

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
*(Through Physical Hearing/VC Mode (Hybrid))*

**C.P. (CAA) No.38/BB/2023**

Under Section 230 to 232 of the Companies Act, 2013  
Read with Rule Companies (Compromises, Arrangements  
And Amalgamations) Rules, 2016

**IN THE MATTER OF SCHEME:**

**1. M/s. Biofusion Therapeutics Ltd.**

4<sup>th</sup> Floor, POD2, BRC Building,  
Biocon Special Economic Zone,  
Bommasandra Industrial Area,  
Bengaluru – 560099

...

**Petitioner Company No.1/  
Transferor Company**

**And**

**M/s. Biocon Pharma Ltd.**

20KM, Electronics City,  
Hosur Road,  
Bangalore – 560100

...

**Petitioner Company No.2 /  
Transferee Company**

**Order delivered on: 24<sup>TH</sup> April, 2024**

**CORAM:**

1. Hon'ble Shri K. Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner Companies : Shri R Inbaraju

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. This is a second motion Petition filed on 13.09.2023 by **M/s. Biocon Therapeutics Limited** (for brevity, the “Petitioner Company No.1/ Transferor Company”) and **M/s. Biocon Pharma Limited** (for brevity, the “Petitioner Company No.2/ Transferee Company”) under Section 230 to 232 and other relevant provisions of the Companies Act, 2013, seeking for the sanction of Scheme of Amalgamation between the Transferee Company and Transferor Company w.e.f. the Appointed Date or such other date as determined in terms of the Scheme, so as to be binding

**C.P. (CAA) No.38/BB/2023**  
**(Second Motion)**

on all the Shareholders and Creditors of the Transferor and Transferee Companies and that the Transferor Company/ Petitioner Company No.1 namely Biofusion Therapeutics Limited be dissolved without the process of winding up.

2. The Petitioner Companies filed First Motion Application bearing C.A.(CAA) No.13/BB/2023 before this Tribunal and based on such Application moved under Section 230 to 232 of the Companies Act, 2013, necessary directions were issued vide Order dated 24.08.2023. Details of the first motion order are as under:

|   | Petitioner Company No.1   | Petitioner Company No.2 |
|---|---|-------------------------|
| <b>Equity Shareholders</b>  | Meeting Dispensed   | Meeting Dispensed       |
| <b>Optionally Convertible Redeemable Non-Cumulative Preference Shareholders</b> | No Optionally Convertible Redeemable Non-Cumulative Preference Shareholders | Meeting Dispensed       |
| <b>Secured Creditors</b>  | No Secured Creditor   | No Secured Creditor     |
| <b>Unsecured Loan Creditors</b>   | Meeting Dispensed   | Meeting Dispensed       |
| <b>Unsecured Trade Creditors</b>  | Meeting Dispensed   | Meeting Dispensed       |

3. When the Petition was listed on 30.10.2023, the following directions were issued: -

*“3. The Petition be listed for hearing on 15.12.2023. At least thirty days before the date fixed for final hearing, the Petitioner Company shall publish the notice of final hearing of the Company Petition in two local newspapers viz., ‘Business Standard’ English Daily and translation thereof in ‘Kannada Prabha’, Kannada Daily, both having circulation in Bangalore as per Rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.*

*4. Notice be also served upon the Objector(s) or their representative as contemplated under sub-section (4) of Section 230 of the Companies Act, 2013 who may have made representation and who have desired*

*to be heard in their representation along with a copy of the Petition and the Annexures filed therewith at least 30 days before the date fixed for hearing. It is to be specified in the notices that the objections, if any, to the Scheme may be filed within thirty days from the date of the receipt of the notice, failing which, it will be considered that there is no objection to the approval of the Scheme on the part of the Objector(s).*

*5. In addition to the above public notice, the Petitioner Companies shall serve the Notice of the Petition on the following Authorities, namely, (a) The Regional Director (South East Region), Hyderabad (b) The Registrar of Companies Karnataka, Bengaluru (c) Official Liquidator, Bengaluru (d) Designated Nodal Officer – Principal Chief Commissioner of Income Tax, Bengaluru (e) Jurisdictional Income Tax Authorities, Bengaluru (e) Secretary, Competition Commission of India, New Delhi (f) Reserve Bank of India, Bangalore (g) The Development Commissioner, Cochin Special Economic Zone (SEZ) along with copy of this Petition and the Annexures filed therewith by Speed Post immediately and to such other Sectoral Regulator(s) who may govern the working of the Petitioner Companies involved in the Scheme as per Rule 8 of the Companies (CAA) Rules, 2016, with a direction that they may submit their representation, if any, within thirty days from the date of receipt of such notice, failing which, it will be presumed that the said Authority has no representation to make to the Scheme.*

