
(2023) 07 NCLT CK 0008

In the National Company Law Appellate Tribunal

Case No : CA(CAA) No.-19/230/232/ND/2023

Doozy Farms Private Limited Vs

Date of Decision : 05-07-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230, 232

Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 — Rule 14

Citation : (2023) 07 NCLT CK 0008

Hon'ble Judges : P.S.N Prasad, Member (J); Dr. Binod Kumar Sinha, Member (T)

Bench : Division Bench

Advocate : S. Shiva

Final Decision : Disposed Of

Judgement

Dr. Binod Kumar Sinha, Member (Technical)

1. This is a joint application filed by the applicant companies herein, M/s Doozy Farms Private Limited (Transferor Company/ Applicant Company-1), M/s S & C Enterprises Private Limited (Transferor Company/ Applicant Company-2) with M/s DHN Agritech Private Limited (Transferee Company/Applicant Company-3) under Section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement in the nature of amalgamation (hereinafter referred to as the "SCHEME") proposed between the applicants.

2. The Applicant Company No. 1/Transferor Company, M/s Doozy Farms Private Limited (CIN- U74999DL2016PTC291655) was incorporated under the provisions of the Companies Act, 2013, as a private limited company vide Certificate of Incorporation dated 24.02.2016 having its registered office at 55, 2nd Floor, Lane-2, Westend Marg, Saidullajab, Near Saket Metro Station, New Delhi-110030. The Authorized Share Capital of the Applicant Company No. 1/Transferor Company is Rs. 6,00,00,000/- divided into 60,00,000 Equity Shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the Company is Rs. 5,09,07,750/- divided into 50,90,775 Equity Shares of Rs. 10/- each. The

Applicant Company No.1/Transferor Company, vide their meeting of the Board of Directors held on 23.02.2023 have unanimously approved the proposed Scheme of Amalgamation as contemplated above. Copies of said resolutions passed in the said board meetings have been placed on record. Affidavit in support of the above application sworn by Mr. Vishal Rastogi being the authorized signatory of the Applicant Company 1, who has been authorized vide Board Resolution dated 23.02.2023 for the Transferor Company No. 1, was duly filed, along with the application. It was also represented that the registered office of the Applicant Company 1 is under the domain of Registrar of Companies, NCT of New Delhi & Haryana and therefore within the territorial jurisdiction of this Tribunal.

3. The Applicant Company No. 2/Transferor Company M/s S & C Enterprises Private Limited is a private limited company incorporated under the provisions of Companies Act, 2013, vide Certificate of Incorporation dated 15.06.2018 (CIN-U52609DL2018PTC335360) with Registrar of Companies, NCT of Delhi & Haryana and having its registered office at Shed No. 21, DSIDC, Kalkaji, New Delhi-110019. The Authorized Share Capital of the Applicant Company No. 2/Transferor Company is Rs. 15,00,000/- divided into 14,20,000/- Equity Share Capital into 14,20,000 Equity shares of Rs. 1/- each and Rs. 80,000 Preference Share Capital divided into 80,000 Preference Shares of Rs. 1/-each. The present issued, subscribed and paid-up share capital of the Company is Rs. 1,092,488/- divided into 10,15,824 Equity Share Capital into 10,15,824 Equity Shares of Rs.1/- each fully paid up and Rs. 76,664/-Preference Share Capital divided into 76,664 Preference Shares of Rs. 1/- each fully paid up. The Applicant Company No. 2/Transferor Company, vide their meeting of the Board of Directors held on 23.02.2022 have unanimously approved the proposed Scheme of Amalgamation as contemplated above. Copies of said resolutions passed in the said board meetings have been placed on record. Affidavit in support of the above application sworn by Mr. Sahil Chopra being the authorized signatory of the Applicant Company 2, who has been authorized vide Board Resolution dated 23.02.2023 for the Transferor Company No. 2, was duly filed, along with the application. It was also represented that the registered office of the Applicant Company 2 is under the domain of Registrar of Companies, NCT of New Delhi & Haryana and therefore within the territorial jurisdiction of this Tribunal.

