

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CA Nos. 64 and 73 of 2015 and
CA Nos. 963-964 of 2014 in/ and
CP No. 165 of 2014 (O&M)

Date of decision : 09.3.2015

M/s Ranbaxy Laboratories Limited Petitioner -Transferor Company
and

M/s Sun Pharmaceutical Industries Limited Transferee Company

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Anand Chhibbar, Senior Advocate with
Mr. Jasmeet Singh Bhatia, Advocate,
Mr. Tarun Dua, Advocate,
Mr. Gaurav Mankotia, Advocate,
Mr. Piyush Prasad, Advocate and
Ms. Srishti Maheshwari, Advocate,
for the petitioner- company.

Mr. Ashok Aggarwal, Senior Advocate with
Mr. M. P. S. Mann, Advocate, for the Transferee Company.

Mr. Akshay Bhan, Senior Advocate with
Mr. Sahil Sharma, Advocate, for the applicant,
in CA Nos. 64 and 71 of 2015.

Mr. Anil Kumar Aggarwal, Advocate,
for the applicant in CA No. 963-964 of 2014.

Mr. Manjit Singh, Assistant Official Liquidator.

Rajesh Bindal, J.

1. The prayer in the present petition filed under Sections 391 - 394 of the Companies Act, 1956, duly supported by affidavits, by M/s Ranbaxy Laboratories Limited (Petitioner-Transferor-Company) and M/s Sun Pharmaceutical Industries Limited (Transferee-Company) is for sanctioning of the Scheme of Arrangement (Annexure P-1) between the aforesaid Transferor Company with the Transferee Company.

2. This is the second motion petition.

3. It is averred in the petition that the registered office of the Transferor Company is situated at Mohali (Punjab), and registered office of the Transferee company is situated at Vadodara (Gujarat).

4. The Board of Directors of the M/s Ranbaxy Laboratories Limited (Petitioner-Transferor-Company) and M/s Sun Pharmaceutical Industries Limited (Transferee-Company) have approved the said Scheme in their respective meetings held on 6.4.2014, vide resolutions annexed with the first motion petition as Annexures P-5 (colly) & P-14, respectively .

5. Main objects of the petitioner-Transferor Company and the Transferee Company are detailed in their respective Memorandum and Articles of Association annexed with the first motion petition.

6. Vide order dated 7.8.2014, the prayer to dispense with convening of the meetings of the secured and unsecured creditors was allowed by this Court considering the fact that the petitioner Transferor company has 18 secured creditors, out of which 16, constituting 93.39% in value, had given their consent/no objection to the Scheme. Out of 7428 unsecured creditors, 65 constituting 88.79% in value, had also given no objection and consent to the scheme. Mr. Harkesh Manuja, and Ms. Puneeta Sethi, Advocates were appointed, as Chairman and Co-Chairperson, respectively, to convene the meeting of the equity shareholders of the Transferor Company. In the report dated 26.9.2014, it has been stated that on 19.9.2014 the meeting was attended either personally or through proxy /authorised representatives by 236 equity shareholders of the Petitioner Transferor Company, holding 28,57,64,027 shares of ₹ 5 each, value of the shares being ₹ 1,42,88,20,135/-. Total 203 ballots involving 28,56,77,507 votes having value of ₹ 1,42,83,87,535/-, were cast as found from the ballot box opened after polling. There were 30 members present personally. Out of the 236 shareholders, 33 abstained from voting. After polling, it was found that in all 203 ballots were polled, out of which 195 were found to be valid and 8 were found to be invalid. The invalid ballot papers 8 in numbers were pertaining to 48,184 shares, having value of ₹ 2,40,920/-. Out of 203 equity shareholders present and voting, 190 voted

in favour of the Scheme of Arrangement, representing value of ₹ 1,42,37,91,500 i.e. 99.6951% of the total value of equity shareholders of those present and voted validly. 5 equity shareholders voted against the Scheme of Arrangement, representing a value of ₹ 43,55,115/- i.e. 0.3049% of the value of those present and voted validly. The summary as reproduced in the report is extracted below:-

In number

<i>Sr. No.</i>	<i>Particulars</i>	<i>In number</i>	<i>%</i>
(a)	Number of members/ authorized representative/ proxies folio wise who voted for the resolution:	190	97.4359
(b)	Number of members/ authorized representative/ proxies folio wise who voted against the resolution:	5	2.5641
(c)	Total Number of Members (folio wise who cast valid votes)	195	100

In value of shares

<i>Sr. No.</i>	<i>Particulars</i>	<i>In value</i>	<i>%</i>
(a)	Votes 'For'	1,42,37,91,500	99.6951%
(b)	Vote 'Against'	43,55,115/-	0.3049%
(c)	Total Valid Votes Cast	1,42,81,46,615	100

7. Vide order dated 29.9.2014, considering the fact that the Scheme has been approved by the majority of the equity shareholders, the first motion petition was disposed of. The petitioner company was given liberty to move the Second Motion Petition.

