

M/S Rexcel Pharmaceuticals Ltd. and ors. Vs. -----

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Court : Delhi

Decided On : Dec-07-2012

Judge : Indermeet Kaur

Appellant : M/S Rexcel Pharmaceuticals Ltd. and ors.

Respondent : -----

Judgement :

*** IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Judgment:**

7. 12.2012 Company Petition No. 385 of 2012 IN THE MATTER OF: M/S. REXCEL PHARMACEUTICALS LTD & ORS. ..Petitioners Through : Mr. Amit Sibal, Mr. Amit Mishra and Mr. Siddharth Dutta, Advocates for the Petitioners. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

(Oral) This Second Motion joint Petition has been filed under Sections 391 & 394 of the Companies Act, 1956 by Petitioner/Transferor Companies No. 1, 2 and 3 seeking sanction of the Scheme of Amalgamation of (i) Rexcel Pharmaceuticals Limited (Transferor Company No. 1); (ii) Solus Pharmaceuticals Limited (Transferor Company No. 2); (iii) Ranbaxy Drugs and Chemical Company (Transferor Company No. 3); (iv) Ranbaxy Life Sciences Research Limited (Transferor Company No. 4); and (iv) Ranbaxy SEZ Limited (Transferor Company No.

5) into Ranbaxy Drugs Limited (Transferee) and their respective Shareholders and Creditors. The registered office of Petitioner/Transferor Companies No. 1, 2 and 3 are situated at New Delhi, within the jurisdiction of this Court. The registered office of Transferor Companies No. 4, 5 and the Transferee Company are situated at Mohali and are duly registered with the Registrar of Companies at Chandigarh. Details with regard to the date of incorporation of Petitioner/Transferor Companies No. 1, 2 and 3 their authorized, issued, subscribed and paid up capital have been mentioned in the Petition. Copies of the Memorandum & Articles of Association as well as the latest Audited Annual Report as on December 30, 2011 of Petitioner/Transferor Companies No. 1, 2 and 3 have also been enclosed with the Petition. Copies of the Resolution passed by the Board of Directors of Petitioner/Transferor Companies No. 1, 2 and 3 dated March 12, 2012 approving the Scheme of Amalgamation have also been placed on record. It has been submitted that no proceedings under Sections 235-251 of the Companies Act, 1956 are pending against Petitioner/Transferor Companies No. 1, 2 and 3. Petitioner/Transferor Companies No. 1, 2 and 3 had earlier filed C.A. (Main) No. 99 of 2012 seeking dispensation of the meeting of shareholders as well as the secured and unsecured creditors of Petitioner/Transferor Companies No. 1, 2 and 3. Vide order dated July 04, 2012, this Court allowed the application and dispensed with the requirement of convening meetings of the shareholders as well as the secured and unsecured creditors of Petitioner/Transferor Companies No. 1, 2 and 3. Also, vide order dated May 31, 2012, the Honble Punjab & Haryana High Court had allowed the first motion filed by Transferor Companies No. 4, 5 and the Transferee Company. Petitioner/Transferor Companies No. 1, 2 and 3 have thereafter filed the present Petition seeking sanction of the Scheme of Amalgamation. Vide order dated August 22, 2012, notice of the Petition was directed to be issued to the Regional Director (Northern Region) and the Official Liquidator. Citations were also directed to be published in Times of India (English Edition) and Jansatta (Hindi Edition) and the Official Gazette of Delhi. Affidavit of service and publication has been filed by Petitioner/Transferor Companies No. 1, 2 and 3 showing compliance regarding service of the Petition on the Regional Director (Northern Region) and the Official Liquidator, and also regarding publication in the aforesaid newspapers on September 26, 2012 in Times of India

(English Edition) and in Jansatta (Hindi Edition) and on October 12, 2012 in Official Gazette of Delhi. Copies of the newspaper cuttings and the Official Gazette of Delhi in original containing the publications have been filed along with the affidavit of service. Pursuant to the notices issued, the Official Liquidator has filed his report dated December 05, 2012 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 Petitioner/Transferor Companies No. 1, 2 and 3 do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or to public interest as per the second proviso of Section 394 (1) of the Companies Act, 1956. In response to the notices issued in the Petition, Mr. Rakesh Chandra, Learned Regional Director, Northern Region, Ministry of Corporate Affairs has also filed his affidavit/report dated October 10, 2012. Relying on Clause 5.1.1 (iii) of the Scheme of Amalgamation, the affidavit states that all the Transferor & Transferee Companies may be asked to obtain No Objection from the concerned regulators which have issued permits, license, quotas, permissions to the Transferor Companies as stated at para 5.1.1 (iii) of the Scheme. Petitioner/Transferor Companies No. 1, 2 and 3 have filed affidavit dated December 05, 2012 stating that Petitioner/Transferor Companies No. 1, 2 and 3 does not have any license, permits, quotas, approvals, permissions, registrations etc., as stipulated in Para 5.1.1.(iii) of the Scheme of Amalgamation. Petitioner/Transferor Companies No. 1, 2 and 3 have further undertaken to comply with Para 5.1.1.(iii) of the Scheme of Amalgamation and obtain no-objection certificate from the authority concerned, as may be required under the applicable law. Petitioner/Transferor Companies No. 1, 2 and 3 have thus explained the compliance of Para 5.1.1. (iii) of the Scheme of Amalgamation. Also, no other objections have been received to the Scheme of Amalgamation from any other party. Mr. Sandip Mehandroo, authorized representative of Petitioner/Transferor Companies No. 1, 2 and 3 has filed an affidavit dated December 07, 2012 stating that Petitioner/Transferor Companies No. 1, 2 and 3 nor their counsel have received any objection pursuant to citations published in the newspapers and Official Gazette of Delhi. In view of the no-objection / approval accorded by the shareholders and creditors of Petitioner/Transferor Companies No. 1, 2 and 3 and the reports filed by the

Regional Director, Northern Region and the Official Liquidator attached with this Court 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 Section 391 and 394 of the Companies Act, 1956. Petitioner/Transferor Companies No. 1, 2 and 3 will comply with the statutory requirements in accordance with law. Certified copy of the 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 Section 391 and 394 of the Companies Act, 1956, and in terms of the Scheme, the whole or part of the undertaking, the property, rights and powers of Petitioner/Transferor Companies No. 1, 2 and 3 be transferred to and vest in the Transferee Company without any further act or deed. Similarly, in terms of the Scheme, all the liabilities and duties of Petitioner/Transferor Companies No. 1, 2 and 3 be transferred to the Transferee Company without any further act or deed. Upon the Scheme coming into effect, Petitioner/Transferor Companies No. 1, 2 and 3 shall stand dissolved without winding up. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes 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. Learned counsel for the Petitioners state that Petitioner/Transferor Companies No. 1, 2 and 3 would voluntarily deposit a total sum of Rs. 1,00,000/- with the common pool fund of the Official Liquidator within three weeks from today. The statement is accepted. The Petition is allowed in the above terms. Order dasti.INDERMEET KAUR, J DECEMBER 7 2012 A

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