

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH-II, CHANDIGARH**

**CP (CAA) 25/Chd/Hry/2023
(2nd motion)**

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

IN THE MATTER OF THE SCHEME OF AMALGAMATION:

JBM Corporate Services Private Limited

having its registered office at
Plot No. 33, Sector-44,
Gurugram-122 002, Haryana
CIN: U74140HR2011PTC100108
PAN: AAC CJ8401 D

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

HN Properties Private Limited

having its registered office at
Plot No. 33, Sector-44,
Gurugram-122 002, Haryana
CIN: U70101HR2002PTC099865
PAN: AABCT9070B

.... Petitioner No. 2/Transferor Company No. 2

K R Chawla Consulting Private Limited

having its registered office at
Plot No. 33, Sector-44,
Gurugram-122 002, Haryana
CIN: U74140HR2003PTC099864
PAN: AACCK2723P

.... Petitioner No. 3/Transferee Company

Order delivered on: 03.07.2024

Coram: Hon'ble Dr. P.S.N. Prasad, Member (Judicial)

Hon'ble Mr Satya Ranjan Prasad, Member (Technical)

Present:

For the Petitioners Companies :	Mr Rajeev Kumar Goel, Advocate Mr Kartikeya Goel, Advocate
For the Income Tax Department::	Mr. Yogesh Putney, Sr. Standing Counsel
For the RD:	Mr. Vineet Khatri, Company Prosecutor
For the Official Liquidator:	Mr. Edward Augustine George, Advocate.

Per: Dr. PSN Prasad, Member (Judicial)
Mr. Satya Ranjan Prasad, Member (Technical)

JUDGEMENT

1. This is a joint second motion Petition filed by Petitioner Companies namely; **JBM Corporate Services Private Limited** (Petitioner No. 1/ Transferor Company No. 1), **HN Properties Private Limited** (Petitioner No. 2/ Transferor Company No. 2) and **K R Chawla Consulting Private Limited** (Petitioner No. 3/ Transferee Company) under Sections 230 & 232 of the Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules).

2. The Petitioner Companies filed first motion Application being CA (CAA) 19/Chd/Hry of 2023 before this Tribunal to obtain appropriate orders to dispense/convene meetings of Shareholders, Secured Creditors and Un-secured Creditors, as the case may be, of these Companies for the purpose of the considering and approving, with or without modification, the aforesaid Scheme of Amalgamation. The First Motion Petition was allowed vide Order dated 16th June, 2023 wherein the requirement of convening meetings of Equity Shareholders of the Transferor Companies No. 1 & 2 and the Transferee Company; Preference Shareholders of the Transferor Company No. 1; Secured Creditors of the Transferee Company; and Un-secured Creditors of the Transferor Companies No. 1 & 2. None of the Transferor Companies No. 1 & 2 has any Secured Creditor. The Transferee Company does not have any Un-secured Creditor. Copy of the order dated 14th June, 2023, passed in the First Motion Application is attached as Annexure P-16 in the Second Motion Petition filed by the Petitioner Companies.

3. The main objects, date of incorporation, authorized and paid-up share capital, and the rationale of the Scheme have already been discussed in detail in the first motion order dated 14th June, 2023.

4. In the second motion proceedings, certain directions were issued by this Tribunal vide order dated 7th July, 2023 and in compliance of such directions, the Petitioners have filed affidavits of compliance vide diary No. 02072/01 dated 21th September, 2023. The notice of hearing was published in “**Business Standard**” (English, Delhi NCR Edition) and “**Business Standard**” (Hindi, Delhi NCR Edition) both dated 7th September, 2023. The original copies of the newspapers are attached as Annexure: 1 of the aforesaid affidavits. It has also stated in the affidavits that copies of notices were served upon the Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs; New Delhi, Registrar of Companies, New Delhi, the Official Liquidator, Chandigarh; and the Income Tax Department through the Nodal Officer, Principal Chief Commissioner of Income Tax, North West Region, and in the respective Circle/Ward where the Petitioner Companies are assessed, by hand delivery/Speed Post, as the case may be. Copies of the proof of service of notice to the aforesaid Statutory Authorities, in original are attached as Annexure: 2 of the aforesaid affidavits.

5. It is also deposed by the authorised signatories of the Petitioner Companies that they have not received any objection from the public after the publication of the aforementioned advertisement on 7th September, 2023 and till the date of filing the aforesaid affidavits on 21st September, 2023 vide diary No. 02072/2.

