

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

COMPANY PETITION Nos.245 and 246 of 2014

% 02.03.2015

C.P.No.245 of 2014

Between:

M/s Astrix Laboratories Limited, Hyderabad

..Petitioner/Transferor Company

C.P.No.246 of 2014

Between:

M/s Mylan Laboratories Limited, Hyderabad

..Petitioner/Transferee Company

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> Head Note:

! Counsel for the petitioners: Sri Iqbal Chagla, senior counsel
for Sri V.S.Raju

^ Counsel for the respondent: Sri B.Narayana Reddy,
Assistant Solicitor General

^ Counsel for the Official Liquidator: Sri M.Anil Kumar

^ Counsel for the Objectors: Sri V.Hariharan

? Cases Referred:

1. (1997) 1 SCC 579

2. 2000 CLC 1356
3. (2009) 92 SCL 272 (BOM.)

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Counsel for the petitioners: Sri Iqbal Chagla, senior counsel
for Sri V.S.Raju

Counsel for the respondent: Sri B.Narayana Reddy,
Assistant Solicitor General

Counsel for the Official Liquidator: Sri M.Anil Kumar

Counsel for the Objectors: Sri V.Hariharan

The Court made the following:

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COMMON ORDER:

Company Petition No.245 of 2014 is filed by M/s Astrix Laboratories Limited, Hyderabad (for short 'the transferor company') and Company Petition No.246 of 2014 is filed by M/s Mylan Laboratories Limited, Hyderabad (for short 'the transferee company') for sanctioning the proposed scheme of arrangement between them.

The transferor company has pleaded that it was incorporated as a public limited company under the name and style of 'M/s Astrix Laboratories Limited' in the State of Andhra Pradesh on 21.09.2005; that its registered office is situated at Plot No.564/A/22, Road No.92, Jubilee Hills, Hyderabad; that its authorized capital is Rs.5 crores, which includes Rs.4,99,99,000/- divided into 49,99,000 equity shares of Rs.10/- each and Rs.10,000/- divided into 1,000 Class-B equity shares of Rs.10/- each; that its issued, subscribed and paid up capital is Rs.4,52,60,000/-, which includes Rs.4,52,50,000/- divided into 45,25,000 equity shares of Rs.10/- each fully paid up and Rs.10,000/- divided into 1,000 Class-B equity shares of Rs.10/- each; and that its main objects, *inter alia*, are to manufacture, import, export, buy, sell, distribute, and deal in bulk drugs, finished drugs and pharmaceuticals, fine pharmaceuticals, chemicals, fine chemicals, enzymes, anti tuberculosis agents' ayurvedic, unani and cosmetics, etc.

The transferee company pleaded that it was originally incorporated as a private limited company under the name and style of "Herren Drugs Private Limited" in the State of Andhra Pradesh on 29.11.1984; that subsequently, it converted itself into a public limited company under the name and style of "Herren Drugs Limited" with effect from 19.10.1992; that its name was changed as "Herren Drugs and Pharmaceuticals Limited" on a fresh certificate of incorporation issued on 27.06.1994; that, later, its name was changed as 'Matrix Laboratories Limited' and subsequently, to M/s Mylan Laboratories Limited on 21.03.2001; that its authorized capital is Rs.40 crores divided into 20,00,00,000 equity shares of Rs.2/- each; that its issued, subscribed and paid up capital is Rs.36,95,13,716/- divided into 18,47,56,858 equity shares of Rs.2/- each fully paid up; and that its main objects, *inter alia*, are to manufacture, import, export, buy, sell, distribute and deal in bulk drugs, finished drugs and pharmaceuticals, fine pharmaceuticals, chemicals, fine chemicals, enzymes, anti tuberculosis agents' ayurvedic, unani and cosmetics, etc.

That under the proposed scheme of arrangement, the transferor company will be amalgamated into the transferee company and that this arrangement is to derive the following benefits:

“1. The Transferee Company, a public company limited by shares, is a subsidiary of MP Laboratories (Mauritius) Limited and is engaged in the manufacture of Active Pharmaceutical Ingredients (“API”) and Finished Dosage Formulations (“FDF”). The Transferor Company, a subsidiary of the Transferee Company, is a developer, manufacturer and marketer of high-quality Antiretroviral (“ARV”). The consolidation and amalgamation of the Transferor Company with the Transferee Company shall result into synergies in the Transferee Company.

