

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - II

C.A.(CAA)/273(MB)2023

In the matter of

The Companies Act, 2013

AND

In the matter of

Sections 230 to 232 and other applicable provisions
of the Companies Act, 2013

AND

In the matter of

Scheme of Amalgamation

of

Nova Pulse IVF Clinic Ahmedabad Private
Limited

*(‘the Transferor Company 1’ / ‘the Applicant
Company1’)*

and

Nova Fertility East Private Limited

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*(‘the Transferor Company 2’ / ‘the Applicant
Company2’)*

with

Rhea Healthcare Private Limited

*(‘the Transferee Company’ / ‘the Applicant Company
3’)*

and

their respective shareholders

NOVA PULSE IVF CLINIC AHMEDABAD PRIVATE LIMITED

(CIN: U85110MH2003PTC399964)

... Transferor Company 1 / the Applicant Company 1

NOVA FERTILITY EAST PRIVATE LIMITED

(CIN: U93000MH2014PTC416797)

... Transferor Company 2 / the Applicant Company 2

RHEA HEALTHCARE PRIVATE LIMITED

(CIN: U85110MH2008PTC375300)

... Transferee Company / the Applicant Company 3

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(hereinafter collectively referred to as "the Applicant Companies")

Order delivered on: 15th April, 2024

Coram:

Anil Raj Chellan

Kuldip Kumar Kareer

Member (Technical)

Member (Judicial)

Appearances:

For the Applicant Companies - Adv. Shyam Kapadia, Counsel a/w Adv Sonam Mhatre a/w Adv Mohnish Bhasin a/w Adv Sakshi Mehta i/b M/s Dhaval Vussonji & Associates, Advocates & Solicitors

ORDER

Per. Coram

1. The Learned Counsel for the Applicant Companies submits that the present Scheme is Scheme of Amalgamation of **Nova Pulse IVF Clinic Ahmedabad Private Limited** (*the Transferor Company 1' / 'the Applicant Company 1'*) and **Nova Fertility East Private Limited** (*the Transferor Company 2' / 'the Applicant*

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Company 2) and **Rhea Healthcare Private Limited** (*the Transferee Company* / *the Applicant Company 3*) and their respective shareholders. (*Scheme*) under Sections 230 to 232 of the Companies Act 2013.

2. The Learned Counsel for the Applicant Companies submits that the Scheme has been approved by the Board of Directors of the Applicant Companies in their respective meetings vide board resolutions dated 23rd May 2023. **The Appointed Date of the Scheme is 1st April 2023.**
3. The Learned Counsel for the Applicant Companies submits that the registered office of the Applicant Companies is situated within the State of Maharashtra and this Honorable Tribunal has jurisdiction to entertain the present Application.
4. The Learned Counsel for the Applicant Companies submit that the Applicant Companies are engaged in the following business:
 - a. The Transferor Company 1 / the Applicant Company 1 is engaged in the business of providing assisted fertility treatments, assisted insemination services, In vitro fertilization services and treatments for Infertility.

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- b. The Transferor Company 2 / the Applicant Company 2 is engaged in the business of providing services in In Vitro Fertilization and other In Vitro related healthcare services.
- c. The Transferee Company / the Applicant Company 3 is engaged in business of running 14 hospitals and 2 clinics under the brand name of Motherhood hospitals.

5. The Learned Counsel for the Applicant Companies further submit that the rationale of the Scheme are as follows:

The Applicant Companies are engaged in similar business and the Applicant Companies believe that the following benefits shall accrue:

- a) Consolidation and integration will result in greater / economies of scale, earning predictability, stronger revenue and improved competitiveness thereby reducing business risks for mutual benefit of the stakeholders;
- b) Streamlining and simplification of the group structure leading to better administration and cost savings;
- c) Significant reduction in the multiplicity of legal and regulatory compliances and cost required at present to be carried out by the entities; and
- d) Concentrated effort and focus by the management to grow the business by eliminating duplicative communication and burdensome co-ordination efforts.

6. Learned Counsel for the Applicant Companies further submits that, upon the Scheme becoming effective, in consideration of the transfer and vesting of the undertaking of the Transferor Companies in the Transferee Company in terms of the Scheme, the consideration shall be discharged by the Transferee Company in the following manner:

Equity Shareholders of Transferor Company 1

“Upon the Ongoing Scheme becoming effective, the Transferor Company 1 shall become a wholly owned subsidiary of the Transferee Company. Therefore, upon amalgamation of the Transferor Company 1 into the Transferee Company, no shares of the Transferee Company shall be issued or allotted to the members of the Transferor Company 1.”

