

CSP No. 408 of 2017;  
CSP No. 398 of 2017;  
CSP No. 397 of 2017;  
CSP No. 396 of 2017 &  
CSP No. 406 of 2017

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
COMPANY SCHEME PETITION NO. 408 OF 2017  
CONNECTED WITH  
COMPANY APPLICATION NO. 32 OF 2017**

Wella India Haircosmetics Private Limited  
[CIN: U74900MH1994PTC192968]

...Petitioner Company  
(Transferor Company No.1)

AND

**COMPANY SCHEME PETITION NO. 398 OF 2017  
CONNECTED WITH  
COMPANY APPLICATION NO. 33 OF 2017**

Gillette Products Private Limited  
[CIN: U74899MH1995PTC247244]

...Petitioner Company  
(Transferor Company No. 2)

AND

**COMPANY SCHEME PETITION NO. 397 OF 2017  
CONNECTED WITH  
COMPANY APPLICATION NO. 34 OF 2017**

Nexus Mercantile Private Limited.  
[CIN: U51311MH1996PTC246757]

...Petitioner Company  
(Transferor Company No. 3)

AND

**COMPANY SCHEME PETITION NO. 396 OF 2017  
CONNECTED WITH  
COMPANY APPLICATION NO. 35 OF 2017**

Mining Consultants (India) Private Limited.  
[CIN: U74999MH1982PTC247243]

...Petitioner Company  
(Transferor Company No. 4)

AND

**COMPANY SCHEME PETITION NO. 406 OF 2017  
CONNECTED WITH  
COMPANY APPLICATION NO. 36 OF 2017**

Gillette Diversified Operations Private  
Limited [CIN: U74899MH1995PTC247244]

...Petitioner Company  
(Transferee Company)

In the matter of the Companies Act, 2013 or  
any re-enactment thereof;

And

CSP No. 408 of 2017;  
CSP No. 398 of 2017;  
CSP No. 397 of 2017;  
CSP No. 396 of 2017 ;  
CSP No. 406 of 2017 &

In the matter of Petition under Sections 230-232 of the Companies Act, 2013 or any re-enactment thereof;

And

In the matter of Scheme of Amalgamation between Wella India Haircosmetics Private Limited ("Transferor Company No. 1") and Gillette Products Private Limited ("Transferor Company No. 2") and Nexus Mercantile Private Limited ("Transferor Company No. 3") and Mining Consultants (India) Private Limited ("Transferor Company No. 4") and Gillette Diversified Operations Private Limited ("Transferee Company") AND their respective shareholders and creditors.

**Order delivered on 8<sup>th</sup> November, 2017**

**Coram:**

**B.S.V. Prakash Kumar, Member (J)**  
**V. Nallasenapathy, Member (T)**

For the Petitioner Companies: Mr. Simil Purohit, Mr. Tapan Deshpande and  
Ms. Priya Patwa, Advocates i/b. Cyril  
Amarchand Mangaldas.

For Regional Director: Mr. S. Ramakantha,

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

**ORDER**

1. Heard Advocate for the Petitioner Companies. No one appears before this Tribunal to oppose the present Company Scheme Petitions seeking sanction to the Scheme of Amalgamation between Wella India Haircosmetics Private Limited ("**Transferor Company No. 1**") and Gillette Products Private



Limited (**"Transferor Company No. 2"**) and Nexus Mercantile Private Limited (**"Transferor Company No. 3"**) and Mining Consultants (India) Private Limited (**"Transferor Company No. 4"**) and Gillette Diversified Operations Private Limited (**"Transferee Company"**) (Transferor Company Nos. 1 to 4 , and the Transferee Company collectively referred to as **"Petitioner Companies"**) AND their respective shareholders and creditors (**"Scheme"**), nor has any party controverted the averments made in the Petitions.

