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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CANOS. 1807-1808 of 2005

I.A.No.13 & 14 In CIVIL APPEAL NO. D17807 OF 2003

I.A. NOS. 15 & 16

United Breweries (Holdings)
Ltd. & Anr.

...Appellant(s)

Versus

Certified to the true copy

Assistant Registrar (Judl.,

Supreme Court of India

Kishore Rajaram Chhabria & Ors.

...Respondent(s)

6483-6484
With I.A. No.1-2 in SLP(C).....CC. No. 7770-7771/03 (CANOS. 1809-1810 of 2005)
C.A. Nos. 4810-4811/02, 4814/02, 4813/02, 4815/02, 4816/02,
8310/03, 8313-8314/03, 8084-8087/03, 8469/03 & 8471/03

ORDER

The main orders of Securities Appellate Tribunal are substituted by consent terms filed today in this Court for which SEBI has given its approval. The orders of the two authorities below will now stand substituted by the terms of the consent memo filed today which is approved by SEBI. As approved by the SEBI a final decree shall be drawn in terms of the consent memo.

The appeals are dispose of in terms of the said consent

mo.

.....J.
(N. Santosh Hegde)

.....J.
(S.B. Sinha)

.....J.
(B.N. Srikrishna)

lhi,
07, 2005.

And

Civil Appeal No.4816/2002

Beethoven Traders Pvt. Ltd. & Anr. ... Appellant(s)

Versus

M. Sreenivasulu Reddy & Ors. ... Respondent(s)

And

Civil Appeal No.8084-8087/2003

United Breweries (Holdings) Ltd. & Anr. ... Appellant(s)

Versus

Kishore Rajaram Chhabria & Anr. ... Respondent(s)

1. After this application was filed, the Advocate for SEBI by a letter dated 5th March, 2005, enclosed therewith a copy of the letter dated 4th March, 2005, of SEBI granting its consent to the consent terms subject to the conditions mentioned therein – copies of the letters dated 4th and 5th March, 2005, are hereto annexed.

2. Accordingly there will, ^{be} an order and decree in terms contained in the final consent terms as redrafted and approved by SEBI, a copy of which is hereto annexed.

Bhargava V. Desai

Advocate Supreme Court
70, Lawyers Chambers, Supreme Court Compound, Tilak Marg, New Delhi-110001.
Phones : Ch: 223382478, Fax: 011 223356949, TLX : 31 62571 SCI-IN Res: 222150064, 222152826

Ref. No.2533-I/2005

Dated: 5.3.2005

Mr. P.H. Parikh
Advocate on record for M/S Herbertsons Group.
30, School Lane,
Bengali Market,
New Delhi-110001

Ms. Bina Gupta,
Advocate on Record of Chhabaria Group.
B-1, Defence Colony,
New Delhi-110024.

Sub. In the Supreme Court of India.
Civil Appeal No. D-17708, CC No. 7770-71 & CA 8084-87 of 2003
United Breweries (Holding) Ltd. & Anr.
Versus
Kishore Rajaram Chhabaria & Others.

Dear Sir,

Please refer to your joint consent terms sent to me on 18.2.2005 seeking the comments from Securities & Exchange Board of India.

I am enclosing herewith a copy of letter dated 4th March, 2005 bearing No. LAD / DRA / 35357 / 05 received from my client SEBI giving their comment on the same which speaks for itself.

I am also enclosing herewith a copy of the draft consent terms given by you as have been modified by my client, SEBI incorporating the conditions on which they are willing to give their consent to the same, if clients of both of you are agreeable to the said modified terms as enclosed herewith. Then my client's Securities & Exchange Board of India has instructed me that they are agreeable to give their consent.

In view of the above, I have to request you both to give your response.

Thanking you,

Yours faithfully,

(Bhargava V. Desai)
Advocate for the SEBI

Copy to :-

Mr. R.S. Loona,
Executive Director (Legal)
Securities & Exchange Board of India,
Mittal Court, B- Wing, 1st Floor,
224, Nariman Point, MUMBAI- 400 021.

Mrs. Raj Rani Bhalla,
Dy. Legal Advisor(SEBI),
Securities & Exchange Board of India, (NRO)
No.32, Rajendra Bhawan, Rajindra Place, New Delhi-110008.

LAD/DRA/SKS/35337 /05
March 04, 2005.

