

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI**

**CA (CAA) No.223/MB/2023**

*[Under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016]*

In the matter of

**SCHEME OF MERGER BY ABSORPTION OF**

**Venkatesh Beverages Private Limited**

[CIN:U15139MH1986PTC212232]

Registered Office:232, Solitaire Corporate Park

Building No. 2 Andheri-Kurla Link Road

Andheri East,

Mumbai-400093.

... Transferor Company/ First Applicant Company

**WITH**

**Kanti Beverages Private Limited**

[CIN: U18500MH1982PTC027996]

Registered Office :232, Solitaire Corporate Park

Building No. 2 Andheri-Kurla Link Road

Andheri East

Mumbai-400093.

...Transferee Company /Second Applicant Company

**AND THEIR RESPECTIVE SHAREHOLDERS**

**Pronounced: 28.06.2024**

*Coram:*

**SHRI K.R. SAJI KUMAR, HON'BLE MEMBER (JUDICIAL)**

**SHRI SANJIV DUTT, HON'BLE MEMBER (TECHNICAL)**

*Appearances:*

For the Applicant(s) : CS Vijay Tiwari

**ORDER**

***[PER: SANJIV DUTT, MEMBER TECHNICAL]***

1. This is a Company Application jointly filed by Venkatesh Beverages Private Limited, the Transferor Company/First Applicant Company and Kanti Beverages Private Limited, the Transferee Company/Second Applicant Company (hereinafter both collectively referred to as “the Applicant Companies”) for seeking appropriate directions from this Tribunal in relation to the proposed Scheme of Merger by Absorption of the Transferor Company with the Transferee Company and their respective Shareholders (hereinafter referred to as the “**Scheme**”) under the provisions of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (hereinafter referred to as “the Act”) read with relevant Rules of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (hereinafter referred to as “the CAA Rules”).
2. The registered offices of both the Applicant Companies are situated in Mumbai, Maharashtra and thus, the subject matter of this Company Application is within the territorial jurisdiction of this Tribunal.
3. The Board of Directors of the Applicant Companies in their respective Board meetings held on 30.05.2023 have approved the proposed Scheme. Certified copies of respective Board Resolutions of both Applicant Companies are annexed to the Company Application.
4. It is submitted that the Appointed Date of the proposed Scheme of Amalgamation is 01.04.2023.
5. It submitted that the First Applicant Company is engaged in the business activity of business brewers, distillers and bottlers of, and of manufacturing, trading processing, preserving, packing, bottling, buying

etc. and the Second Applicant Company is engaged in the business of brewers, distillers and bottlers of, and of manufacturing, trading, processing, preserving, packing, bottling, buying, selling, supplying import, export and otherwise dealing in aerated waters, mineral waters, artificial waters, aerated gas, soft drinks squashes, juices, deverages, beer, ale, porter, stout, wines, spirits, liquors and other drinks whether intoxicating or not and also food stuffs, provisions, health food, confectioneries, cakes, bread, biscuits, tea coffee, coca, milk, provision stores, consumable articles, sugar, sweet meet, dairyman, grocers, dry ice, etc.

5.1 The proposed Scheme envisages that the whole of the undertaking of the Transferor Company shall together with all assets, rights, benefits, liabilities, obligations and employees be transferred to and vested in the Transferee Company as a going concern from the Appointed Date.

6. The rationale for the proposed Scheme is stated as under:-

- a. The Merger by Absorption is expected to be beneficial to the shareholders of all the Company as it would create greater size, scale integration and greater strength and flexibility for the amalgamated entity, which would result in improved operational focus;
- b. The amalgamated entity will have the ability to leverage on its collective asset base to enhance shareholder value;
- c. Cost savings are expected to flow from more focused operational efforts, rationalisation, standardisation and simplification of business processes, improved procurement and the elimination of duplication;
- d. The amalgamated entity will benefit from improved organisational

capability and leadership arising from combination of people who have the diverse skills, to compete successfully in an increasingly competitive industry;

- e. The amalgamated entity would enable transfer/leverage of knowledge between the various functional teams for improving productivity, MIS, cost reduction and inventory management initiatives;
- f. General and administrative cost reduction and productivity gains by pooling of financial, managerial and technical resources, personnel capabilities, skills, expertise and technologies of the Parties.
7. The details of Authorised, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on 31.03.2023 are as under:-

a. Transferor Company:

<b>Authorised share capital (No. of shares)</b>		<b>Amount in INR</b>
7,50,000	Equity Shares of Rs.10/- each	75,00,000
<b>Issued, Subscribed and Paid-up share capital (No. of shares)</b>		<b>Amount in INR</b>
5,13,120	Equity Shares of Rs. 10/-each	51,31,200
<b>Total</b>		<b>51,31,200</b>

b. Transferee Company:

<b>Authorised share capital (No. of shares)</b>		<b>Amount in INR</b>
42,00,000	Equity Shares of Rs.10/- each	420,00,000
<b>Issued, Subscribed and Paid-up share capital (No. of shares)</b>		<b>Amount in INR</b>

29,03,274	Equity Shares of Rs. 10/- each	2,90,32,740
<b>Total</b>		<b>2,90,32,740</b>

- 7.1 The Applicant Companies submit that there has been no change in the authorised, issued, subscribed and paid-up share capital of the Transferee Company and the Transferor Company upto the date of filing of this Application.
- 7.2 Upon sanction of the Scheme, the authorised share capital of the of the Transferee Company shall automatically stand increased in respect of the authorised share capital of the Transferor Company.
8. As regards the consideration for transfer of entire undertaking of the Transferor Company, it is stated that upon the Scheme being effective, the Transferee Company shall, without any further act or deed, issue and allot equity shares in the Transferee Company to each equity shareholder of the Transferor Company whose name is recorded in the register of members of the Transferor Company on the Appointed Date in the following ratio (the "Share Entitlement Ratio"):-

***For Every Seventy-Eight Shares of Transferor Company held by the shareholder, he will receive 1 share of Transferee Company***

- 8.1 The Applicant Companies have submitted Valuation Report dated 25.05.2023 for both the Applicant Companies prepared by a registered valuer for ascertaining the above share exchange ratio.
- 8.2 Upon the Scheme becoming effective, the shareholding of Transferee Company in Transferor Company shall stand cancelled.

- 8.3 Upon the Scheme becoming effective, the Transferor Company shall be dissolved without winding up and its name shall be struck off from the list of Companies maintained by the Registrar of Companies, Maharashtra.
9. It is submitted that Transferee Company shall, upon the Scheme becoming operative, record the assets and liabilities of the Transferor Company vested in it pursuant to this Scheme in accordance with the method of accounting as prescribed for the "Pooling of Interest Method" under Accounting Standard 14 "Accounting for Amalgamations" or as per IND AS 103 'Business Combinations notified under Section 133 of the Act. It is observed that a CA certificate dated 10.05.2023 has been placed on record affirming that the accounting treatment of the proposed Scheme by the Transferee Company is in accordance with all the applicable Accounting Standards notified by the Central Government under Section 133 of the Act read with the Companies (Accounts) Rules, 2014.
10. The Applicant Companies submit that no investigation or proceedings against the Applicant Companies have been instituted and/ or are pending under Sections 210 to 227 of the Act and that no winding-up petitions have been filed or are pending against either of them.
11. The Learned CS for the Applicant Companies submits that there are no Secured Creditors in the First Applicant Company as on 15.02.2023. Therefore, the question of convening and holding meeting of Secured Creditors of the Transferor Company does not arise.
12. The Learned CS for the Applicant Companies submits that there are 3 Unsecured Creditors of total value Rs.1,48,81,498/- in the First Applicant Company as on 15.02.2023. The certificate issued by Nagori Nuwal & Co., Chartered Accountants dated 28.04.2023, confirming the

