

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
COMPANY PETITION NO. 1 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 843 OF 2016  
(HIGH COURT TRANSFERRED APPLICATION).

JYOTHY CONSUMER PRODUCTS MARKETING LIMITED

....Petitioner/ the Transferor Company

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

COMPANY PETITION NO. 4 OF 2017

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 844 OF 2016  
(HIGH COURT TRANSFERRED APPLICATION)

JYOTHY LABORATORIES LIMITED

....Petitioner/ the Transferee Company

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

AND

In the matter of Sections 230 to 232 of the  
Companies Act, 2013 and other relevant  
provisions of the Companies Act, 2013

AND

In the matter of Sections 391 to 394 of the  
Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of  
JYOTHY CONSUMER PRODUCTS MARKETING  
LIMITED, the Transferor Company with  
JYOTHY LABORATORIES 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. Ishan Ravindranath i/b M/s The Law Point for SEBI.

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

Mr. Vinod Sharma, the Official Liquidator.

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

Date: 1<sup>st</sup> March, 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. Mr. Ishan Ravindranath i/b M/s The Law Point has appeared on behalf of Securities and Exchange Board of India and stated that they have no objections to the Scheme of Amalgamation of JYOTHY CONSUMER PRODUCTS MARKETING LIMITED, the Transferor Company with JYOTHY LABORATORIES 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 JYOTHY CONSUMER PRODUCTS MARKETING LIMITED, the Transferor Company with JYOTHY LABORATORIES 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. 843 of 2016 and 844 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 they have filed necessary affidavits of compliance in the Hon'ble Bombay High Court. 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 of manufacturers, dealers, stockists, distributors, exporters and importers of Fast Moving Consumer Products and the Transferee Company has been carrying on the business of manufacturing, marketing and trading of Fast Moving Consumer Goods. As per the opinion of the management, the proposed scheme of Amalgamation would result in numerous benefits, viz., that the Transferor Company is a wholly owned subsidiary of the Transferee Company and both the Transferor and Transferee Companies are under same management and amalgamation would lead to administrative convenience and would be advantageous to combine the operations in a single Company and will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and benefit of combined resources and that the Transferor and the Transferee Company, both, are engaged in the business of manufacturing and marketing of Fast Moving Consumer Goods (FMCG) products and as a result the amalgamation

would lead to better leveraging of manufacturing and marketing facilities and will bring both the entities under one roof to portray one face to all the parties with whom the Jyothy Group deals and that the amalgamation would also result in achieving Direct and Indirect Tax efficiencies and that the amalgamation the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business and will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, knowledge, efficiencies, expertise and infrastructure of both the companies and that the amalgamation will result in cost saving for both the companies as they would capitalize on each other's core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company and that the amalgamation will result in simplification of shareholding structure, reduction in shareholding tiers, reduction in the operating costs, reduction in multiplicity of legal and regulatory compliances, elimination of multiple recordkeeping which will ultimately lead to overall reduction in expenditure.

7. The Regional Director has filed a Report on 13<sup>th</sup> day of February, 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/ corresponding Ind As-8 etc.*

- b) Regarding 13 of the Scheme it is submitted that the surplus if any arising out of the scheme 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 Profit & Loss Account of the Transferee Company.*
- c) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangement to the Income Tax Department for their comments. It appears that the company vide letter dated 21<sup>st</sup> January, 2017 has served a copy company petition No. 4/2017 along with relevant order etc., to IT Department. However, as on date there is no response from Income Tax Department. 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."*

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/corresponding 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 Transferee Company is bound to comply with 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.

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 tax implication if any arising out of the Scheme is subject to final decision of the Income Tax Authorities and the decision of the Income Tax Authority shall be binding on the Petitioner Companies.
11. Mr. S. Ramakantha, Joint Director, in the office of the Regional Director, Ministry of Corporate Affairs, Western region, Mumbai, is satisfied with the undertaking given by the Petitioner Companies. The said undertaking given by the Petitioner Companies are accepted.
12. The Official Liquidator has filed his report on 20<sup>th</sup> February, 2017 in the Company Petition No. 1 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 and is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 4 of 2017 is made absolute in terms of prayers clause (a) to (c) and 1 of 2017 is made absolute in terms of prayer clauses (a) to (d).
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 1956 / 2013.

16. 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. 4 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.
17. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, National Company Law Tribunal, Mumbai.

Sd/-

B.S.V. Prakash Kumar Member (Judicial)