

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT II**

C.A.(CAA)/ 219 / MB /2023

In the matter of the Companies Act, 2013 (18 of 2013)

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and Rules framed there under as in force from time to time;

AND

In the matter of Scheme of Merger by Absorption of Walko QSR Company Private Limited ('First Applicant Company' or 'Transferor Company') with Walko Food Company Private Limited ('Second Applicant Company' or 'Transferee Company') and their respective shareholders.

Walko QSR Company Private Limited (CIN:)
U55204MH2013PTC245264), a company)
incorporated under the Companies Act, 1956)
having its registered office at 701B,)
Churchgate Chambers, 5 New Marine Lines,)
Mumbai, Maharashtra, - 400020.) ... First Applicant Company /
Transferor Company

Walko Food Company Private Limited (CIN:)
U15549MH2012PTC232875), a company)
incorporated under the Companies Act, 1956)
having its registered office at 701B,)
Churchgate Chambers, 5 New Marine Lines,)
Mumbai, Maharashtra, - 400020.)...Second Applicant
Company / Transferee
Company

(First Applicant Company and Second Applicant Company are together referred to as "Applicant Companies")

Order pronounced on 15.04.2024

Coram:

Anil Raj Chellan

Kuldip Kumar Kareer

Member (Technical)

Member (Judicial)

Appearance (through physical meeting)

For the Applicant Companies : Adv. Devanshi Sethi

ORDER

Per: Coram

1. The Learned Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Merger of Walko QSR Company Private Limited ('First Applicant Company' or 'Transferor Company') with Walko Food Company Private Limited ('Second Applicant Company' or 'Transferee Company') and their respective

shareholders under section 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 and Rules framed there under as in force from time to time (the “Scheme”). The Learned Counsel for the Applicant Companies further submits that the First Applicant Company/ Transferor Company is a wholly owned subsidiary of the Second Applicant Company/ Transferee Company wherein the entire paid-up share capital is held by the Second Applicant Company/ Transferee Company along with its nominees. Accordingly, no consideration is envisaged for the merger which is between wholly owned subsidiary and its parent company.

2. The Learned Counsel for the Applicant Companies submits that the First Applicant Company. is engaged in the business of manufacturing and processing confectionaries which is run through a franchisee based model and institutional sales. The Second Applicant Company is engaged in the business of manufacturing and processing of agro foods and other agro based products.
3. The Learned Counsel for the Applicant Companies submits that the Board of Directors of the Applicant Companies in their respective meetings held on July 12, 2023 have approved the Scheme. The Board Resolution approving the Scheme for the Applicant Companies was annexed as an “Annexure D and Annexure E” having pages nos 253 to 261 to the Joint Company Scheme Application.
4. The Learned Counsel for the Applicant Companies submits that Appointed Date for merger of First Applicant Company/ Transferor Company into the Second Applicant Company /Transferee Company is ***April 01, 2023***.
5. The Learned Counsel for the Applicant Companies submits that the Authorized, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on date of filing of application is as under:

First Applicant Company/ Transferor Company

Particulars	Amount (in Rs)
<u>Authorised Share Capital</u>	
2,00,000 Equity Shares of Rs. 10/- each	20,00,000
2,00,000 2% Redeemable Preference Shares of Rs. 10/- each	20,00,000
TOTAL	40,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
1,00,000 Equity Shares of Rs. 10/- each	10,00,000
1,62,500 2% Redeemable Preference Shares of Rs. 10/- each	16,25,000
TOTAL	26,25,000

Second Applicant Company/ Transferee Company

Particulars	Amount (in Rs)
<u>Authorised Share Capital</u>	
17,50,000 Equity shares of Rs. 10/- each	1,75,00,000
8,50,000 Preference Shares of Rs. 10/- each	85,00,000
TOTAL	2,60,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
251,084 Class A equity shares of INR 10 each	25,10,840
417,599 Class B equity shares of INR 10 each	41,75,990

Particulars	Amount (in Rs)
346,215 compulsorily convertible preference shares of INR 10 each	34,62,150
26,425 compulsorily convertible preference shares Class A1 of INR 10 each	264,250
61,652 compulsorily convertible preference shares Class A2 of INR 10 each	616,520
24,680 compulsorily convertible preference shares Class A3 of INR 10 each	246,800
57,588 compulsorily convertible preference shares Class A2 of INR 10 each	575,880
TOTAL	11,852,430

6. The Learned Counsel for Applicant Companies submits that the First Applicant Company/ Transferor Company is a wholly owned subsidiary of the Second Applicant Company/ Transferee Company and accordingly no consideration is payable pursuant to the Scheme of Merger by Absorption as entire equity and preference share capital is held by the Transferee Company alongwith its nominees.

