IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)

Present:

Mr. Justice Sikder Mahmudur Razi

Company Matter No. 639 of 2026

IN THE MATTER OF:

An application under Sections 228 and 229 of the Companies Act, 1994.

-AND-

IN THE MATTER OF:

Divine Cold Storage Limited

….Transferee-Petitioner.

- Versus-

The Registrar, Joint Stock Companies and Firms.

....Transferor-Respondent.

Mr. Amit Das Gupta, Advocate

……For the petitioner.

No one appears

.......For the Respondent.

Heard on: 11.08.2026 and 18.08.2026

And

Judgment on: The 19th August, 2026

1. This application under sections 228 and 229 of the Companies Act, 1994 has been filed seeking sanction of a Scheme of Amalgamation whereby the petitioner No. 2, **Divine Agro Tissue Culture Limited**, being the Transferor Company, shall be amalgamated with and absorbed by the petitioner No. 1, **Divine Cold Storage Limited**, being the Transferee Company. Under the proposed Scheme, the entire undertaking of the Transferor Company as a going concern, together with all its assets and liabilities, is proposed to be transferred to and vested in the

Transferee Company. The proposed Scheme of Amalgamation has been annexed to the petition as Annexure-A.

2. Facts in a nutshell are that the petitioner No. 1, Divine Cold Storage Limited, was originally incorporated as a private company limited by shares in the name of Divine Specialized Cold Storage Limited bearing Incorporation Certificate No. C-49891(186)/2003 and subsequently, on 04.01.2004, its name was changed to Divine Cold Storage Limited. Its Certificate of Incorporation, Memorandum and Articles of Association and Form VIII relating to change of name have been annexed as Annexures-B, B-1 and B-2 respectively. The petitioner No. 1 has an authorised share capital of Tk.7,00,00,000/- divided into 7,00,000 ordinary shares of Tk.100/- each and a paid-up share capital of Tk.10,00,000/-. The Annual Summary of Share Capital as on 30.12.2025 has been annexed as Annexure-C, while Form XII showing its directors has been annexed as Annexure-D.

The petitioner No. 2, Divine Agro Tissue Culture Limited, is also a private company limited by shares incorporated under the Companies Act, 1994 bearing Incorporation Certificate No. C-105553/12. Its Certificate of Incorporation and Memorandum and Articles of Association have been annexed as Annexures-E and E-1 respectively. The petitioner No. 2 has an authorised share capital of Tk.3,00,00,000/- divided into 3,00,000 ordinary shares of Tk.100/- each and a paid-up share capital of Tk.20,00,000/-. Its Annual Summary of Share Capital as on 31.12.2025 has been annexed as Annexure-F and Form XII showing its directors has been annexed as Annexure-G.

2.1. It further appears that both companies are under substantially common management and their objects are similar and complementary. Clause III(16) of the Memorandum of Association of the petitioner No. 1 and Clause III(8) of the Memorandum of Association of the petitioner No. 2 permit the corporate arrangements contemplated by the proposed amalgamation.

Both companies have also placed their audited financial statements as on 30.06.2025 before this Court as Annexures-H and H-1. The acknowledgments relating to their income-tax returns dated 30.04.2026 have similarly been annexed as Annexures-I and I-1.

2.2. Before approaching this Court, the respective Boards and shareholders of the petitioner companies considered the proposed amalgamation.

In respect of the petitioner No. 1, notice of the Board meeting dated 02.05.2026 and the minutes of the Board meeting held on 10.05.2026, whereby the proposed merger was approved, have been annexed as Annexures-J and J-1. Thereafter, notice of its Extraordinary General Meeting dated 10.05.2026 and the minutes of the Extraordinary General Meeting held on 03.06.2026, in which the proposal was approved subject to sanction of this Court and compliance with the applicable legal and regulatory requirements, have been annexed as Annexures-K and K-1.

Likewise, in respect of petitioner No. 2, notice of the Board meeting dated 02.05.2026 and the minutes of its Board meeting held on 10.05.2026 have been annexed as Annexures-L and L-1, while the notice and minutes of its Extraordinary General Meeting held on 03.06.2026 have been annexed as Annexures-M and M-1.

