

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

NEW DELHI BENCH-VI

CP.(CAA) NO. 38/ND/2022

IN

CA(CAA) NO. 97/PB/2021

IN THE MATTER OF SECTION 230-232 OF THE COMPANIES ACT, 2013

(Under Section 230 & 232 of the Companies Act, 2013 read with other applicable provisions of the Companies Act, read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016)

IN THE MATTER OF SCHEME OF AMALGAMATION

M/s. HMD Healthcare India Private Limited

having its Registered Office at
901, Narain Manzil,
23 Barakhamba Road,
New Delhi – 110001

**PETITIONER COMPANY NO.1)/
(TRANSFEROR COMPANY)**

WITH

M/s Niraj Industries Private Limited

having its Registered Office at
901, Narain Manzil,
23 Barakhamba Road,
New Delhi – 110001

**PETITIONER COMPANY NO. 2/
(TRANSFeree COMPANY)**

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER, JUDICIAL

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER, TECHNICAL

Appearance:

For the Petitioner/Applicant	Mr. Chitta Ranjan Biswal, CS
For the RD	Ms. Shankari Mishra and Ms. Niharika Tanwar, Advs.
For the OL	Ms. Tanuja Rawat Advocate
For the IT Department	Mr. Puneet Rai, Adv.

ORDER

PER: RAHUL BHATNAGAR, MEMBER, (TECHNICAL)

Pronounced on 15.04.2024

1. This joint petition has been filed by the Petitioner Companies in accordance with Sections 230 to 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of the Transferor Company into the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the “Scheme”), has been placed on record.
2. The Petitioner Company No.1 i.e., M/s. HMD Healthcare India Private Limited (**CIN - U74899DL1990PTC039511**), was originally incorporated on the 14th day of March, 1990 in accordance with the provisions of the Companies Act, 1956 as Hindustan Syringes Export Private Limited. The name of the company was changed to HMD Healthcare India Private Limited having duly passed the necessary resolution in

accordance with of Section 21 of the Companies Act, 1956 and the approval of the Central Government and fresh certificate of incorporation issued on 25th day of July, 2013 by the Registrar of Companies, NCT of Delhi and Haryana. The company has an authorized share capital of INR 50,00,000 and paid up share capital of INR 6,40,000. The company has its registered office at 901, Narain Manzil, 23 Barakhamba Road, New Delhi – 110001

3. The Petitioner Company No. 2 i.e., M/s. Niraj Industries Private Limited (**CIN - U74899DL1980PTC011063**) was incorporated under the provisions of the Companies Act, 1956, as a private limited company vide Certificate of Incorporation dated 21.11.1980. The company has an authorized share capital of INR 25,00,000 and paid up share capital of INR 7,00,000. The company has its registered office at 901, Narain Manzil, 23 Barakhamba Road, New Delhi – 110001

4. The Petitioner companies have averred that the amalgamation of 'Transferor Company with the Transferee Company would, inter alia, entail the following benefits:

a) Both to avoid multiplicity of companies and to be able to work more cohesively, efficiently and effectively as a single unit, it is being thought to amalgamate both the companies.

- b) The proposed scheme will result in reduction in overheads and other expenses, reduction in administrative and procedural work, eliminate duplication of work, will result in better and more productive utilization of various resources and will enable the undertakings concerned to effect internal economies and optimize productivity.
- c) The proposed Scheme will result in formation of a larger company enabling further growth and development of the businesses of the said company.
- d) The said Scheme will enable the undertakings and business of the said company to obtain greater facilities possessed and enjoyed by one large company compared to a small company for raising capital, securing and conducting trade and business on favorable terms and other related benefits.

5. A perusal of the petition discloses that the first motion application bearing CA (CAA) 97/PB/2021 was jointly filed by the Petitioner Companies. Based on the averments made in the said application this Tribunal vide order dated 28.01.2022 dispensed with the meeting of Shareholders, Secured Creditors and Unsecured Creditors of all the Petitioner Companies.

6. This Tribunal vide order dated 28.01.2022 directed to issue notices to the (i) Regional Director, Ministry of Corporate

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Affairs, (ii) Registrar of Companies, NCT of Delhi and Haryana, (iii) Official Liquidator, Lok Nayak Bhavan, Delhi (iv) concerned Income Tax Department.

