

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**CP (CAA) NO. 14/ALD/2023
(2nd Motion)**

(Under Sections 230 & 232 of the Companies Act, 2013, the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions of the Companies Act, 2013).

IN THE MATTER OF SCHEME OF ARRANGEMENT OF:

1. HSSS Investment Holding Pvt. Ltd.

A private limited company incorporated under the Companies Act, 1956 and having its registered office at Plot No. – 1A, Sector 16A, Noida, Gautam Buddha Nagar – 201301, Uttar Pradesh, India, with PAN-AADCH1285J and the CIN-U67100UP2013PTC054927.

**..... Petitioner Company No.1/
Amalgamating Company No. 1**

2. KBHB Investment Holding Pvt. Ltd.

A private limited company incorporated under the Companies Act, 1956 and having its registered office at Plot No. – 1A, Sector 16A, Noida, Gautam Buddha Nagar – 201301, Uttar Pradesh, India, with PAN-AAFCK0761N and the CIN-U67100UP2013PTC054992

**..... Petitioner Company No. 2/
Amalgamating Company No. 2**

3. SSBPB Investment Holding Pvt. Ltd.

A private limited company incorporated under the Companies Act, 1956 and having its registered office at Plot No. – 1A, Sector 16A, Noida, Gautam Buddha Nagar – 201301, Uttar Pradesh, India, with PAN-AAFCK0762R and the CIN-U70102UP2013PTC054995

**..... Petitioner Company No. 3/
Amalgamating Company No. 3**

AND

4. Jubilant Industries Ltd.

A public company incorporated under the Companies Act, 1956 and having its registered office at Bhartiagram, Gajraula, District – Amroha, Uttar Pradesh-244223, India, with PAN-AABCH9323D and the CIN-L24100UP2007PLC032909

..... Petitioner Company No. 4/ JIL

AND

5. Jubilant Agri and Consumer Products Ltd.

A public company incorporated under the Companies Act, 1956 and having its registered office at Bhartiagram, Gajraula, District – Amroha, Uttar Pradesh - 244223, India, with PAN-AADCC4657M and the CIN-U52100UP2008PLC035862

**..... Petitioner Company No. 5/
Amalgamated Company**

AND

Their respective Shareholders and Creditors

Order Pronounced On: 07th August, 2024

Coram:

Mr. Praveen Gupta : Member (Judicial)
Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Rahul Agarwal : *For the petitioner*
Sh. Rajneesh Kumar Singh, AOL : *For the OL*
Sh. Gaurav Mahajan, Sr. SC. : *For the IT Deptt.*
Sh. Krishna Dev Vyas, Adv. : *For the RoC*

ORDER

1. The present Joint Company Petition is filed by the Petitioner Companies above named under Sections 230 & 232 read with Section 66 of the Companies Act, 2013, the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions, if any, for sanction of the Composite Scheme of Arrangement of HSSS Investment Holding Pvt. Ltd. (“Petitioner Company No. 1” or “Amalgamating Company No. 1”), KBHB Investment Holding Pvt. Ltd. (“Petitioner Company No. 2” or “Amalgamating Company No. 2”), SSBPB Investment Holding Pvt. Ltd. (“Petitioner Company No. 3” or “Amalgamating Company No. 3”), and Jubilant Industries Ltd. (“Petitioner Company No. 4” or “JIL”), and Jubilant Agri and Consumer Products Ltd. (“Petitioner Company No. 5” or “Amalgamated Company”) and their respective Shareholders and Creditors (“Scheme” or “Scheme of Arrangement”).
2. The Petition has now come up for final hearing. The Ld. Counsel for the Petitioner Companies submits as follows:
 - (i) The proposed ‘Scheme of Arrangement’ has previously been approved by the Board of Directors of Petitioner Companies in their respective Board Meetings held on

12th August, 2022 and modified through their Circular Resolution on 13th March, 2023 for approving insertion of Stock Exchange observations.

- (ii) The factual position of the Authorized, Issued, Subscribed and Paid-up Share Capital of the Petitioner Companies as on 30th June, 2023 is described in the present Company Petition.
- (iii) The rationale of the proposed Scheme of Arrangement is elaborately described in the present Company Petition which may be summarized as under:

2.1 Preamble

HSSS Investment Holding Pvt. Ltd. is engaged in making, holding and nurturing investments, inter-alia, in agri-products and performance polymer segments.

KBHB Investment Holding Pvt. Ltd. is engaged in making, holding and nurturing investments, inter-alia, in agri-products and performance polymer segments.

SSBPB Investment Holding Pvt. Ltd. is engaged in making, holding and nurturing investments, inter-alia, in agri-products and performance polymer segments.

Jubilant Industries Ltd. (JIL) is a holding company of Petitioner Company No. 5 and had been engaged in the business of manufacturing Indian made foreign liquor.