Thereafter, a joint meeting of the Boards of Directors of both companies was held on 04.06.2026. The respective notices dated 03.06.2026 and the minutes of the joint Board meeting have been annexed as Annexures-N, N-1 and N-2.

3. Upon admission of the matter on 21.06.2026, this Court directed the petitioners, amongst others, to convene separate meetings of the members and creditors of the respective companies for consideration and approval of the Scheme; to keep the Scheme open for inspection; to serve notices of the meetings upon the members and creditors by registered post enclosing copies of the proposed Scheme; to publish notices of presentation of the application and of the meetings in two daily newspapers; to submit the Chairmen's reports; and to place the latest financial reports before the Court. The petitioners were further directed to file an affidavit-in-compliance within 30.07.2026.

3.1. Pursuant to the aforesaid order, the petitioners issued notices dated 01.07.2026 to the members and creditors of both companies convening their respective meetings on 19.07.2026 and 20.07.2026. Copies of the notices together with the postal receipts and acknowledgments due have been annexed to the affidavit-in-compliance as Annexures-X, X-1, X-2 and X-3. In compliance with the direction relating to publication, notices regarding presentation of the application and the meetings were published on 01.07.2026 in The Daily Prothom Alo and The Daily Financial Post. Copies of the newspaper publications have been annexed as Annexures-X-8 and X-9.

3.2. The meetings of the members of both petitioner companies were held on 19.07.2026 and the separate meetings of their creditors were held on 20.07.2026 at their respective registered offices under the chairmanship of their respective Chairmen. The minutes of those meetings have been brought on record as

Annexures-X-4, X-5, X-6 and X-7 to the affidavit-in-compliance. It appears from the said minutes that no objection to the proposed amalgamation was raised in those meetings.

3.3. The respective Chairmen thereafter prepared their reports dated 22.07.2026 regarding the members' meetings held on 19.07.2026 and the creditors' meetings held on 20.07.2026. Those reports have been annexed as Annexures-X-10, X-11, X-12 and X-13.

3.4. In further compliance with the order dated 21.06.2026, the latest financial reports of the two petitioner companies as on 30.06.2025 were placed before this Court as Annexures-X-14 and X-15.

3.5. It subsequently transpired that although the meetings of the creditors of both companies had duly been held on 20.07.2026, the attendance sheets of those meetings were not annexed with the affidavit-in-compliance dated 26.07.2026. The petitioners, therefore, filed a supplementary affidavit-in-compliance and produced the attendance sheets of the two creditors' meetings as Annexures-X-20 and X-21.

3.6. It further appears from the petition that the petitioner companies had informed the banks with which they maintained banking transactions about the proposed amalgamation and those banks furnished No Objection Certificates to the Scheme. The said NOCs have been placed before the court as Annexures-O to O-4.

4. Learned Advocate appearing for the petitioners submits that the proposed amalgamation is commercially beneficial to both companies since their businesses are similar and complementary and they are operated under substantially common management. According to him, bringing the businesses under one corporate structure would eliminate duplication, reduce administrative, warehousing and overhead expenses, rationalise management and finances and facilitate better utilisation of employees and other resources.

He further submits that the rights of the creditors will not be adversely affected because the Transferee Company will take over not only the assets and business of the Transferor Company but also its liabilities and obligations. He further submits that the Scheme specifically protects the employees of the Transferor Company by providing that they shall become employees of the Transferee Company on the effective date without any break or interruption in service and that their existing rights relating to provident fund, gratuity and other service benefits will continue to remain protected.

Lastly, he submits that the Scheme has been approved by the members and creditors, the concerned banks have expressed no objection and no shareholder, creditor or other stakeholder has appeared before this Court opposing the proposed amalgamation.

5. I have heard the learned Advocate for the petitioners and perused the petition, the Scheme of Amalgamation (**Annexure-A**), the corporate documents, the affidavit-in-compliance, supplementary affidavit-in-compliance, minutes and reports of the meetings and the other materials brought on record.

