

IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENCH AT MUMBAI, COURT- II

C.P.(CAA) 54/MB/2021

IN

C.A.(CAA) 77/MB/2019

In the matter of Companies Act, 2013

**And**

In the matter of Sections 230 to 232 of The Companies Act, 2013 and other applicable provisions of the Companies Act 2013 and Rules made thereunder

**And**

In the matter of Scheme of Arrangement and Amalgamation between All Indian Origin Chemists & Distributors Limited (AIOCDL) and Maharashtra Safe Chemists and Distributors Alliance Limited (MSCDAL) and their respective shareholders.

All Indian Origin Chemists & )

Distributors Limited )

6<sup>th</sup> Floor, Corporate Park - II, V.N. )

Purav Marg, Chembur, Mumbai - )

400071 at Maharashtra )

CIN: U74110MH2007PLC167578 )

..... First Petitioner

Company/Transferor Company

**And**



**Maharashtra Safe Chemists and )**  
**Distributors Alliance Limited )**  
6<sup>th</sup> Floor, Corporate Park - II, V.N. )  
Purav Marg, Chembur, Mumbai – )  
400071 Maharashtra ) ..... **Second Petitioner**  
CIN: U24239MH2006PLC165149 ) **Company/Transferee Company**

[together referred as “Petitioner Companies”]

Order delivered on: 13.04.2023

*Coram:*

Hon’ble Member (Technical)

Hon’ble Member (Judicial)

Shri Shyam Babu Gautam

Shri Kuldip Kumar Kareer

*Appearances:*

For the Petitioner Companies : Mr. Ahmed Chunawala i/b Adv.  
Dweep Joshi

**ORDER**

*Per: Kuldip Kumar Kareer, Member Judicial*

1. The Bench is convened by video conference.
2. Heard Learned Counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the petition and nor has any party controverted any averments made in the petition.



3. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of Companies Act, 2013 ('Act') and in the matter of Scheme of Amalgamation between All Indian Origin Chemists & Distributors Limited and Maharashtra Safe Chemists and Distributors Alliance Limited and their respective shareholders ('Scheme').
4. Learned Counsel for Petitioner Companies submits that the Petitioner Companies are engaged in the business activities of Chemists, Distributors and other related products and services in its business line.
5. Learned Counsel for Petitioner Companies further submits that rationale for the Scheme is as under:
  1. *The Amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits:*
    - a) *The primary objective behind merging of First Petitioner Company with Second Petitioner Company is to reap the benefits of economies of scale as both the companies are engaged in business operations of similar line of products i.e. pharmaceutical products;*
    - b) *The Amalgamation is expected to be beneficial to the shareholders of both Companies;*
    - c) *Greater size, scale integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder value;*
    - d) *The synergies that exist between the two entities in terms of products and resources can be put to the best advantage of all stakeholders;*



- e) *The amalgamated entity will have operational business synergies which would enable leveraging the existing dealer network of First Petitioner Company and servicing / marketing setup for better penetration on a pan India level leading to increased competitive strength and efficiencies;*
- f) *The amalgamated entity will have the ability to leverage on its large asset base to enhance shareholder value;*
- g) *The amalgamation will result in increased financial strength and flexibility, and enhance the ability of the amalgamated entity to undertake large projects on a pan India basis, thereby contributing to enhancement of future business potential;*
- h) *Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, improved procurement and the elimination of duplication;*
- i) *The amalgamated entity will benefit from improved organizational capability and leadership arising from combination of people who have the diverse skills, to compete successfully in an increasingly competitive industry;*
- j) *The amalgamated entity would enable transfer / leverage of knowledge between the various functional teams for improving productivity, MIS, cost reduction and inventory management initiatives;*
- k) *General and administrative cost reduction and productivity gains by pooling of financial, managerial and technical resources, personnel capabilities, skills, expertise and technologies of the Parties.*
2. *The reorganization of Share Capital of the Transferee Company by converting its Preference Shares into Equity Shares for following reasons:*
- a) *The Preference Shares are redeemable in terms of the issue. Since the Transferee Company has been incurring losses over the past few years.*



*Based on the level of activity, the Transferee Company is unlikely to generate sufficient funds in the near future, redemption of all the 8% Non-Cumulative Non-Convertible Preference Shares could be a challenge. Even though the Company may turn around post Amalgamation, it would not be possible to redeem the Preference Shares out of profits within required time-frame. A fresh issue of capital for purposes of redemption would not be feasible at that stage. Further, no infusion of further capital is also envisaged. That being the case, Second Petitioner Company may not be in a position to redeem all the Preference Shares.*

