IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 373 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 245 OF 2015

In the matter of Companies Act, 1956 (1 of 1956);

And

In the matter of Sections 391 and 394 read with Sections 100 to 103 of the Companies Act, 1956 (1 of 1956);

And

In the matter of Scheme of Amalgamation of SW Finance Co. Limited ("Transferor Company") with United Spirits Limited ("Transferee Company") and their respective Shareholders and Creditors, as the case may be.

SW Finance Co. Limited,)
A company incorporated under)
The Companies Act, 1956 and)
Having its Registered Office)
At Bank of Baroda Building, 2nd Floor,)
3, Walchand Hirachand Marg, Ballard)
Estate, Mumbai 400 038) ...Petitioner Company

<u>Called for hearing:</u>

Mr. Mahek Kamdar i/b. M/s. Kanga & Company, Advocates for the Petitioner Company.

Mr. Y. R. Mishra i/b. Mr. A.A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator, present.

CORAM: S.C Gupte J.

DATE: 28th August 2015

PC:

1. Heard learned counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought to a Scheme of Amalgamation of SW Finance Co. Limited ("Transferor Company") with United Spirits Limited ("Transferee Company") and their respective Shareholders and Creditors, as the case may be., under Section 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956.

3. The Learned Counsel for the Petitioners states that The Transferor Company is a wholly owned subsidiary of the Transferee Company with 100% of the beneficial ownership of the Transferor Company being held by the Transferee Company. 52.55% of the Equity Share Capital of the Transferor Company is held by the Transferee Company and the balance 47.45% of the Equity Share Capital of the Transferor Company is held by the SWFSL Benefit Trust for the benefit of the Transferor Company. The Petitioners further state that the Transferor Company is engaged in the business of advancing/lending surplus funds to its group companies and as on date hold investment in subsidiary and the Transferee Company after its incorporation has been and is carrying on the business of manufacturing and marketing of Alcoholic Spirits. The proposed amalgamation would rationalize the number of legal entities in the group and would also result in reduction in overheads and other expenses of maintaining a legal entity, and will enable the group to rationalise and streamline their management, business and finances and to effect internal economies and eliminates duplication of work to their common advantage. The amalgamation would increase long term value for all the stakeholders.

4. The Board of Directors of the Transferee Company as well as Board of Directors of the Petitioner Company/ the Transferor Company have considered and proposed the amalgamation of the entire business and undertaking of the Transferor Company with the Transferee Company in order to benefit the stakeholders of the said companies. The Transferor and Transferee Companies approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Summons for Directions.

6. The Learned Counsel appearing on behalf of the Petitioners states that the Petitioners have complied with all requirements as per directions of this Court and that the Petitioners have filed necessary Affidavits of compliance in the Court. Moreover, in Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and 2013 the Rules made thereunder which is applicable. The said undertaking is accepted.

7. The Regional Director has filed an Affidavit on 23rd July 2015 stating therein that save and except as stated in para 6. (a),(b) and (c), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 (a) to (c) of the affidavit, the Regional Director has stated as under:

   6(a) The Registered office of the Transferee Company is situated in the State of Karnataka. Hence, present Scheme of Amalgamation between the Transferor Company and Transferee Company will be subject to the condition of obtaining similar approval from Hon'ble High Court of Karnataka in respect of Transferee Company.

   (b) Clause 11(vi) of Scheme provides for adjustment of differences in Accounting Policies between Transferor Company & Transferee Company. In this regard, it is submitted that in addition to compliance of Accounting Standard 14, 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 etc.

   (c) It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authority. The approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after

giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.

8. So far as the observation made by the Regional Director in paragraph 6(a) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel states that the Transferee Company had filed necessary application before the Hon'ble High Court of Karnataka at Bengaluru seeking dispensation of filing of separate proceedings by the Transferee Company under the provisions of Section 391 to 394 of the Companies Act, 1956. The Petitioner Company through its Counsel further states that by an Order dated 12th June 2015 read with Order dated 24th July 2015 passed by the Hon'ble High Court of Karanataka at Bengaluru, the Transferee Company is dispensed with filing separate proceedings under the provisions of Section 391 to 394 of the Companies Act, 1956.

9. So far as the observation made by the Regional Director in paragraph 6(b) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that in addition to the compliance of Accounting Standard -14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme and to comply with other applicable Accounting Standard such as AS-5 etc.

10. So far as the observation made by the Regional Director in paragraph 6(c) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the Petitioner Company is bound to comply with all the 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.

11. The Learned Counsel for Regional Director on instructions of Mr. Chandanamuthu, Joint Director in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertakings given by the Learned Counsel for the Petitioner Companies. The undertakings given by the Petitioner Company are accepted.

12. The Official Liquidator has filed his report on 19th August 2015 stating that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved.

13. 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. None of the parties concerned have come forward to oppose the Scheme in the court.

14. Since all the requisite statutory compliance have been fulfilled, Company Scheme Petition No. 373 of 2015 is made absolute in terms of prayers (a) to (f).

15. The Petitioner Company to lodge a copy of this order and scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of issuance of the order by the Registry.

16. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with 21/E-Form – INC 28 in addition to physical copy as per the provisions of the Companies Act, 1956/2013.

17. The Petitioner Company to pay costs of Rs. 10,000/- to the Regional Director, Western Region, Mumbai, and costs of Rs. 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

18. Filing and issuance of the drawn up order is dispensed with.

19. All authorities concerned to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(S.C. Gupte J.)