

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

C.A. (C.A.A.) 819/MB/2019

In the matter of the Companies Act, 2013;

And

In the matter of Application under Sections 230 - 232 and other applicable provisions of the Companies Act, 2013;

And

In the matter of Hindustan Unilever Limited [CIN: L15140MH1933PLC002030], a company, incorporated under the Indian Companies Act, 1913, having its registered office at Unilever House, B D Sawant Marg, Chakala, Andheri East, Mumbai 400099, Maharashtra;

And

In the matter of GlaxoSmithKline Consumer Healthcare Limited [CIN: L24231PB1958PLC002257], a company, incorporated under the Companies Act, 1956, having its registered office at Patiala Road, Nabha - 147 201, Punjab;

And

In the matter of Scheme of Amalgamation by way of Merger by Absorption among GlaxoSmithKline Consumer Healthcare Limited, Hindustan Unilever Limited and their respective shareholders and creditors.

Hindustan Unilever Limited CIN:
L15140MH1933PLC002030, a company,



incorporated under the Indian Companies Act, 1913, having its registered office at Unilever House, B D Sawant Marg, Chakala, Andheri East, Mumbai 400099, Maharashtra.

...Applicant Company/
Transferee Company

Order delivered on 02.05.2019

Coram:

Hon'ble Member (Judicial) Mr. V. P. Singh
Hon'ble Member (Technical) Mr. Ravikumar Duraisamy

For the Applicant Company: Mr Gaurav Joshi, Senior Advocate, Mr Ashish Kamat, Advocate, Mr Tapan Deshpande, Advocate and Ms Priya Patwa, Advocate

Per Ravikumar Duraisamy, Member

ORDER

1. Perused the Company Scheme Application, along with with the Affidavit dated 20th February 2019 of Mr. Dev Bajpai, Executive Director, Legal and Corporate Affairs and Company Secretary of the Applicant Company in support of the Company Scheme Application and heard Senior Advocate Mr Gaurav Joshi for the Applicant Company.
2. The Scheme of Amalgamation, provides *inter alia* for (i) the amalgamation of GlaxoSmithKline Consumer Healthcare Limited (the "**Transferor Company**") into the Applicant Company, by way of merger by absorption and dissolution of the Transferor



Company without winding up and the consequent issuance of the Applicant Company Shares (*as defined in the Scheme*) in accordance with the Share Exchange Ratio (*as defined in the Scheme*) to the Eligible Members (*as defined in the Scheme*), in respect of each Transferor Company Share (*as defined in the Scheme*) held by them in accordance with the Scheme; and (ii) various other matters incidental, consequential or otherwise integrally connected therewith, including the increase in the share capital of the Applicant Company, pursuant to Sections 230 - 232 and other relevant provisions of the Companies Act, 2013 in the manner provided for in the Scheme and in compliance with the provisions of the IT Act (*as defined in the Scheme*).

3. The background, rationale and benefits of the Scheme are as follows:

- (i) The Transferor Company is one of the key players in the Foods and Refreshment (F&R) category with iconic brands such as 'Horlicks' and 'Boost' and comprises of a wide product portfolio. Under the strategic review of the 'Horlicks' and other consumer healthcare nutrition products business in India. The Transferor Company has decided to undertake amalgamation of the business of the Transferor Company with the Applicant Company.
- (ii) The Amalgamation is in line with the Applicant Company's strategy to build a sustainable and profitable F&R business



in India. The Transferor Company and the Applicant Company expect significant synergies through supply chain opportunities and operational improvements, go-to-market and distribution network optimisation, scale efficiencies in cost areas such as marketing, and optimisation of overlapping infrastructure.

- (iii) The Amalgamation will result in consolidation of the businesses of the companies' resulting in expansion of the consolidated business and creation of greater value for shareholders and all other stakeholders;
- (iv) The Amalgamation would be in the best interest of the public shareholders of the Transferor Company, as they would continue to play a part in the Indian consumer growth through one of India's leading fast-moving consumer goods companies, i.e. the Applicant Company; and
- (v) Under the Amalgamation, the Applicant Company will be able to leverage on its wider distribution network, to cater to the nutritional needs of a larger customer base, thereby positively impacting public health in India. The efficiencies arising out of the Amalgamation would provide an opportunity for the malt-based and protein-based health food drinks category to penetrate rural areas of India, given the extent of the Applicant Company's reach and technology led capabilities.



