

SL. No.6

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 14.09.2023, At 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CA (CAA) No.52/230/2023
NAME OF THE COMPANY	Roxy Roller Flour Mills Pvt Ltd (Demerged Co.) and Vivan Roller Flour Mills Pvt Ltd (Resulting Company -1) and Roxyroller Flour Mills (Bengaluru) Pvt Ltd (Resulting Company-2)
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	230

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this petition is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

CA (CAA) No. 52/230/HDB/2023
U/s 230 and 232 of the Companies Act, 2013

IN THE MATTER OF SCHEME OF DEMERGER

BETWEEN

ROXY ROLLER FLOUR MILLS PVT LTD.
(Transferor/Demerged Company)

AND

VIVAN ROLLER FLOUR MILL PRIVATE LIMITED
(Transferee/Resulting Company-1)

AND

ROXYROLLER FLOUR MILLS (BENGALURU) PRIVATE LIMITED
(Transferee/Resulting Company-2)

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

M/s.Roxy Roller Flour Mills Pvt. Ltd.

CIN: U15311TG1980PTC002734

Sy.No.486 & 495, Basuregadi Village

Gowdavelly Medchal Mandal & District, Near Gandhi Maisamma

Hyderabad – 501 401

....Applicant Company-1 / Demerged Company

M/s. Vivan Roller Flour Mill Private Limited

CIN: U15400TG2023PTC169961

58-59, IDA Phase-III, Jeedimetla

Tirumalagiri

Hyderabad – 500 005

....Transferee/ Resulting Company-1

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M/s. Roxyroller Flour Mills (Bengaluru) Private Limited

CIN: U10611TS2023PTC172576

Sy.No.486 & 495, Basuregadi Village
Gowdavelly Medchal Mandal & District
Near Gandhi Maisamma Rangareddy
K.V.Rangareddy
Hyderabad – 501 401

...Transferee/ Resulting Company-2

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Coram:

Hon'ble Shri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Shri Sanjay Puri, Member (Technical)

Counsel/Parties present:

For the Applicants : Mr.L. Dhanamjay Reddy, PCS

Heard on: 23.08.2023

[PER: BENCH]

ORDER

- I. This is a Joint Application filed on behalf of the Applicants, M/s. Roxy Roller Flour Mills Private Limited (Applicant Company-1/Transferor /Demerged Company), M/s. Vivan Roller Flour Mills Private Limited (Applicant Company-2/Transferee/Resulting Company-1) and M/s. Roxy Roller Flour Mills (Bengaluru) Private Limited (Applicant Company-3/Transferee/Resulting Company-2) under Sections 230-232 of the Companies Act, 2013, seeking to

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dispense with the requirement of holding the Meetings of the Shareholders of the 1st Applicant Company/Demerged/Transferor Company, Shareholders of the 2nd Applicant Company/Resulting Company-1/Transferee Company-1, Shareholders of the 3rd Applicant Company/Resulting Company-2/Transferee Company-2, meeting of the secured and unsecured Creditors of the 1st Applicant/Demerged/Transferor Company; and meetings of the secured and unsecured creditors of the Transferee Company-1/Resulting Company-1 and Transferee Company-2/Resulting Company-2 as there are no secured and unsecured creditors of the Transferee Companies 1 & 2 for consideration of the proposed Scheme of Demerger and Arrangement, for short “**the Scheme**”, between the Applicant Companies, their respective shareholders and creditors as envisaged under the Scheme.

II. The gist of the Application is –

1. **M/s.Roxy Roller Flour Mills Pvt. Ltd. (Demerged/Transferor Company)** was incorporated under the Companies Act, 1956 on 16.07.1980 with CIN: U15311TG1980PTC002734, having its Registered Office at Sy. No.486 & 495, Basuregadi Village, Gowdavelly Medchal Mandal & District, Near Gandhi Maisamma, Hyderabad – 501 401.

2. The main objects of the Demerged Company are as follows:
- a. To manufacture, grind, crush, husk, dehusk, malt, cultivate, mill, grow, can, process, refine, treat, store, purchase, sell, import, export and otherwise deal in, wheat, barley, oat, grams, maize, corn, oil seeds, cotton, paddy, flour maida, atta, of all kinds, semolina (sooji), rawa, bran, rice, flakes, basan, basan-rawa, and all other cereals and processed and bye products thereof.
 - b. To carry on the business of manufacturing, designing, fabricating, assembling, repairing, hiring, installing, maintaining and dealing in all kinds of plant, machineries and equipments for Roller Flour Mills and also to give technical know-how, secret information benefit of scientific knowledge, assistance in connection with manufacturing, building and setting up of plant, machinery and equipment required by Roller Flour Mills.
 - c. To establish, install, erect, construct maintain, take on lease and run flour mills, oil presses. Graneries and store houses.

