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**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 28.09.2018

PRESENT: 1. Hon'ble member (J) **Shri Rajeswara Rao Vittanala**,  
2. Hon'ble member (T) **Dr. Ashok Kumar Mishra**

CP/CA No	Purpose	Section	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CA(CAA)No.50/BB/2018	For pronouncement of order	Sec 230-232	M/s Coffee Day Resorts Pvt Ltd	Tatva Legal		

SL. NO. NAME (IN CAPITAL) & PHONE NUMBER

REPRESENTATION TO WHOM

SIGNATURE

PETITIONER/s:

*N. K. Dilip  
M. G. Nanjappa  
Vivek. B. S.*

*Applicant/  
Transferee  
Company*

*Vivek B.S*


RESPONDENT/s:

**ORDER**

Heard Shri N.K.Dilip, Shri M.G.Nanjappa and Shri Vivek B.S.m learned counsels for the applicant.. CA disposed of by separate order.

  
Member(T)

Prema Murray - Steno.

  
Member(J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

CA(CAA)NO.50/BB/18  
Under Section 230 to 232 of Companies Act, 2013

**IN THE MATTER OF SCHEME OF AMALGAMATION  
IN THE MATTER OF  
SHANKAR RESOURCES PRIVATE LIMITED (TRANSFEROR COMPANY)  
WITH  
COFFEE DAY RESORTS (MSM) PRIVATE LIMITED (TRANSFeree COMPANY)**

**Order delivered on: 28.09.2018**

Coram: Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

For the Petitioner (s): TATVA LEGAL BANGALORE  
Advocates  
4<sup>th</sup> Floor, Phoenix Pinnacle,  
46, Ulsoor Road,  
Bangalore-560042

**Coffee Day Resorts (MSM) Private Limited**  
23/2, 9<sup>th</sup> Floor, VittalMallya Road,  
Bangaluru-560001

...Applicant Company /Transferee Company

**Per: Hon'ble Shri Ashok Kumar Mishra, Member (Technical)**

**ORDER**

*These*  
*Avi* 1. This is a Joint Application filed on behalf of the Applicant Companies under Section 230 and 232 of the Companies Act, 2013 read with Rule 3 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016, praying to

- A. Direct that the meeting of the unsecured creditors of the Applicant/Transferee Company be convened in the city of Bengaluru, situated in the State of Karnataka, for the purpose of considering, and if thought fit, approving, with or without modifications, the Scheme of Merger proposed to be made between the Transferor Company and the Applicant/Transferee Company.
- B. Direct that the meeting of the shareholders of the Applicant/Transferee Company be dispensed with as the shareholders of the Applicant/Transferee Company have given their written permission under a Consent Affidavit to

*Avi*

the Scheme of Merger proposed to be made between the Transferor Company and the Applicant/Transferee Company or in alternative direct that the meeting of the Shareholders of the Applicant/Transferee Company be convened in the city of Bengaluru, situated in the State of Karnataka, for the purpose of considering, and if thought fit, approving, with or without modification, the Scheme of Merger proposed to be made between the Transferor Company and the Applicant/Transferee Company.

- C. Direct that the meeting of the secured creditors of the Applicant/Transferee Company be dispensed with, as there are no secured creditors of the Applicant/Transferee Company.
- D. Direct that:
- (i) S.V.Ranganath, I.A.S, Former Chief Secretary, Government of Karnataka be appointed as Chairperson for the meeting of the unsecured creditors of the Applicant/Transferee Company as the Hon'ble Tribunal deems fit;
- (ii) S.V.Ranganath, I.A.S, Former Chief Secretary, Government of Karnataka be appointed as Chairperson for the meeting of the Shareholders of the Applicant/Transferee Company as the Hon'ble Tribunal deems fit;
- (iii) Mr.Harshavardhan R Borrati, Practising Company Secretary, be appointed as scrutinizer for the meeting of the unsecured creditors of the Applicant/Transferee Company or appoint any person as the scrutinizer for the meeting of the unsecured creditors of the Applicant/transferee Company as the Hon'ble Tribunal deems fit;
- (iv) Mr. Harshavardhan R Borrati, Practising Company Secretary, be appointed as scrutinizer for the meeting of the shareholders of the Applicant/Transferee Company or appoint any person as the scrutinizer for the meeting of the unsecured creditors of the Applicant/transferee Company as the Hon'ble Tribunal deems fit;
- E. Issue necessary directions fixing the time within which the Chairperson shall file report of the result of the meeting to this Hon'ble Tribunal
- F. Direct that the notice for the meeting of the shareholders and the unsecured creditors be published in the Bangalore Edition of Business Line, an English daily and in the Bangalore Edition of Vijayavani, Kannada edition.
- G. Direct that the Company Application be served on the following sectorial regulators: Regional Director of Corporate Affairs, Registrar of Companies,

