IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.6

C.A.(CAA)/39(AHM)2023

Proceedings under Section 230-232

IN THE MATTER OF:

CIMS Hospital Pvt Ltd **.....Applicant**
Marengo Asia Healthcare Pvt Ltd

Order delivered on: 13/09/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr.Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I

C.A.(CAA)/39(AHM)2023

[Application under Sections 230-232 and read with other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016]

Scheme of Amalgamation

of

CIMS Hospital Private Limited
(Transferor Company)

with

Marengo Asia Healthcare Private Limited
(Transferee Company)

and

Their respective shareholders

Order Pronounced on 13.09.2023

CORAM:

SHAMMI KHAN
HON'BLE MEMBER (JUDICIAL)

KAUSHALENDRA KUMAR SINGH
HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

CIMS Hospital Private Limited
(CIN:U85110GJ2001PTC039962)
Registered office is situated at;
Plot No. 67/1, Opposite Panchamrut Bunglows, Near Shukan Mall, Off. Science City Road, Sola, Ahmedabad-380 060, Gujarat. ....Transferor Company

With

Marengo Asia Health Care Private Limited
(CIN:U85100HR2020PTC090306)
Registered office is situated at;
Plot No. 67/1, Opposite Panchamrut Bunglows, Near Shukan Mall, Off. Science City Road, Sola, Ahmedabad-380 060, Gujarat. ....Transferee Company

Appearance:

For the Applicants: Ld. Counsel Ms. Dharmishta N. Raval.

O R D E R

1. The present joint application is filed under Sections 230-232 with other applicable provisions of the Companies Act, 2013 ('**the Act'**) read with Companies (Compromise, Arrangement and Amalgamations) Rules, 2016 (Rules, 2016") seeking directions for dispensing with the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company and the Transferee Company for the purpose of considering and if thought fit, approving, with or without modification(s), in the proposed Scheme of Amalgamation of M/s. CIMS Hospital Private Limited

(Transferor Company) with M/s. Marengo Asia Healthcare Private Limited (Transferee Company) (collectively referred to as the Applicant Companies) and their respective shareholders **('the Scheme')** with effect from Appointed Date i.e. 01.04.2023 as mentioned in the Scheme. This company application was e-filed and physical copy thereof was filed on 27.04.2023.

2. An affidavit in support of the present application, on behalf of the Transferee Company, sworn by Ms. Vacha Saumil Shah, authorized vide board resolution dated 21.04.2023 by the Applicant Transferee Company, is placed on record.

3. An affidavit in support of the present application, on behalf of the Transferor Company, sworn by Mr. Sistla Narayana Murthy, authorized vide board resolution dated 21.04.2023 by the Applicant Transferor Company, is placed on record.

4. The averments made by the Applicant Companies are summarized as under:

   (i) The registered office of both the Applicant Companies is situated in the State of Gujarat, under the jurisdiction of the National Company Law Tribunal, Ahmedabad Bench.

   (ii) The Board of Directors of the Applicant Companies has approved the Scheme of Amalgamation at their respective Board Meetings held on 21.04.2023. Copies of respective Board Resolutions are placed on record.

   (iii) The Transferor Company M/s. CIMS Hospital Private

Limited is a private limited company incorporated on 04.09.2001 under the provisions of the Companies Act, 1956 in Gujarat in the name of 'CARE Cardiovascular Consultants Private Limited'. Pursuant to issue of fresh certificate of incorporation consequent upon change of name dated 10.03.2010, the name of the applicant Transferor Company was changed from 'CARE Cardiovascular Consultants Private Limited' to 'CIMS Hospital Private Limited'. It is engaged in the business of running of hospital under the name of CIMS Hospital Private Limited which is a JCI and NABH accredited Hospital in Ahmedabad. Its Equity Shares are not listed on any stock exchange.

The authorized, issued, subscribed and paid-up share capital of the applicant transferor company as on 31.03.2022 is as under:-

Share Capital	Amount in INR
1,00,00,000 Equity Shares of INR 10/- each	10,00,00,000
Total	10,00,00,000
Issued, Subscribed and Paid-up Share Capital	
8,182,161 Equity Shares of INR 10/- each	8,18,21,610
Total	8,18,21,610

Subsequent to the above date and till the date of approval of the Scheme by the Board of Directors, there has been no change in the authorized, issued, subscribed and paid-up share capital of the applicant transferor company.

