

**BEFORE THE HON'BLE NATIONAL COMPANY
LAW TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD**

CA(CAA).No 29/230/HDB/2017

Date of order: 08/05/2017

M/s. Ritemed Pharma Retail Private Limited
H. No: 11-6-56, Survey No: 257 & 258/1,
Opposite to IDPL Railway Siding Road,
Moosapet, Kukatpally,
Hyderabad-500037, Telangana,
India

....1st Applicant/Transferor Company

AND

M/s. Optival Health Solutions Private Limited
H. No: 11-6-56, Survey No: 257 & 258/1,
Opposite to IDPL Railway Siding Road,
Moosapet, Kukatpally,
Hyderabad-500037, Telangana,
India

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

....2nd Applicant/Transferee Company

Counsel for the Applicants : Mr. Ramakrishna Gupta Racharla PCS

CORAM:

RAJESWARA RAO VITTANALA, MEMBER (JUDICIAL)



ORDER

(As per Rajeswara Rao Vittanala, Member (Judl))

1. The present Company Application bearing CA(CAA) No.29/230/HDB/2017, is jointly filed by M/s. Ritemed Pharma Retail Private Limited and M/s. Optival Health Solutions Private Limited, under Sections 232 read with 230 and other applicable provisions of the Companies Act, 2013, by, inter alia seeking a direction to dispense with the meetings of the Equity Shareholders and Secured Creditors of the 1st Applicant / Transferor Company and to dispense with the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the 2nd Applicant / Transferee Company with consequential reliefs etc
2. Brief facts, which are relevant to the present issue, as stated in the Company application, are as under:

A. In respect of 1ST applicant/Transferor Company :

1. M/s. Ritemed Pharma Retail Private Limited (1st Applicant / Transferor Company) having CIN No. U52399TG2009PTC064130 was incorporated under the Companies Act, 1956 on 25th June, 2009. Its Registered office is situated at H. No: 11-6-56, Survey No: 257 & 258/1, Opposite to IDPL Railway Siding Road, Moosapet, Kukatpally, Hyderabad-500037, Telangana, India.

2. The main objects and nature business of the Company, as set out in the Memorandum of Association , in brief, are as under:-

(a) *To establish, run, take on hire or lease, maintain, organize and promote retail Pharmacy stores, To buy, sell, import, export or deal in any manner in Medical and*



Pharmaceutical Products like Intravenous Sets, Intravenous Solutions, all kinds of drugs, disinfectants, tinctures, colloidal products, injectables and all the pharmaceuticals and medicinal preparations, veterinary products including setting up contract manufacturing facility.

(b) To carry on the business of buyers, sellers, exporters, importers, distributors, stockists, agents, merchants, suppliers, representatives and dealers of Ayurvedic medicines, Herbal Medicines, Cosmetics, Herbal or other such products used for Health and Beauty Care and Food Supplements like nourishes, tonics, nutrition, supplement, proteins and such other allied products.

(c) It is engaged in the business of retail trading of medicines and general items through various outlets.

3. The authorized, issued, subscribed and paid-up share capital of the Company as on 31st March, 2016 was as under:

| Authorised Share Capital | Amount (Rs.) |
|--|---------------------|
| 2,30,00,000 Equity Shares of Rs. 10 each | 23,00,00,000 |
| Total | 23,00,00,000 |
| Issued, Subscribed and Paid-up Capital | Amount (Rs.) |
| 2,30,00,000 Equity Shares of Rs. 10 each fully paid-up | 23,00,00,000 |
| Total | 23,00,00,000 |

Subsequent to the above date and till the date of filing the Scheme, there has been no change in the issued, subscribed and paid up capital of the 1st Applicant/Transferor Company.



B. In respect of 2nd Applicant/Transferee Company:

1. M/s. Optival Health Solutions Private Limited (2nd Applicant / Transferee Company) having CIN No. U85110TG2005PTC046821 was incorporated under the Companies Act, 1956 on 11th July, 2005. Its Registered office is situated at H. No: 11-6-56, Survey No: 257 & 258/1, Opposite to IDPL Railway Siding Road, Moosapet, Kukatpally, Hyderabad-500037, Telangana, India.
2. The main objects and nature of business of the Company, as set out in the Memorandum of Association, in brief are as under:-
 - a) *To establish, run, take on hire or lease, maintain, organize and promote retail Pharmacy stores, health centers, clinics, hospitals, maternity & family planning units, blood banks, nature cure centers, surgical stores, oxygen centers, diagnostic centers, medical & other research centers and provide specialized medical and health services.*
 - b) *To buy, sell, import, export or deal in any manner in Medical and Pharmaceutical Products like Intravenous Sets, Intravenous Solutions, all kinds of drugs, disinfectants, tinctures, colloidal products, injectables and all the pharmaceuticals and medicinal preparations, veterinary products including setting up contract manufacturing facility.*
 - c) *To carry on the business of producers, makers, buyers, sellers, exporters, importers, distributors, stockists, agents, merchants, suppliers, representatives and dealers of Ayurvedic medicines, Herbal Medicines, Cosmetics, Herbal*



or other such products used for Health and Beauty Care and Food Supplements like nourishes, tonics, nutrition, supplement, proteins and such other allied products.