4. The Applicant Company No. 3/Transferee Company M/s DHN Agritech Private Limited is a private limited company incorporated under the provisions of Companies Act, 2013, vide Certificate of Incorporation dated 11.01.2022 (CIN-U15111DL2022PTC392290) with Registrar of Companies, NCT of Delhi & Haryana and having its registered office at Shed No. 21, DSIDC, Kalkaji, New Delhi-110019. The Authorized Share Capital of the Applicant Company No. 3/Transferee Company is Rs. 1,100,000/- divided into 10,00,000/- Equity Share Capital into 1,00,000 Equity shares of Rs. 10/- each and Rs. 1,00,000/-Preference Share Capital divided into 10,000 Preference Shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the Company is Rs. 1,02,100/- divided into 97,940 Equity Share Capital into 9,794 Equity Shares of

Rs.10/- each and Rs. 4,160/- Preference Share Capital divided into 416 Preference Shares of Rs. 10/- each. The Applicant Company No. 3/Transferee Company, vide their meeting of the Board of Directors held on 23.02.2023 have unanimously approved the proposed Scheme of Amalgamation as contemplated above. Copies of said resolutions passed in the said board meetings have been placed on record. Affidavit in support of the above application sworn by Mr. Parth Birendra being the authorized signatory of the Applicant Company 3, who has been authorized vide Board Resolutions dated 23.02.2023 for the Transferee Company, was duly filed, along with the application. It was also represented that the registered office of the Applicant Company 3 is under the domain of Registrar of Companies, NCT of New Delhi & Haryana and therefore within the territorial jurisdiction of this Tribunal.

5. The Transferor Companies as well as the Transferee Company have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses, as well as their last Audited Annual Accounts for the Financial Year 31.03.2022.

6. It has been stated that the Applicant Company-1/Transferor Company has 35 Shareholders. The Applicant Company-1 with regard to its Shareholders seeks for holding a meeting of the Shareholders of the Applicant Company-1, for the purpose of consideration and approval of the proposed Scheme of Arrangement for Amalgamation between the Applicant Companies. It was further represented that the Applicant Company-1 has 2 Secured Creditors and 44 Unsecured Creditors and the Applicant Company-1 with regard to Secured Creditors and Unsecured Creditors seeks for holding a meeting of the Secured Creditors and the Unsecured Creditors of the Applicant Company-1, for the purpose of consideration and approval of the proposed Scheme of Arrangement for Amalgamation between the Applicant Companies.

7. It has been stated that the Applicant Company-2/Transferor Company has 7 Equity Shareholders and 1 Preference Shareholder. The Applicant Company-2 with regard to Equity Shareholders seeks for holding a meeting of the Shareholders of the Applicant Company-2, for the purpose of consideration and approval of the proposed Scheme of Arrangement for Amalgamation between the Applicant Companies. In relation to the Preference Shareholders, Applicant Company-2 seeks dispensing with holding/convening of the meeting as their consent affidavit was placed on record. It was further represented that the Company has nil Secured and 20 Unsecured Creditors. Since the Company has no Secured Creditors, therefore, the necessity of convening/holding a meeting in respect of Secured Creditors does not arise. In relation to the Unsecured Creditors, the Applicant Company-2 seeks for holding a meeting of the Unsecured Creditors of the Applicant Company-2, for the purpose of consideration and approval of the proposed Scheme of Arrangement for Amalgamation between the Applicant Companies.

8. It has been stated that the Applicant Company-3/Transferee Company has 45

Equity Shareholders and 13 Preference Shareholders. The Applicant Company-3 with regard to Equity Shareholders and Preference Shareholders seeks for holding a meeting of the Shareholders of the Applicant Company-3, for the purpose of consideration and approval of the proposed Scheme of Arrangement for Amalgamation between the Applicant Companies. It was further represented that the Company has nil Secured and 37 Unsecured Creditor. Since the Company has nil Secured Creditors, therefore, the necessity of convening/holding a meeting of Secured Creditors does not arise. In relation to the 37 Unsecured Creditors, the Applicant Company-3 seeks for holding a meeting of the Unsecured Creditors of the Applicant Company-3, for the purpose of consideration and approval of the proposed Scheme of Arrangement for Amalgamation between the Applicant Companies.

