

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
ALLAHABAD BENCH**

COMPANY PETITION NO. 57/ALD/2017
Connected with
COMPANY APPLICATION NO.06/ALD/2017

In the matter of Companies Act, 2013

AND

In the matter of Section 230- 232 and other applicable provisions of the Companies Act, 2013 and Rule framed thereunder as in force from time to time.

AND

JUBILANT SECURITIES PRIVATE LIMITED,

A private company incorporated under the Companies Act, 1956 having its registered office at Plot No. 1A, Sector – 16A, Noida – 201301, Uttar Pradesh, India, having corporate identity number U74899UP1989PTC043720.

.... Petitioner Company No. 1/ Transferor Company

AND

JSPL LIFE SCIENCE SERVICES AND HOLDINGS PVT. LTD.

A private company incorporate under the Companies Act, 2013 having its registered office at Plot No.1A, Sector – 16A, Noida – 201 301, Uttar Pradesh, India, having corporate identification number U7499UP2016PTC087691.

.....Petitioner Company No.2/Transferee Company

Judgement delivered on 13 .10.2017

Coram : Shri H.P. Chaturvedi, Member (J)

For the Petitioners : Shri Navin Sinha, Senior Advocate
Assisted By
Shri Rahul Agarwal, Advocate

For the Central Government : Shri M.K Bagri, Official Liquidator

ORDER

(AS PER SH. H.P. CHATURVEDI, MEMBER JUDICIAL)



1. M/S Jubilant Securities Private Limited (“Petitioner Company No.1/Transferor Company”), is a private company incorporated under

the Companies Act, 1956 (1956 Act), having its registered office at Plot No.1A, Sector – 16A, Noida – 201301, Uttar Pradesh, India, PAN NO.AAACH3072J. The Petitioner Company No.1/Transferor Company was incorporated on September 15th, 1989.

2. M/S JSPL Life Science Services and Holdings Private Limited (“Petitioner Company No.2/Transferor Company”), is a private company incorporated on 15.11.2016 under the Companies Act, 2013 (**Act**), having its registered office at Plot No. 1A, Sector – 16A, Noida – 201301, Uttar Pradesh, India. Petitioner Company No.2/Transferee Company is a wholly owned subsidiary of the Petitioner Company No.1/Transferor Company.

3. The Petitioner Companies have filed this joint petition under Sections 230 – 232 of the Companies Act, 2013 read with National Company Law Tribunal Rules, 2016, along with the Companies (Companies, Arrangements and Amalgamations) Rules, 2016 praying for sanction of the proposed Scheme of Arrangement vide which the Demerged Undertaking of Petitioner Company No.1/Transferor Company will stand transferred to and vest with Petitioner Company No.2/Transferee Company.

4. The Petitioner Company further submits that the Board of Directors of the Petitioner Companies in its meeting held on 09.01.2017 has already approved the proposed Company Scheme.

The Factual Position of the Authorized, Issued, Subscribed and Paid up share capital of the Transferor Company and Transferee Company



as on 31.03.2016 are described well in the present Company Petition which reads as under:

Share Capital of Jubilant Securities Private Limited (Transferor Company)	Amount (in Rupees)
Authorized Capital	45,60,00,000/-
91,00,000 Equity shares of Rs.10/- each.	9,10,00,000/-
3,65,00,000 Non-Cumulative Non-Convertible Redeemable Preference Shares of Rs.10/-each.	36,50,00,000/-
Issued, Subscribed and Paid –up Share Capital	
89,44,928 Equity shares of Rs.10/- each fully paid up.	8,94,49,280/-
3,47,14,840 Non-Cumulative Non-Convertible Redeemable Preference Shares of Rs.10/- each fully paid up.	34,71,48,400/-
TOTAL	43,65,97,680/-

That the Authorized, Issued, Subscribed and Paid up share capital of the Transferee Company as on 31.12.2016 is as under:

