IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 173 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 87 OF 2015

Creative Health Care Private Limited

…..Petitioner/Transferor Company 1

AND

COMPANY SCHEME PETITION NO. 174 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 88 OF 2015

Vivimed Labs (Alathur) Private Limited

…Petitioner/Transferor Company 4

In the matter of the Companies Act, 1956 (1 of 1956) and the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of the Scheme of Amalgamation of Creative Health Care Private Limited and Octtantis Nobel Labs Private Limited and Klar Sehen Private Limited and Vivimed Labs (Alathur) Private Limited with Vivimed Labs Limited and their respective shareholders and creditors

Called for Hearing

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

Mr. R.C. Master i/b Mr A.A Ansari for Regional Director in both the Petitions.

Mr. S. Ramakantha, Official Liquidator Present

Mr. Vinod Kothari i/b Apex Law Partners for Neol Pharma (I) Pvt. Ltd. & M/s Grace Enterprises, Unsecured Creditors.

CORAM: K.R. SHRIRAM, J

DATE: 4th DECEMBER 2015

1. Heard the Learned Counsels for the Petitioner Companies. No objector has come before the Court to oppose the Scheme of Amalgamation and nor any party has controverted any averments made in the Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation of Creative Health Care Private Limited and Octtantis Nobel Labs Private Limited and Klar Sehen Private Limited and Vivimed Labs (Alathur) Private Limited with Vivimed Labs Limited and their respective shareholders and creditors.

3. All the Transferor Companies are 100% subsidiaries of the Transferee Company.

4. The rational for the Scheme is that Petitioner Companies are wholly owned subsidiary of the Transferee Company. Consolidation of the Petitioner Companies with the Transferee Company by way of amalgamation would provide synergies of operation, stronger financial flexibility and accelerate the future growth/ expansion, more specifically the advantages such as:- The Transferor Companies' capabilities, product portfolio and pipeline complement the Transferee Company's existing business. The amalgamation will strengthen the foothold of the Transferee Company in the Pharmaceutical segment. The expanded manufacturing capacity will allow the Transferee Company to increase its operational capacity and product portfolio. Greater integration, financial strength and flexibility for the Transferee Company, which will improve the financial position of the Transferee Company on a standalone basis. Greater efficiency in cash management of the Transferee Company, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities, to further improve shareholder's value. Greater financial flexibility to execute on other opportunities to accelerate the Transferee Company's long-term growth targets. Improved organizational capability and leadership, arising from the pooling of human capital that has the diverse skills, talent and vast experience to compete successfully in an increasingly regulated and competitive industry. Benefit of operational synergies to the combined entity in areas such as raw material sourcing, product placement, marketing and sale promotions initiatives, freight optimization and logistics. Greater leverage in operations planning and process optimization and enhanced flexibility in product offerings. Cost savings are expected to flow from more focused operational efforts, rationalization, standardisation and simplification of business processes, productivity improvements, improved procurement, usage of common resource pool like human resource, administration, finance, accounts, legal, technology and

other related functions, leading to elimination of duplication and rationalization of administrative expenses.

5. The Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Learned Counsel 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. The Learned Counsel appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Hon'ble High Court and they have filed necessary Affidavits of compliance with the Hon'ble High 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 given by the Petitioner Companies are accepted.

8. The Regional Director has filed an Affidavit dated 30th September, 2015 stating therein that save and except as stated in paragraph 6(a) to 6(c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit it is stated that:

6. That the Deponent further submits that,

(a) *The Registered office of the Second and Third Transferor Company as well us Transferee Company is situated in the State of Karnataka. Hence, present Scheme of Amalgamation between the Transferor companies and Transferee Company will be subject to the condition of obtaining similar approval from Hon'ble High Court of Karnataka in respect of said Companies.*

(b) *It is observed from the letter dated 17/07/2015 of the Deputy Commissioner of Income Tax 15(3)(1), Mumbai, that the Fourth Transferor Company is having huge tax liabilities and the company has defaulted in payment of such dues. Copy of said letter is annexed hereto as Exhibit-'D'. In this regard, the Transferee*

Company may be directed to safeguard the interest of Income Tax Department with respect to the said Income Tax dues.

(c) *It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

9. As far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Counsel for Petitioners states the Petition filed by the Transferor Companies are pending before the Hon'ble Karnataka High Court and the approval of the scheme by this Court shall be subject to obtaining similar approval by the Transferor Companies. The Counsel or the Petitioners further clarifies in view of observations made in Mahaamba Investment Limited v/s IDI Limited (2001) 105 Company Cases page 16 to 18, this Court, inter-alia, observed and held that if the Scheme of Amalgamation provides for no issue of Equity Shares to the members of the Transferor Company, being wholly owned subsidiary of the Transferee Company, filing of separate Application /Petition by the Transferee Company is not necessary. Similar view has been taken by this Court in the Scheme of Amalgamation of Damini Multitrade Private Limited and Dhaneshwar Solution Private Limited and Sapan Holdings and Trading Private Limited and Sambhaw Holdings Limited with Binani Metals Limited (Company Scheme Petition Nos. 210 to 213 of 2013), wherein the registered offices of all the Transferor Companies were situated in the State of Maharashtra and the registered office of the Transferee Company was situated in the State of West Bengal and the argument of not filling separate Application/ Petition by the Transferee Company was accepted.

10. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioners states that as per clause 4.3 of the Scheme all debts, liabilities, duties and obligations of the Transferor Companies including Transferor Company 4 shall be the debts, liabilities, duties and obligations of the Transferee Company including any encumbrance on the

assets of the Transferor Companies or on any income earned from those assets shall be taken over by the Transferee. The Counsel for the Petitioners clarify that all liabilities including Income Tax shall be the liability of the Transferee Company .

11. In so far as observations made in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Petitioner Companies through their Counsel submits that approval of the scheme by this Court will not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner companies after giving effect to the Amalgamation and all tax issues arising out of the Scheme will be met and answered in accordance with law.

12. 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 by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

13. The Official Liquidator has filed his report on 8th October 2015 stating therein that the Affairs of the Petitioner / Transferor Companies 1 & 4 have been conducted in a proper manner and that the Petitioner/ Transferor Companies 1 & 4 may be ordered to be dissolved by this Hon'ble Court.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 173 of 2015 and 174 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

16. The Petitioner Companies to lodge 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 receipt of the Order.

17. Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme 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.

18. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Official Liquidator, High Court, Bombay . Costs to be paid within four weeks from the date of the Order.

19. Filing and issuance of the drawn up Order is dispensed with.

20. 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.

(K.R. SHRIRAM, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

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