



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
*(Through Physical Hearing/ VC Mode (Hybrid))*

**C.P. (CAA) No.13/BB/2024**  
U/s. 230, 231 & 232 r/w Section 66 & other  
Applicable provisions of the Companies Act, 2013  
R/w Companies (Compromises, Arrangements and  
Amalgamations) Rules, 2016

**IN THE MATTER OF:**

**1. GOLDEN DRUGS PRIVATE LIMITED**

10/1, Laxmi Narayan Complex,  
5<sup>th</sup> Floor, Palace Road,  
Bangalore-560052.

...Petitioner No.1/ Transferor Company

**2. BAL PHARMA LIMITED**

#21 & 22, Bommasandra,  
Industrial Area,  
Bangalore- 560099

...Petitioner No.2 / Transferee Company

**Order delivered on: 26.03.2025**

**CORAM:** Hon'ble Shri K. Biswal, Member (Judicial)

Hon'ble Shri Ravichandran Ramasamy, Member (Technical)

**PRESENT:**

For the Petitioners : Shri Ashwin Kumar H. S,

For ROC/RD : Shri. Vinayaka S Pandit

**ORDER**

1. This is a Second Motion Petition filed on 02.01.2024 by **Golden Drugs Private Limited** (for brevity, the 'Petitioner No.1 /Transferor Company'), **Bal Pharma Limited** (for brevity, the 'Petitioner No.2/ Transferor Company'), under Sections 230 to 232 r/w. Section 66 and other applicable



provisions of the Companies Act, 2013 (for short to be referred hereinafter as the 'Act') r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, 'Rules') by *inter alia* seeking for the sanction of Scheme of Arrangement (for brevity, 'Scheme') of Transferor Company, and Transferee Company w.e.f. the Appointed Date or such other date as determined in terms of the Scheme, so as to be binding on all the Shareholders and Creditors of the Transferor and Transferee Companies. The Composite Scheme of Merger is annexed as **Annexure 11** to the Petition.

2. The Petitioner Companies filed First Motion Application bearing C.A. (CAA)No.09/BB/2023 ("First Motion Application") and CA No. 100/2023 vide orders dated 06.11.2023 read with 24.08.2023 by this Tribunal the meeting of the Equity Shareholders of Transferor Company was dispensed with and meetings of the Equity Shareholder, Secured Creditors and Unsecured Creditors of the Transferee Company were convened.
3. The following directions were issued by this Tribunal, vide order dated 15.04.2024:

*"3. The Petition be listed for hearing on 11.06.2024. At least ten days before the date fixed for final hearing, the Petitioner Company shall publish the notice of final hearing of the Company Petition in two local newspapers viz., 'Financial Express' English Daily and translation thereof in 'Vijayavani' Kannada Daily, both having circulation in Bangalore as per Rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.*

*4. Notice be also served upon the Objector(s) or their representative as contemplated under sub-section (4) of Section 230 of the Companies Act, 2013 who may have made representation and who have desired to be heard in their representation along with a copy of the Petition and the Annexures filed therewith at least 15 days before the date fixed for hearing. It is to be specified in the notices that the objections, if any, to the Scheme may be filed within thirty days from the date of the receipt of the notice, failing which, it will be considered that there is no objection to the approval of the Scheme on the part of the Objector(s).*

*5. In addition to the above public notice, each of the Petitioner Company shall serve the notice of the Petition on the following Authorities namely, (a) Regional Director (South East Region), Hyderabad; (b) Registrar of Companies, Karnataka, Bengaluru; (c) The Reserve Bank of India; (d) The Official Liquidator, Bengaluru; (e) Bombay Stock Exchange; (f) National Stock Exchange; (g) Central Drugs Standard Control Organisation; (h) National Pharmaceutical Pricing Authority; (i) Principal Chief Commissioner of Income Tax, Karnataka & Goa, being the Nodal Officer; (j) the Jurisdictional Deputy/Assistant Commissioner/Assessing Authority; along with the copy of this Petition by speed post immediately and to*



*such other Sectoral Regulator(s) who may govern the working of the respective Companies involved in the Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, with a direction that they may submit their representation, if any, within 30 (thirty) days from the date of receipt of such notice, failing which it will be presumed that the said Authority has no representation to make to the Scheme.*

*6. The Petitioner Companies shall host notices of final hearing along with the copy of the scheme on their respective websites, if any. The Petitioner Companies shall at least 7 days before the date of hearing of the Petition file an affidavit of service regarding paper publication as well as service of notices on the Authorities specified above including the sectoral regulator as well as the objectors, if any. The Petitioner Companies shall file compliance report with this Tribunal at least 10 (ten) days before the date fixed for final hearing and report to this Tribunal that the directions regarding the service of notices upon regulatory authorities and publication of advertisement of the notice of hearing in the newspapers have been duly complied with.”*

