



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**CA (CAA) No. 08/ALD/2022
(First Motion)**

**Under Section 230 to 232 and
other Applicable Provisions of
the Companies Act, 2013
read with Companies
(Compromises, Arrangements &
Amalgamations) Rules, 2016**

IN THE MATTER OF SCHEME OF AMALGAMATION OF:

PALIWAL MEDICARE PRIVATE LIMITED

117/H-1/02, PANDU NAGAR

KANPUR, UTTAR PRADESH - 208025

.....APPLICANT NO. 1 / TRANSFEROR COMPANY

AND

PALIWAL DIAGNOSTICS PRIVATE LIMITED

117/H-1/02, PANDU NAGAR

KANPUR, UTTAR PRADESH - 208025

.....APPLICANT NO. 2 / TRANSFEREE COMPANY

Order delivered on: 12th October, 2023

Coram: Hon'ble Mr. Praveen Gupta, Member (Judicial)

Hon'ble Mr. Ashish Verma, Member (Technical)

Present through Physical hearing: -

For the Applicant Companies: Mr. Ankit Misra, PCS

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ORDER

1. This is a joint First Motion Application filed by the Applicant Companies namely; **PALIWAL MEDICARE PRIVATE LIMITED** (Applicant / Transferor Company), and **PALIWAL DIAGNOSTICS PRIVATE LIMITED** (Applicant / Transferee Company) under Section 230-232 of the Companies Act, 2013 (the 'Act') and other applicable provisions of the Act read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the 'Rules') in relation to the Scheme of Amalgamation between the Applicant Companies and their respective Shareholders and Creditors (the 'Scheme'). The said Scheme is attached as **Annexure A-1** of the Application.

2. The Applicant Companies have prayed for dispensing with the requirement for convening the Meeting of the Secured and Unsecured Creditors of the Applicant / Transferor Company as it is stated in the Application that there are no Secured creditors in the Applicant/Transferor Company, and 94.55% of unsecured creditors have given their consent to the

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scheme by the way of Affidavit and Meeting of the Secured and Unsecured Creditors of the Applicant/Transferee Company as there are no Secured Creditors in the Applicant / Transferee Company. It is further prayed to convene the meetings of the Unsecured Creditor of the Applicant / Transferee Company.

3. The Applicant / Transferor Company is a deemed Public Limited Company (Subsidiary of Public Limited Company) incorporated under the Companies Act, 1956 and is engaged in the business of Radiological, Cardiological and other Diagnostic tests and to carry on and conduct Medical, Clinical and related activities etc. The Equity Shares of the Applicant / Transferor Company are not listed on any Stock Exchange.

4. The Applicant / Transferee Company is a deemed Public Limited Company (Subsidiary of Public Limited Company) incorporated under the Companies Act, 1956 and is engaged in the business of Radiological, Cardiological and other Diagnostic tests and to carry on and conduct Medical, Clinical and related activities etc. The Equity Shares of the Applicant / Transferee Company are not

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listed on any Stock Exchange.

5. It is submitted that the Registered Offices of the Applicant Companies are situated in the State of Uttar Pradesh, therefore, the territorial jurisdiction of the Applicant Companies lie with this Bench.

6. The rationale of the Scheme is given below:-

(a) The Transferor Company and the Transferee Company have common control, common management, common place of business, common fund management and common group administration. The amalgamation will result in simplification of corporate structure by reducing the number of legal entities, rationalization of group shareholding pattern and reorganizing the legal entities in the group structure.

(b) The amalgamation would integrate the business synergies and reap the benefit of consolidation through focused management, generating surplus funds to enable planning for further growth in business.

(c) The amalgamation will lead to emergence of a single entity with strong financial capability to effectively withstand competition, to effectuate economies of scale

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and to optimize benefits available under the law. The consolidated Company with far enlarged asset base, higher profitability and net worth will be better placed to access low cost fund for its expansion and diversification requirements.

(d)The amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried by the Amalgamating Companies and will avoid duplication of administrative functions and eliminate multiple record keeping.

7. It is stated that the Board of Directors of the Applicant / Transferor Company and the Applicant / Transferee Company in their respective meetings held on **25th October, 2021** have considered and unanimously approved the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copies of the Board Resolutions of the Applicant Companies are part of attached as **Annexures A-3 and A-9** respectively of the Application.

