IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.17 OF 2015
IN

COMPANY SUMMONS FOR DIRECTION NO.170 OF 2014

REGAL REMEDIES LIMITED …PETITIONER COMPANY

In the matter of Companies Act, 1956

AND

In the matter of Section 391 of the Companies Act, 1956

AND

In the matter of Scheme of Amalgamation

OF

Shayona Intermediates Private Limited

WITH

Regal Remedies Limited

Called for Hearing

Mrs. Madhuri Gaikwad i/b MG Legal Advocate for the Petitioner in Petition.

Mr. H.V.Mehta i/b. A. A.Ansari, for Regional Director in the Petition.

CORAM: S. J. KATHAWALLA, J

DATE: 30th April, 2015

PC

1. Heard counsel for the parties. 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 of the Companies Act, 1956 to the Scheme of Amalgamation between Shayona Intermediates Private Limited and Regal Remedies Limited.
3. Learned Advocate for the Petitioner further states that the Transferor Company is engaged in the business of medicinal products and other related activity as per main object mentioned in Memorandum of Association.

4. Learned Advocate for Petitioner Company submits that Transferor Company is situated at Gujarat. The Company Petition no. 240 of 2013 was filed by Transferor Company for sanctioning the Scheme of Amalgamation. The Learned Counsel for the Petitioner further states that Hon'ble High Court of Gujarat has sanctioned the said Scheme of Amalgamation vide order dated 24.7.14.
5. The learned Counsel for the Petitioner Company states that the proposed Scheme of Amalgamation will lead to synergies of operations of Transferor as well as Transferee Company.
6. The Petitioner Company for Transferor and Transferee Company have approved the Scheme of Amalgamation by passing the Board Resolution which are annexed to the Company Scheme Petition respectively.
7. The Learned Advocate for the Petitioner Company states that the Petitioner Company have complied with all directions passed in Company Summons for Direction and that the Company Scheme Petition has

been filed in consonance with the orders passed in Company Summons for Directions.

8. The Learned Advocate 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 Company undertakes to comply with all statutory requirements, if any, as required under the companies Act, 1956/2013 and the rules made there under whichever is applicable. The said undertaking is accepted.

9. The Regional Director has filed an affidavit on 23rd April 2015 stating therein, save and except as stated in paragraph 6(a) to (c), it appears that the scheme is not prejudicial to the interest of shareholders and public. In Paragraph 6(a) to (c) of the said Affidavit, the Regional Director submits that

   6. *That the Deponent further submits that.*

      (a) Clause no.12.4 of the scheme states that the excess, if any, of the value of the net assets of the Transferor Companies over the paid up value of the equity shares to be issued and allotted shall

be credited by the Transferee company to an account to be styled as 'Amalgamation Reserve Account" and the said account shall be treated as free reserve of the Transferee Company. In this regard, it is submitted that the surplus arising out of the Scheme which is proposed to be transferred to Amalgamation Reserve, shall not be treated as free reserve. This reserve is arising due to transfer of capital assets from Transferor Company to Transferee company and hence that part of the reserve cannot be construed as free reserve and not forming part of the networth of the Transferee company.

(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 16 of Scheme provides for Modification and Amendments to Scheme wherein the Board of Directors of Transferor Company and Transferee Company have been authorised to make any amendments to Scheme, if necessary, after the Scheme is approved by the Hon'ble Authority. Such liberty shall not be exercised by Board of Directors without obtaining prior approval from the Hon'ble Authority. The Transferor Company and Transferee Company shall be directed to undertake to this effect.*

10. In so far as observations made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Counsel for the Petitioner Company submits that surplus if any, arising out of this scheme will be transferred to Amalgamation Reserve Account of the Transferee Company.

11. As far as observations made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the

Transferee Company submits that the Petitioner Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out the Scheme will be met and answered in accordance with law.

12. The Learned Counsel for the Petitioner Company states that clause 16 of the Scheme gives power to the Board of Directors of the Petitioner Company to amend any part of the Scheme. The Learned Counsel for the Petitioner Company states that such powers to amend the scheme is subject to approval of the Court. It is therefore clarified that the power vested under clause 16 of the Scheme will be subject to the approval of the High Court.

13. 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 undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Company are accepted.

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, Company Scheme Petition No.17 of 2015 filed by the Petitioner Company is made absolute in terms of prayer clause (a) and (c) of the respective Company Scheme Petition.

16. The Petitioner Company is directed to lodge a copy of the 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 order.

17. The Petitioner Company is directed to file a copy of this order alongwith a copy of the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Registrar of Companies, electronically, alongwith E- Form INC-28, in addition to the physical copy as per the relevant

provisions of the Companies Act, 1956/2013 whichever is applicable.

18. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. The cost 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 authorities to act on a copy of this order along with the modified Scheme duly authenticated by the Company Registrar, High Court, (O.S.). Bombay.

(S.J.KATHAWALLA. J)