- b) Accordingly, and with a view to retaining the resources in the Company on a permanent basis, the Company proposes this Scheme whereunder the Company intends to convert the Preference Shares into appropriate number of Equity Shares based on an independent valuation report.*
  - c) The Scheme, under Section 230 to 232 of the Act, would provide greater level of transparency and openness and secure full involvement of all the Preference Shareholders.*
  - d) The Scheme is being filed in its present form as conversion of Preference Shares into Equity of the Transferee Company, is conditional upon the Amalgamation becoming effective. A single composite scheme involving both Amalgamation and conversion of the Preference Share Capital of the Transferee Company will ensure that there is no time lag and following the Amalgamation, the conversion of the Preference Share Capital of the Transferee Company can be efficiently and immediately completed.*
- 3. In addition to the above, the proposed Scheme will, inter-alia, result in the following benefits:*



- a) *The net worth of the Company will not be affected by the proposed conversion of Preference Shares to Equity Shares under this Scheme;*
- b) *The Equity Shareholders will be benefited as the Company will be able to conserve the resources which would otherwise have been utilized in payment of dividend and redemption of Preference Shares;*
- c) *For Equity Shareholders, there will be no prior claims on account of Preference Shares at the time of distribution of profits or repayment of capital;*
- d) *The Company will be able to discharge its redemption liability to the extent of the Preference Shares, which would be beneficial for its Equity shareholders.*

4. *The reduction of Share Capital of the Transferee Company for following reasons:*

a) *The objective of the Scheme is to re-organize the capital structure of the Transferee Company so as to represent the realistic value for the shares of the Transferee Company.*

b) *The Scheme is being filed in its present form as, Reduction of Share Capital of Transferee Company, is conditional upon the Amalgamation becoming effective as a result of which the net impact of the aggregate Accumulated Losses of both the Transferor Company and Transferee Company on the net worth of the Transferee Company, as reflected in its financial statements, upon amalgamation has to be taken into account.*

c) *The Transferee Company has accumulated loss of Rs.4,20,04,281/- as appearing in the Unaudited Balance Sheet as on 30<sup>th</sup> November, 2017 and the continuous losses have substantially wiped off the value*



*represented by the Share Capital. Thus, the financial statements do not reflect the correct picture of health of the Transferee Company. The Transferor Company has accumulated loss of Rs.14,75,07,691/- as appearing in the Unaudited Balance Sheet as on 30<sup>th</sup> November, 2017. The aggregate accumulated losses of the Transferor Company and Transferee Company as on 30<sup>th</sup> November, 2017 amounts to Rs.18,95,11,972. For ensuring that the financial statement of the Transferee Company upon amalgamation reflects the real picture and the Capital lost is not continued to be shown on the face of the balance sheet, it is necessary to carry out reduction of capital of the Transferee Company.*

*d) The combined accumulated losses of the Transferor Company and Transferee Company upon amalgamation shall wipe out most of the net worth of the Transferee Company. The Transferee Company shall, therefore, be unable to raise any finance from the Capital Markets or from the Financial Institutions whether in the form of Equity or Debt or undertake business activities on a larger scale.*

6. The Learned Counsel for the Petitioner Companies submit that the First Petitioner Company and Second Petitioner Company have approved the Scheme by passing its Board Resolutions dated 8<sup>th</sup> August 2017 and has approached the Tribunal for sanction of the Scheme.

7. The Learned Counsel for Petitioner Companies submits that the Company Scheme Petition has been filed in consonance with order



dated 5<sup>th</sup> March 2020 passed by this Tribunal in CA(CAA)/77/MB/C-II/2019.

8. The Learned Counsel for the Petitioner Companies submits that the Company Scheme Petition CP(CAA)/54/MB/C-II/2021 was admitted by this Hon'ble Tribunal on 23<sup>rd</sup> September 2022. In compliance to the order dated 23<sup>rd</sup> September 2022, the Petitioner has filed an affidavit of service dated 5<sup>th</sup> November 2022 including proof of serving notice and newspaper publications.
9. Regional Director has filed his report dated 18 May 2021 ('Report') praying that this Tribunal may pass such orders as it thinks fit, save and except as stated in paragraphs IV (a) to (j). In response to observations made by Regional Director, Petitioner Company have also given necessary clarifications and undertakings vide their rejoinder affidavit dated 6<sup>th</sup> July 2021. Observations made by Regional Director, clarifications and undertakings given by Petitioner Company and response of the Regional Director in its Supplementary Report dated 16 August 2021 are summarized in the table below:

Para No. and Page No. of RD	RD Observations dated 18 May, 2021	Response of Petitioner Company	Response of the Regional Director in its Supplementary Report



Report			
Para IV (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>	With reference to the observation of the Regional Director, in clause IV (a) of the Report, the Petitioner Companies submit that in addition to compliance of AS-14 (IND AS-103), the Petitioner Companies undertake to pass such accounting entries as may be necessary in connection with the scheme, so as to comply with the other applicable Accounting Standards such as AS-5 (IND AS -8) etc.	The reply of the Petitioner Companies is satisfactory



