



IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(Through web-based video conferencing platform)

C.P (CAA) No.18/BB/2023
U/s 230 and 232 of Companies Act, 2013
r/w Rule 15 (1) of the Companies(CAA)Rules,2016

In The Matter of:

TATA COFFEE LIMITED

Pollibetta, Kodagu
Karnataka - 571215

... Petitioner Company No.1/
Transferor Company/
Demerged Company

AND

TCPL BEVERAGES & FOODS LILIMITED

Kirloskar Business park,
Block C, 3rd and 4th Floor,
New Airport Road, Hebbal,
Bengaluru - 560024

... Petitioner Company No.2/
Resulting Company

Order delivered on: 31st October, 2023

CORAM: 1.Hon'ble Justice (Retd).T.Krishnavalli Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member(Technical)

Parties/Counsels Present:

For the Petitioner: Shri.Sharan.A.Kukreja
For the ROC : Shri Vaibhav
For the IT Dept. : Shri Ganesh.R.Ghale

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. This is a Second Motion Petition filed on 14.02.2023 by M/s. Tata Coffee Limited (for brevity, the "Petitioner Company No. 1/ Transferor Company") and M/s. TCPL Beverages & Foods Limited (for brevity, "Petitioner Company No. 2/Resulting Company") (Petitioner Company No. 1 and Petitioner Company No. 2 collectively referred to as "Petitioner



C.P (CAA) No.18/BB/2023
(Second motion)



Companies”) under Section 230-232 and other relevant provisions of the Companies Act, 2013 (for short to be referred hereinafter as the ‘**Act**’) and Rule 15 (1) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 for *inter alia* seeking sanction of the Scheme of Arrangement attached as Annexure-C so as to be binding on all the shareholders and creditors of the Petitioner Companies, and all other persons, w.e.f. the Appointed Date (as defined in the Scheme); by the order sanctioning the Scheme, to permit the Petitioner Company No.2 to change its name to “Tata Coffee Limited” as provided in the Scheme; and liberty be reserved to the Petitioner Companies to apply to this Hon’ble Tribunal for any direction(s) that may be necessary for the purpose of carrying out the Scheme etc. This is a composite scheme of Arrangement in which there is a demerger of the Plantation business of M/s. Tata Coffee Limited into TCPL Beverages Foods Limited followed by amalgamation of the remaining business of Tata Coffee Limited with Tata Consumer Products Limited (Non-Petitioner Company).

- The Petitioner Companies filed First Motion Application bearing C.A (CAA) No.57/BB/2022 before this Hon’ble Tribunal and based on such Application moved under Section 230-232 of the Act necessary directions were issued *vide* order dated 15.12.2022. Details of the First Motion Order are as under:

	Petitioner Company No. 1	Petitioner Company No. 2
Equity Shareholders	Meeting convened	Meeting Dispensed (Consent Obtained)
Preference Shareholders	(No Preference Shareholders)	Meeting Dispensed (Consent Obtained)
Secured Creditors	(No Secured Creditors)	(No Secured Creditors)
Unsecured Creditors	Meeting Dispensed (Consent Obtained)	Meeting Dispensed (Consent Obtained)

In compliance with the above directions, meeting of the Equity Shareholders of the Petitioner Company No.1 has been conducted by the Chairperson and Scrutinizer and they have also filed their





report in this regard which are placed as Annexure-'Y' of the petition. It is seen that the said Equity Shareholders have approved the proposed Scheme.

3. When the Petition was listed on 27.04.2023, the following directions were issued:-

"... 3. The Petition be listed for hearing on 09.06.2023. At least thirty days before the date fixed for final hearing, the Petitioner Companies shall publish the notice of final hearing of the Company Petition in two local newspapers viz., 'The Hindu' English Daily and translation thereof in 'Vijay Karnataka' Kannada Daily, both having circulation in Bangalore as per Rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

4. Notice be also served upon the Objector(s) or their representative as contemplated under sub-section (4) of Section 230 of the Companies Act, 2013 who may have made representation and who have desired to be heard in their representation along with a copy of the Petition and the Annexures filed therewith at least 30 days before the date fixed for hearing. It is to be specified in the notices that the objections, if any, to the Scheme may be filed within thirty days from the date of the receipt of the notice, failing which, it will be considered that there is no objection to the approval of the Scheme on the part of the Objector(s).

5. In addition to the above public notice, the Petitioner Companies shall serve the Notice of the Petition on the following Authorities, namely, (a) The Regional Director (South East Region), Hyderabad (b) The Registrar of Companies Karnataka, Bengaluru (c) Office of Official Liquidator, Bengaluru (d) Designated Nodal Officer – Principal Chief Commissioner of Income Tax, Bengaluru (e) Jurisdictional Income Tax Officer-Circle 7(1)(1), Koramangala, Bengaluru (e) Secretary, Competition Commission of India, New Delhi (f) Reserve Bank of India, Bangalore (g) Securities and Exchange Board of India (h) BSE Limited (i) National Stock Exchange Ltd., along with the copy of this Petition and the Annexures filed therewith by Speed Post immediately and to such other Sectoral Regulator(s) who may govern the working of the Petitioner Companies involved in the Scheme as per Rule 8 of the Companies (CAA) Rules, 2016, with a direction that they may submit their representation, if any, within thirty days from the date of receipt of such notice, failing which, it will be presumed that the said Authority has no representation to make to the Scheme. Meanwhile, the Petitioner Company No.2 is directed to file Audited Financials for the F.Y. ending 31.03.2022."

4. In pursuance of the aforesaid notice, the learned counsel for the Petitioner Companies have filed copies of proof of service of notices *vide* Diary Nos. 2558 & 2560 dated 18.05.2023, on the aforesaid authorities and also copies of paper publication of notice of hearing. Further, in the



C.P (CAA) No.18/BB/2023
(Second motion)



same affidavit the Petitioner Companies stated that the Petitioner company No.1 has not received any objections to the composite Scheme of Arrangement amongst the Petitioner Company No.1, the Petitioner Company No.2 and Tata Consumer Products Limited and their representatives as prescribed under Sub-Section (4) of Section 230 of the Act and therefore the need to serve notices on the objector(s) does not arise.

5. The main objects, dates of incorporation, authorized, issued and paid-up share capital, rationale of the scheme and interest of employees have been discussed in detail in the First Motion Order dated 15.12.2022.
6. The Board Resolution of the Petitioner Companies approving the Scheme is annexed as Annexures 'A' and 'B' respectively of the Petition.
7. It is further submitted that the Certificate of Statutory Auditors of the Petitioner Companies, state that the proposed accounting treatment in Clause 14 of the Scheme is in conformity with applicable Indian Accounting Standards notified under Section 133 of the Act read with the rules made thereunder and other generally accepted accounting principles. The aforesaid certificates are attached as Annexure -AI of the Petition.
8. The Petitioner Companies have submitted that in terms of Clause 5.1(c) of the Scheme, 'Appointed Date' is defined as "*the same date as the Effective Date or such other date as may be mutually agreed by the Companies*". The Petitioner Companies have submitted that in terms of Clause 5.1(m) of the Scheme, 'Effective Date' is defined as "*the date which will be the first date of the month following the month in which the month in which the Companies mutually acknowledge in writing that the last of the conditions and matters referred to in Clause 29.1 have occurred or have been fulfilled, obtained or waived, as applicable, in accordance with this Scheme.*"
9. The audited financial statement of the Petitioner Company No. 1 as on 31.03.2022 are attached as Annexure F and the financial results of the





Petitioner Company No. 1 for the financial quarter ended 31.12.2022 are attached as Annexure G of the Petition. Further, the latest unaudited financial results of the Petitioner Company No. 2 for the quarter ended 31.12.2022 is attached as Annexure P of the Petition. Further, pursuant to the order dated 27.04.2023, the Counsel for the Petitioner Company No. 2 has filed audited financial statements as on 31.03.2023 *vide* Diary No. 2559 dt. 18.05.2023 and the same is taken on record.