6. In response to the abovementioned notices, the statutory authorities have furnished their Reports as under:

6.1 **Registrar of Companies (ROC)/Regional Director (RD)**

- i. The Regional Director has furnished its comments/report on the Scheme of Amalgamation to this Tribunal vide 02072/4 dated 26th October, 2023. The Report of the Registrar of Companies (ROC) has been attached along with the Report of the Regional Director (RD) filed with this Tribunal. The RD in its report has observed that as per the report of the Registrar of Companies, all companies

have filed their Balance Sheets and Annual Returns up to 2020-21 and no prosecution has been filed and no inspection or investigation has been conducted in respect of any of the Petitioner Companies. However, the ROC has pointed out the following observations in his Report:

- a) (i) As per annexure 'A' of auditor's report for the FY 2021-22 of Transferor Company no. 1 (JBM Corporate Services Private Limited) there are statutory dues outstanding on account of any dispute amounting ₹98,52,586.
(ii) Company has incurred cash losses of ₹2,44,077 during current financial year and ₹46,751 during immediately preceding financial year.
(iii) Company has 'nil' revenue from operation since last two years and appears 'Dormant'.
- b) As per annexure 'A' of auditor's report for the F.Y. 2021-22 of Transferee Company there are statutory dues outstanding on account of any dispute as per table given therein pertaining to year 2010-11 to 2016-17.
- c) As per Clause 16.8 of the Scheme, the equity share holder of Transferor Company no.1 will get redeemable preference shares of the Transferee Company instead of equity shares. Therefore, company may be asked to clarify compliance of section 48 and 230(7)(c) of the Act
- d) As per audited financial statement of the Transferor Company no.1 it is seen that company has financial assets more than 50% of the total assets and also other income is more than 50% of its total revenue, thus, company fulfils the 50-50 test and deemed to be an NBFC.
- e) Refer to clause 20 of the scheme, the Transferee company may kindly be directed to comply with the provision of section 232(3)(i) of the

Companies Act, 2013 in regard to be fee payable on its revised authorised share capital, if applicable.

ii. In response to the aforesaid observations made by the ROC the Petitioner Companies have filed Reply Affidavits wherein they have provided the clarifications which are reproduced below:

a. Our response to the observations made in the first point are as follows:

With regard to the submissions made by the Learned ROC with respect to non-payment of certain statutory dues [being Income Tax dues] by the Transferor Company No. 1 on account of dispute, it is submitted that these submissions are factual information duly disclosed in the Financial Statements/Auditors Report. As already disclosed in the Financial Statements/ Auditors Report, Income Tax Dues to the tune of ₹98,52,586 is due for payment due to pending appeal before the Commissioner of Income Tax (Appeals). The aforesaid amount will be paid as per the final outcome of the appeal. The Transferee Company undertakes to pay the aforesaid statutory dues on settlement of disputes.

It is pertinent to mention that in terms of the provisions of the Scheme of Amalgamation, all the assets and liabilities of the Transferor Companies including tax liabilities, if any, will be transferred to and will be vested in the Transferee Company. Hence, sanction of the present Scheme of Amalgamation will not prejudice the interest of the Income Tax Department.

With regard to cash losses incurred by the Transferor Company No. 1, it is submitted that the Transferor Company No. 1 has, in fact, incurred losses. The Management of the Company is continuously providing the necessary financial support. It is confirmed that the Transferor Company No. 1 is discharging all its liabilities.

All the Companies in the present Scheme of Amalgamation are closely held private limited Group Companies under common management and control. The proposed amalgamation will be in larger interest of these Companies, their shareholders, employees and other stakeholders and all concerned.

It is relevant to mention that under the Companies Act, 2013 and other applicable provisions, if any, there is no bar on the amalgamation of loss-making companies. We, however, wish to submit and confirm that in terms of the provisions of Section 72A of the Income Tax Act, 1961, none of the Transferor Companies are eligible to carry forward the accumulated losses and set off the same in the Transferee Company on amalgamation. Hence the proposed Scheme of Amalgamation will not have any adverse impact on the Income Tax Authorities or on any other person.

The Transferor Company No. 1 was incorporated to provide corporate, management and other advisory services. The Company has made investments in other Group Companies and earning dividend income. The Company is a Core Investment Company (CIC) in the terms of the RBI Regulations. The Transferor Company No. 1 is an active company, earning revenue from various sources. The Company has debtors, creditors and various other assets and liabilities.