8. Notice of this Second Motion Petition was issued to the Regional Director, Ministry of Corporate Affairs, Noida as well as the Official Liquidator and was also ordered to be published in 'Financial Express' (English) and 'Dainik Bhaskar' (Hindi), both Punjab and Chandigarh editions and in the official Gazette of the State of Punjab. The aforesaid order was complied with and an affidavit to this effect has been placed on record.

9. Vide CA Nos. 963-964 of 2014 and CA No. 64 of 2015, two objections have been filed, which are being dealt with first before dealing with the case of the petitioner on merits.

**OBJECTIONS FILED AGAINST ACCEPTANCE OF SCHEME OF
ARRANGEMENT.**

CA Nos. 963-964/2014

10 The present applications have been filed by Sales Promotion Employees working with the Transferor Company through the Federation of Medical and Sales Representatives' Associations of India.

11. Learned counsel for the objectors claimed the the Sales Promotion Employees are the workmen, hence, they have the locus to file objections. He further submitted that the objectors are aggrieved against clauses 13(a) and 13(b) of the Scheme of Arrangement whereby terms and conditions of the employees already working are sought to be changed to their detriment. Further in clause 13(c) of the Scheme of Arrangement, it has been mentioned that the Transferor Company means M/s Ranbaxy Laboratories Limited only and not its subsidiary or associates. Same is the position with the Transferee Company, still in clause 13(b) of the Scheme of Arrangement, it has been mentioned that employees could be transferred to even the subsidiary of the Transferee Company. Such a transfer could be to a small time defunct company which can spoil the career of the applicants. He further submitted that the Transferor Company had recognised certain Negotiating Committees. Those committees should be allowed to continue and also the other agreements between the Transferor Company and the objectors. He further submitted that if any of the conditions in the scheme of Arrangement is found to be against the public policy, the same can either be deleted or amended by this Court. Even merger approved by the Gujrat High Court in the petition filed by the Transferee Company is of no consequence as this Court has to examine the issue independently.

CA No. 64/2015

12. By filing CA No. 64 of 2015, objections have been filed by Genepharm S.A. Greece, one of the unsecured creditor, claiming that no notice was ever served upon it as firstly it was one of the creditors and secondly there was a licence and supply agreement dated 11.6.2012 executed between the parties which could not be assigned by either party without prior consent of the other. In the present case, the consent of the objector was not sought prior to filing of the petition for arrangement or any time thereafter. Communication was sent by Ranbaxy (U.K.) Limited on

4.12.2014 seeking such a consent, hence, in the absence thereof the Scheme of Arrangement should not be approved as rights of the objector will be adversely affected.

13. Learned counsel for the applicant further submitted that in the Scheme of Arrangement even reduction in share capital and capital reserve account has been approved for which due procedure has not been followed.

14. Learned counsel for the Transferor company submitted that it does not dispute the locus of employees, who filed the applications. He submitted that it is a small group of 750 employees out of total 13000-14000. All the rights of the existing employees of the Transferee Company have been fully protected under Clause 13 of the Scheme of Arrangement. It has been specifically mentioned therein. The apprehensions sought to be raised are totally misconceived. The transfer of the employees shall be strictly in accordance with terms of their appointment and so is the salary and other benefits.

