

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH, at MUMBAI

TRANSFERRED COMPANY SCHEME PETITION NO. 182 OF 2017

TRACSTAR INVESTMENT PRIVATE LIMITED ... Transferor Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 183 OF 2017

ALLIED BLENDERS & DISTILLERS PRIVATE LIMITED ...

... Transferee Company

In the matter of the Companies Act,
2013;

AND

In the matter of Sections 391 to 394 of
the Companies Act, 1956 (corresponding
sections 230 to 232 of the Companies Act
2013);

AND

In the matter of Scheme of Arrangement
between Tracstar Investment Private
Limited ("Transferor Company" /
"Demerged Company") and Allied
Blenders & Distillers Private Limited
("Transferee Company"/ "Resulting
Company") and their respective
Shareholders and creditors.

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners.

Mr. S Ramakantha, Joint Director in the office of Regional Director .

Mr. Pushkal Mishra , i/by MV Kini & Co for Andhara Bank

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

V. Nallasenapathy, Member (Technical)

Date: 6th April 2017

1. Heard the learned counsel for the Petitioner Companies and the objecting Creditor.
2. The learned counsel for Andhra Bank (ie. lead Bank representing other member Banks of the consortium) submits that dues of the consortium Banks including Andhra Bank have not been paid and therefore Andhra Bank in their capacity as lead Bank is objecting to the Scheme .

3. The Counsel for the Petitioner Companies submits that the Transferor Company has already submitted an affidavit dated 4th April 2017 to Andhra Bank recording that the Transferor Company has already deposited a sum of Rs 5 crores with Andhra Bank being the Lead Bank and that the Transferor Company undertakes that it shall submit the final amount payable by way of "Right to Recompensate" (i.e ROR) duly certified by its statutory auditor by 15th April 2017. If any amounts are due and payable to by way of ROR to the consortium Banks including Andhra Bank over and above the deposited amount of Rs. 5 crores, the Transferor Company will undertake to make the payment within 2 working days from the date of email/letter received from Andhra Bank. Andhra Bank has accordingly given their No objection to the Scheme of Arrangement.
4. The sanction of the Tribunal is sought under Sections 230 and 232 of the Companies Act, 2013, to the Scheme of Arrangement between Tracstar Investment Private Limited ("Transferor Company" / "Demerged Company") and Allied Blenders & Distillers Private Limited ("Transferee Company"/ "Resulting Company") and their respective Shareholders and creditors.
5. Learned Counsel for the Petitioner Companies states that the Transferor Company is primarily engaged in the business of bottling, bottle trading and has a grain based distillery.
6. The rationale for the scheme is that in order to achieve synergies and commonality as part of Group restructuring exercise, the Resulting Company has envisaged to acquire the Bottle trading, Bottling and Distillery Business Undertaking of the Demerged Company. To achieve this end, it is proposed to demerge the Bottle trading, Bottling and Distillery Business Undertaking from Tracstar Investment Private Limited to Allied Blenders & Distillers Private Limited.
7. The Demerged Company and the Resulting Company have approved the said Scheme of Arrangement by passing the Board Resolution which are annexed to the Company Scheme Petition filed by the Petitioner Companies.
8. Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble National Company Law Tribunal Mumbai bench and has filed necessary affidavits of compliance with the National Company Law Tribunal Mumbai bench. Moreover, the Petitioner Companies through its Counsel

undertakes 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 is accepted.

9. The Regional Director has filed a Report dated 27th day of March, 2017 stating therein, that the Tribunal may take this report on record and pass such other order or orders as deemed fit and proper in the facts and circumstances of the case post considering the observations made at Sr. No. IV (a) to (d) mentioned in his report.

In paragraphs IV (a) to (d), of the said Report it is stated that:-

“..

- a) *In addition to compliance of AS-14 (IND AS-103) the Resulting Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as (IND AS-8) etc.,*
 - b) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 28.10.2016 has served a copy company petition No.690 & 691 of 2016 (TCSP No. 182 & 183 of 2017) along with relevant orders etc. However, as on date there is no response from Income Tax Department. Further the Regional Director has also issued a reminder on 23.03.2017 to respective IT Department. 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 Resulting Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
 - c) *The Deponent prays that the excess of, or deficit, in value of the assets over the value of the liabilities of the Demerged Company vested in the Resulting Company pursuant to the scheme as recorded in the books of account of the Resulting Company shall be treated as Capital Reserve and in the case of deficit, it should be treated as Goodwill.*
 - d) *Petitioner in the Clause No. 13.7 inter alia has mentioned that the Resulting Company shall, if an to the extent required, increase and / or reclassify its Authorized share capital to facilitate the issue of New Equity Shares under this Scheme. Therefore, Deponent prays that the Hon'ble Tribunal may pass orders to comply with the sec 61, r/w sec 13, sec. 64 and other applicable sections of the Companies Act, 2013....”*
10. As far as the observations made in paragraph IV (a) of the RD Report is concerned, Petitioner Companies through its Counsel undertakes that in addition to compliance of AS-14 (IND AS-103) the Resulting Company shall also pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as (IND AS-8) etc as may be applicable.,

11. As far as the observations made in paragraph IV (b) of the RD Report is concerned, Petitioner Companies through its Counsel submits that the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
12. With reference to the observation set out in paragraphs IV (c) of the RD Report, Petitioner Company undertakes that that the accounting treatment for the Resulting Company as provided in the scheme is already in compliance with applicable accounting standards as confirmed by the certificate from the statutory auditors of the Resulting Company.
13. With reference to the observation set out in paragraph IV (d) of the RD Report, the Petitioner Companies through its Counsel submits that it undertakes to comply with all relevant and applicable provisions of the Companies Act, 2013 and the rules framed thereunder in respect of the increase in Authorized share capital of the Resulting Company to facilitate the issue of New Equity Shares under the Scheme of Arrangement.
14. The observations made by the Regional Director have been explained by the Petitioner in paragraphs 10 to 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
15. 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.
16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 690 & 691 of 2016 (TCSP No. 182 & 183 of 2017) filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
17. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement 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 issuance of the order by the Registry.
18. The Resulting Company to lodge certified copy of this order and the Scheme 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. The Petitioner Company to pay cost of Rs.25,000/- each to the Regional Director, Western Region, Mumbai.
20. Costs 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 Scheme 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/-

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

Sd/-

V. Nallasenapathy, Member (Technical)