

**THE NATIONAL COMPANY LAW TRIBUNAL,
COURT – I, MUMBAI BENCH**

CP (CAA)36/MB/2024

A/W

CA(CAA)/257/MB/2023

In the matter of

The Companies Act, 2013 (18 of 2013);

AND

*In the matter of Sections 232 r/w 230
and other applicable provisions of the
Companies Act, 2013 and Rules framed
thereunder as in force from time to time;*

AND

In the matter of

Scheme of Amalgamation

Spaceway Wellness Private Limited

CIN:- U85110MH2022PTC402265

...Applicant Company
/**Transferor Company**

Indira IVF Hospital Private Limited

CIN: - U85110MH2015PTC406059

...Applicant Company 1
/**Transferee Company**

Order delivered on 24.04.2024

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)

Hon'ble Member (Judicial)

Appearances (through)

For the Petitioner(s) : Mr Anindya Basarkod, Mr Peshwan Jehangir, Mr Mehul Shah, Mr Aman Yagnik, Mr Rushabh Gala, Ms Roselin Alex, Ms Dhruvi Dharia i/b Khaitan & Co for the Applicant Companies

ORDER

Per: CORAM

1. Heard learned Counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Company Scheme Petition and nor has any party controverted any averments made in the Company Scheme Petition except otherwise stated hereunder.
2. The sanction of this Tribunal is sought under Section 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013 (“Act”) to the Scheme of Amalgamation between **Spaceway Wellness Private Limited** (Transferor Company) with **Indira IVF Hospital Private Limited** (Transferee Company) and their respective shareholders (“Scheme”).
3. The First Petitioner Company is engaged in the business of hospitals, health centres, medical clinics, nursing homes, in and outpatient services for treatment of persons suffering from infertility by performing ART techniques including IVF and IUI treatments, and its combinations as well as other related medical services.

4. The Second Petitioner Company is principally engaged in the provision of medical treatment of infertility, performing in-vitro fertilisation (IVF), intra-uterine insemination (IUI) and other allied services. The Second Petitioner Company has a network of IVF speciality hospitals spread across multiple locations in India.
5. The registered offices of the Petitioner Companies are situated in Mumbai, Maharashtra and hence the subject matter of the captioned Company Scheme Petition is within the jurisdiction of the Hon'ble National Company Law Tribunal, Mumbai Bench (**"Tribunal"**).
6. The rationale in the Scheme is as under:
 1. *"The amalgamation of the Transferor Company with the Transferee Company will result in the following benefits:*
 - (a) *Create operational synergies which can result in achieving economies of scale and higher revenues and profitability for the businesses of the Parties;*
 - (b) *Rationalisation, simplification and centralization of the management and administrative structure will increase productivity gains by pooling of financial, managerial and technical resources, personnel capabilities, skills, expertise and technologies of the Parties and reduce the overall running and overhead costs; and*
 - (c) *Reduction in multiple entities and regulatory compliances will further reduce the overall compliance and overhead costs of the Parties.*
 2. *The Scheme is in the best interests of the shareholders, employees and the creditors of each of the Parties."*
7. The Company Scheme Petition No. C.P.(CAA)/36(MB)2024 was filed in consonance with the Order dated 9 February 2024

passed by this Tribunal in the Company Scheme Application No. CA(CAA)/257/MB/2023 (“**said Order**”).

8. The Petitioner Companies have also served notice of date of final hearing and final disposal of Company Scheme Petition upon the sectoral/regulator authority as per the directions of this Tribunal. Further, the Petitioner Companies have filed an Affidavit of Service on 8 April 2024, evidencing the newspaper publications and service of notices upon the said regulatory authorities. The Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal.
9. The Regional Director has filed his Report dated 17.04.2024 making certain observations and the Petitioner Companies have undertaken/made following submission that :
 - i. The fee paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation;
 - ii. In terms of Clause 10 of the Scheme, the authorised share capital of the First Petitioner Company will be combined with the authorised share capital of the Second Petitioner Company in the manner provided in the Scheme and the Petitioner Companies will comply with the provisions of Section 232(3)(i) of the Act to the extent applicable;
 - iii. The creditors of the Petitioner Companies shall, in no way, be affected by the Scheme, as there is no reduction in the amount payable to any of the creditors and no compromise or arrangement is contemplated with the creditors;

- iv. The Scheme enclosed to the Company Scheme Application and Company Scheme Petition are one and the same and there is no discrepancy / change made.;
 - v. The Scheme is in compliance with the requirements specified in Section 232(6) of the Act and the MCA Circular;
 - vi. The Scheme is in compliance with Section 2(1B) of the Income-tax Act, 1961 and after effectiveness of the Scheme, the Second Petitioner Company will comply with provisions of Section 2(1B) and other applicable provisions of the Income-tax Act, 1961 and rules thereunder;
 - vii. Pursuant to the provisions of Section 90 and other applicable provisions of the Act read with the Companies (Significant Beneficial Owners) Amendment Rules, 2019 there is no individual in the First Petitioner Company and the Second Petitioner Company who can be identified as a significant beneficial owner and the Petitioner Companies have duly complied with provisions of Section 90 of the Act and the Companies (Significant Beneficial Owners) Amendment Rules, 2019. In view of the aforesaid, the Petitioner Companies state that, they are not required to file e-Form BEN-2.
 - viii. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.
10. Mr. Tushar Wagh, Deputy Director, Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner

Companies in rejoinder are satisfactory and they have no further objection to the Scheme.

11. The Official Liquidator, Bombay High Court (“**Official Liquidator**”) has filed its report dated 15 April 2024 (“**OL Report**”) and the Petitioner Companies through reply have undertaken that:

- i. The fee paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation;
- ii. In terms of Clause 10 of the Scheme, the authorised share capital of the First Petitioner Company will be combined with the authorised share capital of the Transferee Company in the manner provided in the Scheme and the Petitioner Companies will comply with the provisions of Section 232(3)(i) of the Act to the extent applicable.

12. The Official Liquidator in his Report also records that on perusal of record of company, it is noticed that the affairs of the transferor company have been conducted in a proper manner Accordingly, the Transferor Companies may be ordered to be dissolved without winding up.

13. The Income Tax Authority concerned of the First Petitioner Company has provided its no objection letter to the Scheme.

14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. Since all the requisite statutory

compliances have been fulfilled, the said Company Scheme Petition is made absolute in terms of the prayer Clauses 25 (a) to 25 (f) thereof.

15. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this Scheme and it shall be open to the Income Tax Authorities to take necessary action to deal with, in relation to tax or any other kind of obligations of Transferor Company against the Transferee Company, as permissible under the Income Tax Laws.
16. The Scheme is hereby sanctioned with the Appointed Date fixed as the opening business hours of 1st August 2023.
17. The First Petitioner Company be dissolved without winding up.
18. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in E-form INC 28 within 30 days from the date of receipt of the certified copy of this Order by the Petitioner Companies.
19. The Petitioner Companies to lodge a copy of this Order along with the Scheme duly authenticated/certified by the Deputy Registrar/ Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified order from the Registry of this Tribunal.

20. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the Deputy Registrar or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

21. Ordered accordingly. File to be consigned to records.

Sd/-

Prabhat Kumar

Member (Technical)

Sd/-

Justice V.G. Bisht

Member (Judicial)