15. Mr. Ashok Aggarwal, learned Senior counsel appearing for the Transferee Company submitted that the Transferee Company had undertaken all the liabilities of the Transferor Company, especially with regard to the employees. It is only that as against the Transferor Company, the name of the Transferee Company shall be substituted. Conditions of service of all the employees will remain the same. All agreement already executed are to be honoured. In terms of Section 19 of the Industrial Disputes Act, there could be wage reduction as well, however, that right has been foregone by the Company for a period of one year. The Scheme is to be read in totality and no provision has to be read in isolation. There is no intention to reduce the wages of any of the employee. He has even filed affidavit dated 11.2.2015 of Ashok I. Bhuta, authorised person of Sun Pharmaceutical Industries Limited stating that if either Clause 13 (a) of the Scheme of Arrangement or the law does not permit, there will not be any reduction in the base salary or base wage of the objectors even after expiry of the period as mentioned in Clause 13 (b) of the Scheme of Arrangement. It has been further stated in the affidavit that Clause 13 (b) of the Scheme of Arrangement shall not be used as an instrument to reduce the base salary or base wage of the transferred employee. Any variation (increase or reduction) in the base salary or base wage rate of the Transferred Employees

even after the relevant period will be in accordance with the terms and conditions of employment and subject always to applicable law, hence, the apprehension is totally baseless.

16. As regards the objections filed by Geneparm S.A., learned senior counsel for the Transferor Company submitted that the objector was one of the unsecured creditor to the extent of ₹ 17,86,276.80. A sum of Euro 45,000 were paid to the objector in June, 2014, which cleared entire debt due against the transferor company. Once it was not the creditor of the Transferor Company, it had no locus to file the application. The agreement produced on record was with Ranbaxy (U.K.) Limited which is an independent entity. No doubt, the Transferor Company is its holding company. All the agreements executed by Transferor Company shall be honoured by the Transferee Company.

17. He further submitted that as per Clause 16.6 of the Licence and Supply Agreement dated 11.6.2012, the agreement will be binding, despite any change in management control on either party.

18. He further submitted that amount sought to be claimed for which a legal notice dated 21.1.2015 was issued by the objector is merely a claim of damages as assessed by the objector. The same has not been adjudicated upon by any Court. If any such claim is maintainable against the Transferor Company and the objector raises the issue in any Court of law, the Transferee Company shall defend the same and bound by the result thereof. Before adjudication by any Court to the extent the amount is claimed, the objector cannot be said to be a creditor.

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

20. Relevant Clauses of the Scheme of Arrangement are extracted below:-

(s) 'Transferor Company' means Ranbaxy Laboratories Limited, a company registered under the Act and having its registered office at A-41, Industrial Area, Phase VIII-A, SAS Nagar, Mohali, Punjab-160061, India;

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(u) 'Transferee Company' means Sun Pharmaceutical

Industries Limited, a company registered under the Act and having its registered office at SPARC, Tandalja, Vadodara — 390020, Gujarat, India;

(v) 'Undertaking' shall mean the entire business and the whole of the undertakings of the Transferor Company as a going concern, all its assets, rights, licenses and powers, and all its debts, outstandings, liabilities, duties, obligations and employees as on the Appointed Date including, but not limited to, the following:

- (i) All the assets and properties (whether moveable or immoveable, tangible or intangible, real or personal, in possession or reversion, corporeal or incorporeal, present, future or contingent) of the Transferor Company, whether situated in India or abroad, including, but not limited to manufacturing facilities, laboratories, land (whether leasehold or freehold), processing plants, plant and machinery, computers, equipment, buildings and structures, offices, residential and other premises, diesel generator sets, stock-in-trade, packing material, raw materials, formulations, tablets, capsules, vials, ointments, active pharmaceutical ingredients and drugs intermediaries, capital work in progress, sundry debtors, furniture, fixtures, interiors, office equipment, vehicles, appliances, accessories, power lines, depots, deposits, all stocks, stocks of fuel, assets, investments of all kinds (including shares, scripts, subsidiaries, stocks, bonds, debenture stocks, units or pass through certificates) including shares or other securities held by the Transferor Company in its subsidiaries, cash balances or deposits with banks, cheques on hand, loans, advances, contingent rights or benefits, book debts, receivables, actionable claims, earnest

moneys, advances or deposits paid by the Transferor Company, financial assets, leases (including but not limited to lease rights of the Transferor Company), hire purchase contracts and assets, lending contracts, rights and benefits under any agreement, benefit of any security arrangements or under any guarantees, reversions, powers, bids, tenders, letters of intent, expressions of interest, development rights (whether vested or potential and whether under agreements or otherwise), municipal permissions, tenancies or license in relation to the office and /or residential properties (including for the employees or other persons), guest houses, godowns, warehouses, licenses, fixed and other assets, intangible assets (including but not limited to software), trade and service names and marks, patents, copyrights, designs and other intellectual property rights of any nature whatsoever, rights to use and avail of telephones, telexes, facsimile, email, internet, leased line connections and installations, utilities, electricity and other services, reserves, provisions, funds, benefits of assets or properties or other interest held in trust, registrations, contracts, engagements, arrangements of all kind, privileges and all other rights, title, interests, other benefits (including tax benefits), assets held by or relating to any Transferor Company employee benefit plan, export incentives accrued, derivative instruments, forward contracts, insurance claims receivable, tax holiday benefit, incentives, credits (including tax credits), minimum alternative tax credit entitlement tax losses, rights, easements, privileges, liberties and advantages of whatsoever nature and wheresoever situate belonging to or in the