Shri Bhargav V. Desai
Advocate
Supreme Court of India
70, Lawyers Chambers,
Supreme Court Compound,
Tilak Marg, New Delhi - 110 001

Dear Sir,

Sub: Civil Appeals Before the Supreme Court of India in the matter of acquisition of shares of Herbertsons Ltd. Proposed consent terms between the parties.

1. Please refer to your e-mail dated February 18, 2005 forwarding therewith the proposed consent terms between UB Group and Chhabria Group and seeking our comments thereon. On perusal of the consent terms, it has been decided that SEBI may grant its consent subject to the following conditions -

- i) The orders passed by SAT to the extent that they are adverse to SEBI's interest are set aside and the appeals preferred by SEBI to that extent are allowed so that orders of SAT to the extent they are adverse to the interests of SEBI are not cited as precedent in any proceedings. This however, shall not affect the public offer and competitive bid and the right of the vendors to freely sell or dispose of the 46,72,791 shares as proposed in the draft consent terms.
- ii) SEBI's orders pursuant to which the adjudication proceedings have been initiated shall not be affected by the private parties arriving at the consent terms. In other words, the power of the Adjudicating Officer to determine the issues shall not be disturbed by these consent terms.
- iii) The open offer and competitive bid already made by the two Groups and in respect of which shares were tendered and payment were made shall not be disturbed and the investors whose shares were accepted in the open offer shall be paid the difference if the delisting price works out higher than the open offer price.
- iv) In case the offer made by the purchaser under SEBI (Delisting of Securities) Guidelines, 2003 fails they shall bring back the public shareholding in the target company i.e. M/s. Herbertsons Ltd. to the minimum limits specified by the Listing Agreement within a period of six months in accordance with clause 9.2 of the SEBI Delisting Guidelines.
- v) As the proposed transaction shall be routed through the stock exchange system, the private parties shall comply with the applicable requirements under the bye laws of the concerned stock exchange and the SEBI Regulations / Guidelines.

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vi) The application/ non-application of Capital Gains Tax in relation to the transaction is a matter of understanding between the private parties and SEBI has nothing to do with the payment of such tax by the private parties or exemption thereof.

2. It may be made clear that the SEBI's consent to the proposed transaction is strictly subject to the conditions suggested above.
3. You are requested to make suitable submissions before the Hon'ble Supreme Court on the above lines.

Thanking you,

Yours faithfully,

Santosh Shukla
Deputy Legal Advisor

Cc: Ms. Raj Rani Bhalla
Deputy Legal Adviser
SEBI - NRO

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Civil Appeal No.D17807/2003

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United Breweries (Holdings) Ltd. & Anr. ... Appellant(s)
Versus
Kishore Rajaram Chhabria & Ors. ... Respondent(s)
And
Special Leave Petition (Civil) No. CC 7770-7771/2003

United Breweries (Holdings) Ltd. & Anr. ... Appellant(s)
Versus
Kishore Rajaram Chhabria & Ors. ... Respondent(s)
And
Civil Appeal Nos.4810-4811/2002

Madanlal Dwarkadas Chhabria ... Appellant(s)
Versus
M. Sreenivasulu Reddy & Ors. ... Respondent(s)
And
Civil Appeal No.4814/2002

Shirish Finance & Investment Pvt. Ltd. ... Appellant(s)
Versus
M. Sreenivasulu Reddy & Ors. ... Respondent(s)
And
Civil Appeal No.4813/2002

IMFA Holdings Pvt. Ltd. ... Appellant(s)
Versus
M. Sreenivasulu Reddy & Ors. ... Respondent(s)
And
Civil Appeal No.4815/2002

Mahameru Trading Co. Pvt. Ltd. ... Appellant(s)
Versus
M. Sreenivasulu Reddy & Ors. ... Respondent(s)
And
Civil Appeal No.4816/2002

Beethoven Traders Pvt. Ltd. & Anr. ... Appellant(s)
Versus
M. Sreenivasulu Reddy & Ors. ... Respondent(s)

And

Civil Appeal No.8084-8087/2003

United Breweries (Holdings) Ltd. & Anr. ...

Appellant(s)

Versus

Kishore Rajaram Chhabria & Anr. ...