We clarify and confirm that the Petitioner Transferor Company No. 1 is not a Dormant Company within the meaning of Section 455 of the Companies Act, 2013. It may be noted that Section 455 provides a facility to the companies which are formed for future projects to register as dormant companies and avail the facility of making fewer compliances and filing of fewer documents as against an active company. However, the Petitioner Transferor Company No. 1 has been making all the

applicable compliances and filing various documents as active company under the Companies Act, 2013.

- b.** With regard to the submissions made by the Learned ROC with respect to non-payment of certain statutory dues [being Income Tax dues] by the Transferee Company on account of dispute, it is submitted that these submissions are factual information duly disclosed in the Financial Statements/Auditors Report. As already disclosed in the Financial Statements/ Auditors Report, Income Tax Dues are due for payment due to pending appeal before the Commissioner of Income Tax (Appeals). The aforesaid amount will be paid as per the final outcome of the appeal. The Transferee Company undertakes to pay the aforesaid statutory dues on settlement of disputes.

It is pertinent to mention that the Transferee Company is not a subject matter of dissolution and hence, sanction of the present Scheme of Amalgamation will not prejudice the interest of the Income Tax Department.

- c.** It is clarified and confirmed that the Scheme of Amalgamation is not proposing any variation of the Shareholders' rights. On Amalgamation, both the Transferor Companies will be dissolved.

The Transferee Company will issue new Preference Shares to all the Equity and Preference Shareholders of the Transferor Company No. 1. Whereas, the Transferor Company No. 2 being a wholly owned subsidiary, no new share will be issued on amalgamation of the Transferor Company No. 2 with the Transferee Company.

We confirm and certify that provisions of Sections 48 and 230(7)(c) of the Companies Act, 2013, are not applicable in the present case. It is, however, pertinent to mention that the present Scheme of Amalgamation has already been approved by all the Equity and Preference Shareholders of all the Petitioner Companies by way of Consent Affidavits. We further, confirm and

undertake that the Transferee Company will comply with all applicable provisions of the Companies Act, 2013 and other applicable law to the extent required.

- d.** As clearly mentioned in the Scheme of Amalgamation, Petition and other papers, the Transferor Company No. 2 is the wholly owned subsidiary of the Transferor Company No. 1. The Transferor Company No. 1 has deployed its almost entire funds in the Equity Shares of the Transferor Company No. 2. Both the Companies are Group Companies. Hence the Transferor Company No. 1 is a Core Investment Company (CIC). In terms of the RBI Regulations, the Transferor Company No. 1 is not required to obtain registration as an NBFC from the RBI. The relevant RBI Notification is enclosed as **Annexure: 1** of the reply affidavit.
- e.** We do confirm and undertake that the Transferee Company will comply with the provisions of section 232(3)(i) of the Companies Act, 2013, and other applicable provisions, if any, and make the requisite payment to the Registrar of Companies and other authorities, if any, on increase of its authorised capital.
- iii.** In response to the aforesaid Reply Affidavits filed by the Petitioner Companies, the Regional Director has furnished his Additional Affidavit to this Tribunal vide 02072/12 dated 21st February, 2024, wherein at para 4, following comments are made:

That in pursuance to the directions of the Hon'ble NCLT, the reply/response dated 27.10.2023 of the petitioner companies has been examined by the office of deponent and comments with respect to the para 10 of the affidavit dated 25.10.2023 are as under-

 - a.** With respect to query No. I, II and III- These are matter of facts.

- b. With respect to query No. IV- The response of the petitioner companies is found satisfactory as the scheme of amalgamation was approved by more than 3/4th members of the petitioner companies and there is no prohibition on allotment of preference shares to equity shareholders.
- c. With respect to query No. V- The response of the petitioner company is found satisfactory of the Transferor Company No. 2 is a wholly owned subsidiary of the Transferor Company No. 1 and the Transferor Company No. 1 has deployed its almost entire funds in the equity shares of the Transferor Company No. 2. Both the companies are Core Investment Company (CIC).
- iv.** In a perusal of the report and the response of the petitioners, it is seen that the observations raised by the RD/RoC stand duly satisfied. Thus, no adverse observations can be inferred from the report of the Regional Director.

