

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CP No. 145 of 2015 (O&M)
connected with CP No. 71 of 2015**

Date of decision : 11.1.2016

In the matter of

Scheme of Arrangement between :

Alchemist Hospitals Limited

.... Transferor / Demerged / Petitioner No.1 Company

And

Alchemist Hospitals (Gurgaon) Private Limited

.... Transferee/ Resulting/ Petitioner No.2 Company

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Anil Kumar Aggarwal, Advocate, for the petitioners.

Mr. Deepak Aggarwal, Advocate, with
Mr. D. K. Singh, Official Liquidator.

Rajesh Bindal, J.

In this petition, the petitioner companies seek sanctioning of Scheme of Arrangement (Annexure P-23), vide which Demerged Undertaking i.e. Hospital situated at Sector-53, Saraswati Kunj, DLF Golf Course Road, Gurgaon of Transferor/Demerged/Petitioner No.1 Company is sought to be demerged into Alchemist Hospitals (Gurgaon) Pvt. Ltd. i.e. Transferee /Resulting/ Petitioner No.2 Company.

It is averred in the petition that the registered office of the petitioner companies is situated at Panchkula.

Main objects of the Transferor /Demerged/ Petitioner No.1 Company and Transferee/ Resulting / Petitioner No.2 Company are detailed in their respective Memorandum and Articles of Association annexed with the petition at **Annexure P-5 and P-11**, respectively.

The Board of Directors of the Demerged Company and Resulting Company have approved the said Scheme in their respective meetings held on 11.3.2015, vide resolutions **Annexures P-1 and P-2**, respectively.

Earlier vide order dated 15.5.2015 passed in CP No. 71 of 2015, this Court dispensed with convening of meetings of equity shareholders of both the petitioner-companies, however, meetings of secured and unsecured creditors of the Transferor /Demerged/ Petitioner No.1 Company were directed to be convened on 25.7.2015. As there was no secured and unsecured creditor of the Transferee/ Resulting / Petitioner No.2 Company, no meeting was required to be conducted. Notice of the meeting was also directed to be published in the newspapers and official gazette. Vide order dated 7.8.2015, the report of the Chairman was taken on record and the first motion petition bearing CP No. 71 of 2015 was disposed of accordingly.

On 21.8.2015, notice of the petition was directed to be issued to Regional Director, Ministry of Corporate Affairs, Noida. Notice was also directed to be published in 'Indian Express' (English) in Delhi as well as Chandigarh Editions and 'Dainik Tribune' (Hindi) in Chandigarh Edition and in the official Gazette of Government of Haryana. The aforesaid order has been complied with and an affidavit to this effect has been placed on record.

Pursuant thereto, the Official Liquidator has placed on record the representation/ affidavit dated 19.11.2015 of A. K. Chaturvedi, Regional Director, Northren Region, Ministry of Corporate Affairs, New Delhi. While referring to the observations made in para 3 of the report of the Regional Director, learned counsel for the Official Liquidator submitted that the petitioner companies have not got evaluated assets and liabilities of the Demerged Undertaking to be transferred to the Resulting / Transferee Company as on appointed date. He has further submitted in para 10.2 (ii) that as per records maintained in his office, no inspection/ investigation is being carried out against the captioned companies. However, a report recommending investigation under Section 212 of the Companies Act, 2013 (for short, 'the 2013 Act') against Alchemist Holding Limited and its associates including the Demerged Company was sent to the Directorate and

forwarded to the Ministry. But nothing has been received in the matter. It has further been reported that his office in the matter of Alchemist Holdings Limited had already submitted a comprehensive report dated 5.1.2015 recommending investigation under Section 212 of the Act by Serious Fraud Investigation Office.

Learned counsel for the Official Liquidator further referred to the observations made by Regional Director in para 10.4D(iii) that the Board of Directors of the petitioner-companies have approved the proposed scheme of Arrangement and Amalgamation in their Board meeting held on 11.3.2015. However, the petitioner companies have violated the provisions of Section 117(3) of the Act by not complying with the provisions of Section 117(3) read with Section 179(3) of the Act by filing such resolution (e-form MGT-14) with the office of the Regional Director within a period of thirty days of the passing of the resolution.

