

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**SPECIAL BENCH- BENGALURU**  
**(through web based video-conferencing platform)**

**CP (CAA) No.42/BB/2022**  
**(Second Motion)**

U/s. 230-232 of the Companies Act, 2013  
r/w. Companies (CAA) Rules, 2016

**IN THE MATTER OF:**

**Eastern Condiments Private Limited,**

No.1, 2nd & 3rd floor, 100 Feet Inner Ring Road Ejipura,  
Ashwini Layout, Vivek Nagar,  
Bangalore 560047 ..... Petitioner Co.1 / Transferor Company

**AND**

**MTR Foods Private Limited,**

No.1, 2nd & 3rd Floor,  
100 Feet Inner Ring Road Ejipura,  
Ashwini Layout, Vivek Nagar,  
Bangalore 560047, Karnataka ..... Petitioner Co.2/ Transferee Company

**Order delivered on: 24.08.2023**

**CORAM:** 1. Hon'ble Justice (Retd) T. Krishnavalli ,Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioners : Shri Saji P. John with Shri Pradeep B.Kulkarni,  
Shri Adit Shah, Shri Ajeya B.G, Shri Vadiraju  
For the OL : Shri Manjunath (JTA)  
For IT : Shri Ganesh R Ghale

**ORDER**

**Per: T.Krishnavalli, Member (Judicial)**

1. This is a Second Motion Petition jointly filed on 22.08.2022 by Eastern Condiments Private Limited (for brevity , the “Petitioner Company No.1”/ “Transferor Company” ) and MTR Foods Private Limited (for brevity , “the Petitioner Company No 2”/ “Transferee Company”) under Sections 230 and 232 of the Companies Act, 2013 (for short to be referred hereinafter as the ‘Act’) and in terms of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, ‘Rules’) by *inter alia* seeking for the sanction of Scheme of Amalgamation (for brevity ‘Scheme’) between Eastern

Condiments Private Limited (“Transferor Company”) and MTR Foods Private Limited (“Transferee Company”).

2. The Petitioner Companies filed First Motion Application bearing CA (CAA) No.02/BB/2022 (“**First Motion Application**”) before this Tribunal seeking to dispense with the meeting of the Equity Shareholders of Applicant Companies, to convene the meetings of secured and unsecured creditors of the applicant company no.1, convene meetings of unsecured creditors of the applicant company no.2 and since there are no secured creditors in the applicant company no.2, hence there was nothing to convene their meeting. Based on such Application moved under section 230-232 of the Companies Act, 2013 necessary directions were issued vide order dated 23.06.2022. Details of the first motion order dated 23.06.2022 are as under:

<b>CA (CAA) No.04/BB/2022 – Date of Order 23.06.2022</b>		
<b>List</b>	<b>Transferor Company</b>	<b>Transferee Company</b>
Equity shareholders	Meeting Dispensed (Consent Obtained)	Meeting Dispensed (Consent Obtained)
Secured creditors	Meeting convened on 03.08.2022	(No Secured Creditors)
Unsecured creditors	Meeting convened on 03.08.2022	Meeting convened on 03.08.2022

Pursuant to the First Motion Application, the Tribunal directed to convene the meetings of Secured and Unsecured Creditors of the Transferor Company on 03.08.2022. In compliance to the Order dated 23.06.2022, the aforesaid meetings were held on 03.08.2022 and the report of the Chairperson (Ms. Ramya BT) dated 10.08.2022 and the report of the Scrutinizer (Shri. Deepak Athreyas) dated 08.08.2022 is attached along with the petition wherein it is stated that in respect of the meeting of Secured Creditors of Petitioner Company No.1, the members were permitted to exercise their vote through video conferencing or OAVM as per MCA guidelines. On a consolidated basis, valid votes were casted by both secured creditors (representing 100% in value) in favour of the resolution (representing 100% of total voting) and were no votes casted against the resolution. Therefore, the resolution approving Scheme of Transferor Company and Transferee Company was approved by the secured creditors with requisite majority. It is further stated that the meeting of Unsecured Creditors of Transferor Company was attended through video

