



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I,
KOLKATA**

CP (C.A.A) No CAA/135/KB/2022
Connected with
CA (C.A.A) No. (CAA)/75(KB) 2022

In the Matter of the Companies Act, 2013 - Section 230(6) [read with Section 232(3)]

AND

In the Matter of:

Tulip Dealtrade Private Limited a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U51109WB2010PTC143234 and its registered office at Room No. 07, Ground Floor Ganeshayan Building, Sevoke Road Siliguri, Darjeeling, WB-734001.

Transferor Company No. 1 /Applicant No.1

AND

Primerose Tradecom Private Limited a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U51909WB2010PTC143235 and its registered office at Room No. 07, Ground Floor Ganeshayan Building, Sevoke Road Siliguri, Darjeeling, WB-734001.

Transferor Company No.2 /Applicant No.2

WITH

Gannayak Food and Beverages Private Limited a Company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U15500WB2007PTC119027 and its registered office at Room No. 07, Ground Floor Ganeshayan Building, Sevoke Road Siliguri, Darjeeling, WB-734001.

Transferee Company/ Applicant No. 3

1. Tulip Dealtrade Private Limited
2. Primerose Tradecom Private Limited



3. Gannayak Food and Beverages Private Limited

..... Petitioner(s)

Date of pronouncing the order:06.12.2023

Coram:

ROHIT KAPOOR : MEMBER (JUDICIAL)
BALRAJ JOSHI : MEMBER (TECHNICAL)

Counsel on Record for the Petitioner(s):

Mr. Varun Jain, Adv.

For Regional Director, Eastern Region, MCA

Mr. Alok Tandon, Joint Director

Per Rohit Kapoor, Member(Judicial)

1. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“Act”) for sanction of the Scheme of Amalgamation of Tulip Dealtrade Private Limited, being the Petitioner No.1 above named ("Transferor Company" or “Petitioner No.1”) and Primerose Tradecom Private Limited, being the Petitioner No.1 above named ("Transferor Company" or “Petitioner No.2”) with **Gannayak Food and Beverages Private Limited**, being the Petitioner No.3 above named ("Transferee Company" or “**Petitioner No.3**”) whereby and where under the Transferor Company is proposed to be amalgamated with the Transferee Company from the **Appointed Date, viz 01.04.2021** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“**Scheme**”).

2. The Petition has now come up for final hearing. Counsel for the Applicants submits as follows:-



- (a) The Scheme was approved by the respective Board of Directors of the Petitioner Nos. 1, 2 and 3 at their meetings held on March 21, 2022.
- (b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-
- (c) The Statutory Auditors of the Petitioner Nos.1, 2 and 3 have by their certificates dated March 20, 2022 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.
- (d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).
- (e) The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of M/s. Sumit Kumar, IBBI Registered Valuer having M.No. IBBI/RV/07/2020/13195 has also confirmed that the said ratio is fair and proper by their fairness opinion thereon.
- (f) The shares of the Petitioner No.1, 2 and 3 are not listed on any stock exchanges.
- (g) By an order dated 28.07.2022 in Company Application (CAA) No. 75 / KB / 2022, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act:-
- (h) Meeting(s) dispensed: Meeting(s) of the Equity Shareholders of the Applicant No.1 and meeting of the Equity Shareholders of the Applicant No.2 and meeting(s) of the Equity Shareholders and Secured Creditors of the Applicant No. 3 are dispensed with under section 230(1) read with Section 232(1) of this Act.
- (i) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated **12.10.2022** the instant petition was admitted by this Tribunal and fixed for hearing on **14.11.2022** upon issuance of notices to the Statutory / Sectoral



Authorities and advertisement of date of hearing. In compliance with the said order dated 12.10.2022, the Petitioner(s) have duly served such notices on the RD, Eastern Region, ROC, Official Liquidator and Income Tax Dept. on 18.10.2022 and 31.10.2022. The Petitioner(s) have also published such advertisements in “The Telegraph” (English Edition) on 31.10.2022 and in “Uttarbanga Sambad” (Bangali Edition) on 13.12.2022. An affidavit of compliance in this regard has also been filed by them on 21.12.2022.

