

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 330 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 272 OF 2016

Genzyme India Private Limited.... Petitioner /First Transferor Company

AND

COMPANY SCHEME PETITION NO. 331 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 273 OF 2016

Merial India Private Limited.... Petitioner /Second Transferor Company

AND

COMPANY SCHEME PETITION NO. 332 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 274 OF 2016

Sanofi-Synthelabo (India) Pvt. Ltd.... Petitioner /Transferee Company

In the matter of the Companies Act of 1956 (Or re-enactment Thereof upon Effectiveness of Relevant Provisions of the Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (Or re-enactment Thereof upon Effectiveness of Relevant Provisions of the Companies Act, 2013);

AND

IN THE MATTER of Scheme of Amalgamation of Genzyme India Private Limited (First Transferor Company) and Merial India Private Limited (Second Transferor Company) with Sanofi - Synthelabo (India) Private Limited (Transferee Company) and their respective Shareholders and Creditors.

Called for hearing:

Mrs. Alpana Ghone along with Mr. Arvind Talgaonkar i/b. M/s. Crawford Bayley & Co., Advocate for the Petitioners in all the Petitions.

Mr. Vinod Sharma, Official Liquidator, present in Petitions 330 & 331 of 2016.

Mr. Shivaraj Patil i/b. Mr. Pankaj Kapoor for Regional Director in all the Petitions.

CORAM: S. C. Gupte J.

DATE: 29th November, 2016

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation and to contravene any averments made in the Petitions.
2. The sanction of the Court is sought to the Scheme of Amalgamation of Genzyme India Private Limited (First Transferor Company) and Merial India Private Limited (Second Transferor Company) with Sanofi - Synthelabo (India) Private Limited (Transferee Company) and their respective Shareholders and Creditors, under Sections 391 to 394 of the Companies Act, 1956 (Or re-enactment Thereof upon Effectiveness of Relevant Provisions of the Companies Act, 2013).
3. The Learned Counsel for the Petitioners states that both the Petitioner Companies were carrying on the business of manufacture and marketing of pharmaceutical products, whereas the Transferee Company is presently carrying on the business of

manufacture and marketing of pharmaceutical and animal health products.

4. The Learned Counsel for the Petitioners states that as the Transferor Companies are the group companies of the Transferee Company and the Amalgamation will enable the Transferee Company to carry on and conduct its business more efficiently and advantageously with better economies of scale, more productive and optimum utilisation of various resources, strengthen its financial position and ability to raise resources for conducting business, achieve synergies in business activities, further development and growth of the business.
5. The Board of Directors of Petitioner Companies have approved the said Scheme of Amalgamation by passing resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Counsel for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Summons for Directions.
7. The Learned Counsel appearing on behalf of the Petitioners states that the Petitioners have complied with all requirements as per directions of this Hon'ble

Court and that the Petitioners have filed necessary Affidavits of compliance in this Hon'ble Court. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said Undertaking is accepted.

8. The Regional Director has filed an Affidavit on 17th November, 2016 stating therein that save and except as stated in paragraphs 6. (i), (ii), (iii) and (iv) it appears according to the Regional Director that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6. (i), (ii), (iii) and (iv) of the affidavit, the Regional Director has stated as under:

6.

- (i) *That the Deponent further submits that the Tax issues, if any, arising out of the scheme shall be subject to final decision of Income Tax Authority and the approval of the scheme by the Hon'ble High Court may not deter the Income Tax Authority to scrutinise the returns filed by the Petitioner Companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Companies.*
- (ii) *Petitioner Companies have not mentioned about the state of employees of transferor companies in the scheme.*

- (iii) *Deponent to state that the shareholders of the petitioner companies foreigners and or foreign body corporates as per the report of ROC and the documents submitted by the petitioner companies. Therefore the Deponent prays that the Hon'ble Court may direct the petitioner company to undertake to comply with the provisions of the RBI Act, FEMA, read with relevant rules, guidelines etc.*
- (iv) *Petitioner in clause 7 of the scheme inter alia has mentioned regarding share exchange ratio that any fraction which is less than half being ignored and a fraction exceeding half considered as one full share in the Transferee Company. Deponent prays that the Hon'ble Court may pass such orders in the interest of the shareholders.*

9. Insofar as the observation made in paragraph 6 (i) of the Affidavit of the Regional Director is concerned, the Petitioner Companies clarifies that the approval of the Scheme by this Court will not deter the Income-tax Authority to scrutinise the tax returns filed by the Petitioner Companies after giving effect to the Scheme and all issues arising out of the Scheme will be met and answered in accordance with the applicable law.
10. Insofar as the observation made in paragraph 6 (ii) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Transferor Companies have no employees.

Each of the Transferor Companies has Directors who look after the management and affairs of the Transferor Companies. Therefore the question of mentioning about the state of employees of Transferor Companies in the scheme does not arise.

11. Insofar as the observation made in paragraphs 6 (iii) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that Petitioner Companies undertake to comply with the provisions of the RBI Act, FEMA, read with relevant rules, guidelines etc. as may be applicable.
12. Insofar as the observation made in paragraphs 6 (iv) of the Affidavit of the Regional Director is concerned, the Shareholders of the Transferor Companies have consented to the Scheme being sanctioned. In view of such consent, rights of the Shareholders of Transferor Companies are protected.
13. The Learned Counsel for Regional Director on instructions of Mrs. P. Sheela, Joint Director-Legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertakings given by the Petitioners. The above undertakings are accepted.
14. The Official Liquidator has filed his report on 1st October, 2016 in Company Scheme Petition Nos. 330 & 331 of 2016 respectively stating that the affairs of the Transferor Companies have been conducted in a

proper manner and that the Transferor Companies may be ordered to be dissolved without winding up.

15. From the material on record, the Scheme appears to be fair and reasonable and does not appear to be violative of any provisions of law or contrary to public policy.
16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 330 and 331 of 2016 are made absolute in terms of prayer clauses (a), (b) and (d), respectively and Company Scheme Petition No. 332 of 2016 are made absolute in terms of prayer clauses (a) and (c).
17. The Petitioner Companies to lodge a copy of this order and Scheme duly authenticated by the Company Registrar, High Court (O.S.), Mumbai, 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 issuance of the order by the Registry.
18. The Petitioner Companies are 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 provisions of the Act.

19. The Petitioners in all the Petitions to pay costs of INRs.10,000/- each to the Regional Director, Western Region, Mumbai, and the Petitioners in Company Scheme Petition No. 330 and 331 of 2016 to pay cost of INRs.10,000/- each to the Official Liquidator, High Court, Mumbai. Costs to be paid within four weeks from the date of the order.
20. Filing and issuance of the drawn up order is dispensed with.
21. All the 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.), Mumbai.

(S. C. Gupte J.)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer.