

Before the Hon'ble National Company Law Tribunal, Hyderabad Bench  
At Hyderabad

CA(CAA) 38/230/HDB/ 2017

Date of Order: 09.05.2017

M/s. Anjani Foods Limited  
Having Registered office at  
Vishnupur, Durgapur, Garagaparru Road,  
Bhimavaram – 534 202, West Godavari,  
Andhra Pradesh Represented by its  
Whole time Director Sri. R.Ravichandran

.... Applicant/Transferee Company

Counsel for applicant/Transferee Company : Sri V.S.Raju & V.B.Raju

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Rajeswara Rao Vittanala , Member(Judicial)



CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

ORDER

(As per Rajeswara Rao Vittanala, Member (Judicial))

1. The Company application bearing C. A. (CAA) No. 38 /230/HDB/2017 (referred to as Company application hereinafter) is filed by M/s. Anjani Foods Limited under sections 230 and 232 and other applicable provisions of Companies Act, 2013 by seeking the following reliefs:

a) To convene the meeting of Equity Shareholders of the Applicant / Transferee Company;

b) To convene the meeting of the Equity Shareholders of the Applicant / Transferee Company at the registered office of the Company or any other place as may be directed, for consideration of the proposed Scheme;

c) To appoint a Chairperson for convening and conducting the meeting of the Equity Shareholders;

d) That the quorum be fixed as 15 (fifteen) shareholders personally present in the meeting and they may be permitted to exercise their vote at the said meeting either in person or through proxies;

e) As to the manner of giving the notices of the said meeting, it is sufficient to serve the notices on the Equity Shareholders of the Applicant / Transferee Company by Ordinary Post;

f) That the advertisement be directed to be published once in English Edition of "The Indian Express", Vijayawada Edition and once in Telugu Edition of "Andhra Jyoti", Eluru Edition;

g) As for the time for the Chairperson of the meeting to file their report to the Hon'ble Tribunal of the result of the meeting, the time be fixed as 10 days from the date of the said meeting, etc.

2. Brief facts of the case, as stated in the Company application are as under:

1) M/s. Anjani Foods Limited (hereinafter referred to as "Transferee Company") was incorporated as a public limited company on 25<sup>th</sup> day of June, 1983 under the name and style of "Raasi Finance and Investment Limited under Certificate of Incorporation No.4005 of 1983-84. Later the name of the company was changed to Raasi Enterprises Ltd., on getting approval from Central Government on 18<sup>th</sup> day of April, 2006 and fresh Certificate of Incorporation consequent on change of name was issued by Registrar of Companies, Andhra Pradesh on 18<sup>th</sup> April, 2006 again later on the company has changed its name to "Anjani Foods Limited" after passing necessary resolution on 20<sup>th</sup> September, 2014 and obtaining the approval from Central Government. A Fresh Certificate of Incorporation consequent on change of name was issued by Registrar of Companies, Andhra Pradesh and Telangana on 07<sup>th</sup> day of November, 2014. The Registered Office of the Transferee Company is situated at Vishnupur, Durgapur, Garagaparru Road, Bhimavaram – 534 202, West Godavari, Andhra Pradesh.



3. The main objects and nature of business of the Transferee Company, in brief, as set out in the Memorandum of Association as under:

- (i) To carry on and undertake as its principal business, the business of finance, investment and trading hire purchase, leasing and to finance lease operations of all kinds, purchasing, selling hiring or letting on hire of all kinds of plant and machinery and equipment that the company may think fit and to assist in financing of all and every kind and description of hire purchase etc.
- (ii) To carry on the business of bakers, confectioners, manufacturers, distributors and sellers of bread, biscuits, crackers, cookies, cakes, pastries and other bakery products, ice creams, beverages, aerated drinks, aerated and artificial water, milk etc.
- (iii) To acquire any such shares, stocks, debentures, debenture stocks, bonds, obligations or securities by original subscription, participation in syndicates, tender, purchase, gift, exchange or otherwise and to subscribe for the same, either conditionally or otherwise and to guarantee the subscription thereof and exercise and enforce all rights and powers conferred by or incidental to the ownership thereof.
- (iv) The Transferee Company is engaged in the business of manufacture of food and confectionery business etc.,



