

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME APPLICATION NO. 655 of 2017

In the matter of the Companies Act, 2013

And

In the matter of Sections 230 read with Section 232 and other applicable provisions of the
Companies Act, 2013

And

In the matter of Scheme of Arrangement in nature of amalgamation of Rambandhu
Masalewale Private Limited and Rathi Food Industries Private Limited with Empire
Spices and Foods Limited and their respective Shareholders and Creditors

(i) Rambandhu Masalewale Private Limited

(CIN: U15495MH1984PTC034382) **Applicant Transferor Company-1**

(ii) Rathi Food Industries Private Limited

(CIN: U74999MH1984PTC032473) **Applicant Transferor Company-2**

The companies incorporated under the
provisions of Companies Act, 1956 and having
its registered office at 2052, Nehru Chowk,
Nashik 422001 and Vyankatesh Bunglow,
Near Tupsakhare Lawn, Tidke Colony, Nashik
422002 respectively

In the state of Maharashtra

And

(iii) Empire Spices and Foods Limited

(CIN: U15100MH1994PLC080772)

A company incorporated under the provisions
of Companies Act, 1956 and having its
registered office at D-303 Everest Garden Link
Road, Ghatkopar (East), Mumbai 400077

In the state of Maharashtra. **Applicant Transferee Company**

Coram: B.S.V. Prakashkumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

Present for the Applicant: Mr. Sanjay Udeshi a/w Mr. Darshan Ashar and Mr. Akshay
Udeshi Advocates i/b Sanjay Udeshi & Co, Advocate(s) for Applicant Transferor
Company-1, Applicant Transferor Company-2 and Applicant Transferee Company.

Dated: 5th July 2017

MINUTES OF ORDER

UPON a joint application filed by the Applicant Transferor Company-1, Applicant Transferor Company-2 and Applicant Transferee Company above named **AND UPON HEARING** Shri Sanjay Udeshi, Advocate for the Applicant Transferor Company-1, Applicant Transferor Company-2 and Applicant Transferee Company **AND UPON READING** the Application dated 26th day of May, 2017 of Mrs. Anita J. Dave, the Authorised Signatory of the Applicant Transferor Company-1, Mr. Dnyaneshwar M. Bachhav, the Authorised Signatory of the Applicant Transferor Company-2 and Mr. Dnyanshwar M. Bachhav, the Director of the Applicant Transferee Company verified by an Affidavit and the Annexures in support of the Application and the Exhibits therein referred to and upon oral submissions of the Learned Counsel for the Applicant Transferor Company-1, Applicant Transferor Company-2 and Applicant Transferee Company, IT IS ORDERED:

- (1) That a meeting of the Equity Shareholders of the Applicant Transferor Company-1, shall be convened and held at Anand Bungalow, Tidke Colony, Near Tupsakhare Lawns, Nashik – 422 002 on Thursday, 24th day of August, 2017 at 12:00 noon for the purpose of considering, and if thought fit, approving, with or without modification(s), Scheme of Arrangement in nature of amalgamation of Rambandhu Masalewale Private Limited and Rathi Food Industries Private Limited with Empire Spices and Foods Limited and their respective Shareholders and Creditors ('Scheme of Arrangement').
- (2) That at least one month before the meeting of the Equity Shareholders of the Applicant Transferor Company-1, to be held as aforesaid, a notice convening the said meeting, at the place, date and time as aforesaid, together with copy of the Scheme of Arrangement, a copy of statement disclosing all material facts as required to be sent under Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 notified on 14th December, 2016 and the prescribed form of Proxy, shall be sent by Courier/ Registered Post/Speed Post/ Hand Delivery or through e-mail (to those shareholders whose e-mail addresses are duly registered with the Applicant Transferor Company-1 for the purpose of receiving such notices by e-mail), addressed to each of the Equity Shareholders of the Applicant Transferor

Company-1 at their last known address or e-mail addresses as per the records of the Applicant Transferor Company-1.

