

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Application (CAA) No. 46/KB/2024**

*An application under section 230 to 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions of law.*

**IN THE MATTER OF:**

***A Scheme of Amalgamation of (First Motion):***

**BORTEX VINYMAY PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U10100JH2008PTC009788 and its registered office at Upper Rajbari Road, PO & PS - Jharia, Dhanbad- 828111, in the State of Jharkhand.**

**... Applicant Company No. 1/ Transferor Company No. 1**

-And-

**LIBRA SPIRITS AND ALE INDIA PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U15512JH2004PTC010755 and its registered office at Ward No.-1, Makan No.-23, Opp-Raj Ground, Main Road, Dhanbad- 828111 in the State of Jharkhand.**

**... Applicant Company No. 2/ Transferor Company No. 2**

-With-

**LIBRA BUSINESS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and a Company within the meaning of the**

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**Companies Act, 2013, having Corporate Identification No. U00318JH1989PTC003503 and its registered office at Upper Rajbari Road, PO & PS - Jharia, Dhanbad- 828111, in the State of Jharkhand.**

**..... Applicant Company No. 3/ Transferee Company**

-And-

**IN THE MATTER OF:**

- 1) Bortex Vinymay Private Limited
- 2) Libra Spirits and Ale India Private Limited
- 3) Libra Business Private Limited

..... Applicants/ Petitioners

**Date of Pronouncement of the Order: 5<sup>th</sup> June 2024**

**CORAM:**

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)**

**SHRI. D.ARVID, MEMBER (TECHNICAL)**

**APPEARANCES**

**FOR THE PETITIONER : Ms. Ankita Dalmia, PCS**

**O R D E R**

**Per: Smt. Bidisha Banerjee, Member (Judicial)**

- 1) This Court is convened through hybrid mode. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 (*Hereinafter referred to as*

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“Act”) for orders and directions with regard to the meetings of shareholders and creditors in connection with the Scheme of Amalgamation of **Bortex Vinymay Private Limited**, being the Applicant No. 1 above named ("**Transferor Company No. 1**") and Libra Spirits and Ale India Private Limited, being the Applicant No. 2 above named ("**Transferor Company No. 2**") with **Libra Business Private Limited**, being the Applicant No. 3 above named ("**Transferee Company**") whereby and where under the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date **01<sup>st</sup> day of April, 2023** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("**Scheme**"). A copy of the Scheme of Amalgamation is annexed to the Company Application being "**Annexure- A**" in **Volume 1** at **Page No(s) 27 - 51**.

- 2) The Board of Directors of the Applicant Companies have approved and resolved to carry out the said Scheme of Amalgamation in their respective Board Meetings held on 28<sup>th</sup> February, 2024. A copy of the Board Resolutions is annexed to the Company Application being "**Annexure - E**" in **Volume 1** at **Page Nos. 208 - 210**.
- 3) Ld. Authorized Representative appearing for the Applicants submits that the shares of none of the Applicants are listed in any stock exchanges. Further, the Applicant(s) have the following classes of shareholders and creditors:

<u>Sl. No.</u>	<u>Name of Applicant Companies</u>	<u>Equity Shareholders</u> (Nos)	<u>Secured Creditors</u> (Nos)	<u>Unsecured Creditors</u> (Nos)
		<b>02</b> (Vol 2, Pg No.	<b>NIL</b> (Vol 2, Pg No.	<b>NIL</b> (Vol 2, Pg

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1	Bortex Vinymay Private Limited (Applicant No. 1)	236)	338)	No. 338)
		<b>Consent:</b> <b>100%</b> <i>(Vol 2, Pg Nos. 239 - 245)</i>	N/A	N/A
2	Libra Spirits and Ale India Private Limited (Applicant No. 2)	<b>18</b> <i>(Vol 2, Pg No. 246 - 247)</i>	<b>NIL</b> <i>(Vol 2, Pg No. 340)</i>	<b>NIL</b> <i>(Vol 2, Pg No. 340)</i>
		<b>Consent:</b> <b>100%</b> <i>(Vol 2, Pg Nos. 250 - 303)</i>	N/A	N/A
3	Libra Business Private Limited (Applicant No. 3)	<b>08</b> <i>(Vol 2, Pg No. 304)</i>	<b>10</b> <i>(Vol 2, Pg No. 342 - 344)</i>	<b>69</b> <i>(Vol 2, Pg No. 342 - 344)</i>
		<b>Consent:</b> <b>100%</b> <i>(Vol 2, Pg</i>	-	-