10. The Petitioner Companies have filed affidavits dated 25.03.2023 regarding the Scheme, stating that the Petitioner Companies have not opted for or undertaken any scheme of corporate debt restructuring. The Petitioner Companies further state that pursuant to the Scheme, the existing shareholding of TCPL in the Petitioner Company No. 1 shall stand cancelled and extinguished. It is further submitted that the consequent reduction of share capital of the Petitioner Company No. 1 is an integral part of the Scheme and as stated in the explanation to Section 230 of the Act, the process under Section 66 of the Act shall not apply to the aforesaid reduction effected in pursuance of the final order passed by this Hon'ble Tribunal.
11. In terms of Clause 24.3 of the Scheme, subject to the applicable law and the separate approval of the board of the Petitioner Company No. 2, as a part of the Scheme and upon effectiveness of the Amalgamation (as defined in the Scheme), the name of Petitioner Company No. 2, i.e., "TCPL Beverages & Foods Limited" shall stand changed to "Tata Coffee Limited" being the name of the Petitioner Company No. 1, and the memorandum of association and the articles of association of the Petitioner Company No. 2 shall, without any further act, instrument or deed, be and stand altered, modified and amended and the consent of the shareholders to the Scheme shall be deemed to be sufficient for the purposes of effecting the amendment and no further resolution(s) under Section 13 and Section 16 of the Act or any other applicable provisions of the Act would be required to be passed separately. The board of Petitioner Company No. 2 passed the resolution on January 27, 2023, approving the change of name from TCPL Beverages & Foods Limited to Tata Coffee Limited.





12. Pursuant to the notice, the Registrar of Companies (“**ROC**”) and Regional Director (“**RD**”) have filed its Common Report vide Dy. No.3837 dated 21.07.2023. Both RD and RoC have raised the following observations vide para II of their report:

1. Tata Consumer Products Limited (Non-Petitioner Company) is registered under the jurisdiction of Registrar of Companies, Kolkata whereas Tata Coffee Limited (Petitioner Company No. 1/Transferor Company) and TCPL Beverages & Foods Limited (Petitioner Company No. 2/Resulting Company) are registered under the jurisdiction of Registrar of Companies, Karnataka. Hence, the observations henceforth are restricted to Tata Coffee Limited and TCPL Beverages & Foods Limited.
2. This is a Composite Scheme of Arrangement consisting of two parts:
 - (a) As a first step, the demerger of the Demerging Undertaking of Tata Coffee Limited (comprising of plantation business) into TCPL Beverages & Foods Limited.
 - (b) As a second step, followed immediately by the amalgamation of Tata Coffee Limited (comprising the remaining business of Tata Coffee Limited) with Tata Consumer Products Limited (Non-Petitioner Company).
3. As per Schedule-1 of the proposed scheme has mentioned only the details of freehold and leasehold properties which form part of the demerged undertaking and Schedule-II is relating to leasehold properties which form part of the Remaining Business. Whereas Petitioner Company in its reply/proposed scheme has not stated what are the total units existing with the Demerged Company and what is/are the remaining units left after transferring the Plantation business to Resulting Company No.1), but only enclosed the details of freehold and leasehold properties which form part of demerged undertaking and remaining business as per Schedule 1 & II of the proposed scheme. Hon'ble Tribunal may be pleased to direct the Petitioner Company to furnish the said details with supporting documents, before the scheme is allowed.
4. As per sub clause (c) of Clause 5.1 of Part A of the Scheme, the appointed date means the same date as the Effective Date or such other date as may be mutually agreed by the companies. The rationale and





significance of the same is to be provided by the Petitioner Companies along with an explanation as to how this has been considered as an appointed date for this proposed scheme. Further, the companies need to file the certified copies of the NCLT orders with the respective jurisdictional Registrar of Companies for the scheme to be effective.

5. Tata Coffee Limited (Petitioner Company No. 1/Transferor Company) and Tata Consumer Products Limited (Non-Petitioner Company) are Listed Companies. The shares of Tata Coffee Limited are listed on NSE and BSE while the shares of Tata Consumer Products Limited are listed on NSE, BSE and CSE (Calcutta Stock Exchange) and its depository receipts are listed on London Stock Exchange and Luxembourg. Stock Exchange. NOCs from SEBI and respective stock exchanges are to be provided, before the scheme is allowed.
6. Demerged Company has NRI Shareholders/foreign Shareholders. Petitioner Demerged Company may be directed to comply with the provisions of FEMA/RBI, before the scheme is allowed.
7. As per latest Annual Return Of Tata Coffee Limited (Petitioner Company No. 1/Transferor Company) filed as on 31.03.2022, Tata Consumer Products Limited (Non-Petitioner Company) is holding 57.48% of shareholding of Tata Coffee Limited (Petitioner Company No. 1/Transferor Company). As per records, TCPL Beverages & Foods Limited (Petitioner Company No. 2/Resulting Company) is a newly incorporated company with 25.02.2022 as its date of incorporation and Tata Consumer Products Limited (Non-Petitioner Company) along with its nominee is holding the entire shareholding of the TCPL Beverages & Food Limited (Petitioner Company No. 2/Resulting Company).
8. As per Clause 13 of Part-B of the Scheme, in consideration of transfer of Demerging Undertaking of Tata Coffee Limited in TCPL Beverages & Foods Limited, Tata Consumer Products Limited (Non-Petitioner Company), being the holding company of Petitioner Company No. 2/Resulting Company shall issue and allot 1 fully paid-up equity share of Re. 1/- each for every 22 fully paid-up equity shares of Re. 1/- each held in Petitioner Company No. 1/Transferor Company. The consideration for the demerger is not directly paid by concerned Resulting Company i.e. TCPL Beverages & Foods Limited (Petitioner Company No. 2/Resulting Company) but is paid by Tata Consumer





Products Limited (Non-Petitioner Company), which holds 100% shares of the company. The permissibility and rationale of the same are to be provided. In this case, shares are being issued by Tata Consumer Products Limited in lieu of no assets being transferred to this company which may lead to dilution of the shareholding of the existing shareholders and would be at a distinct disadvantage to them. This is more relevant taking into consideration the fact that Tata Consumer Products Limited is a listed public company whereas the resulting company i.e. TCPL Beverages & Foods Limited is an unlisted company.

9. As per para 21 of Part-C of the proposed scheme has interalia stated that "Notwithstanding anything contained under the Act, pursuant to the provisions of Section 230-232 of the Act, the existing shareholding of the Transferee Company in the Transferor Company shall stand cancelled and extinguished without any further act, instrument or deed immediately following the issue of the equity shares in accordance with Clause 20 of the proposed scheme. The consequent reduction of share capital of the Transferor Company shall be an integral part of this scheme and the companies shall not be required to follow the process under section 66 of the Act or any other provisions of applicable law separately.
10. As per provisions of section 232(3)(h)(B) of Companies Act, 2013, if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made. The petitioner companies, with respect to demerger of the listed company into an unlisted entity, need to clarify if any shareholders have decided to opt out and in such a case, the provisions which have been made by the petitioner companies also need to be clarified.
11. As per MCA records, demerging/Transferor Company has one huge open charge. Hence, the Petitioner Companies have to obtain and furnish No Objection Certificate from the concerned charge holder to Hon'ble NCLT before the scheme is allowed. Further, it is to be clarified as to whether this charge has been created on the demerged assets or remaining business of Tata Coffee Limited which will be transferred to either TCPL Beverages & Foods Limited or Tata Consumer Products Limited.