4. The authorized, issued, subscribed and paid-up share capital of the Transferee Company as on the date of incorporation i.e. March 31<sup>st</sup> 2016 is as under:

Particulars	Rupees
<b>Authorised Share Capital</b>	
50,00,000 Equity Shares of Rs. 10/- each	5,00,00,000
-	5,00,00,000
Issued, Subscribed and Paid-up Share Capital	4,00,00,000
40,00,000 equity shares of Rs. 10/- each, fully paid up Share Capital by allotment	
Less: Calls in Arrears	120,000
Total:	3,98,80,000

5. M/s. Sai Aditya Foods and Retail Private Limited (hereinafter referred to as "Transferor Company") was incorporated under the Companies Act, 1956, in the State of Andhra Pradesh in the name of 'Sai Aditya Hotels and Super Markets Pvt. Ltd.,' on 16<sup>th</sup> day of May, 1994. Subsequently, its name was changed to "Sai Aditya Foods and Retail Private Limited" and fresh certificate of Incorporation consequent to the change of name was issued by the Registrar of Companies, Andhra Pradesh on 17<sup>th</sup> April, 2007. The Registered Office of the Transferor Company is situated at Plot No.153, Sita Nilayam, Dwarakapuri Colony, Punjagutta, Hyderabad – 500 082, Telangana.

6. The main objects and nature of business of the Transferor Company as set out in the Memorandum of Association, in brief, as under:

- (I) To carry on the business of hotel, restaurant, cafe, tavern, beer-house, housekeepers, licensed victuallers, wine, beer, and spirit merchants, aerated and artificial waters and other drinks, purveyors, caterers for public and purchase erect or otherwise acquire establish and equip, act as collaborators, any of other hotels in India or in any other part of the world.
- (II) To act as agents of any hotel/Company or as buying and selling agents of any hotel/Company, and to do and perform all and singular the several duties, services and offices, which the agents, buying and selling agents of any hotel/Company usually do and perform and undertake and to become bound by conditions of any agreements entered into for any of the purposes aforesaid.
- (III) To carry on the business as hoteliers, hotel proprietors, hotel managers and operators, refreshment room proprietors, milk and snack, bar proprietors, ice-cream merchants, sweetmeat merchants, milk manufacturers and merchants, bakers, confectioners, professional merchants, licensed victuallers, wine and spirit merchants, blenders and bodies.

(IV) To establish and to carry on the business of super-markets, retail shops, show rooms, wholesale markets, departments, stores or show rooms, distribution centres, warehouses, clearing houses, custodians and to provide facilities for storage of commodities, articles things, preparation of all kind and description whatsoever storage rooms, godowns, cold storage, clearing, forwarding, transportation and distribution of Wines and Liquors, beverages, food products and merchandise of all kinds.

(V) At present the Transferor Company is engaged in the the business of retail food chain outlets etc.

7. The authorised, issued, subscribed and paid-up share capital of the Transferor Company as on 31<sup>st</sup> March, 2016 was as under:

PARTICULARS	Amount in Rs.
<b>Authorised Share Capital</b>	
3,00,000 Equity Shares of Rs. 100/- each	3,00,00,000
<b>Issued, Subscribed and Paid-up Share Capital</b>	
2,94,185 Equity Shares of Rs. 100/- each fully paid-up	2,94,18,500



Subsequent to the above date and till the date of filing the Scheme, there has been no change in the issued, subscribed and paid up capital of the Transferor Company.

