

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

CP(CAA)No.164/230/HDB/2017

U/s 230 to 232 of the Companies Act, 2013

In the matter of

1. Asian Institute of Gastroenterology Private Limited
6-3-661, Somajiguda,
Hyderabad - 500082,
Telangana. ... Petitioner/Transferee Company
2. Sarvejana Institute of Trauma and Orthopedics Pvt. Ltd.
C4, Road No.12, Film Nagar Phase-II,
Jubilee Hills,
Hyderabad - 500033,
Telangana. ... Petitioner/First Transferor Company
3. Maxivision Health Care Private Limited
1-11-252/1A to 1D, Alladin Street,
Begumpet,
Hyderabad - 500016,
Telangana ... Petitioner/Second Transferor Company
4. Rainbow Institute of Health Sciences Private Limited
22, Road No.10, Banjara Hills,
Hyderabad - 500034,
Telangana ... Petitioner/Third Transferor Company

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**



Date of Order: 03.10.2017

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Parties Present:

Counsel for the Petitioners: Mr. Y. Suryanarayana, Advocate
along with Mr. Lokesh Agarwal, PCS

Counsel for the ROC & RD: Mr. B. Appa Rao, CGSC

Counsel for OL : Mr. M. Anil Kumar, Advocate

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The Company Petition bearing CP(CAA)No.164/230/HDB/2017 is filed by the Petitioner Companies Under Sections 230 to 232 and other applicable provisions of the Companies Act 2013 by seeking the Tribunal the following reliefs:-

a) To sanction the Scheme of Amalgamation between Asian Institute of Gastroenterology Private Limited (Transferee Company) and Sarvejana Institute of Trauma and Orthopaedics Private Limited (First Transferor Company), Maxivision Health Care Private Limited (Second Transferor Company), Rainbow Institute Health Sciences Private Limited (Third Transferor Company) be sanctioned and confirmed by the Tribunal with effect from the appointed date i.e. 01.04.2017, so as to be binding on all the members, employees, creditors of the Petitioner Companies and on the Petitioner Companies.

b) That the Petitioners/First, Second and third Transferor Companies be dissolved without going through the process of winding up.

c) That the Petitioner Companies do within 30 days after the date of receipt of certified copy of the order(s), cause a certified copy of the order to be filed with the Registrar of Companies at Hyderabad, Telangana and Andhra Pradesh, for registration as specified under Sub-Section 5 of Section 232 of the Companies Act, 2013.



d) That the parties to the Scheme of Amalgamation or any other person interested shall be at liberty to apply to this Hon'ble Tribunal, Bench at Hyderabad for any direction that may be necessary with regard to the carrying out the Scheme of Amalgamation, etc.

2. Brief facts, leading to the filing of present case, in brief, are as follows:

A) In respect of Petitioner/Transferee Company:

(a) Asian Institute of Gastroenterology Private Limited, the Transferee Company herein, was incorporated as a Private Limited Company on 20.09.1994, under the provisions of Companies Act, 1956 vide Corporate Identity Number U99999TG1994PTC018352 and having its Registered Office situated at 6-3-661, Somajiguda, Hyderabad, Telangana - 500082.

(b) As on 31.03.2016, the Authorised Share Capital of the Company is Rs.23,00,00,000/- (Rupees Twenty Three Crores only) divided into 2,28,55,000 Equity Shares of Rs. 10/- each and 1,45,000 Preference Shares of Rs.10/- each. The issued, subscribed and paid-up-capital is Rs.12,57,70,000/- (Rupees Twelve Crores Fifty Seven Lakhs and Seventy Thousand only) divided into 1,25,77,000 Equity Shares of Rs.10/- each. Subsequent to 31.03.2016, in the month of April, 2016, the Transferee Company issued and allotted 10,00,000 equity shares of Rs.10/- each at a premium of Rs.990/- each aggregating Rs.10,00,00,000/- (Rupees Ten Crores only) and consequent upon such issue and allotment of shares, the paid-up-capital of the Transferee Company



increased to Rs.13,57,70,000/- (Rupees Thirteen Crores Fifty Seven Lakhs and Seventy Thousand only).

