

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III**

Item No. 105
CP. CAA-12(ND)/2023

IN THE MATTER OF:

Devyani Airport Services (Mumbai) Pvt Ltd. AND Devyani Food Street Pvt Ltd.

.....PETITIONER

SECTION

U/s 230/232

Order Pronounced on 13.07.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant	: Mr. Saurav Kalia, Mr. Rizwan Khan, Mr. Neeraj Arora, Advs.
For the IT Dept.	: Mr. Zobe Hussain, Sr. Standing Counsel, Mr. Sanjeev Menon, Jr. Standing Counsel With Mr. Vivek Gaurav, Adv.
For the OL	: Ms. Hemlata Rawat, Adv.
For the RD	: Ms. Shankari Mishra, Adv.

ORDER

Order pronounced in open court vide separate sheets. CP. CAA-12(ND)/2023 is **sanctioned** and **disposed of**.

**-SD-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

**-SD-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI, COURT-III**

COMPANY PETITION NO. (CAA) - 12(ND)/2023

CONNECTED WITH

COMPANY APPLICATION NO. (CAA) - 99(ND)/2022

(Under Section 230-232 and other applicable provisions of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016)

IN THE MATTER OF SCHEME OF AMALGAMATION

OF

M/s. DEVYANI AIRPORT SERVICES (MUMBAI) PRIVATE LIMITED

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

AND

M/s. DEVYANI FOOD STREET PRIVATE LIMITED

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

WITH

M/s. DEVYANI INTERNATIONAL LIMITED

..... Petitioner Company No. 3/ Transferee Company

AND

THEIR RESPECTIVE CREDITORS AND SHAREHOLDERS

Order Delivered on 13.07.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Saurabh Kalia, Adv.

For the IT Department : Mr. Zoheb Hussain, Sr. Standing Counsel
Mr. Sanjeev Menon, Jr. Standing Counsel
with Mr. Vivek Gaurav Adv.

Devyani Airport Services (Mumbai) Pvt Ltd. and Devyani Food Street Pvt Ltd.

CP(CAA)/12(ND)/2023

Date of Order: 13.07.2023

For the Official : Ms. Hemlata Rawat, Adv.

Liquidator

For the Regional : Ms. Shankari Mishra, Adv.

Director

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Second Motion Petition is filed jointly by the M/s. Devyani Airport Services (Mumbai) Private Limited (Petitioner Company No. 1/ Transferor Company No. 1), M/s. Devyani Food Street Private Limited, (Petitioner Company No. 2/ Transferor Company No. 2), and M/s. Devyani International Limited (Petitioner Company No. 3/ Transferee Company) under Sections 230-232 of the Companies Act, 2013 (Act) read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Rules) for the Sanction of the proposed Scheme of Amalgamation between the Transferor Company and Transferee Company and their respective shareholders and creditors (Scheme). The proposed Scheme provides whereby all the undertaking, entire business and all the properties whether moveable or immovable or tangible or intangible where ever situated and also all other assets, capital, work-in-progress, current assets, movable assets, all investments in India or out of India, if any, powers, authorities, allotments, approvals, consents licenses, registrations, contracts, engagements, arrangements, rights, intellectual property rights, titles, interests, benefits and advantages of whatsoever nature belonging to or in the ownership, power, possession, control of or vested in or granted in favour of or enjoyed by the Transferor/ Petitioner Companies, including but without being limited to, all licenses, liberties, easements, advantages, benefits, privileges, leases, tenancy rights, ownership, intellectual property rights including trademarks, brands, copy rights, patents, quota rights, subsidies, capital subsidies, concessions, exemptions, approvals, clearances, environmental clearances, authorizations, certification, quality certification, utilities, electricity connections, electronics and computer link ups, services of all types,

Devyani Airport Services (Mumbai) Pvt Ltd. and Devyani Food Street Pvt Ltd.

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reserves, provisions, funds, benefit of all agreements and all other interests arising to the Transferor Companies/ Petitioner Companies (hereinafter collectively referred to as "the said assets") shall, without any further act or deed or without payment of any duty or other charges, be transferred to and vested in the Transferee Company/ Petitioner Company No. 3 pursuant to the provisions of Sections 230-232 of the Companies Act, 2013 for all the estate, right, title and interest of the Transferor Companies/Petitioner Companies therein so as to become the property of the Transferee Company/ Petitioner Company No. 3.

The Registered office address of each Petitioner Company is situated in the NCT of Delhi and therefore, it is under the jurisdiction of the National Company Law Tribunal, New Delhi.

