

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I), CHANDIGARH**

CA (CAA) No. 19/Chd/Chd/2024
(1st Motion)

Under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 and National Company Law Tribunal Rules, 2016 and other provisions of applicable laws.

IN THE MATTER OF SCHEME OF AMALGAMATION OF:

1. AKM Holding Private Limited.

(Through its Authorized Representative: Mr. Parmod Kumar)
having its registered office at
SCO 140-141, Sector- 34 A,
Chandigarh-160022.
CIN: U67120CH2003PTC026234
PAN: AAECA7224R [Jurisdiction: DCIT/Central Circle-2, Ludhiana]

...Applicant Company-1/ Transferor Company-1

2. Chamba Joiner Renewable Energy Company Private Limited.

(Through Authorized Representative: Mr. Parmod Kumar)
having its registered office at
House No.99, Sector-3, New Shimla,
Himachal Pradesh-171009
CIN: U17291HP2007PTC030802
PAN: AADCC3529J [Jurisdiction: DCIT/ACIT (CEN)-1, CHD]

...Applicant Company-2/ Transferor Company-2

3. Highland Distillers & Bottlers Private Limited.

(Through Authorized Representative: Mr. Sarabjeet Singh)
having its registered office at
SCO 140-141, Sector 34-A,
Chandigarh-160022
CIN: U72900CH2013PTC034493
PAN: AAECD7349E [Jurisdiction: ITO Ward 5(5), Chandigarh]

... Applicant Company-3/ Transferor Company-3

4. Hightime Spirits Private Limited

(Through Authorized Representative: Mr. Puneet Tangri)

having its registered office at

SCO 140-141, Sector- 34 A,

Chandigarh-160022

CIN: U40300CH2017PTC041609

PAN: AAPCA7266E [Jurisdiction: ITO Ward 5(5), Chandigarh]

... Applicant Company-4/ Transferee Company

Order delivered on: 04.07.2024

**Coram: HON'BLE SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SH. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For Applicant Companies: Mr. Rahul Jogi, Advocate with Ms. Deepali Garg, PCS

Per: Sh. Harnam Singh Thakur, Member (Judicial)

Sh. Umesh Kumar Shukla, Member (Technical)

ORDER

This is a First Motion Joint Application filed by the Applicant Companies namely; **AKM Holding Private Limited** (hereinafter referred to as the "Applicant Company-1" or "Transferor Company-1"), **Chamba Joiner Renewable Energy Company Private Limited** (hereinafter referred to as the "Applicant Company-2" or "Transferor Company-2"), **Highland Distillers & Bottlers Private Limited** (hereinafter referred to as the "Applicant Company-3" or "Transferor Company-3") and **Hightime Spirits Private Limited** (hereinafter referred to as the "Applicant Company-4" or "Transferee Company"). under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 and National Company Law Tribunal Rules, 2016 and other provisions of applicable laws, if any, seeking directions for dispensation with the requirement of convening, holding

and conducting meetings of the Equity Shareholders, Debenture Holders, Secured Creditors and Unsecured Creditors of the Applicant Company-1, Applicant Company-2, Applicant Company-3, and Applicant Company-4 and permitting the Applicant Companies to present the Company Petition for sanction of the Scheme without further formalities. The said Scheme is attached as Annexure 1 with the Application.

2. The registered offices of the Applicant Companies-1, 3, 4 and Applicant Company-2 are situated in the Union Territory of Chandigarh and in the State of Himachal Pradesh respectively. Therefore, the subject matter of the Application is within the jurisdiction of this Bench.

3. The Facts of the case as stated in the Application, are as below:

- (i) AKM Holding Private Limited, the Applicant Company-1, is a private limited company incorporated under the provisions of the Companies Act, 1956 on 29.07.2003 with its registered office situated at SCO 140-141, Sector 34A, Chandigarh-160022, India. Its main objects, as per its Memorandum and Articles of Association, are as follows:

"To carry on the business of share and stock brokers on behalf of investors under the guidelines of SEBI."

