IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CP No. 132 of 2015 (O&M)
Date of decision : 19.10.2015

In the matter of
Scheme of Amalgamation between

Gambro India Private Limited

... Transferor Company

and

Baxter (India) Private Limited

... Transferee Company/ Petitioner Company

Present:- Mr. Atul V. Sood, Advocate, for the petitioner.

Mr. Deepak Aggarwal, Advocate, with
Mr. D. K. Singh, Official Liquidator.

Rajesh Bindal, J.

In this petition, the petitioner companies seek sanctioning of Scheme of Amalgamation (Annexure P-1), of Gambro India Private Limited (Transferor Company) and Baxter (India) Private Limited (Transferee Company/ Petitioner Company).

The registered office of the petitioner company is situated at Gurgaon, Haryana.

The Memorandum and Articles of Association of the Transferor Company and Transferee Company/ petitioner company have been annexed with the petition at Annexures P-2 (colly) and P-4, respectively.

The Board of Directors of both the aforementioned Companies in their respective meetings held on 20.4.2015 have approved the Scheme. Copies of the same have been annexed at Annexures P-6 and P-7, respectively.

Earlier vide order dated 25.5.2015, passed in CP No. 75 of 2015, this Court had dispensed with convening of meeting of the Equity Shareholders of the Petitioner Transferee Company. As there was no secured creditor of the petitioner company, no meeting was required. It was further directed to convene the meeting on 18.7.2015 of the Unsecured

Creditors of the Petitioner Transferee Company for seeking approval of Scheme of Amalgamation. Notice of the meeting was also directed to be published in the newspapers and official gazette. Vide order dated 28.7.2015, the report of the Chairman was taken on record and the first motion petition was disposed of accordingly.

This is the second motion petition. Notice of the petition was directed to be issued to Regional Director, Ministry of Corporate Affairs. Notice was also directed to be published in 'Indian Express' (English) and 'Jansatta' (Hindi), both Delhi/ NCR Editions, and in the official Gazette of Government of Haryana. The aforesaid order has been complied with and affidavit to this effect has been placed on record.

While referring to the report dated 8.10.2015 by way of affidavit of A. K. Chaturvedi, Regional Director, Northren Region, Ministry of Corporate Affairs, filed by the Official Liquidator today in Court, learned counsel appearing for Official Liquidator submitted that the Regional Director has raised in para no.13 of its report that the petitioner Transferee Company may be directed to comply with the applicable provisions/ guidelines of FIPB and RBI.

In reply to the aforementioned issue raised by learned counsel appearing for the Official Liquidator, learned counsel for the petitioner company while referring to the reply by way of affidavit dated 13.10.2015 of Amit Dhingra, authorised signatory of the petitioner company, submitted that it has undertaken in para 3 thereof that the petitioner company shall comply with all provisions applicable to it pertaining to FEMA/ RBI Act, Income Tax Act, 1961 or any other law or regulation.

Heard learned counsel for the parties and perused the paper book.

The only issue raised by the Regional Director is regarding compliance to the provisions of FEMA/RBI Act. Clause 15.7 of the Scheme takes care of the issue of shares of the Transferor company. The same are extracted below:-

> "15.7 The Transferee Company shall, if and to the extent required, apply for and obtain any approvals from the concerned regulatory authorities for the issue and allotment by the Transferee Company of the

> New Equity Shares to the shareholders of the Transferor Company under the Scheme. It is hereby clarified that no approvals from the shareholders of the Transferor or the Transferee Company will be required for effecting the allotment."

Still further in the affidavit of Amit Dhingra dated 13.10.2015, it has been undertaken by the petitioner Transferee Company that it shall comply with all provisions applicable to it pertaining to FEMA/ RBI Act, Income Tax Act, 1961 or any other law or regulations.

The petitioner- company has confirmed that there are no proceedings under Sections 235 to 251 and Sections 397-398 of the Companies Act, 1956 and the relevant provisions of Companies Act, 2013 pending against it.

For the reasons afore-stated and on consideration of all the relevant facts and the procedural requirements contemplated under the Act and the relevant Rules and on due consideration of the report of Regional Director, Northern Region, Ministry of Corporate Affairs, the Scheme of Amalgamation is hereby sanctioned, subject to the sanctioning of the scheme in the petition filed by Gambro India Private Limited (Transferor Company) before Hon'ble High Court of Madras, and as a result thereof, the assets and liabilities of the Transferor Company shall stand vested in the Transferee Company. The Transferee Company shall be required to comply with the procedural requirements with regard to all conditions stipulated under the FEMA/ RBI Act, Income Tax Act, 1961 or any other law or regulation.

The Scheme shall be binding on the Transferor and Transferee Companies, their respective Shareholders, Creditors and all concerned.

Let formal order of sanction of the Scheme of Amalgamation be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt of the same.

Learned counsel for the petitioner company states that the petitioner companies would voluntarily deposit a sum of ₹ 1,00,000/- in the Common Pool Fund Account of the Official Liquidator within four weeks.

The statement is accepted.

Notice of the order be published in the "Indian Express' (English) and 'Jansatta' (Hindi), both Delhi/ NCR Editions, and in the official Gazette of Government of Haryana.

Any person interested shall be at liberty to apply to the Court for any direction (s) as per law.

Disposed of accordingly.

19.10.2015 (Rajesh Bindal)
vs Judge