IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.210 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.191 OF 2015

ALONGWITH

COMPANY APPLICATION NO. 336 OF 2015

FAMY CARE LIMITED.

…..Petitioner/Applicant Company.

AND

COMPANY SCHEME PETITION NO.211 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 192 OF 2015

ALONGWITH

COMPANY APPLICATION NO. 335 OF 2015

JAI PHARMA LIMITED.

…..Petitioner/Applicant Company.

In the matter of Companies Act, 1956 and Companies Act, 2013

AND

In the matter of Sections 391 to 394 read with Sections 100 to 104 of the Companies Act, 1956, section 52 and section 55 of the Companies Act, 2013

AND

In the matter of the Scheme of Arrangement
between
Famy Care Limited (Demerged Company)
and
Jai Pharma Limited (Resulting Company)
And
Their respective Shareholders and Creditors.

Called for Hearing

Mr. Ashish Kamat i/b M/s Crawford Bayley & Co, Advocate for Petitioner Companies .

Ms. Purnima Awasthi i/b Shri. A. A. Ansari for Regional Director in both the Petitions.

CORAM: S. J. KATHAWALLA, J

DATE : 24th APRIL, 2015

PC:

1. Heard learned counsel for parties. None appears 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 104 of the Companies Act, 1956, section 52 and section 55 of the Companies Act, 2013 to a Scheme of Arrangement ("Scheme") between Famy Care Limited and Jai Pharma Limited and their respective shareholders and creditors.

3. The learned Advocate for the Petitioner Companies states that the Demerged Company is presently carrying on business of manufacturers, processors, traders, importers, exporters, contractors, dealers and agents of intrauterine devices, condoms, other family planning products, sterile medical disposable articles, drugs, hospital supplies, medical and surgical instruments, sanitary pads, disposable papers, tissue products and pharmaceuticals, sanitary and medical goods of all kinds and descriptions. The Resulting Company intends to carry on business of manufacturers, processors, traders, importers, exporters, contractors, dealers and agents of intrauterine devices, other family planning products, sterile medical disposable articles and pharmaceuticals, sanitary and medical goods of all kinds and descriptions, however as on date the Resulting Company doesnot carry out any business activities.

4. The learned Advocate for the Petitioner Companies further states that the Scheme of Arrangement will have the benefit and that the Demerged Undertaking presently forms the core of the Demerged Company's business. The Demerged Undertaking consists of a fairly matured business, which has been profitable for the Demerged Company and has generated consistent growth in the past and the Demerged Company has invested substantially in the Demerged Undertaking in the past and presently the Demerged Undertaking has sufficient infrastructure and manpower and on the other hand, the Remaining Undertakings are comparatively nascent ventures of the Demerged Company, While the Remaining Undertakings have the potential for significant growth in the future, substantial investments will be required in the Remaining Undertakings (especially in developing the requisite technology and intellectual property) in order to realize their full potential and the Demerged Company proposes to utilize part of its existing cash reserves towards investment in the Remaining Undertakings and given their distinct business propositions, investment requirements and growth potentials, the potential risks and returns of the Demerged Undertaking and the Remaining Undertakings (respectively) are divergent

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

6. The Learned Advocate for the Petitioner in Company Scheme Petition No 210 of 2015 states that as per clause (7.1) of the Scheme, the proposed utilisation / reduction of the Capital Redemption Reserve and securities premium account of

the Petitioner Company shall be effected as an integral part of the Scheme and in view of the averments made in paragraph 25 of the Company Scheme Petition, inter alia, stating that reduction of Capital Redemption Reserve and securities premium account does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital. The Petitioner Company has passed a Special Resolution pursuant to provisions of Section 100 of the Companies Act, 1956 in the Extra Ordinary General Meeting of its Equity Shareholders for the utilisation / reduction of the Capital Redemption Reserve and securities premium account of the Petitioner Company and same is annexed as Exhibit F to the Company Scheme Petition. In view thereof, the procedure prescribed under section 101 (2) of the Companies Act, 1956 was dispensed with vide order dated 13/03/2015 passed in CSD No. 191 of 2015.

