IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Company Petition No.158 of 2015 (O&M)
Date of Decision: 28.03.2016

IN THE MATTER OF :

Company Petition under Section 391-394 of the Companies Act, 1956.

AND

IN THE MATTER OF:

SCHEME OF AMALGAMATION BETWEEN:

PAGRO FOODS PRIVATE LIMITED

. . . . Transferor /Applicant No.1

AND

PAGRO FROZEN FOODS PRIVATE LIMITED

. . . . Transferee/Applicant No.2

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN.

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Present: - Mr.Anand Chibbar, Sr. Advocate, with
Ms.Riya Bansal, Advocate,
for the petitioners.

Mr.Deepak Aggarwal, Advocate, with
Mr.D.K. Singh, Official Liquidator.

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RAKESH KUMAR JAIN, J.

This petition is filed under Section 391 & 394 of the Companies Act, 1956 [for short 'the Act'], duly supported by affidavits of the Transferor and Transferee Companies, seeking sanction of the Scheme of Amalgamation [for short 'the Scheme'] [Annexure P-19] of Pagro Foods Private Limited with Pagro Frozen Foods Private Limited.

On 14.9.2015, the meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Transferor and Transferee

Company were dispensed with by this Court and a notice was ordered to be issued to the Regional Director, Northern Region, Ministry of Corporate Affairs, Noida and the Official Liquidator. The notice was also directed to be published in the 'Indian Express' (English) and 'Amar Ujala' (Hindi) and in the official Gazette of Chandigarh Administration besides being uploaded on the website of the Official Liquidator.

Pursuant to the aforesaid order, an affidavit of publication dated 19.2.2015 has been filed by Mr.Ranjit Chawla, Advocate.

The report of A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi has been filed by way of an affidavit dated 16.2.2016 in which the following averments have been made in para No.7, 9.1, 9.2 and 11: -

> *"7. That the Deponent states that in response to the Deponent's letter dated 08.01.2016 issued to the Income Tax Department requesting to offer their comments, letter dated 21.01.2016 has been received on 01.02.2016 from the Pr. Commissioner of Income Tax – I, Chandigarh endorsing the objection raised by the Dy. Commissioner of Income Tax and stating that the scheme of Amalgamation is against the interest of revenue. It has been stated in the enclosed letter by the DCIT Circle 1(1) Chandigarh that the company M/s Pagro Frozen Foods Private Ltd. is a loss making concern, whereas M/s Pagro Foods Pvt. Ltd. is a profit making*

unit. While both the entities are having same nature of business, there appears to be no reason for M/s Pagro Frozen Foods Private Limited for incurring heavy loses. It has been further stated that the amalgamation scheme is apparently a device to set off the loss of loss making company against the profits of the profit making company, which is against the revenue interests. This is more so as the key management personnel of both the concerns are same allowing them to influence the affairs of the two entities in any manner whatsoever. It has also been pointed out that both the companies are being run and managed by one family and the shareholders include foreign entities belonging to Singapore and Mauritius. According to the AO, the scheme of amalgamation appears to be an arrangement where revenue would be at loss. The said letter from the Income Tax Department is marked as Exhibit-C for kind perusal of the Hon'ble Court."

<u>9.1</u> The Registrar of Companies in para 15 of the report has stated that the Transferee Company has complied with the Provisions of Section 383A of the Companies Act only w.e.f. from 07.12.2015. However, there were non-compliance of section 383A prior to 7.12.2015 (from 2011 onwards).

It has been further stated that the Transferor Company has not complied *with the provisions of Section 383A of the Companies Act, 1956.*

9.2 The Registrar of Companies in Para 25 of the report has observed that valuation has been conducted by M/s Garg Sanjeev & Association, Chandigarh and as per report of Chartered accountants dated 05.02.2014, valuation analysis report is thus valuing the equity shares of the company specifically as per the discounted free cash flow Methodology only.

In this regard, it is submitted that the petitioner companies have furnished updated and unsigned report of aforesaid valuer along with the papers filed with the petition and further other methods of valuation have not been undertaken to compare the suitability of swap ratio in case of the petitioner companies.

