

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH – I

CP (CAA)/91(MB)2023  
IN  
CA (CAA)/137(MB)2022

*In the matter of*

The Companies Act, 2013;

and

*In the matter of*

Sections 230-232 read with section 234 and other  
relevant provisions of the Companies Act, 2013

and

*In the matter of*

Scheme of Amalgamation of Heal Holdings  
(Transferor Company)

with

Rhea Healthcare Private Limited  
(Transferee Company)

and their respective shareholders

**Rhea Healthcare Private Limited**

**CIN: U85110MH2008PTC375300**

.....the Petitioner Company / Transferee Company



**Order delivered on 14.07.2023**

***Coram:***

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao  
Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

***Appearance (via videoconferencing):***

For the Petitioner Company: Sr. Advocate Mr. Mustafa Doctor a/w  
Ms. Sonam Mhatre i/b. Dhaval Vussonji  
and Associates

For Regional Director : Ms. Rupa Sutar, Deputy Director, Office  
of the Regional Director, Mumbai

**ORDER**

***Per: Anu Jagmohan Singh, Member (Technical)***

1. The Court convened through video-conference.
2. Heard the Learned Counsel for the Petitioner Company and the representative of the Regional Director, Western Region, 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.
3. The sanction of the Tribunal is sought under Section 232, Section 234 read with Section 230 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, to the Scheme of Amalgamation of Heal Holding ('the Transferor Company') with Rhea Healthcare Private Limited ('the Transferee Company') and their respective shareholders ('Scheme').
4. The Petitioner Company is engaged in the business of running mother and childcare hospitals and Clinics. The Petitioner Company situated in Mumbai and the Transferor Company situated in Mauritius.



5. The Learned Counsel for the Petitioner Company submit that the Board of Directors of the Petitioner Company and the Transferor Company had approved the Scheme with Appointed Date 1<sup>st</sup> April, 2021 vide Board Resolution dated 28<sup>th</sup> March, 2022.
6. The Learned Counsel for the Petitioner Company submit that since the registered office of Heal Holdings (the Transferor Company) is situated in Mauritius, the Transferor Company had preferred application for sanction of the Scheme before the Bankruptcy Division in the Supreme Court of Mauritius under the applicable provisions of The Companies Act, 2001 of the Republic of Mauritius. The Bankruptcy Division in the Supreme Court of Mauritius has vide order dated 13.07.2022 sanctioned the Scheme.
7. The Learned Counsel for the Petitioner Company states that the share exchange ratio of the Scheme is as follows:  
  
*“100 (One Hundred) Equity Shares of INR 1 each of the Transferee Company shall be issued and allotted as fully paid up to the equity shareholders of the Transferor Company for every 2,387 (Two Thousand Three Hundred and Eighty-Seven) Ordinary Share of USD 1 each of their holding in the Transferor Company”*
8. The rationale of the Scheme is as under:
  - a) Consolidation of the business carried on by the Transferor Company through its Indian subsidiary with that of the Transferee Company.



- b) Ensuring a streamlined group structure.
  - c) Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Company and the Transferee Company.
  - d) Rationalising cost by eliminating multiple record keeping and administrative functions.
  - e) 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.
9. The Learned Counsel for the Petitioner Company submits that the present Company Petition has been filed in consonance with Section 232 read with Section 230 and 234 of the Companies Act, 2013 and in terms of order pronounced on 03.03.2023 in C.A.(CAA)/137(MB)2022.
10. The Learned Counsel for the Petitioner Company submits that the Petitioner Company have complied with all the requirements as per directions of this Tribunal and have made requisite filings to demonstrate compliance with this Tribunal. Moreover, the Petitioner Company undertakes 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.
11. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai ('RD') has filed his Report dated 12.05.2023. In paragraphs 2(a) to 2(h) of report, the RD has made certain



observations. In response to the observations made by the RD, the Petitioner Company has given necessary clarifications and undertakings vide its rejoinder affidavit dated 13.05.2023. The Petitioner Company has submitted that:-

