

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No. 301
CA(CAA)/28(AHM)2023

Proceedings under Section 230-232 of
Co. Act, 2013

IN THE MATTER OF:

Aabad Marketing Pvt Ltd (AMPL) (Transferor Co.)
Fable Food Products Pvt Ltd (FFPPL) (Transferee Co.)

.....Applicant

.....Respondent

Order delivered on 15/06/2023

Coram:

Mr. Deep Chandra Joshi, Hon'ble Member(J)
Mr. Ajai Das Mehrotra, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-SD-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-SD-

DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
(COURT NO. II)**

CA(CAA)/28/NCLT/AHM/2023

(An application Sections 230-232 and read with Section 66 of Companies Act, 2013)

In the matter of Scheme of Arrangement

OF

**AABAD MARKETING PRIVATE LIMITED (AMPL)
(Applicant Company No. 1/Transferor Company)**

WITH

**FABLE FOOD PRODUCTS PRIVATE LIMITED (FFPPL)
(Applicant Company No. 2/Transferee Company)**

Order Pronounced on: 15.06.2023

Coram:

**DEEP CHANDRA JOSHI,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

M/S. AABAD MARKETING PRIVATE LIMITED (AMPL)

(CIN:U51220GJ2005PTC077699)

Registered Office at :

302, Shapath-I, Opp. Rajpath Club, S.G.

Highway, Ahmedabad-380015. (Gujarat)

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

WITH

**M/S. FABLE FOOD PRODUCTS PRIVATE
LIMITED**

(CIN: U15200GJ2004C077611)

Registered office at:

302, Shapath-I, Opp. Rajpath Club, S.G.

Highway, Ahmedabad-380015, Gujarat.

....Aplicant Company No. 2/Transferee Company

Appearance

For the Petitioners : Ms. Madhulika Mishra, PCS

ORDER

1. The present application is filed jointly by the two Applicant Companies under Section 230–232 read with Section 66 of the Companies Act, 2013 (hereinafter referred to as the ‘Act’) and read with Companies (Compromise, Arrangements and Amalgamations) Rules, 2016, seeking directions for dispensation of meetings of Equity Shareholders of both the Applicant Companies and convening and holding the meetings of the Secured and Unsecured Creditors of both the Applicant Companies in respect of the proposed Scheme of Arrangement of M/s. Aabad Marketing Private Limited (hereinafter referred to as “Transferor Company”) with M/s. Fable Food Products Private Limited (hereinafter referred to as “Transferee Company”) with effect from the appointed date, i.e. 01.04.2022, as mentioned in the Scheme.

2. Learned Counsel for the Applicant Companies appeared and made the averments which are summarised as under:

- I. M/s. Aabad Marketing Private Limited- the Transferor Company was incorporated on 21st July 2005 under the provisions of the Companies Act, 1956 with CIN: U51220GJ2005PTC077699 with an object to carry on the business of importers, exporters, buyers, sellers, dealers, stockists, processors, repackers, of all types of dairy products, milk products, food products, and their derivatives. As on 31.03.2022, the Transferor Company has Authorized Share Capital of Rs. 10,00,000/- and the Issued, Subscribed, and Paid-up Share Capital of Rs. 1,00,000/-.

- II. M/s. Fable Food Products Private Limited- the Transferee Company was incorporated on 16th April 2004 under the provisions of the Companies Act, 1956 with CIN: U15200GJ2004PTC077611 with an object to manufacture, process, and prepare, buy, sell, and deal whether as wholesalers or as exporters or importers or agents in milk, butter, derivatives of milk, dairy products, and other food products. As on 31.03.2022, the Transferee Company has Authorized Share Capital of Rs 5,00,00,000/- and Issued, Subscribed and Paid-up Share Capital of Rs. 4,38,75,600/-.
- III. The registered office of both companies is situated at 302, Shapath-I, Opp. Rajpath Club, S.G. Highway, Ahmedabad-380015, in the State of Gujarat, and hence, both of them are under the territorial jurisdiction of the National Company Law Tribunal at Ahmedabad.
- IV. Both the Applicant Companies belong to the same group and are under common management. Both Applicant Companies are engaged in similar line of commercial activities of dealing in dairy and other food products. Hence, the Board of Directors of the Applicant Companies thought it fit to amalgamate them for achieving synergic advantages.
- V. An Affidavit has been sworn by Mr. Prashant Vallabhbhai Vadodariya on behalf of the Transferor Company and Mr. Vallabhbhai Savjibhai Vadodariya on behalf of the Transferee Company, who are the authorized representative and Director of the Transferor as well as Transferee Company and the same is annexed with the application. The above-named authorized representative

for the Applicant Companies has been authorized vide Board Resolution dated 05.01.2023 of the Applicant Companies.

