

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CA(CAA)/116/MB-IV/2022

*In the matter
of*

*The Companies Act, 2013 and other applicable provisions
of The Companies Act, 2013 and rules framed thereunder*

And

In the matter of Scheme of Amalgamation

of

ACG Pharma Technologies

Private Limited

“First Applicant Company”/

“Transferor Company”

With

ACG Pam Pharma Technologies

Private Limited

“Second Applicant Company”/

“Transferee Company”

their respective shareholders and creditors

ACG Pharma Technologies Private Limited ...First Applicant Company/
[CIN: U29251MH1996PTC104558] Transferor Company

ACG Pam Pharma Technologies ...Second Applicant Company/
Private Limited Transferee Company
[CIN: U24239MH1972PTC015632]

Order delivered on: 01.12.2022

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicants:

Mr. Gaurav Raj Shrawat, a/w
Mr. Abhijeet Swaroop, Mr.
Tabrez Malawat and Mr. Syed
Hamza, Advocates.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. The Court is convened through video conferencing today.
2. Learned Advocate for the Applicant Companies states that the present scheme is a Scheme of Amalgamation of a company namely, ACG Pharma Technologies Private Limited (“Transferor Company”) with ACG Pam Pharma Technologies Private Limited (“Transferee Company”) (together “Applicant Companies”) and their respective shareholders and creditors (“Scheme”) under the provisions of section 230 to 232 of the Companies Act, 2013.
3. Learned Counsel for the Applicant Companies states that resolutions approving the Scheme were passed by the Board of Directors of the Transferor Company in its board meeting held on February 25, 2022 and by the Board of Directors of the Transferee Company in its board meeting held on February 25, 2022. The Appointed Date fixed under the Scheme is 01st April, 2022.
4. Learned Counsel for the Applicant Companies further states that the Transferor Company is *inter alia* engaged in the business of manufacturing fluid bed equipment, tablet coater machines, and similar equipment for pharmaceutical and nutraceutical industry and the Transferee Company is *inter alia* engaged in the business of manufacturing capsule-filling machines, tablet presses, blister packing

and cartooning machines for pharma and non-pharma companies globally.

5. Learned Counsel for the Applicant Companies further states that both the Transferor Company and Transferee Company are under same control and management.
6. The Counsel for the Applicant Companies further submits that the amalgamation of the Transferor Company with the Transferee Company would *inter alia* have the benefits mentioned in paragraph B of the Scheme of Amalgamation which is summarized as below:
 - a. The consolidation of operations of the Transferor Company and the Transferee Company by way of amalgamation will lead to a more efficient utilization of capital, administrative and operational rationalization and promote organizational efficiencies. It will prevent cost duplication that can erode financial efficiencies of the holding structure and the resultant operations will be more cost-efficient with the achievement of greater economies of scale, reduction in overheads and improvement in various other operating parameters.
 - b. The amalgamation will result in the formation of a stronger company with a larger capital and asset base and enable the combined business to be pursued more conveniently and advantageously. The amalgamation will have beneficial results for the amalgamating companies, their stakeholders and all concerned.
 - c. Greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximizing

overall shareholder value, and will improve the competitive position of the combined entity.

- d. Improved organizational capability and leadership, arising from the pooling of human capital who have the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.
- e. Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, and the elimination of duplication, and rationalization of administrative expenses.
7. The Authorised, Issued, Subscribed and Paid-Up Share Capital of the Transferor Company as on 31st January, 2022 is as follows:

Particulars	Amount (in Rs.)
Authorised Share Capital	
5,00,000 Equity Shares of Rs.100 each;	5,00,00,000/-
10,00,000 10% Redeemable Preference Shares of Rs.10/- each;	1,00,00,000
2,00,000 12% Non-cumulative Redeemable Preference Shares of Rs.10/- each;	20,00,000
12,00,00,000 9% Non-Cumulative Redeemable Preference Shares of Rs.10/- each.	1,20,00,00,000
Total	1,26,20,00,000
Issued Subscribed and Paid-Up Capital	
2,12,832 Equity Shares of Rs.100 each;	2,12,83,200

