

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

Coram: Hon'ble Shri H. V Subba Rao, Member (J)

CA (CAA)/8/2021
: Hearing through

Hon'ble Shri Prasanta Kumar Mohanty, Member (T) : Video Conferencing

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY
TRIBUNAL, GUWAHATI BENCH ON 23.08.2021**

Name of the Company

M/s Luit Valley Enterprises Pvt Ltd

And

M/s Nemcare Hospital Tezpur Pvt. Ltd

Section of the Companies Act:

Under Section 230 to 232 of the Companies Act, 2013.

<u>S.No.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>
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1.	Mr. Biman Debnath	CS	Petitioners Present in Video Conference
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ORDER

The Applicant is represented through respective Learned Counsel(s).

The case is fixed for pronouncement of order.

The order is pronounced in the open court, vide separate sheet.

Sd/-

**(Prasanta Kumar Mohanty)
Member (Technical)**

Dated this the, 23.08. 2021

Sd/-

**(H.V Subba Rao)
Member (Judicial)**

ORDER

[Per se: Mr H. V. Subba Rao, Member (J)]

The Company Application has been filed jointly by both the Petitioners, Petitioner no 1 M/S Luit Valley Enterprises Pvt. being the Transferor Company and the Petitioner no 2 M/S Nemcare Hospital Tezpur Pvt. being the Transferee Company. It is submitted that the Board of Directors of the both the Companies, transferor as well as the transferee Company have at their respective Board meetings held on the 25/02/2021 by a resolution passed unanimously have approved a draft scheme of amalgamation for amalgamating the transferor Company with the Transferee Company **w.e.f. the 1st day of April, 2020, the appointed date. Copy of the resolution passed at the Board of Directors of both the Companies have been attached herewith as "Annexure-8".**

1. The rationale of the said Scheme of Arrangement are, as follows:-

- i) The Transferor Company is inoperative since last year and is not carrying on its hotel activities for some years because of which its fixed assets along with the land had remained unutilized and hence your petitioners have decided to amalgamate with each other so that the fixed assets and the resources of the transferor company can be properly utilized and the business activity of the transferee company can be carried on smoothly in the land of the transferor company.
- ii) The registered office of the Transferee Company is also situated in the land of the transferor Company as the building and the land of the Transferor Company were taken on lease by the transferee Company for carrying on the hospital business. Further at the time of availing of financial assistance from the bank by the transferee Company, the bank had insisted the transferee Company to mortgage the property of the transferor company which was taken on lease by the Transferee Company against the financial facilities and amalgamate both the Companies so that the ownership of the property solely comes under Transferee Company. Hence this amalgamation of both the petitioners had been proposed for.
- iii) As the Transferee Company has just started its operations and holds operating facilities and assets which cannot be transferred easily, the transferor Company does not have any such operating facilities or assets. In view, inter alia of the aforesaid, operationally it is considered more

convenient to merge the transferor Company with the Transferee Company than vice versa.

- iv) The amalgamation will enable appropriate consolidation of the undertakings of the Transferor Company and the transferee Company. The business of the amalgamated entity will be carried on more efficiently and economically as a result, inter alia, of pooling and more effective utilization of the combined resources of the said companies and substantial reduction in costs and expenses which will be facilitated by and follow the amalgamation.
- v) The merger will also result in the formation of a larger company having greater capacity to raise and access funds for growth and expansion of its business and marketing on more favorable terms.
- vi) The petitioners state that all the properties, rights and interest of 'Transferor Company' be transferred to and be vested without any further act or deed in Transferee Company and accordingly the same shall pursuant to Section 232 (1) of the Companies Act, 2013 be transferred to and vested in transferee Company for all the estate and interest of Transferor Company' subject never the less to all charges, now affecting the same.
- vii) The petitioners state that all the liabilities and duties of 'Transferor Company' be transferred without further act or deed and accordingly the same shall pursuant to Section 232(1) of the Companies Act,2013 be transferred to and become the liabilities and duties of Transferee Company'.
- viii) The petitioner state that all the proceedings and/or appeals now pending by or against 'Transferor Company' be continued by or against the 'Transferee Company'.
- ix) The detailed scheme of merger has been enclosed herewith as **Annexure-7.**
- x) The board of directors of both the companies, transferor as well as the transferee Company have at their respective Board meetings held on the 25/02/2021 by a resolution passed unanimously have approved a draft scheme of amalgamation for amalgamating the Transferor Company with the Transferee Company w.e.f. the 1st day of April 2020, the appointed date.
- xi) There are no investigations or proceedings pending against any of the petitioner companies.

