



L24233MH2016PLC274202,	a)
company incorporated under the)
Companies Act, 2013 having its) ...Petitioner Company 2/
registered Office at C-105, MIDC	Transferee Company.
Mahad, Mahad, Raigad – 402 301	

Order delivered on: 23.12.2022

Coram:

Justice P N. Deshmukh (Retd.), Member (Judicial)

Shyam Babu Gautam, Member (Technical)

Appearance: For the Petitioner(s): Mr. Ashish O. Lalpuria, PCS
a/w. Mr. Kamal Lahoty, PCS.

ORDER

Per: Shyam Babu Gautam, Member Technical

The sanction of the Tribunal is sought under sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (the Act) to the Scheme of Amalgamation of HARISHREE AROMATICS AND CHEMICALS PRIVATE LIMITED, the Transferor Company with LASA SUPERGENERICS LIMITED, the Transferee Company and their respective Shareholders.

1. The Scheme envisages Amalgamation of HARISHREE AROMATICS AND CHEMICALS PRIVATE LIMITED, the



Transferor Company with LASA SUPERGENERICS LIMITED, the Transferee Company.

2. We have heard the Learned Authorised Representative for the Petitioner Companies and the Deputy RoC for the Regional Director, WR, MCA. Neither any objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition

3. The Learned Authorised Representative for the Petitioner states that the Transferor Company is in the business of organic and inorganic chemicals, chemical compounds and other preparation including undertaking job work for manufacturing and processing of all kind of chemicals, drugs, intermediates, pharmaceutical, fine chemicals, reagents, laboratory grade chemicals etc. and the Transferee Company is engaged in the Business as manufacturers of organic and inorganic chemicals and their by-products, pharmaceuticals, drugs, intermediates, fine chemicals regents, laboratory grade chemicals, dye stuffs, dyes and colours, enzymes, derivatives, formulations, plastics, pesticides, pigments, varnishes, paints, agro-chemicals, petrochemicals, compound industrial and other preparations, processing of all kinds of chemicals, drugs, intermediates, pharmaceuticals, fine chemicals, reagents, laboratory grade chemicals and to provide consultancy services, contract research, feasibility studies, working out of process details and equipment specification, plant erection and commencement of new project on turn-key basis.



4. The Board of Directors of Petitioner Companies have approved the scheme at their respective Board Meetings conducted on 25th February, 2020 respectively. The appointed date of the scheme is 1st April, 2020.

5. The learned Counsel for the Petitioner Companies further submitted the following rationale for the Scheme:
 - a) The Transferor Company is engaged in the business of organic and inorganic chemicals, chemical compounds and other preparations including undertaking job work for manufacturing and processing of all kinds of chemicals, drugs, intermediates, pharmaceutical, fine chemicals, reagents, laboratory grade chemicals etc. The promoter of the Transferee Company is major shareholder, holding 96.21 % of the issued, subscribed and paid up equity share capital of the Transferor Company. The Transferee Company is engaged in the business as manufacturers of organic and inorganic chemicals and their by-products, pharmaceuticals, drugs, intermediates, fine chemicals regents, laboratory grade chemicals, dye stuffs, dyes and colours, enzymes, derivatives, formulations, plastics, pesticides, pigments, varnishes, paints, agro-chemicals, petrochemicals, compound industrial and other preparations, processing of all kinds of chemicals, drugs, intermediates, pharmaceuticals, fine chemicals, reagents, laboratory grade chemicals and to provide consultancy services, contract research, feasibility studies, working out of process details and equipment specification, plant



erection and commencement of new project on turn-key basis. The amalgamation of the Transferor Company with the Transferee Company will provide significant synergistic benefits, economies of scale, consolidation of finances and operational efficiencies as well as forward integration of the business of the Transferee Company. The amalgamation shall also add into the top line of the transferee company ultimately increasing shareholder value;