4. The Applicant Company has no secured creditors as on 31st December 2018. The Applicant Company has 4,471 (Four Thousand Four Hundred and Seventy One) unsecured creditors having in the aggregate an outstanding amount of INR 3345,29,91,735 /- (Rupees Three Thousand Three Hundred and Forty-Five Crore Twenty Nine Lakhs Ninety One Thousand Seven Hundred and Thirty-Five Only), as on 31st December 2018. The Applicant Company has stated that most of the unsecured creditors of the Applicant Company are like sundry creditors in its day to day business. The present Scheme is in no manner prejudicial to the interests of the said unsecured creditors. The Applicant Company further submitted that under the Scheme of Amalgamation, neither any compromise is proposed with any of the unsecured creditors nor any liability of the said unsecured creditors of the Applicant Company is proposed to be reduced or extinguished. The Applicant Company submitted that the net worth of the Applicant Company as on 31st December 2018 is Rs. 6,110 Crores and the net worth of the Transferor Company as on 31st December 2018 is Rs. 3,814.42 Crores. The Applicant Company submitted that both the Applicant Company and the Transferor Company have a positive net worth, and the present Scheme being a scheme of merger by absorption, the resulting net-worth of the Applicant Company post the sanction of the Scheme, *Cetris Paribus*, i.e. all other conditions being unchanged or constant, will be much more than their aggregate outstanding amount payable to unsecured creditors.



5. The Applicant Company has therefore sought an order from this Tribunal directing the Applicant Company to hold a meeting of its equity shareholders and unsecured creditors to seek their approval to the Scheme. Given the preceding and view of the provisions of Section 230 of the Companies Act, 2013, the following directions are issued:
6. The meeting of the equity shareholders of the Applicant Company be convened and held at the Registered Office of the Applicant Company at Unilever House, B. D. Sawant Marg, Chakala, Andheri (East), Mumbai 400099 on Saturday, 29th June 2019 at 11:00 a.m., or any adjourned date(s) thereof, for the purpose of considering and, if thought fit, approving the Scheme.
7. That the meeting of the unsecured creditors of the Applicant Company be convened and held at the Registered Office of the Applicant Company at Unilever House, B. D. Sawant Marg, Chakala, Andheri (East), Mumbai 400099 on Saturday, 29th June 2019 at 12:00 noon, or so soon thereafter after the conclusion of the meeting of the equity shareholders of the Applicant Company as mentioned hereinabove or any adjourned date(s) thereof, for the purpose of considering and, if thought fit, approving the Scheme.
8. In view of provisions of Section 230(4) read with Section 108 of the Companies Act, 2013 read with Rule 20 and other applicable provisions of the Companies (Management and Administration) Rules, 2014 and in accordance with Regulation 44 of the



Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, the Applicant Company is required to provide the facility of remote e-voting in respect of all shareholder resolutions. In addition to the remote e-voting, the equity shareholders of the Applicant Company are allowed to avail the facility of e-voting at the venue, for the said meeting to be held on Saturday, 29th June, 2019. The e-voting facility for the equity shareholders of the Applicant Company shall be provided in compliance with the conditions specified under the Companies (Management and Administration) Rules, 2014 and Regulation 44 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Secretarial Standard on General Meetings issued by the Institute of Company Secretaries of India, as applicable.

9. At least 30 clear days before the said meeting of the equity shareholders of the Applicant Company, to be held as aforesaid, a notice convening the said meeting and also the instructions with regard to e-voting together with a copy of the Scheme, a copy of the statement disclosing all material facts as required under Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the prescribed Form of Proxy shall be sent by Registered Post or Courier or Speed Post or hand delivery or through e-mail (to those shareholders whose



email addresses are duly registered with the Applicant Company or its Registrar and Transfer Agent or the Depositories), addressed to each of the equity shareholders of the Applicant Company as on 19th April, 2019, at their last known address or email addresses as per the records available with the Applicant Company and/or depositories.