1,74,950 12% Non-cumulative Redeemable Preference Shares of Rs.10/- each;	
12,00,00,000 9% Non-Cumulative Redeemable Preference Shares of Rs.10/- each.	17,49,500
	1,20,00,00,000
Total	1,22,30,32,700

8. The Authorised, Issued, Subscribed and Paid-Up Share Capital of the Transferor Company as on 31st January, 2022 is as follows:

Particulars	Amount (in Rs.)
Authorised Share Capital	
27,52,100 Equity Shares of Rs.100 each;	27,52,10,000/-
8,45,00,000 10% Redeemable Preference Shares of Rs.10/- each;	84,50,00,000/-
6,05,00,000 11% Redeemable Preference Shares of Rs.10/- each.	60,50,00,000/-
Total	1,72,52,10,000
Issued Subscribed and Paid-Up Capital	
24,444 Equity Shares of Rs.100 each;	24,44,4000/-
1,96,68,876 1% Redeemable Preference Shares of Rs.10/- each;	19,66,88,760/-
3,53,20,811 11% Redeemable Preference Shares of Rs.10/- each.	35,32,08,810
Total	55,23,41,970

9. In relation to the Transferor Company, the Counsel for the Applicant Companies submits that there are 2 (two) Equity Shareholders of holding 100% of the Equity Share Capital of the Transferor Company and both

the Equity Shareholders of the Transferor Company have given their Consents to the Scheme by way of Affidavits which are annexed to the Application at Annexure "A13". Therefore, the meeting of equity shareholders of the Transferor Company is not required to be convened and hence the same is hereby dispensed with.

10. In relation to the Transferee Company, the Counsel for the Applicant Companies submits that there are 2 (two) Equity Shareholders holding 100% of the Equity Share Capital of the Transferee Company and both the Equity Shareholders of the Transferee Company have already given their Consents to the Scheme by way of Affidavits which are annexed to the Application at Annexure "A17". Therefore, the meeting of Equity Shareholders of the Transferee Company is not required to be convened and hence the same is hereby dispensed with.
11. The Transferor Company has 1 (one) Preference Shareholder holding 100% of the Preference Share Capital of the Transferor Company and the preference shareholder of the Transferor Company has given its Consent to the Scheme by way of Affidavit which is annexed to the Application at Annexure "A14". Therefore, the meeting of Preference Shareholder of the Transferor Company is not required to be convened and hence the same is hereby dispensed with.
12. The Transferee Company has 8 (eight) Preference Shareholder holding 100% of the Preference Share Capital of the Transferee Company. Out of the same, 6 Preference Shareholders holding 99.66% of the total Preference Share Capital have already given their Consent to the Scheme by way of Affidavits which are annexed to the Application at Annexure "A18". Therefore, the meeting of preference shareholders of the

Transferee Company is not required to be convened and hence the same is hereby dispensed with.

13. The Transferor Company has 1 (one) Secured Creditor of Rs.15,00,00,000/- (Rupees fifteen crore only) as per the list of Creditors as on 28th February 2022 which has been placed on record at Annexure “A16” of this Application. The sole Secured Creditor of the Transferor Company has already given its Consent to the Scheme by way of Affidavit which is annexed to the Application at Annexure “A16”. Therefore, the meeting of secured creditors of the Transferor Company is not required to be convened and hence the same is hereby dispensed with.
14. The Transferee Company has 2 (two) Secured Creditors of Rs.30,00,00,000/- (Rupees thirty crore only) as per the list of Creditors as on 28th February 2022 which has been placed on record at Annexure “A20” of this Application. Both the Secured Creditors of the Transferee Company have already given their Consent to the Scheme by way of Affidavits which are annexed to the Application at Annexure “A20”. Therefore, the meeting of secured creditors of the Transferee Company is not required to be convened and hence the same is hereby dispensed with.
15. The Transferor Company has 243 (two hundred and forty-three) Unsecured Creditors with outstanding value as Rs.12,96,53,899/- as per the list of Unsecured Creditors as on 28th February 2022 which has been placed on record at Annexure “A15” of this Application.
16. The Transferee Company has 727 (seven hundred and twenty-seven) Unsecured Creditors with outstanding value as Rs. 52,62,91,931.07/- as

per the list of Unsecured Creditors as on 28th February 2022 which has been placed on record at Annexure “A19” of this Application.

