

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

NEW DELHI

CA (CAA)-215 (ND)/2017

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT, 2013

In the matter of:

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Amalgamations, and Amalgamations) Rules, 2016.

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

OF

**KSA CORPORATE ADVISORS PRIVATE LIMITED
(TRANSFEROR/ APPLICANT NO.I COMPANY)**

1

CA (CAA) 215 (ND)/2017

KSA CORPORATE ADVISORS PRIVATE LIMITED



AND
KSA INFRAVENTURES PRIVATE LIMITED
(TRANSFEROR/ APPLICANT NO.II COMPANY)

AND
UPSIDE FOODS PRIVATE LIMITED
(TRANSFEROR/ APPLICANT NO.III COMPANY)

AND
HELWELL FOODS PRIVATE LIMITED
(TRANSFEROR/ APPLICANT NO.IV COMPANY)

WITH
REINA INDUSTRIES PRIVATE LIMITED
(TRANSFEROR/ APPLICANT NO.V COMPANY)

MEMO OF PARTIES

KSA CORPORATE ADVISORS PRIVATE LIMITED

A Company incorporated under the Companies Act, 1956
Having its registered office at:
K-8, Ground Floor, Jangpura Extention

2

CA (CAA) 215 (ND)/2017

KSA CORPORATE ADVISORS PRIVATE LIMITED



New Delhi-110014

.... Transferor /Applicant No. 1

KSA INFRAVENTURES PRIVATE LIMITED

A Company incorporated under the Companies Act, 1956

Having its registered office at:

K-8, Ground Floor, Jangpura Extention

New Delhi-110014

.... Transferor /Applicant No. 2

UPSIDE FOODS PRIVATE LIMITED

A Company incorporated under the Companies Act, 2013

Having its registered office at:

K-8, Ground Floor, Jangpura Extention

New Delhi-110014

.... Transferor /Applicant No. 3

HELWELL FOODS PRIVATE LIMITED

A Company incorporated under the Companies Act, 2013

Having its registered office at:

K-8, Ground Floor, Jangpura Extention

New Delhi-110014

.... Transferor /Applicant No. 4

REINA INDUSTRIES PRIVATE LIMITED

A Company incorporated under the Companies Act, 2013

Having its registered office at:

K-8, Ground Floor, Jangpura Extention

New Delhi-110014

.... Transferee /Applicant



Counsel for the Applicants: Mr. Ashish, Advocate

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Order Delivered on: 24th October, 2017

ORDER

1. This is an application which is filed by the applicant companies herein, namely KSA Corporate Advisors Private Limited (for brevity "Transferor/Applicant No. 1 Company"), KSA Infraventures Private Limited (for brevity "Transferor/Applicant No. 2 Company"), Upside Foods Private Limited (for brevity "Transferor/Applicant No. 3 Company"), Helwell Foods Private Limited (for brevity "Transferor/Applicant No. 4 Company") and Reina Industries Private Limited (for brevity "Transferee /Applicant") under sections 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Amalgamations and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the "SCHEME") proposed between the applicants. The said Scheme is also annexed as Annexure "56" to the application. The applicants above named have preferred the instant application in effect for the following purpose as evident from the reliefs sought for in the Application, namely:-



- Dispense with the requirement of convening the meeting of the equity shareholders of the Transferor and Transferee Companies and also to dispense with the requirement of issue and publication of notices of the same and appointment of chairman for the meetings.
 - Dispense with the requirement of convening the meeting of the secured creditors of the Transferor Companies No. 1 to 4 and the Transferee Company and also to dispense with the requirement of issue and publication of notices of the same and appointment of chairman for the meetings.
 - Dispense with the requirement of convening the meeting of the unsecured creditors of the Transferor Companies No. 1 to 4 and the Transferee Company and also to dispense with the requirement of issue and publication of notices of the same and appointment of chairman for the meetings.
 - Issue such other orders or directions be given as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.
2. An Affidavit in support of the above application sworn for and on behalf of all the Applicant Companies has been filed by one Mr. Akshay Bansal, Director of all the Applicant Companies along with the application. Counsel for the joint applicants took us through the averments made in the application as well as the typed set of documents annexed there with. Learned Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of

the Act. It is further represented that a joint application filed by the applicants are maintainable in view of Rule 3(2) of the Companies (Compromises, Amalgamations and Amalgamations) Rules 2016.

