

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 525 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 453 OF 2016

ROCHE DIAGNOSTICS INDIA PRIVATE LIMITED

....Petitioner/Demerged Company

AND

COMPANY SCHEME PETITION NO 526 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 454 OF 2016

ROCHE DIABETES CARE INDIA PRIVATE LIMITED

....Petitioner/ the Resulting Company

In the matter of the Companies Act, 1956 (1 of 1956) (or any re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Section 391 to 394 and Sections 100 to 103 of the Companies Act, 1956 read with Section 52 of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement

BETWEEN

Roche Diagnostics India Private Limited ('the Demerged Company')

WITH

Roche Diabetes Care India Private Limited ('the Resulting Company')

AND

Their Respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b. M/s. Hemant Sethi & Co., Advocates for the Petitioners

Mr. P.S Gujar i/by Pankaj Kapoor for Regional Director in both Petitions.

CORAM: A. K. Menon, J

DATE: 6TH October 2016

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions.
2. The sanction of the Court is sought under Sections 391 to 394 and Sections 100 to 103 of the Companies Act, 1956 read with Section 52 of the Companies Act, 2013 to the Scheme of Arrangement of Roche Diagnostics India Private Limited with Roche Diabetes Care India Private Limited and their respective shareholders.
3. Learned Counsel for the Petitioners state that RDIPL is involved in the business to, maintain, service, repair, import, export, buy, sell, prepare for market and deal in for all type of blood gas analyzers, electrolyte analyzers, non-invasive techniques and other bio medical equipment, apparatus, accessories, spare parts and components. RDIPL is also engaged into the business of importing, exporting, buying, selling, preparing for market, do kitting of various components, provide as samples, service, repair, and deal in all types of blood glucose monitoring systems for the measurement of human blood glucose levels, including but not limited to strip-based blood glucose meters; continuous blood glucose monitors; lancing devices; lancets; and all types of non-invasive techniques of blood glucose monitoring systems; and all types of insulin delivery systems for the measurement and delivery of insulin in the human body.
4. The rationale for the demerger is that there is a need to manage the diabetes care business as an independent Undertaking, so as to enhance its capabilities and flexibility. The management feels that by demerging the Diabetes Care Undertaking into RDCIPL, it can react to on market demand in a better and faster way.

5. The Learned Advocate for the Petitioner / Demerged Company further states that the reduction of the Share Capital of the Petitioner / Demerged Company shall be effected as an integral part of the Scheme pursuant to clause 6.1.3 of the Scheme and the said reduction does not involve either diminution of liability in respect of unpaid share capital of the Petitioner Company or payment to any shareholder of any paid up share capital of the Petitioner Company and hence procedure prescribed under section 101(2) of the Companies Act, 1956 was dispensed with vide order dated 1st July, 2016 passed in CSD No 453 of 2016. Further the Petitioner Company has passed a Special Resolution in the Extra Ordinary General Meeting of its Members on 23rd day of June, 2016, a copy of the same is annexed as Exhibit 'E' to the Company Scheme Petition
6. Learned counsel for the Petitioners further state 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 Petitions.
7. Learned Counsel for the Petitioners further state that, the Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in Company Summons for Directions.
8. The learned counsel appearing on behalf of the Petitioners have stated that the Petitioners have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever applicable. The said undertaking is accepted.
9. The Regional Director has filed an affidavit on 22nd day of September, 2016 stating therein that save and except as stated in paragraph 6 of the said affidavit, it appears according to R.D. that the scheme is not

prejudicial to the interest of shareholders and public. In paragraph 6 of the said affidavit it is stated that:

- a. *It is submitted 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 Company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company.*
- b. *The Advocates for the petitioner company in his letter dated 09.08.2016 inter alia informed that at point 9 that the shares of the both petitioner companies are held by foreign/nonresident shareholders.*

Roche Diabetes Care India Private Limited Shareholding Pattern as at 05th August 2016

Sr. No.	Particular	No. of Shares	Amount (Rs)	% Holding
1	M/s. Roche Pharmholding B.V Netherland	9,999	99,990	99.99%
2	M/s. Roche Chemical Establishment Limited	1	10	0.01%
	Total	10,000	1,00,000	100.00%

Roche Diagnostics India Private Limited Shareholding Pattern as on 31st March 2016

Sr. No.	Particular	No. of Shares	% Holding
1	M/s. Roche Pharmholding B.V Netherland	1,491,501	99.9999%
2	M/s. Roche Chemical Establishment Limited	1	0.0001%

	Total	1,491,502	100.00%
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Petitioner in clause 5.3 has inter alia has mentioned that RDCIPL shall, if and to the extent required, apply for and obtain any approvals from the concerned regulatory authorities for the issue and allotment of shares to the shareholders of RDIPL.

It is clear shares are held by foreign companies and hence therefore Hon'ble court may direct the company to make compliances of FEMA Act and RBI Act read with concerned applicable rules regulations etc.

c. Deponent prays that the Hon'ble Court may direct the company to increase the Authorized share capital for the purpose of compliance of the Scheme in accordance with the provisions of the Companies Act, 2013 read with relevant rules guidelines etc.

d. The petitioner company in clause 7 of the scheme inter alia has mentioned that all the profits or income accruing or arising to RDIPL relatable to Demerged Undertaking or expenditure or losses arising or incurred by RDIPL relatable to Demerged Undertaking shall for all purposes be treated and deemed to be and accrue as the profits or income or expenditure or losses of RDCIPL

10. In so far as observations made in paragraph 6 (a) of his Affidavit, the Petitioner Company submits that the Petitioner Company are bound to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the scheme will be met and answered in accordance with law.
11. In so far as observations made in paragraph 6 (b) of his Affidavit, the Petitioner Company through its counsel undertakes to comply with the

relevant provisions of FEMA / RBI regulations as may be applicable with regard to allotment of new shares to the foreign shareholder.

12. As far as observations made in paragraph 6 (c) of his Affidavit, the Petitioner Company through its counsel undertakes to comply with the applicable provisions of the Companies Act, 2013 read with relevant rules and regulations as may be applicable.
13. In response to the aforesaid observation in paragraph 6 (d) of his Affidavit, the Petitioner Company through its counsel undertakes to comply with the applicable accounting standard / accounting policy.
14. The Learned Counsel for Regional Director on instructions of Ms. P Sheela Joint Director (Legal) in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai have not raised any further objections to the submissions made by the Petitioner Companies. The said submissions and undertakings of the Petitioner Companies are accepted.
15. 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.
16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 525 of 2016 filed by the Petitioner Company are made absolute in terms of prayer clauses (a) and the Company Scheme Petition No. 526 of 2016 filed by the Petitioner Company is made absolute in terms of prayer clauses (a).
17. The Petitioner Companies to file a copy of this order and the 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 the Order.
18. Petitioners 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, 2013.

19. The Petitioner Company in both the Company Scheme Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai. Cost 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 concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(A. K. Menon, J)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer