Case Study

Leading manufacturer of high-quality chocolate and cocoa products

Service(s) offered: **Consolidation/Merger**

Sector/Industry: **Food Processing and Manufacturing**

Facilitating the merger of two international food processing companies

The Client

Headquartered in Italy, the ABC Group is the world's leading manufacturer of high-quality chocolate and cocoa products.

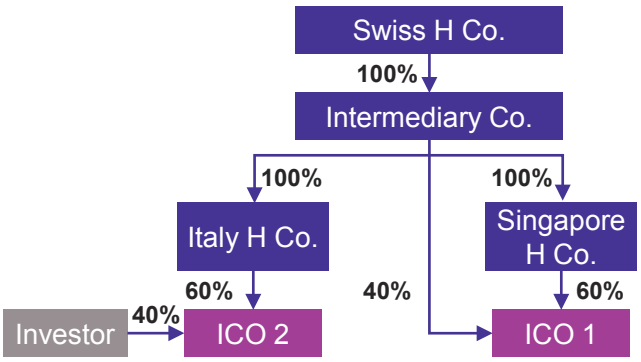
Its Indian Company subsidiary (ABC Private Limited or the ICO 1) was incorporated in India in 2013 to manufacture, market and distribute high-quality chocolate and cocoa products. The Company had set up a factory in Maharashtra.

Pursuant to an acquisition at headquarter level, the Group added one more subsidiary company in India (ICO 2).

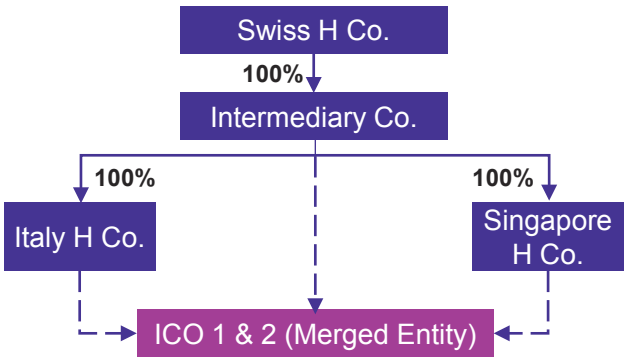
Case Highlights

- Pre-merger acquisition of shares for giving exit of minority shareholder
- Greenfield set up related regulatory advisory and interim funding prior to the commencement of the merger
- Advice on maintaining an appropriate shareholding structure to satisfy tax requirements
- End-to-end tax and regulatory advisory concerning the exit of a minority shareholder, greenfield set-up, change of control with the directorate of industries for a packaged scheme of incentives, merger, etc.
- Valuation of shares of both the entities to derive share exchange ratio having regard to post-merger shareholding pattern to be maintained
- Seamless conclusion of merger and post-merger consolidation of share capital in the records of the registry

Present Structure



Proposed Structure



Context

40% of the stake in ICO 2 was held by the Italian Government sponsored investment fund (minority shareholder). The Group had major expansion plans in India and intended to give exit to the minority shareholder and also consolidate the business into one single entity.

Nexdigm was approached to advise and project manage the entire business reorganization process end-to-end as desired by the Group in the given timeframe.

Our Approach

The Nexdigm approach to this project was based on project management's four pillars: Time, Cost, Quality, and Risk. The assignment's primary requirement was to assess the existing situation and build a roadmap for business reorganization. A dedicated project team was assigned, which led the project, which involved complex regulatory involvement coupled with the practical challenge of a raging pandemic.

Despite the limitations rendered by the pandemic, the team ensured adherence to the timelines by closely coordinating with the Group management, Indian management, and other stakeholders while working remotely.

Project Management Support

Nexdigm provided support across several phases of the project, from initiation to merger of companies (and even post-merger integration). The team managed the project in the following areas:

Initial advisory:

Nexdigm advised an efficient way to offer exit to minority shareholder, which involved tax and regulatory advice and a review of the share purchase agreement drafted by Italian lawyers. Subsequent to that, Nexdigm advised on greenfield set up related issues such as the acquisition of land from an industrial corporation, change of control updation with the directorate of industries for a packaged scheme of incentives granted by the State, mode of optimum interim funding, and tax and regulatory advice in relation thereto.

Conceptualization of Merger Option:

Nexdigm conceptualized the amalgamation of another group company which was saddled with heavy losses. The conceptualization of the merger option was finalized after extensively evaluating the available options from tax and regulatory perspectives. This involved review of conditions of tax neutral amalgamation, entitlement to benefit of carry forward and set off of losses, stamp duty implications, other regulatory impacts such as directorate of industries, industrial development corporation and foods safety standards licensing requirements. The exit of the shareholder was arranged in a manner that the benefit of India – Singapore Treaty was retained (grandfathering benefit). Before initiating the merger process, the Group was advised on carefully transitioning of plant and machinery to meet conditions w.r.t movement of assets as well as of capacity utilization in order to preserve the brought forward losses. The name of the Company was also changed prior to the merger so as to preserve the goodwill attached to the name.

Initiation of Merger Process:

The merger process broadly involved determining share exchange ratio, drafting of the Scheme of amalgamation, approval of shareholders, application to the Tribunal, procuring dispensation of creditors meeting, filing of a petition for confirmation of the Scheme, procuring reports from regulatory authorities such as the Registrar of Companies, Regional Director, Official Liquidator, Ministry of Corporate Affairs, availing exemption notification under Competition Act, 2002, obtaining final approval to the merger from the Tribunal, consolidation of authorized capital post-merger and adjudication of stamp duty payable on merger order.

Liquidation of affairs of amalgamating entity also involved representation before aforesaid regulatory authorities and submission of filtered information in an appropriate manner.

Nexdigm extensively worked with the Company's existing consultant to ensure that they were also aligned to project sensitivity and timelines.

Critical Issues:

The project faced certain issues that involved advice on Indian law for acquisition of shares from minority shareholders. Furthermore, one of the critical issues was to maintain desired shareholding pattern on one hand while meeting the conditions to avail carried forward losses in the merger. Also, the Group wanted to transit the plant and machinery from another company to the Company, which required detailed analysis so as to preserve the pre-condition of availing carried forward losses. Nexdigm also successfully procured dispensation to holding creditors meetings despite there being negative net worth by putting across argument of Group support.

Nexdigm represented the Company before regulatory authorities to obtain their clean reports and satisfied all their observations on the proposal, including a rationale for the merger, protection of creditors' interest, and stated that the Scheme is in compliance with applicable laws.

Nexdigm also successfully combined the authorized share capital as a result of the merger without payment of additional registration fees and stamp duty.

Time-bound Merger Process:

The project was strictly time-bound due to the timeline set up by the Group to commence production in the newly set-up factory in 2022.

Impact

Nexdigm's overall project management approach helped achieve the management's objective of completing the project within the desired timeline despite the complications rendered by the pandemic. Undeterred by the pandemic restrictions/lock-down, the Nexdigm project team ensured that the merger was consummated by March 2022 by resolving every critical issue appropriately and in accordance with the law, delivering to the management's expectations.

The structure brought substantial tax savings ~USD 3.14 million. It also enabled the Group to arrange the exit of investors in ICO-2 so-that the benefits of the Singapore treaty could be retained (Grandfathering of treaty benefit).

Our Project Management service helped the client to complete the transaction from various perspectives successfully. The project supported the Group consolidate its business presence in India coupled with the increase in production capacity and ensured entitlement to benefit of carried forward losses and ease of administration.

> "Nexdigm has been very instrumental in closing a complex reorganization of the Indian business of the Group. They were involved right from the beginning of process which encompassed, offering an exit to minority shareholders, deal documentation, and valuation, followed by the conceptualization of the merger in the most tax and regulatory efficient manner. In this process Nexdigm's multidimensional team paid attention to the commercial and economic rationale of business reorganization to ensure operational synergies. The team understood the key aspects of the entire reorganization process and advised on all key matters as a project manager.
>
> We are happy and satisfied with the overall advice we have received on technical and commercial aspects and also on the smooth implementation of the merger project for our Group. It was a wonderful experience to work with Nexdigm's M&A Tax and Restructuring Team."

Group Finance Controller

For more information on this case study, please write to us at:

ThinkNext@nexdigm.com

You can also visit our website to know how our services resulted in tangible business benefits:

www.nexdigm.com