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		Nos. 307 - 332)		
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- 4) Ld. Authorized Representative appearing for the Applicants further submit that all the Equity Shareholders of all the Applicant Companies have already given their consent to the Scheme by way of affidavits, being **“Annexure- G”** at **Volume 2, Pg Nos. 236 – 332.**
- 5) Ld. Authorized Representative appearing for the Applicants further submits that the Applicant Companies No. 1 & 2 does not have any secured or unsecured creditors and the Petitioners now seek admission of the instant petition presented by them for sanction of the Scheme.
- 6) Ld. Authorized Representative for the Petitioners further submits that the present scheme is an arrangement between the Applicant Companies and none of the members, shareholders and creditors will be affected by the Scheme.
- 7) The Certificate by the Chartered Accountant in respect of the Applicant Companies verifying conformity with the Accounting Standards under section 133 of the Companies Act 2013 is annexed with the Company Application being **“Annexure- D”** in **Volume 2** at **Page Nos. 205 – 207.**
- 8) Directions are sought accordingly for (a) dispensing meetings of the equity shareholders of all the Applicant Companies and (b) holding of meeting of the secured and unsecured creditors of Applicant Company No. 3.

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9) Heard the Ld. Authorized Representative for the Petitioners and upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicants, we allow the instant application and make the following orders:

a) **Meetings Dispensed:** In view of the consent given through affidavits by all the equity shareholders of all the Applicant Companies, the meetings of the said equity shareholders are hereby dispensed with.

b) **Meetings to be held:** Meeting of the Unsecured Creditors of Applicant Company No. 3 shall be held on 09.07.2024 at 10AM for the purpose of considering and if thought fit, approving the Scheme, with or without modification and the meeting of the Secured Creditors of Applicant Company No. 3 shall be held on 09.07.2024 at 12PM for the purpose of considering and if thought fit, approving the Scheme, with or without modification.

c) **Mode of Meeting:** The meeting of the Unsecured Creditors of the Applicant Company No. 3 shall be held physically at Wedlock Greens Hotels & Resorts, Bhatia More, Kasitand, NH- 2, Gobindpur, Jharkhand- 828109 and the meeting of the Secured Creditors of the Applicant Company No. 3 shall be held physically at Wedlock Greens Hotels & Resorts, Bhatia More, Kasitand, NH- 2, Gobindpur, Jharkhand- 828109.

d) **Advertisement:** At least 30 (thirty) clear days before the said meeting to be held, as aforesaid, an advertisement of the notice of the meeting(s) be published once each in “**Times of India**” (Jharkhand Edition) in the English language and a Bengali translation thereof in “**Prabhat Khabar**” (Jharkhand Edition) as per Rule 7 of the

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Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity "**Rules**").

- e) **Individual Notices:** At least 30 (thirty) clear days before the said meeting to be held, as aforesaid, notices convening the said meeting(s), along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Act disclosing necessary details and the prescribed form of proxy, shall be sent to each of the secured creditors and unsecured creditors of the Applicant Company No. 3 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by e-mail to those secured creditors and unsecured creditors whose email addresses are registered in the records of Applicant Company No. 3 and by speed post to those secured creditors and unsecured creditors whose addresses are registered in the records of Applicant Company No. 3 (where email is not available).
- f) **Chairperson: Adv. Shantanu Mishra , Mobile No. 9433580177, E-mail: Onextshantanu@gmail.com** is appointed as the Chairperson of the meetings to be held, as aforesaid. The Chairperson shall be paid a consolidated sum of Rs. 60,000/- for conducting the aforesaid meeting as Chairperson.
- g) **Scrutinizer: Mr. Devdas Chakraborty, FCA, Mob No. 9830678044** is appointed as the Scrutinizer of the aforesaid meetings to be held as aforementioned in terms of this order. The Scrutinizer shall be paid a consolidated sum of Rs. 50,000/- for acting as Scrutinizer.
- h) **Quorum and Attendance:** The quorum of the aforesaid meeting of the Unsecured Creditors and Secured Creditors shall be five (5)

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respectively. Only attendance of such persons physically present at the venue shall be counted for quorum. 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.