conferencing or OAVM as per MCA guidelines by 23 Unsecured Creditors (out of a total of 677 unsecured creditors) of the Petitioner Company No.1 representing to Rs 13,54,42,228 in value, constituting 59.57% of the value of unsecured creditors of the Company. In the First Motion order dated 23.06.2022, it was prescribed that the quorum for the meeting will be 40% of the total value of the unsecured creditors, therefore this requirement is fulfilled. The total value of 23 Unsecured Creditors voting in video conferencing for the resolution was Rs. 13,54,42,228 /- . The 20 votes for Rs. 12,21,20,451 unsecured creditors were casted in favour of the resolution (representing 96.77% of total voting) and 1 vote were casted against the resolution (representing 3.23% of total voting) and 2 votes were abstained. Therefore the resolution approving Scheme of Amalgamation of Transferor Companies and Transferee Company was approved by the unsecured creditors with requisite majority. It is further stated meetings were held on 03.08.2022 and the report of the Chairperson (Ms. Rishi Agarwal) dated 08.08.2022 and the report of the Scrutinizer (Shri. L.Dhanajay Reddy) dated 04.08.2022 is attached along with the petition wherein it is stated that in respect of the meeting of of Unsecured Creditors of Transferee Company was attended through video conferencing or OAVM as per MCA guidelines by 121 Unsecured Creditors (out of a total of 1456 unsecured creditors) of the Petitioner Company No.2 representing to Rs 98,29,94,854/- in value. In the First Motion order dated 23.06.2022, it was prescribed that the quorum for the meeting will be 40% of the total value of the unsecured creditors, therefore this requirement is fulfilled. The total value of 95 Unsecured Creditors voting in video conferencing for the resolution was Rs 98,02,48,679 /- . The 94 votes for Rs. 979550758 unsecured creditors were casted in favour of the resolution (representing 99.93% of total voting) and 1 vote were casted against the resolution (representing 0.07% of total voting). Therefore the resolution approving Scheme of Amalgamation of Transferor Companies and Transferee Company was approved by the unsecured creditors with requisite majority.

**3.** When the petition was listed on 18.10.2022, the following directions were issued:-

*“Admit and Issue Notice. The Registry is directed to prepare notice on all the statutory authorities viz., the Central*

*Government through the office of the Regional Director South east Region, Hyderabad; Registrar of Companies, Official Liquidator, Income Tax Department, Competition Commission of India; Reserve Bank of India and the learned counsel for the petitioner is permitted to collect the notice and serve it on the said statutory authorities along with the Company Petition and material papers by speed post as well as by authorized email and to file proof of service of notice in the NCLT Registry, by way Compliance Affidavit well before the next date of hearing. The applicant is directed to take paper publication in one in Kannada daily and one English Daily vastly circulated in the region where the company is located. Accordingly, notice is issued to you to submit your reply on the above subject to the Bench in the matter on or before 08.12.2022. Next date of hearing of the above case is fixed on 13.12.2022 for hearing.”*

4. In pursuant to the aforesaid notice, the Petitioner Companies have filed a compliance affidavit vide Diary No.5216 dated 02.12.2022 along with copies of proof of service of notice to the aforesaid authorities.
5. The main objects, date of incorporation, authorized, issued and paid-up share capital, rationale of the Scheme and interest of employees have been discussed in detail in First Motion Order passed on 23.06.2022.
6. The Board Resolution approving the Scheme by the Petitioner Companies is annexed at Annexure D & H of the Petition.
7. It is further submitted that the Certificates of Statutory Auditors of the Petitioner Companies, stating that the Accounting Treatment contained in clause 13 of Part B of the Proposed Scheme, is in compliance with the applicable Indian accounting standards specified under Section 133 of the Act read with the Companies (Indian Accounting Standards) Rules, 2015 (as amended) and other Generally Accepted accounting principles. The aforesaid certificate is attached as Annexure L of the petition.
8. The audited financial statements as on 31.03.2021 and the unaudited balance sheets as on 31.03.2022 of petitioner companies are attached as Annexure B, C, F & G to the petition.
9. As per the Scheme, the “Appointed Date” means 01.04.2021.
10. The consideration for Amalgamation of the Transferor Company with the Transferee Company has been determined under clause 7 of the Scheme.
11. It is stated that the petitioner companies have filed affidavits stating that there is no Capital or Debt Restructuring pursuant to the Scheme becoming effective and the merger between the Transferor and Transferee. The

petitioner companies produced the details of the pending investigations and legal proceedings and further stated that apart from the details produced there are no investigation proceedings pending against the Petitioner Companies under any other statutes. The aforesaid affidavits is attached as Annexure J & K of the petition.

- 12.** In pursuant to the notice, the Regional Director (RD) has filed its report along with the ROC *vide* Diary No.2157 dated 19.04.2023, by *inter alia* observing as under, *vide* para 2:

I. The Appointed Date of the scheme is mentioned as 01.04.2021, being an old dated, the scheme if approved, may be allowed from 01.04.2022 as appointed date as all the Transferor Companies and Transferee Company have filed their Balance Sheets for the year ending 31.03.2022.

II. As per the latest shareholders list attached to the last Annual Return filed as on 31.03.2022, the Transferee Company holds 67.82% of shares in Transferor Company and Orkla Asia Pacific Pte Ltd, Singapore holds 99.99% of shares in the Transferee Company. Transferee Company is required to comply with the provisions of FEMA/RBI, by providing compliances before the Hon'ble NCLT, before the scheme is allowed.

III. The Transferor Company has shifted its Registered Office from the State of Kerala to the State of Karnataka on 01.10.2021.

IV. As per MCA records, the Transferor Company has one open charge. Hence, the petitioner company may be directed to obtain and furnish No Objection Certificate from the concerned charge holder before the scheme is allowed.