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8. The 'Appointed Date' of the Scheme is 1st April, 2021 as mentioned in the Scheme of Amalgamation which is attached as **Annexure A-1** of the Application.
9. It is stated that the Applicant / Transferor Company and Applicant / Transferee Company have filed the Audited Financial Statements as on 31st March, 2021 which are attached as **Annexures A-7** and **A-13** respectively of the Application.
10. It is further stated that the Applicant / Transferor Company and Applicant / Transferee Company have also filed the Financial Statements for the period ended 31th March, 2022 on 23rd July, 2023.
11. It is submitted that no corporate debt restructuring is envisaged in the proposed Scheme of Amalgamation.
12. It is further submitted that in pursuance of the proviso to Section 230 (7) and Section 232 (3) of the Act, the Applicant Companies have filed the certificates dated 16th March, 2022 issued by the Statutory Auditors of the respective Applicant Companies certifying that the accounting treatment proposed in the Scheme is in compliance with the Accounting Standards prescribed

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under Section 133 of the Companies Act, 2013 and the same are attached as **Annexures A-15** respectively of the Application.

13. It is further submitted by the Counsel for the Applicant Companies that as per the Report of Mr. Ramandeep Singh Arora, a Registered Valuer for Securities and Financial Assets (Registration No. IBBI / RV/ 06 / 2018 / 10487) dated 25th October, 2021 on Share Exchange Ratio for the Scheme of Amalgamation which is attached as **Annexure A-14** of the Application, the Applicant / Transferee Company shall, without any further act or deed, issue and allot to each member of the Transferor Companies, whose name is recorded in the Register of Members as on the Record date, the Equity Shares in the following proportion:

The fair share exchange ratio for the proposed merger of PMPL with PDPL should be for every 10 equity shares of Rs.10 each held in PMPL, 4 equity shares of Rs. 10 each of PDPL should be issued.

14. It is submitted by the learned Counsel that the Scheme of Amalgamation (**Annexure A-1**) also takes care

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of the interests of the staff, workers and employees of the Applicant Companies, as provided under Part-B Para 9 of the Scheme.

15. The Authorised Representative of the Applicant Companies has deposed by way of affidavit that there are no inspection, inquiry, investigations or legal proceedings pending against the Applicant Companies under Section 210 to 227 of the Companies Act, 2013 and Section 235 to 251 of the Companies Act, 1956 and other applicable provisions of the Companies Act, 1956/2013. The aforesaid Affidavit of the Authorised Representative of the Applicant Companies is attached and marked as **Annexure A-5 and A-6** of the First Motion checklist.

16. The Authorised Representative of the Applicant Companies has deposed by way of affidavit that the Applicant Companies are not regulated by any sectoral regulators. The aforesaid Affidavit of the Authorised Representative of the Applicant Companies is filed separately on 16th February, 2023 as per the order of Hon'ble Tribunal

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17. The Applicant Companies have furnished the following documents: -

- Proposed Scheme of Amalgamation (Annexure A-1 of the Application).
- Certificate of Incorporation along with Memorandum and Articles of Association of the Applicant Companies (Annexures A-2 and A-8 respectively of the Application).
- List of Equity Shareholders of the Applicant / Transferor Company and Applicant / Transferee Company as on 25th October, 2021 (Annexure A-4 and A-10 of the Application).
- Consent Affidavit of Unsecured Creditors constituting 94.55% of total value of unsecured debt for waiver of holding of Meeting of Unsecured Creditors of the 'Applicant/Transferor Company' (Annexure A-5 of the Application).
- Consent Affidavit of an Unsecured Creditor constituting 90.06% of the total value of Unsecured Debt for waiver of holding of Meeting of Unsecured Creditors of the 'Applicant/Transferee Company' (Annexure A-11 of the Application)

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- List of Creditors of the Applicant / Transferor Company and the Applicant / Transferee Company as on 25th October, 2021 duly certified by the Statutory Auditors (Annexures A-5, A-11 of the Application).
- Certificates of the Statutory Auditors of the Applicant Companies to the effect that the accounting treatment proposed in the Scheme is in conformity with the provisions of Section 133 of the Companies Act, 2013 (Annexures A-15 respectively of the Application).
- Audited Financial Statements as on 31st March, 2021 of the Applicant Companies (Annexures A-7 and A-13 respectively of the Application).
- Financial Statements for the period ended 31st March, 2022 of the Applicant Companies filed on 23rd July, 2023.
- Report on Valuation of Shares and Share Exchange Ratio of Mr. Ramandeep Singh Arora, a Registered Valuer for Securities and Financial Assets (Registration No. IBBI / RV/ 06 / 2018 / 10487) dated 25th October, 2021 for the Scheme of Amalgamation (Annexure A-14 of the Application).