ownership, power or possession and in the control of or vested in or granted in favour of or enjoyed by the Transferor Company or in connection with or relating to the Transferor Company and all other interests of whatsoever nature belonging to or in the ownership, power, possession or the control of or vested in or granted in favour of or held for the benefit of or enjoyed by the Transferor Company, in each case, whether in India or abroad.

- (ii) All agreements, rights, contracts, entitlements, licenses, permits, permissions, incentives, approvals, registrations, tax deferrals and benefits, subsidies, concessions, grants, rights, claims, leases, tenancy rights, liberties, special status and other benefits or privileges and claims as to any patents, trademarks, designs, quotas, rights, engagements, arrangements, authorities, allotments, security arrangements, benefits of any guarantees, reversions, powers and all other approvals of every kind, nature and description whatsoever relating to the Transferor Company business activities and operations.

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- (v) Rights to any claim not preferred or made by the Transferor Company in respect of any refund of tax, duty, cess or other charge, including any erroneous or excess payment thereof made by the Transferor Company and any interest thereon, under any law, act, rule or scheme, and in respect of set-off, carry forward of un-absorbed losses, deferred revenue expenditure, deduction, exemption, rebate, allowance, amortization benefit, etc. whether under the Income Tax Act, 1961, the rules and regulations thereunder, or taxation laws

of other countries, or any other or like benefits under the said acts or under and in accordance with any law or act, whether in India or anywhere outside India.

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- (vii) All other obligations of whatsoever kind, including liabilities of the Transferor Company with regard to their employees, or the employees of any of their subsidiaries, with respect to the payment of gratuity, pension benefits and the provident fund or other compensation or benefits, if any, whether in the event of resignation, death, voluntary retirement or retrenchment or otherwise;
- (viii) All permanent and temporary employees engaged by the Transferor Company at various locations.”

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“5. LEGAL PROCEEDINGS

- (a) Upon coming into effect of this Scheme all suits, claims, actions and proceedings by or against the Transferor Company pending and / or arising on or before the Effective Date shall be continued and be enforced by or against the Transferee Company as effectually as if the same had been originally instituted and/ or pending and/ or arising by or against the Transferee Company.
- (b) The Transferee Company will undertake to have all legal or other proceedings initiated by or against the Transferor Company referred to in Section 5(a) above transferred to its name and to have the same continued, prosecuted and enforced by or against the Transferee Company.”

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13. TRANSFEROR COMPANY EMPLOYEES

- (a) Upon the Scheme coming into effect and with effect from the Appointed Date, all permanent employees (including deputed employees) of the Transferor Company, shall become employees of the Transferee Company on such date as if they were in continuous service without any break or interruption in service, and on terms and conditions as to employment and remuneration not less favourable than those on which they are engaged or employed by the Transferor Company, so as to become as and from the Appointed Date, the employees of the Transferee Company. The Transferee Company undertakes to continue to abide by any agreement/ settlement, if any, validly entered into by the Transferor Company with any union/employee of the Transferor Company recognized by the Transferor Company.
- (b) Without prejudice to the provisions of this Scheme and the rights and obligations of the Transferee Company under applicable law, for a period of 12 months after the Scheme comes into effect, (the "**Relevant Period**"), the Transferee Company shall provide (or cause its subsidiaries to provide each such employee of the Transferor Company whose employment was transferred to the Transferee Company pursuant to this Scheme (each, a "**Transferred Employee**") with compensation and benefits that are

substantially comparable in the aggregate economically to the compensation and benefits provided to such Transferred Employee immediately prior to the Scheme coming into effect; *provided, however*, that during the Relevant Period there shall be no decrease in a Transferred Employee's base salary or base wage rate in effect immediately prior to the Scheme coming into effect. To the extent that: (i) the applicable law of any jurisdiction; (ii) any collective bargaining agreement, works council agreement or similar agreement; or (iii) any employment agreement would require the Transferee Company to provide any more favorable terms of employment to any Transferred Employee than those provided in the preceding sentence, the Transferee Company shall provide (or cause its subsidiaries to provide) such more favorable term, and otherwise provide terms of employment in accordance with the preceding sentence.

