

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**  
**COURT-IV**

**C.P. (CAA)/107(ND)2022**  
**IN**  
**C.A. (CAA)/37/ND/2021**

Under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromise, Arrangements ad Amalgamation Rules, 2016)

**IN THE MATTER OF SCHEME OF AMALGAMATION**

**BETWEEN**

**DM Foods Private Limited**

**... Transferee Company/Petitioner Company No. 1**

**And**

**Lapisco Distributors Private Limited**

**... Transferor Company No. 1/Petitioner Company No. 2**

**And**

**RR Vinimay Private Limited**

**...Transferor Company No. 2/Petitioner Company No. 3**

**And**

**Their Respective Shareholders and Creditors**

**Order Delivered on: 07.06.2024**

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER  
(JUDICIAL)**

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

**PRESENT:**

For the Petitioner : Adv. Afnaan Siddiqui along with Adv. Ankita  
Agarwal, Adv. VisakhaRaghuram

For the RD : Adv. Aakash Sharma

## **ORDER**

**PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)**

1. This second motion petition has been jointly filed by the petitioner companies herein namely M/s DM Foods Private Limited (Petitioner Company No. 1/Transferee Company), M/s Lapisco Distributors Private Limited (Transferor Company No. 1/Petitioner Company No. 2), and M/s RR Vinimay Private Limited(Transferor Company No. 2/Petitioner Company No. 3) under section 230-232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016, (“Rules”) and the National Company Law Tribunal Rules, 2016, for the purpose of the sanction of the proposed Scheme of Amalgamation of the Transferor Companies with Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the (“Scheme”), has been placed on record.
2. The Petitioner Company No. 1/Transferee Company i.e., M/s DM Foods Private Limited was incorporated under the Provisions of Companies Act, 1956 on 12.11.1997 vide CIN: U15432DL1997PTC090654 having its registered office at 3/16, West Patel Nagar, New Delhi-110008. Thus, this Tribunal is having territorial jurisdiction. The Authorized Share Capital of Transferee Company is Rs. 60,00,000/- divided into 6,00,000 equity shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital is Rs. 57,38,950/- divided into 5,73,895 equity shares of Rs. 10/- each.

3. The Petitioner Company No. 2/Transferor Company No. 1 i.e., M/s Lapisco Distributors Private Limited was incorporated under the Provisions of Companies Act, 1956 on 06.07.1995 vide CIN: U51109DL1995PTC348170 having its registered office at 3/16, West Patel Nagar, New Delhi-110008. Thus, this Tribunal is having territorial jurisdiction. The Authorized Share Capital of the Transferor Company No. 1 is Rs. 44,00,000/- divided into 4,40,000 Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital is Rs. 43,95,500/- divided into 4,39,550 Equity Shares of Rs. 10/- each.
4. The Petitioner Company No. 3/Transferor Company No. 2 i.e., M/s RR Vinimay Private Limited was incorporated under the provisions of Companies Act, 1956 (now the Companies Act, 2013) with the Registrar of Companies, West Bengal. Thereafter the company changed its registered office from the West Bengal to state of Delhi w.e.f. 11.11.2019 vide CIN: U51109DL2008PTC357337 having its registered office at 3/16, West Patel Nagar, New Delhi-110008. Thus, this Tribunal is having territorial jurisdiction. The Authorized Share Capital of the Transferor Company No. 2/Petitioner Company No. 3 is Rs. 25,00,000/- divided into 2,50,000 Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-up Share Capital is Rs. 24,95,000/- divided into 2,49,500 Equity Shares of Rs. 10/- each.
5. The Petitioner Companies submit that the rationale for the scheme of amalgamation between the Transferor Companies and Transferee Company would have the following benefits: -

- i. The Companies are related with the group companies and to achieve inter-alia economies of scale and efficiency, the merger of the Companies are being undertaken. The amalgamation of the Transferor Companies with the Transferee Company inter alia has the following benefits.
  - a. Greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder value, and will improve the competitive position of the combined entity.
  - b. Greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholders value.
  - c. Improved organizational capability and leadership, arising from the pooling of human capital who have the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.
  - d. Greater access by the amalgamated company to different market segments in the conduct of its business.
  - e. Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, and the elimination of duplication, and rationalization of administrative expenses.