- xii) The exchange ratio of shares of the applicant companies have been fixed on fair and reasonable basis and on the basis of valuation report prepared by a registered valuer. The share exchange ratio has been fixed as 1:29 i.e. shareholders of the transferee Company against one share held by them in the transferor company.
- xiii) The Petitioner has submitted that the scheme does not prejudice the interest of any person.
- xiv) Unless orders as prayed for herein are made, the petitioner will suffer irreparable loss and injury and will be gravely prejudiced.
- xv) The instant petition is bona fide and made for the ends of justice.
- xvi) The aggregate assets of the applicant companies are sufficient to meet all the liabilities and the said scheme shall not adversely affect the rights of any creditors of the Applicant Companies in any manner whatsoever and due provision have been made for payment of liabilities as and when same fall due in usual course.
- xvii) At present the transferor company does not have any other significant business interest other than earning lease rentals on its property leased to the transferee Company i.e. the proposed Transferee Company in this scheme.
- xviii) The Amalgamation will enable appropriate Consolidation of the undertakings of the Transferor Company and the Transferee Company. The Business of the merged entity will be carried on more effective utilization of the combined resources of the said companies and substantial reduction in costs and expenses which will be facilitated by and follow the Amalgamation.
- xix) In consideration of the Amalgamation, the transferee Company will issue and allot to shareholders of the transferor company, Equity shares credited as fully paid up in the transferee company aggregating to Rs. 92,80,000.00 (Ninety Two Lakh Eighty Thousand Only). The existing equity shares of the Transferee Company held by the Transferor Company shall stand necessarily cancelled as a consequence of the Amalgamation, if any. The aforesaid will enable the shareholders of the transferor Company to hold shares directly in the operating Company, viz the Transferee Company. The same will unlock shareholders value.
- xx) The amalgamation will also result in the formation of a larger company having greater capacity to raise and access funds for growth and expansion of its business and marketing on more favorable terms.

2. The necessary particulars about the Applicants Companies submitted by the Applicant is being reproduced herein below:

Sr. No. A	TRANSFEROR COMPANY	M/S LUIT VALLEY ENTERPRISES PVT. LTD.
A1.	TRANSFEROR COMPANY	9 th day of September,1985
A2	Incorporation	U55101AS1985PTC002431
A3	CIN	AAACL4724B
A4	PAN	
A5.	Registered Office	Holding No 5/1288 Ward No 5, Ranu Singh Road, Tezpur- 784001, Sonitpur, Assam
A6.	Shares	<p>Authorized Share Capital is Rs.40,00,000/- and Issued, Subscribed and Paid-up Capital is Rs.32,00,000/-</p> <ul style="list-style-type: none"> • To establish and carry on business of hotels, restaurants, refreshment, rooms, tea, rooms, cafes,milk and snack bar. • To act as caterers and contractors as bakers, confectioners, tobacco, milk and butter seller, dairymen, grocers, farmers, Ice merchant etc. • To carry on the business of providing boarding and lodging houses, hotels, savers, bear houses and lincensed wine, beers and spirit Merchants. • To purchase or otherwise acquire any land, building or premises and to turn into accounts, develop, improve, alter, demolish or let out for the purpose of carrying on the business of Hotel.
Sl.no B	TRANSFEEEE COMPANY	M/S NEMCARE HOSPITAL TEZPUR PVT. LTD.
B1	Incorporation	23 rd day of May,2016
B2	CIN	U85300AS2016PTC017428
B3	PAN	AAFNC2839J