2. The Advocate appearing for the Petitioner Companies states that the Company Scheme Petitions have been filed to seek sanction to the Scheme, pursuant to the provisions of Sections 230 - 232 and other relevant provisions of the Companies Act, 2013.
3. The Transferor Company No.1 was engaged, inter alia, in the business of manufacturing and trading in hair cosmetics. Transferor Company No. 2 was incorporated to engage, inter alia, in the business of manufacturing and trading of writing instruments, household, kitchen appliances and other manufacturing equipment. Transferor Company No. 3 was incorporated to engage, inter alia, in the business of carrying on industrial activity. Transferor Company No. 4 was incorporated to engage, inter alia, in the business of carrying on industrial activity. The Transferee Company is primarily engaged in the business of manufacturing and trading of oral care products. The equity shares of the Transferor Companies and the Transferee Company are not listed on any stock exchange. The Learned Advocate for the Petitioner Companies says that the rationale and significant benefits of the Scheme are as under:

- a) Greater integration, financial strength and flexibility for Transferee Company and would result in maximising overall shareholder value.
  - b) Greater efficiency in cash management of Transferee Company, and unfettered access to combined cash flow which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximise shareholder value.
  - c) Greater logistical and administrative convenience which shall be a result of leaner operations, smoother interoperability and reduced regulatory requirements.
  - d) Cost savings are expected to flow from more focused operational efforts, rationalisation, usage of common resource pool like administration, finance, accounts, legal, technology and other related functions, leading to elimination of duplication and rationalisation of administrative expenses.
  - e) Simplification of group structure by eliminating multiple companies in similar business thus enabling focus on core competencies and unlocking of value through operating independence of each vertical.
4. The Advocate for the Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal and have filed necessary Affidavits of compliance in this Tribunal. Moreover, Petitioner Companies undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted.
5. The Regional Director has filed his Report dated 7<sup>th</sup> September, 2017 *inter alia* stating therein that save and except as stated in paragraph IV (1) to (4)



of the said Report, it appears that the Scheme was not prejudicial to the interest of the shareholders and public. The observations made by the Regional Director in paragraph IV of the Report are, for sake of ready reference, reproduced hereunder:

*“IV. The observations of the Regional Director on the proposed Scheme to be considered are as under:-*

*1. The tax implications 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.*

*2. It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 31.03.2017 for comments. The office of the Directorate also has issued reminder dated 23.08.2017.*

*3. As per the reply of the Petitioner companies, there are Foreign/Non resident shareholding in the transfer company-1 to whom shares are allotted.*

*In this regard, petitioner companies have to undertake to submit Proof of serving notice to RBI.*

*4. ROC, Mumbai has inter alia mentioned certain adverse observations in point no.33 of their respective report.*

*In this regard, it is humbly submitted that the Hon'ble Tribunal may look into it before passing appropriate order.”*

6. As far as the observation in paragraph IV (1) of the said Report is concerned, the Advocate for the Petitioner Companies agrees that the tax implications, if any, arising out of the Scheme will be subject to final decision of the Income Tax Authority. The Advocate for the Petitioner Companies further states that the approval of the Scheme by this Tribunal will not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Company after giving effect to the Scheme. The Advocate for the Petitioner

Companies further states that the decision of the Income Tax Authority upon reaching its finality thereon will be binding on the Transferee Company.

7. As far as the observation in paragraph IV (2) of the said Report is concerned, the Advocate for the Petitioner Companies confirms and states that the notices of the hearing of the Petition has been given to the Income Tax Authorities by the Petitioner Companies and requisite Affidavits proving service have been filed before this Tribunal.
8. As far as the observation in paragraph IV (3) of the said Report is concerned, the Advocate for the Petitioner Companies states that the Reserve Bank of India is not a Sectoral Regulator of the Petitioner Companies, and in view thereof, notice under Section 230 (5) of the Companies Act, 2013 was not required to be given to the Reserve Bank of India. The Advocate for the Petitioner Companies on instructions states that the Transferee Company undertakes to this Tribunal that the Transferee Company will seek requisite approval from the appropriate authority, including the Reserve Bank of India before issuing shares to the foreign/non-resident shareholders of the Transferor Companies in terms of the Scheme.
9. In paragraph IV (4) of the said Report, the Regional Director has stated that the Registrar of Companies had mentioned certain adverse observations in Point No. 33 of his Report, being Annexure 'A' to the Report of the Regional Director ("**Report of the ROC**"). While dealing with the observations set out in Point No. 33 of the Report of the ROC, the Advocate for the Petitioner Companies, states as follows.