- (3) That at least one month before the meeting of the Equity Shareholders of the Applicant Transferor Company-1, to be held as aforesaid, a notice convening the said meeting indicating the place, date and time of meeting as aforesaid be published and stating that the copies of the Scheme of Arrangement, the Statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 and form of proxy can be obtained free of charge from the registered office of the Applicant Transferor Company-1 as aforesaid and/or at its Advocates office M/s Sanjay Udeshi & Co. at 402-B, Vikas Building, Top Floor, N.G.N. Vaidya Road, Fort, Mumbai- 400001.
- (4) That the Notice of the meeting shall be advertised in two local Newspapers viz 'Deshdoot Times' in English language and 'Deshdoot Times' in Marathi language both having circulation in Nashik, not less than 30 days before the date fixed for the meeting.
- (5) That Mr. Hemant M. Rathi, Director of the Applicant Transferor Company-1, and failing him, Mr. Umesh L. Rathi, Authorized Person of the Applicant Transferor Company-1, and failing him, Mr. Anand H. Rathi, Authorized Person of the Applicant Transferor Company-1, shall be the Chairman of the meeting of the Equity shareholders to be held at Anand Bungalow, Tidke Colony, Near Tupsakhare Lawns, Nashik – 422 002 on Thursday, 24th day of August, 2017 at 12:00 noon or at any adjournment or adjournments thereof.
- (6) That Mr. Milind Gujar, Practising Company Secretary, is hereby appointed as Scrutinizer of the meeting of Equity Shareholders of the Applicant Transferor Company-1 to be held at Anand Bungalow, Tidke Colony, Near Tupsakhare Lawns, Nashik – 422 002 on Thursday, 24th day of August, 2017 at 12:00 noon, or at any adjournment or adjournments thereof.
- (7) That the Chairman appointed for the aforesaid meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairman shall have all powers as per Article of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural

questions that may arise or at any adjournment thereof or any or other matter including an amendment to the Scheme of Arrangement, if any, proposed at the meeting by any person(s).

- (8) That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under section 103 of the Companies Act, 2013.
- (9) That voting by proxy or Authorised representative in case of body corporate be permitted, provided that a proxy in the prescribe form/ Authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Transferor Company-1 at its registered office at 2052, Nehru Chowk, Nashik 422001 not later than 48 hours before the aforesaid meeting.
- (10) That the value and number of the shares of each Equity Shareholder shall be in accordance with the book/ register of the Applicant Transferor Company-1 and where the entries in the books/ register are disputed, the Chairman of the meeting shall determine the value for the purpose of the aforesaid meeting and his / her decision in that behalf would be final.
- (11) That the Chairman to file an Affidavit not less than Seven (7) days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
- (12) That the Chairman of the meeting to report to this Tribunal, the results of the aforesaid meeting within thirty (30) days of the conclusion of the meeting.
- (13) That since there are no Secured Creditors in the Applicant Transferor Company-1, as stated in the averment made in paragraph 24 of the Application, the question of sending them notices does not arise.
- (14) That Counsel for the Applicant Company submit that since the Scheme is an Arrangement between the Applicant Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby also directs the Applicant Transferor Company-1 to issue notice to unsecured creditors as required under section 230(3) of the Companies Act 2013 with a direction that they may submit their representations, if any, to the Tribunal

and copy of such representations shall simultaneously be served upon the Applicant Transferor Company-1.

