

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 54/2016

Reserved on 18th May, 2016
Date of pronouncement: 27th July, 2016

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Application under Section 391 of the
Companies Act, 1956 read with Rule 9 of the
Companies (Court) Rules, 1959**

Scheme of Amalgamation of:

Parag Breweries Limited

Applicant/Transferor Company

WITH

Carlsberg India Private Limited

Applicant/Transferee Company

**Through Mr. Arun Kathpalia with
Mr. Anirudh Das, Mr. Manu and
Mr. Kamaljeet Singh, Advocates for the
applicants**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Section 391 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, preference shareholders, secured and unsecured creditors to consider and approve, with or without modification, the proposed Scheme of Amalgamation of Parag Breweries Limited (hereinafter

referred to as the transferor company) with Carlsberg India Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this Court.

3. The transferor company was originally incorporated under the Companies Act, 1956 on 24th August, 2005 with the Registrar of Companies, West Bengal. The company shifted its registered office from the State of West Bengal to Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 2nd December, 2015.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 3rd May, 2006 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of South Asia Breweries Private Limited. The company changed its name to Carlsberg India Private Limited and obtained the fresh certificate of incorporation on 23rd February, 2009.

5. The present authorized share capital of the transferor company is Rs.17,70,00,000/- divided into 1,77,00,000 equity shares of Rs.10/- each.

The issued, subscribed and paid-up share capital of the company is Rs.13,18,50,610/- divided into 1,31,85,061 equity shares of Rs.10/- each.

6. The present authorized share capital of the transferee company is Rs.1,61,88,00,000/- divided into 13,68,80,000 equity shares of Rs.10/- each aggregating to Rs.1,36,88,00,000/- and 2,50,00,000 preference shares of Rs.10/- each aggregating to Rs.25,00,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.82,12,39,240/- divided into 5,76,12,591 equity shares of Rs.10/- each aggregating to Rs.57,61,25,910/- and 2,45,11,333 preference shares of Rs.10/- each aggregating to Rs.24,51,13,330/-.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2015, of the transferor and transferee companies, along with the report of the auditors, have also been filed.

8. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavit. It is submitted by the applicants that the transferor company is a wholly owned subsidiary of the transferee company and the proposed amalgamation

will result in optimal utilization of resources due to pooling of management, administrative and technical skills of various resources, better administration, and cost reduction, including reduction in managerial, administrative and other common costs, thereby resulting in enhancing the cash flows and operational efficiencies.

9. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, no consideration shall be payable by the transferee company for the equity shares of the transferor company, since the transferor company is the wholly owned subsidiary of the transferee company.

10. It has been submitted by the applicants that no proceedings under Sections 235 to 250A of the Companies Act, 1956 or the applicable provisions of the Companies Act, 2013 are pending against the applicant companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 7th March, 2016 and 10th March, 2016 respectively have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The transferor company has 07 equity shareholders and 56 unsecured creditors. All the equity shareholders and 37 out of 56 unsecured creditors, being 65% in number and 91.7% in value, have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditors of the transferor company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation is dispensed with. There is no secured creditor of the transferor company, as on 29th February, 2016.

13. The transferee company has 02 equity shareholders, 01 preference shareholder and 02 secured creditors. Both the equity shareholders, the sole preference shareholder and both the secured creditors have given their consents/no objections in writing to the proposed Scheme of Amalgamation. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders, preference shareholders and secured creditors of the transferee company to consider and, if thought fit, approve, with or

without modification, the proposed Scheme of Amalgamation is dispensed with.

14. So far as the unsecured creditors of the transferee company are concerned, the transferee company has 815 unsecured creditors, whose consents have not been placed on record. It was pleaded by learned counsel for the applicants that since the transferor company is a wholly owned subsidiary of the transferee company; the applicant companies are not proposing any arrangement with their shareholders and creditors; and no new shares will be issued on amalgamation, therefore, the rights of the unsecured creditors of the transferee company will not be affected. Learned counsel further submitted that the unsecured creditors of the transferee company are cyclic in nature and the liability owed to them are cleared periodically and therefore, their debts are being met in the ordinary course of business. Hence, their consents/NOC are not required to be obtained for the proposed amalgamation. In support of his submission, learned counsel relies on the decision of this Court in **Bharti Infotel Private Limited**, 2015 SCC Online Del 13203.

15. Further, the learned counsel for the applicants has also sought to dispense with the requirement of filing of the second motion petition by the transferee company seeking sanction to the Scheme. In support of his submissions, learned counsel placed reliance on the judgments of

several High Courts, including this Court, in many cases such as **Sharat Hardware Industries Pvt. Ltd.** (1978), 48 Com. Cas 23 (Delhi); **Mahaamba Investments Ltd. V. IDI Limited** (2001) 105 Com Cas. 17 (Bombay) and **Bharti Airtel** (CA(M) 12/2014), wherein it has been held that since the transferor company is a wholly owned subsidiary of the transferee company, there is no requirement to file a separate or joint application on behalf of the transferee company for sanction of the Scheme.

16. I have carefully considered the aforesaid case law cited at the Bar. In view of the submissions made at the bar, the settled law on the subject, and considering the Scheme of Amalgamation, the requirement of convening and holding the meeting of the unsecured creditors of the transferee company, to consider and if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation, is dispensed with. Further, the requirement of the transferee company to file the second motion petition for sanction of the Scheme of Amalgamation is also dispensed with.

17. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

July 27, 2016