Jubilant Agri and Consumer Products Ltd. is wholly owned subsidiary of Jubilant Industries Ltd. and is engaged in the business of manufacturing of agri-products comprising single superphosphate, a wide range of crop nutrition, crop growth, performance

polymers and chemicals; Consumer products like Adhesives, Wood Finishes; Food Polymers; Latex such as Vinyl Pyridine, SBR and NBR latex.

It is structured so as to enable the shareholders of JIL to directly hold shares in an operating company (i.e. the Amalgamated Company) instead of holding shares in a holding company (i.e. JIL), which would also lead to greater operational efficiencies, reduction in management overlaps and reduction in compliance requirements of multiple companies and associated expense. In order to streamline various activities of petitioner companies, unlock the true value of its businesses, achieve management efficiencies and accelerated growth, the Management is proposing to consolidate entire business into Petitioner Company No. 5.

The present Composite Scheme of Arrangement is a two-step amalgamation process proposed to achieve the aforesaid objectives in the following manner:

- **Part-B** Amalgamation of Amalgamating Company No.1, Amalgamating Company No.2 and Amalgamating Company No.3 with and into JIL; and thereafter
- **Part-C** Amalgamation of resulting JIL with and into Jubilant Agri and Consumer Products Ltd. (the Amalgamated Company) on a going concern basis.

2.2 Amalgamation: Following are some of the specific advantages of the proposed Amalgamation of the petitioner companies:

a. The amalgamation of the Amalgamating Companies No. 1, 2 & 3 into JIL pursuant to Part B of the Scheme shall provide the following benefits:

- i.** Currently, a significant portion of the Promoters' shareholding in JIL is held indirectly, through the Amalgamating Companies. The proposed amalgamations will result in simplification and streamlining of the shareholding structure by elimination of shareholding tiers and simplification of a large part of the indirect Promoters' shareholding into a clearer structure directly identifiable with the Promoters;
- ii.** Further, such a simplified direct holding structure is expected to bring greater transparency in the Promoters' shareholding and demonstrate the Promoters' direct commitment and engagement from a shareholders' perspective; and
- iii.** The proposed simplification of holding structure will also make it simpler to identify the ultimate beneficial owner for various applicable know your customer (KYC) requirements.

- b.** Further, the amalgamation of JIL into the Amalgamated Company pursuant to Part C of the Scheme shall provide the following benefits:
- i.** The shareholders of JIL would directly hold shares in an operating company (i.e. the Amalgamated Company) instead of holding shares in a holding company (i.e. JIL), which would also lead to greater operational efficiencies, reduction in management overlaps and reduction in compliance requirements of multiple companies and associated expenses; and
 - ii.** Reduction in overheads, administrative, managerial and other expenditure, and optimal utilization of various resources due to consolidation of activities.
- c.** There would neither be any change in the existing number of shares nor in the percentage shareholding of the Promoters on an aggregate basis in JIL and the Amalgamated Company pursuant to the amalgamations contemplated under Part B and Part C of the Scheme.
- d.** All costs, charges, expenses and taxes (including stamp duty, registration charges and statutory amounts) arising out of or in connection with the amalgamations contemplated under Part B of the Scheme shall be borne by the respective Amalgamating Companies and the balance, if any,

shall be borne by the Identified Promoters. The Amalgamating Companies shall have no Liabilities on the Effective Date. Additionally, the Scheme also provides that the Identified Promoters shall fully indemnify the Amalgamated Company and keep the Amalgamated Company indemnified for liability, claim, demand, if any, of past, present and future and which may devolve on the Amalgamated Company on account of the amalgamations contemplated under Part B and Part C of the Scheme.

- e. The implementation of the Scheme is aimed at protecting and maximizing value for the shareholders of JIL as well as the creditors and all other stakeholders.

2.3 The circumstances which justify and/or necessitate the proposed Re-organization/Scheme of Arrangement of the Amalgamated Company - Jubilant Agri and Consumer Products Ltd. are, inter alia, as follows:

- a. Present issued, subscribed and paid-up share capital of the Amalgamated Company is ₹ 5,60,85,520 divided into 56,08,552 Equity Shares of ₹10 each, which is held entirely by the Petitioner Company No. 4-JIL. In terms of the provisions of the Scheme, the Amalgamated Company will issue Equity Shares to the Equity Shareholders of the JIL. Post Amalgamation, all the Equity Shareholders of the Amalgamating Companies

and JIL will hold same percentage of Equity Shares in the Amalgamated Company.