<p>Para IV (b)</p>	<p><i>As per Definition of the Scheme,</i></p> <p><i>“Appointed Date” means 1st April 2020 or such other date as the National Company Law Tribunal (NCLT) or other competent authority may otherwise direct /fix.</i></p> <p><i>“Effective Date” or “coming into effect of this Scheme” means the date on which the Certified copies of National Company Law Tribunal order(s) vesting the assets, properties, liabilities, rights, duties, obligations and the like of the Transferor Company in the Transferee Company are filed with the appropriate Registrar of Companies.</i></p> <p><i>“Record Date” means the date to be fixed by the Board of Directors of the Transferee Company for the purpose of determining the shareholders of the Transferor Company to whom the shares would be issued in accordance with Clause 12.1 of this Scheme.</i></p> <p><i>Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-I dated</i></p>	<p>With reference to the observation of the Regional Director, in clause IV (b) of the report is concerned, the Petitioner Companies submit that the Appointed date i.e April 1, 2020 has been clearly indicated in Clause 1.2 of the scheme in accordance with Section 232 (6) of the Companies Act, 2013. The Petitioner Companies further submit that they are already in compliance with the requirements and clarification as stated in Circular No. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs</p>	<p>The reply of the Petitioner Companies is satisfactory.</p>
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21.08.2019 issued by the  
Ministry of Corporate Affairs.

by clearly  
specifying the  
Appointed date in  
the scheme.



<p>Para IV (c)</p>	<p><i>As per Clause 15 of the Scheme, any excess/deficit being the difference, if any, between the value of net assets of the business transferred from the Transferor Company and the amount credited to Share capital shall be adjusted in the Goodwill Account of the Transferee Company.</i></p> <p><i>In this regards, Petitioner Companies have to undertake that the surplus shall be credited to Capital Reserve Account arising out of amalgamation and deficits shall be debited to Goodwill Account.</i></p> <p><i>Further Petitioner Companies have to undertake that reserves shall not be available for distribution of dividend.</i></p>	<p>With reference to the observation of the Regional Director, in clause IV(c) of the report, Petitioner Companies state that since this is a scheme of Arrangement and Amalgamation and as a part of the scheme, any excess/deficit being the difference, if any, between the value of net assets of the business transferred from the Transferor Company and the amount credited to Share capital shall be adjusted in the Goodwill Account of the Transferee Company as per generally accepted accounting principles as mentioned in the clause 15 of the scheme. The Petitioner Companies hereby do undertake that the surplus shall be credited to the Capital Reserve (Amalgamation Reserve) arising out</p>	<p>Hon'ble Tribunal may consider the aforementioned reply submitted by the Petitioner Company and decide the matter on the merit.</p>
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of Amalgamation and deficits shall be debited to Goodwill account.

The Petitioner Companies hereby further state and undertake that the Amalgamation Reserve being a Capital Reserve itself will not be utilized as reserves available for distribution of Dividend in view of the generally accepted accounting principles.



<p>Para IV (d)</p>	<p><i>ROC, Mumbai Report dated 29.01.2021 has inter alia mentioned that there are no prosecution, no technical scrutiny, no inquiry, no inspection and no complaint is pending against Petitioner Companies.</i></p> <p><i>Further mentioned that:-</i></p> <p><i>1. Notice to be served to the Central Drugs Standard Control Organization (CISCO)</i></p> <p><i>2. As per clause 13 of the Scheme, the Transferee Company post amalgamation would change its name to All India Origin Chemists and Distributors Limited</i></p> <p><i>3. As per clause 14 of the Scheme, on the Scheme coming into effect, without further act or deed and without following the procedure laid down u/s 13,14 and other applicable provisions if any, of the Companies Act, 2013</i></p> <p><i>4. As per clause 7.4 and 21 of the Petition, the Transferor Company has accumulated loss of Rs.14,75,07,692 as appearing in the unaudited balance sheet as on 30th November, 2017, the aggregate accumulated losses of the Transferor and Transferee Company as on</i></p>	<p>The ROC, Mumbai Report inter alia states that “one complaint is pending regarding fraud raised by Shri Neera Agarawal vide SRN No. I00056999 dated 15.12.2020. In the regard, first Petitioner Company submits that the said complaint pertains to ‘All Cargo Logistics Limited and not to the Transferor Company viz “All India Origin Chemists and Distributors Limited.” Hence, no complaint is pending.</p> <p>Opening paragraph of clause VI(d) of Regional Directors’ Report rightly state that “there are no prosecution, no technical scrutiny, no inquiry no inspection and no complaints is pending against Petitioner Companies’</p> <p>The report further mentions certain points in IV (d) from 1 to 8, which is dealt with herein below:</p>	<p>Hon’ble Tribunal may consider the aforementioned reply submitted by the Petitioner Company and decide the matter on the merit.</p>
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30th November, 2014 amount to Rs.18,95,11,973 and such loss is not continued to be shown on the face of the balance sheet.

