



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.301  
C.P.(CAA)/17(AHM)2023 in  
C.A.(CAA)/59(AHM)2022

**Order under Sections 230-232 of Co. Act, 2013**

**IN THE MATTER OF:**

Apicore Pharmaceuticals Pvt Ltd

.....Applicant

**Order delivered on: 30/06/2025**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sanjeev Kumar Sharma, Hon'ble Member(T)

**ORDER**  
**(Hybrid Mode)**

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

sd/-

**SANJEEV KUMAR SHARMA**  
**MEMBER (TECHNICAL)**

sd/-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT-1, AHMEDABAD**

**CP(CAA)/17(AHM)2023**

**in**

**CA(CAA)/59(AHM)2022**

[Company Application under Sections 230 to 232 read with other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016].

In the matter of **Scheme of Amalgamation (Modified Scheme)**

**Memo of Parties**

**Apicore Pharmaceuticals Pvt.  
Ltd.**

CIN:U24119GJ2006FTC048777

A company incorporated under the Companies Act, 1956 and having its registered office at Block No. 252-253, Village-Dhobikuva, Padra-Jambusar ..... Petitioner Company / Highway, Taluka-Padra, District- Transferee Company Vadodara-390 440

**Order Pronounced on 30.06.2025**

**C O R A M :**

**MR. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)**

**MR. SANJEEV KUMAR SHARMA, HON'BLE MEMBER (TECHNICAL)**

**A P P E A R A N C E :**

For the Applicant	:	Mr. Pranjal Buch, Advocate
For the Regional Director	:	Mr. Shiv Pal Singh, Deputy Director
For the Income Tax Department	:	Ms. Kinjal Vyas, Proxy Advocate for Ms. Maithili D. Mehta, Advocate.



**ORDER**  
**(Per Bench)**

1. This Company Petition i.e. CP(CAA)/17(AHM)/2023 in CA(CAA) 59 (AHM) 2022, has been filed by Petitioner Company/Apicore Pharmaceuticals Pvt. Ltd. under Sections 230-232 of the Companies Act, 2013 and read with Companies (Compromise, Arrangement and Amalgamations) Rules, 2016 seeking approval of the Scheme of Amalgamation of Aktinos Pharma Pvt. Ltd./Transferor Company into Apicore Pharmaceuticals Pvt. Ltd./Transferee Company and their respective shareholders and creditors, with effect from 01.04.2022, being the Appointed Date as mentioned in the Scheme.
2. The Scheme, inter alia, provides for Merger of Aktinos Pharma Pvt. Ltd. (Transferor Company) into Apicore Pharmaceuticals Pvt. Ltd. (Transferee Company).
3. The registered office of the Transferor Company/Aktinos Pharma Pvt. Ltd. is situated at Sri Lakshmi Spaces, 5<sup>th</sup> Floor, Plot No.7, Block No.B, Kavuri Hills, Phase-I, Madhapur Hyderabad-500 033, Telangana. Hence, the Transferor Company filed an application before the National Company Law Tribunal, Hyderabad Bench.
4. The registered office of the Transferee Company/Apicore Pharmaceuticals Pvt. Ltd. is situated at Block No. 252-253, Village-Dhobikuva, Padra-Jambusar Highway, Taluka-Padra, District-Vadodara-390 440. Transferee Company is engaged





in the business of Research and Development and manufacturing of active pharmaceuticals

5. Affidavit dated 28.03.2023, in support of the company petition, was sworn by Mr. Jayaraman Kannappan, the Authorized Signatory of the petitioner company, duly authorized vide Board Resolution **(Annexure-C)** dated 22.09.2022. The aforesaid affidavit is placed on record along with the company petition at page no.21.
6. The petitioner company had filed a Company Application before this Tribunal, being CA(CAA)/59(AHM)2023, seeking directions for convening and holding meetings of its equity shareholders, secured creditors and unsecured creditors. The aforesaid company application, CA(CAA)/59(AHM)2022, was allowed by this Tribunal, vide order dated 21.12.2022. By the said order, this Tribunal directed for convening and holding of separate meetings of equity shareholders, secured creditors and unsecured creditors of the petitioner company. This Tribunal had appointed Shri Devesh Pathak as the Chairperson and in his absence Shri Suresh Sisodia as the Chairperson and Shri Hemang Mehta as the Scrutinizer, for the aforesaid meetings and gave further directions to comply with various stipulations contained in the order dated 21.12.2022 including filing of the Chairman's Report in respect of the aforesaid meetings. Further, this Tribunal had directed the applicant company for issuance of notice to the Central Government, through the Regional Director, Registrar of Companies, Gujarat, and Income Tax Department,





who may have a significant bearing on the operation of the applicant company.