d) Undertake Hospital Automation, Hospital management, Project Management, Health insurance, Health camps and launch Healthcare schemes.

e) To carry on the business of processing, mixing, packing, preserving, freezing, extracting, refining, importing, exporting, buying, selling, trading and to act as broker, distributor, agency, factors, stockiest or otherwise deal in processed foods, health foods, protein foods, fresh foods and all kinds of food products including food supplements and other consumable provision of every description for human consumption and any other food products in and outside India.”

f) It is engaged in the business of retail trading of medicines and general items through various outlets.

3. The authorised, issued, subscribed and paid-up share capital of the Company as on 31st March, 2016 was as under:

| Authorised Share Capital | Amount (Rs.) |
|---|---------------|
| 14,40,00,000 Equity Shares of Rs. 10 each | 144,00,00,000 |



| | |
|---|----------------------|
| Total | 144,00,00,000 |
| Issued, Subscribed and Paid-up Capital | Amount |
| | (Rs.) |
| 14,15,44,740 Equity Shares of Rs. 10 each fully paid-up | 141,54,47,400 |
| Total | 141,54,47,400 |

Subsequent to the above date and till the date of filing the Scheme, there has been no change in the issued, subscribed and paid up capital of the Company.

3. The rationale of proposed scheme of Amalgamation, in brief, are as under:
- a) The Transferor Company and the Transferee Company are subsidiaries of Medplus Health Services Private Limited. The Transferor Company and the Transferee Company are engaged in the similar business and the integration, consolidation and amalgamation of the Transferor Company with the Transferee Company would inter alia be expected to have the following benefits:

(i) Greater integration, financial strength and flexibility for the Transferee Company, which will improve the financial position of the Transferee Company;

(ii) Greater efficiency in cash management of the Transferee Company, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities, to further improve shareholder's value;

(iii) Improved organizational capability and leadership, arising from the pooling of human capital that has the diverse skills, talent

and vast experience to compete successfully in an increasingly regulated and competitive industry;

- (iv) The Applicant are engaged in the similar line of business and intend to achieve synergies in economies of scale, efficiency, freight optimization and logistics and distribution network, product placement, stability of operations, marketing and sale promotions initiatives, by consolidating the business operations of both the Transferor and the Transferee Company;
- (v) Greater leverage in operations planning and process optimization and enhanced flexibility in its operations;
- (vi) Result in enhancing the scale of operations and reduction in and / or optimization in overheads costs, administrative, managerial and other expenditure, operational rationalization, organizational efficiency, and optimal utilization of various resources and also benefiting from economies of scale; and
- (vii) Consolidate the managerial expertise of the companies' involved thereby giving additional strength to the operations and management of the amalgamated Company resulting into expansion of the existing business.

4. It is stated that in view of the aforesaid advantages, the Board of Directors of the 1st Applicant/ Transferor Company vide its resolution dated March 6, 2017 approved the Scheme. . Similarly, the Board of Directors of the 2nd Applicant/Transferee Company has also approved the Scheme at their meeting held on March 6, 2017.

5. It is stated that no investigation or proceedings have been instituted or are pending against the 2nd Applicant/Transferee Company under the



Companies Act, 2013. However, it is stated that the Transferor Company/1st Applicant has filed two Compounding Applications with Company Law Board, Chennai through Registrar of Companies, Hyderabad both dated 10th June, 2011, for non-compliance of provisions of section 297 of the Companies Act, 1956 and the same are pending for disposal.

6. It is further submitted that both the Companies are closely held private and unlisted Companies.
7. It is stated that there are 2(Two) Equity Shareholders in the 1st Applicant/Transferor Company and all of them have given their consent to the proposed Scheme by means of affidavits. Copies of those documents have been filed along with this application.
8. Similarly, there are 5 (Five) Equity Shareholders in the 2nd Applicant / Transferee Company and the shareholders holding 99.987% value of shares have given their consent to the proposed Scheme by means of affidavits. A copy of the list of Equity Shareholders and the consent affidavits obtained from the said Equity Shareholders of the 2nd Applicant/Transferee Company are filed with this application. .
9. It is further stated that at present, there is only 1 (One) Secured Creditor (SBI) of the 1st Applicant/ Transferor Company. As far as the rights of the Secured creditors is concerned, they will not be affected by the Proposed Scheme of Amalgamation since post Scheme, the assets of the 1st Applicant Company shall be sufficient to discharge its liabilities and further, it does not involve any compromise or arrangement with any creditors of 1st Applicant Company. The copy of the Scheme as approved by the Board of Directors of the 1st Applicant Company has been submitted with the sole Secured Creditors. The Company has obtained no objection letter from SBI, Hyderabad vide its letter No



