

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
BENCH AT MUMBAI

T.C. S. P. NO. 146/(MAH)/2017

IN THE MATTER OF

Section 391 to 394 of the Companies Act, 1956 and Section 230-232 of Companies Act, 2013 read with The Companies (Compromise, Arrangement And Amalgamation) Rules, 2016

AND

In the matter of Scheme of Amalgamation of Maple Gourmet and Industries Private Limited with Suressa Tea Limited (Formerly known as Jivraj Tea and Industries Limited)

AND

In the matter of

**MAPLE GOURMET AND INDUSTRIES
PRIVATE LIMITED**

A Company registered under Companies Act, 1956,
Having its registered office at 5 & 6,
Samikaran 34/B, Sant Janabhai Road,
Off Hanuman Road, Vile Parle (East),
Mumbai- 400057.

In the state of Maharashtra.

...Petitioner
(The Transferor company)

Called for Hearing

Judgement / Order delivered on 18th October, 2017

**Coram: B.S.V Prakash Kumar, Member (Judicial)
V. Nallasenapathy, Member (Technical)**

Mr. Dhiren R. Dave, Authorised Representative of the Petitioner Company.

Mr. Ramesh Gholap, Deputy ROC.

Per: B.S.V. Prakash Kumar, Member (J)

ORDER

1. Heard the learned counsel for the Petitioner Company.
2. The sanction of this Tribunal is sought under Section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of **MAPLE GOURMET AND INDUSTRIES PRIVATE LIMITED** with **SURESAA TEA LIMITED (FORMERLY KNOWN AS JIVRAJ TEA AND INDUSTRIES LIMITED)** and their respective Shareholders and Creditors.
3. Authorised Representative for the Petitioner Company submit that **MAPLE GOURMET AND INDUSTRIES PRIVATE LIMITED** is a wholly owned subsidiary of the **SURESAA TEA LIMITED (FORMERLY KNOWN AS JIVRAJ TEA AND INDUSTRIES LIMITED)**. The Transferor Company is engaged in the business of General Merchant and traders. The Transferee Company mainly carries on business of tea and power distribution
4. The respective Board of Directors are of the view that the proposed scheme of Amalgamation is beneficial to the respective shareholders, employees and all stakeholders of the both Companies. The proposed Scheme of Amalgamation is aimed at achieving the following business and commercial objectives:
 - a. The Transferor Company was established with the objective of dealing in all types of Tea, coffee, machineries and equipments and to act as General Merchant and traders.
 - b. The Transferor Company is wholly owned subsidiary of the Transferee Company and both the companies are under the same management.
 - c. The amalgamation would reduce the administrative costs and other overheads which are presently being duplicated because of separate entities.

- d. Since the Transferee Company holds 100% share capital of the Transferor Company, the amalgamation will ensure simplification of holding and investment structure of the Transferee Company.
5. The Board of Directors of the Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing necessary Board Resolutions which are annexed to the Company Scheme Petition filed by the Petitioner Company.
6. Authorised Representative appearing on behalf of the Petitioner Company further states that the Petitioner Company has complied with all requirements as per direction of the Court/Tribunal and the necessary affidavits of compliance has been filed in the Court/Tribunal. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking given by the Petitioner Companies are accepted.
7. The Official Liquidator has filed his report on 27.06.2017 stating that the affairs of the transferor Company have been conducted in a proper manner and that Transferor Company may be dissolved.
8. The Regional Director has filed his Report dated 21.09.2017 stating therein that, the tribunal may take into consideration the observations made at para IV (a) to (f) mentioned in his report and pass such other order or orders as deemed fit and proper in the facts and circumstances of the case.

In paragraph IV (a) to (f) of the said Report, it is stated that:

- a. In addition to compliance of AS-14 (IND AS-103) the Transferee company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.

- b. As per Clause 2.4, Definitions of the scheme, "The Appointed Date" means 1st April, 2015 or such other date as the High Court at Bombay may direct. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2015
- c. As per existing practice, the Petitioner Companies are required to serve Notice of Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 13th October, 2016 has served a copy company scheme petition no 648 of 2016 along with relevant orders etc., further this Directorate has also issued a reminder 13/07/2017 to IT Department.
- d. The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the petitioner company.
- e. As M/s Maple Gourmet and Industries Private Limited, the transferor company is wholly owned subsidiary of M/s Jivraj Tea and Industries Limited the Transferee company the Hon'ble Tribunal may kindly direct each of the companies involved in the Merge files a declaration of solvency in prescribed form with the Registrar of Companies, Mumbai u/s 233(1)© read with Section 233(12) of the Companies Act, 2013 and pass appropriate order(s) as deem fit.
- f. M/s Jivraj Tea and Industries Limited (The Transferee company-JTAIL) changed its name to M/s Suressa Tea Limited on 09.01.2017. Hon'ble Tribunal may kindly direct the petitioner to amend the cause title accordingly.
9. With reference to the observation set out in paragraph IV (a) of the RD report, the petitioner company through its Authorised Representative states that the Petitioner Company undertake that In addition to compliance of AS-14 (IND AS-103) the Transferee company shall pass such accounting entries which are

- necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.
10. With reference to the observation set out in paragraph IV (b) of the RD report, the petitioner company through its Authorised Representative states that petitioner company undertake to accept the "Appointed Date" as 1st April, 2015 in line with provisions of section 232(6) of the Companies Act, 2013.
 11. So far as observations set out in paragraph IV (c) and (d) of the RD report, the petitioner company through its Authorised Representative undertakes to comply with the applicable provisions of the Income Tax and all tax issues arising out of the Scheme will be answered in accordance with law.
 12. With reference to the observation set out in paragraph IV (e) of the RD report, the petitioner company through its Authorised Representative states that Section 233 is applicable with regard if the procedure is before the office of the Regional Director and not before the NCLT. This Petition was filed before the Hon. High Court under erstwhile Companies Act, 1956 and much before Section 230 and 232 of the Companies Act, 2013 came in to force, hence this may not be applicable to this petition.
 13. With reference to the observation set out in paragraph IV (f) of the RD report, the petitioner company through its Authorised Representative states that the cause title has been suitably changed.
 14. The Observation made by the Regional Director has been explained by the Petitioner Company in paragraph 9 to 13 above. The clarification and undertaking given by the Petitioner Company are hereby accepted.
 15. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violation with any law and is not contrary to public policy.
 16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 146/(MAH) of 2017 filed by the Petitioner Company is made absolute in terms of prayer clause of CSP No. 146/(MAH) of 2017 of the Petition.

17. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of receipt of the order by the Registry.
18. The Petitioner Companies to lodge a copy of this and copy of the Scheme of Amalgamation duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
19. It is clarified that for the period between the Appointed Date and Effective Date, the business of the Transferor Company shall be carried on by the Transferor company in trust and for an on behalf of Transferee company.
20. The Petitioner Company to pay cost of Rs. 25,000/- to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of receipt of order.
21. All authorities concerned to act on a certified copy of this order along with copy of the Scheme of Amalgamation duly certified by the Deputy Director, national Company Law Tribunal, Mumbai Bench.
22. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V Prakash Kumar, Member (J)