

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH**

NEW DELHI

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

IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT, 2013

In the matter of:

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Arrangements) Rules, 2016.

AND

In the matter of Scheme of Amalgamation

OF

- 1. ARVIV LIFESCIENCES PRIVATE LIMITED
M-134, 2ND FLOOR, CONNAUGHT PLACE
NEW DELHI-110001**

TRANSFEROR COMPANY 1/ APPLICANT COMPANY 1

AND

- 2. BARFANI BABA PHARMA PRIVATE LIMITED
M-134, 2ND FLOOR, CONNAUGHT PLACE
NEW DELHI-110001**

TRANSFEROR COMPANY 2/ APPLICANT COMPANY 2

AND

- 3. MANVIN HEALTH PRIVATE LIMITED**

COMPANY APPLICATION NO CA (CAA) No.441/ ND/ 2020



M-134, 2ND FLOOR, CONNAUGHT PLACE
NEW DELHI-110001

TRANSFEROR COMPANY 3/ APPLICANT COMPANY 3
AND

4. REVIVAA BIOTECH PRIVATE LIMITED

M-134, 2ND FLOOR, CONNAUGHT PLACE
NEW DELHI-110001

TRANSFEROR COMPANY 4/ APPLICANT COMPANY 4

AND

5. RAJASTHAN ANTIBIOTICS LIMITED

M-134, 2ND FLOOR, CONNAUGHT CIRCUS
NEW DELHI-110001

TRANSFEREE COMPANY/ APPLICANT COMPANY 5

Coram:

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

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

For the Applicants: VARSHA BANERJEE (ADVOCATE)

ORDER DELIVERED ON: 22.05.2020

ORDER

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

1. This is an application filed by the applicant companies under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (for brevity 'The Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'The Rules') in relation to the Scheme (for brevity the

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COMPANY APPLICATION NO CA (CAA) No.441/ ND/ 2020



“SCHEME”) seeking dispensation with respect to the meetings of Shareholders and Creditors of the amalgamation of Arviv Lifesciences Private Limited, Barfani Baba Pharma Private Limited , Manvin Health Private Limited, Revivaa Biotech Private Limited with Rajasthan Antibiotics Limited.

2. An Affidavit in support of the application sworn for and on behalf of all Applicant Companies has been filed by their authorized representative.
3. It is represented that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. Learned Counsel has taken us through the averments made in the application as well as the typed set of documents annexed there with. It is further represented that the application filed by the applicants is maintainable in view of Rule 3(2) of the Rules.
4. The applicant has furnished the details of the Shareholders, Secured Creditors, and Unsecured Creditors in the Scheme marked as Annexure “A1”, of the applicant companies as on date which are as follows;

Company	Shareholders	Consents	Secured Creditors	Consents	Un-Secured Creditors	Consents
A-1 Company (Arviv Life Sciences)	3	All (meetings dispense with)	Nil	N.A.	Nil	N.A.



A-2 Company (Barfani Baba Pharmacy)	4	All (meetings dispense with)	Nil	N.A.	Nil	N.A.
A-3 Company (Manvin Health)	3	All (meetings dispense with)	Nil	N.A.	Nil	N.A.
A-4 Company (Revivaa Biotech)	2	All (meetings dispense with)	Nil	N.A.	Nil	N.A.
A-5 Company (Rajasthan Antibiotic)	7	All (meetings dispense with)	2 <i>Amount:</i> <i>Rs.</i> <i>395,183,8</i> <i>04.50</i>	1 (97.56% in value) (Meeting dispense with)	42 <i>Amount:</i> <i>219,487,74</i> <i>9/-</i> (meeting dispense with)	15 (90.20% in value) (meeting dispense with)

5. It is pertinent to mention that under sub-section 9 of Section 230 of Companies Act, meeting of creditors can be dispensed with if creditors having atleast 90% in value agree by way of affidavit in favour of the Scheme.