7. In compliance with the order dated 21.12.2022, the Chairman filed a service affidavit dated 18.02.2023, confirming service of notice of meetings upon Equity Shareholders, Secured Creditors, and Unsecured Creditors, along with proof of paper publication. The applicant company filed an affidavit dated 14.02.2023, regarding service of notice upon the aforesaid Statutory/Regulatory Authorities.
8. The Chairman, Mr. Devesh Pathak, filed reports of the aforesaid meetings by way of affidavit dated 20.03.2023, vide inward no. D1042, on 22.03.2023. On perusal of the report of the Chairman, meetings of equity shareholders, secured creditors and unsecured creditors of the petitioner company were convened on 15.03.2023. As per the Chairman's report, the Equity Shareholders, Secured Creditors, and Unsecured Creditors, who attended the meetings, unanimously approved the proposed Scheme.

9. **RATIONALE OF THE SCHEME:**

The petitioner company has provided the following rationale for the Scheme:-

This Scheme envisages amalgamation of Aktinos into Apicore, resulting in consolidation of the business in one entity and strengthening the position of the merged entity, by enabling it to harness and optimize the synergies of the two companies. Aktinos and Apicore believe that the financial, managerial and technical resources, personnel capabilities, skills, expertise and technologies of Aktinos and Apicore, pooled in the merged entity,



will lead to increased competitive strength, cost reduction and efficiencies, productivity gains, and logistic advantages, thereby significantly contributing to future growth. Therefore, the management of Aktinos and Apicore believe that the Scheme would benefit the respective companies and other stakeholders of the respective companies, inter alia, on account of the following reasons:-

- i) Reduction in management overlaps and reduction of legal and regulatory compliances and associated costs due to operation of multiple companies.
- ii) Optimization of the allocated capital and availability of funds which can be deployed more efficiently to pursue the operational growth opportunities.
- iii) The merger shall result into reduction of overheads and other expenses, facilitate administrative convenience and ensure optimum utilization of available services and resources.
- iv) The merger of Aktinos into Apricore will lead to a more efficient utilization of capital, greater business synergies and create a consolidated base for future growth.
- v) The merger will result in administrative and operational rationalization and promote organizational efficiencies with the achievement of greater economies of scale, reduction in overheads and improvement in various other operating parameters.
- vi) Apicore relies on Aktinos for its raw materials and therefore, the merger would also result in operational efficiencies by way of backward integration.
- vii) Aktinos has invested heavily into research and development and has developed and formulated an exclusive know how for its business. Apicore seeks to capitalize the said knowhow through the merger.

10. After complying with all the directions given in the orders dated 21.12.2022, the Second Motion Petition was filed before this Tribunal by the petitioner company on **31.03.2023**, vide Inward





Diary No. E633, for sanction of the proposed Scheme by this Tribunal.

11. This Tribunal vide order dated 17.04.2023 directed the petitioner company to issue notice to (a) the Central Government through the office of the Regional Director, North-Western Region, (b) the Registrar of Companies, Gujarat, Ahmedabad; and (c) to the Income Tax Authority. This Tribunal had also directed the petitioner company for paper publication to be made in English daily "Business Standard" and Gujarati translation thereof in vernacular language in "Sandesh", both having circulation in Baroda.
12. In compliance of order dated 17.04.2023, petitioner company filed affidavit of service dated 26.05.2023, vide Inward Diary No. D1945, on 31.05.2023, in respect of service of notice upon the statutory/regulatory authorities along with proof of service as well as proof of publication of notice of hearing of the petition in English daily "Business Standard" and Gujarati translation thereof in vernacular language in "Sandesh", both having circulation in Baroda on 26.05.2023.
13. Pursuant to the service of notice upon the statutory/regulatory authorities, the following authorities have responded:-

