

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - II, CHENNAI**

CP(CAA)/44(CHE)/2024

in

CA(CAA)/12(CHE)/2024

(Filed under Sections 230 to 232 of the Companies Act, 2013)

*In the matter of the Scheme of Composite Scheme of Arrangement &
Amalgamation*

Between

JAIN RECYCLING PRIVATE LIMITED,

Having its registered office at,
4th Floor, Old No. 7/1, New No.20,
Waddels Road, Kilpauk,
Chennai – 600010.

... 1st Petitioner / Transferor Company

And

JAIN RESOURCE RECYCLING PRIVATE LIMITED,

Having its registered office at,
The Lattice, 4th Floor, Old No. 7/1, New No.20,
Waddels Road, Kilpauk,
Chennai – 600010.

... 2nd Petitioner / Transferee Company

Order Pronounced on 21st January 2025

CORAM

JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present: -

For Petitioner(s) : Mr. T.K. Bhaskar Advocate
For Regional Director : Mr. Avinash Krishnan Ravi, Advocate
For Income Tax Department : Mr. Rajkumar Jhabakh, Advocate
For Official Liquidator : Mrs. Sri Kumari, JTO
Mr. B. Palani, Estate Assistant

ORDER

(Hearing Conducted though Hybrid mode)

This is a Joint Application filed by **Jain Recycling Private Limited** (Transferor Company) along with **Jain Resource Recycling Private Limited** (Transferee company) under section 230-232 of the Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') for approval of the Scheme of Amalgamation (hereinafter referred to as the 'SCHEME') proposed by the Petitioner Companies and the said Scheme is also filed along with the Petition.

2. An affidavit in support of the present petition sworn by

(i) **Mr. Hemant S Jain** on behalf of the Transferor Company in the capacity of Authorised Signatory.

(ii) **Mr. Amit Kumar Parakh** on behalf of the Transferee Company in the capacity of Authorised Signatory and the corresponding Board Resolutions are placed on record.

3. **1ST MOTION APPLICATION – IN BRIEF**

3.1. The Petitioner Companies filed the First Motion Application vide CA(CAA)/12(CHE)/2024 and sought directions for dispensation conducting the meeting of its members and creditors regarding approval of the proposed Scheme. Based on the submissions, this Tribunal vide order dated 10.05.2024

issued directions to conduct meeting of Unsecured Creditors of the 1st Petitioner Company and Unsecured Creditors of the 2nd Petitioner Company.

3.2 **Subramaniam Aneetha** was appointed as the Chairperson of the above meetings. The Chairman filed his report dated 18.07.2024 , on perusing the report it is noticed that in the meeting stated above the respective Unsecured Creditors of the respective Petitioner Companies with requisite majority accorded their consent to the Scheme. Thereafter, the second motion petitions were filed before this Tribunal by the petitioner companies on 05.07.2024 for approval of the Scheme by this Tribunal which is within limitation as per provisions of the Companies Act, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

4. SCHEME SUMMARY:

The Scheme provides for Composite Scheme of Amalgamation & Arrangement of Transferor Company (Jain Recycling Private Limited) and Transferee Company (Jain Resource Recycling Private Limited). Both the Transferor Company and the Transferee Company comes under the jurisdiction of this Tribunal.

5. RATIONALE OF THE SCHEME

The rationale and benefits of the Scheme are briefed in Clause-7 of the Scheme as follows,

(i) The reduction of share capital will result in having a more efficient capital structure and the shareholders will also benefit in terms of enhanced return on capital and return on capital employed; and

(ii) The excess capital lying idle and unutilised will be returned to the shareholders and the reduction of share capital would reflect the accurate financial position as the unwanted share capital would be returned to the shareholders.

clause 8 of the Scheme as follows,

The Amalgamation pursuant to this Scheme would, inter alia, have the following benefits:

- (i) The transferor company and Transferee Company are under the same management and the Amalgamation will ensure focused management in the combined entity thereby resulting in efficiency of management and maximising overall shareholder value;*
- (ii) The Amalgamation will result in consolidation of the business of the companies resulting in expansion of the consolidated business and creation of greater value for shareholders and all other stakeholders.*
- (iii) It is considered prudent and more appropriate to consolidate similar line of business in one entity. The Amalgamation will lead to simplification of group structure by eliminating multiple companies in similar business, thus enabling focus on core competencies.*
- (iv) The Amalgamation is based on leveraging the significant complementarities that exist amongst the parties to the scheme given that the sourcing/procurement of the scrap for processing can be centralized and aggregated and the scrap generated by either of the party can be used/ processed by the other party.*
- (v) The Amalgamation would create meaningful value for various stakeholders including respective shareholders, customers, employees, as the combined business would benefit from increased sale, balance sheet resiliency and the ability to drive synergies across the manufacturing process and operating efficiencies, amongst others.*

6. In the second motion Petition filed by the Petitioner Companies, this Tribunal directed the Petitioner Companies to issue notice to the Statutory / Regulatory Authorities to the authorities concerned as well as directed to issue paper publication.