10. That at least 30 clear days before the said meeting of the unsecured creditors of the Applicant Company to be held as aforesaid, a notice convening the said meeting of the unsecured creditors together with a copy of the Scheme, a copy of the statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the prescribed Form of Proxy shall be sent by Registered Post or Speed Post or Courier or Air Mail or hand delivery or through e-mail (to those unsecured creditors whose email addresses are registered with the Applicant Company for receiving such notices), addressed to each of the unsecured creditors of the Applicant Company as on 31st December, 2018, at their last known address or email addresses as per the records available with the Applicant Company.
11. At least 30 clear days before the meetings of the equity shareholders and the unsecured creditors of the Applicant Company, to be held as aforesaid, a notice convening the respective meetings, indicating the date, time, and venue of the



respective meetings and also instructions with regard to remote e-voting, as applicable, as aforesaid be published on the website of both the Companies as well as in Pan-India edition of any one or a combination of the newspapers viz. The Times of India, Economics Times, The Indian Express, Business Standard and/or The Hindu in the English language and a Marathi translation thereof in Loksatta (Maharashtra edition), stating that copies of the Scheme and the statements required to be furnished pursuant to Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the Form of Proxy/ies shall be obtained free of charge at the registered office of the Applicant Company as aforesaid and/ or at the offices of its Advocates, Cyril Amarchand Mangaldas, Advocates & Solicitors, having their address at 5th Floor, Peninsula Chambers, Peninsula Corporate Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai 400 013.

12. The Applicant Company has undertaken to:

- a. Issue notice convening the respective meetings of the equity shareholders and the unsecured creditors, as per Rule 6(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 which *inter alia* provides for issuance of notice through the following modes viz. registered post or speed post or by courier or by email or by hand delivery or by any other mode as directed by this Honble Tribunal at the last known address of the



shareholder in the format of the notice that has been provided in Form No. CAA 2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 to the equity shareholders and the unsecured creditors of the Applicant Company.

- b. Issue statements containing all the particulars as per Section 230 of the Act, to its equity shareholders and the unsecured creditors.
- c. Issue Form of Proxy/is as per Form No. MGT- 11 (Rule 19) of the Companies (Management and Administration) Rules, 2014 to its equity shareholders and the unsecured creditors.
- d. Publish the Notice convening the said meetings as per Form No. CAA 2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, to its equity shareholders and the unsecured creditors.

The undertaking dated 20.02.2019 given by the Applicant Company is accepted.

13. Mr Vinay Kumar Garg, Sr Advocate (M. 9810138124) and in his absence, Mr Shashikant Bhojani, Advocate shall be the Chairperson of the aforesaid meetings of the equity shareholders and the unsecured creditors of the Applicant Company, to be held at Unilever House, B. D. Sawant Marg, Chakala, Andheri (East), Mumbai 400099 on Saturday, 29th June 2019 or on any



adjourned date(s) thereof. The fee of Rs 3,00,000/- excluding taxes shall be payable.

14. The Scrutinizer to conduct the voting process by remote e-voting, voting at the venue of the meetings, as applicable, shall be. S. N. Anantha Subramanian, Practising Company Secretary (FCS No.: 4206, C.P. No.: 1774). The fee of Rs 1,00,000/- excluding taxes shall be payable.
15. The Chairperson appointed by the Tribunal for the meetings of the equity shareholders and the unsecured creditors of the Applicant Company, to issue a notice of the respective meetings to the equity shareholders and the unsecured creditors and publication of the date of notices of the respective meetings in the newspapers. The said Chairperson should have all the powers as per the Articles of Association, also under the Companies Act, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the respective meeting, including for deciding procedural questions that may arise thereafter at any adjourned dates thereof or any other matter including an amendment to the Scheme or the resolution, if any proposed at the meeting by any person(s).
16. The quorum of the aforesaid meeting of the equity shareholders shall be 30 (thirty) equity shareholders present in person, as prescribed under Section 103(1)(a) (iii) of the Companies Act, 2013.



17. That the quorum of the aforesaid meeting of the unsecured creditors of the Applicant Company shall be 100 creditors and the rest of the conditions as prescribed under section 103 of Companies Act, 2013 shall be applicable *mutatis mutandis* upon the meeting of unsecured creditors.
18. The voting by proxy or by authorized representative in the case of a body corporate be permitted, provided that a proxy in the prescribed form/ authorisation, duly signed by the person entitled to attend and vote at the meetings, is filed with the Applicant Company at its registered office at Unilever House, B. D. Sawant Marg, Chakala, Andheri (East), Mumbai 400099, not later than 48 (forty-eight) hours before the aforesaid meetings.
19. The number and holding of the equity shares of the equity shareholders or value of the debt of the unsecured creditors as the case may be, shall be in accordance with the records or the registers of the Applicant Company and where the entries in the records or registers are disputed, the Chairperson of the meeting shall determine the number and holding value, as the case may be, for the respective meetings, and his decision in that behalf would be final.
20. The Chairperson of the meetings to file an affidavit not less than 7 (Seven) days before the date fixed for the holding of the meetings of the equity shareholders and unsecured creditors and report to this Tribunal that the directions regarding the issue of the notices and the advertisements have been duly complied



with. Since the list of equity shareholders and unsecured creditors of the Applicant Company, to whom the notice of the respective meetings will be issued, are voluminous, the Applicant Company is allowed to submit the said lists with the Registry in the form of a Compact Disc.