- b) The Transferor Company generates its major source of revenue from the job work it carries for the products of the Transferee Company. Further, the Transferor Company owns a number intellectual property rights in the form of patents in the field of processing of chemicals;
- c) The Transferee Company intends to integrate the operations of the Transferor Company with itself as a part of restructuring process by taking over the manufacturing unit along with its business know-how, market reach, all the tangible and intangible assets with no liability since the transferor company is free from debt except the liability owed to transferee company.
- d) The Amalgamated Company will have greater efficiency in overall business including economies of scale, cash flow management of the amalgamated entity and unfettered access to cash flow generated by the combined business which can be deployed more efficiently for the purpose of development of businesses of the companies and their growth opportunities, eliminate inter corporate



dependencies, minimize the administrative compliances, etc. resulting in maximisation of shareholders value.

- e) Amalgamation will result in cost saving for the Transferor Company and the Transferee Company as they are engaged in the related and interdependent activity which is expected to result in higher net worth and cost savings for the Amalgamated Company.
- f) The Amalgamated Company will have the benefit of the combined resources of the Transferor Company and the Transferee Company i.e., market share, scale, efficiency, combined net-worth, combined employee base, reserves, investments, and other assets, manpower, consolidated pool of finances, including optimization of borrowing costs and administrative compliances related thereto, larger size, consolidation of operations, mitigating competition, future opportunities, etc. The Amalgamated Company would be in a position to carry on consolidated operations through optimum utilization of its resources and integrated production facilities.
- g) The Amalgamated Company would also have a larger net-worth base, and greater borrowing capacity since the assets held by transferor companies are free from all encumbrances, which would provide it a competitive edge over others, especially in view of the increasing competition due to liberalization and globalization, which will be beneficial in more than one ways to the Transferor Company and the Transferee Company and their



shareholders and creditors, as the Transferor Company and the Transferee Company plan to meet the competition in a more effective way by combining their asset base and operations.

h) The Board of Directors of the Transferor Company and the Transferee Company are of the opinion that the amalgamation would motivate employees by providing better opportunities to scale up their performance with a corporate entity having large revenue base, resources, asset base etc which will provide impetus to corporate performance thereby enhancing overall shareholder value.

6. The Company Petition is filed in consonance with Sections 230 to 232 of the Act along with the order dated 17th February, 2020 read with Corrigendum Order dated 03rd May, 2020 passed in CA (CAA) No. 1157/(MB)/2020 of this Tribunal.

7. The Authorised Representative appearing on behalf of the Petitioner Companies submits that upon this Scheme becoming effective, the Transferee Company shall issue and allot 1000 (one Thousand) Equity Shares of Rs. 10/- (Rupees Ten Only) each credited as fully paid-up in the capital of the Transferee Company for every 35 (Thirty-Five) Equity Shares of the face value of Rs. 10/- (Rupees Ten Only) each held by the Shareholders of the Transferor Company.

8. The Authorised Representative appearing on behalf of the Petitioner Companies stated that the Petitioner Companies



have complied with all requirements as per directions of the Tribunal and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory/regulatory requirements, if any, as required under the Act and the Rules made thereunder. The undertaking given by the Petitioner Companies is accepted.

9. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its Report dated 13th October, 2021 inter alia stating therein its observations on the Scheme as stated in para IV (a) to (i) of the Report. In response to the observations made by the Regional Director, the Petitioner Companies filed an Affidavit in Rejoinder and have given necessary clarifications and undertakings. The observations made by the table below:

<i>Sr. No. Para (IV)</i>	<i>RD Report / Observation Dated 13th December, 2021</i>	<i>Response of the Petitioner Companies</i>
<i>a)</i>	<i>In compliance of AS-1.4 (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>	<i>Apropos observation made in paragraph IV (a) of the report of Regional Director is concerned, the Petitioners undertake to comply with AS-14 (IND AS-103) and such applicable Accounting Standards such as AS-5(IND AS-8) etc. for Amalgamation and as</i>



		per other applicable provisions of the Companies Act, 2013 while passing necessary entries in connection with the Scheme.
b)	<p><i>As per Definitions of the Scheme.</i></p> <p><i>"Appointed Date" means 1st April, 2020 or such other date as may be fixed or approved by the regulatory authority or other Government Authority, if applicable; and,</i></p> <p><i>"Effective Date" means the last of the dates on which the sanctions/approvals or orders as specified in Clause No. 22 of this scheme have been obtained and/or filed.</i></p> <p><i>In this regard, it is submitted that Section 232(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 date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent</i></p>	<p>Apropos observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report concerned, the Petitioners confirms that the definition "Appointed Date" means 1st April, 2020. Further, Clause 4 (c) of the Scheme specifies that the appointed date shall be 1st April, 2020. Further, the Petitioners confirms that the "Effective Date" shall be the last of the dates on which the sanctions/approvals or orders as specified in Clause No. 22 of this scheme have been obtained and/or filed. The Petitioner Companies further undertakes to comply with the circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs. The Petitioner Companies clarify that</p>



	<p><i>powers.</i></p> <p><i>Further, the petitioners may be asked to comply with the requirements as clarified vide circular no. F. No.7/12/201-9/cL-7 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	<p>the amalgamation as embodied in the Scheme shall take effect from the Appointed Date i.e. 1st April 2020.</p>
c)	<p><i>Petitioner Company have to undertake to comply with section 232(3)(i) of the Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.</i></p>	<p>Apropos observation made in paragraph IV (c) of the Report of the Regional Director is concerned, the transferee company undertakes to comply with the provisions of section 232(3)(i) of the Companies Act, 2013.</p>
d)	<p><i>ROC, Mumbai report made following observations:-</i></p> <p><i>1. The transferee company has one open charges.</i></p>	<p>Apropos observation made in paragraph IV (d) of the Report of the Regional Director is concerned, the Petitioner Companies submits that:</p> <p>1. As per the Observation of ROC, the open charges pertain</p>



	<p><i>2. Inquiry is pending against the Transferee Company.</i></p> <p><i>3. One complaint registered as</i></p>	<p>to Axis Bank Ltd. which has already issued their no dues certificate. A copy of the said certificate is annexed herewith as Annexure B. It is further submitted that said charge is appearing due to technical error. The Transferee Company would make necessary application with the Registrar of Companies for rectifying the said error.</p> <p>2. As per the Observation of ROC that Inquiry is pending against the Transferee Company, it is submitted that the Transferee Company is not aware about any inquiry and also has not received any such communication from the Registrar of Companies in this regard. Further, the Registrar of Companies has not provided any information with respect to the said Inquiry. Furthermore, even if any enquiry is found to be pending</p>
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	<p><i>PMOPG/E/2019/0368393 dated 04.07.2019 was received against the transferee company from Shri Ramesh Singh, regarding Financial Fraud in the Company (Copy of the Compliant attached). However complaint was very brief therefore the complainant has requested to provide the copy of full complaint, but till date the complainant has not provided any information/complaint.</i></p> <p><i>4. Interest of the Creditors should be protected.</i></p> <p><i>In view of the observations made by the ROC, Mumbai the petitioner Companies may be directed to provide the copy of the full complaint to the ROC and the complaint pending against the Transferee Company is related to Financial Fraud, therefore the petitioner Company should be directed to submit full facts in the</i></p>	<p>in the records of the Registrar of Companies, the Transferee Company will continue to exist and can deal with the same in accordance with law.</p> <p>3. As far as observation of ROC with respect to one pending Complaint is concerned, it is submitted that Transferee Company has not been served with a copy of any such Complaint and hence the Transferee Company is not in a position to comment on this. It is further submitted that the Transferee Company will continue to exist and can deal with the Complaint as and when served upon it in accordance with the law.</p> <p>4. The Petitioner Companies confirms that interest of creditors will be protected at all times</p>
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	<i>matter.</i>	
e)	<i>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by 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 subsection (3) to (5) of section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.</i>	Apropos observation made in paragraph IV (e) of the report of Regional Director is concerned, the Petitioner Companies states that the shareholders of the Transferor Companies had already given their consents on affidavit to the Scheme and the Hon'ble Tribunal dispensed the requirement of holding meeting of the members of Transferor Company vide its Order dated 17 th February, 2021. It is further submitted that the shareholders of the Transferee Company have approved the Scheme by requisite majority at their meeting held on 12 th June, 2021. Further, unsecured creditors having value of more than 90% have already given their consent to the Scheme and the same forms a part of the Petition as Exhibit N-Colly at page no. 447-458. Furthermore, the meeting of the unsecured creditors of Transferee Company was dispensed with subject to



		<p>issue of notice upon the said creditors inviting objections. The Transferee Company has duly complied with the issuance of notice upon the said creditors. The meeting of the secured creditor of the Transferee Company was also dispensed with subject to obtaining consent before the final date of hearing. Since the meetings of secured and unsecured creditors except meeting of the Equity Shareholders of the Transferee Company, the requirement of placing the minutes of meetings except the minutes of the meeting of the Equity Shareholders of the Transferee Company are not required. The Minutes of the meeting of the Equity shareholders of Transferee Company held on 12th June, 2021 is annexed as Annexure C to the Rejoinder.</p>
<i>f)</i>	<i>Clause 13(d) of Accounting Treatment of the scheme; stated that the difference, if any, being</i>	Apropos observation made in paragraph IV (f) of the report of Regional Director is concerned,



	<p><i>excess/deficit arising pursuant to the scheme shall be accounted based on the accounting principles prescribed under the Ind AS-103.</i></p> <p><i>In this regard it is submitted that as per Accounting Standard 14, such surplus if any arising out of the scheme should be credited to the Capital Reserve arising out of amalgamation and deficit if any arising out of the same shall be debited to Goodwill Account of the Transferee Company. Such Capital Reserve, arising out of the amalgamation shall not be considered as free reserves and not available for distribution of dividend</i></p>	<p>the Transferee Company undertakes that the difference, if any arising out of Amalgamation shall be credited to “Capital Reserve arising out of Amalgamation and deficit if any arising out of the same shall be debited to Goodwill Account of the Transferee Company” and shall not be considered as free reserve and not be available for distribution of dividend and other similar purposes.</p>
<p><i>g)</i></p>	<p><i>The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961.</i></p> <p><i>In this regards, the petitioner company shall ensure compliance of all the provisions of Income Tax and Rules thereafter;</i></p>	<p>Apropos observation made in paragraph IV (g) of the report of Regional Director is concerned, the Petitioner Companies undertake the compliance of all provisions of the Income Tax Act, 1961 including provisions of section 2(1B) of the Income Tax Act.</p>
<p><i>h)</i></p>	<p><i>It is observed that the Transferee Company is a listed company,</i></p>	<p>Apropos observation made in paragraph IV (h) of the report of</p>



<p><i>therefore, the petitioner company may be directed to place on record whether the prior notice was served to NSC. BSC and SEBI objection received thereon if any.</i></p> <p><i>Further, the petitioner company to place on record whether the meeting of shareholders (other than promoters/directors) was convened and what is the proposed shareholding promoters/directors after approval of the Scheme.</i></p>	<p>Regional Director is concerned, it is submitted that the Petitioner Companies have already served notice upon the NSE and BSE. Further, BSE Limited and National Stock Exchange of India Limited have already issued their Observation letter to the Scheme of Amalgamation vide letters dated 13th November, 2020 and 19th November, 2020 respectively. Copies of the Observation letter are already annexed as Exhibit ‘H-1’ and ‘H-2’ and placed at page no. 291-294 of the Petition. Further, the aforesaid observation letters specifically mentions that the issue of notice upon SEBI is not required to be sent as mandated under section 230(5) of the Companies. However, as per the direction of the Tribunal, the Petitioners had already served notice upon SEBI. It is further submitted that the Petitioner Companies have not received any objections from the BSE, NSE</p>
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		<p>and SEBI till date. It is further submitted that the details of meetings have already been provided in para (e) above. Furthermore, there is no requirement of holding separate meeting of shareholders (other than promoters/directors) under the law. However, SEBI Master Circular No CFD/DIL3/CIR/2017/21 dated March 10, 2017, provides that the Scheme shall be acted upon only if the number of votes cast by the Public Shareholders in favour of the Resolution for approval of the Scheme is more than the number of votes cast by the Public Shareholders against it. In this regard, it is submitted that the Scrutinizer of the meeting of shareholders of Transferee Company in his report has provided the voting by public shareholder (other than promoters/directors) and the same is placed at page 443 of the Petition.</p>
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i)	<i>It is observed that the Transferee Company is having non-residential Shareholders/foreign shareholders, therefore, Petitioner Company may be directed to comply with the provisions of FEMA and RBI guidelines.</i>	Apropos observation made in paragraph IV (i) of the report of Regional Director is concerned, it is submitted that the Transferee Company is having non-residential Shareholders/foreign shareholders. However, no shares are being issued to the shareholders of Transferee Company and therefore the requirement of complying with the provisions of FEMA and RBI Guidelines does not arise. Further, the Petitioner undertakes to comply the applicable provisions of FEMA and RBI guidelines at all times.
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10. The Regional Director has filed his Supplementary Report dated 30th March, 2022 stating that the reply of the Petitioner Companies appears to be satisfactory and that the Hon'ble Tribunal may decide the same on merit.

