

IN THE NATIONAL COMPANY LAW TRIBUNAL
AT JAIPUR

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER
SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER**

**CP (CAA) No. 13/230-232/JPR/2022
Connected with
CA (CAA) No. 07/230-232/JPR/2022**

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

IN THE MATTER OF SCHEME OF AMALGAMATION

OF

**MODERN FOOD ENTERPRISES PRIVATE LIMITED
(Transferor Company No. 1)**

And

**MODERN CAPITAL FOOD PRIVATE LIMITED
(Transferor Company No. 2)**

And

**READY ROTI INDIA PRIVATE LIMITED
(Applicant / Transferee Company)**

And

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

MEMO OF PARTIES

MODERN FOOD ENTERPRISES PRIVATE LIMITED

CIN: U15122HR2014PTC054138

8th Floor, Wing No. 3, AIPL Business Club,

Sector-62, Gurugram-122002, Haryana

...Transferor Company No. 1

With

CP (CAA) No. 13/230-232/JPR/2022

Connected with

CA (CAA) No. 07/230-232/JPR/2022

MODERN CAPITAL FOOD PRIVATE LIMITED**CIN: U15549HR2018PTC092947**

Registered Office at Plot No. 570,
 Food Park, HSIIDC Industrial Estate, Rai,
 Sonipat, Haryana – 131029

... Transferor Company No. 2**With****READY ROTI INDIA PRIVATE LIMITED****CIN: U15412RJ1998PTC014648**

Registered Office at F-28,
 RIICO Industrial Area, Tehsil -Tijara
 Sare Khurd, Alwar, Rajasthan – 301707

... Transferee Company**Counsel for the Applicants:** Shivam Narang, Adv.**Order Pronounced on: 16.03.2023****ORDER****Per: Shri Deep Chandra Joshi, Judicial Member**

1. This is a second motion petition filed by M/s Ready Roti India Private Limited ('Petitioner Company' / 'Transferee Company') under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 ('Act') and in terms of Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ('Rules') for sanction of the Scheme of Amalgamation ('Scheme') among M/s Modern Food Enterprises Private Limited, Modern Capital Food Private Limited ('Transferor Companies') and the Transferee Company. The registered office of the Transferee Company is in the State of Rajasthan; thus, the jurisdiction of Transferee Company lies with the National Company Law Tribunal, Jaipur Bench. The Transferor Companies are situated within the jurisdiction of NCLT Chandigarh.

2. The Petitioner Company filed First Motion Application bearing CA (CAA) No. 07/230-232/JPR/2022 before this Tribunal for seeking direction to dispense with the meetings of the Equity Shareholders, Secured Creditors and convening the meetings of Unsecured Creditors of the Transferor Companies/ Applicant Company to approve the Scheme of Amalgamation and based on the Application moved under Section 230-232 of the Companies Act, 2013 necessary directions were issued on 29.07.2022 in which meetings of equity shareholders, secured were dispensed with and Chairman's Report in Form CAA – 4 along with affidavits of unsecured creditors of the Transferee Company was taken on record *vide* Order dated 06.10.2022. The dates of incorporation, authorized and paid-up share capital of the Petitioner Companies and the rationale of the Scheme have been discussed in detail in the order dated 29.07.2022 passed by this Tribunal in the first motion Application.

3. Thereafter, the Petitioner Company filed 2nd motion petition before this Tribunal on 27.09.2022, within the time prescribed. Consequently, the petition was listed on 20.10.2022, and the following directions were issued:

- (i) *The date of hearing of the Petition filed by the Petitioner Companies for the approval of the Scheme is fixed on 07.12.2022.*
- (ii) *Notice of the hearing shall be advertised in two Newspapers, one English and One vernacular, having wide circulation in Alwar, not less than fifteen days before the aforesaid date fixed for hearing.*

