

S.No.5

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
29-04-2024 AT 10:30 AM**

CP (CAA) No. 34/230/HDB/2023
u/s. 230 of Companies Act, 2013

IN THE MATTER OF:

M/s. Aurobindo Pharma Limited (Transferee Company) and M/s. Mviyes Pharma Ventures Private Limited (Transferor Company-1) and M/s. Auronext Pharma Private Limited (Transferor Company-11) and their respective shareholders and creditors
...Petitioner

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced. In the result, **CA (CAA) No. 34/230/HDB/2023 is allowed**, subject to the directions mentioned in the order.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

**C.P. (CAA) NO. 34/ 230/HDB/2023
Connected With
C.A. (CAA) NO.47/230/HDB /2023
U/s. 230 to 232 read with other applicable
Provisions of the Companies Act, 2013**

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

M/s. Aurobindo Pharma Limited

(‘Transferee Company’)

AND

M/s. Mviyes Pharama Ventures Private Limited

(‘Transferor Company-I’)

AND

M/s. Auronext Pharma Private Limited

(‘Transferor Company-II’)

AND

Their Respective Shareholders & Creditors

M/s. Aurobindo Pharma Limited,
Registered office at
Plot No.2, Maithrivihar, Behind Maithri Vanam,
Ammerpet, Hyderabad – 500 038, Telangana.
Corporate Office at Galaxy, Floor No. 22-24,
Plot No. 1, Sy. No. 83/1, Hyderabad knowledge city,
Raidurg Panmaktha, Hyderabad – 500 032, Telangana.
Authorised Representative Mr. Santhanam Subramanian.

.... Petitioner/Transferor Company

AND

M/s. Mviyes Pharma Ventures Private Limited,
Registered office at Galaxy, Floor No. 22-24,
Plot No. 1, Sy. No. 83/1, Hyderabad knowledge city,
Raidurg Panmaktha, Hyderabad – 500 032, Telangana.
Authorised Representative Mr. Santhanam Subramanian

... Petitioner / Transferor Company-I

M/s. Auronext Pharma Private Limited,
Registered office at Galaxy, Floor No. 22-24,
Plot No. 1, Sy. No. 83/1, Hyderabad knowledge city,
Raidurg Panmaktha, Hyderabad – 500 032, Telangana.
Authorised Representative Mr. Santhanam Subramanian

... Petitioner / Transferor Company-II

Date of Order: 29.04.2024

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Sh. Charan Singh, Hon'ble Member (Technical)

Parties/counsels present:

For the Petitioners: Y. Suryanarayana, R. Ramkrishna (Advocates).

For the Respondents: Mr.Sahu, Joint Director, RD.
Smt. Kusum Yadav, Assistant Director for RD.
Mr.D.Vasantrao Meshram, O.L
Mr. Yashwanth, AOL from OL.

PER-BENCH

1. This is a joint Petition filed by the Petitioner Companies under Section 230-232 of the Companies Act, 2013 read with Rule of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 by inter-alia praying for sanction of the Scheme of Amalgamation of the Petitioner Companies so as to be binding on all the members, creditors and employees and all concerned.
2. **Brief averments in the Petitioner Companies are:**
3. The averments made in the Petition are briefly described as under:
 - (A) The Transferor Company I, M/s. **Mviyes Pharma Ventures Private Limited**, was incorporated in the state of Telangana, under the provisions of the Companies Act, 2013 on March 30, 2017 vide Corporate Identification Number: (CIN): U749999TG2017PTC116265 issued by the Registrar of Companies, Telangana. The Registered Office of the Transferor Company is same as mentioned in the cause title.
 - (B) The Transferor Company is engaged inter alia, in the business of manufacturing, buying, selling, importing, exporting, distribute, store, maintain, supply and generally deal in all classes and kinds of drugs, chemicals, pharmaceuticals, pesticides, dyestuffs and other intermediaries. A copy of the certificate of Incorporation and Memorandum and Articles of Association of the First

Petitioner/Transferor Company I is annexed as **Annexure-I** to the Petition.