2. Transferor Company No. 1 namely M/s. Devyani Airport Services (Mumbai) Private Limited, bearing CIN: U55101DL2013PTC250959 was incorporated on 18/04/2013 under the provisions of the Companies Act, 1956 as a Private Company Limited with the Registrar of Companies, NCT of Delhi and Haryana. The registered office address of Transferor Company No. 1 is situated at F-2/7, Okhla Industrial Area, Phase-I, New Delhi-110020. The Authorized Share Capital of the Company is Rs. 54,00,00,000/- and the issued, subscribed and paid-up share capital of the company is Rs. 49,94,80,360/-.
3. Transferor Company No. 2 namely M/s. Devyani Food Street Private Limited, bearing CIN: U55101DL2009PTC193995 was incorporated on 07/09/2009 under the provisions of the Companies Act. 1956, as a Private Company Limited with the Registrar of Companies, NCT of Delhi and Haryana. The registered office of Transferor Company No. 2 is situated at F-2/7, Okhla Industrial Area, Phase-I, New Delhi-110020. The Authorized Share Capital of the Company is Rs.13,50,00,000/- and issued, subscribed and paid-up share capital of the company is Rs. 8,90,90,000/-.
4. Transferee Company namely M/s. Devyani International Limited, bearing CIN: L15135DL1991PLC046758 is a company originally

incorporated on 13/12/1991 under the provisions of the Companies Act, 1956 as Private Limited Company under the name and style of "Universal Ice Creams Private Limited". Thereafter, name of the Applicant Company No. 3 was changed to "Devyani International Private Limited" and fresh certificate of incorporation was issued by the Registrar of- Companies on 07/06/2000. Subsequently, the Applicant Company No. 3 was converted into Public Limited Company and its name was changed to "Devyani International Limited". A new certificate of incorporation was issued by Registrar of Companies, NCT of Delhi and Haryana on 09/05/2005. The registered office address of Transferor Company No. 3 is situated at F-2/7, Okhla Industrial Area, Phase-I, New Delhi-110020. The Authorized Share Capital of the Company is Rs. 500,00,00,000/- and the issued, subscribed and paid-up share capital of the company is Rs. 120,47,36,378/-.

5. It is stated that the Transferee Company viz., M/s. Devyani International Limited has moved the necessary second motion Petition being **CP (CAA) – 12(ND)/2023** on 07.01.2023, connected with the first motion Application being **CA (CAA) – 99(ND)/2022**, before the National Company Law Tribunal, New Delhi.
6. The Board of Directors of the Transferor Companies and of the Transferee Company in their respective Board Meetings dated 13.12.2021 approved and adopted the proposed Scheme of Amalgamation.

A Copy of the Board Resolution dated 13.12.2021, passed by the Board of Directors of the Transferor Company and of the Transferee Company, inter alia, approving the Scheme and the filing thereof with this Tribunal is filed along with the Petition.

7. The rationale for, and the benefits of, the Scheme of arrangement for the amalgamation of the Transferor Company with the Transferee Company are as follows:

The Amalgamation of the Transferor/ Petitioner Companies into and with the Transferee/ Petitioner Company No. 3 is proposed to consolidate the operations/business of the Transferor Companies and

the Transferee Company into a single company by amalgamation of the Transferor Companies with the Transferee Company pursuant to a Scheme of Amalgamation under Sections 230-232 and other applicable provisions, if any, of the Companies Act, 2013. The amalgamation of the Transferor Companies with the Transferee Company would result, inter-alia, in the following benefits:

- i.** Both the Transferor Companies are Wholly Owned Subsidiaries of the Transferee Company engaged in similar activities. The proposed amalgamation of the Transferor Companies with the Transferee Company would result in business synergy, consolidation of various Wholly Owned Subsidiaries with their Parent/Holding Company and pooling of their resources into a single entity which would facilitate in exploiting the significant potential for growth.
- ii.** The proposed Amalgamation would result in optimising and leveraging the existing resources of these Companies for the most beneficial utilization of these factors in the combined entity. It would be advantageous to combine the activities and operations of all these Companies in a single entity and build strong capability to effectively meet future challenges in the competitive business environment.
- iii.** The proposed Scheme of Amalgamation will result in the usual economies of a centralized and a large company including the elimination of duplicate work, reduction in overheads, better and more productive utilization of financial, human and other resources and enhancement of overall business efficiency. The proposed Scheme will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and promote and secure overall growth.
- iv.** The amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances which at present is required to be made separately by the Transferor Companies and the Transferee Company.

- v. Greater efficiency in cash management of the Transferee Company and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities. The proposed amalgamation would enhance the shareholders' value of the Transferor and the Transferee Companies.
 - vi. The proposed Scheme of Amalgamation will have beneficial impact on the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned.
8. This Tribunal by its order dated 11.11.2022 (18.11.2022 – modified order) dispensed with the requirement to convene the meetings of the Equity Shareholders of the Transferor Companies and dispensed with the requirement to convene the meetings of the Unsecured Creditors of Transferor Companies and dispensed with the requirement to convene the meetings of the Secured Creditors of Transferor Companies and Transferee Company, as sought through first motion application.
 9. The Second Motion petition was moved by the Petitioner Companies in connection with the Scheme of Amalgamation for issuance of notices. This Tribunal vide order dated 08.02.2023 directed to issue notice to the Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, NCT of Delhi and Haryana, Ministry of Corporate Affairs, Official Liquidator attached to the High Court Of Delhi and Such other Sectoral Regulatory Authorities who shall be affected by the proposed Scheme and to such other Objector(s), if any, and also direct that the notice be published in two newspapers i.e., Indian Express (English) and Jansatta (Hindi) Delhi Edition.
 10. It is submitted by the Petitioners that in compliance of the above-stated directions, the Petitioners duly filed an Affidavit of Service dated 18.03.2023 by confirming that the aforesaid Notices of the present Company Petition were published on 15.03.2023 in Indian Express (English) and Jansatta (Hindi) newspapers Delhi edition.