6.2 **Official Liquidator**

- i. The Official Liquidator has furnished its comments/reports on the Scheme of Amalgamation to this Tribunal vide 02072/3 dated 25th October, 2023. The Official Liquidator, in Para 22 of the Report has made the following observations:

Rationale of the proposed Scheme as per the petition filed	Observation of the Office of the Official Liquidator
As per (Clause 3.2 c) The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of redundancies, reduction of overheads, optimal utilization of financial, human and other resources and enhancement of overall business efficiency. The proposed amalgamation will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth.	Revenue from Operations: As per the audited profit and loss account for the previous three consecutive years, the company have only Dividend income on investment and the revenue from operations is "NIL". The transferor company is not doing any business and the corresponding rationale does not seem justified.
(Clause 3.2 a) All the Transferor Companies and the Transferee Company are closely held Group Companies under common management and control. The proposed amalgamation of the Transferor Companies with the Transferee Company would result in consolidation of Group Companies and pooling of their resources into a single entity.	Rotations of funds: From the audited balance sheet of the company it is noticed that:- i. the major source of funds for M/s JBM Corporate Services Private Limited, is Shareholders funds i.e., Rs-28.56 crores which is derived from the issue of shares at

	<p>premium and the major assets of the company is Non current investment of Rs-28.54 crores which is made in the subsidiary i.e HN Properties Private Limited (Transferor Company No.2) and fellow subsidiary company i.e K R Chawla Consulting Private Limited (Transferee Company).</p> <p>ii. the major source of funds M/s HN Properties Private Limited is only Shareholders funds i.e Rs-28.03 crores, which is derived from the issue of shares at premium and the major assets of the company is Non current investment of Rs- 28.04 crores, which is made in the subsidiary i.e. K R Chawla Consulting Private Limited (Transferee Company)</p> <p><i>In view of above, it is submitted that, rationale of the scheme is not justified/clear as they have already pooled major sources in the group companies.</i></p>
<p>As per (Clause 16.2) Preference shareholder holding 1% optionally convertible non-cumulative redeemable preference shares ("OCRPS") of the Transferor Company No.1- 1,087 Redeemable Preference Shares of face value INR 10 each, fully paid-up, up for every 100 OCRPS of the Transferor Company No.1 held by its preference shareholders as on Record Date</p>	<p>Presently Transferor Company no-1 have 26,34,647 1% Optionally Convertible Non-Cumulative Redeemable Preference Shares of ₹10 each aggregating ₹2,63,46,470. Accordingly, as per this clause the shareholder of the Transferor Company no-1 will get 2,86,38,613/ (1087/100*2634647) Redeemable Preference Shares of face value INR 10 each amounting to Rs-28,63,86,130/- in the Transferee Company but the increased Authorized capital as per part III of the Scheme is only Rs.8,07,00,000.</p>

- ii. In response to the aforesaid observations made by the OL, the Petitioner Companies have filed Reply Affidavits wherein they have provided the following clarifications:

- a) As regards Rationale of the Scheme as pointed out by the Learned OL, it may be noted that Clause 3 of the Scheme of Amalgamation gives Rationale of the proposed amalgamation. The very first Sub-clause 3.1 of Scheme says that the Transferor Companies and Transferee Company are part of same group. The management of the Transferor Companies and Transferee Company is contemplating a consolidation of the Transferor Companies with the Transferee Company. The proposed consolidation is expected to result in greater business synergies and reduced administrative and other costs. It is pertinent to mention that the Transferor Company No. 2-HN Properties Private Limited is a wholly owned subsidiary of the Transferor Company No. 1-JBM Corporate Services Private Limited. All the three Petitioner Companies are closely held Group Companies under common management and control. The present Scheme of Amalgamation is proposed to consolidate all the three Companies tighter to take various benefits of consolidation. Some of these benefits are mentioned in Sub-clause 3.2 of the Scheme.
- b) As rightly pointed out by the Learned OL, the Transferee Company will issue 2,86,38,613 Preference Shares of ₹10 each aggregating to ₹28,63,86,130. The post-Scheme Authorised Share Capital of the Transferee Company will not be sufficient to accommodate such issue of shares. Needless to say, the Transferee Company will increase its Authorised Capital to enable it to issue the aforesaid preference shares by paying the requisite fee to the ROC for such increase. We, accordingly, do hereby confirm and undertake that immediately on approval of the Scheme by this Hon'ble Tribunal, the Transferee Company will increase its Authorised Capital to enable it to implement the terms of the Scheme of Amalgamation and will pay the necessary

fee to ROC in terms of the provisions of the Companies Act, 2013 including Section 232(3)(i) of the Act.

