



IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH
[Through Physical hearing/VC Mode (Hybrid)]

ITEM No.10
C.P. (CAA) No. 44/BB/2024

IN THE MATTER OF:

Shilpa Therapeutics Pvt. Ltd. ... Petitioner

Petition under Section 230-232 of CA, 2013

Order delivered on: 27.02.2026

CORAM:

SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

COUNSELS PRESENT:

For the Petitioner : Ms. Tejaswini for Shri Abhijit Atur

ORDER

The C.P is **allowed** vide separate order.

File be consigned to Record Room.

-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

BL



IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH,

C.P.(CAA) No.44/BB2024

U/s. 230, 231, 232, Section 66 & other Applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

IN THE MATTER OF:

Shilpa Therapeutics Private Limited

Regd. Office at: Shilpa House,
#12-6-214/A1, Hyderabad Road,
Raichur, Yeramarus Camp,
Karnataka – 584135.

... Transferor Company/Petitioner No. 1

AND

Shilpa Medicare Limited

Regd. Office at : #12-6-214/A1,
Hyderabad Road,
Raichur, Karnataka – 584135.

... Transferee Company/Petitioner No.2

Order delivered on: 27.02.2026

CORAM: Shri Sunil Kumar Aggarwal, Hon'ble Member (Judicial)
Shri Radhakrishna Sreepada, Hon'ble Member (Technical)

COUNSELS PRESENT:

For the Petitioner Companies : Shri Abhijit Atur
For the ROC : Shri Hemanth Rao
For the IT Dept. : Shri Ganesh R Ghale

ORDER

1. This second motion petition was filed on 26.08.2024 for sanction of Scheme of Amalgamation of the petitioner Companies, making it binding on them and their



respective shareholders and creditors, in accordance with Section 232 of the Companies Act, 2013.

2. The Petitioner Companies had filed First Motion Application bearing **C.A (CAA) No.01/BB/2024** wherein vide order dated 02.05.2024, the convening and holding the meetings of the shareholders, secured creditors and unsecured of the Transferee Company; the shareholders, secured creditors of the Transferor Company were dispensed with. The Chairperson appointed by this Tribunal has filed his report, wherein the meetings of Unsecured Creditors and Trade Creditors held on 02.07.2024 wherein the Scheme was approved by requisite majority. The Board of directors had approved the scheme at **Annexure – L**, on 21.06.2023.
3. When the petition was listed on 18.12.2024, following directions were given:-

“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) Reserve Bank of India; (d) the Office of the Official Liquidator; (e) Jurisdictional Income Tax Authorities by disclosing the PAN numbers of the Applicant Companies; (f) Designated Nodal Officer – Principal Chief Commissioner of Income Tax, Karnataka & Goa; (g) Securities and Exchange Board of India (in respect of Transferee Company); (h) National Stock Exchange of India Limited (in respect of Transferee Company); (i) Bombay Stock Exchange Limited (in respect of Transferee Company) along with the copy of this Petition by speed post immediately and 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.”

The Petitioner Company 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 also 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”

The petitioners submit that :

4. After public announcement through publication, the Petitioner Companies or their Counsel did not receive any objections whatsoever with regard to the proposed Scheme of Amalgamation or the Petition.
5. The main objects, dates of Incorporation, authorized, issued and paid-up share capital, rationale of the scheme and interest of employees were also considered during first motion proceedings. The Board Resolutions of the Petitioner Companies approving the Scheme are at **Annexure- L & M**.
6. The accounting treatment provided in the Scheme of Amalgamation is in accordance with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. Copies of the Auditor’s Certificates confirming it are produced as **ANNEXURES - Q and R**.
7. The audited financial statement as on 31.03.2023 and provisional statement as on 31.03.2024 of the Transferor Company are at **ANNEXURE E** and **ANNEXURE F** respectively.
8. As per the Scheme, the “**Appointed Date**” means **01.04.2023** or such other date as may be fixed by NCLT or such other authorities.
9. On being notified, the **Regional Director (RD)** has filed report stating as under:
 - a) That as per the latest shareholders list attached to the last Annual Return filed as on 31.03.2024 by the Transferor and Transferee Company, Shilpa Medicare Limited (Transferee Company), a body corporate along with its nominees, holds entire Equity & Preference Shares in the Transferor Company. Hence, the Transferor Company is a wholly owned subsidiary of the Transferee Company.
 - b) That as per Clause 1.4 of Part 1 of the Scheme, the appointed date is 01.04.2023. As the appointed date is too old and since, both the Transferor and Transferee Companies have filed Annual Returns and Balance Sheets



for the Financial Year 2023-24, the Petitioner Companies may be asked to change the Appointed date to a latest date as may be decided by the Tribunal.

