

THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - I

C.P.(CAA)/231(MB)2022

IN

C.A.(CAA)106/MB/2022

In the matter of

The Companies Act, 2013;

And

In the matter of

Sections 232 r/w Section 230

and other applicable provisions of the

Companies Act, 2013 read with

Companies (Compromises, Arrangements

and Amalgamations) Rules, 2016;

And

In the matter of

Scheme of Amalgamation of

Nova Medical Centers Private Limited

CIN: U85110MH2009PTC375301

..Petitioner Company 1/
Transferor Company

Nova Pulse IVF Clinic Private Limited

CIN: U74900MH2010PTC375458

..Petitioner Company 2/
Transferor Company

**Nova Medical Centers NCR Region
Private Limited**

CIN: U85110MH2010PTC376910

..Petitioner Company 3/
Transferor Company

DSR Healthcare Private Limited

CIN: U85110MH2016PTC374636

..Petitioner Company 4/
Transferor Company

Motherhood Fertility Private Limited

CIN: U74999MH2016PTC374639

..Petitioner Company 5/
Transferor Company



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

C.P.(CAA)/231(MB)2022
IN
C.A.(CAA)106/MB/2022

Neo Art Repository Private Limited
CIN: U51909MH2013PTC374635

...**Petitioner Company 6/**
Transferor Company

RHEA Healthcare Private Limited
CIN: U85110MH2008PTC375300

...**Petitioner Company 7/**
Transferee Company

(Herein after collectively referred to as "the Petitioner Companies")

Order delivered on 01.11.2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

(Appearances)

For the Petitioner(s) : Mustafa Doctor a/w Adv Nausher
Kohli a/w Mrs. Sonam Mhatre a/w
Adv Mohnish Bhasin a/w Adv
Sakshi Mehta i/b. M/s. Dhaval
Vussonji & Associates, Advocates

For the Regional Director : Mr. Tushar Wagh, Deputy
Director, Office of the
Regional Director,

ORDER

1. Heard the Ld. Counsel for the Petitioner Companies and the representative of the Regional Director, Western Region,



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

C.P.(CAA)/231(MB)2022
IN
C.A.(CAA)106/MB/2022

Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme, nor has any party controverted any averments made in the Petition.

2. The sanction of the Tribunal is sought under Section 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules 2016, to the Scheme of Amalgamation of **Nova Medical Centers Private Limited** (Petitioner Company 1) and **Nova Pulse IVF Clinic Private Limited** (Petitioner Company 2) and **Nova Medical Centers NCR Region Private Limited** (Petitioner Company 3) and **DSR Healthcare Private Limited** (Petitioner Company 4) and **Motherhood Fertility Private Limited** (Petitioner Company 5) and **Neo Art Repository Private Limited** (Petitioner Company 6) with **Rhea Healthcare Private Limited** (Petitioner Company 7/Transferee Company) and their respective shareholders ('Scheme').
3. The Petitioner Companies are engaged in the following business:
 - a. The Transferor Company 1 / Petitioner Company 1 is engaged in the business of operating multi-specialty day care surgical centers to provide ambulatory services and diagnostics, outpatient lab and other services that are incidental and ancillary to the provision of ambulatory services.
 - b. The Transferor Company 2 / Petitioner Company 2 is engaged in business directly and through its subsidiary to



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

C.P.(CAA)/231(MB)2022
IN
C.A.(CAA)106/MB/2022

- provide assisted fertility treatments, assisted insemination services, In Vitro Fertilization (IVF) services and treatments for infertility.
- c. The Transferor Company 3 / Petitioner Company 3 is engaged in business of operating standalone multi-specialty day care surgical centers to provide ambulatory services and diagnostics, outpatient, lab and other services that were incidental and ancillary to the provision of ambulatory services till 31st December 2014.
 - d. The Transferor Company 4 / Petitioner Company 4 is engaged in business of providing the services in the field of maternal, child and other health care services.
 - e. The Transferor Company 5 / Petitioner Company 5 is engaged in business of trading in pharmaceutical products.
 - f. The Transferor Company 6 / Petitioner Company 6 is engaged in business of owning, acquiring, promoting, establishing, managing and administering ART (Assisted Reproductive Technology) bank.
 - g. The Transferee Company / Petitioner Company 7 is engaged in business of running hospitals and clinics.
4. The Board of Directors of the Petitioner Companies had approved the Scheme with the Appointed Date being 1st April, 2021 vide their respective Board Resolutions dated 28th March 2022.
5. Consideration pursuant to the Scheme is as follows:



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

C.P.(CAA)/231(MB)2022
IN
C.A.(CAA)106/MB/2022

a. **Equity Shareholders of the Transferor Company 1 /
Petitioner Company 1**

100 (One Hundred) fully paid-up Equity Shares of INR 1 each of the Petitioner Company 7 shall be issued and allotted as fully paid up to the equity shareholders of the Petitioner Company 1 for every 2,055 (Two Thousand and Fifty-Five) fully paid-up Class A Equity Share of INR 10 each of their holding in the Petitioner Company 1.

