

**IN THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH
AT HYDERABAD**

**C.P.No.387/2016
[CP(TCAA)No.50/HDB/2017]**

Under Section 391/394 of the Companies Act, 1956

In the matter of

Mallemaala Agro Private Limited
Having its registered office at Plot No.5,
L.V. Prasad Maarg, Road No.2, Banjara Hills,
Hyderabad,
Telangana – 500 034.

.... Petitioner/Transferor Company

Order delivered on: 03.05.2017

CORAM:

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

For Petitioner : Mr. V. Venkata Rami Reddy, Advocate
Mrs. Vanga Anita, Advocate

For Official Liquidator : Mr. J. Srinadh Reddy, Advocate

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

ORDER

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**



The Company Petition bearing CP.No.387/2016 [CP(TCAA)No.50/HDB/2017] was filed by Mallemaala Agro Private Limited (Petitioner/Transferor Company) before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh under Sections 391 & 394 of the Companies Act 1956, by seeking the following reliefs:

- a) to sanction Scheme of Amalgamation in question (Page No.111 of the Company Petition) so as to be binding on all the Equity Shareholders/Members, Creditors and employees of the Petitioner/Transferor Company; and
- b) Order that the Petitioner Company shall be dissolved without going through the process of winding up.

2. A Gazette Notification GSR 1134(E) dated 14th December, 2016 issued by the Ministry of Corporate Affairs with effective date of 15th December, 2016, and in terms of Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 & Rule 23A of NCLT Rules R/w Rule 3 of Companies (Transfer of Pending Proceedings) Rules, 2016, jurisdiction is conferred on this Tribunal in respect of subject cases and thus pending cases also transferred from the Hon'ble High Court to the NCLT. Accordingly, the Hon'ble High Court transferred this case to this Bench. On transfer, case is listed before this Bench on 02.02.2017, 14.02.2017, 22.02.2017, 14.03.2017, 05.0.2017, 21.04.2017, 25.04.2017 and finally on 03.05.2017.
3. Heard, Mr. V. Venkata Rami Reddy, Learned Counsel for the Petitioner/Transferor Company, Mr. J. Srinadh Reddy, Learned Counsel for the Official Liquidator and have carefully perused all pleadings along with material papers filed in its support.
4. Brief facts of case, which are relevant to the issue in question, are submitted as under:



Initially, the Petitioner/Transferor Company has filed Company Application No.1424 of 2016 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh for dispensing with the convening of meeting of shareholders of the transferor Company for consideration of the proposed scheme of amalgamation of Petitioner/Transferor Company with Mallemaala Entertainments Private Limited (Transferee Company) as detailed in the Scheme.

- b. The said Company Application No.1424 of 2016 was disposed of by Hon'ble High Court vide its Order dated 30.09.2016 dispensing with the conducting of meetings of the shareholders of Petitioner/Transferor Company. After fulfilling requisite conditions for sanction of scheme in question, the present Petition is filed before this Tribunal for sanction of the scheme.

c. Details of the Petitioner/Transferor Company

The Petitioner/Transferor Company is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 15.02.2013 under the name of Mallemaala Agro Private Limited. The Registered Office of the Company is situated at Plot No.5, L.V. Prasad Maarg, Road No.6, Banjara Hills, Hyderabad, Telangana – 500 034. The main objects of the Petitioner/Transferor Company as per its Memorandum of Association, in brief are to carry on the business of farming, agriculture and horticulture in their respective forms and branches and to grow, produce, manufacture, process, prepare, refine, extract, manipulate, grind, bleach, buy, sell, distribute in retail or wholesale or otherwise deal in all kinds of agricultural, horticultural, dairy, poultry and farm produce and products including food grains, cereals, seeds, plants, flowers, vegetables, fruits, vegetable and edible oils, meat, fish, eggs and good products and preparation of any nature and to carry on the business of manufacturers, distributors, selling agents, commission agents, indenting agents, traders, importers, exporters, brokers, for all kinds of agrochemicals, pesticides, insecticides, fungicides, rodenticides, fertilizers, disinfectants and other chemicals/medicines relates to Agro/poultry industry, etc.



