**(2022) 09 NCLT CK 0053**

**In the National Company Law Tribunal**

**Case No :** CP(CAA) 39/MB/C-I/2022 In CA(CAA)277/2021

**Takeda Pharmaceuticals India Privatelimited Vs**

**Date of Decision :** 16-09-2022

**Acts Referred:**

Companies Act, 2013 — Section 13, 133, 230, 230(5), 232, 232(3)(i)

**Citation :** (2022) 09 NCLT CK 0053

**Hon'ble Judges :** P. N. Deshmukh (Retd.), Member, (J);Shyam Babu Gautam, Member (T)

**Bench :** Division Bench

**Advocate :** Gaurav Joshi, Palash Agarwal, Pulkit Sharma, Abhishek Swaroop, Palash Agarwal, Rupa Sutar

**Final Decision :** Disposed Of

## Judgement

Shyam Babu Gautam, Member (Technical)

1. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (the Act) and the Rules framed thereunder for the Scheme of Amalgamation (the Scheme) of Shire Biotech India Private Limited, Transferor Company No.1 and Takeda Pharmaceuticals India Private Limited, Transferor company 2 with Baxalta Bioscience India Private Limited, Transferee company and their respective shareholders and all concerned.

2. Heard the learned counsel for the Petitioner Company and the Deputy Director, MCA (WR), Mumbai. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.

3. Counsel for the Petitioner Company states that the present Scheme is for Amalgamation of Shire Biotech India Private Limited (Transferor Company No. 1 / Non-Petitioner) and Takeda Pharmaceuticals India Private Limited (Transferor Company No. 2 / Petitioner Company No. 1) with Baxalta Bioscience India Private Limited (Transferee Company / Non-Petitioner) and their respective shareholders (Scheme) under the provisions of Sections 230 to 232 of the Companies Act, 2013.

4. The Counsel for the Petitioner Company submits that the Petitioner Company / Transferor Company No.2 is a private company limited by shares having its registered office situated at Bldg. B-4, Vadapa Village, Citylink Warehousing Complex, Mumbai Nashik Highway, Bhawandi, Thane 421302 within the State of Maharashtra i.e. within the Jurisdiction of this Tribunal.

5. The Counsel further submits that the Transferor Company No.1 and Transferee Company are private companies, limited by shares having registered office situated at 6th floor, Tower C, Building No.8, DLF Cyber City, DLF Phase II, Gurgaon-122001 Haryana respectively, i.e. within the Jurisdiction of Hon'ble National Company Law Tribunal, Chandigarh Bench and therefore a separate petition has been filed before the Hon'ble National Company Law Tribunal, Chandigarh Bench with respect to Transferor Co No.1 and Transferee Co.

6. The Board of Directors of the Transferor Company No.1, Transferor Company No.2 and the Transferee Company have approved the Scheme in their respective Board meetings held on 20th October 2021. The Appointed Date fixed under the Scheme is 1st October 2022.

BACKGROUND OF COMPANIES:

7. The Counsel for the Petitioner Company further submits that the Petitioner Company is engaged in pharmaceutical business which inter alia includes business of providing market research, advisory, consultancy, monitoring, sourcing, quality assurance and project management services to clients in the pharmaceutical, life science and health care industry, whether in India or abroad.

8. Share Capital:

(a) Share Capital of the Transferor Company No. 1

The authorized, issued, subscribed and paid-up share capital of the Transferor Company No. 1 as on March 31, 2021 is as under:

Particulars

Amount (in INR)

Authorized Share Capital

10,000 equity shares of INR 10 each

1,00,000

Total

1,00,000

Issued, Subscribed and Paid-up Share Capital

10,000 equity shares of INR 10 each, fully paid

up

 

1,00,000

Total

1,00,000

Subsequent to March 31, 2021, there has not been any change in the authorized, issued, subscribed and/or paid-up share capital of the Transferor Company No. 1.

(b) Share Capital of the Transferor Company No. 2

The authorized, issued, subscribed and paid-up share capital of the Transferor Company No. 2 as on March 31, 2021 is as under:

Particulars

Amount (in INR)

Authorized Share Capital

1,50,00,000 equity shares of INR 10 each

15,00,00,000

Total

15,00,00,000

Issued, Subscribed and Paid-up Share Capital 49,89,481 equity shares of INR 10 each, fully paid up

4,98,94,810

Total

4,98,94,810

Subsequent to March 31, 2021, there has not been any change in the authorized, issued, subscribed and/or paid-up share capital of the Transferor Company No. 2.

(c) Share Capital of the Transferee Company

The authorized, issued, subscribed and paid-up share capital of the Transferee Company as on March 31, 2021 is as under:

Particulars

Amount (in INR)

Authorized Share Capital

25,00,00,000 equity shares of INR 10 each

2,50,00,00,000

Total

 

2,50,00,00,000

Issued, Subscribed and Paid-up Share Capital 20,02,37,612 equity shares of INR 10 each, fully paid up

2,00,23,76,120

Total

2,00,23,76,120

Subsequent to March 31, 2021, the date of the Scheme being approved by the Board of the Transferee Company, there has not been any change in the authorized, issued, subscribed and/or paid-up share capital of the Transferee Company.

Consideration:

9. Upon the coming into effect of this Scheme and in consideration of the transfer of and vesting of the Assets and Liabilities comprising the Undertaking of the Transferor Companies in the Transferee Company in terms of this Scheme, the Transferee Company shall, without any further application, act, deed, instrument, matter or thing, issue and allot to every shareholder holding fully paid-up equity shares in the Transferor Company No. 1 and the Transferor Company No. 2, respectively, and whose name appears in the register of members / shareholders of the Transferor Company No. 1 and the Transferor Company No. 2, respectively, on the Record Date, equity shares, credited as fully paid-up shares in the Transferee Company as set out hereinafter in the ratio of:

(a) 46,262 (Forty-six thousand Two hundred and Sixty-two) equity shares of the Transferee Company of the face value of Rupees Ten (INR 10), credited as fully paid-up for every 99 (Ninety-nine) equity shares of the face value of Rupees Ten (INR 10) each, fully paid-up of the Transferor Company No. 1; and

(b) 17 (Seventeen) equity shares of the Transferee Company of the face value of Rupees Ten (INR 10), credited as fully paid-up for every 8 (Eight) equity shares of the face value of Rupees Ten (INR 10) each, fully paid-up of the Transferor Company No. 2.

The ratio in which the equity shares are to be issued and allotted to the shareholders of the Transferor Companies is referred to as the “Share Entitlement Ratio”.

10. Any fraction arising out of allotment of shares as per Clause 13.1 shall be rounded off to the nearest integer.

Change in name:

11. Upon the coming into effect of this Scheme, the existing name of the Transferee Company (i.e. Baxalta Bioscience India Private Limited) shall be deemed to have been changed from “Baxalta Bioscience India Private Limited” to

 

the preferred name being “Takeda Biopharmaceuticals India Private Limited” or any other corporate name bearing the word / trade name “Takeda” as may be available and consequently approved by the Registrar of Companies (“New Name”) in accordance with Section 13 and other applicable provisions of the Act. It is clarified that the change of name will not be deemed to be a change in legal entity status of the Transferee Company, the consequent related actions for change in name being a procedural requirement under applicable Laws. A reference to the Transferee Company in this Scheme (including without limitation in Clause 5) would include a reference to the Transferee Company whether doing business under its existing name or New Name.

12. That the Scheme will take effect from the Appointed Date mentioned therein, namely October 01, 2022 (in relation to all matters, including financial, accounting and/or tax matters, but save as provided in relation to licenses, regulatory matters and labelling etc.). It is submitted that the Board of Directors of all the Scheme Entities had proposed and considered that the present Scheme should be made effective from the Appointed Date i.e., October 01, 2022. Further, the ‘Effective Date’ has also been defined as the later of: (a) October 1, 2022, and, (b) the date of filing of the last of the certified copies of the orders of the relevant Hon’ble NCLTs sanctioning the Scheme, with the concerned Registrar of Companies.

13. The Counsel for the Petitioner Company further submits that the proposed amalgamation will be beneficial to the Transferor Company 1, Transferor Company 2, Transferee Company and their respective shareholders and creditors, employees and other stakeholders and will have following benefits:

Rationale for amalgamation of the Transferor Company 1 and the Transferor Company 2 with the Transferee Company:

(i) Improved Operational Efficiency and Optimum Advantages: Achieve improved operational efficiency and optimum advantages and achieve greater efficiency and maximize synergy in operations by combining the activities of the Transferor Companies with the Transferee Company, including as described in sub-clause (ii) below.

(ii) Consolidation within One Entity for Effective Management: Effectively and efficiently integrate the operations and consolidate the businesses within one entity and effectively manage the Transferor Companies and the Transferee Company as a single entity, which will provide several benefits, including streamlined corporate group structure which will facilitate increased efficiency across various functional areas by reducing the number of entities, such as reduction in risk, consistent processes, reduction in regulatory (including tax) compliances, simplified accounting management, audit processes and management reporting, consolidation of inter-corporate and inter-party agreements and third-party contracts, reduction in the number of required licenses / registrations (including IT licenses), realization of staffing synergies, focused management and business approach, combined financial resources, and, ultimately rationalization of costs by simplification of structure leading to better administration and significant cost savings and saving of management time; the restructuring will also lead to simplification of the group structure by eliminating legal entity redundancies and multiple companies in similar or related businesses, thus enabling focused operational efforts, making business functions and operations more efficient and align with the business plan of the Takeda group which would help in focusing on core competencies.