7. In compliance with the said directions issued by this Tribunal, the Petitioner Companies have effected paper publications as directed by the Tribunal in “Business Standard” (All India Edition) in English and “Makkal Kural” (Tamil Nadu Edition) in Tamil on 27.08.2024. Notices have been served to (i) Regional Director, Southern Region, Chennai, (ii) Registrar of Companies Chennai, (iii) Income Tax Department on 30.07.2024 and the proof of the same by way of affidavit of service dated 09.09.2024 have been enclosed with the separate typed set. Pursuant to the service of notice of the petitions the following statutory authorities have responded as under:

8. STATUTORY / REGULATORY AUTHORITIES

8.1. REGIONAL DIRECTOR

The Regional Director (RD), Southern Region to whom the notice was issued has filed its report vide SR No: 4263 dated 23.08.2024 before this Tribunal expressed its ‘No Objection’ to the Scheme as follows,

“16) The scheme of amalgamation filed with the application has been examined and it has been decided not to make any objection to the scheme, except for the observation at Para 14 of the report and it is therefore prayed that this Hon’ble National Company Law Tribunal Bench at Chennai may dispose of the matters on merits and pass such order/orders as deemed fit and proper.”

Further, Para 14 of the Regional Director Report is extracted as follows:

15) It is submitted that clause 36 of Part-IV of the scheme provides that the upon scheme becoming effective, the authorized capital of the Transferor Company shall be deemed to be added to the authorized capital of Transferee Company. The Company has stated that it is required to pay only the balance fee stamp duty relating to its increased authorized capital after setting off the fees and stamp duty already paid by the Transferor Company on their respective authorized share capital. Hence, it is prayed before this Hon'ble Tribunal to direct Petitioner Company to undertake to file amended MOA & AOA before the Registrar of Companies, for increase in authorized capital along with prescribed fee, if any thereof.

8.2. OFFICIAL LIQUIDATOR:

8.2.1. The Official Liquidator, Chennai to whom the notice was issued in the first motion itself, has filed his Report Vide SR No: 4182 dated 20.08.2024 before this Tribunal and has stated that they have appointed M/s. Khicha & Prabu Kesavan, Chartered Accountants Firm from the panel list maintained by their office to verify into the affairs of the Transferor Company. In para 6 of the above said report the Official Liquidator has expressed his satisfaction as follows,

"... The Official Liquidator is of the view that the petition may be considered fairly as the affairs of the Company have not been conducted in a manner prejudicial to the interest of its creditors or public."

8.2.2. Further, the Official Liquidator sought to take the report of the Chartered Accountant on record and has also sought to fix the remuneration

payable to the Auditor who has investigated into the affairs of the Transferor Company. In this regard, this Tribunal hereby directs the Transferor Company to pay a sum of **Rs.50,000/-** plus GST.

8.3. INCOME TAX DEPARTMENT:

8.3.1 The Income Tax of Department to whom the notice was issued has filed his Memo dated 05.08.2024 before this Tribunal and has expressed their 'Objection' as follows,

“8. It is pertinent to note that M/s. Jain Resource Private Limited was incorporated on 25-02.2022 and the PAN was also allotted on the same day. The said company came into existence after the search and now it wants the assessee company which was subject to search action and whose proceedings are pending as on date wants to amalgamate with the recently formed company.

9. There is also an outstanding demand of RS. 62,050/- for the A.Y.2021 as on date and demand likely to be raised, consequent to the search proceedings would be to the tune of Rs.22,34,46,726/- (30% of Rs.74,48,22,421/-).

10. The above facts prove that the search proceedings are pending in the case of the assessee due to litigation “.

8.3.2 Further It is submitted that a search u/s.132 of Income Tax Act, 1961 was carried out on 25.02.2020 at various business premises of the applicant group concerns. Further it is submitted assessment proceedings is pending before Interim Board for Settlement –II.

8.3.3 In response to the objections raised by the Income Tax Department, The Petitioner company has filed there Reply vide SR No: 3957 dated 05.08.2024 before this Tribunal, and stated as follows:

“8. It is therefore submitted that the Scheme is not prejudicial to the interest of income Tax Department and will not result in any loss of the revenue for the Income Tax Department. The Scheme is in compliance with the provisions of the Income Tax Act, 1961”.