11. In this regard, the Registrar of Companies, Chandigarh is being directed to take appropriate action for violation of provisions of Section 383A of the Companies Act, 1956."

"That the Deponent states that the Hon'ble Court may direct the petitioner companies to comply with the provisions of the Accounting Standard 14 related to "the pooling of interests method" as prescribed under Section 211(3C) of the

Companies Act, 1956 and under Section 133 of the Companies Act, 2013."

In reply to the report of the Regional Director, an affidavit of Narinder Singh Brar, Director of both the petitioner-Companies, dated 23.2.2016 has been filed in which the following averments have been made in paras No.3.3, 5 & 7: -

> *"<u>3.3</u> It is further submitted that Pagro Frozen Foods Private Limited is not a loss making company. In fact both the companies are paying income tax on their earnings. The Transferor Company has paid Income Tax of Rs.14,10,534/- and Transferee Company has paid Income Tax of Rs.5,26,913/- for the Financial Year ending 31st March 2015. The Income Tax Returns of Transferor Company & Transferee Company for last three years is enclosed to this affidavit as Annexure C & D.*
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> *<u>5.</u> That in this context of the said observation made by the Regional Director, it is submitted that the transferee company has already appointed the company secretary w.e.f. 7th December 2015. That it is further submitted that the Transferee Company will proceed for seeking compounding of the non-compliance of the provisions of Section 383-A of the Companies Act, 1956.*

> *7. That in this context of the observation made by Regional Director it is submitted that duly signed copies of valuation reports were filed with the office of Regional Director. A copy of the same is attached as Annexure E along with this affidavit. It is further submitted that the valuation reports submitted by the company have calculated on the basis of Discounted Cash Flow method as well as Net Assets Value method. The exchange ratio as per Discounted Cash Flow method comes out to be 1:0.99 and exchange ratio on the basis of Net Assets Value Method comes out to be 1:0.89. The Company has taken the exchange ratio of 1:1 on the basis of Discounted Cash Flow method which gives more realistic picture of the state of affairs of the companies. It is further stated that there is not much of difference in the exchange ratio calculated by two different methods and they are almost same."*

The above stated explanation submitted by the Director of the petitioner-Companies meets with the queries raised by the Regional Director.

The Official Liquidator has also filed his report dated 18.2.2016 in which he has not taken any objection and has averred that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of its members, creditors or to public at large.

The petitioner-companies have confirmed that there are no proceedings pending against them under Sections 235 to 251 of the Act or any relevant Section of the Companies Act, 2013 or under the provisions of Monopolies & Restrictive Trade Practices Act, 1969 have been initiated or are pending against the Petitioner-Companies.

For the reasons aforestated and on consideration of all the relevant facts and the procedural requirements in terms of Section 391-394 of the Act and the relevant Rules and on due consideration of the report of the Regional Director, Ministry of Corporate Affairs, New Delhi and Official Liquidator, the Scheme of Amalgamation is hereby sanctioned and as a result thereof, the assets and liabilities of the Transferor Company shall stand vested in the Transferee Company and the Transferor Company shall be dissolved without being wound up. The Petitioner/Companies shall be required to comply with the procedural requirement with regard to Accounting Standard 14 issued by the Chartered Accountants of India, relating to the "pooling of interest method" as provided under Section 211(3C) of the Act and under Section 133 of the Companies Act, 2013.

The Scheme shall be binding on the Transferor and Transferee Companies, their respective Shareholders, Creditors and all concerned.

Let formal order of sanction of the Scheme be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt thereof.

A notice of the order be published in 'Indian Express' (English), 'Amar Ujala' (Hindi) and in the official Gazette of Chandigarh Administration, U.T., Chandigarh.

Any person interested shall be at liberty to apply to the Court for any direction(s) as per law.

Learned counsel for the petitioner-Companies stated that the petitioner-Companies would voluntarily deposit a sum of ₹50000/- in the Common Pool Fund Account of the Official Liquidator within four weeks. The statement is accepted.

Disposed of accordingly.

(RAKESH KUMAR JAIN)
JUDGE

28.03.2016
Vivek