(iii) Capitalize Combined Resources for Future Growth: In a fast changing and highly competitive environment, this amalgamation shall strengthen the businesses of the Transferor Companies and the Transferee Company by pooling and capitalizing on their combined resources, business expertise, business processes and assets towards a common purpose and future growth potential, and hence, efficient and optimum utilization.

(iv) Best Advantage of All Stakeholders: The synergies that exist between the entities in terms of operations and resources can be maximized and put to the best advantage of all stakeholders; the amalgamation would also provide the Transferee Company a strong and focused base to undertake business more advantageously and achieve other operational objectives.

14. The Counsel for the Petitioner Company submits that the present Company Petition is filed in consonance with Sections 230 to 232 of the Act along with the Order dated 03.02.2022 passed in C.A.(CAA) 277 of 2021 by this Tribunal.

15. The Counsel for the Petitioner Company further states that the Petitioner Company has complied with all requirements as per directions of this Tribunal and they have filed necessary affidavit of service with the Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory/regulatory requirements, if any, as required under the Companies Act, and the Rules made thereunder.

16. The Learned Counsel for the Petitioner Company states that the shares of the Petitioner Company are not listed on any stock exchanges.

17. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 03.06.2022 inter alia stating therein, the observations on the Scheme as stated in paragraph IV(a) to (k). In response to the observations made by the Regional Director, the Petitioner Companies have filed a rejoinder affidavit and given necessary clarifications and undertakings. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Sr. No of Paragraph IV

Observations in Report dated 03.06.2022 filed by Regional Director

 

Reply of Petitioner Company by Affidavit in Rejoinder dated 13.06.2022.

(a)

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.

The Petitioner Company undertakes to pass such accounting entries which are necessary in connection with the Scheme of Amalgamation 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 arrangement. 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).

The Petitioner states that notices have been issued to the concerned authorities under Section 230(5) of the Companies Act, 2013. Necessary compliance reports dated February 26, 2022 have been filed by the Petitioner before this Hon’ble Tribunal in that regard. The Petitioner confirms the authorities may take any decisions, as per applicable laws, subject to and in compliance with the orders passed by the Hon’ble NCLT.

(c)

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 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.

The Transferee Company shall pay the balance/ difference amount of fee and stamp duty on its increasing Authorized share capital.

The Petitioner undertakes 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 authorized capital shall be set-off against any fees payable by the Transferee Company on its authorized capital subsequent to the amalgamation.

Further, the Transferee Company undertakes to pay the balance/ difference amount of the fees and stamp duty on its increased authorized share capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.

(d)

The Hon'ble NCLT may kindly direct the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one and same and there is no discrepancy or deviation.

The Petitioner Company undertakes that the Scheme enclosed to the Company Application (CAA) No. 277 (Mah)/ 2021 and the Scheme enclosed to the Company Petition No. (CAA) 39/(Mah)/ 2022 are one and the same and there are no discrepancy or deviations made.

(e)

As per Definition of the Scheme, "Appointed Date" means October 1, 2022 or such date as may be fixed or approved by the NCLT (as hereinafter defined)

"Effective Date" means the later of: (a) October 1, 2022; and (b) the last of dates on which the certified copies of the relevant Hon'ble NCLT's (as hereinafter defined) sanctioning the scheme are filed by the Transferor Companies (as hereinafter defined) and/or Transferee Company (as hereinafter defined), as applicable, with the concerned Registrar of Companies (as hereinafter defined). Accordingly any references in this scheme to the "date of coming into effect of this scheme" or " upon the scheme becoming effective" or "effectiveness of the scheme" or "Scheme taking effect" or similar phrases shall mean the Effective date.

"Record Date" means the date to be fixed by the Board of Directors of the Transferee Company for the purpose of determining the equity shareholders of the Transferor Companies to whom shares of the Transferee Company would be allotted and issued in accordance with the scheme.

Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

(f)

Clause 14 of the Scheme ACCOUNTING TREATMENT

Upon the Scheme becoming effective and with effect from the Appointed Date, the amalgamation of the Transferor Companies with the Transferee Company shall be accounted for in the books of accounts of the Transferee Company in accordance with Indian Accounting Standards as specified by the Central Government on recommendations and pronouncements received from the Institute of Chartered Accountants of India and as prescribed under the provisions of Section 133 of the Act, read with the Companies (Indian Accounting Standards) Rules, 2015.