Equity Shareholders of Transferor Company 2

“998 (Nine Hundred and Ninety-Eight only) fully paid-up Equity Shares of INR 1 each of the Transferee Company shall be issued and allotted as fully paid up to the equity shareholders of the Transferor Company 2 for every 1,000 (One Thousand only) fully paid-up Equity Share of INR 10 each held in the Transferor Company 2.”

However, since a company cannot issue/hold its own shares, no consideration shall be issued in respect of shares already held by the Applicant Company 3 in

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the Applicant Transferor Companies and in terms of Clause 9.4 of the proposed Scheme such investment shall stand cancelled.

7. Learned Counsel for the Applicant Companies submits that the share capital structure of the Applicant Companies is as follows:

i) The Authorized, Issued, Subscribed and Paid-up share capital of the Transferor Company 1 / the Applicant Company 1 as on the date of approval of the Scheme by the Board of Directors is as under:

Particulars	Amount in INR
Authorized share capital	
1,50,000 Equity Shares of INR 10/- each	15,00,000/-
Total	15,00,000/-
Issued, subscribed fully paid-up share capital	
7,550 Equity Shares of INR 10/- each	75,500/-
Total	75,500/-

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- ii) The Authorized, Issued, Subscribed and Paid-up share capital of the Transferor Company 2 / the Applicant Company 2 as on the date of approval of the Scheme by the Board of Directors is as under:

Particulars	Amount in INR
Authorized share capital	
5,00,000 Equity Shares of INR 10/- each	50,00,000/-
Total	50,00,000/-
Issued, subscribed fully paid-up share capital	
4,65,000 Equity Shares of INR 10/- each	46,50,000/-
Total	46,50,000/-

- iii) The Authorized, Issued, Subscribed and Paid-up share capital of the Transferee Company / the Applicant Company 3 as on the date of approval of the Scheme by the Board of Directors is as under:

Particulars	Amount in INR
Authorized share capital	
2,95,00,000 Equity Shares of INR 1/- each	2,95,00,000/-
5,00,000 Compulsorily Convertible Preference Shares of INR 1/- each	5,00,000/-

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Total	3,00,00,000/-
Issued, subscribed and paid-up share capital	
54,39,280 Equity Shares of INR 1/- each	54,39,280/-
Total	54,39,280/-

8. Post giving effect to the Scheme, the assets of the Transferee Company / the Applicant Company 3 will be sufficient to discharge the liabilities and the Scheme shall not adversely affect the rights of any creditors of the Applicant Companies in any manner whatsoever.
9. There are 2 (two) shareholders in the Transferor Company 1 / the Applicant Company 1. The list of shareholders of the Transferor Company 1 / the Applicant Company 1 as on 31st January 2024 along with the certificate by the Chartered Accountant verifying the correctness of the same on 1st March 2024 is annexed to the Additional Affidavit dated 2nd March 2024 forming part of the Company Scheme Application and marked as “**Annexure E1**” at “Page 218-219” of the Additional Affidavit dated 2nd March 2024.
10. All the shareholders of the Transferor Company 1 / the Applicant Company 1 have considered the Scheme and have given their consent in writing agreeing to the Scheme. The copies of the consent affidavits of 1 (one) shareholder of the

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Transferor Company 1 / the Applicant Company 1 is annexed to the Additional Affidavit dated 2nd March 2024 forming part of the Company Scheme Application and marked as “**Annexure C**” at “Page 184-187” of the Additional Affidavit dated 2nd March 2024 and the consent affidavit of the other shareholder is provided vide Additional Affidavit dated 29th January 2024 which is annexed and marked as “**Annexure D (Colly)**” at “Page 188-193” to the Additional Affidavit dated 2nd March 2024.

11. There are 3 (Three) shareholders in the Transferor Company 2 / the Applicant Company 2. The list of shareholders of the Transferor Company 2 / the Applicant Company 2 as on 31st January 2024 along with the certificate by the Chartered Accountant verifying the correctness of the same on 1st March 2024 is annexed to the Additional Affidavit dated 2nd March 2024 forming part of the Company Scheme Application and marked as “**Annexure E2**” at “Page 220-221” of the Additional Affidavit dated 2nd March 2024
12. All the shareholders of the Transferor Company 2 / the Applicant Company 2 have considered the Scheme and have given their consent in writing agreeing to the Scheme. The copies of the consent affidavits of 2 (two) shareholders of the Transferor Company 2 / the Applicant Company 2 are annexed to the Company Scheme Application and marked as “**Annexure G2 (Colly)**” at “Page 478-485” of the Company Scheme Application and the consent affidavit

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of the remaining shareholder is provided vide Additional Affidavit dated 29th January 2024 which is annexed and marked as “**Annexure D (Colly)**” at “Page 188-193” to the Additional Affidavit dated 2nd March 2024.