4. In pursuant to the aforesaid notice, the learned Counsel for the Petitioner companies has filed copies of proof of service of notices along with the paper publication of notice vide Diary No. 5911 dated 22.11.2023.
5. The main objects, dates of Incorporation, authorized, issued and paid-up share capital, rationale of the scheme and interest of employees have been discussed in detail in first motion Order dated 24.08.2023.
6. The Board Resolution of Petitioner Company No.1 and Petitioner Company No. 2 approving the Scheme are annexed as Annexure-

- 11&12 to the Petition.
7. It is further submitted that the Certificate of Statutory Auditors of the Petitioner Companies, has been filed, stating that, the Accounting Treatment contained in Clause 12 and 13 of the Scheme is in compliance with the applicable Indian Accounting Standards specified U/s.133 of the Act, and Other Generally Accepted Accounting Principles. The aforesaid Certificate is attached as Annexure-17 and 18 to the Petition.
  8. The learned PCS for the Petitioner Companies has filed various affidavits with regard to the sectoral regulators, no corporate debt restructuring and no investigations or proceedings pending against the Petitioner Companies of any manner whatsoever and Directors are not subjected to any kind of legal prosecutions or proceedings thereof. The aforesaid Affidavits are attached as Annexures-21, 22, 23, 24, 25 & 26 to the Petition.
  9. The Audited Financial Statements of the Petitioner Companies as on 31.03.2022 is attached as Annexure-4 & 9 and Provisional Unaudited Financial Statements of the Petitioner Companies as on 30.11.2022 of the Petitioner Companies are attached as Annexures-5 & 10 to the Petition.
  10. As per the Scheme, the “Appointed Date” means 01.04.2022 or such other date as the NCLT may direct or approve under the relevant provisions of the Act.
  11. The Valuation Report is attached as Annexure-16 to the petition.
  12. In pursuant to the notice, the Regional Director (RD) and the Registrar of Companies (ROC) have filed a Common Report vide Diary No.221 dated 10.01.2024. Both RD and ROC have raised the following observations vide para II:
    - 1) As per clause 1.3 of Part A of the Scheme the appointed date is 1st April 2022. Since this appointed date is ante-date beyond a year, Hon’ble Tribunal may be pleased to direct the Petitioner Companies to change the Appointed date from 01.04.2022 to

01.04.2023, subject to the approval of the Hon'ble NCLT and if also to amend the Scheme changing the Appointed date in the proposed scheme, wherever applicable and to furnish the amended copy to all the statutory authorities before the scheme is allowed.

- 2) As per the latest Audited Financial Statement for the financial year ending 31.03.2023, Transferor Company is a profit-making entity, whereas the Transferee Company is a loss-making company and also there may be a negative outflow of taxes once scheme is allowed. Since the petitioner company is a wholly owned subsidiary of a listed entity, Hon'ble Tribunal may be pleased to direct the Petitioner Companies to furnish the required declarations, intimations and approvals from Stock Exchange Board of India/ Stock Exchanges, as may be applicable before the scheme is allowed for approval.
- 3) As per note No. 14 and 16 of the Financial Statements for the financial year ending 31.03.2023, Transferor and Transferee Companies have undisputed statutory dues to the tune of Rs. 10.27 lakhs and Rs. 4.9 crores respectively. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to furnish an undertaking to Hon'ble NCLT to the effect that it will settle the statutory dues immediately, if not settled so far.
- 4) As per note no. 14 of the Financial Statements for the year ending 31.03.2023 of the Transferee Company, outstanding dues to Micro and Small Enterprises to the tune of Rs. 1.7 crores exists. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to show as to how it has complied with Micro, Small and Medium Enterprises Development Act, 2006 and also to furnish an undertaking to the Hon'ble Tribunal to the effect that it will settle the dues as per the said Act immediately, if not settled so far.
- 5) Clause 11 of Part C of the Scheme provides for clubbing of Authorized Capital wherein it is stated that the authorized share capital of the Transferee Company shall automatically stand increased without any payment of stamp duty and fees. This term

in the Scheme is not in line with the provisions of Section 232(3)(i) of the Companies Act, 2013, Hon'ble Tribunal may be pleased to direct the Petitioner Companies to comply with the provisions of the section and pay the difference of fee, after setting off the fee already paid by the Transferor Company on its respective capital.