**STATUTORY/REGULATORY AUTHORITIES**  
**OBSERVATION & RESPONSE THEREOF**

14. **The Regional Director, North-Western Region, Gujarat**  
**and the Registrar of Companies, Gujarat.**

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In response to the notice served upon the Regional Director (RD), a report dated 27.03.2023 was filed by the RD, North-Western Region, on 27.04.2023, vide Inward Diary No. R 324 & 325, along with the report of the Registrar of Companies (RoC) dated 28.02.2023. They have made some observations in their reports. The petitioner companies have filed an additional affidavit dated 26.05.2023, vide Inward Diary No.D1944, on 31.05.2023 in response to the representation/reports of the Regional Director, the Registrar of Companies.

**RD's Observation:** The observations of the RD and response of the petitioner companies for these observations is discussed below:-

- 2 (c) That, as per the Scheme, the authorized share capital of the Petitioner Transferor Company amounting to Rs.20,00,00,000/- will be added to the authorized share capital of the Petitioner Transferee Company and the consolidated authorized share capital of the transferee company will be arrived to Rs. 35,00,00,000/-. The Transferee Company will required to pay the difference of amount of fees which is payable on the enhanced authorized capital of Rs.35,00,00,000/- as on the date and the total payable amount of fees which have already been paid by the companies at the time of registration/increase in authorized capital, as the case may be.



**Response of Petitioner Company:** The Transferee Company undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013.

- 2(e) That, as per consideration provided in the scheme, further increase in authorized share capital of the Transferee Company will be required since the authorized share capital of the Transferee Company is not sufficient to issue and allot new shares of the Transferee Company to the shareholders of the Transferor Company. There is requirement to increase in the authorized capital of the Transferee Company up to Rs.36,25,83,450/-.

In this regard, the Hon'ble NCLT may be pleased to direct petitioner Transferee Company to comply with the provisions of Section 61 of the Companies Act, 2013 and also as to the payment stamp duty, registration fees, etc. and file the relevant e-form with respective Registrar of Companies.

**Response of the Petitioner Company:** The Petitioner Transferee Company undertakes to comply with the provisions of Section 61 of the Companies Act, 2013 and pay the stamp duty, registration fee, etc.

- 2(f) That, the Transferor Company/Aktinos Pharma Pvt. Ltd. falls under the jurisdiction of the Hon'ble NCLT, Hyderabad Bench.

The Hon'ble NCLT may therefore be pleased to direct the petitioner Transferee Company to submit the present status of the application/petition filed before





Hon'ble NCLT, Hyderabad, in respect of the Transferor Company.

**Response of the Petitioner Company:** The petitioner company submitted that Transferor Company had filed CA(CAA) No.5/230/HDB/2023 before the Hon'ble NCLT, Hyderabad Bench and the said application was allowed vide order dated 10.03.2023 and directed to convene meetings of the equity shareholders, secured creditors and unsecured creditors. The said meetings were held on 23.04.2023. Copy of the aforesaid order dated 10.03.2023, is annexed to the reply as Annexure-I.

2(g) That, in pursuant to this Directorate's letter dated 10.02.2023, the Transferee Company has provided the details of Auditors' remarks/qualifications during the last three years and their respective justification as given by management in respect of the Transferee Company, which are as under:-