- (C) The authorized, issued, subscribed and paid-up share capital of the Transferor Company I as on 31st March, 2023 is as follows:

Share Capital	Amount in Rs.
Authorised Capital	
15,02,49,382 Equity shares of INR 10 each	1,50,24,93,820
Total	1,50,24,93,820
Issued Subscribed and Paid up	
15,02,49,382 Equity shares of INR 10 each	1,50,24,93,820
Total	1,50,24,93,820

Subsequent to 31.03.2023 and till the date of approving of the resolution for the Scheme of amalgamation by the Board of Directors of the Transferor Company I, there has been no change in the Capital Structure of the Transferor Company I.

A copy of the audited financial statements as at 31st March, 2023 of the Transferor Company is annexed as **Annexure-2** to the Petition.

- (D) The Transferor Company II i.e **M/s. Auronext Pharma Private Limited** was incorporated under the Companies Act, 1956 on July, 02, 2009 in the state of Telangana, vide Certificate of Incorporation No U749999TG2009PTC109591 issued by the Registrar of Companies, Telangana. The registered office of the Transferor Company II is same as mentioned in the cause title.
- (E) The Transferor Company-II is engaged in the business as manufacturers, producers, processors, makers, converters, importers, exporters, traders, buyers, sellers, retailers, wholesalers, suppliers,

indenters, packers, movers, preservers, stockists, agents, sub-agents, merchants, distributors, consigners, jobbers, brokers, concessionaries and to provide storage facilities to others on rental basis or otherwise deal in all type of medical related chemicals and essential oils & hurbs. A copy of the certificate of Incorporation and Memorandum and Articles of Association of the First Petitioner/Transferor Company I is annexed as **Annexure-3** to the Petition.

(F) The authorized, issued, subscribed and paid-up share capital of the Transferor Company-II as on 31st March, 2023 is as under:

Share Capital	Amount in Rs.
12,50,00,000 Equity shares of INR 10 each	1,25,00,00,000
13,00,00,000 Preference Shares of INR 100 each	1,30,00,00,000
Total	2,55,00,00,000
Issued, Subscribed and Paid-up	
12,49,84,028 Equity shares of INR 10 each	1,24,98,40,280
Total	1,24,98,40,280

Subsequent to 31.03.2023 and till the date of approving of the resolution for the Scheme of amalgamation by the Board of Directors of the

Transferor Company II, there has been no change in the Capital Structure of the Transferor Company II.

A copy of the audited financial statements as at 31st March, 2022 and provisional financial statements as at 31st March, 2023 of the Transferor Company II is annexed as **Annexure 4** to the Petition.

- (G) The Transferee Company **M/s. Aurobindo Pharma Limited** was incorporated as Aurobindo Pharma Private Limited pursuant to the provisions of the Companies Act, 1956 on 26.12.1986 with CIN 469 of 1986 issued by the Registrar of Companies, Pondicherry. Subsequently, the Company converted itself into a Public Limited Company by following the due provisions laid down under the Companies Act, 1956 and consequently, the word “private” was struck off from the name of the Company on 30.04.1992 by the ROC, Pondicherry. Subsequently, the Company shifted its registered office from Union Territory of Pondicherry to the State of Andhra Pradesh by following due provisions laid down under the provisions of the Companies Act, 1956 (now state of Telangana) vide order dated 04.12.1992 passed by Hon’ble CLB Southern Region Bench Madras. After obtaining the Certificate of Registration of Order of CLB confirming the transfer of the Registered Office from one state to another from the Registrar of Companies, Andhra Pradesh on 30.12.1992. The present Certificate of Incorporation No is L24239TG1986PLC015190. The registered office of the Transferee Company is same as mentioned in the cause title.