- 6) As per Section 240 of the Companies Act, 2013, the liability in respect of offences committed under Companies Act by the Officers in default, of the Transferor Company prior to merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.
- 7) That in the Transferor Company there is a capital Work in Progress (CWIP) as at 31.03.2023 for an amount of Rs. 50,19,28,000/-. Company has sold the entire capital work in Progress to the related entity by incurring massive loss of Rs.30,95,48,000/- on slump sale basis. Hon'ble Tribunal may be pleased to direct the Petitioner companies to explain the reason for disposing Capital Work in Progress by increasing for such a loss with supporting documents, duly certified by the Directors, in particular when the company is incorporated only in the Year 2021. Also the Slump sale price mechanism may be explained to the Hon'ble Tribunal for their consideration.
- 8) Transferor Company has related Party transactions, compliance of Section 188 of the Companies Act, 2013 needs to be shown before the Hon'ble Tribunal, with supporting documents, duly certified by the Directors, before the scheme is allowed.
- 9) No Employees/ workmen of Transferor Company (as on the date of sanctioning the scheme) to be retrenched/terminated in terms of amalgamation of Transferor Company with Transferee Company. The Hon'ble Tribunal may be pleased to direct the Petitioner Companies to complying with the same in letter and spirit and not retrenching the staff or employees of Transferor Company in the guise of surplus staff on account of merger and also direct the Petitioner Company to furnish an undertaking by the Transferee Company, before the scheme is allowed.

- 10) With reference to the Directorate's letter dated 20.11.2023 issued to the Income Tax Department, till date no report/comments in the matter have been received from Income Tax Department. Hon'ble Tribunal may obtain NOC of the Income Tax Department in the matter or may obtain an undertaking from the Petitioner Companies that as and when the demand arises from the Income Tax Department, Petitioner Companies are ready to pay the said dues to the respective Income Tax Departments. However, opinion from the Income Tax Department may be called for in respect of the transactions of slump sale involved in the scheme.
  - 11) Petitioner Companies in its reply submitted before the Directorate on 07.12.2023 has stated that Transferor and Transferee Companies have served notice of the first and second motion petition to the Reserve Bank of India, Bengaluru on 14.11.2023. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to state whether any comment/ objection in the above matter have been received from the said authorities, if so to furnish the same, duly certified.
  - 12) There are no open Complaints, Prosecutions, Technical Scrutiny/Inquiry, Inspections and Investigations pending in this Office against the Petitioner Companies.
13. Subsequently, reply affidavit to the Common Report of RD & ROC has been filed by the Petitioner Company No.2/Transferee Company vide Diary No.552 dated 25.01.2024, inter alia stating as under: -
- i. **Reply to para II (1) of the ROC & RD report:** The Transferee Company undertakes and confirm that in accordance with the provisions of Section 232(6) of the Companies Act, 2013, the Petitioner Companies have determined 1<sup>st</sup> April 2022 as the 'Appointed Date' and the Petitioner Companies had filed the First Motion Application before this Hon'ble Tribunal on 14<sup>th</sup> February 2023. Hence, it is humbly submitted that the Petitioner Companies had made their application to the Hon'ble Tribunal

within one year from the date of the Appointed Date and thus was well within the statutory timelines as required under the law and the same was clarified in the General Circular No. 09/2019 vide dated August 21, 2019 issued by the Ministry of Corporate Affairs. Accordingly, the Petitioner Company No. 2/ Transferee Company request this Hon'ble Tribunal to retain the Appointed Date of the Scheme as April 1, 2022 in the interest of justice and equity.

- ii. **Reply to para II (2) of the ROC & RD report:** The Petitioner Company No. 2/ Transferee Company undertake and confirm that the observation made by the Regional Director that the Transferee Company is loss-making is incorrect. As per the latest audited financial statement for the financial year ending 31.03.2023 the Transferee Company is a profit-making company. The Petitioner Companies further confirm that the amalgamation is proposed with the objective of housing, manufacturing and R&D Generic formulation business under the same legal entity. Such business consolidation would result in achieving operational synergies besides economies of cost and other benefits, thereby increasing the value derived to the shareholders leading to significant wealth creation for shareholder. The Petitioner Companies further confirm that upon the scheme becoming effective, the tax losses, if any, would be dealt with in accordance with Section 2(1B) of the Income-tax Act, 1961 and other related provisions and rules framed thereunder.

Further, it is confirmed that the Petitioner companies are unlisted public companies which are wholly-owned subsidiaries of Biocon Limited, a listed company. The Petitioner Companies are not required to make filings to the Securities Exchange Board of India or to any stock exchanges in connection with the proposed amalgamation. However, if this Hon'ble Tribunal directs the Petitioner Companies to furnish any declaration, intimation and approvals from Stock Exchange Board of India/ Stock Exchanges,



the same shall be duly furnished in compliance with the Hon'ble Tribunal's direction.

