



# PROJECT BUTTERFLY

## REPORT ON THE CAPITAL STRUCTURE

Jupiter Life Line Hospitals Limited

Prepared By - MMJB & Associates LLP, Practicing Company  
Secretaries, Mumbai

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## Disclaimer:

We have been mandated by Jupiter Life Line Hospitals Limited (**“the Company”**) to prepare a report regarding certain queries with respect to certain aspects of the **“Capital Structure”** of the Company in relation to the initial public offer of equity shares of ₹10 each (**“Equity Shares”**) by the Company (the **“Offer”**, and the report **“Report”**). Our scope of work included specific instructions received and information in relation to the Capital Structure of the Company.

For the purpose of the Report, we have not conducted a forensic audit. This Report should not be included or referred to in any document, notes or publication, made available to persons other than requesting concern and outside the organization namely Jupiter Life Line Hospitals Limited, their legal advisors, and ICICI Securities Limited, Edelweiss Financial Services Limited and JM Financial Limited (the **“BRLMs”**) therein without our written consent, except that for inclusion of contents from this the Report (in part or full), in the draft red herring prospectus, red herring prospectus, and prospectus (collectively, the **“Offer Documents”**) to be filed with the Securities and Exchange Board of India (**“SEBI”**), the relevant stock exchanges in India where the Equity Shares are proposed to be listed (the **“Stock Exchanges”**), the Registrar of Companies, Maharashtra at Mumbai (**“RoC”**) and/or other regulatory/ governmental authorities, as the case may be and or any other Offer-related material, and this Report may be included as a material document available for inspection in relation to the Offer, in accordance with applicable law, and may be submitted to SEBI, the Stock Exchanges and the RoC, if requested or deemed necessary in the sole discretion of the BRLMs. We do not have any responsibility to update this report after the date of the report.

I further confirm that I am an independent professional, holding a valid certificate of peer review bearing number 2826/2022 issued by the Peer Review Board of the Institute of Company Secretaries in India, which is valid until 30<sup>th</sup> November, 2027, and is annexed herewith as **Annexure A**, and have with no direct or indirect interest in the Company, its Subsidiaries, its group, the directors or the Promoters except for provision of professional services in the ordinary course of my profession.

We hereby certify that the information, as set out herein and in the Report are true, correct and not misleading as on the date of this Report.



Accordingly, we are in no way responsible to any reader / user of this findings, if he/she is erred in any judgment and / or suffers any set back / loss / damage directly or indirectly based on usage of these findings or interpreting correctly or incorrectly of any sentence or phrase therein.

I represent that the execution, delivery and performance of this Report have been duly authorised by all necessary actions (corporate or otherwise).

We agree to keep the information regarding the Offer strictly confidential.



**INDEX FOR QUERY REDRESSAL REPORT FOR  
JUPITER LIFE LINE HOSPITALS LIMITED**

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**1) BRIEF PROFILE OF THE COMPANY**

**A) THE COMPANY WAS INCORPORATED ON NOVEMBER 18, 2002:**

The present status is as follows: -

<b>Name of the Company</b>	JUPITER LIFE LINE HOSPITALS LIMITED
<b>Address of the Registered Office of the Company</b>	1004, 10 <sup>th</sup> Floor, 360 Degree Business Park Maharana Pratap Chowk, LBS Marg Mulund (West), Maharashtra- 400080
<b>Address other than R/o where all or any books of account and papers are maintained</b>	Jupiter Hospital, Eastern Express Highway Opp. Flower Valley, Thane (W), Maharashtra- 400601
<b>CIN</b>	U85100MH2002PLC137908

**B) CAPITAL STRUCTURE AS ON MAY 10, 2023:**

<b>Particulars</b>	<b>Amount (Rs.)</b>
<b>A AUTHORISED SHARE CAPITAL</b> 80,000,000 Equity Shares of Rs. 10/- each	800,000,000
<b>B ISSUED, SUBSCRIBED AND PAID UP CAPITAL</b> 56,518,390 Equity Shares of Rs. 10/- each	565,183,900



### 3) QUERIES ADDRESSED

#### 3.1 Equity Share Capital History of the Company

#### 1. [Details relating to allotment made by the Company in the Board Meeting held on March 31, 2004 and March 31, 2009](#)

##### a. Details:

It is observed that there is a discrepancy in the names of the list of allottees appearing in the board resolution and the names appearing in the list of allottees appended to the Form 2 filed with the Registrar of Companies.

##### March 31, 2004:

(i) As per the board resolution dated March 31, 2004, Navin Davda has been allotted two allotments:

- a. 270,000 Equity Shares; and
- b. 70,000 Equity Shares.

However, in the Form – 2, 270,000 Equity Shares have been allotted to Navin Davda and 70,000 Equity Shares have been allotted to Dhanwantri Hospital; and

(ii) As per the board resolution dated March 31, 2004, Pragna Davda has been allotted two allotments:

- a. 150,000 Equity Shares; and
- b. 3,300 Equity Shares.

However, in the Form -2, 150,000 Equity Shares have been allotted to Pragna Davda, and 3,300 Equity Shares have been allotted to Shusrat Pathology Lab.

(iii) We understand that Dhanwantri Hospital and Shusrat Pathology Lab are sole proprietorships of Navin Davda and Pragna Davda, respectively. Further, at the time of allotment, it appears that separate folio numbers were not allotted to Dhanwantri Hospitals and Shusrat Pathology Lab.

- (iv) Further, based on our review of the application and renunciation forms provided by the Company, we understand that:
- Navin Davda applied for 340,000 Equity Shares, and
  - Pragna Davda applied for 153,300 Equity Shares, and no Equity Shares were renounced in favour of Dhanwantri Hospital or Shusrat Pathalogy Lab.

March 31, 2009:

- (v) As per the board resolution dated March 31, 2009, 250,000 Equity Shares have been allotted to Rajeshwari Capital Market Limited.
- (vi) However, the Form-2 filed with the Registrar of Companies provides for the allotment of 250,000 Equity Shares to Rajeshwari Pharma Chem Private Limited.
- (vii) Additionally, the register of members provides for the allotment of 250,000 Equity Shares to Rajeshwari Capital Market Limited.

