IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
BENCH-2

CA (CAA) 30/AHM/2022

IN THE MATTER OF THE COMPANIES ACT, 2013

[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 Merger

OF

M/s Aleor Dermaceuticals Limited
(Applicant Company No. 1/Transferor Company)

WITH

M/s Alembic Pharmaceuticals Limited
(Applicant Company No. 2/Transferee Company)

And
Their Respective Shareholders and Creditors

Order Pronounced on: 28/04/2022

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

MEMO OF PARTIES

M/s Aleor Dermaceuticals Limited,
(CIN: U24302GJ2016PLC092131)
Registered office at;

5th Floor, Administrative Building Alembic Limited,
Alembic Road, Vadodara, Gujarat-390003.

... Applicant Company No. 1/
Transferor Company

WITH

M/s Alembic Pharmaceuticals Limited,
(CIN: L24230GJ2010PLC061123)
Registered office at;
Alembic Road, Vadodara, Gujarat-390003.

... Applicant Company No. 2 /
Transferee Company

For the Applicant : 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**") read with the Companies (Compromise, Arrangement, and Amalgamations) Rules, 2016. The proposed Scheme of Amalgamation is between Aleor Dermaceuticals Limited (hereinafter referred to as the "Transferor Company") with Alembic Pharmaceuticals Limited (hereinafter referred to as the "Transferee Company") and their respective Shareholders and Creditors.
2. It is also represented that the registered office of both the applicant companies is 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: U24302GJ2016PLC092131 was incorporated on 23.05.2016 with the name Aleor Dermaceuticals Limited under the provisions of the Companies Act, 2013 with the Registrar of Companies, Gujarat. The registered office of the Transferor Company is situated at 5th Floor, Administrative building Alembic Road, Vadodara-390003, Gujarat. The Authorised Share Capital of the Transferor Company is Rs. 50,00,000/- which is divided into 5,00,000 Equity shares of Rs. 10/- each and Issued, Subscribed and Paid-up Share Capital is Rs. 50,00,000/- which is divided into 5,00,000/- equity shares of Rs. 10/- each.

4. It is submitted that the Transferee Company having CIN: L24230GJ2010PLC061123 was originally incorporated on 16.06.2010 with the name of Alembic Pharma Limited, under the provisions of the companies Act, 1956, with the ROC, Gujarat. Vide order dated 24.01.2011, passed by Hon'ble High Gujarat High Court, the Pharmaceutical Undertaking of Alembic Limited was demerged and transferred to Alembic Pharma Limited. The name of the Company was changed to Alembic Pharmaceuticals Limited on 12.03.2011. The Company became a public listed company from 20.09.2011 . The shares of the Transferee

Company are listed on BSE Limited as well as National Stock Exchange of India Limited. The registered office of the Transferee Company is situated at Alembic Road, Vadodara-390003. The Authorised Share Capital of the Transferee Company is Rs. 40,00,00,000/- which is divided into 20,00,00,000/- Equity shares of Rs. 2/- each and the Issued, Subscribed and Paid-up Share Capital is Rs. 39,31,26,248/- which is divided into 19,65,63,124/- equity shares of Rs. 2/- each.

5. Applicant Companies are empowered by their respective Memoranda and Articles of Association to enter into Scheme of Merger. Copies of Memoranda and Articles of Association of both the Applicant Companies are placed on record. The audited Financial Statements of both the Applicant Companies as on 31st March, 2021 are placed on record. The unaudited Financial Statements of both the Applicant Companies as on 31.12.2021 are placed on record.

6. It is submitted that entire Equity Share Capital of Transferor Company is held by Transferee Company, hence, no shares are required to be issued by the Transferee Company towards consideration. The Master Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021/0000000665 dated 23.11.2021 issued by SEBI is 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, Transferee Company is not required to undertake any valuation.

7. The Board of Directors of both Applicant Companies have approved the Scheme of Amalgamation at their respective Board Meetings held on 29/03/2022. Copies of respective Board Resolutions passed on 29/03/2022 of both the applicant companies are placed on record.

8. Both the Applicant Companies provided the certificate from Statutory Auditors confirming the proposed Accounting Treatment being in conformity with the Applicable Accounting Standard under section 133 of the Companies Act, 2013.

9. It is stated in the Application that there are no proceedings or investigations pending against any of the Applicant Companies under sections 210-217, 219, 220, 223 to 227 of the Companies Act, 2013 and/or under sections 235 to 251 of the Companies Act, 1956. There are no winding up petitions or any other proceedings under the Insolvency and Bankruptcy Code, pending against any of the Applicant Companies.

