

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-V**

**C.P.(CAA)/1052/2020
Connected with
C.A.(CAA) 1013/2020**

In the matter of

Companies Act, 2013

AND

In the matter of

Section 230-232 of the Companies
Act, 2013 and other applicable
provisions of the Companies Act, 2013

read with the Companies
(Compromises, Arrangements and
Amalgamations) Rules, 2016;

In the matter of

Scheme of Merger by Absorption of
GUFIC LIFESCIENCES PRIVATE
LIMITED, the Amalgamating Company
with GUFIC BIOSCIENCES LIMITED,
the Amalgamated Company

GUFIC BIOSCIENCES LIMITED

CIN: L24100MH1984PLC033519

... Transferee Company/ Petitioner Company

GUFIC LIFESCIENCES PRIVATE LIMITED

CIN: U24230GJ2012PTC070990

... Transferor Company

Order delivered on 11th March 2021

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Chandra Bhan Singh, Member (Technical)

Appearances (via videoconferencing):

For the Applicants : Mr Ahmed M Chunawala, i/b
Rajesh Shah & Co, Advocates

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Merger by Absorption of GUFIC LIFESCIENCES PRIVATE LIMITED, the Amalgamating Company with GUFIC BIOSCIENCES LIMITED, the Amalgamated Company.
2. The Bench is conveyed by videoconference. Heard the Learned Counsel for the Petitioner Company. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition to the said Scheme.
3. The Transferor and Petitioner Company have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 25th March 2019, respectively which are annexed to the Company Scheme Petition.

4. The Learned Advocate appearing on behalf of the Petitioner Company states that the Petition have been filed in consonance with the Order passed on 14.07.2020 in the Company Scheme Application No. 1013 of 2020 of the Hon'ble Tribunal.
5. The Learned Advocate appearing on behalf of the Petitioner Company further states that the Petitioner Company have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.
6. The Learned Counsel for the Petitioner Company states that the Petitioner Company presently carrying on business of manufacturing, job work, marketing and sale of formulations and bulk drugs and that the Transferor Company presently is carrying on business of manufacturing of pharmaceutical formulations.
7. In the opinion of the Transferor Company and the Petitioner Company, the merger will lead to synergies of operations and more particularly the following benefits, which is also mentioned in the Scheme of Amalgamation:
 - a. The Transferor Company is one of the largest manufacturers of Lyophilized injections in India and has a fully automated EU-GMP approved Lyophilization plant. The amalgamation would provide larger asset base to the Transferee Company enabling further growth and development of the business of the amalgamated company.

- b. The Transferor Company's Marketing Authorizations in the European Market will boost the exports of the amalgamated company.
 - c. The amalgamation would provide focused management attention, rationalization, standardization and simplifications of business processes and leadership to the manufacturing and marketing operations of the amalgamated company.
 - d. The amalgamation would benefit the shareholders, creditors, employees and other stakeholders of the respective Companies.
 - e. The amalgamation would bring more productive and optimum utilization of various resources of the amalgamated company.
 - f. The amalgamation would help achieve synergies of operations and streamline business activities.
 - g. The amalgamation would strengthen the financial position and ability to raise resources for conducting business.
 - h. The business carried on by both the Transferor Company and the Transferee Company is synergistic and is complementary to each other. The amalgamation will scale up operations of the amalgamated Company to further enhance the value of stakeholders.
 - i. The amalgamation would result into simplified legal compliances and obligations including other reduced administrative costs.
8. The Regional Director has filed his Report dated 11th day of February 2021 stating therein that save and except the observations as stated in paragraph IV (a) to (j) of the report, it

appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that: -

Sr No.	Regional Director's Observation	Response/ Undertaking given by the Petitioner Company.
a.	<i>In compliance of AS-14 (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.</i>	So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that in addition to Compliance of IND AS-103, the Petitioner Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as IND AS-8 etc.
b.	<i>As per Definition of the Scheme. "Appointed Date" means 1st day of January 2019 for the purpose of Section 232(6) and the scheme</i>	So far as the observation in part one of paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner

<p><i>shall be effective from the aforesaid date.</i></p> <p><i>"Effective Date" means the last dates on which the certified copies of the orders sanctioning this scheme, passed by the national company law tribunal at Mumbai in case of Transferor Company, is filed with the registrar of companies, Mumbai by the Transferor company.</i></p> <p><i>In, this regard, it is submitted that Sectin232(6) of the Companies Act,2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However,</i></p>	<p>Company submits that the Appointed Date is January 01, 2019 from which it shall be effective, and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.</p>
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	<p><i>this aspect may be decided by Hon'ble Tribunal taking into account its inherent powers.</i></p> <p>Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. P. No 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>	
c.	<p><i>Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the</i></p>	<p>So far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be accordance with provisions of section 232(3)(i) of the Companies</p>

	<i>amalgamation and therefore, petitioners to affirm that they comply the provisions of the section</i>	Act, 2013.
d.	<i>The Registered Office of the Transferor Company is situated in the state of Gujarat i.e., outside the jurisdiction of NCLT of this Tribunal and falls within the Jurisdiction of NCLT of Gujarat. Accordingly, similar approval be obtained by the Transferor Company from Hon'ble NCLT at Gujarat respectively.</i>	So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Hon'ble National Company Law Tribunal, Ahmedabad Bench (NCLT, Ahmedabad bench) vide its order dated December 31, 2020 have already approved the Scheme, subject to the approval of the same by Hon'ble National Company Law Tribunal, Mumbai Bench (NCLT, Mumbai bench).
e.	<i>The Hon'ble Tribunal may kindly seek the undertaking that this scheme is approved by</i>	So far as the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the

	<p><i>the requisite majority of members and creditors as per section 230(6) of the Act in meetings duly held in terms of Section 230 (1) read with subsequent (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.</i></p>	<p>Learned Counsel for the Petitioner Company submits that the Scheme has been approved by requisite majority of Members as per Section 230(6) of the Companies Act, 2013 at the Meeting duly held in terms of Section 230(1) read with sub-section (3) to (5) of Section 230 of the Act and the Chairman's Report on the said Meeting has been duly submitted with this Tribunal. Further, as per order dated July 14, 2020 of this Tribunal, the Meeting of the Secured and Unsecured Creditors were not conveyed by the Company and no representations were received by the Creditors in this regard.</p>
<p>f.</p>	<p><u>As per Clause 12.4 of Accounting Treatment clause of the Scheme;</u> <i>stated that upon the</i></p>	<p>So far as the observation in paragraph IV (f) of the Report of the Regional Director is concerned, the</p>

<p><i>Scheme coming into effect, the difference between the amount recorded as share capital issued by the Transferee Company (Securities issued will be recorded at their nominal value) and the amount of share capital of the Transferor Company shall be transferred to Capital Reserves/Goodwill of the Transferee Company, as the case may be.</i></p> <p><i>In this regards it is submitted that as per Accounting Standard 14, the surplus if any arising out amalgamation shall be credited to Capital Reserve arising and deficit shall be debited with Goodwill Account of the Transferee. Such Capital Reserve, arising out of the amalgamation shall not be considered as free</i></p>	<p>Learned Counsel for the Petitioner Company submits that the Company will comply with the applicable Accounting Standards including IND AS 103. The Petitioner Company further submits that the Capital Reserve, arising out of the amalgamation shall not be considered as free reserves and shall not be available for distribution of dividend.</p>
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	<i>reserves and not available for distribution of dividend.</i>	
g.	<i>The Petitioner Company has stated that this Scheme has been drawn up to comply with the condition relating to 'Amalgamation' as specified under section 2(1B) of the Income tax act, 1961. In this regard, the petitioner company shall ensure compliance of all the provisions of the Income tax act and rules thereunder.</i>	So far as the observation in paragraph IV (g) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that subject to Clause 21 of the Scheme, the Company will comply with the applicable provisions of the Income Tax Act and the Rules framed thereunder.
h.	<i>In view of the part No.12 in the table above, direct to the petitioner company to resolve the investor complaints before approval of the scheme.</i>	So far as the observation in paragraph IV (h) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Company is not aware about any investor complaint pending against the Investor. The Petitioner/ Transferee

