

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

C.A(CAA)/1069/MB-II/2020

In the matter of

the Companies Act, 2013;

And

*In the matter of Companies Act, 2013 (18
of 2013) and Section 230-232 of the*

Companies Act, 2013 and other
applicable provisions of the
Companies Act, 2013 read with the
Companies (Compromises,
Arrangements and Amalgamations)

Rules, 2016;

And

In the matter of

Composite Scheme of Arrangement
and Amalgamation between Avalon
Cosmetics Private Limited ('the
Demerged Company' or 'the First
Applicant Company') and ATC
Beverages Private Limited ('the
Transferor Company' or 'the Second
Applicant Company') and Hindustan
Foods Limited ('the Resulting
Company' or 'the Transferee
Company' or 'the Third Applicant
Company') and their respective
Shareholders.

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AVALON COSMETICS PRIVATE LIMITED

(CIN: U24246MH2003PTC140203)

... Demerged Company

First Applicant Company

ATC BEVERAGES PRIVATE LIMITED

(CIN: U01554MH2004PTC339661)

.... Transferor Company /

Second Applicant Company

HINDUSTAN FOODS LIMITED

(CIN: L15139MH1984PLC316003)

.... Resulting Company /

Transferee Company/ Third

Applicant Company

(Hereinafter collectively referred to as "Applicant Companies")

Order delivered on :- 26.04.2021

Coram:

Shri H.P. Chaturvedi : Member (Judicial)

Shri Ravikumar Duraisamy : Member (Technical)

Appearances (via videoconferencing)

For the Applicant(s):

**Mr. Ahmed Chunawala i/b Rajesh
Shah & Co., Advocates**

Per: H.P. Chaturvedi, Member (Judicial)

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ORDER

1. This court is convened by video conference.
2. The Counsel for the Applicant Companies submits that the present Scheme is Composite Scheme of Arrangement and Amalgamation between Avalon Cosmetics Private Limited ('the Demerged Company' or 'the First Applicant Company') and ATC Beverages Private Limited ('the Transferor Company' or 'the Second Applicant Company') and Hindustan Foods Limited ('the Resulting Company' or 'the Transferee Company' or 'the Third Applicant Company') and their respective Shareholders under the provisions of Sections 230 to 232 of the Companies Act, 2013.
3. The Counsel for the Applicant Companies submits that the Composite Scheme of Arrangement involves (a) Demerger of Contract Manufacturing (Coimbatore) Business of Avalon Cosmetics Private Limited (the 'Demerged Company' or 'the First Applicant Company') into Hindustan Foods Limited ('the Resulting Company' or 'the Transferee Company' or 'the Third Applicant Company'). (b) Merger of ATC Beverages Private Limited ('the Transferor Company' or 'the Second Applicant Company') with Hindustan Foods Limited ('the Resulting Company' or 'the Transferee Company' or 'the Third Applicant Company').
4. The Counsel for the Applicant Companies further submits that the Scheme has been approved by the respective board of directors of the

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Applicant Companies vide board resolutions dated 16th March 2020 and the Appointed Date of the Scheme is fixed as 1st April 2020.

5. The Counsel for the Applicant Companies further submits that the First Applicant Company is engaged in the manufacturing of cosmetic, Malt beverages, Home care and personal care products as a contract manufacturer for reputed FMCG marketing companies. The Second Applicant Company is engaged in the business of manufacture of beverages like soft drinks, juices, energy drinks and is also carrying on the business of contract manufacturing of carbonated beverages and fruit juices. The Third Applicant Company is engaged in the FMCG segment of manufacture of high quality cereal based food products and a range of instant mixes, baby foods, instant porridges, breakfast cereals and health drinks and also further manufactures Pest repellents, disinfectants, Home care, Fabric care, Personal care, leather products and accessories.
6. The Counsel for the Applicant Companies further submits that the Composite Scheme of Arrangement and amalgamation would result in the following benefits:

In case of demerger:

- Concentrated management focus on the businesses in a more professional manner and to create a more competitive business both in scale and operations. The Resulting Company would develop combined long-term corporate strategies and financial policies, thus enabling better management and accelerated growth of the business.

