

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO:II

137

SPECIAL BENCH(Video Conference)

CORAM: HON'BLE MADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL
HON'BLE VEERA BRAHMA RAO AREKAPUDI-MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 12.08.2021 AT 12:30 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CA(A) Merger & Amalgamation/24/2021
NAME OF THE COMPANY	HYS Foods Pvt Ltd (Transferor Co.) & Ambika Food Industries Pvt Ltd (Transferee Co.)
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	230

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Order is pronounced. The petition is disposed vide separate order.

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**MEMBER
(TECHNICAL)**

Karim

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**MEMBER
(JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

CA (A) Merger & Amalgamation/24/230/HDB/2021
Under Section 232 read with section 230 of the Companies Act, 2013

In the matter of :

M/s. HYS Foods Private Limited
Having its Registered Office at:
Plot No.91A, TSIIC, Kattedan, Hyderabad, Telangana.
(Rep. by its Managing Director, Mr. Divesh Kumar Agarwal)
... Transferor Company

And

M/s. Ambika Food Industries Private Limited
Having its Registered Office at:
15-9-583 & 584, 1st and 2nd Floor, Mahboob Gunj,
Near Siddiamber Bazar Masjid, Hyderabad,
Telangana – 500 012.
(Rep. by its Director, Mr. Sunil Kumar Agarwal)
... Transferee Company

Date of Order: 12.08.2021

Coram: Shri. Madan B. Gosavi, Member Judicial.
Shri. Veera Brahma Rao Arekapudi, Member Technical.

Parties/Counsel(s) Presents:

For the Applicant: Mr. Pavan Kankani, PCS

[Per Bench]

ORDER

1. The present Joint Company Application bearing CA(A) Merger & Amalgamation/24/230/HDB/2021 is filed by M/s. HYS Foods Private Limited (Transferor Company) and M/s. Ambika Food Industries Private Limited (Transferee Company) under section 232 read with section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

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2. The present Company Application is filed, inter-alia, seeking the following prayers:-

- i) To dispense with the Meetings of the Equity Shareholders of the 1st Applicant Company/Transferor Company.
- ii) To dispense with the meetings of the Equity Shareholders, unsecured Creditors and secured Creditor of the 2nd Applicant Company/Transferee Company.

3. The Registered Offices of the Applicant Companies are situated in the State of Telangana and therefore, they are within the jurisdiction of this Tribunal.

4. Brief facts leading to the filing of the instant application are as follows:

I) In respect of Transferor Company:

The Authorized, Issued, Subscribed and Paid-up Share Capital of the Transferor Company as on 31.03.2020 is as follows:-

Particulars	Amount In Rupees
<u>Authorised:</u>	
8,00,000 of Class A Equity Shares of Rs.10/- each.	80,00,000
5,00,000 of Class B Equity shares of Rs.10/- each.	50,00,000
Total	1,30,00,000
<u>Issued, Subscribed and Paid-up:</u>	
4,99,508 of Class A Equity Shares of Rs.10/- each	49,95,080
4,16,666 of Class B Equity Shares of Rs.10/- each fully paid-up (Differential voting rights of 1 vote for every 50,000 equity shares or part thereof held by shareholder is attached to Class B Shareholder).	41,66,660
Total	91,61,740

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The main objects of the Transferor Company are to carry on the business of process, produce, Mix, pack, preserve, freeze, extract, refine, manufacture, import, export buy, sell, trade and to act as broker, adatia, warehouse, stockist, distributor, marketing man, jobworker, importer, exporter, buyer, seller, franchiser, C & F agent, concessionaire, transporter and etc.,

II) In respect of Transferee Company:

The Authorized, Issued, Subscribed and Paid-up Share Capital of the Transferor Company as on 31.03.2020 is as follows:-

Particulars	Amount In Rupees
<u>Authorised Share Capital:</u>	
3,00,000 of Class A Equity Shares of Rs.100/- each	3,00,00,000
2,00,000 of Class B Equity Shares of Rs.100/- each	2,00,00,000
Total	5,00,00,000
<u>Issued, Subscribed and Paid-up Capital:</u>	
1,89,724 of Class A Equity Shares of Rs.100/- each fully Paid-up.	1,89,72,400
1,13,577 of Class B Equity Shares of Rs.100/- each fully paid-up (Differential voting right of 1 vote for every 50,000 equity shares or part thereof held by shareholder is attached to class B Shareholder)	1,13,57,700
Total	3,03,30,100

The main objects of the Transferee Company are to carry on the business of millers and to setup mills for milling wheat, gram, other grains and cereals, dal, basin, maida atta, suji and other allied products, and to manufacture food products such as biscuits flakes, daila and confectionery from flours of all kinds and description and to setup factories or mills for the manufacture thereof.