		Company further submits that they are not getting dissolved and that the same will be taken care in ordinary course of business.
i.	<i>As per the provisions of the SEBI (Listing Obligation & Disclosure Requirements) Regulation 2015, for passing the resolution of the scheme of Amalgamation a separate meeting of the public shareholders (other than Promoters) is required to be conduct. But, in the aforesaid matter, it is observed that as per the directions of the Hon'ble National Company Law Tribunal, Mumbai Bench ('NCLT') vide its order dated July 14,2020 the Company had duly convened its shareholder meeting on September 15, 2020 at 12:30 p.m. through Video</i>	So far as the observation in paragraph IV (i) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that a separate Meeting of the public shareholders other than the Promoters is convened on September 15, 2020 and the Chairman's Report for the said Meeting has already been submitted with this Tribunal. It is hereby clarified that the Promoter did not vote on the resolution placed before the shareholder for the approval of the Scheme.

	<p><i>Conferencing and as per the chairman's Report and the Scrutinizer Report for the said meeting, duly submitted with the NCLT, as on 15.09.2020 out of total Promoters, Public institutions and Public Non-institutions holding 5,11,76,372, 66,82,726 & 1,99,71,502 shares, total 53 equity shareholders had attended the meeting holding 9,92,510. And from 14.08.2020 to 15.09.2020 during the period of these 30 days before the conducting the meeting through Video Conference total 161 ballot/response received from voters.</i></p> <p><i>In this regard, it has noticed that the separate meeting of the public shareholders other than Promoters is not convened.</i></p>	
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	<p>Hence, <i>Petitioner Companies shall undertake to comply the provisions of SEBI (Listing Obligation & Disclosure Requirements) Regulations, 2015 and submit the clarification for the scheme before the Hon'ble Tribunal.</i></p>	
	<p><i>As per Ministry letter No.05/02/2014/IEPF-VOL-5 dated 06.01.2016, inquiry u/s 206 (4) of Companies Act, 2013 against Gufic Biosciences Limited (Transferee Company) has been ordered and same is in under process. (Copy of enclose as Annexure-F). The Transferee Company be directed to ensure full co-operation in the said inquiry.</i></p>	<p>So far as the observation in paragraph IV (j) of the Report of the Regional Director is concerned, the Learned Counsel for the <i>Petitioner Company</i> submits that the inquiry under Section 206 of the Act by the Registrar of Companies, <i>Mumbai</i> ("ROC") against the <i>Petitioner Company</i> is pertaining to the non-compliance for transfer of unclaimed dividend to the <i>Investor Education Protection Fund (IEPF)</i> and a case in this regard had</p>

		been filed by the said ROC before the Metropolitan Magistrate, 40th Court, Girgaon, Mumbai and the Petitioner Company after complying with the said provisions and paying the penalty as ordered by the said Court, the said matter was disposed off.
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9. The observations made by the Regional Director have been explained by the Petitioner Companies in the above Para. The Representative of the RD has submitted that the explanations and clarifications given by the Petitioner Company are found satisfactory and that they have no objection to the Scheme. The affidavit filed by the Petitioner Company in response to the said affidavit, are accepted by this Tribunal.
10. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
11. It is to be mentioned herein that the registered office of the Transferor Company is situated in the state of Gujarat and hence, the application/petition is filed before the Hon'ble NCLT, Ahmedabad Bench and the Hon'ble NCLT, Ahmedabad bench vide its order dated December 31, 2020 have sanctioned the said Scheme, subject to the approval of the same by this Tribunal.

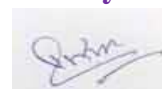
12. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 1052 of 2020 is made absolute in terms of clauses (a) to (c).
13. Petitioner Company is directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry.
14. The Petitioner Company to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.
15. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.
16. The Appointed Date is 1st January 2019.
17. Ordered Accordingly Pronounced in open court today.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)

Certified True Copy

Date of Application: **17.05.2021**
Signed on this day of **17th May 2021**



Joint Registrar
NCLT Mumbai Bench
(Digitally signed and scanned)