

**NATIONAL COMPANY LAW TRIBUNAL**  
**CHANDIGARH COURT-I**

**COMPANY PETITION NO. (CAA) 29/Chd/Hry/2023**

**IN**

**COMPANY APPLICATION NO. (CAA) 10 /Chd/Hry /2023**

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

**M/S SUCHALIS CONFECTIONERY PRIVATE LIMITED**

Plot No-321, Udyog Vihar Phase-2,

Sector-20, Gurgaon - 122016

PAN: AAICM1839L

Income Tax Ward/Circle: WARD 4(1) GURGAON

through its authorized representative,

Ms. Suchali Jain,

CIN: U15490HR2018PTC076091

...Transferor Company/ Petitioner No.1

AND

**M/S MUHAVRA ENTERPRISES PRIVATE LIMITED**

D-I73, Sushant Lok I,

Gurgaon -122002,

PAN: ABACS9199J

through its authorized representative,

Mr. Matthew Joseph Chitharanjan,

CIN: U15492HR2012PTC047234

...Transferee Company /Petitioner No. 2

**Order Delivered on: 01.05.2024**

**Section: 230-232 of the Companies Act, 2013.**

**CORAM:**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)**

**PRESENT**

**For the Petitioner Companies:** Mr. Manish Jain, Ms. Divya Sharma,  
Mr. Manan Jain, Mr. Yugank Goel,  
Ms. Tanya Manglik & Mr. Siddhant Jain,  
Advocates

**For the RD** : Mr. Vineet Khatri, Company Prosecutor

**For the OL** : Mr. Edward Augustine George, Advocate

**For the Income Tax Dept.** : Mr. Varun Issar, Senior Standing Counsel

## **ORDER**

**PER: SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)**

The captioned petition is preferred by the Petitioner Companies jointly under Section 230 to 232 of the Companies Act, 2013 read with the Companies (Compromise, Arrangements, and Amalgamations) Rules, 2016 for approval of the Composite Scheme of Amalgamation (hereinafter referred to as '**Scheme**'), as contemplated between the Companies, its Shareholders and Creditors. A copy of the Scheme has been placed on record as Annexure 2 in the Petition.

2. Suchalis Confectionery Private Limited (hereinafter, referred to as "**the Petitioner No. 1/Transferor Company**"), having CIN U15490HR2018PTC076091 issued from the Registrar of Companies "RoC" of Delhi and Haryana, is a company incorporated on 27.09.2018, under the Companies Act, 2013. The Transferor Company's registered office is at Plot No-321, Udyog Vihar Phase-2, Sector-20, Gurgaon 122016. The Transferor Company is in the business of manufacturing, producing, buying, selling, and distributing all types of bread, biscuits, bakery products, confectionery, sweets & namkeen foods products.

3. Muhavra Enterprises Private Limited (hereinafter referred to as the "**Petitioner No. 2/Transferee Company**"), having CIN UI5492HR2012PTC047234 issued from the Registrar of Companies "RoC" of Delhi and Haryana, is a company incorporated on 26.09.2012 under the provisions of the Companies Act, 1956. The Transferee Company has its registered office at D-

173, Sushant Lok I, Gurgaon - 122002. The Transferee Company is in the business of manufacturing, processing and selling goods and providing services related to coffee and allied activities.

4. The 'Transferor' and 'Transferee' Companies are together called '**Petitioner Companies**' hereinafter. The Registered offices of both Companies are in Gurugram, Haryana, therefore, the jurisdiction lies with this Bench.