- b.** Accordingly, upon the Scheme becoming effective, the pre-Scheme issued and paid-up share capital of the Amalgamated Company which consists of 56,08,552 Equity Shares of ₹10 each aggregating ₹5,60,85,520 will be cancelled. 1,50,67,101 Equity Shares of ₹10 each, credited as fully paid-up, aggregating ₹15,06,71,010 will be issued in place of such cancelled equity share capital.
- c.** It is clarified that the aforesaid re-organization of Share Capital would not involve either the diminution of any liability in respect of un-paid share capital or payment to any shareholder of any paid-up share capital. The Company is not proposing any buy-back of shares from its shareholders.
- d.** It is further clarified that no creditor of the Company will be adversely affected by the proposed re-organization of share capital.
- e.** Amalgamation-1, i.e., amalgamation of Amalgamating Companies into JIL and treatment of existing shares as per Cl. 10.2 of Part B of Scheme of Arrangement would be as follows:
 - i.** Upon the Effective Date, 71,64,048 Equity Shares held by the Amalgamating Company No.1 in JIL will stand cancelled and simultaneously with such cancellation, JIL

shall allot the same number of Shares to the HSB Family Trust and the SSB Family Trust, respectively, in equal proportion.

- ii.** Upon the Effective Date, 17,36,415 Equity Shares held by the Amalgamating Company No.2 in JIL will stand cancelled and simultaneously with such cancellation, JIL shall allot the same number of Shares to the HSB Family Trust.
- iii.** Upon the Effective Date, 16,51,879 Equity Shares held by the Amalgamating Company No.3 in JIL will stand cancelled and simultaneously with such cancellation, JIL shall allot the same number of Shares to the SSB Family Trust.
- iv.** The said allotted shares shall be listed on Stock Exchanges in accordance with SEBI provisions.
- v.** Upon Effective Date, all the authorized share capital of Amalgamating Companies including both Equity and Preference Shares shall stand reclassified to Equity Shares, and be combined to form the total authorized capital of resulting JIL.
- vi.** There will neither be any change in the existing number of shares nor in the percentage shareholding of the Promoters on

an aggregate basis in resulting JIL post the Amalgamation-1.

- f.** Amalgamation-2, i.e., amalgamation of resulting JIL into Amalgamated Company and treatment of existing shares as per Part C of Scheme of Arrangement would be as follows:
- i.** The Amalgamated Company is a wholly owned subsidiary of JIL. From the Effective Date all Equity Shares of Amalgamated Company held by JIL stand cancelled.
 - ii.** Simultaneous to the said cancellation, for every fully paid-up equity share of ₹10 each held by JIL's equity shareholders, the Amalgamated Company will issue and allot 1 (One) to each equity shareholder of JIL.
 - iii.** Upon Effective Date, all the authorized share capital of resulting JIL shall be deemed to be combined and added to the authorized share capital of Amalgamated Company to form the total authorized capital of Amalgamated Company and preference share capital of the Amalgamated Company shall stand reclassified entirely only as equity share capital.
 - iv.** The said allotted shares shall be listed on Stock Exchanges in accordance with SEBI provisions.

- 2.4 Dissolution:** Upon Effective Date, Amalgamating Companies shall stand dissolved and their names and records struck off from the RoC records. Further, JIL would also stand dissolved and its name and records struck off from the RoC records.
- 2.5** The Scheme of Arrangement is proposed for the aforesaid reasons. The Board of Directors of the Amalgamating Companies, JIL and the Amalgamated Company are of the opinion that the proposed Scheme is in the best interest of these Companies, their Shareholders and other stakeholders.
- 3.** The Petitioners have stated that the accounting treatment proposed in the Scheme of Arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013 as certified by the respective Auditors of the Petitioner Companies.
- 4.** It has also been stated in the Petition that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210 to 226 of the Companies Act, 2013 are pending against any of the Petitioner Companies.
- 5.** It has also been stated in the Petition that the Scheme is not prejudicial to the interest of the Shareholders and Creditors of the Petitioner Companies and the Petition is made *bona*

fide and is in the interest of all the Petitioner Companies and their respective Shareholders and Creditors as a whole and is just and equitable.

6. It has been stated that JIL is a public limited listed company. Equity Shares of JIL are listed on BSE Ltd. and National Stock Exchange of India Ltd. The Amalgamated Company is a wholly owned subsidiary of JIL. The entire issued and paid-up Equity Share Capital of the Amalgamated Company is beneficially owned by JIL.
7. It is also submitted that valuation exercise has been carried out to determine the valuation of the proposed Scheme of Arrangement. Mr. Subodh Kumar, a Registered Valuer, registered with the Insolvency and Bankruptcy Board of India (IBBI), has prepared the Valuation Report dated 9th August, 2022. Further, in terms of the provisions of the Stock Exchange and SEBI Regulations, a Fairness Opinion Report dated 9th August, 2022 was also obtained from M/s Fast Track Finsec Pvt. Ltd., a SEBI Registered Category 1 Merchant Banker, on the valuation opinion.
8. A perusal of the present Petition discloses that initially the Petitioner Companies had filed a Company Application No.

06/ALD/2023 seeking directions of this Tribunal to dispense with the requirement of convening the meetings of Equity Shareholders and Preference Shareholders of the Amalgamating Company No.1, Amalgamating Company No.2, Amalgamating Company No.3 and the Amalgamated Company; to convene separate meetings of Equity Shareholders of JIL at the Registered Office of the Company at Bhartiagram, Gajraula, District - Amroha, Uttar Pradesh – 244223 with e-voting facility and poll at the venue of the meeting; to convene separate meetings of Secured and Un-Secured Creditors of Amalgamated Company; to appoint Chairman, Co-Chairman and Scrutinizer for conduct of meetings; and to consider the Scheme of Arrangement.