- c) That as per MCA records, the Transferee Company, being a Public Company, has not filed the Board Resolution for approval of the Scheme of Amalgamation in e-form MGT-14. The NCLT may direct the Transferee Company to file the same.
- d) That the Transferee Company is a Listed Company and its Equity Shares are listed on National Stock Exchange of India Limited and Bombay Stock Exchange of India Limited, the Petitioner Companies may be directed to comply with the provisions of SEBI (Listing Obligations and Disclosures Requirements), Rules 2015. Further, the Transferee Company may be asked to submit No Objection Certificate from The Securities and Exchange Board of India, National Stock Exchange of India Limited and Bombay Stock Exchange Limited since an Unlisted Transferor Company is merging with a Listed Transferee company.
- e) That as per MCA records, there is a Common Director in the Petitioner Companies.
- f) That as per MCA records, the Transferor Company was originally incorporated on 02.04.2004 with the name ***Nu Therapeutics Private Limited*** which was changed to its current name w.e.f. 18.06.2016 and the Transferor Company had shifted its registered office from the state of Telangana to Karnataka with effect from 09/05/2003. The Transferee Company was originally incorporated on 20.11.1987 with the name ***Shilpa Antibiotics Private Limited***, and got converted into a Public Limited Company with effect from 03/11/1993 whereafter it changed to its current name with effect from 13/12/2002.
- g) That the Capital Structure of the Transferee Company as provided in Clause 1.2 of Part B of the Scheme does not match with the Capital Structure in the Master data of the company. The Company is required to



- clarify the same to the NCLT along with details of share allotments/transfer/s if any, subsequent to filing of the petition before the Tribunal.
- h) That as per MCA records, the Transferee Company has several open charges. Hence, the Company has to obtain and furnish No Objection Certificate/s from the concerned charge holder/s to the Tribunal before the Scheme is allowed.
- i) That as per Para 23 of the NCLT, Bengaluru Bench order dated 02/05/2024, the meetings of the Equity Shareholders/Preference Shareholders of both the Transferor and Transferee Companies have been dispensed with. The Transferor Company has Nil Secured Creditors, hence no meeting was convened. The meeting of Secured Creditors of the Transferee Company has been dispensed with. The meeting of the Unsecured Creditor of the Transferor Company was convened on 02/07/2024 and as per Scrutinizer's Report, the Scheme has been approved by the requisite majority. Further, the meeting of Unsecured Creditors of the Transferee Company has been dispensed with. The meeting of the Trade Creditors of the Transferor Company was convened on 02/07/2024 and as per Scrutinizer's Report, the Scheme has been approved by the requisite majority. The meeting of Trade Creditors of the Transferee Company has been dispensed with.
- j) That as per Clause 9 of Part II of the Scheme, the Transferee Company will not issue or allot any shares to the shareholders of the Transferor Company, it being a Wholly Owned Subsidiary of the Transferee Company and the entire shares held by the Transferee Company and its nominee in the Transferor Company shall stand cancelled.
- k) That as per the latest Audited Financial Statements for the year ending 31/03/2024, the Transferor Company is a loss making company, whereas, the Transferee Company is a profit-making entity. Hence, there may be a negative outflow of income tax once the Scheme is sanctioned. In this regard, Transferee Company may be directed to take care of the tax implications if any, upon approval of the merger.