The jurisdiction of the Court under sections 228 and 229 of the Companies Act, 1994 while considering a Scheme of Amalgamation is essentially supervisory. The Court is to see whether the statutory procedure has been substantially complied with; whether the shareholders and creditors whose interests may be affected have been afforded a fair opportunity to consider the

Scheme; whether the Scheme is fair and reasonable; and whether it is contrary to any provision of law or public policy.

In the present case, the corporate decision-making process preceding the filing of the matter is evident from Annexures-J to N-2. The respective Boards of Directors considered and approved the proposal and the respective Extraordinary General Meetings thereafter approved the proposed amalgamation subject to sanction of this Court.

After admission of the matter, notices of the Court-directed meetings together with postal receipts and acknowledgments have been placed on record as Annexures-X to X-3. The requisite newspaper publications are evidenced by Annexures-X-8 and X-9. The members' meetings and creditors' meetings were thereafter held and their minutes are available as Annexures-X-4 to X-7. The Chairmen's reports have been filed as Annexures-X-10 to X-13. The latest financial reports have also been brought before the Court as Annexures-X-14 and X-15.

The attendance sheets of the creditors' meetings, which had inadvertently been omitted from the first affidavit-in-compliance, have subsequently been produced through the supplementary affidavit-in-compliance as Annexures-X-20 and X-21.

The records further show that no objection was raised in the members' or creditors' meetings and no stakeholder has appeared before this Court to oppose the proposed amalgamation.

Another important consideration is that the amalgamation does not extinguish the liabilities of the Transferor Company. Rather, under the Scheme

(**Annexure-A**), its entire undertaking together with its assets and liabilities is to vest in the Transferee Company. Therefore, an existing creditor does not lose an enforceable claim merely because the separate corporate existence of the Transferor Company comes to an end.

The interest of the employees also appears to have been protected under the Scheme. The employees of the Transferor Company in service on the effective date are to become employees of the Transferee Company without any break or interruption in service and their provident fund, gratuity and other employment-related rights and benefits are to remain protected. The materials specifically state that the Transferee Company shall honour the existing agreements, settlements and employee-related obligations of the Transferor Company.

The commercial justification behind the Scheme also appears reasonable. Both companies have similar and complementary objects, substantially common management and interconnected business interests. The proposed amalgamation is intended to reduce administrative and overhead costs, rationalise management and financial affairs and achieve more effective utilisation of the companies' resources. These matters principally fall within the commercial wisdom of the stakeholders. Where such commercial decision has been taken bona fide, after compliance with the statutory process, and no prejudice to the creditors, employees or other stakeholders is demonstrated, there is no reason for this Court to substitute its own commercial assessment for that of the persons directly interested in the companies.

Having considered the entire materials on record, this Court is therefore satisfied that the statutory requirements under sections 228 and 229 of the

Companies Act, 1994 have been substantially complied with; the Scheme has received the requisite approval of the members and creditors; due opportunity was afforded to all concerned to consider the Scheme; no objection has been raised before this Court by any stakeholder; and the proposed Scheme appears to be fair, reasonable and commercially expedient and is neither contrary to law nor against public policy.

6. Accordingly, the application is allowed. The Scheme of Amalgamation annexed to the petition as **Annexure-A** is hereby sanctioned and confirmed. Upon filing of the certified copy of this Judgment and Order with the Registrar of Joint Stock Companies and Firms:

a) Divine Agro Tissue Culture Limited, the Transferor Company, shall stand amalgamated with Divine Cold Storage Limited, the Transferee Company, in accordance with the Scheme of Amalgamation (**Annexure-A**), which shall form part of this Judgment and Order.

b) The whole undertaking, business, assets, properties, rights, interests, licences, benefits, contracts, liabilities and obligations of Divine Agro Tissue Culture Limited shall, subject to the terms and conditions of the Scheme, stand transferred to and vested in Divine Cold Storage Limited without any further act, deed or instrument.

c) All suits, proceedings, actions or other legal proceedings pending by or against Divine Agro Tissue Culture Limited shall be continued, prosecuted and enforced by or against Divine Cold Storage Limited, as the case may be, as if the same had originally been instituted by or against Divine Cold Storage Limited.

