

**NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

**CP (CAA) No.2/Chd/Hry/2023**

**(2<sup>nd</sup> Motion)**

**Under Sections 230-232 of the  
Companies Act, 2013 read with  
Rule 15 of the Companies  
(Compromises, Arrangement  
and Amalgamation Rules), 2016**

**IN THE MATTER OF SCHEME OF ARRANGEMENT FOR AMALGAMATION OF:**

**JK RESORTS INDIA PRIVATE LIMITED**

having its registered office at  
1<sup>st</sup> floor, SCF-14, I Block Market  
Sarabha Nagar, Ludhiana, Punjab-141001  
(PAN: AACJ5659D)  
CIN: U55101PB2010PTC033935

..... Transferor Company/ Petitioner Company 1

AND

**JK INFCON PRIVATE LIMITED**

having its registered office at  
1<sup>st</sup> Floor, SCF-14, I Block Market  
Sarabha Nagar, Ludhiana, Punjab-141001  
(PAN: AAGCA4161K)  
CIN: U70100PB2006PTC03025

..... Transferee Company/ Petitioner Company 2

**Judgement delivered on: 03.07.2024**

**Coram: HON'BLE DR. PSN PRASAD, MEMBER (JUDICIAL)**

**HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

**Present: -**

For the Petitioner Companies : Mr. Afnaan Siddiqui, Advocate  
For Income Tax Department : Mr. Saurabh Kapoor, Senior Standing Counsel  
For the Official Liquidator : Mr. Edward Augustine George

**Per: Dr. PSN Prasad, Member (Judicial)**

**Umesh Kumar Shukla, Member (Technical)**

## JUDGEMENT

This is a Joint Second Motion Petition filed by the Petitioner Companies namely; JK Resorts India Private Limited (hereinafter referred to as the “Transferor Company”) and JK Infcon Private Limited (hereinafter referred to as the “Transferee Company”) for sanction of Scheme of Arrangement for Amalgamation (hereinafter referred to as the “Scheme”) under Sections 230-232 of the Companies Act, 2013 (hereinafter referred to as the “Act”) read with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (hereinafter referred to as the ‘Rules’). The copy of the Scheme has been annexed as Annexure P1 of the Petition.

2. The Board of Directors of the Transferor Company and Transferee Company in their respective meetings held on 03.06.2022 have approved the Scheme. The copy of the resolution passed by the Board has been annexed as Annexure P2 (colly) of the Petition.

3. The Petitioner Companies filed First Motion Application bearing CA(CAA) No.51/Chd/Hry/2022 seeking directions for dispensing with the requirement of meetings of Equity shareholders and Unsecured Creditors of both the Petitioner Companies, and Secured Creditors of Petitioner company 2. Along with the First Motion Application, the Petitioner companies have submitted an affidavit that they are not governed by any Sector Specific Regulator, hence Notice to the Sectoral Regulator is not required to be served under Section 230(5) of the Companies act, 2013.

4. The First Motion Application bearing CA(CAA) No.51/Chd/Hry/2022 filed by the Petitioner Companies was disposed of vide this Tribunal Order dated 21.10.2022,

with the directions to dispense with the meetings of Equity Shareholders and Unsecured Creditors of both the Petitioner Companies and of Secured Creditors of the Petitioner Company 2 giving the liberty to file the Second Motion Petition with a direction that Applicant Companies shall make specific prayer for sending notices to the (a) Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, (b) concerned Registrar of Companies; (c) Official Liquidator and (d) Income Tax Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition. The rationale of the Scheme, Share-exchange ratio and other details of the First Motion Application, as submitted by the Petitioner Companies, have been, in brief, included in this Tribunal Order dated 21.10.2022 in the First Motion Application.

5. In the Second Motion Petition proceedings, certain directions were issued by this Tribunal vide Order dated 22.03.2023. In compliance of the above Order, the Petitioner Companies have filed the compliance affidavit vide Diary No.03122/4 dated 31.05.2023. As per the compliance affidavit, the Petitioner Companies have made newspaper publications in "Financial Express" (English) and "Punjab Kesari" (Hindi) both Punjab Edition on 01.04.2023 in regard to notice of the hearing and the original copies of the newspapers have been attached as Annexure-A/2 (colly) to the aforesaid affidavit. It was also stated in the same affidavit that copies of notices were served upon the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, Registrar of Companies, N.C.T. of Delhi and Haryana, Official Liquidator attached to High Court of Punjab and Haryana, Income Tax Department, through Nodal Officer-Principal Chief Commissioner of Income Tax Aaykar Bhawan, Sector-17E, Chandigarh. The copies of the covering letters showing duly receipt of notices along with speed post have been attached as Annexure-A/1 (colly) of the affidavit. It

has also been deposed in the aforesaid affidavit that pursuant to the publications made on 01.04.2023, no objections have been received from any stakeholders of the Petitioner Companies till the date of filing of the affidavit.

