

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD**

C.P.(CAA) No. 178/230/HDB/2017
U/s 230 & 232 of Companies Act, 2013

In the matter of

M/s. Sai Aditya Foods and Retail Private Limited
Having Registered office at
Plot No.153, Sita Nilayam,
Dwarakapuri Colony, Punjagutta,
Hyderabad - 500 082, Telangana

... Petitioner /
Transferor Company



Versus

1. The Regional Director
South East Region
3rd Floor, Corporate Bhawan
Bandlaguda, Nagole, Tattiannaram
Hayat Nagar Mandal
Hyderabad - 500068

2. The Official Liquidator
High Court of Judicature at Hyderabad
For the State of Telangana & State of Andhra Pradesh
1st Floor, Corporate Bhawan
Bandlaguda, Nagole, Tattiannaram
Hayat Nagar Mandal
Hyderabad - 500068

...Respondents

Date of Order: 27.10.2017

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

Parties Present:

Counsels for the Petitioner: Mr. V.S.Raju & V.B.Raju
Advocates
Counsel for Regional Director: Mr. B. Appa Rao, Central
Govt. Standing Counsel
Mr. M. Anil Kumar, Official
Liquidator, Standing
Counsel

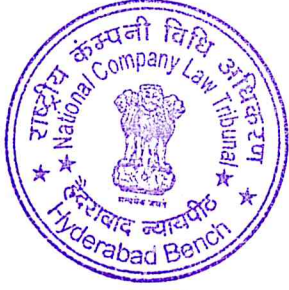
Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The Company Petition bearing C.P. (CAA)No. 178/230/HDB/2017 is filed by M/s. Sai Aditya Foods and Retail Private Limited (Petitioner / Transferor Company) under Sections 230 and 232 of the Companies Act, 2013, by inter-alia seeking to sanction scheme of Amalgamation in question so as to be binding on all the Equity Shareholders / Members, Creditors and employees of the Petitioner / Transferor Company.



2. Brief facts, leading to filing of present petition, are submitted as under:
- M/s. Sai Aditya Foods Limited (The Petitioner / Transferor Company) is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 16th May, 1994. Its Registered Office is situated at Plot No.153, Sita Nilayam, Dwarakapuri Colony, Punjagutta, Hyderabad - 500 082, Telangana. The objects of the Transferor Company are to carry on the business of Hotels, Restaurant and café, tavern, housekeepers and to act as agents of any hotel or company and to establish and to carry on the business super-markets, retail shops, showrooms etc.
 - The present Authorised Share Capital of the Transferor Company as on 31.03.2016 is Rs.3,00,00,000/- divided into 3,00,000 Equity Shares of Rs.100/- each. The issued subscribed and paid up Capital of the Transferor Company is Rs. 2,94,18,500/- divided into 2,94,185 equity shares of Rs. 100/- each.



- c. M/s. Anjani Foods Limited (hereinafter referred to as "Transferee Company") was incorporated as a public limited company on 25th 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 18th day of April, 2006 and fresh Certificate of Incorporation consequent on change of name was issued by Registrar of Companies, Andhra Pradesh on 18th April, 2006 again later on the company has changed its name to "Anjani Foods Limited" after passing necessary resolution on 20th 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 07th day of November, 2014. The main objects of the Transferee Company are to carry on the business of finance, investment and trading, hire purchase, leasing and to finance lease operations etc. and 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 etc. Its Registered Office is situated at Vishnupur, Durgapur, Garagaparru Road, Bhimavaram - 534 202, West Godavari, Andhra Pradesh.
- d. The Authorized Share Capital of the Transferee Company as on 31.03.2016 is Rs. 5,00,00,000/- divided into 50,00,000 Equity Shares of Rs.10/-

each. The issued subscribed and paid up capital of the Transferee Company is Rs. 4,00,00,000/- divided into 40,00,000 equity shares of Rs. 10/- each fully paid up and there were calls in arrears of Rs.1,20,000/-.