17. The Counsel for the Applicant Companies further submits that the present Scheme is an arrangement between the Transferor Company and the Transferee Company and their respective Shareholders as contemplated under Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no Compromise and/or Arrangement with the Unsecured Creditors of the Applicant Companies, who will not be affected by the proposed Scheme of Amalgamation as, post the amalgamation coming into effect, the assets of the Transferee Company will be far in excess of its liabilities and accordingly the Unsecured Creditors will be paid-off in the ordinary course of business without jeopardizing their rights. Therefore, the meetings of Unsecured Creditors of the Transferor Company and the Transferee Company are not required to be convened.
18. In view of the above, the Applicant Companies are directed to issue Notices to all its Unsecured Creditors having outstanding dues aggregating to 90 % in value of the total outstanding dues payable to such Unsecured Creditor(s) as per the list of creditors by way of Registered Post-AD/Speed Post and by E-mail (whose Email IDs are duly registered with the Applicant Companies). Each such notice shall be issued enclosing a copy of the Scheme, and clearly indicating therein that in case the relevant Unsecured Creditor has any objection, he/she/it shall file the same before this Tribunal with a copy to the respective Applicant Companies or their Representative, within a period of 30 (thirty) days from the date of receipt of such notice.

19. As mentioned in the Scheme, new Equity Shares and Preference Shares will be issued/allotted to the Shareholders of the Transferor Company by the Transferee Company as per the Share Exchange Ratio mentioned in the Scheme as tabulated below:

Shares of the Transferee Company to be allotted	For Shares of the Transferor Company	Ratio
11 (Eleven) Equity shares Rs. 100 (One Hundred) each as fully paid up	1000 (One Thousand) Equity shares of Rs. 100 (One Hundred) each	11:1000
1 (One) 12% Non-Cumulative Redeemable Preference Shares of Rs. 10 (Ten) each as fully paid up	1 (One) 12% Non-Cumulative Redeemable Preference Shares of Rs. 10 (Ten) each	1:1
1 (One) 9% Non-Cumulative Redeemable Preference Shares of Rs. 10 (Ten) each as fully paid up	1 (One) 9% Non-Cumulative Redeemable Preference Shares of Rs. 10 (Ten) each	1:1

20. No fractional share will be issued by the Transferee Company in respect of fractional entitlements, if any, to which Shareholders of the Transferor Company may be entitled based on the Share Exchange Ratio. Any fractional entitlement arising out of the issue and allotment of the shares (both equity shares and redeemable preference shares) issued by the Transferee Company pursuant to the Scheme, shall be rounded up to the next integer and be issued free from all liens, charges, equitable interests, encumbrances and other third-party rights of any nature whatsoever.

21. The Transferor Company has availed the facility of 51 (fifty-one) Bank Guarantees issued to various vendors/suppliers as performance

guarantees in relation to its contractual obligations amounting to Rs.8,42,43,852/-.

22. Further, Transferee Company has availed the facility of 75 (seventy-five) Bank Guarantees issued to various vendors/suppliers as performance guarantees in relation to its contractual obligations amounting to Rs.12,27,37,116.

23. The details of litigations filed by and against the Applicant Companies are given below:

(Re) Litigation Status of the Transferee Company, ACG Pam Pharma Technologies Pvt. Ltd.

(A) Litigation filed by the ACG Pam Pharma Technologies Pvt. Ltd.:

- i. ACG Pam Pharma Technologies Pvt. Ltd. has filed 7 cases against various individuals and entities under section 138 of Negotiable Instruments Act, 1881.
- ii. ACG Pam Pharma Technologies Pvt. Ltd. has filed 2 suits for specific performance and contractual compliance.
- iii. ACG Pam Pharma Technologies Pvt. Ltd. has filed 1 suit for recovery of certain amounts before the High Court of Bombay.
- iv. ACG Pam Pharma Technologies Pvt. Ltd. has filed 1 suit before the Addl. District Judge, Pune with respect to certain property disputes.