iii. In response to the aforesaid Reply Affidavits filed by the Petitioner Companies, the OL has filed its Additional Report to this Tribunal vide 02072/11 dated 6th February, 2024, wherein at para 4 to 6 he has made the following comments:

a. Revenue from Operations: As per the audited profit and loss account for the previous three consecutive years, the company have only Dividend income on investment and the revenue from operations is "NIL". The transferor company is not doing any business and the corresponding rationale does not seem justified.

b. Rotations of funds: From the audited balance sheet of the company it is noticed that:

i. the major source of funds for MIs JBM Corporate Services Private Limited, is Shareholders funds i.e. Rs-28.56 crores which is derived from the issue of shares at premium and the major assets of the company is Non current investment of Rs-28.54 crores which is made in the subsidiary i.e. HN Properties Private Limited (Transferor Company No.2) and fellow subsidiary company i.e. K R Chawla Consulting Private Limited (Transferee Company)

ii. the major source of funds MIs HN Properties Private Limited is only Shareholders funds i.e. Rs-28.03 crores, which is derived from the issue of shares at premium and the major assets of the company is Non current investment of Rs-28.04 crores, which is made in the subsidiary i.e. K R Chawla Consulting Private Limited (Transferee Company).

In view of above, it is submitted that, rationale of the scheme is not justified/clear as they have already pooled all their resources.

c. Presently Transferor 'Company no-1 have 26,34,647 (1%) Optionally Convertible Non-Cumulative Redeemable Preference Shares of ₹10 each

aggregating to ₹2,63,46,470.

Accordingly, as per this clause the shareholder of the Transferor Company no-1 will get 2,86,38,613/- (1087/100*2634647) Redeemable Preference Shares of face value INR 10 each amounting to Rs. 28,63,86,130/- in the Transferee Company but the increased Authorized capital as per part III of the Scheme is only ₹8,07,00,000.

- d. That as regard to the observation no 1 and 2 the official Liquidator still have the same observations.
 - e. That as regard to the observation no 3 the Official Liquidator has no further objection, as the Petitioner companies agrees to pay the requisite fee towards the increase of Authorized Capital, to the ROC.
- iv.** In a perusal of the report and the response of the petitioners and arguments advanced, it is seen that the OL have endorsed no objection for allowing the proposal. Thus, no adverse observations can be inferred from the report of the Official liquidator.

6.3 Income Tax Department

- i. The Income Tax Department has furnished its comments/reports in respect of all the Petitioner Companies to this Tribunal vide 02072/7 dated 27th October, 2023. The Income Tax Department had given its “No Objection” to the proposed Scheme of Amalgamation. However, certain Income Tax Dues/Demands have been pointed out by the Income Tax Department in the Petitioner Companies.
- ii. The Petitioner Companies have also filed their Reply Affidavits to the comments/reports filed by the Income Tax Department vide 02072/8 dated 24th November, 2023. The submissions made by the Petitioner Companies is reproduced below:
 - a. It is pertinent to mention that the Income Tax Department has categorically given its “No Objection” to the proposed Scheme of Amalgamation.

- b. The Income Tax Department has pointed out some Income Tax Dues/Demands in the Petitioner Companies, for earlier assessment years. Status of the Income Tax Dues/Demands in the Petitioner Companies, as pointed out by the Income Tax Department, and clarifications by the Companies to the same are compiled in the following tables:

Transferor Company No. 1: JBM Corporate Services Private Limited

Sl. No.	Particulars	Amount (₹)	Remark
1.	Income Tax Demand for the Assessment Year 2015-16	98,52,585	<i>Appeal filed against the demand raised by the Income Tax Department¹</i>

The Company has filed an Appeal before the CIT (Appeals) against the aforesaid Income Tax demand for the assessment year 2015-16. The Learned CIT (Appeals) is yet to pass an order in the aforesaid Appeal. The Transferee Company undertakes to make the payment, if any, as per the final outcome of the aforesaid appeal.