V. As per clause 7 of part B of the Scheme, Transferee Company shall issue and allot to the shareholders of Transferor Company a combination of:

- (i) 7,57,526 fully paid Equity Shares of face value Rs. 10; and
- (ii) 6,11,128 fully paid ROCPS of face value of Rs. 10.

As it is seen that the Transferee Company is holding around 67.82% shares in the Transferor Company, same have to be cancelled and no fresh shares are to be issued in lieu of these shares. Further, it is only mentioned that a combination of Equity Shares and Redeemable Optional Convertible Preference Shares shall be issued. The ratio of these Equity Shares and Redeemable Optional Convertible Preference Shares to be allotted has not been specified. Hence, it has to be clari-

fied as to what is the ratio of allotment and provide a detailed list as to which shareholders will be allotted which shares and the quantum of the same. A specific undertaking from each allottee / eligible Shareholders of Transferor Company needs to be provided for the allotment thus proposed.

It is also seen that the Authorized Capital of the Transferee Company does not provide for any sort of preference share capital. The capital clause of the Transferee Company requires to be altered accordingly, before the scheme is approved, duly following the prescribed procedure in compliance of the Companies Act, 2013 and Rules framed therein and filing the respective forms with jurisdictional Registrar of Companies, so as to enable it to issue shares as per the consideration proposed in the scheme.

VI. As per note no. 33(b) and 41 of Audited financial statement for the financial year ending 31.03.2022 of Transferor Company and Transferee Company respectively, the Transferor Company has disputed Sales Tax/VAT liability to the tune of Rs. 44.31 crores, Service Tax liability to the tune of Rs. 8.43 crores and Central Excise Tax liability to the tune of Rs. 11 lakhs and Transferee Company has Indirect Tax liability to the tune of Rs. 2.04 crores and other litigation amount towards Bangalore Electricity Supply Company Limited to the tune of Rs.1.58 crores. Further, as per note no. 25 of Audited financial statement for the financial year ending 31.03.2022, Transferee Company has undisputed statutory dues to the tune of Rs. 4.69 crores. Hence, the Petitioner Companies may be directed to furnish an undertaking to the effect that statutory dues will be settled immediately, if not settled so far and settle the disputed dues as and when the claim is crystallized.

VII. According to note no. 18 and 23 of the Audited financial statement of the Transferor and Transferee Companies for the year ended 31st March 2022, outstanding dues to Micro and Small Enterprises to the tune of Rs. 7.48 crores and Rs. 93.86 crores respectively exists. The Petitioner Companies may be advised to show as to how it has complied with Micro, Small and Medium Enterprises Development Act, 2006 and may be directed to furnish an undertaking to the effect that it will settle the dues as per the said Act immediately, if not settled so far.

VIII. As per note 39 of financial statements for the year ending 31.03.2022, the Transferee Company had an unspent amount on an ongoing project to the tune of Rs.53 lakhs and as per the provisions of section 135(6) of the Companies Act, 2013, the company was required to transfer the unspent amount to a special account called "Unspent Corporate Social Responsibility Account" within a period of 30 days from the financial year ended on 31.03.2022. But, Transferee company transferred the unspent amount to the special account on September 27, 2022, which is beyond the stipulated timelines and thereby not complied with the provisions of section 135(6) of the Companies Act, 2013. The company may be directed to file an adjudication application under section 454 of the Companies Act, 2013 for not complying with the requirement of section 135(6) of the Companies Act, 2013, before the scheme is allowed.

IX. The Transferor and Transferee Companies have Related Party Transactions during the financial year 2021-22. The petitioner companies may be asked to show the compliance of Section 188 of the Companies Act, 2013 read with Rule 15 of Companies (Meetings of Board and its Powers) Rules, 2014, before the scheme is allowed.

X. Clause 14 of Part A of the Scheme provides for Clubbing of Authorised Capital wherein it is stated that the authorized share capital of the Transferee Company shall automatically stand increased without any payment of stamp duty and fees. This term in the Scheme is not in line with the provisions of Section 232(3)(i) of the Companies Act, 2013. In this regard, the Transferee Company shall comply with provisions of the aforementioned section and pay the difference fee, after setting off the fee already paid by the Transferor Company on its respective capital.

XI. As per Section 240 of the Companies Act, 2013, the liability in respect of offences committed under the Companies Act by the Officers in default, of the Transferor Company prior to merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

XII. Official Liquidator, Karnataka in his report filed before Hon'ble NCLT, Bengaluru Bench has pointed out certain observations. The Hon'ble Tribunal may

kindly direct the Petitioner companies to comply with the observations pointed out by the Official Liquidator, Karnataka, before the scheme is allowed.

**13.** Subsequently, reply affidavit to the Common RD & ROC report have been filed by petitioner companies vide diary No.2198 and 2199 dated 20.04.2023 *inter alia* stating as under:-

1. Regarding observation in Para No. 2(I) of the Common Report It is submitted that the appointed date of 1 April 2021 as set out in the Scheme has been approved by the shareholders of both the Petitioners and their respective creditors at the meetings of the creditors conducted by this Hon'ble Tribunal. Further, both the Petitioners have filed their respective financial statements under Section 137 of the Companies Act, 2013 for the financial year 2021-22 on a standalone basis as the Scheme is pending approval by this Hon'ble Tribunal.

Upon this Hon'ble Tribunal approving the Scheme, the Transferee Company, i.e., the resultant amalgamated company, will file a revised financial statement for the financial year 2021-22, in accordance with the Companies Act, 2013. It is submitted that the appointed date of 1 April 2021 has been decided with certain commercial considerations of the Petitioners, and the same is not restricted under the Companies Act, 2013.

It is accordingly submitted that the appointed date need not be changed or extended to any other date as the same will adversely impact the Scheme and the interests of the stakeholders upon the amalgamation.

2. Regarding observation in Para No. 2(II) of the Common Report, it is submitted that the Petitioner Companies are currently fully compliant with the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder. Following the sanction of the Scheme, it is submitted that the Petitioners will undertake any actions as may be directed in order to comply with the applicable provisions of the Foreign Exchange Management Act, 1999.
3. Regarding observation in Para No. 2(III) of the Common Report, it is submitted that the Transferor Company has duly complied with



the Companies Act, 2013 and the rules made thereunder, in shifting its registered office as mentioned in the Report, and obtained the approval of the Regional Director, Southern Region, Chennai.

4. Regarding observation in Para No. 2(IV) of the Common Report, it is submitted that the said charge pertains to a loan taken from ICICI Bank by Reenaz Properties Private Limited with the Transferor Company as a co-borrower (together, the Borrowers), and to secure such loan, a charge was created by way of mortgage on the corporate office building of ECPL. Subsequently, the Borrowers had availed a further top-up loan facility from ICICI Bank on 30 July 2020, pursuant to which a supplemental indenture of mortgage was executed between the Borrowers and ICICI on the same date and the earlier charge was modified accordingly. Subsequently, the Transferor Company had transferred the ownership of the corporate office building to Reenaz. However, since the loan facility subsists, the charge has not been closed and is reflected as an open charge against the Transferor Company's name in the Ministry of Corporate Affairs portal. The Transferor Company will undertake best efforts to obtain a no objection certificate from ICICI Bank in this regard.

Notwithstanding the above, it is submitted that ICICI Bank is a secured creditor of the Transferor Company and had voted in favour of and approved the Scheme at the meeting of the secured creditors of the Transferor Company dated 3 August 2022, convened by this Hon'ble Tribunal, and the same has been noted in the report dated 10 August 2022 of the Chairperson of the meeting appointed by this Hon'ble Tribunal. Attached is a copy of the report of the Chairperson as Annexure 1.

5. Regarding observation in Para No. 2(V) of the Common Report, it is submitted that all details relating to the issuance of shares of the Transferor Company to Mr. Navas Meeran and Mr. Feroz Meeran the eligible shareholders of the Transferor Company (Eligible Holders) including the nature of the shares and ratio in which it is to be issued, are fully set out in Paragraph 7 of the Scheme. It is submit-

ted that that paragraph 7.1 of the Scheme states that a combination of (i) 7,57,526 fully paid Equity shares of face value Rs.10, and (ii) 6,11,128 fully paid ROCPS of face value of Rs. 10, shall be issued to the eligible holders in proportion to their respective holding of equity shares in the Transferor Company. As each eligible holder currently holds 1,553,795 equity shares each in the Transferor Company, the number and proportion in which shares will be issued and allotted to the Eligible Holders in the Transferee Company shall be as follows:

<b>Name of Eligible Holder</b>	Number of equity shares held in the Transferor Company (% percentage shareholding)	Number of equity shares to be issued in the Transferee Company	Number of ROCPS to be issued in the Transferee Company
Navas Meeran	1,553,795 (16.09%)	3,78,763	3,05,564
Feroz Meeran	1,553,795 (16.09%)	3,78,763	3,05,564

It is submitted that the above, i.e., the determination of the number of shares to be issued and allotted to the Eligible Holders is based on the valuation report prepared by the Registered Valuer, Mr. Harsh Chandrakant Ruparelia, C.A. It is further submitted that the Eligible Holders have filed affidavits before this Hon'ble Tribunal dated 25 October 2021 stating that they agree and confirm to the terms of the Scheme which includes the issue of the shares as described above, and have accordingly agreed to dispense with the meeting of shareholders as required under Section 232 of the Companies Act, 2013.

