

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO 629 OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other
applicable provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of
Radiant Life Care Private Limited ("the
Amalgamating Company") and Halcyon Finance &
Capital Advisors Private Limited ("the
Amalgamated Company") and their respective
Shareholders

Radiant Life Care Private LimitedPetitioner/Amalgamating
Company

And

Halcyon Finance & Capital Advisors Private Limited.....Petitioner/Amalgamated
Company

Called for Hearing

Judgment/Order delivered on 24th August, 2017

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)
Hon'ble **V .Nallasenapathy** Hon'ble, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co
Mr. S Ramakantha , Joint Director in the office of Regional
Director

Per: **B.S.V. Prakash Kumar, Member (J)**

Order

1. Heard the learned counsel for the Petitioner Companies.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of Radiant Life Care Private Limited and Halcyon Finance & Capital Advisors Private Limited and their respective Shareholders.

3. Learned Counsel for the Petitioners states that the Amalgamating Company is a wholly owned subsidiary of the Amalgamated Company and is engaged in the business of managing and operating hospitals. The Amalgamated Company is inter alia, engaged in rendering financial consultancy and business advisory services in health care sector.
4. The rationale for the scheme is that the amalgamation will result in reduction in the shareholding layers and direct control of assets of the Amalgamating Company in the hands of the Amalgamated Company. Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances. Therefore, with a view to effect such plan, the Board of Directors of the Amalgamating Company and the Amalgamated Company proposes to amalgamate the Amalgamating Company with the Amalgamated Company on a going concern basis to be undertaken through this Scheme under the provisions of Sections 230 to 232 of the Companies Act, 2013, for such consideration and in such manner as provided for in this Scheme.
5. The Amalgamating Company and Amalgamated Company have approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the Company Scheme Petition.
6. Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies is accepted.
7. The Regional Director has filed an Affidavit on 23rd day of August, 2017 stating therein, save and except as stated in paragraph IV (1) to (7), it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph IV of the said affidavit, it is stated that:-

1. *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble 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 Company.

- 2. It is submitted that the Petitioner Companies have submitted the proof of serving notice, upon the Income Tax Authorities dated 12.05.2017 for comments. The office of the Directorate also has issued a reminder dated 09.08.2017.*
- 3. Petitioner have to undertake to file requisite forms with Registrar of Companies for change of name and alternation of object clause separately in accordance with the Companies Act, 2013 read with rules.*
- 4. Petitioner in clause 15.2 of the scheme had inter alia mentioned that The Amalgamating Company, the Amalgamated Company and Bennett Coleman and Company Limited ("BCCL") have entered into a Share cum Warrant Agreement dated 5 February 2013 which was amended by agreements dated 13 February 2013 and 25 February 2017 ("SWSA"). Pursuant to the SWSA, the Amalgamating Company has issued 5 (Five) warrants on terms and conditions mentioned in the SWSA. On the Scheme becoming effective, the Amalgamated Company shall, in consideration of the transfer and vesting of the assets and liabilities of the Amalgamating Company into the Amalgamated Company, without any further act, deed or thing, (a) issue 5 (Five) warrants to BCCL in lieu of the warrants held by BCCL in the Amalgamating Company in accordance with the terms of the SWSA and (b) assume the obligations of the Amalgamating Company under the SWSA. Further, the obligations of the Amalgamated Company as the Promoter under the SWSA shall be assumed by Mr Abhay Soi (PAN ABYPS5017J), a Promoter and Director of the Amalgamated Company.*

In this regard, it is submitted that petitioner companies in clause 15.1 of the scheme has inter alia mentioned that Amalgamating Company is a wholly owned subsidiary of the Amalgamated Company. Hence, upon the Scheme becoming effective, no shares of the Amalgamated Company shall be issued or allotted in lieu or exchange of its holding in the Amalgamating Company. The shares of the Amalgamating Company held by the Amalgamated Company shall stand cancelled.

