The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Company Petition Nos.170 & 171 of 2015

Dt: 05.10.2015

C.P.No.170/15:

Between:

**M/s.Excellence Biscuits Pvt. Ltd.,
Hyderbad, rep. by its Director
Mr.Anban Dharmadas**

…Petitioner /Transferor Company

C.P.No.171/15:

Between:

**M/s.Veermani Biscuit Industries Ltd.,
Hayathnagar
rep. by its Managing Director
Mr.Julius Esooran Rajiah Pitchamuthu**

…Petitioner /Transferee Company

Counsel for the petitioners: Mr.V.S.Raju

The Court made the following:

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Common Order:

Company Petition No.170 of 2015 is filed by M/s.Excellence Biscuits Private Limited (hereinafter referred as 'the Transferor Company') under Sections 391 and 394 of the Companies Act, 1956 (for short 'the Act') seeking approval of the proposed Scheme of its Amalgamation with M/s.Veermani Biscuits Private Limited (hereinafter referred as 'the Transferee Company').

Company Petition No.171 of 2015 is filed by the Transferee Company for the same relief.

Transferor Company pleaded that it was incorporated under the provisions of the Companies Act, 1956 (for short 'the Act') on 16.11.1999; that its Corporate Identity Number is 01-32856 of 1999-2000; that its registered office is situated at Survey No.249, Kammaguda Village, Turkayamjal Post, Hayathnagar Mandal, Ranga Reddy District; that its authorized share capital is Rs.25 lakhs divided into 2,50,000 equity shares of Rs.10/- each; and that its issued, subscribed and paid-up share capital is Rs.16,44,300/- divided into 1,64,430 equity shares of Rs.10/- each.

The Transferee Company pleaded that it was originally incorporated as a Private Limited Company under the provisions of the Act on 31-03-1986 with Corporate Identity No.6331 of 1985-1986; that subsequently, it was converted into a Public Limited Company, by virtue of special resolution, dated 15-02-1993, passed in terms of the Act on 09-07-1993; that its registered office is situated at Survey No.249, Kammaguda Village, Turkayamjal Post, Hayathnagar Mandal, Ranga Reddy District; that its authorized share capital is Rs.8 Crores divided into 80 lakh equity shares of Rs.10/- each; and that its issued, subscribed and paid-up share capital is Rs.6,99,04,500/- divided into 69,90,450 equity shares of Rs.10/- each including the forfeited shares of 5,17,550 of Rs.10/- each.

Both the Companies pleaded that their main objects are to carry on the business of manufacturers, processors, producers, growers, makers, importers, exporters, buyers, sellers, suppliers, stockists, agents, merchants, distributors and dealers in biscuits, groundnut cakes, bread, flakes, sweets, confectionary, cakes made of flour of wheat gram, other grains and cereals, dal, besan, maida, atta, suji and other allied products *etc*.

Both the Companies further pleaded that their businesses are interdependent; that the Transferor Company is engaged in running bakeries and the Transferee Company is diversified in manufacturing and dealing in all the machinery and equipment required for manufacturing of biscuits and other confectionaries; that the proposed Scheme of Amalgamation will horizon the activities of both the Companies resulting in synergy of operations, which aims to cut down the high overhead cost and the additional expenses and making the optimum utilization of resources; that the proposed Scheme of Amalgamation will lead to a single entity with greater integration, financial strength and flexibility aiding in achieving economies of scale, sourcing benefits, vendor rationalization, focus on operational efforts, simplification of business processes and productivity improvements; and that the proposed Scheme of Amalgamation will be beneficial not only to their shareholders but also to their creditors and employees.

Both the Companies further pleaded that anticipating the above benefits, their Board of Directors, in their respective meetings held on 02.04.2015, resolved to approve the proposed Scheme of Amalgamation (Annexure A5) and fixed the appointed date as 01.04.2015.

Transferor Company pleaded that it has six shareholders and no secured or unsecured creditors; that this Court *vide* Order, dated 28-04-2015, in Company Application No.859 of 2015, dispensed with the requirement of convening the meeting of its shareholders for consideration of the proposed Scheme of Amalgamation.

Transferee Company pleaded that it has 220 shareholders, one secured creditor and 40 unsecured creditors; that this Court *vide* Order, dated 28-04-2015, in Company Application No.860 of 2015 appointed two Chairpersons for convening the meetings of its shareholders and unsecured creditors.

The Chairpersons have, accordingly, filed their respective reports stating that pursuant to this Court's Order, they have caused individual notices on the shareholders and unsecured creditors of the Transferee Company and have also carried out publication in two daily newspapers *viz*., Business Standard (English) and Andhra Bhoomi (Telugu) of Hyderabad Editions on 13-05-2015, notifying the date of meetings and accordingly, convened the meetings on 12-06-2015 at 10.30 a.m. and 12.00 noon respectively.

In the first report relating to the meeting of the shareholders, the Chairperson has stated that out of 220 shareholders, 63 shareholders valued at Rs.3,14,08,000/- have attended the meeting in person; that the proposed Scheme of Amalgamation was read out and explained to them; that all of them have voted in favour of the proposed Scheme of Amalgamation; and that, accordingly, all of them have unanimously passed the resolution to approve the proposed Scheme of Amalgamation.

