

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

ITEM No. 2
CP(CAA)71/ND/2022

IN THE MATTER OF:

Trimex Foods Private Limited

... Applicant

And

Paramount Restaurants Private Limited &
Another

Order under Section 230-232.

Order pronounced on 19.05.2023

Coram:

MR. P.S.N. PRASAD,
HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

CP(CAA)71/ND/2022 Stands allowed.

Sd/-

DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

Sd/-

P.S.N. PRASAD
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV
C.P.(CAA) 71/ND/2022
WITH
C.A.(CAA) 50/ND/2022**

In the matter of the Companies Act, 2013

And

**In the matter of Sections 230-232 and other applicable provisions of
the Companies Act, 2013**

AND

In the matter of Scheme of Amalgamation between

Trimex Foods Private Limited

...Petitioner/Transferee Company

And

Paramount Restaurants Private Limited

...Petitioner/Transferor Company I

Premier Restaurants Private Limited

...Non-Petitioner/Transferor Company II

Mukund Hospitality Private Limited

...Non-Petitioner/Transferor Company III

SNZ Concepts Private Limited

...Petitioner/Transferor Company IV

Promex Brands Private Limited

...Petitioner/Transferor Company V

Order Delivered on: 19.05.2023

CORAM:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Pawan Sharma, Adv.

For the OL : Ms. Hemlata Rawat, Adv.

For IT Deptt. : Mr. Ruchir Bhatia, Sr. St. Counsel, Mr. Shlok
Chandra, Jr. St. Counsel & Mr. Keshav Garg, Adv.

ORDER

PER: SHRI P.S.N. PRASAD, MEMBER (JUDICIAL)

1. The present Joint Petition is filed by the Petitioner Companies viz., Paramount Restaurants Private Limited (Petitioner/Transferor Company I), Premier Restaurants Private Limited (Non-Petitioner/Transferor Company II), Mukund Hospitality Private Limited (Non-Petitioner/Transferor Company III), SNZ Concepts Private Limited (Petitioner/Transferor Company IV), Promex Brands Private Limited (Petitioner/Transferor Company V), Trimex Foods Private Limited (Petitioner/Transferee Company) under Section 230-232 of the Companies Act, 2013 read with 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 of the Transferor Company No. 1 to 5 with Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme") has been placed on record.
2. The Transferee Company i.e. M/s Trimex Foods Pvt Ltd was incorporated on 8th January, 2019 under the provisions of the Companies Act 2013 bearing CIN: U15549DL2019PTC343963 having its registered office at B-11/1, Okhla Industrial Area Phase-II Delhi-110020. The Authorized Share Capital of the Transferee Company is Rs. 10,00,000 divided into 1,00,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of the company is Rs. 2,20,000 divided into 22,000 equity shares of Rs. 10 each.
3. The Transferor Company I i.e. M/s Paramount Restaurants Pvt Ltd was incorporated on 21st October, 2009 under the provisions of the Companies Act 1956 bearing CIN: U55204DL2009PTC195378 having its registered office at R-308, Level 3, Ambiance Mall, Nelson Mandela Road, Vasant Kunj, New Delhi-110070. The Authorized Share Capital of the Transferor Company I is Rs. 10,00,000 divided into 1,00,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up share

capital of the company is Rs. 1,00,000 divided into 10,000 equity shares of Rs. 10 each.