5. As per clause 16 and 23 of the petition, there is cancellation of cross holding shares.

6. As per clause 17, reorganization of share capital by conversion of 8% redeemable Non-cumulative Non-convertible preference shares into equity shares of the Transferee Company.

7. Reorganization of share capital of the Transferee Company by converting its preference Share Capital into equity shares, it is submitted that "in terms of the provisions of section 55(3) of the Companies Act, 2013." Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further

i. Notice has already been served to the Central Drugs Standard Control Organisation (CDSCO) on behalf of both the Petitioner Companies in view of the order dated 5<sup>th</sup> March 2020 passed by this Hon'ble Tribunal. The proof of service to CDSCO is attached as "**Annexure-B**" to the Affidavit-in-Rejoinder.

ii. The Petitioner Companies take due note of the same post amalgamation change of name of the transferee Company to All India Origin Chemists and Distribution Limited. However, in the regard, the Petitioner Companies would like to offer minor clarification that post amalgamation change of name of the transferee Company should be 'All Indian Origin Chemists and



*redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed: Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.*

*Explanation.-For the removal of doubts, it is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.*

*8. Interest of the creditors should be protected.*

*Hence Hon'ble Tribunal may consider the same and decide the matter on merit.*

Distributors Limited' as mentioned in the clause 13 of the Scheme in place "All Indian Origin Chemists and Distributions Limited" in the Regional Directors' Report as it appears to be typographical error.

iii. The petitioner Companies take due note of point 3 of IV (d) of the Report.

iv. However, as regards point no. 4 of the clause IV(d) of Regional Directors' Report the petitioner Companies would like to offer minor clarification that the aggregate accumulated losses of the Transferor and Transferee Companies have been mentioned as on the date 30<sup>th</sup> November 2014 which should be read as on the date 30<sup>th</sup> November 2017 as per the said Scheme. It also



appears to be typographical error.

v. The Petitioner Companies take due note of Points 5 to 7.

vi. With reference to Point 8 of IV (d) of the report, it is hereby clarified and confirmed that there are no Secured Creditors in both the Petitioner Companies as on date. Notices were sent to the Unsecured Creditors of both the Petitioner Companies, inviting any objection to the proposed Scheme of Arrangement and Amalgamation, if any. However, there were no objections received. The first petitioner further submits that dues of the one Secured Creditor of the Transferor Company, as mentioned in NCLT Order dated 5<sup>th</sup> March 2020, has been satisfied in full; the certificate of



satisfaction of charge is attached as “Annexure-C” to the Affidavit-in-Rejoinder. Screenshot of MCA website reflecting the same is attached as “Annexure-D” to the Affidavit-in-Rejoinder.



<p>Para IV (e)</p>	<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 amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.</i></p>	<p>With reference to the point no. IV(e) of the report is concerned, the Petitioner Companies hereby undertake to comply with the provisions of 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 Authorised Capital shall be set off against any fees payable by the Transferee Company on its Authorised Capital subsequent to the Amalgamation</p>	<p>Hon'ble Tribunal may consider the aforementioned reply submitted by the Petitioner Company and decide the matter on the merit.</p>
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<p>Para IV (f)</p>	<p><i>As per clause 13 of the Scheme, the Petitioner Companies has proposed Change in Name of the Transferee Company, The Transferee Company post amalgamation would change its name to "ALL INDIAN ORIGIN CHEMISTS &amp; DISTRIBUTORS LIMITED" or such other name as may be decided by the Board of Directors or a Committee thereof and approved by the Ministry of Corporate Affairs, the Office of the Registrar of Companies.</i></p> <p><i>That the adoption of new name of Transferor Company by the Transferee Company shall create confusion in the minds of general public and other stakeholders. Besides it will also create confusion with the regulators like Income Tax, GST, MCA etc which give impression that Transferor Company is still in existence however it is not in existence.</i></p> <p><i>Further, as per clause 8(2)(8) of the Companies (Incorporation) Rules, 2014, "The names released on change of name by any company shall remain in data base and shall not be allowed to be taken by any other company including the group company of the company who</i></p>	<p>With reference to the point no. IV(f) of the report is concerned, the Petitioner Companies hereby submit that the name as provided in the scheme post amalgamation is vital because the name 'All Indian Origin Chemists &amp; Distributors Limited' carries goodwill and brand value in the market, which has been built over many years since its inception. Replacing the name would result in the Transferee Company losing its value and market capitalization to a large extent. Also, one of the main reasons behind the proposed Arrangement for the Transferee Company is to build a Pan-India business, based on the said brand value of the Transferor Company.</p>	<p>The Transferee Company may not be allowed to change its name by ALL INDIAN ORIGIN CHEMIST S &amp; DISTRIBUTORS LIMITED ( AIOCDL) and amend the Scheme accordingly .</p>
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*has changed the name for a period of three years from the date of change subject to specific direction from the competent authority in the course of compromise, arrangement and amalgamation.*