Para	Observations in the RD report dated 12.05.2023	Reply by the Petitioner Company 13.05.2023
2(a)	<i>In compliance of AS-14 (IND AS-103) the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS 8) etc.;</i>	<i>The Petitioner Company undertakes that it shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-14 (IND AS 103), AS-5 (IND AS 8) etc.</i>
2(b)	<p><i>As per Definitions of the Scheme, "Appointed Date" means 1st April, 2021, or such other date as may be approved by the Appropriate Authority.</i></p> <p><i>"Effective Date" means the last of the dates on which the conditions specified in clause 16 of the Scheme are complied with. Any reference in this Scheme to "upon the Scheme becoming effective" or "on the Scheme becoming effective" shall mean the Effective Date.</i></p> <p><i>In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble</i></p>	<p><i>The Petitioner Company submits that as per clause 1.3 of the Scheme, "Appointed Date" means April 1, 2021. Further, as per clause 1.5 of the Scheme, "Effective Date" means the last of the dates on which the conditions specified in clause 16 of the Scheme are complied with. As per section 232(6) of the Companies Act, 2013 the scheme under this section shall clearly indicate an appointed date from which it shall be effective, and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. Hence, in the instant case, the Scheme shall be effective from Appointed Date i.e. April 1, 2021 and not at a date subsequent to the Appointed Date i.e. April 1, 2021. Further, the Petitioner Company submits that it has complied with and undertakes to comply with the requirements and clarified vide circular no. F.No. 7/12/2019/CL-I dated 21.08.2019 issued by the</i></p>

	<p><i>Tribunal taking into account its inherent powers.</i></p> <p><i>The Petitioner may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	<p><i>Ministry of Corporate Affairs.</i></p>
2(c)	<p><i>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with 7 subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.</i></p>	<p><i>The Petitioner Company submits that vide order pronounced on 03.03.2023 in CA (CAA) 137/MB/C-I/ 2022, the Hon'ble Tribunal had dispensed with the convening of the meeting of the members and creditors required to be held in accordance with the Section 230 of the Companies Act, 2013</i></p>
2(d)	<p><i>Petitioner Company may be directed to place on record prior approval of Reserve Bank of India as required u/s. 234(2) of the Companies Act, 2013 and may also directed to undertake the requirement of FEMA regulations has been complied with by the petitioner company.</i></p>	<p><i>The Petitioner Company states that as per the provisions of section 234(2) of the Companies Act, 2013 read with Rule 25A of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, a foreign company may with the prior approval of the Reserve Bank of India amalgamate with an Indian company. In this regard, Reserve Bank of India has framed Foreign Exchange Management (Cross Border Merger) Regulations, 2018. As per Regulation 9 of the said regulations issued by Reserve Bank of India, any transaction on account of a cross border merger undertaken in accordance with the Foreign Exchange Management (Cross Border Merger) Regulations, 2018 shall be deemed to have prior approval of Reserve Bank as required under Rule 25A of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016. Further as per the said</i></p>



		<p><i>regulation, a certificate to that effect is required to be furnished along with the application made to the National Company Law Tribunal.</i></p> <p><i>The Petitioner Company submits that it has complied with and undertakes to comply with the provisions of the regulations contained in Foreign Exchange Management (Cross Border Merger) Regulations, 2018. Further Mr. Ritesh Pandey and Mr. Kumar Shobhit Agarwal, directors of the Petitioner Company have provided a declaration to ensure compliance with the Foreign Exchange Management (Cross Border Merger) Regulations, 2018 along with the Company Scheme Application – Exhibit K. Accordingly, approval of Reserve Bank of India is deemed to have been received to the Scheme.</i></p>
2(e)	<p><i>Registered office of the Transferor Company is situated in Mauritius, therefore, petitioner company may be directed to place on record similar approval as per law Mauritius Government.</i></p>	<p><i>The Petitioner Company submits that since the registered office of Heal Holdings (the Transferor Company) is situated in Mauritius, the Transferor Company had preferred application for sanction of the Scheme before the Bankruptcy Division in the Supreme Court of Mauritius under the applicable provisions of The Companies Act, 2001 of the Republic of Mauritius. The Bankruptcy Division in the Supreme Court of Mauritius has vide order dated 13.07.2022 sanctioned the Scheme.</i></p>
2(f)	<p><i>In the Balance Sheet of Transferee Company as on 31.03.2022, Security Premium of Rs. 3,51,66,64,000/- is showing, therefore, Hon'ble NCLT may ask the petitioners to clarify that Income Tax Department has properly assessed the increase of share capital</i></p>	<p><i>The Petitioner Company submits that the increase in share capital was done in compliance with the Income Tax Act, 1961 and there are no ongoing proceedings / litigations or outstanding demand by / against the Petitioner Company or its shareholders under</i></p>

