

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (CAA)/48/MB-IV/2024

IN

CA (CAA)/275/MB/2023

*In the matter of
the Companies Act, 2013;*

AND

In the Matter of

*Section 230-232 of the Companies Act, 2013
and other applicable provisions of the
Companies Act, 2013 read with the
Companies (Compromises, Arrangements
and Amalgamations) Rules, 2016;*

AND

*In the matter of Amalgamation
of*

Kerry Limited

*("Non- Petitioner Company/
Transferor Company")*

And

AATCO Foods India Private Limited

("Transferor Company")

With

***Kerry Ingredients India Private
Limited***

*("Non- Petitioner Company/ Transferee
Company")*

And

*their respective Shareholders and
Creditors*

AATCO Foods India Private Limited ... First Petitioner Company
[CIN: U15310MH2007FTC174468]

Kerry Limited ... Second Petitioner Company
[CIN: U15320KA1996PLC081638]

Kerry Ingredients India Private Limited ...Third Petitioner Company
[CIN: U15400KA2010PTC096834]

Order delivered on: 12.07.2024

Coram:

Smt. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances;

For the Petitioner : CA Harsh Ruparelia i/b A R
C H and Associates,
Chartered Accountants.

For the Regional Director (WR) : Mr. Gaurav Jaiswal,
Authorised Representative for
the RD (WR).

ORDER

1. Heard the Ld. Authorised Representative for the Petitioner Companies and the representative of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme nor has any party raised objection in the Petition.
2. Ld. Authorised Representative for the Petitioner Company submit that the Non- Petitioner Company have filed Second Motion Petition before the National Company Law Tribunal, Bengaluru Bench as the Registered office of the Non-Petitioner Company are situated at Bengaluru, Karnataka and case number of the said petition registered as Company Scheme Petition No. C.P. (CAA)/ 16/BB/2024.

-
3. Ld. Authorised Representative for the Petitioner Company further submits that the sanction of this Tribunal is sought under Section 232 read with Section 230 and other applicable provisions of the Companies Act, 2013 ('Act') for the Scheme of Amalgamation of *Kerry Limited* (Non-Petitioner Company/ Transferor Company No.1) and *AATCO Foods India Private Limited* (Petitioner Company/Transferor Company No.2) with *Kerry Ingredients India Private Limited* (Non- Petitioner Company/ Transferee Company) and their Respective Shareholders and Creditors ('the Scheme'), pursuant to the provisions of Sections 230 to 232 of the Companies Act, 2013 read with applicable rules & regulations framed in this regard.
4. The Professional for the Petitioner Company submits that the Companies are engaged in the following business as below:
- The Petitioner Company is engaged in business of manufacturing, processing, preserving, canning, bottling, refining, grinding, packing, selling, dealing, blending, exporting and importing all types of food stuff, condiments, sauces, preserves and to act as agents, stockiest, suppliers and distributors of portion-controlled food products of all kinds in India and overseas to fast food franchise chains, airlines, hotels, travel industries, retailers and supermarkets.
 - The Transferor Company No. 1 is engaged in the business of manufacturing, producing, processing, buying, selling, importing, exporting or dealing in flour, starch or sugar

based dry mixes, industrial bread crumbs, coating systems and stabilizer blends.

- The Transferee Company is engaged in the business of manufacturing, marketing, distributing, purchasing, selling, importing and exporting of the pharmaceutical, and food, food ingredients and flavours of every description including beverages, syrups and ice cream mixes.