21. The primary apprehension of the applicants in CA Nos. 963-964 of 2014, who are working as Sales Promotion Employees in the Transferor Company is that their terms and conditions of employment may be changed to their detriment. Their salary may be reduced after one year as is sought to be provided in Clause 13(b) of the Scheme of Arrangement and further they may be transferred to some insignificant companies.

22. In my opinion, though in clause 13(a) and (b) of the Scheme of Arrangement, the interest of the employees of the Transferor Company has been fully taken care of, but still to clarify the issue further affidavit dated 11.2.2015 of Ashok I. Bhuta, authorised person of Sun Pharmaceutical Industries Limited has been filed undertaking therein that Clause 13 (b) of the Scheme of Arrangement shall not be used as an instrument to reduce the

base salary and base rate of the transferred employee as any variation therein even after the relevant period will be in accordance with the terms and conditions of the employment subject to applicable law. Relevant paragraphs of the affidavit are reproduced as under:-

“2. That Clause 13(b) of the scheme of arrangement between Ranbaxy Laboratories Limited and Sun Pharmaceutical Industries Limited (“Scheme”) provides that for a period of 12 months after the scheme comes into effect, there shall be no decrease in a Transferred Employee's base salary or base wage rate from the base salary or base wage rate which was applicable immediately prior to the Scheme coming into effect. Thus, the Transferred Employees are protected during the Relevant Period from any reduction in their base salary or base wage rate. This provision is without prejudice to the provisions of this Scheme and the rights and obligations of the Transferee Company under applicable law. If either Scheme [particularly clause 13(a)] or law does not permit, there cannot be any reduction in their base salary or base wage rate even after the expiry of the Relevant period.

3. It is submitted that the Applicants to the Company Application No. 964 of 2014 (Objectors) have alleged that pursuant to the Scheme being allowed by this Hon'ble Court, clause 13 (b) may be misused by the Transferee Company to reduce their base salary or base wage rate after the Relevant Period.

4. The Transferee Company submits and undertakes that it shall not use the Hon'ble Court's sanction to the Scheme including clause 13(b) of the Scheme as an instrument to reduce the base salary or base wage rate of the Transferred Employees, and any variation (increase or reduction) in the base salary or base wage rate of Transferred Employees after the Relevant period will be in accordance with the terms and conditions of employment, and subject always to all the extant laws including labour laws in this regards.”

23. As far as transfer of the employees to the other associated or subsidiary is concerned, even in the letter of appointment of the applicants such a condition is existing. In Clause 13(a) of the Scheme of Arrangement, all such rights and liabilities have been protected, hence, apprehension is baseless.

24. As regards the issue of subsidiary of the Transferor Company is concerned, once the Transferor Company is being merged in the Transferee Company with all its assets and liabilities, the entire share holding of the Transferor Company in other companies in which the Transferor Company has majority share holdings, automatically gets transferred to the Transferee Company and as a result thereof change to that extent will be affected which is a natural consequence, hence, nothing hinges on that.

CA No. 73/2015

25. The objection sought to be raised by Genepharm S.A. Greece, is that it is one of the unsecured creditor of the Transferor Company and further that it has to recover a sum of Euro 15,37,619.80 from the transferor company as damages on account of loss suffered by it for which a legal notice dated 21.1.2015 had been got issued. Further case set up by it is that in terms of Licence and Supply Agreement dated 11.6.2012 in case of assignment of the rights under the agreement by either party prior written consent of other party was required but in the present case none was sought. It is further claimed that similar agreement is with Ranbaxy (U.K.) for which consent was sought vide letter dated 4.12.2014 after the entire exercise had already been done by the Transferor Company. Ranbaxy (U.K.) is the subsidiary of the Transferor company.

26. The case set up by the Transferor Company is that in terms of Clause 16.6 of the Licence and Supply Agreement, the agreement remains binding on the parties despite any change of management control on either party and further in Clause 21 thereof there is an arbitration clause for settling the dispute, if any, arising out of the agreement. It was further claimed that no amount is due to the applicant from Transferor Company.

