

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P. NO.266/2017**

IN

C.A.NO 739/2016

DATED: THURSDAY THE 2ND DAY OF FEBRUARY 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 COFFEE DAY ENTERPRISES LIMITED

T.P. NO.266/2017 IN C.A.NO.739/2016

**1. Coffee Day Enterprises Limited,
No.23/2, Coffee Day Square
Vittal Mallya Road,
Bengaluru 560001**

APPLICANT/TRANSFeree COMPANY

PARTIES PRESENT: Mr. M.G. Nanjappa, Tatva Legal Bangalore, Advocate
4th Floor, Phoenix Pinnacle 46, Ulsoor Road
Bangalore 560042 and Authorised Representatives
for the Applicant

Heard on: 25.01.2017

ORDER

This Application is filed on behalf of the Applicant Company under Section 391 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959, praying to order for convening the Meeting of Shareholders of the Applicant Company and dispensing with convening of the meetings of the Secured and Unsecured Creditors of the Applicant Company for approving the Scheme of Amalgamation, whereunder the Coffee Day Overseas Private Limited (Transferor Company) to be merged with the Applicant Company Coffee Day Enterprises Limited (Transferee Company) for purposes of considering the Scheme of Amalgamation etc.,

This Application was originally filed before the Honourable High Court of Karnataka and was numbered as CA No. 739/16. Consequent upon the Notification No: 1119E dated 7th December, 2016 by Ministry of Corporate Affairs, Government of India the said Company Application was transferred to this Tribunal and renumbered as T.P No. 266/17.

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


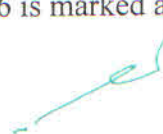
The Applicant Company seeks an order for convening the Meeting of Shareholders of the Applicant Company for approving the Scheme of Amalgamation of Coffee Day Overseas Private Limited with the Applicant Company Coffee Day Enterprises Limited in terms of Scheme of Amalgamation shown as **Annexure-E**.

The Applicant Company seeks an order for dispensing with convening of meeting of Secured Creditors and Unsecured Creditors for approving the Scheme of Amalgamation of Coffee Day Overseas Private Limited with the Applicant Company.

It is further averred in the Application that the Applicant Company was incorporated on 20th June, 2008 as per the provisions of the Companies Act, 1956 under the name of Coffee Day Holdings Company Private Limited in the state of Karnataka. The name of the Applicant Company was changed to Coffee Day Resorts Private Limited from Coffee Day Holdings Company Private Limited on 25th January, 2010 and subsequently the name of the Applicant Company was changed to Coffee Day Enterprises Limited on 6th August, 2014 bearing **CIN No. U55101KA2008PTC046866**. It was incorporated to purchase, establish, conduct, manage, take-over, acquire, lease, promote, develop and carry on the running holiday resorts, boarding and lodging houses, hotels, restaurants, cafes, resorts, vacation/holiday resorts, villas, lodging, stalls, summer houses, castles, inns, road houses, motels, taverns, rest houses, guest houses, retreats, cottages, restrooms, holiday camps, time share resorts, country clubs, mass housing, row housing, tourist bungalows, health care clinics, health spas, health rejuvenation hospitals and all other types of accommodations of all descriptions, To import, export, processors, whole-sale traders in coffee and allied products, To take over all the assets and liabilities and to continue the business and all activities of Coffee Day Holding Co.,

The Registered office of the Applicant Company is situated at No.23/2, Coffee Day Square Vittal Mallya Road, Bengaluru-560001.

The Audited profit and loss account and balance sheet for the year ending 31/03/2016 is marked as **Annexure -D**.





It is further stated that, the Board of Directors of the Applicant Company has approved and adopted a Scheme of Amalgamation at its meeting held on 11th August 2016 by virtue of which Coffee Day Overseas Private Limited (Transferor Company) is proposed to be merged with the Applicant Company subject to approval. The resolution passed by the Board of Directors of the Applicant Company is marked as Annexure-F. Copy of the Memorandum and Articles of Association of the Transferee Company is shown as **Annexure-C**.

It is further averred that, the Transferor Company was incorporated on 21st March, 2001 under the name and style of "Way 2 Wealth Advisors Private Limited". The Transferor Company name was changed to RG Advisors Private Limited from Way 2 Wealth Advisors Private Limited on 2nd December, 2010 and subsequently the name of the Transferor Company was changed to Coffee Day Overseas Private Limited bearing **CIN No. U55101KA2001PTC028792** on 25th March, 2014. The Transferor Company was incorporated to set up in India and abroad a chain of cafes, restaurants, hotels, cyber cafes, internet service providers, to provide franchise to the people who are prepared to serve the customers in accordance with the tradition and system of service laid down by the Company, to sell, service and distribute and to manage and market the selling, service and distribution of eatables, To cultivate and deal with agricultural products, horticultural products, dairy and farm produce and products including food grains, cereals, seeds, oilseeds, vegetables, fruits, edible oils, food products and preparation of any description and To import and export all kinds of and types of food products.