(H) The Transferee Company is engaged in the business as manufacture, prepare, import, export, buy, sell, supply, distribute, store, stock, warehouse, maintain and otherwise handle, deal in and carry on the business in all kinds and varieties of pharmaceutical products, bulk drugs, bulk drugs, intermediates, patent and non-patent medicines, common medicinal preparations, drugs, mixtures, pills, powders, controlled substances, elixirs, drops, tonics, other liquid drugs and medicines, formulations, capsules, tablets, medicated ointments, pharmaceuticals, chemical, medical and medical products, preparations and materials, sterilized injections, vaccines, immunogens, phylacogens, disinfectants and chemicals and to do the research and developmental activities to develop drugs. A copy of the certificate of Incorporation and Memorandum and Articles of Association of the Transferee Company is annexed as **Annexure-5** to the Petition.

(I) The authorized, issued, subscribed and paid-up share capital of the Transferee Company as on 31st March, 2023 is as under:

Share Capital	Amount in Rs.
Authorized Capital	
1,79,05,00,000 Equity shares of INR 1 each	1,79,05,00,000
82,10,000 preference shares of INR 100 each	82,10,00,000
Total	2,61,15,00,000
Issued, Subscribed and Paid -up	
58,59,38,609 equity shares of INR 1 each	58,59,38,609

Total	58,59,38,609
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Both the Transferor Companies are wholly owned subsidiaries of the Transferee Company.

Subsequent to 31.03.2023 and till the date of approving of the resolution for the Scheme of amalgamation by the Board of Directors of the Transferee Company, there has been no change in the Capital Structure of the Transferee Company.

A copy of the audited financial statements as at 31st March, 2022 and provisional financial statements as at 31st March, 2023 of the Transferor Company II is annexed as **Annexure 6** to the Petition.

4. The Board of Directors of the Petitioner Companies at their respective meetings held on 01.04.2023 approved the Scheme of Amalgamation between M/s. Mviyes Pharma Ventures Private Limited ('Transferor Company I') and M/s. Auronext Pharma Private Limited ('Transferor Company II') and M/s. Aurobindo Pharma Limited ('Transferee Company') and their respective Shareholders and Creditors. The Scheme of Amalgamation is annexed as **Annexure – 7** to the Petition. The certified true copy of the Board Resolutions passed by the Board of Directors of the Petitioner Companies are annexed as **Annexure 11-13** to the Petition.
5. The said scheme of Amalgamation between Transferee Company and Transferor Companies and their respective Shareholders and Creditors, was approved by the Board of Directors of the Petitioner Companies with the following objectives:

- i. Reduction of administrative responsibilities, multiplicity of records and statutory, legal and regulatory compliance.
- ii. Cost savings through legal entity rationalization.
- iii. The merger of Transferor Company I and Transferor Company II into the Transferee Company will result in operational synergies resulting in cost optimization.
- iv. The merger would result in consolidation of Networth of the Transferor Companies with the Transferee Company thereby resulting in an increased Networth of the combined entity.

The Scheme is in the interest of the shareholders, creditors and all other stakeholders of the companies and is not prejudicial to the interests of concerned shareholders, creditors or the public at large.

6. CONSIDERATION:

Transferor Companies are wholly owned subsidiaries of Transferee Company. Hence, upon the Scheme becoming effective and amalgamation of Transferor Companies with Transferee Company in terms of Part II & III of this Scheme, all the equity shares issued by Transferor Companies and held by Transferee Company and/or its nominees shall stand cancelled and extinguished and in lieu thereof, no allotment of any shares in Transferee Company shall be made to any person whatsoever.

7. COMPLIANCE OF ACCOUNTING STANDARDS

The accounting treatment proposed at clause 13 and clause 22 of Scheme of Amalgamation between M/s. Mviyes Pharma Ventures Private Limited

(Transferor Company I), Auronext Pharma Private Limited (Transferor Company II) and M/s. Aurobindo Pharma Limited (Transferee Company) and their respective Shareholders and Creditors, is in conformity with the accounting standards as prescribed under the provisions of Section 133 of the Companies Act, 2013.

(‘A certificate issued by the Chartered Accountant confirming the Accounting Treatment proposed in the Scheme, is annexed hereto and marked as ‘Annexure- 8 to 10’).

8. DECLARATION BY THE PETITIONER COMPANIES:

- a) No petition under Section 241 or 242 read with Section 66 of the Companies Act, 2013 has been filed against any of the Petitioner Companies and there has been no material change in the affairs of any of the Petitioner Companies, except for what was done in the normal course of the business.
- b) There are no proceedings pending under Section 210 to 227 of Companies Act, 2013 against any of the Petitioner Companies.
- c) The Scheme of Amalgamation between M/s. Mviyes Pharma Ventures Private Limited (Transferor Company I), M/s. Auronext Pharma Private Limited (Transferor Company II) and M/s Aurobindo Pharma Limited (Transferee Company) and their respective Shareholders and Creditors does not have an adverse effect on any of the shareholders or creditors or other stakeholders of the Petitioner Companies in any manner whatsoever.

9. It is submitted that the Petitioner Companies had filed a Joint Company Petition bearing CA (CAA) No. 47/230/HDB/2023, under section 230 to 232 of the Companies Act, 2013, wherein this Tribunal vide its Order dated 18.07.2023, dispensed with the requirement of convening the meeting of the Equity Shareholders and trade creditors of the Transferor Companies and dispensed with the requirement of convening the meeting of the Equity Shareholders, trade creditors, secured creditors and unsecured creditors of the Transferee Company. A copy of the order dated 18.07.2023, passed by this Hon'ble Tribunal is annexed to the petition as “**Annexure 15**”.
10. It is submitted that this Tribunal vide order dated 09.08.2023 ordered notices to all the statutory authorities as per Rule 16 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Subsequently notices were issued on all the statutory Authorities. It is further submitted that the Petitioner Companies as per the order of this Tribunal, publication had been carried out in the Economic Times (English) and Eenadu (Telugu) Newspapers on 19.08.2023 and filed the Compliance Memo with this Tribunal on 25.09.2023.

11. REGIONAL DIRECTOR, SOUTHEAST REGION REPORT:

- The Regional Director vide his report dated 13.12.2023 has made certain observations. The Petitioner Companies have filed affidavit dated 29.12.2023, in response to the observations made by the Regional Director, Southeast Region, Ministry of Corporate Affairs, Hyderabad.

Observation of Regional Director	Reply filed by the Petitioner Companies by way of an Affidavit
<p>Para 3 (b)</p> <p>Clause 26 of the scheme provides for an automatic increase in Authorized Capital of the Transferee Company with that of the Transferor Companies. The Transferee Company shall pay the differential fee and stamp duty payable on the said increase in Authorised capital after deducting such fees and duties paid but the transferor Companies before the merger.</p>	<p>The Transferee Company submits that it shall pay the differential fee, if any and stamp duty on its increased authorized share capital after setting off the fee and duties already paid by the Transferor Company on its respective capital. The Petitioner Companies submit that they shall comply with the provisions of the Companies Act, 2013 to that extent.</p>
<p>Para 3(C)</p> <p>It is averred that Ministry's vide letter no.03/120/2011-C1-11(SER) dated 19.02.2021 ordered enquiry under Section 206(4) of the Companies Act, against Transferee Company. Based on the said order inquiry has carried out the inquiry and submitted the</p>	<p>Transferee Company vide Affidavit undertakes that the Company and the officers in default will make good the offences observed if any, and comply with the provisions of the Companies Act, 2013.</p>

<p>report to the Directorate vide dated 30.05.2022. In this connection Directorate has instructed this office to initiate the action for the violations reported under Part B, Part C, and Part D of the report and further instructions are awaited with respect to Part A from the ministry. Thus, an under taking to that effect that officers in default will make good the offences observed if any and comply with the provisions of the Companies Act, 2013.</p>	
<p>Para 3(d)</p> <p>It is averred that CBI has filed a charge sheet in FIR No. RC 19(A) 2011 dated 17.08.2011 in which the transferee company has been names as accused. Further it is averred that the Enforcement Directorate (ED) and the Security Exchange Board of India (SEBI) has also filed cases against the transferee company. The scheme of amalgamation has not been informed to the above said authorities and</p>	<p>It is submitted that the present status of the cases before the Hon'ble Special Judge for CBI and ED are that all the accused filed for disposal of cases and the same are pending for adjudication. Coming to the case before SEBI, it is submitted that the case is pending against the promoters of the Company and no case is pending before SEBI against the Transferee Company.</p>

sought their approval. Hence, the transferee company may be directed to inform to the said Regulatory Authorities and furnish proof of the same before this Tribunal.

The Transferee Company vide affidavit agrees and undertakes before this Tribunal that any pending suit, appeal or other proceedings of whatever nature by or against any of the Transferor Company shall be continued, prosecuted and enforced by or against the Transferee Company upon approval of the Scheme. Further no CBI & ED proceedings have been initiated or are pending against the Transferor Companies involved in the Scheme and since the Amalgamated Company is the Transferee Company the proceedings initiated by CBI & ED against the Transferee Company is the Transferee Company the proceedings initiated by CBI & ED against the Transferee Company shall not abate and the sanction of the instant scheme shall not have any direct or indirect or any likely impact on the outcome of the said proceedings.

<p>Para 3(e)</p> <p>It is averred that the companies are engaged in manufacturing of Pharmaceuticals, etc., hence prior approval from the Department of Pharmaceutical under the Ministry of Chemical and Fertilizer may be sought.</p>	<p>It is submitted that the approval from the regulatory authority is required only for carrying on the business of Manufacturing Pharmaceutical Products, setting up of the Pharma Facility, approval of the Pharma Plant and for registration of the Pharmaceutical Products and not for the amalgamation of the Companies with their 100% Holding Company which is also engaged in the same business. The Petitioner Companies once again reiterate that no prior approval/permission of Ministry of Chemicals and Fertilizers and any other Regulatory Authority is required by any of the Petitioner Companies in relation to the Scheme of Amalgamation.</p>
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Para 3(f)

Hon'ble Tribunal may direct the petitioner companies to submit an affidavit whether companies has got any form of government agencies in subsidies rate or under any scheme.

It is averred that as per the State Government Industrial Development Policy, power subsidy has been given to the Transferee Company to the extent of fixed power cost reimbursement @ Re.1.00 per unit for 5 years from the date of commencement of commercial production. Under this policy, the company has to pay the power bill to the government at full tariff amount. Reimbursement of subsidy amount will be paid by the government separately. During last 3 years, the company has not received any subsidy from the state government.

Further, Transferor 1 and Transferor 2 Companies have not availed any subsidies from any government agencies.

<p>Para 3(g)</p> <p>Since the Transferee Company is a listed Company and hence an affidavit on compliance with SEBI Regulation and approvals/intimation relating to stock exchanges may be called for.</p>	<p>It is averred that since the present scheme is solely provides for Amalgamation of wholly owned subsidiaries with its parent Company, no formal approval is required from the Stock Exchanges or Securities and Exchange Board of India Regulations, 2015.</p> <p>In terms of SEBI Regulations, the present Scheme of Amalgamation is only required to be filled with BSE and NSE for the purpose of disclosure and dissemination on its website. In compliance with the said regulations, the Transferee Company has already filed the Scheme with the Stock Exchange on 01.04.2023.</p>
<p>Para 3(h-j)</p> <p>Hon'ble Tribunal may please to direct the Petitioner Company to preserve the books, comply with statutory laws, file Inc-28 with the Registrar of Companies.</p>	<p>The Petitioner Companies vide this affidavit undertakes to comply with all the Applicable provisions and rules under the Companies Act, 2013.</p>

