IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 42 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 871 OF 2015

Abbott Truecare Pharma Private Limited .... Petitioner/ Transferor Company

AND

COMPANY SCHEME PETITION NO. 43 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 872 OF 2015

Abbott Healthcare Private Limited .... 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 Abbott Truecare Pharma Private Limited (Transferor Company) with Abbott Healthcare Private Limited (Transferee Company) and their respective Shareholders and Creditors.

Called for hearing:

Ms. Alpana Ghone along with Mr. Arvind Talgaonkar i/b. M/s. Crawford Bayley & Co., Advocate for the Petitioners in both the Petitions.
Mr. Vinod Sharma, Official Liquidator, present in CPS No. 42 of 2016.
Mr. Anand Singh i/b. Mr. Niraj Kumar for Regional Director in all the Petitions.

CORAM: S. C. Gupte J.
DATE: 4th May, 2016

PC:

1. Heard counsel for the parties.

2. The sanction of the Court is sought to the Scheme of Amalgamation of Abbott Truecare Pharma Private Limited (Transferor Company) with Abbott Healthcare Private Limited (Transferee Company) and their respective Shareholders and Creditors, under Sections 391 to 394 and other applicable provisions of the Companies Act, 1956 (or re-enactment thereof upon effectiveness of the Companies Act, 2013).

3. The Learned Counsel for the Petitioners states that the Transferor Company is presently carrying on business of Marketing, selling, distribution of various drugs, pharmaceutical formulations including branded, generics manufactured by Abbott Healthcare Private Limited.

4. The Learned Counsel for the Petitioners states that the amalgamation will enable the Transferee Company for simplification of the Abbott group structure in India as a result of the consolidation of Transferor Company and Transferee Company

which are group companies resulting in economies of scale, greater integration, greater flexibility, most effective distribution network and greater market reach for the amalgamated entity, and will improve the competitive position of the combined entity and operational synergies to the combined entity such as rationalization of vendors and distribution points, which can be put to the best advantage of the stakeholders. The amalgamation will be value accretive through realization of business synergies. Cost savings, which are expected to flow from more focused operational efforts, standardization and simplification of business processes, productivity improvements, improved procurement and the elimination of duplication of administrative expenses. Carrying on and conducting the business more efficiently and advantageously, more productive and optimum utilisation of various resources, strengthen its financial position and ability to raise resources for conducting business, stronger capital base for future expansion /growth. Optimize the costs of associated complexities in operating two separate companies. The amalgamation contemplated in this Scheme will help avoid duplication of administrative functions, resources, systems, skills and processes, reduce overall cost, improve synergies, enable the achievement of economies of scale, reduce administrative costs entailed by the conduct of businesses through separate entities, eliminate multiple record-keeping, provide enhanced flexibility in funding of expansion plans, promote management efficiency and optimize the resources of the amalgamated entity. And to 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. The consolidation of entities will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Company and the Transferee Company.

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 7th April, 2016 stating therein that save and except as stated in paragraphs 6. (a), (b) and (c) it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6 (a), (b) and (c) of the affidavit, the Regional Director has stated as under:

6.

(a) *Clause 14.3 of Scheme provides for adjustment for differences in Accounting Policies 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 equity shareholders of both the Transferor and Transferee Company are held by foreign body corporate as its shareholders. Hence for allotments of new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company may be directed to comply with FEMA /RBI regulations as applicable in this regard.*

(c) *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 the approval of the scheme by this Hon'ble High Court may not deter the Income Tax Authority to scrutinise the returns filed by the petitioner company after giving effect to the amalgamation the decision of the Income Tax Act Authority is binding on the petitioner company.*

9. In so far as observation made in paragraph 6 (a) of the Affidavit of the Regional Director is concerned, the Petitioner /Transferee through its Counsel undertakes to pass such accounting entries as

may be necessary in connection with the scheme to comply with other applicable accounting standards.

10. In so far as observation made in paragraph 6 (b) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner companies are bound to comply with all applicable provisions of the FEMA /RBI for allotments of new shares by the Transferee Company to the shareholders of Transferor Company being foreign body corporate.

11. In so far as observation made in paragraph 6 (c) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner companies are bound to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the scheme and/or from the scrutiny of the returns filed by the petitioner company will be met and answered in accordance with law.

12. The Learned Counsel for Regional Director on instructions of Mr. Chandanamuthu, 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 hereinabove. The above undertakings are accepted.

13. The Official Liquidator has filed his report on 18th April, 2016 in Company Scheme Petition No. 42 of 2016 stating that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved without winding 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 No. 42 of 2016 is made absolute in terms of prayer clauses (a), (b) and (d), and 43 of 2014 is made absolute in terms of prayer clauses (a) and (c).

16. The Petitioner Companies 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 issuance of the order by the Registry.

17. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme of Amalgamation 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.

18. 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 the Company Scheme Petition Nos. 42 of 2016 to pay cost of INRs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

20. 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.), 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.