The Registered office of the transferor company is situated at No.23/2, Coffee Day Square Vittal Mallya Road, Bengaluru-560001. Copy of Profit and Loss Account and Balance Sheet of the Transferor Company for the year ending 31/03/2016 is shown as **Annexure-D**.

It is further averred that, Directors of both the companies are of the opinion that, if the Transferor Company is merged with the Applicant Company it would be beneficial for the purpose of administrative convenience. The Board of Directors of both the Companies have decided to merge the Transferor Company with the Applicant Company. It is further stated that, the proposed Scheme of Amalgamation will be beneficial to the Applicant Company and to the Transferor Company. A



copy of the Board Resolution of Applicant Company dated 11th August, 2016 in approving the Scheme of Amalgamation is marked as Annexure-F and Scheme of Amalgamation is marked as **Annexure-E**.



It is further stated that, the Applicant Company is a member of the Bombay Stock Exchange Limited and National Stock Exchange Limited of India. The Approval Letter received from Bombay Stock Exchange Limited dated November 16, 2016 is marked as Annexure-H. The Approval Letter received from National Stock Exchange Limited dated November 17, 2016 is marked as Annexure-J.

It is further stated that the Chartered Accountant after verification of the books of accounts and other records and documents of the Applicant Company certified the number of shareholders of the Applicant Company as on September 30, 2016. Certificate issued by the Chartered Accountant is marked as Annexure-J

It is further stated that there are 6 Secured Creditors and 18 Unsecured Creditors in the Applicant Company. Certificate issued by the Chartered Accountant is marked as **Annexure-K**.

We have heard the Counsel appearing for the Applicant Company. The Application is filed by the Applicant Company which is a Transferee Company for Convening the Meeting of Shareholders of the Applicant Company and dispensing with convening of meetings of the Secured creditors and Unsecured Creditors for considering the Scheme of Amalgamation shown as **Annexure-E**.

The Applicant is seeking an order to convene the Meeting of Shareholders and dispensing with the convening of meeting of Secured and Unsecured Creditors on the ground that the Secured and Unsecured Creditors have given consent for the proposed Scheme of Amalgamation. The consent letters of the Secured Creditors are marked as Annexure-L series and the consent letters of the Unsecured Creditors are marked as Annexure-M series. We have seen the consent letters of the Secured Creditors marked as Annexure-L series and we have seen the consent letters of the Unsecured Creditors marked as Annexure-M series. We have seen the extract of the Minutes of the meeting of the Board of Directors of Coffee Day Enterprises Limited held on 11th August 2016 which is marked as **Annexure-F**.



Thus, the 6 Secured and 18 Unsecured Creditors have given consent for the Scheme of Amalgamation. The Chartered Accountant certified that there are only 6 Secured Creditors and 18 Unsecured Creditors of the Applicant Company.

The Applicant Company has disclosed all relevant materials in the Applicant and there is no impediment in law to grant the prayer sought for in the Application. Hence the Tribunal is of the considered view that the prayers sought for deserves to be granted.

In any eventuality where the Applicant Company approaches this Tribunal for seeking the approval of the scheme, it would be open for secured creditors and unsecured creditors who are interested/disinterested in the scheme of amalgamation to put forth their contention before the Tribunal.

Hence, the Application is allowed and the Applicant Company is directed to convene and hold the Meeting of Shareholders as per following Schedule:

Date of the Meeting of Shareholders: 10.03.2017 at 12:00 P.M

Chairman for the meeting Mr. S.V.Ranganath

Venue of the meeting: No.23/2, Coffee Day Square,
Vittal Mallya Road, Bengaluru 560001. *deleted vide order dt. 31/2/2017*
*Coffee day Global Village, RVCE post, Mysore Road, Pattangere / Mylasandra village, BANGALORE-560059**

Chairman shall issue individual notices, enclosing copy of the Scheme of Amalgamation, form of proxy and statement as required under Section 393 to all the shareholders of the Applicant-Company mentioning the date, time and venue of the meeting.

As proposed by Applicant Company, it shall take-out notices of the meeting in one edition of The Hindu-Business Line (English Daily) and Vijay Vani (Kannada Daily) on or before 7th February, 2017.

Quorum for the meetings of shareholders shall be as under:

Shareholders: 30 by person

Chairman shall file his report within 15 days from the date of meeting.

Convening of the meeting of the Secured Creditors and unsecured Creditors is dispensed with.

2/2/17
(RATAKONDA MURALI)
MEMBER, JUDICIAL

2/2/17
(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE *2nd* DAY OF FEBRUARY 2017

** inserted vide order dt. 31/2/2017*