9. The appointed date as specified in the Scheme is 01.04.2023 subject to the directions of this Tribunal.

10. The Applicant Companies confirmed that the provisions relating to the accounting treatment for the proposed amalgamation, as contained in the Scheme, were in conformity with the applicable provisions of the Companies Act, 2013. Certificates from respective Statutory Auditors of the Companies on the accounting treatment, as proposed in the Scheme, were annexed to the application and it is clearly stated that the Accounting treatment is in conformity with the applicable prescribed under Section 133 of Companies Act, 2013.

11. The Applicant Companies have stated that no proceedings for inspection, inquiry or investigation were pending against any of the Applicant Companies.

12. Taking into consideration the submissions and the documents filed therewith, the following directions are issued with respect to convening/holding or dispensing with the meetings of the Shareholders, Secured and Unsecured Creditors as well as issue of notices including by way of paper publication as follows:

A. In relation to the Applicant Company-1:

a) With respect to Equity Shareholders: The meeting of the Equity Shareholders of the Applicant Company-1/Transferor Company cannot be dispensed with as consent of Equity Shareholders was not obtained and Applicant Company-1 seeks for holding the meeting of Equity Shareholders. The meeting of the Equity Shareholders of the Applicant Company-1 is directed to be held at the venue, date, time and mode as decided by the Chairperson in consultation with the counsel for Applicant Companies. The quorum for the meeting will be 18 in number.

b) With respect to Secured Creditors: The meeting of the Secured Creditors of the Applicant Company-1/Transferor Company cannot be dispensed with as consent of the Secured Creditors was not obtained and Applicant Company-1 seeks for holding the meeting of Secured Creditors. The meeting of the Secured

Creditors of the Applicant Company-1 is directed to be held at the venue, date, time and mode as decided by the Chairperson in consultation with the counsel for Applicant Companies. The quorum for the meeting will be 2 in number.

c) With respect to Unsecured Creditors: The meeting of the Unsecured Creditors of the Applicant Company-1/Transferor Company cannot be dispensed with as consent of the Unsecured Creditors was not obtained and Applicant Company-1 seeks for holding the meeting of Unsecured Creditors. The meeting of the Unsecured Creditors of the Applicant Company-1 is directed to be held at the venue, date, time and mode as decided by the Chairperson in consultation with the counsel for Applicant Companies. The quorum for the meeting will be 23 in number.

B. In relation to Applicant Company-2:

a) With respect to Equity shareholders: The meeting of the Equity Shareholders of the Applicant Company-2/Transferor Company cannot be dispensed with as consent of Equity Shareholders was not obtained and Applicant Company-2 seeks for holding the meeting of Equity Shareholders. The meeting of the Equity Shareholders of the Applicant Company-1 is directed to be held at the venue, date, time and mode as decided by the Chairperson in consultation with the counsel for Applicant Companies. The quorum for the meeting will be 4 in number.

b) With respect to Secured Creditors: There are no Secured Creditors, therefore the necessity of convening a meeting does not arise.

c) With respect to Unsecured Creditors: The meeting of the Unsecured Creditors of the Applicant Company-2/Transferor Company cannot be dispensed with as consent of the Unsecured Creditors was not obtained and Applicant Company-2 seeks for holding the meeting of Unsecured Creditors. The meeting of the Unsecured Creditors of the Applicant Company-2 is directed to be held at the venue, date, time and mode as decided by the Chairperson in consultation with the counsel for Applicant Companies. The quorum for the meeting will be 11 in number.