6. The Appointed Date as fixed for the proposed scheme of Amalgamation is 31<sup>st</sup> December, 2020.
7. From the records, it is seen that the First Motion joint application seeking direction for dispensation/convening the meeting of Shareholders, Secured Creditors and Unsecured Creditors was filed before this bench vide CA(CAA)37(ND)OF2021 and based on such application moved under Section 230-232 of the Companies Act, 2013, this Tribunal vide order dated 17.12.2021 (pronounced order) has passed the following directions: -
  - i. The requirement of convening the meeting of the shareholders of the Transferor Company No. 1, 2 and Transferee Company is dispensed with.
  - ii. Since there were nil Secured Creditors and Unsecured Creditors of the Transferor Company No. 1, 2 and Transferee Company, therefore, the requirement of convening the meeting of the Secured Creditors and Unsecured Creditors of the Transferor Company No. 1, 2 and Transferee Company did not rise.
8. In the present second petition, vide order dated 10.03.2023 read with order dated 16.06.2023 passed by this Tribunal, the Tribunal directed the Petitioner Companies to published notice of the hearing of the main Company Petition in newspapers and in addition to the public notice, directed to issue notices to the (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; (b) Registrar of Companies, NCT of Delhi & Haryana, Ministry

- of Corporate Affairs; (c) officer having jurisdiction over the Petitioner Company in the Income Tax Department; (d) Official Liquidator and to such other sectoral regulators or authorities.
9. In compliance with the order dated 10.03.2023 read with order dated 16.06.2023, the petitioner companies have filed an affidavit of service on 04.09.2023 affirming and disclosing that the Petitioners have effected publication in “Business Standard” (English, Delhi Edition) and (Hindi Delhi Edition) both dated on 23.06.2023. In addition to the public notice, notices were served on the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, Income Tax Department, and Official Liquidator.
10. Pursuant to the notice issued, the Regional Director, and Official Liquidator have filed their response/reply in the matter.
11. The Regional Director (RD) in its report affidavit dated 25.08.2023 has made certain observations regarding the proposed scheme of Amalgamation among the Petitioner Companies. In response to the same, the Petitioner Companies had filed reply dated 18.01.2024 wherein the Petitioner Companies gave clarification to the observations made by the Regional Director. The details of the same are given below:

Observation	Observation by the Regional Director vide report affidavit dated 25.08.2023	Reply by the Petitioner Companies dated 18.01.2024
1.	On examination of documents (Financial Statements), filed by both of the Transferor Companies and Transferee	It is submitted that the Petitioner Companies have made investments only in their group companies. It is pertinent to note that the all the

