

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

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 09.02.2024

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

1. Heard the Ld. Counsel for the Applicant Companies.
2. The present Scheme is an Application for a Scheme of Amalgamation sought u/s 232 r/w Section 230 of the Companies Act, 2013 and other Applicable Provisions of the Companies Act, 2013 between Applicant Companies i.e. **Spaceway Wellness Private Limited** (Transferor Company) and Indira IVF Hospital Private Limited (Transferee Company) and their respective shareholders.
3. The Board of Directors of Transferor Company and the Transferee Company at its respective Board Meetings held on 15th September, 2023 approved the Scheme. The Appointed Date means the opening business hours of 1st August 2023 or such other date as may be decided by the Board of the Applicant Companies. The Effective Date means the date on which last of the conditions specified in Clause 19 (Conditions Precedent) of the Scheme are complied with.

4. The consideration for the amalgamation of the First Applicant Company with the Second Applicant Company as mentioned in Clause 8 of the Scheme is as under:

“225 equity share of INR 5 (Indian Rupees Five) each of the Transferee Company, credited as fully paid up, for every 10 equity share fully paid up of INR 10 (Indian Rupees Ten) each of the Transferor Company held by such equity shareholder”

5. The circumstances and / or reasons and / or grounds that have necessitated and / or justified the Scheme and some of the major benefits which would accrue from the Scheme are briefly stated below:

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.”*

6. The Share Capital structure of Transferor Company as on 15th September 2023 is as follows:

Particulars	Amount
Authorized Capital	
50,00,000 Equity Shares of Rs. 10/- each	50,00,00,000
115,00,00,000, 0.1% compulsory convertible preference shares of Rs.10 each	1150,00,00,000
Total	1155,00,00,000
Issued, Subscribed and Paid up Capital	
10,00,000 Equity Shares of Rs. 10/- each	1,00,00,000
100,00,00,000, 0.1% compulsory convertible preference shares of Rs.10 each	1000,00,00,000
Total	1001,00,00,000
Paid Up Share Capital	
10,00,000 Equity Shares of Rs. 10/- each	1,00,00,000
100,00,00,000, 0.1% compulsory convertible preference shares of Rs.10 each (INR 9.09n paid up)	909,00,00,000
Total	910,00,00,000

Subsequent to the above, there has been no change in the authorised, issued, subscribed and paid-up share capital of the Transferor Company. Further, payment of call money by the shareholders holding partly paid-up 0.01% compulsory convertible preference shares and any issuance of compulsory convertible preference shares to the Transferee Company will result in increase in paid-up share capital of the Transferor

Company. The Transferee Company holds 100% of the preference share capital of the Transferor Company.

7. The Share Capital of the Transferee Company as on the 15th September 2023 is :

Particulars	Amount
Authorized Capital	Amount Rs.
16,00,00,000 Equity Shares of Rs. 5/- each	80,00,00,000
Total	80,00,00,000
Issued, Subscribed and Paid up Capital	
15,00,00,000 Equity Shares of Rs. 5/- each fully paid up	75,00,00,000
Total	75,00,00,000

Subsequent to the above, there has been no change in the authorised, issued, subscribed and paid-up share capital of the Transferee Company. The Transferor Company holds 26% of the equity share capital of the Transferee Company

8. The Learned Counsel for the First Applicant Company submits that as on 4th August 2023, the First Applicant Company has 4 Equity Shareholders holding 10,00,000 fully paid-up equity shares of INR 10/- each. The certificate issued by M/s. A R C H & Associates, Chartered Accountants verifying the aforesaid list of equity shareholders of the First Applicant Company is placed on record. It is further submitted that all the Equity Shareholders of the First

Applicant Company have given their consent in the form of affidavits approving the proposed Scheme and dispensing with the requirement for convening and holding the meeting of the Equity Shareholders of the First Applicant Company. Accordingly, the requirement to convene and hold a meeting of the Equity Shareholders of the First Applicant Company is dispensed with.