C. In relation to Applicant Company-3:

a) With respect to Equity shareholders: The meeting of the Equity Shareholders and Preference Shareholders of the Applicant Company-3/Transferee Company cannot be dispensed with as consent of Equity Shareholders and Preference Shareholders was not obtained and Applicant Company-3 seeks for holding the meeting of Equity Shareholders and Preference Shareholders. The meeting of the Equity Shareholders and the Preference Shareholders of the Applicant Company-3 is directed to be held at the venue, date, time and mode as decided by the Chairperson in consultation with the counsel for Applicant Companies. The quorum for the meeting will be 30 in number.

b) With respect to Secured Creditors: There are no Secured Creditors, therefore

the necessity of convening a meeting does not arise.

c) With respect to Unsecured Creditors: The meeting of the Unsecured Creditors of the Applicant Company-3/Transferee Company cannot be dispensed with as consent of the Unsecured Creditors was not obtained and Applicant Company-3 seeks for holding the meeting of Unsecured Creditors. The meeting of the Unsecured Creditors of the Applicant Company-3 is directed to be held at the venue, date, time and mode as decided by the Chairperson in consultation with the counsel for Applicant Companies. The quorum for the meeting will be 19 in number.

19. Mr. Rajesh Sharma, Mobile: 9312264174, Email id-rajeshsharmafca@hotmail.com is appointed as the Chairperson and Mr. Kushagra Goyal, Mobile: 9811097574, Email id-fca.kushagragoyal@gmail.com is appointed as Scrutinizer for the meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company-1, of Equity Shareholders and Unsecured Creditors of the Applicant Company-2 and Equity Shareholders and Unsecured Creditors of the Applicant Company-3 in terms of the direction issued.

20. In case the quorum as noted above for the aforesaid meetings are not present at the meeting, then the meeting shall be adjourned by half an hour. Thereafter the persons present and voting shall be deemed to constitute the quorum. The Chairperson appointed herein along with the Scrutinizer shall ensure that the proxy Registers are properly maintained.

21. The Fees of the Chairperson for the aforesaid meetings shall be Rs. 1,00,000/- and the Fees of the Scrutinizer shall be Rs. 50,000/- in addition to meeting their incidental expenses. The Chairperson will file his report within a week from the date of holding of the aforesaid meeting. The fees of Chairperson and Scrutinizer along with the travelling expenses and other out of pocket expenses shall be borne by the Applicant Companies. A copy of this order shall be supplied to the learned counsels for the Applicant Companies who in turn shall supply a copy of the same to the Chairperson and the Scrutinizer.

22. Individual Notices shall be sent to the Creditors and Shareholders as above by the Applicant Companies through email or through registered post or speed post, 30 days in advance before the scheduled date of meeting, indicating the day, date, the place fixed for and time of meeting as aforesaid, together with a copy of the Scheme and copy of explanatory statement as required under the Companies Act, 2013 and the Rules, along with the proxy/forms and any other documents as may be prescribed under the Act. These will be provided free of cost. A compliance affidavit of service will be filed with this Tribunal.

23. The Applicant Companies shall publish an advertisement at least 30 clear days before the aforesaid meetings, indicating the day, date and the place fixed and time of meetings as aforesaid, which will be published in "Financial Express" (English) and "Jansatta" (Hindi), both Delhi NCR editions. The Applicant Companies shall also publish the notice on their websites, if any, and file a

compliance affidavit of service with this Tribunal. The Chairperson shall be responsible to report the results of the meetings to the Tribunal in Form No. CAA 4, as per Rule 14 of the Rules within 7 (seven) days of the conclusion of the meetings. The Authorized Representative/ Company Secretary of the Applicant Companies and the Scrutinizer, will assist the Chairperson in preparing and finalising the reports.

24. Voting shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means as may be decided by the Chairperson in consultation with the counsel of the Applicant Companies in terms of the provisions of the Companies Act, 2013 and Rules framed there under.

25. Notice of this application shall also be served on the following:

- i. Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2 Floor, Paryawaran Bhavan, CGO Complex, New Delhi-110003;
- ii. Registrar of Companies at 4th floor, IFCI Tower, 61, Nehru Place, New Delhi-110019;
- iii. Income Tax Department, Income Tax Office, Additional Commissioner of Income Tax, Special Range 4, Central Revenue Building, IP Estate, New Delhi-110002. The notices to Income Tax Authorities shall disclose sufficient details like PAN, ward numbers and assessing officers so that timely and proper reply may be filed.
- iv. Any other sectoral regulators required to be served.

The application stands allowed on the aforesaid terms and disposed off.