Respondent(s)

CONSENT TERMS

1. An IA No. 13-14 of 2004 in Civil appeal No, D17807/2003 dated 29th November, 2004, (a copy where of is annexed as Schedule I hereto) setting out the settlement proposed by the private parties was filed by United Breweries (Holdings) Ltd and Anr. seeking leave of this Hon'ble Court to the private parties for filing consent terms of the matters stated therein. It was clarified in the said application that in the event of SEBI raising any objection to the proposal for settlement between the private parties, the application may be treated as withdrawn. SEBI has since conveyed its consent to the settlement proposed by the private parties a set out in I.A No.13-14 of 2004 subject to the four conditions mentioned in the letter dated 10th January, 2005, (a copy whereof is annexed as Schedule II hereto) which conditions are accepted, without any modification. The following Consent Terms between the private parties are arrived at _____.

2. These Consent Terms are arrived at between (a) Airedale Investment and Trading Private Limited (b) Algid Investment and Finance Private Limited (c) Beethoven Traders Private Limited (d) Darrel Traders Private Limited (e) Stingray Traders Private Limited (f) Veneer Investment and Finance Private Limited. (g) IMFA Holdings Private Limited (h) Mahameru Trading Company Private Limited and (i) Shirish Finance & Investment Private Limited, are herein referred to as the "Vendors" AND (i) Kishore Rajaram Chhabria and (ii) Madanlal Dwarkadas Chhabria herein-referred to as the First Confirming Parties and United Breweries (Holdings) Limited and McDowell & Company Limited, herein referred to as the

"Purchasers" AND (1) M. Sreenivasulu Reddy, (2) M. Vijay Kumar Reddy (3) M. Kiran (4) M. Geethalatha (5) M. Snehalatha (6) M. Parvathi (7) M. Sudhakar Reddy (8) A. S. Malini Reddy, (9) Magunta Investments Private Limited (10) Star Investments Private Limited (11) Vijay Mallya and (12) Herbertsons Limited are herein referred to as the "Second Confirming Parties".

3. The Vendors "hold" 46, 72,791 equity shares in Herbertsons Limited (hereinafter referred to as "the Company") representing 49.06% of the total share capital of the Company. Details of the said shares are mentioned in the Schedule III hereto.
4. That the Vendors represent and declare that the said 46,72,791 shares are free from any financial encumbrance or lien and the Vendors have full right and authority to enter into these Consent Terms and sell the said 46,72,791 shares as herein provided.
5. Several legal proceedings including the above mentioned Civil Appeals/Special Leave Petitions are pending between the parties to these Consent Terms relating to the substantial acquisition of about 21.86% of the total equity shares of the Company and its control and management.
6. The parties to these Consent Terms have now settled all their outstanding disputes including those that are the subject matter of the above Civil Appeals/ Special Leave Petitions and it is agreed that all the above Civil Appeals/ Special Leave Petitions and other proceedings including the company suits and petitions, as per list set out as Schedule IV hereto, be disposed of as follows.
7. The parties to these consent terms undertake -
 - (a) That the Vendors do sell the said 46,72,791 shares representing 49.06% of the total issued capital of the Company, particulars of which are mentioned

in the Schedule III hereto (the said 46,72,791 shares), in one lot, and the Purchasers do purchase jointly the said 46,72,791 shares and do pay to the Vendors, against delivery of the share certificates in respect of the said 46,72,791 shares along with duly executed and stamped share transfer forms, a slump (lump sum) consideration of Rs.131.16 crores (Rupees one hundred and thirty-one crores and sixteen lacs only) as provided in clause (b) below. The said 46,72,791 shares have already been deposited under an Escrow Agreement dated 11th February, 2005 with M/s. Kanga & Co., Advocates & Solicitors, Mumbai and the whole of the said consideration has been deposited in escrow with the said M/s. Kanga & Co.