Further, in relation to the alteration of the Transferee Company's authorised share capital clause, it is submitted that in accordance with Paragraph 14 of the Scheme, upon the Scheme becoming ef-

fective, the authorised share capital of the Transferor Company shall stand combined with the authorised share capital of the Transferee Company, without any further act or deed of the Transferee Company; accordingly, as stated in Paragraph 14.2 of the Scheme, upon the sanction of the Scheme by this Hon'ble Tribunal, Clause V of Memorandum of Association of the Transferee Company shall be replaced with the following:

*"The Authorized Share Capital of the Company is INR 109,00,00,000 divided into 8,70,00,000 equity shares having face value of INR 10 each and 2,20,00,000 redeemably optionally convertible preference shares having face value of INR 10 each."* The Transferee Company shall, following the sanction of the Scheme by this Hon'ble Tribunal, undertake all actions as may be necessary under the Companies Act, 2013 (including payment of the differential stamp duty, etc.) to give effect to the above. It is accordingly submitted that there is no action required to be taken by the Transferor Company prior to the sanction of the Scheme by this Hon'ble Tribunal in this regard.

6. Regarding observation in Para No. 2(VI) of the Common Report, it is submitted that the It is submitted that in accordance with Paragraph 12.1 of the Scheme, all taxes payable by the Transferor Company shall be on account of the Transferee Company pursuant to the sanction of the Scheme by this Hon'ble Tribunal. Further, the Scheme also provides in Paragraph 6.2 (e) that all debts, liabilities, duties and obligations of the Transferor Company shall stand transferred to the Transferee Company so as to become the debts, liabilities, duties and obligations of the Transferee Company pursuant to the sanction of the Scheme. It is submitted that the Transferee Company hereby undertakes to settle all the undisputed statutory dues in the due course of time and will settle the disputed dues as and when the claim is crystallized.
7. Regarding observation in Para No. 2(VII) of the Common Report, it is humbly submitted that the Scheme does not define or provide for Effective Date. As per Clause 3 of the Scheme, it is stated that

the Scheme shall be effective from the Appointed Date. Further, attention is drawn to Para 17.4 of the Scheme, reproduced hereunder – The Transferor Company has complied with the provisions of the Micro, Small and Medium Enterprises Act, 2006 (MSME Act) read with the Companies Act, 2013. Attached as Annexure 2 hereto is a copy of the latest Form MSME-1 filed by the Transferor Company with the Registrar of Companies along with the payment challan thereof. Attached as Annexure 3 is a document indicating the latest status of payments due to entities which are micro, small or medium enterprises in accordance with the MSME Act.

Further, stated that the Transferee Company will settle all payments due to entities which are micro, small or medium enterprises in accordance with the MSME Act, in due course.

8. Regarding observation in Para No. 2(VIII) of the Common Report, it is submitted that the Transferee Company hereby undertakes to file an adjudication application in relation to the non-compliance (i.e., a delay of 5 months) in transferring the unspent corporate social responsibility amount to the designated account within the timelines in the Companies Act, 2013.
9. Regarding observation in Para No. 2(IX) of the Common Report, it is submitted that the The Transferor Company has complied with Section 188 of the Companies Act, 2013, in respect of its related party transactions, and such transactions have also been disclosed in the financial statements (duly audited) of the Transferor Company and the report of the board of directors. Further, it is submitted that as per the report submitted by Sudhakar & Hegde, Chartered Accountants, appointed by the Official Liquidator, it is stated that the transactions of the Transferor Company are in compliance with the provisions of Section 188 of the Companies Act, 2013 and the Transferor Company has recognized all transactions entered into with related parties are in the ordinary course of business and are on an arms' length basis. The Transferee Company has complied with Section 188 of the Companies Act, 2013, in respect of its related party transactions, and such transactions have also been

disclosed in the financial statements (duly audited) of the Transferee Company and the report of the board of directors.

10. Regarding observation in Para No. 2(X) of the Common Report, it is humbly submitted that the pursuant to the sanction of the Scheme by this Hon'ble Tribunal, the Transferee Company shall undertake all the actions necessary, as required under the Companies Act, 2013, for the clubbing of the authorized share capital, pay any differential fee as may be applicable in this regard.
  11. Regarding observation in Para No. 2(XI) of the Common Report, it is humbly submitted it is noted.
  12. Regarding observation in Para No. 2(XII) of the Common Report, it is humbly submitted that the Transferor Company has complied with the observations pointed out by the Official Liquidator and, where applicable, has stated its response to the observations in the compliance memo dated 15 March 2023 filed before this Hon'ble Tribunal.
- 14.** Official Liquidator (OL) has filed a memo and report vide diary No. 1133 dated 27.02.2023 wherein it is stated that the Chartered Accountant in their report in respect of Petitioner Companies by inter alia observing as under:
1. The scheme has been filed under Section 230 - 232 of Company Act, 2013 for merger of Eastern Condiments Pvt Ltd (TR) with MTR Food Pvt Ltd (TE). This report is in respect of the Transferor Company only.
  2. Both Eastern Condiments Private Limited (Transferor Company) With MTR Foods Private Limited (Transferee Company) are registered in the state of Karnataka. The TR Company is a subsidiary of TE Company.
  3. Transferor Company is having one open Charges to the tune of Rs. 23.98 Crore as per charge register/master data maintained by MCA/ROC. Interest of secured creditor need to be taken care.
  4. The Transferee Company is holding 65,49,310 Shares in Transferor Company. Therefore, Transferee Company is having substantial interest in TR Company being subsidiary Company. Nearly 67.82% of

total equity of TR company is held by TE company and other 2 individuals equally with 16.09%.

