

**IN THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
BENCH AT CHANDIGARH**

CA(CAA) No. 17/Chd/Hry/2024

(1st Motion)

**Under Sections 230 to 232 of the
Companies Act, 2013 read with
Companies (Compromise,
Arrangements and Amalgamations)
Rules, 2016**

IN THE MATTER OF SCHEME OF AMALGAMATION OF:

M/s Z X Drugs Private Limited

871, Sector-13,
Karnal, Haryana-132001

... APPLICANT COMPANY NO.1/ TRANSFEROR COMPANY

AND

M/s Suryavnshi Ventura Private Limited

871, Sector-13,
Karnal, Haryana-132001

... APPLICANT COMPANY NO.2/ TRANSFEREE COMPANY

Order delivered on: 02.07.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. L. N. GUPTA, MEMBER (TECHNICAL)**

Present:-

For the Applicant Companies : Mr. G.S Sarin, PCS
Mr. Iswar Mohapatra, Advocate

**Per: Mr. Harnam Singh Thakur, Member (Judicial)
Mr. L.N. Gupta, Member (Technical)**

ORDER

This is a Joint First Motion Application filed by Applicant Companies namely; **M/s Z X Drugs Private Limited** (referred to as "Applicant Company No.. 1/ Transferor Company) and **M/s Suryavnshi Ventura Private Limited** (referred

to as "Applicant Company No. 2/ Transferee Company) under Section 230-232 of the Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation between the respective companies. The said Scheme is attached as **Annexure-2** with the Application.

2. The Transferor Company is engaged in the business of deriving formulating Producing, Manufacturing, Preparing, Processing Selling, marketing, export, import of Drugs, Pharmaceuticals and all kinds of herbal products.

That the particulars of applicant company ie. **M/s Z X DRUGS PRIVATE LIMITED** (herein after referred to as Transferor Company) are as under:

Name	M/s Z X DRUGS PRIVATE LIMITED
Date of Incorporation	04.10.2007
CIN	U51397HR2007PTC037275
Name of ROC	RoC-Delhi
Registered Office Address	871 Sector 13, Karnal, Haryana - 132001
Authorised Capital	Rs.11,00,000/- divided into 1,10,000 shares of Rs.10/- each)
Paid Up Capital	Rs.10,45,000/- divided into 1,04,500 shares of Rs.10/- each)

3. The Transferee Company is presently engaged in the business of buying, purchasing or otherwise acquire any immovable or movable property of all kinds and description and right, title and interest therein and to carry on the business of

renting, letting or other similar arrangements of immovable and movable properties including but not limited to equipment of all kinds and description, building equipment, construction equipment and houses, building, market, shops, industrial sheds, plots, flats, vehicles, plants, machinery, ships, aircraft, vessels, apparatuses, computers and any other assets.

That the particulars of applicant company ie. **M/s SURYAVNSHI VENTURA PRIVATE LIMITED** (herein after referred to as Transferee) are as under:

Name	M/s SURYAVNSHI VENTURA PRIVATE LIMITED
Date of Incorporation	28.09.1995
CIN	U74899HR1995PTC089613
Name of ROC	RoC-Delhi
Registered Office	871 Sector 13, Karnal, Haryana -

Address	132001
Authorised Capital	Rs.45,00,000/- divided into 4,50,000 shares of Rs.10/- each)
Paid Up Capital	Rs.33,21,260/- divided into 3,32,126 shares of Rs.10/- each

4. It is submitted that the registered offices of the Applicant Companies are situated within the state of Haryana, therefore, the territorial jurisdiction of Applicant Companies falls with this Bench.
5. The rationale behind the Scheme are as reproduced below: -

a. The Transferor Company and Transferee Company are inter-related Companies. However, to comply various statutory requirements lots of administrative actions are required to be taken. Therefore, the purpose of this Scheme of Amalgamation is to merge Transferor Companies into Transferee Company by vesting entire undertaking of Transferor Companies with Transferee Company;

b. By virtue of such exercise, it is expected to accomplish considerable management and administrative efficiency resulting into synergy of operations and greatly reducing administrative expenses;

c. The Scheme will culminate into single effective entity, which will be able to execute objects more efficiently without any constraint to achieve better results. It will also economize resources and energy.

It is therefore in the interest of members of the respective companies as such merger may increase share holders' value;

d. The amalgamation will enable the companies to pool in their financial, managerial, technical and other resources and use the financial, managerial, technical and marketing and distribution expertise of each other;

e. The proposed Scheme will contribute in furthering and fulfilling the objects of the companies concerned and enabling the optimum growth and development of their combined businesses;

f. With the enhanced capabilities and resources at its disposal, the Amalgamated Company will have greater flexibility to market and meet customer needs and will be able to compete more effectively, thus, further strengthening its market position in domestic and international markets.