- VI. As per the Certificate issued by the Statutory Auditor, namely, AMD & Co., Chartered Accountants, the Transferor Company has 3 Equity Shareholders as on 31.03.2022, 18 Unsecured Creditors, and 2 Secured Creditors as on 30.01.2023.
- VII. As per the Certificate issued by the Statutory Auditor, namely, AMD & Co., Chartered Accountant, the Transferee Company has 8 Equity Shareholders as on 31.03.2022, 149 Unsecured Creditors, and 6 Secured Creditors as on 30.01.2023.
- VIII. All Equity Shareholders of the Applicant Companies have given their consent by way of affidavit for the proposed Scheme of Amalgamation. Hence, the meetings of the Equity Shareholder of the Applicant Companies may be dispensed with.
- IX. The Applicant Companies is seeking to hold and convene the meeting of Secured and Unsecured Creditors to consider, and if thought fit, to approve the Scheme, with or without modification(s), through video conferencing or other audio-visual means.
- X. The Applicant Companies have placed on record the Valuation Report dated 31.12.2022, issued by CA Sejal Agrawal, Chartered Accountants and Registered Valuer, having Registration No. IBBI/RV/06/2020/13106. The said valuation has been conducted for the purpose of determining the exchange ratio with respect to the proposed Scheme of Arrangement between M/s. Aabad

Marketing Private Limited with M/s. Fable Food Products Private Limited.

- XI. The accounting treatment specified in the Scheme is in conformity with the accounting standards prescribed in the Companies Act, 2013 and certificates of the statutory auditor issued under Section 133 of the Companies Act, 2013 are filed respectively with the application.
- XII. There are no proceedings pending under Sections 210 to 227 of the Companies Act, 2013 either against the Transferor Company or Transferee Company.
- XIII. The Board of Directors of the Applicant Companies approved the Scheme of Arrangement on 05.01.2023.
- XIV. The rationale for the Scheme of Amalgamation stated in the proposed Scheme is as under:

The Transferor Company and the Transferee Company belong to the same group of management. Therefore, to streamline the current organization structure and to consolidate assets and liabilities of the group companies, the Board of Directors of the said companies are desirous of entering into the Scheme of Amalgamation of the Transferor Company with the Transferee Company. It is envisaged that the proposed amalgamation would inter alia achieve the following advantages:

- a) Streamlining of the current organization structure;*
- b) Business and administrative synergies;*
- c) Consolidation of assets and liabilities of the group companies;*
- d) Reduction in managerial overlaps due to operation of multiple entities and more focused leadership;*

- e) *Improve overall organizational capability;*
- f) *Reduction in multiplicity of legal and regulatory compliances, reduction in overheads, including administrative, managerial and other administrative costs.*

In view of the aforesaid advantages, the Board of Directors of the Transferor Company and the Transferee Company have considered and proposed the Draft Scheme of Arrangement under provisions of Sections 230 to 232 read with Section 66 and other applicable provisions of the applicable law.

- XV. There are no foreign shareholders of the Transferor or Transferee Company, and therefore, notice to the Reserve Bank of India is not required to be issued.
- XVI. The Applicant Companies have filed their Memoranda and Articles of Association inter alia delineating their object clauses, along with their last audited financial statement as on 31.03.2022.
- XVII. It is further submitted that the Transferor and Transferee Companies form a part of the same group, therefore, the Competition Commission of India will not be the regulatory authority for the purpose of the present Scheme. Further, both the Applicant Companies are unlisted company, and therefore, no notice is required to be sent to SEBI, BSE and NSE.

3. Heard Learned PCS, Ms. Madhulika Mishra, for the Applicant Companies. Perused the application and the supporting affidavits of Mr. Prashant Vallabhkhai Vadodariya, Director of the Transferor Company and Transferee Company and the documents annexed with the application.

4. Taking into consideration the submissions and the documents placed on record, we issue the following order: -

- i. Convening of the meeting of Equity Shareholders of both the Applicant Companies is hereby dispensed with, in view of 100% consent affidavits of shareholders being placed on record.
- ii. The Transferor Company is directed to convene and hold the meeting of the Secured Creditors on 27th July 2023, at 11:00 a.m. through video conferencing or other audio-visual means, for the purpose of considering, and, if thought fit, approving, with or without modification(s) the proposed Scheme, wherein the secured creditors will be able to cast their votes electronically. In addition to the above, the Transferor Company shall provide the facility of remote e-voting to each of its secured creditors to cast their vote.
- iii. The Transferor Company is directed to convene and hold the meeting of the Unsecured Creditors on 27th July 2023, at 1:00 p.m. through video conferencing or other audio-visual means, for the purpose of considering, and, if thought fit, approving, with or without modification(s) the proposed Scheme, wherein the unsecured creditors will be able to cast their votes electronically. In addition to the above, the Transferor Company shall provide facility of remote e-voting to each of its unsecured creditors to cast their vote.
- iv. The Transferee Company is directed to convene and hold the meeting of the Secured creditors on 28th July 2023, at 11:00