It is an associate company of Applicant Company-2 and the Applicant Company-3, which hold its 3,32,500 equity shares of Rs.100/- each and 56,20,000 equity shares of Rs.10/- each constituting 27.52% and 46.51% respectively of its paid-up equity share capital on a fully diluted basis, and 110 and 125 respectively Zero% Compulsory Convertible Debentures of Rs.20,000/- each aggregating to Rs.22,00,000/- and Rs.25,00,000/- respectively. Applicant Company-2 also holds 165 Zero% Optionally Fully

Convertible Debentures of Rs.5,000/- aggregating to Rs.8,25,000/-. As per the latest audited balance sheet as at 31.03.2023, its authorized share capital is Rs.15,00,00,000/- divided into 1,91,000 equity shares of Rs.100/- each & 1,30,90,000 equity shares of Rs.10/- each and issued, subscribed and paid-up share capital is Rs.8,71,80,000 divided into 1,90,500 equity shares of Rs.100/- each & 68,13,000 equity shares of Rs.10/- each fully-paid up. The National Company Law Tribunal, Chandigarh Bench, Chandigarh vide its order dated NCLT/Reg./FO/2023/1490 dated 20.03.2024 in [CP (CAA) 8/Chd/Chd/2022] has approved the Scheme of Amalgamation between AKM Shares & Stocks Private Limited and AKM Holding Private Limited with appointed date of 15.04.2022, pursuant to which the authorized share capital of AKM Shares & Stocks Private Limited has been transferred to the Applicant Company-1 with effect from the Appointed Date of 15.04.2022 and the Applicant Company-1 had issued its shares to the shareholders of AKM Shares & Stocks Private Limited as per the Share Swap Ratio order as per the Scheme. As at 31.03.2024, its authorized share capital is Rs.18,38,00,000/- divided into 5,29,000 equity shares of Rs.100/- each & 1,30,90,000 equity shares of Rs.10/- each and issued, subscribed & paid-up share capital is Rs.12,08,30,000 divided into 5,27,000 equity shares of Rs.100/- each & 68,13,000 equity shares of Rs.10/- each fully-paid up.

- (ii) Chamba Joiner Renewable Energy Company Private Limited, the Applicant Company-2, is a private limited company incorporated under the provisions of the Companies Act, 1956 on 05.11.2007 with its registered office situated at H. No. 99, Sector 3, New Shimla, Himachal Pradesh-

171009, India. Its main objects, as set out in its Memorandum and Articles of Association, are as follows: -

- 1. To carry on in India or elsewhere the business of Generation, Transmission, Distribution and Conservation of energy by establishment, operation and maintenance of Hydro Power Plants or any other power plants from renewable, non-conventional sources of Energy.*
- 2. To plan, promote, develop and organize an integrated and efficient development of power system/ plants/ projects in all its aspects including planning, investigation, research, design, engineering and preparation and preparation of preliminary feasibility and definite project reports, construction, generation, operation and maintenance of power stations and sale of power generated.*
- 3. To acquire, produce, purchase, take on lease or in any way deal with anyone or more of the ongoing and under implementation power generating stations, grid sub-stations, transmission system and distribution system.*

It is an associate of Applicant Company-1 and a subsidiary of Applicant Company-4, which hold its 18,48,417 and 60,00,000 fully paid-up equity shares of Rs.10/- each respectively constituting 23.15% and 75.16% respectively of its paid-up capital and have invested Rs.9,00,000 and Rs.16,00,000 respectively in it by subscribing 45 and 80 respectively Zero% Compulsory Convertible Debentures of face value of Rs.20,000/- each. As at 31.03.2023, its authorized and issued, subscribed & paid-up share capital is Rs.16,00,00,000/- divided into 1,60,00,000 Equity Shares of Rs.10/- each and Rs.7,98,30,170/- divided into 79,83,017 Equity Shares of Rs.10/- each respectively.