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- Operational rationalization, organizational efficiency and optimal utilization of various resources due to pooling of management, administrative and technical skills of various resources of both the companies, better administration, and cost reduction, including reduction in managerial, administrative and other common costs;
- Providing better flexibility in accessing capital, focused strategy and specialization for sustained growth;
- Creation of value for shareholders and various stakeholders;

In case of merger:

- Enhancement of net worth of the combined business to capitalize on future growth potential since both entities are engaged in similar areas of business;
- Achieve optimal utilization of resources, better administration and cost reduction;
- Expansion and diversification of business, foraying into new product line and broadening the customer base;
- Creating synergies in operational process and enhancing competitive strength and
- Creating value for various stakeholders and shareholder.

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7. That in the First Applicant Company there are 4 Equity shareholders and they have given respective consent affidavits which are annexed as Exhibits as “B1” to “B4” to the further affidavit in support of aforesaid Company Application filed on 22nd October 2020. In view of the fact that all the equity shareholders of the First Applicant Company have given their consent to the Scheme by way of affidavits, the meeting of the equity shareholders of the First Applicant Company is hereby dispensed with.
8. That there are no Preference Shareholders in the First Applicant Company mentioned in Para 28 of the Application and hence the question of holding and convening the meeting of Preference shareholders does not arise.
9. That in the Third Applicant Company there is 1 preference Shareholder and has given its consent affidavit which is annexed as Exhibits as “B1” to the further affidavit in support of aforesaid Company Application filed on 22nd October 2020. In view of the fact that the preference shareholder of the Third Applicant Company has given its consent to the Scheme by way of affidavit, the meeting of the preference shareholder of the Third Applicant Company is hereby dispensed with.
10. This Bench issues directions with regard to the meetings of the equity shareholders and preference shareholders of the Second Applicant Company as follows:-

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- (a) That the meeting of the Equity Shareholders of the Second Applicant Company be Convened and held on 30.06.2021 at 4:00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Composite Scheme of Arrangement and Amalgamation between Avalon Cosmetics Private Limited ('the Demerged Company' or 'the First Applicant Company') and ATC Beverages Private Limited ('the Transferor Company' or 'the Second Applicant Company') and Hindustan Foods Limited ('the Resulting Company' or 'the Transferee Company' or 'the Third Applicant Company') and their respective Shareholders, through video conferencing or other audio visual means mode, as per applicable operating procedures mentioned in Circular No.14/2020 dated 8 April 2020 read with Circular No.17/2020 dated 13 April 2020, Circular No.22/2020 dated 15 June 2020 and Circular No.33/2020 dated 28 September 2020 issued by the Ministry of Corporate Affairs (MCA Circulars), with necessary modifications as stated herein or as may be required, and not in physical presence of shareholders, as the same in the current COVID-19 environment related social distancing norms shall not be possible.
- (b) That the meeting of the 9% Convertible Preference Shareholders of the Second Applicant Company be convened and held on 30.06.2021 at 2:00 p.m., for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Composite Scheme of Arrangement and Amalgamation between Avalon Cosmetics Private Limited ('the Demerged Company' or 'the First Applicant Company') and ATC Beverages

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Private Limited ('the Transferor Company' or 'the Second Applicant Company') and Hindustan Foods Limited ('the Resulting Company' or 'the Transferee Company' or 'the Third Applicant Company') and their respective Shareholders, through video conferencing or other audio visual means mode, as per applicable operating procedures mentioned in Circular No.14/2020 dated 8 April 2020 read with Circular No.17/2020 dated 13 April 2020, Circular No.22/2020 dated 15 June 2020 and Circular No.33/2020 dated 28 September 2020 issued by the Ministry of Corporate Affairs (*MCA Circulars*), with necessary modifications as stated herein or as may be required, and not in physical presence of shareholders, as the same in the current COVID-19 environment related social distancing norms shall not be possible.