b. **Equity Shareholders of the Transferor Company 2 /
Petitioner Company 2**

100 (One Hundred) Equity Shares of INR 1 each of the Petitioner Company 7 shall be issued and allotted as fully paid up to the equity shareholders of the Petitioner Company 2 for every 1886 (One Thousand Eight Hundred and Eight Six) fully paid-up Equity Share of INR 10 each of their holding in the Petitioner Company 2.

c. **Equity Shareholders of the Transferor Company 3 /
Petitioner Company 3**

The Petitioner Company 3 is a wholly owned subsidiary of the Petitioner Company 1. Upon the Scheme becoming effective and upon amalgamation of the Petitioner Company 1 and the Petitioner Company 3 into the Petitioner Company 7 in terms of this Scheme, no shares of the Petitioner Company 7 shall be issued or allotted to the members of the Petitioner Company 3.



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

C.P.(CAA)/231(MB)2022
IN
C.A.(CAA)106/MB/2022

d. Equity Shareholders of the Transferor Company 4 /
Petitioner Company 4

The Petitioner Company 4 is a wholly owned subsidiary of the Petitioner 7 i.e., the entire paid-up share capital of the Petitioner Company 4 is being held by the Petitioner Company 7 along with its nominee. Therefore, on amalgamation of the Petitioner Company 4 with the Petitioner Company 7, the shares held by the Petitioner Company 7 in the Petitioner Company 4 shall stand cancelled with coming into effect of the Scheme and no new shares of the Petitioner Company 7 shall be issued and allotted.

e. Equity Shareholders of the Transferor Company 5 /
Petitioner Company 5

The Petitioner Company 5 is a wholly owned subsidiary of the Petitioner Company 7 i.e., the entire paid-up share capital of the Petitioner Company 5 is being held by the Petitioner Company 7 along with its nominee. Therefore, on amalgamation of the Petitioner Company 5 with the Petitioner Company 7, the shares held by the Petitioner Company 7 in the Petitioner Company 5 shall stand cancelled with coming into effect of the Scheme and no new shares of the Petitioner Company 7 shall be issued and allotted.

f. Equity Shareholders of the Transferor Company 6 /
Petitioner Company 6



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

C.P.(CAA)/231(MB)2022
IN
C.A.(CAA)106/MB/2022

The Petitioner Company 6 is a wholly owned subsidiary of the Petitioner Company 2 and the Petitioner Company 2 holds all the shares issued by the Petitioner Company 6 along with its nominee. Upon Part B of the Scheme becoming effective, the Petitioner Company 6 shall become a wholly owned subsidiary of the Petitioner Company 7. Therefore, upon amalgamation of the Petitioner Company 6 into the Petitioner Company 7 in terms of Part C of this Scheme, no shares of the Petitioner Company 7 shall be issued or allotted to the members of the Petitioner Company 6.

6. **The Rationale of the Scheme is as under:**

- a. Consolidation and integration of all the companies will result in earning predictability, stronger revenue and improved competitiveness thereby reducing business risks for mutual benefit of the stakeholders.
- b. Greater economies of scale and will provide a larger and stronger base for potential future growth.
- c. Simplification of shareholding and elimination of multiple entities, thereby ensuring a streamlined structure.
- d. Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and the Transferee Company.
- e. Rationalizing cost by eliminating multiple record keeping and administrative functions.



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

C.P.(CAA)/231(MB)2022
IN
C.A.(CAA)106/MB/2022

- f. Concentrated effort and focus by the management to grow the business by eliminating duplicative communication and burdensome co-ordination efforts across multiple entities and countries.
7. The present Company Petition has been filed in consonance with Section 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and other regulations as applicable and in terms of the order pronounced on 4th August 2022 in C.A.(CAA)/106(MB)2022.
8. The Petitioner Companies have complied with all the requirements as per the directions of this Tribunal and have made requisite filings to demonstrate compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if and to the extent applicable, as may be required under the Companies Act 2013 and the rules made thereunder.
9. The Regional Director has filed his report dated 08.08.2023 making certain observations. The Petitioner Companies have submitted/undertaken that:
- a. Transferor Company 1 and the Transferee Company states that from the date of filing of the Scheme with the NCLT and till date, there has been no change in the authorised share capital and the same has been rightly disclosed at the time of Company Scheme Application



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

C.P.(CAA)/231(MB)2022
IN
C.A.(CAA)106/MB/2022

C.A.(CAA)/106(MB)2022 and Company Scheme
Petition C.P.(CAA)/231(MB)2022 as well.;

- b. The Transferor Company 1 post filing of the Scheme with the Hon'ble NCLT, the Transferor Company 1 has allotted 56,11,017 Class A equity shares of INR 10/- each amounting additional equity share capital of INR 5,61,10,170/-; The Transferee Company has allotted 3,01,997 equity shares of INR 1/- each amounting additional equity share capital of INR 3,01,997/-;
- c. Transferor Company 2 shall pay its legitimate dues and liability towards trade payable and borrowings in the due course of business as and when they become due.
- d. The Transferee Company shall comply with the applicable provisions of Section 232(3)(i) of Companies Act, 2013 and the fee and stamp duty paid by the Transferor Companies on its authorized share capital shall be set-off against any fees and stamp duty payable by the Transferee Company;
- e. The Transferee Company shall pass such accounting entries which are necessary in connection with the AS-14 or IND AS-103 and comply with all other applicable Accounting Standards such AS-5 or IND AS-8, etc;
- f. The Scheme enclosed to the Company Application and Company Petition are one and the same and there is no discrepancy, or no change is made to the scheme;
- g. The approval of the Scheme would not deter such Sectoral/Regulatory Authorities to deal with any of the issues arising after giving effect to the Scheme and the



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

C.P.(CAA)/231(MB)2022
IN
C.A.(CAA)106/MB/2022

decision of such authorities would be binding on the Petitioner Companies;

- h. The Petitioner Companies shall comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.
 - i. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company; and
 - j. The Petitioner Companies to the extent required and applicable, shall comply with the provisions of section 90 of Companies Act, 2013 read with Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder and also to file Form BEN-2 for declaring name of the significant beneficial owner with concerned Registrar of Companies.
10. Mr. Tushar Wagh, Deputy Director from the Office of Regional Director of Western Region, Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.
11. The Official Liquidator, Bombay High Court, Mumbai has filed his report dated 28.06.2023 making certain observations. The Petitioner Companies have submitted/undertaken that:



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

C.P.(CAA)/231(MB)2022
IN
C.A.(CAA)106/MB/2022

- a. Investment in fixed deposits cannot be treated as financial assets and receipt of interest income on fixed deposits with banks cannot be treated as income from financial assets as these are not covered under the activities mentioned in the definition of “financial institution” in Section 45 I(c) of the RBI Act 1934. Besides, bank deposits constitute near money and can be used only for temporary parking of idle funds, and/ or in the above cases, till commencement of NBFI business.’ An NBFC is a company which has 50% or more of its total assets as financial assets and which has 50% or more of its gross income from such financial assets. Further investment in fixed deposits and interest income thereon is not considered as part of financial activity as they constitute near money and can be used only for temporary parking of idle funds.
- b. The audited financials as on 31st March 2022, does not satisfy the criteria of an NBFC;
- c. The statutory auditors i.e., Deloitte Haskins & Sells LLP have also stated in their audit report that Petitioner/Transferor Company 1 is not required to be registered under Section 45-IA of the Reserve Bank of India Act, 1934 i.e., confirming that it is not an NBFC.
- d. The statutory auditors i.e., Sriramulu Naidu & Co have also stated in their audit report that the Petitioner/Transferor Company 3 is not required to be registered under section 45-IA of the Reserve Bank of India Act, 1934 i.e., confirming that it is not an NBFC.
- e. The statutory auditors i.e., SRSN & Associates have also stated in their audit report that Petitioner /Transferor Company 5 & 6



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

C.P.(CAA)/231(MB)2022
IN
C.A.(CAA)106/MB/2022

is not required to be registered under section 45-IA of the Reserve Bank of India Act, 1934 i.e., confirming that it is not an NBFC.

12. We have considered the observation of the Official Liquidator and the explanation of the Petitioner Company, and find that nature of the business of the Petitioner Company explains the reasons of losses in the initial years. The Official Liquidator has submitted that barring observations the affairs of the Transferor Company have been conducted in a proper manner.
13. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and, it shall be open to the Income Tax authorities to take necessary action as possible under the Income Tax Law.
14. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.
15. Since all the requisite statutory compliances have been fulfilled, the Company Petition bearing C.P. (CAA)/231(MB)2022 is made absolute in terms of prayer in the said Company Scheme Petition.



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I

C.P.(CAA)/231(MB)2022
IN
C.A.(CAA)106/MB/2022

16. The Petitioner Companies are directed to file a certified copy of the order along with a copy of the Scheme with the concerned Registrar of Company, electronically, along with e-Form INC-28 in addition to physical copy, within 30 days from the date of receipt of certified copy of the same from the Registry.
17. The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy Registrar or the Assistant Registrar, as the case may be, of National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified copy of the Order.
18. All regulatory authorities concerned to act on a copy of this Order along with the Scheme duly certified by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai.
19. The Appointed Date is 1st day of April 2021.
20. Ordered accordingly Scheme is hereby approved and C.P. (CAA)/231(MB)2022 is allowed and disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)

Certified True Copy _____
Date of Application 06/11/2023
Number of Pages 13
Fee Paid Rs. 65/-
Amount called for collection copy on 10/11/23
Document prepared on 10/11/2023
Document issued on 10/11/2023

Page 13 of 13



R. S. Sonawant
Deputy Registrar 10/11/2023
National Company Law Tribunal, Mumbai Bench