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- Affidavits stating that there are no legal proceedings pending against the Applicant Companies (Annexure A-5 and A-6 of the first motion checklist).
- Affidavit with regard to the Sectoral Regulator of the Applicant Companies filed on 16th February, 2023 by the order of Hon'ble Tribunal

18. The Applicant Companies have furnished the details of the Equity Shareholders, Preference Shareholders, Secured and Unsecured Creditors and Debenture holders as follows:

Name of the Applicant Companies	Shareholders along with their consent			
	Equity Shareholder (A)	Consent of (A) with calculations	Preference Shareholders (B)	Consent of (B) with calculations
Applicant Company No.1 (TRANSFEROR)	03 (10,000 shares)	03 (10,000 shares)	0	0
Applicant Company No.2 (TRANSFEREE)	03 (16,000 shares)	03 (16,000 shares)	0	0

	Creditors along with their consents					
	Debenture Holders (C)	Consent of (C) with calculation	Secured Creditors (D)	Consent of (D) with calculations	Unsecured Creditors (E)	Consent of (E) with calculation
Applicant Company No.1 (TRANSFEROR)	0	0	0	0	15 Rs. 7,35,674	6 Rs.6,95,552 (94.55%)
Applicant Company No.2 (TRANSFEREE)	0	0	0	0	62 Rs. 97,52,380	28 Rs.87,83,663 (90.06%)

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19. Accordingly, the directions of this Bench in the present case are as under:-

I. In relation to Applicant / Transferor Company No. 1:

- a. There are no Secured Creditors of the Applicant / Transferor Company, as such, the question of issuing directions for convening / dispensing the meetings of the Secured of the Applicant / Transferor does not arise;
- b. There are no Preference Shareholders of the Applicant / Transferor Company, as such, the question of issuing directions for convening / dispensing the meeting of the Preference Shareholders of the Applicant / Transferor Company does not arise;
- c. The meeting of the Equity Shareholders of the Applicant / Transferor Company is dispensed herewith, keeping in view that all Equity Shareholders have given their consent by the way of affidavit
- d. The meeting of the unsecured creditor of the Applicant / Transferor Company is dispensed herewith, keeping in view that 94.55% Unsecured Creditors have given their consent by the way of affidavit

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II. In relation to Applicant / Transferee Company:

a. There are no Secured Creditors of the Applicant / Transferee Company, as such, the question of issuing directions for convening / dispensing the meetings of the Secured of the Applicant / Transferee does not arise;

b. There are no Preference Shareholders of the Applicant/ Transferee Company, as such, the question of issuing directions for convening / dispensing the meeting of the Preference Shareholders of the Applicant/Transferee Company does not arise;

c. The meeting of the Equity Shareholders of the Applicant/Transferee Company is dispensed herewith, keeping in view that all Equity Shareholders have given their consent by the way of affidavit

d. The meeting of the Unsecured Creditor of the Applicant/ Transferee Company shall be convened as prayed for on **Saturday, 02nd December 2023, at 1:00 P.M.** at the Registered Office of the Company at 117/H-1/02 PANDU NAGAR, Kanpur, Uttar Pradesh, India, 208025, Uttar Pradesh with facility for voting through poll at the venue of the meeting. The quorum of the

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meeting of the unsecured creditor shall be in accordance with the provisions of the Companies Act, 2013 and the applicable Rules made thereunder. For computing the quorum, unsecured creditor present through valid proxy shall also be considered.

III. In case the required quorum as noted above for the meetings is not present at the commencement of the meeting, the meeting shall be adjourned by thirty minutes and thereafter the unsecured Creditor of the Transferee Company present and voting shall be deemed to constitute the quorum of the respective meetings.

IV. Ms. Gunjan Jadwani, Mobile No. 8980174409, email id: gunjanjadwani@gmail.com, is appointed as the Chairperson for the meetings to be called under this order. A consolidated amount of Rs.1,25,000/- (Rs. One Lakh Twenty Five Thousand only) be paid for services as Chairperson for all the meetings. The Chairperson shall have all the powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with the other applicable rules and provisions in relation to conduct of the meetings, including for deciding procedural

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questions that may arise at the meeting(s) or at any adjournment thereof, or any other matter relating to the meetings, including an amendment to the Scheme of Amalgamation, if any, proposed by any persons.

- V.** Mr. Abhishek Mishra, Company Secretary, Mobile No. 9452739057, email id: abhishekmishra1612@gmail.com is appointed as the Scrutinizer for the above meetings to be called under this order. An amount of Rs.75,000/- (Rupees Seventy Five thousand only) only be paid for the services as Scrutinizer.
- VI.** Apart from the above remuneration, the Transferee Company shall make necessary and proper arrangements for travel / transport, stay and other allied expenses for Chairman and Scrutinizer etc., if so required.
- VII.** It is further directed that individual notices of the said meetings of unsecured creditor shall be sent by the Transferee Company through registered post or speed post or through courier or e-mail, at least 30 (Thirty) days in advance before the scheduled date of the meeting, indicating the day, date, time and place as aforesaid, together with a copy of the Scheme, copy of the

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Explanatory Statement, Report on Valuation of Shares and Share Exchange Ratio of the Registered Valuer proposed in Scheme of Amalgamation as discussed in para 14 of this order, form of proxy and documents required to be sent under the Companies Act, 2013 and the applicable Rules made thereunder.