5. From the record, it is seen that the Petitioner Companies filed the First Motion petition CA(CAA) No. 10/Chd/Hry/2023 seeking directions for convening the meetings of the shareholders and creditors of both Petitioner Companies and this Tribunal vide Order dated 30.05.2023, issued directions for convening the meeting of Shareholders, Secured Creditors, and Unsecured Creditors of both the Companies. Chairperson of the meetings has filed report dated 28.07.2023, as per which the outcome of meetings is tabulated below:

<b>Percentage of Votes in Favour of the Scheme</b>			
	<b>Equity Shareholders</b>	<b>Secured Creditors</b>	<b>Unsecured Creditors</b>
Meetings of the Transferor Company held on 22.07.2023	100%	Both Secured creditors were paid & they issued NOC. None attended the meeting., meeting rendered infructuous.	100%
Meetings of the Transferee Company held on 23.07.2023	100%	100%	97.95%

It is further stated that in terms of the notice, the meeting of Secured Creditors of the Transferor Company commenced at 10 am on 22 July 2023. In the meeting, Ms. Suchali Jain, Director of the Transferor Company informed that both the Secured Creditors of the Transferor Company, i.e., Yes Bank Ltd and HDFC Bank Ltd, were not present, as they have already issued No Dues

Certificates (NoCs) dated 13.01.2023 (Reference No. ASE5802054/073644/N/01132023/1807310) and 17.03. 2023 (Reference No. FC0603230161), respectively, stating that the facility/account has been fully repaid by the Transferor Company. These NoCs were shared in advance with all the people attending the meeting. Nevertheless, for the sake of completeness, the meeting was adjourned by 30 (Thirty) minutes and thereafter the meeting was called to order. Since no Secured Creditors were present and the outstanding amount had already been repaid, the meeting was closed and rendered infructuous.

6. The “Appointed date” as per clause 1.03 under Part I (Definitions) of the Proposed Scheme of Amalgamation (page 83 of the Petition) is 01.04.2022.

7. Later, the Second Motion petition was moved by the Petitioner Companies in connection with the Scheme of Amalgamation for issuance of notices to the (i) Central Government through the RD (Northern Region), MCA, New Delhi; (ii) ROC, Delhi and Haryana, New Delhi; (iii) Income Tax Department through the Nodal Officer Principal Commissioner of Income Tax, North West Region, Aayakar Bhawan, Sector 17 E, Chandigarh; and (iv) the Official Liquidator (attached to Punjab and Haryana High Court).

8. Directions were issued, vide Order dated 21.08.2023 of this Tribunal, requiring the Petitioner Companies to serve notice upon the concerned statutory authorities and carry out necessary publication concerning the said Scheme in “*Financial Express*” (English) and “*Jansatta*” (Hindi) newspapers, both in Delhi NCR Edition. In compliance with the above-stated directions, the Transferor and Transferees Companies have duly filed Affidavits of Service

on 10.10.2023 vide Diary Number 02526/01 and Diary no 02526/2 respectively, confirming that the aforesaid Notices of Hearing of the present Company Petition were published in the “*Financial Express*” (English) and “*Jansatta*” (Hindi) on 26.09.2023. The Transferor Company filed a Compliance Affidavit dated 16.10.2023 wherein the Transferor Company attached its response to the letter of the Official Liquidator, dated 26.09.2023, furnishing the information as was asked for by the Official Liquidator. The Transferee Company filed a Compliance Affidavit dated 16.10.2023 stating that the Transferee Company has not received any objections/representations regarding the proposed scheme of amalgamation from any of the creditors, shareholders, sectoral authorities, and the public at large.

9. On issuance of notice, the Income Tax Department filed its report dated 27.02.2024, which containing observations as reproduced below:

- (i) Details of the ITR of M/s M/s Suchailis Confectionery Pvt Ltd. The assessee has its return of income for the A.Y. 2019-20 to 2022-23.
- ii) Other Relevant information in the case of M/s M/s Suchailis Confectionery Pvt Ltd.
- As per ITD system, there is no outstanding demand against the assessee.

From the report (ibid), it is observed that there is no objection raised by the Income Tax Department as regards to the Transferor Company.

