

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



317

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

39

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”.*
- 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*



3A

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 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



323

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)

Certified True Copy

Date of Application 07.04.2017

Number of Pages 8

Fee Paid Rs. 40

Applicant called for collection copy on 26.4.2017

Copy prepared on 26.4.2017

Copy issued on 26.4.2017

Deputy Director

National Company Law Tribunal, Mumbai Bench

SCHEME OF AMALGAMATION

OF

UNOKOTI BOTTLING AND BEVERAGE PRIVATE LIMITED,

(The Transferor Company)

WITH

ALLIED BLENDERS AND DISTILLERS PRIVATE LIMITED

(The Transferee Company)

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

1. PREAMBLE

This Scheme of Amalgamation is presented under Sections 391 to 394 and other applicable provisions of the Companies Act, 1956 and the Companies Act, 2013 for the amalgamation of UNOKOTI BOTTLING AND BEVERAGE PRIVATE LIMITED, (CIN U15511MH2008PTC274224) (hereinafter referred to as "The Transferor Company") with ALLIED BLENDERS AND DISTILLERS PRIVATE LIMITED, (CIN-U15511MH2008PTC187368) (hereinafter referred to as "The Transferee Company"), pursuant to Sections 391 to 394 and other relevant provisions of the Companies Act, 1956 and other relevant provision of Companies Act, 2013 as notified therein and the same is divided into the following Parts:

Part A - Deals with Definitions and Share Capital;

Part B-Deals with Amalgamation of UNOKOTI BOTTLING AND BEVERAGE PRIVATE LIMITED with ALLIED BLENDERS AND DISTILLERS PRIVATE LIMITED.

Part C - Deals with General Clauses, Terms and Conditions.



2. RATIONALE FOR THE SCHEME OF AMALGAMATION

325

- 2.1 The Transferor Company is a wholly owned subsidiary of the Transferee Company.
- 2.2 The amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base.
- 2.3 It would be advantageous to combine the activities and operations of both companies into a single Company for synergistic linkages and the benefit of combined financial resources. This will be reflected in the profitability of the Transferee Company.
- 2.4 This Scheme of amalgamation would result in merger and thus consolidation of business of the Transferor Company and the Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform.
- 2.5 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. The merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme.
- 2.6 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 is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.



PART A – DEFINITIONS AND SHARE CAPITAL

3. DEFINITIONS

In this Scheme, unless inconsistent with the subject or context, the following expressions shall have the following meanings:

3.1 UNOKOTI BOTTLING AND BEVERAGE PRIVATE LIMITED, (hereinafter referred to as "The Transferor Company") means a company incorporated under the Companies Act, 1956, and having its Registered Office situated at 394- C Lamington Chambers, Lamington Road, Mumbai- 400 004.

3.2 ALLIED BLENDERS AND DISTILLERS PRIVATE LIMITED, (hereinafter referred to as "The Transferee Company") means a company incorporated under the Companies Act, 1956, and having its Registered Office situated at 394- C Lamington Chambers, Lamington Road, Mumbai- 400 004.

3.3 "The Act" or "the said Act" means the Companies Act, 1956 and The Companies Act, 2013 to the extent the sections as notified and shall include any statutory modifications, re-enactment or amendments thereof for the time being in force.

3.4 "The Appointed Date" means 1st April, 2016 or such other date as the High Court of Judicature at Mumbai or other competent authority may otherwise direct/ fix.

3.5 "The Effective Date" means the date on which certified copies of the Order(s) of the High Court at Mumbai vesting the assets, properties, liabilities, rights, duties, obligations and the like of the Transferor Company in the Transferee Company are filed with the Registrar of Companies, Maharashtra, after obtaining the necessary consents,



approvals, permissions, resolutions, agreements, sanctions and orders in this regard.

3.6 "The High Court" shall for the purpose of this Scheme, mean the High Court of Judicature at Mumbai and the expression shall include, all the powers of the High Court under the Chapter V of the Act being vested on the National Company Law Tribunal constituted under Section 10 FB of the Act, the National Company Law Tribunal and the provisions of the Act as applicable to the Scheme shall be construed accordingly.

3.7 "Undertaking" shall mean and include:

- (a) All the assets, and properties and the entire business of the Transferor Company as on the Appointed Date, (hereinafter referred to as "the said assets")
- (b) All the debts, liabilities, contingent liabilities, duties, obligations and guarantees of the Transferor Company as on the Appointed Date (hereinafter referred to as "the said liabilities")
- (c) Without prejudice to the generality of sub-clause (a) above, the Undertaking of the Transferor Company shall include the Transferor Company reserves, movable and the immovable properties, all other assets including investments in shares, debentures, bonds and other securities, claims, loans and advances, deposits, ownership rights, lease-hold rights, tenancy rights, occupancy rights, hire purchase contracts, leased assets, lending contracts, revisions, powers, permits, authorities, licenses including Excise license and permits, consents, approvals, municipal permissions, industrial and other licenses, permits, authorizations, quota rights, registrations, import/ export licenses, bids, tenders, letter of intent, connections for water, electricity and drainage, sanctions, consents, product registrations, quota rights, allotments, approvals, freehold land, buildings, factory buildings,



plant & machinery, electrical installations and equipments, furniture and fittings, laboratory equipments, office equipments, NSE Membership Card, effluent treatment plants, tube wells, software packages, vehicles and contracts, engagements, titles, interest, benefits, allocations, exemptions, concessions, remissions, subsidies, tax deferrals, tenancy rights, trademarks, brand names, patents and other industrial and intellectual properties, import quotas, telephones, telex, facsimile, websites, e-mail connections, networking facilities and other communication facilities and equipments, investments, rights and benefits of all agreements and all other interests, rights and power of every kind, nature and description whatsoever, privileges, liberties, easements, advantages, benefits and approvals and all necessary records, files, papers, process information, data catalogues and all books of accounts, documents and records relating thereof.

3.8 "The Scheme" means this Scheme of Amalgamation in its present form or with any modification(s) approved or imposed or directed by the High Court at Mumbai.

4. SHARE CAPITAL

4.1 The Share Capital of the Transferor Company, UNOKOTI BOTTLING AND BEVERAGE PRIVATE LIMITED as at 31st March, 2016 is as under.

Particulars	Amount in (Rs.)
Authorised Capital	
60,000 Equity Shares of Rs.100/- each	60,00,000
Total	60,00,000
Issued, Subscribed and Paid-up	
59,490 Equity Shares of Rs.100/- each fully Paid-up	59,49,000
Total	59,49,000



4.2 The Share Capital of the Transferee Company, Allied Blenders and Distillers Pvt Ltd. as at 31st March, 2015 is as under.

329

Particulars	Amount in (Rs.)
Authorised Capital	
1,01,10,000 Equity Shares of Rs.10/-each.	10,11,00,000
3,50,00,000 15% Optionally Convertible Cumulative Redeemable Preference Shares of Rs. 10/- each	35,00,00,000
Total	45,11,00,000
Issued, Subscribed and Paid-up	
97,80,000 Equity Shares of Rs. 10/- each fully paid-up.	9,78,00,000
3,50,00,000 15% Optionally Convertible Cumulative Redeemable Preference Shares of Rs.10/- each fully paid up	35,00,00,000
Total	44,78,00,000

However the Share Capital of the Transferee Company has been changed and the present Share Capital as on 31.03.2016 is as under :-

Particulars	Amount in (Rs.)
Authorised Capital	
2,00,00,000 Equity Shares of Rs.10/-each.	20,00,00,000
3,50,00,000 15% Optionally Convertible Cumulative Redeemable Preference Shares of Rs. 10/- each	35,00,00,000
Total	55,00,00,000
Issued, Subscribed and Paid-up	
1,17,80,000 Equity Shares of Rs. 10/- each fully paid-up.	11,78,00,000
3,50,00,000 15% Optionally Convertible Cumulative Redeemable Preference Shares of Rs.10/- each fully paid up	35,00,00,000
Total	46,78,00,000



PART-B - AMALGAMATION OF THE TRANSFEROR COMPANY WITH THE TRANSFEE COMPANY

5. TRANSFER AND VESTING OF UNDERTAKING

5.1 With effect from the opening of the business as on the Appointed Date (i.e; 1st April , 2016) and subject to the provisions of this Scheme, the entire business and whole of the Undertaking of the Transferor Company as a going concern including the assets and all other debts, liabilities, duties and obligations and also including without limitation or properties and assets (whether movable or immovable, tangible or intangible, real or personal, corporeal or incorporeal) of whatsoever nature and whosoever situated belonging to or in the ownership, power or possession and or in the control of or vested in or granted in favour of or enjoyed by the Transferor Company such as industrial and other licences, permits, quotas, approvals, import entitlements, factory licence, Pollution Control Board permission, including Excise Licence bearing no 29/06-7 dated 29th December 2006 for Blending , Reducing , Compounding and Bottling of IMFL , Approval from Department of Industries of Commerce , Govt of Tripura for Packaging Water vide letter No. DI/DIC/KLS/SSI / 3(7)/VOL-IV / 99-2000 / 3369-69 and Certificate for Consent to Establish and Operate issued by Tripura State Pollution Control Board vide F.17(10) / TSP.CB dated 28/12/2011 for Drinking Water Processing Unit and registration including but not limited to excise licence in respect of Tripura Sales Tax / Vat Registration including but not limited to registration in respect of state of Tripura, lease tenancy rights in relation to the office and residential properties, permissions, investments, buildings, plant and machinery, office equipments, vehicles, incentives if any and all other rights of commercial nature, title, interest, labels and brand registrations, copyrights, patents, trademarks, trade names and other industrial or intellectual property rights of any nature whatsoever contracts, agreements, consent, approvals or power of every kind, nature and description whatsoever and all liabilities as on the Appointed Date, shall under the provisions of Section 391 to 394 of the Act and pursuant

331

to the orders of the High Court sanctioning this Scheme and other applicable provisions of the Act without any further act, instrument or deed, be and shall stand transferred to and vested in and/or deemed to have been transferred to and vested in the Transferee Company as a going concern subject, however, to all charges, liens, mortgages, if any, then affecting the same or any part thereof be transferred and / or deemed to be transferred and vested in the Transferee Company so as to become the properties and assets of the Transferee Company.

PROVIDED ALWAYS that the Scheme shall not operate to enlarge the security for any loan, deposit or facility created by or available to the Transferor Company and which shall vest in the Transferee Company by virtue of the amalgamation and the Transferee Company shall not be obliged to create any further or additional security after the amalgamation has become effective or otherwise unless specifically provided hereinafter.

- 5.2 The entire business of the Transferor Company as going concerns and all the properties whether movable or immovable, real or personal, corporeal or incorporeal, present or contingent including but without being limited to all assets, authorized capital, fixed assets, capital work-in-progress, current assets and debtors, investments, rights, claims and powers, authorities, allotments, approvals and consents, reserves, provisions, permits, ownerships rights, lease, tenancy rights, occupancy rights, incentives, claims, rehabilitation schemes, funds, quota rights, import quotas, all licenses and permits, factory licence, Pollution Control Board permission Including Excise Licence bearing no 29/06-7 dated 29th December 2006 for Blending , Reducing , Compounding and Bottling of IMFL , Approval from Department of Industries of Commerce , Govt of Tripurs for Packaging Water vide letter No. DI/DIC/KLS/SSI / 3(7)/VOL-IV / 99-2000 / 3369-69 and Certificate for Consent to Establish and Operate issued by Tripurs State Pollution Control Board vide F.17(10) /



TSP.CB dated 28/12/2011 for Drinking Water Processing Unit and all registrations, contracts, NSE Membership Card, engagements, arrangements, brands, logos, patents, trade names, trade marks, copy rights, all other intellectual property rights, other intangibles of the Transferor Company whether registered or unregistered or any variation thereof as a part of its name or in a style of business otherwise, other industrial rights and licenses in respect thereof, lease, tenancy rights, flats, telephones, telexes, facsimile connections, e-mail connections, internet connections, websites, installations and utilities, benefits of agreements and arrangements, powers, authorities, permits, allotments, approvals, permissions, sanctions, consents, privileges, liberties, easements, other assets, special status and other benefits that have accrued or which may accrue to the Transferor Company on and from the Appointed Date and prior to the Effective Date in connection with or in relation to the operation of the undertaking and all the rights, titles, interests, benefits, facilities and advantages of whatsoever nature and wherever situated belonging to or in the possession of or granted in favour of or enjoyed by the Transferor Company as on the Appointed Date and prior to the Effective Date shall, pursuant to the provision of Section 394(2) of the Act, without any further act, instrument or deed, be and stand transferred to and vested in or deemed to be transferred to and vested in the Transferee Company.