2. The Transferor Company’s capabilities, product portfolio and pipeline complement the Transferee Company’s existing API platform. The amalgamation will strengthen the foothold of the Transferee Company in the ARV API segment.

3. Greater integration, financial strength and flexibility for the Transferee Company, which will improve the financial position of the Transferee Company.

4. Greater efficiency in cash management of the Transferee Company, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities, to further improve shareholder’s value.

5. Benefit of operational synergies to the combined entity in areas such as raw material sourcing, product placement, marketing and sale promotions initiatives, freight optimization and logistics.

6 . Grater leverage in operations planning and process optimization and enhanced flexibility in product offerings.

7. Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, productivity improvements, improved procurement, usage of common resource pool like human resource, administration, finance, accounts, legal, technology and other related functions, leading to elimination of duplication and rationalization of administrative expenses.”

That the transferee company is held by two major shareholders, viz., Mylan Mauritius and Mylan Luxembourg 2 S.a.r.l. to an extent of 82.79% and 15.38% respectively, i.e., both of them together holding a total of 98.17% shares, and the remaining 1.83% shareholding is held by the minority shareholders; that as a part of

this composite scheme of arrangement, the transferee company intends to cancel and extinguish the equity shares held by its minority shareholders by paying cash in lieu of equity shares held by them for the following reasons:

“1. Transferee Company was listed on Bombay Stock Exchange and National Stock Exchange having Scrip ID 524794 and MATRIX LABSEQ respectively. The Transferee Company went through a delisting process in the year 2009 and consequently the shareholders of the Transferee Company lost liquidity as the shares are no more traded on the said Stock Exchanges.

2. The fact that the shares of MLL are de-listed from the Stock Exchanges and, as a result thereof, the same cannot be traded on the floor of the Stock Exchange. The Transferee Company has received numerous requests from the Minority Shareholders to provide an exit option by way of buyback of shares. The Composite Scheme of Arrangement provides an opportunity to the Minority Shareholders to liquidate their entire shareholding in respect of equity shares held by them for cash.

3. The Composite Scheme of Arrangement provides for greater level of transparency and openness and secures full involvement of shareholders of MLL. All the Minority Shareholders of MLL would benefit from the Scheme in the same proportion as his/her/its share in the capital of MLL.”

Both the petitioners have given the details of the proposed scheme of amalgamation, particular reference to which is not necessary, except to the extent relating to the valuation of the shares, which alone is in dispute in these two cases.

It is stated in Company Petition No.246 of 2014 that the minority shareholders shall be paid a sum of INR 387 per equity share, representing an amount not less than the fair value of the share of the transferee company, as determined by an independent Valuer.

Both the petitioners have pleaded that their respective Boards of Directors have approved the proposed scheme of arrangement.

The transferor Company filed Company Application No.1066 of 2014 seeking dispensing with of the holding of the meeting of its

shareholders and convene the meeting of the unsecured creditors.

This Court by order, dated 01.09.2014, has dispensed with the meeting of the shareholders of the transferor company and appointed Sri K.Raja Reddy, Advocate, for holding the meeting of the unsecured creditors of the transferor company on 17.10.2014 at 4.30 pm. Accordingly, the meeting was held by the Chairperson. In the report, dated 25.10.2014, submitted by the Chairperson, it is *inter alia* stated that in pursuance of the advertisement published in two daily newspapers, 74 unsecured creditors in person, valued at Rs.62,81,73,711/-, attended the meeting and that all the unsecured creditors have unanimously voted in favour of the proposed scheme of arrangement.

The transferee Company filed Company Application No.1067 of 2014 for convening the meetings of its equity shareholders and the unsecured creditors.

This Court by order, dated 01.09.2014, appointed Sri K.N.Jwala, Senior Advocate, for convening the meetings of the equity shareholders and unsecured creditors on 17.10.2014 at 10.30 am and 2.30 pm, respectively, at Hotel Park Hyatt, Road No.2, Banjara Hills, Hyderabad. Accordingly, the meetings were held by the said Chairperson.