**b. Actions:**

With regard to the discrepancies mentioned above, [our recommendations on actions required to be undertaken by the Company is mentioned below :

**c. MMJB Reply:**

**In relation to the above matters, the details of documents reviewed by us:**

BM Minutes	Application & renunciation forms	Forms	Ledgers of	Registers	Share Certificate (SC) index*
Allotment of shares - March 31, 2004	Navin Davda Pragna Davda	Form 2 filed for the allotments made on: March 31, 2004 & March 31, 2009	Navin Davda Pragna Davda	Register of Members	<ul style="list-style-type: none"> <li>SC No. 10 - 2,70,000 shares - Navin Davda</li> </ul>



Allotment of shares - March 31, 2009		Form 20B filed for the Financial Year 2008-09  Annual Return for the FY 2004-05* *Form 20B for the Financial Year 2003-04 is not available.	Rajeshwari Capital Market Limited		<ul style="list-style-type: none"><li>• SC No. 11 - 70,000 shares - Navin Davda</li><li>• SC No. 12 - 1,50,000 shares - Pragna Davda</li><li>• SC No. 13 - 3300 shares - Pragna Davda</li><li>• SC No. 1395 - 2,50,000 shares - Rajeshwari Capital Market Limited</li></ul> <p><i>*Since, all the shares were dematerialized; hence share certificates are not available.</i></p>
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**Our understanding:**

March 31, 2004:

After going through the cited minutes and various documents available with us, it is observed that:

1. The Board in its meeting held on March 31, 2004 had allotted:
  - a. 3,40,000 equity shares via Share Certificate (SC) No. 10 of 2,70,000 Equity Shares of Rs. 10 each and SC No. 11 of 70,000 Equity Shares of Rs. 10 each to Mr. Navin Davda on right issue basis; and
  - b. 153,300 equity shares via SC No. 12 of 1,50,000 Equity Shares of Rs. 10 each & SC No. 13 of 3,300 Equity Shares of Rs. 10 each to Mrs. Pragna Davda on right issue basis.
2. However, the list of allottees appearing in Form-2 filed with Registrar of Companies, Maharashtra at Mumbai ('RoC') for the allotment made on March 31, 2004 of 70,000 equity shares under SC No. 11 reflects allotment made to Dhanwantri Hospital, which is a sole proprietorship concern of Mr. Navin Davda and of 3,300 equity shares under SC No. 13 to Shusrat Pathology Lab, which is a sole proprietorship concern of Mrs. Pragna Davda.
3. Further, it is evident from the ledgers of Mr. Navin Davda and Mrs. Pragna Davda that the share application money was received from the account of Mr. Navin Davda and Mrs. Pragna Davda and not from their respective sole proprietorship concern.
4. Also, the register of members of the Company records Mr. Navin Davda and Mrs. Pragna Davda as members of the Company.
5. Also, the Share Certificate No. 10 and 11; 12 and 13 mentions the names of Mr. Navin Davda and Mrs. Pragna Davda respectively as the members of the Company.
6. Due to the unavailability of the Form 20B filed for the FY 2003-04 and no allotment of shares during the FY 2004-05, the annual return of FY 2004-05 has been referred, wherein the list of shareholders includes Mr. Navin Davda and Mrs. Pragna Davda as the members.



Hence, in view of the foregoing, it is understood that the shares were originally allotted to Mr. Navin Davda and Mrs. Pragna Davda only and not to their sole proprietorships.

***Therefore, we had recommended that the Company file the revised erstwhile Form 2 (currently Form PAS-3) with RoC for allotment dated March 31, 2004 with the correct list of allottees.***

***In this regard, the Company has filed the corrected Form PAS-3 with the ROC on May 10, 2023, having SRN: AA2334839 a copy of which is attached to this Report as Annexure B. No further action is required in relation to the discrepancies mentioned above. Further, this form has no impact on the online MCA data in connection to the current paid-up capital of the Company.***

March 31, 2009:

After going through the cited minutes and various documents available with us, it is observed that:

1. The Board in its meeting held on March 31, 2009 had allotted 2,50,000 equity shares (SC No. 14 of 2,50,000 Equity Shares of Rs. 10 each) to Rajeshwari Capital Market Limited.
2. However, the list of allottees appearing in Form-2 filed with Registrar of Companies ('RoC') for the allotment made on March 31, 2009, reflects allotment of 2,50,000 equity shares under SC No. 14 to Rajeshwari Pharma Chem Private Limited.
3. Further, it is evident from the ledgers of Rajeshwari Capital Market Limited that the share application money was paid by Rajeshwari Capital Market Limited and not by Rajeshwari Pharma Chem Private Limited.
4. The register of members of the Company records Rajeshwari Capital Market Limited as its member.
5. Also, the share certificate No. 1395 mentions the name of Rajeshwari Capital Market Limited as the member of the Company.



6. Further, list of shareholders attached in Form 20B filed for the FY 2008-09 also shows Rajeshwari Capital Market Limited as the member of the Company.

Hence, in view of the foregoing, it is understood that the shares were allotted to Rajeshwari Capital Market Limited and not Rajeshwari Pharma Chem Private Limited.

*Therefore, we had recommended that the Company file the revised erstwhile Form 2 (currently Form PAS-3) with RoC for allotment dated March 31, 2009 with the correct list of allottees.*

*In this regard, the Company has filed the corrected Form PAS-3 with the ROC on May 10, 2023, having SRN: AA2389479 a copy of which is attached to this Report as Annexure C. No further action is required in relation to the discrepancies mentioned above. Further, this form has no impact on the online MCA data in connection to the current paid-up capital of the Company.*

## **2. [Details relating to rights issues under section 81\(1\) of Companies Act, 1956.](#)**

### **a. Details and Actions :**

The Company had undertaken a rights issue in 2007. In that regard, we have been requested to confirm that necessary compliances were undertaken under Section 81(1) of the Companies Act, 1956.

