IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.481 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 506 OF 2016

PERLIN COSMECEUTICALS PRIVATE LIMITED

...Petitioner/Transferor Company

With

COMPANY SCHEME PETITION NO.482 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.507 OF 2016

FAIRMOUNT HEALTHCARE PRIVATE LIMITED

....Petitioner/Transferee Company

In the matter of Companies Act, 1956 (1 of 1956)

AND

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

AND

In the matter of Scheme of Amalgamation

OF

Perlin Cosmeceuticals Private Limited ('the Transferor Company')

WITH

Fairmount Healthcare Private Limited ('the Transferee Company')

AND

Their Respective Shareholders

<u>Called for hearing</u>

Mr. Rajesh Shah, i/b M/s Rajesh Shah & Co. Advocate for the Petitioner Companies.

Mr. Pavan S Patil i/b Mr. Pankaj Kapoor for the Regional Director.

Mr. Vinod Sharma, Official Liquidator present in CSP No.481 of 2016.

CORAM: S.C.Gupte, J.
DATE: 18th November, 2016

PC:

1. Heard the learned advocate 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 Company Scheme Petition.

2. The sanction of the Court is sought under Sections 391 to 394 to the Scheme of Amalgamation of Perlin Cosmeceuticals Private Limited with Fairmount Healthcare Private Limited and their respective Shareholders.

3. The Learned Advocate for the Petitioners states that Petitioner Company in Company Scheme Petition No. 481 of 2016 is engaged in business of manufacturing and marketing of cosmeceutical products and the Petitioner Company in Company Scheme Petition No. 482 of 2016 is engaged in business of export and trading in pharmaceutical products.

4. The Learned Advocate for the Petitioners states that the Scheme will result into following benefits namely
   - The financial resources of the companies will be conveniently merged and pooled together leading to a more effective and centralised management and reduction of administrative and manpower expenses and overheads;
   - The shareholders of both the companies are common. Accordingly, the merger will also help in streamlining the group structure;
   - Reduction in administrative costs & overheads;

- Simplified and transparent business structure.

5. The Learned Advocate for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petition of the Petitioner Company.

6. The Learned Advocate for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Direction and that the Company Scheme Petitions has been filed in consonance with the orders passed in respective Company Summons for Direction.

7. The Learned Advocate appearing on behalf of the Petitioner Companies 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 Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under. The said undertakings given by the Petitioner Companies are accepted.

8. The Regional Director has filed an Affidavit on 21st October, 2016 stating therein, save and except as stated in paragraphs 6 (i) and 6 (ii), it appears according to the Regional Director, that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (i) and 6 (ii) of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

(i) *The Petitioner Companies had accepted the Purchase Method of Accounting as set out in AS-14 however the Petitioner Companies should also shall pass accounting entries as mentioned in AS-5 of the Accounting Standards. Therefore, Deponent prays that the Hon'ble Court may pass such orders as deem fit.*

(ii) *That 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 Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax 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."*

9. As far as observations made in paragraph 6 (i) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Advocate undertakes that it shall pass such accounting entries which may be necessary in connection with the Scheme to comply will comply with the AS-14 and other applicable accounting standards as per the provisions of the Companies Act, 1956.

10. As far as observations made in paragraph 6(ii) of Affidavit of the Regional Director is concerned, the Petitioner Companies through their Advocate undertakes to comply with all applicable provisions of the Income Tax Act and tax implications, if any arising out of the Scheme of Amalgamation will be subject to the decision of the Income Tax Authority.

11. The Learned Counsel appearing for the Regional Director on instructions of Mr. R K Dalmia, Deputy Director, in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings

given by the Advocate on behalf of the Petitioner Companies. The said undertakings are accepted.

12. The Official Liquidator has filed his report on 11th November, 2016, stating that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved without being wound up by this Court.

13. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 481 of 2016 is made absolute in term of prayer clauses (a) to (c) and Company Scheme Petition No.482 of 2016 is made absolute in terms of the prayer clauses (a) and (b).

15. The Petitioner Companies are directed to lodge a copy of this order and Scheme duly authenticated by the Company Registrar, High Court (O.S.), 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 order.

16. 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 relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

17. The Petitioners in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Petitioner Company in Company Scheme Petition No. 481 of 2016 to pay cost of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

19. 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.

(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