5. Ld. Authorised Representative for the Petitioner Companies submit that the **Rationale** for the Scheme:

The Board of Directors of Petitioner Company and Non-Petitioner Company, believe that the following benefits will accrue, pursuant to the amalgamation of the **Kerry Limited** (Non- Petitioner Company/ Transferor Company No.1) and **AATCO Foods India Private Limited** (Petitioner Company/Transferor Company No.2) with **Kerry Ingredients India Private Limited** (Non- Petitioner Company/ Transferee Company) and their respective shareholders and creditors;

- i. Simplify management structure, leading to better administration and reduction in costs from more focused operation efforts, rationalization, standardization and simplification of business processes, and the elimination of duplication and rationalization of administrative expenses.
- ii. The amalgamation would lead to greater and efficient use of infrastructure facilities and optimum utilisation

-
- of the available resources resulting in substantial reduction in statutory compliances.
- iii. Simplification of group structure by eliminating multiple companies having similar objectives or businesses.
6. The Petitioner Company and Non- Petitioner Company have approved the Scheme by passing their respective **Board Resolutions** on **8th September 2023** and have approached the Tribunal for sanction of the Scheme. The Appointed Date for the Scheme is **1st April 2023**.
7. Ld. Authorised Representative for the Petitioner Company submit that the Company Scheme Petition has been filed in consonance with the *order dated 17th January 2024* passed by this Tribunal in *C.A.(CAA)/275/MB/2023*. Further, the meetings of Shareholders were not required to be held by the Tribunal vide order dated *17th January 2024* in *CA(CAA)/275/MB/2023*. That there were no Secured and Unsecured Creditors in the Petitioner Company, so question of convening their meeting did not arise. It further states that the Petitioner Companies have complied with all the requirements as per directions of the Tribunal. Moreover, the Petitioner Company shall comply with all the statutory requirements, if any, as required under the Companies Act, 2013 and the Rules & Regulations made there under. The said undertaking is accepted.
8. The Regional Director, Western Region on behalf of the Central Government has filed their Report dated **10th April 2024** praying that this Tribunal may pass such orders as it thinks fit, making certain observations in paragraphs of the

Report. In response to the observation made by the Regional Director, the Petitioner Company have also given necessary undertakings and clarification vide their affidavit in reply dated **7th May 2024**. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Company are summarized in the table below:

Para No. 2	Report of the RD	Response of the Petitioner Company
(a)	That on examination of the report of the Registrar of Companies, Mumbai dated 19.02.2024 for Petitioner Transferor Company No. 2 (Annexed as Annexure A-1) that the Petitioner Company falls within the jurisdiction of ROC, Mumbai. It is submitted that no representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Company. Further, the Petitioner Company has filed Financial Statements up to 31.03.2023.	Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2(a) of the Report is concerned, the Petitioner Company submits that these are factual statements and have no further comments.

<p>(b)</p>	<p><i>The ROC has further submitted that in his report dated 19.02.2024 which are as under: -</i></p> <ol style="list-style-type: none"><i>1. That the ROC Mumbai in his report dated 19.02.2024 has stated that No Inquiry, Investigations, Inspections, Prosecutions, Technical Scrutiny, Complaints are pending against the Petitioner Companies.</i><i>2. As per the provisions of Section 232(3)(i) of the Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor Company on its authorized capital shall be set-off against any fees payable by the Transferee company on its authorized capital subsequent to the amalgamation.</i>	<p>Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2(b) of the Report is concerned, the Petitioner Company hereby undertake and confirm following response to the RoC Report that:</p> <ol style="list-style-type: none">1. these are factual statements and have no further comments2. as per Clause 11.2 of the proposed Scheme, the filing fees and stamp duty already paid by the Transferor Companies on its authorized share capital shall be utilized and applied to the increased share capital of the Transferee Company and shall be deemed to have been, so paid by the Transferee Company on such combined authorized share capital and the difference of fees
------------	--	---

	<p><i>Therefore, remaining fee, if any after setting-off the fees already paid by the transferee company on the increased authorized capital subsequent to the amalgamation.</i></p> <p><i>3. Interest of the Creditor should be protected</i></p> <p><i>4. May be decided on its merits.</i></p> <p><i>Hence, the Petitioner Company shall undertake to submit detail reply against observations mentioned above”.</i></p>	<p>if any after setting off the fees paid by the Transferor Companies shall be paid by the Transferee Company pursuant to Section 232(3)(i) of the Companies Act, 2013 for increase in the authorized share capital to that extent.</p> <p>3. It is humbly submitted that Petitioner Company / Transferor Company No.2 does not have any creditors.</p> <p>These are factual statements and have no further comments.</p>
(c)	<p><i>Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Sr Company for increase of share capital on</i></p>	<p>Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2(c) of the Report is concerned, the Petitioner Company hereby undertake and confirm that, as already mentioned in the above response as per Clause</p>

