

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH – V**

**COMPANY PETITION (CAA) NO. – 83/(ND)/2023
WITH
COMPANY APPLICATION NO. CA(CAA) 65/(ND)/2023**

Under Section 230-232 and other applicable provisions of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016)

IN THE MATTER OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF SCHEME OF AMALGAMATION OF:

MANN NUTRITIONAL FOODS PRIVATE LIMITED

...PETITIONER NO.1/TRANSFEROR COMPANY

AND

MANN'S FROZEN FOODS PRIVATE LIMITED

...PETITIONER NO.2/ TRANSFEREE COMPANY

Order Delivered On: 03.07.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Kartikeya Goel, adv.

For the Respondent :

For the IT Department: Shlok Chandra SSC along with Madhavi Shukla and Priya Sarkar JSC

For the RD : Adv. Sumeet Kaul
For the OL : Ms. Hemlata Rawat, Mr. Rahul Bhatt, Adv.

MEMO OF PARTIES

Mann Nutritional Foods Private Limited

CIN: U15100DL2019PTC359528

Registered Office at: Plot No. 37, Second Floor, Block-BD, Gali No. 14, Faiz Road, Karol Bagh, New Delhi-110005.

...Transferor Company/Petitioner Company-1

AND

Mann's Frozen Foods Private Limited

CIN: U15137DL2016PTC290660

Registered office at: Plot No. 37, Second Floor, Block-BD, Gali No. 14, Faiz Road, Karol Bagh, New Delhi-110005.

...Transferee Company/Petitioner Company-2

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. The present Joint Petition is filed by the Petitioner Companies herein Mann Nutritional Foods Pvt. Ltd. (Transferor Company/Petitioner No.1) and Mann's Frozen Foods Pvt. Ltd. (Transferee Company/Petitioner No. 2) under Section 230-232 of the Companies Act, 2013 read with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and the National Company Law Tribunal Rules, 2016, for the purpose of the Sanction of the proposed Scheme of Amalgamation between the Transferor Company and the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred to as the "Scheme"), has been placed on record.

2. The Transferor Company/Petitioner No. 1 i.e., M/s Mann Nutritional Foods Pvt. Ltd. is a private limited company incorporated on 30.12.2019 under the provisions of the Companies Act, 2013 vide CIN: U15100DL2019PTC359528, having its registered office at Plot No. 37, Second Floor, Block-BD, Gali No. 14, Faiz Road, Karol Bagh, New Delhi-110005. Thus, the registered office of the Transferor Company is under the jurisdiction of this Tribunal. The authorized share capital of the Transferor Company is Rs. 5,00,00,000/- divided into 50,00,000 equity shares of Rs. 10/- each. The issued and subscribed and paid-up share capital of the Transferor Company is Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each.
3. The Transferee Company/ Petitioner Company No. 2 i.e., M/s Mann's Frozen Foods Pvt. Ltd. is a private limited company incorporated on 08.02.2016 under the provisions of the Companies Act, 2013 vide CIN: U15137DL2016PTC290660, having its registered office at Plot No. 37, Second Floor, Block-BD, Gali No. 14, Faiz Road, Karol Bagh, New Delhi-110005. Thus, the registered office of the Transferee Company is under the jurisdiction of this Tribunal. The authorised share capital of the Transferee Company/ Petitioner Company No. 2 is Rs. 12,00,00,000/- divided into 1,20,00,000/- equity shares of Rs. 10/- each. The present issued, subscribed and paid-up capital of the Transferee Company is Rs. 11,52,00,000 divided into 1,15,20,000 equity shares of Rs. 10/- each.
4. The Petitioner Companies submit that the proposed scheme of amalgamation of the Transferor Company and Transferee Company would have the following benefits: -
 - (i) The Transferor Company and the Transferee Company are closely held private limited Group Companies under common management and control. Both these Companies are wholly owned subsidiaries of a common Parent Company-Mann Feeds Pvt Ltd. The proposed amalgamation of the Transferor Company with the Transferee Company would result in consolidation of both these Companies and pooling of their resources into a single entity.