4. The Non-Petitioner/Transferor Company II i.e. M/s Premier Restaurants Pvt Ltd was incorporated on 30th December, 2011 under the provisions of the Companies Act 1956 bearing CIN: U55101CH2011PTC042745 having its registered office at Shop No. 312b, 3rd Floor, Plot No. 178-178A, Elante Mall, Industrial Area, Phase I, Chandigarh-160002. The Authorized Share Capital of the Transferor Company II is Rs. 20,00,000 divided into 20,00,000 equity shares of Rs. 1 each. The issued, subscribed and paid-up share capital of the company is Rs. 20,00,000 divided into 20,00,000 equity shares of Rs. 1 each.
5. The Non-Petitioner/Transferor Company III i.e. M/s Mukund Hospitality Pvt Ltd was incorporated on 22nd February, 2010 under the provisions of the Companies Act 1956 bearing CIN: U55103WB2010PTC142574 having its registered office at 59D, Chowringhee Road, 1st Floor, Kolkata -700020, West Bengal. The Authorized Share Capital of the Transferor Company III is Rs. 5,00,00,000 divided into 50,00,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of the company is Rs. 4,00,00,000 divided into 40,00,000 equity shares of Rs. 10 each.
6. The Petitioner/Transferor Company IV i.e. M/s SNZ Concepts Pvt Ltd was incorporated on 13th June, 2012 under the provisions of the Companies Act 1956 bearing CIN: U55101DL2012PTC237445 having its registered office at B-11/1, Phase II, Okhla Industrial Area Delhi-110020. The Authorized Share Capital of the Transferor Company IV is Rs. 10,00,000 divided into 1,00,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of the company is Rs. 10,00,000 divided into 1,00,000 equity shares of Rs. 10 each.
7. The Petitioner/Transferor Company V i.e. M/s Promex Brands Pvt Ltd was incorporated on 10th December, 2020 under the provisions of the Companies Act 2013 bearing CIN: U74999DL2020PTC374400 having

its registered office at B-11/1, Phase II, Okhla Industrial Area Delhi-110020. The Authorized Share Capital of the Transferor Company V is Rs. 15,00,000 divided into 1,50,000 equity shares of Rs. 10 each. The issued, subscribed and paid-up share capital of the company is Rs. 1,00,000 divided into 10,000 equity shares of Rs. 10 each.

8. The Petitioner Companies submit that the proposed scheme of amalgamation of the Transferor Companies and Transferee Company would have the following benefits: -
- i. Optimum and efficient utilization of resources either in the form of assets and sharing of ancillary facilities;
 - ii. Benefit of obtaining synchronization of synergies;
 - iii. Structured, sharper and better management focusing on holistic growth of the businesses;
 - iv. Rationalizing multiple subsidiaries in the group to ensure optimized legal entity structure, more aligned with the business by reducing the number of legal entities and re-organizing the legal entities in the group structure;
 - v. Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferee Companies and the Transferee Company;
 - vi. Concentrated effort and focus by the management to grow the business by eliminating duplicative communication and burdensome coordination efforts across multiple entities;
 - vii. Cost saving by way of reduction of overheads, administrative, managerial, and other expenditure and to bring about operational rationalization and efficiency; and
 - viii. Synchronization of efforts to achieve uniform corporate policy and ease in decision making at the group level of the Transferee Company.
9. The appointed date as fixed for the proposed scheme of Amalgamation is 1st April, 2022 or such other date as may be directed by the National Company Law Tribunal.

10. From the records, it is seen that the First Motion joint applications was filed before this Tribunal vide CA(CAA)50(ND)OF2022. Vide order dated 02.06.2022, the meeting of Shareholders and Unsecured Creditors of all the Transferor Companies I, IV, V and Transferee Company was dispensed with. The Transferor Companies I, IV & V and Transferee Company did not have any secured creditors. therefore, the requirement for convening a meeting did not rise.
11. The Tribunal directed the petitioner companies 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, (iv) Official Liquidator
12. Vide Order dated 08.07.2022, the Petitioner Companies were also directed to carry out publication in the newspapers. It is seen from the record that the petitioners have filed an Affidavit affirming compliance and disclosing that the applicants have effected publication in “Business Standard” (English, Delhi edition) and “Business Standard” (Hindi, Delhi edition), both dated on 20.07.2022. In addition to the public notice, notices were served on the Regional Director (Northern Region), Official Liquidator, Income Tax Department and Registrar of Companies, NCT of Delhi and Haryana and to the other relevant sectoral regulators.
13. Pursuant to the notice issued to the Regional Director, Official Liquidator and Income Tax Department, they have filed their response/reply in the matter.
14. The Regional Director (RD) in its report dated 16.02.2023 has made certain observations with regard to the proposed scheme of Amalgamation among the Petitioner Companies. The Petitioner Companies had filed reply dated 03.02.2023 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 which are given below:

Observation	Observation of the Regional Director vide report dated 16.02.2023	Reply of the Petitioner Companies vide Affidavit dated 03.02.2023
1.	As per the financial statement of Transferee company year ended 3.03.2021, three body corporates are holding shares 38.64%, 38.64% and 22.73%. However, no BEN-2 e-form has been filed by the company.	The Transferee company inadvertently missed to file the BEN-2 e-form. The Company has now e-filed the BEN-2 e-forms for the FY 2018-19, 2019-20, 2020-21 and 2021-2022 along with email of approval of SRN from MCA.
2.	As per the financial statement as on 31.03.2021 of Transferor company no. 5 company namely Stellar Concepts Private Limited is holding 51% of shares. However, no BEN-2 e-form has been filed by the company.	The Transferor Company V inadvertently missed to file the BEN-2 e-form. The company has now e-filed the BEN-2 e-forms for the FY,2020-21 and 2021-2022 along with email of approval of SRN from MCA.
3.	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 capital.	The Transferee Company undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act as and when applicable.
4.	Board of Directors have not agreed with the recommendation of valuer. It has given to respective company by the person belonging to their respective shareholder promoter group will be treated as equity shares accordingly the valuer has determined the swap ratio assuming deemed conversion". The company has not provided the details of unsecured loans including the names of companies who have received such loan and name of promoter shareholders who have given such loans. It is also not clear whether provisions of chapter V of Companies Act, 2013 relating to acceptance of deposit have been complied or not. The calculation swap ratio also not clear as in clause 18(2)(u) it appears that swap ratio will be reworked once again. The Transferee company proposes to issue CCPS with voting rights, which is in contravention of section 43 of the Companies Act, 2013.	<ul style="list-style-type: none"> • The company has taken the loans from Director and Body Corporate only which are treated as exempted Deposits as per Deposits Rules and has filed return of exempted deposits in Form DPT-3 with ROC as and when required. The Company has not accepted any deposits and therefore are not required to comply with Chapter V of Companies Act 2013 relating to acceptance of deposit. • The board has accepted the valuer report and the shares in consideration in the form of CCPS will be allotted in the ratio as determined by the Valuers, (please see clause 18.3). The valuer has determined the exchange ratio on the basis of treating promoters/directors' loan as equity and the board has decided to apply the said ratio on actual basis after actual conversion. So it is not as if the board has deviated from the valuers report. • Since transferee company is a private company, Section 43 and 47 of the Companies Act, 2013 have been excluded from the scheme.

15. In daily order dated 21.03.2023 passed by this Tribunal, it was noted that the proxy counsel appeared on behalf of Income Tax Department and stated that they had no objection in allowing the proposal and the proxy counsel appearing on behalf of Official Liquidator also submitted that they have no objection to the proposed scheme.

16. Considering the reply of the 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.
17. In this petition it has also been affirmed that 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.
18. Certificates of Statutory auditor of the petitioner companies, has been placed on record to the effect that Accounting Treatment proposed in the Scheme of Arrangement 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.
19. The shareholders of the petitioner company are the best judges of their interest, being fully conversant with market trends, and therefore, their decision should not be interfered with by the Tribunal for the reason that it is not a part of the judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme, of which sanction is sought under Section 230-232 of the Companies Act of 2013, will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.
20. 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.

21. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following directions: -
- (i) The Petitioners shall always remain bound to comply with the statutory requirements in accordance with law.
 - (ii) Notwithstanding the sanction, 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.
 - (iii) 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.
22. This tribunal further directs with respect to Transferor companies and Transferee company, that:
- i. Upon the sanction becoming effective from the appointed date as provided under the scheme, 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 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;

- 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 affected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
23. 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.
24. 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.

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

Let copy of the order be served to the parties.

Sd/-

**DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)**

Sd/-

**SH. P.S.N. PRASAD
MEMBER (JUDICIAL)**