The Authorized, Issued, Subscribed, Paid-up Share Capital of the Petitioner/Transferor Company as on 08.10.2016, is Rs.12,00,00,000/- divided into 1,20,00,000 Equity Shares of Rs.10/- each.

d. Details of the Transferee Company

The Transferee Company was incorporated under the provisions of the Companies Act, 1956 on 10.04.1991 under the name Mallemaala Estate Private Limited. Later on, the name of the Company changed to Mallemaala Entertainments Private Limited with the approval of Registrar of Companies on 11.07.2005. The Registered Office of the Company is situated at Plot No.5, L.V. Prasad Maarg, Road No.6, Banjara Hills, Hyderabad, Telangana-

500034. The main objects of the Transferee Company as per its Memorandum of Association, in brief are to acquire land or lake on lease land from the Government or from Private people and to construct Dubbing and Mixing, Recording and Re-Recording theaters on the above land. To Collect Mixing and Dubbing charges from the Producers of the Feature Films of all language produced in India or Abroad for doing services in the above theatres, etc.

The Authorized Share Capital of the Transferee Company as on 31.03.2006, is Rs.3,00,00,000/- divided into 3,00,000 Equity Shares of Rs.100/- each. The Issued, subscribed & Paid up capital of the company is Rs.2,52,90,000/- divided into 2,52,900 equity shares of Rs.100/- each.

5. The object of Scheme of Amalgamation is as follows:



- a) The Transferor Company and the Transferee Company are engaged in the common business. Moreover, the Transferor Company is wholly owned subsidiary of Transferee Company and has complementing business activities. Hence, to horizon the activities of both Companies, the Board of Directors of both the Companies have decided to amalgamate and to have synergy of operations which aims to cut down the high overhead cost, reducing the cost of capital and optimum utilization of machinery, manpower act., and to have optimum utilization of resources after the amalgamation within the wide range of markets geographically.
- b) The proposed merger would ensure greater synergy to the activities and would result in carrying on the business more efficiently and effectively, enlarge its area of operations and optimum utilization of its management and other resources and any surplus funds would be invested in new area of operations.

6. The following are brief terms of Scheme of Amalgamation:

- a) The Appointed Date for the purpose of this Scheme and the IT Act means 01.04.2015.
- b) The Scheme of Amalgamation envisages the merger of the entire undertaking of the Petitioner/Transferor Company with all its assets and liabilities in to the Transferee Company. With the said effect, the Transferor Company shall be merged without going through the process of winding up.
- c) The entire properties of the Transferor Company of whatsoever nature and where so ever, situated and capable of passing by manual delivery, shall without further act or deed but subject to the charges now effecting the same, be transferred to and vested in or be deemed to have transferred to and vested in the Transferee Company, so as to become property of the Transferee Company.
- d) The liabilities of Transferor Companies, shall without any further act or deed but subject to the charges now effecting the same, be transferred to and vested in the Transferee Company.
- e) Subject to the other provisions of this Scheme, all contracts, deeds, bonds, agreements and other instruments of whatsoever nature to which the Transferor Company is/are a party, subsisting or having effect immediately before the Effective Date shall be in full force and effect against or in favour of the Transferee Company, as the case may be, enforced as fully and effectively as if, instead of the Transferor Company, the Transferee Company has been a party thereto.
- f) All legal and other proceedings by or against the Transferor Company, if any, pending on the Appointed Date and relating to the said undertakings, it liabilities, obligations, duties and covenants shall be continued and enforced by or against the Transferee Company, as the case may be.
- g) With effect from the Appointed Date and upto the effective date, the transferor Company shall carry on and be deemed to carry on all business and activities and stand possessed of its properties and assets for an on account of and in trust for the Transferee Company and for all taxes and duties paid and



payable shall be deemed to have paid for and on account of the Transferee Company; etc.

- h) All the permanent staff, workmen or other permanent employees in the service of the Transferor Company immediately preceding the Effective Date, shall become the staff, workmen and permanent employees of the Transferee Company on the basis herein after provided.
- i) The Transferor Company is wholly owned subsidiary company of the Transferee Company and the entire equity shares of the Transferor Company is held by Transferee Company and its Nominee. Accordingly there would be no issue of equity shares of the Transferee Company to the shareholders of the Transferor Company.
- j) The Transferor Company shall not declare any dividend for the period commencing from and after 01.04.2015 without the written consent of the Transferee Company in the course of Amalgamation.
- k) The Transferee Company is entitled to any sales Tax/State subsidy/Other Tax benefits, if any from the Government of Telangana or any other state; such benefits to the extent not utilized, not availed or not received by the Transferor Company w.e.f. the Appointed Date.



The Board of Directors of the Petitioner/Transferor Company at the meeting conducted on 24.08.2016 approved the Scheme in question.