- l) That as per Note no. 19 and 20 of the latest Audited Financial Statements for the year ending 31/03/2024, both the Transferor and Transferee Companies have undisputed statutory dues to the tune of Rs. 61.17 lakhs and Rs. 3.59 crores respectively. The Petitioner Companies may be directed to furnish an undertaking to the NCLT to the effect that it will settle the statutory dues immediately, if not settled so far.
- m) That as per Note no. 17 and 19 of the Audited Financial Statements for the year ending 31/03/2024, the Transferor and Transferee Companies have total outstanding dues to Micro, Small and Medium Enterprises to the tune of Rs.25.60 lakhs and Rs.53.13 lakhs respectively. The Companies to show as to how they have complied with Micro, Small and Medium Enterprises Development Act, 2006 and directed to furnish an undertaking to the NCLT to the effect that it will settle the dues as per the said Act immediately, if not settled so far.
- n) That as per the Financial Statements for the year ending 31/03/2024, 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.
- o) That Clause 10 of Part II of the Scheme provides for the 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. In this regard, the Transferee Company shall comply with the provisions of the Section 232(3)(i) of the Companies Act, 2013 and pay the difference of fee, after setting off the fee already paid by the Transferor Company on its Authorised Share Capital.
- p) That as per Clause 7.1 of Part II of the Scheme, all staff, workmen and employees of the Transferor Company shall be absorbed into the Transferee Company. In this regard, the Transferee Company may be



directed to safeguard the interests of the employees of the Transferor Company upon approval of the Scheme.

- q) That 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 issued from time to time.
- r) That 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 Tribunal may direct the Petitioner Companies to furnish an undertaking in this regard.
- s) That 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.
- t) That there are no open Complaints, Prosecution, Technical Scrutiny/ Inquiry, Inspection and Investigation pending in this office against the Transferor Company, except one open Complaint (pertaining to alleged wrong Scrutinizer Report dated 30.09.2023 of the 36th Annual General Meeting of the Company and alleged violation of SS-2) is pending against the Transferee Company in this office.
- u) With reference to the Directorate's letter dated 14.05.2025 issued to the Principal Commissioner of Income Tax, Bengaluru, no report/comments in the matter have been received from Income Tax Department till date with respect to the Petitioner Transferor Company. The Tribunal may obtain consent/NOC from the Income Tax Department with respect to the petitioner company, before the scheme is allowed.
- v) That the report of the Official Liquidator, Bangalore has been filed before the Tribunal on 15.04.2025 (copy enclosed) which may kindly be considered and direct the Petitioner Companies to comply with the observations made in his report followed by any further report filed if any.



- w) On examination of the contents of the scheme, the replies of the Petitioner Companies, the RD endorsed the observations of the Registrar of Companies and further made the following additional observations: -
- a. That the present Scheme is filed for amalgamation of wholly owned subsidiary company with its holding company.
 - b. That the Appointed Date mentioned in the Scheme is very old i.e. 01-4-2023 and since the petitioner companies have filed statutory returns up to 31-03-2024, the Petitioner Companies may be directed to change the same to a latest date as may be decided by the Tribunal.
 - c. That as per Clause 7.1 of the Scheme, it is stated that upon coming into effect of the Scheme, all the staff, workmen and employees of the Transferor Company in service as on the Effective Date, shall become the staff, workmen and employees of the Transferee Company on the terms and conditions not less favourable than those on which they are engaged by the Transferor Company and without any break or interruption in service. In this regard, the Transferee Company may be directed to furnish an undertaking stating that the interests of the employees of the Transferor Company are being protected by the Transferee Company.
 - d. That as per the Clause 9.1 of the Scheme, upon approval of the Scheme, no shares will be issued/allotted under the Scheme by the Transferee Company since all the shares of the Transferor Company are held by the Transferee Company.
 - e. That as per Clause 10.1 of the Scheme, it is stated that as an integral part of the Scheme and upon coming into effect of this Scheme and upon the transfer and vesting of the Transferor Company into Transferee Company, the entire Authorised Share Capital of the Transferor Company shall be clubbed with the Authorized Share Capital of the Transferee Company. In this regard, the Transferee Company may be directed to comply with C.P.(CAA) No.44/BB/2024 (Second Motion)



the provisions of Section 232(3)(i) of the Companies Act, 2013 and pay the differential fee after setting off the fee already paid by the Transferee Company and the Petitioner Company may be directed to furnish an undertaking before the Tribunal.

