

IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI

CA/205/CAA/2017

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation

between

M/s. Wheat Energy Foods Private Limited
(1st Transferor Company)

AND

M/s. M A Patel and Sons Private Limited
(2nd Transferor Company)

WITH

M/s. Aurofood Private Limited
(Transferee Company)

Order delivered on 23rd of November, 2017


CORAM

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For Applicant(s) : Mr. T.K. Bhaskar, Counsel

ORDER

Per : CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under consideration is a joint Application filed under Sections 230 to 232 of the Companies Act, 2013. The prayer made is to dispense with convening, holding and conducting of the meeting of equity shareholders, secured/unsecured creditors in relation to the 1st 

Transferor Company, 2nd Transferor Company and Transferee Company.

2. **M/s. Wheat Energy Foods Private Limited**


i. The 1st Transferor Company viz., M/s. Wheat Energy Foods Private Limited has four equity shareholders and it is a wholly owned subsidiary of the Transferee Company. The list of shareholders is placed at page 38 of the typed set filed with the Application. The consent affidavits given by all the four equity shareholders are placed at pages 39 to 49 of the typed set filed with the Application, wherein it has been deposed that they do support the Scheme and consent to dispense with convening, holding and conducting the meeting of equity shareholders. Therefore, the meeting of the equity shareholders of the 1st Transferor company is allowed to be dispensed with.

ii. There is no secured/unsecured creditor in relation to the 1st Transferor Company. The certificates issued

by the Chartered Accountant to this effect are placed at pages 50 and 51 of the typed set filed with the Application.


iii. The Registry is directed to issue notice to the Official Liquidator in respect of the 1st Transferor Company. The Official Liquidator shall appoint Chartered Accountant on his own for the purpose of preparation of the report which shall be submitted to this Bench within four weeks from the date the copy of this order is received.

3. **M/s. M A Patel and Sons Private Limited**

As regards the 2nd Transferor Company viz., M/s. M A Patel and Sons Private Limited, it has eleven shareholders. The list of shareholders is placed at page 92 of the typed set filed with the Application. The consent affidavits given by all the eleven equity shareholders are placed at pages 93 to 114 of the typed set filed with the Application, wherein it has been deposed that they do support the Scheme and consent 

to dispense with convening, holding and conducting the meeting of equity shareholders. Therefore, the meeting of the equity shareholders of the 2nd Transferor Company is allowed to be dispensed with.

ii. There is no secured creditor in relation to the 2nd Transferor Company. The certificate issued by the Chartered Accountant to this effect is placed at page 115 of the typed set filed with the Application.

iii. As regards, the unsecured creditors, there are nine unsecured creditors who have given their consent affidavits. The certificate of the Chartered Accountant to that effect and the consent Affidavits of the unsecured creditors are placed at pages 116 and 118 to 135 respectively of the typed set filed with the Application. Therefore, the meeting of the unsecured creditors is allowed to be dispensed with under clause (9) of the Section 230 of the Companies Act, 2013. 

iv. The Registry is directed to issue notice to the Official Liquidator in respect of the 2nd Transferor Company. The Official Liquidator shall appoint Chartered Accountant on his own for the purpose of preparation of the report which shall be submitted to this Bench within four weeks from the date the copy of this order is received.

4. M/s. Aurofood Private Limited

i. The Transferee Company viz., M/s. Aurofood Private Limited, has 35 equity shareholders. The list of shareholders is placed at page 189 of the typed set filed with the Application. The consent affidavits given by all the 35 equity shareholders are placed at pages 190 to 298 of the typed set filed with the Application, wherein it has been deposed that they do support the Scheme and consent to dispense with convening, holding and conducting the meeting of equity shareholders. Therefore, the meeting of the shareholders of the Transferee Company is allowed to be dispensed with.

ii. There are 3 secured creditors in relation to the Transferee Company. The certificate issued by the Chartered Accountant to this effect is placed at page 299 of the typed set filed with the Application. The consent Affidavit of the secured creditors are placed at pages 300 to 306 of the typed set filed with the Application. Therefore, the meeting of the secured creditors is allowed to be dispensed with under clause (9) of the Section 230 of the Companies Act, 2013.

iii. As regards, the unsecured creditors, there are 58 unsecured creditors who have given their consent affidavits. The certificate of the Chartered Accountant to that effect and the consent Affidavits of the unsecured creditors are placed at pages 307 and 310 to 463 respectively of the typed set filed with the Application. Therefore, the meeting of the unsecured creditors is allowed to be dispensed with under clause (9) of the Section 230 of the Companies Act, 2013.

5. The Registry is directed to issue notice to the Regional Director, Ministry of Corporate Affairs, ROC and Income Tax Authorities in relation to the Applicant Companies separately. Since the Applicant companies are private limited, there is no requirement to issue notice to the SEBI or other stock exchanges and CCI or other sectoral regulators. In case, the statutory authorities are desirous of making any objection/representation, they may do so within 30 days from the date of receipt of the notice. In case no objection/representation is made, it shall be presumed that they/any of them have/has no objection/representation to make.

6. The Applicants are directed to issue private notice to the authorities/regulators by way of speed post/hand delivery separately. The proof of sending and effecting the service of notice upon them along with the newspaper publication be submitted with supporting affidavit.

7. The Applicant companies are directed to effect publication separately in the newspapers one in English "The Business Line" (All India Edition) and another in vernacular language "Makkal Kural" (Tamilnadu Edition) having wide circulation in the State of Tamilnadu, having not less than 30 days before filing the Company Petition. The Applicants are directed to upload the notice on their websites and display the notice on the notice board at the Registered Office of their respective companies. The Registry is also directed to display the notice on the notice board of this Bench.

8. Accordingly, the Application is allowed. The Applicant Companies are directed to present the Petition(s) on or before 12.01.2018.


(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)

PAM