

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
TRANSFERRED COMPANY SCHEME PETITION NO. 241 OF 2017
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 632 OF 2016
(HIGH COURT TRANSFERRED APPLICATION).

UNOKOTI BOTTLING AND BEVERAGE PRIVATE LIMITED

....Petitioner/ the Transferor Company

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
TRANSFERRED COMPANY SCHEME PETITION NO. 242 OF 2017
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 633 OF 2016
(HIGH COURT TRANSFERRED APPLICATION)

ALLIED BLENDERS AND DISTILLERS PRIVATE LIMITED

....Petitioner/ the Transferee Company

In the matter of the Companies Act, 2013 (18 of
2013);

AND

In the matter of the Companies Act, 1 of
1956 and other relevant provisions of the
Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the
Companies Act, 1956 and other relevant
provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of
UNOKOTI BOTTLING AND BEVERAGE
PRIVATE LIMITED, the Transferor Company with

ALLIED BLENDERS AND DISTILLERS
PRIVATE LIMITED, the Transferee Company.

Called for hearing

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

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

Mr. Pola Raghunathan, the Official Liquidator

Coram: SH. B.S.V. Prakash Kumar Hon'ble Member (J) and SH. V. Nallasenapathy
Hon'ble Member (T)

Date: 5th April, 2017

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 of UNOKOTI BOTTLING AND BEVERAGE PRIVATE LIMITED, the Transferor Company with ALLIED BLENDERS AND DISTILLERS PRIVATE LIMITED, the Transferee Company.
2. The sanction of the Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of UNOKOTI BOTTLING AND BEVERAGE PRIVATE LIMITED, the Transferor Company with ALLIED BLENDERS AND DISTILLERS PRIVATE 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 Summons for Direction Nos. 632 of 2016 and 633 of 2016 of the Hon'ble Bombay High Court.
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 Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the Hon'ble Bombay High Court and 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, 1956/2013 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 has been carrying on the business to produce Indian made foreign, liquor by compounding, Blending and Bottling of Rectified Sprit & other raw materials and the Transferee Company has been carrying on the business of process manufacture, distill, prepare, refine, blend, store, mature, produce, import, export and generality to deal in wines, spirits, liquors, country liquors, whisky, gin, rum, brandy, spirits, Liquors, beer, aerated, mineral and medicated waters. As per the opinion of the management that the merger will lead to synergies of operations and more particularly the following benefits that both the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company and that the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and it would be advantageous to combine

the activities and operations of both companies into a single Company for synergistic linkages as both the Companies are engaged in the same type of business activities and thus there will be benefit of combined financial resources and this will be reflected in the profitability of the Transferee Company and that the amalgamated Company will immensely benefit from several back end processes such as supply chain and logistics alignment, benefit from the increased scale of operations, saving in various fixed cost, reduced administrative cost as there will be no duplication of various activities in running two companies with similar business and this Scheme of amalgamation would result in merger and thus consolidation of business of the Transferor Company and the Transferee Company in one entity which will result in savings of cost and improvement in the revenues and margins of the Amalgamated Company, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform and the amalgamation of the Transferor Company with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of both the companies and that the merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme and that the Scheme of amalgamation will result in cost saving for both the companies as they are capitalizing on each others core competency and resources which are expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company, thus it will immensely benefit the shareholders of both the companies.

7. The Regional Director has filed a Report on 24th day of March, 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 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 06.12.2016 has served a copy company petition No. CSP 755 and 756 of 2016 along with relevant order etc. The directorate has also issued a reminder letter to the Income Tax Department dated 27.03.2016. 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.*
- c) Petitioner in clause 13.2 inter alia has mentioned that if there is a surplus arising as a result of the difference, if any, of the value of the assets out over the value of the liabilities of the transferor Company, in accordance with this scheme, the same shall be credited to Reserve and Surplus Account of the Transferee Company and in the event of deficit if the same shall be debited to Goodwill Account of the Transferee Company. In view of this, Reserve and Surplus be read as "Capital Reserve".*
- d) ROC has observed in point no.(29) that as per the Rule6(3)(ix)(c) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 effect from 15.12.2016, the companies under the Compromise, Arrangement or Amalgamation is required to attach a Certificate from the Company's*

Auditor to the effect that the accounting treatment if any proposed is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available. The Company to submit the same before the proceeding of the amalgamation takes place.

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) 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 (Ind AS-8) etc.
9. So far as the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies 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.
10. So far as the observation in paragraph IV(c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes that the surplus if any arising out of the scheme which shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against the Profit & Loss Account of the Transferee Company.
11. 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 that the accounting standards prescribed under section 133 of the Companies Act, 2013 is submitted to this Tribunal.

12. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 11 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
13. The Official Liquidator has filed his report on 25th March, 2017 in the Company Petition No. 241 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.
14. 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.
15. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 241 of 2017 is made absolute in terms of prayers clause (a) to (d) and 242 of 2017 is made absolute in terms of prayer clauses (a) to (c).
16. 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 1956 / 2013.
17. 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.
18. 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. 241 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.

19. 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/-

B.S.V. Prakash Kumār, Member (J)

Sd/-

V. Nallasenapathy, Member (T)