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13.2.2023

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**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT-II**

CA (CAA) 02/AHM/2023

[Sections 230-232 and 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 Arrangement in the Nature of Amalgamation of

**M/s Curatio Health Care (I) Private Limited,
(Transferor Company/ Applicant Company No. 1)**

with

**M/s Torrent Pharmaceuticals Limited,
(Transferee Company/ Applicant Company No. 2)**

And

Their Respective Shareholders and Creditors

Order Pronounced on:08/02/2023

CORAM:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA
HON'BLE MEMBER (TECHNICAL)**



MEMO OF PARTIES

M/s Curatio Health Care (I) Private Limited,
 (CIN: U24231GJ2005PTC137705)
 Registered office at;
 Torrent House, Nr. Dinesh Hall,
 Off Ashram Road, Ahmedabad-380009
 Gujarat.

... Transferor Company/Applicant Company No. 1

AND

M/s Torrent Pharmaceuticals Limited,
 (CIN: L24230GJ1972PLC002126)
 Registered office at;
 Torrent House, Nr. Dinesh Hall,
 Off Ashram Road, Ahmedabad-380009
 Gujarat.

... Transferee Company/Applicant Company No. 2

For the Applicants: Sr. Advocate, Mr. Saurabh Soparkar a.w. Advocate,
 Ms. Swati Soparkar.

ORDER

1. The present joint Application is filed under Section 230-232 with other applicable provisions of the Companies Act, 2013 (hereinafter referred to as “the Act”) and read with the Companies (Compromise, Arrangement, and Amalgamations) Rules, 2016 for sanctioning Scheme of Amalgamation (hereinafter referred to as the “Scheme”) of M/s Curatio Health Care (I) Pvt. Ltd. (herein after referred to as Transferor Company) with M/s Torrent Pharmaceuticals Ltd. (hereinafter referred to as



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Transferee Company) with effect from the Appointed Date i.e., 14.10.2022 as per features set out in the Scheme annexed in accordance with Sections 230 to 232 of the Companies Act, 2013.

2. It is submitted that the registered office of the Applicant Companies are situated within the territorial jurisdiction of Registrar of Companies, Ahmedabad, Gujarat, which is falling under the jurisdiction of this Tribunal.
3. It is submitted that the Transferor Company having CIN: U24231GJ2005PTC137705 is incorporated on 27.06.2005, under the provisions of the Companies Act, 1956, with the name M/s Curatio Health Care (I) Pvt. Ltd. with its Registered Office in the State of Tamil Nadu. Thereafter the Registered Office of the Company shifted to the State of Gujarat. Both the Certificates of incorporation and certificate of change of registered address from ROCs are on record. The Registered office of the Transferor Company is situated at Torrent House, Nr. Dinesh Hall, Off Ashram Road, Ahmedabad-380009 Gujarat. The Authorised Share Capital of the Transferor Company is Rs. 10,00,00,000 which is divided into 1,00,00,000 /- Equity shares of Rs. 10/- each and Issued, Subscribed and Paid-up Share Capital is Rs. 6,96,75,100/- which



is divided into 69,67,510/- equity shares of Rs. 10/- each. The Transferor Company is a wholly owned subsidiary of Transferee Company.

4. It is submitted that the Transferee Company is a listed public limited company having CIN: L24230GJ1972PLC002126 incorporated on 15.07.1972, under the provisions of the Companies Act, 1956, with Registrar of Companies, Gujarat with the name M/s Torrent Pharmaceuticals Limited. The Registered office of the Transferee Company is situated at Torrent House, Off Ashram Road, Ahmedabad-380009 Gujarat. The Authorised Share Capital and Issued, Subscribed and Paid-up Share Capital of the Transferee Company as on 31.10.2022 is as follows:

Particulars	Rs.
Authorised Share Capital	
40,00,00,000 equity shares of INR 5 each	200,00,00,000
25,00,000 Preference Shares of Rs. 100 each	25,00,00,000
Total	225,00,00,000/-
Issued, Subscribed and Paid-up Share Capital	
33,84,45,440 equity shares of Rs 5 each fully paid up	169,22,27,200

5. It is submitted that Transferee Company is a listed public limited company and its Equity shares are listed at Bombay Stock Exchange Limited (BSE) and National Stock Exchange of India Limited (NSE).



The Non- Convertible Debentures are listed on National Stock Exchange Limited. The Transferee Company had submitted the Scheme to the aforesaid stock exchanges for disclosure purposes and copy of such intimation is annexed with the Application. Since the Transferor Company is a wholly owned subsidiary of the Transferee Company, prior approval is not necessary.