- (b) (i) That accordingly the transaction of sale and purchase of the said 46,72,791 shares, in one lot, shall be put through a recognized Stock Exchange where the shares of the Company are listed, through a registered member of that Stock Exchange jointly appointed by the Vendors and the Purchasers. (ii) the Vendors and the Purchasers do pay equal shares, Securities Transaction Tax payable under Chapter VII of the Finance (No.2) Act, 2004 and all other charges payable to the Stock Exchange. (iii) That the sale of the said 46,72,791 shares shall be ex-dividend and the Vendors shall be entitled to the dividend declared and not paid/or that may be declared by the Company for the Financial Years 1996-1997, 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003 and 2003-2004. (iv) That the Purchasers shall bear and pay brokerage charges.
- (c) That the Purchasers shall comply with the Securities and Exchange Board of India (Delisting of Securities) Guidelines, 2003.
- (d) The open offer and competitive bid made by the private parties shall be acted upon by respective parties and the shareholders whose shares were accepted in open offers shall be paid the difference if the delisting price works out higher than the open offer price.

- (e) In case the offer made by purchaser under delisting guidelines fails, the purchaser shall bring back the public shareholding in the company to the minimum limits specified under the listing agreement within a period of 6 months as required under clause 9.2 of the SEBI (Delisting of Securities) Guidelines, 2003.
- (f) That simultaneously with the completion of the sale of the said 46,72,791 shares, the Company do transfer the 3,47,400 shares, representing 3.64% of the total issued capital of the Company acquired by McDowell & Company Ltd. which were lodged by McDowell & Company Limited with the Company but not transferred by the Company.
- (g) Not later than 30 days from the date hereof the parties hereto undertake to report compliance with these consent terms to this Hon'ble Court, to enable this Hon'ble Court to pass necessary consequential orders.
8. Although no Capital Gains Tax is payable on the aforesaid transaction, in the event of any Capital Gains Tax being demanded from the Vendors in relation to the aforesaid transaction the Purchasers agree to pay the Vendors within 30 days any Capital Gains Tax that may be demanded from the Vendors. The Vendors agree to contest all such demands and will return to the Purchasers any refund that they may get after deducting reasonable cost incurred by them for contesting such demand.
9. The stock exchange and the regulatory authority shall co-operate and facilitate in execution of the above stated transaction in accordance with law.
10. Pending the completion of sale of the said 46,72,791 shares as herein provided the Vendors are restrained by an order and injunction of this Court from exercising any rights in respect of or disposing of or selling or in any manner encumbering the said 46,72,791 shares or any of them.
11. Pending the completion of the sale of the said 46,72,791 shares as herein provided the Company is hereby restrained by an order and injunction from (i) disposing of

or encumbering any of its assets, except in the ordinary course of business, or amalgamating with any other company (ii) issuing any equity shares or other instruments or securities.

12. It may be ordered, declared and decreed that -

- i) The orders passed by SAT to the extent that they are adverse to SEBI's interest are set aside and the appeals preferred by SEBI to that extent are allowed so that orders of SAT to the extent they are adverse to the interests of SEBI are not cited as precedent in any proceedings. This however, shall not affect the public offer and competitive bid and the right of the vendors to freely sell or dispose of the 46,72,791 shares as proposed in the draft consent terms.
- ii) SEBI's orders pursuant to which the adjudication proceedings have been initiated shall not be affected by the private parties arriving at the consent terms. In other words, the power of the Adjudicating Officer to determine the issues shall not be disturbed by these consent terms.
- iii) The open offer and competitive bid already made by the two Groups and in respect of which shares were tendered and payment were made shall not be disturbed and the investors whose shares were accepted in the open offer shall be paid the difference if the delisting price works out higher than the open offer price.
- iv) In case the offer made by the purchaser under SEBI (Delisting of Securities) Guidelines, 2003 fails they shall bring back the public shareholding in the target company i.e. M/s. Herbertsons Ltd. to the minimum limits specified by the Listing Agreement within a period of six months in accordance with clause 9.2 of the SEBI Delisting Guidelines.
- v) As the proposed transaction shall be routed through the stock exchange system, the private parties shall comply with the applicable requirements under the bye laws of the concerned stock exchange and the SEBI Regulations / Guidelines.
- vi) The application/ non-application of Capital Gains Tax in relation to the transaction is a matter of understanding between the private parties and SEBI has nothing to do with the payment of such tax by the private parties or exemption thereof.