As on the date of approval of the Scheme by the Board of Applicant Transferor Company, 75.69% of the equity share capital of Applicant Transferor Company is held by Applicant Transferee Company. Accordingly, Applicant Transferor Company is a subsidiary of Applicant Transferee Company.

(iv) The Transferee Company M/s. Marengo Asia Healthcare Limited company is a private limited company, incorporated on 21.10.2020 under the applicable provisions of the Companies Act, 2013 in Haryana. Subsequently, pursuant to issue of Certificate of Registration of Regional Director order for change of State dated 27.04.2022, issued by Registrar of Companies, Ahmedabad, the registered office was shifted from Haryana to Gujarat.

The authorized, issued, subscribed and paid-up share capital of the applicant transferor company as on 31.03.2022 is as under:-

Share Capital	Amount in INR
3,00,000 Equity Shares of INR 10/- each	30,00,000
Total	30,00,000
Issued, Subscribed and Paid-up Share Capital	
99,278 Equity Shares of INR 10/- each	9,92,780
Total	9,92,780

As on 21.04.2023, the revised authorized, issued, subscribed and paid-up share capital of applicant Transferee Company is as under:-

Share Capital	Amount in INR
1,93,00,000 Equity Shares of INR 10/- each	19,30,00,000
7,00,000 preference shares of INR 10/- each	70,00,000
Total	20,00,00,000
Issued, Subscribed and Paid-up Share Capital	
1,22,56,549 Equity Shares of INR 10/- each	12,25,65,490
Total	12,25,65,490

(v) The Applicant Companies are empowered by their respective Memorandum of Association and Articles of Association to enter into a Scheme of Amalgamation. Copies of Memorandum of Association and Articles of Association of the Applicant Companies are placed on record.

The audited financial statements as on 31.03.2022 and provisional financial statements as on 31.12.2022 of the Applicant Companies are placed on record.

A copy of the Scheme is annexed to the application as Annexure-D.

(vi) The certificate issued by the statutory auditors of the Applicant Companies to the effect that the accounting treatment specified in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013, is annexed with the application as Annexure-E.

(vii) The Applicant Companies have also placed on record the valuation report dated 21st April, 2023 given by VIRA Financial Advisors Private Limited, Registered Valuer, a copy whereof is annexed as Annexure H to the application.

(viii) The Applicant Companies are part of the same group. Accordingly, the provisions of the Competition Act, 2002 are not applicable in the present case as merger or amalgamation of two enterprises where one of the enterprises has more than fifty per cent (50%) shares or voting rights of the other enterprises is specifically exempt under Schedule I of The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011.

(ix) Notice to Reserve Bank of India is not required as there are no foreign shareholders in the applicant Transferor Company and hence, no shares are proposed to be issued to a foreign shareholder.

(x) The applicant Transferee Company has 1 (one) foreign shareholder. Considering the nature and business and also considering the fact that no new shares will be issued to the shareholders of the Transferee Company, approval of the Reserve Bank of India, will not be necessary for the purpose of the present Scheme.

(xi) Notice to Securities and Exchange Board of India and Stock Exchanges is also not required as the applicant companies are not listed.

(xii) There are no investigations or proceedings under the Companies Act, 1956 / Companies Act, 2013 that have been instituted or are pending in relation to the Applicant Companies.

(xiii) The directors and key managerial personnel of the Applicant Companies are not in any manner interested in the Scheme except in the capacity of the shareholder.

(xiv) There are no winding up / liquidation proceedings / corporate insolvency resolution process pending against the Applicant Companies.

