IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 103 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 551 OF 2014.

PREMIER NUTRICARE PRIVATE LIMITED

....Petitioner/ Transferor Company

AND

COMPANY SCHEME PETITION NO.104 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 552 OF 2014.

PREMIER NUTRACEUTICALS PRIVATE LIMITED

....Petitioner/ Transferee Company

In the matter of the Companies Act, 1 of 1956 and other relevant provision of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provision of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of PREMIER NUTRICARE PRIVATE LIMITED, (The Transferor Company) with PREMIER NUTRACEUTICALS PRIVATE LIMITED, (The Transferee Company)

<u>Called for hearing</u>

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners in all Petitions.

Mr. H.V.Mehta i/b Mr.A.A. Ansari for Regional Director in both the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in CSP No.103 of 2015.

CORAM: S. J. Kathawalla, J.

DATE: 30th April, 2015

PC:

1. Heard Learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions.

2. The sanction of the Court is sought to a Scheme of Amalgamation of PREMIER NUTRICARE PRIVATE LIMITED, the Transferor Company with PREMIER NUTRACEUTICALS PRIVATE LIMITED, the Transferee Company, under Sections 391 to 394 of the Companies Act, 1956.

3. The Learned Counsel for the Petitioners states that the Transferor and Transferee Company are carrying on business of dealing in all types descriptions, specifications, strengths and applications of pharmaceutical, neutraceutical and chemical products. The proposed scheme of Amalgamation will have the benefit that both the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company. The amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in

operation and create a stronger financial base and it would be advantageous to combine the activities and operations of both companies into a single Company for synergistic linkages as both the Companies are engaged in the same type of business activities and thus there will be benefit of combined financial resources.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

6. The Learned Counsel appearing on behalf of the Petitioners have stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.

7. The Official Liquidator has filed his report on 21st day of April, 2015 in Company Scheme Petition No. 103 of 2015 stating that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved

8. The Regional Director has filed an Affidavit on 29th day of April, 2015 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

> *"6. That the Deponents further submits that,*
>
> *(a) Clause 13.4 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard – 14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.*
>
> *(b) That the Deponent further submits that, the tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation, The decision of the Income Tax Authority is binding on the petitioner company.*

9. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner /Transferee Company through its counsel undertakes that the Transferee Company will pass such accounting entries which are necessary in connection with this Scheme to comply with any other Accounting Standards.

10. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner Companies are bound to comply with all applicable provisions of Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

11. The Learned Counsel for Regional Director on instructions of Mr. M. Chandana Muthu, Joint Director Legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertakings given by the Petitioners. The above undertakings is accepted.

12. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 103 of 2015 is made absolute in terms of prayers clause (a) and (d) and 104 of 2015 is made absolute in terms of prayer clauses (a) and (c).

14. The Petitioner Companies to file a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay, with the concerned Superintendent of Stamps, for the purpose of

adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.

15. Petitioners are directed to file a certified copy of order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E Form INC- 28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

16. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in the Company Scheme Petition No. 103 of 2015 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

17. Filing and issuance of the drawn up order is dispensed with.

18. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. J. Kathawalla, J.)