6. In response to the abovementioned notices, the statutory authorities have furnished their replies, which is discussed as under:

#### 6.1 Regional Director/ Registrar of Companies(RoC)

The Regional Director (RD) has filed its report along with the report of the Registrar of Companies (RoC) by diary No.03122/3 dated 30.05.2023 before this Tribunal. No specific objections have been raised in RD/ RoC, and following observations about the petitioner companies have been made as under:

- The Authorized Capital of the Transferee Company, after the Scheme becoming effective, shall be in accordance with Section 232 (3) (i) of the Companies Act, 2013. As per Section 232 (3) (0 of the Companies Act, 2013, the fee, if any, paid by the Transferor Company on its Authorized Capital shall be set-off against any fee payable by the Transferee Company on its authorized capital subsequent to the amalgamation.
- The Transferor Company (Petitioner Company No.1) has share premium a/c balance of Rs.96 Lakhs (approximately) as on 31.03.2022.
- The transferee Company (Petitioner Company No.2) is an associate of the Transferor Company (Petitioner Company No.1).
- The Transferor Company (Petitioner Company No.1) has made non-current investments of Rs.6 Lakh only in equity shares of Transferee Company (Petitioner Company No.2) as on 31.03.2022.
- The Transferee Company has share premium a/c balance of Rs.2.37 Crores as on 31.03.2022.
- The Transferee Company has contingent liability in the form of bank guarantee from HDFC Bank amounting to Rs.6.99 Crores as on 31.03.2022.
- The Transferee Company (Petitioner Company No.2) has deferred tax assets of Rs.9.17 Lakhs as on 31.03.2022.

## 6.2 Official Liquidator

The Official Liquidator has filed its report vide Diary No.03122/5 dated 13.06.2023. The Official Liquidator in his report has only reiterated clause 1.1, 3.1, 3.2, 3.5, 3.6, 4.1, 4.2, 4.3, 4.4, 4.5, 5.1, 5.2 and 6.1 of the Scheme and has made no specific objections to the proposed Scheme.

## 6.3 Income Tax Department

6.3.1 The Income Tax Department filed its report vide Diary No.03122/7 dated 04.12.2023.

6.3.2 In respect of the Transferor Company, it has been submitted in its report that:

- (i) A demand of Rs. Nil is outstanding as per the ITBA portal.
- (ii) Investigations/ Inquiries work is not under the office of the Assessing Officer.
- (iii) As per the provisions of the scheme, all losses and unabsorbed depreciation of the Transferor Company be carried forward and set off against tax of future taxable income of the Transferee Company in accordance with provisions of section 72A of Income Tax Act, 1961.
- (iv) The department has no objection to the scheme, if all demand outstanding and liability of the Transferor Company and also any other proceeding under the Income Tax Act, 1961, if pending against the Transferor Company is transferred to the Transferee Company.

6.3.3 In respect of the Transferee Company, it has been submitted in its report that:

- (i) There is a proceeding pending against the Transferee Company for the Assessment Year 2022-23 with demand of Rs.1,93,530/-.
- (ii) As per the records available on the system, no investigation or enquiry is pending with this office against the Transferee company and an

undertaking in this respect has been submitted by the director of the company.

- (iii) The department has no objection to the scheme, if upon coming into effect the scheme of amalgamation, the Tribunal directs that (a) all compliances under Income Tax Act, 1961 shall be made by Transferee Company or Resultant Company after the appointed date and (b) All the tax liabilities and all the pending appeals and proceedings under the Income Tax Act, shall be enforced and continued against the Transferee Company.

7. The certificate of the Statutory Auditors with respect to the Scheme between Transferor and Transferee Company to the effect that the accounting treatment proposed in the Scheme is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles, has been attached as Annexure P-8 of the Second Motion Petition.