In the report, dated 25.10.2014, submitted by the Chairperson, it is *inter alia* stated that in pursuance of the advertisement published in two daily newspapers, 207 shareholders in person, valued at Rs.36,30,60,426/-, and 68 members by proxies holding shares, valued at Rs.1,69,276/-, attended the meeting and that except 14 shareholders in person or through proxy, all the remaining have voted in favour of the proposed scheme of arrangement.

In another report, dated 30.10.2014, submitted by the Chairperson, it is *inter alia* stated that in pursuance of the advertisement published in two daily newspapers, 119 unsecured creditors in person, valued at Rs.7,50,42,15,677/-, attended the meeting and all of them have unanimously voted in favour of the proposed scheme of arrangement.

The petitioners have subsequently filed the present Company Petitions for approving the proposed scheme of amalgamation.

By separate orders, dated 12.11.2014, in these Company Petitions, this Court has ordered notices to the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad

and the Official Liquidator attached to this Court.

In obedience to the notices issued by this Court, the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad, has filed his report, so also the Official Liquidator attached to this Court.

In his report, dated 19.12.2014, the Regional Director has stated that in pursuance of General Circular No.1/2014, dated 15.01.2014, issued by the Ministry of Corporate Affairs, New Delhi, comments from the Income Tax Department have been called for, vide letter, dated 24.11.2014, and that no comments/objections were received, by his office, till the date of filing of the report. He has further stated that the Registrar of Companies, Telangana and Andhra Pradesh, Hyderabad, has reported that the transferor company is regular in filing the statutory returns; that the transferee company has filed the statutory returns up to the year 2013; and that no complaints, no investigations and no inspections are pending against the affairs of both the companies.

The Official Liquidator also in his report, dated 23.12.2014, has stated that the affairs of the transferor company have not been conducted in a manner prejudicial to the interests of the members or to the public interest.

In response to the publication of notice, three individual shareholders have filed Company Application Nos.114, 115, 1572 and 1574 of 2014. For convenience, these shareholders are referred to as 'objectors'. One of the three objectors has attended the meeting and voted against the proposed scheme of arrangement. The objections raised by these objectors are two fold, viz., (1) that the Valuer to which the valuation of shares was assigned is not an independent one as, it was the advisor of one of the major shareholders of the transferee company, viz., Mylan, Luxembourg, and (2) that the Valuer has not made a fair valuation of the shares.

Sri V.Hari Haran, learned counsel for the objectors, submitted that 98.17% of shares of the transferee company is held by two major shareholders, viz., Mylan Mauritius and Mylan Luxembourg. He has further submitted that since this is a case of compulsory buying out of the shares of the minority shareholders of the transferee company, the Valuation report needs a more closer and critical scrutiny by this Court in order to ensure payment of proper value for the shares held by the minority shareholders. He has taken this Court through the Director's report filed in the Company Application No.1574 of 2014 and also the Valuation report, dated 18.08.2014, of Price Waterhouse & Co., LLP and submitted that

while the Director's report reflects healthy growth of the financial position of the transferee company, the Valuer while evaluating the shares has taken into consideration the scaling down of production in the year 2014 on the ground that there was slow down in the market. He has further submitted that out of the three recognized methods prescribed for valuation of the shares, viz., Income approach, Market approach and Net Asset Value approach, the Valuer has taken into consideration only the first mentioned two criteria excluding the criterion of Net Asset Value approach and that therefore the Valuation is defective requiring appointment of an independent Valuer for making a fair valuation of the shares.

