subsidiary of the transferee company and the entire capital of the transferor company is held by the transferee company along with its six nominees.

The petitioner pleaded that all its shareholders and its nominees have given their consent affidavits to the proposed scheme of amalgamation. Its lone secured creditor, viz., Indian Bank has also given its consent and all the unsecured creditors have also given their individual No Objection letters to the proposed scheme of amalgamation.

The petitioner has filed Company Application No.709 of 2014 for dispensing with the convening of the meetings of its equity shareholders and unsecured creditors for considering the proposed scheme of amalgamation. This Court by order, dated 24.06.2014, has allowed the said Company Application. The petitioner has filed the present Company Petition for approving the proposed scheme of amalgamation.

This Court by order, dated 07.07.2014, ordered notices to the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad and the Official Liquidator attached to this Court. Advertisement was also ordered to be published in two daily newspapers, viz., Business Standard (English) and Andhra Prabha (Telugu) of Hyderabad editions.

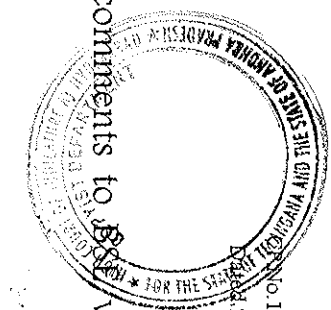


In compliance of the directions of this Court, the petitioner has published the newspaper advertisement informing the public that any person desirous of supporting or opposing this Company Petition should send to the petitioner's advocate notice of his intention signed by him or his advocate, with his name and address, so as to reach the petitioner's advocate not later than two days before the date fixed for hearing of the Company Petition. This publication was made on 30.07.2014.

Sri L.V.V.Iyer, the learned counsel for the petitioner, submitted that he has not received intimation from any person regarding his intention of supporting or opposing this Company Petition.

The petitioner has filed proof of publication through memo, vide USR No.2687 of 2014, dated 28.08.2014 and no objections are stated to have been received.

In response to the notice, the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad has filed his report, dated 19.09.2014, wherein it is stated that in pursuance of General Circular No.1 of 2014, dated 15.01.2014, issued by the Ministry of Corporate Affairs, New Delhi, comments/objections from the Securities and Exchange Board of India, Mumbai (SEBI) were invited by him, vide letter, dated



14.08.2014, and that SEBI has sent comments to BSE vide its letter, dated 16.05.2014.

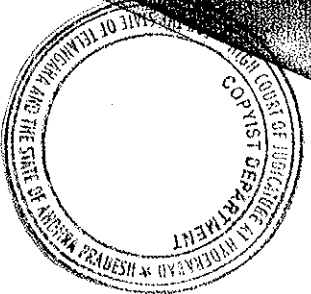
In his report, the Regional Director has further reported that the transferor company involved in the proposed scheme of amalgamation is regular in filing the statutory returns and that no complaints, no investigations and no inspections are pending against it.

The only observation worth noticeable made by the Regional Director in his report is that though the scheme has specified 01.04.2013 as the appointed date, the company has finalized the Balance Sheet and the Profit and Loss account for the financial year ended 31.03.2014 audited and approved by the shareholders; that the transferor company becomes subsidiary of transferee company on 14.02.2014; and that therefore, the appointed date may be shifted to 01.04.2014.

This is seriously opposed by Sri L.V.V.Iyer, learned counsel for the petitioner. He has drawn this Court's attention to Clause-7(b) (i) of the Scheme of Arrangement (Amalgamation) which reads as under:

"Until the Effective Date and subject to such consents as may be necessary:

The Transferor Company shall carry on and be deemed to have carried on its businesses and activities and shall hold and stand possessed of and shall be deemed to have held and stood possessed of the Undertaking of the Transferor Company on account of and in trust for the

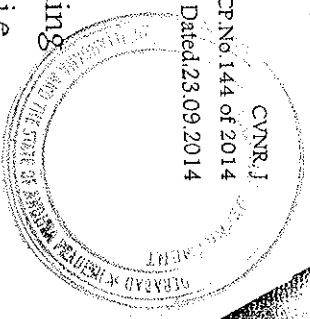


Transferee Company and the Transferor Company shall be entitled to sell or transfer any property or assets to any party including the Transferee Company, with the prior written consent of the Transferee Company.”

