

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

**CA NO.174/ALD/2017**

**(Under Section 230-232 of Companies Act, 2013)**

**IN THE MATTER OF:**

**1. JAIPRAKASH ASSOCIATES LIMITED**

**.....TRANSFEROR COMPANY**  
**..... APPLICANT NO.1**

**2. JAYPEE INFRASTRUCTURE DEVELOPMENT LIMITED**

**..... TRANSFeree COMPANY**  
**..... APPLICANT NO.2**

**JUDGMENT/ORDER DELIVERED ON 08.12.2017**

**CORAM : Sh. Harihar Prakash Chaturvedi, Member (Judicial)**

**FOR THE APPLICANT : Sh. R.P. Agarwal, Advocate.**

**PER : SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)**

**ORDER/JUDGMENT**

1. The present application is jointly filed by the applicants' companies herein, namely *Jaiprakash Associates Limited* (for brevity "Transferor Company") and *Jaypee Infrastructure Development Limited* (for brevity "Transferee Company") seeking approval of Scheme of Arrangement under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation proposed between the applicants Companies. It is stated that the Transferee Company is a wholly owned subsidiary of the Transferor Company. The Transferor Company is a listed company and its shares are listed in the BSE Limited and National Stock Exchange of India Limited, while the Transferee Company is an unlisted company.





2. The proposed Scheme of Arrangement has been annexed as Annexure "1" to the application for seeking following reliefs, which are stated as under:

- (i) To dispense with the meetings of the shareholders and the creditors of the Transferee Company;
- (ii) To dispense with the meetings of shareholders and Secured and the Unsecured creditors of the Transferor Company and instead their approval be obtained through postal ballot with facility of voting through electronic means (e-voting), where ever possible, in accordance with the provisions contained in Rule 20 of Companies (Management and Administration) Rules, 2014;
- (iii) And/or pass such other and further orders or direction in the matter as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

3. The proposed Scheme of Arrangement provides for demerger of "**SDZ Real Estate Development Undertaking**" of Jaiprakash Associates Limited [Transferor Company] and its transfer to and vesting in Jaypee Infrastructure Development Limited [Transferee Company], as a going concern *on a slump exchange basis* and in accordance with the terms mentioned in this Scheme pursuant to Sections 230-232 and other applicable provisions of the Companies Act, 2013.

4. The proposed Scheme of Arrangement has been prepared to give effect to a part of the **Comprehensive Debt Realignment Proposal (DRP)** for Jaiprakash Associates Limited as approved *by the Joint Lenders Forum at their meeting held on 22.06.2017*.

5. The salient features of the proposed Scheme of Arrangement can be summarized as under:

- (i) **Transfer and vesting :** Upon the Scheme coming into effect but with effect from the Appointment Date, the SDZ Real Estate Development Undertaking [Demerged Undertaking] as defined and described in clause 2.01(d) and (j) read with clause 4.01(ii)





of the Scheme, shall stand demerged from the Transferor Company and such Demerged Undertaking, in its entirety, shall simultaneously stand transferred to and vested in the Transferee Company, as a going concern on a slump exchange basis, without any further act, instrument or deed and pursuant to the provisions of Section 230-232 of the Act, and all the properties, estate, assets, rights, title, interest, authorities and privileges and with all liabilities and obligations, which arise out of the activities operations and pertain to or are part of the said Undertaking, so as to become, as and from the Appointed Date, the business and properties, estate, assets, rights, title, interest, authorities and privileges and all liabilities and obligations etc. of the Transferee Company, subject to such specific provisions made in the Scheme as may be applicable. The Scheme, however, provides that the liability for payment of all instalments towards the premium and external development cost of the land forming part of the Demerged Undertaking and interest thereon, if any, which might have become due prior to the appointed date or which may become due after the appointed date, **shall continue to be the liability of the Transferor Company and will not form part of the Transferred Liabilities.**

The details of land parcels, being the primary assets of the SDZ Real Estate Development Undertaking and its liabilities as on the appointed date, which will stand transferred to the Transferee Company in terms of the Scheme, are given in **Annexure – 12** of the Present Company Application.

