

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENCH, AT MUMBAI

CSA NO. 792 OF 2017

In the matter of the Companies Act, 2013

And

In the matter of Scheme of Amalgamation and
Arrangement between Gabs Investments Private
Limited ('Transferor Company') and Ajanta
Pharma Limited ('Transferee Company') and their
respective Shareholders

And

In the matter of Sections 230- 232 read with
Section 52 and Section 66 and other applicable
provisions of the Companies Act, 2013

Ajanta Pharma Limited, a company incorporated	}	
under the provisions of Companies Act, 1956	}	
having its registered office at Ajanta House, 98,	}	
Govt. Industrial Area, Charkop,	}	
Kandivali West, Mumbai – 400 067	}	
CIN L24230MH1979PLC022059	}	... Applicant Company /
		Transferee Company

Order delivered on 23rd August, 2017

Coram:

Hon'ble B.S.V. PRAKASH KUMAR, Member (J)
Hon'ble V. NALLASENAPATHY, Member (T)

For the Applicant(s): Mr. Hemant Sethi i/b Hemant Sethi & Co. Advocates for Applicants

Per: B.S.V. PRAKASH KUMAR, Member (J)

Order

1. The present Scheme is a Scheme of Amalgamation and Arrangement between Gabs Investments Private Limited ('Transferor Company') and Ajanta Pharma Limited ('Transferee Company') and their respective Shareholders under Sections 230 to 232

read with Section 52 and Section 66 of the Companies Act, 2013 ('Scheme'). The Scheme inter-alia provides for the amalgamation of the Transferor Company with the Transferee Company.

2. The Scheme involving the Applicant Company and the Transferor Company would have the following benefits:
 - a) The merger will result in the promoter group of the Transferor Company directly holding shares in the Transferee Company, which will lead not only to simplification of the shareholding structure and reduction of shareholding tiers but also demonstrate the promoter group's direct commitment to and engagement with the Transferee Company;
 - b) The promoter group of the Transferee Company is desirous of streamlining its holding in the Transferee Company. As a step towards such rationalization, it is proposed to merge the Transferor Company into the Transferee Company;
 - c) The promoters would continue to hold the same percentage of shares in the Transferee Company, pre and post the merger. There would also be no change in the financial position of the Transferee Company. All cost, charges and expenses relating to the Scheme would be borne out of the assets (other than shares of the Transferee Company) of the Transferor Company. Any expense, exceeding the assets of the Transferor Company would be borne by the promoters directly;
 - d) Further, the Scheme also provides that the shareholders of the Transferor Company shall indemnify the Transferee Company and keep the Transferee Company indemnified for liability, claim, demand, if any, and which may devolve on the Transferee Company on account of this amalgamation.
3. The meeting of the Equity Shareholders of the Applicant Company be convened and held at Prabodhankar Thackrey Natyagrah, Sodawala Lane, Borivli (West), Mumbai – 400 092 on Tuesday, the 10th day of October, 2017 at 11:00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation and Arrangement between Gabs Investments Private Limited and Ajanta Pharma Limited and their respective Shareholders.
4. In compliance pf provisions of Section 108 of the Companies Act, 2013 read with Rule 20 of the Companies (Management and Administration Rules), 2014 as amended

from time to time and as per the provisions of Regulation 44 of the SEBI (Listing Obligations and Disclosure Requirements) Rules, 2015, the Applicant Company will also obtain the approval of shareholders to the said Scheme through e-voting.

5. That at least 30 clear days before the said meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Section 102 of the Companies Act, 2013 and Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.
6. That at least 30 clear days before the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Section 102 of the Companies Act, 2013 and Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid or can be downloaded from website of the Applicant Company.
7. That the Notice of the meeting shall be advertised in two local newspapers viz. in "Free Press Journal" in English and "Navshakti" in Marathi, both circulated in Mumbai, not less than 30 days before the date fixed for the meeting.

8. That Mr. Yogesh Agrawal, Managing Director of the Applicant Company and failing him, Mr. Rajesh Agrawal, Joint Managing Director of the Applicant Company and failing him, Mr. Prabhakar Dalal, Independent Director of the Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders to be held at Prabodhankar Thackrey Natyagrah, Sodawala Lane, Borivli (West), Mumbai – 400 092 on Tuesday, the 10th day of October, 2017 at 11:00 a.m. or any adjournment or adjournments thereof.
9. That Mr. Alwyn Dsouza, Practicing Company Secretary is hereby appointed as Scrutinizers of the meeting of Equity Shareholders of the Applicant Company to be held at Prabodhankar Thackrey Natyagrah, Sodawala Lane, Borivli (West), Mumbai – 400 092 on Tuesday, the 10th day of October, 2017 at 11:00 a.m. or any adjournment or adjournments thereof and his remuneration is fixed as Rs. 25,000/- excluding any applicable taxes thereon and other out of pocket expenses at actuals.
10. That the Chairman appointed for the aforesaid meeting of the Equity Shareholders to issue the advertisement and send out the notices of the meeting referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
11. That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
12. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Registered Office at Ajanta House, 98, Govt. Industrial Area, Charkop, Kandivali (West), Mumbai – 400 067 not later than 48 hours before the aforesaid meeting.

13. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
14. That the Chairman to file an affidavit not less than Seven (7) days before the date fixed for the holding of the meeting of the Equity Shareholders and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
15. That the Chairman of the meeting of the Equity Shareholders to report to this Tribunal, the results of the aforesaid meeting within thirty days of the conclusion of the meeting.
16. That Counsel for the Applicant Company submits that since the Scheme is an arrangement between the Applicant Company and their respective shareholders, only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This Bench hereby directs the Applicant Company to issue notice to its Secured Creditors as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
17. That Counsel for the Applicant Company submits that since the Scheme is an arrangement between the Applicant Company and their respective shareholders, only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This Bench hereby directs the Applicant Company to issue notice to its Unsecured Creditors of the value Rs. 5,00,000/- and above representing about 92.22% of the value of Unsecured Creditors with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.

18. That the Applicant Company is directed to serve notices along with copy of Scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies, (iv) BSE Limited, (v) National Stock Exchange of India Limited, and (vi) Securities and Exchange Board of India, with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served to the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposed arrangement embodied in the Scheme.
19. The Applicant Company to file affidavit of service in the Registry proving dispatch of notices upon the Equity Shareholders, Secured Creditors, Unsecured Creditors and Regulatory authorities as stated above and publication of notice in newspapers.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)