- f. That as per Clause 11.1 of the Scheme, it is stated that upon the Scheme becoming effective, the Transferee Company shall follow the accounting prescribed under Indian Accounting Standard 103 and other applicable Indian Accounting Standards, as applicable from time to time.
- g. That as per the Scheme, the Transferor Company has shown Equity Share Capital of Rs.1,83,76,340/- and preference share capital of Rs.40,00,000/-. However, as per Master Data of the company as on date the paid up capital of the Transferor Company is shown as Rs.1,83,76,340/-. In this regard, the Transferor Company may be directed to explain the mismatch in the paid-up share capital before the Tribunal. Likewise, there is a mismatch of Authorized Share Capital and Paid up capital of the Transferee Company upon comparing with the Scheme and Master Data. It appears that the company has subsequently issued/allotted shares to the shareholders of the Transferee Company. Hence, petitioner companies may be directed to furnish the details of subsequent allotment and whether those shareholders have given consent for the Scheme or not since the meeting of the shareholders has been dispensed as per the orders of the Tribunal dated 04.05.2024.
- h. That the Transferee Company being Public Limited Company and the shares are listed on NSE Ltd. and BSE Ltd., the Petitioner/Transferee Company has served a copy of the Scheme on NSE Ltd. & BSE Ltd. vide letter dated 27-10-2023 and as per the terms of Regulations 37(6) of the Listing Regulations, the requirement of obtaining NOC is not applicable since Transferor Company is a wholly owned subsidiary of Transferee Company.



- i. That as per the Balance Sheet as at 31-03-2023, the Transferor Company owes MSME dues amounting to Rs.12,86,250.00/-. Hence, Transferor Company may be directed to settle the dues immediately if not settled so far.
- j. That as per the Balance Sheet as at 31.03.2023, the Transferor Company has taken certain secured loans from Citibank, NA. It may be directed to furnish NOC obtained from the bank before the Tribunal.
- k. That the Transferor Company had taken loan of Rs. 60390040/- from related party i.e. Transferee Company. The Transferor Company may be directed to show the compliance of the provisions of Section 185/186 of the Companies Act, 2013 and furnish an undertaking before the Tribunal in this regard.
- l. That with regard to the complaint stated in para (u) of the ROC report at Para No.3 above, necessary instructions will be given to ROC, Bangalore to process the complaint as the same is against Transferee Company which will be existing even after approval of the Scheme.
- m. That the Transferee Company is having foreign shareholders.
- n. That this office has received letter No. BLR/FED/EXP.No. S126/06.06.031/2025-2026, dated 15.05.2025 (copy enclosed) from Reserve Bank of India, wherein, it was stated that the Transferee Company i.e. Shilpa Medicare Limited have certain inward/ outward remittances and that *“any sanction of the proposed scheme may kindly be without prejudice to the liability of the Transferor Company/Transferee Company with respect to the contraventions, if any, of the provisions of FEMA, rule, regulation, notification, direction or order issued thereunder committed by the Transferor Company and the continuance of such liability on the Transferee Company”*. In view of the same, the Tribunal may hear the RBI before approval of the Scheme.



10. The Petitioner Companies have filed their reply to the RD/RoC observations as under:

- 1) **Re : Para 1 to 3 (a), 3(e), 3(f), 3(i) & (j), 6 (a) & (d), 6 (h), 6 (m),** : It is stated that the contents in these paragraphs are a matter of record.
- 2) **Re : Para 3 (b) & 6 (b) : Change in Appointed Date :** It is submitted that the Petitioner Companies herein do not have an objection for change of the Appointed Date to 01.04.2025 in accordance with the directions of this Tribunal.
- 3) **Re : Para 3 (c) : Filing of MGT-14 :** The Petitioner Companies have filed the Board Resolution for approval of Scheme of Amalgamation by way of MGT-14 on 17.07.2023. Copies of the MGT-14 along with acknowledgement is produced as Document No-1 (Colly).
- 4) **Re : Para 3 (d) : Compliance with SEBI (LODR) Regulations, 2015 :** The Transferor Company is a wholly owned subsidiary of the Transferee Company i.e., Shilpa Medicare Limited. As per Regulation 37(6) of the SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015, for a merger of a wholly owned subsidiary with its holding company, no NOC is required to be obtained from the SEBI or stock exchanges. However, the Transferee Company in compliance with the Orders passed by this Tribunal, has issued Notice of the instant petition to SEBI, NSE and BSE on 04.01.2025, and the acknowledgements along with tracking detailed have been produced as Document No-2 (Colly).
- 5) **Re : Para 3 (g) & 6 (g) :** Capital Structure of the Transferor and Transferee Company :