- (15) The Applicant Transferor Company-1 is directed to serve notices along with copy of Scheme of Arrangement, the explanatory statement and the disclosures mentioned under Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 upon: (i) Concerned Income Tax Authority within whose jurisdiction the Applicant Transferor Company-1's assessments are made, (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Transferor Company-1, failing which, it shall be presumed that the Authorities have no representations to make on the proposal.
- (16) The Applicant Transferor Company-1 is also directed to serve notice along with copy of Scheme of Arrangement upon Official Liquidator. M/s A.S. Kanchwalla & Associates, are appointed to assist the Official Liquidator to scrutinize books of accounts of the Applicant Transferor Company-1 for the last 3 years. The Applicant Transferor Company-1 to pay fees of Rs. 7500/-.
- (17) Applicant Transferor Company-1 to file Affidavit of Service in the Registry proving dispatch of notices upon equity shareholders, creditors, notices to regulatory authorities as stated in Clause 15 and Clause 16 above and publication of notices in newspapers.
- (18) That a meeting of the Equity Shareholders of the Applicant Transferor Company-2, shall be convened and held at Vyankatesh Bungalow, Tidke Colony, Near Tupsakhare Lawns, Nashik – 422 002 on Thursday, 24th day of August, 2017 at 11:00 am for the purpose of considering, and if thought fit, approving, with or without modification(s), Scheme of Arrangement in nature of amalgamation of Rambandhu Masalewale Private Limited and Rathi Food Industries Private Limited with Empire Spices and Foods Limited and their respective Shareholders and Creditors ('Scheme of Arrangement').
- (19) That at least one month before the meeting of the Equity Shareholders of the Applicant Transferor Company-2, to be held as aforesaid, a notice convening the

said meeting, at the place, date and time as aforesaid, together with copy of the Scheme of Arrangement, a copy of statement disclosing all material facts as required to be sent under Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 notified on 14th December, 2016 and the prescribed form of Proxy, shall be sent by Courier/ Registered Post/Speed Post/ Hand Delivery or through e-mail (to those shareholders whose e-mail addresses are duly registered with the Applicant Transferor Company-2 for the purpose of receiving such notices by e-mail), addressed to each of the Equity Shareholders of the Applicant Transferor Company-2 at their last known address or e-mail addresses as per the records of the Applicant Transferor Company-2.

- (20) That at least one month before the meeting of the Equity Shareholders of the Applicant Transferor Company-2, to be held as aforesaid, a notice convening the said meeting indicating the place, date and time of meeting as aforesaid be published and stating that the copies of the Scheme of Arrangement, the Statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 and form of proxy can be obtained free of charge from the registered office of the Applicant Transferor Company-2 as aforesaid and/or at its Advocates office M/s Sanjay Udeshi & Co. at 402-B, Vikas Building, Top Floor, N.G.N. Vaidya Road, Fort, Mumbai- 400001.
- (21) That the Notice of the meeting shall be advertised in two local Newspapers viz 'Deshdoot Times' in English language and 'Deshdoot Times' in Marathi language both having circulation in Nashik, not less than 30 days before the date fixed for the meeting.
- (22) That Mr. Umesh L. Rathi, Director of the Applicant Transferor Company-2, and failing him, Mr. Hemant M. Rathi, Authorized Person of the Applicant Transferor Company-2 shall be the Chairman of the meeting of the Equity shareholders to be held at Vyankatesh Bungalow, Tidke Colony, Near Tupsakhare Lawns, Nashik – 422 002 on Thursday, 24th day of August, 2017 at 11:00 am or at any adjournment or adjournments thereof.
- (23) That Mr. Milind Gujar, Practising Company Secretary, is hereby appointed as Scrutinizer of the meeting of Equity Shareholders of the Applicant Transferor

Company-2 to be held at Vyankatesh Bungalow, Tidke Colony, Near Tupsakhare Lawns, Nashik – 422 002 on Thursday, 24th day of August, 2017 at 11:00 am, or at any adjournment or adjournments thereof.