B4	Registered Office	Holding No 5/1288 Ward No 5, Ranu Singh Road, Tezpur- 784001, Sonitpur, Assam
B5	Shares	Authorized Share Capital of Rs.11,00,00,000/- and Issued, Subscribed and Paid-up Capital of Rs.10,24,67,200/-
B6	Objects of Company (In Brief)	<ul style="list-style-type: none"> • To establish, construct, erect, maintain ,manage, develop ,own, acquire, purchase, undertake, improve, equip, promote, initiate , encourage, subsidies and organize, run hospitals, nursing homes, dispensaries, clinics, diagnostic center, polyclinics, pathology, laboratories centres, investigation centres, Paramedical Education Institution, Medical College, Postgraduate Education Institute ,Nursing Institutes and other similar establishment for providing treatment and medical relief in all its branched by all available means to public at large , hospitals, institutes and others and • to carry on the business in India or elsewhere to manufacture, Produce, export ,import, buy, sell, fabricate, discover, develop, design, process, investigate, store, formulate, install, repair, maintain recondition, turn to account, exchange, sponsor, distribute or otherwise to deal in all sorts of medicines, pharmaceuticals, chemicals, injections, drugs, formulations, apparatus, instruments, accessories, natural and artificial human body parts and other allied goods and articles, to conduct genetical research, to set up project special purpose vehicles (SPVs) and to do all incidental acts and things necessary for the attainment of the objects under these

		presents.
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3. The Particulars of the directors of the Company are as follows:

TRANSFEROR COMPANY:

Name	DIN	Address
<u>Hiteswar Baruah</u>	01157669	Prabhu Nibash Sarumataria Hengerabri Guwahati-06 Assam, India
Mihir Kumar	01157562	CK Agarwal Road, Chenikuthi, Guwahati-03, Assam, India
Ranjan Kumar Deka	01157216	Narengi, Guwahati, Assam, India
Dharani Dhar Baruah	02094968	Nemcare Hospital, Bhangagarh, Guwahati-781005, Assam ,India
Pallabi Saikia	07291622	Tezpur, Assam, India

TRANSFeree COMPANY

Name	DIN	Address
Hiteswar Baruah	01157669	House No : 28 Prabhu Nibash, Sarumataria, Hengerabari, Guwahati-05, Assam
Mihir Kumar Baruah	01157562	CK Agarwal Road, Chenikuthi, Guwahati-03, Assam, india
Ranjan Kumar Deka	01157216	Narengi, Guwahati, Assam, India
Dharani Dhar Baruah	02094968	Nemcare Hospital, Bhangagarh- Guwahati, 781005, Assam, India
Pallabi Saikia	07291622	Jyoti Agarwal Path, Murhateli, Tezpur, ezipur-784001, Assam India
Perbez Ahmed	03606834	H No 37, Dr B Baruah Road opp Royal Archade, Ulubari, Kamrup Metro, Guwahati
Rajmohan Pathak	08176394	C/0 Bhabendra Natha Pathak, Landmark Apartment-K-2 B.R. Path, Bacpan School, Beltola-781028, Kamrup Metro, Assam, India

Bipul Chandra Kalita	08713721	Chandmari,Kuhiarbari,tezpur Sonitpur, Sibsagar-784001,Assam, India
Satyapran Deka	08713752	H/no-31 Nizarapar, Pension Para RD Chandmari Guwahati Kamrup(Metropolitan), Guwahati-781003, Assam. India
Utpal Jyoti Barman	08714013	G-203, Trillium, Magarpatta City. Hadapsar, Pune City, Hadapsar, Pune City Hadpsar i.e Maharashtra Magarpatta City Maharashtra India 411013