10. With respect to the **Transferor Company,** it is stated that:

a) There are 7 equity shareholders and certificate from Chartered Accountant certifying list of shareholders is annexed. All equity shareholders have given their consents by way of affidavits for the proposed composite scheme of amalgamation. The copies of

the consent affidavits of all equity shareholders are annexed with the application. Hence, the company is seeking dispensation for holding the meeting of equity shareholders.

b) There are only 2 Secured Creditors and certificate from Chartered Accountant certifying the same is annexed. The Applicant Company is seeking directions for holding the meeting of Secured Creditors.

c) There are 256 Unsecured Creditors and certificate from Chartered Accountant certifying list of the Unsecured Creditor is annexed. The Applicant Company is seeking directions for holding the meeting of Unsecured Creditors.

d) The Applicant Transferor Company has issued secured as well as unsecured non-convertible redeemable debentures cumulatively amounting to Rs. 914,00,00,000/-as on 25.03.2022. All these debentures are currently held by Transferee Company. The Transferee Company has, in its capacity as debenture holder of the said secured and unsecured debentures have given its approval to the proposed Scheme in form of the written consent letters on affidavit. Certificate from the C.A. confirming the list of the Debenture Holders and further confirming the fact of receipt of the written approval from such Debenture Holders is placed on record. Hence, the company is seeking dispensation for holding the meeting of Debenture Holder.

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

e) The Transferee Company is a listed public limited company and has large size of operations. The said company has more than one lakh Equity Shareholders as on 28.02.2022. However, 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 of Transferor with Transferee Company. The rights and interests of the Equity Shareholders of Transferee Company are not in any way affected. A certificate by a Chartered Accountant indicating the shareholding pattern of Transferee in both Pre-scheme and indicative Post-scheme scenario is placed on record. The Transferee Company is seeking dispensation for holding the meeting of Equity Shareholders.

f) There are only 5 Secured Creditors and certificate from Chartered Accountant certifying the same is annexed. The Applicant Company is seeking directions for holding the meeting of Secured Creditors.

g) There are 2792 Unsecured Creditors and certificate from Chartered Accountant certifying list of the Unsecured Creditor is annexed. The Applicant Company is seeking directions for holding the meeting of Unsecured Creditors.

12. The Applicant Transferee Company has one unsecured debenture holder amounting to Rs. 200,00,00,000/- as on 25.03.2022. Certificate from the Chartered Accountant confirming the list of the Debenture Holders is placed on records. It is further stated that as per the terms of the said debentures, all of them shall be repaid on 25th April, 2022. In view of the proposed repayment, the same shall stand cancelled in the very near future. The proposed Scheme shall not have any effect on the rights and interests of the said Debenture Holders as their dues shall not survive at the time of implementing the Scheme. The Transferee Company undertakes to place on the record all the relevant details of the said payment immediately upon effecting the same. In view of the same the Transferee Company is seeking dispensation for holding the meeting of the Debenture Holders.

13. The appointed date as specified in the Scheme is 01st April, 2021 subject to the directions of this Tribunal.

14. Taking into consideration the submissions and the documents filed therewith, we issue the following directions with respect to holding and convening or dispensing the meeting of the Equity Shareholders, Unsecured and/or Secured Creditors as well as issue of notices including by way of paper publication as follows:

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 received by way of affidavits from Shareholders.

b. With respect to Secured Creditors:

The meeting of the unsecured creditors of Transferor Company shall be convened and held on 14th June, 2022 at 10.30 a.m., for the purpose of considering and, if thought fit, approving the proposed Scheme of Amalgamation, with or without modifications through video conferencing or other audio visual means, and not in physical presence of creditors, as requested.

c. With respect to Unsecured Creditors:

The meeting of the unsecured creditors of Transferor Company shall be convened and held on 14th June, 2022 at 11.30 a.m., for the purpose of considering and, if thought fit, approving the proposed Scheme of Amalgamation, with or without modifications through video conferencing or other audio visual means, and not in physical presence of creditors, as requested.

ii) In relation to the Transferee Company:

a. With respect to Equity Shareholders:

The meeting of the Equity Shareholders of Transferee Company shall be convened and held on 14th June, 2022

at 03.00 a.m., for the purpose of considering and, if thought fit, approving the proposed Scheme of Amalgamation, with or without modifications through video conferencing or other audio visual means, and not in physical presence of shareholders, as requested.

b. With respect to Secured Creditors:

The meeting of the secured creditors of Transferee Company shall be convened and held on 14th June, 2022 at 12.30 a.m., for the purpose of considering and, if thought fit, approving the proposed Scheme of Amalgamation, with or without modifications through video conferencing or other audio visual means, and not in physical presence of creditors, as requested.

c. With respect to Unsecured Creditors:

The meeting of the unsecured creditors of Transferee Company shall be convened and held on 14th June, 2022 at 01.30 a.m., for the purpose of considering and, if thought fit, approving the proposed Scheme of Amalgamation, with or without modifications through video conferencing or other audio visual means, and not in physical presence of creditors, as requested.

d. With respect to Debenture Holders:

The meeting of the debenture holders of Transferee Company shall be convened and held on 14th June, 2022 at 04.30 a.m., for the purpose of considering and, if thought fit, approving the proposed Scheme of Amalgamation, with or without modifications through video conferencing or other audio visual means, and not in physical presence of debenture holders, as requested.

