IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 765 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 720 OF 2015

GODREJ SEEDS & GENETICS LIMITED

…… Petitioner / Demerged Company

AND

COMPANY SCHEME PETITION NO 766 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 721 OF 2015

GODREJ AGROVET LIMITED

….. Petitioner / Resulting Company

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

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between Godrej Seeds & Genetics Limited ('the Demerged Company') AND Godrej Agrovet Limited ('the Resulting Company') AND Their Respective Shareholders

Called for hearing

Mr. Hemant Sethi with Mr. Ajit Singh Tawar i/b. Hemant Sethi & Co., Advocates for the Petitioners in all three Petitions.

Mr. G. Hariharan with Mr. A. A. Ansari, for Regional Director in both the Petitions.

CORAM: K. R. Shriram, J.

DATE: 8th January, 2016

PC:

1. Heard the learned counsel for the Petitioner Companies. 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 Godrej Seeds & Genetics Limited and Godrej Agrovet Limited and their respective Shareholders.
3. The learned Counsel for the Petitioners states that the Demerged Company is engaged in the business of cultivating and marketing of high quality Hybrid Seeds. The Resulting Company is mainly engaged in the business of manufacturing and marketing of animal feed and agricultural inputs and oil palm.
4. That Rational for Scheme is that the transfer of the Seeds Division of the Demerged Company would enable consolidation of the related seeds business of the Resulting Company. The management of Demerged Company and Resulting Company believe that the Scheme would benefit the respective companies and the stake holders, creditors and employees of respective companies and would reflect the real value of the business of the Petitioner Company and achieve optimum capital structure of the Petitioner Company.
5. The Demerged Company and the Resulting Company have approved the Scheme by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Counsel for the Petitioners further states that the Petitioner Companies have 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 respective Company Summons for Direction.

7. The Counsel for the Petitioners further states that the Petitioner Companies have complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 or Companies Act 2013, as may be applicable and the rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 7th January, 2016 stating therein that save and except as stated in paragraph 6 (a) to (d) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6(a) to 6(d), of the said affidavit it is stated that:

(a) *The accounting treatment provided in clause 13.1.2, 13.1.3 and 13.1.4 is not in - consonance with the reduction of capital proposed in clause 11.1 and consequential accounting treatment required. When the matter was taken up with the company, the petitioner company has clarified that these clauses will be substituted as follows:-*

13.1.2

The paid up value of redeemable non-convertible preference shares cancelled as per clause 11.1 should be reduced from share capital account and adjusted against the debit balance in profit and loss account of GSGL.

13.1.3

The difference between the book value of assets and book value of liabilities pertaining to the demerged undertaking, demerged from GSGL will be credited to capital reserve account

13.1.4

The debit balance in profit and loss account of GSGL after giving effect to clause 13.1.2 of the scheme shall be directly adjusted against the balance in capital reserve account created pursuant to clause 13.1.3 of the scheme.

In view of the above, Petitioner Company may be directed to suitably amend the aforesaid clauses in the scheme as well as in the petition and file revised copy of the scheme with the Registrar of Companies.

(b) *In clause 11.5 of the scheme, the word "transferee company" appearing in the second line be deleted and substituted by the word "demerged company".*

(c) *Clause 11.1 of the scheme provides for cancellation of preference shares issued by demerged company. The special Resolution passed by the company as well as the scheme is silent as to how the reduction of capital is effected*

When the matter was taken up with the company, the company has clarified that in continuation to the special resolution passed at the extra ordinary general meeting held on 19.5.2015 in the demerged company further resolution was passed on 11.12.2015 which clarifies that such reduction of capital is in order to adjust against the debit balance in the profit and loss account of demerged company, since such paid up share capital is not represented by available assets of the company. The petitioner company has further clarified that the existing clause 11.1 will be substituted as follows:

"Upon the scheme becoming effective, the Issued, Subscribed and Paid —up Preference Share Capital of GSGL of Rs.5,00,00,000 (Rupees Five Crores only) divided into 5,00,000 9% Redeemable Non-Convertible Preference Shares of Rs. 100/- each shall stand cancelled, without any consideration to the preference shareholders and shall be utilized to adjust the debit balance in profit and loss account of GSGL to the extent of paid up value of such shares."

The petitioner company may be directed to amend the clause 11.1 suitably and further be directed to file copy of the resolution with the Registrar of Companies in Form No. MGT 14 in compliance of section 114 of Companies Act, 2013.

