

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
03-05-2024 AT 10:30 AM**

CP (CAA) No. 67/230/HDB/2023
u/s. 230 of Companies Act, 2013

IN THE MATTER OF:

M/s. Neelkanth Drugs Pvt Ltd (Transferor Company) and
M/s. Keimed Primate Limited (Transferee Company) and
their respective share holders

...Petitioner

C O R A M:-

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

O R D E R

Orders pronounced. In the result, **CP (CAA) No. 67/230/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, HYDERABAD-1**

CP (CAA) NO.67/230/HDB/2023 connected with
CA (CAA) NO.51/230/HDB/2023
U/s. 230 to 232 of the Companies Act, 2013

**IN THE MATTER OF
NEELKANTH DRUGS PRIVATE LIMITED
(TRANSFEROR COMPANY)
AND
KEIMED PRIVATE LIMITED
(TRANSFeree COMPANY)**

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

NEELKANTH DRUGS PRIVATE LIMITED

having its registered office at
D.No 7-2-1740, K Subbaiah Pillai Godowns, Main Road,
Sanath Nagar, Hyderabad, Telangana, India, 500018
Represented by its Director, Mr. Arvind Kumar Venkat.

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

KEIMED PRIVATE LIMITED

having its registered office at
10-3-316/A, Masab Tank, Hyderabad – 500 028,
Telangana, India, Represented by its Director,
Mr. Arvind Kumar Venkat.

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

DATE OF ORDER:03.05.2024

CORAM: -

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

Counsels / Parties Present

For the Petitioner : Mr.Sanjay Kishore, Counsel.
For the Respondent : Smt Kusum Yadav, Assistant Director from RD
and Shri U.K.Sahoo, for Official Liquidator.

PER BENCH

1. This is a Petition filed by the Petitioner Company under Sections 230 to 232 read with Companies (Compromises, Arrangements and Amalgamations), Rules 2016 by inter-alia seeking for sanction of the Scheme of Amalgamation between Transferor Company and Transferee Company and their respective shareholders and creditors.
2. **The averments made in the Petition in brief:**
 - a. **M/s. Neelkanth Drugs Private Limited**, (hereinafter referred to as "1st Petitioner Company" or "Transferor Company") was incorporated as a Private Limited Company on 19th April, 1999 in the then combined State of Andhra Pradesh now in the State of Telangana by virtue of Andhra Pradesh Re-organization Act, 2014 under Corporate Identity No. U24233TS1999PTC173960

(Erstwhile CIN: U24233DL1999PTC099355) and registered under the Registrar of Companies, Hyderabad. The Copy of the Master data from MCA, Certificate of Incorporation, Memorandum and Articles of Association of the Transferor Company are annexed as **Annexure-1** to the Petition.

- b. The Authorized, Issued, Subscribed, and Paid-up share capital of the Transferor Company as on 31st March, 2023 are as follows: -

Particulars	Amount INR
Authorized Capital	
30,00,000 equity shares of INR10 each.	3,00,00,000
Total	3,00,00,000
Issued, Subscribed, and Paid-up	
29,04,150 equity shares of INR10 each	2,90,41,500
Total	2,90,41,500

Subsequent to 31st March, 2023, there is no change in the Authorized, Issued, Subscribed, and Paid-up Share Capital of the Transferor Company. A copy of the Audited Financial Statements of the Transferor Company as on 31st March, 2022 and as on 31st March, 2023, are annexed as **Annexure-2 and Annexure-3** respectively to the Petition.

c. The Transferee Company i.e., **M/s. Keimed Private Limited** was incorporated originally as Keimed Limited on 10th March, 2000 bearing CIN: U72200TG2000PTC033837 with the Registrar of Companies, Hyderabad under the provisions of the Companies Act, 1956. The said Company was renamed as Keimed Private Limited on 10th July, 2012, pursuant to requisite approvals for conversion into a Private Limited Company. A copy of the Master data from MCA, Certificate of Incorporation, Memorandum and Articles of Association of the Transferee Company are annexed as **Annexure 4** to the Petition.

d. The Authorized, Issued, Subscribed and, Paid-up share capital of Transferee Company as 31st March, 2023 is as follows:

Particulars	Amount INR
Authorized Capital	
66,00,000 equity shares of INR10 each	6,60,00,000
35,00,000 preference shares of INR10 each	3,50,00,000
Total	10,10,00,000
Issued, Subscribed and, Paid-up	
59,48,959 equity shares of INR 10 each	5,94,89,590
Total	5,98,39,589

Subsequent to 31st March, 2023, Authorized preference share capital of the Transferee Company was reclassified into Authorized equity share capital vide a resolution passed by its shareholders in the Annual General Meeting held on 27.09.2023. Accordingly, revised Authorized, share capital of the Transferee Company is as below:

Authorized Capital	Amount (INR)
1,01,00,000 equity shares of INR 10 each	10,10,00,000
Total	10,10,00,000

A copy of the audited financial statements of the Transferee Company as on 31st March, 2022 and as on 31st March, 2023 are annexed as **Annexure 5** and **Annexure 6** respectively to the Petition.

