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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CO.APPL.(M) 19/2016**

**IN THE MATTER OF  
MODI-MUNDIPHARMA HEALTHCARE PVT. LTD.**

..... Applicant no.1/ Transferor Company

**WITH**

**MODI-MUNDIPHARMA PVT. LTD.**

..... Applicant No.2/ Resulting Company

Through: Mr Rajeev K. Goel, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**ORDER**

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**05.02.2016**

1. This is a first motion (joint) application, which is moved by Modi-Mundipharma Healthcare Pvt. Ltd. (i.e. Applicant no.1/ Transferor Company) and Modi Mundipharma Pvt. Ltd. (i.e. Applicant no.2/ Resulting Company) (hereafter collectively referred to as the applicants) under Section 391, 394 and 100 to 104 of the Companies Act, 1956 (in short the Act) in connection with the proposed scheme of arrangement (hereafter referred to as the scheme). A copy of the scheme is enclosed with the application.

1.1 To be noted, the scheme is configured in a manner whereby, a demerged undertaking of the Transferor Company is to merge with the Resulting Company.

2. The registered office of the applicants are situate, within the National Capital Territory of Delhi and, therefore, this court has the necessary jurisdiction to deal with the matter.

3. The details of the date of incorporation of the applicants, their authorized, issued, subscribed and paid up capital have been set out in the affidavits filed in support of Judge's summons for directions.

3.1 The Transferor Company was incorporated on 25.03.2009 under the name and style: Modi Omega Pharma (India) Pvt. Ltd., in consonance with the provisions of the Act. Thereupon, the name of the Transferor Company was changed to its present name i.e. Modi-Mundipharma Healthcare Pvt. Ltd. Accordingly, a fresh Certificate of Incorporation was issued by the Registrar of Companies, NCT of Delhi and Haryana (ROC), on 13.04.2015.

3.2 In so far as the Resulting Company is concerned, it was incorporated on 31.10.1990, under the provisions of the Act. Apparently, the Transferor Company is a wholly owned subsidiary of the Resulting Company.

4. The copies of Memorandum and Articles of Association of the applicants have been filed. The latest audited annual accounts of the Transferor Company for the year ended 31.12.2014 is on record. Similarly, the Resulting Company has also filed its latest audited annual accounts for the year ended 31.03.2015.

5. I am informed by the learned counsel for the applicants that no proceedings under Section 235 to 251 of the Act are pending against them as on date.

6. The scheme has been approved by the respective Board of Directors (BOD) of applicants. The copies of the BOD resolution of even date i.e. 21.10.2015 have been filed.

7. The status of the shareholders, secured and unsecured creditors of the applicants and the consent obtained from them (wherever applicable) qua the scheme is set out in the table given below:-

| Company            | No. Of Shareholders | Consent given | No. Of secured creditors | Consent given | No. Of unsecured creditors | Consent given |
|--------------------|---------------------|---------------|--------------------------|---------------|----------------------------|---------------|
| Transferor Company | 2                   | ALL           | NIL                      | N.A.          | 151                        | Not obtained  |
| Resulting Company  | 4                   | ALL           | 2                        | ALL           | 846                        | Not obtained  |

8. A prayer has been made to dispense with the requirement of convening the meetings of the shareholders of the applicants as also the secured creditors of the Resulting Company. The letters of consent submitted by the shareholders have been seen and examined. They are found in order. Similarly, letters of consent of secured creditors of the Resulting Company have been seen and found in order.

8.1 Accordingly, prayer made for dispensing with the meetings of the shareholders of the applicants as also the secured creditors of the Resulting Company is allowed.

9. In so far as the unsecured creditors of the applicants are concerned, a prayer has been made to issue directions to convene a meeting qua them.

10. It is pertinent to note that in the application, there is disclosure made with respect to statutory and other dues payable both by the Transferor Company and the Resulting Company. The details with respect to the Transferor Company and the Resulting Company are given in Table A and B below :-

**TABLE A**

| S. No. | Particulars            | Payable as on 31.10.2015 | Paid till 30.11.2015 | Remarks         |
|--------|------------------------|--------------------------|----------------------|-----------------|
| 1      | Tax Deducted at source | 18,910                   | 18,910               | Paid in Full    |
| 2      | Provident Fund         | 30,207                   | 30,207               | Paid in Full    |
| 3      | VAT/CST                | 2,73,562                 | 2,58,392             | Paid as per due |

|   |                                |                 |       |                     |
|---|--------------------------------|-----------------|-------|---------------------|
|   |                                |                 |       | dates               |
| 4 | Service tax                    | 1,750           | 1,750 | Paid in Full        |
| 5 | Provision for Gratuity         | 2,29,620        |       | Not due for payment |
| 6 | Provision for Leave Encashment | 2,61,862        |       | Not due for payment |
| 7 | LTA Provision                  | 9,870           |       | Not due for payment |
|   | <b>Total</b>                   | <b>8,25,781</b> |       |                     |