Sr. No.	Auditor's Qualification	Management Response
	<b>Financial Year 2019-20</b>	
1	<b>Emphasis of Matter</b> Attention is invited to note no.43 of the financial statements regarding the uncertainties arising out of the outbreak of COVID-19 pandemic and the assessment made by the management on its business and financials, including valuation of assets and solvency for the year ended March 31, 2020, this assessment and the outcome of the pandemic is as made by the	<b>Management's Reply</b> Note no. 43 of the financial statement states the extent of the impact of coronavirus (COVID-19) outbreak on operations of the Company will depend on future developments, including the duration and spread of the outbreak, related advisories and restrictions, government actions, the impact on financial markets and the overall





	management and is highly dependent on circumstances as they evolve in the subsequent periods. Our opinion is not modified in respect of this matter.	economy, all of which are highly uncertain and cannot be predicted.
	<b>Financial Year 2020-21</b>	
1	We were appointed as auditors of the company on August 16, 2021 and thus did not observe the counting of the physical inventories at the beginning of the year. We were unable to satisfy ourselves by alternative means concerning inventory quantities held at March 31, 2021. Since opening inventories enter into the determination of the results of operations and cash flows, we were unable to determine whether adjustments might have been necessary in respect of the profit for the year reported in the Statement of Profit and Loss and the net cash flows from operating activities reported in the Cash Flow Statement.	Auditors were approached in the month of August 2021 i.e. after closing of the financial year. In addition to this, Auditors were not able to conduct physical verification of inventory for as on 31.03.2021 due to lockdown imposed by Government of Gujarat amid emergence of second wave of COVID-19 pandemic. Hence, they gave this disclaimer. This has no major impact over financials of the company. This is and can be considered as general observation which auditors normally give in their auditor report when their appointment is done after closing of the year.
	<b>Financial Year 2020-21</b>	
	NIL	

The Hon'ble NCLT may, therefore, be pleased to direct the Petitioner Company to clarify the matter and place on record all the relevant facts of the

**Response of the Petitioner Company:** It is submitted that the contents of the aforesaid paragraphs itself are self-explanatory and, therefore, no further comment is required from the petitioner company.

#### **RoC's Observation**

Some observations of the RoC have already been mentioned in the representation of the RD. Following are the other observations of RoC:-

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- i. Transferor Company does not fall under the jurisdiction of RoC, Ahmedabad.
- ii. Transferee Company is not listed with any Stock Exchange.
- iii. The Hon'ble Tribunal may be pleased to direct the petitioner company
  - a) to preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central Government as per the provision of Section 239 of the Companies Act.
  - b) to ensure Statutory compliance of all applicable Laws and also on sanctioning of the present Scheme, the petitioner company shall not be absolved from any of its Statutory liabilities, in any manner.
  - c) Necessary Stamp Duty on transfer of property/assets, if any, is to be paid to respective authorities before implementation of the Scheme.
  - d) to comply with the provisions of Section 232(5) of the Companies Act, 2013 with respect to the file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from the date of passing order.

**Response of the Petitioner Company:** The petitioner company undertakes to comply with all the aforesaid statutory requirements in accordance with the directions of the Hon'ble Tribunal.



## 15. Income Tax Department

- (i) In response to the notice served upon the Income Tax Department, the Income Tax Department, Vadodara, filed its report 23.01.2023 vide inward no. 377 on 16.03.2023, in respect of the Petitioner Company. It is submitted that on perusal of case records of the Assesse Company as well as data made available with ITBA system, the recovery proceeding in the case is pending against the following outstanding demands:-

A.Y.	Order passed u/s.	Date of Order	Outstanding demand in Rs.
2016-17	143(3)	28.11.2018	3,080
2016-17	220(2)	29.08.2022	37,056
2017-18	143(1)(a)	27.12.2018	5,45,480
2018-19	154	28.11.2019	9,66,168

It is submitted that the assessee company M/s. Apicore Pharmaceuticals Pvt. Ltd. is a transferee/Resulting Company, it is, therefore, this office has no objection on the proposed amalgamation of the Company M/s. Aktinos Pharma Private Limited into the assessee company.