- (24) That the Chairman appointed for the aforesaid meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairman shall have all powers as per Article of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or any or other matter including an amendment to the Scheme of Arrangement, if any, proposed at the meeting by any person(s).
- (25) That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under section 103 of the Companies Act, 2013.
- (26) That voting by proxy or Authorised representative in case of body corporate be permitted, provided that a proxy in the prescribe form/ Authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Transferor Company-2 at its registered office at Vyankatesh Bunglow, Near Tupsakhare Lawn, Tidke Colony, Nashik 422002 not later than 48 hours before the aforesaid meeting.
- (27) That the value and number of the shares of each Equity Shareholder shall be in accordance with the book/ register of the Applicant Transferor Company-2 and where the entries in the books/ register are disputed, the Chairman of the meeting shall determine the value for the purpose of the aforesaid meeting and his / her decision in that behalf would be final.
- (28) That the Chairman to file an Affidavit not less than Seven (7) days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
- (29) That the Chairman of the meeting to report to this Tribunal, the results of the aforesaid meeting within thirty (30) days of the conclusion of the meeting.

- (30) That since there are no Secured Creditors in the Applicant Transferor Company-2, as stated in the averment made in paragraph 26 of the Application, the question of sending them notices does not arise.
- (31) That Counsel for the Applicant Company submit that since the Scheme is an Arrangement between the Applicant Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby also directs the Applicant Transferor Company-2 to issue notice to unsecured creditors as required under section 230(3) of the Companies Act 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Transferor Company-2.
- (32) The Applicant Transferor Company-2 is directed to serve notices along with copy of Scheme of Arrangement, the explanatory statement and the disclosures mentioned under Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 upon: (i) Concerned Income Tax Authority within whose jurisdiction the Applicant Transferor Company-2's assessments are made, (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Transferor Company-2, failing which, it shall be presumed that the Authorities have no representations to make on the proposal.
- (33) The Applicant Transferor Company-2 is also directed to serve notice along with copy of Scheme of Arrangement upon Official Liquidator. M/s A. S. Kanchwalla & Associates, are appointed to assist the Official Liquidator to scrutinize books of accounts of the Applicant Transferor Company-2 for the last 3 years. The Applicant Transferor Company-2 to pay fees of Rs.7500/-.
- (34) Applicant Transferor Company-2 to file Affidavit of Service in the Registry proving dispatch of notices upon equity shareholders, creditors, notices to regulatory authorities as stated in Clause 32 and Clause 33 above and publication of notices in newspapers.

- (35) That a meeting of the Equity Shareholders of the Applicant Transferee Company, shall be convened and held at D-303, Everest Gardens, Link Road, Ghatkopar (E), Mumbai – 77 on Wednesday, 23rd day of August, 2017 at 11:00 am for the purpose of considering, and if thought fit, approving, with or without modification(s), Scheme of Arrangement in nature of amalgamation of Rambandhu Masalewale Private Limited and Rathi Food Industries Private Limited with Empire Spices and Foods Limited and their respective Shareholders and Creditors ('Scheme of Arrangement').
- (36) That at least one month before the meeting of the Equity Shareholders of the Applicant Transferee Company, to be held as aforesaid, a notice convening the said meeting, at the place, date and time as aforesaid, together with copy of the Scheme of Arrangement, a copy of statement disclosing all material facts as required to be sent under Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 notified on 14th December, 2016 and the prescribed form of Proxy, shall be sent by Courier/ Registered Post/Speed Post/ Hand Delivery or through e-mail (to those shareholders whose e-mail addresses are duly registered with the Applicant Transferee Company for the purpose of receiving such notices by e-mail), addressed to each of the Equity Shareholders of the Applicant Transferee Company at their last known address or e-mail addresses as per the records of the Applicant Transferee Company.
- (37) That at least one month before the meeting of the Equity Shareholders of the Applicant Transferee Company, to be held as aforesaid, a notice convening the said meeting indicating the place, date and time of meeting as aforesaid be published and stating that the copies of the Scheme of Arrangement, the Statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 and form of proxy can be obtained free of charge from the registered office of the Applicant Transferee Company as aforesaid and/or at its Advocates office M/s Sanjay Udeshi & Co. at 402-B, Vikas Building, Top Floor, N.G.N. Vaidya Road, Fort, Mumbai- 400001.
- (38) That the Notice of the meeting shall be advertised in two local Newspapers viz 'Free Press Journal' in English language and 'Navshakti' in Marathi language both

having circulation in Mumbai, not less than 30 days before the date fixed for the meeting.