3. **Board Resolution**

The Board of Directors of the Petitioner Companies vide its resolution dated 5th May, 2023 approved the Scheme of Amalgamation between M/s. Neelkanth Drugs Private Limited (Transferor Company) and M/s. Keimed Private Limited (Transferee Company) and their respective shareholders and creditors. A copy of the Board Resolution of the Petitioner Companies approving the Scheme is annexed at **Annexure 17** to the Petition. A copy of the Scheme of Amalgamation is annexed and marked as **Annexure-7** to the Petition.

4. BENEFITS ARISING OUT OF AMALGAMATION:

The proposed amalgamation of the Transferor Company into the Transferee Company shall result in the following, benefits, amongst others, to the Transferor Company and the Transferee Company and their respective shareholders and creditors:

- a. Consolidation of activities of the Transferor Company and the Transferee Company, which are similar to each other, and thereby resulting in efficient management of the businesses, higher revenues, profitability and market share;
- b. Reduction in the number of corporate entities in the group thereby leading to simplification of the group structure;
- c. Cost savings due to focused operational efforts, integrated business functions (such as finance, secretarial, IT & HR, administration, procurement etc.), reduction in overhead expenses and synergy generated, thereby enhancing shareholder value, realizing operational synergies and increasing operational efficiency;
- d. Rationalization, standardization and simplification of business processes, productivity improvements and administrative expenses;
- e. Opportunity to leverage the combined assets, financial, managerial and technical resources and build a stronger sustainable business.

f. The proposed amalgamation by way of the Scheme under the provisions of the Act is beneficial, advantageous and not prejudicial to the interests of the shareholders, creditors, general public at large and other stakeholders of all the companies involved.

5. **CONSIDERATION**

Upon the coming into effect of the Scheme, and in consideration for the transfer of and vesting of the assets and liabilities of the Transferor Company, the Transferee Company shall, without any further act or deed, issue and allot fully paid up equity share, to all shareholders of the Transferor Company, holding fully paid up equity shares in Transferor Company and whose names appear in the register of members of Transferor Company on the Record Date (*as defined in the Scheme*) or to such of their respective heirs, executors, administrators or other legal representative or other successors in title as on the Record Date in the following manner:

“8.324 fully paid up equity share of INR 10 (INR Ten only) each of credited as fully paid-up shares of KPL for every 100 fully paid up equity shares of INR 10 (INR Ten only) each held by such shareholder in NDPL”.

Further, no shares of Transferee Company shall be allotted in lieu or exchange of its holding in the Transferor Company, directly or indirectly through its subsidiaries and, the entire investment of the Transferee Company directly in the share capital of the Transferor

Company shall stand cancelled in the books of Transferee Company. The copy of the Valuation Report for determining swap ratio issued by a Registered Valuer is annexed as **Annexure 8** to the Petition.

6. **DECLARATION BY THE PETITIONER COMPANIES**

- No similar Petition/ Application under Section 230 to Section 232 has been filed by the Petitioner Companies with reference to the Scheme and there has been no material change in the affairs of the Petitioner Companies except in what has been done in the normal course of business.
- No investigation or proceedings under the Companies Act, 1956 / Companies Act, 2013 have been instituted or are pending in relation to the respective Petitioner Companies.
- The Directors of the respective Petitioner Companies have no material interest in the Scheme except in their capacity as directors and/or shareholders.

7. It is submitted that the Petitioner Companies had filed a Joint Company Petition bearing CA (CAA) No. 51/230/HDB/2023, under section 230 to 232 of the Companies Act, 2013, wherein this Tribunal vide its Order dated 23rd August, 2023. Copy of the order passed by this Hon'ble Tribunal is annexed to the petition as "**Annexure 10**". Copy of the Chairperson's report along with Scrutinizers report for the Transferor Company and Transferee Company are annexed to the petition as **Annexure – 13** and **Annexure -14** respectively to the Petition.