6. In relation to the territorial jurisdiction, Ld. Counsel for the applicant companies submit that since the registered office of the respective companies fall within the purview of Registrar of Companies, NCT, New Delhi, this Tribunal has the necessary territorial jurisdiction to entertain the joint application.

7. We have perused the joint application and the connected documents / papers filed therewith including the Scheme of Arrangement contemplated between the Applicant companies.

S.no	Name of the Company	Date of Incorporation	Board of Directors of the Applicant companies unanimously approved the proposed Scheme of Amalgamation
1.	Arviv Lifesciences Private Limited (TRANSFEROR COMPANY NO. 1)	08.09.2009	08.05.2019
2.	Barfani Baba Pharma Private Limited (TRANSFEROR COMPANY NO. 2)	29.07.2009	08.05.2019
3.	Manvin Health Private Limited (TRANSFEROR COMPANY NO. 3)	04.05.2009	08.05.2019
4.	Revivaa Biotech Private Limited (TRANSFEROR COMPANY NO. 3)	16.04.2010	08.05.2019
5	Rajasthan Antibiotech Limited (TRANSFEREE COMPANY)	17.03.1986	08.05.2019



8. Perusal of the application filed by the applicants indicate the details of the capital structure of the applicant companies which are given by way of tabulation as follows;

9. The share capital of the Transferor Company 1 as on 31.12. 2018 is as under:

Particulars	Amount (in INR)
Authorized Share Capital 400,000 Equity Shares of INR 10/- each	4,000,000.00
Issued, Subscribed and Paid up Share Capital 3,33,650 Equity Shares of INR 10/- each fully paid up	3,336,500.00

10. The share capital of the Transferor Company 2 as on 31.12.2018 is as under:

Particulars	Amount (in INR)
Authorized Share Capital 100,000 Equity Shares of INR 10/- each	1,000,000.00
Issued, Subscribed and Paid up Share Capital 92,000 Equity Shares of INR 10/- each fully paid-up	920,000.00

11. The Share capital of the Transferor Company 3 as on 31.12.2018 is as under:

Particulars	Amount (inINR)
Authorized Share Capital 100,000 Equity Shares of INR 10/- each	1,000,000.00
Issued, Subscribed and Paid up Share Capital 97,200 Equity Shares of INR 10/- each fully paid-up)	972,000.00

12. The Share capital of the Transferor Company 4 as on 31.12.2018 is as under:

Particulars	Amount (inINR)
Authorized Share Capital 10,000 Equity Shares of INR 10/- each	100,000.00
Issued, Subscribed and Paid up Share Capital 10,000 Equity Shares of INR 10/-each fully paid-up	100,000.00

13. The Authorized, Issued, Subscribed and Paid-up Capital of the Transferee Company as on the Appointed Date i.e. 31.12.2018 and immediately prior to the filing of this Scheme is as follows:

Particulars	Amount (in Rs.)
Authorized Share Capital 12,000,000 Equity Shares of Rs. 10 each	120,000,000.00
Issued, Subscribed and Paid up Share Capital 5,275,765 Equity Shares of Rs. 10 each (fully paid-up)	52,757,650.00

14. All the applicants have filed their respective Memorandum and Articles of Associations. The applicants have also filed their balance sheet for the period ended 30.09.2019.
15. It is submitted that the proposed merger is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013. The appointed date as provided in the Scheme shall be 31.12.2018.
16. All the companies have submitted that no proceedings for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under the provisions of the Companies Act, 1956 are pending against the applicant companies.
17. Further, it has been stated in the application that the Scheme will be beneficial to all the applicant companies and their respective shareholders,

employees, creditors and other stake holders. It is further affirmed that the Scheme has been drawn up to comply with all applicable laws and regulations, specifically the provisions of Income Tax Act, 1961 and other applicable rules and regulations.

18. The certificates of statutory auditors of all the applicant companies confirming that the accounting treatment in the scheme is in conformity with Accounting Standard notified by the Central Government under Section 2(2) and Section 133 of the Companies Act, 2013 have been filed.