*As on the appointed date, the primary assets of the demerged undertaking comprise of land parcels admeasuring 950.35 acres. The fair value of above assets was assessed by M/s. Jones Lang Lasalle Property Consultants (India) Private Limited (JLL), a Valuer engaged at the instance of the Joint Lenders' Forum of JAL, as **Rs.11,898.04 Crores** vide their Report dated 28<sup>th</sup> July, 2016. This valuation has been referred to and considered by M/s Bansi S. Mehta & Company, Independent Valuer, in their Valuation Report dated 07.10.2017. As against the above, the aggregate liabilities of the Demerged Undertaking as on the appointed date have been **Rs.11,833.55/- Crores.***

(ii) **Appointed Date:** The “appointed date” for above transfer and vesting of the demerged undertaking is the “***opening of the business on 01.07.2017*** or such other date as to be fixed or approved by this Tribunal.

(iii) **Effective Date:** The effectiveness of the Scheme is conditional upon and subject to –

(a) Requisite approval of the Scheme by the shareholders and/or creditors of the Transferee Company and the Transferor Company, by postal ballot/e-voting and/or at the meetings, if convened by the Hon'ble NCLT, in accordance with relevant provisions of the Act, being obtained.





As per Para 9 of the SEBI circular No. CFD/DIL3/CIR/2017/21 dated 10<sup>th</sup> March, 2017, the Scheme shall be acted upon only if the votes cast by the public shareholders in favour of the Scheme are more than the number of votes cast by them against the Scheme through e-voting.

- (b) Sanction of the Scheme by the Hon'ble NCLT in terms of sections 230-232 and other relevant provisions of the Act, being obtained.;

*Subject to above approvals/sanctions, the Scheme shall become effective with effect from the date on which the certified copy of the order of Hon'ble NCLT sanctioning the Scheme is filed with the Registrar of Companies, Uttar Pradesh. However, the Scheme shall be operative from the 'appointed date'.*

- (iv) **Exchange Ratio:** In consideration for transfer of the Demerge Undertaking by the Transferor Company to the Transferee Company, *the Transferee Company shall issue and allot 1,00,000 equity shares of the face value of Rs.10 each fully paid up in the Transferee Company to the Transferor Company in consideration of transfer of the demerged undertaking to the Transferee Company as recommended by M/s Bansi S. Mehata & Company Independent Valuer.* The shares so issued and allotted shall rank pari passu with the existing shares in all respect and shall be subject to provisions contained in the Memorandum and Articles of Association of the Transferee Company.
- (v) **Legal Proceedings:** Clause 4.11 of the Scheme Provides that any suit, appeal or other proceedings of whatsoever nature [whether civil or criminal and whether pending in any Court or before any statutory or judicial or quasi-judicial authority or tribunal] including proceedings under various tax laws pertaining to the Demerged Undertaking, by or against the Transferor Company are pending on the effective date, the same shall not abate, or discontinued or in any way be prejudicially affected by reason of this Scheme coming into effect and all such proceedings may be continued, prosecuted and enforced, by or against the Transferee Company in the same manner and to the same extent as they would or might have been continued, prosecuted and enforced by or against the Transferor Company, if this Scheme had not come into effect.
- (vi) **Employees :** Clause 4.14 of the Scheme Provides that upon the Scheme becoming effective, all the employees engaged in or in relation to the business activities and operations of the Demerged Undertaking who are in the service of the Transferor Company on the Effective Date, shall become the employees of the Transferee Company on such date without any break or interruption in service and on terms and conditions as the



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remuneration and otherwise, not less favourable than those subsisting as on the Effective Date.

(vii) **Residual business:** Clause 4.14 of the Scheme provides that all the residual business of the Transferor Company [i.e. business other than the demerged undertaking] and all the assets and liabilities and obligations, etc. pertaining to such residual business, shall continue to belong to and vested in the Transferor Company and will not be affected in any way by this Scheme.

(viii) **Costs and Expenses:** Clause 7.13 of the Scheme provides that all costs, charges and expenses up to the stage of sanction of the Scheme by the NCLT shall be borne by the Transferor Company. All subsequent costs, charged and expenses incurred, including stamp duty, if payable, after the Scheme becomes effective shall be borne by the Transferee Company.