(d) *The entire preference share capital of demerged company is held by resulting company. Besides, it holds 90% of the equity share capital of demerged company also. Clause 11.1 of the scheme provides for cancelation of the preference share capital to adjust the debit balance in the profit and loss account of the demerged company. It is pertinent to note that the loss of the company is represented only by the equity share capital of demerged company and cannot be construed that the same is represented by loan taken /preference share capital issued by the demerged company. The adjustment of preference share capital would therefore, be an indirect loss to the resulting company and the profit of the company is under estimated. Whether such adjustment is to evade any tax payment by the resulting company is a matter falling within the domain of Income Tax Department. Further, the scheme provides for issue of preference shares to the equity shareholders of demerged company contrary to the provision of Income Tax Act In this regard it is submitted that the tax* *issue if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Demerged Company after giving effect to the demerger. The decision of the Income Tax Authority is binding on the demerged Company.*

9. Learned Advocate for Petitioner Companies submits that as per observation raised by the Regional Director in paragraph 6(a) of his Affidavit, Clause 13.1.2, 13.1.3 and 13.1.4 of the Scheme is required to be amended and hence the Petitioner Company seeks leave of this Court to delete the said clauses and substitute Clauses 13.1.2, 13.1.3 and 13.1.4 with the following:

"13.1.2 The Paid-up value of Redeemable Non-Convertible Preference Shares cancelled as per clause 11.1 shall stand reduced from share capital account and adjusted against the debit balance in Profit and Loss Account of GSGL.

"13.1.3 The difference between the book value of assets and book value of liabilities pertaining to the Demerged Undertaking, demerged from GSGL will be credited to Capital Reserve Account.

"13.1.4 The debit balance in Profit and Loss Account of GSGL after giving effect to Clause 13.1.2 of the Scheme shall be directly adjusted against the balance in Capital Reserve Account created pursuant to clause 13.1.3 of the Scheme.

10. Learned Advocate for Petitioner Companies submits that as per observations raised by the Regional Director in paragraph 6(b) of his Affidavit, Clause 11.5 of the Scheme is required to be amended and hence the Petitioner Company seeks leave of this

Court to delete the said clauses and substitute Clauses 11.5 with the following:

"11.5 Upon the sanction of the Scheme, the Issued, Subscribed and Paid- up share capital of the Demerged Company shall automatically stand modified without any further act, instrument or deed on the part of GSGL to reflect the reduction in the Preference Share Capital of GSGL.

11. As far observations raised by the Regional Director in paragraph 6(c) of his Affidavit, the Learned Advocate for the Petitioners state that the Demerged Company has in continuation of Special Resolution passed on 19th May 2015, passed further resolution on 11th December 2015 and the Demerged Company undertakes to file MGT 14 for the same with Registrar of Companies. In view thereof Clause 11.1 of the Scheme is required to be amended and hence the Petitioner Company seeks leave of this Court to delete the said clauses and substitute Clauses 11.1 with the following:

"11.1 Upon the Scheme becoming effective, the Issued, Subscribed and Paid- up Preference Share Capital of GSGL of Rs 5,00,00,000 (Rupees Five Crores only) divided into 5,00,000 9% Redeemable Non-Convertible Preference Shares of Rs 100 each shall stand cancelled without any consideration to the Preference Shareholders and shall be utilized to adjust the debit balance in Profit & Loss Account of GSGL to the extent of paid - up value of such shares.

12. In view of above, leave to amend the Scheme is granted. Amendments to be carried out within two weeks from today.

13. In so far as observations made in paragraph 6(d) of the Affidavit of Regional Director is concerned, the Petitioner Companies through their Counsel submits that the Petitioners are bound to comply with all applicable provisions of Income Tax Act, and all

tax issues arising out of Scheme will be met and answered in accordance with applicable income tax provisions.

14. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that he is satisfied with the undertaking given by the Petitioner Companies and agrees with the amendments sought. The said undertakings given by 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. None of the parties concerned has come forward to oppose the Scheme.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 765 of 2015 and 766 of 2015 filed by the Demerged Company and Resulting Company are made absolute in terms of prayer clauses (a) of the respective Petitions.

17. The Petitioner Companies to lodge a copy of this order and the amended 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.

18. Petitioner Companies are directed to file a copy of this order along with a copy of the amended 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.

19. The Petitioner Companies in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western

Region, 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 concerned authorities to act on a copy of this order along with amended Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(K.R.Shriram, J)

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