Share Capital of JSPL LIFE SCIENCE SERVICES AND HOLDINGS PRIVATE LIMITED (Transferee Company)	Amount (in Rupees)
Authorized Share Capital	10,00,00,00/-
99,90,000 Equity shares of Rs.10/- each.	
10,000 9% Non-Cumulative Non-Convertible Redeemable Preference Shares having face value of Rs.10/- each.	9,99,00,000/-
	1,00,000/-
Issued Subscribed and Paid Up Share Capital	
500 Equity shares of face value Rs.10/- each.	5000/-
TOTAL	5000/-



6. The Rational for the proposed Scheme has been elaborately discussed in the present Company Petition which may be summarised as under:

5.1. That the Petitioner Company No.1/Transferor Company currently has business interests in diverse business such as food, e-retail pharmacies, industrial process, trading, print media, exploration and production of oil and gas and life sciences.

5.2 That the Demerged Undertaking comprising of business interest of Transferor Company in life sciences and re-tail pharmacies, has significant potential for growth and development and requires infusions of funds and undivided care and attention for optimum growth, expansion and development. The nature of risk and competition involved in the business of the Demerged Undertaking is distinct from other business interests of the Petitioner Company No.1/Transferor Company which includes food, retail (other than e-retail pharmacies), industrial processes, trading, print media, exploration and production of oil and gas. The business of the Demerged Undertaking is capable of attracting a different set of investors, strategic partners, lenders and other stake holders compared to the business of the Petitioner Company No.1/Transferor Company in the food, industrial services and retail business.

5.3 That the transfer of the Demerged Undertaking to the Petitioner Company No.2/ Transferee Company will enable greater focus on the Petitioner Company No.1/Transferor Company and would enable unlocking of value for the shareholders of Petitioner Company No.1/Transferor Company. The restructuring proposed by the management will enable the investors to separately hold investments in the businesses which have different risks and returns, and thereby enable them to select investments which best suit their investment strategies and risk profile.

5.4 That the demerger shall facilitate running of the other business interest of the Petitioner Company No.1/Transferor Company with a greater and more focused approach. This



reorganization and segregation of the business is integral to providing focused management attention to the Demerged Undertaking and also by the residual business interest of the Petitioner Company No.1/Transferor Company. The demerger would also attract different sets of investors for the different business interests.

5.5 That the transfer and vesting of the Demerged Undertaking to and with the Petitioner Company No.2/Transferee Company would be in the best interests of the shareholders, creditors and employees of the Transferor Company and the Transferee Company, respectively, as it would result in enhanced value for the shareholders and allow focused strategy in operation of the Demerged Undertaking and the remaining business of the Transferor Company which would be in the best interest of the Transferor Company, their shareholders, creditors and other persons connected to the Transferor Company.

7. It is reported that the Boards of directors of the Transferor Company as well as of the Transferee Company respectively have determined the share exchange ratios as stated as under:

- a. *For every 01(one) equity share of face value of Rs.10/- (Rupees Ten only) each held in the Transferor Company as on the Demerger Record Date, the equity shareholders of the Transferor Company shall be issued 1 (one) equity share of face value Rs.10/- (Rupees Ten only) each credited as fully paid-up in the Transferee Company;*
- b. *As regards RPS held in the Transferor Company as on the Demerger Record Date, every RPS shareholder of the Transferor Company shall be issued proportionate Transferee Company RPS, credited as fully paid-up in the Transferee Company and having the other terms and conditions set out in Schedule 8 of the Scheme.*



8. It is further stated in the Petition that pursuant to this scheme of Arrangement, all the shareholders of the Transferor Company will get

shares in the Transferee Company and there would be no change in the economic interest for any of the shareholders of the Transferor Company pre and post implementation of the Scheme. We also perused valuation report which has earlier been annexed with the Company Application.