*Hence, the Transferee Company i.e MAHARASHTRA SAFE CHEMISTS AND DISTRIBUTORS ALLIANCE LIMITED (MSCDAL) may not be allowed to change its name by the name of Transferor Company i.e ALL INDIAN ORIGIN CHEMISTS & DISTRIBUTORS LIMITED (AIOC DL) and Petitioner Company have to amend the scheme accordingly.*

So far as the view of Regional Director with regards to confusion in minds of general public, stakeholders and regulators due to the said name change is concerned, the Petitioner Companies undertake to use the term "*Merged with All Indian Origin Chemists & Distributors Limited, formerly known as Maharashtra Safe Chemists and Distributors Alliance Limited*" on all the documents, correspondences of the Company for a period of 3 years to avoid confusion in the minds of the general public, stakeholders and the regulators.



<p>Para IV (g)</p>	<p><i>As per clause 14 of the Scheme, the Petitioner Companies has proposed Change of object clause of the Transferee Company, Upon the Scheme coming into effect, without any further act or deed and without following the procedure laid down under Sections 13, 14 and other applicable provisions, if any, of the Companies Act, 2013, the Main Objects of the Transferor Company as mentioned herein below shall stand inserted in Clause III (A) i.e. Main Objects of the Memorandum of Association of the Transferee Company after the existing sub-clause 2:</i></p> <p><i>In this regards, Petitioner Companies shall undertake to comply with applicable provisions of Companies Act, 2013 read with applicable rules.</i></p>	<p>With reference to the point no. IV (g) of the Report is concerned, the Petitioner Companies hereby undertake to comply with the applicable provisions of the Companies Act, 2013 read with the applicable rules with regards to change of Object Clause of the Transferee Company, upon the Scheme coming into effect.</p>	<p>Hon'ble Tribunal may consider the aforementioned reply submitted by the Petitioner Company and decide the matter on the merit.</p>
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<p>Para IV (h)</p>	<p><i>As per Clause 17 and 18 of the Scheme, Petitioner Company has proposed for REORGANIZATION OF SHARE CAPITAL BY CONVERSION OF 8 % REDEEMABLE NON-CUMULATIVE NON-CONVERTIBLE PREFERENCE SHARES INTO EQUITY SHARES OF THE TRANSFEREE COMPANY AND CONSEQUENTIAL REDUCTION.</i></p> <p><i>Hence, Petitioner Company shall undertake to comply with provision of Companies Act, 2013 read with applicable rules also clarify that Ministry vide letter no, 03/08/2019. CL V, dated 27th July, 2020 has slated that one litigation is ongoing w.r.t conversion of equity shares into preference shares and vice versa whereby reclassification of such type was rejected by ROC, Delhi and has also asked for comments on the conversion of Equity Shares into Preference Shares or vice versa.</i></p> <p><i>It is submitted that the equity shareholders are having rights different to that of the preference shareholders which include voting rights. Hence, such conversion many be considered undesirable.</i></p>	<p>With reference to the point no. IV (h) of the RD's Report the Petitioner Companies hereby state that pursuant to t Order dated 5<sup>th</sup> March 2020, the meetings of the Equity Shareholders and the Preference Shareholders(as applicable), of the Petitioner Companies were held on 20<sup>th</sup> November 2020, to seek their approval to the said Scheme and also to the proposal of Reorganization of Share Capital by Conversion of 8 % Redeemable Non-Cumulative Non-Convertible Preference Shares into Equity Shares of the Transferee Company and subsequent Reduction. The Resolution was passed with requisite majority for all the resolution in the said Meetings. It would also be pertinent to note that redemption of 8% Redeemable Preference shares would have affected Liquidity and thereby</p>	<p>It is submitted that the equity shareholders are having rights different to that of the preference shareholders which include voting rights. Hence, such conversion many be considered undesirable.</p>
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operations of the Company. However, if the Preference Shareholders are allotted Equity Shares, they will be able to reap the benefits from the profits that the Transferee Company shall earn in the coming years.



