IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 497 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 357 OF 2015

Soven Trading & Investment Company Private Limited.
.....Petitioner/the First Transferor Company.

AND

COMPANY SCHEME PETITION NO. 498 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 358 OF 2015

Sudipta Trading & Investment Company Private Limited.
.....Petitioner/the Second Transferor Company.

AND

COMPANY SCHEME PETITION NO. 499 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 359 OF 2015

Transgene Trading & Investment Company Private Limited.
.....Petitioner/the Third Transferor Company.

AND

COMPANY SCHEME PETITION NO.500 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 360 OF 2015

Anand Synthochem Limited.
.....Petitioner/the Fourth Transferor Company.

AND

COMPANY SCHEME PETITION NO. 501 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 361 OF 2015

FDC Limited.
.....Petitioner/the Transferee Company.

In the matter of Companies Act, 1956 (1 of 1956) and to the extent

applicable provisions of the Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 and Section 55 of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation between SOVEN TRADING & INVESTMENT COMPANY PRIVATE LIMITED and SUDIPTA TRADING & INVESTMENT COMPANY PRIVATE LIMITED and TRANSGENE TRADING & INVESTMENT COMPANY PRIVATE LIMITED and ANAND SYNTHOCHEM LIMITED and FDC LIMITED and their respective shareholders and creditors.

Called for Hearing

Mr. Tushar Shah, i/b M/s Vaish Associates, Advocates for the Petitioner in all the Petitions.

Mr. Y. R. Mishra i/b A. A. Ansari for Regional Director in all the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in C.S.P No. 497 to 500 of 2015.

CORAM: S. C. GUPTE, J

DATE: 4th September, 2015

PC:

1. Heard learned counsel for Petitioners. 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 103 of the Companies Act, 1956 and Section 55 of the Companies Act, 2013, to the Scheme of Amalgamation between Soven Trading & Investment Company Private Limited, the First Transferor Company, Sudipta Trading & Investment Company Private Limited, the Second Transferor Company, Transgene Trading & Investment Company Private Limited, the Third Transferor Company, Anand Synthochem Limited, the Fourth Transferor Company with FDC Limited, the Transferee Company and their respective shareholders and creditors.

3. The learned Counsel for the Petitioner states that the First Transferor Company, the Second Transferor Company, the Third Transferor Company are non-deposit accepting non-banking financial companies and are presently carrying on business of an Investment Company. The Fourth Transferor Company is carrying

on the business of chemist, druggist, laboratory chemicals, pharmaceuticals, intermediates, chemical compounds, etc. The Transferee Company is carrying on business of pharmaceutical and dispensing chemists, wholesale manufacturing and druggists, opticians, oil and colourmen, importers and manufacturers of and dealers in pharmaceutical, medical, fine chemical preparations and article, compounds etc.

4. The learned Counsel for the Petitioner Companies further states that the proposed amalgamation of the Transferor Companies with and into the Transferee Company would, inter-alia, result in the simplification of the Group structure and alignment of group businesses and consolidation of the group companies in one entity thereby resulting in rationalization and standardization of the business processes, economies of scale, reduction in overheads, administrative, managerial and other expenditure, organizational efficiency, and optimal utilization of resources which would be beneficial for all members of the Petitioner Companies and other stakeholders.

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

6. The learned Counsel 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.

7. The learned Counsel appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Court as passed in the respective Company Scheme Petitions 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 read with the applicable provisions of the Companies Act, 2013, to the extent made effective, and the rules made thereunder. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 2nd September, 2015 in Company Scheme Petition Nos. 497 to 500 of 2015, inter alia, stating therein that the affairs of the Transferor Companies have not been conducted in a manner prejudicial to the interests of their members or to the public interest and that the Transferor Companies may be ordered to be dissolved.

9. The Regional Director has filed his Affidavit on 3rd September, 2015 inter alia, stating therein that save and except as stated in paragraphs 6 (a) to (d) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to (d) of the said Affidavit, the Regional Director has stated that :

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

(a) *Clause 11.1.2 of the scheme provides for transferring the special reserve created in the Transferor Company to the general reserve account of Transferee Company. It is submitted that such transfer can be effected only after only after obtaining prior approval of Reserve Bank India.*

(b) *It has been observed that, the 1st Transferor Company is holding 1,80,08.500 equity shares of Rs 1/- each and the 2nd Transferor Company is holding 1,83,52,000 equity shares of Rs 1/- each and 3rd Transferor Company is holding 1,90,24,500 equity shares of Rs 1/- each in the capital of Transferee Company. These shares will get cancelled on amalgamation as per clause 11.1.3 of the scheme, consequently there will be reduction of capital in the paid up capital of Transferee Company. The scheme is silent with respect to compliance of section 100 of the Companies Act, corresponding to section 66 of the Companies Act, 2013. Since the petitioner company shall amend the scheme suitably to reflect such reduction of the capital as an integral part of the scheme.*

(c) *The 1st, 2nd and 3rd Transferor Company are a Non Deposit taking NBFC Company Registered with the Reserve Bank of India. Hence, Transferee Company may be directed to file a copy of the scheme along with the copy of this Hon'ble Court's order with the RBI within 30 days and shall also comply with tile other applicable provisions of RBI Act*

(d) *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.*

10. So far as the objection of the Regional Director, Western Region, Ministry of Corporate Affairs, as stated in paragraph 6(a) of his Affidavit is concerned, the learned Counsel of the Petitioners states that the Petitioner Companies have already taken prior approval from the Reserve Bank of India vide its approval letter dated November 10th, 2014 on the Scheme as approved by the board of directors of the Petitioner Companies dated September 6, 2014. The said RBI approval letters are annexed as Exhibit E-2, H-2 and K-2 to Company Scheme Petition 501 of 2015.

11. So far as the objection of the Regional Director, Western Region, Ministry of Corporate Affairs, as stated in paragraph 6(b) of his Affidavit is concerned, the learned Counsel of Petitioners submits that in terms of clause 11.1.5 of the Scheme the application and consequential reduction of reserve account of the Transferee Company will be effected as integral part of the Scheme and the order of the High Court sanctioning the Scheme shall be deemed to be an order under Section 55 of the Companies Act, 2013

read with Sections 100 -102 of the Companies Act, 1956 confirming the reduction.

12. So far as the objection of the Regional Director, Western Region, Ministry of Corporate Affairs, as stated in paragraph 6(c) of his Affidavit is concerned, the Transferee Company through its counsel undertakes to file a copy of the Scheme along with the copy of this order with the RBI, within 30 days from the date of this order. The Transferee Company also undertakes to comply with all other applicable provisions of the RBI Act.

13. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(d) of his Affidavit is concerned, the learned Counsel for the Petitioners submits that the Petitioners are 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.

14. The Learned Counsel for Regional Director on instructions of Mr. M. Chandana Muthu, Joint Director Legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertaking given by

the Advocate for the Petitioner Company. The said undertaking is accepted.

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. 497 of 2015, Company Scheme Petition No. 498 of 2015, Company Scheme Petition No. 500 of 2015 and Company Scheme Petition No. 501 of 2015 are made absolute in terms of prayer clauses (a) & (b) and Company Scheme Petition No. 499 of 2015 is made absolute in terms of prayer clauses (a) to (c).

17. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court, 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.

18. Petitioner Companies are directed to file/lodge a copy of this order along with a copy of the Scheme of Amalgamation 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 read with the applicable provisions of the Companies Act, 2013.

19. The Petitioners in all the Company Scheme Petitions are directed to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioners in the Company Scheme Petition Nos. 497 of 2015 to 500 of 2015 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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 the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. GUPTE, J.)