6. That the rationale and benefits of the proposed Scheme as perceived by the Board of Directors and is described in the Scheme are stated as under:

(i) The debt burden and consequently recurring interest liability of the Transferor Company shall stand substantially reduced, which will help in addressing the cash flow mismatch which the Transferor Company has been facing in recent years through restructured repayment of debt and corresponding interest rates.

(ii) The land parcel forming part of SDZ Real Estate Development Undertaking of Transferor Company is proposed to be demerged from the Transferor Company and transferred to and vested in the Transferee Company. The Transferor Company will be insulated from any headwinds that may occur in the business operations of the Transferee Company.

(iii) The Transferee Company is expected to be benefitted so that –

- It could carry out its business more conveniently with greater focus and attention;
- It will enable independent evaluation of transferred undertaking.

(iv) The Scheme will not adversely affect any class of creditors or the shareholders of either company.

7. That M/s Rajendra K. Goel & Co., Chartered Accountants, being the Statutory Auditors of the Transferor Company and M/s R. Nagpal Associates, Statutory Auditors of the Transferee Company, have



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certified vide their certificates dated 06.10.2017 that the accounting treatment contained in the Scheme is in compliance with all the applicable Accounting Standards.

8. The Scheme makes detailed provisions concerning the above Demerger and Latest Financial Position with Latest Auditors Report as per FY 2016-17 of both the Transferor and Transferee Company Annexed with Application.
9. The Scheme has been approved unanimously by the Board of Directors of the respective Applicant Companies in its meetings duly convened and held on 07.10.2017.

We have gone through the above stated averments made in the present Company Application and perused the documents annexed therewith as already discussed in the preceding paras of the order.

Having heard the submission of *Shri R.P. Agarwal*, the counsel for the Applicants Companies, we are of the view that the relief sought for in Company Application can be granted. Hence, the present Company Application is allowed in the term of its '*Prayer Clause*'/*Relief Clause* with the following directions, which are issued in relation to calling, convening, and holding of the meeting of the equity shareholders, secured creditors and unsecured creditors and other interested person of the Transferor and Transferee Companies.

Such directions are stated as under:

1. The meetings of the shareholders and the creditors of the Transferee Company are dispensed with, as a Consent affidavit on behalf of the Shri Man Mohan Sibbal, the Secretary of Jai



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Prakash Associate Limited who is duly empowered by the Board of Directors of the Company vide resolution dated 07.10.2017 has been filed and is annexed as Annexure No.4 of the present Application.

2. The meetings of shareholders and Secured and the Unsecured creditors of the Transferor Company are being dispensed with, with such a direction that instead of meetings their approval to be obtained through postal ballot with facility of voting through electronic means (e-voting), where-ever possible as per provisions of Section 110(1)(b) of the Companies Act, 2013 and provision contained in Rule 20 of Companies (Management and Administration) Rules, 2014.
3. That the notices for postal ballot and e-voting to shareholders and Secured and Unsecured creditors of the Transferor Company shall be communicated in the manner permitted under Rule 20 of the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016) Rules by the Authorised Representative of the Transferor Company individually to each of the shareholders and to the Secured and the Unsecured creditors by Registered Post or Speed Post or Courier or through email where email id is available. Such notices shall be sent at least one month before the date fixed for the end of e-voting/last date fixed for submission of postal ballots by the shareholders and the secured and unsecured creditors.
4. It is further directed that such notices shall be accompanied by a copy of Scheme of Arrangement, copy of valuation report and





fairness opinion report, and a statement disclosing the details as specified in *Rule 6(3) of Companies (Compromises, Arrangements, Amalgamations) Rules, 2016* and such other information/documents as may be necessary under any other provisions.

5. Further *Mr. Nesar Ahmed (PCS) Mobile No.9810044367* and *Dr. Pawan Jaiswal (PCMA) Mobile No.9839441144* is appointed as a Scrutinizer and Alternate Scrutinizer for scrutinizing the postal ballots/e-votes cast by the shareholders and the Secured and the Unsecured Creditors of the Transferor Company and they shall be paid Rs.1,00,000/- (Rs.1 Lacs only) and Rs. 75,000/- (Rupees Seventy-Five Thousand only) respectively for rendering professional services. Further they have to submit a report thereof to this Hon'ble Tribunal within prescribed period with a copy marked to Applicant Companies.
6. It is also directed that Notices shall be published in the following newspaper at least one month before the date fixed for the end of e-voting/last date fixed for submission of postal ballots by the shareholders and the secured and unsecured creditors-

Navbharat Times (Hindi) - Published from Delhi

Times of India (English) - Published from Delhi.



