

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

T.P. NO.162/2017, T.P.NO.163/2017
AND T.P.NO.164/2017

IN

C.P.NO.52/2016, C.P.NO.53/2016
AND C.P.NO.54/2016

DATED: WEDNESDAY THE 7TH DAY OF JUNE, 2017

*PRESENT: SRI RATAKONDA MURALI, MEMBER JUDICIAL
SRI ASHOK KUMAR MISHRA, MEMBER TECHNICAL*

IN THE MATTER OF COMPANIES ACT, 1956
SECTIONS 391-394 OF THE COMPANIES ACT, 1956

AND

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

AND

IN THE MATTER OF SCHEME OF AMALGAMATION
MAHIMA SHANKAR PROCESSED FOODS PRIVATE LIMITED,
MEGHA SPRINGS PRIVATE LIMITED

WITH

MEGHA FRUIT PROCESSING PRIVATE LIMITED

T.P. NO.162/2017 IN C.P.NO.52/2016

1. Megha Fruit Processing Private Limited
Narimogaru Post and Village,
Puttur Taluk, Puttur-574202

-APPLICANT/TRANSFEE COMPANY

T.P.NO. 163/2017 IN C.P.NO.53/2016

1. Mahima Shankar Processed Foods Private Limited
Narimogaru Post and Village,
Puttur Taluk, Puttur-574202

-APPLICANT/TRANSFEROR COMPANY No 1

T.P.NO.164/2017 IN C.P.NO.54/2016

1. Megha Springs Private Limited
Narimogaru Post and Village,
Puttur Taluk, Puttur-574202

- APPLICANT/TRANSFEROR COMPANY No.2

PARTIES PRESENT: 1.Mr. Saji.P.John, SPJ Legal, Advocate
2. Ms. Prema Hatti, Standing Counsel for Central Govt.
3. Vasant Kumar, Assistant, Official Liquidator
Bengaluru

Heard on: 08.02.2017, 03.03.2017, 16.03.2017, 20.03.2017 and 03.04.2017

COMMON ORDER

These Company Petitions are filed on behalf of the Applicant Companies under Section 391 to 394 of Companies Act, 1956 read with Rule 9 of Companies (Court) Rules, 1959, praying to order for approval of the scheme of amalgamation of Transferor Companies with the Transferee Company and shall be binding upon all the shareholders and creditors of the Companies.

These Petitions were originally filed before the Hon'ble High Court of Karnataka and were numbered as C.P.No.52/16, C.P.No.53/16 and C.P.No.54/16 respectively. Consequent upon notification no: GSR 1119(E) dated 7th December, 2016 by Ministry of Corporate Affairs, Government of India the said Company Petitions were transferred to this Tribunal and renumbered as T.P.No.162/17, T.P.No.163/17 and T.P.No.164/17 respectively.

The averments made in the Company Petitions are briefly described hereunder:-

The Petitioner Companies seeks an order for sanctioning the Scheme of Amalgamation of **Mahima Shankar Processed Foods Private Limited** (Transferor Company 1) and **Megha Springs Private Limited** (Transferor Company 2) with **Megha Fruit Processing Private Limited** (Transferee Company). The Scheme of Amalgamation is produced at **Annexure-A**.

The Transferee Company was incorporated on 11th November, 2003 under the name and style of Megha Fruit Processing Private Limited. The registered office of the Transferee Company is situated at Narimogaru Post and Village, Puttur Taluk, Puttur-574202. The main objects of the transferee company is to carry on the business in India or elsewhere as manufacturer, producer, importer, exporter, dealer in all kinds of fruits and vegetables, raw, preserved, canned fruit preparations of every kind and descriptions and to manufacture, process and prepare Ready to serve carbonated, non-carbonated, Drinks, fruit juices, beverages, jams, jelly, squash, flavours, syrups, sarbats, flavoured drinks, health and diet drinks. A copy

of Memorandum of Association and Articles of Association of the Transferee Company is shown as **Annexure- B in T.P.162/17.**

The authorized share capital of the Transferee Company as on 31st, March, 2016 is Rs.13,00,00,000/- divided into 1,30,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital as on 31st March, 2016 is Rs.12,63,22,600/- divided into 1,26,32,260 equity shares of Rs.10/- each. The Audited balance sheet as on 31st March, 2016 is filed along with Memo dated 7th April, 2017 in T.P.162/17.