9. It is further stated in the Petition that the Scheme of Arrangement is not intended, in any manner, to have any beneficial effect on the material interest, if any, of the Directors of any of the Petitioner Companies, except to the extent of their shareholdings, if any.
10. It is further stated in the Petition that the Scheme will not adversely affect the rights or interest of any creditor of the Petitioner Companies or their respective shareholders, in any manner whatsoever.
11. It is further stated in the Petition that the Scheme of Arrangement does ^{not involve} any compromise with the creditors of any of the Petitioner Companies in any manner whatsoever. As such, the Scheme of Arrangement does not in any manner adversely affect the interests of any of the creditors of the Petitioner Companies. Due provisions have been made for payment of all their liabilities as and when the same fall due in the usual course.
12. It is also stated that the Auditors of the Petitioner Company No.1/Transferor Company have not disclosed any mismanagement in its affairs. The Auditors of the Petitioner Company No.2/Transferee Company has not disclosed any mismanagement in its affairs.
13. That the Petitioner Company No.1/ Transferor Company as well as Petitioner Company No.2/Transferee Company have duly complied



with the accounting standards. Certificates from the auditor of the Petitioner Company No.1/Transferor Company and Petitioner Company No.2/Transferee Company regarding the accounting treatment under the Scheme being in compliance with the Accounting Standards is enclosed and marked as Annexure-11 and 12 respectively to Company Petition No.6/ALD/2017.

14. A perusal of the present petition discloses that initially the Petitioner Companies filed a ***Company Application/CA No.06/ALD/2017*** before this Tribunal *seeking such directions for dispensing with the meetings of the Equity Shareholders, Preference Shareholders and unsecured Creditors of Applicant Company No.1/Transferor Company and dispensing with the meetings of the Equity Shareholders and unsecured Creditors of Applicant Company No.2/Transferee Company* Accordingly, this Bench vide its order ***dated 24.04.2017*** allowed the above mentioned prayers ***by dispensing with such meeting.***

15. Further this Tribunal issued a direction to the Petitioner Companies to issue a notice to Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, Official Liquidator and to make a paper publication in English and Hindi newspapers.

In Compliance thereof, authorised representative of the applicant / Petitioner companies Shri Umesh Sharma duly filed an affidavit of service by confirming that notices have been duly published in the English '***Financial Express***' and in the Hindi '***Jansatta***' Noida Edition. The Petitioners have duly served notices of the present Company Petition upon the Central Government through



the Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, U.P. at Kanpur, upon the Department of NBFC, Reserve bank of India U.P at Kanpur, ^{and} upon the Income Tax Officer at Noida.

16. In response to the such notices issued, the Registrar of Companies has filed its report stating ^{the} purpose of the present Petition, Share Exchange Ratio, that there is no prosecution filed against Transferor Companies and Transferee Company, nor there is any report ^{for} ~~of~~ violation of section 383A/215 of the Companies Act, 1956.
17. The Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, having received a report from the Registrar of Companies (Kanpur) filed his representation Affidavit wherein he stated that he is having no objection to present scheme except observation made in Para 5.

Para 5 of his affidavit is reproduced here as under:

"That the Deponent is to state that the petitioner companies at para 8 of the reply have stated that the Transferor Company is a registered NBFC and Certificate of registration issued by RBI is enclosed herewith as "Annexure 7" with the reply, copy of the acknowledgement of an application to the RBI is enclosed with the reply. In has been further stated by Petitioner companies that they have not received any observation from RBI.

The deponent is to say as the transferor company is an NBFC and has been issued certificate of registration by the RBI, NOC from RBI is required to be placed on record by Petitioner Companies before the Hon'ble Tribunal at the time of sanction / consideration of the scheme. The Petitioner companies may



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also be directed to place on record complete list with details of demerged assets before Hon'ble Tribunal."