5.1. The Capital Structure of the Transferor Company has been detailed as follows:

- a) The Authorised Share Capital of the Transferor Company is Rs. 3,00,00,000/- (Rupees Three Crores Only) comprising of Equity Share Capital of Rs.2,00,00,000/- divided into



- 20,00,000 (Twenty Lakhs) equity shares of Rs. 10/- (Rupees Ten Only) each and preference share capital of Rs. 1,00,00,000/- (Rupees One Crore Only) divided into 10,00,000/- (Ten Lakhs) preference shares of Rs. 10/- (Rupees Ten Only) each.
- b) The issued, subscribed and paid-up capital of the Transferor Company is Rs.1,83,76,340/- (Rupees One Crores Eighty Three Lakhs Seventy Six Thousand Three Hundred Forty Only) divided into 18,37,634 (Eighteen Lakhs Thirty Seven Thousand Six Hundred Thirty Four) Equity Shares of Rs. 10/- (Rupees Ten Only) each and 40,00,000 (Rupees Forty Lakhs) Preference Shares of Rs. 10/- (Rupees Ten Only).

5.2. The Capital Structure of the Transferee Company has been detailed as follows:

- a) The Authorised Share Capital of the Transferee Company was increased from R. 9,50,00,000/- (Rupees Nine Crores Only) to Rs. 11,00,00,000/- (Rupees Eleven Crores Only) on 27.09.2023. Pursuant to the approval of the merger of ***INM Technologies Private Limited*** with the Transferee Company, by this Tribunal on 18.06.2025, the Authorised Share Capital stands increased to Rs.56,00,00,000/- (Rupees Fifty Six Crores Only) in compliance with the Order. The Board Resolution dated 29.07.2023 and the NCLT order dated 18.06.2025 are produced as Document No. 3 & 4.
- b) The Authorised Share Capital is divided into 56,00,00,000 shares of Re. 1/- (Rupees One Only) each. The updated Memorandum of Association is Master Data, reflecting the increase in Capital Structure is produced as Document No. 5.



- 6) **Re : Para 3 (h) : Open Charges of the Transferee Company** : The Transferor Company is the wholly owned subsidiary of the Transferee Company, this Tribunal had dispensed with the meetings of the Shareholders, Secured and Unsecured Creditors of the Transferee Company vide Order dated 02/05/2024. Further, the Transferee Company is a public listed company and will continue to discharge its liability towards its creditors including the secured creditors.
- 7) **Re : Para 3 (k) : Tax Implications** : The Transferee Company undertakes to comply with any tax implications that might arise in accordance with the Income Tax Act, 1961 upon the Scheme coming into effect.
- 8) **Re : Para 3 (l) : Statutory Dues** : The Transferee Company undertakes to settle any undisputed statutory dues. Further, the Transferee Company is a going concern and the Transferee Company shall continue to discharge all legitimate liabilities towards statutory authorities.
- 9) **Re : Para 3 (m) & 6(i) : MSME Dues** : The Transferee Company undertakes to settle the undisputed MSME dues as per the MSME Act. Further, the Transferee Company is a going concern and the Transferee Company shall continue to discharge all legitimate liabilities towards all its vendors and customers
- 10) **Re : Para 3 (n) and 6 (n) : FEMA/RBI Regulations** : The Transferee Company has already undertaken to comply with the necessary FEMA/RBI regulations pertaining to the foreign transaction in reply to the Report dated 15.05.2025 issued by the Reserve Bank of India bearing No. BLR.FED.EXP. No. S129/06/06/031/2025-26 and BLR.FED.EXP. No. S128/06.06.031/2025-26. The necessary undertakings pertaining to inward/outward remittances have been filed by the Transferee Company herein in response to the Reports dated 15.05.2025 issued by the Reserve Bank of India.
- 11) **Re : Para 3 (o) & 6 (e) : Payment of Stamp Duty in compliance with Section 232(3)(i) of the Companies Act, 2013 (“Act”)** : The Transferee Company undertakes to pay the difference of the stamp duty fee after



setting off the fee already paid by the Transferor Company on its representative capital in accordance with Section 232(3)(i) of the Act, within a period of six months from the date of Order passed by this Tribunal. The Transferee Company further undertakes to make a separate request letter to the RoC for clubbing of the Authorised Capital within one month of the Order given by this Tribunal.