(j) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

3. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“**RD**”), [Official Liquidator, {specify Court/city of OL}] and [specify other Authorities and persons, as the case may be] have filed their representations before this Tribunal.

4. The Official Liquidator has filed his report dated 06.02.2023 and concluded as under:-

10. *That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable.*

11. *That in View of the submission made above the Hon’ble National Company Law Tribunal may like to pass such order/orders as deemed fit and proper in the facts and circumstance of the case.*

5. The RD has filed his reply affidavit dated 11.11.2022 (“**RD affidavit**”) which has been dealt with by the Petitioner(s) by their Rejoinder affidavit dated 31.12.2022 (“**Rejoinder**”). The observations of the RD and responses of the Petitioner(s) are summarized as under:-



- (a) **Paragraph No. 2 (a) of RD Affidavit:** *Petitioner companies asked to furnish certain information and document in relation with amalgamation*

Paragraph No. 2 (a) of Rejoinder: The document which was asked by RD has sent on 17.12.2022 through speed post and on 21.12.2022 vide email

- (b) **Paragraph No. 2 (b) of RD Affidavit:** *Valuation report dated 20.03.2022 had been taken by Sumeet kankani & Associates, Chartered Accountant which is not Registered Valuer as per section 247 of Companies Act, 2013. Kindly take the fresh valuation report and approved in the Board Meeting of Companies.*

Paragraph No. 2(b) of Rejoinder: As per observation raised by RD a fresh Valuation has been taken by Registered Valuer Mr. Sumeet Kumar having M.No IBBI/RV/07/2020/13195 as per section 247 of Companies Act, 2013. The share exchange ratio is the same and methodology of valuation is also same and the report has been given on the basis of financial as on 20.03.2022. The copy of report and BR has been annexed with rejoinder.

- (c) **Paragraph No. 2 (h) of RD Affidavit:** *The Transferee Company, Gannayak Food & Beverages Food and Private Limited is basically a NBFC company operating as such without obtaining license from RBI. The Position of Assets and income of the Company as shown in the financial statement of 2021-2022 were as follows:-*

<i>Total Assets (Rs Lakhs)</i>	<i>Financial Assets (Rs Lakhs)</i>	<i>Total Income (Rs Lakhs)</i>	<i>Financial Income (Rs Lakhs)</i>
599.35	561.69 <i>(Non-current Investment Rs 255.00 Lakhs and short term</i>	45.42	27.42 <i>(Interest Income)</i>



	<i>loans and Advances Rs 306.69 Lakhs)</i>		
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The company is NBFC but functioning without Registration Certificate from the Reserve Bank of India under section 451A of the Reserve Bank of India Act 1934, as it appears since the Auditor has misleadingly reported that the company does not require to get registered under section 451A of the Reserve Bank of India Act 1934. The said material fact has not been also disclosed in the scheme, contrary to the provisions of section 230(2)(a) of the Companies Act 2013.

Paragraph No. 2(h) of Rejoinder: I state that **M/s Gannayak Food & Beverages Private Limited, Transferee Company** is not a NBFC. However, the investment which has been made by the Transferee Company is in the Group Companies only. We made investment according to Section 186 of Companies Act, 2013 with in the same group.

The details of non – current investment are as under as under:

[Based on Financial Statement 2021-2022]

Non Current Investment : Rs. 255 Lakh

S No.	Name of Company	Amount of Investment (unquoted shares)	Relation (Investment have been made in the same group)
1	Vaishnodevi Buildcon Private Limited	Rs. 175 Lakh	Mr. Jagdish Chand, Ms.Sima Agarwal, Mr. Kuldeep Dhanuka and Mr. Jaideep Dhankua are also directors in this



			company.
2.	Featherlite Buildcon Private Limited	Rs.20 Lakh	Mr. Kuldeep Dhanuka and Mr. Jaideep Dhankua are also directors in this company.
1.	Panchrashi Properties Private Limited	Rs. 60.50 Lakh	Mr. Jagdish Chand, Ms. Sima Agarwal, Mr. Kuldeep Dhanuka also directors in this company.