11. The Learned Authorised Representative appearing on behalf of the Petitioner Companies further states that as per the First Motion Order dated 17th February, 2021 in CA (CAA)/1157/MB/2020, the Hon'ble Tribunal dispensed the meeting of Secured Creditor of the Transferee Company. However, the Tribunal directed that consent from Secured



Creditor be obtained before the final date of hearing. The Transferee Company filed an Appeal before National Company Law Appellate Tribunal, New Delhi Bench (NCLAT) vide Company Appeal (AT) 82/2021 challenging the specific direction of the Hon'ble Tribunal's w.r.t. obtaining consent of secured creditor even though the meeting of secured creditor of Transferee company was dispensed. He further submits that the Hon'ble NCLAT vide its Order dated 28th November, 2022 allowed the Appeal and set aside the direction w.r.t. obtaining the consent of Secured Creditor. He further submits that the Transferee Company has already complied with the directions of the Hon. NCLAT since the secured creditor was already put on notice vide letters dated 24th May, 2021 and 28th May, 2021 respectively which is also reflected in the affidavit of service dated 2nd June, 2021 filed before this Hon Tribunal.

12. The Official Liquidator has filed his report on 22nd December, 2021, inter alia stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that his representation may be taken on record.
13. From the material on record, the Scheme appears to be fair, reasonable and is not in violation to any provisions of law nor is contrary to public interest/policy. The undertakings given by the Petitioner Companies are hereby accepted.
14. Since all the requisite statutory compliances have been fulfilled, CP (CAA)/111/(MB)/2021 is made absolute in terms of prayer clauses of the Company Petition. Hence Ordered.



ORDER

- i) The Petition is allowed subject to the following.
- (i) The Scheme, with the Appointed Date fixed as 1st April, 2020 placed as **Exhibit – A** of the Company Petition, is hereby sanctioned. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors and Employees.
 - (ii) The Registrar of this Tribunal shall issue the certified copy of this Order along with the Scheme forthwith. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme with the Registrar of Companies concerned, electronically in E-form INC-28 within 30 days from the date of receipt of the Order from the Registry.
 - (iii) The Petitioner Companies shall lodge a copy of this Order and the Scheme duly authenticated by the Registrar of this Tribunal with the Superintendent of Stamps concerned, within 60 working days from the date of the receipt of the Order, for the purpose of adjudication of stamp duty, if any, payable.
 - (iv) The Petitioner Companies shall comply with all the undertakings given by them.



- (v) The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
- (vi) The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
- (vii) All concerned shall act on a copy of this Order along with the Scheme duly authenticated by the Deputy Registrar of this Tribunal.
- (viii) Any person interested in the above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.

Sd/-

SHYAM BABU GAUTAM
MEMBER TECHNICAL

Sd/-

JUSTICE P.N. DESHMUKH
MEMBER JUDICIAL