

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COMPANY SCHEME PETITION NO 186 OF 2017

M/s. Sakas Milk and Milk Products Private Limited.....Petitioner

AND

COMPANY SCHEME PETITION NO 187 OF 2017

M/s. Green Valley Foods Processors Private Limited.....Petitioner

In the matter of the Companies Act, 1956 (1 of 1956); (or any re-enactment thereof upon effectiveness of companies Act, 2013);

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 (corresponding to Section 230 to 232 read with Section 66 of the Companies Act, 2013);

AND

In the matter of the Scheme of Amalgamation of M/s. Sakas Milk and Milk Products Private Limited with M/s. Green Valley Foods Processors Private Limited and their Respective Shareholders.

Called for Hearing

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

Mr. Ramesh Golap, Assistant Director in the office of Regional Director

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

V. Nallasenapathy, Member (Technical)

Date : ^{21st} 20th June 2017

MINUTES OF ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of this Tribunal is sought under Sections 391 to 394 read with Section 100 to 103 of the Companies Act, 1956 (corresponding to Section 230 to 232 read with Section 66 of the Companies Act, 2013), to the Scheme of Amalgamation of Sakas Milk and Milk Products Private Limited ('the Transferor

Company’) with Green Valley Foods Processors Private Limited (‘the Transferee Company’) and their Respective Shareholders.

3. The Counsel for the Petitioners submit that the Transferor Company is presently engaged in the business of manufacturers, producers and processors of and dealers in dairy products such as milk, milk powder, infant milk powder, malted milk food, condensed milk, butter, cheese and ghee and other dairy products, poultry and eggs, meat and meat products and processing.
4. The Counsel for the Petitioners further submit that the rationale for Scheme is that the amalgamation will help in achieving economies of scale for the amalgamated company. There would be lesser regulatory/procedural compliances for the amalgamated company. It would help integrate, rationalize and streamline the management structure of the merged business resulting in further cost saving in fees/duties payable on statutory and procedural compliances. It will facilitate inter-transfer of resources and costs and optimum utilization of assets while ensuring synchronizing of efforts to achieve uniform corporate policy.
5. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.
6. The Learned Counsel appearing on behalf of the Petitioner Company further states that the Petitioner Company has complied with all requirements as per directions of the Court/ Tribunal and the necessary affidavits of compliance has been filed in the Court. Moreover, the Petitioner Company through its Counsel 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 undertakings given by the Petitioner Company is accepted.
7. The Official Liquidator has filed his report on 9th May, 2017 stating in the Transfer Company Scheme Petition No. 694 of 2016 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.
8. The Regional Director has filed a Report dated 16th May 2017 stating therein, save and except as stated in paragraph IV (a) to (d), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV, of the said Report it is 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 Clause 3.2, Definitions of the scheme. "Appointed Date: For the purpose of this Scheme and or Income Tax Act, 1861, the "Appointed Date" means 1st April 2015, or such other date as may be approved by the High Court of Bombay. In this regard, it is submitted in terms of provision of section 232(6) of the Companies Act, 2013 it should be 1st April, 2015.*

(c) *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 21st November 2016 has served a copy Company Scheme Petition No. 694 & 695 of 2016 along with relevant orders etc. Further the Regional Director has also issued reminder on 11th May 2017 to Income Tax Department.*

(d) *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 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.*

9. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Transferee Company through its Counsel undertakes that 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. The Petitioners through their Counsel clarify that the Indian Accounting Standard ("IND AS") is not applicable to both the Companies since the Companies have net worth below the prescribed limit i. e. INR 500 Crores as contemplated under roadmap for convergence to IND AS.
10. In so far as observations made in paragraph IV (b) of the Report of the Regional Director is concerned, the Petitioner Companies through their Counsel confirms that the Appointed Date under the Scheme will be 1st April 2015.
11. In so far as observations made in paragraph IV (c) and (d) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit 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. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No 186 of 2017 and Company Scheme Petition No. 187 of 2017 filed by the respective Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
15. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Amalgamation 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.
16. The Petitioner Companies to lodge a 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.
17. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in Company Scheme Petition No 186 of 2017 to pay cost of Rs 25,000/- to the Official Liquidator, High Court, Bombay .
18. Costs to be paid within four weeks from the date of receipt of the order.
19. All authorities concerned to act on a certified copy of this order along with the Scheme duly certified by the Deputy Director National Company Law Tribunal, Mumbai Bench.
20. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

Sd/-

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