- (ii) Ld. Counsel appearing for the Income Tax Department has also filed the aforesaid report on 10.05.2023, vide inward no. R 377 and 378


16. On 26.03.2025, the petitioner company filed additional affidavit dated 25.03.2025, vide inward diary no. D 2074,





along with copy of the order of NCLT, Hyderabad bench, in respect of the Transferor Company, passed in CP(CAA) No.6/230/HBD/2024 as well as the Modified Scheme. In the additional affidavit at para-3,4,5,6,7 and 8, it is submitted as follows:-

- 3 It is stated that the Transferee Company has filed the present Petition before this Hon'ble Tribunal seeking sanction of the Scheme. However, considering the fact that the Petition filed by the Transferor Company was pending before the Hon'ble NCLT, Hyderabad Bench, for the sanction of the Scheme, the proceedings before this Hon'ble Tribunal was adjourned from time to time in order to await the order sanctioning the Scheme by the Hon'ble NCLT, Hyderabad Bench.
- 4 However, during the interregnum, the Regional Director, South East Region raised a query/objection qua the words 'premium' used in the clause of the Scheme relating to the accounting treatment and directed the Transferor Company to remove the word 'premium' from the entire body of the Scheme when it relates to the allotment of shares by the Transferee Company to the Transferor Company. The Transferor Company did try to persuade the Regional Director, South East Region to withdraw their objection, but was of no avail.
- 5 Considering the aforesaid issue being faced by the companies in getting the Scheme sanctioned, the respective board of directors of both the companies, passed a resolution and modified the Scheme and removed the words 'premium' from the entire body of the Scheme so far as it related to the issuance of the shares and modified the Scheme accordingly. A copy of the Board Resolution of both Transferor Company and Transferee Company, both dated 09.11.2024 is annexed hereto and marked as **ANNEXURE-A1 (Colly.)**
- 6 It is stated that the said power to modify the Scheme by the respective board of directors of both the companies are specifically prescribed in Clause 21 of the original Scheme without modification (annexure-E of the present Petition) and also in the modified Scheme. A copy of the modified Scheme is annexed hereto and marked as **ANNEXURE-A2.**
- 7 Pursuant to the aforesaid modification to the Scheme carried out by both the Transferor Company as well by the Transferee Company, the objection/concern of the Regional Director, South East Region have been duly taken care of.
- 8 Considering the aforesaid, the Hon'ble NCLT, Hyderabad Bench, eventually has sanctioned the Modified Scheme vide its order dated 11.02.2025 passed in the petition filed by the Transferor Company. A copy of the said order dated 11.02.2025 is annexed hereto and marked as **ANNEXURE-A3.**
- 9 In view of the aforesaid, it is stated that since the original Scheme empowered the Board of Directors of respective companies to modify the Scheme as is required by any statutory authority and considering the fact that such modification is not prejudicial to any stakeholder of either the Transferor Company or the Transferee Company and considering the fact that the said modified Scheme has already been




sanctioned by the Hon'ble NCLT, Hyderabad Bench in the case of the Transferor Company and also looking to the fact that this Hon'ble Tribunal was just waiting for the sanction order from the Hon'ble NCLT, Hyderabad Bench, it is humbly requested that the modified Scheme as is placed on record by way of the present Additional Affidavit may kindly be sanctioned and the Company Petition (CAA) No. 17 of 2023 filed by the Transferee Company, may kindly be allowed in terms of the prayers as prayed for in the interest of justice and oblige.

17. This Tribunal vide order dated 27.03.2025 directed the petitioner company to serve copy of the Additional Affidavit dated 25.03.2025 consisting of all the documents upon the Regional Director, the Registrar of Companies and to the Income Tax Department for filing their respective reports/comments on the Modified Scheme. In compliance to the order dated 27.03.2025, the petitioner company filed an affidavit of service dated 11.04.2025, vide inward no. D2664, on 23.04.2025, along with proof of service. In this affidavit, the petitioner company submitted that they have uploaded the covering letter along with the aforesaid Additional Affidavit dated 25.03.2025 on the website of the Income Tax Department under the e-filing section, The Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi on 07.04.2025. The acknowledgment received from the Income Tax Department is annexed to the affidavit as **Annexure-A2**.

18. In response to the notice served, as directed by this Tribunal vide order dated 27.03.2025, upon the Regional Director (RD), a report dated 03.05.2025, was filed by the RD, North-Western Region, on 13.05.2025, vide Inward Diary No. R 213, along with a letter dated 25.04.2025, report dated 28.02.2023





of the Registrar of Companies (RoC). The RD, in its report at para-9 and 10, it is submitted as follows:-

“9. That this office has examined/gone through the additional affidavit dated 25.03.2025, as well as the modified Scheme, and to submit observations as under:-

- (i) The board of directors of the transferor and transferee company have delegated power by the shareholders meeting dated 23.04.2023 and 15.03.2023 respectively to acting themselves or through authorized persons, may consent jointly but not individually, on behalf of all persons concerned to any modifications or amendments of this scheme.