9. Accordingly, this Tribunal vide its order dated 3rd May, 2023 (date of pronouncement), allowed the above mentioned prayers, by directing to convene separate meetings of Equity Shareholders of JIL, at the Registered Office of the Company at Bhartiagram, Gajraula, District - Amroha, Uttar Pradesh – 244223 with e-voting facility and poll at the venue of the meeting, directing to convene separate meetings of Secured and Un-Secured Creditors of Amalgamated Company, and

dispensed with the requirement of convening meetings of Equity Shareholders and Preference Shareholders of the Amalgamating Company No.1, Amalgamating Company No.2, Amalgamating Company No.3 and the Amalgamated Company. None of the Amalgamating Companies and JIL have any Secured and Un-Secured Creditor. The Tribunal has appointed Mr. Shivendra Bahadur as Chairperson, and Mr. Mehul Khare, as Co-Chairperson of the said meeting and Mr. S. K. Gupta, as Scrutinizer for said meetings. This Tribunal further directed to issue notice of the Company Application/Scheme of Arrangement to the Statutory Authorities, viz., (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Uttar Pradesh, Ministry of Corporate Affairs, Kanpur; (c) The Official Liquidator, Uttar Pradesh, Allahabad; (d) the Income Tax Department; (e) BSE Ltd., Mumbai; (f) National Stock Exchange of India Ltd.

- 10.** A perusal of the present Petition discloses that in pursuance of the directions contained in Order dated 3rd May, 2023 (date of pronouncement), passed by this Tribunal in

Company Application No. 06/ALD of 2023, separate meeting of Equity Shareholders of JIL were duly convened at the Registered Office of the Company at Bhartiagram, Gajraula, District Amroha 244223, Uttar Pradesh on 28.07.2023 at 2:00 p.m., with e-voting facility and poll at the venue of the meeting.

- 11.** A perusal of the present Petition discloses that in pursuance of the directions contained in Order dated 3rd May, 2023 (date of pronouncement), passed by this Tribunal in Company Application No. 06/ALD of 2023, separate meetings of Secured and Un-Secured Creditors of Amalgamated Company were duly convened on 29.07.2023, as per the following schedule:

Sl. No.	Particulars	Time
1.	Secured Creditors of Amalgamated Company	10:30 A.M.
2.	Un-Secured Creditors of Amalgamated Company	1:30 P.M.

- 12.** The Scheme of Arrangement was considered and approved by overwhelming majority in the respective meetings of the Equity Shareholders of JIL and Secured and Un-Secured Creditors of the Amalgamated Company, without any

modifications. The common Chairperson appointed for the meetings has filed his Report dated 10th August, 2023 which are enclosed as Annexure 24 with the Petition. This report contains the result of the meeting of the equity shareholders of JIL and secured and unsecured creditors of Jubliant Agri and Consumer Products Limited (Amalgamated Company no. 5). The result is as follows;

- Equity shareholders – Approved by 99.99 % of total voting.
- Secured creditors – Approved 100%
- Unsecured Creditors – Approved 100%

13. Notice of the Company Application/Scheme of Arrangement was also given to the Statutory Authorities-RD, ROC, OL, Income Tax Department, BSE Ltd and National Stock Exchange of India Ltd. On August 24, 2023, BSE intimated this Tribunal that there were certain compliances still to be done by the Petitioner Company No. 4. The Petitioner Company No. 4/JIL submitted its proposals for compliance to BSE, which were accepted and an email to this effect was communicated on September 6, 2023. After the compliances were carried out by the Petitioner Company No. 4/JIL, the BSE submitted its No Objection vide its communication

dated 29th September, 2023 addressed to the Registrar of this Tribunal for the proposed Scheme of Arrangement. Thereafter, the Petitioner Company No.4/JIL filed its Affidavit dated 30th September, 2023 pointing out these developments and stating that it has complied with BSE's observation of filing details of assets and liabilities being transferred to the Amalgamated Company pursuant to the said Scheme.

14. This Tribunal vide its order dated October 4, 2023 directed to issue notice of hearing in respect of present Company Petition to the Statutory Authorities and also to make paper publication in this respect in "Hindustan Times" (English) and "Hindustan" (Hindi) both having wide circulation over the area where the registered office of Petitioner Companies are situated.

15. In compliance thereof, the Petitioner Companies have filed Affidavit of service and publication, confirming that notices have been duly published in "Hindustan Times" (English) and "Hindustan" (Hindi) both having wide circulation over the area where the registered office of Petitioner Companies are situated. The Petitioner Companies have also served

notice of the Company Petition to (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) the Registrar of Companies, Uttar Pradesh, Ministry of Corporate Affairs, Kanpur; (c) The Official Liquidator, Uttar Pradesh, Allahabad; (d) the Income Tax Department; (e) BSE Ltd., Mumbai; (f) SEBI and (g) National Stock Exchange of India Ltd.

