

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
TRANSFERRED COMPANY SCHEME PETITION NO. 40 OF 2017.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTIONS NO.908 OF 2017.

BRISK INDIA PRIVATE LIMITED

...Petitioner Company

AND
TRANSFERRED COMPANY SCHEME PETITION NO. 41 OF 2017.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTIONS NO.909 OF 2017.

GADHINGLAJ SUGARS PRIVATE LIMITED

...Petitioner Company

In the matter of the Companies Act, 1956;

AND

In the matter of Sections 230 to 232 of the
Companies Act, 2013 read with Section 66 of the
Companies Act 2013 and other applicable
provisions of the Companies Act, 2013 and rules
made thereunder;

AND

In the matter of Scheme of Arrangement between
Brisk India Private Limited ("Demerged Company")
and Gadhinglaj Sugars Private Limited ("Resulting
Company") and their respective shareholders

CALLED FOR HEARING

Mr. Chandrakant Mhadeshwar, Advocates for the Petitioner Company.

Mr. S. Ramakantha, Joint Director Legal for Regional Director.

Coram: SH. B.S.V. Prakash Kumar Member (J)
and Shri V. Nallasenapathy, Member (T)

Date: 08th June, 2017

MINUTES OF 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.

2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 read with Section 66 of the Companies Act 2013, to a Scheme of Arrangement between of Brisk India Private Limited, the Demerged Company and Gadhinglaj Sugars Private Limited, Resulting Company.
3. The Demerged Company and the Resulting Company have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The learned Advocate for the Petitioner Companies further states that the Scheme of Arrangement would lead to following benefits:
 - (i) Efficient and focused management on Sugar business segment;
 - (ii) Unlocking value for the shareholders of Brisk India Private Limited;
 - (iii) Financial and Administrative efficiencies
 - (iv) Reduction of Share Capital of Gadhinglaj Sugar Private Limited to reflect mirror image of share holding in Gadhinglaj Sugar Private Limited post arrangement.
5. The Learned Advocate appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Regional Director has filed his Report dated 28th April, 2017 inter alia, stating therein that save and except as stated in paragraphs III (a) to (e) of the said Report, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph III of the said Affidavit, the Regional Director has 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 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 27th January 2017 has served a copy of the company petition No. 40 & 41 of 2017 along with relevant orders. Further the Regional Director has also issued a reminder on 24th April, 2017.*
- (c) *The tax implication if any arising out of the scheme is subject to final decision of the 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.*
- (d) *Clause 13 of the scheme, upon the scheme becoming effective M/s. Gadhinglag Sugars Private Limited (GSPL) the Resulting Company may apply for change of name of the Company to "Brisk Facilities (Sugar Division)" or "Brisk Facility Private Limited" or such other name as may be approved by the Ministry of Corporate Affairs, New Delhi. Further, in this regard the report/letter No. ROC/STA/391/394/2016/6714 dated 06.02.2017 of ROC Pune may kindly be seen.*
- In this regard, it is submitted that the change of name is subject to compliance with the provisions of section 4(2) & (3) of the Companies Act, 2013 r/w rule 8(8) of the Company (Incorporation) Rules, 2014.*

*(e) As per **clause 1.2 of the scheme “The Appointed Date”** means opening business hours of **1st April 2016** or such other date as may be fixed or approved by the High Court. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be **1st April 2016**.*

7. As far as the observation of the Regional Director stated in paragraph III (a) of his report is concerned, the Petitioner Company through its Counsel undertakes that in addition to compliance of AS-14 (IND AS-103) the Petitioner Company will also comply with the other applicable Accounting Standards such as AS-5(IND AS-8) etc.
8. As far as the observation of the Regional Director stated in paragraph III (b) and (c) of his report is concerned, the Petitioners undertake 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.
9. As far as the observation of the Regional Director stated in paragraph III (d) of his report is concerned, the Resulting Company through its Counsel undertakes to comply with the provisions of section 4(2) & (3) of the Companies Act, 2013 read with the rules made thereunder and will file the relevant e-forms with requisite enclosures by payment of requisite fees to the extent applicable.
10. As far as the observation of the Regional Director stated in paragraph III (e) of his report is concerned, the Petitioner Company through its Counsel states that the Appointed Date will be 1st April, 2016.
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, Transferred Company Scheme Petition Nos. 40 & 41 of 2017 are made absolute in terms of prayer clauses (a) to (c) of the respective Petitions.
13. Petitioner Company is 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.
14. The Petitioner Company to lodge a copy of this Order and the Scheme duly authenticated 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.
15. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai.. Costs to be paid within four weeks from today.
16. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumār Member (J)