- i) **Mode of Voting:** Voting shall be through ballot paper at the venue either themselves or through proxies. The Applicant Company No. 3 shall make necessary arrangements for the voting accordingly.
- j) **Cut-off date:** The cut-off date for determining the eligibility to vote and the value of votes of the unsecured creditors and secured creditor shall be as on the 45<sup>th</sup> day prior to the date of the meeting. The cut-off date for dispatch of notices shall be as on the 45<sup>th</sup> day prior to the date of the meeting. The value of the votes cast shall be reckoned and scrutinized with reference to the said dates.
- k) **Voting procedure:** Subject to the directions and matters dealt with herein, the procedure for the conduct of voting, in so far as the same is prescribed by the Companies (Management & Administration) Rules, 2014 (for brevity “the said Rules”), and the forms there under shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.
- l) **Proxies & Board Resolutions:** Voting shall be allowed on the proposed Scheme by proxy at the aforesaid meetings provided that the proxies are in the prescribed form duly signed by the persons(s) entitled to attend and vote at the meetings is filed with the Applicant Companies at its Registered Office and by email to the Scrutinizer, not later than forty-eight hours before the meetings. In case of a Body



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Corporate, being an Unsecured/Secured Creditor of Applicant Company No. 3 opting to attend and vote at the meeting, as aforesaid, through its authorized representative, such Body Corporate may do so provided a certified copy of the resolution of its Board of Directors or other governing body authorizing such representative to attend and vote at the meeting on its behalf is deposited at the registered office of the Applicant Company No. 3 and by email to the Scrutinizer, not later than forty-eight hours before the time for holding the meeting.

- m) That the Chairperson appointed for the said meetings, or any person authorised by the Chairperson do issue and send the notices of the aforesaid meetings. Further, the Chairperson shall have all other powers under the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 read with the other applicable rules and provisions in relation to the conduct of the meetings, including for deciding procedural questions that may arise at the meeting or at any adjournment thereof, or any other matter relating to the meetings, including an amendment to the Scheme, if any proposed by any persons.
- n) **Scrutinizer's Report/ Declaration of Results:** The votes cast shall be scrutinized by the Scrutinizer. The Scrutinizer shall prepare and submit the respective reports on the meetings along with all papers relating to the voting of the Chairperson of the meeting within 3 days from the conclusion of the meeting. The Chairperson shall declare the result of the meeting after submission of the report of the Scrutinizer.
- o) The value of each Secured Creditors and Unsecured Creditors of Applicant Company No. 3 shall be in accordance with the books and records of the said Applicant Company and where entries in the books

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are disputed, the Chairperson shall determine the value for purpose of the said meeting.

p) The Chairperson must report to this Tribunal the result of the said meetings within four weeks from the date of the conclusion of the said meeting(s). Such report shall be in Form No. CAA 4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

**10)** Notice under Section 230(5) of the Companies Act, 2013 along with all the accompanying documents, including a copy of the aforesaid Scheme and statement under the provision of Companies Act 2013, shall also be served on:

- i. The Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata.
- ii. The Registrar of Companies, Jharkhand with whom the Applicants are registered.
- iii. The Official Liquidator, High Court, Calcutta.
- iv. The Income Tax having the jurisdiction over the Applicant Companies.
- v. Other Sectorial Regulators that are likely to be affected by the Scheme.

These notices shall be sent by hand delivery through special messenger or by speed post and by e-mail within two weeks from the date of receiving this order and shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Authorized Representative of the said Applicants. If no such representation is received by the Tribunal within such period, it shall

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be presumed that such Authorities have no representations to make on the said Scheme of Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

- 11)** The Applicant Companies shall file an Affidavit of Service, to report to this Tribunal that the directions regarding the issuance of notices have been duly complied with.
- 12)** The application being **C.A. (CAA) No. 46/KB/2024** is disposed of accordingly.
- 13)** Certified copies of the Order may be issued, if applied for, upon compliance with all the requisite formalities.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**This order signed on the 5<sup>th</sup> day of June, 2024.**

Oindrila, K (LRA)