16. In response to the above stated notice, the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi and the Registrar of Companies, Uttar Pradesh, Ministry of Corporate Affairs, Kanpur have submitted their Report dated 8th December, 2023. No objection has been raised by the Regional Director, Northern Region and the Registrar of Companies on the Scheme of Arrangement.

17. In response to the above stated notice, the Official Liquidator, Ministry of Corporate Affairs, Allahabad, Uttar Pradesh has also submitted his Report dated 15th September, 2023 wherein it has been stated that the Official Liquidator has no objection to the dissolution of the Amalgamating/Petitioner Companies without winding up

pursuant to provisions of Sections 230 and 232 of the Companies Act, 2013 and other applicable sections and rules thereunder.

18. In response to the notices served, the Income Tax Department has furnished its comments/reports as per the following details:

a. In respect of the Amalgamating/Petitioner Company No.1- HSSS Investment Holding Pvt. Ltd.:

i. The Income Tax Department has furnished its comments vide its Affidavit sworn on 26th February, 2024 and filed on 14th March, 2024 before this Hon'ble Tribunal. The Income Tax Department has stated in Para 7, 8 that no arrear of demand, no carry-forward loss and no other proceedings are pending against the Amalgamating Company No.1. The Income Tax Department has given its No Objection to the proposed Scheme of Arrangement.

b. In respect of the Amalgamating/Petitioner Company No.2- KBHB Investment Holding Pvt. Ltd.:

i. The Income Tax Department has furnished its comments vide its Affidavit dated 21st November, 2023 before this Hon'ble Tribunal. The Income Tax Department has stated in Para 7, 8 that no arrear of demand, no carry-forward loss and no other proceedings are pending against the

Amalgamating Company No.2. The Income Tax Department has given its No Objection to the proposed Scheme of Arrangement.

c. In respect of the Amalgamating/Petitioner Company No.3-SSBPB Investment Holding Pvt. Ltd.:

i. The Income Tax Department has furnished its comments vide its Affidavit sworn on 17th January, 2024 before this Hon'ble Tribunal. The Income Tax Department has made the following observations:

7. That the A.O. upon a careful perusal of the documents submitted on 16.10.2023 alongwith the copy of the notice found that some of the necessary details/documents have not been submitted as such queries were raised vide letters dated 03.11.2023 requiring SSBPB Investment Holding Private Limited to submit its response. A further letter dated 13.12.2023 was also issued to the Company. A photocopy of the letters dated 03.11.2023 and 13.12.2023 issued by the A.O. are enclosed herewith and marked as Annexure No.C.A.-1.

8. That it is pertinent to mention here that SSBPB Investment Holding Private Limited vide their reply dated 26.12.2023 and 28.12.2023 has partly complied with the queries raised in the letters dated 03.11.2023 and 13.12.2023. The

part reply filed by the Company is under consideration and further investigation/clarifications will be required to be made. A photocopy of the part Reply dated 26.12.2023 and 28.12.2023 are enclosed herewith and marked as Annexure No.C.A.-2.

9. That in the absence of the complete set of the second motion petition being provided to the A.O. coupled with the facts that the complete reply has not been furnished to the query letters issued by the A.O. as such at present it is not possible for the Department to ascertain possible leakage/evasion of revenue or otherwise. Therefore, it is respectfully prayed that the sanction to the Scheme of Arrangement may kindly be kept in abeyance till the Company submits its complete response/replies to the queries/clarifications required by the A.O. to protect the interest of revenue.

10. That as per the Digital database of the Department the following facts emerges: -

A/Y	Date of Filing	Income Returned	Taxes Paid	Exempt Income
2013-14	23/09/2013	0	0	0

2014-15	26/09/2014	0	0	0
2015-16	18/09/2015	0	0	0
2016-17	21/09/2016	0	0	0
2017-18	30/10/2017	0	0	0
2018-19	29/09/2018	0	0	0
2019-20	22/10/2019	0	0	0
2020-21	01/02/2021	0	0	0
2021-22	28/01/2022	0	0	0
2022-23	30/08/2022	0	0	0
2023-24	06/10/2023	0	0	0

11. *That there is no outstanding demand pending against the Company in respect of abovementioned A/Y's as on the date of swearing of the present affidavit. No carry forward losses have been declared by the Company as on the date of filing of the present affidavit.*

ii. The Income Tax Department has furnished its further comments vide its Affidavit sworn on 7th February, 2024 before this Hon'ble Tribunal. The Income Tax Department has made the following observations:

1. That after receipt of the second motion petition, the Jurisdictional A.O. had issued notices dated 03.11.2023 and 13.12.2023 and the same were replied to by the Petitioner Company No. 3. Since in the meantime the date of hearing before Hon'ble NCLT was approaching as such the Counter/Representation Affidavit was filed bringing on record the facts as they stood then.
2. That subsequently on perusal of the audited accounts of the Company it was noticed that the Petitioner Company No. 3 has received a gift of 11,66,600 shares of Jubilant Industries Ltd. during F/Y 2016-17 but the required details like gift deed and other supporting documents like treatment of gift received were earlier not provided as such notices had been issued to the Petitioner Company No. 3.
3. That in compliance to the notices issued, the petitioner company had submitted written explanation on 26.12.2023 & 23.12.2023.
4. That the A.O. after perusing the reply filed by the Petitioner Company No. 3 has found that the Company has accounted for the gift as an asset in the Balance Sheet for F/Y 2016-17. With regard to the treatment of gift of 11,66,600 equity shares received and reflected in the ITR for A/Y-2017-18 it had been submitted that for the year under consideration such gift of equity

shares being equity shares of a Company in which public has substantial interest were not taxable in the hands of the company receiving the gift as per provisions of section 56 (2) (vii) of the act the submission appears to be acceptable as the Company M/s Jubilant Industries Ltd. is a Company in which public has substantial interest.

- 5. That the A.O. checked the details of Petitioner Company No. 3 and it is seen that the Company have been filling its ITR regularly since A/Y-2013-14. In the latest ITR filed for A/Y-2023-24 it has declared total income of Rs. 54,460/- and that despite the gift of 11,66,600 shares received being nontaxable, the same has not been disclosed in any of the ITR's filed, thus it appears that the Company has taken the value of gift as Zero in its ITR. It is further submitted that the Petitioner Company no. 3 has never submitted its audit report.*
- 6. That it is respectfully submitted that any income tax liability likely to occur in respect of any of the Amalgamating Companies, shall be paid by the Amalgamated Company.*
- 7. That in view of the above facts it is respectfully submitted that any pending suits / appeals or other proceedings of whatsoever nature relating to Amalgamating Companies, whether by or*

against Amalgamating Companies, shall not abate, be discontinued or in any way prejudicially affected by reason of the amalgamation of Amalgamating Companies or of anything contained in this Scheme, but the proceedings shall continue and any prosecution shall be enforced by or against the Amalgamated Company in the same manner and to the same extent as would or might have been continued, prosecuted and/or enforced by or against the Amalgamating Companies as if this Scheme had not been implemented. Any suit, appeal or other proceeding of whatever nature by or against Amalgamating Companies is pending, shall not abate or be discontinued or in any way be prejudicially affected by reason of or by anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against the Amalgamated Company, as the case may be, in the same manner and to the same extent as it would be might have been continued, prosecuted and enforced by or against the Amalgamating Companies as if this scheme had not been implemented.

d. In respect of the Petitioner Company No.4/JIL-Jubilant Industries Ltd.:

- i. The Income Tax Department has furnished its comments vide its Affidavit sworn on 7th March, 2024 and filed on 14th March, 2024 before this Hon'ble Tribunal. The Income Tax Department has stated in Para 5 that the Company has carried forward business loss of Rs. 10,33,17,862/- in AY 2023-24. Para 6 states that no arrear of demand, and no other proceedings are pending against the Petitioner Company No.4.
 - ii. The Income Tax Department has prayed that in case any demand is raised against the Petitioner Company No. 4 in respect of its activities before the Appointed Date, the Petitioner Company No. 5 may be made liable for the same and specific directions in this regard may be issued.
- e. In respect of the Petitioner Company No.5/Amalgamated Company- Jubilant Agri and Consumer Products Ltd.:**

- i. The Income Tax Department has furnished its comments vide its Affidavit sworn on 7th March, 2024 and filed on 14th March, 2024 before this Hon'ble Tribunal. The Income Tax Department has stated in Para 5 that the Company has carried forward unabsorbed depreciation of Rs. 61,20,70,304/- in AY 2023-24. The Income Tax Department has stated in Para 6 that no arrear

of demand, and no other proceedings are pending against the Amalgamated Company.

19. To specifically provide for the apprehension expressed by the Income Tax Department towards carry forward of losses as mentioned in their Reports filed for the Petitioner Company Nos. 4 and 5, this Tribunal in its order dated 04.07.2024, directed the Petitioner Company Nos. 4 & 5 to file a specific undertaking/affidavit. In compliance with the Hon'ble Tribunal's order, the Petitioner Company Nos. 4 & 5 have filed their Affidavits vide diary no. 1342 dated 10.07.2024 giving the undertaking that the Petitioner Company No. 5 undertakes to pay any demand that may be raised by the Income Tax Department or any other competent authority in future in terms of the applicable provisions of law and as is laid down in Clause 7.1 of Part-C of the Composite Scheme of Arrangement.

20. The Petitioner Companies have also filed Affidavits dated 9th April, 2024, confirming that neither the Petitioner Companies nor their Legal Counsel has received any objection/representation from any person against the Petition or the proposed Scheme of Arrangement in response

to the publication of the notice of hearing of the present Petition in Newspapers.