7. The Learned Advocate for the Petitioner in Company Scheme Petition No. 211 of 2015 states that as per clause (10.1) of the scheme, the reduction of Share Capital of the Petitioner Company shall be effected as an integral part of the Scheme and in view of the averments made in paragraphs 26 of the Company Scheme Petition, inter alia, stating that reduction of Share Capital does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital. The Petitioner Company has passed a Special Resolution pursuant to provisions of Section 100 of the Companies Act, 1956 in the Extra Ordinary General Meeting of its Equity Shareholders for reduction of Share Capital of the Petitioner Company and same is annexed as Exhibit H to the Company Scheme Petition. In view thereof, the procedure prescribed under section 101 (2) of

the Companies Act, 1956 was dispensed with vide order dated 13/03/2015 passed in CSD No. 191 of 2015.

8. The Learned Counsel for the Petitioner further states that, the Board of Director of the Petitioner Companies has proposed to amend the clauses 1.1, 3 and 7.4 of the Scheme of Arrangement as the same is required to be amend in respect of Appointed Date as “1st April, 2015 instead of “31st March, 2015” and addition of Clause 3.8 described as “Transitory Period” and also deletion of clause 7.4 (ii). The Petitioner Companies has taken out the Company Application Nos. 335 of 2015 and 336 of 2015 wherein schedule for amendment is annexed. Learned counsel for the Petitioner Company prays that the amendments may be allowed in terms of prayer Clause (a).

Perused the Company Applications and Affidavits in Support of the Company Applications, Company Applications are made absolute in terms of prayer Clause (a). Amendment to be carried out within three weeks from the date of the order. The Company Applications are disposed off accordingly

9. The Learned Advocate 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 thereunder whichever is applicable. The said undertaking is accepted.

10. The learned Advocate for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction

and that the Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

11. The Regional Director has filed his Affidavit on 22nd April, 2015, *inter alia*, stating therein that save and except as stated in paragraphs 6 (a) to (c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to (c) of the said Affidavit, the Regional Director has stated that :

> *"6. That the Deponent further submits that:-*
>
> *a) With reference to clause 10.2 of the scheme, which provides for increase in the authorised share capital of the Resulting Company from Rs 5 lacs to Rs 2 crores. It is submitted that the Resulting Company shall comply with the provision of section 94/97 of the Companies Act, 1956 corresponding to section 61/64 of the Companies Act, 2013 in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.*
>
> *b) Shares of the Demerged Company are held by foreign body corporate as its shareholders. Hence for allotment of new equity shares by the Resulting Company to the shareholders of Demerged Company, the Resulting Company may be directed to comply with FEMA/RBI regulations as applicable in this regard.*
>
> *c) 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 demerged company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the demerged company."*

12. As far as the objection of the Regional Director in paragraph 6(a) of his affidavit is concerned, the Resulting Company through its advocate undertakes that

Resulting Company shall comply with the provision of section 94/97 of the Companies Act, 1956 corresponding to section 61/64 of the Companies Act, 2013 in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

13. As far as the objection of the Regional Director in paragraph 6(b) of his affidavit is concerned, the Resulting Company through its advocate undertakes that while allotment of new equity shares by the Resulting Company to the shareholders of Demerged Company, the Resulting Company will comply with FEMA/RBI regulations as applicable in this regard.

14. So far as the objection of the Regional Director as stated in paragraph 6(c) of his Affidavit is concerned, the Petitioner Companies submit that the Petitioner is 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.

15. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, 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 and amendment sought by the Petitioner Companies through their advocate. In view thereof, the said undertakings are accepted.

16. 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.

17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.210 of 2015 filed by the Demerged Company is made absolute in terms of prayer clauses (a) and (b) and Company Scheme Petition No.211 of 2015 filed by the Resulting Company is made absolute in terms of prayer clauses (a) to (c).

18. The Petitioner Companies to lodge a copy of this order and the amended 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 this order.

19. Petitioner is directed to lodge a copy of this order along with a copy of the amended Scheme of Arrangement 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.

20. The Petitioners in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from today.

21. Resulting Company, in Company Scheme Petition No.211 of 2015 to publish a notice of registration of order and form of minutes of reduction of capital annexed as Exhibit 'J' to Company Scheme Petition No.211 of 2015 by Registrar of Companies once each in the two local newspaper, viz, "Free Press Journal" in English language and translation thereof in "Navshakti" in Marathi Language, both

having circulation in Mumbai and also in the Maharashtra Government Gazette within 14 days of registration.

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

23. All concerned regulatory authorities to act on a copy of this order along with the amended Scheme and Form of Minutes annexed as Exhibit “J” to the Company Scheme Petition No.211 of 2015 duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. J. KATHAWALLA, J)