4. The Authorised, Issued and Subscribed Share Capital of the Transferor Company M/S Luit Valley Enterprises Pvt Ltd as on the date of meetings of the Board of Directors considering and approving this Scheme i.e. as on 31.03.2020 and present financial position are as follows:

Particulars	FY 2019-20(Rs.)	FY 2018-19(Rs.)
Authorized share capital	40,00,000.00	40,00,000.00
Paid up share capital	32,00,000.00	32,00,000.00
Total assets	8,831,689.00	88,37,689.00
Total Income / Revenue	0	0
Net Profit/ (Loss) After Tax	-33,900.00	89,599.00

5. The Authorized, Issued and Subscribed share Capital of the Transferee Company [M/s Nemcare Hospital Tezpur Private Limited] and the present financial position are as follows:

Particulars	FY 2019-20(Rs.)	FY 2018-19(Rs.)
Authorized share capital	11,00,00,000.00	6,00,00,000.00
Paid up share capital	10,07,67,200.00	5,92,10,000.00
Total assets	239,138,149.66	133,367,171.35
Total Income / Revenue	57,384.00	0.0
Net Profit/ (Loss) After Tax	-6,89,897	-7,65,585

6. Consequent to and as part of the Amalgamation of the transferor Company with the Transferee company herein, the authorized share capital of the Transferor Company shall stand merged into and combined with the authorized share capital of the transferee Company pursuant to the Scheme, without any further act of deed, and without payment of any registration or filing fee on such combined authorized share capital, the transferor company and the transferee Company having already paid such fees.

7. There are no proceedings pending under Section 210 -227 of the companies Act 2013 and/or sections 235 to 251 of the companies Act 1956 against the Transferor Company and the Transferee Company.

8. There is no reduction of share capital of the Companies proposed in the Scheme of Amalgamation and no scheme of corporate debt restructuring proposed to be entered by the companies pursuant to Amalgamation.

9. The Operation of the scheme Amalgamation of the Transferor Company with the Transferee Company in case of Transfer and vesting of the Undertaking:

- i. With effect from the appointed date, the transferor company provided in the scheme. Accordingly the said assets subject to the changes due to carrying on business by the Transferor Company up to the Effective Date, if any, shall without any further act or deed, be and shall stand transferred to and vested in the transferee Company, as an ongoing concern without any further act, deed, matter or thing so as to become on and from the Appointed date the undertaking of the Transferee Company.
- ii. It is expressly provided that the assets of the Transferor Company are immovable in nature or otherwise capable of being transferred by endorsement only, the same shall be so transferred by the Transferor Company and shall become the property of the Transferee Company accordingly with proper deed or instrument of conveyance for the same.

- iii. The transfer and vesting as shall be subject to any existing charges/hypothecations mortgages or other encumbrance (if any) over or in respect of the said assets or any part thereof.
- iv. Subject to the other provisions of the scheme, all licenses , permissions, approvals, consents, registrations, eligibility certificates, fiscal incentives and no objections certificates obtained by the Transferor Company is entitled to in terms of the various statues and / or schemes of Union and state Governments, shall be available to the transferee Company, without any further act or deed and shall be appropriately mutated by the statutory authorities concerned therewith in favor of the Transferor Company will be transferred to the Transferee Company as a going concern without any break or interruption in the operations thereof, the transferee company shall be entitled to the benefit of all such licenses, permissions, approvals, consents, registrations, eligibility certificates ,fiscal incentives and no-objections certificates and to carry on and continue the operations of the undertaking of the Transferor Company on the basis of the same upon this scheme become effective .Further all benefits to which the transferor Company is entitled in terms of the various statues and / or schemes of Union and State Governments, including credit for MAT, Advance Tax and Tax deducted at source and other benefits under Income Tax Act and Tax credits and benefit under Income Tax Act and Tax credits and benefit relating to Excise (including Modvat /Cenvat), Sales Tax , service Tax, etc. shall be available to the Transferee Company upon this scheme becoming effective.
- v. For the removal of the appointed date , it is hereby clarified that to the extent that there are inter-corporate loans, deposits, obligations, balances or other outstanding as between the Transferor Company and the Transferee Company , if any , the obligations in respect thereof shall come to an end and there shall be no liability in that behalf and corresponding effect shall be given in the books of account and records of the Transferee Company for reduction of assets or liabilities as the case may be and there would be no accrual of interest or any other charges in respect of such inter corporate loans , deposits s or balance, with effect from the appointed date .