Accounting treatment in the books of the Transferor Companies:

Upon the Scheme coming into effect and pursuant to the relevant provisions of the Act and receipt of relevant approvals, the respective Transferor Companies will dissolve without winding up, and no specific accounting is prescribed in the Indian Accounting Standards specified under Section 133 of the Act for such transfer.

Accounting treatment in the books of the Transferee Company:

1.1 The Transferee Company shall account for the Scheme in its books of accounts in accordance with accounting prescribed under "pooling of interest" method in Indian Accounting Standards (Ind AS) 103 – Business Combinations. The following are the salient features of the accounting treatment to be given:

1.2 Upon the Scheme becoming effective and with effect from the Appointed Date, the Transferee Company shall record the assets, liabilities and reserves of the Transferor Companies in its books of accounts

1.3 All the assets and liabilities of the Transferor Companies shall be recorded at their existing carrying amounts, as appearing in the books of the Transferor Companies as on the Appointed Date, in the books of the Transferee Company, and no adjustments shall be made to reflect their respective fair values, or recognize any new assets or liabilities.

1.4 The difference, if any, between the book value of assets of the Transferor Companies and the aggregate of: (a) book value of liabilities of the Transferor Companies vested in the Transferee Company pursuant to this Scheme; (b) book value of reserves of the Transferor Companies vested in the Transferee Company pursuant to this Scheme; and (c) the share capital issued by the Transferee Company pursuant to this Scheme, shall be recorded as capital reserve in the books of the Transferee Company.

1.5 To the extent that there are inter-corporate loans or balances, dues between the Transferor Companies and the Transferee Company the obligations in respect thereof shall come to an end and corresponding effect shall be given in the books of accounts of the Transferee Company for such reduction of any assets or liabilities.

1.6 Upon the Scheme becoming effective and with effect from the Appointed Date, all inter-party transactions between the Transferor Companies and the Transferee Company shall be considered as intercorporate/ inter-party transactions for all purposes and shall get cancelled.

1.7 In case of any differences in the accounting policies of the Transferor Companies and the Transferee Company, the impact of the same will be quantified and recorded in accordance with Indian Accounting Standards and policies adopted by the Transferee Company to ensure that the financial statements of the Transferee Company reflect the financial position on the basis of consistent accounting policy.

1.8 Notwithstanding the above, the Board of Directors of the Transferee

Company, in consultation with its statutory auditors, is authorized to account for any of these balances in any manner whatsoever, as may be deemed fit, in accordance with the prescribed Indian Accounting Standards issued by the Central Government and the generally accepted accounting principles.

Petitioner Companies have to undertake that the surplus/deficit shall be adjusted to Capital Reserve Account

Further, Petitioner Companies have to undertake that reserves shall not be available for distribution of dividend.

The Petitioner Company undertakes that the surplus / deficit shall be adjusted to the capital reserve account and that the reserves shall not be available for distribution of dividend.

(g)

Clause 16 of the Scheme

CHANGE IN NAME

Upon the coming into effect of this Scheme, the existing name of the Transferee Company (i.e. Baxalta Bioscience India Private Limited) shall be deemed to have been changed from "Baxalta Bioscience India Private Limited" to the preferred name being "Takeda Biopharmaceuticals India Private Limited" or any other corporate name bearing the word / trade name "Takeda" as may be available and consequently approved by the Registrar of Companies ("New Name") in accordance with Section 13 and other applicable provisions of the Act. It is clarified that the change of name will not be deemed to be a change in legal entity status of the Transferee Company, the consequent related actions for change in name being a procedural requirement under applicable Laws. A reference to the Transferee Company in this Scheme (including without limitation in Clause 5) would include a reference to the Transferee Company whether doing business under its existing name or New Name.

That the adoption of new name of 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 Petitioner Company is still in existence however it is not in existence. 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 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.

The Petitioner Companies shall undertake to comply with provisions of Section 13 of the Companies Act, 2013 read with applicable rules.

 

The  Hon’ble NCLT may not allow the change of name of the Petitioner Company.

The name change process contemplated is with respect to the Non-Petitioner Company/Transferee

Company  and not with respect to the Petitioner  Company/Transferor Company.

Further, the Transferee Company shall prefer the name being “Takeda Biopharmaceuticals India Private Limited” or any other corporate name bearing the word / trade name “Takeda” as may be available and consequently approved by the Registrar of Companies in accordance with Section 13 and other applicable provisions of the Act.

It is further submitted that the above preferred name is distinct and separate from the name of the Transferor Company No. 2 / Petitioner Company, i.e., “Takeda Pharmaceuticals India Private Limited” and is not identical to the name of the Petitioner Company/Transferor Company.

