IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 323 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 184 OF 2015.

Jet Lite (India) Limited

....Petitioner/ the Transferor Company

AND

COMPANY SCHEME PETITION NO. 324 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 185 OF 2016

Jet Airways (India) Limited

....Petitioner/ the Transferee Company

In the matter of the Companies Act, 1956 and the corresponding provisions of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and the corresponding provisions of the Companies Act, 2013, to the extent notified;

AND

In the matter of Scheme of Merger of Jet Lite (India) Limited with Jet Airways (India)

Limited and their respective shareholders and creditors.

Called for hearing

Senior Counsel Mr. Janak Dwarkadas, Counsel Mr. Ankit Lohia along with Mr. R. J. Gagrat, Solicitor, Ms. Sheetal Sabnis, Mr. G. T. Mestha, Ms. I. Sen, Ms. Mrunal Sandge, Advocates i/b Gagrats, Advocates for the Petitioners.

Senior Counsel Mr. S. Singhvi, Advocate i/b Mr. Rahul Kamerkar, Advocate for Jet Aircraft Maintenance Engineers Welfare Association.

Ms. P. Sheela, Joint Director (Legal), from the office of the Regional Director.

Ms. Yogini Chauhan, the Deputy Official Liquidator, present in Company Petition No. 323 of 2016.

CORAM: A. K.Menon, J.

DATE: 20th October, 2016

PC:

1. Heard Learned Counsel for the parties. No objection has come before the Court to oppose the Scheme and nor any party has contravened any averments made in the Petitions.

2. The sanction of the Court is sought to a Scheme of Merger of Jet Lite (India) Limited, Transferor Company with Jet Airways (India) Limited, the Transferee Company and their respective shareholders and creditors, under Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business of operating air transport services, scheduled and non-scheduled, for the carriage of passengers, mail and freight and the Transferee Company has been carrying on the business of providing air transport services for the carriage of passengers, baggage, mail and freight.

4. The Learned Counsel for Petitioners states that the Scheme of Merger will result in the following benefits, namely:

   a. Strengthening of the single brand leading to a stronger market presence providing customers with a seamless on-board experience, and removing any other brand perceptions/ distinctions in customers' minds.
   b. More focused operational efforts, realizing synergies in terms of compliance, governance, administration and costs.
   c. Greater efficiency in cash management of the merged entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to maximize shareholder value.

5. The Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Merger by passing Resolutions which are annexed to the respective Company Summons for Directions.

6. The Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in the respective Company Summons for Directions.

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

8. The Official Liquidator has filed his report on the 7th day of September, 2016 in Company Scheme Petition No. 323 of 2016 stating that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved without being wound up by this Court.

9. The Regional Director has filed an Affidavit on the 22nd day of September, 2016. In the last paragraph of the said Affidavit it has been stated that "*Save and except as stated in para 6 (i) and (iv), it appears*

that the Scheme is not prejudicial to the interest of shareholders and public…”.

10. The Learned Counsel appearing on behalf of the Petitioners has stated that there is a typographical error in the last paragraph of the said Affidavit of the Regional Director and which should read as “*Save and except as stated in paragraphs 6 (i) and (ii), it appears that the Scheme is not prejudicial to the interest of shareholders and public…*” and that the said typographical error be corrected accordingly.

11. In paragraph 6 of the said Affidavit, the Regional Director has stated as follows:-

“(i) That the Deponent further submits that, the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and Approval of the scheme by 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 petitioner company.

(ii) Transferee Company is a listed company and the BSE has given NOC Vide its letter NO. DSC/AMAL/CS/24(F0/193/2015-16 dated 20.10.2015 subject to certain directions and NSE has given NOC Vide its letter NO. NSE/LIST/47188 dated 20.10.2015 subject to certain directions therefore, Deponent prayed that may

Hon'ble Court may direct the company to comply with the directions of the BSE and NSE."

12. So far as the observation in paragraph 6 (i) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that the Petitioner Companies will comply with all applicable provisions of Income Tax Act, 1961 and tax implications if any, arising out of the Scheme will be dealt with in accordance with law.

13. So far as the observation in paragraph 6 (ii) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that the Petitioner Companies will comply with all applicable provisions of the Listing Agreement and all directions as given by the BSE and NSE, in accordance with law.

14. The Learned Counsel for Regional Director on instructions of Ms. P. Sheela, Joint Director (Legal) in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that she agrees to the correction being made in the last paragraph of the said Affidavit and the corrected line should read as "*Save and except as stated in paragraphs 6 (i) and (ii) it appears that the scheme is not prejudicial to the interest of shareholders and public…*".

15. Further Ms. P. Sheela, Joint Director (Legal) in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioners. The said undertakings are accepted.

16. Senior Counsel Mr. S. Singhvi appearing on behalf of Jet Aircraft Maintenance Engineers Welfare Association (‘**JAMEWA**’), has raised an apprehension that if a common seniority list is to be maintained, post the Merger, it may affect the seniority of the members of JAMEWA, adversely.

17. Senior Counsel Mr. Janak Dwarkadas appearing on behalf of the Transferor and the Transferee Companies, has assured this Hon’ble Court that:

    i. the Scheme of Merger is conditional upon Jet Airways being allowed to retain and operate two separate Airline Operating Permits (‘AOPs’);

    ii. in the event, such approval is accorded and the Scheme becomes effective, the employees of the Transferor Company shall be attached to the Undertaking of the Transferee Company as a separate and independent division of the Transferee Company, under two separate

AOPs and two separate seniority lists will be maintained by Jet Airways, as are being maintained as of date.

Senior Counsel Mr. S. Singhvi accepts the aforesaid statement.

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

19. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 323 and 324 of 2016 are made absolute in terms of prayers clauses (a) to (f).

20. The Petitioner Companies to file 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.

21. The Petitioners are directed to file a certified copy of order along with a copy of the Scheme of Merger 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 whichever is applicable.

22. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company in Scheme Petition No. 323 of 2016 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the Order.

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

24. 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.

(A. K. Menon, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

Uploaded by : Shankar Gawde, Stenographer.