<p>Para 4</p> <p>Hon'ble Tribunal may direct the petitioner companies to comply with the observations pointed out by Official Liquidator.</p>	<p>Complied</p>
<p>Para 5</p> <p>With reference to this Directorate's letter dated 22.08.2023, issued to The Addl. Commissioner of Income Tax, Hyderabad, till date no reply/comments in the matter has been submitted to this Directorate. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to furnish an undertaking that, if any demand arises from the Income Tax Department with respect to Transferor Companies and Transferee Company, Transferee Company is ready to pay the said dues as per rules.</p>	<p>It is submitted that the Transferee Company undertakes vide affidavit dated 04.12.2023 that all necessary action and pay dues, if any, to the extent applicable, with respect to any tax demand as per the provisions of the Income Tax Act, 1961.</p>

<p>Para 6(a-e)</p> <p>Upon examining the contents of the Scheme, Regional Director had made certain observations like</p> <ul style="list-style-type: none">• Transferee company should comply with SEBI(LODR) Regulations, 2015.• Upon Scheme becoming effective, all the equity shareholders issued by the transferor Company 1 and transferor Company 2 held by transferee company or its nominees shall stand cancelled and extinguished and in lieu thereof, no allotment of any share in transferee company shall be made.• The amalgamation of petitioner companies shall be accounted as per “Pooling Interest Method”.	<p>Petitioner Companies under take to comply all the observations made by the Regional Director vide affidavit dated 04.12.2023.</p>

<ul style="list-style-type: none">• The value of investments in the shares of transferor company 1 as held by transferee company shall stand cancelled.• Transferee Company shall furnish an undertaking with regard to the compliance of the provisions of Section 188 of the Companies Act, 2013.	
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- The Regional Director filed further report dated 19.01.2024 stating that since the Transferee Company is a listed Company and SEBI has filed cases against Transferee Company, hence in view of this SEBI may be called by this Tribunal before considering the Scheme. Further sought direction from the Tribunal before considering the Scheme to clarify whether the approval from Department of Pharmaceuticals and Ministry of Chemicals Fertilizers is required.
- Regional Director vide memo dated 05.02.2024 stated that as per Rule 5(g) of the Companies Rules, 2016, which specifically states that notice to be given to sectoral Regulators or Authorities required under Sub-Section 5 of Section 230 of the Companies Act, 2013 and also the provision of sub-section (5) of Section 230 reiterates that specific notice of the merger to be given to the sectoral regulators and

authorities which are likely to be affected by the Compromise or Arrangement.

- In reply to the memo dated 05.02.2024, petitioner companies has stated that approval/permission of Ministry of Chemicals and Fertilizers and the authorities functioning under the aegis of the said Ministry is required for setting up of the manufacturing plant and as also for manufacturing new drugs and also for necessary R&D activities for product filing and etc., except those activities no permission or approval is required from the Ministry of Chemicals and Fertilizers and the authorities functioning under the said Ministry, for corporate restructuring that may be undertaken by a Company engaged in the business of production of pharmaceutical products. Further stated that no representation from the Ministry is warranted or required as the Companies involved in the instant Scheme of Amalgamation which are engaged in business of manufacturing of pharmaceutical products. Permission is required from the said Authorities only when setting up of manufacturing plant and manufacturing of the new product.'

12. OFFICIAL LIQUIDATOR'S REPORT:

The Official Liquidator has filed his report, vide OLR No. 61/2023 dated 03.11.2023 stating certain observations at point no.22 of his report. The observations pointed out has been replied by the petitioner companies vide affidavit's dated 09.01.2024. Petitioner Companies

in their reply to the report stated that some of the observations are on record and statements of facts. Further Official Liquidator vide O.L.R.No.01/2024, dated 08.01.2024 filed the final report which is stated below as remarks.