8. It is stated that both The Transferor and Transferee Companies are engaged in the business of Bakers, Confectioners and related food products. The Transferor Company is a subsidiary of Transferee Company which is holding 72.98% share capital of the Transferor Company. The Scheme of Amalgamation will benefit the Transferor Company, the Transferee Company and their respective shareholders. The rationale and reasons for the proposed Scheme of Amalgamation, inter alia, are summarized below:

- Simplify management structure, leading to better administration and a reduction in costs from more focused operational efforts, rationalization, standardization and simplification of business processes, elimination of duplication and rationalization of administrative expenses.
- Will result in creation of a single larger unified entity in place of various entities under the same management and control, thus resulting in efficient synergies of operations and streamlined business transactions.
- Management and financial resources of Transferee Company will help the transferor company in setting up the green field manufacturing facility with appropriate international quality standards.

In view of the above benefits, the proposed amalgamation would result in an enhanced shareholder value.



9. In view of the aforesaid advantages, the Board of Directors of the Applicant/Transferee Company vide its meeting dated 14<sup>th</sup> day of November, 2016 approved the Scheme of Amalgamation of M/s Sai Aditya Foods and Retail Private Limited with Anjani Foods Limited and their respective Shareholders and creditors.

10. Some of the salient / material features of the proposed Scheme are as under:

**(I) TRANSFER AND VESTING OF UNDERTAKING**

Subject to the provisions of the Scheme as specified hereinafter and with effect from the Appointed Date, the entire business Undertaking of the Transferor Company, including all debts, liabilities, losses, etc, shall, under the provisions of Sections 391 to 394 of the Act, and pursuant to the order of the High Court sanctioning this Scheme and without further act, instrument or deed, but subject to the charges affecting the same as on the Effective Date, be transferred and/or deemed to be transferred to and vested in the Transferee Company, so as to become the properties, assets, rights, business and Undertaking of the Transferee Company.

Without prejudice to the generality of clause 5.1 of the Scheme, with respect to the assets of the Transferor Company, including cash and bank balances, as are movable in nature or are otherwise capable of transfer by manual delivery, by paying over or by endorsement and delivery or otherwise, the same shall be so transferred by the Transferor Company to the Transferee Company, without requiring any deed or instrument of conveyance for the same and shall become the property of the Transferee Company as an integral part of the assets of the Transferee Company, with effect from the Appointed Date.

The existing encumbrances if any over the properties and other assets of the Transferee Company or any part thereof which relate to the liabilities and obligations of the Transferee Company prior to the Effective Date shall continue to relate only to such assets and properties and shall not extend or attach to any of the assets and properties of the Transferor Company transferred to and vested in the Transferee Company by virtue of this Scheme.

The amalgamation of the Transferor Company with the Transferee Company, pursuant to and in accordance with this Scheme, shall take place with effect from the Appointed Date and shall be in accordance with Section 2(1B) of the Income-Tax Act, 1961. If any terms or provisions of the Scheme is/ are inconsistent with the provisions of section 2(1B) of the Income Tax Act, 1961, the provisions of Section 2(1B) shall prevail and the Scheme shall stand modified to the extent necessary to comply with such provisions. Such modifications will however not affect the other parts of the Scheme.

**(II) CONSIDERATION:**

Upon coming into effect of the Scheme and in consideration for the transfer and vesting of Undertaking of the SFRPL / Transferor Company with AFL / Transferee Company shall, without any further act or deed, issue and allot equity shares, credited as fully paid up, to the extent indicated below, to the members of SFRPL whose name appears in the Register of Members of SRFPL as on the Record Date or to their respective heirs, executors, administrators or other legal representatives or the successors-in-title, as the case may be, in the following manner:



" 2 (TWO) fully paid Equity Share of AFL/ Transferee Company shall be issued and allotted for every 1(ONE) fully paid Equity Share each held in SFRPL / Transferor Company to shareholders other than AFL / Transferee Company ".

The total number of shares in SFRPL are 2,94,185 out of which 2,14,696 shares are held by AFL. The face value of one share of AFL and SFRPL are Rs. 10/- and Rs. 100/- each respectively. While revaluing the shares for the calculation of swap ratio, the face value of the shares of SFRPL were brought down to Rs. 10/- per share in line with the face value of shares of AFL. Consequently, the number of shares in SFRPL have been proportionately multiplied in order to bring uniformity in the valuation process.