12. As per Clause 20 of Part-C of the Scheme, in consideration of transfer of the remaining business of the Petitioner Company No. 1/Transferor Company in the Non-Petitioner Company, the Non-Petitioner company shall issue and allot 14 fully paid-up equity shares of Re. 1/- each for every 55 fully paid-up equity shares of Re. 1/- each held in Petitioner Company No. 1/Transferor Company.
13. As per Clause 24 of Part-C of the Scheme, upon effectiveness of the Amalgamation, the name of the TCPL Beverages & Foods Limited (Petitioner Company No. 2/Resulting Company) shall stand changed to "Tata Coffee Limited" i.e., the current name of Petitioner Company No. 1/Transferor Company. The Petitioner Companies needs to follow the applicable provisions of the Companies Act, 2013 to effect 'change of name and also file relevant e-forms.
14. As per the Independent Auditor's Report of Petitioner Company No. 1/Transferor Company for the financial year ending 31.03.2022, Company have disputed Income tax and Sales tax dues to the tune of Rs. 87.47 crores and Rs. 2.82 lakhs respectively. The Petitioner Companies may be directed to furnish an undertaking to Hon'ble NCLT to the effect that it will settle the dues as and when the claim is crystallized.
15. As per note no. 19 of the Financial Statement for the financial year ending 31.03.2022, Petitioner Company No. 1/Transferor Company have undisputed statutory dues to the tune of Rs. 3.75 crores. The Petitioner Companies may be directed to furnish an undertaking to Hon'ble NCLT to the effect that it will settle the statutory dues immediately, if not settled so far.
16. According to note no. 18 of the Financial Statements for the financial year ending 31.03.2022 of Petitioner Company No, 1/Transferor Company, outstanding dues to Micro and Small Enterprises to the tune of Rs. 69.51 lakhs exist. The Petitioner Companies may be asked to show as to how it has complied with Micro, Small and Medium Enterprises Development Act, 2006 and may be directed to furnish an undertaking to the effect that it will settle the dues as per the said Act immediately, if not settled so far.
17. Clause 25.1 of Part-D the Scheme provides for Clubbing of Authorized Capital wherein it is stated that the authorized share capital of the Non-Petitioner Company shall automatically stand increased without any





payment of stamp duty and fees. This term in the Scheme is not in line with the provisions of Section 232(3)(i) of the Companies Act, 2013. In this regard, the Non-Petitioner Company shall comply with the provisions of the section and pay the difference of fee, after setting off the fee already paid by the Petitioner Company No. 1/Transferor Company on its respective capital.

18. As per Section 240 of the Companies Act, 2013, the liability in respect of offences committed under the Companies Act by the Officers in default of the Petitioner Company No. 1/Transferor Company prior to merger, amalgamation, demerger or acquisition shall continue after such merger, amalgamation or acquisition.
 19. With reference to this Directorate's letters dated 16.05.2023 issued to Income Tax, RBI, SEBI, NSE, BSE & CCI till date no reports in the matter have been received from the said authorities. Hence, Hon'ble Tribunal may be pleased to obtain necessary comments/reply if any from the said authorities, before the scheme is allowed.
 20. Official Liquidator, Karnataka in his report dated 22.06.2023 has pointed out certain observations. Hon'ble Tribunal may specifically take into consideration the observations pointed out by the Official Liquidator and if required may obtain necessary explanation/clarification from the Petitioner Companies and to obtain report from Income Tax Department, before the Scheme is allowed.
- 13.** Subsequently, reply affidavit to the report of RD and ROC have been filed by the Petitioner Companies *vide* Diary Nos. 3946 and 3947 dated 27.07.2023, *inter alia* stating as under:
- i. **Reply to Point 1 of the ROC & RD Report:** The contents of the above mentioned observation are factually true and correct.
 - ii. **Reply to Point 2 of the ROC & RD Report:** The contents of the abovementioned observation are factually true and correct.
 - iii. **Reply to Point 3 of the ROC & RD Report:** The Petitioner Company No. 1 has two divisions i.e., Plantation Division and Instant Coffee Division. Out of these two divisions, the Plantation Division (forming a part of the Plantation Business (as defined in the Scheme)) shall be demerged and transferred to Petitioner Company No. 2. Further, the Instant Coffee Division which forms a part of the Remaining Business





(as defined in the Scheme), shall be transferred to TCPL i.e., Non-Petitioner Company. Therefore, as per the Scheme, the Petitioner Company No. 1 will stand dissolved as on the Effective Date (as defined in the Scheme) and both divisions of Petitioner Company No. 1 shall stand transferred to Petitioner Company No. 2 and TCPL.

- iv. **Reply to Point 4 of the ROC & RD Report:** As per Clause 5.1(m) of the Scheme, the 'Effective Date' is the first day of the month following the month in which the Petitioner Companies and TCPL mutually acknowledge in writing that the last of the conditions and matters referred to in Clause 29.1 of the Scheme have occurred or have been fulfilled, obtained or waived. Therefore, when all the conditions get completed in a month and the board of directors (including any committee thereof) of the Petitioner Companies and TCPL, in their respective meetings, pass a resolution acknowledging that the last of the conditions referred to in Clause 29.1 of the Scheme has been completed or waived, then the first day of the next month will be the Effective Date. Clause 29.1 of the Scheme specifies that *inter alia* the following conditions need to be fulfilled for the Scheme to be effective: receipt of no-objection from the Stock Exchanges, approval from the requisite majority of shareholders and creditors, sanction of the Scheme by the NCLTs and filing of the certified copy of the sanction orders with the RoC. The Effective Date is the same as the 'Appointed Date' unless otherwise agreed upon collectively by the Petitioner Companies and TCPL. The same is to ensure certainty of the date of effectiveness and for operational ease. Disclosures in this regard, will be made to the stock exchanges, as applicable under law. The Appointed Date being a future date and based on the occurrence / fulfilment of the conditions set out in the Scheme (as indicated above) is expressly permitted in law under the MCA General Circular No. 09 of 2019 dated August 21, 2019 ("**MCA Circular**"). The MCA circular, *inter alia*, provides that "*the provision of section 232(6) of the Companies Act, 2013 enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event such as fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant*





to the scheme.” Accordingly, the Effective Date, being a future date (dependent upon occurrence of certain events) is in compliance with the provisions of the Act and is expressly permitted under the MCA Circular. Further, in terms of Clause 29.1(f) of the Scheme, the effectiveness of the Scheme is conditional upon, *inter alia*, the certified copies of the sanction order(s) of the NCLT(s) approving this Scheme being filed with the relevant RoC having jurisdiction over the Petitioner Companies and TCPL. Accordingly, upon receipt of the certified copies of the sanction order of the NCLTs approving the Scheme, the Petitioner Companies and TCPL will file the same with the respective RoCs.

v. **Reply to Point 5 of the ROC & RD Report:** The BSE and NSE issued their no-objection/ observation letters to the Petitioner Company No. 1 on June 8, 2022 on June 7, 2022 respectively and the same have been produced with the Company Petition as Annexures AJ and AL at pages 698 (Vol IV of the Petition) and 705 (Vol IV of the Petition) respectively. The observation letter of the BSE also refers to the letter issued by SEBI where comments have been provided by SEBI and therefore, the Scheme has been considered by SEBI as well. Further, BSE, NSE and CSE issued their no-objection/ observation letters to TCPL on June 08, 2022, June 07, 2022 and June 09, 2022 respectively and copies of the same has been produced as ANNEXURES B, C and D respectively with the Reply Affidavit. It is further submitted that only global depository receipts of TCPL were listed on the London Stock Exchange and Luxembourg Stock Exchange. It is submitted that no consent/NOC is required to be obtained from the London Stock Exchange and the Luxembourg Stock Exchange for the purpose of the present Scheme since there is no transfer or impact on the global depository receipts of TCPL which is a transferee company that continues to exist. Further, as on date, there are no listed global depository receipts of TCPL.

vi. **Reply to Point 6 of the ROC & RD Report:** Pursuant to the Scheme being sanctioned by this Hon’ble Tribunal, TCPL is permitted to issue equity instruments to the existing shareholders of the Petitioner Company No. 1 resident outside India, under the automatic route in terms of Rule 19 of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019. Therefore, no approval is required for issuing shares to NRI/foreign shareholders under the Foreign





Exchange Management Act, 1999 and the relevant rules and regulations thereunder. Further states that all the requirements of FEMA and all rules and regulations made thereunder, shall be adhered to by the parties to the Scheme. Further, the RBI *vide* its email dated October 13, 2022 issued to TCPL, confirmed that it has no comments/objections to the Scheme. A copy of the aforesaid email dated October 13, 2022 issued by the Reserve Bank of India has been produced as ANNEXURE E with the Reply Affidavit.