Observations of OL	Reply by way of Affidavit	Remarks
<p>22 (c): That, the Clause 9.1 of Part-II as well as Clause 18.1 of Part-III of the Scheme seeks to protect all staff, workmen and employees on payrolls of the Transferor Company, in service on the Effective Date shall be deemed to have become staff, workmen, and employees of the Transferee Company. Hence, this Hon'ble Tribunal may be pleased to direct the Transferor and Transferee Companies to submit an undertaking to this Hon'ble Tribunal to the effect that there would no retrenchment of any employee who were in service as on the Appointed Date (i.e. 01-04-2023) as well.</p>	<p>Petitioner Companies undertakes that the upon sanction of the Scheme by this Hon'ble Tribunal, the Transferee Company shall not retrench employees (if any) who were in service of the Transferor Company as on Appointed Date i.e. 01st April, 2023.</p>	<p>Observation Complied</p>
<p>22 (h): As per Note-9 of the Financial statements as at 31.03.2023 of the Transferor Company -II an amount of Rs.532.18 Lakhs has been shown as “Liability towards Corporate Social Responsibility” under the head of “Other Current Liabilities”.</p>	<p>The Transferee Company undertaken to spend the balance unspent CSR Amount of Rs.30,74,404/- of the Transferor Company II before end of the current financial year 31.03.2024.</p>	<p>Observation complied.</p>

<p>It is observed that Transferor Company II had unspent CSR amount of Rs.5,32,18,079/- for the financial year 2022-23 and in the year 2023-24 the company had spent the said amount. It is further observed that, Transferor Company II has qualified an amount of Rs.1,08,81,685/- as CSR amount which is required to be spent for the year 2023-24 but only Rs.78,07,281/- has been spent and remaining Rs.30,74,404/- has not spent. Hence, prayed the Tribunal to direct the Transferor Company II and Transferee Company to submit an undertaking to the effect that they shall spend the balance unspent CSR Amount.</p>		
<p>22(i) Transferor Company II is loss making Company getting merged with profit making Transferee Company as per the Audited balance sheets. Hence, the Income tax implications due to merger needs to be complied by the Transferee Company</p>	<p>Petitioner Companies stated that all the income tax implications due to merger will be complied with by the Transferee Company</p>	<p>Observation Complied</p>

13. OBSERVATION

We have heard the Learned Counsel appearing for the Petitioner Companies and perused the material papers on record. As regards to the observations pointed out by the Regional Director and compliance

filed by the petitioner company, it appears that Petitioner Companies undertake to comply the necessary observations whenever required. Regional Director vide memo dated 05.02.2024 stated that petitioner companies are required to serve notice to sectoral regulator (Ministry of Chemicals and Fertilizers) as part of compliance of the provisions of the Companies Act, 2013. Which has been replied by the petitioner companies stating that approval of the such regulators is required for setting up of the manufacturing plant and as also for manufacturing new drugs and also necessary for R&D activities.

Before we decide on this issue it is proper to place on record Section 230 (5) of Companies Act, 2013 which is as below:

Section 230 Sub-Section 5

(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar , the respective stock exchanges, the Official Liquidator , the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

On careful perusal of the Section, we find that the words used are “
...and such other sectoral regulators or authorities which are likely to

be affected by the compromise or arrangement and shall require that representations...”. Which clearly speaks that, if compromise affect the sectoral regulators, then their representation is required.

In so far as the case on hand is concerned, since it is simple case of merger, of one wholly owned subsidiary with its holding company and as the observations of the concerned regulators have been complied with, we are of the opinion that no notice is required to the concerned ministry of the petitioner companies. However, we direct the Deputy Registrar of this Tribunal to send a copy of this order through registered speed post with acknowledgment due and also by email to the Secretary of Ministry of Chemical and fertilizer. Ministry of Chemical and fertilizer, is at liberty to approach this Tribunal in the event if they are affected by the present compromise or arrangement.