13. There are 15 (Fifteen) shareholders in the Transferee Company / the Applicant Company 3. The list of shareholders of the Transferee Company / the Applicant Company 3 as on 31st January 2024 along with the certificate by the Chartered Accountant verifying the correctness of the same on 1st March 2024 is annexed to the Additional Affidavit dated 2nd March 2024 forming part of the Company Scheme Application and marked as “**Annexure E3**” at “Page 222-224”.

14. All the shareholders of the Transferee Company / the Applicant Company 3 have considered the Scheme and have given their consent in writing agreeing to the Scheme. The copies of the consent affidavits of 12 (twelve) shareholders of the Transferee Company / the Applicant Company 3 are annexed to the Company Scheme Application and marked at “**Annexure H2 (Colly)**” at “Page 492-539” of the Company Scheme Application and the consent affidavit of the remaining 3 (three) shareholders is provided vide Additional Affidavit dated 29th January 2024 which is annexed and marked as “**Annexure D (Colly)**” at “Page 208-216” to the Additional Affidavit dated 2nd March 2024.

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15. There are NIL secured creditors in the Transferor Company 1 / the Applicant Company 1. The list of secured creditors of the Transferor Company 1 / the Applicant Company 1 as on 31st January 2024 along with the certificate by the Chartered Accountant verifying the correctness of the same on 1st March 2024 is annexed to the Additional Affidavit dated 2nd March 2024 forming part of the Company Scheme Application and marked as “**Annexure H-1**” at “Page 237-239”.

16. There are NIL secured creditors in the Transferor Company 2 / the Applicant Company 2. The list of secured creditors of the Transferor Company 2 / the Applicant Company 2 as on 31st January 2024 along with the certificate by the Chartered Accountant verifying the correctness of the same on 1st March 2024 is annexed to the Additional Affidavit dated 2nd March 2024 forming part of the Company Scheme Application and marked as “**Annexure H-2**” at “Page 240-248”.

17. There are 6 (Six) secured creditors in the Transferee Company / the Applicant Company 3. The list of secured creditors of the Transferee Company / the Applicant Company 3 as on 31st January 2024 along with the certificate by the Chartered Accountant verifying the correctness of the same on 1st March 2024 is annexed to the Additional Affidavit dated 2nd March 2024 forming part of the

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Company Scheme Application and marked as “**Annexure H-3**” at “Page 249-290”.

18. All secured creditors of the Transferee Company / the Applicant Company 3 have considered the Scheme and have given their consent in writing to the Scheme. The copies of the consent affidavits of 4 (four) secured creditors of the Transferee Company / the Applicant Company 3 are annexed with the Company Scheme Application and marked at “**Annexure K2 (Colly)**” at “Page 667-682” and the consent of remaining 2 (two) secured creditors are annexed to the Additional Affidavit dated 2nd March 2024 and marked at ‘**Annexure-G (Colly)**’ at “Page 229-236”.

19. There are 79 (Seventy-Nine) unsecured creditors in the Transferor Company 1 / the Applicant Company 1. The list of unsecured creditors of the Transferor Company 1 / the Applicant Company 1 as on 31st January 2024 along with the certificate by the Chartered Accountant verifying the correctness of the same on 1st March 2024 is annexed to the Additional Affidavit dated 2nd March 2024 forming part of the Company Scheme Application and marked as “**Annexure H-1**” at “Page 237-239”.

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20. There are 399 (Three Hundred and Ninety-Nine) unsecured creditors in the Transferor Company 2 / the Applicant Company 2. The list of unsecured creditors of the Transferor Company 2 / the Applicant Company 2 as on 31st January 2024 along with the certificate by the Chartered Accountant verifying the correctness of the same on 1st March 2024 is annexed to the Additional Affidavit dated 2nd March 2024 forming part of the Company Scheme Application and marked as “**Annexure H-2**” at “Page 240-248”.
21. There are 2,475 (Two Thousand Four Hundred and Seventy-Five) unsecured creditors in the Transferee Company / the Applicant Company 3. The list of unsecured creditors of the Transferee Company / the Applicant Company 3 as on 31st January 2024 along with the certificate by the Chartered Accountant verifying the correctness of the same on 1st March 2024 is annexed to the Additional Affidavit dated 2nd March 2024 forming part of the Company Scheme Application and marked as “**Annexure H-3**” at “Page 249-290”.
22. The Learned Counsel for the Applicant Companies further submits that as far as the rights and interests of the Unsecured Creditors of the Applicant Companies are concerned, they will not be affected by the proposed Scheme since post Scheme, the assets of the Transferee Company / Applicant Company 3 will be sufficient to discharge the liabilities and further it does not involve any

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compromise or arrangement with any of the unsecured creditors of the Applicant Companies.

