IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 459 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 172 OF 2015

In the matter of the Companies Act, 1956 or any re-enactment thereof;

-And-

In the matter of Petition under Sections 391 to 394, of the Companies Act, 1956 or any re-enactment thereof;

-And-

In the matter of Strides Arcolab Limited [CIN:L24230MH1990PLC057062], a company incorporated under the Companies Act, 1956 having its registered office at 201, Devavrata, Sector – 17, Vashi, Navi Mumbai – 400703;

-And-

In the matter of Scheme of Amalgamation between Shasun Pharmaceuticals Limited (Transferor Company) and Strides Arcolab Limited (Transferee Company) and their respective shareholders and creditors.

Strides Arcolab Limited [CIN: L24230MH1990PLC057062], a company incorporated under the Companies Act, 1956 having its registered office at 201, Devavrata, Sector – 17, Vashi, Navi Mumbai – 400703	} } } }	… Petitioner Company

Called for Hearing

Mr. Tapan Deshpande, Advocate instructed by Cyril Amarchand Mangaldas, Advocates for the Petitioner Company.

Anil Yadav, Advocate i/b Mr. A.A. Ansari for Regional Director

Coram: S. C. Gupte, J.

Date: 28th August, 2015

MINUTES OF THE ORDER

PC:

1. Heard Counsel for the parties. No objector has come before the Court to oppose the Scheme nor has any party controverted any averments made in the Petition.

2. Learned Advocate for the Petitioner Company states that the Petition has been filed to seek sanction to the Scheme of Amalgamation between Shasun Pharmaceuticals Limited (Transferor Company) and Strides Arcolab Limited (Transferee Company) and their respective shareholders and creditors, pursuant to the provisions of Sections 391 to 394 of the Companies Act, 1956 or any re-enactment thereof.

3. The Learned Advocate for the Petitioner Company states that the Petitioner Company has complied with all the directions passed in the Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the order passed in Company Summons for Direction.

4. The Learned Advocate for the Petitioner Company has stated that the Petitioner Company has complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 or any re-enactment thereof and the Rules made thereunder. The said undertaking is accepted.

5. The Petitioner Company is a global pharmaceutical company engaged in the business of various types of pharmaceuticals products. The Transferor Company is also engaged in pharmaceuticals business. The learned Advocate for the Petitioner Company says that the rationale and significant benefits of the Scheme are that, (i) the amalgamation will create a vertically integrated pharma company of scale with a strong presence in front ended regulated market finished dosage formulations, emerging markets branded generics, institutional business, active pharmaceutical ingredients and contract research and manufacturing services; (ii) the amalgamation will significantly enhance the finished dosage formulations portfolio in niche and complex domains with a pipeline of over 100 (one hundred) products and

accelerate product filings with a combined research and development strength of over 400 (four hundred) personnel; (iii) the amalgamation will significantly de-risk operations with the combined entity having 12 (twelve) manufacturing facilities, including 3 (three) finished dosage formulations manufacturing facilities approved by the US Food and Drug Administration, 2 (two) active pharmaceutical ingredients manufacturing facilities approved by the US Food and Drug Administration, 1 (one) contract research and manufacturing services facility approved by the US Food and Drug Administration and 6 (six) manufacturing facilities catering to the emerging markets; (iv) The amalgamated entity will leverage the Transferor Company’s best in class active pharmaceutical ingredients manufacturing capacities and shift focus towards niche active pharmaceutical ingredients aligned with the portfolio and pipeline for finished dosage formulations; (v) The amalgamation will create significant synergistic opportunities in operations and cost savings through economies of scale; and The amalgamated entity will be amongst the top 15 (fifteen) listed Indian pharma companies by revenue with increased scale and visibility to drive future growth; (iv) The amalgamation of the entire undertaking and business of the Transferor Company with the Transferee Company will benefit the stakeholders of both companies. The Board of Directors of the Transferor Company and the Petitioner Company, have approved the said Scheme by passing their respective board resolutions which are annexed to the Petition. Further the Counsel for the Petitioner Company submits that the Madras High Court in the Company Petition filed by the Transferor Company before it has by an order dated 16th June, 2015 sanctioned an amended Scheme of Amalgamation with an amendment by inserting Clause 15.3 therein.