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- d. To carry on the business as manufacturers of and dealers in cattle feed, poultry feed, fish meal and all other types of animal and bird feeds.

A copy of the Certificate of Incorporation and Memorandum of Association of the Demerged Company are filed as Exhibit-I at page nos.1-32 of the Application

3. The Authorised Share Capital of the Demerged/Transferor Company is Rs.95,00,000/- divided into 95,000 Equity Shares of Rs.100/- each. The issued, subscribed and paid-up capital is Rs.73,80,000/- divided into 73,800 equity shares of Rs.100/- each.
4. The Financial Period of the Transferor Company is beginning from 01.04.2022 to 31.03.2023 for the purpose of the Scheme of Demerger. The Audited Annual Accounts of the Transferor/Demerged Company for the Financial Year 2022-23 were adopted by the shareholders at the AGM held on 30.09.2022.

Copies of the Audited Financial Statements for the Financial Year 2022-23 and Provisional Balance Sheet as at 31.05.2023 are filed as Exhibit-II of the application.

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5. **M/s.Vivan Roller Flour Mill Private Limited**, for short '**Transferee/Resulting Company-1**' was incorporated on 03.01.2023 with CIN U15400TG2023PTC169961 having its Registered Office at 58-59, IDA, Phase-III, Jeedimetla Tirumalagiri, Hyderabad – 500 055.
6. The main objects of the Resulting Company-1 are as follows:
- a) To manufacture, grind, crush, husk, dehusk, malt, cultivate, mill, grow, can, process, refine treat, store, purchase, sell, import, export and otherwise deal in, wheat, barley, oats, grams, maize, corn, oil seeds, cotton, paddy, flour maida, atta of all kinds of semolina (sooji) rawa bran, rice, flakes, basan, basan rawa and all other cereals and processed and bye products thereof.
 - b) To carry on the business of manufacturing, designing, fabricating, assembling, repairing, hiring, installing, maintaining and dealing in all kinds of plant, machineries and equipment for roller flour mills and also to give technical know how secret information benefit of scientific knowledge, assistance in connection with manufacturing, building and setting up of plant, machinery and equipment required by Roller Flour Mills.

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- c) To establish, install, erect construct maintain take on lease and run flour mills, oils presses, graneries and store houses.
- d) To carry on the business as manufacturers of and dealers in cattle feed, poultry feed, fish meal and all other types of animal and birds feed.

A copy of the Certificate of Incorporation and Memorandum of Association of the Resulting Company-1 are filed as Annexure – IV of the application at page nos.87 to 101 of the application.

7. The Authorised Share Capital of the Transferee Company-1 is Rs.10,00,000/- divided into 1,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid-up capital is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.
8. The Financial Period of the Transferee Company-1 is beginning from 03.01.2023 and ending on 31.05.2023 for the purpose of the Scheme of Demerger.

A copy of the Provisional Balance Sheet of the Transferee Company-1 as at 31.05.2023 are filed as Exhibit-V at page nos.102 to 104 of the application.

9. M/s.Roxyroller Flour Mills (Bengaluru) Private Limited, for short 'Transferee/Resulting Company-2' was incorporated on 01.05.2023 with CIN: U10611TS2023PTC172576 having its Registered Office

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at Sy.No.486 & 495, Basuregadi Village, Gowdavelly Medchal Mandal & District, Near Gandhi Maisamma Rangareddy K.V.Rangareddy, Hyderabad – 501 401.

10. The main objects of the Resulting Company-2 are as follows:

- a) Flour Milling
- b) To manufacture, grind, crush, mill, process, refine, store, purchase, sell, import, export, flour maida, atta, semolina (sooji) of all kinds, rawa, basan rawa, bran, wheat bran & otherwise deal in wheat, barley, oat, grams, maize, corn, oil seeds, cotton, paddy, rice, flakes, basan and all other cereals and processed and bye products thereof including cattle feed, poultry feed, fish meal and all other types of animal and birds feeds.

A copy of the Certificate of Incorporation and Memorandum of Association of the Resulting Company-2 are filed as Annexure – VII at page nos.108 to 129 of the application.