- (c) The main objects of Company, as set out in its Memorandum, in brief, are to run, own, manage, administer diagnostic cum therapeutic unit for treating patients with gastroenterology diseases mainly through endoscopic Techniques, administer diagnostic Centres, scan centres, nursing homes, hospitals, clinics, dispensaries, maternity homes, child welfare and family planning centres clinical pathological testing laboratories, X-ray and ECG clinics in India and abroad etc.

B) In respect of Petitioner/First Transferor Company:

- (a) Sarvejana Institute of Trauma and Orthopaedics Private Limited, the First Transferor Company, was incorporated as a Private Limited Company on 15.04.2009, under the provisions of the Companies Act, 1956 vide Corporate Identity Number U85100TG2009PTC063343. The Registered Office situated at C4, Road No.12, Film Nagar Phase-II, Jubilee Hills, Hyderabad - 500 033.
- (b) As on 31.03.2016, the Authorised Share Capital of the Company is Rs.7,00,00,000/- (Rupees Seven Crores only) divided into 10,000 Equity Shares of Rs. 10/- each and 69,90,000 Preference Shares of Rs.10/- each. The issued, subscribed and paid-up-capital is Rs.6,70,65,000/- (Rupees Six Crores Seventy Lakhs and Sixty Five Thousand only) divided into 10,000 Equity Shares of Rs.10/- each and 66,96,500 - 2% Fully Paid-up Optionally Convertible Cumulative Preference Shares of Rs.10/- each.



- (c) The main objects of Company as set out in its Memorandum, in brief, are to carry on business of promoting, owning, running, administering, managing, investing in or establishing multi-specialty modern hospitals, dispensaries, nursing homes, clinics, laboratories, cord blood stem cell banks, pharmacies, maternity homes, child welfare and family planning centers in India and abroad and/or to act as consultants and advisors providing technical know-how, technical and allied services for the establishment, operation and improvement of hospitals, medical centers, nursing homes, clinics, cord blood stem cell banks, maternity homes and laboratories in India and abroad etc.

C) In respect of Petitioner/Second Transferor Company:

- (a) Maxivision Health Care Private Limited, the Second Transferor Company, was incorporated as a Private Limited Company on 20.04.2009, under the provisions of the Companies Act, 1956 vide Corporate Identity Number U85100TG2009PTC063364. The Registered Office situated at 1-11-252/1A to 1D, Alladin Street, Begumpet, Hyderabad - 500016.
- (b) As on 31.03.2016, the Authorised Share Capital of the Company is Rs.7,30,00,000/- (Rupees Seven Crores and Thirty Lakhs only) divided into 10,000 Equity Shares of Rs. 10/- each and 72,90,000 - 2% Optionally Convertible Cumulative Preference Shares of Rs.10/- each. The issued, subscribed and paid-up-capital is Rs.7,29,85,000/- (Rupees Seven Crores Twenty Nine Lakhs and Eighty Five Thousand only) divided into 10,000 Equity Shares of Rs.10/- each and 72,88,500 - 2% Fully



Paid-up Optionally Convertible Cumulative Preference Shares of Rs.10/- each.

- (c) The main objects of Company as set out in its Memorandum, in brief, are to acquire, establish and maintain hospitals for the reception and treatment of persons suffering from illness; or mental defect or for the reception and treatment of persons during convalescence, or of persons requiring medical attention, or rehabilitation and to own, operate, hire, lease, and rent various medical and laboratory establishments including hospitals, clinics and diagnostics centres etc.

D) In respect of Petitioner/Third Transferor Company:

- (a) Rainbow Institute of Health Sciences Private Limited, the Third Transferor Company, was incorporated as a Private Limited Company on 20.04.2009, under the provisions of the Companies Act, 1956 vide Corporate Identity Number U93000TG2009PTC063361. The Registered Office situated at 22, Road No.10, Banjara Hills, Hyderabad - 500 034.
- (b) As on 31.03.2016, the Authorised Share Capital of the Company is Rs.6,75,00,000/- (Rupees Six Crores and Seventy Five Lakhs only) divided into 67,50,000 Equity Shares of Rs. 10/- each. The issued, subscribed and paid-up-capital is Rs.6,65,30,000/- (Rupees Six Crores Sixty Five Lakhs and Thirty Thousand only) divided into 66,53,000 Equity Shares of Rs.10/- each.
- (c) The main objects of Company as set out in its Memorandum, in brief, are to carry and to own,



establish, run, manage and maintain hospitals, research centres diagnostic centres, blood bank service centres, nursing homes, health centres, rehabilitation centers, clinics, polyclinics, laboratories and to apply or provide utility article and services to patients, attendances and others and to provide aids to medical personnel for research and development, to establish allied health training centres and to act and work as consultant in medical profession in India and abroad etc.