It is further submitted that upon approval of the Scheme by this Tribunal, the Transferee Company shall undertake the change in name in compliance with the provisions of Section 13 of the Act read with the relevant rule(s) under the Company  (Incorporation) Rules, 2014, as amended.

The proposed change of name will be subject to approval of the Central Registration Centre (“CRC”) which is an initiative of Ministry of Corporate Affairs (MCA) and will be done in accordance with the applicable procedures. There will be no confusion with any authority since there will be a fresh certificate which shall be obtained from the jurisdictional Registrar of Companies stating the change of name. Also, the CIN of the Transferee Company/ NonPetitioner Company will remain same.

Further, the PAN of the Transferee Company / Non-Petitioner Company as mentioned in communication to the Income Tax authorities will also remain the same. Similarly, the GSTIN of the Transferee Company / Non-Petitioner Company will  also remain the same.

Further, the Income Tax authorities, the RBI and sectoral regulator have been served notice and made aware of the present proceedings and the Scheme pursuant to directions of this Hon’ble Tribunal. Further, it is clarified that pursuant to the name change as aforesaid, the Transferee Company/Non-Petitioner Company will mention the words “earlier known as…” following the new name for a period of next three (3) years to avoid any confusion. The proposed name change to “Takeda Biopharmaceuticals India Private Limited” or any other corporate name bearing the word / trade name “Takeda” as may be available, will commercially be more beneficial to the group and to the objective of consolidation of business.

It is further submitted that in light of the above considerations there will be no confusion created in the minds of the general public and/or other stakeholders.

Lastly, it is submitted that as per Section 8A(1)(w) of the Companies (Incorporation) Rules, 2014, as amended by the Companies (Incorporation) Fifth Amendment Rules, 2019 such change in name is permitted "in the course of compromise, arrangement or amalgamation".

Accordingly, since the change of name is being undertaken pursuant to an amalgamation in accordance with the Scheme, the same is permissible in accordance with the said Rules. In support of this, there are various precedents wherein this Hon'ble Tribunal has permitted such change of name belonging to the transferor company to be used by the transferee company by way of change of name clause being proposed in the schemes of amalgamation wherein post sanction of the scheme of amalgamation, it is filed with the jurisdictional Registrar of Companies and thereafter the applicable process followed by the transferee company for name change with further approval of CRC being obtained.

Further, this Hon'ble Tribunal in CP(CAA)/11/MBIV/2021 connected with CA(CAA)/1064/MBIV/2020 in the matter of scheme of amalgamation of Bharat Serums and Vaccines Limited (First Transferor Company), BSV Life Private Limited (Second Transferor Company) and Asksipro Diagnostics Private Limited (Transferee Company) has allowed the name change. Copy of the final order dated 02.08.2021 passed by the Hon'ble Tribunal in CP(CAA)/11/MBIV/2021 annexed herewith and marked as ANNEXURE C.

Also, Rule 8 of the Companies (Incorporation) Rules, 2014 clarifies that "the proposed name has been released from the register of companies upon change of name of a company and three years have not elapsed since the date of change unless a specific direction has been received from the competent authority in the course of compromise, arrangement or amalgamation."

Accordingly, the NCLT has the jurisdiction to pass appropriate directions

(h)

Clause 17 of the Scheme

AMENDMENT TO THE OBJECTS IN THE MEMORANDUM OF ASSOCIATION

In order to carry on the relevant business activities that are currently being carried on by the Transferor Companies, upon coming into effect of the Scheme, the main objects in the Memorandum of Association of each of the Transferor Companies shall be deemed to have been added to the main objects of the Memorandum of Association of the Transferee Company, to the extent such objects are not already covered by those of the Transferee Company. The consent of the shareholders of the Transferee Company to this Scheme shall be deemed to be sufficient for the purposes of effecting this amendment and that no further resolution under Section 13 or any other applicable provision of the Act would be required to be separately passed.

 

The Petitioner Companies shall undertake to comply with provisions of Section 13 of the Companies Act, 2013 read with applicable rules

Petitioner submits that the Scheme Entities vide board resolution dated 20.10.2021 has taken consent from their respective shareholders w.r.t. to the approval of the Scheme.

Further, the amendment to the objects in the memorandum of association of the Transferee Company form part and parcel to the present Scheme. Therefore, the Scheme Entities have duly complied with the provisions of Section 13 of the Companies Act, 2013.

It is further submitted that the Petitioner Company and the Transferee Company undertake to comply with applicable provisions of the Act with respect to such amendment and file all necessary forms with the Registrar of Companies along with the necessary fees in compliance with the provisions of the Act.

(i)

Petitioner Companies to undertake to obtain NOC from the Income Tax department, if so required

In compliance of the order of Tribunal dated 03.03.2022, the Petitioner Company has served the copy of the order along with the copy of company petition to the concerned Income Tax Authority within whose jurisdiction the Petitioner Company is assessed to tax by hand on 16.03.2022.

