

Evaxo Pharma Private Limited and anr. Vs.

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Court : Delhi

Decided On : Aug-08-2014

Judge : Sanjeev Sachdeva

Appellant : Evaxo Pharma Private Limited and anr.

Respondent :

Judgement :

\$~25 *IN THE HIGH COURT OF DELHI AT NEW DELHI + CO.PET. 249/2014 IN THE MATTER OF EVAXO PHARMA PRIVATE LIMITED & ANR. Petitioners Through: Mr. S.M. Sundaram, Advocate for the Petitioners. Mr. Atma Sah, and Assistant Registrar of Companies for the Regional Director. Mr. Rajiv Bhel Advocate for the Official Liquidator. CORAM: HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

0808.2014 % SANJEEV SACHDEVA, J (ORAL) 1. This second motion joint Petition has been filed under sections 391 to 394 of the Companies Act, 1956 (Act) seeking sanction to the Scheme of Amalgamation (Scheme) of Evaxo Pharma Private Limited (hereinafter referred to as Transferor Company) with USK Health Care Private Limited (hereinafter referred to as Transferee Company) ===== CO.PET. 249 /2014 1 (collectively referred as the Petitioner Companies). A copy of the Scheme has been enclosed with the petition.

2. The registered offices of the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

3. The details of respective dates of incorporation of the Petitioner Companies, their authorised, issued, subscribed and paid up capital have been set out in the petition.

4. The copies of the Memorandum and Articles of Association of the Petitioner Companies have been enclosed with the petition.

5. The copies of Resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme have also been filed along with the petition.

6. Learned counsel for the Petitioner Companies submits that no proceedings under sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

7. The Petitioner Companies had earlier filed CO. APPL. ===== CO.PET. 249 /2014 2 (M). 36/2014 seeking directions of this court for dispensation for convening of meetings of shareholders. This Court vide its Order dated 3rd March, 2014 allowed the Application and dispensed with the requirement shareholders of of the convening Transferor meetings and of Transferee Companies. Both Transferor and Transferee Companies have no Secured and Unsecured Creditors.

8. The Petitioner Companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide Order dated 23rd April, 2014 notice in the petition was directed to be issued to the Official Liquidator, Registrar of Companies and the Central Northern Government Region, (through Ministry of Regional Director, Corporate Affairs). Citations were also directed to be published in The Statesman (English) and Jansatta (Hindi). Affidavit of Service and Publication has been filed by the Petitioners showing compliance regarding service of the petition on the Official Liquidator, ROC and Regional Director and also regarding publication of citations on 7th June, 2014 in The Statesman (English) and Jansatta (Hindi) respectively. Copies of

/2014 3 the newspapers cutting, in original, containing the publications have been filed along with the Affidavit of Service.

9. In response to the notices issued, the Official Liquidator sought information from the Petitioner Companies. Based on the information received the Official Liquidator has filed his report dated 27th July, 2014 wherein he has stated that he has not received any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public as per 2 nd proviso of Section 394(1) of the Act.

10. In response to the notices issued in the Petition, learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his affidavit/report dated 11th July, 2014. Relying on Clause 3.1 of Part II of the Scheme, he has stated that all the employees of the Transferor Company shall become the employees of the Transferee Company without any break or interruption in their services upon sanctioning of the Scheme by the Court. Despite notice, the Income Tax

/2014 4 Authorities have not raised any objection with regard to the Scheme.

11. The Learned Regional Director has observed that the Petitioner Companies may be asked to comply with/adopt accounting treatment as prescribed under the Accounting Standard - 14 issued by the Institute of the Chartered Accountants of India and comply with the provisions of Section 2 (43) of the Companies Act, 2013.

12. In reply to the aforesaid observation of the Learned Regional Director, the Petitioner Companies have filed an Affidavit dated 27th July 2014 wherein it has been undertaken that the Petitioner Companies shall comply with the provisions of Accounting Standard - 14 issued by the Institute of the Chartered Accountants of India and shall comply with provisions of section 2 (43) of the Companies Act, 2013.

13. In view of aforesaid clarification and undertaking given by the petitioners, the concern of the Regional Director has been duly addressed.

14. No objection has been received to the Scheme of Amalgamation from any other party, Dr. Umesh Kalra, ===== CO.PET. 249 /2014 5 Director of the Petitioner Companies has filed their affidavit dated 27th July, 2014 confirming that neither the Petitioner Companies nor their Legal Counsel has received any objection pursuant to the citations published in the Newspapers.

15. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; representation/reports filed by the Regional Director, Northern Region to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under sections 391 and 394 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law.

16. Certified copy of the formal Order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of sections 391 and 394 of the Companies Act, 1956, all the property, rights and powers of the Transferor Company be transferred to and vest in the Transferee Company without any further act or deed. Similarly, all ===== CO.PET. 249 /2014 6 the liabilities and duties of the Transferor Company are transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, the Transferor Company shall stand dissolved without winding up.

17. It is, however, clarified that this Order will not be construed as an Order granting exemption from payment of stamp duty or any other charges, if payable, in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

18. The Learned Counsel for the Petitioner submits that the Petitioner Companies (collectively) would voluntarily deposit a sum of Rs 50,000/- in the Common Pool fund of the Official Liquidator within three weeks from today. The Statement is accepted.

19. The Petition is allowed in the above terms. Order Dasti. SANJEEV SACHDEVA, J AUGUST8 2014

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