IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 762 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 507 OF 2015

In the matter of the Companies Act, 1 of 1956

And

In the matter of Sections 391 to 394 of the Companies Act, 1956;

And

In the matter of Scheme of Arrangement of Jindal Photo Limited (the Demerged Company) and Jindal Poly Films Limited (the Resulting Company) and their respective shareholders and Creditors.

Jindal Photo Limited [CIN No.L33209DN2004PLC000198], a company incorporated under the Companies Act, 1956, having its registered office at 260/23, Sheetal Industrial Estate, Demani Road, Dadra – 396193, Dadra & Nagar Haveli (U.T.)	)	…Petitioner/ Demerged Company

Called for Admission

Mr. Suraj Iyer with Mr. Rohan Mathur i/b M/s. Ganesh & Co., Advocate for the Petitioner Company.
Mr. D.P. Singh i/b A.A. Ansari for Regional Director

Coram: K.R. SHRIRAM J.

Date: 26th February 2016

P.C:-

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

2. The sanction of this Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Arrangement of Jindal Photo Limited (the Demerged Company) and Jindal Poly Films Limited (the Resulting Company) and their respective shareholders and Creditors.

3. The Learned Counsel for the Petitioner Company states that the Demerged Company is engaged *inter-alia* in the business of manufacturing photographic and medical products by converting big size jumbo rolls into saleable sizes through various manufacturing processes.

4. The proposed Scheme of Arrangement will enable the Demerged & the Resulting Company to effectively and efficiently cater to the independent growth plans (both through organic and inorganic means) for each of the businesses of the Petitioner/ Demerged Company and to facilitate greater

efficiency in cash management and unfettered access to cash flow generated to maximize shareholder value

5. The Petitioner Company have approved the Scheme of Arrangement by passing Board Resolution which is annexed to the respective Company Scheme Petition.

6. The Learned Advocate for the Petitioner Company states that the Petitioner Company 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 Company Summons for Direction and seeks sanction to the proposed Scheme.

7. The Learned Advocate for the Petitioner Company has stated that the Petitioner Company have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company through their Advocate undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 8th December, 2015 stating therein that save and expect as stated in Para 2 (c) to 2 (g), it appears that the scheme is not prejudicial to the interest of shareholders and public. In the light of aforesaid facts the Hon’ble Court may pass such order as may be deemed fit and proper.

In Para 2 of the said Affidavit, it is stated that:

(c) *That, the deponent submits that the petitioner demerged company namely M/s Jindal Photo Limited is listed with the BSE & NSE. That the petitioner demerged company has submitted with the office of the deponent, the copies of letter dated 11.03.2015 and 12.03.2015 issued by the Bombay Stock Exchange and National Stock Exchange respectively to the petitioner transferee company. It is revealed from the said letters that both the stock exchanges have stated that the "**The company shall duly comply with various provisions of the circular of SEBI**". The SEBI circular No. CIR/CFD/DIL/5/2013 dated 04.02.2013 read with CIR/CFD/DIL/8/2013 dated 21.05.2013, requires the listed company to obtain NOC from SEBI also apart from the respective Stock Exchanges where the shares are listed, for approval of any scheme of amalgamation/demerger/reduction etc. The revised requirements shall be applicable to listed companies, which, on the date of this circular, have not submitted the Scheme with the Hon'ble High Court. The aforesaid SEBI circulars issued on 04.02.2013 and 21.05.2013 is intended to ensure compliance by listed company in the interest of shareholders at large. This is office is of the view that the said circulars is applicable and the petitioner companies should comply with the requirements of the said circular. In this regard the Hon'ble Court may be pleased to direct the petitioner-demerged company to comply with the same.*

(d) That, the deponent submits that it is revealed from the shareholding pattern as on 30.10.2015 of the petitioner demerged company that 28,454 (0.28% of total equity shares) number of equity shares out of total 1,02,58,326 number of equity shares are held by NRIs. The deponent is not aware about as to whether the petitioner company has complied with the provisions of FEMA and RBI guidelines or not, in this regard. The Hon'ble Court may therefore be pleased to direct the petitioner companies to ensure about all the compliances of FEMA and RBI guidelines, in the matter, from time to time.

(e) That, the deponent submits that the clause 3.14 of the Scheme provides for Employees. As per the said clause, all the employees of the demerged undertaking of the petitioner demerged company shall become the employees of the resulting company w.e.f. proposed appointed date. The petitioner companies have proposed to absorb all the employees of the transferor company. However, the scheme is silent about the proposed place of postings of the employees of the demerged undertaking of the petitioner demerged company as to how the resulting company will provide the postings to such employees of the demerged undertaking of the petitioner demerged company, through this scheme. In this regard the Hon'ble Court may be pleased to direct the petitioner company to amend the said clause suitably about the proposed place of postings of the employees of the demerged undertaking of the petitioner demerged company and to accommodate them at same place of posting and for providing and granting of same service terms and conditions to all the employees of the transferor company rather than permanent employee only, and that the said service

terms and conditions will not be less favorable than the present benefits available to them.

(f) *That, the deponent submits that the Ministry of Corporate Affairs vide its circular no. 2/1/2014 dated 15.01.2014 (copy enclosed and marked as* ***Annexure-A****) has directed that the Regional Director concerned shall invite specific comments from the income Tax Department giving 15 days time to the Income Tax Department to inform objections, if any, for the proposed scheme under section 391 to 394, as the case may be and to file the report on behalf of the Central Government accordingly. In this regard this Directorate vide letter dated 30.10.2015 had sent letter to the Chief Commissioner of Income Tax, Ahmedabad, Gujarat with a request to give specific comments of the Income Tax Department about the proposed scheme. It is submitted that no reply has been received from the Income Tax Department in this regard. The Hon'ble Court may therefore be pleased to direct the petitioner companies to undertake compliance of Income Tax Act and Rules in the matter.*

(g) *That, the report of the office of the Registrar of Companies, Gujarat has been received vide his letter No. ROC/GUJ/391-394/Jindal Photo/2015/8763 dated 06.11.2015 and as per the said report, there is one complaint against the Petitioner Company is pending regarding issue of duplicate share certificate. The company has taken steps to resolve the said complaint through its registrar. The ROC has further reported that there is* *no other complaint /representation against the scheme of Arrangement of the petitioner company.*

9. As regards to Para 2 (c) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Companies state that the Petitioner/Demerged Company has received no objection letters dated 11.03.2015 and 12.03.2015 from the BSE and NSE respectively granting no objection to the Scheme. The Petitioner/Demerged Company shall abide by the terms and conditions of the said NOCs. It is submitted that the SEBI Circulars prescribe that NOC shall be obtained from the Stock Exchanges through an internal process between SEBI and the relevant Stock Exchanges, pursuant to which, NOC will be issued on a Scheme under Section 391 of the Companies Act, 1956. It is further submitted that once the NOCs are issued, the SEBI Circulars do not prescribe for any further approval from SEBI. It is reiterated that basis the internal process prescribed in the SEBI circulars, the Stock Exchanges namely, BSE and NSE have issued the NOCs. Further, in terms of the SEBI Circulars, the public shareholders of the Petitioner/Demerged Company have duly approved the Scheme as more particularly stated at Para 31 and 32 of the Company Petition.

10. As regards to Para 2 (d) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Companies state that the Petitioner/Demerged Company is in due compliance of applicable rules and regulations issued under FEMA and RBI guidelines with respect to foreign shareholding in its paid up equity share capital. The Petitioner/Demerged Company shall continue to

comply with all such applicable rules and regulations issued under the FEMA and applicable RBI guidelines in this regard.

11. As regards to Para 2 (e) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Companies state that the Clause 3.14 of the Scheme expressly provides that all employees of the Demerged Undertaking shall be absorbed by the Resulting Company on terms and conditions which are no less favorable than those on which they are currently engaged by the Petitioner/Demerged Company and the Petitioner Company undertakes to abide by the terms of the employment agreement in this regard. Apart from this, all other matters will be governed by the respective terms of employment of each transferred employee.

12. With respect to Para 2 (f) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Companies state that clause 3.20 of the Scheme provides that the Scheme has been drawn up to comply with the conditions of demerged as prescribed under Section 2(19AA) of the IT Act. The said clause further provides that in the event of any inconsistency between the provisions of the Scheme and the applicable provisions of the IT Act, the provisions of the IT Act shall prevail.

13. With respect to Para 2 (g) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Companies state that the Petitioner/Demerged Company will be continuing its existence subsequent to the sanction of the

Scheme and the matters as referred to in Para 2(g) shall continue qua the said Company.

14. The Learned Counsel for the Petitioner Companies further states that with respect to the Resulting Company, the Hon'ble High Court of Judicature at Allahabad has sanctioned the Scheme by order dated 05 November 2015.

15. The Learned Advocate on instructions of Mr. Shambhu Kumar Agarwal, Regional Director in the office of the Regional Director, Ministry of Corporate Affairs, North - Western Region, Ahmedabad states that they are satisfied with the undertakings given by the Advocate for the Petitioner Company. The undertakings given on behalf of the Petitioner Company are accepted.

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

17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition be made absolute in terms of prayers clauses (a) to (d) in the abovementioned Company Scheme Petition.

18. The Petitioner Company 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 (sixty) days from the date of the Order.

19. The Petitioner Company is directed to file a copy of this Order along with a copy of the Scheme and Form of Minutes duly authenticated by the Company Registrar, High Court, Bombay the concerned Registrar of Companies, electronically, along with E-Form INC 28 in addition to the physical copy within 30 days of receipt of the same, as per the relevant provisions of the Companies Act 1956/2013, whichever is applicable.

20. The Petitioner Company to pay costs of Rs.10,000/- each to Regional Director, North-Western Region, Ahmedabad. Costs to be paid within four weeks from the date of the order.

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

22. 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.

(K.R. SHRIRAM, J.)

<u>C E R T I F I C A T E</u>

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

Uploaded by: Shankar Gawde,
Stenographer