Opposing the above submissions, Sri Iqbal Chagla, learned senior counsel appearing for Sri V.S.Raju, learned counsel for the petitioners, submitted that overwhelming majority of shareholders supported the proposed scheme of arrangement; that of 1.83% of the minority shareholders, 76% in value and 93% in number have voted in favour of the proposed scheme of arrangement; and that only 16 shareholders are opposing the proposed scheme of arrangement only on the ground of alleged improper valuation of shares. He has further submitted that Price Waterhouse & Co., LLP, which has valued the shares is a limited liability partnership concern based at Gurgaon, India and that it has not advised Mylan Luxembourg at any point of time. Alternatively, he has submitted that the auditor, which has submitted Valuation report, being submitted by a professional auditor, no bias can be presumed merely on account of the fact that it has advised one of the shareholders of the transferee company in the absence of any defects and apparent shortcomings existing in the report. He has referred to and relied upon the judgment of the Apex Court in ***Miheer H.Mafatlal Vs. Mafatlal Industries Ltd***, a judgment of a Division Bench of this Court in ***Vadlamudi Rama Rao Vs. M/s Asian Coffee Ltd*** and a judgment of a Division Bench of Bombay High Court in ***Sandvik Asia Ltd Vs. Bharat Kumar Padamsi*** in support of his submission that the jurisdiction of this Court under Sections 391 and 394 of the Act is supervisory and not appellate in nature and that this Court will not examine the intricacies of valuation. That unless the Court finds serious defects in the Valuation report of the Valuer, it will seldom interfere with the Valuation report as it does not possess the expertise to come to a different opinion from the one arrived at by the Valuer. The learned senior counsel also referred to the affidavits filed in the Company Applications and submitted that the Valuer has not applied the Net Asset Value approach for the reason that if the same is applied, the value of each share will come down to around Rs.135/-. He has also invited this Court's attention to page-32 of the Valuation report, wherein the Valuer has given certain reasons for not considering the Net

Asset Value approach for value analysis.

I have carefully considered the submissions of learned counsel for the parties and perused the record.

While considering the scope and the jurisdiction of the Company Court under Sections 391 and 394 of the Act, the Supreme Court in ***Minheer H.Mafatlal*** (supra) held that it is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court; that the Court certainly would not act as a Court of appeal and sit in judgment over the informed view of the parties concerned to the compromise as the same would be in the realm of corporate and commercial wisdom of the parties concerned. It was further held therein that the Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority; that consequently, the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate and that the Court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the rules and do not overstep the limits and subject to that how best the game is to be played is left to the players and not to the umpire.

While dealing with the submission made by the objectors on the exchange ratio of the equity shareholders, the Supreme Court held as under:

“It was submitted that the exchange ratio of equity shareholders so far as the transferee-Company is concerned works very unfairly and unreasonably to them. As per the proposed Scheme 5 equity shares of the transferor-Company are to be exchanged for 2 equity shares of the transferee-Company. So far as this contention is concerned it has to be kept in view that before formulating the proposed scheme of compromise and amalgamation an expert opinion was obtained by the respondent-Company as well as the transferor-Company, namely, MFL on whose Board of Directors the appellant himself was a member. M/s C.C. Chokshi & Co., a reputed firm of chartered accountants, having considered all the relevant aspects suggested the aforesaid exchange ratio keeping in view the valuation of shares of respective companies. It must at once be stated that valuation of shares is a technical and complex problem which can be appropriately left to the consideration of experts in the field of accountancy. Pennington in his *Principles of Company Law* mentions four factors which had to be kept in mind in the valuation of shares:

- “(1) Capital Cover,
- (2) Yield,
- (3) Earning Capacity, and
- (4) Marketability.

For arriving at the fair value of share, three well-known methods are applied:

- (1) The manageable profit-basis method
(the Earning Per Share Method)
- (2) The net worth method or the break
value method, and
- (3) The market value method.”

So many imponderables enter the exercise of valuation of shares. M/s C.C. Chokshi & Co. considering all the relevant aspects and obviously keeping in view the accounting principles underlying the valuation of shares suggested the said ratio which was found acceptable both by the Board of Directors of the respondent-Company as well as the Board of Directors of the transferor-Company. That the appellant himself as a director of the transferor-Company gave green signal to the Scheme and to this very ratio of exchange of shares. But Shri M.J. Thakore, appearing for the appellant, submitted that from the point of view of the transferor-Company it was very profitable to have two shares of the transferee-Company against five shares of the transferor-Company. But the difficulty arises only from the point of view of the transferee-Company shareholders. According to Shri Thakore the proper exchange ratio would be one share of the transferee-Company to six shares of the transferor-Company. It is difficult to appreciate this contention of the appellant. It has to be kept in view that the appellant never bothered to personally remain present in the meeting of equity shareholders for pointing out the unfairness of this exchange ratio to his brother equity shareholders who were likely to be affected by the very same ratio as the appellant. His interest at least to that extent was entirely common and parallel to that of other equity shareholders. But he had no time to remain personally present. He sent his proxy only to record his dissent vote which was in microscopic minority of 5% as compared to 95% majority vote. Not only that even before the Court he did not submit any contrary expert opinion regarding the valuation of shares of transferor and transferee companies for supporting his *ipse dixit* that the correct ratio would be 6:1 so far as transferor and transferee companies were concerned. Shri Shanti Bhushan, learned Senior Counsel for the appellant, having realized this difficulty submitted that at least these proceedings are continuation of proceedings before the High Court, therefore, this Court may now in order to satisfy itself send for the opinion of an expert. It is