8. It is submitted that this Tribunal vide order dated 07.11.2023 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 Business Standard (English) and Nava Telangana (Telugu) Newspapers on 02.12.2023 and filed the Compliance Memo with this Tribunal on 18.12.2023.
9. The Regional Director, vide his report dated 01.01.2024, has not objected to the proposed Scheme but has made certain observations. The Petitioner Companies have filed reply Affidavit dated 08.01.2024, in response to the observations made by the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad. The details are given below.

Observation of Regional Director	Reply filed by the Petitioner Companies by way of an Affidavit
Para 6 (d) : Clause 12.1 of Part C of the scheme provides for an automatic increase in Authorized Capital of the Transferee Company with that of the Transferor Company. The Transferee Company	The Transferee Company submits that undertakes to pay the differential fee, if any and stamp duty to the extent applicable on its increased authorized share capital after setting off the fee and duties

<p>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 Company before the merger.</p>	<p>already paid by the Transferor Company on its respective capital. The Petitioner Companies undertake to comply with the provisions of the Companies Act, 2013 to that extent.</p>
<p>Para 6(g-i) 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 8: With reference to this Directorate's letter dated 10.11.2023, issued to the Addl. Commissioner of Income Tax, Hyderabad, till date no reply/comments in the matter have 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</p>	<p>It is submitted that the Transferee Company shall take 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>Company, Transferee Company is ready to pay the said dues as per rules.</p>	
<p>Para 9(a):</p> <p>Clause 12.1 of the Scheme states that upon the scheme becoming effective, the authorized capital of the Transferor Company shall stand combined with authorized capital of the Transferee Company without any further act or deed and the said fact is not correct. In this regard, the Hon'ble NCLT may please direct the transferee company to furnish an undertaking stating to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 and pay the differential fee.</p>	<p>Transferee Company submits that it shall comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013 and pays such differential fee, if any, as applicable.</p>
<p>Para 9(c)</p> <p>Both the petitioner companies are having related party transactions during the last two years. In this regard, petitioner companies may be directed to furnish an undertaking with regard to</p>	<p>The Petitioner Companies submit that they shall comply with the provisions of Section 188 of the Companies Act, 2013.</p>

<p>compliance of the provisions of section 188 of the Companies Act, 2013.</p>	
<p>Para 9(d)</p> <p>As per the Balance Sheet as at 31.03.2022, the transferor and transferee companies have given loans and advances. In this regard, petitioner companies may be directed to furnish an undertaking stating that necessary compliances have been made under Section 185/186 of the Companies Act, 2013.</p>	<p>The Petitioner Companies submit that they shall comply with the provisions of Section 185 and 186 of the Companies Act, 2013.</p>
<p>Para 9(e)</p> <p>The Transferee Company has filed 19 separate petitions for amalgamation of different companies with transferee company (in each petition Keimed Private Limited is shown as transferee company). The reason for filing separate petitions for each transferor company is neither mentioned in the petition nor stated in the scheme since transferee company is one and the same in all the cases. In view of the above, the reason for filing 19 petitions for 19 transferor companies separately may please be</p>	<p>The Petitioner Companies submit that the Merger is being undertaken by the Petitioner Companies with the intent of overall efficiency in terms of costs, management, simplification of group structure etc. Out of 19 Companies which is intended to be merged with the Transferee Company, registered office of 14 companies were earlier situated outside Telangana. Considering operational efficiency, the registered office of these 14 companies was shifted from respective states to state of Telangana before filing application for merger and since approvals</p>

<p>explained to the Hon'ble Tribunal for considering approval of the Scheme.</p>	<p>from respective Regional Directors was received for all companies allowing shifting of registered office and new address was updated on MCA portal for only some of the companies till the time of filing merger applications, which had to be done prior to 31st March, 2023. However, due to technical issues in the MCA portal, in some cases, the erstwhile address of the Transferor Company was only getting reflected in the MCA portal. It is submitted that filing consolidated scheme for all companies could not have been feasible as delay in updating of registered office of one entity or any other technical issue could have impacted the overall scheme.</p>
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Regional Director, filed his additional affidavit dated 05.02.2024 stating that the replies filed by way of affidavit dated 08.01.2024 have been examined and this Hon'ble Tribunal may consider the same and pass orders as deemed fit and proper in the circumstances.

