

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENCH AT MUMBAI
TRANSFER COMPANY SCHEME PETITION NO. 173 OF 2017
(HIGH COURT TRANSFERRED COMPANY SCHEME PETITION NO. 681 OF 2016)
CONNECTED WITH COMPANY SUMMONS FOR DIRECTION NO. 329 OF 2016**

IN THE MATTER of the Companies Act, 1956
and the Companies Act, 2013;

AND

IN THE MATTER of Sections 391 to 394 read
with Sections 100 to 103 of the Companies Act,
1956 and Section 52 of the Companies Act, 2013;

AND

IN THE MATTER of Huhtamaki PPL Limited;

AND

IN THE MATTER of Scheme of Arrangement of
Positive Packaging Industries Limited and
Huhtamaki PPL Limited (formerly known as The
Paper Products Limited) and their respective
shareholders and creditors.

Huhtamaki PPL Limited (formerly known as)
The Paper Products Limited))
a company incorporated under the provisions of the)
Companies Act, 1956 having its registered office at)
12A-06, 'B' Wing, 13th Floor, Parinee Crescenzo,)
C-38/39, 'G' Block, Bandra Kurla Complex,)
Bandra (East), Mumbai – 400 051)

...Petitioner / Transferee Company

AND

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENCH AT MUMBAI
TRANSFER COMPANY SCHEME PETITION NO. 174 OF 2017
(HIGH COURT TRANSFERRED COMPANY SCHEME PETITION NO. 682 OF 2016)
CONNECTED WITH COMPANY SUMMONS FOR DIRECTION NO. 330 OF 2016**

IN THE MATTER of the Companies Act, 1956
and the Companies Act, 2013;

AND

IN THE MATTER of Sections 391 to 394 read
with Sections 100 to 103 of the Companies Act,
1956 and Section 52 of the Companies Act, 2013;

AND

IN THE MATTER of Positive Packaging Industries Limited;

AND

IN THE MATTER of Scheme of Arrangement of Positive Packaging Industries Limited and Huhtamaki PPL Limited (formerly known as The Paper Products Limited) and their respective shareholders and creditors.

Positive Packaging Industries Limited)	
a company incorporated under the provisions of the)	
Companies Act, 1956 having its registered office at)		
12A-06, 'B' Wing, 13 th Floor, Parinee Crescenzo,)	
C-38/39, 'G' Block, Bandra Kurla Complex,)	
Bandra (East), Mumbai – 400 051)	...Petitioner / Transferor Company

Called for Hearing

Mr. Shyam Kapadia a/w Ms. Dhanyashree Jadeja and Ms. Debashree Dey i/b Desai & Diwanji,
Advocates for the Petitioner.

Ms. P. Sheela for Regional Director

Mr. Vinod Sharma, Official Liquidator, in Transfer Scheme Petition No. 174 of 2017.

Coram: Shri B.S.V. Prakash Kumar, Member (J)

Shri V. Nallasenapathy, Member (T)

Date: 22 February 2017

MINUTES OF THE ORDER

1. Heard Advocates for the parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor any party has controverted any averments made in the Company Scheme Petition.

2. The sanction of this Hon'ble Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Arrangement of Positive Packaging Industries Limited (**Transferor Company**) and Huhtamaki PPL Limited (formerly known as The Paper Products Limited) i.e. **Petitioner/Transferee Company** herein and their respective shareholders and creditors.
3. The Petitioner Company and the Transferor Company have approved the said Scheme of Arrangement in separate meetings held on 14 September 2015 and by passing Board Resolutions which are annexed to the captioned Company Scheme Petition (*at Exhibits H-1 and H-2*).
4. The Learned Advocate for the Petitioner states that, the Petitioner Company has complied with all the directions given by the Hon'ble Bombay High Court by order dated 22 April 2016 passed in Company Summons for Direction No. 329 of 2016 and that the captioned Company Scheme Petition has been filed in consonance with the order passed in the Company Summons for Direction No. 329 of 2016.
5. The Learned Advocate appearing on behalf of the Petitioner Company states that the Petitioner has complied with all requirements as per directions of the Hon'ble Bombay High Court and has also filed necessary affidavits of compliance before the Hon'ble Bombay High Court. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder, whichever applicable. The said undertaking is accepted.

6. The Regional Director has filed a Report on 08 February 2017 ("**Report**"), *inter alia*, stating therein that save and except as stated in paragraphs IV (1) to (8) of the said Report, 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:

"1. *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 the 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.*

2. *As per the Scheme Appointed date is 30/01/2015. Petitioner submitted Audited balance Sheet and Profit and loss Account as on 31st December, 2015. According to the provisions of Section 232(2)(e), a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme is to be circulated for the meeting.*

Latest audited financial statements, latest Auditors Report are not available.

3. *Declaration of solvency filed by each of the companies involved in the merger, in the prescribed Form, not found.*

4. *According to the provisions of Section 233(10) of the Act, the Transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished, whereas the Petitioner company has not mentioned.*
 5. *A notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar, Official Liquidators issued by the Transferor companies or the Transferee Company is not found.*
 6. *Objections or suggestions considered by the Companies in their respective general meetings, not found.*
 7. *Authorized share capital of the Transferor Company as on 31.12.2015 is not available.*
 8. *Approval of shareholders for splitting of equity shares of Transferor Company is not available.*
7. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(1) of the Reportis concerned, the Petitioner Company submits that the Petitioner is bound 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.

8. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(2) of the Report is concerned, the Petitioner Company submits that, the financial year of the Petitioner Company is 01 January to 31 December. The Petitioner had vide its letter dated 11 November, 2016, submitted copies of its: (i) latest audited financial statements as on 31 December, 2015; and (ii) latest provisional Balance Sheet/Financial Results for the period 01 January, 2016 to 31 March, 2016 to the office of the Regional Director. It is submitted that, as the financial year of the Petitioner Company is 01 January to 31 December, the financial statements of the Petitioner Company for the year ended 31 December, 2016 are yet to be approved by Board of Directors of the Petitioner Company. As the Company Scheme Petition was filed and admitted under the provisions of the erstwhile Companies Act, 1956, hence provision of section 232 (2)(e), a supplementary accounting statement for a period ending more than 6 months before the first meeting of the Company summoned for the purposes of approving the scheme is to be circulated for the meeting may be exempted.
9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(3) of the Report is concerned, the Petitioner Company submits that, as the Company Scheme Petition was filed and admitted under the provisions of the erstwhile Companies Act, 1956, there was no requirement of filing the Declaration of Solvency, which is a requirement under the Companies Act, 2013.
10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(4) of the Report is concerned, the Petitioner Company submits that, the Petitioner Company had vide its letter dated 11 November 2016, informed the Regional

Director, Western Region, Mumbai, that the Composite Scheme of Arrangement pertains to the amalgamation of the Transferor Company with the Petitioner Company and that as the Transferor Company is a wholly owned subsidiary of the Petitioner Company (*on account of the Petitioner Company (in its name or jointly with its nominees) holding 100% of the issued, subscribed and paid-up equity share capital of the Transferor Company*), no consideration will be payable pursuant to the amalgamation and no shares will be issued by the Transferee Company to the shareholders of the Transferor Company. Clause 16 of the Scheme provides that the equity shares held by the Transferee Company in the Transferor Company will stand cancelled and there shall be no further obligation in this behalf. In any event, the Petitioner Company undertakes that the Petitioner shall not, as a result of the Scheme, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and the shares shall be cancelled in terms of the Scheme.

11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(5) of the Report is concerned, the Petitioner Company submits that, the Petitioner Company, in terms of the Order dated 13 October 2016 passed by the Hon'ble Bombay High Court in the Company Scheme Petition, served copies of the Petition along with all requisite documents/annexures upon the office of the Registrar of Companies, the Regional Director and the Official Liquidator. Further, the requirement of inviting any objections is envisaged under the new Companies Act, 2013, while this petition has been filed under the provisions of erstwhile Companies Act, 1956 wherein there was no such requirement or necessity and all procedural requirements have been duly fulfilled. In any event, in terms of the Order dated 13 October 2016, the Registrar of Companies has already submitted its Report dated 18 November 2016 (*bearing no.*

ROC/STA(BDS)/145537/391-394/593) to the Regional Director, Western Region, Mumbai and the Official Liquidator has also submitted its report dated 08 February 2017, *inter alia*, stating 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.

12. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(6) of the Reportis concerned, the Petitioner Company submits and confirms that, there were no objections raised in Court Convened Meeting held on 21June, 2016 by any of the shareholders of the Company for the said Composite Scheme of Arrangement.
13. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(7) of the Reportis concerned, the Petitioner Company submits that, the authorized Share Capital of the Transferor Company as on 31 March, 2016 is Rs.72,80,00,000/- (Seventy Two Crore and Eighty Lakhs Only). Further, the audited copy of balance sheet as on 31 March2016 was duly forwarded to Regional Director as on 11 November 2016. Further the audited balance sheetas on 31 March, 2016 was duly filed with Registrar of Companies, Maharashtra, Mumbai on 12 November 2016 vide SRN G21413851 as required under the Companies Act 2013and as per the Balance Sheet authorised share capital is Rs. 72,80,00,000/-.
14. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(8) of the Reportis concerned, the Petitioner Company submits that,clause no. 15.1 of the scheme provides that upon merging, the Authorized Share

Capital of the Transferor Company shall be added into the Authorized Share Capital of the Transferee Company. The said clause no. 15.1 is reproduced as below:

“Upon coming into effect of the Scheme, the authorized share capital of the Transferor Company shall be deemed to be added to the authorized share capital of the Transferee Company and the authorized share capital of the Transferee Company shall be re-classified (in terms of clause 15.2 below) without any further act, deed or procedure, formalities or payment of any stamp duty and registration fees”.

15. The Official Liquidator has filed his report on 08 February 2017 in the Company Scheme Petition *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.
16. 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.
17. Since all the requisite statutory compliances have been fulfilled, the Transfer Company Scheme Petition No. 173 of 2017 (*High Court Transferred Company Scheme Petition No. 681 of 2016 Connected with Company Summons for Direction No. 329 of 2016*) filed by the Petitioner Company is made absolute in terms of prayer clauses (a) to (h).
18. The Petitioner is directed to lodge a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-form INC-28 in addition to physical copy as per the relevant provision of the Companies Act 1956/2013, whichever is applicable.

19. The Petitioner Company to pay costs of Rs. 25,000/- (Rupees Twenty Five Thousand only) each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of this order.
20. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, National Company Law Tribunal, Mumbai Bench.

Sd/-

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

Sd/-

V. Nallasenapathy, Member (T)