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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI
BENCH III

Coram: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)
SHRI K.K. VOHRA, MEMBER (TECHNICAL)

CAA-34/ND/2019
CONNECTED WITH
CA (CAA)-165(ND)/2018

IN THE MATTER OF:

(SECTIONS 230-232 OF THE COMPANIES ACT, 2013)

AND

IN THE MATTER OF SCHEME OF AMALGAMATION OF

MEMO OF PARTIES

ARTEMIS HEALTH SCIENCES LIMITED

Plot No. 14, Sector 20, Dwarka
South West Delhi, Delhi - 110075

APPLICANT COMPANY 1 / AMALGAMATING COMPANY 1

AND

ATHENA EDUSPARK LIMITED

Plot No. 14, Sector 20, Dwarka
South West Delhi, DELHI- 110075

APPLICANT COMPANY 2 / AMALGAMATING COMPANY 2

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And

ARTEMIS GLOBALLIFE SCIENCES LIMITED
414/1, 4th Floor,
DDA Commercial Complex, District Centre
Janakpuri, New Delhi-11005

APPLICANT COMPANY 3/ AMALGAMATED COMPANY 1
(Transferor Company 3/ Transferee Company 1)

And

ARTEMIS MEDICARE SERVICES LIMITED
Plot No. 14, Sector 20, Dwarka, South West Delhi,
Delhi- 110075

APPLICANT COMPANY 4/ AMALGAMATED COMPANY 2
(Transferee Company 2)

FOR THE PETITIONERS: Mr. Manoj Sharma & Associates

FOR INCOME TAX:
FOR OFFICIAL
LIQUIDATOR:

Ms. Lakshmi Gurung,

Mr. Aayushmaan, Mr. Deepak Anand
(Advocates)

FOR RD:

Mr. B. Mishra



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ORDER

Delivered on: 30.09.2019

1. The present Petition has been filed by the companies above named for the purpose of the approval of the scheme of arrangement, as contemplated between the companies by way of amalgamation of the Transferor Companies / Applicant Companies 1 and 2 namely Artemis Health Sciences Limited and Athena Eduspark Limited with the Applicant Company 3 namely Artemis Global Life Sciences Limited and simultaneously the merged entity as above amalgamating with Artemis Medicare Services Limited Applicant Company 4, its wholly owned subsidiary under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 (for brevity 'the Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') pursuant to the Scheme of Amalgamation (hereinafter referred to as the 'SCHEME') proposed between the Petitioners and the said Scheme is also annexed as Annexure 2 at pages 96 to 134 of the Petition.
2. From the records, it is seen that the First Motion seeking directions for dispensing with the requirement of convening the meeting of the Equity Shareholders, Secured and Unsecured Creditors of the Petitioner Companies was filed before this Tribunal vide CA (CAA) No. 165 (ND) 2018 and based on such joint application moved under Sections 230-

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232 of the Companies Act, 2013, directions were issued by this Tribunal, wherein the meetings of shareholders were dispensed with in relation to Artemis Health Sciences (AMSL), Athena Eduspark Limited and Artemis Medicare Services Limited vide order dated 19.12.2018 and meeting of shareholders to be convened with in relation to Artemis Global Life Sciences (AGLSL) and meetings of Secured and Unsecured Creditors to be convened in relation to AMSL. It was also represented that there were no Secured and Unsecured creditors in relation to Artemis Health Sciences, Athena Eduspark Limited and AGLSL, therefore, the necessity of convening the meetings did not arise.

3. Under the circumstances, the Applicant Companies filed their joint petition for sanction of the Scheme of Amalgamation before this Tribunal, subsequent to the order of dispensation/convening of the meeting after compliance in relation to the meetings evident from the reports of the respective Chairman appointed by this Tribunal by filing their report in relation to the Applicant Companies. Directions were issued vide order dated 14.05.2019 in relation to the notice to the Statutory / Regulatory Authorities as well as for paper publication in "Business Standard" in English and "Jansatta" in Hindi edition, and pursuant to the same notices have been served to the Regional Director, ROC, Official Liquidator and the Income Tax Department.