- 21.** We have gone through the reports/comments of the Ld. Registrar of Companies, Uttar Pradesh, Kanpur, Ld. Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi, Ld. Official Liquidator, Ministry of Corporate Affairs, Allahabad, the Income Tax Department and the Reply Affidavits filed by the Petitioner Companies and after perusing the same, we find that there appears to be no reservation to grant sanction to the Scheme and we are of the view that the sanction of the present Scheme is not against public policy, nor it would be prejudicial to the public interest at large.
- 22.** In addition to above, all the statutory compliance seems to have been complied with by the Petitioner Companies, therefore, the present Company Petition deserves to be allowed in terms of its Prayer Clause.
- 23.** As a result, the proposed Composite Scheme of Arrangement, which is annexed to the Company Petition stands approved and sanctioned and the same shall be binding on all the Shareholders and Creditors of the above-

named Petitioner Companies and also on the Petitioner Companies with effect from the Appointed Date, i.e., 1st day of July, 2022. The Petitioner Companies are required to act upon as per terms and conditions of the sanctioned Scheme of Arrangement.

24. While approving the Scheme as above, it is clarified that this order should not be construed as, in any way, granting exemption from payment of stamp duty (if any, is applicable), taxes (including Income Tax, GST or any other charges, if any, are applicable) and payment in accordance with law or in respect to any permission / compliance with any other requirement which may be specifically required under any law. The transferee company shall also comply with the provisions of Section 170A of the Income Tax Act, 1961 for filing of modified tax returns if any required to be filed.

25. THIS TRIBUNAL DO FURTHER ORDER:

With respect to Amalgamation of the Amalgamating Companies with and into JIL under Part B of the Scheme (Amalgamation 1);

i. Upon the Effective Date and with effect from the Appointed Date, all the assets, property, rights and powers of the Amalgamating Companies specified in the first, second and third parts of the Schedule hereto and

all other property, rights and powers of the Amalgamating Companies be transferred, without further act or deed, to JIL and accordingly, the same shall, pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and vested in JIL for all the estate and interest of the Amalgamating Companies therein but subject nevertheless to all charges now affecting the same;

- ii.** Upon the Effective Date and with effect from the Appointed Date, all the liabilities and duties of the Amalgamating Companies be transferred, without further act or deed, to JIL and accordingly the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of JIL;
- iii.** Upon the Effective Date, all the employees of the Amalgamating Companies, if any in service on the Effective Date, shall be transferred to and shall become the employees of JIL as provided in the Scheme of Arrangement;
- iv.** Upon the Effective Date, all proceedings now pending by or against the Amalgamating Companies be continued by or against JIL;
- v.** Upon Effective Date, the entire authorized share capital of Amalgamating Companies including both Equity and Preference Share Capital shall stand reclassified entirely as Equity Share Capital, and be combined and added to the authorized share capital of JIL to form the total

authorized capital of resulting JIL and the fees/ stamp duty, if any, paid by each of the Amalgamating Companies on their respective authorized share capital shall be deemed to have been so paid by JIL on the combined authorized share capital in terms of Section 232(3)(i) of the Companies Act, 2013; and

vi. In relation to the issuance of the fully paid-up equity shares of Rs. 10/- each of JIL and cancellation of the existing equity shares held by the Amalgamating Companies in JIL, the following shall be deemed to have occurred and taken effect:

(a) In relation to the amalgamation of the Amalgamating Company-1 into JIL, upon the Effective Date, 71,64,048 Equity Shares held by the Amalgamating Company No.1 in JIL will stand cancelled and be of no effect on and from the Effective Date and simultaneous and concurrent with such cancellation, JIL shall issue and allot the same number of Shares to the Hari Shanker Bhartia Family Trust and the Shyam Sunder Bhartia Family Trust, respectively, in equal proportion, through their respective trustees/nominees.

(b) In relation to the amalgamation of the Amalgamating Company-2 into JIL, upon the Effective Date, 17,36,415 Equity Shares held by the Amalgamating Company No.2 in JIL will stand

cancelled and be of no effect on and from the Effective Date and simultaneous and concurrent with such cancellation, JIL shall issue and allot the same number of Shares to the Hari Shanker Bhartia Family Trust, through its trustees/nominees.

- (c) In relation to the amalgamation of the Amalgamating Company-3 into JIL, upon the Effective Date, 16,51,879 Equity Shares held by the Amalgamating Company No.3 in JIL will stand cancelled and be of no effect on and from the Effective Date and simultaneous and concurrent with such cancellation, JIL shall issue and allot the same number of Shares to the Shyam Sunder Bhartia Family Trust.
- (d) The said shares allotted by JIL shall be listed on Stock Exchanges in accordance with SEBI provisions.

