IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 18 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 884 OF 2014

Dwarkadhish Pharma Vet Private Limited … Transferor Company No.1/ Petitioner Company

AND

COMPANY SCHEME PETITION NO. 19 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 885 OF 2014

Adelphi Tradvest Private Limited … Transferor Company No.2/ Petitioner Company

WITH

COMPANY SCHEME PETITION NO. 20 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 886 OF 2014

Gateway Leasing Private Limited … Transferee Company/ Petitioner 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 the Scheme of Amalgamation of DWARKADHISH PHARMA VET PRIVATE LIMITED (Earlier Known as Chokhani Pharma Vet Pvt. Ltd.)

AND

ADELPHI TRADVEST PRIVATE LIMITED

(The Transferor Companies)

WITH
GATEWAY LEASING PRIVATE LIMITED
(The Transferee Company)

Called for Hearing

Mr. Sukesh Shah a/w. Ms. Shruti Kelji, for Shah Legal for the Petitioners.
Ms. Neeta Masurkar i/b.H. P. Chaturvedi for the Regional Director in all the Company Scheme Petitions.
Mr. S. Ramakantha, Official Liquidator in Company Scheme Petition Nos. 18 and 19 of 2015.

Coram : S. J. Kathawalla, J.
Date : 18th April, 2015

P.C:-

1. Heard Advocate for the parties. No objectors have come before the Court to oppose the Scheme nor any party has controverted any averments made in the Company Scheme Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of Dwarkadhish Pharma Vet Private Limited (earlier known as Chokhani Pharma Vet Pvt. Ltd.) and Adelphi Tradvest Private Limited (Transferor Companies) with Gateway Leasing Private Limited (Transferee Company).

3. Learned Advocate for the Petitioner Companies state that the Transferor Companies are engaged in the business of investment in Shares and the Transferee Company is engaged in the business of providing secured finance and finance related solutions.

4. The proposed scheme of amalgamation of the Transferor Companies with Transferee company will have the benefit that it would lead to a more efficient utilization of capital and create a stronger base for

future growth of the amalgamated entity and reduce administrative time and costs of managing multiple entities and greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities and operational synergies to the combined entity and greater leverage in operations, planning and process optimization and avoidance of multiple legal entities and maintenance costs and cost savings are expected to flow from more focused operational efforts, rationalization and standardisation of administrative expenses.

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

6. The Learned Advocate for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the Order passed in Company Summons for Directions.

7. The Learned Advocate appearing on behalf of 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, the Petitioner Companies through their Advocate undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 13th April, 2015 in Company Scheme Petition No. 18 and 19 of 2015 stating therein 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 4th March, 2015 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. The aforesaid paragraph 6 reads as under:

"6. That the Deponent further submits that:-

(a) With reference to clause 14.4 of the Scheme, it is submitted that the surplus if any arising out of the scheme shall not be transferred to general reserve account and the same may be transferred to capital reserve account of transferee Company. This reserve is arising on 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 net worth of the Company

(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."

10. As far as the observations made in paragraph 6 (a) of the Affidavit of the Regional Director is concerned, the Petitioners undertake that the surplus if any arising out of the scheme shall not be transferred to General Reserve Account and the same will be transferred to capital reserve account of the Transferee Company. The Petitioners further undertake that the reserve arising on transfer of capital assets from Transferor Company to the Transferee Company will not be construed

as a free reserve and will not form part of the net worth of the Company.

11. As far as the observations made in paragraph 6 (b) of the Affidavit of the Regional Director is concerned, the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act, and all tax issues arising out of scheme will be met and answered in accordance with law.

12. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertakings given by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

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, Company Scheme Petition Nos. 18 and 19 of 2015 are made absolute in terms of prayer clause (a), (b) and (d) and Company Scheme Petition No. 20 of 2015 is made absolute in terms of prayer clause (a) and (c).

15. The Petitioner Companies are directed 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.

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

17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai in Company Scheme Petition Nos. 18 to 20 of 2015 and to the Official Liquidator, High Court, Bombay in Company Scheme Petition Nos. 18 and 19 of 2015. 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 Scheme duly authenticated by the Company Registrar, High Court, (O.S.), Bombay.

(S. J. Kathawalla, J.)