10. **OFFICIAL LIQUIDATOR'S REPORT:**

The Official Liquidator has filed his report, vide OLR No. 73/2023 dated 04.12.2023 stating certain observations at point no.11, 19 & 22 of his report. The observations pointed out has been replied by

the petitioner companies vide affidavit dated 18.12.2023, which is mentioned below:

Observations of Official Liquidator		Reply by way of Affidavit	
11. Transferee Company:		The updated authorized, issued and paid-up share capital of Transferee Company is reproduced hereinbelow for ready reference.	
Particulars	Amount in Rs. (31.03.2023)	Particulars	Updated Amount in INR
Authorised Share Capital 66,00,000 Equity Shares of Rs.10/- each	6,60,00,000	Updated Authorised Capital 1,01,00,000 Equity Shares of Rs.10/- each	10,10,00,000
35,00,000 Preference Shares of Rs.10/- each	3,50,00,000	---	---
Total	10,10,00,000	Total	10,10,00,000
Issued & Subscribed Share Capital 59,48,959 Equity Shares of Rs.10/- each	5,94,89,590	Issued & Subscribed and Paid-up 59,48,959 Equity Shares of Rs.10/- each	5,94,89,590
Total	5,94,89,590	Total	5,94,89,590
Paid Up Share Capital 59,48,959 Equity Shares of Rs.10/- each.	5,94,89,590		
Total	5,94,89,590		
19. Shareholding pattern of the Transferor Company as on 04.05.2023 as provided by the Transferor Company vide letter dated Nil (received on 23.10.2023) as mentioned in page 7 of the report.		It is stated that post 21 st March, 2023, the preference share capital of Transferee Company was redeemed and the latest revised shareholding patterns do not include preference shareholders.	

<p>22 (a): That, the Clause 1.14 of Part-A of the Scheme dealing with ‘Record Date’, leaving it as undetermined and seeking to vest entire power to fix the Record Date completely with the Board of Directors of Transferee Company alone without the involvement of Transferor Company and hence, this Hon’ble Tribunal may be pleased to direct the Transferee Company (M/s. Keimed Private Limited) to submit an undertaking to this Hon’ble Tribunal to the effect that the Record Date would be decided and fixed mutually by the Board of Directors of Transferor & Transferee Companies.</p>	<p>The Transferee Company submits that the record date would be decided and fixed mutually by the Board of Directors of the Transferor and Transferee Companies.</p>
<p>22 (b): That, the Clause 8 of Part-“B” of the Scheme seeks to protect all staff, workmen and employees, if any, engaged in the Transferor Company as on the Effective Date shall stand transferred to 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</p>	<p>Petitioner Companies undertake that there would be no retrenchment of any employee who was in the service as on the Appointed Date i.e., 01st April, 2022.</p>

<p>retrenchment of any employee who were in service as on the Appointed Date (i.e., 01.04.2022) as well.</p>	
<p>22(e) : That, as per the Financial Statements of Transferee Company for Financial Year 2022-23, there is a disclosure of loans and advances to its subsidiary companies. In this regard, the Transferee Company vide its letter dated 04.10.2023 has clarified that, the Transferee Company has been charging interest on loans and advances to its subsidiaries and further clarified that, necessary compliances with respect to Section 185 and 186 of the Companies Act, 2013 has been complied with.</p>	<p>The Transferee Company undertakes to comply with the necessary compliances under Sections 185 and 186 of the Companies Act, 2013.</p>

11. **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. 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 Company, the Transferee Company and their respective shareholders, employees, creditors and all persons concerned. Hence the scheme can be approved with appointed date as 01.04.2022. All the statutory compliances have been made under Section 230 to 232 of the Companies Act, 2013. Hence ordered.

ORDER

12. 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 01.04.2022 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 Company 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 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.
- (vii). 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.
- (viii). All the legal proceedings pending by or against the Transferor Company shall be continued by or against the Transferee Company.
- (ix). 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.

- (x). The Petitioner Companies are directed to strictly comply with the Accounting Treatment Standards prescribed under Section 133 of the Companies Act, 2013.
- (xi). 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.
- (xii). We direct the Transferee Company to comply with the provisions of Section 2 (41) of the Companies Act, 2013, if applicable.
- (xiii). The Transferor Company shall be dissolved without going through the process of winding up.
- (xiv). 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.

- (xv). 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.
- (xvi). 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.
- (xvii). Any person shall be at the liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- (xviii). Accordingly, the Company Petition C.P. (CAA) No. 67/230/HDB/2023 is allowed and the same is disposed.

SD

Charan Singh
Member Technical

Sridher/pavani

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial