

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH**

C.P. (CAA)/2507/MB/2018

In

CSA No. 862 of 2017

Under Sections 230 to 232 of the Companies  
Act, 2013;

In the matter of Scheme of Merger by  
Absorption of Gufic Stridden Bio-Pharma Private  
Limited (First Petitioner Company / Transferor  
Company) with Gufic Biosciences Limited  
(Second Petitioner Company / Transferee  
Company) and their respective shareholders

Gufic Stridden Bio-Pharma Private Limited

... First Petitioner Company / Transferor Company

Gufic Biosciences Limited

... Second Petitioner Company / Transferee Company

Order Delivered on 6<sup>th</sup> Day of September, 2018

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioners:

Mr. Ajit Singh Tawar i/b Ajit Singh Tawar & Co., Advocates for  
Petitioners

For the Regional Director: Mr. S Ramakantha, Joint Director

For the Official Liquidator: Mr. Santosh Dalvi, Representative of OL

*Per: - V. Nallasenapathy, Member (T)*

**ORDER**

1. Heard the learned Counsel for the Petitioner Companies. None appears before the Tribunal to oppose the Scheme or to contravene averments made in the Joint Company Scheme Petition.

2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Merger by Absorption of Gufic Stridden Bio-Pharma Private Limited (First Petitioner Company / Transferor Company) with Gufic Biosciences Limited (Second Petitioner Company / Transferee Company) and their respective shareholders.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions, which are annexed to the Joint Company Scheme Petition.
4. The Learned Counsel for the Petitioner Companies state that the Petition have been filed in consonance with the order passed in the Joint Company Scheme Application No. 862 of 2017 of National Company Law Tribunal, Mumbai Bench.
5. The Learned Counsel for the Petitioner Companies further state that the Petitioner Companies have complied with all requirements as per the directions of National Company Law Tribunal, Mumbai Bench. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 1956 / the Companies Act, 2013 and the rules made thereunder. The said undertaking is accepted.
6. The Learned Counsel for the Petitioner Companies submit that the First Petitioner Company is primarily engaged in the business of International Marketing and Export of products manufactured on Loan License or Third party from WHO / GMP approved manufacturing plant; whereas the Second Petitioner Company is engaged in the business of manufacture, job work, marketing and sale of formulations and Bulk Drugs.
7. The transfer and vesting of Transferor Company into the Transferee Company would, inter-alia, have the following benefits:-
  - The Transferor Company has significant Pharmaceutical Products registration in export market. The amalgamation

would provide direct and easy penetration in the export market to the Transferee Company.

- 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.
- The amalgamation would bring more productive and optimum utilisation of various resources of the respective Companies.
- The amalgamation would help achieve synergies of operations and streamline business activities.
- The amalgamation would strengthen the financial position and ability to raise resources for conducting business.
- The business carried on by both the Transferor Company and the Transferee Company is synergistic and is complementary to each other. There is a substantial opportunity for the Transferee Company to avail advantage of product registration portfolio held by the Transferor Company and scale up operations of the Transferee Company to further enhance the value of stakeholders.
- The Amalgamation would result in consolidation of intellectual properties, R&D capabilities and physical infrastructure into one combined entity.

8. The office of Regional Director has filed its report dated 31<sup>st</sup> Day of August, 2018 and has stated as under:

*(a) In addition to 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.*

*(b) The Petitioners under provisions of Section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or Amalgamation, Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The*

*decision of such Authorities is binding on the Petitioner Company(s).*

- (c) *As regards Clause No. 16 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Amalgamation for setting-off of fees paid by the Transferor Company on its Authorized Share Capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.*
- (d) *Petitioner Companies has not submitted admitted copy of the Petition, Minutes of order of Hon'ble NCLT. In this regard petitioner companies has to undertake to submit the same for the record of Regional Director and also to undertake that the scheme as admitted with the Hon'ble NCLT through company petition and the scheme which is to be served to the Regional Director through company application is one and the same, and in case of deviation, if any, shall be brought to the notice of the Regional Director.*
- (e) *As per Clause 4.3 of the Scheme, Appointed Date means 1<sup>st</sup> April 2016 or such other date as may be fixed or approved by the regulatory authority or other Government Authority, if applicable. 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 a date subsequent to the appointed date. However, this aspect may be decided by Hon'ble Tribunal taking into its inherent powers.*
9. In so far as the observation made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies through their counsel undertake that they will comply with all the applicable Accounting Standards. Further, in addition to compliance with the applicable accounting standards, the Transferee Company shall pass such accounting entries as may be necessary in

connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8), etc.

