

(2021) 11 NCLT CK 0049
In the National Company Law Tribunal
Case No : In CAA-27/PB/2018
A B Medicos Private Limited Vs

Date of Decision : 18-11-2021

Acts Referred:

Companies Act, 2013 — Section 133, 230, 231, 232

Citation : (2021) 11 NCLT CK 0049

Hon'ble Judges : Bhaskara Pantula Mohan, Member (J); Hemant Kumar Sarangi, Member (T)

Bench : Division Bench

Advocate : Harsh Sethi, Sarvapriya Makkar, Himanshu Bhandari, Vipul Agarwal, Dushyant Agarwal, Shankari Mishra

Final Decision : Disposed Of

Judgement

Bhashara Pantula Mohan, Member (Judicial)

1. Under consideration is Company Petition CAA 27(PB)/ 2018 filed under Sections 230 to 232 of the Companies Act, 2013 ("The Act") read with the Companies (Compromises, Arrangements 86 Amalgamations) Rules, 2016. The purpose of the Company Petition is to obtain sanction of the Scheme of Amalgamation (for brevity "The Scheme") of M/s. A B Medicos Private Limited And M/s Aditya Medicos Private Limited And M/s Aesthetica Enterprises Private Limited And M/s Akhil Meditech Private Limited And M/s Ashwin Pharmaceuticals Private Limited And M/s Avee Medi Surgicals Private Limited And M/s Glory Lifesciences Private Limited And M/s Gracia Healthcare For You Private Limited And M/s Himanshu Medicare Private Limited And M/s Hitesh Construction Private Limited And M/s Kunal Medicare Private Limited And M/s Mona Infotech Private Limited And M/s Paradise Realtech Private Limited And M/s Prabhat Healthcare Services Private Limited And M/s Purnendu Traders Private Limited And M/s Radhika Surgical Private Limited And M/s Regal Builders And Promotes Private Limited And M/s Rockland Hospitals Noida Private Limited And M/s Rockland Laboratories Private Limited And M/s Rockland Oil 86 Gas Private Limited And

M/s Sukumar Enterprises Private Limited And M/s Sunskriti Tradex Private Limited And M/s Umesh Pharmaceuticals Private Limited And M/s Vaibhav India Surgicals Private Limited (hereinafter referred to as Petitioner Company/ Transferor Company) and M/s Rock Land Private Limited (hereinafter referred to as Petitioner Company/ Transferee Company) (Transferor Company and Transferee together referred to as "Petitioner Companies,.

2. M/s A B MEDICOS PRIVATE LIMITED (hereinafter referred to as "Transferor No.1 Company") having CIN: U51101DL2013PTC262271 is a company incorporated on 16/12/2013 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi- 110017. The Transferor No.1 Company is primarily engaged in business of manufacturing, trading, marketing of Allopathic, Ayurvedic, Homeopathic medicines and formulations thereof of all types and description and research development of pharmaceuticals formulations in all lines of medicines & surgery.

3. M/s ADITYA MEDICOS PRIVATE LIMITED (hereinafter referred to as "Transferor No.2 Company") having CIN: U24232DL2004PTC129207 is a company incorporated on 17/09/2004 under the Companies Act, 1956 having its Registered Office at C-30, Pan.chsheel Enclave, New Delhi-110017. The Transferor No.2 Company is primarily engaged in business of manufacturing and trading of all kind of Drugs & Medicines (allopathic and ayurvedic).

4. M/s AESTHETICA ENTERPRISES PRIVATE LIMITED (hereinafter referred to as "Transferor No.3 Company") having CIN: U51909DL2008PTC175465 is a company incorporated on 17/03/2008 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Transferor No.3 Company is primarily engaged in business of trading, buying, selling, importing and exporting of vehicles and machinery.

5. M/s AKHIL MEDITECH PRIVATE LIMITED (hereinafter referred to as "Transferor No.4 Company") having CIN:U24100DL2008PTC180309 is a company incorporated on 01/07/2008 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi- 110017. The Transferor No.4 Company is primarily engaged in business of manufacturing and trading of pharmaceuticals drugs and chemicals.