Karnataka and the Income Tax Authorities, for the purpose of giving their representations and/or approving, the Scheme of Merger proposed to be made between the Applicant/Transferee Company and Transferor Company

2. The averments made in the Company Application are briefly described hereunder:-

- i) Application is filed by the applicant companies stating that Applicant Company/Transferee Company was incorporated on 28<sup>th</sup> February 2008 as per the provisions of the Companies Act, 1956 in the name and style of Coffee Day Resorts (MSM) Private Limited with Registrar of Companies, Karnataka having CIN no.U55101KA2008PTC045438. The Registered office of the Applicant Company/Transferee Company is situated at No.23/2, 9<sup>th</sup> Floor, VittalMallya Road, Bengaluru-560001.
- ii) The main objects of the Applicant Company/Transferee Company is to carry on the business of establishing, conducting, managing and carrying on business of resorts, restaurants, bars, hotels, lodgings, holiday homes and eating houses, food joints, bakery, confectionary, ice cream & juice parlors, soft drinks, cyber cafes, internet services providers, beverages business, convention centre, corporate training centre and amusement. The copy of Memorandum and Articles of Association of the Applicant Company is shown as **Annexure-A**.
- iii) The latest authorized share capital of Applicant Company/Transferee Company is Rs.5,00,000/- divided into 50,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid-up share capital is Rs.1,00,000/- divided into 10,000 Equity Shares of Rs.10/- each fully paid up. The Audited balance sheet as on 31st March, 2017 is shown as **Annexure -B1**.
- iv) It is further stated that, the Board of Directors of the Transferor Company and Transferee Company have approved and adopted a Scheme of Amalgamation at their respective meetings held on 11<sup>th</sup> July, 2018 respectively by virtue of which Shankar Resources Private Limited (Transferor Company) is proposed to be merged with Coffee Day Resorts (MSM) Private Limited (Applicant Company/Transferee Company) subject to confirmation. Copies of the Board Resolution of Transferor and Transferee Company dated 11.7.2018 respectively approving and adopting the Scheme of Amalgamation are shown as **Annexure-F**.

- v) It is further averred in the scheme that the amalgamation of both the Transferor Companies with Transferee Company would inter alia have the following benefits:
- a. To achieve greater integration and greater financial strength and flexibility, to maximize all the stakeholders value
  - b. The consolidation of the companies will help to better manage the funds and also in repayment to the lenders.
- vi) It is further stated that the Chartered Accountant after verification of the books of accounts and other records and documents of the Applicant Company/Transferee Company has certified the number of shareholders of the Applicant Company/Transferee Company as on 24.7.2018. There are **two** shareholders. Certificate issued by the Chartered Accountant shown as **Annexure-J**.
- vii) It is further stated that there are **no** Secured Creditors in the Applicant Company /Transferee Company as on 11.7.2018 as certified by the Chartered Accountant. The Certificate of the Chartered accountant certifying the list of Secured Creditors is shown as **Annexure-L**.
- viii) It is further stated that there are **four** Unsecured Creditors in the Applicant Company/Transferee Company as on 11.7.2018 as certified by the Chartered Accountant. The Certificate of the Chartered Accountant certifying the list of Unsecured Creditors is shown as **Annexure-M**.
3. We have seen the consent affidavits filed by the two Equity shareholders of Applicant Company/Transferee Company i.e., (i) Shankar Resources Private Limited, holding 9,999 equity shares, constituting 99.99% of the paid-up capital, (ii) V G Siddhartha, holding 1 equity shares, constituting 0.01% of the paid-up capital.
  4. The Applicant Company /Transferee Company is seeking an order to dispense with convening of meetings of Equity Shareholders and Secured Creditors, on the ground that, there are two Equity Shareholders, no Secured Creditors. All the Shareholders have given their consent by way of affidavit for the proposed scheme of amalgamation. The Applicant Company/Transferee Company is seeking an order to direct the meeting of Unsecured Creditors be held.
  5. After hearing the counsel and after perusing the documents filed, we pass the following order:



