

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 425 OF 2017

Johnson & Johnson Private Limited

.....Petitioner/Transferee Company

AND

COMPANY SCHEME PETITION NO. 430 OF 2017

Loyalty Investments And Enterprises Private Limited

.....Petitioner/Transferor Company I

AND

COMPANY SCHEME PETITION NO. 427 OF 2017

Suryalay Investment And Trading Company Private Limited

.....Petitioner/Transferor Company III

AND

COMPANY SCHEME PETITION NO. 429 OF 2017

Key To Riches Investment And Leasing Private Limited

.....Petitioner/Transferor Company IV

AND

COMPANY SCHEME PETITION NO. 426 OF 2017

NR Jet Enterprises Private Limited

.....Petitioner/Transferor Company V

AND

COMPANY SCHEME PETITION NO. 428 OF 2017

IN

COMPANY SCHEME APPLICATION NO. 158 OF 2017

Deshraj Investment And Trading Company Private Limited

.....Petitioner/Transferor Company II

In the matter of Sections 230 to 232 and any corresponding provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Scheme of Amalgamation between Loyalty Investments And Enterprises Private Limited (Transferor Company I), and Deshraj Investment And Trading Company Private Limited (Transferor Company II), and Suryalay Investment And Trading Company Private Limited (Transferor Company III), and Key To Riches Investment And Leasing Private Limited (Transferor Company IV), and NR Jet Enterprises Private Limited (Transferor Company V) with Johnson

& Johnson Private Limited (Transferee Company) and their respective Shareholders ("Scheme").

Order delivered on 21st September 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

Per: V. Nallasenapathy, Member (T)

Order

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petitions and nor any party has controverted any averments made in the Petitions.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation between Loyalty Investments And Enterprises Private Limited (Transferor Company I), and Deshraj Investment And Trading Company Private Limited (Transferor Company II), and Suryalay Investment And Trading Company Private Limited (Transferor Company III), and Key To Riches Investment And Leasing Private Limited (Transferor Company IV), and NR Jet Enterprises Private Limited (Transferor Company V) with Johnson & Johnson Private Limited (Transferee Company) and their respective shareholders.
3. The counsel for the Petitioner Companies submits that the Transferee Company is engaged in the business of manufacturing, importing and selling health care, drugs, pharmaceutical specialty products and medical device products. The counsel further submits that Transferor Company I, Transferor Company II, Transferor Company III and Transferor Company IV are engaged in the business of making investments in affiliate companies and bank deposits. The Transferor Company V is currently not engaged in any business activities.

4. The Counsel for the Petitioner Companies submits that below is the rationale for the proposed Scheme:
 - a) Transferor Company I, Transferor Company II, Transferor Company III, and Transferor Company IV are wholly owned subsidiaries of the Transferee Company and together hold 100% of the paid up share capital of Transferor Company V. With a view to maintain a simple corporate structure and eliminate duplicate corporate procedures, it is desirable to merge and amalgamate all the undertakings of the Transferor Companies into the Transferee Company. The amalgamation of the undertakings of the Transferor Companies into the Transferee Company will facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations.
 - b) Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.
5. The counsel for the Petitioner Companies submits that the Board of Directors of the Transferor Companies and the Transferee Company have approved the said Scheme of Amalgamation by passing board resolutions which are annexed to the Company Scheme Petitions.
6. The counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in Company Scheme Applications referred to above and that the Company Scheme Petitions have been filed in consonance with the orders passed in abovementioned Company Scheme Application.
7. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the 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, 2013 and the rules made there under as applicable. The said undertakings given by the Petitioner Companies are accepted.

8. The Regional Director has filed a report dated 15 September 2017 stating therein, save and except as stated in paragraph IV (1) to (5), 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:

1. *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 Tribunal 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.*
2. *It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 17.03.2017 for comments. The office of the Directorate also has issued reminder dated 02.08.2017.*
3. *Proof of serving notice to RBI is required as the transferor Companies shares are held by non-resident with 100% foreign direct investment and all companies from I to IV who are subsidiaries of Transferee Company. Transferor Company V shares are held by Transferor Company I to IV.*

In this regard petitioners have to furnish the comments of RBI, if received and to comply with the same.