- (iii) Highland Distillers & Bottlers Private Limited, the Applicant Company-3, is a private limited company incorporated under the provisions of the Companies Act, 1956 on 16.05.2013 under the name and style of 'Manesar Cyber Tech Private Limited'. Its name was changed to 'Delhi Software Solution Private Limited' on 15.07.2013, 'Bengal Distillers & Bottlers

Private Limited' on 24.08.2016, Highland Non-Conventional Energy Private Limited on 22.02.2017 and to 'Highland Bottlers Private Limited' on 28.03.2018 and thereafter to its present name 'Highland Distillers and Bottlers Private Limited' on 30.01.2020. Its registered office is situated at SCO 140-141, Sector 34A, Chandigarh-160022, India. Its main objects, as per its Memorandum and Articles of Association, are as follows:

- 1. To carry on the business of distillers, rectifiers, metoylators, brewers, malsters and to make, produce, prepare, manufacture, purchase, sell, import, export, and generally to deal in country and foreign wines, whisky gin, rum, brandy, bear, cider, spirits and liquors, commercial, Industrial and absolute alcohols rectified, methylated and sweet spirits, denatured and plain spirits, aerated, mineral and medicated waters, general temperance and other drinks, beverages, cordials and the like, carbonic acid gas brewing mixture, sulphuric ether manure, potash and other chemicals including carbon dioxide.*
- 2. To trade, carry on and manage the business of bottling warehouse, etc., stout and porter merchants, bottling agents and distributors, growers and cultivators of grapes, melon, and other fruits, potatoes and other vegetables sugar cane barley, corn, importers, refiners, preservators, dehydrators and merchants, manufacturers and dealers in molasses, grains, gur, yeast, fining, isinglass and other drawer requisites, bottle maker, bottle closure and stopper makers, coopers, capsule makers, manufactures of and dealers in boxes, cartons, bags and packing reacceptance of paper card board wood metal, synthetic and chemical material and substances, bottlers, canners and packers.*

It holds 56,20,000 fully paid-up equity shares of Rs.10/- each of the Applicant Company-1 constituting 46.51% of its paid-up equity share capital making Applicant Company-1 as its associate company. It has also invested Rs.25,00,000 in Applicant Company-1 by subscribing 125 Zero% Compulsory Convertible Debentures of face value of Rs.20,000/- each. As at 31.03.2023, its Authorized Share Capital is Rs.1,00,00,000/- divided into 10,00,000 Equity Shares of Rs.10/- each and Issued, Subscribed & Paid-up Share Capital is Rs.66,00,000/- divided into 6,60,000 Equity Shares of Rs.10/- each.

(iv) Hightime Spirits Private Limited, the Applicant Company- 4, is a private limited company incorporated under the provisions of the Companies Act, 2013 on 22.06.2017 under the name and style of 'ARA Biomass Power Private Limited'. Its name was changed to 'Skyview Alcobev Private Limited' on 26.03.2018 and thereafter to its present name 'Hightime Spirits Private Limited' on 03.05.2018. Its registered office is situated at SCO 140-141, Sector 34A, Chandigarh-160022, India. Its main objects, as per its Memorandum and Articles of Association, are as follows:

- 1. To carry on manufacture and manage the business of distillers, rectifiers, metoylators, brewers, malsters and to make, produce, prepare, manufacture, purchase, sell, import, export, and generally to deal in country and foreign wines, whisky gin, rum, brandy, bear, cider, spirits and liquors, commercial, Industrial and absolute alcohols rectified, methylated and sweet spirits, denatured and plain spirits, aerated, mineral and medicated waters, general temperance and other drinks, beverages, cordials and the like, carbonic acid gas brewing mixture, sulphuric ether manure, potash and other chemicals including carbon dioxide.*
- 2. To trade, carry on and manage the business of bottling warehouse, etc., stout and porter merchants, bottling agents and distributors, growers and cultivators of grapes, melon, and other fruits, potatoes and other vegetables sugar cane barley, corn, importers, refiners, preservators, dehydrators and merchants, manufacturers and dealers in molasses, grains, gur, yeast, fining, isinglass and other drawer requisites, bottle maker, bottle closure and stopper makers, coopers, capsule makers, manufactures of and dealers in boxes, cartons, bags and packing reacceptance of paper card board wood metal, synthetic and chemical material and substances, bottlers, canners and packers.*

It is the holding company of the Applicant Company-2. As per the latest audited balance sheet as at 31.03.2023, its Authorized Share Capital s Rs.60,00,000 divided into 6,00,000 Equity Shares of Rs.10/- each and Issued, Subscribed & Paid-up Share Capital is Rs.51,00,000 divided into 5,10,000 Equity Shares of Rs.10/- each.