- vi. The Transferee Company may, at any time after coming into effect of this Scheme in accordance with the provisions hereof, if so required, under any law or otherwise, execute deeds of confirmation in favor of the secured creditors of the Transferor Company or in favor of any other party to any contract or agreement to which the Transferor Company is party or any writings as may be necessary to be executed in order to give formal effect to the above provisions. The Transferee Company shall under the provisions of the Scheme be deemed to be authorized to execute any such writing on behalf of the Transferor Company and to implement or carry out all such formalities or compliances referred to above on the part of the Transferor Company to be carried out or performed.
 - vii. For avoidance of doubt, all rights, title , interest and claims of the transferor Company in any leasehold properties , including all such leases, of the transferor Company shall, pursuant to section 232(4) of the Act, without any further act or deed, be transferred to and vested in or be deemed to have been transferred to and vested in the Transferee Company
10. (a) It is submitted that as on 04th March, 2021, the Transferor Company had 6 equity shareholders. As on 4th March 2021, the Transferor Company had 11 Sundry Creditors (Trade Payables) and the company has taken unsecured loans from the director of the company Mr. Pratim Goswami, the sun of Rs.50,00,000.00 as per the book of account of the Company. The List of shareholder is annexed as '**Annexure A of the I.A at page 61**'. A list of the sundry Creditors (Trade payables) of the Transferor Company as certified by the Chartered Accountants are annexed hereto and marked as "**Annexure 3 of the I.A**".
- (b) It is further submitted that as on 04th March, 2021, the Transferee Company had 54 Shareholders, 2 Secured Creditors and 77 unsecured creditors. The List of shareholder is annexed as '**Annexure6 of the I.A at page no 105-108**'. A list of the Unsecured Creditors and Secured Creditors of the Transferee Company as certified by the Chartered Accountants are annexed hereto and marked as "**Annexure -6 of the I.A at page 98**".

11. It is submitted that all the shareholders of the Transferor Company, by affidavits given their consent to the said Scheme of Arrangement. The respective Affidavits, in original are annexed hereto and collectively marked **"Annexure 4 at page no 62-85 of the I.A"**.

12. It is submitted that the shareholders of the Transferee Company, by affidavits given their consent to the said Scheme of Arrangement. The respective affidavits, in original are annexed hereto and marked as **"Annexure 8 at page 233 -308 of the I.A"**.

13. It is submitted that all the creditors of the Transferor Company, by affidavits given their consent to the said Scheme of Arrangement. The respective affidavits, in original are annexed hereto and marked as **"Annexure 4 at page 62-85 of the I.A"**.

14. It is further submitted that all the creditors of the Transferee Company, by affidavits given their consent to the said Scheme of Arrangement. The respective affidavits, in original are annexed hereto and marked as **"Annexure 7 at Page 109-232 of the I.A"**.