After taking the aforesaid condition into effect; the shares of SFRPL are 29,41,850 shares @ Rs. 10/- each. Out of this 21,46,960 shares of AFL will stand cancelled due to cross holding and the balance 7,94,890 shares are eligible to receive the shares of AFL in the determined swap ratio of 2:1. In other words, 15,89,780 shares ( $7,94,890 \times 2$ ) @ Rs. 10/- each will be allotted to the shareholders of SFRPL. The existing shares of AFL are 40,00,000 nos. @ Rs. 10/- each. With a fresh allotment of 15,89,780 shares @ Rs. 10/- each to SFRPL in the process of merger the total number of shares in AFL post- merger comes to 55,89,780 shares @ Rs. 10/- each.

The equity shares to be issued to the members of SFRPL as above shall be subject to the Memorandum and Articles of Association of AFL and shall rank *paripassu* with the existing equity shares of AFL in all respects including dividends.

The equity shares shall be issued in dematerialized form to those shareholders who hold shares of SFRPL in dematerialized form, in to the account in which SFRPL shares are held or such other account as is intimated by the shareholders to SFRPL and / or its Registrar before the Record Date. The equity shares of AFL allotted pursuant to the Scheme shall remain frozen in the depositories system till listing and trading permission is given by the designated Stock Exchange(s).

The Board of Directors of AFL shall, if and to the extent required, apply for and obtain any approvals from concerned Government / Regulatory authorities for the issue and allotment of equity shares to the members of SFRPL pursuant to above clause.

The equity shares to be issued to the members of SFRPL pursuant to clause 6.1 of the Scheme will be listed and/or admitted to trading on all the Stock Exchanges on which shares of AFL are listed on the Effective Date. AFL shall enter into such arrangements and give such confirmations and/or undertakings as may be necessary in accordance with the applicable laws or regulations for complying with the formalities of the said Stock Exchanges. Further there shall be no change in shareholding pattern or control in Anjani Foods Limited between the record date and the listing.

### III) **ACCOUNTING TREATMENT IN THE BOOKS OF TRANSFEE COMPANY**

On the Scheme becoming effective, the accounting for the amalgamation would be done in accordance with the "Purchase Method" referred in Accounting Standard 14 – Accounting for Amalgamation (AS 14) issued by the Institute of Chartered Accountants of India and notified by the National



Advisory Committee on Accounting Standards, Ministry of Corporate Affairs, as amended from time to time.

IV) On the Scheme becoming effective, the Transferor Company shall stand dissolved, without going through the process of winding up and without further acts and deeds by parties on such terms and conditions as the High Court may direct or determine.

v) This Scheme is and shall be conditional upon and subject to:

(i) Approval by the Hon'ble High Court;

(ii) The certified copy of the order of the High Court sanctioning the Scheme being filed with the Registrar of Companies by the Transferor Company and the Transferee Company; and

(iii) As per Para (I)(A) (9)(a) and (b) of SEBI Circular No. CIR/CFD/CMD/16/2015 dated November 30, 2015 which is applicable in this case, the listed company 'AFL' shall ensure that the Scheme of Arrangement submitted with the Hon'ble High Court for sanction, provides for voting by public shareholders through postal ballot and e-voting, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution;

(iv) The Scheme of arrangement of the listed company 'AFL' provides that the Scheme shall be acted upon and only if the votes cast by the public shareholders in favour of the proposal are more than the number of votes cast by the public shareholders against it. The term 'public' shall carry the same meaning as defined under Rule 2 of Securities Contracts (Regulation) Rules, 1957.