(v) Subsequent to 31,03,2023 and till the date of signing of this Application, there has been no change in the aforesaid share capital of the Applicant

Company-1, 2, 3 and 4 except those arising or resulting from the usual course of business.

- (vi) The certified copy of the latest Master Data, Memorandum and Articles of Association of the Applicant Company-1, 2, 3 and 4 have been annexed with the Application as Annexure 2, Annexure 5, Annexure 8 and Annexure 11 respectively.
- (vii) The Certified true copy of latest audited financial statement as at 31.03.2023 of Applicant Company-1, 2, 3 and 4 have been attached with the Application as Annexure 3, Annexure 6, Annexure 9 and Annexure 12 respectively. The Certified true copy of latest provisional unaudited financial statement as at 31.03.2024 of Applicant Company-1, 2, 3 and 4 are attached with the Application as Annexure 4, Annexure 7, Annexure 10 and Annexure 13 respectively.
- (viii) The proposed amalgamation of the Transferor Companies with and into the Transferee Company would, inter-alia, result in the following benefits:
- a) *The Transferor Companies do not have any business activity. Consequently, the need for retaining them as separate legal entity is diminished.*
 - b) *Simplify the corporate structure by reducing the legal entities paving the way for concentrated efforts and focus by the senior management to grow the business by seamless implementation of policy changes, eliminating duplicative communication and co-ordination efforts across multiple entities;*
 - c) *Optimum and efficient utilization and rationalization of capital, resources, assets and facilities;*
 - d) *Reduction in various inter-company transactions between the Transferor Companies and the Transferee Company is required at present due to the current operating structure leading to better management of capital resources, thereby achieving reduced managerial overlaps, which are necessarily involved in running multiple entities and achieving operational and management efficiency; and*
 - e) *Reduction in regulatory and legal compliances/ filings including accounting, reporting requirements, statutory and internal audit compliance requirements,*

tax filings, company law compliances, etc., and therefore reduction in administrative costs.”

- (ix) The Board of Directors of the Applicant Company-1, 2, 3 and 4 in their respective Board meetings dated 09.04.2024, 10.04.2024, 09.04.2024 and 11.04.2024 respectively have approved the Scheme, the Report explaining effect of the Scheme on the various stakeholders, and Valuation Report prepared by a Registered Valuer and have authorized Mr. Parmod Kumar for Applicant Company- 1 & 2, Mr. Sarabjeet Singh for Applicant Company-3 and Mr. Puneet Tangri for Applicant Company-4 to pursue the matter before the Tribunal. The certified copies of Board Resolution of the respective Applicant Companies along with the report explaining effect of Scheme on the various stakeholders and the List of Directors have been attached with the Application as Annexure 14(Colly.), Annexure 15 (Colly.), Annexure 16 (Colly.) and Annexure 17 (Colly.) respectively.
- (x) As per the copy of Valuation Report dated 04.04.2024 issued by Mr. Hitesh Jamb, Registered Valuer (Regd No. IBBI/RV/11/2019/12355), annexed with the Application as Annexure 18, the following share exchange ratio has been proposed:
- (a) issue and allot 26(Twenty-Six) Equity Shares of Rs. 10/- (Rupees Ten only) each credited as fully paid up by the Transferee Company, for every 100 (One Hundred) equity shares of Rs. 10/- (Rupees Ten only) each held by the equity shareholders of the Transferor Company-1 on a fully diluted basis;
- (b) issue and allot 251 (Two Hundred and Fifty-One) Equity Shares of Rs. 10/- (Rupees Ten only) each credited as fully paid up by the Transferee Company, for every 100 (One Hundred) equity shares of Rs. 100/- (Rupees One Hundred only) each held by the equity shareholders of the Transferor Company-1 on a fully diluted basis;

(c) issue and allot 52 (Fifty-Two) Equity Shares of Rs. 10/- (Rupees Ten only) each credited as fully paid up by the Transferee Company, for every 100 (One Hundred) equity shares of Rs. 10/- (Rupees Ten only) each held by the equity shareholders of the Transferor Company-2 on a fully diluted basis; and

(d) issue and allot 140 (One Hundred and Forty) Equity Shares of Rs. 10/- (Rupees Ten only) each credited as fully paid up by the Transferee Company, for every 100 (One Hundred) equity shares of Rs. 10/- (Rupees Ten only) held by the equity shareholders of the Transferor Company-3 on a fully diluted basis;

Any fraction, if any, arising out of the allotment of Equity Shares as per Clause 8.1 above shall be rounded off to the nearest integer.