5. Board of TR company has obtained approval of the scheme on 20.10.2021. As per the records available, unsecured creditors meeting was held on 03.08.2022. The shareholders meeting has not been convened, as the three shareholders have given their consent for the merger with TE company.
6. Through the appointment date proposed is on 01.04.2021, the Company has filed its financial statement U/s 137 of Companies Act 2013 for the 2021 - 2022 with ROC. The appointed /effective may be extended to 01.04.2022 or some other later date.
7. As per documents available, there are large number of unsecured creditors in the TR company. Interest of them to be safeguarded totally by TE company in case the Scheme is allowed.
8. It is seen from the Chartered Accountant's Report that there is a pending contract between Transferor Company and Spice Board. In this regard, an NOC may be obtained from Spice Board for fulfilling the contract/agreement for export of goods and consequential compliances.
9. As per the Financial Statement as of 31.03.2021 and 31.03.2022 of TR company, the company is a fast growing company with Rs. 900 crores turn over. It is not known why such profit making company is to merge with another company which is also profit making company.
10. As 67.82% shares are held by TE Company, no share will be issued by TE company after the scheme is allowed. For other two individual shareholders 757526 equity shares of Rs. 10/- each and 611128 RCPS of Rs. 10/- each will be issued as per the valuation report obtained.
11. The TR company may be asked to show the compliance of MSME Act, paying of interest for the delay and filing of Form MSME-1 with ROC.
12. As per the Financial Statements, the TR company had huge related party transactions with associate company/director/relatives etc., The total compliance of Section 188 r/w Rules shall be shown to the ROC,

Bangalore to his satisfaction and to take further course of action, if any.

13. The CSR Expenditure spent by the TR Company has been examined for the last 3 years. It is noticed that the amount spent by the company for the last 3 years is not eligible as CSR and not in compliance with the schedule 7 r/w Section 135 of Companies Act, 2013. Since, the company has not complied with the requirement of spending the CSR Amount correctly the TR Company has to approach the ROC Bengaluru to clarify as to how they have complied with the section in terms of expenditure incurred.
14. No Employees/workmen of Transferor Company to be retrenched/ terminated in the terms of amalgamation of Transferor Company with Transferee Company. The Hon'ble Tribunal may kindly see that the Transferee Company is complying with the same in letter and spirit and not retrenching the staff or employee of Transferor Company in the guise of surplus staff on account of merger. Need to give a separate undertaking by the Transferee Company in this regard. On 01.04.2021, there were 2839 employees/workers in the TR Company. However, as per Chartered Accountant's report as of now number of employees has plunged to 2291. It means 548 workers were retrenched/given pink slips after the scheme of merger is proposed. It is not known how the TE company with similar number of employees would absorb 2300 (approx.) employees of TR company once the scheme is approved. Considering, this Hon'ble NCLT may kindly safeguard the interest of employees/holders before the scheme is allowed.
15. As per the Chartered Accountant report and details submitted by the company, there are large number of cases pending in the Court of various states against the company with regard to the adulteration in the spice products sold by the TR Company. This aspect may please be noted by the Hon'ble Tribunal.
16. That the Official Liquidator for scrutiny of the books of accounts and records of Transferor Company has engaged M/s. Sudhakar Hegde

and Co, Chartered Accountants from the panel approved by the Hon'ble High Court of Karnataka.

17. That the said Chartered Accountants, has submitted reports on Transferor Company on 08.12.2022 and supplementary report on 13.01.2023. The said reports are enclosed herewith in this report. The Chartered Accountant's reports regarding transferor Company may be treated as part and parcel of this report. It is noticed from the CA report that no adverse comments were given and CA has stated that the affairs of the TR Companies are not prejudicial to the interest of its members, creditors and Public.

**15.** The petitioner companies filed its reply vide diary no: 1523 dated 16.03.2023 to the observations made by the Official Liquidator is as under:

1. Regarding observation in Para No. 1, 2, 4, 5, 10 of the report of the Official Liquidator, it is submitted that the petitioner companies has noted these.

2. Regarding observation in Para No. 3 of the report of the Official Liquidator, it is submitted that It is submitted that in the meeting of the secured creditors of the Transferor Company dated 3 August 2022, convened by this Hon'ble Tribunal, both the secured creditors of the Transferor Company (i.e., ICICI Bank Limited and Kotak Mahindra Prime Limited) were present at the meeting and voted in favour of, and approved the Scheme, and the same has been noted in the report dated 10 August 2022 of the Chairperson of the meeting appointed by this Hon'ble Tribunal. Attached is a copy of the report of the Chairperson as Annexure A.