above-mentioned details of Unsecured Creditors of the First Applicant Company as on 15.02.2023 is placed on record. In this connection, it is submitted that the Scheme is an Arrangement between the Applicant Companies and their shareholders as contemplated under Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Act. It is also submitted that the convening and holding of meeting of the Unsecured Creditors is not required as there is no Compromise and/or Arrangement proposed with the creditors and no sacrifice on the part of unsecured creditors is called for. Further, it is submitted that the assets of the Second Applicant Company will be sufficient to discharge all its liabilities. On perusal of the list of unsecured creditors, it is noticed that two out of three Unsecured Creditors are equity shareholders of the First Applicant Company accounting for 99.86% of the total Unsecured Creditors in value. Since holding of a separate meeting of equity shareholders of First Applicant Company is being directed, the requirement of convening and holding meeting of the Unsecured Creditors of the First Applicant Company is hereby dispensed with on peculiar facts of the case. **However, the First Applicant Company undertakes to serve notice to all three Unsecured Creditors by Registered Post-AD/ Speed Post or through email (to those unsecured creditors whose email addresses are duly registered with the First Applicant Company for the purpose of receiving such notices by email), with instructions that they may submit their representation, if any, to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representation shall simultaneously be served upon the First Applicant Company. If no such representation is received, it will be presumed that the said Unsecured Creditor has no objection to the Scheme.**

13. It is submitted that there are 8 equity shareholders of the First Applicant Company (i.e. Transferor Company) holding 513120 equity shares of Rs.10/- each fully paid-up as on 15.02.2023. The Learned CS for the Applicant Companies submits that directions may be issued for convening and holding the meeting of Equity Shareholders of the First Applicant Company (i.e., Transferor Company), physically or through Video-Conference. **Accordingly, it is directed that the meeting of the Equity Shareholders of the First Applicant Company be convened and held physically or through Video-Conference (VC) at 232, Solitaire Corporate Park, Building No. 2 Andheri Kurla Link Road, Andheri EAST, Mumbai City, MUMBAI, Maharashtra, India, 400093 on Friday, 09.08.2024 at 10 a.m. for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Merger by Absorption of First Applicant Company/Transferor Company with the Second Applicant Company/Transferee Company.**
14. The Learned CS for the Applicant Companies submits that there is 1 (One) Secured Creditor of value Rs.14,23,43,252.19/- in the Second Applicant Company as on 15.02.2023. Further, it is submitted that there are 127 Unsecured Creditors of value Rs.11,22,54,908.09/- in the Second Applicant Company as on 15.02.2023. The certificate issued by Nagori Nuwal & Co., Chartered Accountants dated 28.04.2023, confirming the above-mentioned details of Secured Creditors and Unsecured Creditors of the Second Applicant Company as on 15.02.2023 is annexed to the Company Application. In this connection, it is clarified that they will not be affected by the proposed Scheme of Merger by Absorption since post-scheme, the assets of the Second Applicant Company will be sufficient to discharge all its liabilities and further, it does not involve any compromise or arrangement with any secured creditor of the First Applicant/Transferor Company and thus



meeting of creditors is not required to be convened. In this connection, it is settled that the court neither has power to usurp the rights of creditors to decide for themselves whether or not to approve the Scheme nor can it determine the extent to which the interests of creditors had been taken care. **Therefore, this Bench directs that a meeting of all the Secured Creditors and Unsecured Creditors with a value of five thousand rupees and above of the Second Applicant Company/Transferee Company be convened on or before 09.08.2024 for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Merger by Absorption of First Applicant Company/Transferor Company with the Second Applicant Company/Transferee Company.**

15. It is submitted that there are 5 equity shareholders of the Second Applicant Company (i.e. Transferee Company) holding 2903274 equity shares of Rs.10/- each fully paid-up as on 15.02.2023. The Learned CS for the Applicant Companies submits that directions may be issued for convening and holding the meeting of Equity Shareholders of the Second Applicant Company (i.e., Transferee Company), physically or through Video-Conference. **Accordingly, it is directed that the meeting of the Equity Shareholders of the Second Applicant Company be convened and held physically or through Video-Conference (VC) at 232, Solitaire Corporate Park, Building No. 2 Andheri-Kurla Link Road, Andheri EAST, Mumbai City, MUMBAI, Maharashtra, India, 400093 on Friday, 09.08.2024 at 11 a.m. for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Merger by Absorption of First Applicant Company/Transferor Company with the Second Applicant Company/Transferee Company.**

