

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

**Company Application No.A.11/PB/2017**

**Present: CHIEF JUSTICE (Retd.) SHRI M.M.KUMAR, HON'BLE PRESIDENT**

**& SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**In the matter of:**

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

**AND**

**IN THE MATTER OF SCHEME OF ARRANGEMENT**

**AMONGST**

**Himalya International Limited ("HIL")**

**(DEMERGED COMPANY/ APPLICANT COMPANY NO.1)**

**AND**

**Appetizers and Snacks Foods Limited ("ASFL")**

**(RESULTING COMPANY NO.1/APPLICANT COMPANY NO.2)**

AND

**Himlaya Green Apartments Limited ("HGAL")**

(RESULTING COMPANY NO.2/APPLICANT COMPANY NO.3)

AND

**Their respective Shareholders and Creditors**

**MEMO OF PARTIES**

**1. HIMALYA INTERNATIONAL LIMITED ("HIL")**

Company registered under the Companies Act, 1956

Having Registered Office at:

E-555, 1<sup>ST</sup>& 2<sup>ND</sup> Floor, Palam Extension, Sector-7

Dwarka, New Delhi-110077

Through its authorized representative and CFO: Mr. Ajay Kaushik

CIN: L70102DL1992PLC047399

...Applicant Company No.1 / Demerged Company

**2. APPETIZERS AND SNACKS FOOD LIMITED ("ASFL")**

Company registered under the Companies Act, 2013

Having Registered Office at:

E-555, 2<sup>ND</sup> Floor, Sector-7 Harijan Basti, Near Ramphal Chowk

New Delhi-110045

Through its authorized representative and CFO: Mr. Ajay Kaushik

CIN: U15490DL2016PLC306438

...Applicant Company No.2/ Resulting Company No.1

### 3. HIMALYA GREEN APARTMENTS LIMITED ("HGAL")

Company registered under the Companies Act, 2013

Having Registered Office at:

E-555, 2<sup>ND</sup> Floor, Sector-7 Harijan Basti, Near Ramphal Chowk

New Delhi-110045

Through its authorized representative and CFO: Mr. Ajay Kaushik

CIN: U70109DL2016PLC306441

...Applicant Company No.3/ Resulting Company No.2

**Counsel for the Applicants: Mr. Raj Rani Bhalla, Advocate**

**Mr. Tavinderpal Sidhu, Advocate**

### **ORDER**

1. This is an application which is jointly filed by the applicant companies herein, namely Himalya International Limited ("HIL") (for brevity "Demerged Company/Applicant Company No.1"), Appetizers and Snacks Food Limited ("ASFL") (for brevity " Resulting Company No.1/Applicant Company No.2") and Himalya Green Apartments ("HGAL") (for brevity "Resulting Company No.2/Applicant Company No.3") under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement (hereinafter referred to as the "SCHEME" ) proposed between the

applicants. The said Scheme is also annexed as Annexure "P-1" to the application. The applicants above named have preferred the instant joint application in effect for the following purpose as evident from the reliefs sought for in Paragraph IV of the Application, namely:-

- a. Direct convening of meeting of the Equity Shareholders of Applicant Company No.1/Demerged Company;
- b. Direct convening of meetings of creditors both Secured and Unsecured of Demerged Company/Applicant Company No.1;
- c. Direct dispensation of meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of Applicant Company No.2/Resulting Company No.1 in lieu of consents received;
- d. Direct dispensation of meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of Applicant Company No.3/Resulting Company No.2 in lieu of consents received;
- e. Direct publication of the general notice of meeting in the newspapers, Business Standard (English, Delhi Edition) and Business Standard (Hindi, Delhi Edition);
- f. Pass such other or further orders 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 joint application sworn for and on behalf of all the Applicant Companies has been filed by one Mr. Ajay Kaushik, being the

  


CFO of the respective 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, Arrangements and Amalgamations) Rules 2016 and it is also represented that the registered office of all the applicant companies are situated within the territorial jurisdiction of this Tribunal and falling within Registrar of Companies, NCT, New Delhi. In relation to Himlaya International Limited being the Demerged Company/Applicant Company No.1, in the Scheme marked as Annexure – “P-1”, it is represented that it is having 16,968 Equity Shareholders as on 31.12.2016. It is further represented by the counsel for Applicants that the Applicant No. 1 / Demerged Company as on 31.01.2017 have 8 Secured Creditors and 329 Unsecured Creditors. In relation to the shareholders of the Applicant Company No. 1 / Demerged Company, the Applicant No.1 Company seeks convening and holding of the meetings of the Equity Shareholders and also in relation to the Secured and Unsecured Creditors, the Applicant Company No.1 seeks convening and holding of the respective

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meetings. It is listed on Bombay Stock Exchange Limited (BSE), from whom "No Objection Letter" has been obtained.

3. In relation to Appetizers and Snacks Foods Limited being the Applicant Company No.2 / Resulting Company No.1 in the Scheme marked as Annexure- "P-1", Learned Counsel represents that company is having 7 Equity Shareholders as on 31.12.2016 and from whom consent letters have been obtained and are placed on record. It is further represented by the counsel for Applicants that the Applicant No. 2 /Resulting Company No.1 as on 02.02.2017 have no secured and Unsecured Creditor. In relation to the Equity Shareholders, the Applicant Company No. 2 / Resulting Company No.1 seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Arrangement in view of consent being obtained from all the Equity shareholders of the Resulting Company No.1/ Applicant Company No.2. Resulting Company No.1 is a wholly owned subsidiary of Demerged Company and has been incorporated for undertaking the business of producing and exports of packaged foods from its Gujarat plant.

4. In relation to Himalya Green Appartments Limited being the Applicant Company No.3 / Resulting Company No.2 in the Scheme marked as Annexure- "P-1", Learned Counsel represents that company is having 7 Equity Shareholders

as on 31.12.2016 and from whom consent letters have been obtained and are placed on record. It is further represented by the counsel for Applicants that the Applicant No. 3 / Resulting Company No.2 as on 02.02.2017 have no secured and Unsecured Creditor. In relation to the Equity Shareholders, the Applicant Company No. 2 / Resulting Company No.1 seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Arrangement in view of consent being obtained from all the Equity shareholders of the Resulting Company No.2/ Applicant Company No.3. Resulting Company No.2 is a wholly owned subsidiary of Demerged Company and has been incorporated for undertaking the business of Real Estate, Infrastructure and Construction of Residential Houses.

5. 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 which contemplates the Demerger of Applicant Company No.1 of its business of producing and export of packaged foods from its Gujarat Plant to Applicant No.2/ Resulting Company No.1 and the business of Real Estate, Infrastructure and Construction of residential houses to Applicant No.3/ Resulting Company No.2. The above joint application has been filed on 15.02.2017 and this Tribunal hence proceeds to entertain the above joint application filed under the 2013 Act.

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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.

6. We have perused the joint application and the connected documents / papers filed therewith including the Scheme of Arrangement contemplated between the Applicant companies.
7. From the certificate of incorporation filed, it is evident that the Demerged Company / Applicant Company No.1 was incorporated under the name and style of Himlaya Cement & Calcium Carbonate Limited which was later on by Resolution changed to Himalya International Limited on 30<sup>th</sup> January, 1992 with the Registrar of Companies, NCT of Delhi .
8. The authorized capital of the Demerged company/ Applicant Company No.1, as on 31.12.2016 is Rs. 75, 00, 00, 000/- divided into 7,50, 00, 0000 equity shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs. 57, 87, 28,840 divided into 5, 78, 72,884 equity shares of Rs. 10/- each.

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9. The main objects of the Demerged Company/ Applicant Company No.1 as stated in the application is to manufacture of natural food products which include mushrooms, dairy products, French Fries and potato specially products, battered appetizers and ethnic Indian snacks and sweets.
10. From the certificate of incorporation filed, it is evident that the Resulting Company No.1 / Applicant Company No.2 was incorporated under the name and style of Appetizers and Snacks Foods Limited on 27<sup>th</sup> September, 2016 with the Registrar of Companies, NCT of Delhi.
11. The authorized capital of the Resulting Company No.1/ Applicant Company No.2, as on 02.02.2017 is Rs. 5, 00, 000/- divided into 50, 000 equity shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs. 5, 00,000 divided into 50,000 equity shares of Rs. 10/- each.
12. The main objects of the Resulting Company No.1/ Applicant Company No.2 as stated in the application is to undertake the business of producing and export of packaged foods from its Gujarat Plant.

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13. From the certificate of incorporation filed, it is evident that the Resulting Company No.2/ Applicant Company No.3 was incorporated with Registrar of Companies, NCT of Delhi under the name and style of Himlaya Green Apartments on 27<sup>th</sup>September, 2016.
14. The authorized capital of the Resulting Company No.2/ Applicant Company No. 3 as on 02.02.2017 is Rs. 5, 00, 000/- divided into 50,000 equity shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs. 5,00, 000 divided into 50,00 equity shares of Rs.10/- each.
15. The main objects of the Resulting Company No.2/ Applicant Company No.3as stated in the application is to undertake the business of Real Estate, Infrastructure and Construction of residential Houses.
16. All the applicants have filed their respective Memorandum and Articles of Association as well as their last available audited financial statements for the year ended 31.12.2016 with respect to Demerged Company and for Resulting Company No.1 and Resulting Company No.2 for 02.02.2017.