### **b. MMJB Reply:**

**Details of Documents reviewed is as follows:**



BM Minutes:	Shareholders' meeting Minutes	Forms:	Ledgers of:	Other Documents
a) Issue of Shares to the existing shareholders - March 02, 2007  b) Issue of shares to the outsiders - May 04, 2007  c) Allotment of shares to existing shareholders as well as outsiders - May 21, 2007	EGM Minutes:  March 30, 2007	Separate Form 2 filed for the 2 allotments made on: May 21, 2007  Form 23 filed for shareholder's approval  Form 20B filed for the following Financial Years: 2005-06 2006-07 2007-08	Jupiter Lifeline Hospitals Ltd.  Equity share capital (Group summary) from April 01, 2007 to May 21, 2007  Share Premium account dated May 24, 2007	Articles of Association of the Company, as amended, from time to time.

**Our understanding:**

**Board Resolution dated March 2, 2007, and shareholders resolution March 30, 2007:**

After going through the cited minutes and various documents available with us, it is observed that:



1. Pursuant to the provisions of Section 81(1) and other applicable provisions of the Companies Act, 1956, the Board in its meeting held on March 02, 2007, approved a rights issue for the purposes of part financing for the development of a project and in order to maintain the minimum debt equity ratio mandated by the requirements of a loan agreement.
2. The abovementioned board resolution *inter alia* (a) determined the rights issue ratio, which was five equity shares for every one equity share, (b) determined that shares issued pursuant to the rights issue be fully paid up, (c) the rights exercisable by shareholders also include a right to renounce, and (d) in accordance with the provisions of section 81(1)(d) of the Companies Act, 1956 (*which stated “after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of directors may dispose of them in such manner as they think most beneficial to the company”*), any shares not accepted by the shareholders be issued to outsiders at a suitable premium as decided by the Board in the bona fide interest of the Company.

Further, as a overcompliance, the aforementioned rights issue was also approved by the shareholders of the Company in their meeting by the way of special resolution held on March 30, 2007.

Further the Company had filed Form 23 with RoC dated May 04, 2007 and registered this resolution.

3. Accordingly, the Company has issued letter of offer to the existing shareholders and received the renunciation letter for 96,75,000 equity shares as undertaken by the board. However in the Board Meeting dated May 04, 2007, it was understood that application from shareholders as well as renouncees in the rights issue were less than the fund requirements of the Company for the purposes mentioned above, the Company, in accordance with the terms of the board resolution dated March 02, 2007 and Section 81(1)(d) of the Companies Act, 1956, decided to issue such unsubscribed shares to outsiders under the terms of the rights issue ‘*that any shares not accepted by the offerers are issued to outsiders at suitable premium as decided by the Board of Directors in the bonafide interest of the Company*’.
4. In exercise of the powers as conferred above, the Board in their meeting held on May 04, 2007 had approved for allotting the 31,80,872 equity shares being unsubscribed and allotted such shares under the category mentioned under Section 81(1)(d) of the Companies Act, 1956, at a price of Rs. 12.50 per Equity Share i.e. at a premium of Rs. 2.50 per equity share, which is in the bona fide interest of the Company.



5. Even after allocation of shares to outsiders, as mentioned in clause 3 above, we note that there was a shortfall in fund requirement. At such time, certain shareholders of the Company came forward and agreed to subscribe to this shortfall at a premium of Rs. 12.50, which was in the bona fide interest of the Company. The details of such shareholders who were allotted such shares is mentioned below:

S. No.	LF	Names of shareholders	No. of shares
1.	35	Dr. A. S. Arvind (jointly with Dr. Kamini Rao)	4,00,000
2.	42	Dr. Kamini Rao (jointly with Dr. A. S. Arvind)	8,00,000
3.	59	Dr. Ajay P. Thakker (jointly with Mr. U V Patel)	5,00,000
		<b>TOTAL</b>	<b>17,00,000</b>

6. Consequent to the above, the Board in its meeting held on May 21, 2007 had approved for the allotment of 1,01,81,500 Equity Shares of Rs.10/- each at par to the existing shareholder and 31,80,872 equity shares of Rs.10/- each at a premium of Rs. 2.50 per equity share to the outsiders.

***Therefore, all compliances required to be met for a rights issue under the applicable provisions of the Companies Act, 1956 were met and the rights issue is in compliance with the Section 81(1) and other applicable provisions of the Companies Act, 1956.***

**Additional Queries:**

**Query 1:**

**Kindly clarify how the allotment of equity shares to the existing shareholders after they did not subscribe to their full entitlement or renounced the full entitlement at the first instance, is in compliance of section 81(1)(d) of the Companies Act, 1956.**

**MMJB Reply:**

According to the Section 81(1)(d) of Companies Act, 1956, “after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of directors may dispose of them in such manner as they think most beneficial to the company.”

Therefore, the board of a company has the authority to dispose of any unsubscribed shares in a way that it deems appropriate and most advantageous to the company.

In the ambit of aforesaid power, the Board through its meeting held on May 21, 2007 decided to allot 31,80,872 equity shares of Rs. 10 each to the outsiders at a premium of Rs. 12.5 per share.

***Even after allocating shares to outsiders, a funding gap still existed. Later on, few shareholders who had initially either not fully subscribed or renounced their shares came forward and agreed to subscribe the shortfall. In this case, it is not a new issue because the shareholders had already been offered the shares. Further the Companies Act 1956 does not give any restriction on this subject matter and it is ultimately at the sole discretion of the board of directors in the best interest of the company, So there is no question of non-compliance of section 81(1)(d) of the Companies Act 1956.***

**Query 2:**

Kindly confirm whether (i) the board discretion for the allotment at Rs. 12.50 is in compliance with Section 81(1) of the Companies Act. 1956, and (ii) the allotment made to Dr. A.S. Arvind (jointly with Dr. Kamini Rao) at two different prices is in compliance with applicable law.

