

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH**

**CA (CAA)-65(ND)/2017**

**Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT, 2013**

**In the matter of:**

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Arrangements) Rules, 2016.

**AND**

**In the matter of Composite Scheme of Amalgamation**

**OF**

M/s Jak Builders Private Limited

(Transferor Company 1 / Petitioner)

And

M/s Jaya Infra Private Limited

(Transferor Company 2 / Petitioner)



WITH

M/s Jak Group Private Limited

(Transferee Company/ Petitioner)

And

Their Respective Shareholders and Creditors

**MEMO OF PARTIES**

**JAK BUILDERS PRIVATE LIMITED**

Having registered office at:

566 Udyog Vihar Gurgaon

Haryana-122001

..... TRANSFEROR COMPANY-1

**JAYA INFRA PRIVATE LIMITED**

Having registered office at:

566 Udyog Vihar Gurgaon

Haryana-122001

..... TRANSFEROR COMPANY-2

**JAK GROUP PRIVATE LIMITED**

Having registered office at:

15<sup>TH</sup> Floor, Eros Corporate Tower, Nehru Place

New Delhi-110019

..... TRANSFEREE COMPANY

**For the Applicants: Mr. Sanjeev Kumar, Advocate**



## ORDER

Order Delivered on: 17.11.2017.

1. This is an application which is filed by the petitioner companies herein, namely Jak Builders Private Limited (for brevity "Transferor Company-1"), Jaya Infra Private Limited (for brevity "Transferor Company-2"), with Jak Group Private Limited (for brevity "Transferee Company") under sections 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Arrangements) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the "SCHEME" ) proposed between the applicants. The said Scheme is also annexed as Annexure "A-9" to the application. The applicants above named have preferred the instant application in effect for the following purpose as evident from the reliefs sought for in the Application, namely:

- I. To dispense with the convening and holding the meetings of the shareholders as well as the secured and unsecured creditors of the Transferor companies.
- II. To dispense with the publication of notices for the aid meetings if the transferor Companies.



- III. Transferor Companies be permitted to file the petition for sanctioning the scheme of Amalgamation within seven days from the receipt of this order passed by this Hon'ble National Company Law Tribunal on the present petition.
  - IV. Transferee Company be exempted from filing any petition or petition or to seek any consequential directions from this Hon'ble National Company Law Tribunal including seeking dispensation from holding any meeting of shareholders or creditors of the Transferee Company and publication thereof.
  - V. Passing such other and further orders as are deemed necessary in the facts and circumstances of the case.
2. An Affidavit in support of the above application sworn for and on behalf of the Transferor Company No.1 by one Ms. Nidhi Bhatia, for the Transferor Company No.2 by one Mr. Bhushan Parkash Bhatia and for the Transferee Company by one Mr. Rajesh Bhatia has been filed, being the Directors of the respective Companies along with the application. Counsel for the joint applicants took us through the averments made in the application as well as the typed set of documents annexed there with. Learned Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that a joint application filed by the applicants are maintainable in view of Rule 3(2) of the Companies (Compromises, Amalgamations and Arrangements) Rules 2016 and it is also represented that the registered office of the Transferor companies are situated within the territorial jurisdiction of Haryana and of the Transferee Company





within the territorial jurisdiction of this Tribunal, however all the companies being amenable to the regulatory authority : \_\_\_\_\_ of Registrar of Companies, NCT, New Delhi.

3. In relation to Jak Builders \_\_\_\_\_ Private Limited being the Transferor Company-1, in the Scheme marked as Annexure – “A-9”, it is represented that it is having 2 (Two) Equity Shareholders as on 31.12.2016 and both of them have given their consents by way of affidavit . It is further represented by the counsel for Applicants that the Transferor Company-1 has no Secured Creditor and 2 (Two) Unsecured Creditors and each of the unsecured creditor have given their consents. In relation to the shareholders and unsecured creditors of the Transferor Company-1, it seeks dispensation from convening and holding of the meetings in view of consent affidavits being obtained and are placed on record.
  
4. In relation to Jaya Infra Private Limited being the Transferor Company-2 in the Scheme marked as Annexure-“A-9”, Learned Counsel represents that company is having 2 (Two) Equity Shareholders. It is further represented by the counsel for Applicants that the Transferor Company-2 has no secured creditor and have 4 (Four) Unsecured Creditor. In relation to the Equity Shareholders and Unsecured creditor of the Transferor Company-2, it seeks dispensation of the



meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent being obtained and are placed on record.

5. In relation to Jak Group Private Limited being Transferee Company in the Scheme marked as Annexure-"A-9", Learned Counsel represents that company is having 2 (Two) Equity Shareholders. It is further represented by the counsel for Applicants that the Transferee Company has 3 (Three) secured creditor and 4 (Four) Unsecured Creditors. In relation to the Equity Shareholders, secured creditors and unsecured creditors of the Transferee Company, it seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent being obtained which are placed on record.
6. Learned Counsel for the Applicants also represents that the provisions of Section 233 of 2013 Act will not apply as the Scheme is a composite Scheme.
7. We have perused the application and the connected documents / papers filed therewith including the Scheme of Amalgamation contemplated amongst the Transferor and Transferee companies.
8. From the certificate of incorporation filed, it is evident that Transferor Company-1 is a private company incorporated under provision of Companies



Act, 1956 on 4<sup>th</sup> October, 2005 with Registrar of Companies, NCT of Delhi & Haryana under the name and style of "M/s Jak Builders Private Limited".

