IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 168 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 60 OF 2016

In the matter of the Companies Act, 1956 (1 of 1956) and Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of Jai Pharma Limited and Mylan Laboratories Limited and their respective shareholders

Jai Pharma Limited.........Petitioner

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company

Ms. Nisha Valani i/b Mr. Pankaj Kapoor for Regional Director

Mr. Vinod Sharma, Official Liquidator Present.

Coram : B.P. Colabawalla, J.

DATE 5th August 2016

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation and nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 to the Scheme of Amalgamation of Jai Pharma Limited with Mylan Laboratories Limited and their respective shareholders.

3. The learned Counsel for the Petitioner submits that the Petitioner Company is engaged *inter alia* in the business of developing, manufacturing and distributing female contraceptive products including medical devices, implantable devices, oral contraceptives or similar products, in each case, used in, used for, or relating to the treatment of issues specific to, (1) human reproductive anatomy, systems and functions at any stage of life; (2) conditions caused by or relating to hormones; or (3) human reproductive healthcare, including contraception, child birth, infertility, hormone replacement therapy (hereinafter collectively referred to as "**Business**") which are aimed at meeting specific needs of the reproductive health care.

4. The learned Counsel for the Petitioner submit that while approving the proposed Scheme, amongst others, the Board of Directors of the Petitioner Company considered the following benefits of the Scheme, namely the Petitioner Company is a wholly owned subsidiary of the Transferee Company. Consolidation of the Petitioner Company with the Transferee Company by way of amalgamation would provide synergies of operation, stronger financial flexibility and accelerate the future growth/ expansion, more specifically the following advantages:

(i) *The Transferee Company's acquisition of the Business of Transferor Company would help the Transferee Company to provide an enhanced and vertically integrated platform that will accelerate the Transferee Company's growth in the women's health care space. The intention of the acquisition of business of the Transferor Company was to augment its women healthcare portfolio and supply chain infrastructure, thereby accelerating its growth. The acquisition also helps the Transferee Company to seamlessly and rapidly integrate and amalgamate the businesses (in terms of broad product portfolio, drug applications and approvals, technical knowhow, employees, customers, etc.) of the Transferor Company with the Transferee Company. Though the acquisition of the Transferor Company was through acquisition of shares to facilitate smooth transition of control and management, the intention of the Transferee Company was always to integrate and amalgamate the businesses of the Transferor Company with itself once the share acquisition process was completed, and to acquire the ownership of the business assets of the Transferor Company consequently.*

(ii) *The Transferor Company's technical capabilities augment the women's healthcare portfolio in the Transferee Company.*

(iii) *Ability to leverage and optimise on the Transferee Company's large asset base, diverse range of products, brands and vast pool of intellectual capital, optimise the value of the brands, which would enhance the shareholder's value and growth profile.*

(iv) *Help diversify the Transferee Company's product portfolio and geographic reach in key growth markets and strengthen its presence.*

(v) *Greater integration, financial strength and flexibility for the Transferee Company, which will improve the financial position of the Transferee Company.*

(vi) *Greater efficiency in cash management of the Transferee Company, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities, to further improve shareholder's value.*

(vii) *Greater financial flexibility to execute on other opportunities to accelerate the Transferee Company's long-term growth targets.*

(viii) *Improved organizational capability and leadership, arising from the pooling of human capital that has the diverse skills, talent and vast experience to compete successfully in an increasingly regulated and competitive industry.*

(ix) *Benefit of operational synergies to the combined entity in areas such as raw material sourcing, product placement, marketing and sale promotions initiatives, freight optimization and logistics.*

(x) *Greater leverage in operations planning and process optimization and enhanced flexibility in product offerings.*

5. The Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Company has approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petition.

6. The Learned Counsel for the Petitioner further states that the Petitioner Company has complied with all the directions passed in the respective Company Summons for Direction and that the

Company Scheme Petition has been filed in consonance with the orders passed in Company Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioner Company has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Company undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / the Companies Act, 2013 and the Rules made there under. The said undertakings given by the Petitioner Company are accepted.

8. The Regional Director has filed an Affidavit on 27th June, 2016 stating therein, save and except as stated in paragraphs 6 (a), 6 (b) and 6(c), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a), 6 (b) and 6(c) of the said Affidavit, the Regional Director has stated that:-

The Deponent further submits that:-

(a) Clause 11.14 of the Scheme provided for adjustment for difference in Accounting Polices between Transferor Company and Transferee Company. In this regard it is submitted that in addition to the compliance of Accounting Standard -14, the Transferee Company shall pass such Accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting standard such as AS-5 etc.

(b) *The Registered office of the Transferee Company is situated in the state of Telengana. Hence the Transferee Company has to file similar Petition before the Hon'ble High Court of Judicature at Hyderabad for approving the said Scheme .*

(c) *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 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.

9. As far as observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Transferee Company through their Counsel undertakes that it shall pass such accounting entries which may be necessary in connection with the Scheme to comply with other applicable accounting standards.

10. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioner submits that the Petition filed by the Transferee Company has been sanctioned by the Andhra Pradesh High Court on 12th July 2016.

11. As far as observations made in paragraph 6(c) of Affidavit of the Regional Director is concerned, the Petitioner Company through their Counsel undertakes to comply with all applicable provisions of the Income Tax Act and tax implication, if any arising out of the

Scheme of Amalgamation will be subject to the decision of the Income Tax Authority.

12. The Learned Counsel appearing for the Regional Director on instructions of Joint Director in the office of the Regional Director states that they are satisfied with the undertakings given by the advocate on behalf of the Petitioner Companies. The above undertakings are accepted.

13. The Official Liquidator has filed his report on 26th July 2016, stating that the affairs of the Petitioner/Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved without being wound up.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition is made absolute in terms of the prayer clause (a) of the Petition.

16. The Petitioner Companies are directed to lodge a copy of this order and Scheme duly authenticated by the Company Registrar, High Court, 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 receipt of the order.

17. Petitioner 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 INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

18. The Petitioners in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

19. Filing and issuance of the drawn up order is dispensed with.

20. All concerned regulatory authorities to act on a copy of this order along with the Scheme 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 original signed order.

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