3. Regarding observation in Para No. 6 of the report of the Official Liquidator, it is submitted that appointed date of 1 April 2021 as set out in the Scheme has been approved by the shareholders of both the Petitioners and their respective creditors at the meetings of the creditors conducted by this Hon'ble Tribunal. Further, both the Petitioners have filed their respective financial statements under Section 137 of the Companies Act, 2013 for the financial year 2021-22 on a standalone basis as the Scheme is pending approval by this Hon'ble Tribunal. Upon this Hon'ble Tribunal approving the Scheme, the Transferee Company, i.e., the resultant amalgamated company, will file a revised financial statement for the



financial year 2021-22, in accordance with the Companies Act, 2013. It is submitted that the appointed date of 1 April 2021 has been decided with certain commercial considerations of the Petitioners, and the same is not restricted under the Companies Act, 2013. It is accordingly submitted that the appointed date need not be changed or extended to any other date as the same will adversely impact the Scheme and the interests of the stakeholders upon the amalgamation.

4. Regarding observation in Para No. 7 of the report of the Official Liquidator, it is submitted that a meeting of the unsecured creditors of the Transferor Company was convened by this Hon'ble Tribunal on 3 August 2022. At such meeting, 96.77% in value of the total number of unsecured creditors of the Transferor Company present and voting at the meeting have approved the Scheme. The same has been recorded in the report dated 10 August 2022 of the Chairperson of the meeting appointed by this Hon'ble Tribunal. Attached is a copy of the report of the Chairperson as **Annexure A**.

5. Regarding observation in Para No. 8 of the report of the Official Liquidator it is submitted that the Transferor Company has submitted a request with the Spices Board of India for obtaining a no-objection certificate as directed in the OL Report. The Transferor Company will submit a copy of such certificate, once the same is received from the Spices Board.

6. Regarding observation in Para No. 9 of the report of the Official Liquidator, it is submitted that rationale for the amalgamation has been clearly set out in the Scheme and an excerpt of the same is reproduced here, for easy reference:

*"Both the Transferor Company and the Transferee Company are currently engaged in similar business activities, i.e., manufacturing, distribution and sale of spices and condiments, convenience foods and other food products. Hence, the amalgamation will result in (i) the optimum utilization of resources by bringing them under one entity and consequent consolidation of technical and managerial expertise of the two companies, (ii) the expansion of the existing business operations of the Transferee Company by combining with the business of the Transferor Company, (iii) the creation*

*of enhanced value for the shareholders of both the Transferee Company and the Transferor Company by way of improved financial structure and cash flow, enhanced asset base, consolidated revenues and higher profitability, (iv) improved product availability for customers due to significant synergies in research and development enabling the amalgamated entity to cater to a larger array of consumers and the existing customers with a better selection of products; (v) enhanced scale of operations by optimal utilization of resources and distribution network of the combined entity."*

7. Regarding observation in Para No. 11 of the report of the Official Liquidator, it is submitted that the Transferor Company has complied with the provisions of the Micro, Small and Medium Enterprises Act, 2006 (**MSME Act**) read with the Companies Act, 2013. Attached as **Annexure B** hereto is a copy of the latest Form MSME-1 filed by the Transferor Company with the Registrar of Companies along with the payment challan thereof. Attached as **Annexure C** is a document indicating the latest status of payments due to entities which are micro, small or medium enterprises in accordance with the MSME Act.

8. Regarding observation in Para No. 12 of the report of the Official Liquidator, it is submitted that The Transferor Company has complied with Section 188 of the Companies Act, 2013, in respect of its related party transactions, and such transactions have also been disclosed in the financial statements (duly audited) of the Transferor Company and the report of the board of directors. Further, it is submitted that as per the report submitted by Sudhakar & Hegde, Chartered Accountants, appointed by the Official Liquidator (CA Report), which forms part of the OL Report, it is stated that the transactions of the Transferor Company are in compliance with the provisions of Section 188 of the Companies Act, 2013 and the Transferor Company has recognized all transactions entered into with related parties are in the ordinary course of business and are on an arms' length basis.

9. Regarding observation in Para No. 13 of the report of the Official Liquidator, it is submitted that A table containing details of the expenditure made by the Transferor Company on its corporate social responsibility (CSR) obligations is set out below:

<b>Particulars</b>	<b>FY 2021-22</b>	<b>FY 2020-21</b>	<b>FY 2019-20</b>
Amount required to be spent on CSR	149	125	118
Amount spent on CSR	89	19	64
Amount unspent on CSR	60	106	53
Details of disclosures in the board's report	Disclosed in board's report under the heading "CSR Report".	Disclosed in board's report under the heading "CSR Report".	Disclosed in board's report under the heading "CSR Report".
Status of transfer to Unspent CSR Account (Yes/No);	Yes	Yes	NA
Date of transfer of such amount and name of the bank in which amount is deposited.	Date of transfer : 30 April 2022 Bank: Citi Bank, Cochin A/c No: 341436087 Amount: 60	Date of transfer : 15 July 2021 Bank: Citi bank, Cochin A/c No: 341436052 Amount:106	
Whether the amount has been spent in pursuance of the CSR policy and in accordance with Schedule VII of the Companies Act, 2013.	Yes	Yes	Yes
Details of amount spent after end of financial year	30 (cheque No.000003 dated 08.03.2023)	18	NA

