

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSP NO. 947 OF 2017

IN

CSA NO. 1103 OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 231 of the
Companies Act 2013);

AND

In the matter of Scheme of Arrangement between JC
Retail India Private Limited (Demerged Company),
and JC Clothings Private Limited (First Resulting
Company) and JC Instyle Fashion Private Limited
(Second Resulting Company) and JC Silver Star
Fashion Private Limited (Third Resulting Company)
and their respective Shareholders

JC Retail India Private Limited, a)

company incorporated under the)

provisions of Companies Act, 1956 with)

CIN U51909PN2006PTC129338 and)

having its registered office at 607/609,)

Sadashiv Peth, Pune, 411030,) **First Petitioner / Demerged**

Maharashtra, India **Company**

AND

JC Clothings Private Limited, a)

company incorporated under the)

provisions of Companies Act, 2013 with)

CIN U51909PN2017PTC169696 and)

having its registered office at 604/605,)

Sadashiv Peth, Laxmi Road, Pune,) **Second Petitioner / First**

411030, Maharashtra, India) **Resulting Company**

AND

JC Instyle Fashion Private Limited, a)
company incorporated under the)
provisions of Companies Act, 2013 with)
CIN U51909PN2017PTC169641 and)
having its registered office at 604/605,)
Sadashiv Peth, Laxmi Road, Pune,) **Third Petitioner / Second**
411030, Maharashtra, India) **Resulting Company**

AND

JC Silver Star Fashion Private)
Limited, a company incorporated under)
the provisions of Companies Act, 2013)
with CIN U51909PN2017PTC169640 and)
having its registered office at 604/605,)
Sadashiv Peth, Laxmi Road, Pune,) **Fourth Petitioner / Third**
411030, Maharashtra, India) **Resulting Company**

Order delivered on 1st February, 2018

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

For the Petitioner(s): Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co., for the Petitioner.
Mr. S. Ramakantha , Joint Director in the office of Regional Director.
Mr. Manjesh Jadhav, Assistant Registrar of Companies, Mumbai

Per: **V. Nallasenapathy, Member (T)**

Order

1. Heard the learned counsel for the Petitioner Companies. None appears before this Tribunal either to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Arrangement between JC Retail India Private Limited (Demerged Company), and JC Cloth ings Private Limited (First Resulting Company)

and JC Instyle Fashion Private Limited (Second Resulting Company) and JC Silver Star Fashion Private Limited (Third Resulting Company) and their respective Shareholders.

3. The Counsel for the Petitioner Companies further submits that the Demerged Company is engaged inter alia in the business of retailing in cloth and readymade garments through its chain of departmental stores, generating power through windmills and investments in real estate ventures. The Demerged Company has decided to segregate its cloth and garment retail business into the Three Resulting Companies on a going concern basis.
4. The demerger of the cloth and garment retail business from the Demerged Company to the Three Resulting Companies would be in the best interest of the shareholders, creditors, employees and all other stakeholders of the Petitioner Companies and is aimed at achieving the following business and commercial objectives:
 - i. The demerger would enable greater/enhanced focus of management of the different undertakings thereby facilitating the management to efficiently exploit opportunities for each of these undertakings.
 - ii. The demerger would result in better administration and independent functioning of each of the stores.
 - iii. It is believed that the proposed segregation will create enhanced value for shareholders and allow a focus strategy in operations, which would be in the best interest of all the stakeholders.
 - iv. The demerger will also provide scope for independent collaboration and expansion.
5. Petitioner Companies have approved the said Scheme by passing the Board Resolutions which is annexed to the Company Scheme Petition. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Scheme Application and that the Company Scheme Petition has been filed in consonance with the order passed in Company Scheme Application.
6. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through its Counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013

and the rules made there under whichever is applicable. The said undertaking is accepted.

7. The Regional Director has filed his Report dated 31st January, 2018 stating therein that save and except as stated in paragraph IV(a) to (d) of the said Affidavit Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV(a) to (d) of the said Affidavit, the Regional Director has stated that:
 - (a) *The tax implication if any arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of 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.*
 - (b) *As per Clause 6.2 Definition of the Scheme. "**Appointed Date**" means **1 April 2017** or such other date as may be approved by the Honourable Tribunal, from which date, the Scheme shall become effective. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be **April 1, 2017**.*
 - (c) *It is submitted that, after demerger all the resulting companies are going to do the business of Garments under the name of Jai Hind Collection. This may lead to unnecessary confusion in the mind of public. Hence, the company may be directed to take necessary steps to avoid the confusion.*
 - (d) *It is submitted that, the Demerged Company has to file Annual Return and Balance Sheet for the year ended 31/03/2017.*
8. In so far as observations made in paragraph IV(a) of the Report of Regional Director is concerned, the Petitioner through its Counsel undertakes 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.
9. In so far as observations made in paragraph IV(b) of the Report of Regional Director is concerned, the Petitioner through its Counsel undertakes to consider April 1, 2017 as the Appointed Date for the demerger.
10. In so far as observations made in paragraph IV(c) of the Report of Regional Director is concerned, the Counsel for the Petitioner submits that as per Para 9.5 of the Scheme, all the three Resulting Companies are authorized to use the Intellectual Property Rights of Demerged Company including the trade name of JAIHIND. Further, the Counsel for the Petitioner Company submits that Petitioner Company have already made the public announcement in leading Newspapers in relation to the proposed demerger.
11. In so far as observations made in paragraph IV(d) of the Report of Regional Director is concerned, the Counsel for the Petitioner submits that the Demerged Company has already filed the Annual Return for the year ended 31/03/2017 in Form MGT-7 on December 23, 2017 vide SRN: G71145882 and Balance Sheet

for the year ended 31/03/2017 in Form AOC-4 on January 6, 2018 vide SRN: G72805559.

12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 8 to 11 above. The clarifications and undertakings given by the Petitioner Company are hereby accepted.
13. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 1103 of 2017 filed by the Petitioner Companies is made absolute in terms of prayer clause (a) of the Petition.
14. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated 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 days from the date of receipt of the order.
15. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme 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.
16. The Petitioner Company to pay cost of Rs.25,000/- to the Regional Director, western Region, Mumbai. The cost to be paid within four weeks from the date of receipt of Order.
17. 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.
18. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Date: 1.2.2018

Sd/-

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