7. Further, the petitioner companies were directed to carry out the publication of advertisement in Delhi editions of 'Business Standard' (English, Delhi Edition) and 'Jansatta' (Hindi, Delhi Edition) by the virtue of the order dated 31.08.2023.
8. The Petitioner Companies in compliance to the aforesaid order filed affidavit of service of notice to the statutory authorities and paper publication affirming service of notice and affirming that notice of hearing was duly advertised in 'Business Standard' (English, Delhi Edition) and 'Jansatta' (Hindi, Delhi Edition) on 06.09.2023.
9. Pursuant to the notice issued by this Tribunal, Regional Director, Ministry of Corporate Affairs and Official Liquidator participated in the proceedings.
10. The RD has filed its report dated 30.08.2022, wherein some observations were made to which petitioner company has filed its response. The observations as well as reply of the Petitioner Companies are as under –

Serial No	Observations in the RD Report	Response of the Petitioner Companies
1.	In reference to the Clause 8 of the Scheme, furnish declaration for compliance of the applicable rules/provision of the Companies Act, 2013 in regard to change of name. Automatic change of name is not possible.	As per Clause 8.1 of the Scheme, it is specified as Upon the Scheme becoming effective, based on the approval/consent given by the members of NIRAJ to this Scheme under the provisions of Section 230 of the Act, which shall be deemed as sufficient for the purposes of Section 13 and Section 61 of the Act and all other applicable provisions of the Act and for which no further resolution shall be required to be passed by the shareholders of NIRAJ, on the Effective Date, the Name of NIRAJ shall automatically stand altered to HMD Healthcare India Private Limited. (Emphasize supplied by us)

		<p>In the said clause, it is provided that no further shareholders' resolution shall be required since it is already passed in the Board Resolution dated 10.08.2021 and consent of shareholders have been taken for the Scheme for name change. Of course, the applicable rules / provision of the Companies Act, 2013 will be strictly followed for change of name.</p> <p>As per declaration "That upon the scheme becoming effective, the Transferee company shall apply to the Authority for the change of name from Niraj Industries Private Limited to HMD Healthcare India Private Limited under relevant provisions of the Companies Act, 2013 and strictly follow</p>
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		all the rules and regulation in this regard".
2.	The Transferor Company has not earned operating revenue since 1998-99 as per company's financials and their own petition (refer Clause D, page 60). Therefore, company is a dormant company under section 455 of the Companies Act, 2013.	As it will be clear from the audited Balance Sheet of the Transferor Company, there are income (dividend) received on Current Investments and the same along with accumulated reserves and surplus are being further invested in Mutual Funds/ current investments which is significant transaction. The Company is filing financial statements regularly with the Registrar without any default. The Transferor Company has significant accounting transaction and not a Dormant Company under Section 455 of the Companies Act, 2013 as alleged".

11. In accordance with the aforesaid report, The RD is satisfied with the response provided by the petitioners. Consequently, the counsel for the RD submits that they have no objection to the approval of the contended scheme.
12. The Official Liquidator has filed its report dated 10.08.2022, wherein it has been submitted by the Official Liquidator on the basis of information submitted by the petitioner companies is of the view that the affairs of the aforesaid Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest in terms of the provisions of the Companies Act, 2013.
13. However, clause 8 of the proposed scheme provides that the name of Transferee Company will be changed to "HMD Healthcare India Private Limited" without going through the procedures laid down under the Companies Act, 2013 and rules framed thereunder. In this regard, it is submitted that section 13 of the Companies Act, 2013 enables a company to change its name by passing special resolution in that behalf with the approval of the Central Government.
14. The approval envisaged in section 13 of the Companies Act, 2013 can be ex post facto, since the legislative intent does not appear to be obtaining of a prior approval before the change can be made effective. Further, on request the change

is to be sanctioned in the light of the guidelines prescribed by the Central Government in that behalf only after the approval of the scheme by this Tribunal. Accordingly, the petitioner companies may not be allowed clause 8 of the proposed scheme of amalgamation.