- vii. **Reply to Point 7 of the ROC & RD Report:** The contents of the abovementioned observation are factually true.
- viii. **Reply to Point 8 of the ROC & RD Report:** The Petitioner Companies submit that pursuant to the Scheme, shareholders of the Petitioner Company No. 1 (other than TCPL) will be allotted shares of TCPL (which is another listed entity in India) and they will be shareholders of a larger branded consumer products business and at the same time, will continue to participate in the plantation business of the Petitioner Company No. 2. The statement that shares are being issued by TCPL *in lieu* of no assets being transferred to this company is incorrect since the Remaining Business (as defined in the Scheme) is being transferred to TCPL. Therefore, there arises no question of dilution of shareholding of existing shareholders or them being put to any disadvantage. The shares would be issued by TCPL basis the valuation report issued by registered valuers, namely, SSPA & CO, Independent Chartered Accountants &, Registered Valuer and PwC Business Consulting Services LLP, Registered Valuers and the fairness report issued by ICICI Securities Limited which was in turn approved by the audit committee and the board and subsequently the equity shareholders. The equity shareholders representing 99.998% of equity shares of the Petitioner Company No. 1 approved the Scheme. As required under the SEBI Scheme Circular dated June 20, 2023, ("SEBI Scheme Circular"), the Petitioner Company No. 1 received the requisite approval from the majority of the public shareholders as well. Further, the equity shareholders representing 99.99% of equity shares of TCPL (Transferee Company) also approved the Scheme and as required under the SEBI Scheme Circular, received the requisite approval from the majority of the public shareholders. Regarding the permissibility of the said





issuance of shares of TCPL under law, Section 2(41A) of the Income Tax Act, 1961 ("Income Tax Act") defines 'Resulting Company' as *"one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger"*. Therefore, the Income Tax Act permits the issuance of shares by TCPL (defined as 'Resulting Company' in the Scheme) to the shareholders of Petitioner Company No. 1 as the consideration for the demerger of the Plantation Business (as defined in the Scheme) into the Petitioner Company No. 2 (which is a wholly owned subsidiary of TCPL). Therefore, the said issuance is in accordance with the Income Tax Act.

- ix. **Reply to Point 9 of the ROC & RD Report:** The contents of the abovementioned observation are factually true and correct.
- x. **Reply to Point 10 of the ROC & RD Report:** It is submitted that based on the valuation report issued by registered valuers, namely, SSPA & CO, Independent Chartered Accountants &, Registered Valuer and PwC Business Consulting Services LLP, Registered Valuers and the fairness report issued by ICICI Securities Limited, which was in turn approved by the audit committee and the board, the equity shareholders representing 99.998% of equity shares of the Petitioner Company No. 1 approved the Scheme. Further, as required under the SEBI Scheme Circular, the Petitioner Company No. 1 received the requisite approval from the majority of the public shareholders. Further, Section 232(3)(h)(B) of the Act contemplates a scenario wherein shareholders of a listed transferor company decide to opt out of an unlisted transferee company. In terms of the Scheme, TCPL is the transferee company and as a consideration for the demerger of Plantation Business (as defined in the Scheme) into Petitioner Company No. 2 and merger of Remaining Business (as defined in the Scheme) into TCPL, the shareholders of Petitioner Company No. 1 are being allotted shares of TCPL, which is a widely listed company in India. Further, pursuant to the Scheme, no shares of the unlisted company,





TBFL (Petitioner Company No. 2) in this case, are being allotted to the shareholders of the Petitioner Company No. 1. Since TCPL, i.e., the transferee company, is not an unlisted company, the provision of Section 232(3)(h)(B) of the Act is not applicable to this proposed Scheme. Therefore, no provision for opt out to the shareholders of Petitioner Company No. 1 is required to be made.

- xi. **Reply to Point 11 of the ROC & RD Report:** The Petitioner Company No. 1 has an existing working capital fund-based facility from Union Bank of India to the extent of Rs. 30.70 Crores. However, till date, the Petitioner Company No. 1 has not availed / drawn down any funds under the said facility. Accordingly, there is no outstanding balance towards Union Bank as on March 31, 2023 and as on date. It is submitted that Union Bank of India has submitted its consent affidavit in respect to the Scheme. A copy of the said consent affidavit by Union Bank of India has been produced as Annexure F of the Reply Affidavit. It is further submitted that for availing the said facility from Union Bank of India, the Petitioner Company No. 1 created charge over the movable assets forming part of the Plantation Business and the Remaining Business. Accordingly, in terms of Clauses 9.3 and 17.3 of the Scheme, upon effectiveness of the Scheme, the said charge will be appropriately addressed with Union Bank of India who has already provided their consent to the Scheme.
- xii. **Reply to Point 12 of the ROC & RD Report:** The contents of the abovementioned observation are factually true and correct and the Petitioner Companies do not have any specific response to the same.
- xiii. **Reply to Point 13 of the ROC & RD Report:** The Petitioner Companies submit that as a part of the Scheme and pursuant to the effectiveness of the Scheme, the Petitioner Company No. 1 will stand dissolved without being wound-up and pursuant to the same, the name of Petitioner Company No. 2, i.e., "TCPL Beverages and Foods Ltd." will stand changed to "Tata Coffee Limited", in compliance with the applicable laws. In this regard, the board of directors of the Petitioner Company No. 2 passed a resolution dated January 27, 2023, granting consent for its name change to Tata Coffee Limited. A copy of the said board resolution has been produced with the Second Motion Petition bearing Company Petition (CAA) No. 18/BB/2022 as Annexure 'U' at





page 483 (Vol. III of the Petition). The Petitioner Companies also submit that all necessary steps and file e-forms to give effect to the name change, as per the Companies Act/ applicable law and relevant rules thereunder will be complied with and adhered to.

- xiv. **Reply to Point 14 of the ROC & RD Report:** The Petitioner No. 1 has disputed Income tax dues to the tune of Rs. 28.37 crores as on March 31, 2022 and not Rs. 87.47 crores. The sales tax dues to the tune of Rs. 2.82 lakhs has since been settled / closed. As per Clause 9.7.1 of the Scheme, upon the coming into effect of the Scheme, all proceedings (including tax proceedings), initiated by or against the Petitioner Company No. 1 in relation to the Demerged Undertaking (whether pending on the Effective Date (as defined in the Scheme) or which may arise or be instituted thereafter), shall be continued, prosecuted and enforced by or against the Petitioner Company No. 2. Further, as per Clause 17.7.1 of the Scheme, upon the coming into effect of the Scheme, all proceedings (including tax proceedings), initiated by or against the Petitioner Company No. 1 in relation to the Remaining Business (whether pending on the Effective Date (as defined in the Scheme) or which may arise or be instituted thereafter), shall be continued, prosecuted and enforced by or against TCPL. The Petitioner Companies further submit that as per Clauses 9.7.1 and 11 of the Scheme, upon effectiveness of the Scheme, all income tax related matters/claims of the Petitioner Company No. 1 in relation to the Plantation Business (as defined in the Scheme) shall be continued, prosecuted and enforced by or against the Petitioner Company No. 2, who shall be responsible for such claims. Further, as per Clauses 17.7.1 and 19 of the Scheme, upon effectiveness of the Scheme, all income tax related matters/claims of the Petitioner Company No. 1 in relation to the Remaining Business (as defined in the Scheme) shall be transferred to and continued by TCPL, who shall be responsible for such claims. In this regard, a separate undertaking on behalf of the Petitioner Companies has been produced as ANNEXURES G and H respectively with the Reply Affidavit.