Accordingly, the respective board of directors of both the companies, passed board resolution dated 09.11.2024 and modified the scheme as suggested by the Regional Director, South East Region by removing word “Premium” from para-11.1 and 14.2 of the scheme as well as para/clause B.b and 1.1 (xi) of the Scheme wherein registered office address of the transferee company had modified as per mater data of MCA record.

10. In view of the facts submitted here-in-above, this Directorate has no objection with regard to modified scheme and this further report may be taken on record for passing order on the merit of the instant case”.

19. The petitioner company filed an additional affidavit dated 28.05.2023, vide inward no.D3378 on 02.06.2025 along with no objection dated 24.04.2025 of Income Tax Department **(Annexure:A1)** as well as report/representation dated 03.05.2025 of the Regional Director and dated 25.04.2025 of the Registrar of Companies **(Annexure-A2)**.

20. It is submitted that there are no proceedings/investigation pending against the petitioner company under Sections 210-





217, 219, 220, 223, 224, 225, 226 & 227 of the Companies Act, 2013.


21. It is further submitted that there are no winding up petitions or proceedings under the Insolvency and Bankruptcy Code, pending against the petitioner company.

22. **Accounting Treatment**

The petitioner company submitted that the accounting treatment specified in the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. Copy of the certificate dated 05.10.2022 issued by the Statutory Auditors certifying the Accounting Treatment of the Petitioner Company, is annexed to the Company Petition as **Annexure-D**. This Tribunal has reviewed the said certificate and finds the accounting treatment to be in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013, subject to the Statutory Auditors' confirmation for the Modified Scheme.

23. **Valuation Report**

A copy of valuation report/share entitlement ratio report dated 14.09.2022 of CA Snehal Shah, Registered Valuer, Registration No. IBBI/RV/06/2019/11772, is annexed as **Annexure:F** to the company petition. This Tribunal has reviewed the valuation report and finds the share exchange ratio of 9 equity shares of the Transferee Company for every



1 equity share of the Transferor Company to be fair and reasonable, based on the independent valuer's assessment.

24. During the hearing on 01.05.2025, Ld. Proxy Counsel for the Income Tax Department submitted that they have no objection for approval of the Scheme qua the resulting company, on the basis of modified Scheme.


25. During the hearing on 05.06.2025, Ld. Deputy Director for the office of the Regional Director submitted that they have no objection for the approval of the modified scheme, after considering the additional affidavit of the applicant/transferee company filed on 02.06.2025, vide inward no. D 3378.

26. **OBSERVATION OF THIS TRIBUNAL**

A. We have gone through the Company Petition, Modified Scheme, both the representations/reports of the Regional Director, report of the Registrar of Companies and report of Income Tax Department as well as the response of the Petitioner Company in respect of the Representation/Report of the RD, RoC and Income Tax Department. There is no adverse observation in respect of the petitioner company as well as in respect of the **Modified Scheme** by the Regional Director, the Registrar of Companies and the Income Tax Department.


B. After analysing the Scheme in detail, this Tribunal is of the considered view that the Scheme as contemplated between





the Transferor Company and the Transferee Company seems to be *prima facie* beneficial to the Companies and will not be in any way detrimental to the interest of the shareholders and the creditors of the Companies. Considering the record placed before this Tribunal and since all the requisite statutory compliances have been fulfilled by the Petitioner Company this Tribunal sanctions the proposed Scheme as well as the prayer made therein. In short, the proposed Scheme provides for amalgamation by way of Merger by absorption between Aktinos Pharma Pvt. Ltd. (Transferor Company) and Apicore Pharmaceuticals Pvt. Ltd. and their respective Shareholders and Creditors effect from the Appointed Date of 01.04.2022.

