

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BNECH
KOLKATA

CORAM:

Shri Vijai Pratap Singh
Hon'ble Member (J)
&
Shri Jinan K. R.
Hon'ble Member (J)

T. P. No.164 of 2017

In the Matter of:

The Companies Act, 1956;
-And-

In the Matter of:

An application under Section 391(2) and 394 of the said Act;
-And-

In the Matter of:

Bhagwati Foods Private Limited, a Company incorporated under the provisions of Companies Act, 1956 and being having its registered office at 305, Mangalam-A, 24, Hemanta Basu Sarani, Kolkata 700 001 with the aforesaid jurisdiction;
-And-

In the Matter of:

Mohan Bakers Private Limited, a Company incorporated under the provisions of Companies Act, 1956 and being having its registered office at 305, Mangalam-A, 24, Hemanta Basu Sarani, Kolkata 700 001 with the jurisdiction above;
-And-

Mani's Baking Solutions Private Limited, a Company incorporated under the provisions of Companies Act, 1956 and being having its registered office at 305, Mangalam-A, 24, Hemanta Basu Sarani, Kolkata 700 001 with the jurisdiction above;
-And-

In the Matter of:

1. Bhagwati Foods Private Limited
2. Mohan Bakers Private Limited
-And-
3. Mani's Baking Solutions Private Limited

....Petitioners

Counsels on Record for the Petitioners:

- | | |
|--------------------------------------|-----------------------|
| 1. Mrs Manju Bhuteria, Advocate |] For the petitioners |
| 2. Mr M. K. Masoti, PCA |] |
| | |
| 3. Mr. Tapas Kr. Das, Asst. Director |] For R.D. (ER), MCA |

Date of pronouncing the order:

ORDER

Per Shri Vijai Pratap Singh, Member(J):

This is a petition for sanctioning of the scheme of amalgamation of Mohan Bakers Private Limited and Mani's Baking Solutions Private Limited (from now on referred to as the "Transferor Companies") with Bhagwati Foods Private Limited (from now on referred to as the "Transferee Company"). A copy of the Scheme of Amalgamation has been annexed with the petition being Annexure "A".

The object of this Petition is to obtain sanction of the Hon'ble Court to a Scheme of Amalgamation of Mohan Bakers Private Limited and Mani's Baking Solutions Private Limited, the transferor companies with Bhagwati Foods Private Limited, the transferee company where all the assets, properties, rights and claims whatsoever of the Transferor Companies and their entire undertakings together with all rights and obligations relating thereto are proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation.

By an order dated 5th December 2016, the Hon'ble High Court at Calcutta dispensed with the meetings of the shareholders of the applicant companies/petitioners, on the basis of the written consent given by all the shareholders of the applicants.

As per direction of the Hon'ble High Court, the petitioners filed the

petition before the Hon'ble High Court at Calcutta for confirmation. Later on, as per the circular of the Ministry of Corporate Affairs, the petition has been transferred from the Hon'ble High Court at Calcutta, and the petitioners filed the same before this Tribunal for confirmation of the petition.

On hearing the Advocates appearing for the petitioners, it appears that Shri Alok Samantarai working for gain as Regional Director, Eastern Region, Ministry of Corporate Affairs has submitted in his affidavit affirmed on 14th July 2017, the observations of the Central Government on the scheme are mentioned as under:-

- (a) *That it is submitted that on examination of the report of the Registrar of Companies, West Bengal, it appears that no complaint and representation has been received against the proposed Scheme of Amalgamation. The petitioner companies are also up-dated in filing their statutory returns.*
- (b) *That it is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 02-2-2017 with a request to forward their comments/ observations/ objections, if any, on the proposed scheme of amalgamation and it is observed from the reply that, the income tax department is objecting the proposed scheme of Amalgamation, the Hon'ble Tribunal may kindly look into the matter. The reply received from the said authority dated 27/02/2017 has been annexed as Annexure 'A' to the Affidavit.*

On 27th February 2017 the Income Tax department sent a letter addressed to the Deputy Director, Ministry of Corporate Affairs, Kolkata mentioning that a search and seizure operation under section 132(1) of the I.T. Act, 1961 was conducted in the office premises of the Bhagwati Group at Mangalam Building-A, 24, Hemanta Basu Sarani, Kolkata- 700 001 on 27/08/2014 and after completion of their assessment of all the assesses of the group including the transferee companies have been completed, wherein all the transferor companies will be amalgamated. The transferor companies have huge demand, and the same is required to be collected. They proposed

that demand should be paid before amalgamation.

The I.T. Department also observed from the Amalgamation Scheme reports that the transferee company has undertaken all the secured and unsecured debts, borrowing and liabilities, including contingent liabilities, present or future liabilities, whether secured or unsecured of the respective Transferor Companies from the appointed date.

On 28th August 2017, the Director of the transferee company has affirmed by an affidavit that the Office of the ACIT, Central Circle-2(1), Kolkata vide their letter no. DCIT-CC2(1), KOL/STAY PETITION/ 17-18/909 DT 26/07/2017 addressed to the petitioners has stayed the outstanding demand of the petitioners as they have already paid 15% of the demand. It has been mentioned in para 4 of their letter dated 26th July 2017 that ***"in a case where the outstanding demand is disputed before CIT(A), the stay of demand can be granted till disposal of the first appeal on payment of 15% of the disputed demand. As 15% of the demand has been paid, your pray for a stay of demand is granted subject to the fulfilment of the following conditions"***.

"(i). As per the instructions, you are required to undertake that you will cooperate in early disposal of appeal failing which the stay order will be cancelled. You have stated in writing in your letter that you will cooperate in early disposal of appeal failing which the stay order will be cancelled. Hence, it is expected that you will cooperate in early disposal of appeal.

(ii). The undersigned reserve the right to review the order passed in this regard granting the stay of demand after the expiry of a reasonable period (i.e. six months) or if you have not cooperated in the early disposal of the appeal, or where a subsequent pronouncement by a higher appellate authority or court alters the above situations.

(iii). The undersigned reserve the right to adjust the refund arising, if any, against the demand to the extent of that amount and subject to the provision of section 245.

6. Further, the undersigned reserve the right to review the order

granting a stay of demand till the disposal of the first appeal. If you fail to comply with the above conditions, the stay granted till the disposal of the first appeal will be treated as rejected and disposed of and the lawful action will be taken by invoking recovery proceedings against you".

On further scrutiny, it has been found that the petitioners have not filed the following documents:

- 1) Auditor's certificate as per proviso to section 232(3) of the Companies Act;
- 2) Valuation Report of Chartered Accountant
- 3) Report from the Official Liquidator
- 4) Reports from Directors of merging companies explaining the effect of Compromise/arrangement as per section 232(2) read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
- 5) Board Resolution regarding Scheme of Amalgamation
- 6) Vakalatnama from Board of Directors of petitioner companies
- 7) List of documents along with the list of dates and synopsis;**

The petitioners are therefore directed to file the above documents (1) to (7) by Supplementary Affidavit to proceed further in the above case.

List the matter for hearing on 21/11/17.

Urgent Photostat certified a copy of this order if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

sd/-
(Jinan K R)
Member (J)

sd/-
(Vijai Pratap Singh)
Member (J)

Signed on this, the 21st day of September 2017