19. The Applicant Companies executed affidavits that the Applicant Companies are not governed by any specific sectoral regulators or authorities which are likely to be affected by the scheme of amalgamation.

20. Taking into consideration the application filed jointly by the Applicant Companies the following directions are issued:

A. In relation to the Transferor Company No.1: -

- i. The meeting of Equity Shareholders is dispensed with as there are only 3 equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*

- ii. *The meeting of Secured creditors is also dispensed with because there is no Secured creditor in the company and therefore, the requirement of convening meeting of Secured creditors does not arise.*
- iii. *The meeting of Unsecured creditors is also dispensed with because there is no Unsecured creditor in the company and therefore, the requirement of convening meeting of Secured creditors does not arise.*

B. In relation to the Transferor Company No.2: -

- i. *The meeting of Equity Shareholders is dispensed with as there are only 4 equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*
- ii. *The meeting of Secured creditors is also dispensed with because there is no Secured creditor in the company and therefore, the requirement of convening meeting of Secured creditors does not arise.*

iii. *The meeting of Unsecured creditors is also dispensed with because there is no Unsecured creditor in the company and therefore, the requirement of convening meeting of Secured creditors does not arise.*

C. In relation to the Transferor Company No.3: -

- i. *The meeting of Equity Shareholders is dispensed with as there are only 3 equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*
- ii. *The meeting of Secured creditors is also dispensed with because there is no Secured creditor in the company and therefore, the requirement of convening meeting of Secured creditors does not arise.*
- iii. *The meeting of Unsecured creditors is also dispensed with because there is no Unsecured creditor in the company and therefore, the*



requirement of convening meeting of Secured creditors does not arise.

D. In relation to the Transferor Company No.4: -

- i. The meeting of Equity Shareholders is dispensed with as there are only 2 equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*
- ii. The meeting of Secured creditors is also dispensed with because there is no Secured creditor in the company and therefore, the requirement of convening meeting of Secured creditors does not arise.*
- iii. The meeting of Unsecured creditors is also dispensed with because there is no Unsecured creditor in the company and therefore, the requirement of convening meeting of Secured creditors does not arise.*

E. In relation to the Transferee Company:-



- i. The meeting of Equity Shareholders is dispensed with as there are only 7 equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*
- ii. The meeting of Secured creditors is also dispensed with because there are only 2 Secured creditors in the company and out of which 1 Secured creditors holding more than 95% in value have given their consent affidavits in favour of the Scheme have been placed on record.*
- iii. The meeting of Unsecured creditors is also dispensed with because there are only 42 Unsecured creditors in the company and out of which 15 Unsecured creditors holding more than 90% in value have given their consent affidavits in favour of the Scheme have been placed on record.*



21. In view of the above the present joint application stands allowed by dispensing with the meetings of shareholders and creditors of all the applicant companies.
22. The applicants are directed to serve notice of the proposed Scheme on the Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryavaran Bhavan, CGO Complex, New Delhi-110 003, Registrar of Companies at 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi-110 019; the Official Liquidator, Lok -Nayak -Bhavan, 8th Floor, Khan Market, New Delhi -110 001; the office of the Income Tax Department, Income Tax Officer, Ward -7(4), Central Revenue Building, IP Estate, New Delhi-110 002 and Office of the Income Tax Department, Income Tax Officer, Additional Commissioner of Income Tax, Special Range-4, Central Revenue Building, IP Estate, New Delhi-110 002. The notices to Income Tax authorities shall disclose sufficient details like PAN card numbers, ward numbers and assessing officers so that proper reply may be filed.



23. The notices to Income Tax authorities shall disclose sufficient details like PAN card numbers, ward numbers and assessing officers so that proper reply may be filed.

Let copy of the order be served to the parties.

— sd —

MS. SUMITA PURKAYASTHA,
MEMBER (T)

— sd —

P.S.N PRASAD,
MEMBER (J)

(Shalini)

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