- xv. **Reply to Point 15 of the ROC & RD Report:** These statutory dues will be settled from time to time, based on assessments (which are under process) being completed. It is further submitted that post the





effectiveness of the Scheme, the Petitioner Company No. 2 or TCPL, as the case may be, shall be responsible for the undisputed statutory dues, if any, payable to any statutory authority. A separate undertaking by the Petitioner Companies in this regard has been produced as ANNEXURES I and J respectively with the Reply Affidavit.

- xvi. **Reply to Point 16 of the ROC & RD Report:** It is submitted that the interest of the MSMEs has been safeguarded by settling the dues of INR 69.51 lakhs as on date. It is further submitted that the Petitioner Company No. 1 has and will continue to comply with the provisions of the Micro, Small and Medium Enterprises Development Act, 2006. A separate undertaking by the Petitioner Companies in this regard has been produced as ANNEXURES K and L with the Reply Affidavit.
- xvii. **Reply to Point 17 of the ROC & RD Report:** In terms of Clause 25.1 of Scheme, the authorised share capital of the Petitioner Company No. 1 aggregating to INR 25,00,00,000, will be transferred to and combined with the authorised share capital of TCPL. Upon the transfer, the authorized share capital of TCPL, INR 125,00,00,000 (as on March 31, 2022) will automatically stand increased to INR 150,00,00,000. As per Section 232(3)(i) of the Act, where the transferor company is dissolved, the fee, paid by the transferor company on its authorized capital is required to be set-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation. Therefore, the fee paid by the Petitioner Company No. 1 on its authorized share capital will be set off against the fees payable by TCPL on its authorized capital subsequent to the amalgamation. After setting off of the fees, no difference in fees exists, TCPL is not required to pay any stamp duty. Further, the filing fees and stamp duty already paid by the Petitioner Company No. 1 on its authorised share capital will be deemed to have been paid by TCPL on the combined authorised share capital. In accordance with the legal requirements, TCPL will not be required to pay any fees/stamp duty on the authorised share capital so increased.
- xviii. **Reply to Point 18 of the ROC & RD Report:** It is further submitted that in terms of Section 240 of the Act, upon effectiveness of the Scheme, the liability in respect of offences committed under the Act by the officers in default of the Petitioner Company No. 1 prior to the





effectiveness of the Scheme in relation to the Plantation Business (as defined in the Scheme) shall be transferred to the Petitioner Company No. 2, which shall be responsible for such liability. Further the liability in respect of offences committed under the Act by the officers in default of the Petitioner Company No. 1 prior to the effectiveness of the Scheme in relation to the Remaining Business (as defined in the Scheme) shall be transferred to TCPL, which shall be responsible for such liability.

xix. **Reply to Point 19 of the ROC & RD Report:** It is submitted that pursuant to the notices served on the statutory authorities by the Petitioner Companies as per Section 230(5) of the Act, the following NOC/responses and comments have already been received:

- (i) RBI *vide* its email dated October 13, 2022 issued to TCPL, confirmed that it has no comments/objections to the Scheme. The aforesaid email dated October 13, 2022 issued by the RBI is produced herewith as Annexure E.
- (ii) BSE and NSE issued their no-objection/ observation letters to the Petitioner Company No. 1 on June 8, 2022 on June 7, 2022 respectively. The NOC issued by BSE dated June 08, 2022 and the NOC issued by NSE dated June 08, 2022 have been produced with the captioned Company Petition as Annexures AJ and AL at pages 698 and 705 respectively. The observation letter of the BSE also refers to the letter issued by SEBI where comments have been provided by SEBI and therefore, the Scheme has been considered by SEBI as well.
- (iii) Competition Commission of India ("CCI") issued a letter dated May 12, 2023 in relation to the Scheme. The Petitioner Companies filed the affidavits in response to this notice on July 07, 2023. The said notice by CCI along with the affidavits by the Petitioner Companies and Petitioner Company No. 2 are already a part of the record (filed vide Diary Nos. 3614 and 3615 of 2023). Further, Income Tax Department, Office of the Deputy Commissioner of Income Tax Circle, 7(1)(1) ("Income Tax Department") *vide* its report dated June 08, 2023 has provided its no objection to the Scheme. The Petitioner Companies have filed the affidavits in response to the said report on July 10, 2023 and the same are a part of the record (Diary No. 3633/2023). Therefore, the Petitioner Companies have





received the report/observations from all the above mentioned statutory authorities and that necessary responses thereto, have been submitted to this Hon'ble Tribunal.

- xx. **Reply to Point 20 of the ROC & RD Report:** The Petitioner Companies submit that pursuant to the report/observations of Official Liquidator, Karnataka dated June 22, 2023 in relation to the Scheme, the Petitioner Company No. 1 filed the affidavit in response to the said report on July 10, 2023 (Diary No. 3634/2023). Further, pursuant to the report/observations of Income Tax Department dated June 08, 2023 in relation to the Scheme, the Petitioner Companies filed the affidavits in response to the said report on July 10, 2023 (Diary No. 3633/2023).

14. The Office of the Official Liquidator has filed its Report vide Dy. No.3305 dated 23.06.2023 and it has made the following observations:

- 1) Both *TR/demerged company and Resulting company* are registered in the state of Karnataka and *TE company* is registered in the state of West Bengal. Hence the report is restricted to *TR1 Company / Demerged Company*. As the *Resulting company* will be in existence as going concern and not proposed for merger with *TE company*. There is no requirement of Official Liquidator to submit report for resulting company.
- 2) It is a composite scheme of arrangement whereby *Tata Coffee Ltd's (TR company/ demerged company)* plantation business will be merged with *TCPL Beverages & Foods Ltd (Resulting company)* and then the remaining business of *TCL* will be amalgamated with *TE company*. The resulting and Transferee Company will be in existence and *TR company* will be dissolved.
- 3) The *TR company* and *TE company* are widely held listed companies with substantial public interest. The interest of shareholders, preference shareholders and both secured and unsecured creditors in particular *MSME* shall be taken care of and to be settled. Total 42.51% shares are held by General public, mutual funds/ FII etc.
- 4) Being listed companies, the *TR Company* and *TE Company* shall comply with all the requirements of SEBI, BSE, NSE and approval of CCI if the threshold limit is crossed beyond the prescribed limit after merger is to be obtained. The BSE and NSE had asked to comply with certain





- requirements by TR company vide its letter dated June 17, 2022 and July 22, 2022 respectively. The TR company shall comply with all the directions.
- 5) Since new shares are allotted to the shareholders of TR company/Demerged company by the (3.61%) TE company to foreign/NRI shareholders, necessary compliance of FEMA Is required to be complied with before the allotment is made.
 - 6) The Resulting Company does not have any charge and it is registered only on 25.2.2022. The company did not file Balance sheet as it is not due as such. TR company 1/Demerged company is registered on 19.11.1949 and has filed it B/s as at 31.3.2022. TR company has got one open charge with the charge holder Union Bank of India, for an amount of Rs, 30.70 cr against its book debts, Moveable property etc. The interest of secured creditor is required to be taken by the TE Company as the major chunk of plantation business is going to be merged with another entity which has been incorporated recently in the state of Karnataka. It is seen that both Union Bank of India and HDFC Bank (Unsecured creditors) have submitted their consent affidavit in respect of TR Company.
 - 7) The Hon'ble NCLT vide order dated 15.12.2022 had directed for the meeting of equity shareholders of the Transferor Company. The shareholders have approved the scheme on 3.2.2023. The Board has also approved the merger of TR company with TE company on 29.3.2022 and also for demerging the plantation business of Tata Coffee Ltd to Resulting company i.e. TCPL Beverages and Foods Ltd.
 - 8) As per the scheme "14 fully paid-up equity shares of Re. 1/- each of TE company shall be Issued and allotted for every 55 fully paid up equity shares of Re. 1/- each held on TR1 Company." "Further, 1 fully paid-up equity shares of Re. 1/- each of TE company shall be issued and allotted for every 22 fully paid-up equity shares of Re. 1/- each to the shareholders of TR1 company for demerging of plantation business to resulting company which is a wholly owned subsidiary of TE company. In this connection, it is not known as to why the TE company has to issue fresh shares to the shareholders of TR company when the plantation business of TR company is going to be merged with Resulting company. Since, the resulting is going to be in operation as a going concern, the Resulting company should issue shares to the shareholders of demerged company and not the TE company.