- iii. **Reply to para II (3) of the ROC & RD report:** The Petitioner Company No. 2 undertake and confirm that the outstanding statutory dues as on March 31, 2023 of the Transferor Company of Rs. 10.27 lakhs and the Transferee Company of Rs. 4.9 crores are mainly in connection to provident fund, TDS, TCS, professional taxes and gratuity etc. The Petitioner Company No. 2 undertake that upon the scheme becomes effective, all the outstanding statutory dues of the Transferor Company and Transferee Company have been duly settled or shall be duly settled by the Transferee Company, as and when claims have been crystalized. An Affidavit duly signed by the Authorised Signatory of Petitioner Company No. 2/ Transferee Company undertaking and confirming to this effect is enclosed as Annexure-3 to the reply.
- iv. **Reply to Para II (4) of the ROC & RD report:** The Petitioner Company No. 2 undertake and confirm that the Transferee Company has paid/settled the outstanding dues payable to Micro and Small Medium Enterprises (MSME) as on March 31, 2023 to the tune Rs.1,69,67,157 (Rupees One Crore Sixty-Nine Lakhs Sixty-Seven Thousand One Hundred and Fifty-Seven only). In respect of the balance outstanding dues of Rs. 32,842 (Rupees Thirty-Two Thousand Eight Hundred and Forty-Two Only) the Transferee Company undertakes to settle the same immediately in compliance with the provisions of the Micro, Small, and Medium Enterprises Development (MSMED) Act, 2006. An Affidavit duly signed by the Authorised Signatory of Petitioner Company No.2/ Transferee Company undertaking and confirming to this effect is enclosed as Annexure-3 to the reply.
- v. **Reply to Para II (5) of the ROC & RD report:** The Petitioner Company No. 2/ Transferee Company undertake and confirm that upon the approval of the Scheme of Amalgamation, the Petitioner

Company No.2 /Transferee Company shall comply the provision of Section 232(3) (i) of Companies Act, 2013 and the Petitioner Companies shall settle the difference fee, if any, after setting off the fee already paid by the Transferor Company on its respective authorised share capital. An Affidavit duly signed by the Authorised Signatory of Petitioner Company No. 2/ Transferee Company, undertaking and confirming to this effect is enclosed as Annexure-3 to the reply.

- vi. **Reply to para II (6) of the ROC & RD report:** The Petitioner Company No. 2/ Transferee Company hereby undertake and confirm that if any liability is incurred or becomes payable in respect of offences committed under the Companies Act, 2013 by the officers of the Transferor Company prior to merger, amalgamation or acquisition, the Petitioner Company No. 1 /Transferor Company shall make good such offence and comply with all the directions of Ministry of Corporate Affairs and settle any liabilities that may arise thereon. An undertaking affidavit duly signed by the Authorised Signatory of Petitioner Company No. 1/Transferor Company confirming to this effect is enclosed as Annexure-4 of the reply.
- vii. **Reply to para II (7) of the ROC & RD report:** The Petitioner Company No. 2/ Transferee Company hereby undertake and confirm that the observation made by the Regional Director that the Transferor Company has sold the capital work in progress for a massive loss of Rs. 30.95 crore is incorrect. Further, the capital work in progress of Rs.50.19 crores is inadvertently mentioned as outstanding as on March 31, 2023 instead of March 31, 2022. It is stated that the Regional Director vide letter dated 29.12.2023 had sought the details of the slump sale transaction along with an explanation on how the slump sale consideration of Rs. 23.15 crores were determined which has resulted in a slump sale gain of Rs. 30.41 crores. In response to the said letter, the Transferee Company has provided a detailed response vide its email dated

January 4, 2024. A copy of the said letter by the Regional Director along with our response to the same is annexed as Annexure-5 to the reply.

Further, it is stated that prior to the slump sale arrangement, the Transferor Company was engaged in Contract Research and Manufacturing Services (CRAMS) and other R & D in the field of pharmaceuticals, including but not restricted to drug discovery, biotechnology pharmaceuticals, medicinal sciences etc. The Transferor Company vide Business Transfer Agreement dated August 1, 2022 has transferred its Contract Research Service undertaking on a going concern basis by way of slump sale to Syngene International Limited, a subsidiary of Biocon Limited for a consideration of INR 23.15 crore (subject to adjustments of assumed liabilities between June 30, 2022 and July 31, 2022 based on the audited financial statements as on July 31, 2022). Pursuant to such sale, all the agreed assets, liabilities, employees, contracts, approvals, registration, licenses, agreements etc. of the said undertaking is transferred to Syngene International Limited. It is stated that the slump sale consideration has been determined based on the report of an independent valuer adopting DCF methodology.