10. As regards the Transferee Company, the Income Tax Department filed its report vide Diary No 02526/15 dated 27.02.2024, containing the following observations:

Sl. No.	Particulars	A.Y.	Date of Filing of Return	Gross total Income/Loss (in Rs.)	Refund/Demand (in Rs.)
1	Details of ITR filed by the company	2019-20 2020-21 2021-22 2022-23	26.10.2019 11.02.2021 14.03.2022 07.11.2022	(-)3,07,18,903 (-)8,97,63,930 (-)7,61,18,836 (-)10,10,01,042	3,59,960 9,37,400 35,02,190
2	Whether any dues pending are	A.Y.	Date of Order	<b>Demand Outstanding</b>	<b>Amount Collectible</b>
		2016-17	27.12.2018	<b>1,53,68,920/-</b>	<b>1,53,68,920/-</b>
3	Whether any proceedings are pending.			As per record available on ITBA system there is no proceedings pending in this case except recovery proceeding for outstanding demand.	
4	Whether transactions of disproportionate value were taken by the company.			Complete account of the company are not available with this office. Therefore, this office is not in a position to report on this aspect.	
5	Whether huge cash deposits are found in their account.			As per system, no cash deposit is showing in ITS data base. Therefore, this office is not in a position to report on this aspect.	
6	Whether company's bank accounts have been used for money laundering and tax evasion.			Complete account of the company are not available with this office. Therefore, this office is not in a position to report on this aspect	

4. In view of above discussion, it is clearly seen that the transferee company has to pay statutory demand of the Income Tax Department, however total demand of Rs. 1,53,68,920/- has not been deposited by the assessee till date. So far the demand has been due since long but the assessee has not even paid 20% of the demand as mandated by the CBDT office Memorandum F.No.404/72/93-ITCC (FTS: 284146) dated 31.07.2017. Further, there is no stay granted to the assessee by the department as per available records and demand is standing due since long. This clearly shows transferee company's mindset regarding the outstanding payment of the Income Tax Department as it completely ignores all the guidelines of the Income Tax Department.

11. Thus, the Income Tax Department in its Report (ibid) has indicated an outstanding demand of Rs. 1,53,68,920/- against the Transferee Company. In response, the Transferee Company has filed a compliance affidavit vide Diary No. 02526/17 dated 28.02.2024, with which has placed additional documents on record, namely, (a) an Indemnity Bond dated 16.11.2023 issued by it to the Income Tax Department, whereby it had undertaken to indemnify the Income Tax Department through its assets to the extent of tax demand, interest and penalty; and (b) a copy of an Appeal before the Commissioner of Income Tax against an assessment order dated 27.12.2018.

12. In view of the facts that the Transferee Company has filed an Appeal against the demand assessed by the Income Tax Department and Indemnity Bond furnished by the Transferee Company to the extent of the demand raised, we observe that there would be no prejudice caused to the Income Tax Department if the Scheme is sanctioned. The approval of the Scheme by this Tribunal shall not, in any manner, deter the Income Tax Department from scrutinizing the tax liabilities of the Transferee Company, which will continue

to be in existence post-amalgamation. We, therefore, do not find any merit in the objections raised by the Income Tax Department. As already noted above from the report of the Income Tax Department, there is no demand outstanding against the Transferor Company.

13. The Regional Director (RD) filed its Report dated 16.10.2023 containing the following observations:

10. That the following as per Clause 31 of the ROC Report dated 13.10.2023, following observation was raised:

1. As per Annexure 'A' to the auditor's report for the FY ended 31.03.2022 of Transferor Company, the company is not maintaining a proper stock register for the manufacturing process undertaken during the F.Y. 2021-22.
2. As per Annexure - 'A' to the auditor's report for the F.Y. ended 31.03.2022 of Transferee Company, the company has pending statutory dues pertaining to Employee Provident Fund and Misc. Act, Employee State Insurance Act and Income Tax Act.
3. As per Annexure 'A' to the auditor's report for the F.Y. ended 31.03.2022 of Transferee Company, the company has incurred Cash losses of Rs.923.61 Lakhs in the F.Y. 2021-22 and Rs.595.55 Lakhs in the immediately preceding financial year 2020-21.
4. As per MCA General Circular no. 9/2019 dated 21.03.2019, if the appointed date is significantly ante-dated beyond a Year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest. In this case, the appointed date is 01.04.2022. However, the justification of the same being ante-dated in terms of the above circular is not clearly brought out.
5. Transferor Company has not filed form MSME-1 in respect outstanding dues to MSME.
6. Refer to clause 18 of the scheme, 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.



