



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-(Court-II)
KOLKATA**

C.P.(CAA) No. 151/KB/2022
Connected with
C.A.(CAA) No. 38/KB/2022

*An application under Sections 230 and 232 the Companies Act 2013 read with
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;*

In the Matter of:

Dhanlaxmi Cold Storage Private Limited (CIN: U63022WB1995PTC067444), a Private company under the provisions of the Companies Act, 1956, having its registered office at 2 Rafi Ahmed Kidwai Road, Kolkata - 700013, West Bengal, India.

.....Transferor Company No. 1/ Petitioner Company
No. 1/ DCSPL

And

Farm Fresh Icecream Private Limited (CIN: U15544WB1997PTC084591), a Private company under the provisions of the Companies Act, 1956, having its registered office at 2 Rafi Ahmed Kidwai Road, Kolkata - 700013, West Bengal, India.

.....Transferor Company No. 2/ Petitioner Company
No. 2/ FFIPL

And

Thacker Overseas Private Limited (CIN: U51909WB2004PTC100643), a Private company under the provisions of the Companies Act, 1956, having its registered office at 2 Rafi Ahmed Kidwai Road, Kolkata - 700013, West Bengal, India.

.....Transferor Company No. 3/ Petitioner Company
No. 3/ TOPL

And

Thacker Industries (India) Limited (CIN: U24239WB2006PLC107275), a Public company under the provisions of the Companies Act, 1956, having its registered office at 2 Rafi Ahmed Kidwai Road, Kolkata - 700013, West Bengal, India.

.....Transferee Company / Petitioner Company No.
4/ TIIL

And

In the Matter of;

1. Dhanlaxmi Cold Storage Private Limited



2. Farm Fresh Ice-Cream Private Limited
3. Thacker Overseas Private Limited
4. Thacker Industries (India) Limited

..... Petitioners

Date of Hearing: 13/10/2022

Date of pronouncing the order: 28/10/2022

Coram:

Rohit Kapoor : Member (Judicial)
Balraj Joshi : Member (Technical)

Appearances (through Video Conferencing)

Mr. Jyoti Mandal, FCA

Ms. Swati Bajaj, PCS

O R D E R

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 **Dhanlaxmi Cold Storage Private Limited**, being the Petitioner No.1 abovenamed ("Transferor Company No.1"), **Farm Fresh Ice-Cream Private Limited**, being the Petitioner No.2 abovenamed ("Transferor Company No.2"), **Thacker Overseas Private Limited**, being the Petitioner No.3 abovenamed ("Transferor Company No.3"), with **Thacker Industries (India) Limited**, being the Petitioner No.4 above named ("Transferee Company") whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, viz **01-April-2021** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”).
2. By an order dated 13-June-2022 read with 14-July-2022 in Company Application (CAA) No.38/KB/2022, this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act:-



- (a) In view of the fact that all the equity shareholders of the Petitioner Companies consented in writing by way of affidavits to the proposed Scheme of Amalgamation, the requirement of convening and holding of separate meetings of the Petitioner companies are dispensed with.*
- (b) In view of the fact that 100% in value of the unsecured creditors of the Petitioner Company Nos. 1, and 4 consented in writing by way of affidavits to the proposed Scheme of Amalgamation, the requirement of convening and holding of separate meetings of the Petitioner Companies are dispensed with.*
- (c) In view of the fact that there are no secured creditors of the Petitioner Companies, convening and holding of separate meetings of the Secured Creditors are hereby dispensed with.*

Further, this Hon'ble Tribunal vide its further order dated 14th July 2022 held as follows:

- (a) By this application, Ld. Authorised Representative for the Petitioner brought to our notice certain inadvertent typographical error in the order passed on 13/06/2022, which are corrected as follows:*
- (b) In paragraph 3, at page 4, 2nd line in between the words “and 4,” and “and”, the following words are inserted:*
“and Preference Shareholders of the Applicant Company No. 4”
- (c) In paragraph 5(a) at page 4, 1st line in between the words “shareholders” and “of the”, the following words are inserted:*
“and preference shareholders”