- v. ACG Pam Pharma Technologies Pvt. Ltd. has filed 1 criminal revision application before the High Court of Bombay.
- vi. ACG Pam Pharma Technologies Pvt. Ltd. has filed 1 execution petition before District Court, Vasai.

(B) Litigation filed against ACG Pam Pharma Technologies Pvt. Ltd.:

- i. 4 suits relating to certain property disputes have been filed against ACG Pam Pharma Technologies Pvt. Ltd. before various district courts.
- ii. 2 cases have been filed by certain employees against ACG Pam Pharma Technologies Pvt. Ltd. for recovery of dues alleged to be paid.
- iii. 1 suit for specific performance of contract has been filed against ACG Pam Pharma Technologies Pvt. Ltd.
- iv. 1 case has been filed before High Court of Bombay involving ACG Pam Pharma Technologies Pvt. Ltd. for the purpose of quashing of summons.
- v. 1 criminal complaint has been filed against ACG Pam Pharma Technologies Pvt. Ltd. before Judicial Magistrate, First Class, Alipore.
- vi. 1 criminal writ petition has been filed against ACG Pam Pharma Technologies Pvt. Ltd. before the High Court of Bombay challenging a sessions court order.

Re) Litigation Status of Transferor Company, ACG Pharma Technologies Pvt. Ltd.

(A) Litigation filed by the ACG Pharma Technologies Pvt. Ltd.:

- i. ACG Pharma Technologies Pvt. Ltd. has filed 2 cases against an entity under section 138 of Negotiable Instruments Act, 1881.

(B) Litigation against the ACG Pharma Technologies Pvt. Ltd.:

- i. 1 suit relating to certain property disputes have been filed against ACG Pharma Technologies Pvt. Ltd.

24. The Transferor Company and the Transferee Company are each directed to serve notice along with a copy of the Scheme of Amalgamation upon:

- i. The Central Government through the office of Regional Director (Western region), Ministry of Corporate Affairs, Mumbai;
- ii. Concerned GST Authorities;
- iii. concerned Income Tax Authority at below stated address under which the respective Transferor Company's and the Transferee Company's assessments are made, clearly indicating the PAN of the company concerned;

Name of the Company	Permanent Account Number	Income Tax Jurisdiction
ACG pharma technologies private limited	AABCP6380Q	CIRCLE 3(1)(1), MUMBAI

ACG pam pharma technologies private limited	AAACP4776H	CIRCLE 4(1)(1), MUMBAI
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- iv. the concerned Registrar of Companies, each in terms of Section 230 (5) of the Companies Act, 2013, read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

If no response is received within a period of 30 (thirty) days from the date of receipt of the notice, it shall be presumed that the respective authorities have no objection to the proposed Scheme of Amalgamation as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

25. The Transferor Company is also directed to serve notice by Registered Post-AD/ Speed Post and Hand Delivery upon Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing Mr. Avinash Jagdish Purohit, M/s WKD & Associates, Chartered Accountants, having Mob.: 7588053127, Email ID: caavinashpurohit@gmail.com; to assist the Official Liquidator to scrutinize the books of accounts of the Transferor Company who is within the Jurisdiction of this Tribunal for the last five (5) years. The fee of the Chartered Accountant is to be fixed at Rs.2,00,000/- (Rupees two lakh only) along with applicable taxes for the services rendered. The Official Liquidator may submit his representations, if any, within a period of thirty (30) days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the First Transferor

Company, the Second Transferor Company and the Third Transferor Company.

26. The Transferor Company shall file an affidavit of service confirming that the directions given by the Tribunal regarding the issue of notices to Unsecured Creditors, Regulatory Authorities, Official Liquidator have been duly complied with.
27. The Transferee Company shall file an affidavit of service in the Registry that the directions given by the Tribunals regarding the issue of notices to Unsecured Creditors, Regulatory Authorities have been complied with.
28. The Appointed Date fixed under the Scheme is 01st April, 2022.
29. Ordered accordingly.

Sd/-

Manoj Kumar Dubey
Member (Technical)
01.12.2022

Sd/-

Kishore Vemulapalli
Member (Judicial)