- a. With effect from the Appointed Date, all the equity shares, debentures, bonds, notes or other securities held by the Transferor Company, whether convertible into equity or not and whether quoted or not shall, without any further act or deed, be and stand transferred to the Transferee Company as also all the movable assets including cash in hand, if any, of the Transferor Company shall be capable of passing by manual delivery or by endorsement and delivery, as the case may

333

be, to the Transferee Company to the end and intent that the property therein passes to the Transferee Company on such manual delivery or by endorsement and delivery.

- b. In respect of movable properties of the Transferor Company other than specified in Clause 5.2 (a) above, including sundry debtors, outstanding loans and advances, if any recoverable in cash or in kind or for value to be received, bank balances and deposits, if any, with government, semi government, local and other authorities and bodies, the Transferee Company may, at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if so required, under any law or otherwise, give notice in such form as it may deem fit and proper to each person, debtor or depositor, as the case may be, that pursuant to the High Court having sanctioned the Scheme, the said debts, loans, advances or deposits be paid or made good or held on account of the Transferee Company as the person entitled thereto to the end and intent that the right of the Transferor Company to recover or realize all such debts, deposits and advances (including the debts payable by such persons, debtor or deposit to the Transferor Company) stands transferred and assigned to the Transferee Company and that appropriate entries should be passed in their respective books to record the aforesaid changes.

5.3 With effect from the Appointed Date, all the debts, unsecured debts, liabilities, duties and obligations of every kind, nature and description of the Transferor Company shall also under the provision of Sections 391 to 394 of the Act, without any further act or deed be transferred to or be deemed to be transferred to the Transferee Company so as to become as and from the Appointed Date, the debts, liabilities, duties and obligations



of the Transferee Company on the same terms and conditions as were applicable to the Transferor Company and further that it shall not be necessary to obtain the consent of any third party or other person who is a party to the contract or arrangement by virtue of which such debts, liabilities, duties and obligations have arisen, in order to give effect to the provisions of this clause.

- 5.4 It is clarified that all debts, loans and liabilities, duties and obligations of the Transferor Company as on the Appointed Date and all other liabilities which may accrue or arise after the Appointed Date but which relate to the period on or upto the day of the Appointed Date shall be the debts, loans and liabilities, duties and obligations of the Transferee Company including any encumbrance on the assets of the Transferor Company or on any income earned from those assets.
- 5.5 It is further specifically clarified, admitted, assured and declared by the Transferee Company that on this Scheme becoming effective, it will take over, absorb and pay and discharge on due dates all the liabilities including liabilities for income tax, wealth tax, central sales tax, value-added tax, service tax, excise duty, custom duty, fringe benefit tax, dividend distribution tax, if any, of the Transferor Company.
- 5.6 With effect from the Appointed Date all debts, liabilities, dues, duties and obligations including all income tax, wealth tax, central sales tax, value added tax, service tax, excise duty, custom duty, fringe benefit tax, dividend distribution tax and other Government and Semi-Government and Statutory liabilities of the Transferor Company shall pursuant to the applicable provisions of the Act and without any further act or deed be also transferred or be deemed to be transferred to and vest in and be assumed by the Transferee Company so as to become as from the Appointed Date the debts, liabilities, duties and obligations of Transferee



335
Company on the same terms and conditions as were applicable to the Transferor Company.

6. **CONTRACTS, BONDS AND OTHER INSTRUMENTS**

Subject to other provisions contained in the Scheme, all contracts, bonds, debentures, indentures and other instruments to which the Transferor Company are parties subsisting or having effect immediately before the Effective Date shall remain in full force and effect against or in favour of the Transferee Company, as the case may be, and may be enforced as fully and as effectually as if, instead of the Transferor Company, the Transferee Company had been a party thereto.

7. **LEGAL PROCEEDINGS**

If any, suit, writ petition, appeal, revision or other proceedings (hereinafter called "the Proceedings") by or against the Transferor Company are pending, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer of the Undertaking of the Transferor Company or of anything contained in the Scheme, but all such Proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would be or might have been continued, prosecuted and enforced by or against the Transferor Company as if the Scheme had not been made. On and from the Effective Date, the Transferee Company shall and may initiate any legal proceedings including criminal proceedings for and on behalf of the Transferor Company.

8. **OPERATIVE DATE OF THE SCHEME**

The Scheme set out herein in its present form with or without any modifications(s) approved or imposed or directed by the High Court or made as per Clause 18 of the Scheme, shall be effective from the Appointed Date but shall become operative from the Effective Date.

TRANSFEROR COMPANY STAFF, WORKMEN AND EMPLOYEES



All the staff, workmen and other employees in the service of the Transferor Company immediately before the transfer of the Undertaking under the Scheme shall become the staff, workmen and employees of the Transferee Company on the basis that:

9.1 Their respective services shall have been continuous and shall not have been interrupted by reason of the transfer of the Undertaking of the Transferor Company;

9.2 The terms and conditions of service applicable to the said staff, workmen or employees after such transfer shall not in any way be less favorable to them than those applicable to them immediately before the transfer; and

9.3 It is provided that as far as Provident Fund, Gratuity Fund, Superannuation Fund or other special fund, if any, created or existing for the benefit of the staff, workmen and other employees of the Transferor Company are concerned, upon the Scheme becoming effective, the Transferee Company shall stand substituted for the Transferor Company for all purposes whatsoever related to the administration or operation of such funds or in relation to the obligation to make contributions to the said Funds in accordance with the provisions of such Funds as per the terms provided in the respective trust deeds. It is the aim and intent of the Scheme herein that all the rights, duties, powers and obligations of the Transferor Company in relation to such funds shall become those of the Transferee Company and all the rights, duties and benefits of the employees employed in different units of the Transferor Company under such Funds and Trusts shall remain fully protected. It is clarified that the services of the staff, workmen and employees of the Transferor Companies will be treated as having been continuous for the purpose of the said Fund or Funds.



337
EFFECTIVE DATE

With effect from the Appointed Date and upto the Effective Date, the Transferor Company:

10.1 shall carry on and shall be deemed to be carrying on all their respective business activities and shall stand possessed of their respective properties and assets for and on account of and in trust for the Transferee Company and all the profits or income accruing or arising to the Transferor Company and/or any cost, charges, expenditure or losses arising or incurred by them shall, for all purposes, be treated and be deemed to be and accrue as the profits or incomes or cost, charges, expenditure or losses of the Transferee Company;

10.2 shall in the ordinary course of their respective business activities, assign, transfer or sell or exchange or dispose of or deal with all or any part of the rights vested with or title and interest in the property, assets, immovable or movable properties including assignment, alienation, charge, mortgage, encumbrance or otherwise deal with the rights, title and interest in the actionable claims, debtors and other assets etc., with the consent of the Transferee Company and such acts or actions would be deemed to have been carried on by the Transferor Company for and behalf of the Transferee Company and such acts or actions would be enforceable against or in favour of the Transferee Company and all the profits or incomes or losses or expenditure accruing or arising or incurred by the Transferor Company shall, for all purposes, be treated as the profits or incomes or expenditure or losses of the Transferee Company;

10.3 hereby undertake to carry on their respective businesses until the Effective Date with reasonable diligence, utmost prudence and shall not, without the written consent of the Transferee Company, alienate, charge or otherwise



deal with the said Undertaking or any part thereof except in the ordinary course of the Transferor Company business;

- 10.4 Shall not, without the written consent of the Transferee Company, undertake any new business.
- 10.5 Shall not vary the terms and conditions of the employment of their employees except in the ordinary course of business.
- 10.6 Pay all statutory dues relating to their respective Undertakings for and on account of the Transferee Company.

11. ISSUE OF SHARES BY THE TRANSFEE COMPANY

Since the entire equity share capital of the Transferor Company is held by the Transferee Company, upon amalgamation, the Transferee Company would not be required to issue and allot any shares to the shareholders of the Transferor Company. The Shares so held by the Transferee Company shall stand cancelled and extinguished without any further application, act or deed pursuant to the Scheme of Amalgamation coming into effect. It is clarified that no new shares shall be issued or payment made in cash whatsoever by the Transferee Company in lieu of such shares of the Transferor company.

12. PROFITS, DIVIDENDS, BONUS/ RIGHTS SHARES

- 12.1 With effect from the Appointed Date, the Transferor Company shall not without the prior written consent of the Transferee Company, utilize the profits, if any, for declaring or paying of any dividend to its shareholders and shall also not utilize, adjust or claim adjustment of profits/reserves, as the case may be earned/ incurred or suffered after the Appointed Date.

The Transferor Company shall not after the Appointed Date, issue or allot any further securities, by way of rights or bonus or otherwise without the



339
prior written consent of the Board of Directors of the Transferee Company.

13. ACCOUNTING TREATMENT

- 13.1 The Transferee Company shall record all assets and liabilities recorded in the Books of Account of the Transferor Company, which are transferred to and vested in the Transferee Company pursuant to the Scheme at their fair values as on the Appointed Date.
- 13.2 If there is a surplus arising as a result of the difference, if any, of the value of the assets over the value of the liabilities of the Transferor Company, in accordance with this Scheme, the same shall be credited to the Reserve and Surplus Account of the Transferee Company and in the event of deficit, if any, the same shall be debited to the Goodwill Account of the Transferee Company.
- 13.3 Inter-company balances, investments and transactions if any, will stand cancelled.
- 13.4 In case of any differences in the accounting policies between the Transferor Company and the Transferee Company, the impact of the same till the Appointed Date of amalgamation will be quantified and adjusted in the Free/General Reserves of the Transferee Company to ensure that the financial statements of the Transferee Company reflects the financial position on the basis of consistent accounting policies.

14. COMBINATION OF AUTHORISED CAPITAL

- 14.1 Upon sanction of this Scheme, the authorised share capital of the Transferee Company shall automatically stand increased without any further act, instrument or deed on the part of the Transferee Company including therein the payment of stamp duty and fees payable to Registrar of Companies, by the authorised share capital of the Transferor Company



aggregating to Rs. 60,00,000/- (Rupees Sixty Lacs Only) comprising of 60,000 (Sixty Thousands) Equity Shares of Rs.100/- each and the Memorandum of Association and Articles of Association of the Transferee Company (relating to the authorised share capital) shall, without any further act, instrument or deed, be and stand altered, modified and amended, pursuant to Sections 391 to 395 and 13, 14 and 61 of the Companies Act, 2013 and applicable provisions of the Act, as the case may be and for this purpose the stamp duties and the fees paid on the authorised capital of the Transferor Company shall be utilized and applied to the above referred increased authorized share capital of the Transferee Company and no payment of any extra stamp duty and/or fee shall be payable by the Transferee Company for increase in its authorised share capital to that extent.

- 14.2 Consequent upon the amalgamation, the authorised share capital of the Transferee Company will be as under:

Authorised Capital	Amount in Rs
2,06,00,000 Equity Shares of Rs 10/- each	20,60,00,000
3,50,00,000 15% Optionally Convertible Cumulative Redeemable Preference Shares of Rs. 10/- each.	35,00,00,000
Total	55,60,00,000

It is clarified that the approval of the members of the Transferee Company to the Scheme shall be deemed to be their consent / approval also to the alteration of the Memorandum and Articles of Association of the Transferee Company as may be required under the Act.

- 14.3 Clause V of the Memorandum of Association of the Transferee Company stands amended as follows:

The Authorised Share Capital of the Transferee Company is Rs. 55,60,00,000/- (Rupees Fifty Five Crore Sixty Lakhs) comprising of



2,06,00,000 (Two Crores Six Lakhs) Equity Shares of Rs.10/- each and

3,50,00,000 (Three Crore Fifty Lakhs) 15% Optionally Convertible

Cumulative Redeemable Preference Shares of Rs. 10/- each.