27. The applicant was a unsecured creditor to the extent of ₹ 17,86,276.80 as on 31.3.2014. The aforesaid amount, which is equivalent to Euro 45,000, was transferred by the Transferor Company in the account of the applicant in June, 2014, hence, nothing was due. Further regarding claim

for damages, the stand is that it is merely a notice got issued by the applicant. The claim is yet to be gone into by any court of law. As per the scheme of Arrangement, the Transferee Company steps into the shoes of the Transferor Company and will defend and settle the claim, if any, as per law. The relevant clauses of the Licence and Supply Agreement dated 11.6.2012 entered into between the Transferor Company and the applicant – Genepharm S.A. Greece, are extracted below:-

“14. ASSIGNMENT

14.1 This Agreement may not be assigned by either Party without the prior written consent of the other, such consent may not to be unreasonably withheld or delayed.

16.6 This Agreement will be binding, despite of any change of management control on either party.

21. DISPUTE RESOLUTION AND ARBITRATION

21.1 This Agreement shall be governed by and interpreted in accordance with English law. Any dispute, controversy or claim arising out of this Agreement, or the breach, termination or invalidity thereof, shall be discussed between the senior management of the Parties who will attempt to resolve the matter amicably. Any disputes which cannot be resolved in this way within sixty (60) days of one Party notifying the other of the existence of a dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

The arbitration shall be conducted in English in London.”

28. Similar Clauses are there in the agreement signed by Ranbaxy (U.K.) with the applicant. Clause 14 of the Agreement provides that the same may not be assigned by either party without prior written consent of the other. However, such consent was not to be unreasonably withheld or delayed. Clause 16.6 of the Agreement provides that it shall remain binding between the parties despite any change of management control on either party. Further Clause 21 of the Agreement provides that it shall be governed by English law. Any dispute, controversy or claim arising out of the Agreement, shall first be discussed amongst the senior management of the

Parties with an attempt to resolve the same. If the dispute cannot be resolved within sixty (60) days, the matter shall be referred to Arbitration. The place of arbitration has been chosen as London.

29. Considering the aforesaid clauses, in my opinion, the objections filed by the applicant that its prior consent was required for giving effect to the scheme of Arrangement between the Transferor and Transferee Companies is not tenable. In case the applicant is aggrieved, complete dispute resolution mechanism has been provided in Clause 21 of the Licence and Supply Agreement. In terms of Clause 16.6 of the Licence and Supply Agreement dated 11.6.2012, the Transferor Company is bound by the same as the agreement will be binding, despite any change of management control on either party. Hence sanction to the Scheme of Arrangement cannot be withheld on that ground.

30. As far as the applicant being an unsecured creditor is concerned, as claimed by the Transferor Company the amount due to it, as on 31.3.2014 was ₹ 17,86,276.80. To settle the account a sum of Euros 45,000 were transferred in the account of the applicant in June, 2014, hence, nothing was due. As regards the claim of Euros 15,37,619.80 on account of damages is concerned, the same is the amount claimed by the applicant vide legal notice dated 21.1.2015. It is yet to be determined by any authority or the Court of law. In terms of Clause 5 of the Scheme of Arrangement, upon coming into effect of the Scheme all suits, claims, actions and proceedings by or against the Transferor Company pending and/or arising on or before the Effective Date shall be continued and be enforced by or against the Transferee Company as effectually as if the same had been originally instituted and/or pending and/or arising by or against the Transferee Company. The Transferee Company has undertaken to have all legal or other proceedings initiated by or against the Transferor Company referred to in Clause 5(a) above transferred to its name and to have the same continued, prosecuted and enforced by or against the Transferee Company. The Transferee Company is bound by the result thereof, even if the cause of action arose to a party prior to the effective date.

31. For the reasons mentioned above, the objections raised by the applicants to the Scheme of Arrangement are not tenable. Hence, the same are dismissed.

CP No. 165/2014 ON MERITS

32. Pursuant to the notice of second motion petition, the Official Liquidator has placed on record the report dated 16.1.2015 by way of affidavit of A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs, Noida. The issues raised by the Regional Director in his affidavit are as under:-