Further, the notice was also sent through email and speed post to the said authority. Further, as per the order dated 03.03.2022, the Tribunal has directed the departments / authorities to submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice, to the Tribunal, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

However, till date, no response / reply has been filed by the Income Tax Department before the Tribunal. It is submitted that otherwise also pursuant to the sanction of Scheme by this Hon'ble Tribunal, the Transferor Company No. 2 / Petitioner Company would amalgamate with the Transferee Company. However, if any demand is raised by Income Tax Department in this regard or under any other applicable laws against the Transferor Company No. 2 / Petitioner Company and if the said demand is applicable then the Transferee Company undertakes to pay the said demand before the Income Tax Department.

(j)

As per the list of shareholders submitted by the Petitioner Companies, Shire Biotech India Private Limited (Transferor Company No. 1), Takeda Pharmaceuticals India Private Limited (Transferor Company No. 2), Baxalta

 

Bioscience India Private Limited (Transferee Company) have 100% foreign shareholders.

Petitioner Companies shall undertake to submit Form FC GPR with online portal of RBI in Compliance with FEMA provisions.

Petitioner Companies shall undertake to obtain approval of RBI, FEMA and FERA and concerned sectoral regulator

The Scheme Entities undertake to submit Form FCGPR with online portal of RBI in compliance with FEMA provisions.

It is further submitted that in compliance of the order dated 03.03.2022, the Petitioner Company has served the copy of the order along with the company petition to the Reserve Bank of India by hand on 16.03.2022. Further, the notice was also sent through email and speed post to the said authority. Further, as per the order dated 03.03.2022, the Hon'ble Tribunal has directed the departments / authorities to submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice, to the Hon'ble Tribunal, failing which, it shall be presumed that the authorities have no representations to make on the proposals. However, till date, no response / reply has been filed by the Reserve Bank of India.

Further, the Scheme Entities will ensure necessary compliance under the FEMA Regulations, RBI Guidelines, and FERA, wherever applicable.

(k)

STATUS OF ROC REPORT

ROC Mumbai report dated 11.05.2022 has inter-alia mentioned that there are no prosecution, no technical scrutiny, no inquiry, no inspection and no complaints pending against the Petitioner Company.

Further mentioned that :-

1) The Transferor Company –

2 is having outstanding dues & other current liability of Rs. 6,85,98,239/- & Rs. 88,08,061/- in the balance sheet as at 31.03.2021 and the same may be considered by the Hon'ble Tribunal

2) The Registered office of the Petitioner Transferor Company -1 and Transferee Company are in Delhi falls within the jurisdiction of Hon'ble NCLT, Delhi

3) The interest of the creditors should be protected.

More than 90% of the creditors of the Transferor Company No. 2/ Petitioner Company had provided their consent to the Scheme by way of an affidavit and the same has already been recorded in the order dated 03.02.2022 passed by this Hon'ble Tribunal.

 

Further, the registered office of the Petitioner Transferor Company No. 1 and the Transferee Company are in the State of Haryana within the jurisdiction of the Hon'ble NCLT, Chandigarh, and not under the jurisdiction of the Hon'ble NCLT, New Delhi and a separate company application and company petition has already been filed and the same is pending before the Hon'ble NCLT, Chandigarh.

Further, also, the Petitioner Company hereby undertake to protect the interest of the creditors of the Transferor Companies and the Transferee Company

18. The observations made by Regional Director have been explained by the Petitioner Company in the above Para 05 through an affidavit in rejoinder submitted on 10.06.2022.

19. In response to the rejoinder affidavit submitted by the Petitioner Company, the Regional Director has filed its supplementary report dated 16.06.2022. In the said supplementary report, the Regional Director has stated that the replies submitted by the Petitioner Company to the Report of Regional Director dated 03.06.2022, especially in para IV(a) to (f) & (h) have been found to be satisfactory. In addition thereto, the Reginal Director has also stated that –

Sr. No.

Observations of the Regional Director

Response / Comments of Petitioner Company

1.

Name change of the Petitioner Company may not be allowed, unless the period mentioned under Rule 8A(1)(n) / (w) of the Incorporation (Company) Rule, 2014 has been expired from dissolution of Transferor Company – 2 in MCA 21 system and the Company be directed to follow the procedure for change of name under the provisions of Companies Act, 2013 and the Rules framed thereunder once the name of Transferor Company No.2 is made available by Central Registrar as per Rule 8A(1)(n) / (w) of the Incorporation (Company) Rule, 2014.