7. The Learned Counsel for the Applicant Companies further submits that the rationale for the Scheme is as follows:

“The Transferee Company and the Transferor Company are engaged in similar business under the same sector being the manufacturing and processing of food. Further, the Transferor Company is a wholly owned subsidiary of Transferee

Company wherein the entire paid-up share capital is held by the Transferee Company along with its nominees. Accordingly, the management of the Transferor Company and the Transferee Company have decided to consolidate the business in a single entity i.e. the Transferee Company with effect from the Appointed Date by way of amalgamation under this Scheme of Merger by Absorption. Further, the amalgamation of the Transferor Company (as defined hereinafter) with the Transferee Company would inter alia also have the following benefits:

- *Consolidation of similar businesses under single entity and achieve simplified corporate structure, eliminate duplicate corporate procedures and facilitate in exploiting the significant potential for growth;*
- *Result in optimizing and leveraging existing resources of these companies for the most beneficial utilization of these factors in the combined entity. Further, it would be advantageous to combine the activities and operations of all these companies in a single entity and build strong capabilities to effectively meet future challenges in the competitive business environment;*
- *Result in elimination of duplicate work, reduction in overheads, better and more productive utilization of financial, human and other resource and enhancement of overall business efficiency and also to enable Companies to combine their managerial and operation strength, to build wider capital and financial base and to promote and secure overall growth;*

- *Result in significant reduction in multiplicity of legal and regulatory compliances which at present is required to be made separately by the Transferor Company and the Transferee Company; and*
- *Greater efficiency in cash management of the Transferee Company and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities. The proposed amalgamation would enhance the shareholders' value of the Transferor Company and the Transferee Company”.*

8. The Learned Counsel for the Applicant Companies submits that as regards the First Applicant Company/ Transferor Company, there are:

- i. 2 (Two) Equity Shareholders a list of which is annexed as “**Annexure G**” having pages nos 266 to 268 to the Joint Company Scheme Application; and
- ii. 1 (One) Preference Shareholder a list of which is annexed as an “**Annexure I**” having pages nos 279 to 281 to the Joint Company Scheme Application

The entire Equity Share Capital of the First Applicant Company/ Transferor Company is held directly and along with the nominee shareholder, by the Second Applicant Company/ Transferee Company. Also, the entire Preference Share Capital of the First Applicant Company/ Transferor Company is held by the Second Applicant Company/ Transferee Company, and accordingly, the First Applicant Company/ Transferor Company is a wholly owned subsidiary of the Second Applicant Company/ Transferee Company. The Equity Shareholders

(along with the nominee shareholders) and Preference Shareholders have provided their consent affidavit(s) to dispense from convening and conducting the Meeting of the Equity Shareholders and the Preference Shareholders of the First Applicant Company/ Transferor Company follows:

- **First Applicant Company – Consent Affidavits of Equity shareholders are Annexure “H1 to H2” on pages 269 to 278** to the Joint Company Scheme Application; and
- **First Applicant Company – Consent Affidavits of the sole Preference shareholder are Annexure “J” on pages 282 to 286** to the Joint Company Scheme Application;

Accordingly, the Meeting of the Equity Shareholders and Preference Shareholders of the of the First Applicant Company. is hereby dispensed with.

9. The Learned Counsel for the Applicant Companies has submitted that as on March 31, 2023, there is One (1) Secured Creditor in the First Applicant Company having an outstanding value of Rs. 160,253,850/- (Indian Rupees Sixteen Crores Two Lacs Fifty-Three Thousand Eight Hundred and Fifty Only) a list of which is annexed as **“Annexure K” having pages nos 287 to 289** to the Joint Company Scheme Application. The Secured Creditor of the First Applicant Company has given consent affidavit which is annexed as **“Annexure L” having pages nos 290 to 293** to the Joint Company Scheme Application. Accordingly, the Meeting of the Secured Creditor of the of the First Applicant Company. is hereby dispensed with.

