

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

CSP NO.790 OF 2017

AND

CSP NO.791 OF 2017

**VYOM ADVISORY SERVICES PRIVATE LIMITED**

...Petitioner Company 1/ Transferor Company

AND

**JSW IP HOLDINGS PRIVATE LIMITED**

... Petitioner Company 2/Transferee Company

Under Sections 230 to 232 of the Companies Act, 2013  
and other relevant provisions of the Companies Act,  
2013.

And

In the matter of Scheme of Amalgamation of VYOM  
ADVISORY SERVICES PRIVATE LIMITED  
("Transferor Company") with JSW IP HOLDINGS  
PRIVATE LIMITED ("Transferee Company") And  
their respective shareholders

Order delivered on 30<sup>th</sup> November, 2017

Coram:

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

For the Petitioner(s): Mr. Rajesh Shah with Mr. Ahmed M Chunawalai/b M/s. Rajesh Shah  
& Co., Advocate for the Petitioner.

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

**MINUTES OF THE ORDER**

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Vyom Advisory Services Private Limited with JSW IP Holdings Private Limited and their respective shareholders.
3. Learned counsel for the Petitioner Companies states that the Petitioner Company 1/ Transferor Company is engaged in the business of providing advisory services,



Petitioner Company 2//Transferee Company is the owner of "JSW" brand and is engaged in the business of brand management and promotion.

4. Learned counsel for the Petitioner Companies further states that the proposed Scheme of Amalgamation will lead to simplification of corporate structure, elimination of holdings through multiple entities thereby streamlining promoter holding and rationalization of management and other operating expenses.
5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the board resolutions which are annexed to their respective Company Scheme Petitions.
6. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitions have been filed in consonance with the order passed in Company Scheme Application Nos. 622 and 625 of 2017 of the Hon'ble Tribunal.
7. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under. The said undertaking is accepted.
8. The Regional Director has filed his report dated 29th November, 2017, inter alia, stating therein that save and except as stated in paragraph IV 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. *The Petitioners shall be directed to clarify their policy towards transfer of Staff, Workmen and Employees of the Transferor Company, upon Scheme being effective. Further, such terms & conditions shall not be less favourable to them with reference to their employment with the Transferor Company on the Appointed & Effective Date.*
  - b. *The Transferee Company must ensure issuance of Shares in the name of the Trustees only on behalf of Sajjan Jindal Family Trust, as the said Trust is actual owner of the shares in the Transferor Company, in accordance to the provisions of the Companies Act, 2013 and relevant Trust Act.*
  - c. *The ROC, Mumbai has reported that the main objects of the Transferor Company (Advisory Services) are not similar to main objects of the Transferee Company (Brand Development and giving Brand on Royalty). The Transferee Company may be directed to ensure inclusion of main objects/ activities of the Transferor Company in its main objects as per Section 12 and other applicable provisions of the Companies Act, 2013, if it require to carry on such activities, upon Scheme becoming effective.*



- d. *As regards Para No. 4.6 of the Scheme, the Petitioner Companies ensure compliance of the relevant provisions of the Companies Act, 2013 & rules made thereunder and also directions issued by the Hon'ble NCLT, while approval of the Scheme in the matter. Any modification for implementation of the Scheme shall be done only with the prior approval of the Hon'ble NCLT.*
  - e. *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such Accounting Entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*
  - f. *The Tax Implication if any arising out of the scheme is subject to final decision of the Income Tax 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 Companies after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
  - g. *That in view of provisions of proviso to Section 66(3) of the Companies Act, 2013, the Hon'ble Tribunal may kindly direct the Company to submit certificate from Auditor of the Company to the effect that the Accounting Treatment proposed by the Transferee Company for such reduction is in conformity with the Accounting Standards specified in Section 133 or any other provisions of the Companies Act, 2013.*
  - h. *In accordance to proviso to Section 232(3) of the Companies Act, 2013, the Petitioners may be directed to file a certificate from the Company's Auditor to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013.*
9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned, the Transferor Company submits that there are no staff/ workmen/ employees in employment with the Transferor Company.
  10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report is concerned, the Transferee Company undertakes to issue shares in the name of the Trustees on behalf of Sajjan Jindal Family Trust, as the said Trust is actual owner of the shares of the Transferor Company and also undertakes to comply with the applicable provisions of the Companies Act, 2013 and the relevant Trust Act.
  11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of the report is concerned, the Transferee Company undertakes to



include the main objects/ activities of the Transferor Company in its main objects and also undertakes to comply with the applicable provisions of the Companies Act, 2013.

12. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of the report is concerned, the Transferee Company hereby undertakes to comply with the relevant provisions of the Companies Act, 2013 and also undertakes to seek prior approval from the Hon'ble NCLT in case any such modifications are made to the Scheme under Clause 4.6 of the Scheme.
13. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of the report is concerned, the Transferee Company undertakes that it will comply with the Accounting Standard- 14. Further, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with other Accounting Standards such as Accounting Standard - 5, as may be applicable.
14. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (f) of the report is concerned, the Petitioner Companies undertakes to comply with the applicable provisions of the Income Tax Act, 1961 and any tax issues arising out of the Scheme will be met and answered in accordance with law.
15. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (g) & (h) of the report is concerned, the Transferee Company hereby clarifies that the Transferee Company has filed the Accounting Treatment Certificate as required under the Companies Act, 2013 with the Company Scheme Application as Annexure E and with Company Scheme Petition as Annexure D2, stating that the proposed Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013.
16. As stated in paragraph III (12) of the report of the Regional Director, Western Region, Mumbai, in respect of submission made by the ROC, Mumbai, the Petitioner Companies submits that the observations made at point 1 and 3 of Para III (12) has been dealt with at paragraph 11 and 12 and appropriate undertaking has been given by the Petitioner Companies. As far as point 2 of para III(12) is concerned, the Petitioner Companies undertakes that the Scheme shall take effect from the Appointed Date in compliance with the provisions of section 232(6) of the Companies Act, 2013.
17. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 16 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
18. The Official Liquidator has filed his report dated 1<sup>st</sup> day of September, 2017 in Company Scheme Application No.622 of 2017 inter alia, stating therein that the affairs



of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved without winding up by the Hon'ble Tribunal.

19. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.
20. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 790 is made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No. 791 of 2017 is made absolute in terms of prayer clauses (a) to (d).
21. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with e-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the Order duly certified by the Deputy Director or Assistant Registrar, of the National Company Law Tribunal, Mumbai Bench.
22. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Director or the Assistant Registrar, of the 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 a period of 60 days from the date of receipt of the Order.
23. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Transferor Company to pay costs of Rs. 25,000/- to the Official Liquidator. Costs to be paid within four weeks from the date of the receipt of the duly certified copy of this order.
24. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Deputy Director or the Assistant Registrar, of the National Company Law Tribunal, Mumbai Bench.

**Sd/-**

V. Nallasenapathy, Member (T)

**Sd/-**

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

Date : 30.11.2017