

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH AT CHANDIGARH**

**CP (CAA) No. 54/CHD/PB/2022  
(2nd Motion)**

**Under Sections 230 to 232 and  
other applicable provisions of  
the Companies Act, 2013**

**IN THE MATTER OF SCHEME OF AMALGAMATION OF:**

**Triputi Infrastructure Private Limited**

with its registered office at  
Sood's Niwas Ranbir Marg, Patiala, Punjab - 147001  
PAN: AAECT7480N  
CIN: U70101PB2011PTC049856

...Petitioner Company No.1/Transferor Company

And

**Milkfood Limited**

with its registered office at  
Bahadurgarh, District Patiala, Punjab - 147021  
PAN: AAACM5913B  
CIN: L15201PB1973PLC003746

...Petitioner Company No.2/Transferee Company

**Order delivered on:16.04.2024**

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)  
Hon'ble Mr. Rahul Bhatnagar, Member(Technical)**

**Present: -**

For the Petitioner Companies: Mr. Anand Chibbar, Senior Advocate with Mr. SP  
Singh Chawla and Mr. Nikhil Y. Chawla, Ms.  
Vidhi Goel and Ms. Malini Sud, Advocates

For the Income Tax Department: Mr. Yogesh Putney, Senior Standing Counsel

For the Regional Director / ROC: Mr. Vineet Khatri, CS

For the Official Liquidator: Mr. Edward Augustine George, Advocate

**Per: Harnam Singh Thakur, Member (Judicial)**

**Rahul Bhatnagar, Member (Technical)**

**ORDER**

This is a joint Second Motion Petition filed by the Petitioner Companies herein, Triputi Infrastructures Private Limited (Petitioner No. 1/ Transferor Company) and Milkfood Limited (Petitioner No. 2/ Transferee Company) under Section 230-232 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) for sanctioning the scheme of Amalgamation.

2. The Petitioner Companies have prayed for sanctioning of the Scheme of Amalgamation between the respective companies. The said Scheme is attached as Annexure - P6 to the petition.

3. The Petitioner Companies had filed first motion application bearing CA (CAA) No.44/CHD/PB/2021 before this Tribunal for seeking directions for dispensing with the meetings of Equity Shareholders, Secured and Unsecured Creditors of the Applicant Company No.1 and convene the meetings of Equity Shareholders, Secured and Unsecured Creditors of Applicant Company No.2/Transferee Company. At that stage, CA No. 43/2022 which was filed by one objector namely, Sudha Commercial Company Limited, whose application was dismissed being not maintainable at that stage in terms of settled ratio of law. Accordingly, the First motion application was disposed of vide order dated 13.05.2022, with directions to dispense with the meetings of Equity Shareholders, Secured and Unsecured Creditors of all the Applicant Companies for the reasons mentioned in the aforesaid orders.

4. The main objects, date of incorporation, authorized and paid-up share capital, and the rationale of the Scheme had been discussed in detail in the order dated 13.05.2022.

5. In the second motion proceedings, certain directions were issued by this Tribunal vide order dated 22.08.2022 and an affidavit for the compliance of the order was filed by Diary No. 01122/6 dated 30.06.2022. The notice of hearing was published in "Financial Express" (English) Punjab Edition and "Jagbani" (Punjabi), both Punjab editions on 02.09.2022. The original copies of the newspapers are attached as Annexure A of the aforesaid affidavit. It has also stated in the affidavit that copies of notices were served upon the (a) the Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi (b) Registrar of Companies, Chandigarh (c) the Official Liquidator, attached to Punjab & Haryana High Court (d) Food Safety and Standards Authority of India (FSSAI), (e) Jurisdictional Income Tax Authorities. Copy of the notices along with original dispatch/acknowledgement receipt are attached as Annexure-B of the aforesaid affidavit. During the proceedings of the present petition at the time of passing the order dated 22.08.2022, counsel for objector had prayed for liberty to file the objections, in the course of the present petition.

6. It is also deposed by the authorised signatories of the petitioner companies with affidavit filed vide Dairy No. 01707/01 dated 31.10.2022 that the petitioner companies have not received any objection from public or anyone till the date of deposing the said affidavit, relating to the present scheme.

7. Thereafter, one company application was filed by the objector, namely, Sudha Commercial Company. The objector had filed CA No. 24 of 2023 placing on record the objections against the proposed merger and the scheme, however, the

same was dismissed vide order dated 16.01.2024 by this Tribunal stating that the same was devoid of merits and stood disposed of.