- (iii) *In addition to above public notices, the Petitioner Company shall serve the notice of the Petition on the following Authorities, namely, Central Government through Regional Director, North Western Region, Ministry of Corporate Affairs; Jurisdictional Income Tax Authority under which the Petitioner Company is assessed indicating clearly the PAN No.; Registrar of Companies and Official Liquidator, Jaipur; Securities and Exchange Board of India; Reserve Bank of India; National Stock Exchange of India Ltd.; BSE Ltd.; as well as other Sectoral Regulators, which may govern the working of the Company in the Scheme, at least thirty days before the date fixed for hearing of the above Petition.*
- (iv) *Further, notices shall also be served to Objector(s) or to the representative(s) as contemplated under Sub-section (4) of Section 230 of the Companies Act, 2013 who may have made representations and who have desired to be heard directly or through their representatives, along with a copy of the Petition and the extracts filed therewith, at-least fifteen days before the date fixed for hearing.*
- (v) *The Petitioner Companies shall, at-least seven days before the date of hearing of the Petition, file an affidavit of service in relation to said publication effected as well as service of notice on the authorities mentioned above including the Sectoral Regulator(s) as well as to Objectors, if any,*
- (vi) *Objections, if any, to the Scheme, contemplated by the Authorities to whom notice has been given, may be filed on or before the date of hearing fixed herein, failing which it may be considered by this Tribunal that there is no objection on the part of the Authorities to the approval of the Scheme, by this Tribunal, subject to other*

conditions being satisfied as may be applicable under the Companies Act, 2013 and Regulations/Rules framed thereunder.

(vii) The Petitioner Companies shall comply with proviso to Sub-Section (7) of Section 230 as may be applicable under the circumstances on or before the date fixed for hearing by filing a certificate of the Companies' Auditor.

4. The affidavit of compliance by the authorized signatory of the Petitioner Company was filed *vide* Diary No. 3513/2022 dated 01.12.2022 along with attested photocopies of newspaper cuttings evidencing publication of notice in 'Times of India' (Jaipur Edition) in English and 'Dainik Bhaskar' (Jaipur Edition) in Hindi, both dated 23.11.2022. Copies of proof of service of notice to the statutory authorities, namely (a) Central Government through Regional Director (North Western Region), Ministry of Corporate Affairs, Ahmedabad; (b) Registrar of Companies and Official Liquidator, Jaipur; (c) Jurisdictional Income Tax Authority; and (d) Reserve Bank of India are also part and parcel of the compliance affidavit.
5. The Regional Director had filed its report *vide* Diary No. 116/2023 dated 16.01.2023 along with the report of the Registrar of Companies. The observations are as under:
 - (a) The Petitioner Company be directed to undertake the compliance of Section 232(3)(i) of the Companies Act, 2013 and to pay fees accordingly.

- (b) It is also stated that the Petitioner Company being not listed on BSE Limited and National Stock Exchange of India Limited, therefore, there is no need of obtaining approval from the said Stock Exchanges.
- (c) It is also stated that the report of the office of the Registrar of Companies, Rajasthan, Jaipur has been received *vide* Letter No. ROC/Amal/2022-23/1070 dated 02.12.2022; as per the said report, there are no complaints against the petitioner transferee company and also there is no complaint / representation against the scheme of amalgamation of the Companies. A copy of ROC report is enclosed and marked as **Annexure-A** to the report of the RD.
- (d) The Petitioner Company be directed to pay such amount of legal fees / cost to the Central Government which may be considered appropriate, including compliance of Section 13 of the Companies Act, 2013 for alteration of the name of the transferor company.
- (e) The Petitioner Company be directed to ensure that the compliances of FEMA and RBI guidelines, in the matter, are done from time to time. Further, it should comply and undertake the compliance of the Accounting Standard – 14.
- (f) The Regional Director has no other observations/ submissions and submits that the Scheme of Amalgamation of the Petitioner Companies may be considered on merits.

6. In response to Regional Director's report, the learned authorised representative of the Petitioner Company has filed an affidavit *vide* Diary No. 554/2023 dated 01.03.2023 stating that:

I. the transferee company undertakes to pay differential fee for increase of authorised capital if required to be paid to ROC and comply with provisions of Section 232(3)(i) of the Companies Act, 2013.

II. the proposed name 'Bimbo Bakeries India Private Limited' does not infringe upon any trademarks as trademarks in the brand and name of 'Bimbo' are already registered with the Applicant's parent company. Further, as per search facilities available on the Ministry of Corporate Affairs ('MCA'), the proposed name neither resemble nor been reserved for the name of another company. A copy of the trademark search report showing 'Bimbo' marks registered in favour of Group Bimbo is annexed as Annexure – A of the Additional Affidavit.