9. The Authorized Share Capital of the Transferor Company-1 is Rs. 10,00,000/- divided into 1,00,000 Equity Shares of Rs.10/- (Rupees Ten only) each. The Issued, Subscribed and Paid-up Share Capital of the Transferor Company-1 is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs.10/- (Rupees Ten only) each.
10. From the certificate of incorporation filed, it is evident that the Transferor Company-2 is a private company incorporated under provision of Companies Act, 1956 on 4<sup>th</sup> October, 2005 with Registrar of Companies, NCT of Delhi & Haryana under the name and style of "M/s Jaya Infra Private Limited.
11. The Authorized Share Capital of the Transferor Company-2 is Rs. 10,00,000/- divided into 1,00,000 Equity Shares of Rs.10/- (Rupees Ten only) each and the Issued, Subscribed and Paid-Up Share Capital of the Transferor Company-2 as on date is Rs. 1,00,000/- divided into 10,000 Equity Shares of Rs.10/- (Rupees Ten only) each.
12. From the certificate of incorporation filed, it is evident that the Transferee Company" is a private company incorporated under the Companies Act, 1956 on 6<sup>th</sup>



February, 2013 with Registrar of Companies, NCT of Delhi & Haryana under the name and style of "M/s Jak Group Private Limited".

13. The Authorized Share Capital of the Transferee Company is Rs.5,00,000,000/- divided into 50,00,000 Equity Shares of Rs.10/- (Rupees Ten only) each and the Issued, Subscribed and Paid-up Share Capital of the Transferee as on such date was Rs.46,522,000/- divided into 46,52,200 Equity Shares of Rs.10/- (Rupees Ten only) each.

14. The petitioner companies have filed their respective Memorandum and Articles of Association interalia delineating their object clauses.

15. All the Petitioners have filed last available audited financial statements for the period 31.03.2016 and the provisional statements for the period ended 31.12.2016.

16. The Board of Directors of the Applicant companies vide separate meetings held on 10.04.2017, have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions passed thereat have been placed on record by the companies.





17. All the companies have submitted that no investigation proceedings are pending against them under Sections 210 or any other applicable provisions of the Companies Act, 2013.

18. Perusal of the application and reliefs above extracted shows that application has been filed seeking for the dispensation of the meetings contemplated to be convened under the provisions of Companies Act, 2013. Further in support of relief no (d) of the application seeking for dispensation in relation to transferee company exemption is sought from filing any petition/ petitions or to seek any consequential directions and it is stated that the Transferor Companies are the associate companies and the Transferor Companies and the Transferee company being under the same management, therefore under the circumstances no separate application need to be filed by the Transferee company.

19. However, under the provisions of Companies Act, 2013 read with Companies (Compromises, Amalgamations and Arrangements) Rules, 2016, it is required of this Tribunal under the provisions of section 230 (5) of the Act to order in relation to each of the Companies before it, notices to Central Government, Income Tax Department, Registrar of Companies, SEBI, respective stock exchanges, Official Liquidator and CCI, if necessary and to such other



sectoral regulators and authorities which are likely to be affected by Compromise and arrangement.

20. Further under proviso to section 230 (7) and proviso to section 232 (2) of the Companies Act, 2013, each of the companies are required to obtain a certificate from Company's Auditor in relation to accounting treatment contemplated under the scheme. Even though the companies might enjoy a holding and wholly owned subsidiary relationship even in that case they are considered under law as separate legal entities having its own identity and in relation to the same may have their own set of legislations governing their operations unique to each and their identity under the Companies Act as well as other fiscal/ tax laws are also separate and has independent existence and under given circumstances may carry same or distinct businesses and non-issue of notices and filing of respective certificate from company's auditor will not be in consonance with law.

21. Further under the provisions of Rule 3 (2) of Companies (Compromises, Arrangements and Arrangements) Rules, 2016 while companies involved in a scheme have been provided with the discretion to file a joint application but no provision has been made to exempt companies from all together filing or joining in an application/ petition as sought for in this application by the Transferee Company. Further, it is well within the <sup>a</sup>rights of the petitioner companies to avail

*a*

the procedure as prescribed under section 233, where they enjoy a holding and subsidiary relationship.

22. In addition in the instant case, as evidenced from the records, while the registered office of the transferee company is situated within the territorial jurisdiction of this Tribunal, it is noticed that the registered office of the Transferor companies falls outside the territorial jurisdiction of this Tribunal.
23. Thus the joint application as filed by the Transferor and Transferee Companies are not maintainable in view of lack of territorial jurisdiction and the companies' involved in the scheme, can if so advised file individual applications taking into consideration the situation of their respective registered offices before the National Company Law Tribunal having territorial jurisdiction in terms of notification No. S.O 1935 (E) dated 01.06.2016 issued by virtue of powers conferred by sub-section (1) of section 419 of the Companies Act, 2013.
24. Taking into consideration the same and with the above observations, the applications stands dismissed, with liberty being given to the companies to file or present applications in relation to the scheme of Amalgamation before the respective jurisdictional Tribunal.

  
(R.VARADHARAJAN)

**MEMBER (JUDICIAL)**