- 8. It is further stated that the Hon'ble High Court by Orders dated 30.09.2016 passed in C.A.No.1424/2016, has dispensed with convening the meeting of the equity shareholders of the Petitioner Company as all the equity shareholders have given their consent/no objection by means of affidavits.
- 9. The Learned Counsel filed a Memo dated 17.04.2017 stating that as per the directions of the Hon'ble High Court, the petitioner got published in Newspaper advertisement of the "Notice of Petition" in English Daily (Business Standard – Hyderabad Edition) and Telugu Daily (Andhra Bhoomi – Hyderabad Edition) on 05.12.2016 and filed a proof of advertisement.

10. The Learned Counsel further submitted there is 1 (One) Secured Creditor i.e. Andhra Bank in the Petitioner/Transferor Company and the Andhra Bank has have given its consent to the proposed Scheme by means of affidavit dated 11.04.2017.
11. At present there is 11 (Eleven) Unsecured Creditors in the Petitioner/Transferor Company amounting to Rs.17,88,07,022/- and all Unsecured Creditors have given their consent by means of affidavits dated 28.12.2016.
12. Further, the Petitioner/Transferor Company obtained loans on vehicles through Hypothecation from HDFC Bank for an amount of Rs.13,30,680/- and the HDFC Bank has given its consent by means of affidavit dated 28.12.2016.
13. It is stated that no investigation or proceedings have been instituted or are pending against the Applicant/Transferee Company.
14. The learned Counsel further submits that in pursuant to the Orders dated 30.11.2016 of the Hon'ble High Court, notices were also issued to the Registrar of Companies; Regional Director (SER), Official Liquidator and Income Tax Department.



The Regional Director(SER), Hyderabad has filed a affidavit dated 15.02.2017 in C.P.No.387/2016, by inter-alia stating that the Petitioner Company has filed the Annual Return and Balance Sheet till the financial year ended 31.03.2015 and prayed this Bench to direct the Petitioner Company to file Annual Returns and Balance Sheet for the financial year 31.03.2016 before the Scheme is implemented since transferor Company stands dissolved on the scheme becoming effective in terms of clause 14 of the Scheme. It is further stated that no complaints, no investigations and no inspections are pending against the Petitioner Company.

He has further stated that in pursuant to the General Circular No.1/2014 dated 15.01.2014 issued by the Ministry of Corporate Affairs, New Delhi, wherein comments of Income Tax Department is required to be sought under Section 391

or 394 of the Companies Act, 1956, a letter dated 13.12.2016 was issued to the Income Tax Department for submitting their comments/objections, if any, within 15 days.

16. The Official Liquidator vide his Report dated 20.12.2016 inter-alia stated that the affairs of the Company appears to have not been conducted in a manner prejudicial to the interests of the members or to public interest.

17. I have carefully gone through all the pleadings, Report of the Regional Director (SER), Report of the Official Liquidator and also relevant provisions of Companies, 1956. I am convinced that the Petitioner/Transferor Company has complied with all statutory requirements as required under Section 391 & 394 and other relevant provisions of Companies Act, 1956 as detailed supra. The Board of Directors of the Petitioner/Transferor Company at its meeting held on 24.08.2016 approved the scheme of amalgamation. I am satisfied that the Scheme of Amalgamation in question is for bonafide reasons meant for favour of all concerned parties of the Companies in question and public in general. It is to be mentioned herein that the Scheme in question is not opposed by any authorities and the Petitioner Company is admittedly following all rules/regulations of Companies Act as stated by Regional Director. Hence, I am of considered view that the Company Petition deserves to be allowed as prayed for.

18. In the result, the C.P.No.387/2016 [CP(TCAA)No.50/HDB/2017] is allowed with the following directions:-

- a) Sanctioned the Scheme of Amalgamation as proposed (which is placed at Page No.111 along with material papers enclosed with the Petition), and it is ordered that the same is binding on all the Equity Shareholders/Members and Creditors (Secured & Unsecured) of the Petitioner/Transferor Company.
- b) Ordered that the Petitioner Company is 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 file Annual Returns/Balance Sheet for the year ended 31.03.2016 with the Registrar of Companies, Hyderabad.
- e) 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.



The Petitioner/Transferor 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.

- g) 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 Company Petition.
- h) The Petitioner Company is directed to strictly adhere to the above directions and provisions of Section 230 of the Act.

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Sd/-
RAJESWARA RAO VITTANALA

*Order received by the
Registry on 25/7/2017*

V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD.

प्रमाणित प्रति
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केस संख्या
CASE NUMBER: P. NO. 387/2016 (CFCAA) NO.
निर्णय का तारीख 50/HDB/2017
DATE OF JUDGEMENT: 3-5-2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON: 25-7-2017