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**IN THE NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH, CHENNAI**

CPs/154 & 155/CAA/2018
in
CA/177/CAA/2017

Under Section 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation

Between

M/s. Idhayam Hospitals Erode Limited.

... Transferor Company

And

M/s. Kovai Medical Center And Hospital Limited.

... Transferee Company

Order delivered on: 18th September, 2018


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CH. MOHD SHARIEF TARIQ, MEMBER (J)

For Petitioner(s): Mr. C.V. Madhusudhanan, PCS.

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (J):

1. Under consideration are the Company Petition Nos. 154 & 155/CAA/2018 filed under Sections 230 to 232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. As per 

the Scheme of Amalgamation (in Short, '**Scheme**'), M/s. Idhayam Hospitals Erode Limited (hereafter referred to as '**Transferor Company**') is proposed to be merged, amalgamated and vested with the wholly owned subsidiary of M/s. Kovai Medical Center And Hospital Limited, (hereafter referred to as '**Transferee Company**') as a going concern.

2. The Transferor Company is an Unlisted Public Company, having its Registered Office at KMCH Premises, Door No.46, Avinashi Road, Coimbatore - 641014. The Transferee Company is a Listed Public Company, having its Registered Office at P B No. 3209, Avinashi Road, Coimbatore - 641014. The Transferor Company is engaged in the business to establish, take over, manage and run nursing homes, hospitals, clinics, diagnostic centres, dispensaries, to run health centres, yoga centers, immunization centre etc, the details of which is elaborately set out in Clause III of the Memorandum of Association of the Transferor Company. The Transferee

Company is engaged in the business to establish, operate, lease, acquire, administer and run hospitals, medicals and healthcare institutions, diagnostic and other investigation labs, medical centers, dispensaries and all other establishments and centers in advancing health diagnosis etc, the details of which is elaborately set out in Clause III of the Memorandum of Association of the Transferee Company. The Board of Directors of Petitioner Companies vide its Resolution dated 03.02.2017 approved the said Scheme of Amalgamation.

3. This Bench vide Order dated 21.11.2017, in CA/177/CAA/2017 dispensed with the convening and holding of the meeting of the Equity Shareholders of the Transferor Company. The Transferor Company has no Secured Creditor, and has one Unsecured Creditor viz., the Transferee Company and furnished the consent affidavit from the said Creditor. The Order dated 21.11.2017 pertaining to the meetings of the Equity Shareholders and Unsecured Creditors of the Transferee ^m


Company have been complied with. The Transferee Company has five Secured Creditors and the meeting of the said Secured Creditors was also dispensed with by this Bench. In short the Petitioner Companies have complied with all the requirements of law.

4. The Counsel appearing for the Petitioner Companies has submitted the reason and circumstances that have necessitated the proposed Scheme. He further submitted that the amalgamation will be beneficial for both the companies in improving size of Transferee Company and enabling the efficient utilization of resources and the net worth of the Transferee Company will substantially increase thereby enabling the Transferee Company to leverage its resources and assets in a more efficient and advantageous manner paving way for quicker business growth and benefiting the shareholders of the Transferor and the Transferee Company.
5. The Regional Director, Southern Region (In short, '**RD**') in the Affidavit dated 16.07.2018 submitted that Clause

8 Section IV of the Scheme provides for the protection of the interest of the employees/staff/workmen of the Transferor Company. It has further been submitted that as per the report of the RoC, Coimbatore, the Transferor Company and Transferee Company are regular in filing their statutory returns, and no complaints are pending and no inspection or investigation has been conducted against the Petitioner Companies.