- 3. Ld. Counsel appearing for the Petitioner(s) submits that the Petitioner(s) now seek admission of the instant petition presented by them for sanction of the Scheme.
- 4. **A.** The Learned Counsel for the Petitioner(s) further submits that in compliance with Section 230(5) of the Companies Act, 2013 and the said order dated 13-June-2022 read with 14-July-2022 made in Company Application (CAA) No. 38/KB/2022, notice along with all accompanying documents has already been served on the Statutory/Sectoral Authorities, as directed by the said order, including upon



- (a) The Central Government through Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata by hand delivery on 25-July-2022 as evidenced from the Affidavit of Compliance for service of Notice dated 27-July-2022, attached to the Petition (page no 377) filed with the Hon'ble NCLT on 26-August-2022;
- (b) Registrar of Companies with whom the Petitioner(s) are registered by hand delivery on 25-July-2022 as evidenced from the Affidavit of Compliance for service of Notice dated 27-July-2022, attached to the Petition (page no 376) filed with the Hon'ble NCLT on 26-August-2022;
- (c) Official Liquidator attached to the Hon'ble High Court, Kolkata, having jurisdiction over the Transferee and the Transferor Company by hand delivery on 22-July-2022 as evidenced from the Affidavit of Compliance for service of Notice dated 27-July-2022, attached to the Petition (page no 375) filed with the Hon'ble NCLT on 26-August-2022;
- (d) The concerned Income Tax Assessing Officer along with the Chief Commissioner of Income Tax by hand delivery on 22-July-2022 as evidenced from the Affidavit of Compliance for service of Notice dated 27-July-2022, attached to the Petition (page nos 370 to 374) filed with the Hon'ble NCLT on 26-August-2022; with Permanent Account Number (PAN) of the Petitioners;

An Affidavit proving Service of Notice has been filed by the Petitioners on 29-July-2022.

B. The Learned Counsel for the Petitioner(s) further submits that in compliance with Section 230(5) of the Companies Act, 2013 and the said order dated 13-June-2022 read with 14-July-2022 made in Company Application (CAA) No. 38/KB/2022, notice along with all accompanying documents has also been served on

- (a) The Central Government through Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata via e-mail on 11-October-2022 and via Speed Post on 11-October-2022.



- (b) Registrar of Companies with whom the Petitioner(s) are registered via e-mail on 11-October-2022 and via Speed Post on 11-October-2022.
- (c) Official Liquidator attached to the Hon'ble High Court, Kolkata via e-mail on 11-October-2022 and via Speed Post on 11-October-2022.
- (d) The concerned Income Tax Assessing Officer along with the Chief Commissioner of Income Tax having jurisdiction via e-mail on 11-October-2022 and via Speed Post on 11-October-2022.

A Supplementary Affidavit proving Service of Notice via e-mail and Speed post has been filed by the Petitioners on 11-October-2022.

5. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Petitioner(s), we admit the instant petition and fix the next date of hearing on **12/12/2022**.
6. At least 10 (ten) clear days before the said date fixed for hearing, the Petitioner(s) shall cause notice of hearing to be advertised in the "**Financial Express**" in '**English**' and "**Aajkaal**" in '**Bengali**' as per Rule 16(1) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ("**CAA Rules**").
7. Another notice pursuant to Section 230(5) of the Companies Act, 2013 along with accompanying documents, including the copies of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013, as sent earlier, shall be served again on the aforesaid Statutory Authorities by sending the same to them by hand delivery through special messenger, by speed post and by e-mail within one week from the date of receiving this order. The notice shall specify the next date of hearing of the petition, as aforesaid, and state that representation, if any, and if not already filed, should be filed before this Tribunal no later than 7 (seven) days before the next date of hearing of the petition and a copy of such representation should be simultaneously sent to the Authorised Representative of the said Petitioner(s). If no such representation is received by the Tribunal within such period, it shall be presumed that such Authorities have no representation to make on the said Scheme. Such notice shall be sent in Form No. CAA3 of the CAA Rules with necessary variations, incorporating the directions herein.



8. The Petitioner(s) to file an affidavit confirming compliance of the abovementioned directions of this Tribunal, 3 (Three) days before the next date of hearing.
9. The Petitioner(s) may also file their rejoinder affidavit(s) dealing with the objections/ observations, if any, of the Authorities, 2 (Two) days before the next date of hearing.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order Dated: 28/10/2022.

Kundan Kr.