4. Pursuant to the aforesaid directions, authorized signatories of the Petitioner Companies filed the copies of proof of service of notice vide Diary No. 3088, dated 30.05.2024 along with copies of newspaper publication in “*The Financial Express*” (English), and “*Vijayavani*” (Kannada) dated 27.05.2024.
5. The main objects, dates of Incorporation, authorized, issued and paid-up share capital, rationale of the scheme and interest of employees have been discussed in detail in First Motion Application order dated 06.11.2023 read with 24.08.2023.
6. The Board Resolution of the Petitioner Companies approving the Scheme is marked as **Annexure 10** to the Petition.
7. It is further submitted that the Certificate of Statutory Auditors of the Petitioner Companies, i.e., K.N & Associates, Chartered Accountants vide Certificate dated 02.01.2024, have *inter alia*, certified that the Accounting Treatment contained in Clause 17 & 18 of the Scheme is in compliance with the applicable accounting standards specified under the Companies Act, 2013 read with the Rules framed there under with reference to the Generally Accepted Accounting Principles in India. The aforesaid certificate is attached as **Annexure 26** to the Petition.
8. It is submitted that the Authorised Signatories of the Petitioner Companies have filed Affidavits dated 19.03.2024, stating that the Petitioner



Companies are not regulated by any Sectoral Regulators to whom the Petition and Scheme needs to be intimated. Moreover, there are no investigation proceedings pending against the Petitioner Companies or its Directors under Companies Act, 2013/1956 or under any other statutes. It is further stated that the Scheme does not provide for any reduction of share capital and Corporate Debt Restructuring is not applicable to the Scheme. The aforesaid Affidavits are attached as **Annexures GG series, II series and JJ series** to the Petition.


9. The audited Financial Statement as on 31.03.2023 and unaudited Provisional Financial Statement of as on 31.01.2024 of the Petitioner Companies is attached as **Annexures C series, F series, I series, L series, O series, R series and U series** to the Petition.
10. "Appointed Date" as defined under the Scheme is 1<sup>st</sup> April 2021.
11. In pursuant to the notice, the Regional Director (RD) and the Registrar of Companies (ROC) have filed their Common report vide Dairy No. 5136 dated 03.09.2024. This report has raised the following observations in their report vide Para-II:
  - (1) As per Para 2.1.2 of Part-I of the proposed scheme the appointed date has been stated as 01.04.2021. Further to inform that as per Company Master Data both the companies have filed Annual Returns and Balance Sheets for the year ended 31.03.2023. Since the appointed date is ante-date beyond a year, if approved we may advise the Company to change the appointed date from 01.04.2021 to 01.04.2023 or any other date as deem fit and proper by the Hon'ble Tribunal.
  - (2) As per the last Annual Return as on 31.03.2023 filed by the Transferor Company, the Transferee Company M/s. Bal Pharma Limited holds 100% of Equity shares in the Transferor Company. Hence, the Transferor Company is a Wholly Owned subsidiary of the Transferee Company. But the said Transferor Company has not complied with the provisions of Section 89/90 of the Companies Act, 2013. The Hon'ble Tribunal may kindly obtain clarification/compliance in this matter by ordering to file affidavit in this matter.



- (3) The Transferee Company is a Listed Company. The Equity shares of the Transferee Company are listed on BSE Limited and National Stock Exchange of India Limited. With reference to this Directorate's letter dated 14.05.2024 issued to SEBI, BSE and RBI, till date no report/comments in the matter have been received from the said authorities. Hon'ble Tribunal may be pleased to obtain consent/ NOC from SEBI, BSE, RBI and other Regulatory Authorities viz Central Drugs Standard Organization (CDSCO) before the scheme is allowed with respect to the Petitioner Transferee Company since those are not obtained by the Transferee Company.
- (4) The Capital Structure of the Transferee Company as provided in Clause 4.2 of the Scheme does not match with the Capital Structure in the Master Data of the Company in the Ministry of Corporate Affairs. Hon'ble Tribunal may be pleased to direct the Petitioner Company to clarify as to whether any share allotments/ transfers have been done after the Financial Year ending on 01/04/2021. Further, it is to be explained as to how their interests have been protected/ safeguarded in this Scheme.
- (5) As per MCA records, both the Transferor and Transferee Companies have open Charges Hence, the Companies have to obtain and furnish No Objection certificate/s from the concerned Charge holder/ s before the Scheme is allowed. In a reply the Petitioner Transferor Company has clarified that they has one secured creditor only i.e. STCI Finance Limited from whom they have obtained NOC. It is found from the copy of NOC submitted by the Petitioner Company that the said NOC is conditional i.e. subject to obtaining NOC from RIIICO etc. which are not complied by the Petitioner Companies. Hence, the Petitioner Companies are not complied with the provisions of Section 232 (1)(b) of the Act. Hon'ble Tribunal may kindly issue direction to the Petitioner Companies for its compliances before approval of the Scheme. Copy of the NOC submitted by the Petitioner Companies in this regard is enclosed herewith marked as Annexure-I.
- (6) As per MCA Records, the Transferor Company has changed its name from Golden Drug Private Limited to Golden Drugs Private Limited with effect from 18/09/2012.



- (7) As per the latest Audited Financial Statements for the year ending 31/03/2023, the Transferor Company is a loss-incurring entity; whereas, the Transferee Company is a profit-making entity. There may be a negative outflow of tax liability of the Transferee Company once the Scheme is approved.
- (8) As per Note no. 25 and 26 of the latest Audited Financial Statements for the year ending 31/03/2023, the Transferor and Transferee Companies have undisputed statutory dues to the tune of Rs. 8.03 lakhs and Rs. 62.11 lakhs respectively. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to furnish an undertaking to the Hon'ble NCLT to the effect that it will settle the statutory dues immediately, if not settled so far.
- (9) As per the Independent Auditor's Report for the Financial Year ending 31/03/2023, the Transferee Company has total outstanding disputed dues towards Service Tax, Income Tax and Goods & Service Tax to the tune of Rs. 74.55 lakhs, Rs. 3.06 crores and Rs. 10.69 crores respectively. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to furnish an undertaking to the Hon'ble NCLT to the effect that it will settle the dues as and when the claim is crystallized.
- (10) As per Note no. 23 of the Audited Financial Statement for the year ending 31/03/2023, the Transferor Company has outstanding dues to Micro, Small and Medium Enterprises to the tune of Rs. 2.71 lakhs. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to show as to how it has complied with Micro, Small and Medium Enterprises Development Act, 2006 and may be directed to furnish an undertaking to the Hon'ble NCLT to the effect that it will settle the dues as per the said Act immediately, if not settled so far.
- (11) As per the Audited Financial Statements for the year ending 31/03/2023, both the Transferor and Transferee Companies have Foreign Exchange Transactions. The Companies may be asked to submit the relevant approvals and compliances made under FEMA/ RBI Regulations before the Scheme is allowed.
- (12) As per para 20 of the reply of the Transferee Company, M/s. Bal Pharma Limited the company has stated that there is one FPI Category



1 Investor holding 20.661 equity shares amounting to 0.13% of total paid up share capital and 124 Non-Resident Indian (NRI's) holding 19,63,040 equity shares amounting to 12.42% of total paid up share capital of the company. Hon'ble Tribunal may be pleased to direct the Petitioner Company to furnish the compliance of FEMA/RBI.

- (13) As per Clause 16 of Part II of the Scheme, as the Transferor Company is a wholly Owned Subsidiary of the Transferee Company, the Transferee Company shall not allot shares to the shareholders of the Transferor Company. Further, the entire Equity Share Capital held by the Transferee Company in the Transferor Company shall stand cancelled and extinguished.
- (14) Clause 19(a) of Part III of the Scheme provides for Clubbing of Authorised Share Capital wherein it is stated that the Authorised Share Capital of the Transferee Company shall automatically stand increased without any payment of stamp duty and fees. This term in the Scheme is not in line with the provisions of Section 232(3)(i) of the Companies Act, 2013. Hon'ble Tribunal may be please to direct the Petitioner Transferee Company to comply with the provisions of the Section and pay the difference of fee, after setting off the fee already paid by the Transferor Company on its Capital.
- (15) As per Clause 10 of Part II of the Scheme, all the employees of the Transferor Company shall be absorbed into the Transferee Company. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to explain before the Hon'ble NCLT as to what measures are being taken to safeguard the interests of the employees of the Transferor Company and steps taken for implementation of this Clause.
- (16) The Accounting Treatment as mentioned in the Scheme needs to be as per the prescribed Accounting Treatment in the Companies Act, 2013 and the applicable Accounting Standards IND-AS-103 issued from time to time.
- (17) The Petitioner Companies are required to comply with the provisions of Section 239 of the Companies Act, 2013 with respect to preservation of books and papers of Amalgamated Company. The Hon'ble Tribunal

may be pleased to direct the Petitioner Companies to furnish an undertaking in this regard.

(18) As per Section 240 of the Companies Act, 2013, the liability in respect of offences committed under the Companies Act by the Officers in default of the Transferor Company prior to merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

(19) With reference to this Directorate's letter dated 14.05.2024 issued to the Principal Commissioner of Income Tax, Bengaluru, till date no report/comments in the matter have been received from Income Tax Department. Hon'ble Tribunal may be pleased to obtain consent/NOC from the Income Tax Department, before the scheme is allowed with respect to both the Petitioner Companies.

(20) Report of Official Liquidator, Karnataka dated 30.05.2024 is filed before the Hon'ble NCLT(BB) and copy of the same has been furnished by the Transferee Company to this Directorate vide e-mail dated 06.06.2024 (copy enclosed) with respect to CP(CAA)13/BB/2024 Official Liquidator in his report has pointed out certain observations. Registrar of Companies is advised to inform Hon'ble Tribunal to direct the Petitioner Companies to comply with the observations pointed out by the Official Liquidator, before the Scheme is allowed.

12. Subsequently, reply affidavit to the common report of ROC & RD has been filed by the Petitioner Companies vide diary No.5676 dated 03.10.2024 *inter alia* stating as under: -

- i. **Reply to Para II (1):** The appointed dated proposed by the Board of Directors and shareholders of the transferor and transferee companies was 1<sup>st</sup> April 2021 and the same was approved by the creditors of both the Companies. Honourable NCLT may kindly approve the scheme with 1<sup>st</sup> April 2021 as the appointed date.
- ii. **Reply to Para II (2):** The Company has complied with the provisions of Section 89/90 of Companies Act.2013 by declaring the beneficial and registered ownership in the annual return file by the transferee Company for the financial year 2023. A copy of the same is attached herewith for your ready reference as **Annexure – 1**.



- iii. **Reply to Para II (3):** As the transferor company is a wholly owned subsidiary of the transferee Company, no specific NOC from the regulators such as SEBI, RBI etc may not be required. However both transferor and transferee Companies has duly informed the regulators about the scheme of merger as per the previous orders from Hon'ble NCLT.
- iv. **Reply to Para II (4):** The Capital structure of the Company has undergone change due to preferential issue of warrants and equity shares issued upon conversion of employee stock options. We are enclosing the evolution of paid up capital of the company from the financial year 2021 to till date as **Annexure - 2**. All the shares allotted under preferential issue and conversion ESOP's rank *pari passu* with the existing equity shares of the Company including dividend.
- v. **Reply to Para II (5):** The Honourable bench of NCLT may be please noted that the scheme has been approved by the Secured creditors of Transferee Company on its Tribunal convened meeting held on 21.12.2023 with requisite majority. For Transferor Company, STCI Finance Limited has become a Secured creditor post 21.12.2023 and due to this reason we have obtained NOC from the said creditor for the merger. The condition's mentioned in the NOC states that NOC shall be obtained from RIICO within 90 days from the NCLT final order and we will undertake to comply with the same.
- vi. **Reply to Para II (7):** The Company will comply with the all applicable laws and regulations related to tax compliance, post amalgamation in letter and spirit.
- vii. **Reply to Para II (8):** All the statutory dues which were outstanding as on 31.03.2023 for the Transferee Company has been paid as on 31.03.2024. For Transferor Company Rs.10,762/- is outstanding for payment. The management undertakes to settle this undisputed statutory dues at the earliest.
- viii. **Reply to Para II (9):** The assessments for outstanding dues towards Service Tax and Goods & Service Tax are in progress and the Company has not received the assessment order in respect of the same. In certain cases, the Company has preferred an appeal which has been remanded



back to the original authority for reassessment. However, we hereby undertake to settle the dues as and when the claim is crystallized.

- ix. **Reply to Para II (10):** We hereby undertake to settle the dues to MSME's if any, immediately if not already settled.
- x. **Reply to Para II (11):** Petitioner Companies are into manufacturing and sale of pharmaceuticals in both domestic and overseas markets. The Companies also procures its raw materials from overseas markets like China and the entities are involved in regular foreign exchange transactions. Inflow and outflow of foreign exchange is reported to RBI through authorized dealers. The Company is in compliance with the applicable provisions of FEMA / RBI regulations in dealing with foreign exchange transactions.
- xi. **Reply to Para II (12):** The transferee Company is a public limited and listed entity and its shares are freely tradable in the stock market. As the investors has purchased the shares of the Company from open market, provisions pertaining to FEMA/RBI may not be directly applicable to the Company.
- xii. **Reply to Para II (14):** We will comply with the provisions of the Section 232 of Companies 2013 and pay the difference of fee, if any after setting off the fee already paid by the Transferor Company on its capital.
- xiii. **Reply to Para II (15):**
  - a. Upon the Scheme coming into effect from the appointed date, the Employees, if any, shall, under the provisions of Sections 230 to 232 of the Act and other provisions of applicable law, if any, without any further act, instrument, deed, cost or charge and without any notice or other intimation to any third party for their transfer, become the employees of the Transferee Company on terms and conditions not less favourable than those on which they are engaged by the Transferor Company and without any interruption of or break in service as a result of the merger of the Transferor Company with the Transferee Company. For the purpose of payment of any compensation, gratuity and other term in all benefits, the past services of such Employees with the Transferor Company shall also



be taken into account, and paid (as and when payable) by the Transferee Company.

- b. It is clarified that save as expressly provided for in this Scheme, the Employees who become the employees of the Transferee Company by virtue of this Scheme, shall not be entitled to the employment policies and shall not be entitled to avail of any schemes and benefits that may be applicable and available to any of the other employees of the Transferee Company (including the benefits of or under any employee stock option schemes applicable to or covering all or any of the other employees of the Transferee Company), unless otherwise determined by the Transferee Company.
- c. In so far as the provident fund, gratuity fund and superannuation fund, trusts, retirement fund or benefits and any other funds or benefits created by the Transferor Company for the Employees or to which the Transferor Company is contributing for the benefit of the Employees and other such funds, trusts, the benefits of which the Employees enjoy (collectively referred to as the “Funds”), all the contributions made to such Funds for the benefit of the Employees and the accretions thereto and the investments made by the Funds in relation to the Employees shall be transferred to the Transferee Company and shall be held for the benefit of the concerned Employees. In the event the Transferee Company has its own funds in respect of any of the Funds referred to above, such contributions, accretions and investments shall, subject to the necessary approvals and permissions and at the discretion of the Transferee Company, be transferred to the relevant funds of the Transferee Company. In the event that the Transferee Company does not have its own funds in respect of any of the above or if deemed appropriate by the Transferee Company, the Transferee Company may, subject to necessary approvals and permissions, maintain the existing Funds separately and contribute there to until such time that the Transferee Company creates its own funds, at which time the Funds and the investments, accretions and contributions pertaining to the



Employees shall be transferred to the funds created by the Transferee Company.