d) All mortgages, charges, securities, undertakings, assurances, obligations and liabilities, if any, of Divine Agro Tissue Culture Limited shall stand transferred to and vested in Divine Cold Storage Limited and shall remain enforceable in the same manner and to the same extent as they were enforceable immediately before the amalgamation. The amalgamation shall not release, discharge or otherwise prejudice any existing security, encumbrance or liability.

e) All liabilities of Divine Agro Tissue Culture Limited, whether ascertained or contingent and whether disclosed in the accounts or otherwise legally enforceable, shall upon amalgamation become liabilities of Divine Cold Storage Limited. Any property of the Transferor Company subject to an existing charge or encumbrance shall vest in the Transferee Company subject to the same charge or encumbrance.

f) All licences, permissions, approvals, registrations, certificates, contractual rights and other benefits belonging to or enjoyed by Divine Agro Tissue Culture Limited shall, subject to law and the terms of the Scheme, stand transferred to and be treated as those of Divine Cold Storage Limited from the effective date.

g) The share exchange contemplated under the Scheme shall be implemented in accordance with the approved valuation and exchange ratio.

h) All employees of Divine Agro Tissue Culture Limited who are in service on the effective date of the Scheme shall continue as employees of Divine Cold Storage Limited without interruption in service and on the terms and conditions contemplated by the Scheme. Their existing rights relating to provident fund, gratuity and other service benefits shall remain protected in accordance with the Scheme and applicable law.

i) The accounts of the petitioner companies shall be finalised and consolidated in accordance with the sanctioned Scheme with effect from the appointed date.

j) Upon the Scheme becoming effective, Divine Agro Tissue Culture Limited shall stand dissolved without winding up in terms of section 228(3) of the Companies Act, 1994.

k) The Registrar of Joint Stock Companies and Firms shall record the amalgamation and the transfer and vesting of all assets, liabilities, rights and obligations of Divine Agro Tissue Culture Limited in Divine Cold Storage Limited pursuant to this Judgment and the sanctioned Scheme.

l) Bangladesh Bank, the National Board of Revenue, the concerned Sub-Registrars, Assistant Commissioners (Land) and every other regulatory, revenue, land, utility or governmental authority concerned shall, upon production of a certified copy of this Judgment together with the registered Scheme, take such consequential steps as are required under law for giving full effect to the amalgamation.

m) All banks, financial institutions, insurance companies, utility service providers and other authorities having dealings with either of the petitioner companies shall recognise Divine Cold Storage Limited as successor-in-interest of Divine Agro Tissue Culture Limited and shall make necessary consequential corrections in their respective records, subject to compliance with such statutory requirements as may specifically be applicable.

n) This Judgment and Order shall not affect or discharge any personal guarantee or similar obligation, if any, furnished by any director, shareholder or third-party guarantor in respect of any legally enforceable liability of the Transferor Company.

o) The Transferee Company shall cause a certified copy of this Judgment and Order to be delivered to the Registrar of Joint Stock Companies and Firms for registration within the period prescribed under section 229(3) of the Companies Act, 1994.

7. The petitioners are directed to take all necessary steps in accordance with the Companies Act, 1994 and the sanctioned Scheme of Amalgamation.

8. The petitioners intend to donate Taka 200,000/- (Two Lac). Out of the said amount Tk. 100,000/- is to be given in the form of pay order in the name of "S. Court Lawers Samity Karmakarta-Karmachari Kallyan Trust" Account No. 4435434109092, Sonali Bank PLC, Supreme Court Br. Dhaka. Tk. 50,000/- is to be given in the form of pay order in the name of "Mosjid E Abu Bakar(R)" Account No. 20506330200054413, Islami Bank Bangladesh Limited, Nabinbag Sub-Br. Banasree Dhaka. Tk. 50,000/- is to be given in the form of pay order in the name of "Mohammad Jashim Uddin" who is an Advocate of Supreme Court of Bangladesh and upon furnishing receipt of the payment, the order may be drawn up, if so, prayed for. The aforesaid amount shall be used exclusively for his medical treatment and related expenses arising from the severe injuries sustained by him in the road accident.

9. The cost of the application shall be borne by the petitioner company.

(Sikder Mahmudur Razi, J:)