

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENCH, AT MUMBAI**

**CSP NO 785 OF 2017
AND
CSP NO 786 OF 2017**

Under the Sections 230 to 232 of the Companies Act, 2013

AND

In the matter of Scheme of Amalgamation of Varian Medical Systems India Software Private Limited, the Transferor Company with Varian Medical Systems International (India) Private Limited, the Transferee Company and their respective Shareholders and Creditors

Varian Medical Systems India Software Private Limited

...Petitioner/ Transferor Company/ Amalgamating Company

Varian Medical Systems International (India) Private Limited

...Petitioner/ Transferee Company/ Amalgamated Company

(Collectively referred as Petitioner Companies)

Judgement / Order Delivered on 22nd Day of November 2017.

Coram:

Order delivered on 20th December, 2017

Coram:

Hon'ble **M.K. Shrawat**, Member (J)

Hon'ble **V .Nallasenapathy**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co

Per: **V .Nallasenapathy , Member (J)**

ORDER

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

Mr. S. Ramakantha, Joint Director for the Regional Director.

Mr. Santosh Dalvi, Representative from the office of Official Liquidator.

1. Heard learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions of Amalgamation of Varian Medical Systems India Software Private Limited, the Transferor Company with Varian Medical Systems International (India) Private Limited, the Transferee Company.
2. The sanction of the Tribunal is sought under Sections 230 to 232 read with Rule 15(1) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and other applicable provisions of Companies Act, 2013 to a Scheme of Amalgamation of Varian Medical Systems India Software Private Limited, the Transferor Company with Varian Medical Systems International (India) Private Limited, the Transferee Company and their respective Shareholders and Creditors.
3. The Petitioner Companies have approved the said scheme of Amalgamation by passing the Board Resolution in Board Meeting which is annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on the behalf of Petitioner states that the petitions have been filed in consonance with the order passed in the company scheme Application no 692 and 693 of 2017 of National Company Law Tribunal.
5. The Learned Advocate appearing on the behalf of Petitioner Further states that the Petitioner Companies have complied with all requirements as per directions of National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under Companies

Act 2013 and the rules made there under. The said Undertaking is accepted.

6. The Learned Counsel for the Petitioners states that, Transferor Company is company currently carrying out business activity of software development, information Technology enabled services and computer services which is covered in the main objects of the Company. Whereas the Transferee Company is engaged in the business activity of marketing, installation and providing related servicing of medical & radio therapy equipments in India and the same is covered under the main objects of the Company.
7. The proposed Scheme of Amalgamation would result in following benefits:
 - a The merger of the Amalgamating Company with the Amalgamated Company will remove inefficiencies and combine similar business interest into one corporate entity, resulting in operational synergies, simplification, streamlining and optimization of the group structure and efficient administration;
 - b The Amalgamated Company as the merged entity will have an enhanced shareholder's value accruing from consolidation of the business operations resulting in economies of scale, improving allocation of capital, and optimizing cash flows, thus contributing to the overall growth prospects of the combined entity;
 - c Reduce regulatory and legal compliances / filings including accounting, reporting requirements, statutory and internal audit requirements, tax filings, etc. and consequential reduction in administrative costs; and

- d The Amalgamated Company as well as Amalgamating Companies share common fundamental management philosophies and are now a part of the same group of companies. The Indian Companies also share common corporate values. This Scheme, if approved, will be beneficial to both the Indian Companies, their shareholders, creditors, employees, and all concerned and will enable them to achieve and fulfil their objective through the combined entity more efficiently and economically.
8. The Official Liquidator filed his report on 6th day of September, 2017 stating that the affairs of the Transferor Company have been conducted in proper manner and that the Transferor Company may be ordered to be dissolved.
9. The Regional Director has filed his report dated 25th Day of September 2017 and has stated that save and except as stated in Paragraph IV of the said Report, the regional Director has stated that:
- “IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:-
- (a) *Tax implication if any arising out of scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon’ble Court/Tribunal 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 Companies.*
- (b) *As per existing practice, the Petitioner companies are required to serve notice for scheme of arrangements to the income tax department for their comments. It is observed that the company*

vide letter dated 30.06.2017 has served a copy of company scheme application no 692 and 693 2017 along with relevant orders etc. further this directorate has also issued a reminder on 20.09.2017 to IT Department.

- (c) In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such Accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*
- (d) It is observed that the Petitioner Companies has Foreign Shareholders. The petitioner Companies must observe the FEMA guidelines for the allotment of shares to the shareholder of the Transferor Company in Transferee Company.*
- (e) Petitioner Companies in the clause 17.2 inter alia has mentioned that the difference between the share capital of Amalgamating Company and nominal value of shares issued by Amalgamated Company pursuant to clause 16.1 of the scheme to the shareholders of Amalgamating Company shall be adjusted by the Amalgamated Company to its Reserve Account.*

The Deponent prays that the difference stated above shall be adjusted by amalgamated Company to its Capital Reserve Account instead of Reserve Account, i.e. reserves should be read as Capital Reserve.

10. As far as the observations made in paragraph IV (a) and IV (b) of the Report of Regional Director is concerned, The Transferee Company undertakes to comply with all applicable provisions of Income Tax Act 1961.

11. As far as the observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel undertakes that in addition to compliance of AS-14 (IND AS-103) the Transferee Company shall also pass such Accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8).
12. As far as the observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies submit that the Transferee Company undertakes to comply with relevant provisions of FEMA guidelines for the allotment of shares to the shareholders of the Transferor Company in Transferee Company.
13. As far as the observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies submit that the Amalgamated Company undertakes to adjust the difference if any, arising out of share capital of Amalgamating Company and nominal value of shares issued by Amalgamated Company to its Capital Reserve Account instead of Reserve Account.
14. The Observations made by the Regional Director have been explained by the Petitioner Companies in Paragraph 10 to 13 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
15. From the material on record, the scheme appears to be fair and reasonable and is not in violation of any provisions of Law and is not contrary to public policy.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 785 and 786 of 2017 of National Company Law Tribunal are made absolute in terms of prayers stated in the respective petitions.
17. The Petitioner Companies are directed to file a certified / authenticated copy of this order and the scheme with the concerned Superintendent of Stamps, within 60 working days from the date of the receipt of certified true Copy of Order, for the purpose of adjudication of stamp duty payable, if any, on the same.
18. The Petitioner Companies are directed to file a certified / authenticated copy of order and the scheme on the receipt of said order from National Company Law, Tribunal, Mumbai Bench with the concerned Registrar of Companies, electronically, along with E-Form INC-28 as per the relevant provisions of the Companies Act, 2013.
19. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition No. 785 and 786 and Transferor Company to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. The cost to be paid within four weeks from the date of receipt of Certified True Copy of Order.
20. All concerned regulatory authorities to act on a copy of this order along with Scheme duly certified by the Registrar, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

20.12.2017

Sd/-

M.K. Shrawat, Member (J)