- (ii) The proposed Amalgamation would result in optimising and leveraging existing resources of these Companies for the most beneficial utilization of these factors in the combined entity. It would be advantageous to combine the activities and operations of these Companies in a single entity and building strong capability to effectively meet future challenges in competitive business environment.
 - (iii) The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of financial, human and other resource and enhancement of overall business efficiency. The proposed Scheme will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth.
 - (iv) The amalgamation will result in significant reduction in multiplicity of legal and regulatory compliances which at present is required to be made separately by the Transferor Company and the Transferee Company.
 - (v) The proposed amalgamation will provide greater efficiency in fund management and unfettered access to fund flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities. The proposed amalgamation would enhance the shareholders' value of the Transferor and the Transferee Companies.
 - (vi) The proposed Scheme of Amalgamation will have beneficial impact on the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned.
5. The appointed date as fixed for the proposed scheme of Amalgamation is 01.04.2023 or such other date as may be mutually agreed by the Transferor Company and the Transferee Company or such other date as may be directed by this Tribunal.
6. From the records, it is seen that the First Motion joint application was filed before this Tribunal vide CA(CAA)65/ND/2023 and vide order dated 20.09.2023, the

meeting of the Equity Shareholders and Unsecured Creditors of the Transferor Company and the Equity Shareholders of the Transferee Company was dispensed with. With respect to the Secured Creditors and Unsecured Creditors of the Transferee Company, this Tribunal vide order dated 20.09.2023, directed to convene separate meeting of the Secured Creditors and Unsecured Creditors of the Transferee Company. The chairperson filed its report dated 05.12.2023, wherein, it was stated that the meeting of the Secured Creditors and Unsecured Creditors of the Transferee Company was held on 30.11.2023 at 03:00 P.M. and 04:00 PM, respectively and the scheme was unanimously approved by the Secured Creditors and Unsecured Creditors of the Transferee Company. The same is placed on record before this Tribunal.

7. The Tribunal vide order dated 20.12.2023 directed the petitioner company to issue individual notices to the (i) Regional Director, Northern Region of Ministry of Corporate Affairs, (ii) Income Tax Department, (iii) Registrar of Companies, NCT of Delhi and Haryana, and (iv) Official Liquidator.
8. The Petitioner Companies were also directed to carry out publication in the newspapers. It is seen from the records that the petitioners have filed an Affidavit affirming compliance and disclosing that the applicants have effected publication in "Business Standard" (English, Delhi Edition) as well as "Business Standard" (Hindi, Delhi edition), both published on 30.12.2023. In addition to the public notice, notices were served on the Regional Director (Northern Region), Official Liquidator, the Income Tax Department, Registrar of Companies, NCT of Delhi and Haryana and to the other relevant sectoral regulators.
9. Pursuant to the notice issued to the Regional Director, Income Tax Department and Official Liquidator, they have filed their response/reply in the matter.
10. This Tribunal vide order dated 20.12.2023, had sought report from the Regional Director regarding his observations/NOC upon the matter. The Regional Director (RD) in its report dated 29.02.2024 has made certain observations with regard to the proposed scheme of Amalgamation among the Petitioner Companies. The

Petitioner Company 2 had filed its reply affidavit dated 07.06.2024 in response to the observations made by the Regional Director, under wherein the Petitioner Companies gave clarification and undertaking to address the observations made by the Regional Director. The details of the same are summarised below:

Sl. No.	Observation of the Regional Director vide report dated 29.02.2024	Reply of the Petitioner Companies vide Affidavit dated 07.06.2024
1.	As per the audited financial statements of the Transferor company for the F.Y. 2022-23, it is seen that the company has incurred cash losses amounting Rs. 140882.82 (hundred) in the financial year and Rs.59,941.17 (hundred) in the immediately preceding financial year.	<p>It is a given fact that the Transferor Company has incurred losses and has negative net worth. Management is continuously providing the necessary financial support to the Transferor Company through un-secured loans and advances. It is confirmed that the Transferor Company is discharging all its liabilities. It may be noted that both the Companies in the present Scheme of Amalgamation are closely held private limited Group Companies under common management and control. To revive the Transferor Company, it is decided to merge the Transferor Company with the financially strong Transferee Company. The proposed amalgamation will combine their financial resources and the business activities into a single entity. It is pertinent to note that the proposed amalgamation is in the larger interest of these Companies, their shareholders, employees and other stakeholders and all concerned.</p> <p>It is relevant to mention that under the Companies Act, 2013 and other applicable provisions, if any, there is no bar on the amalgamation of a loss-making company with a profit-making company. We, however, wish to submit and confirm that in terms of the provisions of Section 72A of the Income Tax Act, 1961, the Transferor Company</p>

