

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

CSP 1082/230-232/NCLT/MB/MAH/2017  
CSP 1083/230-232/NCLT/MB/MAH/2017  
CSP 1084/230-232/NCLT/MB/MAH/2017

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Under Section 230-232 of the Companies  
Act, 2013;

In the matter of

M/s. Foodlink Banquets & Catering (India) Private Limited,  
Petitioner in CSP 1083/2017  
(First Transferor Company)

M/s. Foodlink Restaurants (India) Private Limited,  
Petitioner in CSP 1084/2017  
(Second Transferor Company)

M/s. Foodlink Services (India) Private Limited,  
Petitioner in CSP 1082 /2017  
(Transferee Company)

Order delivered on 19th January, 2018

Coram:

Hon'ble **M. K. Shrawat**, Member (J) and  
Hon'ble **Bhaskara Pantula Mohan**, Member (J)

**For the Petitioner(s):**

Mr. Hiten Sarvaiya with Ms. Raveena Jain i/b A. T. Jain & Co., Practising Chartered  
Accountants for the Petitioners

**For Registrar of Companies:**

Mr. Ramesh Gholap, Deputy Registrar of Companies

**For the Official Liquidator:**

Mr. Santosh Dalvi, from the office of Official Liquidator

*Per: Bhaskara Pantula Mohan, Member (J)*

**ORDER**

1. The sanction of the Tribunal is sought under sections 230 to 232 of the Companies Act, 2013 to a Scheme of Merger by Absorption of FOODLINK BANQUETS & CATERING (INDIA) PRIVATE LIMITED, the First Transferor Company and FOODLINK RESTAURANTS (INDIA) PRIVATE LIMITED, the Second Transferor Company with FOODLINK SERVICES

*Bhaskara Pantula Mohan*



(INDIA) PRIVATE LIMITED, the Transferee Company and their respective shareholders.

2. The Petitioner Companies have approved the said Scheme of Merger by Absorption by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The First Transferor Company is engaged in the business of outdoor catering and banqueting. The Second Transferor Company is engaged in the business of operating restaurants. The Transferee Company is engaged in the business of providing management services in the field of food and beverages and owning brand and trademark.
4. The rationale for the Scheme, in the opinion of management, is the merger by absorption of the Transferor Companies with the Transferee Company which will enhance efficiencies and combine similar business interest into one corporate entity, result in operational synergies, simplification, focused management, streamlining and optimization of the group structure and efficient administration. Further, the merger by absorption of the Transferor Companies with the Transferee Company will result in more efficient utilization of resources and reduce administrative time and cost of managing multiple entities, greater efficiency in cash management, benefit of operational synergies, greater leverage in operations, planning and process optimization.
5. The Authorized, Issued, Subscribed and Paid-up Share Capital of the First Transferor Company is Rs.1,00,00,000/- comprising of 10,00,000 equity shares of Rs. 10/- each, fully paid up.
6. The Authorized Share Capital of the Second Transferor Company is Rs. 5,00,00,000/- comprising of 50,00,000 equity shares of Rs. 10/- each, fully paid up. The Issued, Subscribed and Paid-up Share Capital of the Second Transferor Company is Rs.4,86,66,330/- comprising of 48,66,633 equity shares of Rs.10/- each, fully paid up.
7. The Authorized Share Capital of the Transferee Company is Rs. 1,50,00,000/- comprising of 15,00,000 equity shares of Rs. 10/- each, fully paid up. The Issued, Subscribed and Paid-up Share Capital of the Transferee Company is Rs. 1,21,19,920/- comprising of 12,11,992 equity shares of Rs. 10/- each, fully paid up.
8. The averments made in the Petition and the submissions made by the Learned Counsel for the Petitioners are:
  - i. The Petitioner Companies have complied with all the requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, Petitioner Companies undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder whichever is applicable.
  - ii. The Regional Director has filed his Report dated 15<sup>th</sup> day of January, 2018 stating therein, save and except as stated in paragraph IV(1) to (4), it appears

*M. K. Chavan:*



that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

- a. *The Tax Implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of scheme by this Hon'ble Tribunal may not deter the Income tax Authority to scrutinize the tax return filed by the transferee Company, after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company."*
- b. *Petitioner in clause 15 of the scheme has inter alia mentioned that on and from the Effective Date, the authorized share capital of the Transferee Company shall be "The Authorized Share Capital of the Company is Rs. 7,50,00,000/- divided into 75,00,000/- Equity Shares of Rs. 10/- each. In this regards, Petitioner Companies have to undertake to comply with provisions of section 232(3) (i) of the Companies Act, 2013.*
- c. *Petitioner Companies in clause 14 of the scheme inter alia mentioned that the compliance of the Accounting standard 14 and not mentioned the method to be followed for which they undertake to comply and to state that the difference of the assets and liabilities after adjustment, to be credited to Capital Reserve.*
- d. *Petitioner Companies in clause 22 of the scheme inter alia mentioned that proposed for increasing the borrowing limits upon the scheme coming into effect. Petitioner to undertake to comply with the procedural requirements of the Companies Act, 2013 read with the Rules for increasing the limits.*
- e. *Apropos observation in paragraph IV (1) of the Report of the Regional Director is concerned, the Petitioner Companies through Authorized Representative undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Merger by Absorption will be met and answered in accordance with law.*
- f. *Apropos observation in paragraph IV (2) of the Report of the Regional Director is concerned, the Petitioner Company through Authorized Representative undertakes to comply with the provision of section 232(3)(i) of the Companies Act, 2013.*
- g. *Apropos observation in paragraph IV (3) of the Report of the Regional Director is concerned, the Petitioner Company shall comply with Accounting Standards AS-14 and through Authorized Representative undertakes to follow the Pooling of Interest Method of Accounting for Merger by absorption while passing necessary entries in connection with the Scheme. The Petitioner Company further undertakes to adjust the difference of the assets and liabilities in the Capital Reserve Account.*

*Approved.*



- h. Apropos observation in paragraph IV (4) of the Report of the Regional Director is concerned, the Petitioner Company through Authorized Representative undertakes to comply with the procedural requirement of section 180(1)(c) of the Companies Act, 2013 for increase in borrowing limits.
  - i. No objector has approached, neither to the Petitioner nor before Tribunal, to oppose this Scheme of Merger by Absorption.
  - j. The Official Liquidator has filed his report on 17<sup>th</sup> November, 2017 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved without winding up.
9. From the material on record, the Scheme of Merger by Absorption appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this bench, to the Petitioner Companies, **do Order that:**
- a) The Petitioner Companies to lodge a copy of this order and the Scheme of Merger by Absorption duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
  - b) Since the entire share capital of the Transferor Companies is held by the Transferee Company hence, upon the Scheme becoming effective and upon transfer and vesting of the Transferor Companies to the Transferee Company in terms of this Scheme, no consideration shall be paid by the Transferee Company to the shareholders of the Transferor Companies.
  - c) The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy, within 30 days from the date of issuance of the order by the Registry, duly certified by the Deputy Director or Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
  - d) The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in the Company Petition No. 1083 and 1084 of 2017 to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of the receipt of Order.
  - e) All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench.
  - f) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

*Spoken:*

- g) The Scheme is sanctioned and the appointed date of the Scheme is fixed as 1<sup>st</sup> April, 2016.

10. Ordered Accordingly

Sd/-

**Bhaskara Pantula Mohan**  
Member (J)

Sd/-

**M. K. Shrawat**  
Member (J)

**Date: 19<sup>th</sup> January, 2018**

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