- d. In relation to those Employees who are not covered under the provident fund trust of the Transferor Company or who do not enjoy the benefit of any other provident fund trust, and for whom the Transferor Company is making contributions to the government provident fund, the Transferee Company shall stand substituted for the Transferor Company, for all purposes whatsoever, including relating to the obligation to make contributions to the said fund in accordance with the provisions of such fund, bye laws, etc. in respect of such Employees, such that all the rights, duties, powers and obligations of the Transferor Company in relation to such provident fund trust shall become those of the Transferee Company.
- e. Upon the coming into effect of this Scheme from the appointed date, the Directors of the Transferor Company will not be entitled to any directorships in the Transferee Company by virtue of the provisions of this Scheme. It is clarified that this Scheme will not affect any directorship of a person who is already a director in the Transferee Company as on the Effective Date.
- xiv. **Reply to Para II (16):** The Company has complied with all the prescribed Accounting treatment as per relevant provisions of the Companies Act, 2013 and applicable Accounting Standards IND-AS-103 issued from time to time. Auditor's certificate for the same is enclosed as **Annexure – 3**.
- xv. **Reply to Para II (17):** The books and papers of Transferor Company shall not be disposed of without the prior permission of the Central Government as per the applicable provisions of Section 239 of Companies Act, 2013.
- xvi. **Reply to Para II (18):** The Honourable tribunal may please be noted that there are no offences committed under the Companies Act by the Officers in default of the Transferor Company as on this date of filing this Affidavit. Further it is to be noted that there are no Complaints, Prosecution, Technical Scrutiny/ Inquiry, Inspection and Investigation pending under the Office of Registrar of Companies, Karnataka as per



Common report submitted by his office on behalf of the Central Government and Registrar of Companies, Karnataka dated 03.09.2024.

- xvii. **Reply to Para II (19):** The Honourable tribunal may please note that, the petitioner companies has filed an affidavit on 10.07.2024 with NCLT in response to report filed by the Principal Commissioner of Income Tax, Bengaluru.

A copy of the affidavit filed is enclosed for your ready reference as **Annexure - 4.**

- xviii. **Reply to Para II (20):** Petitioner Companies has filed Reply with Honourable NCLT Bengaluru Bench for the observations pointed out in Official Liquidator Report on 10.06.2024. Petitioner Companies has complied with all the observations made in the OL report.

13. The Income Tax Department (IT) has filed its report for Transferee Company vide diary No.6511 dated 26.12.2023 wherein it has been observed as under:

Sl. No.	Components of the Proposal	Observation of the AO in the case of M/s Bal Pharma Ltd	
3	Details of any proceedings pending against applicant company under the Income Tax Act	Penalty u/s 270A is pending for AY 2017-18	
4	Details of tax demand pending for recovery (Year wise amount outstanding)	Asst. Year	Demand
		2008-09	4,88,734/-
		2008-09	6,01,201/-
		2009-10	78,767/-
		2017-18	85,10,120/-
		2017-18	20,000/-
		2018-19	1,47,25,100/-
		2019-20	60,55,560/-
5	Details of pendency of investigation/ enquiry proceedings, if any	2022-23	13,31,842/-
		No	



6	Whether proposed scheme will impact allow ability of carry forward loses or unabsorbed depreciation or any benefits under the IT Act. If yes quantify the amount of tax effect compliance of section 72A.			Nil		
7	Whether the proposed scheme will have any impact of exemption of capital gain tax/ dividend distribution tax.			NA		
8	Whether in view of the assessing office prima facie GAAR provision appears to be attracted in the scheme of arrangement			-		
9	Comments of valuation report attached to the scheme.			-		
10	In case of reverse merger where loss making company continues to exist and profit making company dissolves to reduce its tax. What is the specific reasons for continuation of loss making company? Need to examine applicability of provision of GAAR			N.A.		
11	Details of ITRs filed by the Company					
	AY	Date of Filing	Return filed u/s	Income Returned/ Loss	Total Tax Paid	TDS
	2023-24	31.10.2023	139(1)	6,55,61,740	2,00,15,045	25,88,715
	2022-23	07.11.2022	139(1)	9,46,21,890	31,19,055	31,19,055



	2021-22	15.03.2022	139(1)	3,30,20,540	1,58,70,574	5,27,111
	2020-21	09.02.2021	139(1)	(-)10,84,78,017	10,96,549	10,96,549
	2019-20	31.10.2019	139(1)	3,16,08,674	96,04,122	19,43,532
12	Whether scheme is opposite to public policy (need to examine whether promoters are only getting benefit. And also examines- if possible quantum of tax evaded which is proposed to be avoided through the scheme of arrangement.			-		