difficult to agree. The appellant who was propounding this theory of correct exchange ratio had nothing to offer in support of his contention both before the learned Single Judge as well as before the High Court. It has to be kept in view that the matter was fiercely contested on all permissible points before the learned Single Judge. The proceedings were pending before the High Court for more than two years from 8-2-1994 till 12-7-1996 when the Division Bench disposed of the appeal. For all these years neither before the learned Single Judge nor before the High Court in appeal the appellant thought it fit to request the Court to either call for the report of any other expert on valuation of shares nor did he himself get such report for placing for consideration of the Court in support of his supposed better ratio. It has also to be kept in view that which exchange ratio is better is in the realm of commercial decision of well-informed equity shareholders. It is not for the Court to sit in appeal over this value judgment of equity shareholders who are supposed to be men of the world and reasonable persons who know their own benefit and interest underlying any proposed scheme. With open eyes they have okayed this ratio and the entire Scheme. 40% of the majority shareholders were financial institutions who were supposed to be well versed on the aspect of valuation of shares. They had no objection to the exchange of 2 shares of the transferee-Company for 5 shares of the transferor-Company. As stated earlier it was a sort of a package duly considering all imponderables and implicit factors which the shareholders had to keep in view for deciding whether to approve the Scheme of Amalgamation or not. The exchange ratio was only one of the items. They thought it fit in their commercial wisdom to accept the Scheme as a whole along with the exchange ratio presumably in expectation of better profits in years to come when the amalgamated companies would operate and when there would be, according to the shareholders, better prospects of earning greater dividends. They willingly agreed to give in exchange two shares of the transferee-Company for five shares of the transferor-Company and made them available to the shareholders of the transferor-Company. The appellant was representing only 5% dissenting shareholders and his objection was almost a voice in the wilderness, which did not appeal to the majority of his brother shareholders. Shri Shanti Bhushan, learned Senior Counsel for the appellant, in this connection invited our attention to the observation of the Division Bench in its judgment at page 375 wherein it has been observed that "if one were to examine the exactitude of exchange ratio that may be offered fairly on the arithmetic scale by taking into consideration various details, there is some force in what were suggested by Mr B.R. Shah on behalf of the appellant. However, keeping in view the scope of enquiry which the Court is required to undertake and with whose findings we are concerned, it will not be permissible for us in law to undertake this exercise in the facts and circumstances of the present case in absence of bona fides". We fail to appreciate how this observation can be of any avail to the learned Senior Counsel for the appellant as all that the Court wanted to suggest was that

even assuming that some other exchange ratio can be suggested to be a better one, it was for the equity shareholders who acted bona fide in the interest of their class as a whole to accept even a less favourable ratio considering other benefits that may offset such less favourable ratio once an amalgamation goes through. We wholly concur with this view. In this connection we may also refer to a decision of Maugham, J., in *Hoare & Co. (No. 2) Re, case*⁵ wherein it was laid down that where statutory majority had accepted the offer the onus must rest on the applicants to satisfy the court that the price offered is unfair. In this connection the following pertinent observations were made by the learned Judge:

“The other conclusion I draw is this ... the court ought to regard the scheme as a fair one inasmuch as it seems to me impossible to suppose that the court, in the absence of very strong grounds, is to be entitled to set up its own view of the fairness of the scheme in opposition to so very large a majority of the shareholders who are concerned. Accordingly, without expressing a final opinion on the matter, because there may be special circumstances in special cases, I am unable to see that I have any right to order otherwise in such a case as I have before me, unless it is affirmatively established that, notwithstanding the views of a very large majority of shareholders, the scheme is unfair.”