SME/NOC/RPRPL/2016-17 dated 31.03.2017. Further, there are no Unsecured Creditors in the 1st Applicant / Transferor Company except in the nature of Trade Creditors. The rights of Trade Creditors will not be effected by the proposed Scheme of Amalgamation since post scheme, the assets of the 1st Applicant / Transferor Company will be sufficient to discharge its liabilities further and further it does not involve any compromise or arrangement with any creditors of the 1st Applicant / Transferor Company and requested the Hon'ble Tribunal to dispense with the meeting of the Unsecured Creditors/ Trade Creditors as the same is not required.

10. It is further stated that there are 3 (Three) Secured Creditors (SBI, SBH and Andhra Bank) of the 2nd Applicant/Transferee Company. As far as the rights of the Secured creditors is concerned, they will not be affected by the Proposed Scheme of Amalgamation since post Scheme, the assets of the 2nd Applicant Company shall be sufficient to discharge its liabilities and further, it does not involve any compromise or arrangement with any creditors of 2nd Applicant Company. The copy of the Scheme as approved by the Board of Directors of the 2nd Applicant Company has been submitted with the Secured Creditors. Accordingly, all the three creditors have given no objection to the proposed of scheme of Amalgamation. SBI, Hyderabad vide its letter No. SME/NOC/OHSPL/2016 dated 21.03.2017, SBH, Punjagutta, Hyderabad vide its letter No. F/IFB/CR/Optival/1052 dtd 24.03.2017 and Andhra Bank vide its letter No. 0362/58/322 dated 31.03.2017. Further, there are 3 (Three) Unsecured Creditors of the 2nd Applicant / Transferee Company as on February 15, 2017. Out of the 3 unsecured creditors, two Unsecured Creditors have given their consent to the proposed Scheme by means of affidavit and the balance 1 (one) unsecured creditor has been paid off in full and there is no due outstanding to him as on the date of the application. A copy of the



consent affidavits obtained from the Unsecured Creditors is filed with the application the loan closure statement from the Unsecured Creditors is also filed and there are no other Unsecured Creditors in the 2nd Applicant / Transferee Company other than as stated above, except in the nature of Trade Creditors. The rights of Trade Creditors will not be effected by the proposed Scheme of Amalgamation since post scheme, the assets of the 2nd Applicant / Transferee Company will be sufficient to discharge its liabilities further and further it does not involve any compromise or arrangement with any creditors of the 2nd Applicant / Transferee Company.

11. In view of above circumstances, the applicants prayed to allow the application as prayed for.
12. I have heard Mr. Ramakrishna Gupta Racharla PCS for the applicants and have carefully perused all the pleadings including material papers filed along with the application and extant provisions of Companies Act, 2013 and consequent rules framed under the Act.
13. The proposed of Scheme of Amalgamation, prima facie, found that it has been framed by taking into account of interests of all shareholders, creditors, and all other interested parties in the Company, and also for the Companies involved. As stated supra, the Companies have followed all extant rules of Companies Act, and rules. Now the question arise for consideration in the present application is whether it is necessary to order to hold meetings of respective Equity Shareholders, secured and un-secured creditors of both the companies in involved , in order to know the views of all concerned parties involved in the Scheme in question. As stated supra, all concerned parties have given no objection/consent for the propose scheme of Amalgamation. Hence, there would not serve any purpose to direct to hold meetings of those parties. Therefore, the applications deserve to be allowed by granting the prayers as prayed in the application.



14. In view of the above facts and circumstances of the case, and also in the interest of justice, the Company application bearing CA(CAA) No. 29/230/HDB/2017 is disposed with the following directions:

- a) Dispensed with the meetings of the Equity Shareholders and Secured Creditors of the 1st Applicant / Transferor Company.
- b) Dispensed with the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the 2nd Applicant / Transferee Company.
- c) This order would not have any bearing on the applications with regarding two Compounding applications stated to have been filed by Transferor /1st Applicant and pending with Company Law Board/NCLT/Chennai for non-compliance of provisions of Section 297 of Companies Act, 1956. Orders passed in those applications would be binding on both the Companies irrespective of this order.
- d) Direct the Companies to serve copies of this order to the Income Tax Authorities, Central Government, Registrar of Companies and all concerned authorities within 2 (two) weeks from the date of receipt copy of this Order.



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

Sd/-

**RAJESWARA RAO VITTANALA
MEMBER (J)**

V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68