

BEFORE THE PRINCIPAL BENCH NATIONAL COMPANY LAW TRIBUNAL

AT NEW DELHI

Present: CHIEF JUSTICE (Retd.) SHRI M.M.KUMAR, HON'BLE PRESIDENT

& SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

COMPANY PETITION NO. 884 OF 2016

CONNECTED WITH

COMPANY APPLICATION (MAIN) NO.112 OF 2016

(TRANSFERRED FROM THE FILE OF HON'BLE HIGH COURT OF DELHI)

IN THE MATTER OF SECTIONS 391 TO 394 OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

KAILASH MEDICAL AND RESEARCH CENTRE PRIVATE LIMITED

Having its Registered Office at :

**A-101, New Ashok Nagar,
Delhi-110096, India**

.....TRANSFEROR/PETITIONER COMPANY

WITH

KAILASH HEALTHCARE LIMITED

Having its Registered Office at :

**A-101, New Ashok Nagar,
Delhi-110096, India**

.....TRANSFeree/NON-PETITIONER COMPANY

ADVOCATE FOR THE PETITIONERS:

**Mr. Saurabh Kalia, Advocate,
Mr. Palash Agarwal, Advocate,**

FOR REGIONAL DIRECTOR (NR), MCA:

Mr. C. Balooni, Company Prosecutor

FOR OFFICIAL LIQUIDATOR:

Ms. Chetana Kandpal, Company Prosecutor,

ORDER

1) This petition filed by the Transferor Company above named is coming up finally before us on 27.02.2017 for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and shareholders of the Petitioner by way of amalgamation of the Transferor Company with the Transferee Company. A perusal of the petition discloses that initially an application seeking for dispensation with convening the meeting of equity shareholders, secured and unsecured creditors of both the transferor and transferee company were filed before the Hon'ble High Court of Delhi in C .A(Main) No.112 of 2016. The Hon'ble High Court of Delhi vide its order dated 27.08.2016 in addition to dispensing with the requirement of convening of the meetings of the equity shareholders, under the circumstances therein had also been pleased to exempt the necessity of the Transferee Company taking out separate proceedings and in this connection the relevant portions of the order of the Hon'ble High Court dated 27.08.2016 is reproduced hereunder:-

"11. The applicant also seeks dispensation of requirement of the transferee company to approach this Court for sanction of Scheme of Amalgamation under Sections 391-394 of the Companies Act, 1956 on the ground that the Scheme does not entail or involve any arrangement between the transferee company and its shareholders. Further, since the transferor company is a wholly owned subsidiary of the transferee company, no new shares will be issued by the transferee company in lieu of the shares of the transferor company; and there will be no change in the control and management of the transferee company, therefore, the rights of the shareholders of the transferee company will not be affected in any manner whatsoever by the Scheme. It is further submitted that the present Scheme does not envisage any compromise or arrangement by the transferee company with their creditors and that the assets of both the companies are more than sufficient to meet its liabilities, therefore, the rights of the creditors of the transferee company will not be adversely affected.

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12. In support of his submissions, learned counsel placed reliance on the judgment of this Court in CA(M) 29/2015 titled as Satyam Cineplexes Limited with Inox Leisure Limited wherein this court under similar circumstances, and relying on the judgments of several High Courts including this Court in many cases such as eMeter India Pvt. Ltd.; (CA(M)179/2012) Auto Tools India Pvt.Ltd. [CA(M) 41/2010], Sharat Hardware Industries Pvt.Ltd. (1978), 48 Com.Cas 23 (Delhi), Mahaamba Investments Ltd. V.IDI Limited (2001) 105 Com Cas. 16 (Bom.), Andhra Bank Housing Finance Ltd. (2004) 118 Com.Cas. 295(AP) and Prosell Field Marketing Pvt. Ltd. [CA(M) 63/2012], had dispensed with the requirement of the transferee company to approach the High Court of Gujarat under Section 391(2) of the Companies Act, 1956 for sanction of the Scheme of Amalgamation.

13. I have considered the aforesaid case law cited at the Bar, wherein the transferee company, being the holding company, has been granted exemption from taking out separate proceedings under Section 391(2) of the Companies Act, 1956. In view of the settled legal position and considering the Scheme of Amalgamation, the requirement of the transferee company having to approach this Court under Section 391(2) of the Companies Act, 1956 for sanction of the Scheme of Amalgamation is dispensed with."