11. The Authorised Share Capital of the Transferee Company-2 is Rs.10,00,000/- divided into 1,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid-up capital is Rs.10,00,000/- divided into 1,00,000 equity shares of Rs.10/- each.

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12. The Financial Period of the Transferee Company-2 is beginning from 01.05.2023 and ending on 31.05.2023 for the purpose of the Scheme of Demerger.

A copy of the Provisional Balance Sheet of the Transferee Company-2 as at 31.05.2023 are filed as Exhibit-VIII at page nos.130 to 132 of the application.

III. The Board of Directors of the Applicant Companies at their respective Board Meetings held on 30.06.2023, have confirmed and approved the proposed Scheme of Demerger between Roxy Roller Flour Mills Pvt. Ltd. (Transfer/Demerged Company or Applicant Company) and Vivan Roller Flour Mills Private Limited (Transferee/Resulting Company-1 or Applicant Company-2) and Roxyroller Flour Mills (Bengaluru) Private Limited (Transferee/Resulting Company-2/Applicant Company-3) and their respective shareholders and creditors with appointed date as 01.06.2023.

Certified copies of the Board Resolutions passed by the Board of Directors of the Applicant Companies are filed as Annexures-X(a), X(b) & X(c) at page nos.140 to 145 of the application respectively.

IV. According to the Applicant Companies, the objects of the proposed Scheme of Demerger are –

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- i. The Applicant Companies were formed to carry out their operations from Hyderabad. Considering the recent initiatives for decentralization of operations, the management of all the companies have decided to demarcate the manufacturing activities into three separate units (undertakings) into two separate activities and Roxy Roller Flour Mills Pvt. Ltd. (Demerged Company) after the proposed demerger will exclusively focus on Hyderabad in Unit-III. Vivan Roller Flour Mill Private Limited and Roxyroller Flour Mills (Bengaluru) Private Limited (Resulting Companies) will exclusively focus on the operations of Unit-I of Hyderabad and Unit II of Bengaluru Division. Hence, it is proposed to demerge the Unit I and Unit II Division of Roxy Roller Flour Mills Pvt. Ltd. into Vivan Roller Flour Mill Private Limited and Roxyroller Flour Mills (Bengaluru) Private Limited for business synergy and to achieve higher growth in flour business.

- ii. The Scheme of Demerger contemplates transfer of the Unit-I of Roxy Roller Flour Mills Pvt. Ltd. into Vivan Roller Flour Mill Private Limited and Unit-II of Roxy Roller Flour Mills Pvt. Ltd. into Roxyroller Flour Mills (Bengaluru) Private Limited for business synergy and to achieve higher growth.

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- iii. The proposed Scheme of Arrangement would ensure the individual growth of Unit-I and Unit-II business units and further enhances the competitiveness to meet the competition in the market.
- iv. It will focus and aim to achieve accelerated growth of this resulting companies in different segments of business in which they are involved and to effectively faced the current competition scenario in global market and its standards and competition.
- v. It will be beneficial and advantageous in the long term interest of the demerged company and resulting company and their shareholders and creditors.
- vi. The demerger also ensures greater efficacy and mitigation from risks, elimination competition reduction of overheads, simplicity in administration of the company to get better opportunities and concentrate on core competency with more specialization and high standards of business practices. The proposed demerger further facilitates planning to strategies and implementation thereof without any delay further it is easy to formulate investment plans and time saving in finalization of contract, deals etc. and further promotes independent collaborations and scope for an expansion. This scheme of demerger formulated towards settlement of business

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units among family members and to fix the management accountability for each benefit further these will be tax benefit to shareholders from capital gain tax and other exemptions.

- vii. The Scheme will enable Demerged Company and Resulting Company to rationalize and streamline their finance and management and will equip them to face the increasing competition in the global market.

A copy of the Scheme of Demerger is filed as Annexure-XI at page nos.146 to 231 of the application.