- C. The Learned Counsel for the Petitioner Company submitted that no investigation proceedings are pending against the Petitioner Company under the provisions of the Companies Act, 1956 or the Companies Act, 2013, and no proceedings for oppression or mismanagement have been filed before this Tribunal or the erstwhile Company Law Board.
- D. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioner company.
- E. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way



granting approval of the said loan assignments and exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

- F. Further, it becomes relevant to discuss that in Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi has made the following observations with regard to the right of the IT Department in the Scheme of Amalgamation:

*“taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in **re Vodafone Essar Gujarat Limited v. Department of Income Tax (2013) 353 ITR 222 (Guj)** and the same being also affirmed by the Hon'ble Supreme Court and as reported in **(2016) 66 taxmann.com374 (SC)** from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15, 2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutory dues from the Petitioner or transferee or any other person who is liable for payment of such tax dues, the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned.”*

**27. THIS TRIBUNAL DO FURTHER ORDER:**

- ← i) The **Modified Scheme** of Amalgamation is hereby





sanctioned, and it is declared that the same shall be binding on the petitioner company and its shareholders and creditors, and all concerned under the Scheme.

- ii) The Appointed Date for the Modified Scheme shall be **01.04.2022.**
- iii) The approval of the Scheme does not affect the authorities' right to proceed with pending cases, if any, against the Petitioner Companies
- iv) All the properties rights and powers of the Transferor Company and all the other property, rights and powers of the Transferor Company be transferred without any further act or deed to the Transferee Company and accordingly the same shall, pursuant to Section 232 of the Act, vest in the Transferee Company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same, if any.
- v) All licenses, permissions, permits, approvals, certificates, clearances, authorities, leases, tenancy, assignments, rights, claims, liberties, special status, other benefits or privileges and any power of attorney relating to the Transferor Company shall stand transferred to and vested in the Transferee Company, without any further act or deed. The Transferee Company shall be bound by the terms thereof, the obligations and duties thereunder, and the rights and



benefits under the same shall be available to the Transferee Company.

- vi) All the liabilities and duties of the Transferor Company shall be transferred, without further act or deed, to the Transferee Company, and accordingly, the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- vii) All contracts, agreements, insurance policies, bonds and all other instruments of whatsoever nature or description, of the Transferor Company, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually against the Transferee Company.
- viii) All proceedings, if any, now pending by or against the Transferor Company shall be continued by or against the Transferee Company.
- ix) All workers / employees of the Transferor Company shall be deemed to become the workers / employees of the Transferee Company with effect from the Appointed Date, and shall stand absorbed in the Transferee Company in accordance with the Scheme without any interruption of service and on terms and conditions no less favourable than those on which they are engaged by the Transferor Company, as on the Effective Date.





x) All taxes paid or payable by the Transferor Company including existing and future incentives, unveiled credits and exemptions, the benefit of carried forward losses and other statutory benefits, which shall be available to and vest in the Transferee Company. The Tax liability of the Transferor Company shall become a liability of the Transferee Company, and any proceedings against the Transferor Company shall continue against the Transferee Company. It is stated that any credit/exemption/relief, etc., as discussed, will be subject to the provisions of the Income Tax Act, 1961

xi) The petitioner company is directed to comply with the observations of the Regional Director and the Registrar of Companies in their representation. The petitioner company shall:

- a) Preserve their books of accounts, papers, and records and not dispose of them without prior permission of the Central Government, as per Section 239 of the Companies Act, 2013.
- b) ensure Statutory compliance of all applicable laws and also on sanctioning of the Scheme.
- c) pay necessary stamp duty on transfer of property / assets, if any, is to be paid to the respective Authorities before implementation of the Scheme.
- d) File a certified copy of this order with the Registrar of Companies within 30 days of receipt, as per



Section 232(5) of the Companies Act, 2013.