17. A copy of the Scheme of Arrangement which contemplates the Demerger and the appointed date as specified in the Scheme is **01.04.2016** subject to the directions of this Tribunal.
18. The Board of Directors of the Applicant companies vide separate meetings held on 01.10.2016, have unanimously approved the proposed Scheme of Arrangement as contemplated above and copies of resolutions passed thereat have been placed on record by the companies.
19. All the companies have submitted that no investigation proceedings are pending against them neither under Sections 235 to 251 of the Companies Act, 1956 nor section 222 to 227 of Companies Act, 2013.
20. 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 Demerged Company/ Applicant Company No.1:**



(i) With respect to Equity shareholders:

Meeting of the Equity Shareholders of the Demerged Company/ Applicant CompanyNo.1 is directed to be held at 10:30 AM at Govindham Banquet Hall, WZ 306-0 Data Ram Marg, Near Flyover Sector-7, Dwarka, New Delhi on 28<sup>th</sup> April, 2017subject to the notice of meeting being issued. The quorum for the meeting of the Equity Shareholders of the Applicant No. 1 / Transferor Company shall be 3000 in number or more than 20% in value whichever is higher.

(ii) With respect to Secured Creditors:

Meeting of the Secured Creditors of the Demerged Company/ Applicant CompanyNo.1 is directed to be held at 11:30 AM at State Bank of India, Jawahar Vyapar Bhawan, 9<sup>th</sup> Floor, 1, Tolstoy Marg New Delhi-110001 New Delhi on 24<sup>th</sup> April, 2017subject to the notice of meeting being issued. The quorum for the meeting of the Secured Creditors of the Applicant No. 1 / Demerged Company shall be 6in number or more than 75% in value whichever is higher.

(iii) With respect to Unsecured Creditors:

Meeting of the Unsecured Creditors of the Demerged Company/ Applicant CompanyNo.1 is directed to be held at 1:30 PM Govindham Banquet Hall, WZ 306-0 Data Ram Marg, Near Flyover Sector-7, Dwarka, New Delhi on 24<sup>th</sup> April, 2017 subject to the notice of meeting being issued. The quorum for the meeting of the Creditors of the Applicant No. 1 / Transferor Company shall be 75 in number or more than 75% in value whichever is higher.

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**B) In relation to Resulting Company No.1/ Applicant Company No.2:**

(i) With respect to Equity shareholders:

Since it is represented by the Resulting Company No.1/ Applicant Company No.2 that consent letters of all the equity shareholders have been placed on record and checked therefore, the convening of meeting is dispensed with.

(ii) With respect to Secured and Unsecured Creditors:

Since it is represented by the Resulting Company No.1/ Applicant Company No.2 that there are no Secured and Unsecured Creditors in the Company, the necessity of convening a meeting of Secured Creditor or Unsecured Creditor do not arise.

**C) In relation to Resulting Company No.2/ Applicant Company No.3:**

(i) With respect to Equity shareholders:

Since it is represented by the Resulting Company No.2/ Applicant Company No.3 that consent letters of all the equity shareholders have been placed on record and verified therefore, the convening of meeting is dispensed with.

(ii) With respect to Secured and Unsecured Creditors:

Since it is represented by the Resulting Company No.2/ Applicant Company No.3 that there are no Secured and Unsecured Creditors in the Company, the

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necessity of convening a meeting of Secured Creditor or Unsecured Creditor do not arise.

D) In case the quorum as noted above for the above meetings of the Applicant Companies are not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the applicant companies at least 48 hours before the meetings. The Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained.

E) Mr. Shudhanshu Batra Senior Advocate (9811035392) is appointed as the Chairperson and Mr. Pradeep Pincha, Advocate (9829157530) is appointed as the Alternate Chairperson for the meeting of Equity Shareholders, Creditors as may have been directed to be convened by this Tribunal as above of the Applicant Companies.

F) The fee of the Chairperson for the aforesaid meetings shall be Rs. Two lac. and the fee of the Alternate Chairperson shall be Rs. One lac. in addition to meeting their incidental expenses. Mr. Ravi Bhushan (9990339200) is appointed as a Scrutinizer and would be entitled to fee of Rs. One lac. for his services in addition to meeting his incidental

expenses. The Chairpersons will file their reports within two weeks from the date of holding of the above said meetings.

G) That individual notices of the said meetings shall be sent by the Applicant Companies through registered post or speed post or through courier or through e-mail , 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme of Arrangement copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above any other documents as may be prescribed under the Act may also be duly sent with the notice.

H) That the Applicant Companies shall publish advertisement with a gap of atleast 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in the English Daily Indian Express in English, and in Hindi Daily Jansatta vernacular stating the copies of Scheme of Arrangement, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies.

I) Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be applicable to the respective

companies under the Act and rules framed there under. The Chairperson shall as aforesaid be responsible to report the result of the meeting within two weeks of the conclusion of the meeting with a vote on the proposed scheme.

J) The companies shall individually send notice to Central Government, the Income Tax Authorities, Registrar of Companies NCT Delhi, Bombay Stock Exchange as well as other sectoral regulators who may have significant bearing on the operation of the applicant companies or along the Scheme perse along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

K) The applicant companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor or member of all the companies entitled to attend the meetings as aforesaid.

L) The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.

M) All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.



The application stands allowed on the aforesaid terms.

14.03.2017

Sd/-

(CHIEF JUSTICE M.M.KUMAR)  
PRESIDENT

Sd/-

(R.VARADHARAJAN)  
MEMBER (JUDICIAL)