Further it is confirmed that based on the terms agreed in the Business Transfer Agreement, the slump sale consideration of Rs. 23.15 crores was adjusted to account for the difference in the assumed liabilities. Based on the audited financial statements as on July 31, 2022, the assumed liabilities increased by Rs. 3.92 crores between June 30, 2022 and July 31, 2022. Accordingly, the adjusted slump sale consideration was Rs. 19.23 crores (i.e., Rs. 23.15 – 3.92 crores). This fact can also be verified from the cash flow statement forming part of the audited financial statement of the Transferor Company as on March 31, 2023. Copy of the audited financial statement of the Transferor Company as on March 31, 2023 is enclosed and marked as Annexure-6 to the reply.

It is stated that as per note no. 32 of audited financial statements of the Transferor Company, the Net worth of the undertaking or division transferred is Rs. (-11.17 crores) which is on account of assumed liabilities exceeding the net assets taken over. Accordingly, the slump sale has resulted in a gain of Rs. 30.41 crores (i.e. 19.23 – (-11.17)). In this regard, the Hon'ble Tribunal may note that the observation made by the RD in its report that the Transferor Company has incurred loss on slump sale is incorrect.

viii. **Reply to para II (8) of the ROC & RD report:** The Petitioner Company No. 2/ Transferee Company hereby undertake and confirm that the Transferor Company has duly complied with the provisions of Section 188 of the Companies Act, 2013 in respect of its transaction with related parties, wherever applicable. An undertaking affidavit given by the Transferor Company confirming that the related party transactions were entered into on an arm's length basis and thus the transactions are in compliance with the requirements of Section 188 of the Companies Act, 2013 is enclosed and marked as Annexure-4 to the reply.

ix. **Reply to para II (9) of the ROC & RD report:** The Petitioner Company No. 2 undertake and confirm that upon the Scheme becoming effective, no employees/workmen of Transferor Company will be retrenched/ terminated in terms of the scheme of amalgamation of Transferor Company with the Transferee Company.

It is further submitted that Clause 6 of the Scheme of Amalgamation already provides for safeguarding the interest of the employees / workmen of the Transferor Company upon the amalgamation becoming effective, ensuring their continuity in the amalgamated company both in letter and in spirit. An undertaking affidavit duly signed by the Authorized Signatory of Petitioner Company No. 2 undertaking and confirming to this effect, is enclosed and marked as Annexure-3 to the reply.

- x. **Reply to para II (10) of the ROC & RD report:** The Petitioner Company No. 2/ Transferee Company states that the IT Counsel has submitted its memo on October 25, 2023 with the Hon'ble NCLT and the NoC letter from the Income Tax Department, Bengaluru dated September 27, 2023 has also been received and duly submitted before the Hon'ble NCLT on 09th November, 2023 vide Dairy No. 5678. Copy of the said memo along IT letter is herewith enclosed and marked as Annexure-7 to the reply. Further, the Petitioner Company No. 2/ Transferee Company has submitted its reply to the said NoC letter on 11th December, 2023 (vide dairy no. 6203) by attaching the undertaking affidavit confirming that the demand, if any, arising from the Income-tax Department will be duly settled as and when the demand crystalizes. Copy of acknowledgement of the IT Reply along with the undertaking affidavit is enclosed and marked as Annexure-8 to the reply.
- xi. **Reply to para II (11) of the ROC & RD report:** The Petitioner Company No. 2 undertakes and confirm that the Petitioner Companies have received the letter from RBI dated October 16, 2023. In response to the said letter, Petitioner Company No. 2 has submitted a reply vide letter dated 22.11.2023. Further, the Petitioner Company No. 2/ Transferee Company has also submitted the reply in affidavit before the Hon'ble Tribunal by attaching the undertaking affidavit of Transferee Company on December 11, 2023 (vide dairy no. 6204). Copy of acknowledgment of the RBI reply letter along with the affidavit (including undertaking affidavit) is enclosed and marked as Annexure – 9 to the reply.
14. Official Liquidator (OL) has filed its report vide Diary No.6263 dated 13.12.2023. OL has raised the following observations in respect of Petitioner Companies by inter-alia observing as under:
- 1) Both TR Company and TE Company are Public unlisted companies and registered in the State of Karnataka. Further both

the companies are wholly owned subsidiary of Biocon Ltd, a listed Company with substantial public interest.