V. Shareholders, Secured and Unsecured Creditors of the Applicant Companies -

- i. The Applicant Company-1/Demerged Company has eleven (11) Equity shareholders holding 73,800 equity shares of Rs.100/- each. A copy of Certificate issued by M/s. Dinesh Baladawa & Associates, Chartered Accountants certifying the list of shareholders and the number of shares held them in the Transferor Company as on 31.05.2023 is filed at page no.75 of the application. All the shareholders have given their consent affidavits for the proposed Scheme of Arrangement. Copies of the consent Affidavits are filed at **page nos.76 to 86 of the application.**

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- ii. A Certificate issued by M/s. Dinesh Baladawa & Associates, Chartered Accountants, certifying the list of three (3) Secured Creditors aggregating to Rs.91,88,75,126/- and Ten (10) Unsecured Creditors aggregating to Rs.15,40,03,836/- as on 31.05.2023 is filed at page no.251 of the application. 'No Objection letters' filed by the Secured Creditors and consent Affidavits filed by the Unsecured Creditors are filed **at page nos.252 to 256 and 257 to 263 of the application respectively.**
- iii. The Applicant Company-2/ Resulting Company-1 has two (2) Equity shareholders holding 10,000 equity shares. A Certificate issued by M/s. Dinesh Baladawa & Associates, Chartered Accountants, certifying the list of shareholders and number of shares held by them in the Transferee Company-1 as on 31.05.2023 is filed at page no.105 of the application. Both the shareholders have given their consent affidavits for the proposed Scheme of Arrangement. Copies of the consent Affidavits are filed at **page nos.106 & 107 of the application.**
- iv. The Applicant Company-3/ Resulting Company-2 has Six (6) Equity shareholders holding 1,00,000 equity shares. A Certificate issued by M/s. Dinesh Baladawa & Associates, Chartered Accountants, certifying the list of Equity Shareholders as on 31.05.2023 and the number

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of shares held by them. A copy of the Certificate is filed at page no.133 of the application. All the shareholders have given their consent affidavits for the proposed Scheme of Arrangement. Copies of the consent Affidavits are filed at **page nos.134 to 139 of the application.**

- v. It is averred that there are no secured and unsecured creditors of the Transferee Companies 1 & 2.
 - vi. The shareholders of the Applicant Companies have given their consent Affidavits stating no objection to the proposed Scheme of Arrangement. Hence, it is not necessary to convene the meetings of the shareholders.
- VI. It is averred that the Demerged Company and Resulting Companies are unlisted companies and hence do not require to obtain “No Objection” for the Scheme of Demerger from any Stock Exchange.
- VII. No investigation proceedings are pending against the Applicant Companies.
- VIII. **ACCOUNTING TREATMENT OF THE SCHEME:**

The accounting treatment proposed in the Scheme of Demerger is in confirm with under Section 2(43) of the Companies Act, 2013 and Accounting Standard 14 notified

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under Section 133 of the Companies Act, 2013 by the Central Government.

Certificates issued by the Chartered Accountants, M/s.Dinesh Baladawa & Associates confirming the Accounting Treatment proposed in the Scheme in respect of the Applicant Companies are filed at page nos.272 to 274 of the application respectively.

IX. A copy of the Valuation Report recommending Share Entitlement Ratio for the proposed Demerger prepared and submitted by Mr. Navin Khandelwal, Registered Valuer is filed as Exhibit-XII at page nos.232 to 250 of the application.

X. **Consideration –**

It is averred that the Scheme is intended to restructure and demerge Unit-I from the Roxy Roller Flour Mills Pvt. Ltd. (Demerged Company) into Vivan Roller Flour Mill Private Limited and demerge Unit-II from the Roxy Roller Flour Mills Pvt. Ltd. (Demerged Company) into Roxyroller Flour Mills (Bengaluru) Private Limited in a more efficient manner consistent with the diverse needs of business.

(i) As the consideration of the Demerger of Unit-I into Vivan Roller Flour Mill Private Limited (Resulting Company/Transferee Company-1) shall issue and allot 2,224 equity shares of Rs.10/- each to the

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shareholders of Roxy Roller Flour Mills Pvt Ltd
(Demerged Company/Transferor Company).

- (ii) As the consideration of the Demerger of Unit-II into Roxyroller Flour Mills (Bengaluru) Private Limited (Resulting Company/Transferee Company-2) shall issue and allot 3,75,481 equity shares of Rs.10/- to the shareholders of Roxy Roller Flour Mills Pvt. Ltd.(Demerged Company/Transferor Company)
- (iii) The demerger company shall transfer the share of the reserves and surplus pertaining to Unit I and Unit II to the resulting company alongwith other assets and liabilities as Pre and Post Demerger Balance Sheet (Schedule III) is enclosed as Annexure were which financial part of the Scheme.