	<p>2. As per annexure-A of the auditor report of the Transferor Company for the F.Y. 2022-23, auditor has reported that company has provided guarantee for loans taken by any other parties during the year amounting Rs.685Lakhs (Corporate guarantee provided to AXIS bank for loan taken by Mann's Frozen Food Pvt Ltd, a fellow subsidiary of the Company).</p>	<p>is not eligible to carry forward the accumulated losses and set off the same in the Transferee Company on amalgamation. Hence the proposed Scheme of Amalgamation will not have any adverse impact on the Income Tax Authorities or on any other person.</p> <p>In view of the above, we most respectfully wish to submit that it is in the larger public interest that the loss-making Transferor Company is merged with the Transferee Company through the present scheme of Amalgamation.</p> <p>It is most respectfully submitted that the Transferor Company and the Transferee Company are wholly owned subsidiaries of a common Parent Company-Mann Feeds Pvt Ltd. The Transferee Company has availed a loan facility from Axis Bank Ltd for which the Transferor Company has provided corporate by guarantee in the form of mortgage of land owned by it. The Transferor Company has already filed the requisite e-Form CHG-1 with the ROC vide SRN: AA1032740 dated 27th October, 2022.</p> <p>Copy of the e-Form CHG-1 filed by the Transferor Company along with the filing proof is enclosed herewith and marked as Annexure: 1.</p> <p>It is pertinent to mention that subsequent to the approval of the Scheme of Amalgamation, all the assets and liabilities including the aforesaid land of the Transferor Company will be transferred to and vested in the Transferee Company. Hence, nobody will be prejudiced by the proposed Scheme Amalgamation.</p>
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<p>3.</p> <p>4.</p> <p>5.</p>	<p>As per the audited financial statements of the Transferee Company for the F.Y. 2022-23, it is seen that Mann Feeds Private Limited is holding 99.99% shares in the company. However, e-form MGT-6 is not filed in this regard. NDIA</p> <p>Emphasis of matter: As per auditor's report for the F.Y. 2022-23 of the Transferee Company, auditor has drawn attention to the Note No. 29.14(f) regarding not filing of CHG-4 for corporate guarantee given in relation to loan taken by Mann Nutritional Foods Private Limited, the loan has been repaid by the borrower.</p> <p>As per the audited financial statements of the Transferor Company for the F.Y. 2022-23, it is seen that the company has unsecured loans and advances from related parties amounting Rs.26,24,40,920 on entire movable & immoveable assets of the company.</p>	<p>It is clarified and confirmed that the Transferee Company is the wholly owned subsidiary of Mann Feeds Pvt Ltd. Mann Feeds Pvt Ltd holds the entire share capital of the Transferee Company except 1 Equity Share which is being held through the nominee Shareholder to maintain statutory minimum two shareholders.</p> <p>The requisite e-form MGT-6 has since been filed by the Transferee Company in this regard.</p> <p>Copy of the e-Form MGT-6 filed by the Transferee Company along with the filing proof is enclosed herewith and marked as Annexure: 2.</p> <p>The Transferee Company has already filed the requisite e-Form CHG-4 with the ROC vide SRN: -drawn AA7019286 dated 8thMarch, 2024.</p> <p>Copy of the e-Form CHG-4 filed by the Transferee Company along with the filing proof is enclosed herewith and marked as Annexure: 3.</p> <p>As pointed out by the Learned ROC, the Transferor Company has taken un-secured loans and advances from related parties amounting to Rs. 26,24,40,920 as at 31st March, 2023. We, however, wish to clarify that the aforesaid loans and advances are un-secured in nature and not secured against any movable or immovable assets of the Transferor Company.</p> <p>Earlier, the Transferor Company had taken a Term Loan from Bank on first and exclusive charge on the entire movable and immovable assets of the Company. The same has since been repaid in full. As at 31st March, 2023, the</p>
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6.	The Transferee Company may kindly be directed to comply with the provision of section 232(3)(i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital, if applicable.	<p>Transferor Company did not have any secured loan. The same may be re-confirmed from its Audited Financial Statements for the year ended 31st March, 2023, a copy of which has been filed along with the 1st motion Application.</p> <p>We wish to clarify and confirm that Clause 10.c of the Scheme of Amalgamation clearly provides that in terms of the provisions of Section 232(3)(i) of the Companies Act, 2013, the Transferee Company will pay the balance fee and other charges, if any, on the increase in its authorised share capital pursuant to the Scheme of Amalgamation.</p> <p>We once again confirm and undertake that the Transferee Company will comply with the provisions of section 232(3)(i) of the Companies Act, 2013, and other applicable provisions, if any, and make the requisite payment to the Registrar of Companies and other authorities, if any, on increase of its authorised capital subsequent to the sanction of the Scheme of Amalgamation.</p>
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11. Thus, though initially, the Regional Director (RD) in its report dated 29.02.2024 had made certain observations with regard to the proposed scheme of amalgamation among the petitioner companies. However, after the reply of the Petitioner Companies in response to the observation made by the Regional Director, the observations made by the Regional Director stand clarified and that the RD has no objection according to the counsel for the Regional Director, as recorded in the order dated 12.06.2024.