- 2) The directors of TR Company and TE Company are common.
- 3) The Transferor Company has filed the Balance sheets as at 31.03.2023. The authorized capital of TR Company Is Rs.15,00,000/-and paid-up capital Rs.5,00,000/.
- 4) That the TR Company has no subsidiary or associate and not a member of LLP, Firms etc.
- 5) The appointed date proposed is 01.04.2022 or any other date as fixed by the Tribunal.
- 6) The consideration fixed for merger is given below: -  
“1 fully paid-up equity share of face value of Rs. 10/- each of the Transferee Company shall be issued and allotted as fully paid up for every 1 equity share of face value of Rs. 10/- each fully paid up held in the Transferor Company”.  
There will not be much impact on the share holding pattern as 100% shares of both TR and TE Company are held by another entity, Biocon Ltd.
- 7) That the valuer vide in his valuation report dated 06.01.2023 has given conclusion about SWAP Ratio stating that the company proposed to be amalgamated are wholly owned subsidiary of Biocon Ltd. Therefore, the final shareholding structure of the amalgamated company shall remain the same even if any valuation methodology is applied for determining the SWAP ratio.
- 8) There is no subsidiary holding relationship between TR and TE Companies
- 9) The Board of TR company have approved the scheme on 06.01.2023 and Hon'ble NCLT vide order dated 24.08.2023 has dispensed with the meeting of equity shareholders, unsecured trade creditors of TR Company after producing consent from the shareholders/creditors.
- 10) The Transferor Company has no secured creditor as on appointed date and as per charge register maintained by ROC.
- 11) The petitioner needs to settle the MSME dues if any as per the

MSME Act, and also to take care of the trade creditors as on date inspite of consent affidavit is received from certain creditors as on 30.11.2022.

- 12) That in the TR Company there is a Capital Work in Progress (CWIP) as at 31.03.2023 for an amount of Rs. 50,19,28,000/-. In this connection, it was noticed that the company has sold the entire capital work in progress to the related entity for a massive loss of Rs. 30,95,48,000/- on slump sale basis. The petitioner needs to explain the reason for disposing CWIP for a such a loss in particular when the company incorporated only in the year 2021.
  - 13) The TR Company has related party transactions, Compliance of section 188 of Companies Act, 2013 needs to be shown.
  - 14) No Employees/workmen of Transferor Company to be retrenched/terminated in the terms of amalgamation of Transferor Company with Transferee Company. The Hon'ble Tribunal may kindly seen that the Transferee Company Is complying with the same in letter and spirit and not retrenching the staff or employee of Transferor Company in the guise of surplus staff on account of merger. Need to give a separate undertaking by the Transferee Company in this regard. However, there are no employees in TR Company.
15. The Petitioner Companies filed its reply vide Diary No.551 dated 25.01.2024 to the observations made by the Official Liquidator which is as under: -
- i. **Reply to para- 1,2,3,4,5 & 6 of the OL report:** The Authorised Signatory of Petitioner Company No. 2 undertakes and confirm that the statements made in the OL Report at Point No. 1,2,3,4,5 & 6 are true and correct to the best of his knowledge.
  - ii. **Reply to para 7 of the OL report:** It is stated that the Transferor Company and Transferee Company are wholly

owned subsidiaries of Biocon Limited and the management of both the companies have approved and considered that the combined share capital of the companies would be the appropriate share capital of the Transferee company. It is respectfully submitted that based on target capitalization method, the consideration is determined to be “issue of 1 (One) fully paid-up equity share of the Transferee Company to the shareholders holding 1(One) fully paid-up equity share of the Transferor Company”. It is further clarified that irrespective of the valuation methodology adopted for determining the SWAP ratio, the final shareholding of the Transferee Company shall remain unchanged and hence the shareholders remain the same.

- iii. **Reply to para 8 & 9 of the OL report:** The Authorised Signatory of the Petitioner Company No. 2 undertake and confirm that the statement made in the OL Report at Point No. 8 & 9 are true and correct to the best of my knowledge.
- iv. **Reply to para 10 of the OL report:** The Authorised Signatory of the Petitioner Company No. 2 hereby undertake and confirm that the statement made in the OL Report at Point No. 10 is incorrect. It is submitted that the Transferor Company has secured term loan of Rs. 28.98 crores outstanding as on April 1, 2022 i.e., appointed date with a pari passu charge on plant and machinery of the facility and guaranteed by its holding company, Biocon Limited. It is further submitted that the said secured loan has been transferred to Syngene International Limited under the Business Transfer Agreement in entirety on December 26, 2022 and the charge created thereon has been duly satisfied. Copy of Certificate of Satisfaction of Charge, Form CHG-4 along with Payment receipt for the same filed with the ROC for satisfaction of charge is enclosed as Annexure -2 to the reply.