14. The reply affidavit to the Income Tax (IT) Report has been filed by the Petitioner Companies vide diary No. 4453 dated 29.07.2024, inter alia stating the following:

	<b>Observation of Deputy Commissioner of Income Tax</b>	<b>Response of Petitioner Companies</b>
3.	Penalty u/s 270A is pending for AY 2017-18	Said penalty of Rs. 20000/- had been paid under vide Challan No.00924 Dtd. 25.01.2020 enclosed as Annexure I, and also state that said demand is not reflecting in e-filing portal of Income tax. We will submit request letter to adjust the amount paid against said demand.
4.	Details of tax demand pending for recovery ) year wise amount outstanding)	



Asst Year	Demand	Response on Demands;
2008-09	4,88,734/-	Said demand is not reflecting in our e-filing of portal of income tax, we will recheck with the Income Tax Department and act accordingly for closure of demand.
2008-09	6,01,201/-	We need more clarity on demand raised, we will recheck with the Income Tax Department about said demand and act accordingly for closure of demand.
2009-10	78,767/-	Said demand is not reflecting in our e-filing of portal of income tax, we will recheck with the Income Tax Department and act accordingly for closure of demand.
2017-18	85,10,120/-	Filed Appeal to CIT(A) with Acknowledgement # 295171061230120 of 23.01.2020
2017-18	20,000/-	Said penalty of Rs. 20000/- had been paid under vide Challan No.00924 Dtd. 25.01.2020 enclosed as Annexure I, and also state that said demand is not reflecting in e-filing portal of Income tax. We will submit request letter to adjust the



			amount paid against said demand.
	2018-19	1,47,25,100/ -	Filed Appeal to CIT(A).with Acknowledgement # 358083711240521 of 24.05.2021
	2019-20	60,55,560/-	Filed Appeal to CIT(A).with Acknowledgement # 488337381240820 of 24.08.2020.
	2022-23	13,31,842/-	The said demand of Rs. 13,31,842/- has been paid under vide Challan No. 02828 Dtd. 28.02.2024 enclosed as Annexure II and also state that said demand is not reflecting in e-filing portal of Income tax. We will submit request letter to adjust the amount paid against said demand.

15. The Official Liquidator (OL) has filed its report for Transferor Company vide diary No. 3159 dated 03.06.2024 wherein it has been observed as under:



1. The appointed date proposed is 31.12.2021 being old and outdated, the scheme may be allowed from 01.04.2023 or any other alternative date deem fit. It may be noted that TR Company filed Balance sheet as at 31.03.2023 with jurisdictional Registrar of Companies.
2. The TR Company Board of Directors has approved the scheme on 08.03.2022 the meeting of equity shareholders and secured creditors of the TR Company has been dispensed by the NCLT, Bangalore vide order dated 15.04.2024. TR Company convened meeting of unsecured creditors on 21.12.2023. it was informed that in the said meeting 100% of unsecured creditors voted in favour of the scheme. However, the TR Company has to ensure the interest of all creditors including statutory creditors till date.
3. As per the records provided against TR company one pending charge over the hypothecation of the assets for a sum of Rs. 20,00,00,000/- in favour of STCI Finance Limited. Approval of Secured Creditor is required to be taken.
4. The TR Company has related party transactions. Needs to comply the provisions of section 188 of Companies Act, 2013.
5. The TR Company is a loss making company whereas TE Company is a profit making company. If set off loss of TR Company with TR Company is availed then, there would be a less outflow of income Tax of TE Company.
6. Being both TR and TE Companies are in drug manufacturing approval if any of competition commission of India may be sought.
7. No employees/ workmen of Transferor Company to be retrenched / terminated in the terms of amalgamation of Transferor Company with Transferee Company. The Hon'ble Tribunal may kindly see that TR or TE will not retrench swap the staff or employee of Transferor Company in the guise of surplus staff on account of merger. Need to give a separate undertaking by the Transferee Company in this regard.
8. TE Company being a listed company necessary compliance of SEBI (LODR) and Stock Exchange may be sought.
9. An undertaking may be obtained from the applicant companies that they will pay applicable stamp duty and other charges to the state Govt. within a reasonable time with an outer-line of 6 months.



16. The reply affidavit to the Official Liquidator (OL) Report has been filed by the Petitioner Companies vide diary No. 3330 dated 10.06.2024, inter alia stating the following:

<b>S.no</b>	<b>Observation of Official Liquidator</b>	<b>Response of Petitioner Companies</b>
3.	The appointed date proposed is 31.12.2021 being old and outdated, the scheme may be allowed from 01.04.2023 or any other alternative date deem fit. It may be noted that TR company filed Balance sheet as at 31.03.2023 with jurisdictional Registrar of Companies.	The appointed date proposed by the Board of Directors and shareholders of transferor and transferee Companies was 1 <sup>st</sup> April 2021 and the same was approved by the creditors of both the Companies. Hon'ble NCLT may kindly approve the scheme with 1 <sup>st</sup> April 2021 as appointed date.
4.	The TR Company Board of Directors has approved the scheme on 08.03.2022 the meeting of equity shareholders and secured creditors of the TR Company has been dispensed by the NCLT, Bangalore vide order dated 15.04.2024. TR company convened meeting of unsecured creditors on 21.12.2023. it was informed that in the said meeting 100% of unsecured creditors voted in favour of the scheme. However, the TR company has to ensure the interest of all	We the Transferor Company (Golden Drugs Pvt Ltd) would like to ensure that the interest of all the creditors including the statutory creditors, if any, will be safeguarded.



