

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT MUMBAI

COMPANY SCHEME PETITION NO 651 OF 2017

IN

COMPANY SCHEME APPLICATION NO 284 OF 2017

Jay Equipment and System Private Limited

..... ('The Demerged Company' or 'JESPL')

AND

COMPANY SCHEME PETITION NO 633 OF 2017

IN

COMPANY SCHEME APPLICATION NO 284 OF 2017

Jay Storage Solutions Private Limited

..... ('The First Resulting Company' or 'JSSPL')

AND

COMPANY SCHEME PETITION NO 632 OF 2017

IN

COMPANY SCHEME APPLICATION NO 284 OF 2017

Jay Novatech Private Limited

..... ('The Second Resulting Company' or 'JNPL')

AND

THEIR RESPECTIVE SHAREHOLDERS

IN THE MATTER of the Companies Act 2013

AND

IN THE MATTER of Section 230 -232 of the Companies Act 2013;

AND

In the matter of Scheme of Arrangement of Jay Equipment and System Private Limited having CIN U28992MH1996PTC103825 ('The Demerged Company' or 'JESPL') and Jay Storage Solutions Private Limited having CIN U29197MH2015PTC261288 ('The First Resulting Company' or 'JSSPL') and Jay Novatech Private Limited having CIN U93000MH2016PTC273212 ('The Second Resulting Company' or 'JNPL')

Called for Notice of Admission:

Mr Manish Ajay Malpani, Advocate for the Petitioners.

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

Date: 24TH August, 2017

Per: V Nallasenapathy Hon'ble Member (T).

ORDER

1. Heard the learned counsel for Petitioner Companies. No objector has come before the court to oppose the Petitions and nor any party has controverted any averments made in the Petitions.
2. The sanction of this Tribunal is sought under sections 230 to 232 of the Companies Act, 2013 to the Scheme of Arrangement between Jay Equipment and System Private Limited ('The Demerged Company' or 'JESPL') and Jay Storage Solutions Private Limited ('The First Resulting Company' or 'JSSPL') and Jay Novatech Private Limited ('The Second Resulting Company' or 'JNPL')
3. The Counsel for the Petitioner Companies submit that Jay Equipment and System Private Limited deals in the business of manufacturing, trading, agency, execute, fabricate, modify, service, or otherwise deal in material handling, equipment storage equipments of all kinds & their components, assocseries and allied items and Jay Storage Solutions Private Limited deals in the business of manufacture, produce, assemble, convert, design, develop, distribute, equip, fabricate, let on hire, install, maintain, operate, repair, overhaul, recondition, remodel, service, supply, import, export, buy, sell and to act as agent broker, consultant,

collaborator or otherwise to deal in all varieties, capacities, specifications, descriptions, sizes, applications and modalities of storage systems, and warehousing equipments, engineering products, equipments, industrial machineries whether automatic & semi-automatic and assemblies thereof or otherwise provide complete storage solution and Jay Novatech Private Limited deals in the business of all kinds of material handling equipment, engineering machines, plants & machines, appliances, mechanical implements, devices, systems and equipments process equipments and automation equipments, components, parts and peripherals, modulers, auxiliary instruments, electronic parts, equipments, tools, machines, systems, conveniences, spare parts, accessories, devices, components, fixtures of different capacities and models and other related materials.

4. The Counsel for the Petitioner Companies submit that the rationale for the scheme of arrangement between the Petitioner Demerged Company, First Resulting Company and Second Resulting Company are as follows:
 - a. As part of restructuring of the businesses of the Petitioner Company, it is proposed that the Demerged Undertaking 1 and Demerged Undertaking 2 of the Petitioner Company should be demerged into JSSPL and JNPL respectively.
 - b. The Demerged Undertaking 1 and the Demerged Undertaking 2 of the Petitioner Company which are proposed to be demerged into the resulting companies require different independent assets and financial requirements coupled with undivided care and attention for optimum growth, expansion and development in order to pursue their respective business

strategies and with their respective expertise. The proposed demerger shall, inter alia, enable the business activities comprised in Demerged Undertaking 1, Demerged Undertaking 2 of the Petitioner Company and Remaining Business to be carried out with greater focus, efficiency, attention and specialization for sustained growth and development of their respective business activities.

- c. The Scheme is in the interest of the petitioner Company, JSSPL and JNPL their respective shareholders, creditors, employees and all concerned. The Scheme does not affect the interest of the workers, employees of the petitioner Company as their services shall be deemed to have been continuous and not interrupted by reason of the Scheme. The terms and conditions of service applicable to such staff, workmen or employees after implementation of the Scheme shall not in any way be less favourable than those applicable to them immediately preceding the implementation of the Scheme.
5. The Counsel for the Petitioner Companies submits that the board of Directors of the Petitioner (Demerged) Company, Petitioner (First Resulting) Company and the Petitioner (Second Resulting Company) approved the said Scheme of Arrangement by passing necessary Board Resolution which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.
6. The learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Court/ Tribunal and the necessary affidavits of Compliance has been filed in the Court/ Tribunal. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory

requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.

7. The Regional Director has filed his report dated 12th June, 2017 stating therein that, save and except as stated below, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In Paragraph IV of the said Report, it is stated that:

(a) As per clause 1.2 of Part A Definitions of the the scheme, "The Appointed Date" means 1st April, 2016 or such other date as asnmay be fixed or approved by the National Company Law Tribunal at Mumbai or High Court of Judicature at Bombay or any other authority having jurisdiction under the law. 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.

(b) 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 27th April, 2017 has served a copy company scheme application No 284/2017 along with the relevant orders etc to IT Department. Further, this Directorate has also issued a reminder letter dated 05.06.2017 to the concerned Income Tax authorities;

(c) The tax implication if any arising out of the scheme is subject to final decision of 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 Transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.

Under these circumstances the Regional Director prays this Hon'ble Tribunal may kindly be pleased to:

- a. Take this report on record ;
- b. Consider the observations made at Sr. no. IV (a) to (c) mentioned above;

And

- c. Pass such other order or orders as deemed fit and proper in the facts and circumstances of the case.

8. In so far as observations made in paragraph IV (a) of the report of the Regional Directors is concerned, the Petitioner Company through its counsel undertakes that as per the clause 1.2 Part A Definitions of the scheme "The Appointed Date" means 1st April, 2016.
9. In so far as observations made in paragraph IV (b) and (c) of the report of the Regional Director is concerned, the petitioner companies through its counsel submits that the Petitioner Companies 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. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 8 to 9 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.

11. From the material record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to the public policy.
12. Since all the requisite statutory compliances have been fulfilled. Company Scheme Petition No 632, 633 and 651 of 2017 filed by the respective Petitioner Companies are made absolute in terms of prayer clause 15(a) & 15(b) of CSP No 651,633 & 632 of 2017 of the respective Petition.
13. Petitioner Companies are directed to file a copy of this order and the Scheme of Amalgamation 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 issuance of the order by the Registry.
14. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, National Company 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.
15. The Petitioner Companies to pay a costs of Rs 25,000/- each to the Regional Director, Western Region, Mumbai and.
16. Costs to be paid within four weeks from today.
17. All authorities concerned to act on a certified copy of this order along with the Scheme duly certified by the Deputy Director National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy Member (T)

Sd/-

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