- e) Obtain shareholder approval for the increase in authorized share capital to Rs.36,25,83,450/- as required under Section 61 of the Companies Act, 2013, within 60 days from the date of this order, and file the relevant e-form with the Registrar of Companies."
- f) Pay the differential fees for the consolidated authorized share capital of Rs.35,00,00,000/- as per Section 232(3)(i) within 60 days from the date of this order."

xii) **Consideration**

Upon the Scheme being effective and in consideration of the Merger, including the transfer and vesting of the Transferor Company in the Transferee Company, the Transferee Company shall without any further application or deed, issue and allot equity shares of the Transferee Company, credited as fully paid up, to the extent indicated below, to the shareholders or to such of their respective heirs, executors, administrators or the legal representatives or other successors in title as may be recognized by the Board of Directors of the Transferor Company in the following manner (the "Share Exchange Ratio") based upon the Share Valuation Report received from Independent Valuer namely M/s. Snehal Shah & Associates dated 14.09.2022:

*9 (Nine) fully paid up equity shares of INR 10 (Indian Rupees Ten) each of Apicore, the Transferee Company, for every 1 (One) equity share of INR 10 (Indian Rupees Ten) each of Aktinos, the Transferor Company, held by such shareholders whose name is recorded in the*





*register of members of the Transferor Company, as on the Record Date.*

- xiii) The petitioner company is directed to file a certified copy of this order along with the Modified Scheme with the Registrar of Companies, Gujarat, electronically via e-form INC-28 and in physical form, within 30 days from the date of issuance of the certified copy by the Registry, as per Section 232(5) of the Companies Act, 2013. Upon such filing, the entire undertaking of the Transferor Company shall stand transferred to the Transferee Company, and the Registrar of Companies shall place all related documents in the Transferee Company's file.
- xiv) All concerned Authorities shall act on the copy of this order along with the **Modified Scheme**. The Registrar of this Tribunal shall issue the certified copy of this order within 7 days of its pronouncement.
- xv) The petitioner company is directed to lodge a copy of this Order and the approved the **Modified Scheme**, duly Certified by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for adjudication of stamp duty within 30 days from the date of this Order, and pay requisite stamp duty payable, if any, within 60 days from the date of adjudication.
- xvi) The legal fees and expenses of the office of the Regional Director are quantified at Rs.20,000/-, to be paid



collectively by the petitioner company. The said fees shall be paid by the Petitioner Company as determined in accordance with standard practice for such proceedings under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

- xvii) The Statutory Auditors of the petitioner company are hereby directed to ensure that the Accounting Treatment as a result of this order is carried out in accordance with the provisions of Section 133" with "The Statutory Auditors are directed to confirm that the accounting treatment for the Modified Scheme, as certified on 05.10.2022 and updated if necessary, complies with Section 133 of the Companies Act, 2013, and to disclose their observations in the next Annual Audit Report.
- xviii) The sanction of the Modified Scheme shall not preclude the Income Tax Department from examining and pursuing any tax liabilities arising from the amalgamation, including initiating appropriate action under the Income Tax Act, 1961, if the scheme is found to result in tax avoidance or non-compliance.
- xix) Any person aggrieved shall be at liberty to apply to this Tribunal for any directions that may be necessary.
- xx) All creditors of the Transferor Company, including secured and unsecured creditors, shall have their rights, claims, and interests preserved in accordance





with the terms of the Modified Scheme and applicable provisions of the Companies Act, 2013, and the Transferee Company shall ensure the timely discharge of all creditor obligations.

xxi) The Effective Date of the Modified Scheme shall be the date on which the certified copy of this order is filed with the Registrar of Companies, Gujarat, or such other date as specified in the Modified Scheme, whichever is later.

xxii) The Transferee Company shall publish the Modified Scheme and a copy of this order on its official website within 15 days from the date of issuance of the certified copy, to ensure transparency for shareholders.

28. Accordingly, Company Petition i.e. **CP(CAA)/17(AHM)2023** in **CA(CAA)/59(AHM)2022**, stands allowed and disposed of in terms of the aforementioned terms.

29. The Registry is directed to send a copy of this order to the Regional Director, the Registrar of Companies and the Income Tax Department, within seven days from the date of this order, through e-mail and place proof on the file.

Sd/-

**SANJEEV KUMAR SHARMA**  
**MEMBER (TECHNICAL)**

Sd/-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

GS