7. The Cut-off date for the purpose of preparation of the list of shareholders of the Transferor Company for sending notices is 17.11.2017 and for sending notices to the Secured and Unsecured creditors is 15.10.2017 and the individual notices need not be

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sent to unsecured creditors whose dues are less than Rs.2 lacs as per Rule 5(e) of the Companies (CAA) Rules, 2016.

8. It is further directed that the Transferor Company shall place these notices on its website at least one month before the date fixed for the end of e-voting/last date fixed for submission of postal ballots and shall also forward the notices to SEBI and the recognized stock exchanges where the securities of the company are listed so that the notices are placed on their web-sites also;
9. The Transferor Company shall also place the proposed Scheme of Arrangement and all other documents, which are required to be hosted on the website under the Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016) Rules, are so hosted on its website within the prescribed time and the same are kept open.
10. The Applicant companies shall send notice of the proposed Company Scheme to the *Union of India* (Central Government) through the office(s) of the *Secretary*, Ministry of Corporate Affairs, New Delhi *Registrar of Companies* (UP), Kanpur, *Regional Director*, (Northern Region), Ministry of Corporate Affairs. Further it shall have sent notice to such *other regulatory bodies who may have significant bearing on the proposed company scheme and on the operation of the present applicants' companies*. The applicant companies shall communicate a copy of this order along with copy of the present application and necessary enclosures of documents and disclosures as required under the provisions of Companies Act,



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2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

11. The Applicant Companies also to serve a notice on the concerned *Income Tax Authority* within whose jurisdiction the Applicant Companies being assessed, pursuant to Companies Act, 2013 and Companies (Compromise, Arrangements and Amalgamations) Rule, 2016.
12. In addition to above, since it is matter of record that the applicant Companies have enclosed a copy of the orders passed/interim direction issued by the Hon'ble Apex Court in pending *Writ Petition(s) (Civil) No(s).744/2017: Chitra Sharma & Ors. versus Union of India*, therefore, we feel appropriate that the Applicant Companies to forward a copy of present application along with copy of this order to Advocate **Mr. Pawan Shree Agarwal** the *Amicus Curie* as appointed by the Hon'ble Supreme Court in the above stated matter and further to **Sh. Shekhar Naphade**, the learned Senior Advocate alongwith **Ms. Shubhangi Tuli, (AOR)** who are made participants in the Meeting of Committee of Creditor of Jaypee Infratech Limited (Corporate Debtor under Corporate Insolvency Resolution Process) so as to safeguard the interest of the home buyers as per the order dated 11.09.2017 of the Hon'ble Apex Court.



13. It is further directed that the Authorised Representative of the Transferor Company shall file Affidavit of Service before this Tribunal at least seven days before the date fixed for the end of e-voting/last date fixed for submission of postal ballots by the



shareholders and the Secured and the Unsecured Creditors, stating that the directions regarding dispatch and publication of notices, as above, have been duly complied with.

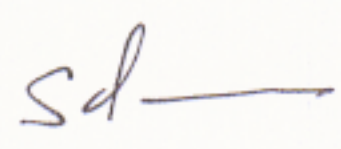
14. A Copy of this order be communicated to the Scrutinizer as well as to the Alternate Scrutinizers appointed in the present matter by this registry as well as by the Applicant Companies.
15. Further, the Applicants' Companies are at liberty to file Second Motion Petition at Appropriate Stage before this court.
16. The Present Company Application to be clubbed with Second Motion Company Petition, if filed.



With the above stated observation/directions, the present Company Application is allowed and stands disposed of.

Dated:08.12.2017

Typed by:  
Aparna Trivedi  
(Law Research Associate)

  
H.P. CHATURVEDI,  
MEMBER (JUDICIAL)