It is further submitted that the Petitioner Companies also served the Notices of the present Company Petition to all the statutory authorities as per the direction given by this Tribunal dated 11.11.2022 (18.11.2022 – modified order).

11. The Income Tax Department vide its report dated 01.03.2023 submitted to this Tribunal stating therein that they have no objection with respect to the present Scheme of arrangement but has made certain observations. The petitioner companies filed reply dated 25.03.2023 in response to the observations made by Income Tax Department, wherein the petitioner companies gave an undertaking to appropriately comply with the observations made by the Income Tax Department.
12. The Regional Director along with the Registrar of Companies vide its report dated 28.03.2023 has not objected to the proposed scheme of the arrangement but has made certain observations. The petitioner companies filed reply dated 12.04.2023 in response to the observations made by the Regional Director, wherein the petitioner companies gave an undertaking to appropriately comply with the observations made by the Regional Director.
13. The Official Liquidator vide its report dated 22.03.2023 submitted to this tribunal stating therein that they have no objection with respect to the present scheme of arrangement.
14. The Transferee / Petitioner Company No. 3 shall account in accordance with and as per the method of amalgamation prescribed in the applicable Indian Accounting Standard as notified under Section 133 of Companies Act, 2013 read together with Paragraph 3 of the Companies (Indian Accounting Standard) Rules, 2015 and other accounting principles generally accepted in India.

In this regard, Certified true copies of Certificates obtained from the Statutory Auditors of all the Petitioner Companies confirming the accounting treatment proposed in the Scheme of Amalgamation are filed along with the Petition.

15. No investigation proceedings have been instituted and are pending in relation to either of the Petitioner Companies under Sections 235 to 251 of the Act or under Sections 206 to 229 (Chapter XIV) of the Act. To the knowledge of each of the Petitioner Companies, no winding-up petition (including under Section 433 read with Section 434 of the Companies Act, 1956) and/or insolvency proceedings have been filed/instituted and are pending against either of the Petitioner Companies. None of the directors of the Petitioner Companies have any material interest in the Scheme except to the extent of their directorships and shareholding in the Petitioner Companies. This Joint Second Motion Petition is made bona fide and in the interest of justice and no one will be prejudiced if orders are made/or directions are given as prayed for.

16. Analysis and Finding

- i.** After considering the reports, we are of the considered view that the Scheme is not prejudicial to the interest of the equity shareholders and creditors of the Transferor Companies and the Transferee Company and the Scheme will be beneficial to the Transferor Companies, Transferee Company and their respective shareholders and creditors.
- ii.** The shareholders of the petitioner company are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by this Tribunal for the reason that it is not a part of the judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme, of which sanction is sought under Section 230-232 of the Companies Act of 2013, will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.
- iii.** It has also been affirmed in the petition that the Scheme is in the interest of both the Transferor Companies, Transferee Company, their respective shareholders, creditors, employees and all concerned.

In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, there appears to be no impediment in sanctioning the present Scheme.

17. Consequently, the sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013.

- i. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with the law.
- ii. Notwithstanding the above, if there is any deficiency found or, the violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken in accordance with the law, against the concerned persons, directors and officials of the petitioners.
- iii. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.
- iv. In compliance with the requirement of Section 230 (1) of the Act, the transferee company shall until the full implementation of the Scheme of Amalgamation filed stated in Form CAA 8 along with the required fee as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.
- v. The appointment date as proposed in the Scheme of Arrangement i.e., 01.04.2022 by the Petitioner Company is confirmed by this Tribunal.

18. This Tribunal does further order: -

- i. That the Transferor Companies shall stand dissolved without following the process of winding-up; and
- ii. That all properties, rights and powers of the Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly, the same shall pursuant to Section 230-232 of the

Companies Act, 2013 be transferred to and vested in the Transferee Company for all intents, purposes and interest of the Transferor Companies subject nevertheless to all changes now affecting the same; and

- iii. That all the liabilities, (if any) and powers, engagements, obligations and duties of the Transferor Companies shall pursuant to Section 232(3) of the Companies Act,2013 without further act or deed be transferred to the Transferee Company and accordingly the same become the liabilities and duties of the Transferee Company; and
- iv. That all proceedings now pending by or against the Transferor Company shall be continued by or against the Transferee Company; and
- v. That all the employees of the Transferor Companies in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date, shall become the employees of the Transferee Company on such date, without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the concerned Transferor Companies on the said date; and
- vi. That the Petitioner Companies, shall within thirty days of the date of the receipt of this order cause certified copy of this Order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferee Company shall be deemed to be transferred; and
- vii. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

19. Accordingly, the Scheme stands **sanctioned** and **CP(CAA)/12 (ND)/2023** stands **disposed of** in the above terms.

Let copy of the order be served to the parties.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

Devyani Airport Services (Mumbai) Pvt Ltd. and Devyani Food Street Pvt Ltd.

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