6. It is stated that the Board of Directors of the Transferor Company and the Transferee Company, in their meetings held on 20.03.2024, considered and unanimously approved the Scheme subject to sanction of the same by this Tribunal. The copy of the Board Resolutions of the Transferor Company and the Transferee Company are placed as part of Annexures-1 of the Application respectively.

7. The appointed date of the Scheme is 01.04.2024 as defined in Part-I, Clause 2(b) of the Scheme of Amalgamation, which is attached as Annexure-2 of the Application.

8. It is submitted that the Scheme of Amalgamation (Annexure-2) also takes care of the interest of the staff/workmen and employees of the Applicant Companies, by virtue of Part-II Clause 9 of the Scheme.

9. It is stated that the Applicant Companies have filed audited annual accounts for the financial year ending 31.03.2022 and 31.03.2023. The applicant companies have filed provisional balance sheet as on 29.02.2024 (attached as Annexure-5, 6,12,13 of the application respectively).

10. It is further submitted that in pursuance to Section 230 and Section 232 of the Act, the Applicant Companies have filed the certificate dated 26.03.2024 issued by the Statutory Auditor of the Applicant Companies certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act which is attached collectively as Annexure -18 of the application.

11. It is further submitted by the counsel for applicant companies that the valuation report has been submitted by Mr. Prabhakar Kumar, IBBI Registered Valuer, having Regn. No. IBBI/RV/02/2021/14527 which is attached as

Annexure-3 of the application. As per the valuation report dated 11.03.2024, the following share exchange ratio has been proposed:-

As consideration for the merger, the SURYAVNSHI VENTURA PRIVATE LIMITED ('SVPL'), shall issue and allot to the shareholders of the below mentioned company fully paid up equity shares of INR 10/- each (Indian Rupees Ten Each) of the ZX DRUGS PRIVATE LIMITED ('ZXPL') credited as fully paid up, to the equity shareholders of the Transferor Company.

12. It is deposed by way of affidavits furnished by authorized signatories of the Applicant Companies that there are no material investigations or proceedings pending against the Applicant Companies under the Companies Act, 2013 or any other law for the time being in force and no prosecution has been initiated against the Directors of Applicant Companies (Page 33-38 of the Application).

13. It is further deposed by the authorized representatives of Applicant Companies that the Applicant Companies are not regulated or governed by any sectoral regulator, Competition Commission of India and hence, provision of the Competition Act, 2002 & other respective enactment, is not applicable in the present case of approval of Scheme of Merger and Amalgamation (Page 33-38 of the Application).

14. It is deposed by way of joint affidavit filed by both the Applicant Companies vide Dairy No. 01198/01 dated 27.05.2024 wherein it is stated that in the first motion application filed by the applicant companies, in the prayer at Clause (c.) was added inadvertently, and hence they seek deletion of the said (c) prayer clause from the prayers.

Moreover, the applicant Company No.1, M/s M/s Z X DRUGS PRIVATE LIMITED is not carrying any business relating to drugs and pharmaceuticals for which the company is required to take drug licenses. In this regard, the Statutory Auditor of the Company has also issued a certificate indicating that the company has not

received any amount from the drug and pharmaceuticals business as on 31.03.2023. So in the case of the applicant Company No.1, notice to Sectoral Regulator like Drug Controller & National Pharmaceutical Pricing Authority is not applicable.

However, submission of Transferor company is not taken into consideration as the company is dealing with the business of drugs and all kinds of herbal products. Even if, Transferor Company is not manufacturing the drugs then also notice is required to be issued to Drug Controller & National Pharmaceutical Pricing Authority.

Further, in the affidavit, it is deposed that the applicant Company No.2, M/s SURYAVNSHI VENTURA PRIVATE LIMITED is not carrying any business of real estate for which the company is required to take RERA Registration. In this regard, the Statutory Auditor of the Company has also issued a certificate indicating that the company has not received any amount from the real estate business as on 31.03.2023. So in the case of the applicant Company No.2, notice to Sectoral Regulator like RERA is not applicable. Even if, Applicant Company No.2 is not carrying on any business of real estate and no income is received by Applicant Company No.2 from real estate business then also keeping in view the nature of the business carried out by the Transferee Company, the notice is required to be issued to the Real Estate Regulatory Authority (RERA).