- v. **Reply to para 11 of the OL report:** The Authorised Signatory of the Petitioner Company No. 2 undertakes and confirms that there were no outstanding MSME dues of the Transferor Company as on 30.11.2022. Further, any outstanding liability dues after 30.11.2022 will be duly settled by the Transferee Company. Further, it is stated that the outstanding liability due to the Trade Creditors as on 30.11.2022 will be duly settled by the Transferee Company. The copy of the Undertaking affidavit given by the Petitioner Company No. 2 confirming the same enclosed as Annexure – 3 to the reply .
- vi. **Reply to para 12 of the OL report:** The Authorised Signatory of the Petitioner Company No. 2 states that the Transferor Company was engaged in Contract Research and Manufacturing Services (CRAMS) and other R & D in the field of pharmaceuticals, including but not restricted to drug discovery, biotechnology pharmaceuticals, medicinal sciences etc. Further, it is stated that the Transferor Company vide Business Transfer Agreement dated August 1, 2022 has transferred its Contract Research Service undertaking on a going concern basis by way of slump sale to Syngene International Limited, a subsidiary of Biocon Limited for a consideration of INR 23.15 crore (subject to adjustments of assumed liabilities between June 30, 2022 and July 31, 2022 based on the audited financial statements as on July 31, 2022). Pursuant to such sale, all the agreed assets, liabilities, employees, contracts, approvals, registration, licenses, agreements etc of the said undertaking is transferred to Syngene International Limited. The slump sale consideration has been determined based on the report of an independent valuer adopting DCF methodology. The Petitioner Company No. 2 confirms that based on the terms agreed in the Business Transfer Agreement, the slump sale consideration of Rs. 23.15 crores was adjusted to account for the difference in the assumed liabilities. Further, it is humbly

stated that based on the audited financial statements as on July 31, 2022, the assumed liabilities increased by Rs. 3.92 crores between June 30, 2022 and July 31, 2022. Accordingly, the adjusted slump sale consideration was Rs. 19.23 crores (i.e., Rs. 23.15 – 3.92 crores). This fact can also be verified from the cash flow statement forming part of the audited financial statement of the Transferor Company as on March 31, 2023. Copy of the audited financial statement of the Transferor Company as on March 31, 2023 is enclosed and marked as Annexure-4 to the reply .

It is stated that as per note no. 32 of the audited financial statements of the Transferor Company, the Net worth of the undertaking or division transferred is Rs. (-11.17 crores) which is on account of assumed liabilities exceeding the net assets taken over. Accordingly, the slump sale has resulted in a gain of Rs. 30.41 crores (i.e. 19.23 – (-11.17)). In this regard, the Hon'ble Tribunal may note that the observation made by the OL in its report that the Transferor Company has incurred loss on slump sale is incorrect.

- vii. **Reply to para 13 of the OL report:** The Authorised Signatory of the Petitioner Company No. 2 hereby states that there are no material related party transactions entered between the Transferor Company and its related parties, except for those disclosed in the financial statement and the same has been filed the Registrar of Companies.

The Petitioner Company No. 2 confirms that the said transactions were entered into on an arm's length basis and thus the transactions are in compliance with the requirements of Section 188 of the Companies Act, 2013. An affidavit undertaking given by the Petitioner Company No. 1/ Transferor Company confirming the same is enclosed and marked as Annexure – 5 to the reply.

viii. **Reply to para 14 of the OL report:** The Authorised Signatory of the Petitioner Company no. 2 undertake and confirm that, upon the Scheme becoming effective, no employees/workmen of Transferor Company will be retrenched/ terminated in the terms of the amalgamation of the Transferor Company with the Transferee Company.

It is submitted that Clause 6 of the Scheme of Amalgamation already provides for safeguarding the interest of the employees / workmen of the Transferor Company upon the scheme becoming effective, ensuring their continuity in the Transferee Company both in letter and in spirit. An undertaking affidavit in this regard by the Petitioner Company No. 2/ Transferee Company is enclosed and marked as Annexure – 3 to the reply.

16. The Income Tax Department has filed their report vide Diary No. 5678 dated 09.11.2023 stating that “Assessment proceedings pending in both the cases for the Assessment Year 2022-23 and penalty proceedings pending in the case Biocon Pharma Limited for AY 2020-21.”

17. The Petitioner Company No.2 has filed their reply affidavit to the Income Tax report vide Diary No.6203 dated 11.12.2023 wherein the Transferee Company undertake and confirm that pursuant to Clause 5.4 of the Scheme of Amalgamation, all the liabilities, duties and obligations of the Transferor Company shall be transferred to/vested with the Transferee Company.