The name change process contemplated is with respect to the Non-Petitioner Company/Transferee Company and not with respect to the Petitioner Company/ Transferor Company No.1 Further, the Transferee Company shall prefer the name being "Takeda Biopharmaceuticals India Private Limited" or any other corporate name bearing the word / trade name "Takeda" as may be available and consequently approved by the Registrar of Companies in accordance with Section 13 and other applicable provisions of the Act. It is further submitted that the above preferred name is distinct and separate from the name of the Transferor Company No. 2 / Petitioner Company, i.e., "Takeda Pharmaceuticals India Private Limited" and is not identical to the name of the Petitioner Company/ Transferor Company. It is further submitted that upon approval of the Scheme by this Tribunal, the Transferee Company shall undertake the change in name in compliance with the provisions of Section 13 of the Act read with the relevant rule(s) under the Company (Incorporation) Rules, 2014, as amended.

The proposed change of name will be subject to approval of the Central Registration Centre ("CRC") which is an initiative of Ministry of Corporate Affairs (MCA) and will be done in accordance with the applicable procedures. There will be no confusion with any authority since there will be a fresh certificate which shall be obtained from the jurisdictional Registrar of Companies stating the change of name. Also, the CIN of the Transferee Company/ Non- Petitioner Company will remain same.

Further, the PAN of the Transferee Company / NonPetitioner Company as mentioned in communication to the Income Tax authorities will also remain the same. Similarly, the GSTIN of the Transferee Company / Non-Petitioner Company will also remain the same. Further, it is clarified that pursuant to the name change as aforesaid, the Transferee Company/Non-Petitioner Company will mention the words "earlier known as…" following the new name for a period of next three (3) years to avoid any confusion. The proposed name change to "Takeda Biopharmaceuticals India Private Limited" or any other corporate name bearing the word / trade name "Takeda" as may be available, will commercially be more beneficial to the group and to the objective of consolidation of business.

It is further submitted that in light of the above considerations there will be no confusion created in the minds of the general public and/or other stakeholders.

Lastly, it is submitted that as per Section 8A(1)(w) of the Companies (Incorporation) Rules, 2014, as amended by the Companies (Incorporation) Fifth Amendment Rules, 2019 such change in name is permitted "in the course of compromise, arrangement or amalgamation".

Accordingly, since the change of name is being undertaken pursuant to an amalgamation in accordance with the Scheme, the same is permissible in accordance with the said Rules. In support of this, there are various precedents wherein this Hon'ble Tribunal has permitted such change of name belonging to the transferor company to be used by the transferee company by way of change of name clause being proposed in the schemes of amalgamation wherein post sanction of the scheme of amalgamation, it is filed with the jurisdictional Registrar of Companies and thereafter the applicable process followed by the transferee company for name change with further approval of CRC being obtained.

Further, this Hon'ble Tribunal in CP(CAA)/11/MBIV/2021 connected with CA(CAA)/1064/MBIV/2020 in the matter of scheme of amalgamation of Bharat Serums and Vaccines Limited (First Transferor Company), BSV Life Private Limited (Second Transferor Company) and Asksipro Diagnostics Private Limited (Transferee Company) has allowed the name change. Copy of the final order dated 02.08.2021 passed by the Hon'ble Tribunal in CP(CAA)/11/MBIV/2021 annexed herewith and marked as ANNEXURE C.

 

Also, Rule 8 of the Companies (Incorporation) Rules, 2014 clarify that "the proposed name has been released from the register of companies upon change of name of a company and three years have not elapsed since the date of change unless a specific direction has been received from the competent authority in the course of compromise, arrangement or amalgamation." Accordingly, the NCLT has the jurisdiction to pass appropriate directions

2.

Transferee Company shall pay the difference / balance amount of the fees and stamp duty on its increasing authorized share capital.

The Petitioner Company has already undertaken in his reply affidavit to pay the balance/ difference amount of the fees and stamp duty on its increased authorized share capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.

3.

Petitioner Companies be directed to comply with the directions of Income Tax Department.

The Petitioner Company has already stated in paragraph 5(i) of its rejoinder affidavit that in compliance of the order of Hon'ble Tribunal dated 03.03.2022, the Petitioner Company has served the copy of the order along with the copy of company petition to the concerned Income Tax Authority within whose jurisdiction the Petitioner Company is assessed to tax by hand on 16.03.2022. Further, the notice was also sent through email and speed post to the said authority.

Further, as per the order dated 03.03.2022, the Hon'ble Tribunal has directed the departments / authorities to submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice, to the Hon'ble Tribunal, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

However, till date, no response / reply has been filed by the Income Tax Department before the Hon'ble Tribunal. It is submitted that otherwise also pursuant to the sanction of Scheme by this Hon'ble Tribunal, the Transferor Company No. 2 / Petitioner Company would amalgamate with the Transferee Company. However, if any demand is raised by Income Tax Department in this regard or under any other applicable laws against the Transferor Company No. 2 / Petitioner Company and if the said demand is applicable then the Transferee Company undertakes to pay the said demand before the Income Tax Department.