13. Liberty to Apply -

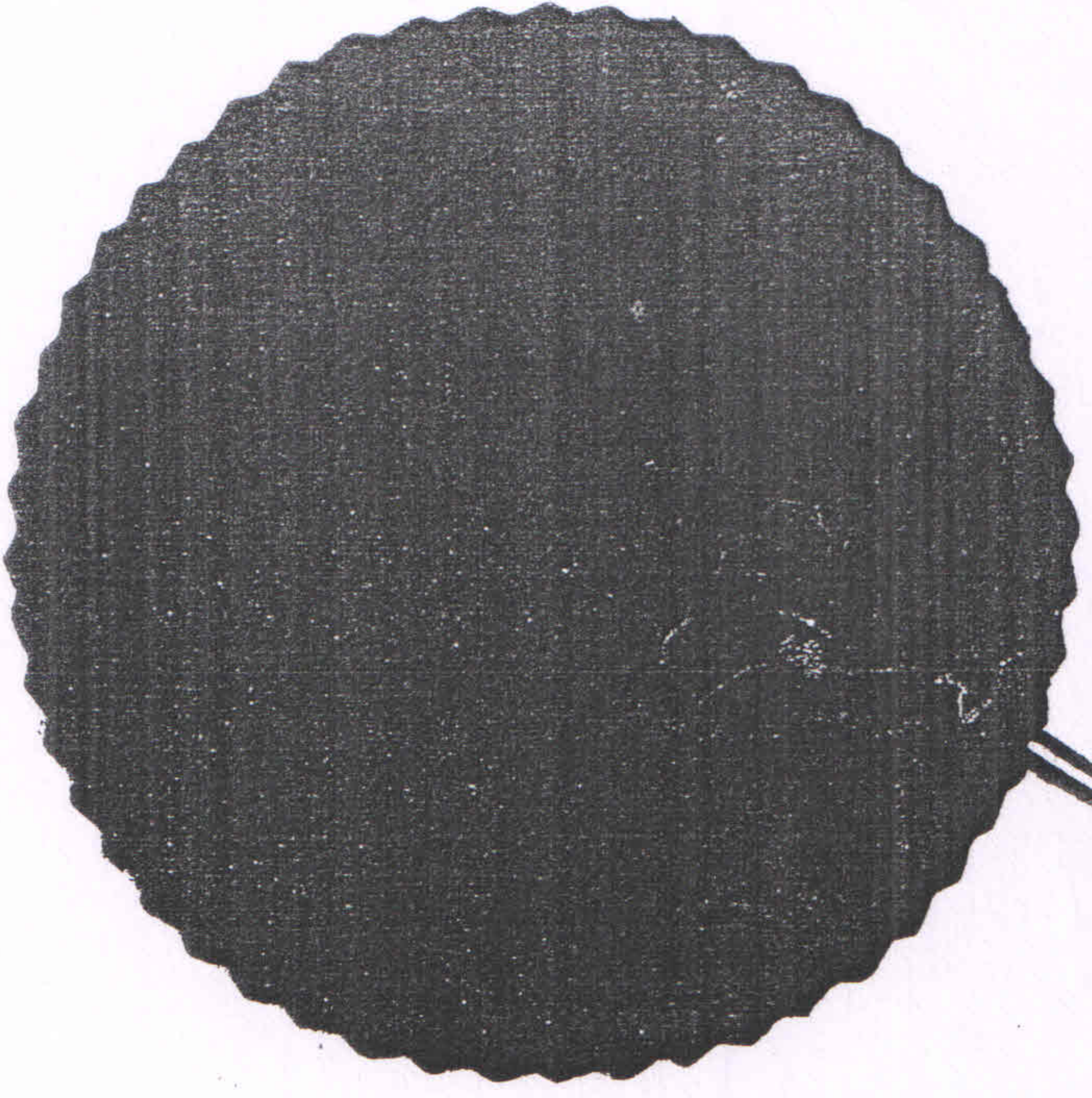
14. No order as to costs -

Note:

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It is a condition precedent to the parties entering into Consent Terms in terms of the proposed Consent Terms that the parties jointly apply to the Hon'ble Supreme Court in the above proceedings for its approval and the Hon'ble Supreme Court grants its approval. If no such approval is accorded then these proposed Consent Terms being without prejudice nothing contained therein shall be relied upon or offered in evidence in any proceedings including any of the above mentioned proceedings or proceedings mentioned in Schedule IV hereto and no claim whatever can be based thereon.