6. M/s ASHWIN PHARMACEUTICALS PRIVATE LIMITED (hereinafter referred to as "Transferor No.5 Company") having CIN: U51101DL2013PTC259819 is a company incorporated on 01/11/2013 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Transferor No.5 Company is primarily engaged in business of manufacturing, trading, marketing, of Allopathic, Ayurvedic, Homeopathic medicines and formulations there of all types and description and research development of pharmaceuticals

formulations in all lines of medicines and surgery.

7. M/s AVEE MEDI SURGICALS PRIVATE LIMITED (hereinafter referred to as "Transferor No.6 Company") having CIN: U24233DL2007PTC157296 is a company incorporated on 03/01/2007 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Transferor No.6 Company is primarily engaged in business of manufacturing 85 trading of all kind of drugs and chemicals.

8. M/s GLORY LIFESCIENCES PRIVATE LIMITED (hereinafter referred to as "Transferor No.7 Company") having CIN: U24100DL2008PTC174992 is a company incorporated on 05/03/2008 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Company is primarily engaged in business of manufacturing and trading of pharmaceuticals drugs and allied products.

9. M/s GRACIA HEALTHCARE FOR YOU PRIVATE LIMITED (hereinafter referred to as "Transferor No.8 Company") having CIN: U85100DL2013PTC260688 is a company incorporated on 23/11/2013 under the Companies Act, 1956 having its Registered Office at B-207, C.R. Park, Near Bus Stop New Delhi-110019. The Company is primarily engaged in business of purchase, lease, or otherwise acquire, establish, maintain, operate, run, manage, or administrate hospitals, medicate, daycare and healthcare centers, nursing homes, clinic for in-door, out-door patients at id facilities for reception and treatment of persons suffering from injuries and illness, disabilities and deficiencies of any kind or nature whatsoever and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, geriatric care centre, assisted living, in the generality, specialty and/or super specialty departments.

10. M/s HIMANSHU MEDICARE PRIVATE LIMITED (hereinafter referred to as "Transferor No.9 Company") having CIN: U51397DL2008PTC180537 is a company incorporated on 07/07/2008 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Company is primarily engaged in business of manufacturing and trading of pharmaceuticals drugs 86 chemicals.

11. M/s HITESH CONSTRUCTION PRIVATE LIMITED (hereinafter referred to as "Transferor No.10 Company") having CIN: U45200DL2007PTC158159 is a company incorporated on 19/01/2007 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Company is primarily engaged in business of Infrastructure Development.

12. M/s KUNAL MEDICARE PRIVATE LIMITED (hereinafter referred to as "Transferor No.11 Company") having CIN:U24100DL2008PTC174950 is a company incorporated on 05/03/2008 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The

Company is primarily engaged in business of manufacturing and trading of all kind of drugs and chemicals

13. M/s MONA INFOTECH PRIVATE LIMITED (hereinafter referred to as "Transferor No.12 Company") having CIN:U72300DL2004PTC129710 is a company incorporated on 06/10/2004 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Company is primarily engaged in business of Information Technology.

14. M/s PARADISE REALTECH PRIVATE LIMITED (hereinafter referred to as "Transferor No.13 Company") having CIN:U74120DL2008PTC175348 is a company incorporated on 14/03/2008 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Company is primarily engaged in the business of builders, colonizer, and civil and Constructional Contractors.

15. M/s PRABHAT HEALTHCARE SERVICES PRIVATE LIMITED (hereinafter referred to as "Transferor No.14 Company") having CIN:U24220DL2004PTC128050 is a company incorporated on 03/08/2004 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Company is primarily engaged in business of owning and running hospitals, clinic and dispensaries.

16. M/s PURNENDU TRADERS PRIVATE LIMITED (hereinafter referred to as "Transferor No.15 Company") having CIN:U51909DL2012PTC230869 is a company incorporated on 01/02/2012 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Company is primarily engaged in the business of trading and dealing in any manner whatsoever in all type of goods.