Further Short Term Loan and Advances has not given outside the group. These are either with in the same group or to that person who are directly/indirectly related with the Company.

[Based on Financial Statement 2021-2022]

Short Term Loan & Advances :Rs. 306.69 Lakh:-

S. No.	Name of the Individual/proprietor/Company	Amount of Loan Given (Rs. In Lakh)	Amount of Business Advance Given (Rs Lakhs)	Relation (Loan have been given with in the same group or to)
1.	Featherlite Buildcon Private Limited	123.90	-	Mr. Kuldeep Dhanuka and Mr. Jaydeep Dhankua are also directors in this company.
2.	Jagdish Chand Agarwal	-	21.58	Director in Primerose Tradecom Private Limited (Transferor Com. No.2)



3.	Mittal Steel	-	109.99	
4.	Panchrashi Properties Private Limited	0.50	-	Mr. Jagdish Chand, Ms. Sima Agarwal, Mr. Kuldeep Dhanuka also directors in this company.
5.	Ms. Sima Agarwal	-	50.73	Director in Tulip Dealtrade Private Limited- Transferor Com. No. 1

Copy of Audited Balance Sheet of Gannayak Food & Beverages Private Limited (Transferee Company) for the Financial Year 2021-2022 have been annexed with the rejoinder as **Annexure-5**.

6. Heard submissions made by the Ld Counsel appearing for the Petitioner, RD, represented by Sh. Alok Tandon Joint Director , RD(ER) office, who states that they do not have any objection. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

(a) The Scheme of Amalgamation mentioned in paragraph 1 of the petition, being Annexure "A" hereto, be and is hereby sanctioned by this Tribunal with the Appointed date as 01.04.2021 (“**Appointed Date**”) and the same shall be binding on Tulip Dealtrade Private Limited (“Transferor Company- 1”) and Primerose Tradecom Private Limited (“Transferor Company- 2”) and **Gannayak Food and Beverages Private Limited (“Transferee Company”)**, their respective shareholders and creditors and all concerned;

(b) All the property, rights and powers of the Transferor Company, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date,



without further act or deed, to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;

(c) All the debts, liabilities, duties and obligations of the Transferor Company be transferred from the said Appointed Date, without further act or deed to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;

(d) The employees of the Transferor Company shall be engaged by the Transferee Company, as provided in the Scheme;

(e) All proceedings and/or suits and/or appeals now pending by or against the Transferor Companies or contemplated against any of them shall be continued by or against the Transferee Company, as provided in the Scheme for which the requisite records of the Transferor company shall be preserved by the Transferee company as provided in Section 239 of the Companies Act.

(f) The Transferee Company do without further application issue and allot to the shareholders of the Transferor Company, the shares in the Transferee Company to which they are entitled in terms of the Scheme;

(g) Leave is granted to the Petitioner(s) to file the Schedule of Assets as well as liabilities of the Transferor Companies in the form as prescribed in the Schedule to Form No.CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;

(h) The Transferor Companies and the Transferee Company shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration and on such certified copies being so delivered, the Transferor Company shall be dissolved without winding up. with effect



from the date or last of the dates of filing of the certified copies of the order, as aforesaid (Effective Date) and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said companies shall be consolidated accordingly.

(i) That any person/authority aggrieved shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

7. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets in acceptable form to the Registry and the Registry will append such printout, upon after verification, to the certified copy of the order.

8. Company Petition No (CAA)/135/KB/2022 is disposed of accordingly.

9. Certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

This order is signed on 6th Day of December, 2023.

BD