

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 207 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 8 OF 2016

In the matter of Companies Act, 1956 (1 of 1956) or any other applicable provisions of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 read with applicable provisions of the Companies Act, 1956 or any other applicable provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between Virbac Animal Health India Private Limited and its shareholders

Virbac Animal Health India Private)
Limited, a company incorporated)
under the Companies Act, 1956)
having its registered office at 604,)
6th floor, Western Edge I,)
Magathane, Western Express)
Highway, Borivali (East), Mumbai)
400 066 Maharashtra, India.)

.....Petitioner Company

Called for hearing

Mr. Hemant Sethi, Mr. Ajit Singh Tawar i/b. Hemant Sethi & Co.,
Advocates for the Petitioner.

Ms. Priya V Sankpal i/b Mr. Pankaj Kapoor, for Regional Director .

CORAM: B.P Colabawalla, J.

DATE: 22nd July 2016

PC:

1. Heard the learned counsel for the Petitioner Company. 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 to the Scheme of Arrangement between Virbac Animal Health India Private Limited and its Shareholders.

3. The counsel for the Petitioner states the Petitioner Company carries on the business of marketing products for animal health, veterinary medicine, dietetics.
4. The rationale for the scheme is to return a part of the capital to the Equity Shareholders, Improve earnings per share, Improve return on equity capital employed, Achieve optimum capital structure and Service equity more efficiently.
5. The Petitioner Company has approved the Scheme by passing the Board Resolution which is annexed to the Company Scheme Petition.
6. The Counsel for the Petitioner further states that the Petitioner Company has complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summons for Direction.
7. The Counsel for the Petitioner further states that the Petitioner Company has complied with all requirements as per the directions of this Court and they have filed necessary Affidavit of compliance in the Court. Moreover, the Petitioner Company through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956, as may be applicable and the rules made there under. The said undertaking is accepted.
8. The Regional Director has filed an Affidavit on 16th June, 2016 stating therein that save and except as stated in paragraph 6 (a) and (b) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

The deponent further submits that:-

- (a) *The equity share capital of the petitioner company is held by foreign body corporate. For payment of cash consideration /buy back of shares, the petitioner company may be directed to comply with FEMA/RBI regulations as may be applicable in this regard.*

(b) *The provisions of section 115QA of the Income tax Act has been amended and received the assent of the President on the 14th day of May 2016. By this amendment, the reference to section 77A of the Companies Act, 1956 in the said provision of Section 115QA of the Income tax Act has been substituted with the following words "Any law for the time being in force relating to companies". In view of the above even the buyback of share, effected invoking the provisions of section 391 of the Companies Act 1956 also falls within the ambit of Section 115QA of the Income tax Act. Accordingly the Petitioner Company has to pay additional tax of @ 20% on the distributed income. The Petitioner company may be directed to undertake to pay such tax liability arising out of this scheme of arrangement.*

(c) *In this regard, 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 the 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 scheme of arrangement. The decision of the Income tax Authority is binding on the Petitioner Company.*

9. As far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Petitioner through their counsel undertakes to comply with FEMA/RBI regulations as may be applicable in this regard.

10. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner through their Counsel undertakes that all payments under the Income tax will be paid to extent applicable and in accordance with law.

11. In so far as observations made in paragraphs 6(c) of the Affidavit of Regional Director is concerned, the Petitioner through their Counsel submits that all tax issues including payment if any arising out of the

Scheme of Arrangement will be met and answered in accordance with the applicable tax law.

- 12.The Counsel for the Regional Director on instructions of Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking and submission given by the Petitioner Company. The said undertakings given by the Petitioner Company 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. None of the parties concerned has come forward to oppose the Scheme.
- 14.Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition filed by the Petitioner Company is made absolute in terms of prayer clauses (a) of the Petition.
- 15.Petitioner Company is 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 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013, whichever is applicable.
- 16.The Petitioner Company to pay cost of Rs.10,000/- to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of the order.
- 17.Filing and issuance of the drawn up order is dispensed with.
- 18.All concerned authorities to act on a copy of this order along with Scheme and form of minutes annexed to the Petition duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(B.P Colabawalla, J)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of the original signed order.

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