(xi) The Statutory Auditors of the Applicant Companies have provided the certificates to the effect that the accounting treatment for amalgamation proposed in the Scheme is in conformity with the Accounting Standard as per Section 133 of Companies Act, 2013 read with the Companies (Indian Accounting Standard) Rules, 2015. The certificates of Statutory Auditors have been attached with the Application as Annexure 35 (Colly.).

(xii) The Applicant Company-1, 2, 3 and 4 by way of Affidavits (attached with the Application as Annexure 36, Annexure 37, Annexure 38 and Annexure 39 respectively) have confirmed that:

a. The proposed Scheme does not envisage any corporate debt restructuring. There is no proposal to restructure or vary the debt obligation of any of the Applicant Companies towards their respective Creditors and Debenture-holders. The proposed Scheme will not adversely affect the rights of any of the Creditors and Debenture-holders of the Applicant Companies in any manner whatsoever;

- b. The proposed Scheme does not envisage any buy back of securities and there is no proposal for reduction of share capital;
- c. Declaration of cross shareholding amongst the Applicant Companies;
- d. None of the Applicant Companies has accepted any public deposit, as on the date.
- e. The Applicant Companies are not regulated or governed by the Securities and Exchange Board of India (SEBI), Reserve Bank of India, Competition Commission of India (CCI) or any other Sectoral Regulator or Regulatory Authority. The Applicant Companies are not required to serve notice of this Application upon the CCI as the thresholds prescribed under section 5 of the Competition Act, 2002 are not triggered;
- f. There is no litigation initiated or pending before any Court or any Judicial/ Quasi-Judicial Authority under any law for the time being in force against the Applicant Companies. Also, there is no enquiry, inspection, investigation, litigation or prosecution pending against the Company before any Court or any Judicial/ Quasi-Judicial Authority under any law being in force against the Applicant Companies;
- g. No winding up/ Insolvency proceedings have been filed or are pending against them under the Companies Act, 2013 or the corresponding provisions of the Companies Act, 1956 and/ or under the Insolvency and Bankruptcy Code, 2016.

h. The Applicant Companies had not previously filed any application, writ petition or suit regarding the matter in respect of which the petition has been made, before any court of law or any other authority or any other Bench or the Board and any such application, writ petition or suit is pending before any of them.

i. The Assets of the Applicant Companies are sufficient to meet all their liabilities and the said Scheme will not adversely affect the rights of any of the creditors and debenture holders of any of the Applicant Companies in any manner whatsoever.

(xiii) The proposed Scheme is fair and reasonable, not detrimental to the interest of the public and not prejudicial to any person. None of the Directors of the Applicant Companies have any material interest in the said Scheme except as Directors and to the extent of their shareholding in the Applicant Companies.

(xiv) Appointed date as defined in clause 4.4 of the scheme means the 01.04.2024 for the purposes of Section 232(6) of the Act.

(xv) As on 31.03.2024, Applicant Company-1 has 07 Equity Shareholders holding 68,13,000 equity shares of Rs.10/- each & 5,27,000 equity shares of Rs.100/- each, Nil Secured & Unsecured Creditors, 3 Debentureholders holding 165 Zero% Optionally Fully Convertible Debentures of Rs.5,000/- each having total outstanding value of Rs.8,25,000/- and 235 Zero% Compulsory Convertible Debentures of Rs.20,000/- each having total outstanding value of Rs.47,00,000/-. The list of Equity Shareholders and Debenture Holders and an affidavit certifying the NIL Secured and

Unsecured Creditors as on 31.03.2024 certified by M/s A.K. Kalia & Associates, Chartered Accountants (Firm Registration No. 006949N) vide certificate dated 15.04.2024 along with consent affidavits of all the Equity Shareholders and Debenture Holders have been annexed with the Application as Annexure 19 (Colly.) and Annexure 22 (Colly), Annexure 20(Colly) and Annexure 21(Colly) respectively.