15. At least one month before the date of the meetings, a notice in Form No. CAA 2 convening the said meetings indicating the day, the date, the time as aforesaid; alongwith instructions with regard to remote e-voting), together with a copy of the Scheme of Arrangement, copy of the Explanatory Statement required to be sent under Section 102 of the Act, read with Sections 230 and 232 of the Act and Rule 6 of the Companies (CAA) Rules, 2016 as well as other requisite documents shall be sent to each of the Secured/Unsecured Creditors of Transferor Company and Equity Shareholders, Secured/Unsecured Creditors and Debenture Holders of the Transferee Company; at their respective available addresses either through e mail or courier or speed post or registered post. In case of the Equity Shareholders of the Transferee Company, the notices shall be sent in reference to the list of the members appearing on record of the Applicant Company as on 31st January 2022. The notices shall be sent to

the Secured/Unsecured Creditors of Transferor Company and Secured/Unsecured Creditors and Debenture Holders of the Transferee Company in reference to the list of the creditors appearing on record of the Applicant Companies as on 31st January 2022 and the voting percentage of such creditors as per list is to be decided after considering the amount of debt as on the date of voting, which is to be ensured by the chairperson.

16. At least one month before the date of meetings, an advertisement about convening the aforesaid meetings of Secured/Unsecured Creditors of Transferor Company, and a separate advertisement about convening the meeting of Equity Shareholders, Secured/Unsecured Creditors and Debenture Holders of the Transferee Company; indicating the day, the date, the time and the details of modalities for the meeting through video conferencing as aforesaid, shall be published once in English Daily 'Indian Express' Vadodara Edition and Gujarati translation thereof in Gujarati daily 'Sandesh' Vadodara Edition. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act, read with Sections 230 and 232 of the Act can be obtained free of charge at the Registered Office of the Applicant Companies or at the office of the Advocate, i.e. Mrs. Swati Saurabh Soparkar, 301, Shivalik-10, Opp. SBI Zonal Office, S. M. Road, Ambavadi, Ahmedabad 380

015 in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.

17. Shri Janak Bathiya, an Independent Practising Advocate and failing him, Smt. Prachiti Shah, an Independent Practising Advocate is hereby appointed as Chairperson of the said meetings to be held on 14th June, 2022 and in respect of any adjournment or adjournments thereof.
18. Shri S. Samdani, Practicing Company Secretary shall act as the scrutinizer of the aforesaid meeting and in respect of any adjournment thereof.
19. The chairperson appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meetings referred to above.
20. The chairperson to file an affidavit in not less than 7(seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meeting have been duly complied with as per Rule 12 of the Companies (CAA) Rules, 2016.
21. It is further ordered that the Chairperson of the company shall report to this Tribunal the result of the meeting in Form No.CAA.4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in from No. CAA.4 within seven days after conclusion of the meeting.

22. The quorum for the aforesaid meeting of the Secured Creditors and Unsecured Creditors of the Transferor as well as Transferee Company be as prescribed under Section 103 of the Companies Act, 2013 and would include Creditors present through video conferencing and/or other audio- visual means. In case the required quorum as stated above is not present at the commencement of the meeting, the meeting shall be adjourned by 30 (thirty) minutes and thereafter the persons present shall be deemed to constitute the quorum.

23. The voting by proxy shall not be permitted as the meetings would be held through video conferencing and/or other audio-visual means as per Para X of General Circular No. 14/2020 dated 08.04.2020 of Ministry of Corporate Affairs.

24. The number and value of the vote of each Equity Shareholder, or the value of debt of the Secured/Unsecured Creditors of the Applicant Companies, as the case may be, shall be in accordance with the register or records of the Applicant Company for Equity Shareholders and as per the entries in the books of accounts of the companies for the Unsecured Creditors; and where the entries in the records are disputed, the Chairperson of the meetings shall determine the value for the purposes of the meetings.

25. In compliance of sub-section (5) of section 230 and Rule 8 of the Companies (Compromise, Arrangements and Amalgamations)

Rules, 2016, the Applicant Companies shall send a notice in Form No. CAA. 3 along with explanatory statement and disclosures mentioned under Rule 6, to (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, Gujarat, Dadra and Nagar Haveli (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, and (iv) Reserve Bank of India; (v) BSE Limited (vi) National Stock Exchange of India Limited as well as (vii) Securities and Exchange Board of India; for only the Applicant Transferee Company and to (viii) the Office of the Official Liquidator stating that representations, if any, to be made by them be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed scheme of arrangement. The said notices shall be sent by registered post or by speed post or by courier or by hand delivery at the office of the aforesaid statutory authorities as required by sub-rule(2) of Rule 8 of the Companies (CAA) Rules, 2016. The Aforesaid statutory authorities who desire to make any representation under Sub section (5) of Section 230 shall sent the same to this Tribunal with a copy of the same to the Applicant

Companies within a period of 30 days from the date of such service.

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

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Abhishek/Steno