IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 48 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 761 OF 2014

**GLEMARK GENERICS LIMITED**

…Petitioner

AND

COMPANY SCHEME PETITION NO. 49 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 762 OF 2014

**GLENMARK ACCESS LIMITED**

…Petitioner

AND

COMPANY SCHEME PETITION NO. 50 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 763 OF 2014

**GLENMARK PHARMACEUTICALS LIMITED**

…Petitioner

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 scheme of amalgamation

OF

Glenmark Generics Limited

AND

Glenmark Access Limited

WITH

Glenmark Pharmaceuticals Limited

Called for Hearing

Mr.Venkatesh Dhond, Mr. Shahezad Kazi and Ms. Karishma Muravne i/b M/s. Majmudar & Partners, Advocate for all the Petitioners in all the Petitions.
Mr. S. Ramakantha, Official Liquidator present in the Company Scheme Petition Nos. 48 and 49 of 2015.
Ms. S. V. Bharucha i/b Mr. H.P. Chaturvedi for Regional Director in all the Company Scheme Petitions.

CORAM: S.J. Kathawalla, J.
DATE: 20th March, 2015

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 Section 391 to 394 of the Companies Act, 1956 to the Scheme of Amalgamation of Glenmark Generics Limited and Glenmark Access Limited with Glenmark Pharmaceuticals Limited.

3. The learned counsel for the Petitioners states that the Petitioner in the Company Scheme Petition No. 48 of 2015 is in the business of generics which constitutes of (i) generic formulation products ("**GFPs**"); and (ii) the active pharmaceutical ingredients ("**APIs**") businesses. The Petitioner also manufactures branded generic products for various customers based on specifications / requirements specified under contracts with such customers and under the brand name of such

customers. The Petitioner in Company Scheme Petition No. 49 of 2015 was previously engaged in the business of importing and exporting drugs, medicines, pharmaceuticals, chemicals and other compounds and minerals for sale in India and for distribution in foreign countries. However, since 2009, the Petitioner has not engaged in or carried out any business. The Petitioner in Company Scheme Petition No. 50 of 2015 is engaged in the specialty business which focuses on manufacture, sale and distribution of branded generic products. The branded generic products manufactured or developed by the Petitioner are off-patent drugs which are labeled under the Petitioner's own brand name. The Petitioner is also engaged in the formulation development of off patented branded generics products. Important aspects of the Petitioner's business include brand building and prescription generation by way of marketing / promotion through sales representatives.

4. The learned counsel for the Petitioners states that as averred in paragraph 24 of the Company Scheme Petition filed by the Transferee Company as, the rationale for the Scheme is to consolidate operations of the Transferor Companies and the Transferee Company leading to integrated supply chain, thereby providing further synergies and to unify branding of "Glenmark" in markets which follow both branded and generics business models thereby leveraging the available infrastructure for strengthening the position in such markets and to provide flexibility in the overall organizational structure thereby enabling to achieve operational and management efficiency and to realign the corporate structure of the Glenmark group in line with its business objectives in order to enhance the long term value of the shareholders and to harmonize the product pipeline enabling transfer of products across markets thereby de-risk business profile of the Transferee Company and to retain and attract best talent, boost employee morale and confidence.

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

6. The learned counsel for the Petitioners further states that, Petitioners have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

7. The learned counsel for the Petitioners has stated that the Petitioners have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioners undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules thereunder, whichever is applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 11th March, 2015 in the Company Scheme Petition Nos. 48 of 2015 and 49 of 2015 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

9. The Regional Director has filed an affidavit on 18th March, 2015 stating therein that save and except as stated in paragraph 6 (a), (b) and (c) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said affidavit it is stated that:

*"6. That the Deponent further submits that,*

*(a) Clause 7.4 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and*

*Transferee Company. 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 Standards such as AS-5 etc.*

*(b) With reference to Clause 7 of the scheme, it is submitted that surplus if any arising out of the scheme be credited to Capital Reserve Account of the Transferee Company and the deficit if any arising the same will be debited to goodwill account of the 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."*

10. As far as the observations made in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Transferee Company through its counsel undertakes that in addition to compliance of Accounting Standard 14, the Transferee Company shall pass accounting entries as may be necessary in connection with this Scheme to comply with any other accounting standards.

11. As far as the observation made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Transferee Company through its counsel undertakes that surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of the Transferee Company and the deficit, if any arising, shall be debited to goodwill account of the Transferee Company.

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

13. The Learned Counsel for 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 by the Petitioners. The undertakings given by the Petitioners 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, the Company Scheme Petition Nos. 48 to 50 of 2015 filed by the Petitioners are made absolute in terms of prayer clauses (i) and (iii).

16. The Petitioners to file 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 the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.

17. Petitioners are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with INC-28 in addition to physical copies as per the relevant provisions of the Companies Act 1956/2013, whichever is applicable.

18. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in Company Scheme Petition Nos. 48 and 49 of 2015 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs 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 regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S.J. Kathawalla, J.)