Transferor Company No. 2: HN Properties Private Limited

Sl. No.	Particulars	Amount (₹)	Remark
1.	Income Tax Demand for the Assessment Year 2009-10	43,710	<i>Application for rectification has been filed against the demand raised by the Income Tax department¹</i>

The Company has filed an application for rectification of the aforesaid Income Tax demand for the assessment year 2009-10. The Learned AO is yet to pass an order in the aforesaid rectification application. The Transferee Company undertakes to make the payment, if any, as per the final outcome of the aforesaid rectification application.

Transferee Company: K R Chawla Consulting Private Limited

Sl. No.	Particulars	Amount (₹)	Remark
1.	Income Tax Demand for the Assessment Year 2011-12	12,35,08,789	<i>Appeal filed against the demand raised by the Income Tax Department¹</i>
2.	Income Tax Demand for the Assessment Year 2012-13	11,04,35,957	
3.	Income Tax Demand for the Assessment Year 2013-14	10,64,34,152	
4.	Income Tax Demand for the Assessment Year 2014-15	7,77,84,775	
5.	Income Tax Demand for the Assessment Year 2015-16	5,34,42,813	
6.	Income Tax Demand for the Assessment Year 2016-17	5,00,12,967	
7.	Income Tax Demand for the Assessment Year 2017-18	3,57,49,693	

¹ *The Company has filed Appeals before the Income Tax Appellate Tribunal (ITAT) against the aforesaid Income Tax demands. The Hon'ble ITAT is yet to pass an order in the aforesaid Appeals. The Transferee Company undertakes to make the payment, if any, as per the final outcome of the aforesaid appeals.*

Certificate from the Chartered Accountants confirming the aforesaid status of the Income Tax Dues/Demand in the Transferor Companies and the Transferee Company are enclosed as **Annexure: 2** of the reply.

- c. We undertake and confirm that any liability that may arise in future against the Petitioner Transferor Companies, will be paid by the Transferee

Company in accordance with the applicable provisions of Law. The Scheme will not adversely affect the right of recovery of the Income Tax Department, or any enquiry, investigation, scrutiny or other proceedings being carried out by Income Tax Department against the Petitioner Transferor Companies. The Income Tax Department is entitled to recover any tax demand or any other dues of the Petitioner Transferor Companies from the Petitioner Transferee Company.

- d. We confirm and undertake that the Transferee Company will make the payment of demand on finalization of the on-going appeals, in terms of the applicable provisions of Law. The Transferee Company is not a subject matter of dissolution and hence the sanction of the Scheme of Amalgamation will not adversely affect any pending proceedings in the Transferee Company. The Transferee Company undertakes to pay any demand that may be raised by the Income Tax Department subsequent to the outcome of the aforesaid appeals.
- e. We wish to further clarify and confirm that interest of the Income Tax Department will not be adversely affected by sanction of the present Scheme of Amalgamation. It is pertinent to mention that in terms of the provisions of the Scheme of Amalgamation, all the assets and liabilities of the Transferor Companies including tax liabilities, if any, will be transferred to and will be vested in the Transferee Company.
- f. With regard to the carry forward of accumulated losses of the Transferor Companies in the Transferee Company, it is most respectfully submitted that the Petitioner Transferor Companies and the Petitioner Transferee Company are not seeking any exemption or relaxation from the applicability of the provisions of the Income Tax Act, 1961. The Scheme of Amalgamation is subject to the provisions of the Income Tax Act. The Petitioner Transferee Company will comply with the provisions of the Income Tax, 1961, including

the provisions of Section 72A of the Act, to the extent applicable. It is pertinent to mention that this Tribunal also clarifies that sanction of Scheme is subject to the provisions of the applicable laws.

- g. That it is clarified and confirmed that the Scheme will not adversely affect the rights of recovery of the Income Tax Department; or any enquiry, appeal, scrutiny or other proceedings being carried out by Income Tax Department against any of the Companies. The Income Tax Department is entitled to recover any tax demand or any other dues from the Companies.
- h. That the Transferee Company undertakes to pay any demand that may be raised by the Income Tax Department or any other competent authority in future in terms of the applicable provisions of law.
- i. That we have no objection if the Tribunal grants specific liberty to the Income Tax Department to take out appropriate proceedings for recovery of any Income Tax Dues from the Transferor, Transferee or Resulting Companies or any other person who is liable for payment of such dues.
- j. That it is most respectfully submitted that various High Courts and the Hon'ble National Company Law Tribunal have held in various cases that there is no impediment on sanctioning of a Scheme of Arrangement or Amalgamation pending any Income Tax demand, litigation or scrutiny proceedings.

