

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
INDORE BENCH**

CA (CAA) 2 of 2022

*[An Application filed under Section 230-232 of the Companies Act, 2013
for (compromise, arrangements, and amalgamations)]*

In the matter of:

M/S 3B BLACKBIO BIOTECH INDIA LIMITED

CIN: U24232MP2010PTC024717

A private limited Company incorporated
under the provisions of the Companies Act, 1956,
having its registered office at:
7-C Industrial Area,
Govindpura, Bhopal,
Madhya Pradesh- 462023

..... Applicant/Transferor Company

M/S Kilpest India Limited

CIN: L24211MP1972PLC001131

A public limited Company incorporated
Under the provisions of the Companies Act, 1956,
Having its registered address at:
7C, Industrial area,
Govindpura, Bhopal,
Madhya Pradesh- 462021

..... Applicant/Transferor Company

**Order Reserved on: 12.05.2022
Order Pronounced on: 10.06.2022**

**Coram: Madan B. Gosavi, Member (Judicial)
Kaushalendra Kumar Singh, Member (Technical)**

Appearance:

Learned Adv. Ms. Dharmistha N Raval appeared for the Applicant Companies.

ORDER

1. This joint application is filed by applicant companies under section 230-232 of the Companies Act, 2013, namely **M/s 3B BlackBio Biotech India Limited (Transferor Company) and M/s Killpest India Limited (Transferee Company)** for dispensation of the meetings of Equity shareholders of Transferor Company as well as Secured and Unsecured Creditors of Transferor and Transferee Company. Further, the petitioner companies prayed for a direction to convene the meeting of Equity Shareholders of Transferee Company for considering and approving with or without modification, a composite scheme of amalgamation.

2. The registered offices of the Applicant Companies are situated in the state of Madhya Pradesh and are under the jurisdiction of the National Company Law Tribunal, Bench at Indore.

3. Applicant Transferor Company is a private limited company having CIN: U24232MP2010PTC024717, incorporated under the Companies Act, 1956 and its registered address is at 7C, Industrial Area, Govindpura, Bhopal, Madhya Pradesh- 462023. Transferor Company was incorporated on 12.11.2010. The Transferor Company is primarily engaged in the business of manufacturer in the field of RT-PCR and NGS base Molecular Diagnostic Kits, engaged in the design, development, manufacturing, and commercialization of PCR based Molecular Diagnostic kits, PCR Enzymes, and PCR Reagents.

4. Applicant Transferee Company is a public limited Company having CIN No: L24211MP1972PLC001131, incorporated under

the provisions of the Companies Act, 1913, having its registered address at 7C, Industrial Area, Govindpura, Bhopal, Madhya Pradesh- 462023. The Transferee Company was incorporated on 27.05.1972. Transferee Company is a listed company and its shares are listed on the Bombay Stock Exchange. The Transferee Company is engaged in the business of manufacturing, cleaning, spinning, bleaching, knitting, and dyeing all kinds of chips and yarns, fibers and intermediaries, textiles, fabrics, etc.

5. The Applicant Companies submit that through the scheme the Amalgamated Company will have greater efficiency in overall business including economies of scale, cash flow management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently for the purpose of development of businesses of the companies and their growth opportunities, resulting in maximization of shareholders value. Amalgamation will result in cost-saving for the Transferor Company and the Transferee Company as they are engaged in the related and interdependent activity which is expected to result in higher net worth and cost-saving for the Amalgamated Company.

6. The Board of Directors of the Applicant Companies in their respective Board Meetings held on 17.09.2020 passed a resolution for preparation of the proposed scheme of amalgamation as placed before the respective Board. The Applicant Companies have filed their audited balance sheets as of 31.03.2021, the same is annexed with the applications.

7. The Applicants have stated that the accounting treatment proposed in the Scheme of Arrangement is in conformity with the accounting standards prescribed under Section 133 of the

Companies Act, 2013. The Certificates from the respective Statutory Auditors of the Applicant Companies have been filed along with the Application.