- 9) The transferee company holds 57.48% shares in transferor company, Likewise the TE company holding 100% shares in the Resulting company. Hence, all the companies are one or other way related to each other.
- 10) Total, 57.48% shares are held by TE Company in TR Company and hence no shares shall be issued directly or indirectly by TE Company in respect of the holding. Shares shall be extinguished to that extent by TE Company.
- 11) No specific appointed date has been given in the Scheme and stating that "the date as the effective date or such other date as may be mutually agreed by the companies". In this connection it is to state that this cannot be kept open for the companies involved but a clear appointed date should be prescribed. The Hon'ble Tribunal may kindly allow the scheme from 1.4.2023 or some other date as may be deemed fit. The Transferor Company has already filed its Balance sheet as at 31.03.2022 with the ROC.
- 12) As per the documents, the Board of directors of Individual companies have approved the valuation report submitted by PWC business consulting services LLP and SSPA and Co, CA a registered IBBI valuer.
- 13) As per the Financial statement as at 31.3.2023, the TR company has provided loans and guarantees of Rs. 2232 lakhs and Rs.27492 lakhs respectively to the related concerns. The compliance of Sec. 185 r/w 186 of CA 2013 needs to be explained.
- 14) There are few IT disputed matter pending against the TR company. The TE company has to take responsibility of settlement of claims when the matter is crystallised.
- 15) There will be an Income tax/GST outflow of TE company and Resulting company as entire chunk of plantation business will be merged with Resulting company (newly formed) and remaining business to the TE company.
- 16) No Employees/workmen of Transferor company to be retrenched/terminated in line of amalgamation of Transferor company with Transferee company except along with shifting of plantation business to resulting company. The Hon'ble Tribunal may kindly see that Resulting or TE will not retrench the employee of Transferor Company in the guise of surplus staff on account of merger. Need to give a separate undertaking by the Transferee Company in this regard.





- 17) *It is noticed that a criminal complaint has been filed against TR company before the Additional Chief Judicial Magistrate Court, Ernakulam by the National Commodity & Derivative Exchange Ltd in relation to supply of pepper, alleged to be sub-standard in CC No. 2057/209. In the event of merger, the TE company has to take care of the case for a logical conclusion.*
 - 18) *That for the scrutiny of the Books of Accounts and records of Transferor Company, the Official Liquidator has engaged Shri Ravi & Srihari, Chartered Accountants from the panel approved by the Hon'ble High Court of Karnataka having office at No.14, 'Audit House', 4th Cross, Central Excise Layout, Vijayanagar, Bengaluru - 560040. As the resulting Company is in existence even after the scheme is allowed and not dissolving it was not referred to the chartered Accountant to examining the books of Accounts to submit the report.*
 - 19) *The Chartered Accountant has submitted report on Transferor Companies with the Official Liquidator on 12.05.2023.*
- 15.** Subsequently, reply affidavit to the Official Liquidator has been filed by the Petitioner Companies *vide* Diary No. 3634 of 2023 dated July 10, *inter alia* stating as under:
- i. **Reply to Point 1 & 2 of the OL Report:** The contents of the abovementioned observation are factually true.
 - ii. **Reply to Point 3 of the OL Report:** It is submitted that the shareholders of the Petitioner Company No. 1 (other than TCPL) will be allotted shares of TCPL, another listed entity in India, and therefore, they will be shareholders of a larger branded consumer products business and at the same time, will continue to participate in the plantation business of the Petitioner Company No. 2. Based on the valuation report issued by registered valuers, namely, SSPA & CO, Independent Chartered Accountants &, Registered Valuer and PwC Business Consulting Services LLP, Registered Valuers and the fairness report issued by ICICI Securities Limited which was in turn approved by the audit committee and the board, the equity shareholders representing 99.998% of equity shares of the Petitioner Company No. 1 approved the Scheme. As required under the SEBI Scheme Circular dated November 23, 2021 ("SEBI Scheme Circular"),





the Petitioner Company No. 1 received the requisite approval from the majority of the public shareholders. As on March 31, 2022, the Petitioner Company No. 1 had no secured creditors and the unsecured creditors constituting 90.88% in value gave their consent to the Scheme by way of consent affidavits and this includes any creditors who are MSMEs. The interest of the shareholders and creditors of the Petitioner Company No. 1 will be safeguarded by TCPL.

- iii. **Reply to Point 4 of the OL Report:** It is submitted that Petitioner Company No. 1 shall duly comply with all the requirements of SEBI, BSE and NSE as set out in the no-objection/ observation letters issued by BSE on June 8, 2022 ("BSE Observation Letter") and by NSE on June 7, 2022 ("NSE Observation Letter"). Further, in response to the requirements mandated in the BSE Observation Letter, the Petitioner No. 1 has filed compliance reports on June 17, 2022, January 04, 2023 and June 7, 2023. In response to the requirements mandated in the NSE Observation Letter, the Petitioner No. 1 has filed compliance reports dated June 17, 2022, July 22, 2022 and January 4, 2023. The BSE Observation Letter and the NSE Observation Letter have been produced with the captioned Company Petition as Annexures AJ and AL respectively. Copies of the compliance letters issued by the Petitioner No. 1 dated June 17, 2022, January 04, 2023, June 7, 2023, June 17, 2022, July 22, 2023 and January 4, 2023 have been produced as ANNEXURE A, B, C, D, E and F respectively with the Reply Affidavit. Therefore, the Petitioner No. 1 has complied with all the directions issued by BSE and NSE and shall comply with any subsequent requirements as well. With respect to whether approval from Competition Commission of India ("CCI") is required for the Scheme, it is submitted that the companies involved in the Scheme are exempted from the requirement of obtaining approval of CCI as per the Competition Commission of India (Procedure in regard to the transaction of business relating to Combinations) Regulations, 2011. The Petitioner Company No. 1 has filed a separate affidavit before this Hon'ble Tribunal in this regard in response to the report dated May 12, 2023 issued by the CCI.





- iv. **Reply to Point 5 of the OL Report:** It is submitted that pursuant to the Scheme being sanctioned by this Hon'ble Tribunal, TCPL is permitted to issue equity instruments to the existing shareholders of the Petitioner Company No. 1 resident outside India, under the automatic route in terms of Rule 19 of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019. Further, the Reserve Bank of India *vide* its email dated October 13, 2022 issued to TCPL, confirmed that it has no comments/objections to the Scheme. The email dated October 13, 2022 issued by the Reserve Bank of India has been produced as ANNEXURE G with the Reply Affidavit.
- v. **Reply to Point 6 of the OL Report:** It is submitted that the observations pertaining to the Petitioner Company No. 2 as captured in report are true. The Petitioner Company No. 1 has an existing working capital fund-based facility from Union Bank of India to the extent of Rs. 30.70 Crores. However, till date, the Petitioner Company No. 1 has not availed / drawn down any funds under the said facility. Accordingly, there is no outstanding balance towards Union Bank as on March 31, 2023, March 31, 2022 and as on date. It is submitted that Union Bank of India and HDFC Bank have submitted their consent affidavits in respect to the Scheme in Company Application (CAA) 57/BB/2022.
- vi. **Reply to Point 7 of the OL Report:** The contents of the abovementioned observations are factually true.
- vii. **Reply to Point 8 of the OL Report:** It is submitted that pursuant to the Scheme, shareholders of the Petitioner Company No. 1 (other than TCPL) will be allotted shares of TCPL (which is another listed entity in India) and they will be shareholders of a larger branded consumer products business and at the same time, will continue to participate in the plantation business of the Petitioner Company No. 2. Section 2(41A) of the Income Tax Act, 196 defines 'Resulting Company' as "one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established,





constituted or formed as a result of demerger". Therefore, the Income Tax Act permits the issuance of shares by TCPL (defined as 'resulting company' in the Scheme) to the shareholders of Petitioner Company No. 1 as the consideration for the demerger of the Plantation Business (as defined in the Scheme) into the Petitioner Company No. 2 (which is a wholly owned subsidiary of TCPL). Therefore, the said issuance is in accordance with the Income Tax Act.