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4. The Applicants, it is seen from the records have filed an affidavit on 30.07.2019 in relation to the compliance of the order passed by the Tribunal as noted above and a perusal of the same discloses that the Applicants have effected the paper publication as directed by the Tribunal in one issue of the 'Business Standard' in English edition and 'Jansatta' in Hindi edition on 10.06.2019. Further, the notices have been served to The Regional Director (NR, MCA), Registrar of Companies (NCT of Delhi & Haryana), Office of the Official Liquidator and Income Tax Department in compliance with the directions passed by this Tribunal and in proof of the same acknowledgements/receipts have also been enclosed.

5. That the Regional Director, Northern Region, MCA to whom notice was issued has made its observation filed on 23.07.2019 before this Tribunal, and upon perusal of the same it is observed that the Regional Director does not have any adverse observation/ remark against the Scheme of Amalgamation between the Applicant Companies. In the representation affidavit filed by the RD, the broad mechanics of the Scheme and in relation to valuation if required to be done has been brought about at paragraph 6 and 7 of the said report succinctly which is as follows: -

"6. That as per clause 13 of the report of ROC it has been inter alia stated that it has been mentioned clause 5.1 of the scheme

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interalia that the amalgamating Company No. 1 is a wholly owned subsidiary of amalgamated Company No. 1 and Amalgamating Company No. 2 is a wholly owned subsidiary of the Amalgamating Company No. 1. Hence on effective date, no new shares of amalgamated Company No. 1 shall be allotted as consideration, further, Amalgamated Company No. 2 shall issue and allot 01 equity shares of face value of Rs 10 each to the shareholders of Amalgamating Company No. 3 for every 5 equity share of face value of Rs 2 each.”

“7. That the valuation report dated 4.5.2018 has been prepared by M/s Chitale & Co., Chartered Accountants. It has been mentioned in the said report interalia that the determination of swap ratio for allotment of shares of AMSL to the shareholders of AGLSL on merger of AGLSL into AMSL is at best an internal arrangement between AGLSL, AMSL and its shareholders and a detailed valuation of equity shares of AGLSL and AMSL to determine the share swap ratio



*would not be relevant in the present case.
Accordingly, valuation of shares of AGLSL
and AMSL using the Market Value Method
or Discount Cash Flow (Income) method or
Net Asset Value (NAV) Method or a
combination of the foregoing would not be
relevant in the present case."*

6. It is also reflected in the Representation Affidavit filed by RD at paragraph 8 which is to the following effect;

7. That at para 33 of the report of the Registrar of Companies, It has been inter-alia stated as under:
"Refer to clause 10 of the proposed Scheme, the amalgamated Company No. 2 may kindly be directed to comply with the provision of section 232(3) (i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital".

The Applicants have filed a detailed reply to the RD, as seen from the observations of the RD, and an affidavit filed on 23.07.2019 ensuring due compliance of section 232(3)(i), of the Companies Act, 2013 with regard to further additional fees payable on its revised authorized share capital beyond the combined limit of Rs 70,05,00,000/- (Seventy Crores and Five Lacs Only).

7. That the report of the Official Liquidator filed on 08.07.2019 has been placed on record which states that based on the information submitted by the Applicant Companies, it is of the view that the affairs of the aforesaid Applicant Companies No. 1 to 3 do not appear to have been conducted in a manner prejudicial to the interest as per the provisions

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of the Companies Act, 1956/ Companies Act 2013, whichever is applicable.