#### VI) **COSTS, CHARGES AND EXPENSES**

In the event of the Scheme being sanctioned by the High Court, the Transferee Company shall bear and pay all costs, charges, expenses and taxes, including duties and levies in connection with the Scheme. The Transferor Company is a wholly owned subsidiary of the Transferee Company and no shares would be issued by the Transferee Company to the shareholders of the Transferor Company as mentioned in clause 6 of the scheme. Hence, Schedule 1A, Article 20(d) of Indian Stamp Act, as applicable to the State of Telangana is not applicable and accordingly no stamp duty is payable by the Transferee Company for merger of the Transferor Company with the Transferee Company.

11. A copy of the Scheme of Amalgamation of Transferor Company with Transferee Company and their respective shareholders and creditors is annexed hereto as **Annexure.**

12. No investigation or proceedings have been instituted or are pending against the Transferee Company and Transferor Company. The Transferee Company is a listed Company listed on the Bombay Stock Exchange Limited and no objection obtained from said Stock Exchange. The shareholders of the Applicant / Transferee Company are interested in the proposed scheme of Amalgamation.




13. It is further submitted that there are no Secured or Unsecured loans in the Applicant / Transferee Company. A similar application is filed by the Transferor Company seeking the directions for dispensation of the meetings of Equity Shareholders and Unsecured Creditors before this Hon'ble Tribunal.

14. I have heard Sri V.S.Raju and V.B.Raju, learned counsels for the applicant and have carefully perused all material documents in support of the case.

15. As stated supra, the Companies involved in the Scheme of Amalgamation are stated to be carrying on their respective business in accordance with their objects as per their Memorandum & Articles of Association. The Scheme in question is initiated for the benefit of all stake holders of Companies and also in general public interest. While proposing , all the procedure involved in initiating such scheme are duly followed. The Scheme in question prima facie shows it is for bonafide reasons for the benefit of all persons involved in running the Companies. Hence, it is fit case, to put the scheme in question for approval for Equity share holders of Company.

16. In view of the above facts and circumstances of the Case, I am of the considered opinion that it is a fit case to order to convene a meeting of Equity Shareholders of Transferee Company for consideration of the Scheme of Amalgamation Hence, CA(CAA) 38/230/HDB/ 2017 is disposed of with following directions:

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- a) Hereby permitted the Transferee Company to convene a meeting of its Equity Shareholders at the registered office of the Company viz Vishnupur, Durgapur, Garagaparru Road, Bhimavaram – 534 202, West Godavari, Andhra Pradesh for consideration of the proposed Scheme on 22-07-2017 at 11:00 A.M.;
  - b) Consequently appointed Ithagoni Sreenu, H.No. 7-1-304/1/B/4, Adhitri Nilayam, Balaiah Nagar, B.K. Guda, S.R. Nagar, Hyderabad-500 038, Mobile No. 9032559007/9030412810 as Chairperson for convening and conducting meeting of the Equity Shareholders of the company;
  - c) Quorum is fixed as 15 (fifteen) shareholders personally present in the meeting and they are permitted to exercise their vote at the said meeting either in person or through proxies.
  - d) It is ordered notices to be sent all Share holders of Company and also concerned authorities involved in the scheme, individually through accepted mode of Communication as per Company practice at the address registered with the Company and such notice shall be accompanied by a statement



disclosing the details of scheme of Amalgamation in question along with material documents, if any; It can also put on website of the Company;

- e) That the advertisement be directed to be published once in English Edition of "The Indian Express", Vijayawada Edition and once in Telugu Edition of "Andhra Jyoti", Eluru Edition;
- f) The Company is directed, as far as possible, to ensure at least 3 /4th of value of Shareholders of the company should express their consent for the Scheme in question in order to have fair representation about acceptance of it;
- g) 10 days time is granted for the Chairperson of the meeting to file his report in the Registry of this Bench.
- h) Fee for Chairperson is fixed at Rs. 1,00,000/- (Rupees one lakh) which is to be paid by the Company.

**Sd/-**

**Rajeswara Rao Vittanala,  
Member (Judicial)**



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OF THE ORIGINAL**

*V. Annapoorna*  
**V. ANNA POORNA**  
Asst. DIRECTOR  
NCLT, HYDERABAD - 68