21. The Chairperson of the meetings to report to this Tribunal, the result of the respective meetings of the equity shareholders and unsecured creditors, within 10 (ten) days of the conclusion of the respective meetings and the said Report shall be verified by his/her Affidavits as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
22. The convening and holding the meeting of the secured creditors of the Applicant Company to consider and if thought fit, approving the Scheme is not required, given the averment made in, paragraph 20 of the Company Scheme Application, that there are no secured creditors of the Applicant Company.
23. The Applicant Company to serve the notices of the meetings of its equity shareholders and the unsecured creditors upon the Central Government through the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, Maharashtra, pursuant to Section 230 (5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Central Government through the Regional Director within 30 days of the date of receipt of the said notice, it



will be presumed that the Central Government through the Regional Director has no objection to the proposed Scheme.

24. The Applicant Company to serve the notices of the meeting of its equity shareholders and the unsecured creditors upon the Registrar of Companies, Maharashtra, Mumbai, under Section 230 (5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the said notice, it will be presumed that the Registrar of Companies has no objection to the proposed Scheme.

25. The Applicant Company having Permanent Account Number (PAN) "AAACH1004N" to serve the notices of the meetings of its equity shareholders and the unsecured creditors upon the concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessment is made, i.e. Asst. Commissioner of Income Tax -Circle 1 (1) (2), having an address at Aaykar Bhavan, M.K. Road, Mumbai 400020, under Section 230 (5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the concerned Income Tax Authority within 30 days of the date of receipt of the said notice, it will be presumed that the concerned Income Tax Authority has no objection to the



proposed Scheme, as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

26. The Applicant Company to serve the notices of the meetings of its equity shareholders and the unsecured creditors upon the BSE Limited, under Section 230 (5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the BSE Limited within 30 days of the date of receipt of the said notice, it will be presumed that the BSE Limited has no objection to the proposed Scheme.
27. The Applicant Company to serve the notices of the meetings of its equity and the unsecured creditors upon the National Stock Exchange of India Limited, under Section 230 (5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the National Stock Exchange of India Limited within 30 days of the date of receipt of the said notice, it will be presumed that the National Stock Exchange of India Limited has no objection to the proposed Scheme.
28. The Applicant Company to serve the notices of the meetings of its equity shareholders and the unsecured creditors upon the Securities and Exchange Board of India, under Section 230 (5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.



If no response is received by the Tribunal from the Securities and Exchange Board of India within 30 days of the date of receipt of the said notice, it will be presumed that the Securities and Exchange Board of India has no objection to the proposed Scheme.

29. The Applicant Company to serve the notices of the meetings of its equity shareholders and the unsecured creditors upon the Reserve Bank of India, under Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Reserve Bank of India within 30 days of the date of receipt of the said notice, it will be presumed that the Reserve Bank of India has no objection to the proposed Scheme.
30. The Applicant Company undertakes to file an Affidavit proving, service of notices of the meetings of its equity shareholders and the unsecured creditors upon (i) the Central Government of India (through the Regional Director, Western Region, Ministry of Corporate Affairs); (ii) Registrar of Companies, Mumbai, Maharashtra; (iii) concerned Income Tax Authority; (iv) BSE Limited; (v) National Stock Exchange of India Limited; (vi) Securities and Exchange Board of India; (vii) Reserve Bank of India and any other regulatory body, as may be required under any applicable law for time being in force, as mentioned above and publication of notice in the newspaper, not less than 7



THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSA No. 819 of 2019

(Seven) days before the date fixed for the holding of the meetings of the equity shareholders and unsecured creditors of the Applicant Company.

Sd/-

Ravikumar Duraisamy
Member (Technical)

2nd May, 2019



Sd/-

V. P. Singh
Member (Judicial)

Certified True Copy
Copy Issued "free of cost"
On 03-5-2019


Assistant Registrar
National Company Law Tribunal Mumbai Bench