HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Company Application No.188 of 2015

In/and

Company Petition No.1 of 2015

Date:20.04.2015

Company Petition No.1 of 2015

Between:

M/s Vista Pharmaceuticals Ltd.,

Gopalaipalli, reptd by its

Director-Narendra Gilaka

.....Petitioner

Counsel for the petitioner: Sri Chetluru Sreenivas

Company Application No.188 of 2015

Between:

Suresh Gadalay,

S/o G.Chintaji Rao and 12 others.

.....Applicants

And:

M/s Vista Pharmaceuticals Ltd.,

Gopalipalli, reptd by its

Director-Narendra Gilaka

… Respondent

Counsel for the applicants: Sri C.Sudesh Anand

Counsel for the respondent: Sri Chetluru Sreenivas

The Court made the following:

<u>COMMON ORDER</u>:

The Company Petition is filed under Section 101 of the Companies Act, 1956 (for short 'the Act') for confirmation of the scheme of reduction of share capital of the petitioner-company.

I have heard Sri Chetluru Sreenivas, the learned counsel for the petitioner, Sri B.Appa Rao, learned counsel representing Sri B.Narayana Reddy, learned Assistant Solicitor General appearing for the Regional Director and Sri C.Sudesh Anand, learned counsel for the objectors/applicants in Company Application No.188 of 2015.

The petitioner averred that it is a limited company incorporated under the Act, in the State of Andhra Pradesh under certificate of incorporation issued by the Registrar of Companies, Andhra Pradesh, on 25.01.1991; that its registered office is situated at Plot Nos.10 to 14 and 16 to 20, APIIC, Industrial Estate, Chityal, Gopalaipalli Village, Nalgonda District; that its authorized share capital is Rs.15 crores divided into 1,50,00,000/- equity shares of Rs.10/- each; that its issued, subscribed and paid up capital is Rs.15 crores divided into 1,50,00,000 equity shares of Rs.10/- each; and that its main objects, as set out in its Memorandum and Articles of Association, are to carry on the business of manufacture, formulate and process all kinds of pharmaceutical drugs and its allied products. The petitioner further averred that it has proposed the scheme of reduction of share capital in order to off set the accumulated losses to an extent of Rs.10,99,91,165/-, as per the latest Audited Financial status of the company as on 31.03.2012; that the Board of Directors, vide its resolution, dated 09.10.2012, approved the proposed scheme and authorized one Sri Narendra Gilaka, Director of the petitioner, to file the present Company Petition; and that an Extraordinary General meeting of the share holders was held on 15.11.2012, wherein it has approved the scheme of reduction of share capital, subject to approval by this Court.

This Court on 19.01.2015, ordered notice to the Registrar of Companies for the State of Telangana, Ministry of Corporate Affairs, South Eastern Region, Hyderabad and also permitted the petitioner to carry out paper publication in two daily newspapers, *viz*., Business Standard (English) and Andhra Bhoomi (Telugu) having circulation in the State of Telangana. However, on 03.03.2015, this Court has noticed the inadvertent mistake in the order, dated 19.01.2015, in ordering notice to the Registrar of Companies instead of ordering notice to the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad and accordingly, fresh notice was ordered to the said functionary.

The petitioner has filed memo, vide USR.No.357 of 2015, dated 06.02.2015, in proof of publication of the notice. In response to the said notice, Sri Sudesh Gadalay and 12 others have filed Company Application No.188 of 2015 raising objections to the proposed scheme of reduction of share capital of the petitioner-company.

The Regional Director has submitted his report, dated 13.03.2015, wherein he has raised two objections to the proposed scheme, *viz*., (1) that the scheme did not provide for any Appointed date with effect from which the reduction of the share capital shall take place; and (2) that the scheme did not provide for any Clause as to how the fractional shares that may arise will be treated on such reduction and splitting up of equity shares. The Regional Director has, however, suggested 01.04.2014 as the appointed date.

The petitioner has accepted the suggestion made by the Regional Director as to the appointed date to be fixed as 01.04.2014. As regards the second objection relating to non-allocation of the fractional shares after reduction and splitting up of equity shares, the affidavit, dated 16.04.2015, filed by Sri Narendra Gilaka, Director of the petitioner-company, has referred to Clause-7 of the proposed scheme, which reads as under:

> “In case any member’s holding in the Company is such that the member becomes entitled to a fraction of an equity share of the Company after reduction, the Company shall not issue fractional share certificates to such members but shall consolidate such fractions and issue consolidated equity shares to separate trustees nominated by the Company in that behalf, who shall sell such shares and distribute the net sale proceeds (after deduction of the expense incurred) to the members respectively entitled to the same, in proportion to their respective fractional entitlements in

the Company."

Having regard to the fact that the petitioner has agreed for treating 01.04.2014 as the appointed date, the first objection raised by the Regional Director is duly met by the petitioner. With regard to the second objection, the above-reproduced Clause has provided as to the manner in which the fractional shares shall be dealt with. In view of the same, the second objection raised by the Regional Director has no merit.

Coming to the objections raised by the applicants in Company Application No.188 of 2015, it is not in dispute that applicant No.1 has attended the Extraordinary General Meeting and opposed the proposed scheme of reduction of share capital. Though the applicants have raised objections in the Company Application, they failed to make out any case that reduction of share capital of the petitioner-company is not warranted. In para-9 (a) of the Company Petition, the petitioner has justified the reduction of share capital by assigning the following reasons:

> "As on 31.03.2012 as per the Audited Financial results of the Company, the total accumulated losses and share capital unrepresented by available assets of the Company are Rs.10,99,91,165/- as against the paid-up equity share capital of Rs.15,00,00,000/-. Mere infusion of further funds into the Company will not benefit any existing share holder even if the Company registers profits in coming years since no dividend can be paid out of profits unless accumulated losses are wiped out. Under this scheme the accumulated losses are reduced to the extent of reduction of capital. Under this scheme, if approved, the Company will represent true financial position which would benefit both the company, institutions in general, and share holders in particular as their holding will yield better results and value."

The applicants have failed to prove that the above reproduced reasons are incorrect.

Considering the fact that the share holders, who were present at the Extraordinary General Meeting, have not opposed the scheme of reduction of share capital and the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad, has also not opposed the proposed scheme in principle, I find that the objections raised by the applicants in Company Application No.188 of 2015 are without any merit. Therefore, these objections are rejected and Company Application No.188 of 2015 is, accordingly, dismissed.

In view of the above-noted facts, the Company Petition is allowed and the scheme of reduction of share capital of the petitioner-company is approved with the appointed date fixed as 01.04.2014.

JUSTICE C.V.NAGARJUNA REDDY

20th April, 2015

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