

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SIGNAL BENCH, CHENNAI**

**CP/205/CAA/2017
[CA/123/CAA/2017]**

Under Section 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation between

**M/s. South Star Distilleries and Breweries Private Limited
(Transferor Company)**

With

**M/s. Kare Power Resources Private Limited
(Transferee Company)**

Order delivered on: 12.12.2017

For the Petitioner(s) : *Mr. Saji P John, Advocate*
Mr. Soy Joseph, PCS
Mrs. B.Rajashree, Advocate
Ms. T. Krishna, Advocate
Ms. JM Nagashree, Advocate

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (J)

1. Under consideration is a Company Petition No: 205/CAA/2017. The Petition has been filed under section 230 of the companies Act, 2013 r/w the companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The purpose of the company petition is to obtain sanction to the scheme of Amalgamation (in Short, '**Scheme**') by virtue of which M/s. South Star Distilleries and Breweries Private Limited (hereafter referred to as '**Transferor Company**') will get merged with M/s. Kare Power

Resources Private Limited (hereafter referred to as '**Transferee Company**') as a going concern.

2. The Details of Share Capital, Shareholders, Secured & Unsecured Creditors of the Company is as under:

Particulars	Authorised Capital	Issued, S&P Capital	No. of Equity Share-holders	No. of Secured Creditors	No. of Un-secured Creditors
Transferor Company	Rs.1,00,00,000	Rs.50,00,000	2	2	1

3. The Transferor is a Private Limited Company having its registered office at C/o T.D Chendrashekar, No.1, Mahalingam Chetty Road, Nugambakkam, Chennai, Tamil Nadu-600034 and it is engaged in the business of establishing distilleries, breweries, re-rectifying plants etc., amongst others. The Transferee Company is a Private Limited Company having their registered offices at Karnataka State, which are falling within the jurisdiction of the NCLT, Bangalore. The Board of directors of Petitioner Company vide its resolutions dated 15th Day of March, 2017 approved the said scheme of Amalgamation.
4. This Bench vide its order dated 07th August, 2017, in CA/123/2017 dispensed with convening, holding and conducting of the meeting of equity shareholders, secured & unsecured creditors in respect of the Transferor Company. In short the petitioner company complied with all the orders passed by this bench.

5. The learned counsel appearing for the Petitioner Company submitted that the rationale and circumstances that have necessitated the proposed scheme are that the amalgamation would increase the financial position of Transferee Company, in terms of its net worth, assets and income. A financially strong Transferee company is desired as it will facilitate access to increase to business opportunities and enhance its ability to compete and bid for new projects resulting in significant commercial benefits etc. The learned counsel further submitted that the Income Tax assessment proceedings for the Assessment Year 2015-2016 in the case of Transferor Company is completed and no investigation proceedings are pending against the petitioner Company under Sections 235 to 251 or other provisions the Companies Act, 1956 or corresponding sections 206 to 229 of the Companies Act, 2013.
6. The Regional Director, Southern Region (In short, '**RD**') in the Report Affidavit (for brevity, '**Report**') dated 15.11.2017 submitted that as per records of ROC, Chennai. Transferor Company is regular in filing its statutory returns and no complaint is pending and no inspection or investigation is pending against Petitioner Company. Clause 8.1 of the scheme provides for the protection of the interest of the employees of the Transferor Company. Further, the RD submitted that under Clause 11.1, the scheme proposes to merge the authorised capital of the Transferor Company with that of the Transferee Company. Therefore, the Transferee

Company may be directed to file an MoA and AoA with the ROC, Bangalore for records. The RD has not raised any other objection to the scheme under consideration.

7. The Official Liquidator (In short, 'OL') in its report dated 16.10.2017, submitted that as per order dated 20.04.2017. He has nominated M/s. M/s. SVV & Associate., Chartered Accountants (Auditor), Chennai who is one of the empanelled auditors for the Hon'ble High Court of Madras to look into the composite Scheme of Amalgamation and to scrutinize the books and accounts of the Transferor Company. The OL further submitted that the Transferor Company has maintained and written up all the statutory books in accordance with normally accepted accounting principles and fulfilled the requirements in terms of sections 391 and 394 of the Companies Act, 1956 and other applicable provisions of Companies Act, 2013.
8. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of Amalgamation will not cost any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the said Scheme is 1st April, 2017. 

9. There is no additional requirement for any modification and the Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under section 230 to 232 of the Companies Act, 2013. Taking into consideration the above facts, the Company Petition is allowed and the scheme of Amalgamation annexed with the petition is hereby sanctioned which shall be binding on the members, unsecured creditors and shareholders.
10. While approving the Scheme as above, it is further clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.
11. Since, the authorised Capital of the Transferor Company will get merged with the Authorised share Capital of the Transferee Company. Therefore, the Transferee Company is directed to file an amended MoA and AoA with the ROC, Bangalore for records. It is further directed that as per section 232(3)(i) of the companies Act, 2013, the Transferee Company has to pay the fee, if any, for the enhanced Authorised Capital subsequent to the amalgamation after set-off of the fees paid by the Transferor Company.

12. The Companies to the Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.
13. A certified copy of this Order shall be filed with Registrar of Companies within 30 days of the receipt of the order.
14. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies.
15. Upon receiving the certified copy of this order, the ROC, Chennai is directed to send all documents relating to the Transferor Company^{to} the Transferee Company, so that the files relating to the Transferor Company ~~could~~ be consolidated with the files and records of the Transferee Company.
16. The Order of sanction of the Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Notified on 14th December, 2016.
17. Accordingly, the Scheme stands sanctioned and CP/205/CAA/2017 stands disposed of.

TJS


CH. MOHD SHARIEF TARIQ
MEMBER (J)