	<i>account of merger of transfer of companies</i>	11.2 of the proposed Scheme, the filing fees and stamp duty already paid by the Transferor Companies on its authorized share capital shall be utilized and applied to the increased share capital of the Transferee Company and shall be deemed to have been, so paid by the Transferee Company on such combined authorized share capital and the difference of fees if any after setting off the fees paid by the Transferor Companies shall be paid by the Transferee Company pursuant to Section 232(3)(i) of the Companies Act, 2013 for increase in the authorized share capital to that extent.
(d)	<i>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the resultant company shall pass such accounting entries which are necessary in connection with the</i>	Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2(d) of the Report is concerned, the Petitioner Company hereby undertake and confirm that

	<i>scheme to comply with other applicable Accounting Standards including AS- 5 or IND AS-8 etc.</i>	the Statutory Auditors of the Resulting Company have provided a certificate on compliance with the applicable Accounting Standards and other generally accepted accounting principles in the Scheme of Amalgamation.
(e)	<i>The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.</i>	Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2(e) of the Report is concerned, the Petitioner Company hereby undertake and confirm that there are no changes or discrepancies in the Scheme enclosed to the Company Scheme Application and Company Scheme Petition and that the Scheme is one and same.
(f)	<i>The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities</i>	Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2(f) of the Report is concerned, the

	<p><i>which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned.</i></p>	<p>Petitioner Company hereby undertake and confirm that it has served notices to the concerned authorities which are likely to be affected by the Amalgamation on 16th April 2024 and also filed the Affidavit of service of notice before the hon'ble Tribunal on 5th May 2024 there are no such other authorities which are likely to be affected by the Amalgamation or arrangement. The decision of such authorities shall be binding on the Petitioner Companies concerned, subject to appropriate rights and remedies available to the Petitioner Companies under the applicable law.</p>
(g)	<p>“Appointed Date” means April 1, 2023 or such other date as the National Company Law Tribunal or such other authorities may direct/ fix;</p>	<p>Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2(g) of the Report is concerned, the Petitioner Company hereby undertake and confirm that</p>

<p><i>"Effective Date" means the date on which the certified true copy(ies) of the order(s) of the National Company Law Tribunal(s), sanctioning the Scheme, are filed with the Registrar of Companies, Bangaluru and Mumbai by the Transferee Company and the Transferor Companies respectively."</i></p> <p><i>"Record Date" means the date to be fixed by the Board of Directors of Transferee Company for the purpose of determining the shareholders of the Transferor Companies to whom shares shall be issued in consideration for the amalgamation of Transferor Companies into the Transferee Company pursuant to and as contemplated under this Scheme.</i></p>	<p>the above definitions with respect to the Appointed Date, Effective date and Record date are as per the Scheme of Amalgamation and it has no further comments. It is humbly stated that the Petitioner Company has duly complied with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs since the Appointed date is April 1, 2023, which is not ante-dated beyond a year from the date of filing, i.e., 11th November, 2023</p>
---	--