12. The Official Liquidator has filed its report dated 13.02.2024, wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.
13. The Income Tax Department has submitted its final report dated 08.02.2024 wherein, it is submitted that the Income Tax Department has no objection to the sanction of the Amalgamation Scheme with respect to the Transferor Company and the Transferee Company. The counsel for the Income Tax Department has also appeared before this Tribunal on 12.06.2024, and submitted that the Income Tax Department has no objection to the scheme.
14. The petitioner companies have filed the affidavit-cum-undertaking dated 06.03.2024 and 07.06.2024, stating that the Transferee Company undertakes to pay any demand that may be raised by the Income tax Department, as and when payable as per law.
15. Considering the reply of Petitioner Companies and further, the undertaking of the Petitioner Companies with respect to the observations and clarifications, we find no impediment in approving the present scheme of amalgamation.
16. In this petition it has also been affirmed by the petitioners that there is no pending complaint against the scheme and no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013 or under provisions of Companies Act, 1956 is pending against the Petitioner Companies.
17. Certificates of Statutory auditor of the petitioner companies, has been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies Accounts Rules, 2014 and Companies (Accounting Standards) Amendment Rules, 2016, and other generally

accepted accounting principles in accordance with the Companies Act, 2013, as applicable.

18. It has also been affirmed in the petition that the Scheme is in the interest of all the Petitioner Companies including their shareholders, creditors, employees and all concerned. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, there appears to be no impediment in sanctioning the present Scheme.

19. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following directions: -

- (i) The proposed scheme has 01.04.2023 as the Appointed Date or such other date as mutually agreed by the Petitioner Companies or such other date as may be directed by this Tribunal. Keeping in view the fact that Accounts would have been drawn for subsequent years, we prescribe 01.04.2024 as the Appointed Date.
- (ii) The Petitioners shall however remain bound to comply with the statutory requirements in accordance with the law.
- (iii) Notwithstanding the above, if there is any deficiency found or, violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken in accordance with the law, against the concerned persons, directors and officials of the petitioners.
- (iv) While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

20. This Tribunal further directs with respect to all the Transferor companies and the Transferee company, that:

- (i) Upon the sanction becoming effective from the appointed date i.e., 01.04.2024, as prescribed by this Tribunal, the Transferor Companies shall stand dissolved without undergoing the process of winding up.
- (ii) All contracts of the Transferor Companies, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;
- (iii) All the employees of the Transferor Companies shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged by the Transferor Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;
- (iv) All liabilities of the Transferor Companies, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.
- (v) All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.
- (vi) Any person interested or effected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

21. Further, the Petitioner Companies shall within thirty days of the date of the receipt of this order, cause a certified copy of this order to be delivered to the Registrar of

Companies for registration and on such certified copy being so delivered, the Transferor companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Companies shall be consolidated accordingly.

22. In compliance with the requirement of Section 232 (7) of the Act, the transferee company shall until the full implementation of the Scheme of Amalgamation shall file a statement every year in the Form CAA 8 along with the required fees with the Registrar of Companies as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.

23. The petition stands disposed of in the above terms.

Let a copy of the order be served to the parties.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)