15. We have considered the observations made by the RD and OL and the Reply filed by the petitioner company. We are satisfied with the response given by the petitioner company w.r.t observation made by the RD and OL.
16. However, approval of the present scheme is subject to compliance with the due procedure pertaining to changing the name of the company, in accordance with Section 13 of the Companies Act, 2013. Consequently, the petitioner undertakes to complete the requisite procedures condition precedent to the change of name of the company.
17. The Income Tax Department has submitted that there are no objection pertaining to the dues of the Transferor Company. However, the Income Tax Department has sought an affidavit stating that in the instance where the Applicant files an Affidavit/Undertaking, it will be accepted by the Income Tax Department. Pursuant to the aforesaid request this tribunal directed the petitioner to the requisite affidavit by the virtue of an order dated 27.03.2023.

18. Accordingly, the petitioner filed a corresponding affidavit/undertaking dated 31.03.2023 stating -

“the Applicant files an Affidavit/Undertaking, it will be accepted by the Income Tax Department”

The aforesaid affidavit was taken on record by the virtue of an order of This Tribunal dated 25.05.2023.

19. In this petition it has also been affirmed that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.

20. Certificates of respective Statutory Auditors of all the petitioner companies, have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies Accounts Rules, 2014 and Companies (Accounting Standards) Amendment Rules, 2016, and other generally accepted accounting principles in accordance with the Companies Act, 2013, as applicable.

21. The shareholders of the petitioner companies are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by the Tribunal for the reason that it is not a part of the judicial function to examine entrepreneurial activities and their commercial decisions.

22. The Hon'ble Supreme Court in ***Miheer H. Mafatlal vs Mafatlal Industries Ltd JT 1996 (8) 205*** while considering the scope of the jurisdiction of the Company Court in respect of matters of sanction of the Scheme of Amalgamation as per the provisions of Section 391 read with Section 393 of the Companies Act, 1956, observed as under:

It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority.

Consequently, the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate.

In view of the law laid down by the Supreme Court, this Tribunal is not supposed to examine the merits/benefits of the commercial wisdom of the decision of the shareholders.

23. It has also been affirmed in the petition that the Scheme is in the interest of the Transferor company and the Transferee company, including their shareholders, creditors, employees and all concerned. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, there appears to be no impediment in sanctioning the present Scheme.

24. Consequently, **sanction is hereby granted** to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following conditions.

- I. *The Petitioners shall however remain bound to comply with the statutory requirements in accordance with the law.*
- II. *The Transferee company shall be responsible to pay the Income Tax dues of the Transferor Company, as per law. The copy of the affidavit cum undertaking filed by the Transferee company shall be provided to the Concerned Assessing Officer of the Income Tax Department.*

- III. *Notwithstanding the above, if there is any deficiency found or, violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken in accordance with the law, against the concerned persons, directors and officials of the petitioners.*
- IV. *While approving the Scheme as above, it is further clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.*
- V. *The Petitioner Companies have proposed 01.04.2021 as appointed date. However, this Tribunal confirms and approve 01.04.2023 as appointed date.*
- VI. *Clause 8 of the amalgamation scheme shall remain inoperative. Consequently, the transferee company shall retain the name M/s Niraj Industries Private Limited. Thereafter, the applicant shall apply for the change of name of the company in accordance with Section 13 of the Companies Act, 2013 before the apposite authority.*

25. This Tribunal hereby further order

- 1) *That the Transferor Company shall stand dissolved without following the process of winding-up; and*
- 2) *That all the property, rights and powers of the Transferor Company, be transferred without further act or deed, to the Transferee company and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee company; and*
- 3) *That all the liabilities and duties of the Transferor Company, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company; and*
- 4) *That all proceedings now pending by or against the Transferor Company, be continued by or against the Transferee company; and*
- 5) *That all the employees of the Transferor Companies in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date, shall become the employees of the transferee company on such date, without any break or interruption in service and upon terms and*

condition not less favorable than those subsisting in the concerned Transferor Company on the said date; and

6) *That Petitioner companies shall, within thirty days of the date of the receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file, kept by him in relation to the Transferee company and the files relating to all the petitioner companies shall be consolidated accordingly; and*

7) *That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.*

26. The petition stands disposed of on the above terms. Let copy of the order be served to the parties.

-SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

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