(xv) The Applicant Companies have following Equity Shareholders, Secured and Unsecured Creditors as per the Certificate issued by the Chartered Accountant:-

Sr. No.	Name of the Company	No. of Equity Shareholders	No. of Secured Creditors	No. of Unsecured Creditors
1	CIMS Hospital Private Limited	28 **(As on 31.03.2023)**	1 **(As on 24.04.2023)**	289 **(As on 24.04.2023)**
2	Marengo Asia Healthcare Private Limited	10 **(As on 31.03.2023)**	1 **(As on 31.03.2023)**	10 **(As on 31.03.2023)**

(xvi) *Rationale of the Scheme*

a) Transferee Company with the objective of expanding its business operations acquired the business of the Transferor Company through purchase of 75.69% (on fully diluted basis) equity shares of the Transferor Company. Pursuant to this Scheme, the Transferee Company intends to consolidate the operations of the Transferor Company with itself by way of merger of the Transferor Company into the Transferee Company

.This is in line with the Transferee Company's strategy of business expansion and inorganic growth.

b) *The management of the Transferor Company and the Transferee Company believe that amalgamation of the Transferor Company with the Transferee Company, inter alia, would have the following benefits:*

(i) *consolidation of business activities into one single entity will lead to elimination of duplication in administrative costs and multiple record-keeping and increase operational and management efficiency and synergy resulting in cost savings and enable Marengo to participate more profitably in an increasingly competitive market;*

(ii) *more focus and concentrated efforts by management to grow the business with faster and effective decision making by eliminating unnecessary multiple and burdensome communication and coordination effort across different entities;*

(iii) *the merger will provide an opportunity to leverage combined assets; capabilities, experience and infrastructure of both entities and build a stronger sustainable business and enable optimal utilization of existing resources;*

(iv) *integrate business functions and enable the management to pool human resources with diverse skills, talent and experience of both the companies for common advantage and for further growth and diversification in the business;*

(v) simplification of corporate structure and reduction of legal and regulatory compliances relating to the Transferor Company;

(vi) create enhanced value for all stakeholders of the respective companies; and

(vii) in summary, consolidation of business will result in expansion of operations and cost reduction and would enable the Transferee Company to self-finance for the above-referred benefits it is likely to receive as part of the merger of the Transferor Company with the Transferee Company.

5. We have heard Ld. Counsel Ms. Dharmishta Raval representing the Applicant Companies and perused the documents annexed with the application. It appears that the present Company Application complies with all provisions of Sections 230-232 of the Companies Act, 2013 and Rules provided thereunder. Taking into consideration the submissions and the documents filed therewith, we issue the following directions:-

(i) The meeting of the Equity Shareholders of the Transferor Company is dispensed with, in view of the consent affidavit of all the Equity shareholders.

The meeting of the Secured Creditor of the Transferor Company is dispensed with, in view of the consent affidavit of the sole Secured Creditor.

The Applicant Transferor Company is directed to convene and hold the meeting of the Unsecured Creditors.

The meeting of the Unsecured Creditors shall be convened on 03.11.2023 at 15:00 pm at Auditorium, CIMS Hospital Private Limited, Plot No. 67/1, Opp. Panchamrut Bunglows, Near Shukan Mal, Off. Science City Road, Sola, Ahmedabad - 380060, Gujarat.

(ii) The meeting of the Equity Shareholders of the Applicant Transferee Company is dispensed with, in view of the consent affidavit of all the Equity shareholders.

The meeting of the Secured Creditor of the Applicant Transferee Company is dispensed with, in view of the consent affidavit of the sole Secured Creditor.

The meeting of the Unsecured Creditors of the Applicant Transferee Company is dispensed with, in view of the consent affidavits of more than 90% of the Unsecured Creditors.

(iii) At least one month before the date of the aforesaid meeting, an advertisement about convening of the said meeting of the Unsecured Creditors of the Applicant Transferor Company, indicating the date, place and time as aforesaid, shall be published in "Business Standard", in English and in "Sandesh", Gujarati, both in Ahmedabad Edition. The publication shall indicate the time within which copies of the Scheme of Amalgamation shall be made available to the concerned persons free of charge from the registered office of the Applicant Transferor Company. The publication shall

also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act can be obtained free of charge from the registered office of the Applicant Transferor Company.

(iv) In addition, at least one month before the date of the aforesaid meeting of the Unsecured Creditors of the Applicant Transferor Company to be held as aforesaid, a notice convening the said meeting, indicating the day, date, place and time as aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 and Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, shall be sent to the each of the Unsecured Creditors of the Applicant Transferor Company at their respective registered or last known addresses either by Registered Post or Speed Post / Airmail or E-Mail or by Courier or by Hand Delivery. The Notice shall be sent to the Unsecured Creditors of the Applicant Transferor Company with reference to the list of the persons appearing on the record of the Applicant Companies as on 1st August 2023.