18. In response to such observations /comments of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, the authorized Signatory of Petitioner Companies filed an affidavit stating that it is not proper to say that the petitioner companies are required to take NOC from Reserve Bank of India and to place it on record before the Tribunal at the time of sanction/consideration of the Scheme. It is deposed that the Circular No. DNBR(PD)CC No.065/03.10.001/2015-16 dated 09.07.2015 as issued by the Reserve Bank of India regulates the grant of approval by the Reserve Bank in case of acquisition/ transfer of control of Non-Banking Financial Companies (NBFCs). A copy of such Circular has been enclosed and annexed with the supplementary affidavit. As per such circular the prior approval of the Reserve Bank of India would be necessary only in those cases where there is any takeover or acquisition of control of an NBFC or there is change of shareholding of an NBFC which would result of acquisition/transfer of shareholding of 26% or more of paid up equity capital of the NBFC or any change of more than 30% of the Directors. As in the present case, neither of the contingencies are attracted. Despite, the Transferor Company duly sent a notice to the Reserve Bank of India on 08.04.2017 drawing its attention to the present company petition proceedings and requesting such to appraise of RBI stand to the Hon'ble Tribunal in the present case if so desired. A copy of such notice dated 08.04.2017 as sent by the Transferor Company to the Reserve Bank of India is annexed with affidavit. It is also submitted that it is not required for the petitioner to obtain any NOC from the Reserve Bank of India and place it before this Hon'ble Tribunal as a prerequisite for consideration of the present company scheme.



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Further the complete schedule of assets has been furnished and enclosed with the supplementary affidavit. Further, an opinion of Auditors and classification of the assets pre and post implementation of the Company Scheme in respect of the Transferee company dated 02.01.2017 is also annexed with the reply affidavit.

19. The Official Liquidator, Allahabad also filed his report in the present matter wherein he mentioned about the detailed particulars of Authorized, Issued, Subscribed and Paid up Capital as on 31.12.2016 of the Transferor and Transferee Company. It is submitted that as per the provisions of section 230-232 of the Companies Act, 2013, his office is required to scrutinize the Books of Accounts and other documents of the company for preparation and submission of its report, pursuant thereto Shri Harish Khurana, PCS as being authorized representative of the Transferor and Transferee Companies has duly produced the Books of Accounts and statutory records for his inspection. After making scrutiny, the Official Liquidator has prepared its report and reported that the affairs of the Transferor Company are not being conducted in manner prejudicial to the interest of their member or to public at large. Thus, the office of the OL is having no objection to the present Scheme.

20. In response to the notices issued to the Reserve Bank of India, RBI vide its letter dated 07th September, 2017, communicated its comments/observation, while expressing its no objection to the present scheme of Arrangement/Demerger between the Petitioner Companies. The Reserve Bank of India, by its comments dated 07.09.2017 observed that the Transferee Company has provided their Audited Post Demerger Balance Sheet (Provisional) as on 31st March, 2017 and according to the Transferee



Company, it does not come within the purview of Section 45-IA of the Reserve Bank of India Act, 1934 such subject matter has been approved by the Authorized Signatory of the company himself vide its letter dated 01st September, 2017. It is further observed that if in future company falls within the criteria of Section 45-IA of the Reserve bank of India Act, 1934, then to keep continue its business as NBFC a Prior approval from the RBI would be required. It is further made clear the contravention of such provisions of the sub-section (1) of Section 45-IA is punishable offence with imprisonment for a term of minimum one year but extendable up to five years and with minimum fine of Rupees One Lakh Rupees, but which may extend to five lakh rupees.

21. In response to the above stated observation of the RBI, Mr. Umesh Chandra the Authorized Signatory filed his supplementary affidavit stating such transferee Company undertakes to comply with provisions of Section 45-IA, of the Reserve Bank of India Act, 1934 and to get registered as NBFC with RBI in order to continue its non-banking finance business, failing which it is understood that Transferee Company would be liable for penal action under Section 58-B (4-A) of the RBI Act, 1934.

22. We have gone through the above stated averments made in the Company Petition and perused the documents annexed therewith we perused affidavit of the Regional Director as well as the Report of Registrar of Companies, Official Liquidator and letter of RBI filed in the present matter.