from time-to-time u/s. 68 of the Income Tax Act, 1961 payment of Income Tax by existing shareholders, if they who have purchased shares at lower price than issued price from above allottees to seek the reply from Income tax department about issues of share capital at high premium.

It is further submitted that CBDT vide circular dated 17.03.2023 (Copy enclosed) appointed the following nodal officer for income tax department for Region of Mumbai & Goa, which is as follows:-

Pr. CCIT, Mumbai

Address:- 3rd Floor, Aayakar

Bhawan,

Maharishi Karve Road, Mumbai - 400020

Phone No. 022-22017654

Email:-

Mumbai.pccit@incometax.gov.in

section 68 of the Income Tax Act, 1961. Further the Petitioner Company submits and undertakes the following:

- i) the Petitioner Company continues to survive post the Scheme becoming effective and there will be no impact of the Scheme on the pending tax litigation / proceedings / demand, if any.
- ii) the Petitioner Company will cooperate with the tax authorities under the applicable laws in relation to the pending tax litigations / proceedings / demand and also make necessary payment of legitimate dues in accordance with the applicable law as and when the liability to pay such dues materializes. Further pursuant to the Scheme, there is no impact on the rights available to the tax authorities under the applicable law.
- iii) the Scheme does not envisage any type of evasion or avoidance of the tax liabilities or dues.
- iv) no assets are being carved out of the Petitioner Company.
- v) while sanctioning the Scheme, the rights of the Income Tax Department remain intact to initiate appropriate proceedings regarding recovery of any tax. Further once the Scheme has been sanctioned by the Hon'ble Tribunal, nothing precludes the Income Tax Department from recovering its legitimate and recoverable outstanding tax dues. The said principles have been stated in the decision dated 25th September 2019 passed by Hon'ble National Company Law





		<p><i>Appellate Tribunal, New Delhi in Company Appeal (AT) No. 98 of 2019.</i></p>								
<p>2(g)</p>	<p><i>It is observed from latest MGT-7 for the year ending 31.03.2022 filed by the petitioner companies that petitioner companies have following corporate body shareholders having more than 10% shareholding, but form Ben-2 has not been filed: -</i></p> <table border="1" data-bbox="337 722 889 1320"> <thead> <tr> <th data-bbox="337 722 532 1024">Name of the Company</th> <th data-bbox="532 722 667 1024">Name of the Shareholder</th> <th data-bbox="667 722 781 1024">Percentage of Shareholding</th> <th data-bbox="781 722 889 1024">Status of Ben-2</th> </tr> </thead> <tbody> <tr> <td data-bbox="337 1024 532 1320">Rhea Healthcare Private Limited (Transferee Company)</td> <td data-bbox="532 1024 667 1320">Asia Health care Holdings Pte Ltd.</td> <td data-bbox="667 1024 781 1320">95.54 %</td> <td data-bbox="781 1024 889 1320">Not filed</td> </tr> </tbody> </table> <p><i>Therefore, petitioner companies may be directed to clarify and comply with the same as required u/s. 90 of the Companies Act, 2013 r.w. companies (Significant Beneficial Owners) Rules, 2018.</i></p>	Name of the Company	Name of the Shareholder	Percentage of Shareholding	Status of Ben-2	Rhea Healthcare Private Limited (Transferee Company)	Asia Health care Holdings Pte Ltd.	95.54 %	Not filed	<p><i>The Petitioner Company states that the provisions of section 90(1) of the Companies Act, 2013 is as under:</i></p> <p><b><i>"Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed"</i></b></p> <p><i>Rule 2(h) of the Companies (Significant Beneficial Owners) Rules, 2018 defines 'significant beneficial owners' to mean as under;</i></p> <p><b><i>"significant beneficial owner" in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:-</i></b></p> <p><b><i>(i) holds indirectly, or together with any direct holdings, not less than</i></b></p>
Name of the Company	Name of the Shareholder	Percentage of Shareholding	Status of Ben-2							
Rhea Healthcare Private Limited (Transferee Company)	Asia Health care Holdings Pte Ltd.	95.54 %	Not filed							