Learned counsel has also placed before the Court the judgment of the Supreme Court in *Marshal Sons and Company (India) Limited Vs. Income Tax Officer*¹, wherein it is, *inter alia*, held as under:

“Every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation/transfer shall take place. The scheme concerned herein does so provide, viz., January 1, 1982. It is true that while sanctioning the scheme, it is open to the Court to modify the said date and prescribe such date of amalgamation/transfer as it thinks appropriate in the facts and circumstances of the case. If the Court so specifies a date, there is little doubt that such date would be the date of amalgamation/date of transfer. But, where the Court does not prescribe any specific date but merely sanctions the scheme presented to it—as has happened in this case—it should follow that the date of amalgamation/date of transfer is the date specified in the scheme as “the transfer date”. It cannot be otherwise. It must be remembered that before applying to the Court under Section 391(1), a scheme has to be framed and such scheme has to contain a date of amalgamation/transfer. The proceedings before the Court may take some time; indeed, they are bound to take some time because several steps provided by Sections 391 to 394-A and the relevant rules have to be followed and complied

¹ CDJ 1996 SC 916



with. During the period the proceedings are pending before the Court, both the amalgamating units, i.e., the transferor company and the transferee company may carry on business, as has happened in this case, but normally provision is made for this aspect also in the scheme of amalgamation. In the scheme before us, Clause-6(b) does expressly provide that with effect from the transfer date, the transferor company (subsidiary company) shall be deemed to have carried on the business for and on behalf of the transferee company (holding company) with all attendant consequences.”

Emphasis supplied

Indeed, Clause-7(b) (i) of the Scheme of Amalgamation reproduced above is similar to Clause-6(d) of the Scheme of Amalgamation in *Marshal Sons and Company (India) Limited* (supra). Therefore, this suggestion of the Regional Director has no merit and there is no need for shifting the appointed date from 01.04.2013 to 01.04.2014.

The Deputy Official Liquidator in his report, dated 28.08.2014, stated that the affairs of the petitioner company are not conducted in a manner prejudicial to the interests of the members of the petitioner or to the public interest.

In view of the above submissions of the learned counsel for the petitioner and having regard to the reports of the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad and the Deputy Official Liquidator and as no



objections/claims have been received in pursuance of the advertisement for approving the proposed scheme of amalgamation, this Court is of the opinion that the proposed scheme of amalgamation is in conformity with the provisions of the Act and the same does not in any manner affect the interests of any of the stake holders including the public.

Therefore, the proposed scheme of amalgamation is sanctioned. The petitioner shall, within 30 days from the date of receipt of a copy of this order, cause a certified copy of the same to be delivered to the Registrar of Companies for the State of Telangana and the State of Andhra Pradesh, Hyderabad and take all other consequential actions in pursuance of sanction of the proposed scheme of amalgamation.

The Company Petition is, accordingly, allowed.

SD/-T.LAKSHMI HEMALATHA
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

- To
1. Sri.V.V.S.Murthy, Director, Auctus Pharma Limited, Regd. Office at 2nd Floor, 3rd Block, My Home Hub, Madhapur, Hyderabad.
 2. The Authorised Signatory, Granules India Limited, Regd. Office at 2nd Floor 3rd Block, My Home Hub, Madhapur, Hyderabad.
 3. The Official Liquidator, High Court of A.P. Hyderabad, Office at 5-4-400, II Floor, East Wing, Gagan Vihar Building, Opp: Gandhi Bhavan, Nampally, Hyderabad.
 4. The Registrar of Companies, 3-5-398, C.P.W.D.Building, Kendriya Sadan, Sultan Bazar, Koti, Hyderabad.
 5. The Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad, Office at II Floor, Kendriya Sadan, Sultan Bazar, Koti, Hyderabad.
 6. Two CD Copies
 7. One cc to Sri.L.V.V.Jyer, Advocate (OPUC)

18/11/14
SUPERINTENDENT
COPYIST DEPARTMENT
High Court of Andhra Pradesh, Hyderabad
for the State of Telangana & Andhra
State of Andhra Pradesh

High Court of Judicature at Hyderabad
for the State of Telangana and the
State of Andhra Pradesh

CP No. 748 2014

Application made. 23-9 2014

Application returned 2014

Application returned 2014

Stamps called for 10-11 2014

Stamps deposited 10-11 2014

Adm. Stamps called for 2014

Adm. Stamps deposited 10-11 2014

Copy ready 2014


Section Officer