
(2014) 09 DEL CK 0426
In the Delhi High Court
Case No : Co. Pet. 370/2013

In Re: Metro Institutes of Medical Sciences Private Limited

Date of Decision : 30-09-2014

Acts Referred:

Companies Act, 1956 — Section 100 101 102 103 104

Citation : (2014) 09 DEL CK 0426

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Rajeev K. Goel, Advocates for the Appellant

Judgement

Sanjeev Sachdeva, J.—This second motion joint Petition has been filed under sections 391 to 394 read with section 100 to 104 of the Companies Act, 1956 seeking sanction of the Scheme of Arrangement ("Scheme") (De-merger) of (a) Metro Hospital & Research Centre at Vadodara and (b) Nursing College cum Hospital at Greater Noida of Metro Institutes of Medical Sciences Pvt Ltd(hereinafter referred as Demerged Company) into Metsun Healthcare Pvt Ltd (hereinafter referred to as Resultant Company No. 1) and Hilsun Medical Services Pvt Ltd (hereinafter referred as Resultant Company No. 2) (collectively hereinafter referred to as the Petitioner Companies). A copy of the Scheme has been enclosed with the Petition.

2. The registered offices of the Petitioner Companies are situated at New Delhi, within the jurisdiction of this Court.

3. Details with regard to the date of incorporation of Petitioner Companies, their authorized, issued, subscribed and paid up capital have been given in the Petition.

4. Copies of the Memorandum and Articles of Association as well as the latest audited Annual Accounts for the year ended 31st March, 2012 of the Petitioner Companies have also been enclosed with the Petition.

5. Copies of the Resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme of Amalgamation have also been placed on record.

6. Learned Counsel for the Petitioner Companies submits that no proceedings under sections 235 to 251 of the Companies Act, 1956 is pending against the Petitioner Companies.

7. The Petitioner Companies had earlier filed C.A (M) 55 of 2013 seeking directions of this Court for dispensation/convening of meetings. By Order dated 7th May, 2013, this Court allowed the Application and requirement of convening meetings of Shareholders of the Demerged Company and the Resultant Companies No. 1 & 2 were dispensed with. None of the Resultant Companies No. 1 & 2 had any Secured and Un-secured Creditors. This Court further directed convening of separate meetings of Secured Creditors and Un-secured Creditors of the Demerged Company under its supervision. The Chairman's have filed their respective reports stating that the Scheme was unanimously approved by the Secured Creditors and Un-secured Creditors.

8. The Petitioner Companies had thereafter filed the present Petition seeking sanction to the Scheme of Arrangement. Vide Order dated 26th July 2013, notice of the Petition was directed to be issued to the Regional Director, Northern Region. Citations were also directed to be published in "Business Standard" (English) and "Dainik Bhaskar" (Hindi). Affidavit of Service and Publication has been filed by the Petitioners showing compliance regarding service of the Petition on the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers. Copies of the newspaper cuttings, in original, containing the publications have also been filed along with the Affidavit of Service.

9. In response to the notice issued in the Petition, Learned Regional Director, Northern Region, Ministry of Corporate Affairs has filed his Affidavit/Report dated 20th March, 2014. Relying on the Scheme of Arrangement, he has stated that, upon sanction of the Scheme, all the employees of the Demerged Business of the Demerged Company shall become the employees of the Resultant Companies without any break or interruption in their services.

10. The Learned Regional Director in its Affidavit has raised observation that certain charges are proposed to be transferred from the Demerged Company to the Resulting Companies. Since name of the Company can not be substituted in the Charge Documents filed with the Registrar of Companies, the Petitioner Demerged Company and Resultant Companies may be asked to file requisite forms for satisfaction and creation of charge.

11. In response to above said observation, the Petitioner Demerged Company in their Reply Affidavit dated 13th May, 2014, has submitted that the charges have been created on some assets of the Demerged Company which are proposed to be demerged pursuant to the Scheme of Arrangement subject such charges. The Resultant Company will have to create charge in favour of the concerned lenders and file necessary form(s) with the ROC. Para 2.1.5 of the Scheme of Arrangement provides that the Demerged Company and Resultant Company will

file requisite form(s) with the Registrar of Companies for creation, modification and/or satisfaction of charge(s), to the extent required, to give effect to the provisions of the Scheme.