The Transferor Company No.1 was incorporated on 19th February, 2008 under the name and style of Mahima Shankar Processed Foods Private Limited . The registered office of the Transferor Company 1 is situated at Narimogaru Post and Village, Puttur Taluk, Puttur-574202. The main objects the transferor company 1 is to carry on business in India and abroad of manufacturing, preserving, reining, packing, bottling, prepare, manipulate, treat, market, import, export, improve, produce, process, prepare, buy, sell, deal in carry on manufacturing and trading in all types of foods and beverages. A copy of Memorandum of Association and Articles of Association of the Transferor Company 1 is shown as **Annexure- B in T.P. 163/17.**

The authorized share capital of the Transferor Company 1 as on 31st, March, 2016 is Rs.4,00,00,000/- divided into 40,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital as on 31st March, 2016 is Rs.3,20,59,660/- divided into 3,2,05,966 equity shares of Rs.10/- each. The Audited balance sheet as on 31st March, 2016 is filed along with Memo dated 7th April, 2017 in T.P.163/17.

The Transferor Company No. 2 was incorporated initially as partnership concern on 22nd March, 2003 and on 23rd April, 2004 converted as Private Limited Company under the name and style of Megha Springs Private Limited. The registered office of the Transferor Company 2 is situated at Narimogaru Post and Village, Puttur Taluk, Puttur-574202. The main objects of the Transferor Company 2 is to establish and carry on the business in India or elsewhere as manufacturer, producer, importer, exporter, dealer in Packaged Drinking Water, Mineral Water, Bottled water either as wholesalers or retailers. A Copy of Memorandum of




Association and Articles of Association is shown as **Annexure-B** in **T.P.No.164/17**.

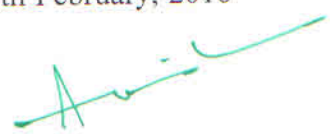
The authorized share capital of the Transferor Company 2 as on 31st, March, 2016 is Rs.8,00,00,000/- divided into 80,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital as on 31st March, 2016 is Rs.6,80,44,710/- divided into 68,04,471 equity shares of Rs.10/- each. The Audited balance sheet as on 31st March, 2016 is filed along with Memo dated 7th April, 2017 in T.P.164/17.

The Board of Directors of the Transferee Company and the Transferor Company 1 and Transferor Company 2 at their respective Board Meetings held on 31st August, 2015 have approved and adopted the Scheme of Amalgamation. Copy of Board Resolution is shown as **Annexure- H** at their respective Company Petitions in T.P.No.162/17, T.P.No.163/17 and T.P.No.164/17.

It is stated in the scheme that the amalgamation of the Transferor companies with the Transferee Company would inter alia have the following benefits:

- a. The facilities available with the Transferor Companies and the Transferee Company could be pooled together and the amalgamated company will be able to exploit the facilities available as one single unit for the benefit of the amalgamated company and consolidate its business.
- b. The Investments of the transferor Companies and the Transferee Company could be pooled together and the amalgamated company will be able to exploit the facilities available as one single unit for the benefit of the amalgamated company and penetrate into the new markets.
- c. Administration and operational costs would be considerably reduced and the amalgamated company will be able to benefit from the same resulting in better revenues from operations and profits.

The Transferee Company, Transferor Company 1 and Transferor Company 2 had filed Company Application No.73/16,74/16 and 75/16 respectively before the Hon'ble High Court of Karnataka for dispensing with the convening of meetings of its Shareholders and Creditors for approving the Scheme of Amalgamation. The Hon'ble High Court of Karnataka vide separate orders dated 26th February, 2016

allowed the Applications and dispensed with the convening of meetings of its Shareholders and Creditors. Copy of the orders of Hon'ble High Court of Karnataka in C.A.No.73/16 is filed along with a Memo dated 8.03.2016 in T.P.162/17, Copy of the order in C.A.No.74/16 is filed along with a Memo dated 8.03.2016 in T.P.163/17 and Copy of the order in C.A.No.75/16 is filed along with a Memo dated 8.03.2016 in T.P.164/17.

