

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.141
C.A.(CAA)/59(AHM)2022

Orders under Section 230-232

IN THE MATTER OF:

Apicore Pharmaceuticals Pvt Ltd

.....Applicant

Order delivered on: 21/12/2022

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Mr.Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in open Court vide separate sheet.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

DR. MADAN B GOSAVI
MEMBER (JUDICIAL)

Sapna

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT-1**

CA(CAA)No.59/230-232/NCLT/AHM/2022

[In the matter of Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016]

Scheme of Arrangement in the nature of

Amalgamation Between

Aktinos Pharma Private
Limited (“Transferor Company”)

With

Apicore Pharmaceuticals
Private Limited

(“Transferee Company”)

And

Their respective Shareholders and
Creditors

In the matter of:

Apicore Pharmaceuticals Pvt. Ltd.
[CIN: U24119GJ2006FTC048777]

A Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Block no. 252-253, Village-Dhobikuva, Padra-Jambusar Highway, Taluka. Padra District-Vadodara-390440, Gujarat, India.

..... Applicant/
Transferee Company

Order Pronounced on: 21.12.2022

**Coram: Dr. Madan Bhalchandra Gosavi-Member (Judicial)
Kaushalendra Kumar Singh-Member(Technical)**

Appearance:

Mr. Navin Pahwa, Sr. Counsel on behalf of Thakkar & Pahwa, Advocates, for the Applicant Company.

ORDER

1. The present application is filed under Sections 230 - 232 and other applicable provisions of the Companies Act, 2013 (the "Act") read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, seeking directions for convening and holding the meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Applicant Company, for the purpose of considering and, if thought fit, approving, with or without modification(s), a Scheme of Amalgamation of M/s. Aktinos Pharma Pvt. Ltd. ("Transferor Company") with M/s. Apicore Pharmaceuticals Pvt. Ltd. ("Transferee Company") and its respective shareholders and creditors (the Scheme) with effect from the Appointed Date, i.e. 01.04.2022, as mentioned in the Scheme. This Application is filed on 19.10.2022.

2. An Affidavit has been sworn by Mr. Jayaraman Kannappan on behalf of the Applicant Company who is the authorized representative/ Director of the Applicant Company and the same is annexed with the application. The above-named authorized representative for the

Applicant Company has been authorized vide Board Resolution dated 22.09.2022 of the Applicant Company.

3. The averments made by the Applicant Company are summarized as under:

- i) The Board of Directors of the Applicant Company vide Board Resolution dated 22.09.2022, have approved the Scheme of Amalgamation. The proposed Scheme of Amalgamation is annexed to the application as Annexure-D with the application.
- ii) The registered office of Applicant Company i.e., Apicore Pharmaceuticals Private Limited is situated in the State of Gujarat, and is under the jurisdiction of the National Company Law Tribunal, Ahmedabad Bench.
- iii) The Applicant Company is engaged in the business of Research and Development and manufacturing of Active Pharmaceutical Ingredients (APIs). The issued, subscribed, and paid up share capital of the Applicant Company as on 31.03.2022 is Rs.13,86,01,100/-. The Applicant Company has filed its Memorandum of Association and Articles of Association inter alia delineating their object clauses, along with its audited Financial Statement for the year ended as at 31.3.2022 and the provisional unaudited balance sheet as at 30.06.2022.
- iv) The registered office of Transferor Company i.e., Aktinos Pharma Private Limited is situated in the State of Telangana and therefore the Transferor

Company has filed separate proceedings before National Company Law Tribunal, Hyderabad, Bench.

- v) The Transferor Company is primarily engaged in the business of Research and Development and manufacturing of Active Pharmaceutical Ingredients (APIs).
- vi) The Applicant Company has annexed the Certificate issued by the Chartered Accountant to the effect that the accounting treatment specified in Clause-14.1.1 of Part-II of the Scheme of Amalgamation is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- vii) No investigation or proceedings under Sections 210 to 227 of the Companies Act, 2013 have been instituted or are pending in relation to the Applicant Company.
- viii) The Applicant Company submitted that its equity shares are not listed on stock exchanges, and it has foreign shareholders but since the Applicant is a Transferee Company, the approval from the Reserve Bank of India for the present Scheme is not necessary.
- ix) Further considering the nature and business and also considering the shareholding pattern of the applicant company, approval of the Reserve Bank of

India, the Competition Commission of India, and Securities and Exchange Board of India is not a necessary authority for the purpose of the present Scheme.