	<p>Company it is found from the financial statement of the Financial Year 2020- 21 that they have followed the activities of the Non-Banking Financial Companies (NBFC) since as per the said Financial Statements the component of Financial Assets exceeds 50% of the total assets and also revenue from Financial Activities/ Assets exceeds the threshold limit of 50% of its total revenue of the said financial years. The matter has also reported by ROC and the same has been stated above in Para-10, but the scheme as well as the Petition are silent about it. In view of the above it is prayed before the Hon'ble Tribunal to satisfy themselves with the contents of the scheme.</p>	<p>Petitioner Companies have invested in their group companies by way of non-current investments and also have disbursed loans to the group companies which constitutes more than 90% of the total assets of the respective Petitioner Companies. Hence, the Petitioner Companies fall within the preview of Core Investment Companies as per RBI Core Investment Companies ('CIC') Directions, 2016.</p> <p>Further, since the asset size of all the Petitioner Companies is less than Rs. 100 crores, such companies are defined as 'Unregistered CICs' under Para 6 of RBI Core Investment Companies ('CIC') ('Master Directions') and have been exempt from registration under the same para. Accordingly, requirement for seeking registration with the Reserve Bank of India does not apply in the present case and the Petitioner Companies are not required to register with the RBI. Since the Petitioner Companies are Unregistered CICs, assets held by them in the form of Non-Current Investments and Loans and Advances cannot be considered to be 'financial assets' and income from such assets cannot be considered to be 'income from financial assets' for the purpose of satisfying the principal business criteria test of deemed NBFC. Therefore, principal business criteria for NBFCs are not being fulfilled by the Petitioner Companies in the present case. Further, in para 16 of Annexure-A of the Independent Auditor's Report for the financial</p>
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		<p>year ended 31st March 2021 of the respective Petitioner Companies, it has been observed by the Statutory Auditor that the Petitioner Companies are not required to be registered under Section 45-IA of Reserve Bank of India Act, 1934. Copy of Master Directions issued by RBI on Core Investment Companies ('CIC') Directions, 2016 is annexed and marked herewith as <b>Annexure A/5</b>.</p>
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12. Thus, the Petitioner Companies vide reply affidavit dated 18.01.2024 duly replied to queries raised by the Regional Director and the Regional Director has not made any adverse remarks or observations thereafter. Further, during the hearing conducted on 09.04.2024, the Ld. Counsel for the RD was present and submitted that the RD filed the report stating no objection in allowing this application.
13. The Official Liquidator filed its report dated 07.07.2023 wherein it is stated that on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest in terms of the provisions of the Companies Act, 2013.
14. Vide order dated 26.09.2023 passed by this Tribunal, the Ld. Counsel for the applicant was directed to file an undertaking that no tax demand is pending and that any future liability shall be discharged as per law. In compliance of order dated 26.09.2023, the Transferee Company/Petitioner Company No. 1 have filed an affidavit cum



undertaking affirming and stating that pursuant to Clause 7.3.1 of Part II of the Scheme of Arrangement for Amalgamation between the Petitioner Companies, any tax liabilities under the Income Tax Act, 1961, Wealth Tax Act, 1957, Customs Act, 1962, Goods and Service Tax Act, 2017 and other state Sales Tax/ Value Added Tax Laws, stamp laws or other applicable laws, regulations allocable or related to the business of the Transferor Company to the extent not provided for or covered by tax provisions in the accounts made as on the date immediately preceding the Appointed Date shall be transferred to the Transferee Company; and the Transferee Company undertakes that all outstanding liabilities/demands, if any, pending against the Transferor Companies shall be borne by the Transferee Company, post the effectiveness of the scheme.

15. Vide order 06.05.2024, the Petitioner Companies was directed to file a separate affidavit of each company in terms of Section 230(2) of the Companies Act, 2013. In compliance of order dated 06.05.2024, an additional affidavit dated 09.05.2024 has been filed by the petitioner companies affirming that no investigation or any proceeding is pending against the Petitioner Companies; is not governed by any sector specific regulator as per the provisions of Section 230(5) is not required in present case; and the present Scheme of Arrangement for Amalgamation does not involve any Corporate Debt Restructuring as per the provisions of Section 230(2)(c) of the Companies Act, 2013.

16. 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.
17. The shareholders of the petitioner companies are the best judges of their interest, being fully conversant with market trends. Therefore, their decisions are not supposed to be interfered with by the Tribunal for the reason that it is not proper on the part of the judicial function of the Tribunal to examine and evaluate 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 do not ordinarily go into the merits of the corporate decisions of companies as approved by their respective shareholders and creditors.
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 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.

20. This Tribunal further directs with respect to both the Transferor Companies and the Transferee Company, that: -

- i. The appointed date for the proposed scheme of amalgamation is 31.12.2020. Having considered the time already elapsed and the fact that Accounts must have already been drawn for

intervening period, we prescribe 01.04.2023 as the 'Appointed Date'.

- ii. Upon the sanction becoming effective from the appointed date i.e., 01.04.2023 as prescribed by this Tribunal, the Transferor Companies shall stand dissolved without undergoing the process of winding up.
- iii. 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;
- iv. 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;

- v. 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.
- vi. All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.
- vii. 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.

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 allowed on the above terms.

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

**Sd/-**

**DR. SANJEEV RANJAN  
MEMBER (TECHNICAL)**

**Sd/-**

**MANNI SANKARIAH SHANMUGA SUNDARAM  
MEMBER (JUDICIAL)**