

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 112/2016

Reserved on 26th July, 2016
Date of pronouncement: 29th August, 2016

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

Application under Sections 391 and 394 of the Companies Act, 1956

Scheme of Amalgamation of:

Kailash Medical and Research Centre Private Limited

Applicant/Transferor Company

WITH

Kailash Healthcare Limited

Non-Applicant/Transferee Company

**Through Mr. Saurabh Kalia with
Mr. Palash Agarwal and Mr. Dheeraj
Kumar, Advocates for the applicant**

SUDERSHAN KUMAR MISRA, J.

1. This application has been filed under Sections 391 and 394 of the Companies Act, 1956 by the applicant/transferor company seeking directions of this court to dispense with the requirement of convening the meetings of its equity shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Kailash Medical and Research Centre Private Limited (hereinafter referred to as the applicant/transferor company) with Kailash Healthcare Limited (hereinafter referred to as the transferee company) and to dispense with the requirement of the

transferee company to approach this Court for seeking sanction of Scheme of Amalgamation.

2. The registered offices of the applicant/transferor company and the transferee company are situated at New Delhi, within the jurisdiction of this Court.

3. The applicant/transferor company was incorporated under the Companies Act, 1956 on 1st October, 1990 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The present authorized share capital of the applicant/transferor company is Rs.10,00,00,000/- divided into 10,00,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the company is Rs.9,77,79,600/- divided into 9,77,796 equity shares of Rs.100/- each.

5. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2015, along with the report of the auditors, of the transferor and transferee companies have also been filed.

6. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavit. It is claimed by the applicant that the proposed amalgamation is expected to improve financial position through restructuring. It is further claimed that the proposed amalgamation would result in simplified corporate structure and therefore lead to a more efficient utilization of capital and create a consolidated base for future growth of the transferee company.

7. So far as the share exchange ratio is concerned, the Scheme provides that the transferor company is a wholly owned subsidiary of the transferee company, therefore, the transferee company shall not be required to issue any shares or pay any consideration to the shareholders of the transferor company. Accordingly, no consideration shall be payable by the transferee company under the Scheme.

8. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the applicant/transferor company and the transferee company.

9. The Board of Directors of the applicant/transferor company and the transferee company in their separate meetings held on 18th March, 2016 and 16th February, 2016 respectively have unanimously approved the

proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

10. The applicant/transferor company has 02 equity shareholders. Both the equity shareholders have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the equity shareholders of the applicant/transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured or unsecured creditor of the applicant/transferor company, as on 31st May, 2016.

11. The applicant also seeks dispensation of requirement of the transferee company to approach this Court for sanction of Scheme of Amalgamation under Sections 391-394 of the Companies Act, 1956 on the ground that the Scheme does not entail or involve any arrangement between the transferee company and its shareholders. Further, since the transferor company is a wholly owned subsidiary of the transferee company, no new shares will be issued by the transferee company in lieu of the shares of the transferor company; and there will be no change in

the control and management of the transferee company, therefore, the rights of the shareholders of the transferee company will not be affected in any manner whatsoever by the Scheme. It is further submitted that the present Scheme does not envisage any compromise or arrangement by the transferee company with their creditors and that the assets of both the companies are more than sufficient to meet its liabilities, therefore, the rights of the creditors of the transferee company will not be adversely affected.

12. In support of his submissions, learned counsel placed reliance on the judgment of this Court in CA(M) 29/2015 titled as Satyam Cineplexes Limited with Inox Leisure Limited wherein this court under similar circumstances, and relying on the judgments of several High Courts including this Court in many cases such as **eMeter India Pvt. Ltd.;** (CA(M) 179/2012) **Auto Tools India Pvt. Ltd.** [CA(M) 41/2010], **Sharat Hardware Industries Pvt. Ltd.** (1978), 48 Com.Cas 23 (Delhi), **Mahaamba Investments Ltd. V. IDI Limited** (2001) 105 Com Cas. 16 (Bom.), **Andhra Bank Housing Finance Ltd.** (2004) 118 Com.Cas. 295(AP) and **Prosell Field Marketing Pvt. Ltd.** [CA(M) 63/2012], had dispensed with the requirement of the transferee company to approach the High Court of Gujarat under Section 391(2) of the Companies Act, 1956 for sanction of the Scheme of Amalgamation.

13. I have considered the aforesaid case law cited at the Bar, wherein the transferee company, being the holding company, has been granted exemption from taking out separate proceedings under Section 391(2) of the Companies Act, 1956. In view of the settled legal position and considering the Scheme of Amalgamation, the requirement of the transferee company having to approach this Court under Section 391(2) of the Companies Act, 1956 for sanction of the Scheme of Amalgamation is dispensed with.

14. The application stands allowed in the aforesaid terms.

Dasti

SUDERSHAN KUMAR MISRA, J.

August 29, 2016