The Court has also taken into consideration, the fact that the appellant before it was representing only 5% dissenting shareholders and his objection was almost a voice in the wilderness, which did not appeal to the majority of his brother shareholders.

The Division Bench of this Court in ***Vadlamudi Rama Rao*** (supra) followed the ratio in ***Minheer H.Mafatlal*** (supra). Echoing similar views, this Court held that it is not in doubt that the Court, while granting approval of the scheme of amalgamation, has to be satisfied that a fair procedure had been adopted and an honest attempt was made to arrive at a fair and reasonable Share Exchange Ratio in the interests of the general body of the shareholders and the creditors, that the Court should nevertheless refrain from embarking on an exercise of evaluation on its own to test the correctness of the figures reached by the experts; that the Court has to take note of the fact that its role in according approval of the scheme of amalgamation under Section 394 of the Act is nothing more than a supervisory role. The Division Bench has compared the jurisdiction of the Company Court closely with the

judicial review of administrative action, where the constitutional Court is not concerned so much with the actual decision reached by the administrative or statutory authority but only with the manner of reaching such decision. The Bench has referred and relied upon the judgment of the Apex Court in **Fertilizer Corpn. Kamagar Union Vs. Union of India** {AIR 1981 SC 344} and quoted a passage from the said judgment which is profitable to be reproduced herein below:

“Certainly, it is not part of the judicial process to examine entrepreneurial activities to ferret out flaws. The Court is least equipped for such oversights. Nor, indeed, is it a function of the judges in our constitutional scheme. We do not think that the internal management, business activity or institutional operation of public bodies can be subjected to inspection by the Court. To do so, is incompetent and improper and therefore, out of bounds. Nevertheless, the broad parameters of fairness in administration, bona fides in action, and the fundamental rules of reasonable management of public business, if breached, will become justiciable.”

The Bench observed that the role of the Court and the scope for interference when it is called upon to sanction the compromise or arrangement, which includes within its sweep a scheme for arrangement, has been succinctly laid down by the Supreme Court in **Mafatlal Industries** (supra).

An identical view was taken by a Division Bench of the Bombay High Court in **Sandvik Asia Ltd** (supra). The Bench has copiously quoted several passages from the judgment in **British and American Trustee & Finance Corpn. Vs. Couper** {(1894) A.C. 399}.

Applying the ratio laid down by the various Courts, including the Apex Court, discussed above, to the facts of the present case, this Court does not find any serious anomalies in the Valuation report.

Perhaps, the objection raised by the objectors that the Valuer has not taken into consideration the Net Asset Value approach while valuing the shares, appears on a superficial consideration, as somewhat serious.

As submitted by learned senior counsel appearing for the petitioners, the Valuer himself has set out the reason for omitting

the said criterion. At page-32 of the Valuation report, it is stated as under:

“Given the purpose of the Value Analysis we have not considered the Net Asset Value Approach for Value analysis. The value under the approach, particularly when this approximates the realizable value, is often used as an estimate of “break-up value”, and therefore, is particularly relevant in the event of liquidation. Hence, this value may not be a good indicator of the realizable value as it merely reflects historic costs and requires adjustments on account of estimated disposal costs and possible shortfall or appreciation in realization of both fixed assets and net current assets.”

In para-6(e) of the counter-affidavit filed on behalf of the transferee company in Company Application Nos.1574 and 1575 of 2014, its Company Secretary and General Manager (Legal) has stated the following reasons for not adopting the Net Asset Value approach by the Valuer while valuing the shares: -

“With reference to paras-5 to 7 of the Application, respondent No.1 Company most respectfully submits that respondent No.1-Company had appointed an independent reputed Valuer for the purpose of determining the fair value of shares. Respondent No.1-Company wishes to submit that the value of INR 387 per share was arrived at by the independent Valuer is not lesser than the fair/intrinsic value of shares of respondent No.1-Company and the independent Valuer has adopted globally acceptable valuation methodologies i.e., Income Approach and Market Approach. The independent Valuer also took cognizance of the fact that the net asset approach be eliminated while arriving at the fair value as it would have resulted in the value being less than the present fair value, i.e., INR 387 per share. Respondent No.1-company wishes to also clarify that a high degree of expertise was exercised by the independent Valuer while arriving at the fair value of the equity shares of respondent No.1-Company. Respondent No.1-Company would like to reiterate the fact that all the factors have been considered while arriving at the valuation and the valuation report shared with the

Applicants, vide e-mail dated December 17, 2014 and by courier on December 18, 2014 has all the necessary details that the applicants have sought for.”