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5. It is further stated that the Board of Directors of the Applicant Companies in their respective Board Meetings held on 06.01.2021 approved the Scheme of Amalgamation between Transferor Company and Transferee Company subject to the approval of their Shareholders and Creditors.
6. It is stated that no proceedings/Investigation are pending against any of the Applicant Companies.
7. The Transferor Company has filed certificate of Chartered Accountant stating that as on 31.03.2021 there are 7 Class A Equity Shareholders and 15 Class B Equity Shareholders in the Transferor Company and all the above Equity Shareholders have given their respective consent affidavits agreeing to the proposed Scheme. (Placed at Page No. 183-185 & 187 – 207).
8. The Transferee Company has filed certificate of Chartered Accountant stating that as on 31.03.2021 there are 10 Class A Equity Shareholders and 3 Class B Equity Shareholders in the Transferee Company and all the above Equity Shareholders have given their respective consent affidavits agreeing to the proposed Scheme. (Placed at Page No. 208 - 222).
9. The Transferor Company has filed certificate of Chartered Accountant stating that as on 28.02.2021 there are no Secured and Unsecured Creditors in the Transferor Company.(Page No.237-239)
10. The Transferee Company has filed certificate of Chartered Accountant stating that as on 28.02.2021 there are three (3) Secured Creditors aggregating total debt of Rs.11,40,82,523/- in the Transferee Company and all of them have given their respective consent affidavits agreeing to the proposed Scheme.

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11. There are nine (9) unsecured Creditors aggregating total debt of Rs.10,34,79,239/- in the Transferee Company and the Unsecured Creditors have given their consent affidavit agreeing to the proposed Scheme. (Placed at Page No. 225 and 233)
12. Heard the submissions made in this regard by Mr. Pavan Kankani, PCS, Counsel for the Applicant Companies.
13. During the hearing held on 09.04.2021, this Bench directed the PCS to conduct the meetings of the Shareholders and Creditors of both the Applicant Companies. The PCS for the Applicant Companies undertook to convene the meeting of the shareholders and creditors of both the companies.
14. It is noted that there are no Secured and Unsecured Creditors in the Transferor Company and hence there is no need to convene their meeting.
15. With regard to the Equity Share Holders of both the Applicant Companies and Secured and Unsecured Creditors of the Transferee Company, this Tribunal pass the following order:-
 - a) A meeting of the **Equity Shareholders** of the **1st Applicant/Transferor Company** shall be held on **27.09.2021 at 10.30 AM** at the Registered Office of the Transferee Company i.e. 15-9-585 & 584, 1st and 2nd Floor, Mahaboob Gunj, Near Siddiamber Bazar Masjod, Hyderabad – 500012, Telangana for the purpose of considering and if, thought fit, approving with or without modification(s) the arrangement embodied in the Scheme.
 - b) A meeting of the **Equity Shareholders** of the **2nd Applicant/Transferee Company** shall be held on **27.09.2021 at 12 Noon** at the Registered Office of the Transferee Company i.e. 15-9-585 & 584, 1st and 2nd Floor, Mahaboob Gunj, Near

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Siddiamber Bazar Masjid, Hyderabad – 500012, Telangana for the purpose of considering and if, thought fit, approving with or without modification(s) the arrangement embodied in the Scheme.

- c) Ms. Niharika Agarwal, Advocate (Mobile No. 8099730952) shall be the Chairman of the above meetings of the Equity Shareholders of both the Transferor and Transferee Companies and in respect of any adjournment thereof.
- d) Mrs. J. Anantha Laxmi, Advocate (Mobile No. 8008012987) is appointed as the Scrutinizer for the aforesaid meetings and in respect of any adjournment thereof.
- e) A meeting of the **Secured Creditors** of the **2nd Applicant/Transferee Company** shall be held on **27.09.2021 at 2.30 PM** at the Registered Office of the Transferee Company i.e. 15-9-585 & 584, 1st and 2nd Floor, Mahaboob Gunj, Near Siddiamber Bazar Masjid, Hyderabad – 500012, Telangana for the purpose of considering and if, thought fit, approving with or without modification(s) the arrangement embodied in the Scheme.
- f) A meeting of the **Un-Secured Creditors** of the **2nd Applicant/Transferee Company** shall be held on **27.09.2021 at 3.30 PM** at the Registered Office of the Transferee Company i.e. 15-9-585 & 584, 1st and 2nd Floor, Mahaboob Gunj, Near Siddiamber Bazar Masjid, Hyderabad – 500012, Telangana for the purpose of considering and if, thought fit, approving with or without modification(s) the arrangement embodied in the Scheme.
- g) M/s. Niharika Agarwal, Advocate (Mobile No. 8099730952) shall be the Chairman of the above meetings of the Secured and Unsecured Creditors of the Transferee Company and in respect of any adjournment thereof.

