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**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
NEW DELHI**

**Coram: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**COMPANY PETITION NO. 883 OF 2016**

**CONNECTED WITH**

**COMPANY APPLICATION (MAIN) NO. 119 OF 2016**

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

**IN THE MATTER OF SECTION 391 to 394 OF**

**THE COMPANIES ACT, 1956**

**(PRESENTLY SECTIONS 230-232 OF THE COMPANIES ACT, 2013)**

**AND**

**IN THE MATTER OF SCHEME OF AMALGAMATION**

**OF:**

**HOLISTIC DENTISTRY PRIVATE LIMITED**  
Company Registered under Companies Act, 1956  
Having registered office at:  
B-507, New Friends Colony,  
New Delhi-110065

**...TRANSFEROR/ PETITIONER COMPANY**

**WITH**

**KAIZEN BUILDERS AND DEVELOPERS PRIVATE LIMITED**  
Company Registered under Companies Act, 1956  
Having registered office at:  
C-41, Ground Floor, Friends Colony  
New Delhi-110065

**...TRANSFeree / PETITIONER COMPANY**

**AND**

**Their respective Shareholders and Creditors**

**Present:**

**ADVOCATE FOR THE PETITIONERS: Mr. Ashish Middha, Advocate**  
**FOR REGIONAL DIRECTOR, (NR), MCA: Mr. Manish Raj, Company Prosecutor**

**ORDER**

**Order Delivered on: 04.12.2017**

1. The present petition has been filed on 10.02.2017 by the companies above named for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders by way of amalgamation of the Transferor/ Petitioner Company with the Transferee/ Petitioner Company. A perusal of the petition discloses that initially the application seeking the dispensation of the meetings of equity shareholders, secured and unsecured creditors was filed before the Hon'ble High Court of Delhi in CA (M) 119/2016.
2. The Hon'ble High Court of Delhi vide its order dated 29.08.2016, was pleased to dispense with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of the Petitioner Companies in view of their consents having been obtained and produced before it or there was none therefore the necessity of convening the meeting did not arise as the case may be.



3. Under the circumstances, the Petitioner Companies have filed their joint petition for sanction of the Scheme of Amalgamation before the Hon'ble High Court of Delhi under the erstwhile provisions, subsequent to the order of dispensation of the meeting ordered by the Hon'ble High Court of Delhi on 29.08.2016.
4. On 23.09.2016 the Hon'ble High Court of Delhi ordered Notice in the Second Motion petition in C.P. No.883/2016 moved by the Petitioner Company under Sections 391 to 394 of the Companies Act, 1956 read with relevant Rules of the Companies (Court) Rules, 1959 in connection with the scheme of amalgamation, to the Registrar of Companies, Regional Director (Northern Region) and the Official Liquidator. The Petitioners were also directed vide said order to carry out publication in the newspapers "The Statesman" (English Edition) and "Veer Arjun" (Hindi Edition).
5. While the joint petition in C.P. No. 883/2016 was pending disposal since the provisions relating to compromises, arrangements and amalgamation as contemplated under Sections 230-232 of Companies Act 2013 had 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. D.L.33004/99 dated 7.12.2016 issued by the Ministry of Corporate Affairs has transferred/transmitted the records of the above petition to this Tribunal vide order dated 16.01.2017, for our consideration.

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6. In view of the above, the petition of Second Motion as above filed by the petitioners jointly before the Hon'ble High Court and subsequently transferred is taken up for final consideration by us. The Petitioner Company, it is seen from the records have filed an affidavit dated 14.12.2016 in relation to the compliance of the orders passed by the Hon'ble High Court of Delhi dated 23.09.2016 and a perusal of the same discloses that the petitioners have affected the paper publication as directed by the Hon'ble High Court of Delhi in one issue of 'The Statesman' in English edition and in 'Veer Arjun' in Hindi edition on 10.12.2016. Further, it has also been stated by the Learned Counsel for the Petitioner Companies that notices have been issued to the Registrar of Companies, Regional Director (Northern Region) as well as to the Official Liquidator attached to the High Court, Delhi in compliance with the order dated 23.09.2016 and in proof of the same acknowledgement made by the respective offices have also been enclosed.