8. The Ld counsel of the applicant companies submitted that as per the audit report placed on record by the applicant Companies the details of Shareholders, Secured Creditors, and Un-secured Creditors are as follows:

i. The Transferor Company has 5 shareholders with the authorized share capital is Rs. 1,20,00,000/-, and Subscribed share capital of Rs. 1,02,75,000/- share value of Rs. 10/- each.

ii. The Transferee Company has 16,766 shareholders with, the authorized share capital of Rs. 15,00,00,000/-, and Subscribed share capital of Rs. 7,50,81,000/- share value of Rs. 10 each.

iii. The Transferor Company does not have any Secured Creditors.

iv. The Transferee Company has one Secured Creditor namely State Bank of India.

v. The Transferor Company does not have any Un-secured Creditors.

vi. The Transferee Company has total 30 Unsecured Creditors.

9. The Ld. Counsel in application contended with respect to the dispensation and convening of the meetings of the creditors and shareholders of the applicant companies as under:

i. This Tribunal may please to dispense with the meetings of shareholders and un-secured of Transferor Company as there are no unsecured creditors and 4 shareholders from total 5 shareholders has given their consent affidavits for the scheme of amalgamation. One of the Equity shareholders namely M/s 2B Blackbio, S.L. Spain, a company incorporated under the laws of Spain has gone into liquidation and therefore it is not possible for Transferor Company to obtain consent from the said shareholder. Further, the meetings of secured creditors are not required as there are no- secured creditors of the Transferor Company.

ii. As far as the Equity Shareholders of Transferee Company are concerned, it is submitted that appropriate directions be given for holding and convening of meeting of the Equity Shareholders of the Transferee Company and for appointment of Chairman and Scrutinizers for the meeting.

iii. This Tribunal may dispense with the meetings of secured creditors and Un-secured creditors of Transferee Company as Un-secured creditors and secured creditors have given their consent for the scheme of amalgamation.

10. It is submitted by the Applicant Companies that Transferee Company being a listed public Company, a prior intimation to Stock Exchange and Security and Exchange Board of India through the designated stock exchange is a prerequisite. In the light of the SEBI circular the Transferee Company has submitted the scheme along with the documents with BSE. BSE observation

letter dated 03.02.2022 is on record, there is no adverse observation made by BSE.

11. The Applicant Companies submitted that no investigation or proceedings against the Applicant Companies under section 201 to 226 of the Companies Act, 2013 as well as sections 235 to 251 of the Companies Act, 1956, or the like are pending.

12. The Applicant Companies submitted that the provisions of the Competition Act, 2002 are not applicable in the present case. It is further submitted by the Applicant Companies that no approval under the FEMA is required. Further there will be no in-flow or out-flow of capital on approval of the Scheme of Amalgamation. Hence, no notice is required to be issued to the RBI.

13. On perusal of the record and submission made by the counsel of the applicant, it is noted that Secured Creditor of Transferee Company has given their consent affidavit for the scheme of amalgamation. There are no Secured Creditor and Unsecured Creditor in the Transferor Company as per the CA certificate. Further, 4 of 5 shareholders of the Transferor Company who holds 97% of the Share Capital have given their consent affidavits. There is no consent received from the shareholders of the Transferee Company. However, some of the Unsecured Creditors of the Transferee Company have given their consent affidavits. Hence, prayer of the counsel of the applicants is partially allowed. Accordingly, the meetings of the Shareholders, Secured Creditors and Unsecured Creditors of the Transferor company are dispensed with. Further, the meetings of Secured Creditors of Transferee Company is also dispensed with. However, meetings of

Shareholders and Unsecured Creditors of Transferee Company will have to be convened.

14. This Tribunal therefor, directes to hold the meeting of shareholders of Transferee Company on Friday, 5th August 2022 at 11:30 AM, through video conference or other Audio-Visual means for the purpose of considering and, if thought fit, approving with or without modification(s) of the Scheme.

15. The meeting of the Unsecured Creditors of the Transferee Company shall be convened and held on Friday, 5th August 2022, at 12:30 PM through video conference or other Audio Visual Means for the purpose of considering and, if thought fit, approving with or without modifications the proposed Scheme.