- x) The Applicant Company has Five (5) Equity Shareholders. The copy of certificate issued by M/s R R Kesrani & Co., Chartered Accountant dated 05.10.2022 certifying number of Equity Shareholders is at Annexure-E to this application.
- xi) The Applicant Company has Two (2) Secured Creditors having value of debt of Rs. 46,07,49,867/- and Eight Hundred Seventy Four (874) Unsecured Creditors having value of debt of Rs. 1,07,37,81,490/-. M/s R R Kesrani & Co., Chartered Accountant has certified the number and value of the Secured and Unsecured Creditors of the Applicant Company. The aforesaid certificate is annexed as Annexure-F to the Application.
- xii) The Applicant Company did not obtain the formal consent of the Equity Shareholders, Secured and Unsecured Creditors, hence seeking directions for convening and holding the meetings of the Equity Shareholders, Secured and Unsecured Creditors, for the purpose of considering and, if thought fit, approving, with or without modification(s), a Scheme of Arrangement in the nature of Merger.

4. The rationale of the Scheme of Amalgamation stated in the proposed Scheme is as under: -

- i) Reduction in management overlaps and reduction of legal and regulatory compliances and associated costs due to operation of multiple companies.
- ii) Optimization of the allocated capital and availability of funds which can be deployed more efficiently to pursue the operational growth opportunities.
- iii) The amalgamation shall result into reduction of overheads and other expenses, facilitate administrative convenience and ensure optimum utilization of available services and resources;
- iv) The amalgamation of Transferor Company into Transferee Company will lead to a more efficient utilization of capital, greater business synergies and create a consolidated base for future growth.
- v) The amalgamation will result in administrative and operational rationalization and promote organizational efficiencies with the achievement of greater economies of scale, reduction in overheads and improvement in various other operating parameters.
- vi) Transferee Company relies on Transferor for its raw materials and therefore, the amalgamation would also result in operational efficiencies by way of backward integration.
- vii) Transferor Company has invested heavily into research and development and has developed and

formulated an exclusive know how for its business. Transferee Company seeks to capitalize the said know how through the amalgamation.

- viii) The amalgamation of Aktinos with Apicore shall be beneficial to members, creditors and employees of each of these companies and will be in the public interest. It shall enhance operational flexibility and will enable the merged entity to have sharp focus, retain and attract best talent and bring better value to the stakeholders.

5. Heard the Ld. Counsel for the Applicant Company and perused the Company Application and the documents annexed therewith. The present joint company application is allowed with the following order/directions:-

- i) The Applicant Company is directed to convene and hold the meetings of the Equity Shareholders, Secured and Unsecured Creditors.
- ii) The meeting of Equity Shareholders of Applicant Company shall be convened on 15th March 2023 at 11:00 AM at the registered office of the Applicant Company viz. Block No.252-253, Village-DhobikuvaPadra-Jambusar Highway, Taluka- Padra, District-Vadodara-390440, Gujarat for the purpose of considering and if thought fit, approving, with or without modification, the Scheme of Amalgamation.
- iii) The meeting of Secured Creditors of Applicant Company shall be convened on 15th March 2023 at 12:00 Noon at the Registered Office of the Applicant

Company for the purpose of considering and if thought fit, approving, with or without modification, the Scheme of Amalgamation.