6. The RD has observed that clause 10 of Section IV of the Scheme provides that the authorised capital of the Transferor Company will be merged with that of the authorised capital of the Transferee Company. The RD has suggested that the Transferee Company may be directed to file the requisite e-forms along with the amended MoA and AoA with RoC, Coimbatore for records. The RD has also suggested that as per Clause (i) to sub Section (3) of Section 232 of the Companies Act, 2013, the Transferee Company has to pay the fees, if any, for the enhanced authorised capital subsequent to

the Amalgamation after setting off the fees paid by the Transferor Company. In the light of the above the Transferee Company may be directed to comply with the above provisions of the Act by making an application with the RoC, Coimbatore for payment of the balance fee as applicable under the provisions of the Act and rules framed thereunder. In this regard, an authorised representative of the Transferee Company has filed an Affidavit deposing therein that the Transferee Company undertakes to file the requisite e-forms along with the amended MoA and AoA and Transferee Company shall make necessary applications to Registrar of Companies for payment of balance fees as applicable and make necessary payment thereof. Accordingly, the Transferee Company shall amend the MoA and AoA and file the same with the RoC, Coimbatore.

7. In Para 10 of the report, the RD has observed that in clause 4.9 of the scheme it is proposed that the share capital of transferor company will be sub divided from 

the present Rs.100/- per share to Rs.10/- per share. The RD observed that the Company need not pass the resolution again but the Transferee Company has to file the requisite e-forms along with the amended MoA and AoA with RoC, Coimbatore with necessary fees for its records. Accordingly, the authorised representative of the Transferee Company has filed an Affidavit deposing therein that due compliance will be made as suggested by the RD.

8. The Official Liquidator (In short, '**OL**') in his Report dated 19.07.2018, submitted that as per the Order given by this Bench, he has nominated M/s. Sundaresan Lakshmanan & Co., Chartered Accountants (Auditor), Coimbatore, who is one of the empanelled Auditors by the Hon'ble High Court of Madras to look into the Scheme of Amalgamation and to scrutinize the books and accounts of the Transferor Company. The Auditor has broadly reviewed and observed that under Clause 8.1 of Section IV of the proposed Scheme, the interest of all the


employees in the service of the Transferor Company is safeguarded.


9. The OL has also submitted that the Chartered Accountants have examined the Books of Accounts and records, other documents, annual reports and statutory records, registers and other related documents of the Transferor Company. Further, they have verified all the RoC related documents and registers of the Transferor Company have been maintained properly and immovable properties/assets are under charge of Rs.1,17,13,00,000/- dated 04/04/2008 and modification dated 15/12/2008 till date, and charge is not closed on RoC records. The Transferor Company has not accepted deposits from the public, and hence the question of commenting on compliance of the directions of the Reserve Bank of India relating to deposits does not arise. The affairs of the Transferor Company have not been conducted in a manner which is prejudicial to the interest of its members or to the public interest.

10. The OL has further submitted that the business of the Transferor Company has not been carried on with intent to defraud the creditors or any other person or for any fraudulent purpose attracting the provisions of Section 542 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013. Neither has any person or officer or director of the Transferor Company has misapplied or diverted or retained or become liable or accountable for any money or property of the Transferor Company nor has been found guilty of any misappropriation, breach of trust in relation to the Transferor Company under the provisions of Section 543 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013.

11. As mentioned in Para 7.1 of Section IV of the Scheme, it appears that the Accounting Treatment is in conformity with the Accounting Standards. The Appointed date of the said Scheme is 01.04.2016.

12. There is no additional requirement for any modification and the said Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under Sections 230 to 232 of the Companies Act, 2013. Taking into consideration the above facts, the Company Petitions are allowed and the Scheme of Amalgamation annexed with the Petitions is hereby sanctioned which shall be binding on the Shareholders, Creditors and employees of the Companies.

13. While approving the Scheme as above, I further clarify that this Order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if 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. 

14. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.
15. A certified copy of this Order shall be filed with the concerned Registrar of Companies within 30 days of the receipt of this Order.
16. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this Order with the concerned Registrar of Companies.
17. Upon receiving the certified copy of this Order, the RoC, Coimbatore, is directed to place all documents relating to the Transferor Company with that of the Transferee Company and the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company.
18. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format 

provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.

19. Accordingly, the Scheme stands sanctioned and CPs/154 & 155/CAA/2018 **stand disposed of.**


(CH. MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)

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