3. In relation to KSA Corporate Advisors Private Limited being the Transferor/ Applicant No.1 Company, in scheme marked as Annexure - "56", it is represented that it is having 2 (Two) Equity Shareholders and both of them have given their consents by way of affidavit. It is further represented by the counsel for Applicants that Applicant No.1/ Transferor Company-1 has no Secured Creditor and only 1 (one) Unsecured Creditor who has given his consent by way of an affidavit. In relation to the shareholders and unsecured creditors of the Applicant No.1 / Transferor Company-1, it seeks dispensation from convening and holding of the meetings in view of consent affidavits having been obtained and which are placed on record.

4. In relation to KSA Infraventures Private Limited being Applicant No. 2/ Transferor Company-2 in the Scheme marked as Annexure-"56", Learned Counsel represents that the company is having 2 (Two) Equity Shareholders



and both of them have given their consents. It is further represented by the counsel for Applicants that Applicant No. 2/ Transferor Company-2 has no secured and only 1 (one) Unsecured Creditor. In relation to the Equity Shareholders and unsecured creditors of the Applicant No. 2/Transferor Company-2, it seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent affidavits being obtained and which are placed on record.

5. In relation to Upside Foods Private Limited being Applicant No. 3/ Transferor Company-3 in the Scheme marked as Annexure-56", Learned Counsel represents that the company is having 2 (Two) Equity Shareholders and both of them have given their consents. It is further represented by the counsel for Applicants that Applicant No. 3/ Transferor Company-3 has no secured and 2 (Two) Unsecured Creditors. In relation to the Equity Shareholders and unsecured creditors of the Applicant No. 3/Transferor Company 3, it seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent affidavits being obtained and which are placed on record.



6. In relation to Helwell Foods Private Limited being Applicant No. 4/ Transferor Company-4 in the Scheme marked as Annexure-56", Learned Counsel represents that the company is having 2 (Two) Equity Shareholders and both of them have given their consents. It is further represented by the counsel for Applicants that Applicant No. 4/ Transferor Company-4 has no secured and 1 (One) Unsecured Creditor. In relation to the Equity Shareholders and unsecured creditors of the Applicant No. 4/Transferor Company 4, it seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent affidavits being obtained and which are placed on record.

7. In relation to Reina Industries Private Limited being Applicant No. 5/ Transferee Company in the Scheme marked as Annexure-56", Learned Counsel represents that the company is having 2 (Two) Equity Shareholders and both of them have given their consents. It is further represented by the counsel for Applicants that Applicant No. 5/ Transferee Company-5 has 1 (One) secured and 3 (Three) Unsecured Creditors. In relation to the Equity Shareholders, secured creditor and unsecured creditors of the Applicant No.

5/Transferee Company , it seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent affidavits being obtained and which are placed on record.

8. Learned Counsel for the Applicants also represents that the provisions of Section 233 of 2013 Act will not apply as the Scheme is a composite Scheme. Further, the registered office of all the applicant Companies are situated within New Delhi and subject to Registrar of Companies, NCT, New Delhi and hence are amenable to the territorial jurisdiction of this Tribunal.
9. We have perused the joint application and the connected documents / papers filed therewith including the Scheme of Amalgamation contemplated between the Applicant companies.
10. From the certificate of incorporation filed, it is evident that Applicant No.1/ Transferor Company No.1 was incorporated under the provisions of Companies Act, 1956 on 8th January, 2007 with the name of KSA Corporate Advisors Private Limited.



11. The Authorized Share Capital of Applicant No.1/ Transferor Company No.1 is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The Issued, Subscribed and Paid-Up Share Capital of the Transferor Company No.1 is Rs. 1,00,000/- divided into 10,000 equity shares of Rs.10/- each.
12. From the certificate of incorporation filed, it is evident that the Applicant No.2/ Transferor Company No.2 is incorporated under the provisions of Companies Act, 1956 on 16th January, 2008 initially under the name and style of Hemkunt DCS Infrastructure Limited as a Public limited company/ the name of the company was changed to Hemkunt DCS Infrastructure Private Limited on 11th January, 2013 and thereafter the name of the company was changed to its present name i.e. KSA Infraventures Private limited.
13. The Authorised Share Capital of the Applicant No.2/ Transferor Company No.2 is Rs. 30,00,000/- divided into 3,00,000 equity shares of Rs 10/- each. The Issued, Subscribed and Paid-up Share Capital is Rs.5,00,000 divided into 50,000 equity shares of Rs.10/-each.