- i. As regards Point No. 33 (1) of the Report of the ROC is concerned, the Advocate for the Petitioner Companies states that (1) vide Orders dated 2<sup>nd</sup> March, 2017 passed by this Tribunal in the Company Scheme Applications filed by the Petitioner Companies, this Tribunal had directed the Petitioner Companies to hold meetings of their equity shareholders and to issue notice of the meeting of the equity shareholders under Section 230(3) of the Companies Act, 2013 to their respective creditors, (2) the Petitioner Companies had given notices to their creditors in compliance of the said Order dated 2<sup>nd</sup> March, 2017 and filed requisite affidavits of service in this Tribunal and therefore, there was no requirement of holding meetings of the creditors of the Petitioner Companies to seek their consent to the Scheme, as allegedly sought by the Registrar of Companies. The Advocate for the Petitioner Companies further states that no creditor has filed any objection to the Scheme, till date.
- ii. As regards Point No. 33 (2) of the Report of the ROC is concerned, the Advocate for the Petitioner Companies on instructions states that though the Valuation Report is dated 26<sup>th</sup> September, 2016, and the Appointed Date under the Scheme is 30<sup>th</sup> September, 2016, there was no change in the financial conditions of the Petitioner Companies in the interregnum period. The Advocate for the Petitioner Companies further states that in support of the said contention, Parimal Ram Pattabhi, the Valuer approved by the Transferee Company has submitted an Addendum dated 10<sup>th</sup> August, 2017 to the said Valuation Report dated 26<sup>th</sup> September, 2016 confirming that in the Report dated 26<sup>th</sup> September, 2016, the

said Valuer had relied on the unaudited financial report dated 26<sup>th</sup> September, 2016 as provided by the management for the purpose of its Report and the same is valid as on 30<sup>th</sup> September, 2016 (being Appointed Date in the Scheme).

iii. As regards Point No. 33 (3) of the Report of the ROC is concerned, the Advocate for the Petitioner Companies on instructions states that the Registrar of Companies did not ask for the financial statements as at Appointed Date i.e. 30<sup>th</sup> September, 2016. In view thereof the Petitioner Company did not furnish the same to the Registrar of Companies. The Advocate for the Petitioner Companies further states that in any event, copies of the said financial statements as at Appointed Date of the Transferor Companies and the Petitioner Company have been annexed as Exhibits "B-1" to "B-5" to the Affidavit dealing with observations of the Regional Directors dated 19<sup>th</sup> September, 2017. The said Affidavit has been served upon the Regional Director and Registrar of Companies *vide* letters dated 20<sup>th</sup> September, 2017. As regards non-furnishing the audited financial statement as at 31<sup>st</sup> March, 2016 is concerned, the Advocate for the Petitioner Companies states that the same were already annexed to the Petitions filed by the Petitioner Companies.

iv. As regards Point No. 33 (4) of the Report of the ROC is concerned, the Advocate for the Petitioner Companies on instructions states that for payment to the single foreign shareholder of Transferor Company No. 1, no separate swap ratio/ share price as per FEMA Guidelines is required, as sought by the Registrar of Companies. In support of the aforesaid contention, the Advocate for the Petitioner



Companies relies upon the Addendum dated 10<sup>th</sup> August, 2017 to the Valuation Report dated 26<sup>th</sup> September, 2016. The Advocate for the Petitioner Companies states that in the said Addendum the Valuer has clarified that Regulation 7 of the Foreign Exchange Management (Transfer or issue of security by a person resident outside India), Regulation 2000 do not require the Transferee Company to obtain a valuation of the shares to be issued pursuant to a merger/ amalgamation nor prescribed any method for valuation of shares. The Advocate for the Petitioner Companies states that the said certificate further clarifies that the Valuation Report obtained by the Petitioner Company for determining the share exchange ratio under the Asset Value Method for the Scheme may be considered for the purpose of FEMA.

