IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 81 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 43 OF 2015

JSW INVESTMENTS PRIVATE LIMITED

………… Petitioner / the Transferor Company

AND

COMPANY SCHEME PETITION NO 82 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 44 OF 2015

JSW IP HOLDINGS PRIVATE LIMITED

………… Petitioner / the Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956) (or re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (or any corresponding provisions of Companies Act, 2013 as may be notified);

AND

In the matter of Scheme of Arrangement

Between

JSW Investments Private Limited ("the Transferor Company" Or "JSWIPL")

and

JSW IP Holdings Private Limited ("the Transferee Company Or "JSW IP Holdings")

And

their respective shareholders

Called for Hearing

Ms. Alpana Ghone along with Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocates for the Petitioners.

Mr. P.S. Jetly i/b Mr. A.A. Ansari for Regional Director in both the Company Scheme Petitions.

CORAM: S. J. Kathawalla, J.
DATE: 18th April, 2015

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Arrangement between JSW Investments Private Limited ("the Transferor Company" or " JSWIPL") and JSW IP Holdings Private Limited ("the Transferee Company" or " JSW IP Holdings") and their respective shareholders.

3. Learned counsel for the Petitioners states that the Petitioner in Company Scheme Petition No. 81 of 2015 is presently engaged in investment in group Companies and also has a Brand Management and Promotion Division and earns royalty income and the Petitioner in Company Scheme Petition No. 82 of 2015 is engaged in carrying out Brand Management and Promotion activities.

4. The Learned counsel for the Petitioner Companies further states that the Scheme will result in transfer and vesting of the Brand Management and Promotion Division owned by the Transferor Company to the Transferee Company and thus it will benefit in better management and focussed promotion of the brand. The Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioner further states that the Petitioner companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Directions.

6. The Learned Counsel appearing on behalf of the Petitioners has stated that the Petitioners have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under, whichever applicable. The said undertaking is accepted.

7. The Regional Director has filed an affidavit on 15th April, 2015 stating therein that save and except as stated in paragraph 6 of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said affidavit it is stated that:

   6. *"That the Deponent further submits that, the scheme provides for issue of preference shares to the transferor Company itself instead of issuing equity shares to the equity shareholders of the transferor Company. It is further observed that the transferred undertaking is not a separate business undertaking of the transferor Company and therefore, this arrangement also not in consonance with the definition provided in Section 2(19AA) of the Income Tax Act 1961. The Scheme is not a tax neutral scheme. In this regard, it is submitted that the tax issue if any arising out of this scheme shall be subject to the final decision of Income Tax Authority and approval of the scheme by the Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the transferor /*

transferee Company."

8. As far as the observations in paragraph 6 of the Affidavit of the Regional Director is concerned, the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

9. Learned counsel for the Petitioner further states that one of its Group Company i.e. JSW Steel Limited, has received objection from its Shareholder, Mr. Mohan Chandiramani, with regard to the aforesaid Scheme of Arrangement. In this connection, Learned Counsel states that JSW Steel Limited has already given reply vide letter dated 26th February 2015 stating that the Scheme of Arrangement is between JSW Investments Private Limited ("the Transferor Company" or "JSWIPL") and JSW IP Holdings Private Limited ("the Transferee Company or "JSW IP Holdings") and their respective shareholders and JSW Steel Limited is not a party to the Scheme and not concerned with the Scheme. Further, the said objector is not a shareholder in either the Transferor Company or the Transferee Company and therefore has no locus to object to the Scheme of Arrangement. The statement made by the Learned Counsel for the Petitioner Companies are accepted.

10. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertaking and submissions given by the advocate on behalf of the Petitioner Companies. The said undertaking is accepted.

11. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

12. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 81 of 2015 and 82 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clauses (a) and (b).

13. The Petitioner Companies to lodge a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.

14. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Registrar of Companies, electronically, along with E-form INC-28 in addition to physical copy as per the relevant provisions of the Companies Act 1956/2013.

15. The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.

16. Filing and issuance of the drawn up order is dispensed with.

17. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. J. Kathawalla, J)