16. In regard to the meetings to be convened of Equity Shareholders of First Applicant Company and Equity Shareholders, Secured Creditors and Unsecured Creditors of the Second Applicant Company, it is hereby directed as under:
- 16.1 That at least 30 (Thirty) clear days before the aforesaid meetings of Applicant Companies to be held as aforesaid, a notice convening the said meeting at the place, day, date and time aforesaid, together with a copy of the Scheme and the Explanatory Statement as required to be sent under Section 230 of the Act, shall be sent by Registered Post-AD/Speed Post, Hand Delivery and Email to each of the respective Equity Shareholders, Secured and Unsecured Creditors of the Applicant Companies at their respective registered or last known addresses or e- mails as per the records of the Applicant Companies.
- 16.2 That at least 30 (thirty) days before the aforesaid meetings of the Applicant Companies to be held as aforesaid, a notice convening the said Meetings, indicating the place, date and time of meetings as aforesaid, be published stating that the copies of the Scheme of Merger by Absorption and the statement required to be furnished pursuant to Section 230(3) of the Act read with Rule 6 of the CAA Rules and the Form of Proxy can be obtained free of charge at the Registered offices of the Applicant Companies.
- 16.3 That at least 30 (thirty) clear days before the aforesaid meetings of the Applicant Companies to be held as aforesaid, a notice convening the said meetings shall be published once each in the "Business Standard" (English Daily) and "Navshakti" (Marathi Daily), both widely circulated at Mumbai, notifying the place, date and time of the meetings and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Act can be

obtained free of charge at the Registered Office of the Applicant Companies.

- 16.4 That the quorum for the aforesaid meetings shall be as prescribed under Section 103 of the Act, present either in person or by authorised representative. In case the required quorum as stated above is not present at the commencement of the meeting, the meeting shall be adjourned by 30 (Thirty) minutes and thereafter the persons present shall be deemed to constitute the quorum.
- 16.5 That the voting by proxy or by authorized representative in case of body corporate shall be permitted, provided that authorization duly signed by the person entitled to attend and vote at the meeting is filed with the Applicant Companies at the Registered Office not later than 48 hours before the aforesaid meeting as required under Rule 6 of the CAA Rules.
- 16.6 That the value and number of shares of each equity shareholder shall be in accordance with the register of shareholders of the First Applicant Company/Transferor Company or depository records for equity shareholders of the Applicant Companies and where the entries in the register/ depository records are disputed, the Chairperson of the meeting shall determine the value and the number for the purpose of the said meeting and his decision in that behalf would be final.
- 16.7 That the value and number of shares of each equity shareholder, Secured Creditor and Unsecured Creditor shall be in accordance with the register of shareholders/Books of account of the Second Applicant Company/Transferee Company or depository records for equity shareholders of the Applicant Companies and where the entries in the register/ depository records are disputed, the Chairperson of the meeting shall determine the value and the number for the purpose of

the said meeting and his decision in that behalf would be final.

- 16.8 This Bench hereby appoints **Mr. Abhishek C Bhadang, Advocate** having **Mobile No. 7045404068,** **E-mail: [bhadangabhishek@gmail.com](mailto:bhadangabhishek@gmail.com)** as the Chairperson for the meetings of Equity Shareholders of the First Applicant Company/Transferor Company. The remuneration for the services to be rendered by the Chairperson shall be Rs.1,00,000/- (One Lakh Rupees) exclusive of taxes.
- 16.9 This Bench hereby appoints **Shri H.P. Chaturvedi, Former Member (Judicial), NCLT, Mobile No. 9969364547** as the Chairperson for the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Second Applicant Company/Transferee Company. The remuneration for the services to be rendered by the Chairperson shall be Rs.2,00,000/- (Two Lakh Rupees) exclusive of taxes.
- 16.10 The respective Chairpersons appointed for the aforesaid meetings of the Applicant Companies are to issue the advertisement and send out the notices of the meeting referred to above. The said Chairpersons shall have all powers under the CAA Rules in relation to the conduct of the meeting, including for deciding procedural questions that may arise at the meeting or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meetings by any person(s).
- 16.11 The respective Chairpersons for the meetings are required to file an affidavit, not less than 7 (Seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of the CAA Rules.