- viii. **Reply to Point 9 of the OL Report:** It is submitted that the contents are factually true. Given that all the companies involved in the Scheme are related to each other in some manner, the Petitioner Company No. 1 obtained the approval from its public shareholders for the Scheme in compliance with paragraph 10(b) of the SEBI Scheme Circular.
- ix. **Reply to Point 10 of the OL Report:** It is submitted that the contents of the observations are factually true. In terms of Clause 21.1 of the Scheme, the existing shareholding of TCPL in the Petitioner Company No. 1 will stand cancelled and extinguished without any further act, instrument or deed immediately following the issuance of the equity shares by TCPL.
- x. **Reply to Point 11 of the OL Report:** It is submitted that as per the Scheme, the 'Appointed Date' is the same date as the Effective Date or such other date as may be mutually agreed by the Companies. Further, 'Effective Date' is the first day of the month following the month in which the Petitioner Companies and TCPL mutually acknowledge in writing that the last of the conditions and matters referred to in Clause 29.1 of the Scheme have occurred or have been fulfilled, obtained or waived. The 'Appointed Date' is a future date and is based on the occurrence of the events set out in Clause 29.1 of the Scheme. This is permitted under the MCA General Circular No. 09/2019 dated August 21, 2019. The MCA circular, *inter alia*, provides that *"the provision of section 232(6) of the Companies Act, 2013 enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event such as fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are*





relevant to the scheme.” Accordingly, the Appointed Date being a future date dependent upon occurrence of certain events is in compliance with the provisions of the Act and is expressly permitted under the MCA Circular.

- xi. **Reply to Point 12 of the OL Report:** The contents of the observations are factually true.
- xii. **Reply to Point 13 of the OL Report:** It is submitted that the Petitioner Company No. 1 has provided corporate guarantees to the lending banks on behalf its overseas wholly-owned subsidiary, Tata Coffee Vietnam Company Limited , which stood at Rs. 27,492 Lakhs as on March 31, 2023. In terms of Section 185 and 186 of the Act, extension of guarantees by the holding company in respect of any loan given to its WOS is exempted from the applicability of the aforesaid sections. As regards the observation in relation to a loan of Rs. 2,232 Lakhs made to related parties, the Petitioner Company No. 1 submits that it has not extended any loans to related parties, except loan amounting to Rs. 2,202 Lakhs which has been provided to one related party as an advance in relation to supply of goods, and the same does not fall within the scope of the provisions of Section 185 and 186 of the Act.
- xiii. **Reply to Point 14 of the OL Report:** It is submitted that that as per Clauses 9.7.1 and 11 of the Scheme, upon effectiveness of the Scheme, all income tax related matters/claims of the Petitioner Company No. 1 in relation to the Plantation Business (as defined in the Scheme) shall be transferred to and continued by the Petitioner Company No. 2, who shall be responsible for such claims. Further, as per Clauses 17.7.1 and 19 of the Scheme, upon effectiveness of the Scheme, all income tax related matters/claims of the Petitioner Company No. 1 in relation to the Remaining Business (as defined in the Scheme) shall be transferred to and continued by TCPL, who shall be responsible for such claims.
- xiv. **Reply to Point 15 of the OL Report:** It is submitted that the Scheme will not result in income tax outflow for the companies involved in the Scheme as the said outflow is not taxable as per Sections 47(vi)(b) and 47(vi) of the Income-tax Act, 1961. Further, in terms of Notification No. 12/2017- Central Tax (Rate), dated June 28, 2017, the Scheme





will not result in GST outflow for the companies involved in the Scheme.

- xv. **Reply to Point 16 of the OL Report:** It is submitted that in terms of Clause 9.6.1 and Clause 17.6.1 of the Scheme, upon effectiveness of the Scheme, the employees of the Petitioner Company No. 1 will be transferred to and become employees of Petitioner Company No. 2 or TCPL, as the case may be, in accordance with the applicable law, without any break or interruption in their service and with the benefit of continuity of service. The terms and conditions of their employment with Petitioner Company No. 2 or TCPL, as the case may be, will not be less favourable than those applicable to them with reference to their employment in the Petitioner Company No. 1 immediately prior to the Effective Date (as defined under the Scheme) and in compliance with applicable law and no retrenchment is proposed. Upon effectiveness of the Scheme, the employees of the Petitioner Company No. 1 will be transferred in accordance with the applicable law and accordingly, will become employees of the Petitioner Company No. 2 or TCPL, as the case may be. A separate undertaking in this regard has been produced as ANNEXURE I with the Reply Affidavit.
- xvi. **Reply to Point 17 of the OL Report:** It is submitted that the dispute referred to in the observation is in relation to the Plantation Business (as defined in the Scheme). Upon the effectiveness of the Scheme, any suit, appeal, legal, taxation or other proceeding of whatever nature, (including before any statutory or quasi-judicial authority or tribunal) in relation to the Plantation Business initiated by or against the Petitioner Company No. 1 shall be continued, prosecuted and enforced by or against the Petitioner Company No.2. Therefore, upon effectiveness of the Scheme, the criminal complaint (CC No. 2057/209) pending before the Additional Chief Judicial Magistrate Court, Ernakulam shall be defended by the Petitioner Company No. 2/ in order to ensure a logical conclusion of the matter.

16. The Income Tax Department has filed its report vide Dy. No. 3942 dated 27.07.2023 with the following observations:



C.P (CAA) No.18/BB/2023
(Second motion)





i. Outstanding Dues:

Assessment Year	Outstanding demand as per the Report (in Rs.)
2018-19	23,74,31,956
2021-22	4,54,61,560

ii. Proceedings pending:

Sl. No.	Assessment Year	Proceedings pending	Authority before which the proceedings are pending
1.	2009-10	First Appellate Proceedings	CIT(A)
2.	2010-11	ITAT OGE/Remand back	AO/TPO
3.	2011-12	ITAT OGE/Remand back	AO/TPO
4.	2012-13	First Appellate Proceedings	CIT(A)
5.	2013-14	First Appellate Proceedings	CIT(A)
6.	2014-15	First Appellate Proceedings	CIT(A)
7.	2015-16	First Appellate Proceedings	CIT(A)
8.	2016-17	First Appellate Proceedings	CIT(A)
9.	2017-18	First Appellate Proceedings	CIT(A)
10.	2018-19	First Appellate Proceedings	CIT(A)

iii. Objection for merger or demerger: NA

iv. Unlawful tax planning or tax avoidance: None

v. Details of Return of Income ('ITR') filed: As per the e-filing portal, latest ITR has been filed up to AY 2022-23 declaring gross total income of Rs.1,14,85,13,041/-. All tax assessment proceedings and appeals of whatsoever nature, by or against the Transferor Company, pending or arising as at the effective date shall be continued and/ or enforced against the Resulting Company. The department reserves its right to determine the tax implications of the Transferor Company contemplated under the scheme in accordance with the provisions of the IT Act, 1961 and the provisions under the Act shall prevail over anything contrary provided under the scheme.