14. In response to the reports described above, the Transferor and Transferee Companies filed their affidavits vide Diary No. 02526/10 and 02526/11 dated 20.11.2023 respectively. The response on behalf of the Transferor Company reads as below:

3. In response to observation (1) in paragraph no. 10 of the Report, it is stated that the Transferor Company maintained a register that recorded the closing stock of each item and its corresponding value. However, the stock register inadvertently could not be kept in the required format due to:
  - a. the accounting software's lack of functionality, and
  - b. the Transferor Company operating with limited staff due COVID-19 restrictions and disruptions.

However, from 1 April 2023, the Transferor Company has implemented an ERP system that has seamlessly taken over the record-keeping and this inadvertent error has so been rectified.



signatory

4. In response to observation (4) in paragraph no. 10 of the Report, it is stated that the first motion application, being CA [CAA] NO. 10/Chd/Hry/2023, was filed on 13 February 2023, and therefore the "*Appointed Date*" was fixed as 1 April 2022. As the said date was ante-dated less than one (1) year from the date of filing of the aforesaid first motion application, this observation appears to be erroneous.
5. In response to observation (5) in paragraph no. 10 of the Report, it is stated that as the Transferor Company does not have any outstanding dues payable to any MSMEs, therefore, it has not filed any MSME-1 return.



The response on behalf of the Transferee Company reads as under:

4. In response to observation (3) in paragraph no. 10 of the Report, it is stated that the Transferee Company suffered cash losses to the tune of INR 923.61 Lakhs in the F.Y. 2021-22, and INR 595.55 Lakhs in the F.Y. 2020-21, mainly due to the COVID-19 restrictions, which caused most cafes and online businesses to shut down, resulting in significant losses for the Transferee Company. However, the sales of these stores has since been restored, with an improvement in operating margins and a reduction in losses.

5. In response to observation (4) in paragraph no. 10 of the Report, it is stated that the first motion application, being CA [CAA] NO. 10/Chd/Hry/2023, was filed on 13 February 2023, and therefore the "Appointed Date" was fixed as 1 April 2022. As the said date was ante-dated less than one (1) year from the date of filing of the aforesaid first motion application, this observation appears to be erroneous.

6. In response to observation (6) in paragraph no. 10 of the Report, it is stated that clause 18 of the scheme is in compliance with Section 232(3)(i) of the Companies Act, 2013 which states that "where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation".

15. As regards the observation relating to pending EPF dues, the Transferee Company has submitted the following:

*"As per the latest audited financials for F.Y. 2022-23 of the Transferee Company, the below-mentioned dues, as stated in Annexure A of the audit report for F.Y. 2021-22, are outstanding:*

- (i) Employee Provident Fund to the tune of INR 97,601/-, and*
- (ii) Employee State Insurance to the tune of INR 1,81,403/-*

*The reason for such outstanding is that the K.Y.C. of some employees who joined and left during the year is not complete. **However, the Transferee Company is currently in the process of depositing the outstanding amounts. Further an***

***amount of INR 153.69 Lakhs as demand for income tax for A.Y. 2016-17 has been challenged by the Transferee Company with Commissioner of Income Tax (Appeals) (CIT) and the same is still pending adjudication.***