It is submitted by the petitioner companies that none of the objections raised by Sudha are untenable in law in terms of the provisions laid down u/ s 230 of the Companies Act, 2013 as well as various decisions of the Hon'ble Supreme Court, Hon'ble NCLAT and the Hon'ble NCLT. The reliance has been placed on the decision passed by the **Hon 'ble Supreme Court in the case of Miheer H. Mafatlal v. Mafatlal Industries ( 1997) 1 SCC 579** wherein it was stated that-

*"6. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same.*

*7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising the same class whom they purported to represent.*

*8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.*

*9. Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction."*

8. In response to the above mentioned notices which have been sent to regulators and the statutory authorities they have furnished their replies.

#### **8.1 Registrar of Companies (RoC)/Regional Director (RD)**

8.1.1. The Regional Director (hereinafter referred to as “RD”) has filed its report along with the report of the Registrar of Companies (hereinafter referred to as “RoC”) vide Diary No 01707/3 dated 28.12.2022. The ROC in its report at Para 28 has made the following observations:

- 1. The Authorized Capital of the Transferee Company, after the Scheme becoming effective, shall be in accordance with Section 232 (3) (i) of the Companies Act, 2013. As per Section 232 (3) (i) of the Companies Act, 2013, the fee, if any, paid by the Transferor Company on its Authorized Capital shall be set-off against any fee payable by the Transferee Company on its authorized capital subsequent to the amalgamation.*
- 2. The transferor company is Triputi Infrastructure private limited having intangible assets of Rs. 14 Crores.*
- 3. The Secretarial Auditor has qualified the Audit Report as the company could not submit financial results for Sept 2020 quarter within the prescribed time under regulation 33 of SEBI (Listing obligations and Disclosure Requirements) Regulations 2015. However, the company submitted results for Sept 2020 quarter on 19.11.2022 with a penalty of Rs 11,800/- as levied by BSE.*
- 4. As the Transferee Company is a Listed Company, the SEBI (LODR) Regulations are to be complied with by the Company.*

8.1.2. As per Clause 28 of the ROC Report dated 28.09.2022, the observations of deponent, communicated to the company vide letter dated 31.10.2022 are as under:-

- 1. The transferor company is Triputi Infrastructure Private Limited has shown brand value of Rs. 14 Cr. of Milk Food Ltd. i.e. Transferee Company which is intangible assets. As per valuation report, it has been noticed that Milkfood Ltd brand value agreement was executed on 05.09.2013. A copy of this agreement may be provided.*
- 2. Kindly indicate whether use of brand name is exclusive right of Transferor Company as per agreement dated 05.09.2013.*
- 3. The tangible networth of Transferor Company as on 31.03.2021 is as under: -*

*Tangible Networth = Total Assets - Total Liabilities - Intangible assets  
Based on this Company's tangible networth comes to Rs. 13.61 -  
14=(-) 0.39 Cr.*

*Accordingly, kindly confirm the above tangible networth or alternatively  
provide an auditors certificate to this effect.*

8.1.3. It may be noted that as per Para 13 of the report, it is observed by  
RD that-

*Transferee company is listed company with paid up capital of  
Rs.4.89 Core having Reserve and Surplus Rs.117.79 Crore with  
secured loan of Rs.72.56 Crore as on 31.03.2022 wherein promoter  
holds 50.10% shares as on 31.03.2022 Consequent upon merger  
48,86,440 shares would be allotted to the shareholders of  
Transferor Company Shri Sidharth Gupta, registered Valuer  
securities & financial Assets (IBBI) has prepared valuation report.  
Further, the agreement of the sale of MILKFOOD brand to TRIPUTI  
INFRASTRUCTURE PRIVATE LIMITED clause 5 inter-alia provides  
that promoter will not assign or sell the brand to any other party and  
clause (b) indicate that promoter will not charge any royalty for use  
of the brand by MilkFood till the term loan from bank is outstanding.*

It is worthwhile to mention that observations are related to Transferee  
Company which would be in existence even after merger. Thus, in view of the  
above observations by the Ld. RD Transferee Company is directed to comply  
with the terms and conditions of Brand Value Agreement after approval of the  
scheme and other directions given by the RD/ROC concerned.

8.1.4. Hence, the RD/ROC has made no adverse observation with regard to  
the proposed Scheme of Amalgamation.

## **8.2 Official Liquidator**

8.2.1. The Official Liquidator has filed his report vide Diary No. 1707/2  
dated 31.10.2022 in respect of Petitioner Company Nos. 1 and 2. The  
Official Liquidator in its report has reproduced the information on the  
incorporation of the Petitioner Companies, their capital structure, financial  
highlights, shareholding, etc. The Official Liquidator has also reproduced

the extracts of Reports of the Statutory Auditors of the Petitioner Companies on the Financial Statements.

8.2.2. Thus, the Official Liquidator has made no adverse observation with regard to the proposed Scheme of Amalgamation.

### **8.3 Income Tax Department**

8.3.1 The Income Tax Department filed its report vide Diary No. 01707/4 Dated 9/5/2023 for the Petitioner Company No 2/ Transferee Company and report vide Diary No. 01707/09 dated 01.11.2023 for the Petitioner Company No. 1/ Transferor Company wherein it is stated that no demand is outstanding.

8.3.2. Thus, there is no adverse observation from the Income Tax Department with regard to the proposed Scheme of Amalgamation.

### **8.4 Food Safety and Standards Authority of India**

8.4.1. The Food Safety and Standards Authority of India has filed its report vide Diary No. 01707/6 Dated 24.05.2023 that wherein it was submitted by FSSAI that they had no role in the Amalgamation between the two Petitioners. However, subsequent to amalgamation, in case of any changes involving the information that would need changing in the records of FSS Act, the same must be done on priority and appropriate amendments shall be made in the FSSAI License/ Records”

8.4.2. Thus, there is no adverse observations from the Food Safety and Standards Authority of India with regard to the proposed Scheme of Amalgamation.

9. The certificate of the Statutory Auditor with respect to the Scheme between Petitioner-Companies to the effect that the accounting treatment proposed in the Scheme is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles was filed as Annexure P-7 of the petition.
10. We have heard the learned Counsel for petitioner companies and learned Senior Standing Counsel for the Income Tax Department as well as Company Prosecutor for the Regional Director and perused the record carefully.
11. In the context of the above discussion, the Scheme contemplated between the petitioner companies, appears to be prima facie in compliance with all the requirements stipulated under the relevant Sections of the Companies Act, 2013. In the absence of any objections before us and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Amalgamation appended as Annexure-“P6” with the company petition.
12. Notwithstanding the submission that no investigation is pending against the petitioner companies, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.
13. It is pertinent to note that the appointed date for scheme is 01.04.2020 which is ante-dated beyond one year from the date of filing i.e. 16.09.2021. As per the definition of the ‘appointed date’ as mentioned in the Part I of the scheme, it states that, *“11. "Appointed Date" means April 1, 2020 or such other date as may be approved by the Hon'ble National Company Law Tribunal (NCLT) or Hon'ble National Company Law Appellate Tribunal (NCLAT), or any other competent Court*



*(s), judicial or quasi-judicial authority or any other competent authority having power to sanction the Scheme, as the case may be.”*

Moreso, during the course of arguments, no valid justification has been given by Ld. counsel for petitioner companies. It is submitted by Ld. counsel for petitioner companies that on instructions he has no objection if appointed date is changed from 01.04.2020 to 01.04.2023.

Therefore, in view of the above discussion, the appointed date is changed from 01.04.2020 to 01.04.2023.

14. While approving the scheme as above, it is clarified 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, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

15. **THIS TRIBUNAL DO FURTHER ORDER:**

- i) That all the property, rights and powers of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 & 232 of the Act, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Companies but subject nevertheless to all charges now affecting the same; and
- ii) That all the liabilities and duties of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 to 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company;

- iii) All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Companies are entitled to include under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;
- iv) 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 favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;
- v) 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 favourable 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;

- vi) That the Appointed Date for the Scheme shall be 01.04.2023 instead of 01.04.2020 as specified in the Scheme;
- vii) That the proceedings, if any, now pending by or against the Transferor Companies be continued by or against the Transferee Company;
- viii) That the Transferee Company shall, without further application, allot to the existing members of the Transferor Companies shares of Transferee Company to which they are entitled under the said Scheme;
- ix) That the fee, if any, paid by the Transferor Companies on their authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme';
- x) That the carry forward and set off of accumulated losses in the Petitioner Company, if any, shall be subject to applicable provisions of Income Tax including Section 72A and Section 79 of the Income Tax Act, 1961;
- xi) That the assessment under the Income Tax Act will be in accordance with the provisions of Section 170 (2A) of the Income Tax Act, 1961;
- xii) That the Transferee Company shall file the revised memorandum and articles of association with the concerned Registrar of Companies and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company; after setting off the fees paid by the Transferor Companies;
- xiii) That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the concerned Registrar of Companies for registration; and
- xiv) That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

16. As per the aforesaid directions, Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal order be issued to the petitioners to the filing of the Schedule of Properties within three weeks from the date of receiving the certified copy of this order.
17. All the concerned Regulatory Authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar of this Bench.
18. The certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.
19. The Company Petition CP (CAA) No.54/CHD/PB/2022 is disposed of accordingly.

Sd/-  
**(Rahul Bhatnagar)**  
**Member (Technical)**

Sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

April 16, 2024

TBG/PRF