<p>Para IV (i)</p>	<p><i>As per clause 21, Petitioner Company has proposed Reduction of Share Capital of the Transferee Company:</i></p> <p><i>This Scheme seeks to reduce or otherwise alter the issued, subscribed and paid-up capital of the Transferee Company and the same will therefore remain altered as a result of the Scheme.</i></p> <p><i>As on 30th November 2017 as per the Unaudited Financial Statements of the Transferee Company, the total accumulated losses and share capital unrepresented by available assets of the Transferee Company are Rs.4,20,04,281/- as against the Paid-up equity share capital of Rs.35,04,61,950/-.</i></p> <p><i>As on 30th November 2017 as per the Unaudited Financial Statements of the Transferor Company, the total accumulated losses and share capital unrepresented by available assets of the Transferor Company are Rs.14,75,07,692/- as against the Paid-up equity share capital of Rs.15,97,88,800/-.</i></p> <p><i>Upon the Scheme becoming effective in terms of Part III (Amalgamation of the Transferor Company into the</i></p>	<p>So far as the observation of the Regional Director, as stated in IV (i) of the report is concerned, the Petitioner Companies hereby undertake to comply with Section 66 read with Section 230-232 of the Companies Act 2013, and also other rules, provisions as applicable for the said arrangement. Explanation to section 230 envisage that no separate procedure for reduction is required to be followed and reduction can be done as part of scheme .</p>	<p>Hon'ble Tribunal may consider the aforementioned reply submitted by the Petitioner Company and decide the matter on the merit.</p>
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*Transferee Company) and Part IV (Reorganization of Share Capital by Conversion of Preference Shares into Equity Shares of the Transferee Company), the aggregate accumulated losses and share capital unrepresented by available assets of the Transferee Company (Amalgamated Company) are Rs.18,95,11,973/- as against the Paid-up equity share capital of Rs.45,77,85,450/-.*

*On the effective date and the Scheme becoming effective in terms of Part III and Part IV of the Scheme, it is proposed that the Transferee Company shall write off the accumulated losses of amounting to Rs.18,31,14,180/- against its paid-up Equity Share Capital through the Reduction of Share Capital.*

*The above set off will result in reduction of the paid-up share capital of the Transferee Company from Rs.45,77,85,450/- (Rupees Forty Five Crores Seventy Seven Lacs Eighty Five Thousand Four Fifty Only) to Rs.27,46,71,270/- (Rupees Twenty Seven Crores Forty Six Lakhs Seventy One Thousand Two Hundred Seventy Only).*



*The reconstruction/restructuring of the capital shall not cause any shareholder to hold any fractional shares in the Company.*

*The Reduction of Share Capital does not envisage transfer or vesting of any properties and/or liabilities to or in favor of the Transferee Company.*

*The Reduction of Share Capital does not involve any conveyance or transfer of any property and consequently, further the order of the Hon'ble National Company Law Tribunal approving the Scheme will not attract stamp duty under the Maharashtra Stamp Act, 1958.*

*The reduction of capital in the manner proposed will enable the Transferee Company to have a rational capital structure which is commensurate with its remaining business and assets.*

*Petitioner Companies shall undertake to comply with section 66 read with section 230-232 of the Companies Act, 2013.*



<p>Para IV (j)</p>	<p><i>Petitioner Companies shall undertake to clarify that how there is negligible shareholding of Promoters and how there can be the Public Shareholders in the Unlisted Company.</i></p>	<p>So far as the observation of the Regional Director, as stated in IV (j) of the Report is concerned, Petitioner companies replies are based on the following grounds:</p> <p><b>(I) <u>No Public offer</u> [Sec 67(3)]</b></p> <p>The Petitioners state that there was an offer for subscription of shares made by the Company which would not amount to offer/ invitation to the public pursuant to Section 67 (3) of the Companies Act, 1956 on following grounds:</p> <p>(i) The Company's offer or invitation was made only to 31 State Associations, the number being less than 50, as set out in the Provisions of Section 67 (3). In such event, invitation to subscribe was sent</p>	<p>The Public shareholding of the Petitioner Transferor Company is 99.71% and in case of Petitioner Transferee Company is 98.68% The Petitioner Companies shall prove compliance with section 67(3) read with 73 of Companies Act, 1956, since the Company have large number of shareholders other than promoters.</p> <p>In this regard, the Petitioner Company has submitted letter dated</p>
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		<p>only to the State Associations who could then apply for allotment of Shares in the name of their members i.e. 10696 Members. Attached to the rejoinder affidavit as “Annexure – 1”, is a list of the name of State Associations to whom the invite was sent.</p> <p>(ii) Further the Petitioner Company had invited only the members of their State Level Associations of AIOCD for subscribing to the shares of our Company. The Petitioner had absolutely no intention at all of allowing non-members to subscribe to the shares of our Company.</p> <p>(iii) The Company’s invitation was restricted only to the members of our State Association. These</p>	<p>03.08. 2021 inter alia mentioned that shares issued to members of district association all over India. Further, Petitioner Company has undertaken that there has never been any public shareholdin g except the trade/ district association in the company not was the company ever open to public for subscription . The chairman Shri. Jagannath S. Shinde,</p>
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		<p>State Association acted as a Canalizing Agent and only those persons who were on the rolls of the State Association (Canalizing Agency) as members/nominee members were entitled to allotment of shares. It was the duty, responsibility and liability of the State Associations (Canalizing Agency) to forward only those applications which met the requirements. Thus, as the invitation was available only to members of our State Associations, therefore the said issue was not a Public Issue and should be treated as an offer made privately, since the invitation of offer did not exceed the limit of 50, as per Private Offer. Hence, the offer was a Private offer and was strictly</p>	<p>Chairman of MSCDAL has also undertaken to maintain this status-quo of the company and take all endeavours in the future for the same.</p>
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available only to the members/nomine e members on the rolls of the State Association. Thus, offer for subscription of shares was not available to the persons other than those receiving offers or invitation.