17. Subsequently, reply affidavit to the Income Tax Department report has been filed by the Petitioner Companies *vide* Diary No. 3633 of 2023 dated July 10, 2023, *inter alia* stating as under:

- i. **Reply to Point 1 of the IT Report:** The observation regarding the outstanding income tax dues of the Petitioner Company No. 1 for the Ay 2018-19 and AY 2021-22 is true and with respect to the tax demand for the AY 2018-19, it is submitted that the tax demand has been subsequently reduced to Rs.7,69,14,709 based on the rectification order passed by the Deputy Commissioner of Income Tax, Circle 7(1)(1), Bangalore on May 31, 2023. Copy of the aforesaid order dated May 31, 2023 has been attached as ANNEXURE A. With respect to the tax demand for the AY 2021-22, it is submitted that the Petitioner Company No. 1's application for rectification of mistakes under Section 154 of the Income Tax Act, 1961 is pending before the assessing officer for disposal. Upon giving effect to the aforesaid rectification application filed, it is submitted that the demand will get nullified.
- ii. **Reply to Point 2 of the IT Report:** It is submitted that, as per Clause 9.7.1 of the Scheme, upon the coming into effect of the Scheme, all proceedings (including tax proceedings), initiated by or against the Petitioner Company No. 1 in relation to the Demerged Undertaking (whether pending on the Effective Date (as defined in the Scheme) or which may arise or be instituted thereafter), shall be continued, prosecuted and enforced by or against the Petitioner Company No. 2. Further stated that as per Clause 17.7.1 of the Scheme, upon the coming into effect of the Scheme, all proceedings (including tax proceedings), initiated by or against the Petitioner Company No. 1 in relation to the Remaining Business (whether pending on the Effective Date (as defined in the Scheme) or which may arise or be instituted thereafter), shall be continued, prosecuted and enforced by or against TCPL. Therefore, the pending proceedings shall be continued, prosecuted and enforced by the Petitioner Company No. 2 or TCPL (as the case may be) in the aforesaid manner in accordance with the Scheme.





- iii. **Reply to Point 3 and Point 4 of the IT Report:** It is noted that the IT Department does not have any objection to the Scheme.
- iv. **Reply to Point 5 of the IT Report:** The observation regarding the declaration of gross total income up to AY 2022-23 in the Income Tax Return of Petitioner Company No. 1 is true. It is submitted that as per Clause 9.7.1 of the Scheme, upon the coming into effect of the Scheme, all tax assessment proceedings and appeals of whatsoever nature, initiated by or against the Petitioner Company No. 1 in relation to the Demerged Undertaking (whether pending on the Effective Date (as defined in the Scheme) or which may arise or be instituted thereafter), shall be continued, prosecuted, and enforced by or against the Petitioner Company No. 2. It is further submitted that as per Clause 17.7.1 of the Scheme, upon the coming into effect of the Scheme, all tax assessment proceedings and appeals of whatsoever nature, initiated by or against the Petitioner Company No. 1 in relation to the Remaining Business (whether pending on the Effective Date (as defined in the Scheme) or which may arise or be instituted thereafter), shall be continued, prosecuted, and enforced by or against TCPL.

18. The Competition Commission of India ("CCI") filed its letter dated May 12, 2023 *vide* Diary No. 2529 dt. 16.05.2023 stating that that said matters have not been filed with the Commissioner under the Provisions of the act. It is requested that before passing appropriate order, the NCLT may seek an undertaking from the Companies involved that approval of the Commission is not required for the said matter(s).

19. The Petitioner Companies filed their affidavits in response on July 07, 2023 bearing Diary Nos. 3614 of 2023 and 3615 of 2023, wherein it was submitted that Item 9 of Schedule I of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("Combination Regulations") provides for an exemption for *inter alia*, merger or amalgamation of enterprises, where one of the enterprise has more than fifty percent (50%) shares or voting rights in the other enterprise, provided the transaction does not result in transfer from joint control to sole control. It was submitted that TCPL holds 57.48% of the paid-up share capital in the Petitioner





Company No. 1 and the transaction does not result in transfer from joint control to sole control. It was further submitted that Item 8 of Schedule-I of the Combination Regulations exempt an acquisition of shares or voting rights or assets, by one person or enterprise, of another person or enterprise within the same group except in cases where the acquired enterprise is jointly controlled by enterprises that are not part of the same group. It was submitted that the Petitioner Company No. 1 is a subsidiary of TCPL and that the Petitioner Company No. 2 is a wholly owned subsidiary of TCPL and that all three entities belong to the same group. It was further submitted that the Plantation Business (as defined in the Scheme) of the Petitioner Company No. 1 is not jointly controlled by entities belonging to different groups. Therefore, it was submitted that the entities involved in the Scheme can avail of the exemption under Item 8 and Item 9 of Schedule I of the Combination Regulations and therefore, the approval of the CCI was not required for the Scheme.

20. The Petitioner Company No. 1 has produced a copy of the no-objection/observation letter dated 08.06.2022 received from BSE Limited and a copy of the no objection/observation letter dated 07.06.2022 received from National Stock Exchange of India Limited as Annexures AJ and AL respectively in the Petition. The Petitioner Company No. 1 has provided its reply to the aforesaid no objection/observation letters of BSE Limited and National Stock Exchange of India Limited and the same are produced as Annexures AK and AM respectively in the Petition.
21. The reports of the ROC, RD, OL, CCI and IT are taken on record. Similarly, the replies filed by the Petitioner Companies to the above-mentioned reports are also taken on record.
22. On 13.09.2023, the Ld. Counsel appearing for the ROC had stated that there are no further observations with regard to the reply filed by the Petitioner Companies
23. In view of the above discussion, we conclude that the objections/observations to the Scheme received from RD, ROC, IT and OL have been adequately replied by the Petitioner Companies and hence there is no impediment in approval of the Scheme.





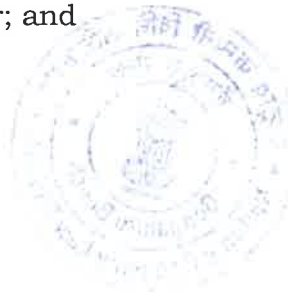
24. The Scheme in question as annexed at **Annexure-‘C’ is approved** and further declares that the Scheme is to be binding on all the shareholders and creditors of the Petitioner Companies. While approving the Scheme, it is clarified that this order should not be construed as an order in anyway granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.
25. Upon effectiveness of the Scheme, the name of the Petitioner Company No. 2, i.e., “TCPL Beverages & Foods Limited” shall be changed to “Tata Coffee Limited”. The Petitioner Counsel shall comply with all necessary steps to give effect the name change as per the Companies Act and relevant rules thereunder.

AND THIS TRIBUNAL DOES FURTHER ORDER:

- (i) That the Petitioner Companies do, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration. The concerned Registrar of Companies shall place all documents relating to the Petitioner Company No.1 registered with him on the file relating to the said Petitioner Company No.2 and the files relating to Petitioner Companies shall be consolidated accordingly, as the case may be; and
- (ii) That the Petitioner Companies shall deposit an amount of **Rs.75,000/-** (Rupees Seventy Five Thousand only) with the Pay & Accounts Officer, Chennai in respect of the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad and **Rs.25,000/-** (Rupees Twenty Five Thousand only) in favour of The Prime Minister’s National Relief Fund, within a period of four weeks from the date of receipt of certified copy of this Order; and



C.P.(CAA) No.18/BB/2023
(Second Motion)





- (iii) The Petitioner Companies are directed to make compliance to the provisions of Section 170A of the Income Tax Act, 1961 within the stipulated period of time.
 - (iv) That any person interested shall be at liberty to apply this Tribunal in the above matter for any directions that may be necessary.
 - (v) The approval /sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act, 2013 and that the authorities under both the Acts, are at liberty to take appropriate action, in accordance with law, if so advised.
- 26.** The Petitioner Companies are directed to comply with all the undertakings given by them in their reply filed to the ROC/RD, OL & IT report.
- 27.** As per the directions, Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioner Companies on filing of the Schedule Property i.e., (i) freehold property of the Petitioner Company and (ii) leasehold property of the Petitioner Company by way of affidavit of the Petitioner Company respectively.
- 28.** Accordingly, **C.P (CAA) No.18/BB/2023** is disposed of. Copy of this Order be communicated to the Counsel for Petitioner Companies.

Sd/-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)



Sd/-
(KRISHNAVALLI)
MEMBER (JUDICIAL)

**CERTIFIED TO BE TRUE COPY
 OF THE ORIGINAL**

**DEPUTY/ASST. REGISTRAR
 NATIONAL COMPANY LAW TRIBUNAL
 Bengaluru Bench**

