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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CO. APPL. (M) 139/2016**

IN THE MATTER OF:

NANDOS SERVICES INDIA PRIVATE LIMITED

... Applicant No.1/Transferor Company No. 1

AND

JANPATH RESTAURANTS PRIVATE LIMITED

... Applicant No.2/Transferor Company No. 2

AND

NANDO'S KARNATAKA RESTAURANTS PRIVATE LIMITED

... Non-Applicant/Transferee Company

Through: Mr. Dhritiman Bhattacharyya,
Mr. Piyush Sharma &
Ms. Deeti Ojha, Advocates for
the Applicant /Transferor
Companies.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER

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03.10.2016

CO.APPL. 3814/2016 (Delay in re-filing)

The present application under Rule 9 of the Companies (Court) Rules, 1959, seeks condonation of delay in re-filing the accompanying Company Application.

For the reasons stated in the application the same is allowed. The delay in

re-filing the accompanying Company Application is condoned.

The application is disposed of accordingly.

CO. APPL. (M) 139/2016

1. The present first motion application under sections 391-394 of the Companies Act, 1956, (for short 'Act') read with Rules 67 to 87 of the Companies (Court) Rules, 1959, has been filed on behalf of Nandos Services India Private Limited (Transferor Company No.1) and Janpath Restaurants Private Limited (Transferor Company No.2), in connection with the Composite Scheme of Arrangement and Amalgamation (for short 'Scheme') between Transferor Companies No. 1 to 2 with Nando's Karnataka Restaurants Private Limited (Non-applicant/Transferee Company).

2. The Transferor companies No. 1 and 2 are hereinafter jointly referred to as 'Transferor Companies'.

3. The Registered Offices of the Transferor Companies are situated within the National Capital Territory of Delhi, thus within the jurisdiction of this Court. The Registered Office of the Transferee Company is situated at Bangalore, Karnataka, being outside the jurisdiction of this Court.

4. It has been submitted on behalf of the Transferor Companies that an application for first motion has been filed on behalf of the Transferee Company before the Karnataka High Court, in accordance with law.

5. A copy of the proposed Scheme has been filed along with the present application and the same is on record. The rationale for the Scheme is that synergies arising out of consolidation of respective businesses would lead to reduction of operating and administrative costs, improvement in profitability, efficient and effective management of business, pooling of financial resources for centralised management of funds to supplement future growth opportunities.
6. The details *qua* the authorized, issued, subscribed and paid-up capital of the Transferor companies has been set out in paragraph 4 of the Scheme.
7. Transferor Company No.1 was incorporated on 28.01.2016 under the provisions of the Act. As on 31.03.2015, the authorised share capital of Transferor Company No.1 is Rs.35,00,000/-, divided into 3,50,000 equity shares of Rs.10/- each. As on 31.03.2015, the issued, subscribed and paid up share capital of Transferor Company No.1 is Rs.30,75,000/-, divided into 3,07,500 equity shares of Rs.10/- each.
8. Transferor Company No.2 was incorporated on 14.03.2012 under the provisions of the Act. As on 31.03.2015, the authorised share capital of Transferor Company No.2 is Rs.37,00,00,000/-, divided into 3,70,00,000 equity shares of Rs.10/- each. As on 31.03.2015, the issued, subscribed and paid up capital of Transferor Company No.2 is Rs.19,96,04,980/-, divided into 1,99,60,498 equity shares of Rs.10/- each.

9. Copies of the Memorandum of Association and Articles of Association are on record. The latest audited Annual Accounts for the year 31st March, 2015 of the Transferor Companies have been enclosed with the application. Copies of the latest unaudited provisional financial statements as on 28th June, 2016 of the Transferor Companies have also been enclosed with the application. The same are on record.

10. It has been submitted on behalf of the Transferor Companies that no proceedings under Sections 235 to 251 of the Act are pending against the Transferor Companies as on the date of institution of the present application.

11. It has been averred that the Scheme has been approved by the respective Board of Directors (BOD) of the Transferor companies. Copies of the BODs Resolutions, dated 28.06.2016, of the Transferor companies whereby the Scheme has been approved, are filed with the application and the same are on record.

12. The status of the Shareholders, Secured and Unsecured Creditors of both the Applicant Companies i.e. both the Transferor Companies and the consents obtained from them for the proposed Scheme has been set out in a table forming part of the application which reads as hereinafter:-

Company	No. of Shareholder	Consent Given	No. of Secured Creditors	Consent Given	No. of Unsecured Creditors	Consent Given
Transferor Company No.1	2	ALL	Nil	NA	24	23 (being 96% in number and 91% in value)
Transferor Company No.2	2	ALL	Nil	NA	47	42 (being 89% in number) 85% in value)

13. A prayer has been sought, in the present application, for dispensing with the requirement of convening the meetings of the Shareholders and Unsecured Creditors of the Transferor Companies.

14. The Transferor Companies do not have any secured creditors. Therefore the requirement of convening the meetings of secured creditors does not arise.

15. In view of the written consents/NOC given by all the Equity Shareholders of the Transferor Companies, which have been duly placed on record and are found to be in order, the requirement of convening the meeting of Shareholders of the Transferor Companies is dispensed with.

16. It has been submitted that requisite number of Unsecured Creditors of Transferor Company No.1 (being 96% in number and 91% in value) have given their consents. The consents/NOCs have been duly placed on record and the

same are found to be in order. Consequently, the requirement of convening meeting of Unsecured Creditors of Transferor Company No.1 is dispensed with.

17. It has further been submitted that requisite number of Unsecured Creditors of Transferor Company No.2 (being 89% in number and 85% in value) have given their consents. The consents/NOCs have been duly placed on record and the same are found in order. Consequently, the requirement of convening meeting of Unsecured Creditors of Transferor Company No.2 is dispensed with.

18. The application stands allowed in the aforesaid terms and the same is disposed of accordingly.

19. A copy of the order be given *dasti*.

SIDDHARTH MRIDUL, J

OCTOBER 03, 2016

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