26. With respect to Amalgamation of resulting JIL with and into the Amalgamated Company under Part C of the Scheme:

- i. Upon the Effective Date and with effect from the Appointed Date, all the assets, property, rights and powers of resulting JIL specified in the first, second and third parts of the Schedule hereto and all other assets,

property, rights and powers of resulting JIL be transferred, without further act or deed, to the Amalgamated Company and accordingly, the same shall, pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and vested in the Amalgamated Company for all the estate and interest of the resulting JIL therein but subject nevertheless to all charges now affecting the same;

- ii. Upon the Effective Date and with effect from the Appointed Date, all the liabilities and duties of the resulting JIL be transferred, without further act or deed, to the Amalgamated Company and accordingly the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Amalgamated Company;
- iii. Upon the Effective Date, all the employees of the resulting JIL, if any in service on the Effective Date, shall be transferred to and shall become the employees of the Amalgamated Company as provided in the Scheme of Arrangement;
- iv. Upon the Effective Date, all proceedings now pending by or against the resulting JIL be continued by or against the Amalgamated Company;
- v. Upon Effective Date and pursuant to the combination of the authorized share capital of the Amalgamating Companies into JIL pursuant to Clause 12.2 of Part B of the Scheme, the authorized share capital of resulting JIL shall stand combined with and be deemed to be

added to the authorized share capital of the Amalgamated Company to form the total authorized capital of the Amalgamated Company and the fees/ stamp duty, if any, paid by resulting JIL on its authorized share capital shall be deemed to have been so paid by the Amalgamated Company on the combined authorized share capital in terms of Section 232(3)(i) of the Companies Act, 2013 and upon the Effective Date, the preference share capital of the Amalgamated Company shall stand reclassified entirely only as equity share capital;

- vi. Upon the Effective Date, the equity shares of the Amalgamated Company held by resulting JIL shall be automatically cancelled and have no effect on and from the Effective Date and simultaneously and concurrent with such cancellation, the Amalgamated Company shall, without any further act or deed, issue and allot fully paid-up equity shares of Rs. 10/-, such that for every 1 (one) fully paid-up equity share of Rs. 10/- each of resulting JIL held by the equity shareholders of resulting JIL as on the amalgamation record date, 1 (one) fully paid-up equity share of Rs. 10/- shall be issued and allotted by the Amalgamated Company, to each equity shareholder of resulting JIL whose name is recorded in the register of members of resulting JIL as holder of shares as of the amalgamation record date. The said allotted shares shall be listed on Stock Exchanges in accordance with SEBI provisions.

- vii. Upon the Effective Date, the pre-Scheme issued and paid-up share capital of the Amalgamated Company which consists of 56,08,552 Equity Shares of ₹10 each aggregating ₹5,60,85,520 will be cancelled. 1,50,67,101 Equity Shares of ₹10 each, credited as fully paid-up, aggregating ₹15,06,71,010 will be issued in place of such cancelled equity share capital to the shareholders of JIL.
- 27.** Upon the Effective Date, the Amalgamating Companies and JIL shall, without any requirement of a further act or deed stand dissolved without being wound up and their names and records struck off the RoC records and Amalgamated Company shall make necessary filings in this regard.
- 28.** Upon the Effective Date, the shares allotted by JIL (under Clause 10 of Part B of the Scheme) and by the Amalgamated Company under Clause 10 of Part C of the Scheme), shall remain frozen in the depository system till listing/trading permission is given by the designated stock exchanges.
- 29.** Further, as prayed, the Amalgamating Companies and JIL shall have 30 days to file the Schedule of Assets from the date of pronouncement of this order.
- 30.** The Petitioner Companies shall within thirty days of the date of the receipt of this Order cause a certified copy of this order

to be delivered to the Registrar of Companies, Kanpur, for registration; and on such certified copy being so delivered, the Amalgamating Companies and JIL shall stand dissolved without undergoing the process of winding up and the Registrar of Companies shall place all documents relating to the Amalgamating Companies and JIL and registered with him on the file kept by him in relation to the Amalgamated Company and the files relating to the said Companies shall be consolidated accordingly; and

- 31.** The Petitioner Companies shall supply legible print outs of the Scheme and the Schedule of Assets in acceptable form to the Registry and the Registry will append such print outs, after verification, to the certified copy of the Order.
- 32.** Certified copy of this Order be supplied, if applied for, subject to compliance with usual formalities.
- 33.** That the Resulting Company shall deposit an amount of Rs.25,000/- (Rupees Twenty-Five Thousand Only) in favour of “The Ministry of Corporate Affairs” within a period of four weeks from the date of receipt of the certified copy of this order and file affidavit of compliance thereof.

- 34.** All the concerned Regulatory Authorities and other persons to act on a copy of this Order annexed with the Scheme duly authenticated by the Registrar, National Company Law Tribunal, Allahabad Bench.
- 35.** Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- 36.** Accordingly, the present Company Petition bearing CP (CAA) No. 14/ALD of 2023 is allowed and stands disposed of.

**-Sd-
Ashish Verma
Member (Technical)**

**-Sd-
Praveen Gupta
Member (Judicial)**

Date: 07th August, 2024