	<p><i>It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	
(h)	<p><i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required.</i></p>	<p>Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2(h) of the Report is concerned, the Petitioner Company hereby undertake and confirm that it is not regulated by any sectoral regulator and the same has been stated in Paragraph no. 44 of the Company Scheme Petition (CAA-5). An affidavit verifying that the Petitioner Company/ Transferor Company No. 2 is not regulated by any sectoral regulators is enclosed herewith and marked as <u>Annexure 2</u> to the Affidavit in</p>

		reply to observations of the Regional Director.
(i)	<i>The Petitioner Companies shall undertake to comply with the directions of the Income Tax Department & GST Department, if any.</i>	Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2(i) of the Report is concerned, the Petitioner Company hereby undertake and confirm that it shall comply with the directions of the Income Tax Department & GST Department, if any.
(j)	<i>The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder</i>	Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2(j) of the Report is concerned, the Petitioner Company hereby undertake and confirm that it shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder.
(k)	<i>Petitioner Companies shall undertake to comply with the guidelines of RBI, FEMA and FERA as Petitioner</i>	Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2(k) of

	<i>company have foreign shareholders.</i>	the Report is concerned, the Petitioner Company hereby undertake and confirm that it shall comply with the guidelines of RBI, FEMA and FERA.
(1)	<i>As per financial statements as on 31.03.2023, the Petitioner Transferor Company No. 2 AATCO Foods Private Limited have body corporate shareholders namely Kerry Group BV having 99.34% shareholding, but No Form BEN-2 has been filed by the Petitioner Company as per records available at MCA21 Portal, hence Petitioner Company shall undertake to comply with the provisions of section 90 of Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder and to file Form BEN-2 for declaring name of</i>	Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2(l) of the Report is concerned, the Petitioner Company hereby submits that Kerry Group BV, is the parent entity holding 99.34% shares of the Petitioner Company. Also, none of the individual shareholders, acting alone or together, or through one or more persons or trust, holds indirectly, or together with any direct holdings, 10% or more of the shares or voting rights of its Holding Company, hence filing of Form BEN-2 is not applicable to the Petitioner Company. The Petitioner Company

	<p><i>the significant beneficial owner with concerned ROC.</i></p>	<p>further submits that it would comply with the provisions of Section 90 of the Companies Act, 2013 read with the Companies (Significant Beneficial Owners) Rules, 2018 amended from time to time and make necessary filings with the Registrar of Companies, if required and applicable under the provisions of law. Without prejudice to the above, it is submitted that, if the Regional Director or the Registrar of Companies opines that the Petitioner Companies have not complied with the aforesaid provisions, liberty is given to the concerned Registrar of Companies to separately deal with the above issue, subject to appropriate remedies available to the Petitioner Companies under the applicable laws and regulations. Further, the</p>
--	--	---

		<p>Petitioner Companies undertakes to comply with the provisions of Section 90 of the Companies Act, 2013 read with the Companies (Significant Beneficial Owners) Rules, 2018, if and to the extent applicable. All issues arising thereunder shall be decided in accordance with law and approval of the Scheme by this Hon'ble Tribunal shall not deter the appropriate authorities to take necessary remedies in accordance with applicable provisions of the Companies Act, 2013.</p>
(m)	<p><i>“The Transferor Company No. 1 viz. Kerry Limited and Transferee Company viz. Kerry Ingredients India Private Limited falls under the jurisdiction of RD, SER. The Petitioner Companies may please be directed to obtain order from Hon'ble NCLT, Bengaluru Bench.</i></p>	<p>Apropos the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph 2(m) of the Report is concerned, the Petitioner Company hereby undertake and confirm that the Transferor Company and the Transferee Company have filed a joint Second motion</p>

		petition before the Hon'ble NCLT, Bengaluru Bench and shall obtain the order once the same has been approved by the Hon'ble Tribunal. A copy of the online and physical submission acknowledgement is enclosed herewith and marked as Annexure 3.
--	--	---

9. That the Authorised Representative for the Regional Director appeared and submitted that their observations/ objections have been satisfactorily explained by the Petitioner Company and are acceptable to them. Hence, the Regional Director does not have any further objection to the proposed Scheme Company Petition.
10. The Official Liquidator, High Court, Bombay has filed its report dated **18th June 2024**, stating therein Para 6 of the Report that the affairs of the Petitioner Company have been conducted in proper manner and there are no adverse findings made by the Official Liquidator, High Court, Bombay, in the conduct of the Petitioner Company. The observations made by the Official Liquidator, High Court, Bombay are taken on record.
11. That the Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and,

it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.