20. Thus, the observations made by the Regional Director and clarifications and undertakings given by the Petitioner Company in para IV(a) to (f) & (h) are found to be satisfactory and hereby accepted by this Tribunal.

 

21. Further, in response to the Affidavit in Rejoinder of the Petitioner Company, the Regional Director has filed his Supplementary Report dated 16.06.2022 wherein the Regional Director has further observed in Para No.IV(g) of the Report that —

"this Tribunal may not allow the change of name of the Petitioner Company unless period mentioned under Rule 8A(1)(n)/(w) of the Incorporation (Company) Rule, 2014 has been expired from dissolution of Transferor Company-2 in MCA 21 system and company may also be directed to follow the procedure for change of name under the provisions of the Companies Act, 2013 and Rules thereunder once name of Transferor Company No.2 is made available by Central Registrar Center as per the said Rule 8A(1)(n)/(w) of the Incorporation (Company) Rule, 2014."

Further observed that the present matter may be decided on merits.

22. The Official Liquidator has filed his report dated 29.04.2022 inter alia, stating therein that the affairs of the Petitioner Company/ Transferor Company No.2 have not been conducted in a manner prejudicial to the interest of its members or to the public interest.

23. That for the purpose of change of name from "Baxalta Bioscience India Private Limited" to "Takeda Biopharmaceuticals India Private Limited" or any other corporate name bearing the word/tradename "Takeda", as mentioned in clause 16 of Part IV of scheme, the transferee company is directed to comply with the provisions of Section 13 of the Act and the procedure laid down thereto for the change of the name and approach the concerned authority for the same, provided the said name is available in accordance with the Companies (Incorporation) Rules, 2014.

24. The petitioner further submitted that the merger entities including the Petitioner Company involved in the pharmaceutical products and the scale of operations of marketing in very large. In order to ensure continuous running of operations, it is directed that the Transferee Company shall be entitled to avail, use and operate under all the licenses, registrations and permits etc. (as referred to in more detail in paras 40 to 43 of the Second Motion Petition) (including but not limited to those under or relating to drugs and pharmaceutical laws) existing in the name of the Transferor Company No.2, along with associated labelling, packaging, packing and marking materials till such time each of the said licenses, registrations and permits etc. (as referred to in more detail in paras 40 to 43 of the Second Motion Petition) are issued afresh, transferred or renewed by the respective Governmental Authorities in the new name of the Transferee Company, in the interests of justice and to ensure continuous running of operations of Transferee Company and to avoid any disruption of business and supply of drugs and pharmaceutical products including those relating to life threatening diseases.

25. From the material on record, the Scheme appears to be fair and reasonable

 

and does not appear to be violative of any provisions of law and not contrary to public policy.

26. Since all the requisite statutory compliances have been fulfilled, C.P. (CAA) /39/MB/2022 filed by the Petitioner Company is made absolute in terms of prayer made in the Company Petition.

ORDER

The Petition be and the same is allowed subject to the following:

(i) The Scheme with the Appointed Date fixed as 1st October 2022 placed at Page Nos. 32 to 72 (Exhibit – P-1) of the Company Petition is hereby sanctioned. It shall be binding on the Petitioner and all concerned including their respective Shareholders, Secured Creditors and Unsecured Creditors-Trade Creditors and Employees.

(ii) The Transferor Company No.2 be dissolved without being wound up.

(iii) The Registrar of this Tribunal shall issue certified copy of this Order along with the Scheme forthwith. Petitioner is 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.

(iv) The Petitioner Company shall lodge a certified copy of this Order and the Scheme duly authenticated by the Registrar of this Tribunal within 60 days from the date of receipt of the Order, with the Superintendent of Stamps concerned, for the purpose of adjudication of stamp duty, if any, payable.

(v) The Petitioner Company shall comply with the undertakings given by it.

(vi) Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the Scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

(vii) While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

(viii) All proceedings now pending by or against the Transferor Co., be continued by or against the Transferee Co.

(ix) The Petitioner company shall, within 15 days of receipt of this Order, issue newspaper publications with respect to approval of the Scheme, in the same newspapers in which previous publications were issued.

(x) The Petitioner Company shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.

(xi) All concerned shall act on a certified copy of this Order along with the Scheme duly authenticated by the Registrar of this Tribunal.

(xii) Any person interested in the above matter shall be at liberty to apply to the Tribunal for any direction that may be necessary.