

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, MUMBAI

TRANSFER COMPANY SCHEME PETITION NO. 149 OF 2017

CONNECTED WITH

HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 655 OF 2016

THINKBED TECHNOLOGY PRIVATE LIMITED...Petitioner Company

AND

TRANSFER COMPANY SCHEME PETITION NO. 150 OF 2017

CONNECTED WITH

HIGH COURT COMPANY SUMMONS FOR DIRECTION NO.656 OF 2016

DOSCH PHARMACUTICALS PRIVATE LIMITED ...Petitioner Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 read with Section 100 to 103 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation and Arrangement

BETWEEN

Thinkbed Technology Private Limited ('TTPL' or 'the Transferor Company')

AND

Dosch Pharmaceuticals Private Limited ('DPPL' or 'the Transferee Company')

AND

Their respective shareholders

CALLED FOR HEARING:

Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co.,
Advocates for the Petitioner Company.

Mr. S. Ramakantha, Joint Director for Regional Director

Mr. Vinod Sharma, Official Liquidator

Coram: SH. B.S.V. Prakash Kumar Hon'ble Member (J) and SH. V .Nallasenapathy
Hon'ble Member (T)

Date: 22nd February, 2017

MINUTES OF THE ORDER

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 230 to 232 read with Section 66 of the Companies Act, 2013 to a Scheme of Amalgamation and Arrangement between Thinkbed Technology Private limited with Dosch Pharmaceuticals Private Limited and their respective shareholders.
3. The Petitioner Companies have approved the said Scheme of Amalgamation and Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Summons for Direction Nos. 655 of 2016 and 656 of 2016.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Bombay High Court and they have filed necessary affidavits of compliance in the Hon'ble Bombay High Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Regional Director has filed its Affidavit on 21st February, 2017 stating therein that save and except as stated in paragraph IV of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph IV, of the said affidavit it is stated that:

- a) *In addition to compliance of AS-14 corresponding (IND AS 103) the Transferee Company shall pass such Accounting Entries which are necessary in connection with the scheme to comply with other Accounting Standards such as AS-5/corresponding IND AS-8 etc.*
 - b) *As per the existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the Company vide letter dated 2nd November, 2016 has served a copy company petition No 657 & 658/2016 along with relevant orders etc., However as on date there is no response from Income Tax Department.*
 - c) *The tax implication, 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 NCLT may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner company.*
7. As far as observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his Affidavit is concerned, the Transferee Company undertakes that in addition to compliance of AS-14 corresponding (IND AS 103) accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.
 8. As far as observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his Affidavit is concerned, the Petitioner Company submits that the Petitioner Company has served copy of company petition No 657 & 658/2016 to Income Tax Department vide letter dated 2nd November, 2016.
 9. As far as observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his Affidavit is concerned, the Petitioner Company submits that the Petitioner Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
 10. Mr. S. Ramakantha, Joint Director in the Office of the Regional Director, Ministry of Corporate Affairs, Western region, Mumbai for the Regional Director states that they are satisfied with the undertakings given by the Learned Counsel

appearing for the petitioner companies. The undertaking given by the Petitioner Companies above are accepted.

11. The Official Liquidator has filed his report on 10th February, 2017 in Company Scheme Petition Nos. 657 of 2016 inter alia, stating therein 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 by this Court.
12. 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.
13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 657 made absolute in terms of prayer clauses (a) to (b) and Company Scheme Petition No 658 of 2016 are absolute in terms of prayer clauses (a) to (c).
14. Petitioners are directed to lodge a copy of this order and a copy of the Scheme of Amalgamation and Arrangement along with Form of Minutes with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013.
15. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.
16. Filing and issuance of the drawn up order is dispensed with.
17. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, National Company Law Tribunal, Mumbai.

Sd/-

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

Sd/-

V. Nallasenapathy Member (T)