In response to the queries raised by the Regional Director, Prabhjot Singh, Assistant Manager (Finance & Accounts) of the petitioner companies, has filed his affidavit dated 1.12.2015 stating that in accordance with the provisions of sub-section (19AA) of Section 2 of the Income Tax Act, 1961, all the assets and properties and all the debts and liabilities of the Demerged Undertaking shall be transferred to the Resulting Company at value appearing in the books of account of Transferor / Demerged Company immediately before the demerger. The transfer of the undertaking will be on a going concern basis. Hence, there is no need to get the assets and liabilities of the demerged undertaking evaluated afresh as observed by the Regional Director.

With regard to inspection/ investigation proceedings initiated by the Securities and Exchange Board of India (SEBI) is concerned, learned counsel for the petitioner-companies submitted that Alchemist Holdings Limited is neither a demerged company nor the resulting company. In the present petition Alchemist Hospitals Limited is the Transferor / Demerged Company and Alchemist Hospitals (Gurgaon) Private Limited is the Transferee/ Resulting Company. He has further submitted that none of the directors of Alchemist Holdings Limited is a director of the petitioner companies.

Learned counsel for the petitioner-companies further submitted that the petitioner companies have complied with the provisions of Section 117(3) read with Section 179(3) of the Act by filing resolution (e-form MGT-14) with the office of the Regional Director vide Annexure-3 of the affidavit dated 1.12.2015 of the petitioner-companies, with additional fee.

Heard learned counsel for the parties and perused the paper book.

With regard to the issues of aforesaid procedural violations, raised by the Regional Director, it has been submitted by the authorised representative of the petitioner-companies in his affidavit that since all the assets and properties and all the debts and liabilities of the Demerged undertaking shall be transferred to the Resulting Company, at value appearing the books of account, therefore, there is no need to evaluate the assets and liabilities of the demerged undertaking. As none of the directors of Alchemist Holdings Limited is a director of the petitioner companies, therefore, the petitioner companies have no concern with the investigation proceedings initiated by SEBI. The petitioner companies have complied with the provisions of Section 117(3) read with Section 179(3) of the Act by filing resolution (e-form MGT-14) with the office of the Regional Director vide Annexure 3, with additional fee. The undertaking given by the authorised representative of the petitioner companies with regard to income tax liabilities shall be complied as and when the need arise. Thus, the aforesaid issues raised by the Regional Director do not survive any longer in view of the affidavit filed by the representative of the petitioner companies.

The petitioner-companies have confirmed that there are no investigations or proceedings pending against them under Sections 235 to 251 of the Companies Act, 1956 (for short, 'the 1956 Act') or under any provisions of Monopolies & Restrictive Trade Practices Act, 1969.

For the reasons afore-stated and on consideration of all the relevant facts and the procedural requirements contemplated under the 1956 Act and the 2013 Act and the relevant Rules and on due consideration of the report of Regional Director, Northern Region, Ministry of Corporate Affairs and the Scheme of Arrangement is hereby sanctioned. The assets and liabilities of the "Demerged Undertaking i.e. Hospital situated at Sector-53, Saraswati Kunj, DLF Golf Course Road, Gurgaon" of Transferor/

Demerged /Petitioner No.1 Company shall be demerged into Alchemist Hospitals (Gurgaon) Pvt. Ltd. i.e. Transferee /Resulting/ Petitioner No.2 Company. The undertaking given by the petitioner companies shall be complied with.

The Scheme shall be binding on the Demerged and Resultant companies, their respective Shareholders, Creditors and all concerned.

Let formal order of sanction of the Scheme of Arrangement be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt thereof.

A notice of the order be published in 'Indian Express' (English) in Delhi as well as Chandigarh Editions and 'Dainik Tribune' (Hindi) in Chandigarh Edition and in the official Gazette of Government of Haryana.

Any person interested shall be at liberty to apply to the Court for any direction(s) as per law.

Learned counsel for the petitioner-companies states that the petitioner-companies would voluntarily deposit a sum of ₹ 1,00,000/- in the Common Pool Fund Account of the Official Liquidator within four weeks.

The statement is accepted.

Disposed of accordingly.

11.1.2016

vs

(Rajesh Bindal)
Judge