3. Both the Transferor Company and the Transferee Company 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 Directors of both Transferor Company and Transferee Company are of the opinion that the proposed Amalgamation will be for the benefit of both the Companies as follows:



- (i) 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.
- (ii) 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.
- (iii) 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.

4. Since the proposed amalgamation would result in an enhanced shareholder value, the Board of Directors of the Transferor and Transferee Companies at their respective meetings held on 11th November 2016 and 14.11.2016 respectively have approved the scheme of amalgamation of Transferor Company with Transferee Company w.e.f. 01.04.2016, subject to approval of the shareholders and confirmation by the Tribunal.
5. The following are brief terms of Scheme of Amalgamation:

a) **Transfer and Vesting of Undertaking of Transferor Company**

With effect from the Appointed Date i.e. 01.04.2016, the whole of the Undertaking shall be transferred to and vested in or be deemed to be transferred to and vested in the Transferee Company as a going concern with all the rights, title, interest or obligations of the Transferor Company thereto.

b) **Legal proceedings**

If any suit, appeal or other proceeding of whatever nature by or against the Transferor Company is pending, including those arising on account of taxation laws and other allied laws, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of the arrangement by anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against the Transferee Company, in the same manner and to the same extent as it would or might have been continued, prosecuted



and enforced by or against the Transferor Company, as if this Scheme had not been made.

c) **Transferor Company Staff, Workmen and Employees**

Upon the Scheme becoming effective, all staff, workmen and employees of the Transferor Company in service on the Effective Date shall be deemed to have become staff, workmen and employees of the Transferee Company with effect from the Appointed Date or the date of joining whichever is later, without any break or interruption in their service and on the basis of continuity of service, and the terms and conditions of their employment with the Transferee Company (i.e. cost-to-company basis, in monetary terms) shall not be less favourable than those applicable to them with reference to their employment with the Transferor Company on the Effective Date.

d) **Saving of concluded transactions:**

Subject to the terms of this Scheme, the transfer and vesting of the Undertaking(s) of the Transferor Company under Clause 5 of this Scheme shall not affect any transactions or proceedings already concluded by the Transferor Company on or before the Appointed Date or concluded after the Appointed Date and the Effective Date (both days inclusive), to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things made, done and executed by the Transferor Company as acts, deeds and things made, done and executed by or on behalf of the Transferee Company.



- e) **Issue of shares by the Transferee Company to shareholders of Transferor Company.**

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”.

- g) **Accounting treatment**

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, which inter alia provides for the following:





- (i) With effect from the Appointed Date, all the assets and liabilities appearing in the books of accounts of Transferor Company shall stand transferred to and vested in the Transferee Company, as the case may be pursuant to the Scheme and shall be recorded by Transferee Company at their respective fair values.
- (ii) The amount of investments made in the shares of the Transferor Company to the extent held by the Transferee Company, shall stand cancelled in the books of the Transferee Company, without any further act or deed.
- (iii) The reserves (whether capital or revenue or on revaluation) of the Transferor Company, other than the statutory reserves should not be recorded in the Financial Statements of the Transferee Company. Where the statutory reserve is transferred and recorded, corresponding debit should be given to a suitable account head (e.g. Amalgamation Adjustment Account) which should be disclosed as a part of 'miscellaneous expenditure' or other similar category in the balance sheet. When the identity of the statutory reserves is no longer required to be maintained, both the reserves and the aforesaid account should be reversed.
- (iv) In case of any differences in accounting policies between the Transferor Company and the Transferee Company, the accounting

policies followed by the Transferee Company shall prevail to ensure that the Financial Statements reflect the financial position on the basis of consistent accounting policies.