*(Emphasis supplied)*

16. Thus, we find that the Petitioner Companies have clarified that the Appointed Date of the Scheme is not ante-dated beyond a year rather it is within a year. As regards the losses by the Transferee Company, the same shall be subject to the provisions of Section 72 A of the Income Tax Act, 1961, and other provisions applicable under other relevant laws. Regarding EPFO dues, the Transferee Company has clarified that it is currently in the process of depositing the outstanding amounts. Further, it has stated that demand of Rs. 153.69 Lakhs by Income Tax department for A.Y. 2016-17 has been challenged by the Transferee Company with CIT (Appeals) (CIT) and the same is still pending adjudication. Moreover, the Transferee Company shall continue to be in existence post-amalgamation and the Statutory authorities like EPFO and Income tax shall be free to recover their dues. Hence, we do not find any material objection raised by the RD in its report.

17. The Official Liquidator also filed its report to the Scheme on 02.11.2023 stating that it has no objection towards the Scheme proposed between the Petitioner Companies. The Report of the Official Liquidator reads thus:

7. That on the basis of the facts in the joint petition, additional information/documents provided by the company, and rationale of the scheme, it is hereby submitted that the office of the official liquidator does not have any specific observations/objections

18. Given the preceding facts and discussion and upon considering the approval accorded by the shareholders and creditors of both the Petitioner Companies to the Scheme and no sustainable objections having been raised by the Office of the Regional Director (North), Income Tax Department, Official Liquidator, or any other interested party, there does not appear to be any impediment in granting sanction to the Scheme. **Accordingly, the sanction is hereby granted to the Scheme of Amalgamation proposed by the Petitioner Companies under Section 230 to 232 of the Companies Act, 2013.** The Scheme shall be binding on the Petitioner Companies and their shareholders and creditors. The Petitioner Companies shall remain bound to comply with the statutory requirements in accordance with law.

19. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Authority to the Scheme will not come in the way of action to be taken, albeit, in accordance with law, against the concerned persons, directors and officials of the Petitioner Companies.

20. 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 other statutory dues, 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. Further the approval of the Scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act, 1961 or serve as any exemption or defence for the Petitioner Companies against tax treatment in accordance with

the provisions of the Income Tax Act, 1961 and the rules and regulations made thereunder.

21. **THIS TRIBUNAL FURTHER DIRECTS** with respect to Transferor Company and Transferee Company, that:

- (i) Upon the sanction of the Scheme becoming effective from the appointed date of Amalgamation i.e., 01.04.2022, the Transferor Company shall stand dissolved without undergoing the process of winding up.
- (ii) All benefits, entitlements, incentives, and concessions under incentive schemes and policies that the Transferor Company is entitled to including 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;
- (iii) All contracts of the Transferor Company, 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 Company, the Transferee Company had been a party or beneficiary or obliged thereto;
- (iv) All the employees of the Transferor Company 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 Company, 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;

- (v) All liabilities of the Transferor Company, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Company Act, 2013, to the extent they are outstanding as of 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.
- (vi) All proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.
- (vii) The Income Tax department and EPFO are permitted to retain their recourse for recovery in respect of demand and any other future liabilities of the Transferor Company and the Transferee company, in respect of the assets sought to be transferred under the proposed scheme.
- (viii) Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
- (ix) Further, the approval of the Scheme would not come in the way of the statutory authorities like Income Tax Department, EPFO etc. to recover their dues against the Petitioner Companies. The contentions of the parties would be open before the relevant fora where disputes are pending.

22. The Petitioner Companies shall within thirty days of the date of the receipt of this Order or on sanction of the Scheme, whichever is later, 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 Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company on the file kept by him about the Transferee Company and the files relating to both the Petitioner Companies shall be consolidated accordingly.

23. **The present Petition CP(CAA) 29/Chd/Hry/2023 is allowed and disposed of accordingly.**

Sd/-  
**(L. N. GUPTA)**  
**MEMBER (T)**

Sd/-  
**(HARNAM SINGH THAKUR)**  
**MEMBER (J)**