17. M/s RADHIKA SURGICAL PRIVATE LIMITED (hereinafter referred to as "Transferor No.16 Company") having CIN:U85110DL2007PTC158071 is a company incorporated on 17/01/2007 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Company is primarily engaged in business of manufacturing and trading of medicines and accessories.

18. M/s REGAL BUILDERS AND PROMOTES PRIVATE LIMITED (hereinafter referred to as "Transferor No.17 Company") having CIN:U70101DL2004PTC128055 is a company incorporated on 03/08/2004 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Company is primarily engaged in the business of construction, infrastructural and development work.

19. M/s ROCKLAND HOSPITALS NOIDA PRIVATE LIMITED (hereinafter referred to as "Transferor No.18 Company") having CIN:U85100DL2013PTC259809 is a company incorporated on 01/11/2013 under the Companies Act, 1956 having its Registered Office at B-207, C.R.

Park, Near Bus Stop New Delhi-110019. The Company is primarily engaged in business of purchase, lease or otherwise acquire, establish, maintain, operate, run, manage, or administrate hospitals, medicate, daycare and healthcare centers, nursing homes, clinic for in-door, out-door patients at id facilities for reception and treatment of persons suffering from injuries and illness, disabilities and deficiencies of any kind or nature whatsoever and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, geriatric care centre, assisted living, in the generality, specialty and/or super specialty departments.

20. M/s ROCKLAND LABORATORIES PRIVATE LIMITED (hereinafter referred to as "Transferor No.19 Company") having CIN: U85110DL2007PTC158985 is a company incorporated on 08/02/2007 under the Companies Act, 1956 having its Registered Office at B-207, C.R. Park, Near Bus Stop New Delhi-110019. The Company is primarily engaged in business of hospitals, clinic and dispensaries. The company earlier knows as Rockland Hospitals (Qutab) Ltd. and on 06.06.2013 it was converted in to private limited company and name had been changed to Rockland Hospitals (Qutab) Pvt. Ltd. Thereafter on 23.07.2013 the name of the company changed to Rockland Laboratories Pvt. Ltd.

21. M/s ROCKLAND OIL 85 GAS PRIVATE LIMITED (hereinafter referred to as "Transferor No.20 Company") having CIN:U11100DL2013PTC253150 is a company incorporated on 30/05/2013 under the Companies Act, 1956 having its Registered Office at B-207, C.R. Park, Near Bus Stop, New Delhi-110019. The Company deals in all sorts of crude and refined petroleum oils, natural gases, oleaginous and saponaceous substances, their products, by products, residues, ingredients, formulation, blends, mixtures, goods and materials.

22. M/s SUKUMAR ENTERPRISES PRIVATE LIMITED (hereinafter referred to as "Transferor No.21 Company") having CIN: U51900DL2012PTC229673 is a company incorporated on 05/01/2012 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Company is primarily engaged in business of trading and dealing in any manner whatsoever in all type of goods

23. M/s SUNSKRITI TRADEX PRIVATE LIMITED (hereinafter referred to as "Transferor No.22 Company") having CIN:U51909DL2010PTC199890 is a company incorporated on 10/03/2010 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Company is primarily engaged in business of trading vehicles, machinery, handicraft and garments.

24. M/s UMESH PHARMACEUTICALS PRIVATE LIMITED (hereinafter referred to as "Transferor No.23 Company") having CIN: U24232DL2004PTC128051 is a company incorporated on 03/08/2004 under the Companies Act,

1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Company is primarily engaged in business of manufacturing and trading of all kind of Drugs 85 Medicines (allopathic and ayurvedic).

25. M/s VAIBHAV INDIA SURGICALS PRIVATE LIMITED (hereinafter referred to as "Transferor No.24 Company") having CIN: U33110DL2010PTC199885 is a company incorporated on 10/03/2010 under the Companies Act, 1956 having its Registered Office at C-30, Panchsheel Enclave, New Delhi-110017. The Company is primarily engaged in business of manufacturing and trading of all kind of drugs and chemicals.

26. M/s ROCK LAND PRIVATE LIMITED (hereinafter referred to as the "Transferee Company") having CIN: U45200DL2008PTC174937 is a company incorporated on 05/03/2008 under the Companies Act, 1956 having its Registered Office at B-208, Chitranjan Park, New Delhi-110019. The Company is primarily engaged in business of infrastructural development, construction and sale/purchase of immovable property and estates. The company was earlier known as Rock Land Limited and converted to private limited w.e.f. 17.12.2012.

27. The Board of Directors of the Petitioner Companies, in their Board Resolutions, M/s A B Medicos Private Limited dated 26th December 2016, M/s Aditya Medicos Private Limited dated 26th December 2016, M/s Aesthetica Enterprises Private Limited dated 27th December 2016, M/s Akhil Meditech Private Limited dated 15th December 2016, M/s Ashwin Pharmaceuticals Private Limited dated 26th December 2016, M/s Avee Medi Surgicals Private Limited dated 27th December 2016, M/s Glory Lifesciences Private Limited dated 27th December 2016, M/s Gracia Healthcare For You Private Limited dated 13th December 2016, M/s Himanshu Medicare Private Limited And Hitesh dated 27th December 2016, M/s Hitesh Construction Private Limited dated 27th December 2016, M/s Kunal Medicare Private Limited dated 27th December 2016, M/s Mona Infotech Private Limited dated 27th December 2016, M/s Paradise Realtech Private Limited dated 27th December 2016, M/s Prabhat Healthcare Services Private Limited dated 27th December 2016, M/s Purnendu Traders Private Limited dated 26th December 2016, M/s Radhika Surgical Private Limited dated 14th December 2016, M/s Regal Builders And Promotes Private Limited 27th December 2016, M/s Rockland Hospitals Noida Private Limited dated 16th January 2017, M/s Rockland Laboratories Private Limited dated 19th December 2016, M/s Rockland Oil 86 Gas Private Limited dated 17th December 2016, M/s Sukumar Enterprises Private Limited dated 26th December 2016, M/s Sunskriti Tradex Private Limited dated 26th December 2016, M/s Umesh Pharmaceuticals Private Limited dated 15th December 2016, M/s Vaibhav India Surgicals Private Limited 26th December 2016 i.e. the Transferor Companies and M/s Rock Land Private Limited dated 30th November 2016 i.e.

the Transferee Company had approved the Scheme.

28. The rationale for the proposed Scheme as stated therein as:

"Merger of the Transferor Companies into and with the Transferee Company shall result in:

I The merger will enable the Companies to pool their financial, commercial and other resources as the magnitude of the investments contemplated will be better met by the Companies merged together and considerable synergy of operations would be achieved;

II. With the enhanced capabilities and resources at its disposal, the Merged Companies will have greater flexibility and strength and will be able to compete more effectively as a multi-dimensional entity;

III. The Merged Companies will have better financial and business prospects. The Scheme would be beneficial to and in the best interest of the Shareholders and Creditors, if any, of the Transferor Companies and the Transferee Company. The Scheme shall not in any manner be prejudicial to the interests of concerned members / Creditors or general public at large. The Scheme shall provide strength to the Transferor Companies on its merger with the Transferee Company;

IV. It would be advantageous to combine the activities of the Transferor Companies and the Transferee Company into a single Company. The Scheme would provide beneficial synergy of operation from business and administrative point of view.

29. That the Office of the Official Liquidator has provided its NOC in regard to the scheme, the same was recorded vide Order dated 12.10.2018 passed by this Bench.

30. That the Income Tax Department has filed a Status Report on 11.09.2018 and merely raised a standard objection, to the effect that dues against the companies if any, will persist even subsequent to sanction of the scheme. A reply to the said status report has been filed by the petitioner in October 2018, as recorded in the order dated 20.11.2018. It has been stated in the Reply filed by the Petitioner Companies that they will all remain bound by any pending/demand, if any, as per the provision of the Income Tax Act, 1961.

31. The Office of the Regional Director had also filed its objection to the Merger stating that the investigation of one M/s Rockland Hospitals Ltd and the transferee companies is also been undertaken as Share Capital has been invested from the Transferor/ Transferee Companies' to M/s Rockland Hospitals Ltd, therefore, at that stage, the merger was likely to hamper the investigation.

32. That in reply the Petitioner filed an Additional Affidavit dated 23.06.2020 in response to the Objection raised by the R.D. stating that:

'Vide Order dated 31.05.2018, the Ministry of Corporate Affairs marked the Report of the R.O.0 u/ s 208 of the Companies Act, 2013 to SFIO for investigation.

Investigation has been concluded and a Complaint dated 30.01.2020 u/ s 212 (15) of the Companies' Act, 2013 of the Companies', 2013 Act has already been filed before the Ld. Special Court, Companies' Act, 2013.

Hence the investigation is complete.

Further the Hon'ble Delhi High Court vide its Order dated 08.04.2020 has recorded the Statement of the La concerned namely Sh. Arun Prasad that the Investigation Stands Completed.

It may kindly be noted that none of the Transferor/ Transferee Companies' have been arrayed as an accused in the final Complaint dated 30.01.2020 filed before the Ld. Special Court."

33. That pursuant to filing of Additional Affidavit on behalf of the Petitioner dated 23.06.2020, the Income Tax Department had again given its No-Objection to the said merger which stood recorded in Order dated 25.02.2021 passed by this Tribunal.

34. It is pertinent to mention that since the filing of the Affidavit on behalf of the Petitioner, the R.D. has been repeatedly given opportunities vide Orders dated 26.06.2020, 21.07.20, 25.02.2021 and 15.04.2021 to Status Report, if any, reflecting as to any further objection against the scheme but no such Report has been filed by the RD. Rather, on 02.09.2021, when the present matter was reserved for Orders, the Ld. Counsel for R.D. submitted that the Investigation Stands Completed and none of the Transferor/ Transferee Companies' have been arrayed as an accused in the final Complaint dated 30.01.2020 filed before the Ld. Special Court under the Companies' Act, 2013.

35. The Petitioner Companies, further, undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder whichever is applicable. The clarifications and undertakings given by the Petitioners are accepted.

36. The Certificates of the respective Statutory Auditors of the Petitioner Companies have been placed on record to the effect that the accounting treatment provided for in the Scheme is in conformity with applicable accounting standards notified under Section 133 of the Act.

37. In view of the foregoing, there appears to be no impediment in sanctioning the Scheme, which appears to be fair and reasonable and not contrary to public policy or violative of any provisions of law. All the statutory requirements of Sections 230-232 of the Act appear to have been complied with. Taking into consideration the above facts, the Company Petition is allowed

and the Scheme annexed with the Petition is hereby sanctioned, with the Appointed date fixed as April 1, 2019. The Petitioner Company-1 / Transferor Company be dissolved without winding up.

38. While approving the Scheme as above, we further clarify 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. Further, the Petitioner Companies shall be bound to comply with the statutory requirements in accordance with law.

39. This Tribunal do further Order:

(i) That all the property, rights and powers of the Transferor Company and all other 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 Act, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and

(ii) 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

(iii) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and

(iv) That the Transferee Company do without further application allot to such members of the Transferor Company as have not given such notice of dissent, in accordance with Clause 4.2 of the Scheme of Amalgamation, the shares in the Transferee Company to which they are entitled under the said Scheme of Amalgamation; and

(v) That all the employees of the Transferor Company in service on date immediately preceding the date on which the Scheme finally take effect shall become employees of the Transferee Company without any break or interruption in their service;

(vi) That the Transferor Company 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 and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said two companies shall be consolidated accordingly; and.

40. The Petitioner Companies shall be at liberty to apply to this Tribunal for any directions that may be necessary in the above matter.

41. All concerned authorities are at liberty to approach this Tribunal for any further clarification after sanctioning of the Scheme of Amalgamation.

Accordingly, the Scheme stands sanctioned and (CAA)-44(PB)/ 2021 in CA(CAA)-111(PB)/2020 stands disposed off

Let a copy of the order be served to the parties.