8. This Tribunal vide its order dated 28.06.2024 observed that the main objects, as set out in the Memorandum of Association of the Transferee Company includes “To carry on the business of real estate and properties including purchase of real estate and development of land/premises/building, creation of plots for the purpose of Sale, lease & to carry on the business of colonisers & developers of commercial/residential buildings, sale and purchase of properties on commission basis” and therefore sought the clarification, why the Notice be not served upon the Real Estate Regulatory Authority(ies) (RERA) of the concerned State(s), where the project(s) of the Transferee Company are located and/or where it is registered as real estate agent, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

9. The Petitioner Companies had submitted affidavit vide Diary No. 03122/8 dated 01.07.2024, in which they have submitted that

In view of the above, it is submitted that the Transferee Company is carrying on the business of civil contractor work like infrastructure development, concrete roads, bridge construction, etc. by procuring and executing government tenders. The Transferee Company is neither engaged in the business of development of real estate projects within the meaning of Section 2(zn) of the Real Estate (Regulation and Development) Act, 2016 nor is carrying on the business of real estate agents within the meaning of Section 2(zm) of the Real Estate (Regulation and Development) Act, 2016 and has no business plans for conducting such activities in the future. Therefore, the Transferee Company is not required to be registered under the Real Estate (Regulation and Development) Act, 2016 for carrying out civil construction activities, hence no intimation of the present Scheme seeking no objection from the Real Estate Regulatory Authority is required in the present case.

10. Further, in response to the query during the course of hearing dated 02.07.2024, the Ld. Counsel has clarified that "In the revenue for the year 2022-2023 and 2023-24 for the six months, April to September, there is no revenue from the activities falling under RERA, whether for sale of flats, plots etc. or commission as a real estate agent." The learned counsel has submitted that the statement is made as per instruction of his client in the open Court. Hence, the same was taken on record.

11. We have heard the learned Counsel for Petitioner Companies, Learned Senior Standing Counsel for the Income Tax Department, Counsel for Official Liquidator and perused the record submitted by the Applicant Companies. Subject to the Petitioner Companies complying with the requirement of various laws including the rules, and regulations, permission is hereby granted to the Scheme of Amalgamation proposed by the Petitioner Companies under Section 230 to 232 of the Companies Act, 2013.

The sanctioned Scheme of Amalgamation shall be binding on both the Transferor Company and Transferee Company (Petitioner Companies) and their Shareholders and Creditors. The Petitioner Companies shall remain bound to comply with all the statutory requirements in accordance with law.

12. Notwithstanding the submission that no investigation is pending against the petitioner companies, if there is any deficiency found or, the violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the petitioners.

13. While approving the scheme as above, it is clarified that this order should not be construed as approval by any sectoral regulator, CCI and other regulatory authorities or construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law. Further, the approval of the scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act, 1961, or serve as any exemption or defense for the Petitioner Companies against Tax Treatment in accordance with the provisions of the Income Tax Act ,1961 and the rules and regulations made thereunder.

14. This Tribunal further directs that:

- (i) Upon the sanction becoming effective from the appointed date of amalgamation i.e., 01.04.2022, the Transferor Company shall stand dissolved without undergoing the process of winding up;



- (ii) All the properties, rights and powers of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company but subject nevertheless to all charges now affecting the same;
- (iii) All the liabilities, obligations and duties of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company;
- (iv) The authorized share capital of the Transferee Company, after the Scheme becoming effective, shall be in accordance with Section 232(3)(i) of the Companies Act, 2013 and the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the amalgamation;
- (v) The Transferee Company shall, without further application, allot to the existing members of the Transferor Company shares of Transferee Company to which they are entitled under the said Scheme of Arrangement;
- (vi) All proceedings pending, if any, by or against the Transferor Company be continued by or against the Transferee Company;

- (vii) All the employees of the Transferor Company shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favourable than those on which they are engaged by the Transferor Company, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;
- (viii) All the tax liabilities and all the pending appeals and proceedings under the Income Tax Act, if pending against the Transferor Company is transferred to the Transferee Company and shall be enforced and continued against the Transferee Company and all compliances under Income Tax Act, 1961 shall be made by Transferee Company after the Appointed Date. Further, the Income Tax department is permitted to retain its recourse for recovery in respect of demand and any other future liabilities of the Transferor Company as well as the Transferee Company, in respect of the assets sought to be transferred under the proposed scheme;
- (ix) The Transferee Company will clear all the pending statutory dues after exercising all Appellate jurisdiction and as per final orders. The Scheme shall not come in the way of the statutory authorities to recover any of their dues. All the contentions of the parties shall remain open before the relevant forum(s), where disputes are pending;
- (x) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary;

15. The Petitioner Companies shall, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies for registration in prescribed form and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company, and the files relating to the Transferor Company and Transferee Company shall be consolidated accordingly, as the case may be.

16. The certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

17. The Company Petition (CAA) No.2 of 2023 is allowed, therefore the matter stands disposed of.

**Sd/-**  
**(UMESH KUMAR SHUKLA)**  
**Member (Technical)**

**Sd/-**  
**(PSN PRASAD)**  
**Member (Judicial)**

July 03, 2024  
VN/RT/VVC/AKS