**MMJB reply:**

As per the provisions of section 81(1)(c) of Companies Act, 1956, unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (b) shall contain a statement of this right;



Further, according to the section 81(1)(d) of Companies Act, 1956, *after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of directors may dispose of them in such manner as they think most beneficial to the company.*

According to the aforementioned provisions and the terms of the offer, the right to renounce was granted to the shareholders in the right issue dated March 02, 2007; 1,49,08,350 equity shares of Rs. 10 each at par, which was approved by the members on March 30, 2007. As a result, Dr. A. S. Arvind renounces 2,32,500 equity shares in the favour of Dr. A. S. Arvind (together with Dr. Kamini Rao). Thus, the company through its board meeting held on May 21, 2007 approved and allotted the said equity shares.

Further, in the board meeting held on May 04, 2007, it was understood that application from shareholders as well as renouncees in the rights issue were less than the fund requirements of the Company for the purposes mentioned above, and hence the Company, in accordance with the terms of the board resolution dated March 02, 2007 decided to issue such unsubscribed shares to outsiders at premium of Rs. 12.50 per share.

From the above we understood that the allotment to Dr. A. S. Arvind (together with Dr. Kamini Rao) has been made on two occasions:

- i. By the way of renunciation at a price of Rs. 10 each and
- ii. By the way of discretion of directors to disposed of the unsubscribe shares at a price of Rs. 12.50 per share.

Even after allocating shares to outsiders, a funding gap still existed. Later on, few shareholders who had initially either not fully subscribed or renounced their shares came forward and agreed to subscribe the shortfall. In this case, it is not a new issue because the shareholders had already been offered the shares. Further the Companies Act 1956 does not give any restriction on this subject matter and it is ultimately at the sole discretion of board of directors in the best interest of the company.

***Since the board of directors has the discretion to dispose the shares in any manner as they think most beneficial for the Company pursuant to section 81(1)(d), and the resolution passed by the shareholders as on March 30, 2007 for issue of equity shares on rights basis also provides an authority to the Board for the same, we are of the view that the said discretion for the allotment at Rs. 12.50 is in compliance with Section 81(1) of the Companies Act. 1956.***





*Further, the Companies Act 1956 does not give any restriction on this subject matter and it is ultimately at the sole discretion of board of directors in the best interest of the company to dispose of the shares in any manner, there is no question of non-compliance of section 81(1)(d) of the Companies Act 1956. Also, it is the sole discretion of the existing shareholder to accept the said offer or not, considering the terms set by the Board of Directors. Hence, the said allotment made to Dr. A.S. Arvind (jointly with Dr. Kamini Rao) at two different prices is in compliance with applicable law.*

### **3. [Details relating to allotment made by the Company in the Board Meeting held on December 12, 2009.](#)**

#### **a. Details:**

1. The Company has provided with the Board resolution for providing authority under section 81(1A) of the Companies Act, 1956 dated March 5, 2009, and a subsequent shareholders resolution dated March 30, 2009.
2. Further, the Company has also provided a Board resolution for providing authority dated July 30, 2009 under section 81(1A) of the Companies Act, 1956, and a subsequent shareholders resolution dated September 26, 2009.
3. We note that Form-2 filed with RoC for the allotment of equity shares includes the date of shareholder's resolution authorising the issue under Section 81 as March 30, 2009.
4. Further, we note that the board resolution passed as on December 12, 2009 for allotment of equity shares states that the allotment is made by way of a rights issue.

#### **b. Actions:**

1. Determination of the correct authority resolutions for the allotment on December 12, 2009.
2. Requirement of the correction to the Form-2.
3. The correct nature of the transaction -whether it is to be classified as a further issue or rights issue.



c. **MMJB Reply:**

Details of Documents reviewed is as follows:

BM Minutes:	Shareholders Meeting Minutes:	Form-2 filed for the allotments made on:	Form 23 filed for the Special Resolution passed on:
<b>Preferential allotment - 1</b> a) Issue of shares - March 5, 2009  b) Allotment of shares - March 31, 2009  <b>Preferential allotment - 2</b>  c) Issue of shares - July 30, 2009  d) Discussion on rights issue - November 11, 2009  e) Allotment of shares - December 12, 2009  f) Allotment of shares - June 01, 2010	a) EGM Minutes: March 30, 2009  b) AGM Minutes: September 26, 2009	a) March 31, 2009  b) August 31, 2009  c) December 12, 2009  d) June 01, 2010	a) March 30, 2009  b) September 26, 2009



**Our understanding:**

Board Resolution dated March 5, 2009, and shareholders resolution dated March 30, 2009:

After going through the cited minutes and various documents available with us, it is observed that:

1. The Board in its meeting held on March 05, 2009 had approved for the further issue of 3,00,00,000 equity shares of Rs. 10 each as a preferential allotment out of the earlier approved re-classification of the unissued preference shares to equity share capital. The members had accorded their consent to the aforementioned resolution on March 30, 2009 and had authorised Board to offer, issue and allot the aforementioned shares at the price as may be deemed fit and decided from time to time.
2. In furtherance to the powers conferred above, the Board of directors had made multiple allotments in its Board Meeting dated March 31, 2009.

Board Resolution dated July 30, 2009, and shareholders resolution dated September 26, 2009:

It is observed that:

1. The Board in its meeting held on July 30, 2009 had approved the further issue of 1,10,00,000 equity shares of Rs. 10 each on preferential allotment (after re-classification of the unissued preference shares to equity share capital). The members had accorded their consent to the aforementioned resolution on September 26, 2009 and had authorised the Board to offer, issue and allot the aforementioned shares at the price deem fit as decided time to time.
2. In view of the powers as conferred above, the Board in its meeting held on December 12, 2009 had approved allotment of 6,46,000 fully paid-up Equity shares at Rs. 10 each. However, the preamble for the allotment of the shares includes *'the statement showing share application money received pursuant to Rights Issue Offer made by the Company'*.
3. In view of the powers as conferred above, the Board in its meeting held on June 01, 2010 had approved allotment of 3,54,000 fully paid-up Equity shares at Rs. 10 each and the preamble for the allotment of the shares includes *'the statement showing share application money received by the Company'*.



Hence, it is understood that the members in their meeting held on March 30, 2009 had approved the issue of 3,00,00,000 equity shares of Rs. 10 each as a preferential allotment and not as a rights issue.

