

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

CSP NO 842 (MAH) OF 2017
IN
CSA NO 533 (MAH) OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between Jeevandeep Prakashan Private Limited (JPPL and/or the Demerged Company) and Jeevandeep Infomedia Private Limited (JIPL and/or the Resulting Company) and their respective Shareholders

Jeevandeep Prakashan Private LimitedPetitioner /Demerged Company

AND

Jeevandeep Infomedia Private LimitedPetitioner/Resulting Company

Order delivered on 15th November, 2017

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)
Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner(s):Mr. Hemant Sethi i/b Hemant Sethi & Co
Mr. S Ramakantha, Joint Director in the office of Regional Director
Ms. P. Sheela, Joint Director in the office of Regional Director
Mr. Ramesh Golap, Deputy Registrar of Companies

Per: V. Nallasenapathy, Member (T)

Order

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of the Tribunal is sought under section 230 to 232, of the Companies Act, 2013 Scheme of Arrangement between Jeevandeep Prakashan Private Limited (the Demerged Company) and Jeevandeep Infomedia Private Limited (the Resulting Company) and their respective Shareholders.
3. The learned Counsel for the Petitioners submit that the Demerged Company is engaged in the business of publishing of educational books and other literary works

- / books and holds business properties. The Resulting Company is engaged in the business of manufacturing and sale of note books and development and publishing of digital educational products.
4. The Rational for the scheme is Scheme is that JPPL has been predominantly engaged in the business of publishing of educational books and other literary works / books and holds business properties. JIPL has been engaged in the business of manufacturing and sale of note books and development and publishing of digital educational products. With a view to align the business of publishing of books, manufacturing and sale of note books and development of digital products related thereto to meet dynamic market requirements, business synergies and consolidation, it is proposed to transfer and vest the Demerged Undertaking of JPPL in JIPL. JPPL and JIPL are both having common mirror shareholding pattern and management. The transfer and vesting of the Demerged Undertaking in JIPL will be in the larger interest of the shareholders and all the stakeholders of both the companies and will help consolidation, focused attention, better and efficient utilization of available resources, expansion and future growth.
 5. The Petitioner Companies have approved the said Scheme by passing the board resolutions which are annexed to the respective Company Scheme Petitions.
 6. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Scheme Applications.
 7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956

/ 2013 and the rules made there under whichever is applicable. The said undertaking is accepted.

8. The Regional Director has filed a Report dated 20th October, 2017 stating therein that save and except as stated in paragraph IV (a) to (e) of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:

- (a) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 6th July 2017 has served a copy company scheme application no. 533 of 2017 along with relevant orders etc., further this Directorate has also issued a reminder 20/09/17, to IT Department.*
- (b) *The tax issue if any arising out of the scheme is subject to final outcome of I.T. authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the petitioner Company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner Company.*
- (c) *As per Part-I Definition & Share Capital Clause 1.2 of the Scheme. "Appointed Date" means 1st April, 2016 or such other date as may be approved by the High Court. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2016.*
- (d) *Ghalla & Bhansali, the Statutory auditors of M/s Jeevandeep Infomedia Private Limited, the Resulting Company, vide annexure to Auditors Report dated 22.09.2014, for the year 31.03.2014 vide para 17 has adversely commented that "According to the information and explanation given to us and on an overall examination of balance sheet for the company, we report that the company has used funds raised on short term basis for long-term investment. The company has accepted unsecured loans amounting to Rs. 3,78,85,000/- which are repayable on demand. Out of the same the company has invested Rs. 2,43,74,594/- for increase of the production capacity." As per provisions of section 217(3) provides that the board shall bound to give the fullest information and explanation its report on every reservation, qualification, adverse comments etc. However, it is seen that the director's report dated 22.09.2014 for the year 2013-14 had not given their replies to this adverse comments/qualifications, thereby violating provisions of Section 271(3) of the Companies Act, 1956.*

(e) *Ghalla & Bhansali, the Statutory auditors of M/s Jeevandeep Prakashan Private Limited, the Demerged Company, vide annexure to Auditors Report dated 29.09.2014 for the year 31.03.2014 vide para 17 has adversely commented that "According to the information and explanation given to us and on an overall examination of balance sheet and cash flow of the company, we report that the company has used funds raised on short term basis for long term investments. The Company has accepted unsecured loans which are repayable on demand and the same has been partly invested for production activities". As per provisions of section 217(3) provides that the board shall bound to give the fullest information and explanation its report on every reservation, qualification, adverse comment etc. However, it is seen that the director's report dated 29.09.2014 for the year 2013-14 had not given their replies to this adverse comments/qualifications, thereby violating provisions of Section 217(3) of the Companies Act, 1956.*

9. In so far as observations made in paragraph IV (a) and IV (b) of the Report of Regional Director are concerned, the Petitioners through its Counsel submits that the Petitioners undertake to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
10. As far observations made in paragraph IV(c) of the Report of Regional Director is concerned the Petitioners through their Counsel confirms that the "Appointed Date" shall be 1st April 2016.
11. In so far as observations made in paragraph IV (d) & (e) of the Report of Regional Director is concerned, the Counsel for the Petitioners submit that the proposed scheme will not dilute the any proceedings that may be filed by the Registrar of Companies as both the Companies will remain to be in existence post sanctioning of the scheme.
12. The observations made by the Regional Director have been explained by the Petitioners in paragraphs 9 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.

13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 842 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the Petition.
15. The Petitioners to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
16. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically, along with e-form INC 28 in addition to the physical copy, within 30 days from the date of receipt of the order.
17. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai.
18. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V Prakash Kumar, Member (J)