16. At least one month before the date of aforesaid meetings, an advertisement about the convening of the said meeting, indicating the day, date, place and time, as aforesaid, shall be published in English daily, i.e., **“Times of India”** and in Hindi daily, i.e., **“Dainik Bhaskar”** in their all editions within the State of Madhya Pradesh, 30 days prior to the date of the meeting. The publication shall indicate the time within which copies of the scheme shall be made available to the concerned persons free of charge from the respective registered office of the Transferee Company. The publication shall also indicate that the statement required to be furnished according to the Section 102 of the Act read with Section 230 to 232 of the Act and the prescribed form of proxy can be obtained free of charge at the respective registered office of the Transferee Company in accordance with the second proviso to sub-section 3 of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.

17. At least one month before the date of the meeting to be held as aforesaid, a notice in Form No. CAA 2 convening the said meeting, indicating the day, date, place, and time aforesaid, together with a copy of the Scheme of Arrangement, a copy of statement required to be furnished pursuant to Sections 230 and 232 read with Section 102 of the Companies Act, 2019, and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent by Registered Post or Speed Post or Registered Post or by Courier or E-Mail or Hand Delivery, addressed to each of the Shareholders and Unsecured Creditors of the Transferee Company, as the case may be, at their respective registered or last known addresses or e-mail addresses as per the records of the Applicant Companies.

18. Mr. Shrikant Kesharwani, Chartered Accountant shall be the Chairman/Chairperson of the aforesaid meetings of Transferee Company to be held on 5th August 2022 and in respect of any adjournment thereof.

19. Mr. Praveen Kumar Rai of P. K. Rai & Associates, Practicing Company Secretary is appointed as the Scrutinizer for the aforesaid meetings of the Transferee Company.

20. The Applicant Companies will make suitable arrangements for the travel and stay of the Chairperson and the Scrutinizer.

21. The quorum for the meetings of the Transferee Company shall be as prescribed under Section 103 of the Companies Act, 2013.

22. It is further directed that the voting through valid proxy has been dispensed by the Ministry of Corporate Affairs vide circular

no. 14/2020 dated 08.04.2020, hence, meeting of members of shareholders and any class of creditors shall not be conducted or counted through proxy.

23. The Chairperson appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the aforesaid meetings. The Chairperson is free to avail the services of the Applicant Companies or any agency for carrying out the aforesaid directions. The Chairperson shall have all the powers under the Articles of Association of the Applicant Companies and also under the Rules in relation to the conduct of the meetings, including to decide any procedural questions that may arise at the meetings or adjournment(s) to the aforesaid scheme or resolution, if any, proposed at the aforesaid meetings by any person(s) and to ascertain the decision of the sense of the meeting by ballot/polling paper.

24. The Chairperson to file an Affidavit not less than 7 (seven) days before the date fixed for the hearing of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of the Companies (CAA) Rules, 2016.

25. It is further ordered that the Chairperson shall report to this Tribunal on the result of the meeting in Form No. CAA-4 along with an affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 within 7 (seven) working days from the date of conclusion of the aforesaid meetings.

26. In compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016, the Applicant Companies shall send

a notice in Form No.CAA.3 along with disclosures mentioned under Rule 6 to, (i) the Central Government through the Regional Director, North-Western Region, (ii) the Registrar of Companies, Gwalior, (iii) the Income Tax Authorities concerned and (iv) the Official Liquidator, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed scheme. The said notices shall be sent forthwith by registered post or by speed post or by courier or by hand delivery or by an e-mail at the office of the authority as required by sub-rule(2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representations under subsection (5) of Section 230, shall send the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which, it will be deemed that they have no representation to make on the proposed arrangement.

27. With the above directions, CA (CAA) No. 2 of 2022 is allowed and stands disposed of accordingly.

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(Kaushalendra Kumar Singh)
Member (Technical)

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(Madan B. Gosavi)
Member (Judicial)

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