15. **The respective auditors of the Transferor Company and the Transferee Company have also confirmed that the accounting treatment contained in the Scheme is in compliance with Accounting Standards prescribed under companies Act 2013 and other Generally accepted accounting Principles. A copy of each of the said certificates is enclosed and marked "Annexure 15 and 16 respectively."**

16. **Presently M/s Luit Valley enterprise Private Limited, the Transferor Company is having no business operations and the Transferee Company M/s Nemcare Hospital Tezpur Private Limited is also having no business operation and is in the stage of development.**

17. **It is submitted that the allotment of shares in Transferee Company to the equity shareholders of the Transferor Company in the following ratio (as per the statement on exchange ratio calculation for equity**

shareholders given in Annexure A) at the option of the equity shareholders of Transferor Company will be fair and reasonable subject to the rounding off to the nearer integer:

- i. 29(Twenty Nine) equity shares of Rs.10/- each in Nemcare Hospital Private Limited, Created as fully paid up, for every1(one) equity shares of Rs.100/- fully paid up held in Luit Valley Enterprises Private Limited.

18. The statement on equity Exchange Ratio calculation is as follows:

Particulars	Amount (In Rs.)
A. Value per share of Nemcare Hospital Tezpur Private Limited (Rs)	97
B. Value per Share of Luit Valley enterprise Private Limited(Rs)	2824.1
C. Exchange Ratio (B/A) i.e 29equity shares of Nemcare hospital Private Limited Of Rs. 10/- Each to be issued to a shareholder holding 1 equity shares of Luit Valley enterprise Private Limited of Rs. 100/- each.	29

Statement of valuation of Equity Shares of m/S Nemcare Hospital Private Limited on the basis of Assets Approach (On the basis of Audited financial statements as at March 31,2020).

Sl. No	Particular	Amount (in Rs)
A	Assets	
	Capital WIP	19,78,18,921
	Long term loan & Advances	2,95,91,694.00
	Cash & Cash Equivalent	28,61,086.15
	Other Current Assets	7,61,090.66
	Total of A	23,10,32,791
B	Liabilities	
	Other Current Liabilities	2,91,454
	Long term Borrowing	12,67,18,869.01

	Trade Payables	49,83,481.00
	Total of B	13,19,93,804
C	Equity value (A-B)	9,90,38,987
D	No. of equity shares	10,24,672
F	Fair Value per share	97

Statement of valuation of Equity Shares of M/s Luit Valley Enterprise Private Limited on the basis of Assets Approach (On the basis of Audited financial statements as at March 31,2020)

Sl. No	Particular	Amount (in Rs.)
A	Assets	
	Tangible Assets	10,16,40,600
	Cash & Cash Equivalents	6,000
	Total of A	10,16,46,600
B	Liabilities	
	Trade Payable	62,09,810
	Other Current Liabilities	33,900
	Short Term Provision	31,481
	Long term Borrowing	50,00,000.00
	Total of B	1,12,75,191
C	Equity value (A-B)	9,03,71,409
D	No. of equity shares of Rs 100/- each	32,000
F	Fair Value per share	2,824

19. The Applicant companies have prayed for the following reliefs:

- a) Dispense with the meeting of the Equity shareholders of both the applicant companies in view of the written consent given by more than ninety percent of the shareholding value of the Applicant Companies (i.e the Transferor and Transferee Company) by way of an affidavit. Consent received of 100% of the shareholding value of the Petitioner No. 1 and 90.25% of shareholding value of Petitioner No II.

- b) Dispense with the meeting of the Creditors of both the applicant companies in view of the written consent given by more than 90% of the credit value of the Creditors of the Applicant Companies(i.e the Transferor Company and the Transferee Company) by way of an affidavit. Consent received of 100% of the credit value of Petitioner No. 1 and 99.72% of Credit value of Petitioner No II.**
- c) To provide necessary orders for issue of newspaper advertisement detailing petition pursuant to Rule 35 of National Company Law Tribunal Rules, 2016 in Form NCLT 3A.**
- d. The Sectoral/Statutory/ regulatory authority involved in this Scheme are i) Regional Director, North Eastern Region; ii) Registrar of Companies, Guwahati; iii) Official Liquidator, Guwahati; iv) Concerned Income Tax authorities; and the applicants are seeking orders to serve notice on such sectoral/ statutory/ regulatory authorities. The Transferor Company and Transferee Company are unlisted Companies and hence no notice is required to be sent to Stock Exchanges. The Competition Commission of India regulations are not applicable to the Applicant Companies in terms of total values of assets and/or turnover of the Applicant Companies. Hence, it is not necessary to serve the scheme of Arrangement on the said authority of any other sectoral authorities.**
- e. To pass such other order or orders or further order be made affording deem fit and proper. And for this act of kindness the applicant shall ever pray.**