6. The Regional Director has filed an Affidavit dated 24th August, 2015, stating therein, that save and except as stated in paragraph 6 of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of the shareholders of the Petitioner Company and public. In paragraph 6 of the Affidavit it is stated that:

"*6. That the Deponent further submits that:-*

(a) *Clause 11.7 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Comp[any. 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) *With reference to clause 11.6 of the Scheme, it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company.*

(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 petitioner company after giving effect to the amalgamation The decision of the Income Tax Authority is binding on the petitioner company."*

7. As regards objection set out in paragraph 6 (a), of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Advocate undertakes to pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with other applicable Accounting Standards such as AS-5, etc.

8. As regards objection set out in paragraph 6 (b), of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Advocate undertakes that the surplus, if any, arising out of the Scheme shall be credited to Capital Reserve Account of Petitioner

Company.

9. As regards objection set out in paragraph 6 (c), of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Advocate submits that the Petitioner Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be answered in accordance with law.

10. The Learned Counsel for the 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 hereinabove by the Petitioner Company through its Advocate.

11. The Counsel for the Petitioner Company submits that, in the Scheme of Amalgamation, some unsecured creditors of the Petitioner Company *viz.* MSN Pharmachem Private Limited, Perfect Containers Private Limited, Matrix Cellular International Services Limited, Vasundhara Rasayans Limited, Deugro and R.J. Engineers, have corresponded with the Petitioner Company, some of them called for copy of the Petition and some of them have informed that they intend to oppose the Scheme. However none of the unsecured Creditors have served copy of their objection, if any, to the Petitioner Company or their Advocates.

12. The Counsel appearing for the Petitioner Company states that the Scheme does not affect the rights of the unsecured creditors of the Petitioner Company. It will be open to the unsecured creditor to pursue their legal remedy as may be advised for recovery of their dues. The Counsel is correct in his submission. It will be open to all the unsecured creditors of the Petitioner Company including the above mentioned unsecured creditors, to pursue their legal remedies against the Petitioner Company for recoveries of their dues. The Petitioner Company undertakes to abide by the final order/s passed by court/s in favour of any or all the unsecured creditors of the Petitioner Company. There can be no doubt that the liability, if any, of the Petitioner Company towards any unsecured creditors, will continue irrespective of this Scheme and will remain unaffected by this Scheme. Equally, the rights of the Petitioner Company against any of the objectors will also remain unaffected.

13. The Advocate for the Petitioner Company has applied for an amendment to the Scheme (Exhibit "L") as per the Company Application No. 807 of 2015. In the said Company Application the Petitioner Company has sought addition of clause 15.3 to the Scheme as the said clause has been added to the Scheme and sanctioned by the Madras High Court vide its order dated 16th June, 2015. The said clause is clarificatory in nature and does not affect the rights of any party hence the amendment as prayed in Company

Application No. 807 of 2015 is allowed. Amendment to be carried out within two week. Reverification of the Petition is dispensed with.

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 requisite statutory compliance have been fulfilled, Company Scheme Petition No. 459 of 2015 filed by the Transferor Company is made absolute in terms of prayer clause (a), sanctioning the Scheme as amended.

16. The Petitioner Company to lodge a copy of this order along with a copy 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, within 60 days from the date of the order.

17. The Petitioner Company is directed to file a copy of this order along with a copy of the amended Scheme duly authenticated by the Company Registrar, High Court [O.S.], Bombay, with the concerned Registrar of Companies, electronically, along with e-form 21/ INC 28 in addition to physical copy as per the provisions of Companies Act, 1956/2013, whichever is applicable.

18. The Petitioner Company to pay costs of Rs. 10,000/- to the Regional Director, Western Region, Mumbai. Costs to be paid within four

weeks from today.

19. Filing and issuance of the respective drawn up orders are dispensed with.

20. All concerned authorities to act on a copy of this order along with the amended Scheme, duly authenticated by the Company Registrar, High Court [O.S.], Bombay.

(**S. C. Gupte, J.**)