Further, the members in their meeting held on September 26, 2009 had approved the issue of 1,10,00,000 equity shares of Rs. 10 each on preferential allotment, which by its nature, supplants the resolution passed on March 30, 2009.

Therefore, the allotment of shares made by the Board on December 12, 2009 shall be construed under the authority resolution passed as on September 26, 2009 by the members of the Company and ***the date of shareholder's resolution authorising the issue under Section 81(1A) of the Companies Act, 1956 shall be mentioned as September 26, 2009 instead of March 30, 2009 in Form 2 filed with RoC.***

***Also, it is noteworthy that the Board in its meeting held on November 11, 2009 had discussed about the proposal of the issue of Equity Shares on rights basis. However, the minutes of the Company records only about the discussion held for the proposed right issue of equity shares and further, no resolution giving effect to the aforementioned resolution was passed by the Board in its meeting.***

***Furthermore, there is no instance found which shows that the allotment made on December 12, 2009 was made pursuant to right issue. Hence, the same appears to be a typo error and the allotment seems to be made on preferential issue basis under the authority of the members resolution dated September 26, 2009.***

***Our recommendations/ actionable:***

***Authority Resolution and subsequent rectification of the Form 2:***

***We have recommended that the Company file the revised erstwhile Form 2 (currently Form PAS-3) with RoC for the allotment dated December 12, 2009 with the correct authority resolution passed by the members of the Company as on September 26, 2009 instead of March 30, 2009.***

***In this regard, the Company has filed the corrected Form PAS-3 with the ROC on May 10, 2023, having SRN: AA2397012 a copy of which is attached to this Report as Annexure D. No further action is required in relation to the discrepancies mentioned above. Further, this form has no impact on the online MCA data in connection to the current paid-up capital of the Company.***



Nature of the transaction:

*The Board resolution passed for allotment of equity shares as on December 12, 2009, seems to be a preferential issue of shares as authorised by the Members' Resolution dated September 26, 2009.*

*However, there seems to be a typographical error in the preamble for the member's resolution passed by the Company as on December 12, 2009 wherein 'the statement showing share application money received pursuant to Rights Issue Offer made by the Company' is stated instead of preferential allotment. No specific action is required to be taken to correct this typographical error.*

**4. Details relating to multiple allotments made by the Company and Authority resolutions for the same.**

**a) Details**

It is observed that multiple allotments (i) dated March 31, 2008, September 1, 2008, and November 3, 2008, and (ii) March 31, 2009 and December 12, 2009, have been made pursuant to the same authority resolutions dated March 1, 2008, and March 30, 2009, as specified in the form -2 filings, respectively.

**b) Action:**

Whether the Form 2 filed with RoC for the said allotments requires revision.

**c) MMJB Reply:**

**Details of Documents reviewed is as follows:**



BM Minutes	Shareholders Meeting Minutes	Form-2 filed for the allotments made on	Form 23 filed for the Special Resolution passed on	Form 20B
d) Issue of shares - March 01, 2008; e) Allotment of shares - March 31, 2008; f) Allotment of shares - September 1, 2008; g) Allotment of shares - November 3, 2008; h) Issue of shares - March 5, 2009; i) Allotment of shares -	EGM Minutes: March 25, 2008 March 30, 2009	a. March 31, 2008, b. September 1, 2008, c. November 3, 2008, d. March 31, 2009, e. December 12, 2009	March 25, 2008 March 30, 2009	Form 20B filed for Financial Year 2008-09



BM Minutes	Shareholders Meeting Minutes	Form-2 filed for the allotments made on	Form 23 filed for the Special Resolution passed on	Form 20B
March 31, 2009; j) Issue of shares - July 30, 2009; k) Allotment of shares - December 12, 2009				

**Our understanding:**

After going through the cited minutes and the Form 23 filed for Special Resolution along with Form 2 filed for various allotments made thereunder, it was observed that:

1. The Board in its meeting held on March 01, 2008 had approved for the preferential allotment of 1,96,55,958 equity shares of Rs. 10 each and the members have accorded their consent to the aforementioned resolution on March 25, 2008 and had authorised Board to offer, issue and allot the aforementioned shares at the price deem fit as decided time to time.
2. In view of the powers as conferred above:
  - a. the Board in its meeting held on March 31, 2008 had approved allotment of 20,00,000 Equity shares.
  - b. the Board in its meeting held on September 1, 2008 had approved allotment of 20,00,000 Equity shares and 4,40,000 Equity shares;
  - c. the Board in its meeting held on November 3, 2008 had approved allotment of 2,00,000 Equity shares.



Hence, out of authority of 1,96,55,958 equity shares of Rs. 10 each, total of 46,40,000 equity shares were issued and allotted.

- d. Further, the Board in its meeting held on March 05, 2009 had approved further issue of 3,00,00,000 equity shares of Rs. 10 each on preferential allotment after re-classification of the unissued preference shares to equity shares capital. The members had accorded their consent to the aforementioned resolution on March 30, 2009 and had authorised Board to offer, issue and allot the aforementioned shares at the price deem fit as decided time to time.
- e. In view of the powers as conferred above, the Board in its meeting held on March 31, 2009 had approved allotment of:
- 1,00,16,500 fully paid-up Equity shares at Rs. 10/ share;
  - 4,00,000 fully paid-up Equity shares at Rs. 12.5/ shares;
  - 49,29,458 partly paid-up equity shares at Rs. 10/ share (3.16 paid on application);
  - 6,70,000 partly paid-up equity shares at Rs. 10/ share (6.716 paid on application) and
  - 20,00,000 partly paid-up equity shares at Rs. 15/ share (2.37 paid on application)

Hence, out of authority of 3,00,00,000 equity shares of Rs. 10 each, total of 1,80,15,958 equity shares were issued and allotted.

- f. Furthermore, the Board in its meeting held on July 30, 2009 had approved for the further issue of the 1,10,00,000 equity shares of Rs. 10 each on preferential allotment out of the earlier approved re-classification of the unissued preference shares to equity share capital. The members have accorded their consent to the aforementioned resolution on September 26, 2009 and had authorised Board to offer, issue and allot the aforementioned shares at the price deem fit as decided time to time.
- g. In view of the powers as conferred above, the Board in its meeting held on December 12, 2009 had approved allotment of 6,46,000 fully paid-up Equity shares at Rs. 10 each.