- iv) The meeting of Unsecured Creditors of Applicant Company shall be convened on 15th March 2023 at 3:00 PM at the Registered office of the Applicant Company, for the purpose of considering and if thought fit, approving, with or without modification, the Scheme of Amalgamation.
- v) At least one month before the date of the aforesaid meetings, an advertisement about convening of the said meeting, indicating the date, place and time as aforesaid, shall be published in “Business Standard” English Daily having circulation all over the state of Gujarat and “Sandesh” Gujarati Daily, having circulation in Vadodara. The publication shall indicate the time within which copies of the Scheme of Amalgamation shall be made available to the concerned persons free of charge from the registered office of the Applicant Company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act can be obtained free of charge from the registered office of the Applicant Company or at the office of its advocates viz. Thakkar and Pahwa, Advocates, 71, New York Tower-A, Opp. Muktidham Derasar, Thaltej, Ahmedabad-380054.
- vi) In addition, at least one month before the date of the aforesaid meetings to be held as aforesaid, a notice

convening the said meetings, indicating the day, date, place and time as aforesaid, together with a copy of the Scheme of Amalgamation, a copy of the Explanatory Statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 and Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, shall be sent to each of the Equity Shareholders, Secured and Unsecured Creditors of the Applicant Company at their respective registered or last known addresses either by Registered Post or Speed Post / Airmail or E-Mail or by Courier or by Hand Delivery. The notices shall be sent to all the stakeholders of Applicant Company mentioned aforesaid with reference to the list of shareholders and creditors as on 31.1.2023.

- vii) Shri Devesh Pathak and in his absence Shri Mr. Suresh Sisodia be the Chairperson of all the meetings of Applicant Company, as referred hereinabove, to be held on 15th March 2023 and in any adjourned meeting(s).
- viii) Shri Hemang Mehta, Company Secretary, is appointed as Scrutinizer for the said meetings of the Applicant Company.
- ix) The Chairperson appointed for the aforesaid meetings shall issue advertisement and send out the notice of the meetings referred to above. The Chairperson is free to avail the services of Applicant Company or any agency for carrying out the aforesaid directions.

- x) The Chairperson shall have all powers under the Articles of Association of Applicant Company and also under the Rules in relation to the conduct of meetings, including for deciding any procedural questions that may arise at the meetings or adjournment(s) thereof proposed at the said meetings, amendment(s) to the aforesaid scheme or resolutions, if any, proposed at the aforesaid meetings by any person(s) and to ascertain the decision of the meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Applicant Company.
- xi) The quorum for the meetings of Equity Shareholder, shall be as per applicable provision of law, and for the meetings of Secured and Unsecured Creditors the quorum shall be constituted under Section 103 of the Companies Act, 2013 in view of Rule-5 of CAA Rules.
- xii) The number of Equity Shareholders and the value of Secured Creditors and Unsecured Creditors of Applicant Company shall be in accordance with the records or registers as on 31.1.2023 and where the entries in the records or registers are disputed as on 31.1.2023, the Chairperson of the meetings shall determine the value, as the case may be, for the purposes of the meetings.
- xiii) The Chairman / Chairperson shall file an affidavit not less than 7 (seven) days before the

date fixed for holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meeting have been duly complied with as per Rule 12 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

- xiv) It is further ordered that the Chairman or Chairperson shall submit his report to this Tribunal, the result of the meetings in Form CAA 4, verified by his affidavit, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 7(seven) days after the conclusion of the meeting.
- xv) In compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, the Applicant Company shall send a notice of meeting under sub-section (3) of Section 230 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in Form No. CAA.3 along with a copy of the Scheme of Amalgamation, explanatory statement and the disclosures mentioned under Rule 6 shall be sent to (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, Gujarat and (iii) the Income Tax Authority, stating that the representations, 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 of

Amalgamation. The said notice (s) shall be sent forthwith after notice is sent to the Equity Shareholders, Secured and Unsecured creditors of Applicant Company by registered post or by speed post or by courier or by Email or by hand delivery at the office of the authority as required by sub-rule (2) of Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The aforesaid authorities, who desire to make any representation under sub-section (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 shall be deemed that they have no representation to make on the proposed Scheme of Amalgamation.

6. This Company Application is allowed and disposed of accordingly.
7. The applicant company shall file a compliance affidavit with the Registry with regard to the directions given in this order.
8. List the matter on 27.03.2023 for filing report by the Chairman.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

DR. MADAN B GOSAVI
MEMBER (JUDICIAL)