It is averred that the Transferee Company and the Transferor Companies filed the Petitions bearing Co.P.No.52/16, Co.P.No.53/16 and Co.P.No.54/16 respectively for approving the scheme of Amalgamation on 29th February, 2016 before the Hon'ble High Court of Karnataka.

The Hon'ble High Court of Karnataka vide separate order dated 4th March, 2016 issued notice to Regional Director in C.P.No.52/16, C.P.No.53/16 and C.P.No.54/16 and to the Official Liquidator in C.P.No.53/16 and C.P.No.54/16 and also directed to take out paper publication of the notices in "The Hindu" and "Udayavani" on or before 18.03.2016 indicating the hearing date as 22.04.2016. As directed by the Hon'ble High Court of Karnataka, notices were published in "Hindu" and "Udayavani" Newspapers on 16.03.2016 and the same were furnished along with Memo dated 16.03.2016.

The Regional Director, Ministry of Corporate Affairs, South-East Region, Hyderabad represented by Registrar of Companies has filed affidavits dated 24th June, 2016 making some observations as follows:

- i. The notice dated 24th March, 2016 was issued to the Income-tax Department as required by Ministry of Corporate Affairs General Circular No.1/2014 dated 15.01.2016 giving 15 days time to offer comments/objections, if any.

The Regional Director, Ministry of Corporate Affairs, South-East Region, Hyderabad represented by Registrar of Companies submits in its affidavit that the Assistant Commissioner of Income Tax, Circle-1(1), Mangaluru vide letter dated 19.05.2016 has informed that the consolidated report by the department in the issue will be sent on or before 25.05.2016. However, no comments/objections have been received so far from the Income Tax Department by Regional Director (South-East




Region) till date. Copy of the said letter of Assistant Commissioner of Income Tax, Circle-1(1), Mangaluru is shown along with the affidavit in C.P.162/16.'

On a prayer made by the Official Liquidator in OLR No. 45/2016 in Co.P.No.53/16 and OLR No. 46/2016 in Co.P.No.54/16 M/s RVS & Co Chartered Accountant was appointed by the Hon'ble High Court of Karnataka to scrutinize the Books of Accounts and records of the Transferor Companies vide order dated 22.04.2016. Upon scrutiny of books of accounts and other material made available by the Transferor Companies M/s RVS & Co Chartered Accountants have submitted report dated 28th August, 2016 stating that:

- a. The Company has maintained proper books of accounts, statutory registers and records as required by the Companies Act, 1956 except few shortcomings mentioned in point no. IV of our report.
- b. The affairs of the company have been conducted in a manner not prejudicial to the interests of the members or the public.

The said Chartered Accountant in his report in T.P.164/17 has stated that on his review of reports, he has observed the following:

- i. Company is not following Deferred Tax provision which are mentioned in Accounting Standard-22 and there is a policy of the Company to provide for the same. However the company is not following the same.
- ii. There are unsecured loans received from directors, relatives and individuals as mentioned in Financial Statements for the FY 2014-2015 total amounting to Rs.15,79,29,672.-
- iii. Provisions for Gratuity are not provided in the books of accounts.
- iv. Disclosures in respect of Related Party transactions are not in detail as mentioned in Accounting Standard-18.
- v. Disclosures in director's report are not in detailed manner regarding Conservation of Energy, Technology absorption, Foreign Exchange earnings and outgo.
- vi. There are more number of Board of Directors meetings held than mentioned in Directors report/Secretarial Compliance Certificate.
- vii. CARO 2003 is reported instead of CARO 2015 for FY 2014-15.

- viii. The company is still in process of updating the Fixed Assets Register and complete the fixed asset verification.