10. The Learned Counsel of the Applicant Companies submits that as on March 31, 2023 there are 862 (Eight hundred and sixty-two) Unsecured Creditors in the First Applicant Company having outstanding value of Rs. 493,514,824/- (Indian Rupees Forty-Nine Crores Thirty-Five Lacs Fourteen Thousand Eight Hundred and Twenty-Four Only) a list of which is annexed as “**Annexure M**” having pages nos **294 to 362** to the Joint Company Scheme Application. The Counsel for the Applicant Companies further submitted that the Scheme is for amalgamation between the Applicant Companies and shareholders of the Applicant Companies as contemplated under Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Act as there is no compromise and/or arrangement with unsecured creditors, and that the unsecured creditors of the First Applicant Company and Second Applicant Company are being paid in the normal course of business and as per the agreed terms and are not called upon to make any sacrifices, hence their interests are not getting affected in any way and are also secured. The present Scheme is in no manner prejudicial to the interests of the unsecured creditors of First Applicant Company. In view the fact that there is no arrangement with the unsecured creditors, the meeting of the unsecured creditors of First Applicant Company to seek their approval to the Scheme is dispensed with. The First Applicant Company is hereby directed to issue individual notices to all its unsecured creditors by courier or registered post or speed post or hand delivery or through e-mail (to those unsecured creditors whose email addresses are duly registered with the First Applicant Company), at their last known address as per the records of the First Applicant Company as applicable, with a direction that they may submit their

representations, if any, to the Tribunal within thirty days from the date of receipt of the said notice and copy of such representations shall simultaneously be served upon First Applicant Company , as applicable.

11. The Learned counsel submits that as regards the Second Applicant Company/ Transferee Company there are:

- i. 71 (Seventy-one) Equity Shareholders a list of which is annexed as “**Annexure N**” having pages nos 363 to 375 to the Joint Company Scheme Application; and
- ii. 23 (Twenty-three) Preference Shareholders a list of which is annexed as “**Annexure O**” having pages nos 376 to 382 to the Joint Company Scheme Application.

12. The Learned Counsel for the Applicant Companies has submitted that as on March 31, 2023, there is One (1) Secured Creditor in the Second Applicant Company/ Transferee Company having an outstanding value of Rs. 79,55,445/- (Indian Rupees Seventy-Nine Lakhs Fifty-Five Thousand Four Hundred and Forty-Five Only) a list of which is annexed as “**Annexure Q**” having pages nos 384 to 386 to the Joint Company Scheme Application. The Secured Creditor of the Second Applicant Company has provided their consent affidavit(s) to dispense from convening and conducting the Meeting of the Secured Creditors of the Second Applicant Company. which is annexed as “**Annexure R**” having pages nos 387 to 396 to the Joint Company Scheme Application. Accordingly, the Meeting of the Secured Creditors of the of the Second Applicant Company is hereby dispensed with.

13. The Learned Counsel of the Applicant Companies submits that as on March 31, 2023 there are 6 (six) Unsecured Creditors in the Second Applicant Company/ Transferee Company having outstanding value of Rs. 21,78,992/- (Indian Rupees Twenty-One Lacs Seventy-Eight Thousand Nine Hundred and Ninety-Two Only) a list of which is annexed as “**Annexure S**” **having pages nos 397 to 399** to the Joint Company Scheme Application.

14. The Learned Counsel for the Second Applicant Company/ Transferee Company respectfully further submits that the meeting of Equity shareholders and Preference shareholders and unsecured creditors of the Second Applicant Company/ Transferee Company be dispensed with basis the following reasons:

- i. The entire share capital of the First Applicant Company/ Transferor Company is directly or indirectly held by the Second Applicant Company / Transferee Company alongwith its nominees. Thus, the entire economic interest of the First Applicant Company/ Transferor Company is held by the Second Applicant Company Transferee Company;
- ii. In case of First Applicant Company/ Transferor Company; being a merger of direct and indirect wholly owned subsidiary company into its holding company, no shares would be issued or allotted pursuant to the Scheme;
- iii. The rights of the creditors of the Second Applicant Company/ Transferee Company are not affected since there will be no reduction in their claims and the assets of the Second Applicant Company/ Transferee Company, post-merger, will be more than sufficient to discharge their claims;