	creditors including statutory creditors till date.	
6.	As per the records provided against TR company one pending charge over the hypothecation of the assets for a sum of Rs. 20,00,00,000/- in favour of STCI Finance Limited. Approval of Secured Creditor is required to be taken.	A copy of the Approval letter issued by the Secured Creditor i.e. STCI Finance Limited was already filed with the office of the official liquidator. For the ready reference of the honourable NCLT, a copy of the approval letter from STCI finance is enclosed with this affidavit.
9.	The TR Company has related party transactions. Needs to comply the provisions of section 188 of Companies Act, 2013.	The related party transactions that the Transferor Company have is only with its 100 % holding Company i.e. Bal Pharma Ltd (Transferee Company) and all such related party transactions are at arm's length. Hence TR company is in compliance with the provisions of Section 188 of Companies Act, 2013.
10.	The TR Company is a loss making company whereas TE Company is a profit making company. If set off loss of TR company with TR company is availed then, there would be a less outflow of income Tax of TE Company.	Both transferor and Transferee Companies will comply with the applicable provisions of Income Tax Act and such other statutory regulations which govern the computation of income tax.
11.	Being both TR and TE Companies are in drug	Approval from Competition Commission of India may not be



	<p>manufacturing approval if any of competition commission of India may be sought.</p>	<p>applicable as TR Company is a wholly owned subsidiary of the TE Company and businesses of these two Companies compliment with each other.</p>
12.	<p>No employees/ workmen of transferor company to be retrenched/ terminated in the terms of amalgamation of Transferor company with transferee company. The Hon'ble Tribunal may kindly see that TR or TE will not retrench swap the staff or employee of Transferor company in the guise of surplus staff on account of merger. Need to give a separate undertaking by the Transferee company in this regard</p>	<p>As per Para 10 of the Scheme of Arrangement it is explicitly stated that <i>“Upon the coming into effect of this Scheme from the appointed date, the Employees, if any, shall, under the provisions of Sections 230 to 232 of the Act and other provisions of applicable law, if any, without any further act, instrument, deed, cost or charge and without any notice or other intimation to any third party for their transfer, become the employees of the Transferee Company on terms and conditions not less favourable than those on which they are engaged by the Transferor Company and without any interruption of or break in service as a result of the merger of the Transferor Company with the Transferee Company. For the purpose of payment of any compensation, gratuity and other term in all benefits, the past services of such Employees with the Transferor Company shall</i></p>



		<p><i>also be taken into account, and paid (as and when payable) by the Transferee Company”.</i></p> <p>Accordingly, the Transferee Company i.e. Bal Pharma Ltd hereby undertake that it will not retrench or swap the staff or employees of the Transferor Company in guise of surplus staff on account of amalgamation.</p>
13.	TE Company being a listed company necessary compliance of SEBI (LODR) and Stock Exchange may be sought.	As Transferor Company is a wholly owned subsidiary of the Transferee Company, provisions of Regulation 37 of listing regulations is not applicable for this transaction. However as per Regulation 37(6) of LODR Regulations of SEBI, draft scheme of arrangement was filed with the stock exchanges as a disclosure requirement.
14.	An undertaking may be obtained from the applicant companies that they will pay applicable stamp duty and other charges to the state Govt within a reasonable time with an outer line of 6 months.	The petitioner Companies hereby undertake to comply with the requirements of paying applicable stamp duty and any other charges to the State Government within 6 months from the date of receipt of merger order from honourable NCLT.



17. The Reserve Bank of India ('RBI') has filed its report vide diary No. 3275 dated 06.06.2024 wherein it has been observed as under:

- a. As per Para A.2 of Master Direction- Export of Goods and Services, it is obligatory on the part of the exporter to realize and repatriate the full value of goods/software/ services to India within a stipulated period of 9 months from the date of export.

However, based on the entries in EDPMS report as on 30<sup>th</sup> April, 2024, it is observed that, there are shipping bills outstanding beyond 9 months for M/s Bal Pharma Limited, the details of which are provided in Table-1.

- b. In terms of Regulation 15 of Notification No. FEMA 23 (R)/2015-RB dated January 12, 2016, where an exporter receives advance payment (with or without interest), from a buyer/third party named in the export declaration made by the exporter, outside India, the exporter shall be under an obligation to ensure that the shipment of goods is made within one year from the date of receipt of advance payment.

However, as per EDPMS data as on April 30, 2024, there are Inward Remittance Messages (IRM) outstanding beyond 1 year for M/s Bal Pharma Limited, the details of which is provided in Table-1.