16.12 The Applicant Companies are directed to:

- i. Issue notices for convening of meeting of Equity Shareholders, Secured Creditors, Unsecured Creditors as per Form No.CAA.2 as per Rule 6 of the CAA Rules;
- ii. Issue Statement containing all the particulars as per Section 230(3) of the Act;
- iii. Issue Forms of Proxy as per Form No. MGT-11 [Rule 19 of the Companies (Management and Administration) Rules, 2014];  
and
- iv. Advertise the Notice convening meeting(s) in Form No.CAA.2 as per Rule 7 of the CAA Rules.

16.13. The respective Chairpersons for aforesaid meetings are required to report to this Tribunal the result of the aforesaid meetings within 7 (Seven) working days of the conclusion of the meetings and the said report by each Chairperson shall be verified by his Affidavit as per Rule 14 of the CAA Rules.

16.14 This Bench hereby appoints **Ms. Dipika Shetty Practicing Company Secretary; (M) 8928234031; E- mail ID: dipika.shetty1002@gmail.com ICSI No. A62569 and COP No. 24561**, who shall be paid an amount of Rs.80,000/- (Eighty-Thousand Rupees) exclusive of taxes for the services in respect of the entire Scheme as the Scrutinizer for the aforesaid Meetings of the Applicant Companies.

17. The Applicant Companies are directed to serve notices of the present Application complete with enclosures by way of Registered Post A.D./ Speed Post/ Hand Delivery and email upon the following authorities :-

- a. The Central Government through the office of Regional Director, Western Region, Ministry of Corporate Affairs Mumbai;
- b. Registrar of Companies, Mumbai;
- c. The Nodal Authority in Income-tax Department-Pr. CCIT, Mumbai at 3<sup>rd</sup> Floor, Aayakar Bhawan, Maharishi Karve Road, Mumbai-400020, Maharashtra;
- d. Concerned Income Tax Authorities within whose jurisdiction the assessments of the Applicant Companies are made :-

<b>Applicant Company</b>	<b>PAN</b>	<b>Assessing Officer</b>
First Applicant Company	AAACV4897M	DCIT/ACIT,5(1), Bhopal
Second Applicant Company	AABCK7186K	Circle 6(1)(2), Mumbai

- e. Jurisdictional GST Authority (proper officer), within whose jurisdiction the Applicant Companies are assessed to tax under GST law;
- f. The Official Liquidator, High Court of Bombay.
- g. Any other Sectoral Regulators/Authorities relevant to the Applicant Companies or their business

pursuant to Section 230(5) of the Act and in terms of Rule 8 of the CAA Rules. If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notices, it will be presumed that they have no objection to the Scheme as per Rule 8 of the CAA Rules. It is clarified that service of notice

through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the noticee.

18. The Applicant Companies are directed to serve a copy of the Scheme upon the Official Liquidator, High Court of Bombay, Mumbai in terms of Section 230(5) of the Act and in terms of Rule 8 of the CAA Rules. If no representation / response is received by the Tribunal from the Official Liquidator, Mumbai within a period of thirty (30) days from the date of receipt of such notice, it will be presumed that Official Liquidator has no objection to the Scheme in terms of Rule 8 of the CAA Rules.
19. The Applicant Companies shall host the notices directed herein on their respective websites, if any.
20. The Applicant Companies will along with Company Scheme Application submit:-
  - i. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.
  - ii. List of pending IBC cases, if any, along with all other litigation pending against the Applicant Companies having material impact on the proposed Scheme.
  - iii. Details of all Letters of Credit sanctioned and utilized as well as Margin Money details, if any.
21. The Applicant Companies are directed to file Affidavit of Service with the Registry within 15 days from service of notices complete with enclosures upon the Regulatory Authorities mentioned above and report to this Tribunal that all the directions in this regard have been duly complied with. The Applicant Companies are also directed to include in

the Affidavit of Service proof of dispatch of documents sent to the Creditors, wherever applicable, and to report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

22. The Appointed Date of the Scheme of Merger is **01.04.2023**.
23. The Company Application is disposed of in terms of the aforesaid directions.

**Sd/-**  
**SANJIV DUTT**  
**MEMBER (TECHNICAL)**

//Deepa & Sunil//

**Sd/-**  
**K.R. SAJI KUMAR**  
**MEMBER (JUDICIAL)**