

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH, AT MUMBAI

COMPANY SCHEME APPLICATION NO 639 OF 2017

In the matter of the Companies Act, 2013

AND

In the matter of Scheme of Amalgamation of Utkarsh Advisory Services Private Limited ('the Transferor Company') with JSW Paints Private Limited ('the Transferee Company') AND their respective Shareholders

AND

In the matter of Sections 230 read with Section 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013

Utkarsh Advisory Services Private Limited, a }
Company incorporated under the Companies }
Act, 2013 and having its registered office at JSW }
Centre, Bandra Kurla Complex, Bandra (East), }
Mumbai – 400 051, Maharashtra }
CIN: U74999MH2014PTC253112 } First Applicant Company

JSW Paints Private Limited, a Company }
incorporated under the Companies Act, 2013 }
and having its registered office at Jindal }
Mansion, 5A, Dr. G. Deshmukh Marg, Mumbai }
– 400 026, Maharashtra }
CIN: U24200MH2016PTC273511 } Second Applicant Company

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates for the First Applicant Company and the Second Applicant Company

CORAM: INA MALHOTRA, Member (J)

DATE: 23rd June, 2017

MINUTES OF THE ORDER

1. The present Scheme provides for amalgamation of Utkarsh Advisory Services Private Limited ('the Transferor Company' or 'the First Applicant Company') with JSW Paints Private Limited ('the Transferee Company' or 'the Second Applicant Company') and various other matters consequential to amalgamation or otherwise integrally connected therewith. The learned Counsel for the Applicant Companies states that the First Applicant Company is engaged in the business of providing advisory services and the Second Applicant Company is into the business of manufacturing of Paints and related products.
2. The rationale for the Scheme is to achieve the following benefits:
 - a) Simplified corporate structure;
 - b) Elimination of holding through multiple entity i.e. streamlining promoter holding; and
 - c) Rationalization of management and other operating expenses
3. The meeting of the Equity Shareholders of the First Applicant Company be convened and held at JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051, on 1st day of August, 2017 at 10:00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation between Utkarsh Advisory Services Private Limited (Transferor Company) and JSW Paints Private Limited (Transferee Company) and their respective Shareholders.

4. The meeting of the Class A Equity Shareholders of the First Applicant Company be convened and held at JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051, on 1st day of August, 2017 at 11:00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation between Utkarsh Advisory Services Private Limited (Transferor Company) and JSW Paints Private Limited (Transferee Company) and their respective Shareholders.
5. Since as on date, there are no Secured Creditors in the First Applicant Company, the question of convening and holding of the meeting of Secured Creditors of the First Applicant Company does not arise.
6. That at least 30 clear days before the said meeting of the Equity Shareholders and Class A Equity Shareholders of the First Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post / Hand delivery or through Email, addressed to each of the Equity Shareholders and Class A Equity Shareholders of the First Applicant Company, at their last known address or email addresses as per the records of the First Applicant Company.
7. That at least 30 clear days before the meeting of the Equity Shareholders and Class A Equity Shareholders of the First Applicant Company to be held as aforesaid, a notice convening the said meeting, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge

at the Registered Office of the First Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602, A Wing, Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.

8. That the Notice of the meeting of the Equity Shareholders and Class A Equity Shareholders shall be advertised in two local newspapers viz. in “Free Press Journal” in English and “Navshakti” in Marathi, both circulated in Mumbai, not less than 30 days before the date fixed for the meeting.
9. That Mr. Sundeep Jain, Authorised Signatory of the First Applicant Company, and failing him, Mr. Sanjeev Doshi, Authorised Signatory of the First Applicant Company shall be the Chairman / Chairperson of the aforesaid meeting of the Equity Shareholders to be held at JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051, on 1st day of August, 2017 at 10:00 a.m. or any adjournment or adjournments thereof.
10. That Mr. Sundeep Jain, Authorised Signatory of the First Applicant Company, and failing him, Mr. Sanjeev Doshi, Authorised Signatory of the First Applicant Company shall be the Chairman / Chairperson of the aforesaid meeting of the Class A Equity Shareholders to be held at JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051, on 1st day of August, 2017 at 11:00 a.m. or any adjournment or adjournments thereof.
11. That M/s. Sunil Agarwal, Practicing Company Secretary is hereby appointed as Scrutinizers of the meeting of Equity Shareholders of the First Applicant Company to be held at JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051, on 1st day of August, 2017 at 10:00 a.m. or any adjournment or adjournments thereof and his remuneration is fixed as Rs. 5,000/-
12. That M/s. Sunil Agarwal, Practicing Company Secretary is hereby appointed as Scrutinizers of the meeting of the Class A Equity Shareholders of the First Applicant Company to be held at JSW Centre, Bandra Kurla Complex, Bandra