- (c) That the meeting of the 11.5% Convertible Preference Shareholders of the Second Applicant Company be convened and held on 30.06.2021 at 3:00 p.m., for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Composite Scheme of Arrangement and Amalgamation between Avalon Cosmetics Private Limited ('the Demerged Company' or 'the First Applicant Company') and ATC Beverages Private Limited ('the Transferor Company' or 'the Second Applicant Company') and Hindustan Foods Limited ('the Resulting Company' or 'the Transferee Company' or 'the Third Applicant Company') and their respective Shareholders, through video conferencing or other audio visual means mode, as per applicable operating procedures mentioned in Circular

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No.14/2020 dated 8 April 2020 read with Circular No.17/2020 dated 13 April 2020, Circular No.22/2020 dated 15 June 2020 and Circular No.33/2020 dated 28 September 2020 issued by the Ministry of Corporate Affairs (*MCA Circulars*), with necessary modifications as stated herein or as may be required, and not in physical presence of shareholders, as the same in the current COVID-19 environment related social distancing norms shall not be possible.

11. This Bench issues directions with regard to the meetings of the equity shareholders of the Third Applicant Company as follows:-

(a) That the meeting of the Equity Shareholders of the Third Applicant Company be convened and held on 30.06.2021 at 11:30 a.m., for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Composite Scheme of Arrangement and Amalgamation between Avalon Cosmetics Private Limited ('the Demerged Company' or 'the First Applicant Company') and ATC Beverages Private Limited ('the Transferor Company' or 'the Second Applicant Company') and Hindustan Foods Limited ('the Resulting Company' or 'the Transferee Company' or 'the Third Applicant Company') and their respective Shareholders, through video conferencing or other audio visual means mode, as per applicable operating procedures mentioned in Circular No.14/2020 dated 8 April 2020 read with Circular No.17/2020 dated 13 April 2020, Circular No.22/2020 dated 15 June 2020 and Circular No.33/2020 dated 28 September 2020 issued by the Ministry of Corporate Affairs (*MCA Circulars*), with

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necessary modifications as stated herein or as may be required, and not in physical presence of shareholders, as the same in the current COVID-19 environment related social distancing norms shall not be possible.

12. This Bench further issues directions with regard to notices as follows:-

- (a) That at least 30 (thirty) days before the said Meeting of the Equity Shareholders of the Second and Third Applicant Companies and the said meeting of Preference Shareholders in case of Second Applicant Company to be held as aforesaid, a Notice convening the said Meeting at the day, date and time as aforesaid, together with a copy of the Scheme, a copy of Explanatory 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) Rule, 2016 notified on 14th December, 2016 shall be sent by email to those Shareholders whose email addresses are duly registered with the respective Applicant Companies, addressed to each of the shareholders, at their last known email addresses as per the records of the respective companies.
- (b) That at least 30 (thirty) days before the said Meeting of the Shareholders of the Second and Third Applicant Companies to be held as aforesaid, a Notice convening the said Meeting at the day, date and time as aforesaid be published once each in '*Business Standard*' in English and '*Navshakti*' in Marathi, both

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having wide circulation in the State of Maharashtra, preferably both newspaper having electronic edition and stating that copies of the Scheme and the said statement required to be furnished pursuant to section 230 (3) of the Companies Act, 2013 can be obtained free of charge by emailing the respective Applicant Companies at legal@thevanitycase.com in case of Second Applicant Company, investorrelations@thevanitycase.com in case of Third Applicant Company.

- (c) The Third Applicant Company being a listed public limited company, is governed by the SEBI circular no. CFD/DIL3/CIR/2017/21 dated March 10, 2017 and is required to provide the facility of e-voting to its shareholders. Accordingly, voting by the Equity Shareholders of the Third Applicant Company to the Scheme shall be carried out through e-voting, indicating the day, the date, and the time as aforesaid.
- (d) The Second Applicant will provide the facility of e-voting to its shareholders. Accordingly, voting by the Equity Shareholders and Preference Shareholders of the Second Applicant Company to the Scheme shall be carried out through e-voting, indicating the day, the date, and the time as aforesaid.
- (e) To avail the VC/ OAVM facility of Service Providers (NSDL/ CSDL/Link Intime India Private Limited) for conducting meeting. This Bench hereby directs the Second and Third Applicant Company to cover the following points:

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- i. Meeting through VC/ OAVM facility should allow webex facility to shareholders.
 - ii. Participants should be allowed to post questions concurrently or give time to submit questions in advance (at least 10 days before meeting) on the e-mail address of the company.
 - iii. The large shareholders (holding 2% or more), promoters, institutional investors, directors KMPs, Chairpersons of Audit Committee, NRC, SC, auditors should be allowed to attend the meeting without restrictions.
- (f) This bench hereby directs the Second and Third Applicant Companies to advertise in two Local Newspaper viz., Business Standard in English and Navshakti in Marathi preferably both having circulation in electronic mode.
- i. The Advertisement should be published prior to dispatch of Notice.
 - ii. The Statement should contain that the meeting will be convened through VC/ OAVM in compliance with applicable provisions of the Act and MCA Circulars.
 - iii. The Statement should mention the date and time of the meeting through VC or OAVM.
 - iv. The Notice and Explanatory of the Meeting should be made available on the website, if any or at the Registered Office of the Applicant Companies.
 - v. The Applicant Companies should also mention that members holding shares through physical form or who have

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not registered their email address with the company can cast their votes through remote e-voting or through the e-voting system during the meeting.

- vi. The Applicant Companies should also mention that those members who have not registered their email address with the company can get the same registered with the company.
 - vii. The Applicant Company should also mention any other details which may be necessary to ease the participation for the Shareholders.
- (g) The Bench hereby directs the Applicant Companies to share the Participants links to the Chairman appointed by the NCLT and Company Secretary. The Bench hereby further directs the Applicant Company to share the link to speaker shareholders for attending the meeting.
- (h) The Bench hereby directs that Company should on the date of the Meeting do the following manner:
- i. The facility for joining the meeting shall be kept open atleast 15 minutes before the time scheduled to start the meeting and shall not be closed till the expiry of 15 minutes after the scheduled time.
 - ii. The meeting should start at the scheduled time.

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iii. The members who are present at the meeting and have not casted their vote through remote e-voting shall be allowed to cast their votes through e-voting at the meeting.

13. This Bench hereby appoints Chairpersons for the meetings aforesaid, as follows:-

- (a) That Mr. Sahil Jaswant Sarvaiya, Director of the Second Applicant Company, and failing him, Ms. Amruta Anurag Adukia, Director of the Second Applicant Company, shall be the Chairman of the aforesaid meeting of the Equity Shareholders, 9% Convertible Preference Shareholders and 11.5% Convertible Preference Shareholders of the Second Applicant Company to be held on 5th February, 2021 or any adjournment or adjournments thereof.
- (b) That Mr. Sameer R Kothari, Managing Director of the Third Applicant Company, and failing him, Mr. Ganesh Agrekar, Executive Director of the Third Applicant Company, shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Third Applicant Company to be held on 5th February, 2021 or any adjournment or adjournments thereof.
- (c) That the respective Chairperson appointed for the aforesaid meetings of the Shareholders of the Second and Third Applicant Companies to issue the notices of the meeting referred to above. The said Chairperson shall have all powers pursuant to sections 230 and 232 of the Companies Act, 2013 read with other

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applicable provisions of the Companies Act, 2013, the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Companies (Management and Administration) Rules, 2014 and MCA Circulars, to the extent necessary and applicable, in relation to the conduct of the meeting including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including, an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

- (d) That the quorum of the aforesaid Meeting of the Equity Shareholders of the Second and Third Applicant Company shall be as prescribed under Section 103 of the Companies Act, 2013.
- (e) That the quorum of the aforesaid Meeting of the classes of Preference Shareholders of the Second Applicant Company shall be 1(One).
- (f) That the value and number of the shares of each Shareholder shall be in accordance with the books / registers of the respective Second or Third Applicant Companies or depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the meeting shall determine the value for the purpose of the aforesaid meeting and his/her decision in that behalf would be final.
- (g) That the respective Chairperson shall file a compliance report not less than 7 (Seven) days before the date fixed for the holding of

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the meeting of the Shareholders of the Second and Third Applicant Companies and report to this Tribunal that the directions regarding the issue of notices and advertisements have been duly complied with as per Rule 12 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