10. In so far as the observation made in paragraph IV(b) of the Report of Regional Director is concerned, the Petitioner Companies through their counsel submits that notices under Section 230(5) of the Companies Act, 2013 is served upon concerned Income Tax Authority, Regional Director, Registrar of Companies by both the Petitioner Companies and to Official Liquidator, High Court Bombay by the First Petitioner Company and to National Stock Exchange, Bombay Stock Exchange and Securities Exchange Board of India by Second Petitioner Company. The counsel for the Petitioner Companies undertakes that sanction of the Scheme by this Tribunal will not deter such authorities to deal with any of the issues arising after giving effect to the scheme and that such issues arising out of this Scheme will be met and answered in accordance with law.
11. In so far as the observation made in paragraph IV(c) of the Report of Regional Director is concerned, the Petitioner Companies undertake to comply with provisions of Section 232(3)(i) of the Companies Act, 2013 as regards combination of Authorised Share Capital and also file the amended Memorandum of Association and Articles of Association with prescribed e-forms with ROC, Mumbai, upon Scheme becoming effective.
12. In so far as the observation made in paragraph IV(d) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel undertake that the Scheme enclosed to the Company Scheme Application and the Company Scheme Petition are one & same and there is no deviation / changes made thereunder. The Petitioner Companies through their Counsel undertake to file the Minutes of Order of Petition admitted by the Hon'ble NCLT to the office of the Regional Director. The Petitioner Companies through their Counsel further submit that the copy of Petition was submitted to the office of Regional Director on 13<sup>th</sup> day of July, 2018.

13. In so far as the observation made in paragraph IV(e) of the Report of Regional Director is concerned, Petitioner Companies through their Counsel undertake that the Appointed Date as mentioned in Clause 4.3 of the Scheme is 1<sup>st</sup> April, 2016 and the same is in compliance with Section 232(6) of the Companies Act, 2013.
14. The observations made by the Regional Director have been explained by the Petitioner Companies in Paragraph 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
15. The Official Liquidator filed his report dated 4<sup>th</sup> day of September, 2018 stating that the affairs of the Transferor Company have been conducted in proper manner and that the Transferor Company may be ordered to be dissolved without winding up by this Hon'ble Tribunal.
16. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of Law and is not contrary to public policy.
17. Since all the requisite statutory compliances have been fulfilled, Joint Company Scheme Petition No. C.P.(CAA)/2507/MB/2018 filed by the Petitioner Companies is made absolute in terms of prayer clause (a) of the Joint Company Scheme Petition.
18. The Petitioner Companies are directed to lodge a certified / authenticated copy of this order and the Scheme with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 working days from the date of the receipt of the certified copy of the Order, for the purpose of adjudication of stamp duty payable, if any on the above.
19. The Petitioner Companies are directed to lodge a certified copy of this order along with the copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with e-form INC-28 in addition to the physical copy within 30 days from the date of issuance of the certified copy of the Order by the

Registry, duly certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.

20. The Petitioner Companies to pay cost of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The cost to be paid within four weeks from the date of receipt of Certified True Copy of this Order.
21. The First Petitioner Company or Transferor Company to pay the cost of Rs. 25,000/- each to the Official Liquidator, High Court Bombay. The cost to be paid within four weeks from the date of receipt of Certified True Copy of this Order.
22. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.

SD/-

V. NALLASENAPATHY  
MEMBER (T)

SD/-

BHASKARA PANTULA MOHAN  
MEMBER (J)