III. it also undertakes to comply with applicable accounting standards and generally accepted accounting principles in India as well as transfer all employees of the transferor company to the transferee company.

7. The Income Tax Authority has not filed any responses for the proposed Scheme; if there will be any liability concerning Income Tax Authorities, the Petitioner shall be liable and pay according to the Rules and Regulations of Income Tax Act, 1961 and Income Tax Rules, 1962.

8. It is further stated that the Petitioner Companies have not received any objection/representation from any person against the proposed Scheme of Amalgamation till date. An affidavit of the authorized representatives of the Petitioner Company in this regard have been filed *vide* Diary No. 554/2023 dated 01.03.2023.
9. The Petitioner Companies have already submitted at the first motion stage that no investigation proceedings are pending against the applicant companies.
10. The Petitioner Company *vide* Diary No. 554/2023 dated 01.03.2023 has placed on record the copy of order dated 05.01.2023 whereby NCLT, Chandigarh Bench have passed the order with respect to paper publication and service of notices to statutory authorities; same is taken on records.
11. In compliance of the proviso to sub-section (7) of Section 230 of the Companies Act, 2013, the Petitioner Company has placed on record certificate of the Chartered Accountant dated 10.05.2022 filed with the CA (CAA) No. 07/230-232/JPR/2022 as Annexure-A-30, confirming that the accounting treatment envisaged under the Scheme of Arrangement is in compliance with the applicable Accounting Standards notified by the Central Government under Section 133 of the Companies Act, 2013.
12. The Audited Financial Statements of the Transferor No. 1, Transferor No. 2 and Transferee Companies as on 31.03.2021 is annexed as Annexure – P6, Annexure – P9 and Annexure – P12 of the Company Petition, respectively *vide* Diary No. 2855/2022 dated 27.09.2022. Further, Provisional Balance

Sheet as of 31.03.2021 of the Transferor No. 1, Transferor No. 2 and Transferee Companies is annexed as Annexure – P7, Annexure – P10 and Annexure P – 13 of the Company Petition, respectively.

13.As per the Scheme, the Appointed Date shall mean 01.04.2022 or such other date as may be proposed and approved by this Tribunal. The effective date, as stated in the Scheme is as below:

“Effective Date” means the last of the date on which the certified copies of the orders of the Tribunal in Chandigarh and Jaipur sanctioning the Scheme are filed with the relevant Registrar of Companies by the Transferee Company and Transferor Companies. Any references in this Scheme to the date of ‘coming into effect of this Scheme’ or ‘becoming effective’ or ‘upon effectiveness of the Scheme’ will mean the Effective Date.

14.The Share Exchange Ratio under the Scheme has been determined in accordance with the report of GT Valuation Advisors Private Limited, Registered Valuer bearing No. IBBI/RV-E/05/2020/134 dated 11.05.2022 (at Annexure – P14 (Colly) of the petition). As per the Scheme, 10% equity stake held in the Transferor No. 1 by Grupo Bimbo, S.A.B de C.V. (‘GB’) will get transferred to the Transferee Company for a cash consideration prior to cancellation of the existing share capital of the transferor companies.

15.Consequently, the present Scheme does not involve any Share Exchange or Swap Ratio. The securities held by the Transferee Company in the Transferor No. 1 will be deemed to have been automatically cancelled and be of effect. Resultantly, the Transferor No. 2 will become a wholly owned subsidiary of the Transferee Company with no issuance of shares.

16. We have heard the Learned Counsel for the Petitioner Company and perused the documents placed on record and upon considering the approval accorded by the members and creditors of the Petitioner Company to the proposed Scheme, and the affidavits/ no objection filed by the respective regulatory authorities, there appears no impediment in sanctioning the present Scheme. The Petitioner Company shall however remain bound to comply with the statutory requirements in accordance with law including, but not limited to, Section 232 (3)(i) as pointed by the Regional Director.