The said Chartered Accountant in his report in T.P.163/17 has stated that on his review of reports, he has observed the following:

- i. Company is not following Deferred Tax provision which are mentioned in Accounting Standard-22 and there is a policy of the Company to provide for the same. However the company is not following the same.
- ii. There are few differences in the Shareholding pattern of the Company which is submitted to Registrar of Companies and Shareholding pattern mentioned in the financial statements for FY 2014-15.
- iii. An amount of Rs.8,00,000/- is received from Mr.Arun Kumar towards subscription of share capital whereas the same is accounted as received from Mrs. Saraswathiamma. Same is been recorded in the Register of Shareholders and Financial Statements of the Company.
- iv. There are unsecured loans received from m/s.Mahima traders(HUF) amounting to Rs.5,17,09,627/- and Griyappa amounting to Rs.4,09,400/- as on 31.03.2015, whereas the same are deposits accepted from outsiders who are directors/relatives of directors of the company.
- v. Provisions for Gratuity are not provided in the books of accounts.
- vi. Disclosures in respect of Related Party transactions are not in detail as mentioned in Accounting Standard-18.
- vii. Disclosures in director's report are not in detailed manner regarding Conservation of Energy, Technology absorption, Foreign Exchange earnings and outgo.
- viii. There are more number of Board of Directors meetings held than mentioned in Directors report/Secretarial Compliance Certificate.
- ix. CARO 2003 is reported instead of CARO 2015 for FY 2014-15.
- x. The company is still in process of updating the Fixed Assets Register and complete the fixed asset verification.

The Transferor Companies are therefore required to give compliance to the observations of the above Chartered Accountants report in their Books of Accounts upon giving effect to the merger.

The Official Liquidator has filed a report in OLR No.155/2016 in C.P.No.53/16 and OLR No. 46/2016 in Co.P.No.54/16 submitting that Transferor Companies may kindly be dissolved without winding up by this Tribunal.

The Counsel for the Petitioner Company has filed Affidavit dated 15th March, 2017 of the Authorised Signatory that there are no other statutory authorities, other than the Regional Director, Registrar of Companies, Official Liquidator and Income Tax Department, to whom the Company Petitions of the Transferor Companies and Transferee Company need to be served and that Petitions have been served on the Regional Director, Registrar of Companies, Official Liquidator and Income Tax Department and they have provided their respective comments/observations on the scheme of Amalgamation.



The Counsel for the petitioner companies has filed Memo dated 08th March, 2017 furnishing the certificate of Auditor stating that the accounting treatment detailed in the aforesaid Scheme is in compliance with Accounting Standard-14 Accounting for Amalgamation as prescribed under Section 133 of the Act read with Rule 7 of the Companies (Account) Rules, 2014.

After hearing the Counsel for the Petitioner Companies and also considering the materials on records,

THIS TRIBUNAL DO FURTHER ORDER THAT:-

While approving the scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specially required under any law.

All property, rights and powers of the transferor companies 1&2 be transferred without further act or deed to the transferee company and accordingly the same



shall pursuant to section 232 of the Act, be transferred to and vest in the transferee company for all the estate and interest of the transferor companies 1&2 therein but subject nevertheless to all charges now affecting the same; and

All the liabilities and duties of the transferor companies be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and

All proceedings now pending by or against the transferor companies be continued by or against the transferee company; and

The tax implications, if any, arising out of the scheme is subject to final decision of Income Tax Authorities and the decision of the Income Tax Authority shall be binding; and

The Transferee Company do without further application allot to such members of the Transferor Companies, as have not given such notice of dissent, as is required by clause 9 of the scheme of amalgamation herein the shares in the transferee company to which they are entitled under the said scheme of amalgamation; and

The Transferee Company and respective Transferor companies shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the transferor companies shall be dissolved and the Registrar of Companies for registration in accordance with Rule 25(7) of Companies (Compromises, Arrangement and Amalgamations) Rules, 2016.

The Scheme shall be effective from the appointed date as mentioned in the scheme of Amalgamation w.e.f. 1.04.2015.

The Transferor Company or its authorised signatory is directed that after the completion of the process of Amalgamation to handover the possession of the Books of accounts and other relevant documents of the Transferor Company to the Transferee Company for the purpose of Section 239 of the Companies Act, 2013.

The Petitioner/ Transferee Company is directed to take steps to make compliance of various provisions of the Companies Act, 2013 upon merging the

accounts of the Transferor Companies and upon giving effect to the Amalgamation with respect to the observations of the Chartered Accountant M/s.RVS & Co., made in their reports dated 26th August, 2016.

Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 7th DAY OF JUNE 2017