We examined the merits of present Company Scheme Petition in the light of Judicial Trend as has been settled as such, *"the court must examine the scheme on its own merits and is not bound to treat the scheme as fait accompli. It is well-settled that in exercising its discretion in according*



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sanction, the court will consider, first, whether the statutory provisions have been complied with; secondly, whether the classes were fairly represented by those who attended the meeting and whether the statutory majority were acting bona fide, and, thirdly, whether the scheme is such as a man of business would reasonably approve. Bearing in mind these principles, the scheme may be examined".¹

Further a Court is required to consider circumstances before giving its approval. Some of the outstanding circumstances in short may be narrated as under: -

- a. The proposal for the Scheme was made in good faith;
- b. The Scheme is fair and reasonable;
- c. The Scheme will yield to smooth and satisfactory working;
- d. The Scheme does not offend public or commercial morality;
- e. The Scheme is not detrimental to the interests of the creditors or members or public interest.

By following the above stated legal canons, we are of the view that the proposed company scheme does not seem to be contrary to the public policy, nor prejudicial to the interest of its shareholders or detrimental to public interest at large. By perusing the material available on record, the Company Scheme appears to be fair and reasonable and is not found violative of any provisions of Law.

23. In addition to above all the Statutory compliance either seems to have been complied with or further undertaken for making compliances by Petitioner Companies as per their Affidavit. Therefore, the present Company Scheme Petition of the Petitioner Companies deserve to be allowed. Hence,



¹ Bank Of Baroda Ltd. vs Mahindra Ugin Steel Co. Ltd.(1976)46Comp. Cas 227(Guj)

the same is allowed and the prayer made therein is made absolute in terms of its Prayer Clause.

24. In the result, the proposed Company Scheme of Arrangement annexed to Company Petition is duly approved and hereby sanctioned. Petitioner Companies to act upon as per the terms and condition of the Sanctioned Company Scheme and same to be binding on the Shareholders, Creditors of the petitioner companies and also on the petitioner companies with effect from *Appointed Date*² i.e. *commencement of business hours on January 1, 2017*.

25. While approving the scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or other charges, if any, and payment in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law.

26. In addition to above cost of Rs. 20,000/- is awarded in favour of the Central Government through the office of the Registrar of Companies (Kanpur), Regional Director (NR) as the case may be towards Legal Expenses incurred which is payable by the Petitioner companies within four weeks from the receipt of an authentic copy of this order.

27. The counsel of the petitioner companies to furnish a copy of draft order of sanction of the Scheme in the prescribed format under Companies Compromises, Arrangement and Amalgamations Rules, 2016 read with other rules for scrutiny and authentication by the Registry of this Tribunal.



² Scheme will be effective from appointed date and not from date of order of the Court (later NCLT) : MN Chhaya v PRS Mani (2005) 63 SCL 509(Bom HC).

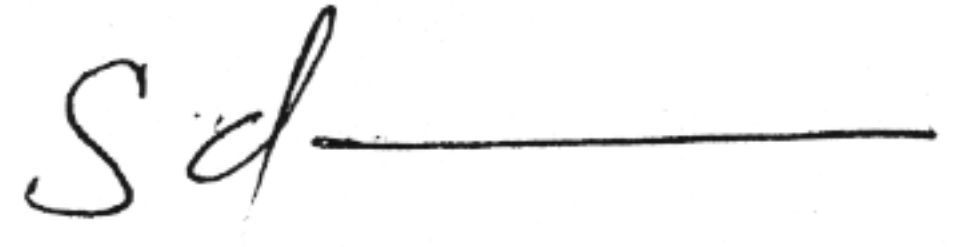
28. That Petitioner Companies shall within thirty days of the date of the receipt of the order duly certified by Registry of this Tribunal, cause a copy of the order, along with the Scheme to be delivered to the Registrar of Companies for registration as per Section 232(5) of the Companies Act, 2013.

29. All Concerned Regulatory Authorities to act on a copy of the order annexed with the Company Scheme duly authenticated by the Asst. Registrar, National Company Law Tribunal, Allahabad Bench.

30. Accordingly, the Company Petition stands disposed.



Dated: 13.10.2017
(Aparna)



H.P. Chaturvedi, (Member Judicial)