

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

**CA(CAA)NO.35/BB/17
Under Section 230 to 232 of Companies Act, 2013**

**IN THE MATTER OF
MANIPAL HEALTH ENTERPRISES PRIVATE LIMITED**

Order delivered on: 13th July, 2017

Coram: Hon'ble Shri RatakondaMurali, Member (Judicial)

For the Petitioner (s) 1. Shri.Saji.P.John, Sr.Advocate

Per: Hon'ble Shri RatakondaMurali, Member (Judicial)

Heard on: 28.04.2017, 14.06.2017, 27.06.2017, 11.07.2017, 12.07.2017

ORDER

This Application is filed on behalf of the Applicant Company under Section 230 and 232 of the Companies Act, 2013 read with Rule 3 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016, praying to direct that the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company be held for considering the Composite Scheme of Arrangement of Manipal Hospitals (Jaipur) Private Limited, Manipal Hospitals (Whitefield) Private Limited and Manipal Health Enterprises Private Limited. The Composite Scheme of Arrangement shown as **Annexure-H**.

The averments made in the Company Application are briefly described hereunder:-

The Applicant seeks an order for direction that the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company be held for approving the Composite Scheme of Arrangement of Manipal Hospitals (Jaipur) Private Limited, Manipal Hospitals (Whitefield) Private Limited and Manipal Health Enterprises Private Limited in terms of Composite Scheme of Arrangement shown as **Annexure-H**.

Application filed by the Applicant Company alleging that the Applicant Company was incorporated on 15th February, 2010 under the name and style of Manipal Health Enterprises Private Limited with Registrar of Companies, Karnataka. The Registered office of the Applicant Company is situated at The Annexe, #98/2, Rustombagh, HAL Airport Road, Bengaluru-560017.



The main objects of the Applicant Company is to carry on the business of health care services, establishing, promoting and maintaining hospitals, multi- speciality health hospitals, ICCUs, healthcare centres, nature care centres, poly clinics, surgical centres, laboratories and research centres, diagnostic centres, fitness centres, health care township with pathology, radiology, micro-biology, bio-chemistry, CT scan, ultrasonography and to conduct, research, investigation, studies and surveys in medicine, biology, anatomy, bio-chemistry, bio-engineering, medico-engineering, dentistry, pharmacy, pharmacology and to impart education in the above facilities by operating schools, colleges, clinics, workshops, research centres, etc., The copy of Memorandum and Articles of Association of the Applicant Company is shown as **Annexure-A**.

The latest authorized share capital of Applicant Company is Rs.1,35,00,00,000/- divided into 7,50,00,000 Equity Shares of Rs.10/- each and 6,00,00,000 0.01% Compulsorily Convertible Preference Shares of Rs.10/-. The issued, subscribed and paid-up share capital is Rs.68,00,73,690/- divided into 6,80,07,369 Equity Shares of Rs.10/- each fully paid up. The Audited balance sheet as on 31st March, 2016 and unaudited balance sheet as on 31st December, 2016 are shown as **Annexure –B and B1 respectively**.

It is further stated that, the Board of Directors of the Applicant Company has approved and adopted a Composite Scheme of Arrangement at its meeting held on 20th January, 2017 of Manipal Hospitals (Jaipur) Private Limited, Manipal Hospitals (Whitefield) Private Limited and Manipal Health Enterprises Private Limited subject to confirmation. A copy of the Board Resolution of Applicant Company dated 20th January, 2017 approving and adopting the Composite Scheme of Arrangement is shown as **Annexure-G**.

It is further stated in the scheme that, the integration, consolidation and amalgamation would inter alia have the following benefits:

1. The amalgamation would facilitate consolidation of core hospital business under one single entity so as to enhance the value of shareholders, creditors and other stake holders of Manipal Hospitals (Jaipur) Private Limited, Manipal Hospitals (Whitefield) Private Limited and Manipal Health Enterprises Private Limited.
2. The proposed consolidation would also create greater visibility and enhance the overall performance of combined business/ entity.

