IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 723 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTIONS NO 524 OF 2014

Eisai Pharmaceuticals India Private Limited ...Petitioner / Transferor Company

In the matter of the Companies Act, 1956;

And

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

And

In the matter of Eisai Pharmaceuticals India Private Limited, a company incorporated Under the provisions of the Companies Act, 1956

And

In the matter of the Scheme of Amalgamation (under sections 391 to 394 of the Companies Act, 1956) of Eisai Pharmaceuticals India Private Limited with Eisai Pharmatechnology and Manufacturing Private Limited

Called for Hearing

Mr Chakrapani Misra along with Ms Meghna Rajadhyaksha and Mr Sairam Subramanian R of M/s. Khaitan & Co., Advocates for the Petitioner Company.

Mrs S.V Bharucha i/b H.P. Chaturvedi for the Regional Director

S. Ramakanth, Official Liquidator present

Coram: S.J. Kathawalla, J.

Date: 6th February, 2015

P.C:

1. Heard Learned Counsel for the Petitioner Company. 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 to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956 of Eisai Pharmaceuticals India Private Limited with Eisai Pharmatechnology and Manufacturing Private Limited.

3. The Learned Counsel for the Petitioner Company states that the Transferor Company is presently engaged primarily in the business of marketing and distribution of prescription medicines in several therapeutic areas such as central nervous system disorders, muscle spasm, vertigo, gastrointestinal disorders, diabetes and peripheral neuropathy. The Transferee Company is presently engaged

primarily in the business of manufacturing pharmaceutical products and has established an integrated Manufacturing and Research complex in the sector specific Special Economic Zone ("SEZ") for pharmaceuticals established by Ramky Pharma City (India) Limited at Parawada, Vishakhapatnam where it manufactures Drug substances (Active Pharmaceutical Ingredient – APIs) and Drug Products (Oral sold dosage forms – Tablets) and undertakes developmental research of APIs.

4. The Learned Counsel for the Petitioner Company states that the proposed Scheme of Amalgamation will facilitate appropriate consolidation of the undertakings of the Transferor Company and the Transferee Company and enable the combined business of the said Companies to be carried on more conveniently and advantageously with pooling and more efficient utilisation of their resources and improvement in various other operating parameters. The scheme will result in reduction of overheads and other expenses, greater economies of scale, reduction in administrative and procedural work, elimination of duplication of work and will enable the undertakings concerned to rationalise and streamline their management, business and finances.

5. The Petitioner Company and Transferee Company have approved the said Scheme of Amalgamation by passing respective Board Resolutions which are annexed to the Company Scheme Petition.

6. The Learned Counsel for the Petitioner further states that, the Petitioner Company has complied with all the directions passed in the Company Summons for Directions and that the Company Scheme Petition has been filed in consonance with the order passed in the Summons for Directions.

7. The Learned Counsel appearing on behalf of the Petitioner Company has further stated that the Petitioner Company has complied with all the requirements as per directions of this Court and that they have filed the necessary affidavits of compliance in the Court. Moreover, the Petitioner Company undertakes to comply with all the statutory requirements, if any, under the Companies Act, 1956 and 2013, and rules made thereunder, whichever is applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 28th January 2015 in the Company Scheme Petition 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.

9. The Regional Director has filed an Affidavit on 04th February 2015 stating therein that save and except as stated in paragraph 6 (a) to (c) of the said affidavit, it

appears that the Scheme is not prejudicial to the interest of shareholders and public.

(a) *The Equity Shares of Transferor Company are held by Foreign Body Corporate. Hence, while giving effect to the Scheme, by issuing new shares by the Transferee Company to the shareholders of the Transferor Company, the Transferee Company has to comply with the provisions of FEMA/RBI regulations as applicable in this regard.*

(b) *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 Company.*

(c) *Clause 12 of the Scheme states that the name of the Transferee Company shall be changed to 'Eisai Pharmaceuticals India Private Limited'. In this connection, Transferee Company has to comply with the provisions of Sections 13(2), (3) & (6) along with Section 15 of the Companies Act, 2013 read with 21/23 of the Companies Act, 1956 in respect of filing of necessary forms with the Registrar of Companies and the proposed new name will be* *allowed subject to the availability of the same, by the Registrar of Companies since under the computerized MCA 21 system of allotting the names, it is systematically not possible to reserve the names. Therefore, the name if available at the time of filing of such application, shall be made available by the registrar of Companies*

10. As far as the observation in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Company, states that the Transferee Company undertakes to comply with the provisions of FEMA/RBI regulations as is required in connection with the issuance of new shares by the Transferee Company.

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

12. As far as the observation in paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Transferee Company undertakes to comply with the provisions of Section

13(2), (3) & (6) along with Section 15 of the Companies Act, 2013, read with Section 21/23 of the Companies Act, 1956 in respect of filing of necessary forms with the Registrar of Companies for the change of name of the Transferee Company and agrees that the name if available at the time of filing of such application shall be made available by the Registrar of Companies .

13. The Learned Counsel for the Regional Director on instructions of Mr M Chandanamuthu, Joint Regional Director - Legal, Western Region, Ministry of Corporate Affairs, Mumbai, states that they are satisfied with the undertakings given hereinabove by the Petitioner Company through its counsel. The undertakings given by the Petitioner Company mentioned hereinabove are accepted.

14. The Learned Counsel for the Petitioner Company submits that the Transferee Company has filed a Petition for sanction of the Scheme of Amalgamation before the Hon'ble High Court of Judicature at Andhra Pradesh and the said scheme is sanctioned by the Hon'ble High Court of Judicature at Andhra Pradesh vide an Order dated 24th September 2014 passed in Company Petition No 146 of 2014.

15. 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.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No 723 of 2014 is made absolute in terms of prayer clauses (a), (b) and (d).

17. The Petitioner Company 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 purposes of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.

18. The Petitioner Company is directed to file a copy of this order alongwith a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-Form INC28 in addition to physical copy as per relevant provisions of the Companies Act, 1956 and the Companies Act, 2013 and Rules made thereunder whichever are applicable.

19. The Petitioner Company is directed to pay a cost of Rs 10,000/- to the Regional Director, Western Region, Mumbai and a cost of Rs 10,000/- to the Official Liquidator. Costs to be paid within four weeks from the date of the order.

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

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

(S.J. Kathawalla, J.)