IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 91 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 6 OF 2015

VULCAN DEVELOPERS PRIVATE LIMITED...Petitioner / the Transferor Company

AND

COMPANY SCHEME PETITION NO 92 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 7 OF 2015

NBZ PHARMA LIMITED .... Petitioner / the Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956;

AND

In the matter of Scheme of Arrangement Of Vulcan Developers Private Limited And NBZ Pharma Limited And their respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners.

Mr. Jay K. Bhatia, i/b Mr. A. A. Ansari for Regional Director in both the Company Scheme Petitions.

Mr. S Ramakantha Official Liquidator, present in Company Scheme Petition No. 91 of 2015.

CORAM: S.J. Kathawalla, J.
DATE: 30th April, 2015

P.C.

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the petition.
2. The sanction of the Court is sought under Sections 391 to 394 read with sections 100 to 103 of the Companies Act, 1956, to the Scheme of Arrangement of Vulcan Developers Private Limited and NBZ Pharma Limited and their respective shareholders.
3. Learned advocate for the Petitioners states that the Transferor Company is presently engaged in the activity of Investment, financing and related activities and Transferee Company is presently engaged in the business of Manufacturing and trading of pharmaceutical products.
4. The Learned Counsel for the Petitioner states that the rationale for the merger is that the restructuring would benefit the companies and its stakeholders on account of increase in operational and financial efficiency, consolidate and simplify the group structures, rationalization of administrative, operative and financial costs and efficient management control and system.
5. The Petitioner Companies has approved the said Scheme of Arrangement by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The learned Advocate for the Petitioners state that Petitioner Companies have complied with all directions passed in company summons for Directions and that the Scheme has been filed in consonance with the orders passed in respective Company summons for Directions.

7. Counsel appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under. The said undertakings are accepted.

8. The Regional Director has filed an Affidavit dated 23rd April, 2015 stating therein that save and except as stated in paragraph 6 (a) and 6(b) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6(a) and 6(b), of the said affidavit it is stated that:

6. That the Deponent further submits that,

a) Clause 6.6 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 any other applicable Accounting Standards 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. As far as observations made in paragraph 6 (a) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company undertakes that the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Arrangement to comply with any other applicable accounting standards.

10. In so far as observation made in paragraph 6(b) of the Affidavit of the Regional Director, Petitioner Companies undertakes that they are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

11. The Counsel for the Regional Director on instructions of Mr. M Chandanamuthu, Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking given by the Petitioner Companies. The said undertakings given by the Petitioner Company are accepted.

12. The Official Liquidator has filed his report on 28th April, 2015 in the Company Scheme Petition No. 91 of 2015 stating therein 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 by this Court.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 91 of 2015 filed by the Petitioner Company are made absolute in terms of prayer clauses (a) the Company Scheme Petition No. 92 of 2015 filed by the Petitioner Company are made absolute in terms of prayer clauses (a).

15. The Petitioner Companies are directed to lodge a copy of this order and the Scheme along with form of minutes, 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 issuance of Order.

16. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme and Form of Minutes with the concerned Registrar of Companies, electronically, along with E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

17. The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in Company Scheme Petition No. 91 of 2015 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

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

(S.J. Kathawalla. J.)