- (v) The amount of any inter-company balances, amounts between the Transferor Company and the Transferee Company, appearing in the Financial Statements of the respective companies, shall stand cancelled without any further act or deed, upon the Scheme coming into effect, and the amounts so cancelled shall not be recorded in the Financial Statements of the Transferee Company.
- (vi) The surplus arising between (A) the aggregate values of assets of the Transferor Company acquired and recorded by the Transferee Company in terms of clause 13.1 or cancelled in terms of clause 13.2 and 13.5 after making necessary adjustments as per clause 13.4, and (B) the aggregate of (a) the liabilities of the Transferor Company acquired and recorded by the Transferee Company in terms of clause 13.1 or cancelled in terms of clause 13.5 after making necessary adjustments as per clause 13.4, and (b) reserves of the Transferor Company recorded by the Transferee Company as per clause 13.3, shall be credited to the Capital Reserve Account of the Transferee Company. In case of a deficit, as computed above, such deficit shall be debited to Goodwill.



(h) Modifications/amendments to the Scheme

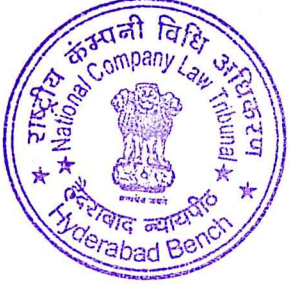
The Transferor Company and the Transferee Company by their respective Board of Directors, or any person(s) or committee authorised/ appointed by them, may carry out or assent to any modifications/ amendments to the Scheme or to any conditions or limitations that the High Court and/ or any other Government Authority may deem fit, to direct or impose or which may otherwise be considered necessary, desirable or appropriate by them (i.e., the Board of Directors or the person(s)/ committee). The Transferor Company and the Transferee Company by their respective Board of Directors, or any person(s) or committee authorised/ appointed by them, shall be authorised to take all such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions whether by reason of any directive or orders of any Government/ regulatory Authorities or otherwise howsoever arising out of or under or by virtue of the Scheme and/ or any matter concerned or connected therewith.



i) Scheme conditional on approvals / sanctions

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

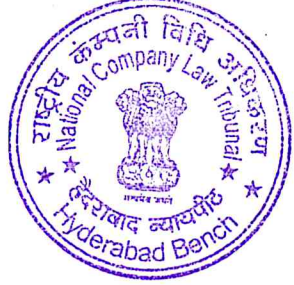


- (iii) As per Para (I)(A) (9)(a) and (b) of SEBI Circular No. CIR/CFD/CMD/16/2015 dated November 30,2015 which is applicable in this case, the listed company 'AFL' shall ensure that the Scheme of Arrangement submitted with the Hon'ble High Court for sanction, provides for voting by public shareholders 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 favor 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.
- (v) Compliance with such other conditions as may be imposed by the High Court.

6. The Petitioner / Transferor Company had earlier filed CA.(CCA) No.37 / 230 / HDB / 2017 under Section 230 and 232 of the Companies Act, 2013 before this Tribunal, by seeking a direction to dispense with meetings of Equity Shareholders and Unsecured / Trade Creditors of the transferor Company for consideration of the proposed scheme of amalgamation of Petitioner / Transferor Company with M/s. Anjani Foods Limited (Transferee Company) as detailed in the Scheme. The said Company Application was disposed of by the

Tribunal vide its Order dated 09.05.2017 dispensing with the conducting of meetings of the equity shareholders and Unsecured / Trade Creditors of the Petitioner Company. After fulfilling requisite conditions for sanction of scheme in question, the present petition is filed for sanction of the scheme.