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- h) Mrs. J. Anantha Laxmi, Advocate (Mobile No. 8008012987) is appointed as the Scrutinizer for the aforesaid meetings and in respect of any adjournment thereof.
- i) The remuneration of Chairman/Chairperson is fixed at Rs. 75,000/- (Rupees Seventy Five Thousand only) for each meeting and remuneration of the scrutinizer is fixed at Rs. 50,000/- (Rupees Fifty Thousand only) for each meeting.
- j) At least one month before 27.09.2021 i.e. the date of the aforesaid meetings, an advertisement about convening of the said meetings, indicating the day, date, place and time, as aforesaid, shall be published in Business Standard (in English) and in Nava Telangana (in Telugu). The publication shall indicate the time within which copies of scheme shall be made available to the concerned persons free of charge from the registered office of the 2nd Applicant/Transferee Company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and the prescribed form of proxy can be obtained free of charge at the registered office of the Applicant/Resulting Company or at the office of its Counsel i.e. Mr. Pavan Kankani, Practicing Company Secretary, No.302, City Centre, 3-6-140/A, Above Bata, Himayath Nagar, Hyderabad – 500029 in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.
- k) The Chairman/Chairperson appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meeting referred to above. The Chairman/Chairperson is free to avail the services of the Applicant/Transferee Company or any agency for carrying out the aforesaid directions. The

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Chairman/Chairperson shall have all the powers under the Articles of Association of the 2nd Applicant/Transferee Company and also under the Rules in relation to the conduct of the meeting, including for deciding any procedural questions that may arise at the meeting or adjournment(s) to the aforesaid scheme or resolution, if any, proposed at the aforesaid meeting by any person(s) and to ascertain the decision of the sense of the meeting by ballot/polling paper at the venue of the meeting.

- l) The quorum for the meeting shall be as per Provisions of Section 103 of the Companies Act, 2013.
- m) Voting by proxy/authorised representatives is permitted provided that the proxy in the prescribed form/authorisation duly signed by the person entitled to attend and vote at the aforesaid meeting is filed with the Applicant/Transferee Company at the Registered Office i.e. 15-9-585 & 584, 1st and 2nd Floor, Mahaboob Gunj, Near Siddiamber Bazar Masjod, Hyderabad – 500012, Telangana, not later than 48 hours before the meetings vide Rule 10 of the Companies (CAA) Rules, 2016 read with Section 105 of the Act.
- n) The Chairman/Chairperson to file an Affidavit not less than 7 (seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meeting have been duly complied with as per Rule 12 of the Companies (CAA) Rules, 2016.
- o) It is further ordered that the Chairman/Chairperson shall report to this Tribunal on the result of the meeting in Form No. CAA-4, duly verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 within seven working days.

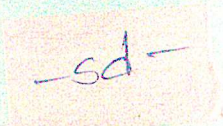
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p) In compliance of sub section(5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, 2016, all the applicant companies shall send notice under sub section (3) of Section 230 read with Rule 6 of the Rules with a copy of the scheme of Arrangement, the explanatory statement and the disclosures mentioned in Rule 6 to (a) the Central Government through the Regional Director, South Eastern region; (b) the Registrar of Companies, Telangana (c) the Income Tax Authorities and (d) the Official Liquidator. The said notices be sent either by Registered Post or by Speed Post or by Hand Delivery at the Offices of the authorities as required by sub rule (2) of Rule 8 of the Rules. The aforesaid authorities, who desire to make any representation under sub section (5) of section 230 shall send the same to this Tribunal within a period of 30 (thirty) days from the date of receipt of such notice, failing which it shall be deemed that they have no representation to make on the proposed Scheme.

16. The Company Application i.e. CA(CAA)No.24/230/HDB/2021 is disposed of accordingly.

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VEER. ~~...~~ KAPUDI
MEMBER TECHNICAL

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MADAN B. GOSAVI
MEMBER JUDICIAL