15. It is declared by way of affidavit that under Section 230(2)(b), the shares held by the Transferor Company in the Transferee Company and Transferee Company in the Transferor Company shall be cancelled and to that extent, capital reduction is taking place between the applicant companies under Section

66 of the Companies Act, 2013. Further, under Section 230(2)(c), it has been declared that the Scheme is not a corporate debt restructuring scheme, and hence, a creditor's responsibility statement and other requirements under Section 230(2)(c) are not applicable to the present case (attached as page 25-32 of the application). The shares held by the transferor and transferee company pre and post-merger are produced as below:-

Sl. No.	Name of Company	Total Net worth	No. of Shares of Transferee Company (pre-merger)	Face Value of Equity Shares	Fair Value
1	ZX Drugs Private Limited	2,35,71,874	1,04,500	10/-	225.568

Transferee Company

Sl. No.	Name of Company	Total Net worth	No. of Shares of Transferee Company (pre-merger)	Face Value of Equity Shares	Fair Value
1	SURYAVNSHI VENTURA PRIVATE LIMITED ('SVPL')	3,79,69,414	3,32,126	10/-	114.322

Exchange Ratio (Post Merger)

Considering the inter Company Investment, the entitlement of equity shares to the shareholders of transferor company shall in proportion as given below:

Name of Transferor Company	No of shares in Transferor Company	Fair Value of Equity of Transferee Company	Fair Value of Equity Shares of Transferor Company	Net entitlement to shareholders of transferor Company
ZX Drugs Private Limited	1,04,500	114.322	225.568	1973.09:1000

16. The Applicant Companies have furnished the following documents:-
- Proposed Scheme (Annexure-2 of the application).
 - The Memorandum and Articles of Association of Applicant Companies. (Annexure -4 &11 respectively of the Application)
 - List of Equity Shareholders of the Applicant Company No.1 as on 29.02.2024 along with consent furnished by way of affidavits (Annexure-8 of the application).

- d) List of Secured Creditor of Applicant Company No. 1 as on 29.02.2024 (Annexures-9 of the application).
- e) List of Unsecured Creditors of Applicant Company No. 1 as on 29.02.2024 along with consent furnished by way of affidavits (Annexures- 10 of the application).
- f) List of Equity Shareholders of the Applicant Company No. 2 as on 29.02.2024 along with consent furnished by way of affidavits (Annexure -15 of the application).
- g) List of Secured of the Applicant Company No. 2 as on 29.02.2024 (Annexure-16 of the application).
- h) List of Unsecured of the Applicant Company No. 2 as on 29.02.2024 (Annexure-17 of the application).
- i) Certificates of Statutory Auditors to the effect that accounting treatment proposed in the Scheme is in conformity with Section 133 of the Act (Annexure-18 of the application).
- j) Proposed Share Exchange Ratio (Annexure- 3 of the application).
- k) The audited annual accounts for the financial year ending 31.03.2022 and 31.03.2023 and the provisional balance sheet as on 29.02.2024 of the applicant companies are attached as Annexure-5, 6,12,13 of the application respectively.
- l) Affidavit with regard to the Sectoral Regulator of the applicant companies (Page 39 to 42 of the application).
- m) Affidavit with regard to no pending inspection and investigation of the applicant companies (Page 33 to 38 of the application).

18. The Applicant Companies have furnished the details of the Equity Shareholders, Secured Creditors, Unsecured Creditors as follows:

Name of the Applicant Companies	Shareholders along with their consent		Creditors along with their consent.			
	Equity Shareholder	Consent calculations with	Secured Creditors	Consent with calculations	Unsecured Creditors	Consent calculations with
Applicant Company No.1	2	100% in Value	NIL	NA	1	100% in Value
Applicant Company No.2	3	100% in Value	NIL	NA	NIL	NA

17. Accordingly, this bench directs as under:

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

- a. The meetings of the two Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company, and the fact that the consent by way of affidavits has been received;
- b. The meeting of the sole unsecured Creditor is dispensed with as the consent by way of affidavit has been received;

II. In relation to Applicant Company No. 2/Transferee Company:

- a. The meetings of the three Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company, and the fact that the consent by way of affidavit has been received;
- b. Since there are no Secured and Unsecured Creditors in Applicant Company No. 2, therefore, there is no scope for any meeting;

18. 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 (a) Central Government through the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, (b) concerned Registrar of Companies; (c) Official Liquidator; and (d) Drug Controller & National Pharmaceutical Pricing Authority (e) Real Estate Regulatory Authority (RERA) (f) Income Tax Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition.

Sd/-

(L.N. Gupta)
Member (Technical)

July 02, 2024

TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)