IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 850 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 870 OF 2014

MONSANTO HOLDINGS PRIVATE LIMITED

………… Petitioner / the Demerged Company

AND

COMPANY SCHEME PETITION NO 851 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 871 OF 2014

MONSANTO INVESTMENTS INDIA PRIVATE LIMITED

………… Petitioner / the Resulting Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and Section 52 of the Companies Act, 2013 read with Sections 100 to 103 of the Companies Act, 1956;

AND

In the matter of Scheme of Arrangement Between Monsanto Holdings Private Limited And Monsanto Investments India Private Limited And their respective shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners in all the Petitions.

Mr. C. J. Joy, i/b Mr H.P. Chaturvedi for Regional Director in both the Company Scheme Petitions.

CORAM: S.J. Kathawalla, J.
DATE: 6th February, 2015

1. Heard the learned counsel for the Petitioner Companies. 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 and Section 52 of the Companies Act, 2013 read with Sections 100 to 103 of the Companies Act, 1956, to the Scheme of Arrangement between Monsanto Holdings Private Limited And Monsanto Investments India Private Limited and their respective shareholders.

3. Learned Counsel for the Petitioners states that the Petitioners in Company Scheme Petition No. 850 of 2014 is presently engaged in business of (a) licensing of seed technology and traits (b) research and development, growing, processing, and selling of hybrid cotton seeds and vegetable seeds and is also engaged in the business of investments in joint ventures / other companies and providing contract research services and Petitioner in Scheme Petition No. 851 of 2014 is engaged in carrying of its business through investments in subsidiaries / joint ventures the pharmaceutical business.

4. The rationale for the Scheme is that both the companies under this Scheme of Arrangement are closely held companies. The restructuring would benefit its companies and its shareholders on account of Focused business attention, Improved organisational capability and leadership.

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

6. The learned Advocate for the Petitioners state that Petitioner Companies have complied with all directions passed in company summons for Directions and that the Scheme has been filed in consonance with the orders passed in respective Company summons for Directions.

7. Counsel 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 there under. The said undertakings given by the Petitioner Companies are accepted.

8. The Regional Director has filed an Affidavit dated 4th February, 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 shareholders and public.

   In paragraph 6(a) and 6(b) of the said affidavit, it is stated that:

   (a) Clause 7.6 of the scheme provides for utilization of Securities Premium Account of Demerged Company such reduction in Securities Premium Account will attract the provisions of section 78 of the Companies Act, 1956 corresponding to Section 52 of the Companies Act, 2013. There is no specific prayer/averments for such reduction in this scheme and therefore, the petitioner company shall amend the scheme suitably that "The approval of the scheme shall be deemed to be also the order under section 78 of the Companies Act, 1956 corresponding to Section 51 of the Companies Act, 2013

for the purpose of confirming the reduction of Securities Premium Account and utilization thereof".

(b) 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.

9. In so far as observations made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the counsel for the petitioner clarifies that reduction of securities premium account and utilization thereof is being done as a part of the Scheme under Section 78 of the Companies Act, 1956 corresponding to Section 52 of the Companies Act, 2013. Accordingly, the petitioner seek leave to amend Clause 7.6 of the Scheme by adding "The approval of the scheme shall be deemed to be also the order under section 78 of the Companies Act, 1956 corresponding to Section 52 of the Companies Act, 2013 for the purpose of confirming the reduction of Securities Premium Account and utilization thereof" at the end of Clause 7.6.

10. In reply to the observations raised by the Regional Director in paragraph 6(b) of his Affidavit is concerned, the Petitioner Companies through their Advocate submits that the Petitioner Companies is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.

11. 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 undertaking. The said undertaking given by the Petitioner Companies are accepted.

12. The Counsel for the Petitioners submit that pursuant to clause 6.1 of the Scheme there is reduction in existing share capital of MIIPL as more specifically explained in the Scheme. The existing 10,000 (Ten Thousand) shares of Rs 10 (Rupees Ten Only) each held by MHPL in MIIPL has been transferred to the shareholders of MHPL on December 15, 2014 in the same proportion in which the shares of MHPL are held by its shareholders in accordance with the applicable laws. An Affidavit dated February 5, 2015 has been filed by the Resulting Company wherein in paragraph 3 and 4 of the said Affidavit, the Petitioner/Resulting Company has stated that necessary approval has been obtained from FIPB and in tune with the approval of FIPB, the shares have been transferred to the existing shareholders. In view thereof there will be no cancellation of 10,000 (Ten Thousand) equity shares of Rs 10 (Rupees Ten Only) each held by MHPL in MIIPL in terms of Clause No. 6 of the Scheme. Hence the learned Advocate for the Petitioners seeks leave to amend Scheme by deleting clause 6. 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, agrees with the amendment sought by the Petitioner Companies. Leave to delete clause 6 of the Scheme and all consequential amendments in respect of change in clause numbers are allowed. Amendment to be carried out within three weeks from today.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 850 of 2014 filed by the

Petitioner Company are made absolute in terms of prayer clauses (a) and (c) and the Company Scheme Petition No. 851 of 2014 filed by the Petitioner Company are made absolute in terms of prayer clauses (a) and (c).

15. The Petitioner Companies to lodge a copy of this order and the Scheme and form of minutes, 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 issuance of Order.

16. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme and form of minutes with the concerned Registrar of Companies, electronically, along with E-Form 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

17. The Petitioner Companies 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 the date of the order.

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

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

(S.J. Kathawalla. J.)