- iv. The net worth of the Second Applicant Company/ Transferee Company is and will continue to remain highly positive. Further, the net worth of the Second Applicant Company/ Transferee Company is highly positive in comparison to the net worth of the First Applicant Company/ Transferor Company;
- v. No undertaking of the Second Applicant Company/ Transferee Company is being parted away or being disposed-off and hence provisions of Section 180 of the Companies Act, 2013 are also not applicable;
- vi. Further, under the Scheme there is no compromise or arrangement with the shareholders or the creditors of the Second Applicant Company/ Transferee Company. Therefore, the proposed Scheme is not prejudicial to the interest of the shareholders or the creditors of the Second Applicant Company/ Transferee Company.

15. The Learned Counsel for the Second Applicant Company/ Transferee Company respectfully submits that in view of the above, no reconstruction or arrangement is proposed by the Second Applicant Company/ Transferee Company either with its shareholders or with its creditors, and thus, it does not require to hold either shareholders meeting or secured creditors meeting or unsecured creditors meeting for approval of the proposed Scheme. It is respectfully submitted that the Hon'ble High Court of Judicature at Bombay in the case of Mahaamba Investments Limited V/s. IDI Limited (2001) 105 Company Cases page 16 to 18 inter alia observed and held that if the Scheme of Amalgamation provides for no issue of equity shares to the members of the transferor company, being a wholly owned subsidiary of the

transferee company and the creditors of the transferee company, are not likely to be affected by the scheme, a separate Petition by the transferee company was not necessary. The Hon'ble National Company Law Appellate Tribunal in the case of DLF Phase-IV Commercial Developers Limited & Ors, In Company Appeal (AT) No. 180 of 2019, Ambuja Cements Limited, In Company Appeal (AT) No. 19 of 2022, and Patel Engineering Limited, In Company Appeal (AT) No. 137 of 2022, Eurokids India Private Limited in CSA No. 911 of 2014 passed by SJ Kathawalla, J of Bombay High Court in the similar facts have taken similar view. The facts in the present case are similar to the facts of the above cases, therefore, it is prayed that the meeting of Equity Shareholders and Preference Shareholders of the Second Applicant Company/ Transferee Company be dispensed with.

16. Based on the above, this Bench is of the view that the meeting of the Equity Shareholders and Preference Shareholders and unsecured creditors of the Second Applicant Company/ Transferee Company are hereby dispensed with since the First Applicant Company/ Transferor Company is wholly-owned subsidiary of the Second Applicant Company/ Transferee Company.

17. However, this Bench hereby directs the Second Applicant Company to issue notices to all its equity shareholders, preference shareholders and unsecured creditors through Registered Post/ Speed Post-AD/ Courier/ hand delivery or by email of the proposed Scheme with a direction that they may submit their representations, if any, within a period of 30 days from the date of receipt of such intimation to the Tribunal with a copy of such representation to be served upon the Applicant Company/

Transferee Company, failing which, it shall be presumed that they have no representations to make on the proposed Scheme.

18. The First Applicant Company and Second Applicant Company are directed to serve notice along with copy of Scheme under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 upon the-

- i. Central Government through the office of Regional Director, Western Region, Mumbai;
- ii. Jurisdictional Registrar of Companies;
- iii. Jurisdictional Income Tax Authority within whose jurisdiction the respective Applicant Company's assessment are made;
- iv. the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3 Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in]; and
- v. Jurisdictional GST Authority(s) (proper officer), within whose jurisdiction such companies are assessed to tax under GST law.

19. The First Applicant Company being the Transferor Company is also directed to serve notice upon Official Liquidator, High Court, Bombay, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

20. The aforementioned Notices shall be served through by Registered Post-AD/ Speed Post/ or Hand Delivery along with copy of Scheme and state that “If no response is received by the Tribunal from the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme”. It is clarified that service of notice through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the notice.
21. The Applicant Companies shall post the notices along with a copy of the Scheme on their respective websites, if any.
22. The Applicant Companies to file Affidavit of Service to report to this Tribunal that the direction regarding the issue of notices have been duly complied with as per the applicable Rules of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

Sd/-
Anil Raj Chellan
Member (Technical)

Sd/-
Kuldip Kumar Kareer
Member (Judicial)