***Hence, the allotment made on December 12, 2009 shall be construed to be made under the authority resolution passed on September 26, 2009 and accordingly, revised erstwhile Form 2 (currently Form PAS-3) shall be filed with RoC.***

***Our recommendations/ actionable:***

***We have recommended the following:***





- a. *Considering the flow of series of transactions, we have recommended that the Board of directors had taken approval of the members of the Company from time to time for the issue of certain number of equity shares on preferential basis as blanket limit. Consequently, the Board, as authorised by the members, have exercised their powers and had made allotment of equity shares as desired from time-to-time.*

*However, there seems to be a typographical error in the preamble for the member's resolution passed by the Company as on December 12, 2009 wherein 'the statement showing share application money received pursuant to Rights Issue Offer made by the Company' is stated instead of preferential allotment. In our view, no further action is required to correct this typographical error.*

- b. *Further, the allotment of shares made by the Board of directors on December 12, 2009 shall be construed under the authority resolution passed by the members of the Company dated September 26, 2009 and accordingly we have recommended to file revised erstwhile Form 2 (currently Form PAS-3) with RoC in with the correct date of authority resolution as September 26, 2009.*

**The Company has filed the corrected Form PAS-3 with the ROC on May 10, 2023, having SRN: AA2397012 a copy of which is attached to this Report as Annexure D. No further action is required in relation to the discrepancies mentioned above. Further, this form has no impact on the online MCA data in connection to the current paid-up capital of the Company.**

## **5. Details relating to partly paid shares and forfeitures, if any.**

### **a. Details:**

It is observed that three allotments dated March 31, 2009, and August 31, 2010, have been made as partly paid Equity Shares.

### **b. Actions:**

1. Determine if the calls and final allotments have been made prior the next issuance;
2. Determine if any forfeitures were made for such allotments.

c. **MMJB Reply:**

**Details of Documents reviewed:**

BM Minutes:	Shareholders' meeting Minutes	Forms:	Ledgers of:	Other Documents
a. Allotment of shares - March 31, 2009 b. June 22, 2009 (call money) c. Issue of shares - July 30, 2009 d. Allotment of shares - December 12, 2009 e. March 24, 2010 (call money) f. November 22, 2010 (call money) g. August 31, 2010 (call money)	AGM Minutes: September 26, 2009	Form 2 filed for the allotments made on: March 31, 2009 August 31, 2010  Form 20B filed for the following Financial Years: 2008-09 2009-10 2010-11 2011-12 2012-13 2013-14  MGT-7 filed for the following Financial Years: 2014-15 2015-16	Dr. Ajay Thakker  Navin Davda  Bhaskar Shah  Share Application money- for FY 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17  Share premium account for FY 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17	Articles of Association of the Company, as amended, from time to time.



BM Minutes:	Shareholders' meeting Minutes	Forms:	Ledgers of:	Other Documents
h. Allotment of shares - March 14, 2017				

**Our understanding:**

Allotments made on March 31, 2009

After going through the cited minutes; ledgers of Dr. Ajay Thakker, Navin Davda and Bhaskar Shah & Relatives and Form 2 filed for the allotment of the shares made on March 31, 2009, it was observed that:

**1. Dr. Ajay Thakker:**

- 49,29,458 equity shares were allotted to Dr. Ajay Thakker on which application money of Rs. Rs. 3.16 was received and Rs. 6.48 per share as call money was to be called.
- The call money amounting to Rs. 6.84 paid per share in respect of aforementioned partly paid-up equity shares was called by the Company in the Board Meeting held on June 22, 2009 and was received by the Company in several tranches by December 5, 2009.
- Further, the effect of the above receipt of money was also reflected in the Form 20B filed for the Financial Year 2009-10.

**2. Navin Davda:**

- 6,70,000 equity shares were allotted to Mr. Navin Davda on which application money of Rs. Rs. 6.716 was received and Rs. 3.28 per share as call money was pending to be called.
- The call money amounting to Rs. 3.28 paid per share in respect of aforementioned partly paid-up equity shares allotted was called by the Company in the Board Meeting held on March 24, 2010 and was received by the Company in several tranches by July 31, 2010.



- Further, the effect of the above receipt of money was also reflected in the Form 20B filed for the Financial Year 2010-11.

### **3. Bhaskar Shah and Relatives:**

- 20,00,000 equity shares were allotted to Mr. Bhaskar Shah and Relatives on which application money of Rs. 2.37 (Rs. 1.58 towards share capital and Rs. 0.79 towards premium) was received and Rs. 12.63 per share (Rs 8.42 as towards share capital and Rs. 4.21 towards premium) was to be called.
- The call money amounting to Rs. 12.63 per share in respect of aforementioned partly paid-up equity shares was called by the Company in the Board Meeting held on March 24, 2010 and was received by the Company in several tranches by July 27, 2010.
- Further, the effect of the above receipt of money was also reflected in the Form 20B filed for the Financial Year 2010-11

The Board in its meeting held on July 30, 2009 had approved for the further issue of the 1,10,00,000 equity shares of Rs. 10 each on preferential allotment out of the earlier approved re-classification of the unissued preference shares to equity share capital. The members have accorded their consent to the aforementioned resolution on September 26, 2009 and had authorised Board to offer, issue and allot the aforementioned shares at the price deem fit as decided time to time. (hereinafter referred as “**Next Issuance-I**”)

In view of the powers as conferred above, the Board in its meeting held on December 12, 2009 had approved allotment of 6,46,000 fully paid-up Equity shares at Rs. 10 each. (hereinafter referred as “**Next Allotment-I**”)

***Hence, from the foregoing, in respect of the partly paid shares allotted to Dr. Ajay Thakker, the calls were made by the Board in their Meeting held on June 22, 2009, which is before the Next Issuance-I.***