8.3.4 The Petitioner Companies further submitted an additional Affidavit vide its SR No: 5494 dated 14.11.2024 and stated that, the matter of quantification of tax liability is pending before Interim Board. Further it is submitted that the Interim Board for Settlement–II vide its order dated 07/10/2024 directed the Principal commissioner of Income Tax to submit a joint verification report under Section 245D (3) of income Tax Act, 1961 quantifying the investment and income earned during the relevant period to enable the quantification of the tax liability, based on the seized material and other sources of information.

8.3.5 In Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi has made the following observations with regard to the right of the IT Department in the Scheme of Amalgamation,

“taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in RE: Vodafone Essar Gujarat Limited v. Department of Income Tax (2013)353 ITR 222 (Guj) and the same being also affirmed by the Hon’ble Supreme Court and as reported in (2016) 66 taxmann.com.374(SC) from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15,2015 that the Department is entitled to take out

appropriate proceedings for recovery of any statutory dues from the transferor or transferee or any other person who is liable for payment of such tax dues, the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned."

8.3.6 In view of above judgment and records submitted by the both the parties it is observed that Income Tax department can peruse and prosecute against the violators through a separate proceedings. The sanction of present scheme will not come in the way of said proceedings.

8.3. OTHER STATUTORY AUTHORITIES:

Despite paper publication made on 27.08.2024, there is no representation from any other Statutory Authorities.

9. ACCOUNTING TREATMENT

The Certificates issued by the Statutory Auditors certifying the Accounting Treatment of the petitioner companies are in compliance with Section 133 of the Companies Act, 2013 are placed on record.

10. Valuation

The valuation report dated 14.12.2023 of registered valuer Radhakrishnan K S is placed on record wherein the wherein the fair share exchange ratio is arrived as follows,

Computation of fair equity share exchange ratio

Jain Recycling Private Limited and Jain Resources Private Limited
Computation of Fair Market Value of Shares and proposed Swap Ratio

Valuation Approach	Weights allocated	JRPL			JRRPL	
		Value as per Valuation Workings	Weighted Valuation	Weights Allocated	Value as per Valuation Workings	Weighted Valuation
Income Approach						
Discounted Cash Flow Method	80%	1,485.55	1,188.44	70%	46.63	32.64
Cost Approach						
Net Asset Value	0%	NA			NA	
Market Approach						
Comparable Companies Market Multiples Approach	20%	1,614.71	322.94	30%	166.95	50.09
Market Price Method	0%	NA			NA	
			1,511.38			82.73

Swap Ratio

18.27 Shares of JRRPL for every share held in JRPL

18.27

11. OBSERVATIONS OF THIS TRIBUNAL

11.1. This Tribunal is of the view that the scheme as contemplated amongst the petitioner companies seems to be *prima facie* not, in any way detrimental to the interest of the members of the Company. In view of the absence of any material objections from any statutory authorities and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Amalgamation as well as the prayer made therein.

11.2. Notwithstanding the above, 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.

11.3. 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.

12. THIS TRIBUNAL DO FURTHER ORDER:

(i) That all properties, rights and interests of the Transferor Company shall, pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Transferee Company in terms of the Scheme.

(ii) That all the liabilities, powers, engagements, obligations and duties of the Transferor Company shall pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Transferee Company in terms of the Scheme.

- (iii) That the Appointed date for the Scheme shall be **01.04.2024** as mentioned in clause 12 (D) of the Scheme.
- (iv) The 'Effective Date' shall be same as the appointed date.
- (v) That all proceedings now pending by or against the Transferor Companies be continued by the Transferee Company.
- (vi) That all the employees/workmen of the Transferor Company in service on the date immediately preceding the date on which the Scheme finally takes effect shall become the employees of the Transferee Company without any break or interruption in their service with all the benefits.
- (vii) That the Transferee Company do without further application allot to such member of the Transferor company, as have not given such notice of dissent, as is required by **Clause 35 of Part III** the scheme herein the shares in the Transferee company to which they are entitled under the said scheme.
- (viii) That the Transferee Company shall file the revised Memorandum and Articles of Association with the Registrar of Companies, Chennai and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company after setting off the fees paid by the Transferor Company.
- (ix) That both the Petitioner Companies, shall within thirty days of 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,

on such certified copy being so delivered, the Transferor Company shall be dissolved without winding up and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file kept by him in relation to all the Transferee Company and the files relating to all the said companies shall be consolidated accordingly.

- (x) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

13. Accordingly, the Company Petition stands **Allowed** on the aforementioned terms and is disposed of.

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)