- (39) That Mr. Hemant M. Rathi, Director of the Applicant Transferee Company, and failing him, Mr. Umesh L. Rathi, Director of the Applicant Transferee Company, and failing him, Mr. Anand H. Rathi, Director of the Applicant Transferee Company shall be the Chairman of the meeting of the Equity shareholders to be held at D-303, Everest Gardens, Link Road, Ghatkopar (E), Mumbai – 77 on Wednesday, 23rd day of August, 2017 at 11:00 am or at any adjournment or adjournments thereof.
- (40) That Mr. Milind Gujar, Practising Company Secretary, is hereby appointed as Scrutinizer of the meeting of Equity Shareholders of the Applicant Transferee Company to be held at D-303, Everest Gardens, Link Road, Ghatkopar (E), Mumbai – 77 on Wednesday, 23rd day of August, 2017 at 11:00 am, or at any adjournment or adjournments thereof.
- (41) That the Chairman appointed for the aforesaid meeting to issue the advertisement and send out the notices of the Meeting referred to above. The said Chairman shall have all powers as per Article of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or any or other matter including an amendment to the Scheme of Arrangement, if any, proposed at the meeting by any person(s).
- (42) That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under section 103 of the Companies Act, 2013.
- (43) That voting by proxy or Authorised representative in case of body corporate be permitted, provided that a proxy in the prescribe form/ Authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Transferee Company at its registered office at D-303 Everest Garden Link Road, Ghatkopar (East), Mumbai 400077 not later than 48 hours before the aforesaid meeting.
- (44) That the value and number of the shares of each Equity Shareholder shall be in accordance with the book/ register of the Applicant Transferee Company and

where the entries in the books/ register are disputed, the Chairman of the meeting shall determine the value for the purpose of the aforesaid meeting and his / her decision in that behalf would be final.

- (45) That the Chairman to file an Affidavit not less than Seven (7) days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
- (46) That the Chairman of the meeting to report to this Tribunal, the results of the aforesaid meeting within thirty (30) days of the conclusion of the meeting.
- (47) That Counsel for the Applicant Company submit that since the Scheme is an Arrangement between the Applicant Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby directs the Applicant Transferee Company to issue notice to secured creditors as required under section 230(3) of the Companies Act 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company. This bench hereby also directs the Applicant Transferee Company to issue notice to unsecured creditors as required under section 230(3) of the Companies Act 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Transferee Company.
- (48) That the meeting of the Unsecured Creditors of the Applicant Transferee Company, for the purpose of considering and, if thought fit, approving, with or without modification(s), the Scheme of Arrangement is not required to be convened in view of the averment made in paragraph 29 of the Application. However, the Applicant Transferee Company is directed to issue notice of the Equity Shareholders' meeting by Courier/ Registered Post/Speed Post/ Hand Delivery or through e-mail to all its Unsecured Creditors as on March 31, 2017, under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representation, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal and a copy of such representation shall simultaneously be served upon the Applicant Transferee Company, failing which, it shall be presumed that the Unsecured Creditors have no representations to make on the proposal.

- (49) The Applicant Transferee Company is directed to serve notices alongwith copy of Scheme of Arrangement, the explanatory statement and the disclosures mentioned under Rule 6 of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 upon: (i) Concerned Income Tax Authority within whose jurisdiction the Applicant Transferee Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Transferee Company, failing which, it shall be presumed that the Authorities have no representations to make on the proposal.
- (50) Applicant Transferee Company to file Affidavit of Service in the Registry proving dispatch of notices upon equity shareholders, creditors, notices to regulatory authorities as stated in Clause 49 above and publication of notices in newspapers.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)