20. In view of the aforesaid, it is submitted that this Hon'ble Tribunal be pleased to dispense with convening of meeting of equity shareholders, secured creditor and unsecured creditors of both the transferor Company and transferee Company.

21. The Sectoral/Statutory/ regulatory authority involved in this Scheme are i) Regional Director, North Eastern Region; ii) Registrar of Companies, Guwahati; iii) Official Liquidator, Guwahati; iv) Concerned Income Tax authorities; and the applicants are seeking orders to serve notice on such sectoral/ statutory/ regulatory authorities. The Transferor Company and Transferee Company are unlisted Companies and hence no notice is required to be send to Stock Exchanges. The

Competition Commission of India regulations are not applicable to the Applicant Companies in terms of total values of assets and/or turnover of the Applicant Companies. Hence, it is not necessary to serve the scheme of Arrangement on the said authority of any other sectoral authorities.

22. All the shareholders of the Transferor Company, by affidavits given their consent to the said Scheme of Arrangement. The respective Affidavits, in original are annexed hereto and collectively marked **"Annexure 4 at page no 62-85 of the I.A"**.

23. All The shareholders of the Transferee Company, by affidavits given their consent to the said Scheme of Arrangement. The respective affidavits, in original are annexed hereto and marked as **"Annexure 8 at page 233 -308 of the I.A"**.

24. All the creditors of the Transferor Company, by affidavits given their consent to the said Scheme of Arrangement. The respective affidavits, in original are annexed hereto and marked as **"Annexure 4 at page 62-85 of the I.A"**.

25. All the creditors of the Transferee Company, by affidavits given their consent to the said Scheme of Arrangement. The respective affidavits, in original are annexed hereto and marked as **"Annexure 7 at Page 109-232 of 'the I.A"**.

26. **The Applicant Companies have submitted the Audited Financial Statement, Directors Report and Auditor Report for the year ending 31/03/2020, the copies of these have been annexed with the applications and marked as "Annexure -1 and 3 respectively" The Auditor Report has been submitted by Mr. Champalal Maheswari,CA wherein it is stated :**

Report on other Legal and Regulatory Requirements:

1. **The Companies (Auditor's report) Order,2016 issued by the Central Government of India in terms of sub-section (11) of section 143 of the Act, is not applicable for the Company.**
2. **As required by Section 143 (3) of the Act, we report that:**

- a) **We have sought and obtained all the information and explanations which to the best of our knowledge and belief were necessary for the purposes of our audit.**
- b) **In our opinion, proper books of account as required by law have been kept by the Company so far as it appears from our examination of those books.**
- c) **The Balance Sheet, the statement of Profit and Loss dealt with by this Report are in agreement with the books of account.**
- d) **In our opinion, the aforesaid financial statements comply with the Accounting Standards specified under Section 133 of the Act, read with Rule 7 of the Companies (Accounts) Rules, 2014.**
- e) **On the basis of the written representations received from the directors as on 31st December, 2020 taken on record by the Board of Directors, none of the Directors is disqualified as on 31st December, 2020 from being appointed as a director in terms of Section 164 (2) of the Act.**
- f) **The company has adequate internal financial control system in place and they are operating effectively;**
- g) **With respect to the other matters to be included in the Auditor's report in accordance with the Rule 11 of the Companies (Audit and Auditors) Rules, 2014, in our opinion and to the best of our information and according to the explanations given, it is reported that:**
 - i. **The Company does not have any pending litigations which would impact its financial position.**
 - ii. **The Company did not have any long-term contracts including derivative contracts for which there were any material foreseeable losses.**
 - iii. **There were no amounts which were required to be transferred to the Investor Education and Protection Fund by the Company**