10. Regarding observation in Para No. 14 of the report of the Official Liquidator, it is submitted that the Scheme, at paragraph 8, provides that upon the Scheme coming into effect, all employees and workmen of the Transferor Company shall become the employees and workmen of the Transferee Company. Accordingly, there shall be no retrenchment or termination of employment in the terms of the Scheme. The Transferee Company shall file an affidavit with this Hon'ble Tribunal to the effect that no such retrenchment or termination exercise will be undertaken by the Transferee Company upon the Scheme receiving the sanction of this Hon'ble Tribunal. It is submitted that the CA Report also opines that

considering the effects of attrition till the effective date, all the employees working in the Transferor Company will become the employees of the Transferee Company without being prejudicial to or sacrificing any of the monetary/compensatory benefits to the employees. It is submitted that the reduction in the workforce of the Transferor Company as pointed out in the OL Report is a result of voluntary separation by such employees from employment with the Transferor Company.

11. Regarding observation in Para No. 15 of the report of the Official Liquidator, it is submitted that the Scheme addresses the issue raised in the OL Report, as it provides that upon the Scheme becoming effective, the Transferor Company shall become a party to all legal proceedings to which the Transferee Company is a party.

12. Regarding observation in Para No. 17 of the report of the Official Liquidator, it is submitted that the CA Report contains no adverse comments and states that the affairs of the Petitioners are not prejudicial to the interest of its members, creditors and the public. Accordingly, the Petitioners humbly seek an order from this Hon'ble Tribunal sanctioning the Scheme.

- 16.** The Learned Counsel for the Petitioner Companies of Income Tax filed its report vide diary no 2470 dated 08.05.2023 for Transferor Company and filed its for Transferee Company vide diary no.2175 dated 19.04.2023, wherein it is observed that there is demand outstanding and no proceedings are pending in respect of the Petitioner Companies. The petitioner companies filed their reply to Income Tax department vide diary no. 2152 and 2200 dated 18.04.2023 and 20.04.2023 stated that any outstanding income tax demand or due is payable by the Transferor Company to the Income Tax Department after the sanction of the Scheme by this Hon'ble Tribunal, such amount shall be made good and paid in full by the Transferee Company upon receiving notice of such outstanding demand or due amount by the Income Tax Department. Further, the petitioner company produced the rectification order of Income Tax Department in respect of the Transferor Company.

17. The reports of the RoC, RD, IT & OL are taken on record. Similarly, reply filed by the Petitioner Company to the RD, IT & OL report are taken on record.
18. In view of the above discussion, we conclude that the objections/ observations to the Scheme received from RD, RoC, IT and OL have been adequately replied by the Petitioner Companies and hence there is no impediment in approval of the Scheme.
19. On 27.06.2023, this Tribunal directed the petitioners to file proper affidavit with regard to no objection from the objectors in compliance to the para.4 of the order dated 18.10.2022 within three days. In compliance to this Order the petitioner filed vide diary no. 3475 dated 30.06.2023 an affidavit stating that the Transferee Company has not received any objections from any persons/stakeholders/creditors as on the date of this Affidavit.
20. The Scheme in question as annexed at Annexure-I is approved and we hereby declare that the same is to be binding on all the shareholders and creditors of the Transferor Company as well as Transferee Company. While approving the Scheme, it is clarified that this order should not be construed as an order in anyway granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law. With the sanction of the Scheme, the Transferor Company namely Eastern Condiments Private Limited shall stand dissolved without undergoing the process of winding up resulting in increase in the authorised share capital of the Transferee Company, namely MTR Foods Private Limited.

**AND THIS TRIBUNAL DOES FURTHER ORDER:**

- (i) That the petitioner companies do, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company and the files

relating to Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and

- (ii) That the Transferee Company shall deposit an amount of Rs.75,000/- with the Pay & Accounts Office, Chennai in respect of the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad and Rs.25,000/- in favour of The Prime Minister's National Relief Fund, within a period of four weeks from the date of receipt of certified copy of this Order; and
- (iii) That any person interested shall be at liberty to apply this Tribunal in the above matter for any directions that may be necessary.
- (iv) The approval /sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act, 2013 and that the authorities under both the Acts, are at liberty to take appropriate action, in accordance with law, if so advised.

**21.** As per the directions, Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioner Companies on filing of the Schedule Property i.e., (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company by way of affidavit of the Transferor Company respectively.

**22.** Accordingly, CP (CAA) No.42/BB/2022, is disposed of. Copy of this Order be communicated to the Learned Counsel for the Petitioner Companies.

**-Sd/-**  
**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

**-Sd/-**  
**(T.KRISHNAVALLI)**  
**MEMBER (JUDICIAL)**