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URGENT FEE Rs. 5/-

SUPREME COURT OF INDIA
(certified copy issued in:)

Matter No. C. A. Nos. 1807-1808/05
United Breweries (Holdings) Ltd & Anr
vs

Brief Cause Title Kishore Rajaram Chhabra & ors

A1-7850

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18/3/05

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18/3/05

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. 17-18 IN CIVIL APPEAL NOS. 1807-1808 OF 2005

UNITED BREWERIES (HOLDINGS) LTD. & ANR.

...Appellant(s)

Versus

KISHORE RAJARAM CHHABRIA & ORS.

...Respondent(s)

O R D E R

As agreed by the private parties it is directed:

- A) The delay in filing the application is condoned.
- B) The application (IA No.17-18 of 2005) reporting inter private parties' compliance with the Consent Terms dated 7th March, 2005 filed in this Hon'ble Court is directed to be taken on record and noted.
- C) The interim order dated 11th December, 2002 in the Civil Appeal Nos. 4810, 4811, 4813, 4814, 4815 and 4816 (stay of holding Annual General Meetings of Herberstons Limited until disposal of appeals) do stand vacated and consequentially it is ordered and

directed by consent of the private parties as follows:-

(1) In respect of the 61st Annual General Meeting of Herbertsons Limited that was convened and held on 30th December, 1998 as per the orders and directions of the Bombay High Court dated 21st December, 1998 in Notice of Motion No.3932/98 in Suit No.3910/97:

(a) that the separate sealed containers/envelopes containing certain votes cast at the meeting and lying deposited with the Prothonotary & Senior Master, High Court, Bombay be handed over to and opened by the scrutineers appointed at the meeting, viz Mr. K.N. Ramasubramanian and Mr. P.B. Madhavan; and

(b) that the Chairman of the meeting, viz. Dr. Vijay Malliya to declare the results in respect of item Nos. 3 to 5 of the notice dated 30th November, 1998 convening the said meeting including the proposed resolutions under Sections 257 and 294 of the Companies Act, 1956 by ignoring all votes cast by Airedale Investment & Trading Private Limited, Imfa Holdings Private Limited, Mahameru Trading Company Private Limited and Shirish Finance and Investments Limited (Defendant Nos. 2 to 5 in Suit No. 3910/97) in respect of the shares disputed in paragraph 18 of the plaint in Suit No. 3910 of 1997 as well as the votes cast by Imfa

Holdings Private Limited, Beethoven Traders Private Limited and Darcel Traders Private Limited (Plaintiffs in Suit No. 297 of 1999) in respect of the shares mentioned in prayer (a) of the plaint in Suit No. 297 of 1999.

(2) After the results of the 61st Annual General Meeting of Herbersons Limited are declared as provided in clause 1 above, Herbertsons Limited to convene and hold all Annual General Meetings of Herbertsons Limited (that were restrained from being convened and held by the said interim order of this Hon'ble Court), viz. Annual General meetings for each of the financial years ended 31st March, 1999, 31st March, 2000 31st March, 2001, 31st March 2002, 31st March, 2003 and 31st March, 2004, and do transact all necessary business at each of the said Annual General Meetings.

(3) In view of the above, Civil Appeal No. D17807 of 2003, Special Leave Petition (Civil) Nos. C7770-7771 of 2003, Civil Appeal Nos. 4810, 4811, 4813, 4814, 415 and 4816 of 2002 and Civil Appeal Nos. 8084-8087 of 2003 stand disposed of as above with no order as to costs.

(4) By consent of the private parties, the private parties are directed to apply for orders in various pending proceedings in different fora in terms

of agreed minutes of orders collectively marked as Schedule II to IA No.17-18 of 2005 (each of the said minutes of orders having been signed by the private parties thereto). It being agreed that the first blank date in each minutes of order be read as 7th March, 2005 Schedule II to the IA No.17-18 of 2005 is treated as incorporated herein.

However, the learned counsel appearing for the SEBI submits that there has not been full compliance of the Consent Terms dated 7th March, 2005. Therefore, we direct the private parties to ensure full compliance of the Consent Terms dated 7.3.2005 including conditions suggested by SEBI without any omission, as stated in SEBI advocate's letter dated 3.5.2005. If there is no compliance of the aforesaid directions, it is open to SEBI to move this Court in an appropriate application.

The appeals are disposed of accordingly.

.....J.
(N. Santosh Hegde)

.....J.
(S.B. Sinha)

New Delhi,
May 04, 2005.