Copies of the relevant orders passed by various High Courts and NCLT are enclosed as Annexure: 3 of the reply affidavit.

That it is clarified and confirmed that the Petitioner Transferor Companies and the Petitioner Transferee Company have filed their up-to-date Income Tax Returns till the financial year ended 31st March, 2023.

Copies of the Income Tax Returns for last three years of the Petitioner Transferor Companies and the Petitioner Transferee Company are enclosed as Annexure: 4 of the reply affidavit.

iii. On a perusal of the report and affidavit furnished by authorized representatives of the Petitioner Companies, it is seen that all the observations of the Income Tax Department are duly satisfied.

7. The certificates of the respective Statutory Auditors of the Petitioner Companies certifying that the accounting treatment proposed in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 and Generally Accepted Accounting Principles in India (Indian GAAP), are attached as Annexure P-15 in the Second Motion Petition filed by the petitioner Companies.

8. We have heard the learned Counsel for Petitioner Companies, Company Prosecutor on behalf of the Regional Director and learned Standing Counsel for the Official Liquidator and the Income Tax Department and have perused the records carefully.

9. In the context of the above discussion, the Scheme contemplated between the petitioner companies appears to be prima facie in compliance with all the requirements stipulated under the relevant sections of the Companies Act, 2013. In the absence of any objections before us and since all the requisite statutory compliance have been fulfilled, this Tribunal sanctions the scheme of Amalgamation appended as "Annexure-P-1" with the company petition.

10. Notwithstanding the submission that no investigation is pending against any of the Petitioner Companies, if there is any deficiency found or, 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 law, against the concerned persons, directors and officials of the petitioners.

11. While approving the Scheme as above, it is clarified that this order should not be 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.

THIS TRIBUNAL DO FURTHER ORDER:

- a. That all the property, rights and powers of the Transferor Companies No. 1 & 2 be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Companies No. 1 & 2 but subject nevertheless to all charges now affecting the same; and
- b. That all the liabilities and duties of the Transferor Companies No. 1 & 2 be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and
- c. Upon the Scheme becoming effective, all the employees of the Transferor Companies No. 1 & 2, in service on the Effective Date, shall be transferred to and shall become the employees of the Transferee Company as provided in the Scheme of Amalgamation; and
- d. Upon the Scheme becoming effective, all proceedings now pending by or against the Transferor Companies No. 1 & 2 be continued by or against the Transferee Company; and
- e. Upon the Scheme finally coming into effect and in consideration of the transfer and vesting of all the said assets and liabilities of the Transferor Companies No. 1 & 2 to the Transferee Company in terms of the Scheme, it is proposed that the Transferee Company shall, without any further application or deed, issue and allot Share(s) to the Shareholders of the Transferor Companies No. 1 & 2 in the following manner as provided in the Scheme of Amalgamation.
- f. The Appointed Date for the amalgamation of JBM Corporate Services Private Limited and HN Properties Private Limited with K R Chawla Consulting Private Limited Ltd shall be 1st April, 2022, as provided in the Scheme;
- g. The fee, if any, paid by the Transferor Companies No. 1 & 2 on its authorised share capital, shall be set off against any fees payable by the Transferee Company on its

- authorized capital subsequent to the sanction of the 'Scheme'; and
- h. The Transferee Company shall file the revised Memorandum and Articles of Association with the Registrar of Companies, NCT of Delhi & Haryana and further make the requisite payments of the differential fee (if any) for the enhancement of authorised capital of the Transferee Company; after setting off the fees paid by the Transferor Companies No. 1 & 2.
12. That 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 and on such certified copy being so delivered, the Transferor Companies No. 1 & 2 shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Companies No. 1 & 2 registered with him on the file relating to the said Transferee Company, and the files relating to the Transferor Companies and Transferee Company shall be consolidated accordingly, as the case may be.
13. As per the aforesaid directions, Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioners to the filing of the Schedule of Properties within three weeks from the date of receiving a certified copy of this order.
14. All the concerned Regulatory Authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar of this Bench.
15. The certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.
16. The Company Petition CP (CAA) 25/Chd/Hry of 2023 is disposed of accordingly.

Sd/-
(Satya Ranjan Prasad)
Member (Technical)

Sd/-
(Dr. PSN Prasad)
Member (Judicial)

July 03, 2024
Reet