8. Further, the department of Income Tax has also filed its report on 23.07.2019 in relation to the Transferor (Applicant) Company 1, Transferor (applicant) Company 2 (Applicant), Transferor(applicant) Company 3/ Transferee Company and for Transferee (applicant 4) Company 2 they have filed report on 17.07.2019. The department is of the view that they are not having any objection if the proposed scheme of amalgamation/merger/demerger/ demerger is accepted by Hon'ble NCLT only after protecting the rights of the revenue to examine the tax implication of all the companies with regard to scheme of amalgamation/merger. However, no specific objections have been raised in relation to the Scheme which is required to be considered by this Tribunal. In relation to SEBI, an affidavit had been filed by one Mr. Pradeep Kumar (authorized representative of Athena Eduspark Limited) stating that no complaint had been received from stock exchanges. However this tribunal is of the view that mere filing of affidavit on the part of one or more Companies involved in the scheme will not suffice more in relation to SEBI/ Listing Agreement and Compliances framed thereunder and listing of the Shares shall be in consonance and dealt with as provided in clause 8.10 and 8.11 of the Scheme and of Section 230(3) (h) of the Companies Act,2013.
9. That the Applicant Companies have complied with proviso to Section 230 (7) / Section 232 (3) by filing the certificate of the Company's Auditor in relation to compliance by the provisions of sec 133 of the Companies Act,

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2013 read with relevant accounting Standards interalia IndAS103 on business combination as well as compliance in relation to SEBI (listing obligation/ disclosures) regulations 2015.

10. The Applicant companies have submitted that no investigation proceedings are pending against them under Section 235 to 251 of the Companies Act, 1956 or under Sections 210 to 226 of the Companies Act, 2013 by way of an affidavit filed on 29.07.2019.
11. In view of absence of any other objections having been placed on record before this Tribunal and an affidavit on 29.07.2019 been filed by the Applicant companies in relation to no objections been received either by the Applicant Companies or the Authorized Representative and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the Scheme of amalgamation annexed as Annexure "2" with the Company Petition as well as the prayer made therein.
12. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.
13. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption

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from payment of stamp duty, taxes or any other charges, if any payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

14. That in Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, this Tribunal has made the following observations with regard to the right of the IT Department in the Scheme of Amalgamation,

“taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in RE: Vodafone Essar Gujarat Limited v. Department of Income Tax (2013)353 ITR 222 (Guj) and the same being also affirmed by the Hon'ble Supreme Court and as reported in (2016) 66 taxmann.com.374(SC) from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15,2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutorily dues from the transferor or transferee or any other person who is liable for payment of such tax dues the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned.”

THIS TRIBUNAL DO FURTHER ORDER:

(1) That all properties, right and interest of the Amalgamating Companies shall pursuant to section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Amalgamated Company 2 as per the terms of the Scheme of Amalgamation.

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- (2) That all the liabilities, powers, engagements, obligations and duties of the Amalgamating Companies shall pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to the Amalgamated Company 2 and accordingly the same become the liabilities and duties of the Amalgamated Company 2.
- (3) That all proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company No. 2.
- (4) That all the employees of the Transferor Companies in service on date immediately preceding the date on which the Scheme finally take effect shall become the employees of the Transferee Company No. 2 without any break or interruption in their service.
- (5) Since the composite Scheme of Amalgamation contemplates the amalgamation of Applicant Companies 1 and 2 with Applicant Company 3 and again of Applicant Company 3 with Applicant Company 4, the cancellation of Equity Share Capital and allotment of Equity Share Capital to the Shareholders of these Companies shall take place in accordance with clause 8 of the Scheme.
- (6) That Transferor Companies and the Transferee No. 2 shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on the file kept by him in relation to all the Transferee Company No. 2 and the files

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relating to the said both companies shall be consolidated accordingly.

- (7) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

-sd-

(K.K.VOHRA)
MEMBER (TECHNICAL)

U.D Mehta/D

-sd-
30/09/19

(R.VARADHARAJAN)
MEMBER (JUDICIAL)



[Signature] 1/10/19
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003

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