- 12) **Re : Para 3 (p) & 6 (c) : Safeguarding the interests of the workmen of the Transferor Company:** As per Clause 7 of the Scheme of Amalgamation, all of the staff, workmen and employees of the Transferor Company as on Effective Date, shall become the staff, workmen and employees of the Transferee Company. The Transferee Company herein undertakes to safeguard the interests of the staff, workmen and employees of the Transferor Company.
- 13) **Re : Para 3 (q) & 6 (f) : Accounting Treatment:** As per Clause 11 of the Scheme of Amalgamation, “the Transferee Company shall follow the accounting prescribed under the Accounting Standard 103 and other applicable Indian Accounting Standards, as applicable from time to time..”. Hence, the accounting treatment followed is in accordance with the applicable law.
- 14) **Re : Para 3 (r) : Compliance with Section 239 of the Act :** The Transferee Company undertakes to comply with the provisions of Section 239 of the Act, with respect to preservation of books and papers of the amalgamated company in accordance with the applicable law.
- 15) **Re : Para 3 (s) : Compliance with Section 240 of the Act :** As on date, there are no offences that have been committed by it or its officers to be in default. However, the Transferee Company undertakes to comply with the provisions of the Section 240 of the Act.
- 16) **Re : Para 3 (t) & 6 (l) : Alleged Wrong Scrutinizer Report dated 30.09.2023 of the 36th AGM and alleged violation of SS-2 pending against Transferee Company:** To the best of the knowledge and belief of the Petitioner Companies, all necessary compliances in relation thereto



have been duly carried out. Nevertheless, as the Transferee Company continues to be a going concern, it undertakes to ensure full compliance with all applicable laws, rules, regulations, and standards in connection with the aforesaid matter

- 17) **Re : Para 4 : NoC from Income Tax Department:** The Transferee Company herein is in receipt of intimation of an NoC from the Deputy Commissioner of Income Tax dated 17.04.2025 on behalf of the Income Tax Department, Hyderabad, the same has been place before this Tribunal and is being reproduced as Document No. 6.
- 18) **Re : Para 5 : Report of the Official Liquidator:** The Transferee Company herein has already placed before this Tribunal and Affidavit of Undertaking in reply to the Report furnished by the Official Liquidator vide Report No. 20 / 2025, the same maybe considered as part and parcel of this affidavit.
- 19) **Re : Para 6 (j) : Secured loans obtained from Citibank:** **As** on 15.09.2023, the Transferor Company does not have any Secured Creditors, all obligations due towards Citibank have been fulfilled prior to filing the first motion application.
- 20) **Re : Para 6 (k) : Related Party Compliance:** The Transferor Company being a wholly owned subsidiary of the Transferee Company, the related party transactions of the Transferor Company were undertaken in the ordinary course of business in compliance with the applicable provisions of the Act. The details of the same have been produced as Document No. 7 Colly. The Transferee Company undertakes any further compliance of the related party transactions in accordance with the law.

11. The Official Liquidator has filed the report observing that:

- a) From the Financial Statement of the Transferor Company for the FY ending 31.03.2023 & 31.03.2024 it is observed that the company is a going concern and has Revenue from operations to the extent of Rs.2,31,56,499/- & Rs.3,07,48,070/- respectively.
- b) As per Balance Sheet as at 31.03.2024, both Transferor and Transferee



Companies have dues of the MSME. The Transferee Company needs to settle the MSME dues as per the MSME Act.