The Official liquidator had also raised certain observations for which the Petitioner Companies filed its reply by way of Affidavit. After hearing the Counsel for the Petitioner Companies and considering the material on record, we are of the view that scheme is not opposed to public interest and the proposed Scheme is in the interests of the

Transferor Companies, the Transferee Company and their respective shareholders, employees, creditors and all persons concerned. Hence the scheme can be approved with Appointed date as 01.04.2023. All the statutory compliances have been made under Section 230 to 232 of the Companies Act, 2013. Hence ordered.

ORDER

14. After hearing the Counsel for the Petitioner Companies and after considering the material on record, this Tribunal passed the following order:
- (i). The Scheme of Amalgamation is hereby sanctioned with appointed date as 01.04.2023 and shall be binding on all the members, employees, creditors and all other stakeholders of the Petitioner Companies.
 - (ii). While Approving the Scheme, we made it clear that this order should not be construed as an order in anyway granting exemption from payment of Stamp Duty, taxes or any other charges, if any, payable in accordance with law or in respect of any permission/compliance with any other requirement which may be specially required under any law.

- (iii). The whole of the assets, property, rights and Liabilities of the Transferor Companies shall be transferred without the requirement of any further act or deed to the Petitioner/Transferee Company.
- (iv). We direct the Petitioner companies to comply with all the observations pointed out by the Regional Director.
- (v). We direct the Petitioner companies to comply with all the observations pointed out by the Official Liquidator.
- (vi). We direct the petitioner to send copy of the order to the sectoral regulators for their record and observations if any.
- (vii). We direct the Petitioner Companies to preserve the books of accounts and papers and records and the same shall not be disposed of without the prior permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.
- (viii). We direct the Petitioner Companies to ensure statutory compliance of all applicable laws and also on sanctioning of the present Scheme the Petitioner Companies shall not be absolved for any of their statutory liability in any manner.
- (ix). All the legal proceedings pending by or against the Transferor Company shall be continued by or against the Transferee Company.
- (x). Though no representation has been received from the Income Tax Authorities despite service of notice by the Petitioner Companies. We

direct the petitioner Companies to comply with the observations if any with the Income Tax Authorities as per law.

- (xi). The Petitioner Companies are directed to strictly comply with the Accounting Treatment Standards prescribed under Section 133 of the Companies Act, 2013.
- (xii). The sanction of the Scheme by this Tribunal shall not forbid the revenue authority from taking appropriate recourse for recovering the existing and previous tax liabilities of the Transferor and Transferee Companies.
- (xiii). We direct the Transferee Company to comply with the provisions of Section 2 (41) of the Companies Act, 2013.
- (xiv). The Transferor Companies shall be dissolved without going through the process of winding up.
- (xv). The Petitioner Companies shall until the completion of the Scheme of Amalgamation, file a statement in such form and within such time as prescribed with the Registrar every year duly certified by a Chartered Accountant or a Cost Accountant or a Company Secretary to the effect that the Scheme of Amalgamation is being complied with in accordance with the orders of the Tribunal as required under Section 232 (7) of the Companies Act, 2013.

- (xvi). We direct the Petitioner Companies involved in the Scheme to comply with Rule 17 (2) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2013. The Petitioner Companies within 30 days after the date of receipt of certified copy of the order, shall cause certified copy to be delivered in Form INC-28 to the Registrar of Companies concerned for registration and on such certified copy being delivered, Registrar of Companies concerned shall take all necessary consequential action in respect of the Petitioner Companies.
- (xvii). The Petitioner Companies is further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of merger under the provisions of the Companies Act, 2013 and submit necessary compliance and undertaking relating to the objections raised by the Regional Director (SER), MCA, GoI, Hyderabad.
- (xviii). Any person shall be at the liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- (xix). Accordingly, the **CP (CAA) 34/230/HDB/2023** is hereby allowed and disposed of.

SD

Charan Singh
Member (Technical)

SD

Dr.Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Pavani