

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSA NO.1015 OF 2017

In the matter of the Companies Act, 2013

AND

In the matter of Sections 230 to Section 232 of the Companies Act, 2013 and other
applicable provisions of the Companies Act, 2013

AND

In the matter BKC Enterprises Private Limited ('Transferor Company')

WITH

Allied Blenders and Distillers Private Limited ('Transferee Company')

BKC Enterprises Private Limited, a)
company incorporated under the)
provisions of the Companies Act, 1956 and)
having its registered office at 394-C,)
Lamington Chambers, Lamington Road,)
Mumbai 400 004, Maharashtra, India) Applicant Company

Order delivered on 7th November 2017.

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)

Hon'ble **V. Nallasenapathy**, Member (T)

For the Applicant (s): Mr. Hemant Sethi i/b Hemant Sethi & Co; Advocates

Per: **V. Nallasenapathy, Member (T)**

Order

1. The Counsel for the Applicant Company submits that the present Scheme is a Scheme for Amalgamation of BKC Enterprises Private Limited ('Transferor Company') With Allied Blenders and Distillers Private Limited ('Transferee Company') and their respective shareholders under sections 230 to 232 of the Companies Act, 2013.
 1. The Counsel for the Applicant Company states that the Applicant Company is engaged in the business of investment activities and providing consultancy business mainly related to real estate.
 2. The Counsel further submits that the Transferee Company is engaged in the business activity of manufacturing, marketing and sale of alcoholic beverages in

India and overseas market. The Transferee Company Company is a subsidiary of the Applicant Company.

3. The proposed Scheme of Amalgamation under the provisions of Sections 230 to 232 and other relevant provisions of the Companies Act, 2013. The amalgamation would result in the following benefits:
 - i. Create transparency in the holding structure;
 - ii. Reduce the number of entities thereby reducing managerial overlaps, which are necessarily involved in running multiple entities;
 - iii. Reduce regulatory and legal compliances / filings including accounting, reporting requirements, statutory and internal audit requirements, tax filings, etc. and consequential reduction in administrative costs; and
 - iv. The Transferee Company is a subsidiary of the Applicant Company and amalgamation shall be beneficial to the shareholders, employees and creditors as it will result in reduction of shareholding layers.

Keeping in view the provisions of Section 230 to 232 of the Companies Act, 2013, directions are issued in relation to the calling, convening and holding of meeting of shareholders of the Applicant Company as follows:

4. The meeting of the Equity Shareholders of the Applicant Company be convened and held at its registered office at 394-C, Lamington Chambers, Lamington Road, Mumbai, Maharashtra 400 004, India on Wednesday, the 17th day of January, 2018 at 4.00 P.M for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation of BKC Enterprises Private Limited ('Transferor Company') With Allied Blenders and Distillers Private Limited ('Transferee Company') and their respective shareholders.
5. That atleast one month before the said Meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Hand delivery / Courier / Registered Post / Speed Post or through Email (to those shareholders whose email addresses are duly registered with

the Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.

6. That atleast one month before the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meetings, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and / or at the office of its Advocates, M/s. Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400 071.
7. That the Notice of the Meeting of the Equity Shareholders shall be advertised in two local newspapers viz. in “Free Press Journal” in English and “Navshakti” in Marathi, both circulated in Mumbai, not less than thirty (30) days before the date fixed for the meeting.
8. That Mr. P. R. Pandya – Director of the Applicant Company and in his absence, Mr. Ramakrishnan Ramaswamy, Authorized Person of the Applicant Company and in his absence, Mr. R. L. Jain, Authorized Person of the Applicant Company and in his absence , Mr. Atit Dalal, Authorized Person shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Applicant Company to be held at its registered office at 394-C, Lamington Chambers, Lamington Road, Mumbai, Maharashtra 400 004, India, on Wednesday, the 17th, day of January, 2018 at 4.00 P.M at or any adjournment or adjournments thereof.
9. That the Chairman appointed for the aforesaid meeting of the Equity Shareholders to issue the advertisement and send out the notices of the meeting referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

10. That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
11. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form / authorisation duly signed by the person entitled to attend and vote at the meeting, are filed with the Applicant Company at its Registered Office at 394-C, Lamington Chambers, Lamington Road, Mumbai, Maharashtra 400 004, India not later than 48 hours before the aforesaid meeting.
12. That the value and number of the shares of each Equity Shareholders shall be in accordance with the books / register of the Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
13. The Counsel for the Applicant Company submits that there are no Secured Creditors in the Applicant Company therefore the question of sending notices does not arise. The Counsel for the Applicant Company further submits that since the Scheme is an arrangement between the Applicant Company and their respective shareholders only and a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby directs the Applicant Company to issue notice to all its Unsecured Creditors of the Applicant Company as required under section 230(3) of the Companies Act 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
14. This Bench hereby directs the Applicant Company to issue notice to all its Unsecured Creditors as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
15. That Mr. T. M. Khumri, Practicing Company Secretary is hereby appointed as Scrutinizer of the meeting of Equity Shareholders of the Applicant Company to be held at its Registered Office at 394-C, Lamington Chambers, Lamington Road, Mumbai, Maharashtra 400 004, India, on Wednesday, the 17th day of January, 2018 at 4:00 P.M

or any adjournment or adjournments thereof and his remuneration is fixed as Rs. 20,000/- Plus Applicable Tax and Out of Pocket Expenses.

16. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings of the Equity Shareholders and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
17. That the Chairman of the meeting of the Equity Shareholders to report to this Tribunal, the results of the aforesaid meetings within thirty (30) days of the conclusion of the meeting.
18. The Applicant Company is directed to serve notices along with copy of scheme upon:-
 - (i) concerned Income Tax Authority with in whose jurisdiction the Applicant Company's assessments is made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai (iii) the Registrar of Companies, with a direction that they may submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
19. The Applicant Company is also directed to serve notice along with copy of scheme upon Official Liquidator and M/s. Dinesh Gandhi & Associates, Chartered Accountants is appointed to assist the Official Liquidator to scrutinize books of accounts of the Applicant Company for the last 5 years. The Applicant Company to pay fees of Rs. 1,00,000/- (Rupees One Lakh only) within a period of two weeks from today
20. The Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, creditors, publication of notices in newspapers and notices to the regulatory authorities as stated in clauses 16 and 17 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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

Date: 7.12.2017