7. The case was listed before this Bench on 09.05.2017, 01.09.2017, 03.10.2017, 23.10.2017 and finally on 27.10.2017.
8. Heard Mr. V.S.Raju and V.B.Raju, Learned Counsels for the Petitioner / Transferor Company, Mr. B. Appa Rao, Central Government Standing Counsel and Mr. M. Anil Kumar, Counsel for Official Liquidator. The Learned Counsel further submits that pursuant to the Orders dated 01.09.2017 of this Tribunal, notices were also issued to the Registrar of Companies, Regional Director (SER), the Official Liquidator and The Income Tax Department. . Further, the Learned Counsel for the Petitioner also submitted that that the Petitioner Company has also served notice on the Income Tax Department on 19/09/2017. However, no comments / objections of the Income Tax Department were received in response to the said notice till date.
9. The Regional Director (SER), Hyderabad has filed a common affidavit dated 29.09.2017 in C.P.(CAA) No.178 / 230 / HDB / 2017 and 179 / 230 / HDB / 2017, directing one secured creditor (Indian Bank) to submit no objection certificate of the secured creditor before this Tribunal. The Transferee Company being listed company has obtained no objection from the Bombay Stock Exchange and the Transferee Company. He



further stated that the Petitioner Companies are regular in filing the statutory returns and no compliance no investigations and no inspections are pending against the petitioner companies. The Learned Counsel for the Petitioner had filed a Memo dated 27/10/2017 enclosing a copy of the no objection letter dated 29/09/2017 received from secured creditor of the Petitioner Company namely Indian Bank, Visakhapatnam Branch. The Official Liquidator, Hyderabad filed his report dated 12.10.2017 in C.P (CAA)No.178/230/HDB/2017 by inter alia, stating that the Petitioner Company's affairs appears to have not been conducted in the manner prejudicial to the interests of the members or to public interest. Therefore, the Counsel for the Official Liquidator submitted that the Tribunal can consider the case as per the merits and pass appropriate orders.



10. I have carefully gone through all the pleadings and material papers in support of the proposed scheme of amalgamation. I am convinced that the Petitioner / Transferor Company has complied with all statutory requirements as required under Section 230 & 232 and other relevant provisions of Companies Act, 2013 as detailed supra. The Board of Directors of the Petitioner Company at its meeting held on 11.11.2016 have duly considered the pros and cons of Scheme of Amalgamation in question, after perusing various reports on the issue, and found it is advantageous and beneficial to the Company, its members, the Secured Creditors and all other concerned parties of the Company, and thus it was approved. We are satisfied that the Scheme of Amalgamation in question is beneficial to the Companies in particular and public in

general. It is to be mentioned herein that the Scheme in question is not opposed by any authorities and the Petitioner / Transferor Company is admittedly following all rules / regulations of Companies Act as stated by Regional Director and Official Liquidator. Hence, we are of the considered view that the Company Petition deserved to be allowed as prayed for.

11. In the result, the C.P. (CAA) No.178/230/HDB/2017 is disposed of with the following directions:-

- a) Sanctioned the Scheme of Amalgamation (enclosed at Page No. 207 to 224 of the Petition) with appointed date as 01.04.2016 and it is ordered that the same is binding on all the Equity Shareholders / Members and Creditors (Secured & Unsecured) of the Petitioner Transferor Company / Transferee Company.
- b) The Petitioner / Transferor Company be dissolved without going through the process of winding up.
- c) The Petitioner Company is directed to take appropriate steps to submit the said scheme to Registrar of companies within 30 days from the date of receipt of Copy of this order.
- d) The Petitioner / Transferor Company is directed to issue newspaper publication with respect to approval of scheme of amalgamation, in the same newspapers in which previous publications were issued in order to ensure transparency / dissemination of complete information to all concerned parties about the approval granted by the Tribunal for the Scheme as proposed.
- e) The Petitioner / Transferee Company is further directed to take all consequential and statutory





steps required in pursuance of the approved Scheme of Amalgamation under the Provisions of the Act.

- f) Liberty is granted to any party / parties, who are aggrieved by this order to seek any direction(s) by way of filing miscellaneous application in the present CP.

Sd/-

RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)


Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
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केस संख्या
CASE NUMBER... C.P. (CA) No. 178/230/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT... 27-10-2017
प्रति तैयार किया गया तारीख
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