

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**AT NEW DELHI**

**Present: SMT. INA MALHOTRA, MEMBER (JUDICIAL)  
& SHRI S.K.MOHAPATRA, MEMBER (TECHNICAL)**

**CAA- 160/ND/2017**

**Connected With**

**C.P No. CA(CAA)-16(PB)2017**

**IN THE MATTER OF SCHEME OF AMALGAMATION**

**BETWEEN**

**MAX MEDICAL SERVICES LIMITED**

**(TRANSFEROR COMPANY)**

**WITH**

**MAX HEALTHCARE INSTITUTE LIMITED**

**(TRANSFeree COMPANY)**

**FOR THE PETITIONERS: Mr. D.K. Malhotra, Advocate**

**Mr. Rajesh Kumar Malhotra, Advocate**

**ORDER DELIVERED ON - 04.10.2017**

## ORDER

**PER SMT. INA MALHOTRA, MEMBER (J)**

1. This Joint application has been filed by the Applicant Companies under sections 230 and 232 of the Companies Act, 2013 read with the Company (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of approving the Scheme of Amalgamation, as contemplated between the Transferor Company with Transferee Company.
2. Both the Transferor and the Transferee Companies have their registered offices at Max House, 1, Dr. Jha Marg, Okhla, New Delhi, which lies within the jurisdiction of this Tribunal.
3. A perusal of the petition discloses that initially the Transferor Company and transferee Company had jointly filed the first motion application bearing C.A. No. (CAA) 16/PB/2017. The Tribunal vide its order dated 08.05.2017 had dispensed with the meetings of the equity shareholders, secured and unsecured creditors of the Transferor Company. In respect of the Transferee Company, while dispensing with the meeting of the equity shareholders and the secured creditors, it was directed that meeting of the unsecured creditors be convened on 27.06.2017. The dispensation of the requirement to hold the meetings

above mentioned was granted in view of the consent affidavits being on record.

4. The aforesaid meeting of the unsecured creditors of the Transferee Company was held on 27.06.2017 as directed by the Tribunal, wherein the proposed Scheme was approved unanimously by its unsecured creditors. The Chairman's report recording their approval of the proposed scheme without modification subsequent to the voting process is on record.

5. The applicant companies have now initiated the Second Motion. An affidavit dated 23.08.2017 discloses that the petitioners have effected publication in the daily newspapers "The Business Standard" and the "Jansatta" in English and Hindi respectively, both dated 18.08.2017 and having circulation in Delhi. The affidavit further discloses that due notice of the proposed scheme had been served on the Registrar of Companies, Regional Director, Northern Region and the Official Liquidator in compliance with the order of the Tribunal, inviting objections if any to the proposed Scheme of Amalgamation.

Pursuant to the Publication in the daily newspapers, for listing of the matter before this Bench, no objector has appeared before us.

Additionally, the petitioners have also filed an affidavit before this tribunal that neither the petitioner companies, nor their Legal Counsels

have received any objection/representation against the proposed scheme of Amalgamation till the date of such affidavit. The replies of the Regional Director, NR, MCA dated 31.08.2017 and the Report of Official Liquidator dated 30.08.2017 have been placed before us.

6. We have heard the counsels for the petitioners and also considered the representation dated 31.08.2017 made by the Regional Director, Northern Region. In the reply filed by the Regional Director (NR), various queries raised by them have been duly answered by the applicant companies. Their main objections were basically two fold:-

- (1) That as per the records maintained on MCA-21 portal, the Transferee Company had filed its Financial Statements for the year 2011-2012, but on examination it was found that the balance Sheet for the said year was not attached, which is in contravention of Section 220 of the Companies Act, 1956.
- (2) That, as per the Auditor's report for the F.Y 2015-2016 of the Transferor company there exists a dispute in respect of the Income Tax and DVAT liability.

7. With respect to the above observations raised by the Regional Director, the petitioners submit that the Transferee Company has filed Forms 23ACXBRL and 23ACAXBRL along with the Balance Sheet in the prescribed format for the F.Y 2011-2012. Furthermore, it is stated that the



Transferee Company also undertakes to do all the compliances as required under the provisions of the Companies Act, 2013.

With respect to any outstanding liability of the Transferor Company towards income tax, DVAT, notwithstanding that the Transferee Company is bound to take over the liability of the Transferor Company as per law, it has also been undertaken vide affidavits and is duly mentioned in the Scheme itself.

With the aforesaid objections having been addressed, and duly confirmed by the Ld. Prosecutor for the RD, we are not taking the aforesaid observations as an adverse factors in these proceedings.

8. The scheme of Amalgamation as contended by the Petitioners is sought to be justified on grounds that it:

- (a) Shall create synergies by consolidating ownership and will result in achieving a simple and transparent ownership structure.*
- (b) Will lead to reduction in the various inter-company transactions between the Amalgamating Company and Amalgamated Company required at present due to the current operating structure leading into better management of working capital.*
- (c) Will lead to reduction of administrative cost and overhead expenses.*
- (d) Will result in migration of entire operations into one consolidated legal entity and will allow for greater operational flexibility in the market with greater brand recognition and competitiveness than earlier*

*resulting in efficiently meeting the requirements of key stakeholders of the business.*

*(e) Will also result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Companies.*

*(f) Will attain more beneficial results for the shareholders, and creditors of the Companies.*

*(g) Will improve the governance within the group due to direct oversight by the senior functionaries, who are working for the amalgamated company, which is also the holding company of the amalgamating company.*

9. As per averments, the Transferor Company is a wholly owned subsidiary of the Transferee Company and its entire issued, subscribed and paid up share capital is held by the Transferee Company and therefore upon the scheme becoming finally effective, the share capital of the Transferor Company will stand automatically cancelled and extinguished. Therefore, there is no question of issuance of allotment of shares of the Transferee Company as it is the only Shareholder of the Transferor Company. This obviates the requirement for valuation of shares of the companies.

The report of the statutory auditors certifying that the Accounting Standards have been adhered to is on record.

10. In view of the foregoing, upon considering the approval accorded by the members and creditors of all companies to the proposed Scheme, and the objections raised by the office of the Regional Director having been addressed, there appears to be no impediment in granting sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under sections 230-232 of the Companies Act, 2013. The sanctioned Scheme of arrangement shall be binding on the Transferor and the Transferee Companies and on all their respective shareholders and creditors. The Petitioners shall also be bound to comply with the statutory requirements in accordance with law.

11. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this ~~Tribunal~~<sup>Tribunal</sup> to the scheme, will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of both the petitioner companies.

12. 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.

13. This tribunal doth further order that upon scheme of Amalgamation by way of Merger coming into effect,

1. That Transferor Company shall stand dissolved without being wound up.
2. That the entire business, properties and assets 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, but subject nevertheless to all charges now affecting the same;
3. That all the liabilities and duties of the Transferor companies, 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;
4. That all proceedings now pending by or against the transferor company, be continued by or against the transferee company;
5. That petitioners 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 them and shall consolidate the files of the two companies, Annexure A1 is accordingly duly approved and sanctioned in terms of the above.



6. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

7. Both the Transferor Company and the Transferee companies are directed to pay Rs.25,000/- each to the Prime Minister Relief Fund within four weeks from the date of the order.

- Sd -

**(S. K. Mohapatra)**  
**Member Technical**

- Sd -

**(Ina Malhotra)**  
**Member Judicial**