- (i) The meeting of the Unsecured Creditors of the Applicant Company/Transferee Company be convened and held at No.23/2, 9<sup>th</sup> Floor, Vittal Mallya Road, Bengaluru-560001 on ~~Monday~~ <sup>Thursday</sup> the 15<sup>th</sup> November, 2018 at 11:00A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed scheme of amalgamation between the Shankar Resources Private Limited (Transferor Company) is proposed to be merged with Coffee Day Resorts (MSM) Private Limited (Applicant Company/Transferee Company).
- (ii) Mr. S.V. Ranganath, as proposed by the Applicant Company /Transferee Company is appointed as Chairperson and Ms. Devika Sathyanarayana, PCS as Scrutinizer for the Meeting of Unsecured Creditors. The remuneration of Chairperson and Scrutinizer is fixed at Rs.50,000/- and Rs.35,000/- respectively for convening the meeting of Unsecured Creditors. The quorum for the Meeting of Unsecured Creditors is two.
- (iii) The Notice of the Meeting of Unsecured Creditors shall be published in an English Daily "Business Line" and in Kannada Daily "Vijayavani".
- (iv) The Applicant Company/Transferee Company or its authorized signatory is directed to issue notice(s) to Unsecured Creditors of Applicant Company/Transferee Company by Registered or Speed Post; or Courier; or Air Mail; or email; or hand delivery to their last known address at least 30 clear days before the said meeting of the Unsecured Creditors of Applicant Company No.2/Transferee Company as per Form No.CAA2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ensuing convening the said Unsecured Creditors Meeting of Applicant Company/Transferee Company at the place, day, date and time, along with a copy of scheme of amalgamation, a copy of Explanatory Statement, pursuant to be sent under Section 230 of the Companies Act, 2013 and form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014.
- (v) The Applicant Company/Transferee Company is directed at least 30 clear days before the Meeting of the Unsecured Creditors of the Applicant Company/Transferee Company to be held as aforesaid, a notice convening the


said meeting, at the place, date and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid.

- (vi) The Applicant Company to serve the notice along with the copy of entire Application including the annexures and a copy of scheme upon the Regional Director, South-East Region, Ministry of Corporate Affairs, Hyderabad pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- (vii) The Applicant Company to serve the notice along with the copy of entire Application including the annexures and a copy of scheme upon the Registrar of Companies, Karnataka pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- (viii) The Applicant Company to serve the notice along with the copy of entire Application including the annexures and a copy of scheme upon the Pr.CCIT, Karnataka & Goa, Designated Nodal Officer of Income Tax Department along with PAN No, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- (ix) The Applicant Company to serve the notice along with the copy of entire Application including the annexures and a copy of scheme upon the other Sectoral Regulators or Authorities, Stock Exchange if applicable, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- (x) The said Chairman shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise before or at any adjournment thereof or any other matter including an amendment to the scheme or resolution, if any, proposed at the meeting by any person(s).



- (xi) The voting shall be in person or by proxy or authorised representative in case be permitted, provided that the proxy in the Form No. MGT-11 authorization duly signed by the person entitled to attend and vote at the meeting, is to be filed with the Applicant Company at its Registered office, not later than, forty eight hours before the aforesaid meeting in accordance with Rule 10 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.
- (xii) The said Chairman to file affidavit not less than seven days before the day fixed for holding of the meeting and do report to this tribunal that the direction regarding convening and issuance of notice(s) to all the necessary parties have been duly complied with in conformity with the relevant Provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.
- (xiii) The Chairman shall report the conclusion of the aforesaid meeting as per the Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- (xiv) In the result, the application is allowed and the Holding of meeting of the Equity Shareholders and Secured Creditors of the Applicant Company/Transferee Company is dispensed with. In any eventuality when the Applicant Company approaches this Tribunal for seeking approval of the scheme it would be open for any person who is interested in the Scheme of Amalgamation to put forth their contentions before the Tribunal.

  
**ASHOK KUMAR MISHRA**  
**MEMBER, TECHNICAL**

  
**RAJESWARA RAO VITTANALA**  
**MEMBER, JUDICIAL**