- c) As per the Financial Statements of the Transferor company as at 31.03.2024 **Rs.1,38,90,386/-** is shown towards employee benefit expenses. Further in the scheme as per Part II Clause 7.1 of the proposed Scheme. *"Upon the coming into effect of this Scheme, all staff, workmen and employees of the Transferor Company and on the terms and conditions no less favourable than those on which they are engaged by the Transferor Company and without any break or interruption in service as a result of amalgamation of the Transferor Company with the Transferee Company "*

d) That as per Part II Clause 9 of the proposed Scheme: Consideration:

"Since the Transferor Company is a wholly owned subsidiary of the Transferee Company, upon the Scheme coming into effect, in connection of the amalgamation of the Transferor Company with the Transferee Company in the terms of the Scheme, no shares will be issued/allotted under the Scheme by the Transferee Company to any person. All the shares issued by the Transferor Company and held by the Transferee Company and its nominees. In the Transferor Company shall stand cancelled and extinguished without any further act, application or deed. "

12. The Petitioner has filed reply to Official Liquidator in para-wise as under:

- 1) **Reply to Para 1 to 11, 13a, 13c and 13d:** It is stated that the content in these paragraphs are a matter of record.
- 2) **Reply to Para 12 in respect of Payment of Stamp Duty :** The Transferee Company has undertaken to pay the differential stamp duty fee, after setting off the fee already paid by the Transferor Company on its representative capital, within a period of six months from the date of the Order passed by this Tribunal. It is further undertaken that a separate request letter shall be submitted to the Registrar of Companies for clubbing of the authorised capital within one month from the date of the Order passed by the Tribunal.



3) **Reply to Para 13b in respect of MSME Dues:** The undisputed MSME dues shall be settled in accordance with the provisions of the MSME Act. Moreover, the Transferee Company is a going concern, and all legitimate liabilities towards its vendors and customers shall continue to be discharged.

13. The Petitioner has filed memo vide dy.no.4685 dated 25.08.2025, stating that as per directions of the Tribunal that the intimation dated 17.04.2025, received from the Deputy Commissioner of Income Tax on behalf of the Income Tax Department, Hyderabad, confirming that there are no dues against the Transferor Company be filed, and the same is produced as **Document No. 1**.

14. The **RBI** has filed its report stating as under:

With respect to M/s Shilpa Medicare Limited as per available records and based on the outstanding entries in the IDPMS / EDPMS* database:

a) As per Regulation 15 of Notification No. FEMA 23(R)/2015-RB dated 12.01.2016 on Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 (updated from time to time) read with para C.2 of FED Master Direction No. 16/2015-16 dated 01.01.2016 on Export of Goods and Services (updated from time to time}, 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 and that the documents covering the shipment are routed through the Authorised dealer through whom the advance payment is received.

However, based on the entries in EDPMS database as on January 10, 2025, in case of M/s Shilpa Medicare limited, it is observed that there are Inward Remittance Messages (IRMs) with total unutilized value outstanding beyond one year, the details of which are provided in Table-1.



- b) As per Regulation 9 of said Notification & Regulations, the amount representing the full export value of goods/software/services exported shall be realised and repatriated to India within nine months (fifteen months in case of exports to a warehouse established outside India).

However, based on the entries in EDPMS database as on 10.01.2025, in case of M/s Shilpa Medicare Limited, it is observed that there are Shipping Bills (SBs) with unrealized value, pending beyond nine months, the details of which are provided in Table-1.

- c) In terms of para 8.5 of FED Master Direction No. 17/2016-17 dated 01.01.2016 on Import of Goods and Services (updated from time to time), 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, based on the entries in IDPMS database as on 10.01.2025, in case of M/s Shilpa Medicare Limited, it is observed that Bills of Entry (BoEs) with unrealized value are pending beyond six months, the details of which are provided in Table-1.

- d) In terms of para C.10 of FED Master Direction No. 17/2016-17 dated 01.01.2016 on Import of Goods and Services (updated from time to time), the AD Category - I bank should rigorously follow-up in case an importer does not furnish any documentary evidence of import within 3 months from the date of remittance involving foreign exchange irrespective of value.

However, based on the entries in IDPMS database as on January 10, 2025, in case of Mis Shilpa Medicare Limited, it is observed that there are Outward Remittance Messages (ORMs) with outstanding value, pending beyond six months, the details of which are provided in Table-1.