- (h) That the respective Chairperson shall report to this Tribunal, the result of the aforesaid meetings within seven days of the conclusion of the said meetings of the Shareholders of the respective Second and Third Applicant Companies, and the said report shall be verified by his undertaking.
- (i) That Mr. Prashant Sharma, Practicing Company Secretary (CP No.: 7902 / Membership No. 21775), proprietor of M/s Prashant Sharma & Associates, is hereby appointed as Scrutinizer of the meeting of the Equity Shareholders of the Second and Third Applicant Company.
- (j) That Mr. Prashant Sharma, Practicing Company Secretary (CP No.: 7902 / Membership No. 21775), proprietor of M/s Prashant Sharma & Associates, is hereby appointed as Scrutinizer of the meeting of the Preference Shareholders of the Second Applicant Company.
- (k) The consolidated fee of the professional appointed as Scrutinizer for the meetings of the shareholders of the Second and Third

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Applicant Company shall be Rs. 25,000/- (Rupees Twenty-Five Thousand only) excluding applicable taxes.

14. That there are no Secured Creditors in the Second Applicant Company as stated in Para 32 of the Company Application and accordingly the question of sending notices to Secured Creditors does not arise.
15. That the present Scheme is an arrangement between the Applicant Companies and their respective shareholders as contemplated under section 230(1)(b) of the Companies Act, 2013 as there is no compromise or arrangement with or diminution of liability of any of the creditors. Therefore, while no meeting of the creditors are necessary, this Tribunal hereby directs that notice be given to all the Secured Creditors in case of First and Third Applicant Companies and notice be given to all the Unsecured Creditors of the First, Second and the Third Applicant Companies, enclosing a copy of the Scheme, with instructions that they may submit their representations, if any, to the Tribunal within a period of 30 (thirty) days from the date of receipt of such notice, and copy of such representations shall simultaneously be served upon the respective Applicant Companies. In view of the Covid-19 pandemic, notice to creditors be given by email to all the creditors at their respective registered e-mail address as per the records of the Applicant Companies. It shall be the responsibility of the Applicant Companies to ensure that every creditor is put on notice regarding the Scheme, so that they may take an informed decision thereon.
16. The Applicant Companies to serve notice of the present Application along with its enclosures on – (i) Central Government through the

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office of Regional Director (Western Region) Ministry of Corporate Affairs, Mumbai; (ii) Registrar of Companies, Maharashtra, Mumbai; (iii) Income Tax Authority within whose jurisdiction the First Applicant Company having PAN AAECA3300L address at Circle 9(1)(2), Mumbai, Aayakar Bhavan, Maharishi Karve Road, Mumbai and the Second Applicant Company having PAN AAECA7901R address at Circle 1(1)(1), Bangalore, Range Code 113, BMTC Building, Koramangala and Third Applicant Company having PAN AAACH4581J address at Circle 1(1)(1), Panaji, Range Code 511, Aayakar Bhavan, Goa ; (iv) BSE Limited; and (v) Securities Exchange Board of India (SEBI), pursuant to section 230(5) of the Companies Act, 2013 and rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 (thirty) days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

17. Additionally, the Second Applicant Company is also directed to serve notice along with a copy of the Scheme upon the Official Liquidator, High Court, Bombay, pursuant to section 230(5) of the Companies 2013 and as per rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal hereby appoints ZADN & ASSOCIATES, having its office at 1st Floor, Sadhana Rayon House, Dr. D.N. Road, Fort, Mumbai – 400001, to assist the Official Liquidator to scrutinize the books of accounts of the Second Applicant Company for the last five years and submit their report to the Tribunal. The Second Applicant company shall pay fees of Rs. 1,00,000/-

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(Rupees One Lakh only) to the Chartered Accountant for this purpose. If no response is received by the Tribunal from the Official Liquidator, High Court, Bombay, within a period of thirty days from the date of the receipt of such notice it will be presumed that the Official Liquidator has no objection to the proposed Scheme.

18. The Applicant Companies shall file an affidavit of service proving dispatch of notices to the Shareholders and Creditors wherever applicable of the respective Applicant Companies and service of notice to the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.
19. Pronounced today in open Court. File to be consigned to records.

Sd/-

**RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)**

Sd/-

**H.P. CHATURVEDI
MEMBER (JUDICIAL)**