Attached to the rejoinder affidavit is the Return of Allotments (Form 2) as “**Annexure – 2**”. In this context the Petitioner had obtained Legal Opinion from Mr. Yusuf Iqbal Yusuf, Advocate, Supreme Court, (of M/s. Yusufs & Associatbefore the first allotment of shares copy whereof is enclosed to rejoinder affidavit as “**Annexure – 3**”

**(III) Registrar of Companies (Mumbai) Notice and our reply therewith:**



In this context the Company had received a Notice dated 23<sup>rd</sup> January 2013 (No. ROC/STA (JK)/167578/2013/5 516) from the office of Registrar of Companies (ROC) calling information u/s 234 of the Companies Act, 1956 and seeking explanation whether the Company had complied with the provisions of Section 67(3) and Section 73 of the Companies Act 2013. The Company replied to the same vide a letter dated 4<sup>th</sup> February 2013. On the basis of the said letter, ROC issued an order under Section 234(3A) dated 18<sup>th</sup> July 2013 (No. ROC/STA(JK)/2013 /2035) seeking further explanations and documentary. The Company replied to the said notice vide their reply dated 16<sup>th</sup> August 2013 with additional documentary evidence and clarifications as required. On receipt of the same ROC was



satisfied and settled the matter with no further observations. Attached to the rejoinder affidavit is a copy of the said notices received from ROC as per "Annexure - 4", copy of our reply as "Annexure - 5".



9. As far as the observation made in para no. (iv) (f) of the Supplementary Report of the Regional Director is concerned, the Petitioner Company submits that the Change in Name of Transferee Company as mentioned in the Scheme will be done in compliance with the provisions of section 13 of the Companies Act, 2013 r/w relevant rule(s) of the Company (Incorporation) Rules, 2014. It is further submitted that the proposed change of name of the Transferee Company to “All Indian Origin Chemists & Distributors Limited” (which is the name of the Transferor Company). Further, it is clarified that pursuant to the name change as aforesaid, the Transferee Company will indicate the earlier name also by mentioning the words “earlier known as...” next to the new name to all the authorities till the next 3 years while intimating the name change to avoid any confusion. The proposed name change to “All Indian Origin Chemists & Distributors Limited” will commercially be more beneficial to the group and the objective of consolidation of business. Lastly, it is submitted that as per clause 8(2)(8) of the Companies (Incorporation) Rules, 2014, such change of name is permitted for use by group company in the course of compromise, arrangement and amalgamation. Accordingly, since the name change is for a group company and not to any third party or outside the group, it is allowed to change the name as aforesaid through a scheme of amalgamation. In support of this, there are various precedents wherein this Bench has permitted such change of name belonging to the Transferor Company to be used by the Transferee Company wherein upon sanctioning of the Scheme the applicable process is followed by the Transferee Company for name change with further approval of the CRC.



- a. CP(CAA)672/MB.II/2020 connected with CA(CAA) 2796/MB.II/2019 in the matter of Scheme of Merger by Absorption of Sterling Generators Private Limited (Transferor Company) by Sterling and Wilson Powergen Private Limited(Transferee Company) and their respective shareholders by way of Order dated 8<sup>th</sup> June 2020.
- b. C. P. (CAA)/3904/2019 in C. A. (CAA)/248/2019 in the matter of Scheme of Merger by Absorption of Menon And Menon Limited with MML Industries Limited and their respective shareholders by way of Order dated 20 January 2020;
- c. C.P (C.A.A)/3779/MB/2019 IN C.A. (CAA)/2788/MB/2019 in the matter of scheme of Scheme of Merger by Absorption of Medusind Solutions India Private Limited with Intelliservco Business Solutions Private Limited and their respective Shareholders by way of order dated 20 December 2019; and
- d. CP (CAA)/4275/MB/201 IN CA (CAA)/788/MB/2018 in the matter of Scheme of Merger by Absorption of Lodha Housing Finance Private Limited (LHFPL) and Finovate Technology Platforms Private Limited (FTPPL) and Lodha Ventures Holding Private Limited (LVHPL) and Lodha Development Management Private Limited (LDMPL) and Helicon Infrastructure Private Limited (HIPL) Lodha Corporate Trusteeship Private Limited (LCTPL) with Eirian Consulting Private Limited (ECPL) by way of Order dated 10 January 2019.
- e. CP (CAA)/11/MB-IV/2021 IN CA(CAA)/1064/MB-IV/2020 in the matter Scheme of Amalgamation of Bharat Serums and Vaccines Limited and BSVLife Private Limited with Aksipro



