

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 543 OF 2017
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 555 OF 2017
OLIVE CAFES SOUTH PRIVATE LIMITED
....Petitioner/ the First Transferor Company

AND
BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 544 OF 2017
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 556 OF 2017
OLIVE MANAGEMENT SERVICES PRIVATE LIMITED
....Petitioner/ the Second Transferor Company

AND
BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 542 OF 2017
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 557 OF 2017
MOVING KITCHEN PRIVATE LIMITED
....Petitioner/ the Third Transferor Company

AND
BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 541 OF 2017
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 558 OF 2017
SUSSEGADO BAR & KITCHEN PRIVATE LIMITED
....Petitioner/ the Demerged Company

AND
BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 545 OF 2017
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 559 OF 2017
OLIVE BAR AND KITCHEN PRIVATE LIMITED

....Petitioner/ the Transferee Company

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation and Arrangement of OLIVE CAFES SOUTH PRIVATE LIMITED, the First Transferor Company and OLIVE MANAGEMENT SERVICES PRIVATE LIMITED, the Second Transferor Company and MOVING KITCHEN PRIVATE LIMITED, the Third Transferor Company and SUSSEGADO BAR & KITCHEN PRIVATE LIMITED, the Demerged Company with OLIVE BAR AND KITCHEN PRIVATE LIMITED, the Transferee or the Resulting Company.

Date: 3rd August, 2017

Coram:

Hon`ble Shri. B.S.V. Prakash Kumar, Member (J)

Hon`ble Shri. V. Nallasenapathythy, Member (T)

Called for hearing

Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co.,
Advocate for the Petitioner.

Mr. Pola Raghunath, Deputy Registrar of Companies

Mr. Santosh Dalvi, Representative from Official Liquidator

Per: V. Nallasenapathy, Member (T)

MINUTES OF THE ORDER

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Amalgamation and Arrangement of OLIVE CAFES SOUTH PRIVATE LIMITED, the First Transferor Company and OLIVE MANAGEMENT SERVICES PRIVATE LIMITED, the Second Transferor Company and MOVING KITCHEN PRIVATE LIMITED, the Third Transferor Company and SUSSEGADO BAR & KITCHEN PRIVATE LIMITED, the Demerged Company with OLIVE BAR AND KITCHEN PRIVATE LIMITED, the Transferee or the Resulting Company.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation and Arrangement of OLIVE CAFES SOUTH PRIVATE LIMITED, the First Transferor Company and OLIVE MANAGEMENT SERVICES PRIVATE LIMITED, the Second Transferor Company and MOVING KITCHEN PRIVATE LIMITED, the Third Transferor Company and SUSSEGADO BAR & KITCHEN PRIVATE LIMITED, the Demerged Company with OLIVE BAR AND KITCHEN PRIVATE LIMITED, the Transferee or the Resulting Company.
3. The Petitioner Companies have approved the said Scheme of Amalgamation and Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all the directions passed in respective Company Scheme Application and the respective Company Scheme Petitions have been filed in consonance with the order passed in Company Scheme Application Nos. 555 of 2017 to 559 of 2017 of the Hon'ble National Company Law Tribunal, Mumbai Bench.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of this Tribunal, and they have filed necessary affidavits of compliance in the 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 whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.

6. The Learned Counsel for the Petitioners states that the First Transferor Company at present is in the business of operating and running restaurants. The Second Transferor Company at present is in the business of Hospitality Management Services. The Third Transferor Company at present is in the business of operating and running restaurants. The Demerged Company at present is in the business of catering and operating and running restaurants. The Transferee Company at present is in the business of operating and running restaurants. In the opinion of the management, the combined operations shall offer better business opportunities owing to economies of scale, integrated operations and reduction in costs and the arrangement would enable optimum utilization of funds and resources and that the arrangement would also enable the Transferee Company to grow much faster with consolidated resources and that the arrangement will integrate all activities of management functions thereby achieving reduction in overhead costs and it will also lead to administrative convenience and greater internal controls.
7. The Regional Director has filed his Representation dated 26th day of July, 2017 stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:

*(a) As per clause 1.10 Definitions of the scheme “The Appointed Date” means the **First day of April, 2016** or such other date as may be mutually agreed upon by the Board of Directors of the Transferor Company/ies and Transferee Company or as may be decided by the NCLT. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be **First day of April, 2016**.*

(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 8th May, 2017 has served a copy of company scheme application No. 555 to 559 of/2017 along with relevant orders etc., to IT Department. Further this office has also issued a reminder letter dated 20/07/2017 to the concerned Income Tax authorities.

(c) 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 Court 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.

8. So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Appointed Date will be 1st April, 2016.
9. So far as the observation in paragraph IV (b) and (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company/Transferee Company undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
10. The Official Liquidator has filed his representation dated 6th June, 2017 in the Company Petition No. 542, 543 and 544 of 2017 inter alia, submitted that the Para 17 of the respective report of Chartered Accountant be taken into consideration vis-a-vis the scheme as proposed and the representation of the Official Liquidator may be taken on record.
11. 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.
12. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 541 to 545 of 2017 filed by the Petitioner Companies is made absolute in terms of prayer clause 44 of the respective petitions.
13. Petitioners are directed to lodge a copy of this order along with a copy of the Scheme of Amalgamation and Arrangement with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act, 2013.
14. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition No. 542 to 544 of 2017 to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the Order.
15. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal,

Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any.

16. All concerned regulatory authorities to act on a copy of this order along with Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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