

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO. 572 OF 2017

AND

CSP NO. 571 OF 2017

Under Section 230-232 of the Companies Act,
2013

In the matter of Scheme of Amalgamation of
INDFRAG LIMITED, the Transferor Company with
OMNIACTIVE HEALTH TECHNOLOGIES
LIMITED, the Transferee Company.

INDFRAG LIMITED

....Petitioner/ the Transferor Company

AND

OMNIACTIVE HEALTH TECHNOLOGIES LIMITED

....Petitioner/ the Transferee Company

Judgement/ order delivered on 27th July, 2017

Coram:

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

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Rajesh Shah with Mr. Ahmed M Chunawala

i/b M/s. Rajesh Shah & Co., Advocate for the Petitioner.

Per: V. Nallasenapathy, Member (T)

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 of

INDFRAG LIMITED, the Transferor Company with OMNIACTIVE HEALTH TECHNOLOGIES LIMITED, the Transferee Company.

2. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to a Scheme of Amalgamation of INDFRAG LIMITED, the Transferor Company with OMNIACTIVE HEALTH TECHNOLOGIES LIMITED, the Transferee Company.
3. The Petitioner Companies have approved the said Scheme of Amalgamation 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 Petitions have been filed in consonance with the Order passed in their Company Scheme Application Nos. 340 of 2017 and 341 of 2017 of the National Company Law Tribunal.
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 the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the 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 Learned Counsel for the Petitioners states that the Transferor Company is engaged in the business of bulk manufacturing, processing and sale of botanical extracts with applications in the food and nutrition industry and the Transferee Company is engaged in the business of natural APIs and novel delivery systems for nutrients and active

ingredients, and offers a range of quality ingredients, which are innovative and scientifically validated for dietary supplementation, function food/ beverage, coloring, flavor enhancement and personal care applications. As per the opinion of the management the merger of Indfrag Limited and OmniActive Health Technologies Limited is with a view to achieve business growth in a more advantageous manner by combining all the businesses/ projects undertaken by the Parties into one and thereby provide an integrated offering to stakeholders as well as external customers/ agencies and to achieve greater integration/ greater financial strength and flexibility, leading to stronger negotiation power in the market and strengthened leadership in the industry, due to better leveraging of the consolidated asset base, consolidated revenues and market share of the combined entity and also to build a stronger and sustainable platform for further growth and expansion of the business of the merged entity and to exit to the smaller shareholders in a fair and transparent manner to ensure 100% consolidation of business and to achieve greater efficiency in cash management and unfettered access to large cash flows generated by the combined business which can be deployed more efficiently to fund larger projects with a stronger platform and strengthen brand visibility and to achieve administrative efficiency through better or centralized control over ongoing and future compliances/ litigation under various tax laws, corporate laws and exchange control regulations and to improve organizational capability and leadership, arising from the pooling of human capital and focus the diverse skills, talent and vast experience in specialized fields to compete successfully in an increasingly competitive industry and cost savings through reduction of administrative costs, rationalization and standardization of support teams, elimination of intra-group transactions, vendor or contracts consolidation, etc.

7. The Regional Director has filed a Report on 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) In addition to compliance of AS-14 corresponding (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 the existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalamtion to Income Tax Department for their comments. It appears that the company vide letter dated 5th May, 2017 has served a copy of company scheme application Nos. 340 and 341 of 2017 along with relevant orders etc. to IT Department. Further this directorate has also issued a reminder letter to the Income Tax Department dated on 20.07.2017. However, as on date, there is no response from Income Tax Department.*
- (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.*
- (d) As per Part-IV – General Terms and Conditions – Clause 23 (power to withdraw the scheme at any time) of the Scheme it is stated that "in the event of any conditions or modification that may be imposed by the Hon'ble NCLT or any competent authority, or if the board of Directors of the Transferor Company or the Board of Directors of the Transferee Company may find it unacceptable for any reason, or if Board of Directors of the said Transferor/ Transferee Company decides, they shall be a liberty to withdraw the scheme unconditionally" in this regard it is submitted that the withdrawal of scheme shall be subject to the approval of NCLT, Mumbai". Hon'ble Tribunal may pass appropriate orders/ orders as may deem fit.*

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 Transferee Company undertakes that in addition to compliance of AS-14 (corresponding Ind AS-103, if applicable) for accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 (corresponding Ind AS-8, if applicable etc.
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. So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that withdrawal of the scheme will be subject to the approval of NCLT, Mumbai.
11. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 10 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
12. The Official Liquidator has filed his report on 11th July, 2017 in the Company Scheme Petition No. 572 of 2017 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal.

13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law including but not limited to Companies Act, 2013; Income Tax Act; Accounting Standards and various other applicable statutory acts and is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 572 of 2017 is made absolute in terms of prayers clause (a) to (d) thereof and 571 of 2017 is made absolute in terms of prayer clauses (a) to (c) thereof .
15. Petitioners are directed to lodge 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 physical copy, as per the relevant provisions of the Companies Act 2013.
16. 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 within 60 days from the date of receipt of the order, if any.
17. 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. 572 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 receipt of the Order.

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

Sd/-
V. Nallasenapathy, Member(T)

Sd/-
B.S.V. Prakash Kumar, Member (J)