(East), Mumbai – 400 051, on 1st day of August, 2017 at 11:00 a.m. or any adjournment or adjournments thereof and his remuneration is fixed as Rs. 5,000/-

13. That the Chairman appointed for the aforesaid meeting of the Equity Shareholders and Class A Equity Shareholders to issue the advertisement and send out the notices of the meeting referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
14. That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
15. That the quorum of the aforesaid meeting of the Class A Equity Shareholders shall be one.
16. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the First Applicant Company at its Registered Office at JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051, Maharashtra not later than 48 hours before the aforesaid meeting.
17. That the value and number of the shares of each Equity Shareholder or Class A Equity Shareholder shall be in accordance with the books/ register of the First Applicant Company and where the entries in the books / register are disputed, the Chairman of the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.

18. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting of the Equity Shareholders and Class A Equity Shareholders and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
19. That the Chairman of the meeting of the Equity Shareholders and Class A Equity Shareholder to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meeting.
20. The meeting of the Equity Shareholders of the Second Applicant Company be convened and held at JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051, on 1st day of August, 2017 at 12.00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Scheme of Amalgamation between Utkarsh Advisory Services Private Limited (Transferor Company) and JSW Paints Private Limited (Transferee Company) and their respective Shareholders.
21. Since as on date, there are no Secured Creditors in the Second Applicant Company, the question of convening and holding of the meeting of Secured Creditors of the Second Applicant Company does not arise.
22. That at least 30 clear days before the said meeting of the Equity of the Second Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post / Hand delivery or through Email, addressed to each of the Equity Shareholders of the Second Applicant Company, at their last known address or email addresses as per the records of the Second Applicant Company.

23. That at least 30 clear days before the meeting of the Equity Shareholders of the Second Applicant Company to be held as aforesaid, a notice convening the said meeting, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Second Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602, A Wing, Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
24. That the Notice of the meeting of the Equity Shareholders shall be advertised in two local newspapers viz. in “Free Press Journal” in English and “Navshakti” in Marathi, both circulated in Mumbai, not less than 30 days before the date fixed for the meeting.
25. That Mr. Deepak Bhat, Authorised Signatory of the Second Applicant Company, and failing him, Mr. Sundeep Jain, Authorised Signatory of the Second Applicant Company shall be the Chairman / Chairperson of the aforesaid meeting of the Equity Shareholders to be held at JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051, on 1st day of August, 2017 at 12.00 p.m. or any adjournment or adjournments thereof.
26. That M/s. Sunil Agarwal, Practising Company Secretary is hereby appointed as Scrutinizers of the meeting of Equity Shareholders of the Second Applicant Company to be held at JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051, on 1st day of August, 2017 at 12.00 p.m. or any adjournment or adjournments thereof and his remuneration is fixed as Rs. 5,000/-.
27. That the Chairman appointed for the aforesaid meeting of the Equity Shareholders to issue the advertisement and send out the notices of the meeting referred to

above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

28. That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
29. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Second Applicant Company at its Registered Office at Jindal Mansion, 5A, Dr. G. Deshmukh Marg, Mumbai – 400 026, Maharashtra not later than 48 hours before the aforesaid meeting.
30. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books/ register of the Second Applicant Company and where the entries in the books / register are disputed, the Chairman of the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
31. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting of the Equity Shareholders of the Second Applicant Company and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
32. That the Chairman of the meeting of the Equity Shareholders of the Second Applicant Company to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meeting.
33. The First Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction



the First Applicant Company's assessments are made,(ii) the Central Government through the office of Regional Director, Western region, Mumbai and (iii) the Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the First Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

34. The Second Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Second Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai and (iii) the Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

35. The First Applicant Company is also directed to serve notice along with copy of scheme upon Official Liquidator. M/s. G. D. Bangard & Co., Chartered Accountants are appointed to assist the Official Liquidator to scrutinize books of accounts of the First Applicant Company for the last 5 years. The First Applicant Company to pay fees of Rs. 30,000/- It may be directed that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the First Applicant Company, failing which, it shall be presumed that they have no representations to make on the proposals.

36. The Counsel of the First and Second Applicant Company submits that the Applicant Companies have obtained consent affidavit from 90% in value of the total Unsecured Creditors and accordingly, the meeting of the Unsecured

Creditors of the First and the Second Applicant Company is not required to be convened. This bench directs the First and Second Applicant Company to issue notices to all its Unsecured Creditors as on May 31, 2017 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Companies.

Sd/-
Ina Malhotra, Member (Judicial)