VIII. It is further directed that along with the notices, the Transferee Company shall also send, statements explaining the effect of the Scheme on the creditors, shareholders, key managerial personnel, promoters and non-promoter members, etc. along with the effect of the Scheme of Amalgamation on any material interests of the Directors of the Transferee Company provided under subsection (3) of Section 230 of the Act.

IX. It is further directed that the provisional Accounting Statement of the Transferee Company be also circulated along with the Notice of the aforesaid meetings in terms of Section 232(2)(e) of the Companies Act, 2013.

X. That the Transferee Company shall publish an advertisement with a gap of at least 30 (Thirty) clear days before the aforesaid meetings, indicating the day, date,

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time and place of the meeting as aforesaid, to be published in “Business Standard” (English) and “Business Standard” (Hindi) both having wide circulation in Kanpur in the State of Uttar Pradesh. It shall be stated in the advertisement that the copies of “Scheme”, the Explanatory Statement required to be furnished can be obtained free of charge at the registered office of the Transferee Company pursuant to Section 230 to 232 of the Act. The Transferee Company shall also host the notice on the website, if any.

XI. It shall be the responsibility of the Transferee Company to ensure that the notices are sent under the signature and supervision of the authorized representative of the Transferee Company on the basis of Board resolutions and that they shall file their affidavits in the Tribunal at least 7(Seven) days before the date fixed for the meetings.

XII. All the meetings of the unsecured Creditor of Transferee Company shall be held physically and voting shall be conducted through poll by polling paper and the unsecured creditor present in person or by proxy shall be entitled to vote thereat. Subject to the directions and

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matters dealt with herein, the procedure for voting by polling paper at the venue of the meeting shall be in so far as the same is prescribed by the Companies Act, 2013 read with the Companies (Management and Administration) Rules, 2014, Secretarial Standards on General Meetings and the forms prescribed thereunder shall be followed with such variations as may be required in the circumstances and in relation to the resolution for approval of the Scheme of Amalgamation.

XIII. The Scrutinizer's report will contain his / her findings on the compliance to the directions given in Para VII to XII above.

XIV. The Chairperson shall be responsible to report the result of the meetings to the Tribunal in Form No. CAA-4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 15 (Fifteen) days of the conclusion of the meeting. The Chairperson would be fully assisted by the Authorized Representative / Company Secretary of the Transferee Company and the Scrutinizer in preparing and finalizing the reports.

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XV. The Transferee Company shall individually and in compliance of sub-section (5) of Section 230 of the Act and Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA-3 along with copy of the Scheme, Explanatory Statement and the disclosures mentioned in Rule 6 of the “Rules” to (i) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi; (ii) Jurisdictional Registrar of Companies; (iii) Official Liquidator, Allahabad; (iv) Income-Tax Department having jurisdiction over the Transferee Company by mentioning the PAN number of the Transferee Company and to such other Sectoral Regulator(s) governing the business of the Transferee Company, if any, stating that report on the same, if any, shall be sent to this Tribunal within a period of 30 (Thirty) days from the date of receipt of such notice and copy of such report shall be simultaneously sent to the Transferee Company, failing which it shall be presumed that they have no objection to the proposed Scheme.

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XVI. The Transferee Company shall furnish a copy of the Scheme free of charge within one day of any requisition for the Scheme made by any Shareholder or creditor entitled to attend the meeting as aforesaid.

XVII. The Authorized Representative of the Transferee Company shall furnish an Affidavit of Service of Notice of Meetings and publication of advertisement and compliance of all directions contained herein at least 7 (Seven) days before the date fixed for the meetings.

XVIII. All the aforesaid directions are to be complied with strictly in accordance with the applicable laws including forms and formats contained in the Rules as well as the provisions of the Companies Act, 2013 by the Applicant Companies.

20. The Second Motion petition shall be filed within 7 days from the date of submission of report by Chairperson in accordance with the provisions of rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

21. With the aforesaid directions, this First Motion Application stands disposed of. A copy of this order be

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supplied to the learned Counsel for the Applicant Companies who in turn shall supply a copy of the same to the Chairperson and the Scrutinizer immediately.

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

Dated : 12th October, 2023

Aditi Kharbanda
(LRA)