6. Rationale of this Scheme of Arrangement has been set out in the application as under:
 - i. Synergies of operations, inter alia, optimization of supply and distribution network and costs;
 - ii. Integration of business thereby providing impetus to the overall growth;
 - iii. Concentrated management focus and improved organisational capability;
 - iv. Integrated, rationalised and streamlined management structure of the merged business;
 - v. Strengthening of financial position with increased capital base;
 - vi. Facilitate inter transfer of resources and optimum utilisation of assets;
 - vii. Pooling of Human talent in terms of Manpower, Management, Administration and marketing to result in saving of costs;
 - viii. Avoiding duplication of administrative functions, reduction in multiplicity of legal and regulatory compliances;
 - ix. Synchronizing of efforts to achieve uniform corporate policy;



x. Diversified and consolidated portfolio of branded products that will strengthen existing base in dermatology segment and will help to strategize the business for long term sustainable growth;

7. Since the entire Equity Share Capital of Transferor Company is held by Transferee Company, no shares are required to be issued by the Transferee Company towards consideration. Further, the Master Circular No. SEBI/ HO/CFD/DIL1/CIR/P/2021 /000000665 dated 23rd Day of November, 2021 issued by SEBI and further read with recent circular being SEBI/HO/DDHS/DDHS-RACPODI1/P/CIR/2022/156 dated 17th November 2022 r.w. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2022/170 dated 09th December, 2022 issued by SEBI are not applicable to the Scheme, since the Scheme solely provides for merger of a wholly owned subsidiary with the parent company and in view of the aforesaid, the Transferee Company is not required to undertake any valuation. However, Transferee Company voluntarily has obtained report for valuation of shares from Registered Valuer. The Valuation Report of Independent Registered valuer, dated 21st December, 2022 is annexed with the application. However, since there is no Exchange Ratio, Fairness Opinion is not necessary and not obtained.



- c) There are 3 unsecured creditors as on 29th December, 2022 and certificate from Chartered Accountant certifying list of Unsecured Creditors is annexed. All the Unsecured Creditors have given their consents by way of affidavits for the proposed Scheme, which are annexed with the application. Hence, the company is seeking dispensation for holding the meeting of Unsecured Creditors.

14. With respect to the **Transferee Company**, it is stated that:

- a) There are more than 67,800 Equity shareholders as on 30.09.2022 as it is a listed public limited company. However, since Transferor Company is a Wholly Owned Subsidiary of Transferee Company, no shares are required to be issued to the shareholders of Transferor Company towards consideration for the proposed amalgamation. The Scheme does not propose any restructuring of capital and no compromise is proposed with the Shareholders of the Transferee Company. In light of this, the rights and interests of the Equity Shareholders of Transferee Company are not in any way affected. Hence, the company is seeking dispensation for holding the meeting of equity shareholders.

- b) There are 9 Secured Creditors and total value of Secured Debt including for non-convertible Debenture Holders is Rs. 4,832.89 Crores as on 30.11.2022. Statement indicating the brief summary of Secured Creditors



with the details of approved limits, utilised limits of both fund based and non-fund based facilities, charges created etc. as on 30.11.2022, as certified by Chartered Accountant is annexed with the application.

c) There are 1783 Unsecured Creditors and the cumulative value of the unsecured debt is Rs. 658.92 Crores as on 30.11.2022. The summary statement confirming the same as certified by the Chartered Accountant is annexed with the application.

d) The Company has issued Non-Convertible Debentures worth Rs. 1000 Crores in the year 2017-18, Rs. 395 crores in the year 2020-2021 and Rs. 500 Crores in the year 2022-23. The said Debentures are listed on National Stock Exchange. Their holding pattern as on 30.11.2022, as certified by Chartered Accountant is annexed with the application.

15. It is submitted that both these companies belong to the same group of management. The Transferor Company is primarily engaged in the business of developing, distributing, marketing, promoting and sale of medicinal, food supplements, dermatology and cosmetology products and comprises of a portfolio of 50+ brands with some of the brands having leadership position in dermatology segment. The Transferor Company has two wholly owned subsidiaries i.e. (i) Curatio International Lanka (Private) Limited at Sri Lanka and (ii) Curatio Inc. at Philippines. These subsidiaries are also engaged in the business of distributing, marketing,



promoting and sale of medicinal, food supplements, dermatology and cosmetology products at Sri Lanka and Philippines respectively. The Transferee Company is one of the leading pharma companies in India engaged in the business of research & development, manufacturing, marketing, promotion and sale of inter alia, pharmaceutical products. Transferee Company is ranked amongst the Top 10 in therapeutic segments of Cardiovascular (CV), Central Nervous System (CNS), Gastro intestinal (GI), Vitamins, Anti-Diabetic and Pain. It has presence in 40+ countries and is ranked No. 1 amongst the Indian pharma Companies in Brazil, Germany and Philippines. Transferee Company has its manufacturing operations in the State of Gujarat, Sikkim, Himachal Pradesh, Madhya Pradesh and Andhra Pradesh.

16. It is further submitted that the Transferee Company has very high positive net worth. The Transferor Company has no Secured Creditors and a very few Unsecured Creditors, which is also huge profit making company. The proposed scheme is not likely to have any adverse effect on the Net Worth of the Transferee Company. The Net Worth of the Transferee Company in Pre-Scheme and Post-Scheme scenario is Rs. 6476.75 Crores and it shall remain the same in Post Scheme scenario. The rights and interests of the Secured Creditors, Unsecured Creditors and Debenture Holders of the Transferee Company shall not be affected in any way. The



Transferee Company shall continue its business in the same manner and no compromise is proposed for any of the aforesaid creditors. In view of the same the Transferee Company is seeking dispensation of the meetings of the Equity Shareholders, Secured and Unsecured Creditors as well as Debenture Holders.