12. Ld. Authorised Representative for the Petitioner Company submitted that the Non-Petitioner Company/ Transferee Company hereby undertakes that all the liabilities and legal proceedings of the Petitioner Company shall be transferred to Non-Petitioner Company/ Transferee Company in accordance with the Scheme. The legal proceedings, whether civil or criminal, if any of whatsoever nature shall not abate as a result of the present Scheme and shall be taken over by the Non-Petitioner Company/ Transferee Company.
13. Ld. Authorised Representative for the Petitioner Company further submitted that the Non-Petitioner Company/ Transferee Company hereby undertakes that all the duties, direct and indirect taxes (including any advance taxes), GST liabilities, liabilities under the erstwhile provisions of the VAT Act, Sales Tax Act, customs duty, excise duty and any other tax obligations or litigations thereunder for any tax laws for the Petitioner Company shall be transferred to Non-Petitioner Company/ Transferee Company, as a result of the Scheme. Further, upon effectiveness of the Scheme the Non-Petitioner Company/ Transferee Company undertakes to have all legal or other proceedings initiated by or against the Petitioner Company, transferred into its name and to have the same continued, prosecuted and enforced by or against the Non-Petitioner Company/ Transferee Company to the exclusion of the Petitioner Company.

-
14. Ld. Authorised Representative for the Petitioner Company further submitted that effectiveness of this Scheme shall not deter any Regulatory Authorities to initiate action, proceedings, prosecution, investigation or any regulatory action against the Petitioner Company and the Non-Petitioner Company/ Transferee Company undertakes that all such proceedings shall continue in its own name.
15. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
16. Upon coming into effect of the Scheme and in consideration for amalgamation, the Non-Petitioner Company/ Transferee Company, shall, without any further application or deed, issue and allot equity shares of face value Rs.10/- each, credited as fully paid up, to the shareholders of the Petitioner Company whose name appear in the register of members of the Petitioner Company 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 proportion (the "Share Exchange Ratio"):
- "0.766 (Zero point Seven Six Six) fully paid-up Consideration Equity Shares of face value of Rs.10/- (Ten) each of the Kerry Ingredients India Private Limited (Non-Petitioner Company / Transferee Company) shall be issued and allotted for every 1 (One) fully paid-up equity shares of Rs.100/- (Hundred) each held in the AATCO Foods India Private Limited (Petitioner Company / Transferor Company No.2)"*

17. Since all the requisite statutory compliances have been fulfilled, *C.P.(CAA)/48/MB/2024* connected with *C.A.(CAA)/275/MB/2023* filed by the Petitioner Company is made absolute in terms of prayer clauses of the said Company Scheme Petition.
18. The Petitioner Company are directed to file a certified copy of this Order along with the copy of Scheme with the concerned Registrar of Companies, electronically in e-form INC-28 within 30 days or an extended timeline with payment of additional fees, as may be applicable, from the date of receipt of the Order duly certified by the Designated Registrar of this Tribunal. The Scheme will become effective on filing of the copy of this order with the concerned Registrar of Companies.
19. The Petitioner Company shall lodge a copy of this Order along with the Scheme duly certified by the Designated Registrar of this Tribunal, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within a period of 60 working days from the date of the receipt of the certified Order from the Registry of this Tribunal.
20. All concerned Regulatory Authorities to act on a copy of this Order along with Scheme duly certified by the Designated Registrar of this Tribunal.
21. Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

22. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
23. Ordered accordingly. Thus, the Company Scheme Petition with *C.P.(CAA)/48(MB)/2024* in *C.A.(CAA)/275(MB)/2023* shall stand to be disposed-off.

Sd/-

Anu Jagmohan Singh
Member (Technical)

/Dubey/

Sd/-

Kishore Vemulapalli
Member (Judicial)