- a.m. through video conferencing or other audio-visual means, for the purpose of considering, and, if thought fit, approving, with or without modification(s), the proposed Scheme, wherein the secured creditors will be able to cast their votes electronically. In addition to the above, the Transferee Company shall provide the facility of remote e-voting to each of its secured creditors to cast their vote.
- v. The Transferee Company is directed to convene and hold the meeting of the unsecured creditors on 28th July, 2023, at 1:00 p.m. through video conferencing or other audio-visual means, for the purpose of considering, and, if thought fit, approving, with or without modification(s), the proposed Scheme, wherein the unsecured creditors will be able to cast their votes electronically. In addition to the above, the Transferee Company shall provide facility of remote e-voting to each of its unsecured creditors to cast their vote.
- vi. At least one month before the said meetings of the respective Secured and Unsecured Creditors of both the Applicant Companies to be held as aforesaid, a notice convening the said meetings at the day, date and time as fixed above, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, shall be sent to the respective Secured and Unsecured Creditors of the

Applicant Companies by electronic mail to their registered e-mail address, as per the records of the Applicant Companies. The Applicant Companies shall ensure that the respective Secured and Unsecured Creditors of both the Applicant Companies whose e-mail addresses are not available with both the Applicant Companies, who have not received notice convening said meetings, can access/download the said notices from the website i.e., <http://www.fablefoodproduct.com/>. The said notices will mention the procedure to register and vote on the resolutions proposed under respective notices.

- vii. Since the meetings are being held through video conferencing or other audio-visual means, physical attendance of Secured and Unsecured Creditors of the respective Applicant Companies has been dispensed with. Accordingly, the facility for appointment of proxies will not be available for the meetings, and hence, the requirement to send the proxy form and attendance slip along with the notice of the said meetings is dispensed with. However, the Secured and Unsecured Creditors of the respective Applicant Companies who are body corporates are entitled to appoint authorized representatives to attend the meeting through video conferencing or other audio-visual means and participate there and cast their votes through e-voting.
- viii. At least 30 (Thirty) days before the meetings of the Secured and Unsecured Creditors of both the Applicant Companies to be held as aforesaid, a notice convening the said meeting, at the date

and time fixed above, be published in 'Financial Express' in English and 'Financial Express' in Gujarati having wide circulation in the state of Gujarat, stating that copies of the Scheme and the said statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 can be obtained free of charge from the registered office of the respective Applicant Companies or by emailing to the Transferor /Transferee Company or from the office of its Company Secretary.

- ix. Ms. Vaishali Prabhu (Membership No. 68412), Practicing Company Secretary, and in her absence, Mr. Vaibhav Shirodkar (Membership No. 61743) Practicing Company Secretary is hereby appointed as the Chairperson for the respective meetings of the secured and unsecured creditors of both the Applicant Companies.
- x. Mr. Vipin Tiwari (Membership No. A40765), Practicing Company Secretary and failing him, Mr. Sadashiv Jadye, (Membership No. F12239), Practicing Company Secretary, is hereby appointed as a Scrutinizer for the respective meetings of the Secured and Unsecured Creditors of both the Applicant Companies.
- xi. The Chairperson appointed for the aforesaid meetings of both the Applicant Companies is authorized to issue notices of the respective meetings of the Secured and Unsecured Creditors referred above. The Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations)

Rules, 2016, as may be applicable for the aforesaid meetings to be convened and held through video conferencing or other audio-visual means, in relation to the conduct of the meetings including for deciding procedural questions that may arise at the meetings or at any adjournment thereof or any other matter including, an amendment to the Scheme or resolution, if any, proposed at the meetings by any Secured or Unsecured Creditor(s).

- xii. The quorum for the meetings of the respective Secured and Unsecured Creditors of the Applicant Companies shall be as per Section 103 of the Companies Act, 2013.
- xiii. The value, number, and votes of the Secured and Unsecured Creditors of the respective Applicant Companies shall be in accordance with the books/register maintained by the respective Applicant Companies and where the entries in the books/register are disputed, the Chairperson of the meetings shall determine the value and number for the purpose of the aforesaid meetings and his decision in that behalf would be final.
- xiv. The Chairperson shall file an affidavit not less than 7 (seven) days before the date fixed for holding of the aforesaid meetings and report to this Tribunal that the directions regarding issuance of notices and advertisements of the aforesaid meetings have been duly complied with as per Rule 12 of

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

- xv. It is further ordered that the Chairperson of the aforesaid meetings shall report to this Tribunal on the results of the meetings, verified by his affidavit, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, within 7(seven) days of the conclusion of the aforesaid meetings.
- xvi. We direct the Applicants to pay the Chairperson a sum of Rs. 30,000/- and to the Scrutinizer a sum of Rs. 15,000/- as their fees.

5. In compliance of subsection (5) of Section 230 of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, both the Applicant Companies shall send a notice in Form No. CAA.3 along with copy of the Scheme of Arrangement to : (i) Central Government through the Regional Director, North Western Region; (ii) Registrar of Companies, Gujarat; (iii) Income Tax Authorities concerned with a copy to Principal Chief Commissioner of Income Tax; (iv) Official Liquidator (in case of Transferor Company) stating that the representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make regarding the Scheme.

6. The Application is allowed and disposed of in terms of the above directions.

**-SD-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

**-SD-
DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)**

Rajeev Kr. Sen/PS
Abhishek/LRA