- c. As per Para B.5 of Master Direction-Import of Goods and Services, Remittances against imports should be completed not later than six months from the date of shipment, except in cases where amounts are withheld towards guarantee of performance, etc.

However, as per IDPMS (Import Data Processing and Monitoring System) data as on April 30, 2024, there are Bills of entry (BoE) outstanding for more than 6 months for M/s Bal Pharma Limited, the details of which is provided in Table-1.

- d. As per Para C.10 of Master Direction-Import of Goods and Services, in case an importer does not furnish any documentary evidence of import, as required under paragraph C.7. of Section III, within 3 months from the date of remittance involving foreign exchange irrespective of value, the AD Category-I bank should rigorously follow-up for the next 3 month.



However, as per IDPMS data as on April 30, 2024, there are Outward Remittances Messages (ORM) outstanding beyond 6 months for M/s Bal Pharma Limited, the details of which is provided in Table-1.

Table-1:

Category	Count	Amount (INR)
SB outstanding beyond 9 months as on April 30, 2024	379	80,57,03,911
IRM outstanding beyond 1 year as on April 30, 2024	739	1,17,64,45,858
BoE outstanding beyond 6 months as on April 30, 2024	219	1,06,89,9,582
ORM outstanding beyond 6 months as on April 30, 2024	163	85,84,97,913

18. The reply affidavit to the Reserve Bank of India ('RBI') Report has been filed by the Petitioner Companies vide diary No. 3331 dated 10.06.2024, inter alia stating the following:

	<b>Observation of RBI</b>	<b>Response of Petitioner Companies</b>
1.	With reference to the letter # BLR.FED.FID.No.S280/21.14 .150/2024-2025 Dated June 4th 2024 issued by Reserved Bank of India, Bangalore and the information provided there in pertaining to IDPMS & EDPMS.	In respect to the information mentioned regarding IDPMS & EDPMS, we submit herewith that various AD banks are involved for the import and export transactions. Apparently the count and the amount reflected seems to be erroneous. As different banks are involved for the transactions pertaining to



		IDPMS & EDPMS we would take up the issue with respective AD banks for reconciliation.
--	--	---

19. The reports of the ROC/RD, IT, OL & RBI are taken on record. Similarly, reply filed by the Petitioner companies to the report of ROC/RD, IT, OL & RBI are also taken on record.

20. It must be noted that vide order dated 29.11.24, this Tribunal had sought clarifications in the present matter. Reply Affidavit vide diary no. 196, dated 10.01.25 has been filed and taken on record, wherein the Petitioners have stated as reproduced below:

*“Hon’ble NCLT may kindly consider approving the merger scheme w.e.f 1<sup>st</sup> April 2023 as appointed date as recommended by ROC/RD in their common report.”*

In view of the objections filed by ROC/RD and OL in regards to the appointed date and the aforementioned submission of the Petitioners, **the appointed date is hereby changed to 1<sup>st</sup> April 2023.**

21. In view of the above discussion, we conclude that the objections/observations to the Scheme received from ROC/RD, IT, OL & RBI have been adequately replied by the Petitioner Companies and hence there is no impediment in approval of the Scheme.

22. The Composite Scheme in question is approved with Appointed Date, April 01<sup>st</sup>, 2023. It is further declared that the Composite Scheme is to be binding on all the Shareholders and Creditors of the Petitioner Companies. While approving the Scheme, it is clarified that this order should not be construed as an order in anyway granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

**AND THIS TRIBUNAL DOES FURTHER ORDER:**



- (i) That the Petitioner Companies do, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration; and
- (ii) That the Petitioner Companies shall deposit an amount of Rs. 75,000/- (Rupees Seventy Five Thousand only) with the Pay & Accounts Officer, Chennai in respect of the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad and Rs. 25,000/- (Rupees Twenty Five Thousand only) in favour of The Prime Minister's National Relief Fund, within a period of four weeks from the date of receipt of certified copy of this Order; and
- (iii) That the Petitioner Companies are directed to make compliance to the provisions of Section 170A of the Income Tax Act, 1961 within the stipulated period of time.
- (iv) That any person interested shall be at liberty to apply this Tribunal in the above matter for any directions that may be necessary.
- (v) That the approval /sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act, 2013 and that the authorities under both the Acts, are at liberty to take appropriate action, in accordance with law, if so advised.
- (vi) That the Petitioner Companies have given various undertakings in response to observations made in ROC/RD & IT reports and they are directed to ensure compliance of the same.

23.As per the directions, in Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioner Companies on filing of the Schedule Property i.e., (i) freehold property of the Petitioner Company and (ii) leasehold property of the Petitioner Company by way of filing an Affidavit.



24. Accordingly, **C.P (CAA) No.13/BB/2024 is disposed of.** Copy of this Order be communicated to the Counsel for Petitioner Companies.

25. The Learned Counsel for the Petitioner Companies is directed to serve a copy of this Order to all the Statutory Authorities within ten days from the date of receipt of copy of this order.

**-Sd-**  
**(RAVICHANDRAN RAMASAMY)**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**(K. BISWAL)**  
**MEMBER (JUDICIAL)**