7. The Regional Director, Northern Region, to whom notice was issued has filed an Affidavit dated 15.02.2017 before this Tribunal, New Delhi and have stated the following:

*"at Paragraph 7as follows:-*

*That the deponent states that the letter sent by the office of the deponent to the petitioner Transferor Company has been received undelivered with the postal remarks "No such Firm".*

*In this regard, the Registrar of Companies, NCT of Delhi & Haryana has been directed to take necessary action u/s 12 of the Companies Act, 2013 and the said proceeding may be processed by ROC Delhi in accordance with the provisions of the Companies Act, 2013 and the rules made thereunder. "*



8. In response to the observation made by the Regional Director, the Petitioner Company has filed affidavit on 01.03.17 stating that there is a board on the outer wall of the premises and the reason for the postman giving its opinion that there is "No such Person" does not seem to be proper as he had not enquired properly. The petitioner has also placed on record a photograph showing the board on the outer wall.
9. The Registrar of Companies in the meanwhile had issued a Show Cause Notice dated 03.02.2017 and Notice of Enquiry to the Petitioner Company. The Petitioner Company has filed its reply to the said show cause notice and the same has been placed on record. That on the date of hearing on 23.03.2017 before Registrar of Companies, the company was represented through its Authorised Representative. The Registrar of Companies on 25.04.2017 passed an order of penalty whereby penalty in a sum of Rs. 41,000/- each was imposed on the company and its directors U/s. 12(8) of the Companies Act 2013 for failure to make compliance of the Act U/s. 12(1) r/w 12(4) of the Act.
10. Thereafter, the Petitioner Company preferred an appeal before the Regional Director against the order passed by the Registrar of Companies dated 25.04.2017. The Regional Director (Northern Region) on 31.07.2017, partly allowing the appeal, passed an order whereby the penalty amount was reduced to the sum of Rs. 15000/- each on Petitioner Company and its directors. The said penalty amount was paid vide challan no. U16067001, U16067035 and U16066805 and the appeal was disposed off.
11. The objection raised by the Regional Director in the above circumstances has been removed by the petitioner company and hence the above undertaking given by the Petitioner Companies are taken on record and the said objection is closed.

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12. Further, it is also seen that pursuant to the directions of the Regional Director, a copy of the Company Petition has also been served on the jurisdictional Income Tax Officer of the Petitioner Companies and that no specific comments/ observation have been received raising any objections to the scheme for which sanction is sought presently.
13. That the Petitioner Companies have complied with proviso to Section 230 (7)/ Section 232 (3) by filing the certificate of the Company's Auditor's.
14. That the counsel for Petitioners have also filed the report of the Official Liquidator on 03.11.17 along with the affidavit stating that the office of the Official Liquidator has not received any complaint against the proposed scheme of Amalgamation from any person interested in the scheme. Hence, no objections has been raised to the proposed scheme. The above statement is taken on record.
15. In view of absence of any 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 – 1 with the Company Petition as well as the prayer made therein.
16. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

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17. While approving the Scheme as above, it is clarified 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 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 vest 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;
- (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;
- (3) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee company;
- (4) That all the employees of the Transferor Companies in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service;

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- (5) That the Transferee Company do without further application allot to the persons entitled of the Transferor Company, as have not given such notice of dissent, the shares in the transferee company to which they are entitled under clause no. 20 of the said SCHEME OF AMALGAMATION;
- (6) That 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 both companies shall be consolidated accordingly;
- (7) 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/-  
4/12/17  
(R.VARADHARAJAN)  
MEMBER (JUDICIAL)

**U.D Mehta**