

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 588 OF 2016.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 419 OF 2016.

SPRINGS INTERNATIONAL FERTILITY CLINIC PRIVATE LIMITED
.... the Petitioner Company

In the matter of the Companies Act, 1 of
1956 and other relevant provision of the
Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the
Companies Act, 1956 and other relevant
provision of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation
of SPRINGS INTERNATIONAL
FERTILITY CLINIC PRIVATE
LIMITED (“SIFCPL” or “the Transferor
Company”) with ORIGIN
INTERNATIONAL FERTILITY

CENTRE PRIVATE LIMITED
(“OIFCPL” or “the Transferee Company”)

Called for hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners.

Mr. P. S Gujar i/b Mr. Pankaj Kapoor for Regional Director.

Mr. Vinod Sharma for Official Liquidator.

CORAM: S. C. Gupte, J.

DATE: 2nd December, 2016

PC:

1. Heard Learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions.
2. The sanction of the Court is sought to a Scheme of Amalgamation of SPRINGS INTERNATIONAL FERTILITY CLINIC PRIVATE LIMITED (“SIFCPL” or “the Transferor Company”) with ORIGIN INTERNATIONAL FERTILITY CENTRE PRIVATE LIMITED (“OIFCPL” or “the Transferee Company”), under Sections 391 to 394 of the Companies Act, 1956 and other relevant provision of the Companies Act, 2013.
3. The learned counsel appearing on behalf of the Petitioner Company submits that by an order passed in the court on

8th July, 2016 in Company Summons for Direction No. 419 of 2016, the filing of separate Company Summons for Direction and Company Scheme Petition in relation to the proposed Scheme of Amalgamation by the Transferee Company, namely ORIGIN INTERNATIONAL FERTILITY CENTRE PRIVATE LIMITED was dispensed with as Transferee Company is 100% holding Company of the Petitioner Company and in view of the Judgment passed by this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases (pages 16 to 18).

4. The Learned Counsel for the Petitioner states that the Petitioner Company and the Transferee Company has been carrying on the business in providing Fertility and Gynecology Services. The Petitioner Company is wholly owned subsidiary of the Transferee Company and that the management of the Companies are of the opinion that the merger will lead to synergies of operations and more particularly the following benefits that the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and it would be advantageous to combine the activities and operations of both companies into a single Company for synergistic linkages and the

benefit of combined financial resources and this will be reflected in the profitability of the Transferee Company and that this Scheme of amalgamation would result in merger and thus consolidation of business of the Transferor Company and the Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform and that the Amalgamation of the Transferor Company with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of both the companies and that the merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme and that the Scheme of amalgamation will result in cost saving for both the companies as they are capitalizing on each others core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company and that the Transferor Company is a wholly owned subsidiary of the Transferee Company and that the shareholders

would consolidate their holdings and leverage the share value consequent to higher profitability

5. The Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company has approved the said Scheme of Amalgamation and by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Counsel for the Petitioner further states that, Petitioner Company have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.
7. The Learned Counsel appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 17th day of November, 2016 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

“6. That the Deponent further submits that,

- (i) In addition to compliance of AS-14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 etc.*
- (ii) That the Deponent further submits that, the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon’ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

9. So far as the observation in paragraph 6(i) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Company submit that in addition to compliance of AS-14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable accounting standards such as AS-5 etc.

10. So far as the observation in paragraph 6 (ii) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel submitted that the Petitioner Company will comply with all applicable provisions of Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law
11. The Learned Counsel for Regional Director on instructions of Mr. Dalmiya, Joint Director Legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertakings given by the Petitioner. The above undertakings are accepted.
12. The Official Liquidator has filed his report on 29th November, 2016 stating therein that the affairs of the Petitioner Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.
13. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition is made absolute in terms of prayers

clause (a) to (d) subject to sanctioning of the Scheme by the High Court of Bombay.

15. The Petitioner Company to file a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.
16. The Petitioner Company is directed to file a copy of order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E Form INC- 28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.
17. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator. Cost to be paid within four weeks from the date of the Order.
18. Filing and issuance of the drawn up order is dispensed with.
19. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. Gupte, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

Uploaded by: Shankar Gawde, Stenographer