(xvi) As on 31.03.2024, Applicant Company-2 has 3 Equity Shareholders holding 70,83,017 equity shares of Rs.10/- each, Nil Secured & Unsecured Creditor and 2 Debenture holders holding 125 Zero% Compulsory Convertible Debentures of Rs.20,000/- each having total outstanding value of Rs.25,00,000/- as on 31.03.2024. The list of Equity Shareholders and Debenture Holders and an affidavit certifying the NIL Secured and Unsecured Creditors as on 31.03.2024 certified by M/s A.K. Kalia & Associates, Chartered Accountants (Firm Registration No. 006949N) vide certificate dated 15.04.2024 along with consent affidavits of all of its Equity Shareholders and Debenture Holders have been annexed with the Application as Annexure 23 (Colly.) and Annexure 26 (Colly), Annexure 24(Colly) and Annexure 25 (Colly) respectively.

(xvii) As on 31.03.2024, the Applicant Company-3 has 2 Equity Shareholders holding 6,60,000 equity shares of Rs.10/- each, Nil Secured & Unsecured Creditor and has 2 Debenture Holders holding 2,754 Zero% Compulsory Convertible Debentures of Rs.20,000/- each having total outstanding value of Rs.5,50,80,000/- as on 31.03.2024. The list of Equity Shareholders and Debenture Holders and an affidavit certifying the NIL Secured and

Unsecured Creditors as on 31.03.2024 duly certified by M/s A.K. Kalia & Associates, Chartered Accountants (Firm Registration No. 006949N) vide certificate dated 15.04.2024 along with consent affidavits of all of its Equity Shareholders and Debenture Holders have been annexed with the Application as Annexure 27 (Colly.) and Annexure 30 (Colly), Annexure 28(Colly) and Annexure 29 (Colly) respectively.

(xviii)As on 31.03.2024, Applicant Company-4 has 3 equity shareholder holding 5,10,000 equity shares of Rs.10/-, Nil Secured and Unsecured Creditor and 3 Debenture-holders holding 5,930 0% Compulsory Convertible Debentures of Rs.20,000/- each having total outstanding value of Rs.11,86,00,000/- as on 31.03.2024. The list of Equity Shareholders and Debenture Holders and an affidavit certifying the NIL Secured and Unsecured Creditors as on 31.03.2024 certified by M/s A.K. Kalia & Associates, Chartered Accountants (Firm Registration No. 006949N) vide certificate dated 15.04.2024 along with consent affidavits of all of its Equity Shareholders and Debenture Holders have been annexed with the Application as Annexure 31 (Colly.) and Annexure 35 (Colly), Annexure 32(Colly) and Annexure 33 (Colly) respectively.

(xix) The Applicant Company-1, 2, 3 and 4 have prayed for dispensing with the requirement of convening, holding and conducting meetings of Equity Shareholders, Debenture holders, Secured and Unsecured Creditors of the Applicant Company-1, 2, 3 and 4 as the Applicant Companies have obtained consent affidavits for the Scheme from all the Equity

Shareholders and Debenture holders and the Applicant Company 1, 2, 3 and 4 do not have any Secured Creditor and Unsecured Creditor.

(xx) The status of consent of Equity Shareholders, Debenture holders, Secured and Unsecured Creditors have been as follows:

Particulars	Applicant Company-1	Applicant Company-2	Applicant Company-3	Applicant Company-4
No. Of Equity Share Holders	7	3	2	2
Consent Given	100%	100%	100%	100%
No. Of Secured Creditors	0	0	0	0
Consents Given	N.A.	N.A.	N.A.	N.A.
No. Of Unsecured Creditors	0	0	0	0
Consents Given	N.A.	N.A.	N.A.	N.A.
No. Of Debenture holders	2	2	2	3
Consents given	100%	100%	100%	100%

4. The following directions were given by this Tribunal vide order dated 03.04.2024 to the Applicant Companies:

“Learned counsel for the applicant companies is directed to file one page note regarding the reconciliation of the liability side of the Balance Sheet with the list of shareholders, secured & unsecured creditors and debenture holders as on 31.03.2024 and also to file an affidavit regarding Sectoral Regulators with regard to lab company in view of nature of their business within five days”