4. *Petitioner Companies are into investment business, proof of serving notice to RBI is to be submitted. In this regard petitioners have to furnish the comments of RBI, if received and to comply with the same.*
5. *It is submitted that the office of PR. Commissioner of Income Tax – 5, Mumbai has forwarded letter dated of 04.08.2017 of Income Tax Office of the ITO 5 (3)(4), Mumbai in which it is inter alia mentioned at para 6 as under – “in view of the above mentioned facts, it is submitted that the right of the Income Tax Department to ascertain/assess correct income in correct hands as per provisions of the Income Tax Act, especially with respect to the observations made in above paras for the period involving the appointed date and effective date and thereafter, may be kept reserved. It is therefore, requested that the above declaration may be incorporated while filing of your response to the Hon'ble Bombay High Court.*

In the view of the above appointment date and effective date may be 01.04.2017 or such other date as fixed by the Competent Authority.

Save and except as stated in para IV (1) to (5) it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Under these circumstances the Regional Director, Incharge 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 (1) to (5) mentioned above.*

And

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

The Registrar of Companies, Mumbai has filed his report stating that the filing position of the Petitioner Companies are up-to-date and there is no prosecution, complaint, inquiry, inspection or investigation filed against the Petitioner Companies and the matter may be decided on merits.

9. As far as observations made in paragraph IV (1), (2) and (5) of the report of the Regional Director are concerned, the Petitioner Companies through their counsel submit 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. As far as the observations made in paragraph IV (3) of the report of the Regional Director are concerned, the Petitioner Companies through their counsel submit that the notice of the Scheme has been served on all the regulatory authorities specified in the order passed by this Hon'ble Tribunal on 23 February 2017. No notice has been served on the Reserve Bank of India ("RBI") in the present case as:
 - a) the entire paid up share capital of the Transferor Companies I to IV is held by a '*Person Resident in India*' as defined under the prevailing foreign exchange regulations i.e., Johnson & Johnson Private Limited, the Transferee Company, a company incorporated under the laws of India, having CIN: U33110MH1957PTC010928, with its registered office at Lal Bahadur Shastri Marg, Mulund (West), Mumbai – 400 080;
 - b) similarly, the entire paid up share capital of Transferor Company V is also held by '*Persons Resident in India*', i.e., the Transferor Companies I to IV, all companies incorporated under the laws of India and having their registered office at 64-66 Senapati Bapat Marg, Mahim, Mumbai – 400 016;
 - c) as per the prevailing foreign exchange regulations, 100% foreign direct investment under the automatic route is permitted in the Transferee Company. Accordingly, the entire paid up share capital of the Transferee Company is held by entities incorporated outside of India;

- d) there will be no change in the shareholding pattern of the Transferee Company as a result of the Scheme given that the Scheme clearly provides that on the Effective Date:
 - (i) all shares of Transferor Companies I to IV held by the Transferee Company shall be deemed to have been cancelled without any further act or deed, and no shares of the Transferee Company will be issued in lieu thereof; and
 - (ii) all shares held by Transferor Companies I to IV in Transferor Company V shall also be deemed to have been cancelled without any further act or deed, and no shares of the Transferee Company will be issued in lieu thereof;
 - e) Accordingly, there is no foreign exchange transaction or issue of shares to a non-resident being contemplated or implemented under the Scheme and therefore no notice has been served on the RBI in relation to the Scheme.
11. As far as the observations made in paragraph IV (4) of the report of the Regional Director are concerned, the Petitioner Companies through their counsel submit that the notice of the Scheme has been served on all the regulatory authorities specified in the order passed by this Tribunal on 23 February 2017. The activities of the Transferor Companies I to IV are not regulated by the RBI and therefore no notice has been served on the RBI in relation to the Scheme.
12. As far as the observations made in paragraph IV (5) of the report of the Regional Director are concerned, the Petitioner Companies confirm that the Appointed Date of the Scheme shall be 1 April 2017.
13. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraph 9 to 12 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
14. The Official Liquidator has filed his report stating therein that the affairs of the Transferor Companies has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.
15. 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.

16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petitions referred to above have been made absolute in terms of prayer clause (a) to (b) of the said Petitions.
17. The Transferee Company is 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, within 30 (thirty) days from the date of issuance of a certified copy of this order.
18. The Transferee Company 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 (sixty) days from the date of receipt of the certified copy of the order.
19. The Petitioner Companies to pay costs of INR 25,000/- each to the Regional Director, Western Region, Mumbai. and the Transferor Companies to pay cost of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of Order.
20. All authorities concerned to act on a certified copy of this order along with 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)