It is further stated that the Chartered Accountant after verification of the books of accounts, other records and documents of the Applicant Company has certified the number of shareholders of the Applicant Company as on February 28, 2017. Certificate issued by the Chartered Accountant is marked as **Annexure-J**.

It is further stated that there are eight Secured Creditors in the Applicant Company as on 28th February, 2017 certified by the Chartered Accountant shown as **Annexure-K**.

It is further stated that there are 2904 Unsecured Creditors in the Applicant Company as on February 28, 2017 certified by the Chartered Accountant shown as **Annexure-L**.

I have heard the Counsel appearing for the Applicant Company. The Application filed by the Applicant Company for direction that the meeting of Equity Shareholders, Secured creditors and Unsecured Creditors of the Applicant Company be held for approving the Composite Scheme of Arrangement of Manipal Hospitals (Jaipur) Private Limited, Manipal Hospitals (Whitefield) Private Limited and Manipal Health Enterprises Private Limited in terms of Composite Scheme of Arrangement shown as **Annexure-H**.

The Applicant Company is seeking an order to direct that the meeting of Equity Shareholders, Secured creditors and Unsecured Creditors of the Applicant Company be held for approving the Composite Scheme of Arrangement.

After hearing the counsel and after perusing the documents filed, the Tribunal pass the following

ORDER

The meeting of the Equity Shareholders of the Applicant Company be convened and held at #98/2, Rustom Bagh, HAL Airport Road, Bangalore, on Monday the 21st August, 2017 at 10:00 A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed scheme of arrangement of Manipal Hospitals (Jaipur) Private Limited, Manipal Hospitals (Whitefield) Private Limited and Manipal Health Enterprises Private Limited.

Mr. Dr. H. Sudarshan Ballal, Director failing him Mr. Dr. Ajay Bakshi, Director failing him Mr. Dr. Ranjan Pai as proposed by the Applicant Company is appointed as Chairperson and Mr. Pattabhi, Practising Chartered Accountant as Scrutinizer for the Meeting of Equity

Shareholders. The remuneration of Chairperson and Scrutinizer is fixed at Rs.20,000/- and Rs.10,000/- respectively for convening the meeting of Equity Shareholders.

The meeting of the Secured Creditors of the Applicant Company be convened and held at #98/2, Rustom Bagh, HAL Airport Road, Bangalore, on Monday the 21st August, 2017 at 11:00 A.M for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed scheme of arrangement of Manipal Hospitals (Jaipur) Private Limited, Manipal Hospitals (Whitefield) Private Limited and Manipal Health Enterprises Private Limited.

Mr.Dr.H.Sudarshan Ballal, Director failing him Mr.Dr.Ajay Bakshi, Director failing him Mr.Dr.Ranjan Pai as proposed by the Applicant Company is appointed as Chairperson and Mr.Pattabhi, Practising Chartered Accountant as Scrutinizer for the Meeting of Secured Creditors. The remuneration of Chairperson and Scrutinizer is fixed at Rs.20,000/- and Rs.10,000/- respectively for convening the meeting of SecuredCreditors.


The meeting of the Unsecured Creditors of the Applicant Company be convened and held at at #98/2, Rustom Bagh, HAL Airport Road, Bangalore, on Monday the 21st August, 2017 at 12:00 Noonfor the purpose of considering and, if thought fit, approving with or without modification(s) the proposed scheme of arrangement of Manipal Hospitals (Jaipur) Private Limited, Manipal Hospitals (Whitefield) Private Limited and Manipal Health Enterprises Private Limited.

Mr.Dr.H.Sudarshan Ballal, Director failing him Mr.Dr.Ajay Bakshi, Director failing him Mr.Dr.Ranjan Pai as proposed by the Applicant Company is appointed as Chairperson and Mr.Pattabhi, Practising Chartered Accountant as Scrutinizer for the Meeting of Unsecured Creditors. The remuneration of Chairperson and Scrutinizer is fixed at Rs.20,000/- and Rs.10,000/- respectively for convening the meeting of UnsecuredCreditors.