17. Further, during the course of hearing Mr. Saurabh Soparkar, Learned Sr. Counsel appearing on behalf of Applicant Companies relied upon Judgment passed by Hon'ble NCLAT in *Ambuja Cements Limited* on 06.04.2021 supporting his arguments that in the present case, even in absence of the consents from shareholders and creditors, the meetings are not required to be convened since interest of the Equity Shareholders, Secured/Unsecured Creditors and Debenture holders are in no way affected by the present Scheme. For the sake of convenience the relevant para of the said judgment is reproduced hereunder:

.....The learned counsel for Appellant in Appeal (AT) No. 19 of 2021 submitted that it is contrary to the principles of judicial discipline.

For better appreciation we reproduce the relevant paragraph of the order passed by the Learned NCLT in 'Vodafone Idea Ltd.' "13. It is submitted that the Applicant Transferee Company is a listed Public Limited Company and both the Transferor Companies being the wholly owned subsidiary of the Applicant Transferee Company; no shares are required to be issued or allotted as consideration for the proposed amalgamation. It is submitted that in the instant case there is no arrangement by the Applicant Transferee Company with its shareholders.



Further, the rights of the shareholders of the Applicant Transferee Company are not affected as no new shares are being issued to the shareholders of the Transferor Companies and the proposed Scheme does not involve any re organisation of the share Capital. In the circumstances, as there is no arrangement with the Equity Shareholders of the Applicant Transferee Company, the rights of the said shareholders are not affected by the present Scheme and therefore, no meeting of the Equity Shareholders of the Applicant Transferee Company is required to be convened. In view of the given facts, this Bench is of the view that there is no requirement to convene and hold the meeting of the Equity Shareholders of the Applicant Transferee Company and accordingly, the meeting of Equity Shareholders of the Applicant Transferee Company is hereby dispensed.....

17. Considering the averments as mentioned above and having considered the entire facts on record that both the Transferor Companies are Company Appeal (AT) No. 19 of 2021 wholly owned subsidiaries of the Applicant Transferee Company and as no compromise is offered by the Applicant Transferee Company under the Scheme of Amalgamation to the creditors and considering the fact that the net worth of the Companies including the Applicant Transferee Company is positive, it is deemed appropriate to order that meetings of the Secured Creditors (including secured debenture holders) and Unsecured Creditors (including unsecured debenture holders) of the Applicant Transferee Company are not required to be held and are hereby dispensed with."

Learned Sr. Counsel further submitted that with regard to this issue, he is also supported by the views taken by various Hon'ble High Courts including Mahaamba Investments Ltd. vs Idi Limited (2001) SCC online Bom 1174, Eurokids India Pvt. Ltd. (CSD No. 911 7 2014) (Bom).



18. Taking into consideration the submissions and the documents filed therewith, we issue following directions:

i) In relation to the Transferor Company:

a. With respect to Equity Shareholders:

Convening of the meeting of equity shareholders of the company is hereby dispensed with, in view of 100% consent affidavits received from Equity Shareholders.

b. With respect to Secured Creditors:

There are no secured creditors in the Company. Hence, convening of the meeting of secured creditors is obviated.

c. With respect to Unsecured Creditors:

Convening of the meeting of Unsecured Creditors of the company is hereby dispensed with, in view of 100% consent affidavits received from Unsecured Creditors.

ii) In relation to the Transferee Company:

a. With respect to Equity Shareholders:

Convening of the meeting of equity shareholders of the company is dispensed with.

b. With respect to Secured Creditors:

Convening of the meeting of Secured Creditors of the company is dispensed with.

c. With respect to Unsecured Creditors:

Convening of the meeting of Unsecured Creditors of the company is dispensed with.



Above dispensations are in view of the decision of Hon'ble NCLAT and various Hon'ble High Courts referred to by the Applicant Company and cited in para 17 (supra).

19. The Applicants shall serve the notice of the application on the following Authorities namely, (i) to the Central Government through the Regional Director, North Western Region (ii) the Registrar of Companies, Gujarat, (iii) to the Income Tax Department along with full details of assessing officer and PAN numbers of all the applicant companies with the copy also to the Chief Commissioner of Income Tax Office as well the advocate appearing for the Income Tax Department (iv) the Official Liquidator (4) Reserve Bank of India; (5) BSE Limited (6) National Stock Exchange Limited as well as (7) Securities and Exchange Board of India (for only the Applicant Transferee Company) and to such other Sectoral Regulatory Authorities who may govern the working of the respective companies involved in the Scheme.

20. The Application is allowed and disposed of in terms of the above directions.

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-sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)
Abhishek Steno/Rahul LRA

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

CA (CAA) 02/AHM/2023

presented by *Vinod*
 Signature *ce*
 Date 13.2.2023