Diagnosics P Limited and their respective shareholders by way of Order dated 2 August 2021.

10. As far as the observation made in para no. (iv) (h) of the Supplementary Report is concerned the Petitioner Companies submit that the word “arrangement” has not been defined under the Act however, the term in itself carries a very wide import. The Division Bench of Punjab & Haryana High Court in the matter of *Q.H Talbros Ltd.* inter-alia observed that; (Page 10 Para @14);

*“A Merger and a Demerger are not the only components of a composite scheme of arrangement. The term arrangement in section 391 is of wide amplitude. It is defined in the Act. Corporate affair are often complex involving the interplay of innumerable factors including those relating to policy matters, management and financial aspects and legal issues. The Scheme often requires considerations of various enactments and adherence to various legal provisions not only under the Companies Act but also under other enactments. Financial aspects are not limited in their nature or in scope. Each component is studied, and the resultant arrangement is arrived at after taking all of them into consideration. There are consequential acts to be performed as an integral part of the scheme. Many of them, therefore, involve other arrangements such as reduction in share capital and the amendment of the Memorandum of Association and the Articles of Association of the company. These very components can constitute one composite scheme / arrangement under Section 391 of the Act. The legislature, therefore advisedly did not restrict scope of the term arrangement by defining it. A view to the contrary would place an unwarranted fetter upon the activities of a company and restrict the choice of it’s members, creditors, debentures holders and other stakeholders.”*

Further, the Chancery Division in *Re Savoy Hotels Ltd* ( Page 652 @Para g) ;



*“..there can be no doubt that the word ‘arrangement’ in s 206 has for many years been treated as being one of very wide import....beyond that it is neither necessary nor desirable to attempt a definition of arrangement”*

11. The clarifications and undertakings given by Petitioner Company are accepted by this Tribunal.
12. 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.
13. The Official Liquidator has filed his report on 9<sup>th</sup> July 2021 *inter- alia*, stating therein that the affairs of the Transferor Company have been conducted in a proper manner.
14. Upon this Scheme becoming effective and in consideration for merger of the Transferor Company with the Transferee Company, including the transfer and vesting of the Transferred Undertaking in the Transferee Company, the Transferee Company shall, without any application or deed, issue and allot shares, credited as fully paid up, to the extent indicated below, to the members of the Transferor Company whose names appear in the register of members, on the Effective Date or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title, as the case may be, recognized by the Board of Directors of the Transferee Company in the following proportion viz:

For equity shareholders of the Transferor Company:



*“For every 250 Equity Share, each having a face value of Rs.10/- each, in the Transferor Company, 100 fully paid up Equity Shares, each having a face value of Rs.10/- each, of the Transferee Company.”*

15. Since all requisite statutory compliances have been fulfilled, CP/(CAA)/ 54/MB/2021 is made absolute in terms of the prayer clauses of said Company Scheme Petition.
16. The Scheme is hereby sanctioned with Appointed Date of 1<sup>st</sup> April 2020.
17. Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with e-form INC-28 within 30 days from the date of receipt of certified copy of Order by Petitioner Company. The Scheme will become effective on filing of the copy of this order with the concerned Registrar of Companies.
18. Petitioner Companies to lodge a copy of this Order along with the Scheme duly certified by designated Director National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of certified Order from the Registry of this Tribunal.



19. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by Designated Director, National Company Law Tribunal, Mumbai Bench.
20. Any person interested is at liberty to apply to this Tribunal in above matters for any directions that may be necessary.
21. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
22. Ordered accordingly.

Sd/-

**SHYAM BABU GAUTAM**  
(MEMBER TECHNICAL)

Sd/-

**KULDIP KUMAR KAREER**  
(MEMBER JUDICIAL)

**Certified True Copy**  
**Copy Issued "free of cost"**  
On 24/4/2023

*A. S. Sonawale,*  
Deputy Registrar 24.4.2023  
National Company Law Tribunal Mumbai Bench  
(D. 5574) 19/4/2023