3. The Transferee Company is the Promoter of all the Transferor Companies and all the Transferor Companies are the Wholly Owned Subsidiary Companies of the Transferee Company.
4. The Petitioner Companies propose the Scheme of Arrangement for the following reasons:
 - (i) The Scheme is presented to consolidation of business of Petitioner Companies in one entity and thereby strengthening the position of the amalgamated entity by enabling it to harness and optimize the synergies of equipments and human resources, which is in the best interest of all the Companies and their respective shareholders.
 - (ii) All the Transferor Companies are wholly owned subsidiaries of the Transferee Company and all the Transferor Companies are engaged in the business akin to that of the Transferee Company. A consolidation of the Transferor Companies and the Transferee Company by way of amalgamation would therefore lead to a more efficient utilization of capital, talent pooling and will result in



creation of a single larger unified entity in place of various entities under the same management and control, thus resulting in efficient synergies of operations and streamlined business transactions.

- (iii) The proposed Amalgamation will lead to the benefits such as economies of scale, besides other synergetic advantages particularly in view of the fact that the Companies involved in the amalgamation are engaged in the businesses, which are akin and can be conveniently combined with one another for mutual benefit.
- (iv) The Scheme shall be beneficial and in the best interests of the shareholders, creditors and employees of the Transferor Companies, The Transferee Company and to the interest of public at large and all concerned.
5. It is further stated that the Board of Directors of Petitioner Companies at their respective meetings held on 30.03.2017, approved the Scheme of Amalgamation, subject to the approval of Hon'ble Tribunal.
6. The following are brief terms of Scheme of Amalgamation:
- The Appointed Date for the purpose of this Scheme is 01.04.2016.
 - Upon the Scheme becoming effective, all the Properties and Liabilities of Transferor Companies, immediately before the amalgamation, become the properties of Transferee Company by virtue of amalgamation.
 - The Transferee Company shall under the provisions of the Scheme be deemed to be authorised to execute any



such writings on behalf of any of the Transferor Companies, to implement and carry out all formalities and compliances, if required,

- d) After the Appointed Date, if any proceedings are taken against the Transferor Companies the same shall be defended by and at the cost of the Transferee Company.
- e) Upon sanction of this Scheme by the Tribunal, all staff, workmen and employees of the Transferor Companies in service on the date of sanction of this Scheme by the Tribunal shall be deemed to have become staff, workmen and employees of the Transferee Company with effect from the date of sanction of this Scheme by the Tribunal without any break in their service and the terms and conditions of their employment with the transferee Company shall not be less favourable than those applicable to them with reference to the Transferor Company concerned on the date of sanction of this Scheme by the Tribunal.
- f) In view of the fact that the Transferor Companies are wholly owned subsidiaries of Transferee Company, upon sanction of this Scheme by the Tribunal, no shares will be issued/allotted under the Scheme by the Transferee Company to any person.
- g) Upon sanction of this Scheme by the Tribunal, the equity shares and the 2% Optionally Convertible Cumulative Preference Shares held by the Transferee Company as investments in the share capital of the Transferor Companies shall stand cancelled.



- h) Upon sanction of this Scheme by the Tribunal, all the Transferor Companies shall without any further act or deed, stand dissolved without going through the process of winding up.
7. It is further stated that the Tribunal by Orders dated 19.05.2017 passed in CA (CAA)No.40/230/HDB/2017, a Joint Company Application file by the Petitioner Companies, has dispensed with convening the meeting of the Equity Shareholders, Preference Shareholders and Trade Creditors of the Petitioner Companies since all the Equity Shareholders, Preference Shareholders and Trade Creditors of the Petitioner Companies had filed their consent affidavit. It is further ordered to convening the meeting of the Sundry Creditors of the Transferee Company on 13.07.2011 at 11 AM and appointed Mr. G. Bhupesh, Advocate as Chairperson and Mrs. G. Anuhya, Advocate as Scrutinizer for the said meeting. Accordingly, the Chairperson, Mr. G. Bhupesh, convened the meeting of the Sundry Creditors of the Transferee Company and file his Report stating that 75 (Seventy Five) Sundry Creditors including proxies to whom the Transferee Company owes an amount of Rs.11,06,94,155/- constituting 78.17% of the total amount due by the Transferee Company to its Sundry Creditors.
8. The Learned Counsel filed a Memo dated 15.09.2017 stating that as per the directions of the Hon'ble NCLT, Hyderabad Bench, the Petitioner Companies got published the "Notice of Petition" in English Daily (Indian Express - Hyderabad Edition) and Telugu Daily (Nava Telangana - Hyderabad Edition) on 12.09.2017 and 13.09.2017 respectively. It is also stated that notices were also issued to the Registrar of Companies; Regional Director (SER) and Official Liquidator.