12. Further, the learned Regional Director in its Affidavit has raised observation that Share Valuation Report prepared by M/s. Lopa Verma & Associates, Chartered Accountants is based on the financial figures as at 31.12.2012, whereas the Appointed Date has been fixed as 1.4.2013.

13. In response to above said observation, learned Counsel for the Petitioner Companies submits that the valuation exercise was undertaken during the month of February, 2013 and the latest audited accounts available at that time were for the year ended 31.3.2012. The Petitioner Demerged and Resultant Companies prepared un-audited provisional accounts for the latest period ended 31.12.2012. Accordingly, the Fair value of the Demerged Business was determined on the basis of the Net Assets Value of these divisions as per such financial statements as on 31st December, 2012. Hence, the Appointed Date was fixed as 1st April, 2013. However, the Petitioners submit that the date may be fixed by the Court and is agreeable to shifting of the date from 1st April 2013 to 31st December 2012.

14. Further, the Regional Director in its Affidavit has raised another concern that Petitioner Companies should be asked to provide the details of assets and liabilities as at 1.4.2013 proposed to be transferred under the Scheme of Arrangement.

15. In response to above said observation, the Petitioner Demerged Company submits that the details of assets and liabilities as at 1.4.2013, the Performa Balance Sheet as on 31.03.2013 has been annexed with the Revised Scheme of Arrangement which has been filed along with the C.A No. 1236 of 2014.

16. Further, the Regional Director has raised an observation that as per the Audited Balance Sheet as at 31.3.2012, the Petitioner Demerged Company was having a large "cash in hand" position and the Company may be asked to deposit the same in its Bank Account.

17. In response to above said observation, the Petitioner Demerged Company submits that the Demerged Company owns and runs several hospitals and most of the sale in the Hospital Industry is cash sale. Cash is deposited in the Bank account regularly. Cash in hand, as pointed out by the learned Regional Director is commensurate to the size of the Company's operations. The Company has also taken insurance coverage for such cash amount.

18. Further the Regional Director has raised an observation that the Petitioners may be asked to submit a copy of the latest Balance Sheet as on 31.3.2013 and Audit Report before the Hon"ble Court.

19. In response to above said observation, the Petitioner Demerged Company submits that latest Balance Sheet and latest audited Annual Accounts for the

year ended 31.03.2013 of all the Petitioner Companies, have been submitted in the Court along with reply affidavit.

20. In view of the aforesaid clarifications, the concerns of the Regional Director have been duly addressed.

21. Mr. Atma Sah, Assistant Registrar of Companies Submits that no further Affidavit is required to be filed and the Affidavit dated 20th March 2014 be treated as an Affidavit in response to modified/revised Scheme.

22. It is directed that the Income Tax Authorities shall be permitted to proceed against the Petitioner Companies in respect of any liability that may arise irrespective of the sanction of the Scheme.

23. No objection has been received to the Scheme of Arrangement from any other party. Ms. Punam Lal, Director of the Demerged Company has filed an affidavit confirming that neither the Petitioner Companies nor their Counsel has received any objection pursuant to citations published in the newspapers.

24. In view of the approval accorded by the Shareholders and Creditors of the Petitioner Companies; representation/report filed by the Regional Director, Northern Region to the proposed Scheme of Arrangement, there appears to be no impediment to the grant of sanction to the Scheme of Arrangement. Consequently, sanction is hereby granted to the revised Scheme of Arrangement under sections 391 and 394; 100 to 104 of the Companies Act, 1956. The Petitioner Companies will comply with the statutory requirements in accordance with law.

25. Certified copy of the formal order be filed with the Registrar of Companies within 30 days from the date of receipt of the same. In terms of the provisions of sections 391 and 394; 100 to 104 of the Companies Act, 1956, all the property, rights and powers of the Metro Hospital & Research Centre at Vadodara of the Demerged Company be transferred to and vest in the Resultant Company without any further act or deed. Similarly, all the liabilities and duties of the Metro Hospital & Research Centre at Vadodara of the Demerged Company be transferred to the Resultant Company without any further act or deed.

26. It is, however, clarified that this order will not be construed as an order granting exemption from payment of stamp duty or any other charges, if payable, in accordance with any law; or permission/compliance with any other requirement which may be specifically required under any law.

27. The Petition is allowed in above terms.