

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

COMPANY PETITION No. 1 of 2008

For Approval and Signature:

**HONOURABLE MR.JUSTICE K.A.PUJ**

Sd/-

<b>1.</b>	Whether Reporters of Local Papers may be allowed to see the judgment ?	<b>YES</b>
<b>2.</b>	To be referred to the Reporter or not ?	<b>NO</b>
<b>3.</b>	Whether their Lordships wish to see the fair copy of the judgment ?	<b>NO</b>
<b>4.</b>	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	<b>NO</b>
<b>5.</b>	Whether it is to be circulated to the civil judge ?	<b>NO</b>

**ZYDUS BSV RESEARCH AND DEVELOPMENT PRIVATE  
LIMITED - Petitioner  
Versus  
. - Respondent**

**Appearance :**

MR SANDEEP SINGHI FOR SINGHI & CO for Petitioner.  
MR HARIN P RAVAL for Respondent.

**CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**

Date : 31/03/2008

ORAL JUDGMENT

1. The present Company Petition is filed for sanctioning the arrangement embodied in the Scheme of Amalgamation of **Zydus BSV Research and Development Private Limited (Transferor Company)** with **Zydus BSV Pharma Private Limited (Transferee Company)** whereby the Undertaking of the Transferor Company (as defined in the Scheme) shall stand transferred to and vested in the Transferee Company on the terms and conditions as stated in the Scheme of Amalgamation and whereby all the assets and liabilities of the Transferor Company would be transferred to the Transferee Company on the terms and conditions, as stated in the Scheme of Amalgamation. I have heard Mr. Sandeep Singhi, learned advocate appearing for the petitioner. I have considered the contents of the petition and the totality reflected from the annexures annexed with the petition.

2. Earlier, by order dated 26<sup>th</sup> December 2007 in Company Application No. 571 of 2007 preferred by the petitioner Company i.e. The Transferor Company for sanctioning the Scheme of Amalgamation, this Court had dispensed with the meetings of Equity Shareholders and Unsecured Creditors for the purpose of considering, and if thought fit, approving, with or without modifications, the said Scheme of Amalgamation.

3. By order dated 07<sup>th</sup> January, 2008 the present petition was admitted and notices were issued to the Central Government through Regional Director, Department of Company Affairs and Official Liquidator attached to this Court. The notices were served on the Central Government through Regional Director, Department of Company Affairs on 16<sup>th</sup> January 2008 and on the Official Liquidator on 11<sup>th</sup> January 2008. The notices were also ordered to be published in two newspapers. Pursuant to the same, an affidavit of one Mr. Manubhai Khodidas Patel, Director of the petitioner

Company, dated 4<sup>th</sup> day of February 2008 has been filed confirming the publication of the notice in two newspapers as directed and service of notices to the Regional Director and Official Liquidator.

4. The affidavit of one Mr. R. K. Dalmia, Deputy Registrar of Companies dated 21<sup>st</sup> March 2008 has been placed on record by Mr. Harin Rawal, learned Assistant Solicitor General appearing for the Central Government. In the said affidavit, it is stated that the petitioner Company be directed to submit its latest financial statements before this Court. Mr. Sandeep Singhi, learned advocate appearing for the petitioner has submitted that the Audited Balance-sheet as on 31.03.2007 is placed on record. He has further placed on record the Provisional Balance-sheet as on 29.02.2008. There is no material difference between the figures given in the audited Balance-sheet as on 31.03.2007 as well as Provisional Balance-sheet as on 29.02.2008. Mr. Raval has also submitted that except this, there is no other objection raised by the Deputy Registrar, Registrar of Companies and the only

objection raised is taken care of by furnishing the provisional Balance-sheet as on 29.02.2008. The Court is, therefore, of the view that the observations made in the affidavit of the Deputy Registrar of Companies are already taken care of.

5. The Official Liquidator has placed his report dated 26.03.2008. His report is based on the report submitted by M/s. Dhirajlal Shah & Co., Chartered Accountants. The said Chartered Accountant has observed in his report as under :-

“STAMP DUTY PAYABLE ON ISSUE AND ALLOTMENT OF SHARES : The Board of the Company has resolved in its meeting dated 07.04.2006 to issue fresh equity shares to its existing shareholders. The allotment of equity shares was done on 17.07.2006. As per the Bombay Stamp Act, 1958 as adopted by State of Gujarat, the issuer is required to pay stamp duty @ 1.00 rupee per 1000 Rupees for value of shares. The required stamp is Rs.9800/-. At the time of verification of books, we have observed that the above proper Stamp Duty is not paid by the Company. The Company has now paid the required stamp duty of Rs.9800/- on 21.03.2008 by franking on shares certificate.”

6. The Chartered Accountant has further stated in his report that any violation of the legislation is against public policy and thereby against public interest. While dealing with the process under Section 394 of the Companies Act, 1956, public interest is not to be construed in a narrow sense that takes into account only the shareholding pattern. While commenting on the observations made by the Chartered Accountant, the Official Liquidator has stated that the stamp duty of Rs.9,800/- was not paid on share certificates, issued by the Company on 17.07.2006. Non-payment of stamp duty on share certificates may not amount to conducting the affairs of the Company in a manner which can be said to be against the public interest. At the most, non-payment of stamp duty on share certificates would invalidate the share certificates but not the allotment of shares. Even otherwise, from materially point of view also, the amount involved was Rs.9800/- only which has also been, in fact, paid by the Company on 21.03.2008. The Official Liquidator has, therefore, observed in his report that the objection

raised by the Chartered Accountant was properly taken care of and it was not adverse to the proposed Scheme of Amalgamation. In this view of the matter, the Official Liquidator has submitted that the affairs of the petitioner Company have not been conducted in a manner prejudicial to the interest of its members or public.

7. In view of the above, the Court is of the view that there are no grounds or circumstances which require this Court to refuse approval to the Scheme of Amalgamation. On going through the Scheme, it appears that the requirement of the provisions of Sections 391 to 394 of the Companies Act, 1956 are satisfied. The Scheme is genuine and bonafide and in the interest of shareholders and creditors of the petitioner Company. The Court, therefore, allows this petition and approves the arrangement embodied in the Scheme of Amalgamation. The Scheme of Amalgamation is accordingly sanctioned. Reliefs in terms of para 17 (a) to (c) in Company Petition No. 1 of 2008 are hereby granted.

8. The fees of learned Assistant Solicitor General of India is quantified at Rs. 3,500/- which should be directly paid by the petitioner Company to Mr. Harin Rawal.

9. This petition shall stand disposed off accordingly.

Sd/-  
[K. A. PUJ, J.]

Savariya