17. The Scheme is hereby approved and we declare the same to be binding on all the shareholders and creditors of the Petitioner Company and on all concerned. While approving the Scheme, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

18. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal to the scheme 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.

19. THIS TRIBUNAL DOES FURTHER ORDER:

I. Upon the Scheme becoming effective, on and from the Appointed Date in the Scheme, i.e. 01.04.2022, the respective undertaking(s) of the Transferor Company No. 1 shall, together with all the property, rights and powers of the Transferor Company No. 1 be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Act, shall stand transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Company No. 1 therein but subject nevertheless to all charges now affecting the same.

II. The Transferor Company No. 1 shall be dissolved without winding up and the Board of Directors and any committees thereof of the Transferor Company No. 1 shall without any further act, instrument or deed stand dissolved. It is clarified that the Transferor No. 2 will become a wholly owned subsidiary of the Transferee Company as a going concern, as provided in the scheme of arrangement and shall not be dissolved.

III. All licenses, permissions, permits, quotas, approvals, certificates, clearances, authorities, leases, tenancy, assignments, rights, claims, liberties, special status, other benefits or privileges and any power of attorney relating to the Transferor Company No. 1 shall stand transferred to and vested in the Transferee Company, without any further act or deed and shall be in full force and effect in favour of the Transferee Company,

as if the same were originally given to, issued to or executed in favour of the Transferee Company. The Transferee Company shall be bound by the terms thereof, the obligations and duties thereunder, and the rights and benefits under the same shall be available to the Transferee Company.

IV. All the liabilities and duties of the Transferor Company No. 1 shall be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.

V. All contracts, agreements, undertakings, insurance policies, bonds and all other instruments of whatsoever nature or description, of the Transferor Company No. 1 which are subsisting or having effect immediately before the Effective Date as per the Scheme, 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 No. 1, the Transferee Company had been a party or beneficiary or obliged thereto / thereunder.

VI. All taxes paid or payable by the Transferor Company No. 1 and all existing and future incentives, un-availed credits and exemptions, benefit of carried forward losses and other statutory benefits, to which the

Transferor Company No. 1 are entitled to shall be available to and vest in the Transferee Company.

VII. All proceedings now pending by or against the Transferor Company No. 1 shall be continued by or against the Transferee Company.

VIII. All employees in the service of the Transferor Company No. 1 shall be deemed to have become the employees and the staff of the Transferee Company on date immediately preceding the date on which the scheme finally take effect and shall stand transferred to the Transferee Company without any interruption of service and on term and conditions no less favourable than those on which they were / are engaged by the Transferor Companies, as on the Effective Date.

IX. The Transferee Company shall, without further application, allot to the existing members of the Transferor Company No. 1 the quantum of shares of the Transferee Company to which they are entitled under the said Scheme of Amalgamation.

X. The fee, if any, paid by the Transferor Company No. 1 on its / 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.

XI. The Transferee Company shall within thirty days of the date of receipt of this order cause a certified copy of this order to be delivered to

the Registrar of Companies, NCT of Delhi & Haryana and Rajasthan for

registration and on such certified copy being so delivered, the concerned Transferor Company No. 1 shall be dissolved without undergoing the process of the winding up, provided that such scheme of arrangement will not have any effect on the status of the Transferor No. 2 as a going concern and shall be recognised as a wholly owned subsidiary of the Transferee Company. The Scheme will become effective on filing of the certified copy of this order along the Order of NCLT, Chandigarh with both the involved Registrars of Companies. The concerned Registrar of Companies shall transfer all documents relating to the relevant Transferor Company registered with him to the file / jurisdiction relating to the said Transferee Company.

XII. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

XIII. The Transferee Company shall deposit an amount of Rs. 25,000/- in favour of “The Prime Minister’s National Relief Fund” and Rs. 35,000/- to be paid in the Online Miscellaneous fee account of Ministry of Corporate Affairs, within a period of four weeks from the date of receipt of certified copy of this Order.

20. As per the above directions, Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the petitioner company on filing of the Schedule of Property i.e., (i) freehold property of the concerned Company; and (ii) leasehold property of the

concerned Company by way of affidavit of the Petitioner Company, respectively.

21. Copy of this order be communicated to the Counsel for the Petitioner Company.

**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**