9. The Regional Director (SER), Hyderabad has filed an affidavit dated 13.09.2017, by inter-alia confirming the averments made by the Petitioner Companies, has further stated that the Petitioner Companies are regular in filing statutory returns and no complaints, no investigations and no inspections are pending against the Company. It is further stated that a notice dated 25.07.2017 was sent to the Income Tax Authorities, Hyderabad requesting to submit their comments/objections, if any, in the present Scheme. The Deputy Commissioner of Income Tax, Circle-1(1), Hyderabad vide letter dated 08.08.2017 has observed that M/s Asian Institute of Gastroenterology Private Limited i.e. Transferee Company, is assessed to Tax with DCIT, Circle-1(1), Hyderabad and there are no arrears of tax outstanding as per their records and expressed no objection for the proposed Scheme. Further, No objection/comments received from the Income Tax Authorities in respect of Transferor Companies. Therefore, they have submitted that the case can be considered as per merits.

10. The Official Liquidator also files his report dated 30.08.2017, by inter-alia confirming the averments made by the Petitioner Companies, has further stated that the affairs of the Company appears to have not been conducted in a manner prejudicial to the interests of the members or to public interest and thus they have no objection for consideration application as per merits.

11. We have carefully perused all the pleadings, reports of the Regional Director, the official Liquidator and also extant provisions of Companies, 2013. We are convinced that the Petitioner Companies have complied with all statutory requirements as required under Sections 230 to 232 and other



relevant provisions of Companies Act, 12013, as detailed supra. The Board of Directors of the Petitioner Companies at its respective Board meetings held on 30.03.2017 have duly approved the Scheme of Amalgamation in question. We are satisfied that the Scheme of Amalgamation in question is for bonafide reasons meant for the benefit of all concerned parties of the Petitioner Companies in question, and public in general. It is also on record that the Scheme in question is not opposed by any authorities and the Petitioner Companies are admittedly following all rules/regulations of Companies Act as stated by Regional Director as stated supra. Hence, we are convinced that the Company Petition deserved to be allowed as prayed for.

12. In the result, the CP(CAA)No.164/230/HDB/2017 is allowed with the following directions:-

- a) Sanctioned the Scheme of Amalgamation as proposed (which is placed at Page No.144 along with material papers enclosed with the Petition), and it is ordered that the same is binding on all the Equity Shareholders/Members and Creditors (Secured & Unsecured) of the Petitioner Companies.
- b) That the Petitioners/First, Second and third Transferor Companies are hereby be dissolved without going through the process of winding up proceedings.
- a) The Petitioner Companies are directed to take appropriate steps to submit the said scheme to Registrar of Companies within 30 days from the date of receipt of Copy of this order.
- b) The Petitioner Companies are directed to issue newspaper publication with respect to approval of scheme of arrangement, in the same newspapers in which previous publications were issued in order to ensure



transparency/dissemination of complete information to all concerned parties about the approval granted by the Tribunal for the Scheme as proposed.

- c) The Petitioner Companies are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Amalgamation under the Provisions of the Act.
- d) Liberty is granted to any party/parties, who are aggrieved by this order, to seek any direction(s) by way of filing miscellaneous application in the present Company petition.
- e) The Petitioner Companies are directed to strictly adhere to the above directions and all extant provisions of Companies Act, 2013.



Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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OF THE ORIGINAL

for *lh*
Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY

केस संख्या
CASE NUMBER *CP/CA/NO.164/230/HDB/2017*
निर्णय का तारीख
DATE OF JUDGEMENT *3.10.2017*
प्रति लेखार किया गया तारीख
COPY MADE READY ON *23.10.2017*