Thus, in terms of the assessment proceedings u/s 143(3) of the Income tax Act, 1961 for AY 2022-23 for the Transferor Company, the Transferee Company undertakes and confirms to settle the outstanding demand, if any, arising on the conclusion of the aforesaid assessment proceedings.

Whereas in case of Biocon Pharma Limited, being the Transferee Company, there are assessments proceedings pending for the Assessment Year 2022-23 and a penalty proceeding pending for AY 2020-21. In this regard, it is stated that since Biocon Pharma Limited

being the successor entity in the said Scheme and will exist after the Scheme becoming effective, the outstanding demand or penalty, if any, as imposed on the conclusion of the assessment or penalty proceedings as and when the same are crystallized.

18. The Reserve Bank of India has filed its report vide Letter BLR.FED.FID.No.S103621/21.14.150/20232024 dated 16.10.2023, stating that M/s Biofusion Therapeutics Limited and M/s Biocon Pharma Limited have overdue outstanding Shipping Bill(SB)/Bill of Entry(BoE)/Inward Remittance Message/Outward Remittance Message, as per our records available with us.
  
19. The Petitioner Companies had submitted its response vide letter dated 02.09.2023 to the Reserve Bank of India as well as reply affidavit vide Diary No.6204 dated 11.12.2023. It is stated in the reply affidavit that pursuant to Clause 5.4 of the Scheme of Amalgamation, all the liabilities, duties and obligations of the Transferor Company shall be transferred to vested with the Transferee Company. Hence, upon the scheme become effective the Transferee Company will pay off all the outstanding Shipping Bill (SB)/Bill of Entry (BoE)/Inward Remittance Message Outward Remittance Message of the Transferor Company as when the dues are crystalized. In terms of the dues of the Transferee Company is concerned, The Petitioner Company No.2 undertake and confirm that, since Transferee Company is the successor entity in the said Scheme and the Company will exist after the scheme becoming effective, the outstanding Shipping Bill (SB)/Bill of Entry (BoE)/inward Remittance Message/ Outward Remittance Message of the Transferee Company will be paid in the due course and shall not impact the process of merger. However, the Transferee Company, further confirms that the outstanding Shipping bills(SB) Bill of Entry (BoE)/inward Remittance Message/ Outward Remittance Message of the Transferee Company shall be paid as and when the dues are crystallized.

20. The reports of the ROC, RD, OL, IT and RBI are taken on record. Similarly, replies filed by the Petitioner Companies to the above-mentioned reports are also taken on record.
21. In view of the above discussion, we conclude that the objections/observations to the Scheme received from RD/ROC, OL, IT Dept. and RBI have been adequately replied by the Petitioner Companies and hence there is no impediment in approval of the Scheme.
22. The Scheme in question as annexed at **Annexure-15 is approved** with the Appointed Date being **01.04.2022** and thus we hereby declare that the same is binding on all the shareholders and creditors of the Transferor as well as Transferee Company. While approving the Scheme, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/ compliance with any other requirement which may be specifically required under any law. With the sanction of the Scheme, the Transferor Company shall stand dissolved without being wound-up, without any further act or deed.

**AND THIS TRIBUNAL DOES FURTHER ORDER:**

- i. That the Petitioner Companies do, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company and the files relating to Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and
- ii. That the Petitioner Company shall deposit an amount of Rs.75,000/- with the "Pay & Accounts Officer, Chennai in respect of the Regional Director, South East Region, Ministry of

Corporate Affairs, Hyderabad” and Rs.25,000/- infavour of “The Prime Minister’s National Relief Fund”, within a period of four weeks from the date of receipt of certified copy of this Order; and

- iii. The Petitioner Company is directed to make compliance to the Provisions of Section 170A of the Income Tax Act, 1961 within the stipulated period of time.
- iv. That any person interested shall be at liberty to apply this Tribunal in the above matter for any directions that may be necessary.
- v. The approval/sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act, 2013 and that the authorities under both the Acts, are at liberty to take appropriate action, in accordance with law, if so advised.
- vi. The Petitioner Companies has given various undertaking in response to observations made in ROC report. They are directed to ensure compliance of the same.

23. As per the directions, FormNo.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioner Company on filing of the Schedule Property i.e., (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company by way of affidavit of the Transferor Company respectively.

24. Accordingly, **C.P.(CAA) No.38/BB/2023** is disposed of. Copy of this Order be communicated to the Counsel for the Petitioner Company.

-Sd-

**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

-Sd-

**(K.BISWAL)**  
**MEMBER (JUDICIAL)**