- v. As regards Point No. 33 (5) of the Report of the ROC is concerned, the Advocate for the Petitioner Companies on instructions states that the Transferor Companies Nos. 2, 3 and 4 are not Non Banking Financial Companies and therefore NOC from the Reserve Bank of India is not required. The Advocate for the Petitioner Companies on instructions further states that the Transferor Companies Nos. 2, 3 and 4, in or around 1999 had applied to the Reserve Bank of India for issue of Certificate of Registration, pursuant to Section 45 (2) and 45-1A of the Reserve Bank of India Act, 1934. However, the Reserve Bank of India had vide their letters dated 30<sup>th</sup> August, 2003, addressed to Transferor Company No.2, letter dated 8<sup>th</sup> March, 2004, addressed to Transferor Company No.3 and letter dated 16<sup>th</sup> December, 2003 addressed to Transferor Company No.4 had

disposed of the said Applications stating therein that the said Transferor Companies were not carrying on any other financial activity covered under Section 45-I (c) read with Section 45-I (f) of the Reserve Bank of India Act, 1934.

- vi. As regards Point No. 33 (6) of the Report of the ROC is concerned, the Advocate for the Petitioner Companies on instructions states that the earlier Scheme referred by the Registrar of Companies was a Scheme of demerger and merger. The Advocate for the Petitioner Companies on instructions further states that in any event, withdrawal of the said Scheme has no relevance to the present Scheme and therefore the question of disclosure of the said Scheme while seeking sanction to the present Scheme of Amalgamation, does not arise.
10. The observations made by the Regional Director have been dealt with by the Petitioner Company in the Affidavit dated 19<sup>th</sup> September, 2017 dealing with the said Report as explained in paragraphs 6 to 9 above. The clarifications and undertakings given by the Petitioner Companies, are accepted.
11. The Official Liquidator has filed his Report with this Tribunal on 18<sup>th</sup> July, 2017 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.
12. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.



13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 408, 398, 397, 396, filed by the Transferor Companies and Company Scheme Petition No. 406 of 2017 filed by the Transferee Company, are made absolute in terms of prayer clauses (a) to (c) and (a) to (e), respectively.
14. The Transferee Company to lodge a certified copy of this order along with the sanctioned Scheme attached thereto with the concerned Collector of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified copy of this order.
15. The Petitioner Companies are directed to file copy of the certified copy of this order along with a copy of the sanctioned Scheme attached thereto with the concerned Registrar of Companies, electronically, along with e-form INC 28, within 30 days of receipt of certified copy of this order along with the sanctioned Scheme.
16. The Transferee Company is directed to file copy of the certified copy of this order along with a copy of the sanctioned Scheme (and Form of Minute Exhibit "U" to the Company Scheme Petition No. 406 of 2017) attached thereto, with the concerned Registrar of Companies, electronically, along with e-form INC 28, within 30 days of receipt of certified copy of this order along with the sanctioned Scheme.
17. The Petitioner Companies to individually pay costs of the Company Scheme Petition of INR 25,000/- to the Regional Director, Western Region, Mumbai. The Transferor Companies to pay the costs of the Company Scheme Petition of INR 25,000/- to the Official Liquidator, High Court,

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Bombay as well. Costs to be paid within four weeks from the date of the order.

18. All concerned authorities to act on a copy of this order along with the sanctioned Scheme, duly certified by the officer of National Company Law Tribunal, Mumbai Bench.

Sd/-

**V. Nallasenapathy**  
Member (T)

Sd/-

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