- “4. That the Deponent craves leave to submit that as per clause 10.1 of the scheme it has been stated that the amalgamation is to be considered as an "Amalgamation in the nature of merger" in accordance with the provision of Paragraph 29 of Accounting Standard 14 - "Accounting for Amalgamation" (AS-14) as notified under the Companies Act, 1956 (which continue to be applicable in respect of section 133 of the Companies Act, 2013 in terms of General circular 15/2013 dated September 13, 2013 of the Ministry of Corporate Affairs), the accounting treatment in respect of assets, liabilities and reserves and surplus of the Transferor Company in the books of the Transferee Company shall be governed by, the provision of AS-14, "the Pooling of Interests Method".
5. That the Deponent craves leave to submit that as per Ministry of Corporate Affairs' General Circular No.1/2014 dated 15.01.2014, letter for furnishing the comments/observations, if any, in regard to scheme was sent to the office of Chief Commissioner of Income Tax, Chandigarh vide this Directorate's letter dated 18.11.2014. In this regard it is submitted that no observation/comments have been received till date.
6. That the Deponent craves leave to submit that as stated by ROC the valuation report has been prepared by Walker Chandilok & Co LLP and Method of Valuation adopted is Net Asset Value Method, Market Price Method.

7. That the Deponent craves leave to submit that with reference to this Directorate's letter dated 10.12.2014 issued to Securities and Exchange Board of India copy enclosed as "Annexure- A", the SEBI has furnished its comments stating as under:-

i. It is noted that the Designated Stock Exchange' viz. BSE, and NSE have accorded their 'no-objection' to the draft Scheme vide letter dated June 09, 2014 and June 11, 2014, respectively.

ii. The matter has been examined by SEBI in The light of the provisions under Part A, Annexure I of the aforesaid Circular. Accordingly, SEBI's comments on the draft Scheme are as under :-

a. Stock exchanges to ensure compliance with the said Circulars.

b. The Company shall duly comply with various provisions of the Circulars.

iii. Please note that the submission of documents/information in accordance with the Circulars, to SEBI should not in any way be deemed or construed that the same has been cleared or approved by SEBI. SEBI does not take any responsibility either for the financial soundness of any scheme or for the correctness of the statements made or opinions expressed in the documents submitted.

8. That the Deponent craves leave to submit with reference to this Directorate's letter dated 18.11.2014

issued to the Registrar of Companies, Chandigarh copy enclosed as "Annexure- B", in this regard Registrar of Companies, Chandigarh has made the following observations as under:

- i. The merger is also subject to the approval/conditions to be imposed by Competition Commission of India.
- ii. As per Clause 9 of the scheme of Amalgamation i.e. REDUCTION OF CAPITAL AND RESERVES sub clause (9.1) An amount equal to the balance lying to the debit in statement of profit and loss in the books of the Transferor Company on the close of 31st day of March, 2014, shall be, in the books of the Transferor Company, adjusted/reduced as follows in accordance with provisions of section 391 to 394, section 78 and 100 to 103 of the Companies Act, 1956 and Section 52 of the Companies Act, 2013 and any other applicable provisions of law:
 - (a) Firstly, against reduction of Capital Reserve Account of the Transferor or Company amounting to INR 176.20 Crore. (Rupees One hundred Seventy Six corers and twenty lacs only).
 - (b) Secondly, against reduction of Securities Premium Account of the Transferor Company amounting to INR 3501.48 Crores. (Rupees Three Thousand Five Hundred One Crore and Forty Eight lacs only);
 - (c) Thirdly, against reduction of the General Reserve of the Transferor Company amounting to INR 551.92 (Rupees Five Hundred and Fifty one

Crores and Ninety Two lacs only), to the extent available or required;

- (d) The balance, if any, remaining in the debit in state of profit and loss in the books of the Transferor Company shall be carried in the books of the Transferor Company as on 31' March 2014.”

33. The Official Liquidator in his report dated 30.1.2015 while referring to the observations made by the Chartered Accountant in audit report has submitted that the Scheme is designed to set off “Carry Forward Accumulated Losses and Unabsorbed Depreciation” of the Transferor Company against profits of the Transferee Company which is prejudicial to the interest of revenue and the public at large.

34. In the submissions made on behalf of the Transferor Company in response to the affidavit filed by the Regional Director, it has been stated that the Scheme of Arrangement is in accordance with the requirement of AS-14. The same has been specifically stated in Clause 10.1 of the Scheme read with other clauses. It has further been stated therein that the Scheme was sent to the Chief Commissioner of Income Tax, Chandigarh, by the Regional Director vide letter dated 18.11.2014, however, no observations were received. Meaning thereby that the Income Tax Department has no objection.

35. With reference to the facts stated in para 7 of the affidavit filed by the Regional Director, the Transferor Company, while stating that the Scheme is strictly in accordance with the law and is not prejudicial to public interest, submitted that the Transferor Company shall comply with all the legal requirements, whichever applicable.

