BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

Argument heard on 31.05.2017
Order passed on 21.06.2017

CP No. 26 of 2017
[Connected with CA No. 26A of 2017]

In the matter of Sections 230 r/w Section 66 of the Companies Act, 2013

AND

In the matter of Scheme of Compromise & Reduction of Share Capital

BETWEEN

M/s. Apollo Healthcare Technology Solutions Limited

AND

Its Members/Shareholders/Creditors

Represented by: Lakshmmi Subramanian, PCS

CORAM

ANANTHA PADMANABHA SWAMY AND CH. MOHD SHARIEF TARIQ, MEMBERS (JUDICIAL)

O R D E R

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL): ORAL

1. Under consideration is a Company Petition filed under section 230 r/w section 66 of the Companies Act, 2013 whereby M/s. Apollo Healthcare Technology Solutions Limited (hereinafter referred to as '**Petitioner Company**') seeks the sanction to the Scheme of Compromise & Reduction of Share Capital (in short, '**Scheme**') between the Petitioner Company and their members, shareholders and creditors whereby it is proposed to reduce the issued, subscribed & paid up capital of the petitioner company by paying off part of the paid up capital of the company by settlement of part of the assets.

2. This Bench vide its order dated 20.03.2016 in CA No. 26A of 2017 dispensed with the convening and holding of the meeting of the equity shareholders, Non-Cumulative Redeemable Preference Shareholders and unsecured creditors in terms of section 230(9) r/w Rule 3(3)(a) Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 on the basis of producing 100% consent from all of them.

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The petitioner company was also directed to carry out publication in English daily 'Business Standard' and Tamil daily 'Malai Malar' which was complied with. There are only seven Equity shareholders, one Non-Cumulative Redeemable Preference Shareholder, no Secured Creditor and only single Unsecured creditor in the petitioner company.

3. The Share Capital of the Petitioner Company as on 31st March, 2016 as under:

Types of Share Capital	No. of Share Capital	Value in Rupees
Authorized Capital	50,000 equity shares of Rs. 10/- each	5,00,000
	99,95,000 Redeemable Preference shares of Rs. 100/- each	99,95,00,000
Total		**1,00,00,00,000**
Issued, Subscribed and Paid up share capital	50,000 equity shares of Rs. 10/- each	5,00,000
	95,75,000 non-cumulative Redeemable Preference shares of Rs. 100/- each	95,75,00,000
Total		**95,80,00,000**

4. At the outset, it is necessary to know the details of the scheme which needs determination. The Petitioner Company is a Public Limited Company having its registered office at No. 19, Bishop Gardens, Raja Annamalaipuram, Chennai- 600028 and the Board of Directors vide its resolution dated 23rd January, 2016 approved the said Scheme of Compromise and reduction of capital. The Petitioner Company was formed for the purpose of carrying on the business to undertake, promote and engage in providing all types of healthcare services to patients through the establishment of hospitals, laboratories, diagnostic centres and healthcare facilities in India and abroad.

5. Mrs. Lakshmmi Subramanian, PCS appearing for the Petitioner Company submitted that Article 37 of the Articles of Association empowers the petitioner company to reduce the share capital in any manner required by law by special resolution. He submitted that the rational, reasons and circumstances that have necessitated the

proposed scheme are that the petitioner company is presently rendering advanced solutions for specified diseases including various forms of cancer. The company has identified the proton beam therapy project in India for providing and making available advanced technology for curing specified ailments with an investment requirement of approximately Rs. 500 Crore. In this regard, AHSTL has raised funds by way of issue of Non- Cumulative Redeemable Preference Shares upto Rs. 95,75,00,000 (Ninety Five Crores Seventy Five Lakhs Only) as an initial funding for the project and fully subscribed only by Apollo Hospitals Enterprises Limited in addition to loan outstanding amount of Rs. 10 Crore as on 23rd January, 2017 from AHEL. By utilising this fund, the company has paid an advance to the supplier towards the procurement of the proton beam therapy equipment and the balance payment fell due during the subsequent months as per the agreed terms of contract. However, the company was unable to identify investors for the project and was not in a position to take this project due to cost requirement and also, the company's board decided not to burden the company with further more liabilities. Therefore, due to the severe losses suffered by the Petitioner Company and there being no return on the investment made by the shareholders, the Board of Directors under the proposed restructuring exercise decided to cancel the Non-Cumulative Redeemable Preference Shares and to settle them by way of transfer of advances paid to the project. Further, to liquidate the creditors and settle by way of transfer of the advances paid to ION Beam Applications S.A, standing as Loans and advances in the books of company as on 23rd January, 2017 and any further balance, if still payable shall be written off and cancelled by the creditor in their books and the company will accordingly adjust its books as per the detailed proposal contained in the Scheme annexed as Annexure 2. The learned PCS further submits that no investigation proceedings are pending against the Petitioner Companies under section 235 to 251 or any other provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.

6. Learned PCS for the Petitioner Company further submitted that the petitioner company is Unlisted thus Company does not require compliance with the requirements of the Listing Agreement or any SEBI Rules/regulations. Also, the petitioner company has filed the Statutory Auditors Certificate dated 23rd January, 2016 confirming Nil Secured Creditor and balance of Unsecured Creditors including the balance of Preference share capital amount for the purpose of record.

7. To dispose of this petition as per the provisions of the Companies Act, 2013, the notices were issued to the statutory authorities as per the procedure prescribed. However, there were no objection to the scheme under reference.

8. The Regional Director, Southern Region (In short, '**RD**') in its Report Affidavit dated 23.02.2017 submitted that as per records of ROC, Chennai, the Petitioner Company is regular in filing its statutory returns and no investigation is pending against the company, therefore, RD decided not to make any objection to the Scheme and submitted that the petition be decided on its merits.

9. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of Compromise will not cost any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. Also, any intervention of the Official Liquidator is not required as the matter is nowhere connected to the liquidation process. As per Clause of the Part II of the scheme, the effective date is the date on which a certified copy of the order of the NCLT is filed with the Registrar of Companies, Chennai.

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10. We do not feel that any modification is required in the said Scheme of Compromise as the same appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances have been made under section 230 r/w section 66 of the Companies Act, 2013. Taking into consideration all the above, the Company Petition is allowed and the scheme of Compromise is hereby sanctioned which shall be binding on the all the members, creditors and shareholders.

11. It is also pertinent to mention herein that Clause 4 of Part V of the Scheme states that since this scheme does not involve a 'conveyance' of any property, the order of the NCLT sanctioning this scheme shall not attract any stamp duty. However, While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.

12. The Company to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme. The Petitioner Company do file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.

13. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 as has been notified on 14th December, 2016.

14. Accordingly, the Company Petition stands disposed of.

(ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)

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