23. The Exchange Ratio of shares in the proposed Scheme has been provided by the Registered Valuer at his Valuation report which is annexed with the Company Scheme Application and marked as “**Annexure L**” at “Page 683-707”.
24. The certificate by the Statutory Auditor in respect of the Transferee Company/ the Applicant Company 3 verifying conformity with the Accounting Standards under Section 133 of the Companies Act, 2013 is annexed with the Company Scheme Application and marked as “**Annexure M**” at “Page 708-710”.
25. Heard the learned Advocate for the Applicant Companies, perused the records and documents annexed to the Company Scheme Application, filed in the instant proceedings and after hearing the submissions made on behalf of the Applicant Companies, the following orders are passed: -
 - i) In view of the fact that all the shareholders of the Applicant Companies have duly consented in writing by way of Affidavits to the proposed Scheme, duly certified by the Chartered Accountant, the requirements of convening and

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holding of separate meetings of the shareholders of the Applicant Companies to ascertain the wishes of the shareholders of all the Applicant Companies for the Scheme, are dispensed with

- ii) Since there are no secured creditors in the Transferor Company 1 / the Applicant Company 1, as certified by the Chartered Accountant, the question of convening and holding the meeting of the secured creditors of the Transferor Company 1 / the Applicant Company 1 does not arise;
- iii) Since there are no secured creditors in the Transferor Company 2 / the Applicant Company 2, as certified by the Chartered Accountant, the question of convening and holding the meeting of the secured creditors of the Transferor Company 2 / the Applicant Company 2 does not arise;
- iv) In view of the fact that all the secured creditors of the Transferee Company / the Applicant Company 3 has duly consented in writing by way of Affidavits, to the proposed Scheme, duly certified by the Chartered Accountant, the requirements of convening and holding separate meetings of the secured creditors of the Transferee Company / the Applicant Company 3 to ascertain the wishes of the secured creditors of the Transferee Company / Applicant Company 3 for the Scheme are dispensed with;

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v) With respect to the Unsecured Creditors, this Bench hereby directs the applicant companies either to procure consent affidavits of at least Ninety percent of its Unsecured Creditors as per Section 230(9) of the Companies Act, 2013 and annex the same with the Company petition or convene and hold meetings of the Unsecured Creditors of all the Applicant Companies.

vi) Let the notice be served by the Applicant Companies, as per the requirements of sub-section (5) of Section 230 of the Companies Act, 2013, along with the copy of the Application and all other documents including the copy of the Scheme and the statement disclosing necessary details to the following authorities by Registered Post AD / Speed Post / Courier/ Hand delivery / Email as may be feasible:

- Central Government, through the Regional Director, Western Region;
- Ministry of Corporate Affairs, Registrar of Companies, Maharashtra;
- The concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income-Tax with PAN Numbers;
- The concerned Goods and Service Tax (GST) Authority;
- The Reserve Bank of India, by the Transferee Company / the Applicant Company 3; and

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- The Official Liquidator, having jurisdiction over the Transferor Company 1 / the Applicant Company 1 and the Transferor Company 2 / the Applicant Company 2.
- vii) The Applicant Companies shall file affidavit not less than 7 days before the date of hearing of Second Motion Petition.
- viii) The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the Applicant Companies and/or their Advocates, in advance.
- ix) If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme.
- x) The objections, if any, to the Scheme contemplated by the Authorities to whom notice has been ordered to be given, may be filed within the time stipulated, failing which it will be considered by this Tribunal that there is no objection to the approval of the Scheme on the part of the said Authorities, subject to other conditions being applicable under the Companies Act, 2013 and relevant rules made thereunder;

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26. The Company Application bearing C.A.(CAA)/273(MB)2023 is, accordingly, disposed of.
27. Certified copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.

Sd/-

ANIL RAJ CHELLAN

MEMBER(TECHNICAL)

Sd/-

KULDIP KUMAR KAREER

MEMBER(JUDICIAL)