2.) Subsequent to the above order dated 27.08.2016, the Petitioner has preferred the instant Petition before the Hon'ble High Court of Delhi which, vide order dated 21.09.2016 directed the Petitioner in connection with the Scheme of amalgamation to issue notice to the Registrar of Companies, Regional Director and the Official Liquidator. The Petitioner was also directed vide the said order in relation to the notice of hearing fixed on 03.03.2017 that publication be issued by the Petitioner in the newspapers 'Business Standard' (English) and "Jansatta" (Hindi) both of Delhi edition not less than 10 days before the date fixed for hearing. Further, the Petitioner was also directed to upload the notice of hearing on the website of the Petitioners as well as the websites of Official Liquidator and Ministry of Corporate Affairs.

3.) However, in the meanwhile, since the provisions relating to Compromise, Arrangements and Amalgamation as contemplated under Section 230-232 have been notified w.e.f.

15.12.2016 wherein the power to consider such schemes have now been vested with the National Company Law Tribunal, the Hon'ble High Court of Delhi pursuant to the notification bearing No.DL.33004/99 dated 07.12.2016 issued by the Ministry of Corporate Affairs has transferred/transmitted the records of the above Petition to this Tribunal vide order dated 24.01.2017, for our consideration.

4.) In view of the above, the Petition of Second Motion as above filed by the Petitioner before the Hon'ble High Court and subsequently transferred is taken up for consideration by us. The Petitioner has filed an affidavit dated 23.02.2017 in relation to the compliance of the orders passed by the Hon'ble High Court of Delhi dated 29.09.2016 and a perusal of the same discloses that the Petitioner has effected the paper publication as directed by the Hon'ble High Court of Delhi in one issue of the 'Business Standard' on 15.02.2017 and in "Jansatta" again on 15.02.2017 in relation to the date of hearing of the Petition on 27.02.2017. Further, the affidavit also discloses that notices have been issued to the Regional Director, Northern Region as well as to the Official Liquidator attached to the High Court, Delhi in compliance with the order dated 29.09.2016 and proof of the same have also been enclosed. Further, it is also seen that pursuant to the directions from Regional Director, Northern Region, a copy of the Company Petition has also been served on the jurisdictional Income Tax Officer of the Transferor and Transferee Company. Notices seem to have also been given to the Registrar of Companies of Delhi and Haryana dated 10.10.2016 by the Petitioner. The Counsel for the Petitioner Company represent that objections from any quarters have not been received in relation to the proposed Scheme coming up for sanction before this Tribunal. Pursuant to the notices issued, the Official Liquidator sought information from the Petitioner Company. Based

on the information received, the Official Liquidator has filed a report dated 13.12.2016 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its member, creditors or public interest as per second proviso of Section 394(1) of the Companies Act, 1956.

5.) We have heard the Counsels for the Petitioner and also considered the representations made by the Regional Director, Northern Region vide representation dated 23.02.2017. An examination of the said representation/affidavit of Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi discloses that despite letter to the Principal Commissioner of Income Tax, New Delhi, no observations/comments have been received from the said office. A further perusal of the said report dated 23.02.2017 and as pointed out by the representative appearing on behalf of the Regional Director, Northern Region, Ministry of Corporate Affairs as extracted below from Paragraph 8 of the affidavit discloses:

“That the Deponent states that the Registrar of Companies, Delhi & Haryana vide Para 31 of his report has made the following observations:-

“It has been observed that the Transferee Company have not yet filed their due Balance Sheet as at 31.03.2016 thereby prima facie violated the provisions of section 137 of the Companies Act, 2013.”

6) The Counsel for Petitioners unequivocally undertake that the above said observations made by the Regional Director, Northern Region has been complied and the Balance Sheet as at

31.03.2016 has been filed before Registrar of Companies vide SRN G36583599 dated 24.02.2017. The above undertaking is taken on record and in view of no further or other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the Scheme of Amalgamation annexed as Annexure-P-10 to the Company Petition as well as the prayer made therein clause 'a'.

7.) While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER

- (1) That all the property, rights and powers of the transferor company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and
- (2) That all the liabilities and duties of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company; and



- (3) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and
- (4) That the Transferor Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said two companies shall be consolidated accordingly; and
- (5) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

SD/-

(CHIEF JUSTICE M.M.KUMAR)
PRESIDENT

SD/-

(R.VARADHARAJAN)
MEMBER(JUDICIAL)

Date: 23.03.2017

(O.P.Sharma)