27. Having heard the learned counsel for the Applicant Companies and by perusal of the records, we feel that the prayer as being sought for by

the Applicant companies appear to be reasonable and bona fide. The present company Applications deserve to be allowed. Accordingly, it is allowed in terms of its prayer clause with following directions: -

- i. Meetings of the Creditors of M/s Luit Valley Enterprises, the applicant Transferor Company and the Transferee Company, M/s Nemcare Hospital Tezpur Private Limited are hereby dispensed with, in the light of the consent letters on affidavit, placed on record.
- ii. A meeting of Equity Shareholders of both the Applicant Companies are hereby dispensed with, in the light of the consent letters on affidavit, placed on record.
- iii. Direction is given for issue of newspaper advertisement detailing petition pursuant to Rule 35 of National Company Law Tribunal Rules, 2016 in Form NCLT.
- iv. **The Appointed date is 1st day of April, 2020, as resolved in the Board Meeting of both Applicant Companies.**

28. In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, the Applicant Companies shall send a Notice of meeting in Form No. CAA 3 with a copy of the Scheme of Arrangement, the Explanatory Statement and the disclosures mentioned under Rule 6 (to the extent applicable) to:

- (a) The Central Government through the Regional Director, North Eastern Region,
- (b) the Registrar of Companies, Guwahati
- (c) the Income Tax Authorities of the concerned areas;
- (d) the Official Liquidator, North eastern Region

stating that representations, if any, to be made by them shall be made within a period of 30 (Thirty) days from the date of receipt of such notice, failing which it will be deemed that they have no objections to make on the proposed Scheme of Arrangement. The said notices shall be sent to the above Statutory authorities forthwith either by Registered Post or by Speed Post or by Courier or by Hand Delivery at the office of the authorities as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities who desire to make any representation under sub-section (5) of Section 230 shall send the same to this Tribunal with a copy of the same to

be sent to the Applicant Companies within a period of 30 (Thirty) days from the date of such service.

29. The Applicants or its Counsels on record shall along with copies of required documents and disclosures required under the provisions of Section 230(5) of the Companies Act, 2013 in Form NO.CAA.3 of the Companies (CAA) Rules, 2016 with necessary variations incorporating the directions therein, by sending the same by hand delivery or through special messenger or by registered post or speed post for filing their representation, if any, within 30 days from the date of receipt of the notice with a copy of such representation being sent simultaneously to the Applicant Companies and/or its Counsels. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Arrangement.

30. Issue advertisement detailing petition under Rule 35 of the NCLT Rules, 2016 not less than fourteen days before the date fixed for hearing in two daily newspapers – one in "Sentinel" in English newspaper and the other in "Dainik Agradoot" in local vernacular newspaper to all the stakeholders for final disposal of the petition.

31. The authorized representative of the Applicant Companies or its Counsels shall furnish an affidavit of compliance before three days of the date of next hearing.

32. All the aforesaid directions are to be complied in accordance with the applicable law including forms and formats contained in the Companies (CAA) Rules, 2016 as well as the provisions of the Companies Act, 2013. The undertaking of the authorized representative of the applicants to this effect is accordingly taken on record.

33. With the aforesaid directions/observations, **CA (CAA) No.8/GB/2021** is allowed and stands disposed of accordingly.

Sd/-

(Prasanta Kumar Mohanty)
Member (Technical)

k.y/deka/ 23.08.2021/

Sd/-

(H.V Subba Rao)
Member (Judicial)