XI. In the light of above facts, the Applicant Companies pray for the following reliefs:

1. In the case of First Applicant Company/Demerged Company

To dispense with convening the meetings of the equity shareholders, secured and unsecured creditors of the First Applicant Company/Demerged Company.

2. In the case of 2nd Applicant Company/Resulting Company-1:

To dispense with convening the meeting of the equity shareholders of the 2nd Applicant Company/Resulting Company-1 and also to dispense with the meeting of the secured and unsecured creditors as there are no secured and unsecured creditors of the Transferee Company-1.

3. In the case of 3rd Applicant Company/Resulting Company-2:

To dispense with the meeting of the equity shareholders of the 3rd Applicant Company/Resulting Company-2 and also to dispense with the meeting of the secured and unsecured creditors as there are no secured and unsecured creditors of the Transferee Company-2.

4. The publication of the Notices of the meeting of the shareholders of the Applicant Companies and secured and unsecured creditors of the Applicant Companies may also be dispensed with or otherwise, as this Hon'ble Tribunal may direct.

XII. We have heard the Learned Counsel for both sides and we have seen the consent Affidavits filed by the equity shareholders, 'No Objection Letters' of the Secured Creditors and 'No Objection Affidavits' of the unsecured creditors of the 1st Applicant Company and consent

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affidavits of the equity shareholders of the 2nd and 3rd Applicant Companies. We have also seen the certificates given by the Chartered Accountants certifying the list of equity shareholders, Secured and Unsecured Creditors of the 1st Applicant Company as on 31.05.2023 and perused the documents.

- XIII. We rely on the Judgements of the Hon'ble NCLT, Hyderabad Bench in C.A. (CAA) No. 223/230/HDB/2020, in re., Scheme of Merger of **Vaidehi Avenues Limited and Aster Rail Private Limited with NCC Limited** and the Hon'ble NCLT, Mumbai Bench in C.A.(CAA) No.2629/MB/2019, in re., Scheme of Merger of **Ness Software Services Pvt. Ltd with Ness Technologies (India) Pvt Ltd.** where the facts of the matter were similar to that of the instant case. In re., (i) **Housing Development Finance Corporation Ltd., in re, in CSA No.243 of 2017**, (ii) **Godrej Consumer Products Limited, in CSA No.915 of 2017**, (iii) **Mahindra CIE Automotive Limited, in CSA. No.899 of 2017** and (iv) **Godrej Properties Limited, in CSA No. 1019 of 2017**, the requirement to hold meeting of Shareholders and creditors of the transferee company were also dispensed with. Further, the Hon'ble NCLAT, New Delhi, in re., **Patel Hydro Power Private Limited and Ors.** in Company Appeal (AT) No.137 of 2021, held as follows:

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“12. To reiterate, we observe that the rights and liabilities of Secured and Unsecured Creditors were not getting affected in any manner by way of the proposed scheme as no new shares are being issued by the 'Transferor Company' and no compromise is offered to any Secured and Unsecured Creditors of the 'Transferee Company'. Therefore, we are of the considered view that when the 'Transferor and Transferee Company' involve a parent Company and a Wholly Owned Subsidiary the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors can be dispensed with as the facts of this case substantiate that the rights of the Equity Shareholders of the 'Transferee Company' are not being affected. Therefore, we hold that obtaining 90% consent Affidavits from its unsecured Creditors is not required keeping in view the facts of the attendant case.”

- XIV. All the shareholders of the Applicant Companies have given their consent affidavits, agreeing to the proposed Scheme of Arrangement. All the Secured Creditors of the 1st Applicant Company have given their 'No Objection Letters' and all the unsecured creditors of the 1st Applicant Company have also given their 'Consent Affidavits'. There are no Secured and Unsecured Creditors of the 2nd and 3rd Applicant Companies. Hence, the meetings of the Shareholders, Secured and Unsecured Creditors of the Applicant Companies can be dispensed with, in terms of Section 230(9) of the Act.
- XV. Since the meetings of the Shareholders, Secured and Unsecured Creditors of the Applicant Companies are dispensed with, we hereby dispense with the publication of the Notices of the meetings of the shareholders, secured and unsecured creditors of the Applicant Companies.

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XVI. In the event of the Applicant Companies approaching this Tribunal seeking approval of the Scheme, it would be open for any person who is interested in the Scheme to put forth their contention(s) before the Tribunal.

XVII. Accordingly, the Company Application **CA(CAA) No.52/230/HDB/2023 is allowed and disposed of.**

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

Syamala