341

15. DISSOLUTION OF THE TRANSFEROR COMPANY

On the Scheme becoming effective, the Transferor Company shall be dissolved without being wound up.

PART-C – GENERAL

16. APPLICATIONS TO HIGH COURT

The Transferor Company and the Transferee Company herein shall, with all reasonable dispatch, make applications under Sections 391 to 394 of the said Act to the High Court of judicature at Mumbai for sanctioning the Scheme and for dissolution of the Transferor Company without being wound up.

17. MODIFICATIONS/AMENDMENTS TO THE SCHEME

17.1 The Transferor Company (by their respective Directors) and the Transferee Company (by its Directors) may assent to any modifications or amendments to the Scheme or agree to any terms and/or conditions which the Courts and/or any other authorities under law may deem fit to direct or impose or which may otherwise be considered necessary or desirable for settling any question or doubt or difficulty that may arise for implementing and/or carrying out the Scheme and do all acts, deeds and things as may be necessary, desirable or expedient for putting the Scheme into effect. All amendments/modificationsto the Scheme shall be subject to approval of High Court.

17.2 For the purpose of giving effect to the Scheme or to any modification thereof, the Directors of the Transferee Company are hereby authorised to give such directions and/or to be take such steps as may be necessary or



desirable including any directions for settling any question or doubt or difficulty whatsoever that may arise.

18. SCHEME CONDITIONAL ON APPROVALS/ SANCTIONS

The Scheme is conditional on and subject to:

- 18.1 The approval to the Scheme by the requisite majorities of the members and creditors of the Transferor Company and of the members and creditors of the Transferee Company.
- 18.2 The requisite resolution(s) under the applicable provisions of the said Act being passed by the Shareholders of the Transferee Company for any of the matters provided for or relating to the Scheme, as may be necessary or desirable, including approval to the issue and allotment of Equity Shares in the Transferee Company to the members of the Transferor Company.
- 18.3 The sanction of the High Court of Judicature at Mumbai under Sections 391 to 394 of the said Act, in favour of the Transferor Company and the Transferee Company and to the necessary Order or Orders under Section 394 of the said Act, being obtained.
- 18.4 Any other sanction or approval of the Appropriate Authorities concerned, as may be considered necessary and appropriate by the respective Boards of Directors of the Transferor Company and the Transferee Company being obtained and granted in respect of any of the matters for which such sanction or approval is required.
- 18.5 The requisite consent, approval or permission of the Central Government or any other statutory or regulatory authority, which by law may be necessary for the implementation of this Scheme.



19. EFFECT OF NON RECEIPT OF APPROVALS/ SANCTIONS

343

In the event of any approvals or conditions enumerated in the Scheme not being obtained or complied with, or for any other reason, the Scheme cannot be implemented, the Boards of Directors of the Transferee Company and the Transferor Company shall mutually waive such conditions as they consider appropriate to give effect, as far as possible, to this Scheme and failing such mutual agreement, or in case the Scheme not being sanctioned by the Hon'ble High Court, the Scheme shall become null and void and each party shall bear and pay their respective costs, charges and expenses in connection with the Scheme.

20. EXPENSES CONNECTED WITH THE SCHEME

All costs, charges, taxes including duties, levies and all other expenses of the Transferor Company and the Transferee Company respectively in relation to or in connection with the Scheme and of carrying out and implementing/completing the terms and provisions of the Scheme and/or incidental to the completion of Amalgamation of the said Undertakings of the Transferor Company in pursuance of the Scheme shall be borne and paid solely by the Transferee Company.



Certified True Copy
Date of Application 07.04.2017
Number of Pages 20
Fee Paid Rs. 100
Applicant called for collection copy on 26.4.2017
Copy prepared on 26.4.2017
Copy Issued on 26.4.2017

Deputy Director
National Company Law Tribunal, Mumbai Bench

344

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.

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

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provision of 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.



ALLIED BLENDERS AND DISTILLERS PRIVATE LIMITED,

... Petitioner Company.

Certified copy of the Minutes of the Order dated 5th April, 2017 alongwith Scheme

M/S.RAJESH SHAH & CO
Advocates for the Petitioner
16, Oriental Building,
30, Nagindas Master Road,
Flora Fountain,
Mumbai-400 001.