

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.09.2016

DELIVERED ON : 18.10.2016

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The Honourable **Mr.Justice RAJIV SHAKDHER**

C.P.Nos.124 and 125 of 2016

Mehta Hospitals Private Limited
2 MC Nichols Road, Chetpet,
represented by its Director
Mr.Dilip Mehta

.. Petitioner in C.P.No.124 of 2016
/ Transferor Company

Mehta Children's Hospitals Private Limited
21 MC Nichols Road, Chetpet,
represented by its Director
Mr.Dilip Mehta

.. Petitioner in C.P.No.125 of 2016
/ Transferee Company

Petitions filed under Sections 391 to 394 of the Companies Act,
1956 to sanction the Scheme of Amalgamation.

For Petitioners : Mr.K.Jayaraman
for M/s.S.A.Shanmugam

Mr.K.Raju
Central Government Standing Counsel
for Regional Director
Ministry of Company Affairs, Chennai

Mr.Atchuta Ramaiah,
Official Liquidator

COMMON ORDER

1. These company petitions are preferred under Sections 391 to 394 of the Companies Act, 1956 for sanctioning the scheme of amalgamation of the transferor company with the transferee company with effect from 01.04.2015. The scheme of amalgamation (in short scheme) is appended as Annexure 'C' to these petitions.

2. The petitioner in C.P.No.124 of 2016 is the transferor company and the petitioner in C.P.No.125 of 2016 is the transferee company.

3. A perusal of the records show that the petitioners have complied with the prescribed procedure. It is stated that there is one secured creditor each as far as transferor company as well as transferee company are concerned and the certificates of the Chartered Accountant confirming the same are appended as Annexure 'E' to these petitions. The transferor company as well as the transferee company have obtained the consents of their respective secured creditors, which are appended as Annexure 'F' to these petitions.

3.1. Copies of two separate resolutions of even date, i.e., 20.02.2016 passed by the Board of Directors of both the transferor company as well as the transferee company respectively approving the proposed scheme are enclosed as Annexure 'D' to these petitions.

4. The affidavits of equity shareholders of both the transferor and the transferee company giving their consent to the proposed scheme are appended as Annexure 'G' to these petitions.

4.1. This Court, by order dated 31.03.2016 passed in C.A.Nos.351 and 352 of 2016 dispensed with the convening, holding and conducting of the meeting of the shareholders of both the transferor and transferee company to consider the proposed Scheme, inter alia for the reason that its equity shareholders had given their consent to it.

5. When the matter was called out on 11.08.2016, learned counsel for the petitioners placed before the Court two affidavits sworn by the Director of the petitioner companies respectively enclosing the list of unsecured creditors and their consents to the

proposed scheme. Hence, this Court directed the learned Official Liquidator and the counsel for the Regional Director to examine the same and file a report.

5.1. Accordingly, learned Official Liquidator has filed a report dated 08.09.2016 observing as follows:

"2. That the Official Liquidator hereby submits that on the scrutiny of the Balance Sheet as on 31.03.2015 and the affidavits filed by the Petitioner Company, it is observed that the Transferor Company M/s.Mehta Hospital Private Limited has only 18 (Eighteen) Sundry Creditors as on 01/07/2016 and these unsecured creditors are only trade creditors. It is further observed that all the unsecured creditors of the Transferor Company as on 01/07/2016, except five (5) of the unsecured creditors namely M/s.Sheth Impex Vivo Solutions Private Limited, M/s.Advances Surgicals Private Limited, Sri Aishwaryam Transport, M/s.The Advances Surgicals Private Limited, Sri Aishwaryam Transport, M/s.The India Cements Limited and M/s.Aerogel Trading Private Limited have issued No Objection Certificates as regards to the proposed Scheme of Amalgamation. Further, it is observed that the Transferee Company namely M/s.Mehta Children's Hospitals Private Limited had obtained NOC from 95% of its creditors and for the balance creditors concerns and the unsecured creditors of the Transferor Company

concern, it appears that the company's net worth is adequate to handle the subject dues."

6. Upon notice being issued, the Regional Director, Ministry of Company Affairs has filed his report stating that he has no objection to the scheme being sanctioned.

7. The Official Liquidator has also filed his report along with the report of the Chartered Accountant. The Chartered Accountant, in his report, states that the affairs of the transferor company have not been conducted in a manner prejudicial to the interest of its members or to public interest, and that, he has not come across any act of misfeasance by the Directors attracting the provisions of Sections 542 and 543 of the Companies Act, 1956. It is further stated that the records maintained in the office of the Registrar of Companies were also caused to be inspected by the said Chartered Accountant. In the absence of any inference that the affairs of the transferor company were being conducted in a manner prejudicial to the interest of its members or public interest, the Official Liquidator has filed his report before this Court for appropriate orders.

8. I have perused the proposed scheme filed along with the

company petitions as also the affidavits placed on record. I find that the Scheme as proposed is not prejudicial to the interest of any person or entity, which has a stake/interest in the petitioner companies. The said scheme, as framed, is not violative of any statutory provisions.

9. The scheme as formulated is fair, just, sound and is not contrary to any public policy or public interest. No proceedings appear to be pending under the provisions of Sections 231 to 237 of the Companies Act, 1956. All the statutory provisions appear to have been complied with.

10. Consequently, there shall be an order approving the scheme of amalgamation between the transferor company, viz., M/s.Mehta Hospitals Private Limited with the transferee company, viz., M/s.Mehta Children's Hospitals Private Limited, with effect from 01.04.2015, as per the procedure laid down under Sections 391 to 394 of the Companies Act.

11. Taking note of the report by the Chartered Accountant as enclosed by the Official Liquidator, in terms of the order passed by

this Court, the transferor company shall stand dissolved, albeit, without winding up.

12. It is made clear, that this order will not be construed as an order granting exemption from payment of stamp duty or, taxes or, any other charges, if any, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

13. The learned Senior Central Government Standing Counsel will be entitled to a fee of Rs.5,000/-, which shall be paid by the transferee company.

14. The above petitions are disposed of in the aforementioned terms.

Index: Yes / No
Internet: Yes / No
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18.10.2016

RAJIV SHAKDHER,J.

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Pre-Delivery Common Order in
C.P.Nos.124 and 125 of 2016

Dated: 18.10.2016