***However, in respect of the partly paid shares allotted to Navin Davda and Bhaskar Shah & Relatives, the calls were made by the Board in the Board Meeting held on March 24, 2010, which is after the Next Issuance-I.***



***The Companies Act, 1956 does not restrict a company from undertaking a fresh issue of shares in case there are outstanding partly paid-up shares and the articles of association of the Company do not impose such a restriction either. Hence, the same shall be construed in compliance with the Companies Act, 1956.***

Allotments made on August 31, 2010

After going through the cited minutes; ledgers of share application money & Share premium account and Form 2 filed for the allotment of the shares made on August 31, 2010, it was observed that:

1. 1,00,00,000 equity shares were allotted to 35 allottees on which application money of Rs. 1 (towards share capital) was received and call money of Rs. 14 per share (Rs 9 towards share capital and Rs. 5 towards premium) was to be called.
2. The Board in its meeting held on November 22, 2010, wherein it was stated that the call money is being called and the same shall be payable from March 15, 2011.
3. The respective 35 allottees had paid the call money in tranches by March 31, 2016.
4. Further, the effect of the above receipt of money were also reflected in the Form 20B and Form MGT-7, as applicable, filed for the respective Financial Years.

The Board in its meeting held on December 15, 2016 had approved for the further issue of the 8,66,551 equity shares of Rs. 10 each on preferential allotment. The members have accorded their consent to the aforementioned resolution on February 7, 2017 and had authorised Board to offer, issue and allot the aforementioned shares at the price deem fit as decided time to time. (hereinafter referred as “**Next Issuance-II**”)

In view of the powers as conferred above, the Board in its meeting held on March 14, 2017 had approved allotment of 5,60,000 fully paid-up Equity shares and as on December 08, 2017 3,06,551 fully paid-up Equity shares at Rs. 10 each. (hereinafter referred as “**Next Allotment-II**”)

***Accordingly, the call money towards the 1,00,00,000 equity shares allotted to 35 allottees was paid by the allottees before the Next Issuance- II.***

## Forfeiture of shares

After visiting through the Articles of Association read with the Companies Act, 1956, it is observed that:

The ground of the forfeiture of shares as provided in the Articles is stated as ‘If any member fails to pay the whole or any part of any call or instalment or any money due in respect of any shares either by way of principal or interest on or before the day appointed for the payment of the same, then the Director may at any time thereafter during such time as the call or instalment or any part thereof or other or other moneys as aforesaid remains unpaid or judgment or decree in respect thereof remains unsatisfied in whole or in part, serve a notice on such member or on the person (if any) entitled to the shares by transmission, requiring him to pay such call or installment or such part thereof or other moneys as remain unpaid together with any interest that may have accrued and all expenses (legal or otherwise) that may have been incurred by the Company by reason of such non- payment.’

Hence, the Company has right to forfeit the shares only when the calls money are not paid by the respective shareholder. Further, no such timeline for payment of call money from becoming due is prescribed in the Articles of Association.

***Also, as per the Balance sheets and Form 20B/ MGT-7 filed for respective financial years, there were no instances found for forfeited shares. Hence, no forfeitures were made by the Company for such allotments.***

### **Additional Query**

***Kindly confirm if there is a time period within which call money is to be paid, post a call being made by a company, taking into note that in the year 2015, partly paid shares were transferred by Western Medical solutions Private Limited to Ajay Thakker.***

### **MMJB Reply**

The Companies Act, 1956 does not provide any time period within which call money is to be paid after the call made by a company. Further, as per the Company’s board resolution dated November 22, 2010, it is mentioned that the call must be paid from March 15, 2011, through cheque, thereby indicating that the resolution neither restricts nor specifies a time frame.

***Our recommendations/ actionable:***

We observe the following:

- a. In respect of the partly paid shares allotted to Dr. Ajay Thakker, the calls were made by the Board in their Meeting held on June 22, 2009, which is before the Next Issuance-I.
- b. However, in respect of the partly paid shares allotted to Navin Davda and Bhaskar Shah & Relatives, the calls were made by the Board in the Board Meeting held on March 24, 2010, which is after the Next Issuance-I.
- c. The Companies Act, 1956 does not restrict a company from undertaking a fresh issue of shares in case there are outstanding partly paid-up shares and the articles of association of the Company do not impose such a restriction either. Hence, the same shall be construed in compliance with the Companies Act, 1956.
- d. Further, the call money towards the 1,00,00,000 equity shares allotted to 35 allottees was paid by the allottees before the Next Issuance-II.
- e. Also, as per the Balance sheets and Form 20B/ MGT-7 filed for respective financial years, there were no instances found for forfeited shares. Hence, no forfeitures were made by the Company for such allotments.

### 3.2 Promoter Shareholding Build-up

#### 6. Details relating to Transfer of Equity Shares held by Dr. Ajay Thakker jointly with Kirti Thakker to Wisdom Wellness Private Limited on March 24, 2010

##### a. Details:

It is observed that Dr. Ajay Thakker (jointly held with Kriti Thakker) has transferred 1,800,000 Equity Shares for a total consideration of ₹32,000,000 by way of a share transfer certificate dated March 24, 2010.

Further, the register of the members state consideration for transfer as ₹17.77 for each Equity Share.



Further, the ledger account provides for a transfer of 1,000,000 Equity Shares for a consideration ₹20 each, and 800,000 Equity Shares for a consideration of ₹15 each.

**b. Actions:**

Whether the consideration recorded for the transfer and process for rectification of the register of members is required.

**c. MMJB Reply:**

**Details of Documents reviewed:**

Registers:	Ledgers:	Share Certificate index*	Other Documents:
Register of share transfer  Register of Members	Copy of Ledger account as received from Wisdom Wellness Private Limited	SC No. 39  SC No. 218  *Since, all the shares were dematerialized; hence share certificates are not available.	Share Transfer Form registering transfer from Dr. Ajay Thakker and Kriti Thakker to Wisdom Wellness Private Limited

**Our understanding:**

After going through the cited documents, it is observed that:

1. Dr. Ajay Thakker jointly with Kriti Thakker had transferred 1,800,000 Equity Shares for a total consideration of ₹32,000,000 to Wisdom Wellness Private Limited. The share transfer form also includes a single entry of transfer of 1,800,000 equity shares for the said consideration (without any bifurcation).