As noted above, learned senior counsel for the petitioners has orally submitted that if the Net Asset Value approach is taken into consideration, each share value would have come down to Rs.135/- which will be detrimental to the non-promoter shareholders.

As held by the Apex Court, this Court has no expertise in judging whether the Valuation report is correct or not. So long as the Court is satisfied that the prescribed parameters for valuation are taken into consideration, it will not undertake a roving enquiry or venture into fishing expedition with a view to finding out the defects or lacunae, if any, in the Valuation report.. The Valuer as well as the transferee company have given reasons for adopting the criteria of Income approach and Market approach. Except pointing out that the third criterion referred to above has not been applied, learned counsel for the objectors failed to further demonstrate as to whether the same has resulted in any prejudice being caused to his clients. The Valuer, being an expert in the field, is the best judge to adopt such criteria as he deems fit and proper for valuing the shares and it is no part of the duty of this Court to make a deep probe into the methodology adopted by the Valuer.

Coming to the submission of learned counsel for the objectors that there is variation in the approach between the Directors on one side and the Valuer on the other while valuing the shares, on a careful consideration of this submission, I do not find any merit whatsoever in the same.

In the Director’s report pertaining to the financial performance of the transferee company for the financial year ended March 31st 2014, it is stated as under: -

“Your Company posted yet another impressive year of performance. During the year under review, the turnover, on a standalone basis, increased by 29.20%, while on a consolidated basis, the sales increased by 24.07% over the previous year. The increase in sales was mainly due to the increase in the sales of Active Pharmaceutical Ingredients (APIs) and Finished Dosage Form (FDF) products and also due to amalgamation of Agila Specialties Private Limited (“ASPL”) and its subsidiary with your company with effect from December 6, 2013. The net profit for the

year also showed an impressive growth of 62.63% on a standalone basis, while on a consolidated basis, the increase was 130.17% over the previous year.

During the year, as part of group restructuring exercise, your Company has sold Matrix Laboratories (Singapore) Pte Limited along with its subsidiaries for a consideration of Rs.3,495.29 million (EUR 40.9 million) to a fellow subsidiary. Consequent to the sale, the earlier provision made for diminution in the value of investment has been written back and profit of sale of Rs.2,983.77 million and Rs.5,615.15 million has been recognized in standalone financials and in consolidated financials respectively.”

In the valuation report, it is stated as under:

“We understand from the Management that the revenues from Mylan group are ascertained based internal pricing studies done by the Management.

We understand from the Management that the growth in the contract manufacturing revenues is largely dependant on the Mylan group strategy to scale-up/utilize the contract manufacturing activities of the Company, as determined by the global production planning team (which is in-turn based on market dynamics and availability of suitable production capacities).

As per Management, ramp-up in the production of Gx FDFs has been scaled down in CY 2014, owing to slow down in the global/US markets, accordingly the observed growth trend in contract manufacturing revenues witnessed slow down in 3M 2014.”

I fail to understand as to how these two documents contradict each other. While in the Directors’ report increase in turn-over over the previous year was mentioned, in the Valuation report, scaling down of production of one particular product, viz., Gx FDFs in the financial year 2014 was mentioned.

Be that as it may, it is not the pleaded case of the objectors that

the transferee Company has manipulated the turn over figures or profit figures in order to down play the performance of the company with a view to fix lower value for the shares of the minority shareholders. This Court cannot presume any such conduct on the part of the transferee company unless a strong case in this regard is made out.

As rightly submitted by learned senior counsel for the petitioners the objectors have failed to file the opinion of an independent expert with reference to the Valuation report of Price Waterhouse & Co., LLP. The objectors have only tried to fish out the so-called deficiencies from the Valuation report. No convincing reason has been put forth by learned counsel for the objectors for not obtaining an independent expert's opinion regarding the correctness or otherwise of the Valuation report submitted by Price Waterhouse & Co. LLP. Therefore, this Court cannot be persuaded to accept the plea of the objectors, unsupported by any material, which would impeach the soundness and correctness of the valuation report, merely based on presumptions and conjectures.