M/s Shilpa Medicare Limited (0788001507)		
Outstanding category as on January 10, 2025	Count	Amount (t)
Inward Remittance Messages outstanding beyond 1 year	738	598,22,97,282
Shipping Bills outstanding beyond 9 months	443	226,81,30,963
Bill of Entry outstanding beyond 6 months	1063	554,75,97,703
ORM outstanding beyond 6 months	188	88,83,23, 176.8

** For better monitoring of export of goods and software from India and import of goods to India, RBI maintains data related to exports and imports using a comprehensive IT- based system viz. Export Data Processing and Monitoring System (EDPMS) and Import Data Processing and Monitoring System (IDPMS).*

The data related to export of goods I software are based on the Shipping Bills/ Sottex Forms received from Customs (through their ICEGATE software system), Software Export Processing Zones (SEZ) and Software Technology Parks of India (STPI) respectively. The data related to inward remittance for the goods and software exported through Customs/STPI/SEZ are reported by AD banks in EDPMS. Similarly, in case of import of goods, Bill of Entry data in IDPMS are received from Customs (ICEGATE)/SEZ and the data related to outward remittance for the import of goods are reported by AD banks in IDPMS.

The EDPMS/IDPMS database available with RBI are not primary databases. Data in these systems are based on the reporting done by different stakeholders like Customs, STPI, SEZ and AD banks. It is used only for monitoring by us from macro perspective. RBI does not modify/amend/cancel the details/data available in the EDPMS/IDPMS.

- 3) The export of Goods and Services from India is governed by Section 7 of the Foreign Exchange Management Act 1999 (42 of 1999), read with Notification No. G.S.R. 381(E) dated 03.05.2000 viz. Foreign Exchange Management (Current Account Transactions) Rules, 2000 and FEMA



Notification No.23(R)/2015-RB dated 12.01.2016. Further, the import of Goods and Services into India is being allowed in terms of Section 5 of the Foreign Exchange Management Act 1999 (42 of 1999), read with Notification No. G.S.R. 381(E) dated May 3, 2000 viz. Foreign Exchange Management (Current Account Transaction) Rules, 2000.

It is therefore submitted that any sanction of the proposed scheme may kindly be without prejudice to the liability of the Transferor/Transferee Company with respect to the contraventions, if any, of the provisions of FEMA, rule, regulation, notification, direction or order issued thereunder committed by the transferor company and the continuance of such liability on the Transferee company.

15. No separate reply to the RBI Report has been filed, as the Petitioner Company the reply already filed to the ROC/RD Report be treated as its reply to the RBI Report.
16. Heard Learned Counsels for the Petitioner Companies, ROC/RD, and Income Tax Department and carefully perused the file.
17. The reports of Statutory Authorities and their replies by the Petitioner companies have been reproduced above in sufficient detail pursuant whereof the departments have not raised further concerns or queries. The requisite undertakings have been furnished and certification completed. Perceptibly the concerned Govt departments are satisfied with the responses on behalf of the petitioners that take care of their concerns including regarding future treatment. There thus remains no impediment to the approval of Scheme.
18. Hence, the *petition is allowed and Scheme of Amalgamation is approved with appointed date being 01.04.2025* and it is declared that the same is binding on all the shareholders and creditors of the Transferor as well as Transferee 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 of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration and effecting necessary changes/segregation of records. The details of assets/properties with registered charges/liabilities thereon, if any of the demerged undertaking be specifically intimated.
- (ii) The Petitioner Companies are directed to comply with the provisions of Section 170A of the Income Tax Act, 1961 within the prescribed period.
- (iii) That any person interested shall be at liberty to apply this Tribunal in the above matter for any directions that may be necessary.
- (iv) The approval/sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Stamp Act, Registration Act, Income Tax Act, 1961, the Companies Act, 2013 or any other applicable statute or Rules/Regulations framed thereunder and that the concerned authorities, are at liberty to take appropriate action, in accordance with law, if so advised.
- (v) The Petitioner Companies have given various undertakings in response to observations made by the Statutory Authorities, which are all accepted. They shall remain bound by the terms thereof and committed to ensure meticulous compliance in letter & spirit.
- (vi) The data/records in all formats pertaining to the Transferor Company shall be preserved by the Transferee Company in the manner and for the duration as prescribed.

19. Formal orders be issued on Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, on filing of the Schedule of



Assets/Properties transferred by Transferor Company to the Transferee Company, by way of an affidavit.

20. Accordingly, C.P. (CAA) No.44/BB2024 is disposed of.

21. A soft copy of this Order be forwarded by the Registry to learned Counsel for the Petitioners.

-Sd-

**RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)**

-Sd-

**SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)**