36. To the observations made by the Registrar of Companies in his communication dated 9.1.2015 addressed to the Regional Director, it has been stated that the Transferor Company will comply with all legal requirements.

37. With reference to the report of the Official Liquidator, in the response filed by the Transferor company, it has been stated that the same is merely repetition of comments of the report prepared by the Chartered Accountant. Whatever rights and liabilities the Transferor or Transferee

Companies have under the Income Tax Act regarding carry forward of losses shall be strictly adhered to. The observations were totally uncalled for. In fact after Scheme of Arrangement comes into effect, more revenue will be generated.

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

39. As far as the issue raised by the Regional Director in his affidavit, the Transferor Company has clarified that the Scheme has been prepared in terms of Accounting Standard-14. Copy of the Scheme was sent to the Chief Commissioner of Income Tax, Chandigarh. However, no comments have been received.

40. It has further been undertaken by the Transferor Company that all legal formalities required shall be complied with by the Transferor Company.

41. In the report of the Official Liquidator, it has been stated that the Scheme of Arrangement is prejudicial to the interest of revenue and public at large, as the Scheme is designed to set off "Carry Forward and Set Off Accumulated Losses and Unabsorbed Depreciation" of the Transferor Company against profits of the profit making Transferee Company. The Scheme was sent to the Income Tax Department. No comments have been received. In case it is legally permissible for the Transferor Company to carry forward and set off all the losses, it shall be entitled to the benefit in case the law does not put a restriction thereon.

42. Certain other issues have been raised in the report of the Official Liquidator in terms of the comments made by the Chartered Accountant in its report. Those are pertaining to certain losses suffered by the Transferor Company regarding ban of drugs in U.S., pendency of certain litigation, etc. These are factors which are required to be considered by the Transferor and Transferee Companies and not the Court.

43. Reference has been made to order dated 5.12.2014 passed by the Competition Commission of India (for short, 'the Commission') under Section 31(7) of the Competition Act, 2002 (for short, 'the Competition Act'). This is with reference to the notice given by the Transferor and Transferee Companies under Section 6(2) of the Competition Act. The Scheme of Arrangement was submitted for approval to the Commission.

Certain queries raised by the Commission were replied to and the information was furnished. Prima facie, the Commission in its meeting held on 7.7.2014 found that the proposed combination is likely to cause an appreciable adverse effect on competition in the relevant markets in India. Hence, the notice was issued to the parties under Section 29(1) of the Competition Act. The Commission directed for publication of the proposed Combination for inviting comments/ objections/ suggestions. Number of them were received.

44. A perusal of the order passed by the Commission shows that exhaustive exercise was carried out to find out the effect of merger on the public at large. The Commission has issued comprehensive directions in consonance with the provisions of the Competition Act, which are to be complied with by the Transferor / Transferee Companies.

45. No doubt, the Commission has taken full care of the interest of the consumers of the medicines manufactured by both the companies, however, still as an abundant caution, it is added that during the period the entire process of Divestment is completed, the monitoring agency shall also monitor the prices of the drugs manufactured by the combined entity.

46. The petitioner- company has confirmed that there are no investigations or proceedings pending against it under Sections 235 to 251 of the Act.

47. For the reasons afore-stated and on consideration of all the relevant facts and the procedural requirements contemplated under Sections 391 to 394 of the Companies Act, 1956 and the relevant Rules and on due consideration of the reports of Regional Director, Northern Region, Ministry of Corporate Affairs Noida; the Official Liquidator and the replies submitted by the Transferor Company, the Scheme of Arrangement is hereby sanctioned. The Transferor Company shall be dissolved without being wound up. The Company shall be required to comply with the procedural requirements in accordance with law.

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

49. Let formal order of sanction of the Scheme of Arrangement 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 thereof.

50. Learned counsel for the petitioner company states that the petitioner company would voluntarily deposit a sum of ₹ 1,00,000/- in the Common Pool Fund of the Official Liquidator within four weeks from today. The statement is accepted.

51. A notice of the order be published in the 'Financial Express' (English) and 'Dainik Bhaskar' (Hindi), and in the official Gazette of the Government of Punjab. It shall be uploaded on the website as well.

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

53. Disposed of accordingly.

09.3.2015
vs

(Rajesh Bindal)
Judge

(Refer to Reporter)