As regards the objection that the Valuer is not an independent Valuer, the objector in Company Application No.115 of 2014 has raised the following pleading:

“The applicant further submits that the PwC has not disclosed any conflict of interest that it has in respect of the valuation carried out by it. The applicant, with great responsibility submits that PwC has been a tax consultant and has represented the Mylan Luxembourg S.a.r.l, one of the majority shareholders of the present respondent No.1 Company. The applicant responsibly submits that the value has been involved with the respondent Transferee Company and MP Laboratories (Mauritius) Limited in respect of their approval of FDI before the Foreign Investment Promotion Board.”

In the counter-affidavit filed on behalf of the petitioners in Company Application No.115 of 2014, it is stated as under:

“With reference to the contents in paragraphs-11(f) and 11(g) of the application, respondent No.1/Transferee company submits that the independent Valuer i.e., Price Waterhouse & Co. LLP., Gurgaon is not related to respondent No.1/Transferee Company nor to Astrix Laboratories Limited (Transferor Company).

Furthermore, respondent No.1/Transferee Company also clarifies that Price Waterhouse & Co. LLP., Gurgaon is neither the Statutory Auditor/Tax Auditor/Tax Consultant of respondent No.1/Transferee Company/Mylan Luxembourg S.a.r.l./MP Laboratories Mauritius Limited and as such the applicant cannot state that the valuation was not independent or not at an arm's length. Respondent No.1/Transferee Company also clarifies that the value arrived at by the independent Valuer was based on the information/assumptions/future prospects of respondent No.1/ Transferee Company and based on their evaluation of the same. Therefore, respondent No.1/Transferee Company hereby refutes such erroneous claims made against the valuation as carried out."

I have no reason to reject the plea of the petitioners to the effect that the Valuer, viz., Price Waterhouse & Co., LLP is neither related to the transferee company nor the transferor company nor the same is the statutory auditor/tax auditor/tax consultant of the transferee company or its major shareholders-Mylan Mauritius and Mylan Luxembourg

Assuming that the Valuer has any connection with the transferee company or its major shareholders, whether the same by itself throws any cloud on the Valuation report is the next question to be considered.

When a similar objection was raised before the Division Bench of this Court in **Vadlamudi Rama Rao** (supra), the Bench has unhesitatingly repelled the same. In that case, it was pointed out that M.N.Raiji & Co. are the statutory auditors of the Consolidated Coffee Limited (transferee Company) and A.F.Ferguson & Co. are the statutory auditors of their associated Companies by name TISCO and ANZ Bank Ltd, which has approved the valuation done by the aforesaid Chartered Accountants.

While agreeing with the view of the learned single Judge, the Division Bench held that the mere fact that one of the Chartered Accountants/Valuers is a statutory auditor of the transferee company does not lead to a reasonable inference that the choice of such Valuer was stage-managed by Tata Tea Ltd and a statutory auditor has an independent role to play if he has to effectively perform his part. That the imputations of bias cannot lightly be made against a professional Chartered Accountant who is expected to discharge the duties according to the obligations

cast on him by the Statute and the well-established principles of professional conduct and etiquette.

The above judgment will put at rest the controversy sought to be stirred up by the objectors that the Valuer being associated with the transferee Company, its Valuation report cannot be accepted.

On a careful consideration of the Valuation report, pleadings and submissions of learned counsel for all the parties, I am of the opinion that no interference with the Valuation report is warranted and there is no need for appointing an independent Valuer, as requested by the objectors.

For all the above-mentioned reasons, I do not find any merit in the objections raised by the objectors and the same are, accordingly, rejected.

In the light of the above noted facts and having regard to the reports submitted by the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad and the Official Liquidator, 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 approved and the petitioners shall, within 30 days from the date of receipt of a copy of this order, cause a certified copy of this order to be delivered to the Registrar of Companies, Telangana and Andhra Pradesh, Hyderabad for registration and take all other consequential actions in pursuance of the approval of the scheme of amalgamation.

The Company Petitions are, accordingly, allowed.

JUSTICE C.V.NAGARJUNA REDDY

02nd March, 2015

Note:

LR copies to be marked.

B/o

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