Whereas petitioner companies in clause 15.2 of the scheme has inter alia mentioned that Amalgamating Company, the Amalgamated Company and Bennett Coleman and Company Limited ("BCCL") have entered into a Share cum Warrant Agreement dated 5 February 2013 which was amended by agreements dated 13 February 2013 and 25 February 2017 ("SWSA"). Pursuant to the SWSA, the Amalgamating Company has issued 5 (Five) warrants on terms and conditions mentioned in the SWSA.

The petitioner has to produce the copy of the shareholder agreement as mentioned above in the scheme and to mention when under which statute petitioners are issuing share warrants when there is holding subsidiary relationship between the petitioners. For including Mr Abhay Soi (PAN ABYPS5017J), a Promoter and Director of the Amalgamated Company, petitioner have to undertake to comply with the provisions of the Companies Act.

- 5. 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.*
- 6. It is submitted that ROC, Mumbai in his report has observed at point no. 32 that the transferee Company has not filed balance sheet and annual return for the year 2015-16. It is also submitted that the balance sheet and annual return for the year 2016-17 (up to 31/12/2017) is also due and the companies may be directed to make compliances.*
- 7. The Amalgamated Company has proposed to change of object clause according to proposed business is health related activities and accordingly proposed to change of name to Amalgamation Company. Hence change of name to be clarify and justify by the Transferee Company.*
- 8. As far as the observations made in paragraph IV(1) and (2) of the report of Regional Director is concerned, the Petitioner Companies undertake to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.*

9. In so far as observations made in paragraph IV(3) of the report of Regional Director is concerned, it is submitted that the Petitioner Companies undertake to file requisite forms with the Registrar of Companies for change of name and alternation of object clause in accordance with the Companies Act, 2013 read with the rules made thereunder.
10. In so far as observations made in paragraph IV(4) of the report of Regional Director is concerned, it is submitted that it is done pursuant to contract and all contractual obligations of the Amalgamating Company shall be undertaken by the Amalgamated Company.
11. In so far as observations made in paragraph IV(5) of the report of Regional Director is concerned, it is submitted that Amalgamated Company has obtained certificate from the statutory auditor certifying that the accounting treatment given in the Scheme is in compliance with all the applicable Accounting Standards issued under the Companies Act, 2013. Accordingly, the Petitioner Companies through their Counsel undertakes that in addition to the accounting treatment given in the Scheme, the Petitioner Companies shall pass such accounting entries as may be necessary in connection with the Scheme to comply with the accounting standards.
12. In so far as observations made in paragraph IV(6) of the report of Regional Director is concerned, it is submitted that the Amalgamated Company has filed the annual return and balance sheet for financial year 2015-16 with the Registrar of Companies, Mumbai on July 19, 2017. An Affidavit of Service in this connection is filed by the Amalgamated Company with the Hon'ble Tribunal on August 9, 2017 and copy of the said Affidavit of Service has been served upon the Registrar of Companies, Mumbai and the Regional Director on August 14, 2017. Further, the Amalgamated Company undertakes to file the annual return and balance sheet for the period 1st April, 2016 up to 31st December, 2017 in accordance with the provisions of the Companies Act, 2013 read with the rules made thereunder.
13. In so far as observations made in paragraph IV(7) of the report of Regional Director is concerned, the Counsel for the Petitioner Companies submit that the change in object clause is warranted to enable the Amalgamated Company to effectively carry on the business of the Amalgamating Company. In so far as change of name is concerned the same is being done as a part of the Scheme which has been approved by all the shareholders of the Petitioner Companies. Further, the name of 'Radiant Life Care Private Limited' is recognized brand which the Amalgamated Company wants to continue.

14. The observations made by the Regional Director have been explained by the Petitioner in paragraphs 8 to 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
15. The Official Liquidator has filed his report stating therein that the Affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal.
16. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No 629 of 2017 filed by the Petitioner Companies is made absolute in terms of prayer clause (a) of the Petition.
18. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.
19. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
20. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay.
21. Costs to be paid within four weeks from the date of receipt of order.
22. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)