**TABLE B**

| S. No. | Particulars                    | Payable as on 31.10.2015 | Paid till 30.11.2015 | Remarks               |
|--------|--------------------------------|--------------------------|----------------------|-----------------------|
| 1      | Tax Deducted at source         | 34,04,223                | 34,04,223            | Paid in Full          |
| 2      | Provident Fund                 | 37,72,051                | 37,72,051            | Paid in Full          |
| 3      | VAT/Sales Tax                  | 77,43,060                | 77,43,060            | Paid in Full          |
| 4      | Service tax                    | 25,32,522                | 25,32,522            | Paid in Full          |
| 5      | Professional Tax               | 40,060                   | 20,240               | Paid as per due dates |
| 6      | Excise Duty                    | 18,95,757                | 18,95,757            | Paid in Full          |
| 7      | Works Contract Tax             | 855                      | 855                  | Paid in Full          |
| 8      | Payable to Employees           | 1,17,882                 | 1,17,882             | Paid in Full          |
| 9      | ESI payable                    | 2,03,015                 | 2,03,015             | Paid in Full          |
| 10     | Provision for Travel Allowance | 39,59,278                |                      | Not due for payment   |
| 11     | Provision for Leave Encashment | 3,49,65,238              |                      | Not due for payment   |
| 12     | Provision for Gratuity         | 1,26,91,052              | 46,43,278            | Not due for payment   |
| 8      |                                |                          |                      |                       |
|        | <b>Total</b>                   | <b>7,13,24,993</b>       | <b>2,43,32,883</b>   |                       |

10.1 A perusal of Table A would show that dues towards withholding tax (TDS), Provident Fund, VAT / CST and Service Tax have been paid.

10.2 In so far as the provisions made for gratuity and leave encashment

and LTA are concerned, the amounts given therein against these heads have not been expended, as according to the applicants, due dates have not reached qua the said liabilities.

10.3 Similarly, in so far as the Table B is concerned, it is the applicants' say that the dues towards withholding tax i.e. TDS, Provident Fund, VAT/ Sales Tax, Service Tax, Professional Tax, Excise duty, Works Contract Tax, the payments to be made to employees and dues payable towards ESI, have been paid in full.

10.4 In so far as the provisions made qua LTA, leave encashment and gratuity are concerned, amounts shown against them have not been expended as due dates have not been reached.

10.5 In this context, the learned counsel for the applicants has made a submission that outstanding dues referred to in Table A and B should not form part of the class of persons / entities who represent unsecured creditors, at the stage of first motion. In other words, a request was made that no separate meeting be called qua the said statutory and other dues as reflected in Table A and B above as in point of fact the said liabilities have not become due and payable at this juncture. The prayer, in my view, is reasonable and therefore, no notice be issued qua liabilities as reflected in serial no.5, 6, 7 of Table A and serial no.10, 11, 12 of Table B. It is, however, made clear that the impact of the aforesaid liabilities will be examined at the stage when a second motion is filed by the applicants with this court.

11. Therefore, the meeting of the unsecured creditors of the Transferor Company shall be held on 21.03.2016 from 2.30 p.m. onwards, at Management Development Centre, Ground Floor, Modi Tower, 98, Nehru

Place, New Delhi – 110 019, while of the Resulting Company will be held on the same date at 4.00 p.m. at the same venue.

11.1 Mr Kanwal Chaudhary, Advocate (Mb 9810050567) is appointed as a Chairperson and Mr. Ritesh Kumar Chaudhary, Advocate (Mb. 9910394267) is appointed as an Alternate Chairperson to convene the meeting of the unsecured creditors of the Transferor Company. Furthermore, Mr.Rahul Gulia Advocate (Mb. 9911669346) is appointed as a Chairperson and Ms. Anureeta Sharma, Advocate (Mb. 8130076420) is appointed as an Alternate Chairperson to convene the meeting of the unsecured creditors of the Resulting Company.

11.2 The quorum with respect to those meetings will be as follows:

| Company            | Unsecured Creditors |           |
|--------------------|---------------------|-----------|
|                    | No.                 | Value (%) |
| Transferor Company | 15                  | 25        |
| Resulting Company  | 85                  | 25        |

11.3 In case the quorum, as mentioned above, with respect to the unsecured creditors of the applicants is not in place, at the designated time when the meeting is called to order, then, the meeting shall be adjourned by half-hour, and thereafter, the persons present for voting shall be deemed to constitute the quorum. For the purposes of computing the quorum, any valid instrument of proxy filed shall be considered, if filed in the prescribed format, and is, duly signed by the person entitled to attend the meeting and furthermore is deposited with the registered office of the applicants, at least 48 hours before the meeting so convened. The Chairperson and/or alternate Chairperson, so appointed, shall ensure that proxy registers are properly

maintained.

12. The Chairperson and/or Alternate Chairperson shall also ensure that notices for convening the aforementioned meetings of the unsecured creditors of the applicants, along with the scheme, and a statement as required under Section 393 of the Act is sent to them by ordinary post at their registered or last known address at least 21 clear days before the date appointed for the said meetings, in their presence or in the presence of their authorised representative. The notice with respect to each of the meetings referred to above, shall be separately published in the Business Standard (English), Delhi edition and in the Business Standard (Hindi), Delhi edition in terms of the 1959 Rules, at least 21 clear days before the date appointed for the said meetings.

13. The Chairperson and/or Alternate Chairperson shall be entitled to issue suitable directions to the management of the applicants so as to ensure that the aforementioned meetings are conducted in a just, free and fair manner. For their efforts, the Chairperson and the Alternate Chairperson for each of the meeting will be paid a fee of Rs. 50,000/- each. This will be in addition to reimbursement of any out of pocket expenses incurred by them. The reimbursement will be on actual basis. The Chairpersons of the respective meetings will file their reports within two weeks of holding the aforesaid meetings.

14. The joint application stands allowed in the aforesaid terms.

15. Dasti.

**RAJIV SHAKDHER, J**

**FEBRUARY 05, 2016**

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