5. In pursuance of the above directions, the Applicant Companies have filed Affidavit dated 08.04.2024 vide diary no 01417/01 to place on record Reconciliation statement of Shareholders, Creditors and Debenture-holders with Provisional Financial Statements and an Affidavit dated 15.05.2024 vide diary no 01417/2 stating that the Applicant companies could not commence its business operations and its revenue from operations is Nil in the last three financial years ending on 31.03.2022, 31.03.2023 and 31.03.2024. Further, it is stated that there are no regulatory provisions of other law, as are applicable to the Applicant Companies and that they are not regulated or governed by the Securities and Exchange Board of India(SEBI),

Reserve Bank of India, Competition Commission of India (CCI) or any other Sectoral Regulator or regulatory authority.

ANALYSIS AND FINDINGS

6. Since this is the First Motion Application seeking order for dispensation/ convening of the meetings of Shareholders, Debenture holders and Creditors, the analysis has been limited to that and other issues would be analysed at the time of Second Motion Petition of the Applicant Companies.

7. It is noted from the object clause of the Applicant Company-2 that It is engaged in the business of generation, transmission, distribution and conservation of energy by establishment, operation and maintenance of hydro power plants or any other power plants from renewable, non-conventional sources of Energy. In view of the above, the notices need to be sent to the Ministry of New & Renewable Energy (MNRE) as well as the respective State Electricity Regulatory Commission based on the power purchase agreement/ location of the power plant, as may be applicable, of the Applicant Company-2.

8. It is also noted that the Applicant Company-2 and 3 are in the business of distillers, rectifiers etc. and to manufacture, purchase, sell, import, export etc. and deal in the country and foreign wines, whisky, spirit etc. and liquor commercial, industrial and absolute alcohols etc. In view of the above, the notice needs to be sent to the regulators dealing with the above business, as may be applicable, (e.g. Food Safety and Standards Authority of India, State Excise Department etc.)

9. In view of the above, the directions of this Bench in the case are as under:

- I. The meetings of the Equity Shareholders and Debenture Holders of Applicant Company-1, 2, 3 and 4 are dispensed with keeping in view the shareholding and ownership pattern of the Applicant Companies and the fact that the consent to the proposed scheme of amalgamation by way of affidavits has been furnished by all the Equity Shareholders and Debenture Holders of respective Applicant Companies as per the list of Equity Shareholders and Debenture Holders certified by the Chartered Accountant. The requirement of issue and publication of notices for the same are also being dispensed.
- II. The meetings of the Secured and Unsecured Creditors of Applicant Company-1, 2, 3 and 4 are dispensed with keeping in view of the fact that they do not have Secured and Unsecured Creditors as per the list of Secured and Unsecured Creditors certified by the Chartered Accountant. The requirement of issue and publication of notices for the same are also being dispensed.
- III. All the Applicant Companies to serve the notice upon the (a) Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) concerned Registrar of Companies; (c) concerned Income Tax Department; (d) concerned Official Liquidator (e) Ministry of New & Renewable Energy (MNRE) as well as respective State Electricity Regulatory Commission(s) based on the power purchase agreement/ location of the power plant, as may be applicable, of the Applicant Company-2; (f) Chairperson, Food Safety and Standards Authority of India, New Delhi (g) State Excise Department of Chandigarh as well as Himachal Pradesh; and (h) such other Sectoral Regulators governing the business of the Applicant

Companies, if any, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with suitable changes in the notice relating to waiver of the meetings. If no response is received by the Tribunal from the above authorities within 30 days of the date of receipt of the notice, it will be presumed that such authorities have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

IV. The Applicant Companies shall file an affidavit in compliance of all the conditions laid down herein along with original proof of service to all the authorities.

10. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition in accordance with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 15 days after the expiry of period of 30 days as mentioned in Section 230(5) of the Companies Act, 2013.

11. A copy of this order be supplied to the learned counsel for the Applicant Companies.

Sd/-
(Umesh Kumar Shukla)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

July 04, 2024
AKS