The quorum for the Meeting of Equity Shareholders is three (coming to at least 50% of the value).

The quorum for the Meeting of Secured Creditors is three (coming to at least 50% of the value).

Since the number of Unsecured Creditors is 2904. The quorum for the Meeting of Unsecured Creditors is 10 (coming to at least 15% of the value).



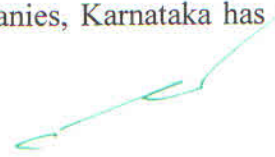
The Notice of the Meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors shall be published in an English Daily "The Hindu" and in Kannada Daily "Udayavani".

The Applicant Company or its authorized signatory is directed to issue notice(s) to Equity Shareholders, Secured Creditors and Unsecured Creditors by Registered or Speed Post; or Courier; or Air Mail; or email; or hand delivery to their last known address at least 30 clear days before the said meeting of the Equity Shareholders, Secured and Unsecured Creditors as per Form No. CAA2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ensuing convening the said Equity Shareholders, Secured and Unsecured Creditors Meeting at the place, day, date and time, along with a copy of scheme of amalgamation, a copy of Explanatory Statement, pursuant to be sent under Section 230 of the Companies Act, 2013 and form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014.

The Applicant Company is directed at least 30 clear days before the Meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company to be held as aforesaid, a notice convening the said meeting, at the place, date and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid.

The Applicant Company to serve the notice upon the Regional Director, South-East Region, Ministry of Corporate Affairs, Hyderabad pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

The Applicant Company to serve the notice upon the Registrar of Companies, Karnataka pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Registrar of Companies, Karnataka within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies, Karnataka has no



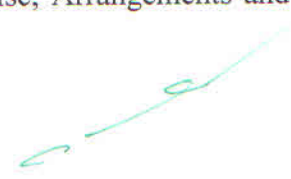
objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

The Applicant Company to serve the notice upon the Income Tax Authority, within whose jurisdiction that Applicant Company's Assessment are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

The Applicant Company to serve the notice upon the Reserve Bank of India, if applicable pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Reserve Bank of India within 30 days of the date of receipt of the notice it will be presumed that Reserve Bank of India has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

The Applicant Company to serve the notice upon the Securities Exchange Board of India, if applicable pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Securities Exchange Board of India within 30 days of the date of receipt of the notice it will be presumed that Securities Exchange Board of India has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

The Applicant Company to serve the notice upon the other Sectoral Regulators or Authorities, Stock Exchange if applicable, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from other Sectoral Regulators or Authorities, Stock Exchange within 30 days of the date of receipt of the notice it will be presumed that the other Sectoral Regulators or Authorities, Stock Exchange has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.



The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise before or at any adjournment thereof or any other matter including an amendment to the scheme or resolution, if any, proposed at the meeting by any person(s).

The voting shall be in person or by proxy or authorised representative in case be permitted, provided that the proxy in the Form No. MGT-11 authorization duly signed by the person entitled to attend and vote at the meeting, is to be filed with the Applicant Company at its Registered office, not later than, forty eight hours before the aforesaid meeting in accordance with Rule 10 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

The said Chairperson to file affidavit not less than seven days before the day fixed for holding of the meeting and do report to this tribunal that the direction regarding convening and issuance of notice(s) to all the necessary parties have been duly complied with in conformity with the relevant Provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

The Chairman shall report the conclusion of the aforesaid meeting as per the Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

In any eventuality when the Applicant Company approaches this Tribunal for seeking approval of the scheme it would be open for any person who is interested in the Composite Scheme of Arrangement to put forth their contentions before the Tribunal.

13/7/17
(RATAKONDA MURALI)
MEMBER, JUDICIAL