14. From the certificate of incorporation filed, it is evident that the Applicant No.3/ Transferor Company No.3 is incorporated under the provisions of Companies Act, 2013 on 23rd November, 2005 initially under the name and style of AKR Insurance Agent Private limited. The name of the company was changed to KSA Freight and Forwarders Private Limited on 16th May, 2016. The name of the company was again changed to its present name i.e. Upside Foods Private Limited on 10th February, 2017.

15. The Authorised Share Capital of the Applicant No.3/ Transferor Company No.3 is Rs. 1,00,000/- divided into 10,000 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.

16. From the certificate of incorporation filed, it is evident that the Applicant No.4/ Transferor Company No.4 is incorporated under the provisions of Companies Act, 2013 on 6th March, 2017 initially under the name and style of Helwell Foods Private limited.



17. The Authorised Share Capital of the Applicant No.4/ Transferor Company No.4 is Rs. 1,00,000/- divided into 10,000 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.

18. From the certificate of incorporation filed, it is evident that the Applicant No.5/ Transferee Company is incorporated under the provisions of Companies Act, 2013 on 11th December, 2014 initially under the name and style of Reina International Industries Private limited. The name of the company was changed to Reina Industries Private Limited on 12th December, 2015.

19. The Authorised Share Capital of the Applicant No.5/ Transferee Company No.3 is Rs. 30,00,000/- divided into 3,00,000 equity shares of Rs 10/- each. The Issued, Subscribed and Paid-up Share Capital is Rs.30,00,000 divided into 3,00,000 equity shares of Rs.10/-each.



20. The applicant companies have filed their respective Memorandum and Articles of Association interalia delineating their object clauses.

21. The applicant companies have filed their last available audited financial statements for the year ended 31.03.2017 which is within the period of six months from the date of filing of the application and as specified under section 232 sub section 2 (e) of the Companies act, 2013 read with their attendant rules.

22. The appointed date as specified in the Scheme is 01.04.2017 subject to the directions of this Tribunal.

23. The Board of Directors of the Applicant companies vide separate meetings held on 14th July, 2017 have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions passed thereat have been placed on record by the companies.



24. All the companies have submitted that no investigation proceedings are pending against them under Sections 210 or any other applicable provisions of the Companies Act, 2013.

25. Taking into consideration the application filed jointly by the Applicant companies and the documents filed therewith, we propose to issue the following directions with respect to calling, convening and holding of the meetings of the shareholders, secured and Unsecured Creditors or dispensing with the same as well as issue of notices including by way of paper publication as follows:-

A. In relation to the Applicant No.1 to 4/ Transferor Companies No.1 to 4:

(i) With respect to Equity shareholders:

Since it is represented by the Transferor Companies No.1 to 4 that there are 2 Equity shareholders in the each of the Transferor Companies whose consents by way of affidavits have been obtained and placed on record, therefore the



necessity of convening and holding a meeting to consider and if thought fit for the approval of the scheme is dispensed with.

(ii) With respect to Secured Creditors:

Since it is represented by the Transferor Companies No.1 to 4 that there is no secured creditor in the each of the Transferor Companies whose consents by way of affidavits have been obtained and placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit for the approval of the scheme is dispensed with.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Transferor Companies that the Unsecured Creditors in the Transferor Companies have given their consents, therefore the necessity of convening and holding a meeting to consider and if thought fit for the approval of the scheme is dispensed with.



B. In relation to Applicant No. 5/ Transferee Company:

(i) With respect to Equity shareholders:

Since it is represented by the Transferee Company that there are only 2 Equity shareholders in the Company whose consents by way of affidavits have been obtained and placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit for the approval of the scheme is dispensed with.

(ii) With respect to Secured Creditors:

Since it is represented by the Transferee Company that there are is only 1 secured creditor in the Company whose consents by way of affidavits have been obtained and placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit for the approval of the scheme is dispensed with.

(iii) With respect to Unsecured Creditors:



Since it is represented by the Transferee Company that there are only 3 unsecured creditor in the Company whose consents by way of affidavits have been obtained and placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit for the approval of the scheme is dispensed with.

The application stands allowed on the aforesaid terms. Let the petition for approval of the scheme of Amalgamation be filed within a period of one week from the date of this order.

Sd/- 24/10/2017
(R.VARADHARAJAN)
MEMBER (JUDICIAL)