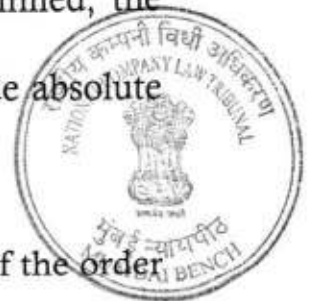


		<p><i>ten per cent. of the shares;</i></p> <p><i>(ii) holds indirectly, or together with any direct holdings, not less than ten per cent. of the voting rights in the shares;</i></p> <p><i>(iii) has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;</i></p> <p><i>(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone:</i></p> <p>...</p> <p><i>The Petitioner Company submits that no individual directly or indirectly holds 10% or more of the shares / voting rights of the Petitioner Company. Accordingly, the Petitioner Company submits that there is no 'significant beneficial owner' of the Petitioner Company and hence compliance by the Petitioner Company with the provisions of section 90 of the Companies Act, 2013 read with Companies (Significant Beneficial Owners) Rules, 2018 is not applicable.</i></p>
2(h)	<p><i>That on examination of the report of the Registrar of Companies, Mumbai dated 01.05.2023 (Annexed as Annexure A-1) that all the Petitioner Companies fall within the jurisdiction of ROC, Mumbai. It is submitted that no compliant and /or representation regarding the proposed Scheme of Amalgamation has been received against the Petitioner Companies. Further, the petitioner companies have filed Financial Statements up to</i></p>	<p><i>The Petitioner Company undertakes submits as under:</i></p> <div data-bbox="997 1917 1292 2196" style="text-align: center;"></div>

<p>31.03.2022 further observations in ROC report are as under:-</p> <p>i. That the ROC Mumbai in his report dated 01.05.2023 has stated that no Inspection/ investigation/ inquiry/ compliant' prosecution against the transferee company is pending.</p> <p>ii. There are 4 Secured creditors amounting to Rs. 1,41,96,41,811/- and 1330 amounting to Rs. 35,90,12,664/- unsecured creditors of the applicant company.</p> <p>iii. Interest of the Creditors should be protected,</p> <p>iv. May be decided on its merit.</p>	<p>i) With regards to the observation as stated in paragraph 2(h)(i) of the report and reproduced hereinabove is concerned, the contents being statements of fact does not require any comments.</p> <p>ii) With regards to the observation as stated in paragraph 2(h)(ii) of the report and reproduced hereinabove is concerned, the contents being statements of fact does not require any comments.</p> <p>iii) With regards to the observation as stated in paragraph 2(h)(iii) of the report and reproduced hereinabove is concerned, the Petitioner Company undertakes to protect the interest of the creditors.</p> <p>iv) With regards to the observation as stated in paragraph 2(h)(iv) of the report and reproduced hereinabove is concerned, the contents being statements of fact does not require any comments.</p>
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12. Ms. Rupa Sutar, Deputy Director, Office of Regional Director (WR), 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.
13. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of Income Tax Act, 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)/91(MB)2023 is made absolute in terms of prayer in the said Company Scheme Petition.
16. The Petitioner Company is 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 Company 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 1<sup>st</sup> day of April, 2021.
20. Ordered accordingly Scheme is hereby approved and C.P.(CAA)/91(MB)2023 is allowed and disposed of.

Sd/-

**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**

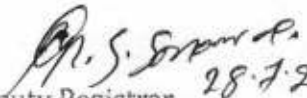
14.07.2023  
Priyal

Sd/-

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**



Certified True Copy \_\_\_\_\_  
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Copy 28/7/23  
Copy issued on 28/7/23

  
Deputy Registrar 28.7.2023

National Company Law Tribunal, Mumbai Bench