In the second report relating to the meeting of the unsecured creditors, the Chairperson stated that out of 40 unsecured creditors, 17 unsecured creditors valued at Rs.2,67,01,146.39 ps., have attended the meeting in person; that the proposed

Scheme of Amalgamation was read out and explained to them; that all of them have voted in favour of the proposed Scheme of Amalgamation; and that, accordingly, all of them have unanimously passed the resolution to approve the proposed Scheme of Amalgamation.

While in Company Petition No.170 of 2015, this Court ordered notices to the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad, and the Official Liquidator attached to this Court, in Company Petition No.171 of 2015, it ordered notice to the Regional Director only, besides ordering publication of advertisement in two daily newspapers each. In compliance with the said order, dated 30-06-2015, both the Companies have caused notices on the Regional Director, Ministry of Corporate Affairs, South Eastern Region, Hyderabad; that the Transferor Company has additionally caused notice on the Official Liquidator; that each of the two Companies have carried out publication of notices in two daily newspapers *viz*., 'The Business Standard' (English) and 'Andhra Bhoomi' (Telugu) of Hyderabad editions having circulation in the State of Telangana and filed the proof through separate Memos in both the Company Petitions.

In response to the notices, the Regional Director has filed his Common report, dated 04-09-2015, in both the Company Petitions and the Official Liquidator has filed his report, dated 11-08-2015, in Company Petition No.170 of 2015.

In his report, the Official Liquidator has commented that the Transferor Company failed to file the No Objection letters of its secured creditor, trade creditors and sundry creditors. However, he has stated that the affairs of the Transferor Company and the Transferee Company have not been conducted in any manner prejudicial to the interests of its members or general public.

In his common report, the Regional Director pointed out that as per Para 3.1 of Part III of the proposed Scheme of Amalgamation, the exchange ratio is 1:1 *i.e.,* one equity share of the Transferee Company will be allotted against one equity share to the shareholders of the Transferor Company but as per the valuation report given by Mr.A.Sarath Babu, Chartered Accountant, the exchange ratio is provided as 1:1:8. He has, therefore, submitted that the petitioners may clarify the discrepancy. The Regional Director has, however, stated that in pursuance of General Circular No.1/2014, dated 15-01-2014, issued by the Ministry of Corporate Affairs, New Delhi, the opinion of the Income Tax Department was sought *vide* letter, dated 24-07-2015 and that no comments/objections have been received from them till date. He has further stated that the Registrar of Companies, Hyderabad, reported that both the Transferor and the Transferee Companies involved in the Scheme of Amalgamation are regular in filing statutory returns and that no inspections and investigations are pending against them.

As regards the objection raised by the Official Liquidator, the Transferor Company has filed letter, dated 24.07.2015, of its sole secured creditor- State Bank of Hyderabad conveying no objection to the proposed Scheme of Amalgamation and No Objection letter, dated 08-05-2015, of its trade depositor- M/s.J.V.Marketing, stating that it has received Rs.5 lakhs towards full and final settlement of its dues from the petitioner and that there are no further dues as on date. The Transferor Company has also filed No Objection Letters of its sundry creditors *viz*., Jai Ganesh Traders, Lakshmi Srinivasa Packaging and Parameshwari Enterprises wherein they have confirmed receipt of Rs.14,89,035/-, Rs.60,291/- and Rs.86,000/- respectively towards full and final settlement of the dues payable by the Transferor Company. The petitioners have, accordingly, complied with the objections raised by the Official Liquidator.

As regards the discrepancy in the share ratio pointed out by the Regional Director, in his affidavit, dated 03-10-2015, the Director of the Transferee Company stated that though the Chartered Accountant has valued the Transferee Company's Shares @ 1:1:8, he has nevertheless recommended allotment of 1,64,430 equity shares of Rs.10/- each to the shareholders of the Transferor Company which works out to the ratio of 1:1 only. In view of the same, the said objection of the Regional Director ceases to have any effect.

Having regard to the report of the Regional Director, South Eastern Region, Ministry of Corporate Affairs, Hyderabad, no objection letters of the secured creditors, the trade depositor and sundry creditors of the Transferee Company and as no claims or objections have been received in pursuance of publication of notice in newspapers, this Court is satisfied that the proposed Scheme of Amalgamation is in conformity with the provisions of the Act and that the same is not being opposed by any stakeholders or general public.

Therefore, the proposed Scheme of Amalgamation is sanctioned with effect from the appointed date *i.e.,* 01.04.2015. The Transferor Company is ordered to be dissolved without going through the process of winding up. Both Transferor Company and the Transferee Company shall, within 30 days of receipt of a copy of this order, cause a certified copy of the same to be delivered to the Registrar of Companies, Hyderabad, and take all other consequential actions in pursuance of the approval of the proposed Scheme of Amalgamation.

Both the Company Petitions are, accordingly, allowed.

(C.V.Nagarjuna Reddy, J)

Dt: 5th October, 2015
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