(v) Mr. Pruthvi Shah, Practicing Chartered Accountant and in his absence Mr. Karan Sanghani Advocate shall be the Chairman/Chairperson of the aforesaid meeting of the Unsecured Creditors of the Applicant Transferor Company to be held on 03.11.2023 and in respect of

any adjournment thereof.

(vi) Mr. Jitendra Leeya, Practicing Company Secretary and in his absence Mr Gaurang Shah is appointed as Scrutinizer for the aforesaid meeting of the Unsecured Creditors of the Applicant Transferor Company and in respect of any adjournment thereof.

(vii) The Chairman or Chairperson appointed for the aforesaid meeting of the Unsecured Creditors of the Applicant Transferor Company shall issue advertisement and send out the notice of the meeting referred to above. The Chairman / Chairperson is free to avail the services of the Applicant Transferor Company or any agency for carrying out the aforesaid directions.

(viii) The Chairman or Chairperson shall have all powers under the Articles of Association of the Applicant Transferor Company and also under the Rules in relation to the conduct of meetings, including for deciding any procedural questions that may arise at the meetings or adjournment(s) thereof proposed at the said meeting, amendment(s) to the aforesaid scheme or resolutions, if any, proposed at the aforesaid meeting by any person(s) and to ascertain the decision of the meetings of the Unsecured Creditors of the Applicant Transferor Company.

(ix) The quorum for the meeting of the Unsecured Creditors will be determined by the Chairman in such a manner

that creditors present in the meeting represent at least 25% and 50% in value as a whole of the class of creditors.

In case, the quorum is not present within half an hour from the time appointed for holding the meetings, then the Chairman shall adjourn the meeting to the same day in the next week at the same time and place. The intimation about the adjourned meetings should be given to each creditor as the case may be through e-mail or by any other mode. If the quorum is still not present on such adjourned date, then the Chairman may furnish a report to that effect to NCLT within seven days thereafter.

(x) The meetings shall be held physically or through video conferencing and voting shall be conducted through poll by polling paper or e-voting facility and the Unsecured Creditors present in person or by proxy shall be entitled to vote thereat. Subject to the directions and matters dealt with herein, the procedure for remote e-voting and voting by polling paper at the venue of the meeting shall be in so far as the same is prescribed by the Companies Act, 2013 read with the Companies (Management and Administration) Rules, 2014, Secretarial Standards on General Meetings and the forms prescribed thereunder shall be followed with such variations as may be required in the circumstances and in relation to the resolution for approval of the Scheme of Amalgamation.

(xi) The Chairperson shall be responsible to report the result of the meeting to the Tribunal in Form No. CAA-4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 7 (Seven) days of the conclusion of the meetings. The Chairperson would be fully assisted by the Authorized Representative/Company Secretary of the Applicant Transferor Company and the Scrutinizer in preparing and finalizing the reports.

(xii) All the aforesaid directions shall be complied with in accordance with the provisions of the Companies Act, 2013, and the Rules made thereunder, as applicable for the proposed Scheme of Amalgamation and any related or incidental matters, including but not limited to forms or formats as may be prescribed under the Rules, guidelines, standards, etc.

(xiii) We direct the applicants to pay a sum of Rs.50,000/- to the Chairman and a sum of Rs.25,000/- to the Scrutinizer as their fees

6. In compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (CAA) Rules, 2016, the Applicant Companies shall send a notice in Form No. CAA.3 along with a copy of the Scheme of Amalgamation, explanatory statement and the disclosures mentioned under Rule 6 shall be sent to **(i)** the Central Government through the Regional Director, North Western Region, **(ii)** the Registrar of Companies, **(iii)** the Income Tax Authority and **(iv)** the Official Liquidator (in respect of the Transferor Company only),stating that the

representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed Scheme of Amalgamation. The said notices shall be sent forthwith by registered post or by speed post or by courier of by hand delivery or by an email at the office of the authority as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230, shall send the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing with it will be deemed that they have no representation to make on the proposed Scheme of Amalgamation.

7. The Applicant Companies shall file a compliance affidavit with the Registry with regard to the directions given in this order.

8. List the matter on 10.11.2023 before the Joint Registrar for filing Chairman's report.

-Sd-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

Sudha-Steno