2. Further, the ledger of Wisdom Wellness Private Limited shows that the 8,00,000 shares have been transferred for a consideration of ₹15 each and 1,000,000 Equity Shares for a consideration ₹20 each.
3. However, the Register of share transfer and the Register of Members shows that 18,00,000 Equity Shares were transferred to Wisdom Wellness Private Limited for a consideration of ₹17.77 for each Equity Share as the Company has made entries by referring the share transfer forms received.
4. Dr. Ajay Thakker has confirmed that the entries in the books of accounts has been wrongly made by the accountant and the entire 18,00,000 equity shares were transferred at the consideration of Rs. 17.77 per share.

***Hence, we understand that the entries made by the Company in the register of members are correct and no change is required in the same.***

**7. Details relating to whether allotment to the outsiders falls within the ambit of rights issue or preferential allotment , further if the number of allottees are more than 49, then whether it is deemed public offer.**

- a) As per the detail discussion made under point 2 of this report, it is amply clear that the company has issued the shares to the outsiders in the ambit of rights issue and in the compliance of relevant provisions of the Companies Act, 1956.
- b) To understand whether the number of allottees are more than 49, then it would be deemed public offer.

**Background:**

As on 20<sup>th</sup> May, 2007, the Company had 15 shareholders. In the said rights issue, as represented to us by the Company, the Company had offered shares on rights basis (hereinafter referred as ‘offer’) to all then existing shareholders (viz. 15 shareholders). It is pertinent to note that out of 15;

- 12 shareholders have renounced the offer (either partially or fully)
- 1 shareholder had accepted and renounced the offer (either partially or fully)



The renunciations were made to either relative/(s) or to folios where they were joint holder with their relative/(s) or to HUF where they were members or karta or their likes. The renunciation was not made to any third party with whom the shareholder didn't had any relation. **(Emphasis supplied)**

➤ 2 shareholders did not subscribe to the offer

It is noteworthy, basis the above acceptance, renunciations and non-acceptance, there were 29 subscriber/ allottees arising **directly** out of the rights issue.

However, post above subscriptions, there were still certain shares which were left unsubscribed. As represented to us by the management, the Board of Directors had used its discretionary powers given under section 81(1)(d) of the Companies Act, 1956. Though this exercise of powers, as represented to us by the management, the Board of Directors had offered the unsubscribed shares to 29 persons.

It is noteworthy, basis the above use of discretionary powers of Board of Directors, there were 29 subscribers/ allottees arising **indirectly** out of the rights issue.

#### **Query posed:**

Since, the total number of allottees, consequent to rights issue, is 58 (more than 49), for better understanding, the BRLMs have sought view as to where the allotment would be considered as 'public issue' under Companies Act, 1956.

#### **MMJC View:**

It is observed that, if we remove the renunciation aspect, the Company had made offer on 2 occasions viz. (i) to existing shareholders and (ii) to persons upon exercise of discretionary powers u/s 81(1)(d) of the Companies Act, 1956, 15 and 29 respectively. Thus, the Company has in toto made offer to 44 persons (less than 49).



However, since the number of allottees is more than 49, therefore a query is raised on an apprehension that offer was made to more than 50 persons. The querist has not raised any concern/ observation on the 'intent' of the management to come out with public issue.

Relevant extract of Sec 67 (3) of Companies Act, 1956 reads out as:

**(3) No offer or invitation shall be treated as made to the public** by virtue of sub- section (1) or sub- section (2), as the case may be, **if the offer or invitation can properly be regarded**, in all the circumstances-

(a) as **not being calculated to result**, directly or indirectly, in the shares or debentures becoming available for sub- scription or purchase **by persons other than those receiving the offer or invitation**; or

**(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation.**

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more

....

In Page 816 of Ramaiya, Guide to the Companies Act, sixteenth edition 2004, Part 1, the author has expressed views on this subject. Relevant extract is reproduced as follows:

**The word "calculated" in clause (a) suggests design, forethought or intention to accomplish a purpose. "Calculated" primarily means to compute mathematically, but when applied to a human action, it is used in the sense of 'to intend, to design, to plan or to adopt, to achieve a purpose'. (Emphasis supplied)** In Nash v. Lynde, (1929) AC 158 at 159, VISCOUNT SUMNER observed: The 'public' in the definition [section 285 of the English Act of 1908] is, of course, a general word. No particular numbers are prescribed. Anything from two to infinity may serve perhaps even one, if he is intended to be the first of a series of subscribers, but makes further proceedings needless by himself subscribing the whole. The point is that the offer is such as to be open to any one who brings his money and applies in due form whether the prospectus was addressed to him on behalf of the company or not.



**The offer of shares to the kith and kin of a director is not an offer to the public. (Emphasis supplied)** "Where a private company offers shares to selective persons it cannot be said to be extending an invitation to the public. In all cases the determination of the question of an offer being made to the public depends upon the facts and language of the notice and the particular circumstances of each case." Rattan Singh v. Moga Transport Co., (1959) 29 Com Cases 165: AIR 1959 Punj 196. **But, generally, an offer to a select and small circle of friends, promoters, relations or customers cannot be said to be an 'offer to the public'.** (Emphasis supplied)

As represented to us by the management, the intent was to never to go public. The offer renounced to relative/(s) or to folios where they were joint holder with their relative/(s) or to HUF where they were members or karta or their likes was purely consequential to the cash flows, tax planning and wealth management of individual shareholders. Therefore, we can safely assume that the renunciations were made to domestic concern of the persons receiving the offer (viz. shareholders).

Based on the above discussion and facts of the case, unless anything contrary is observed, we find no reason as to why the above rights issue and the consequent allotment be deemed to be 'public issue'.

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**For MMJB & Associates LLP,  
Practicing Company Secretaries**

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**Saurabh Agarwal**  
FCS: 9290  
CP: 20907  
PR: 2826/2022  
UDIN: F009290E000285082  
Date: 10th May, 2023  
Place: Mumbai