9. The Second Applicant Company has 5 Equity Shareholders holding 15,00,00,000, fully paid-up equity shares of INR 5 each. The certificate issued by M/s. A R C H & Associates, Chartered Accountants verifying the aforesaid list of equity shareholders of the Second Applicant Company is placed on record. It is submitted that all the Equity Shareholders of the Second Applicant Company have given their consent in the form of affidavits approving the proposed Scheme and dispensing with the requirement from convening and holding the meeting of the Equity Shareholders. Accordingly, the requirement to convene and hold a meeting of the Equity Shareholders of the Second Applicant Company is dispensed with.
10. The First Applicant Company has 1 Preference Shareholder holding 100,00,00,000 fully paid-up preference shares of INR 10 each (INR 9.09 paid up). The certificate issued by M/s. A R C H & Associates, Chartered Accountants verifying the aforesaid list of preference shareholders of the First Applicant Company is placed on record. It is submitted that the sole Preference Shareholder of the First Applicant Company has given its consent in the form of an affidavit approving the

proposed Scheme and for dispensing the requirement for convening and holding the meeting of the Preference Shareholders. Accordingly, the requirement to convene and hold a meeting of the Preference Shareholders of the First Applicant Company is dispensed with.

11. The Second Applicant Company does not have any Preference Shareholder. Accordingly, the requirement of convening and holding the meeting of the Preference Shareholders of the Second Applicant Company does not arise.
12. The First Applicant Company has 3 Secured Creditors having an outstanding amount of INR 312,25,20,305/-. The certificate issued by M/s. A R C H & Associates, Chartered Accountants verifying the list of Secured Creditors of the First Applicant Company is placed on. It is submitted that all the Secured Creditors of the First Applicant Company have given their consents in the form of affidavits approving the proposed Scheme and for dispensing the requirement for convening and holding the meeting of the Secured Creditors. Accordingly, the requirement to convene and hold meeting of the Secured Creditors of the First Applicant Company is dispensed with.
13. The Learned Counsel submits that the Second Applicant Company does not have any Secured Creditors. Accordingly, the requirement of convening and holding the meeting of the Secured Creditors of the Second Applicant Company does not arise.

14. The First Applicant Company does not have any Unsecured Creditors. Accordingly, the requirement of convening and holding the meeting of the Unsecured Creditors of the First Applicant Company does not arise.

15. The Second Applicant Company has 19 (Nineteen) Unsecured Creditors of the Second Applicant Company having an outstanding amount of INR 18,47,21,619. The certificate issued by M/s. A R C H & Associates, Chartered Accountants verifying the aforesaid list of Unsecured Creditors of the Second Applicant Company is placed on record. It is further submitted that the Second Applicant Company has received consent affidavits from its Unsecured Creditors representing more than 90% in value of the total outstanding amount whereby such Unsecured Creditors have given their consent and approval to the Scheme. Accordingly, the requirement to convene and hold meeting of the Unsecured Creditors of the Second Applicant Company is dispensed with.

16. The Applicant Companies shall serve notice upon:
 - (i) The Central Government through the Regional Director, Western Region, Ministry of Corporate Affairs;
 - (ii) The Registrar of Companies, Mumbai;
 - (iii) The Goods & Services Tax Authority having jurisdiction over the First Applicant Company-

Commissionerate-Udaipur, Division-GST Division-B
Udaipur, Range-GST Range VIII;

- (iv) The Goods & Services Tax Authority having jurisdiction over the Second Applicant Company-Commissionerate- Mumbai-East, Division V, Range-III; and
- (v) Jurisdictional Income Tax Authorities; within whose jurisdiction; the Applicant Company's assessment are made; and the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3 rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in];
- (vi) The Office of Official Liquidator, High Court of Bombay.
- (vii) Any other sectoral regulator as may be directed by this Hon'ble Tribunal.
- (viii) Any sectoral regulator, as applicable, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

If no response is received by the Tribunal from such authorities within 30 (thirty) days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

17. Additionally, the First Applicant Company is directed to serve notice along with a copy of the Scheme upon the Official Liquidator, High Court, Bombay, pursuant to Section 230(5) of the Act read with Rule 8 of CAA Rules. The Official Liquidator, High Court, Bombay shall submit his report to this Hon'ble Tribunal within a period of 30 (thirty) days from the date of the receipt of such notice, failing which it shall be presumed that the Official Liquidator has no objection to the proposed Scheme. A copy of the report shall simultaneously be served upon the First Applicant Company.
18. The Notice shall be served through by Registered Post-AD, Speed Post and email along with copy of Scheme and state that "*If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme*". It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.
19. The Applicant Companies will submit –
 - i. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.
 - ii. List of pending IBC cases, if any, along with all other litigation;
 - iii. pending against the Applicant Companies having material impact on the proposed Scheme.
 - iv. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as

Margin Money details; if any.

20. The Applicant Companies to file an affidavit of service within 10 working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)