

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Company Application (CAA) No. 173/ KB / 2021

In the Matter of:

The Companies Act, 2013 - section 230(1) and read with section 232(1)

And

In the Matter of:

Jupiter Solar Power Limited, a company incorporated under the Companies Act, 1956 and being a company within the meaning of the Companies Act, 2013, having Corporate Identification No. U5 2392WB2006PLC111250 and its registered office at “UNNAYANAM”, 20A, Ashutosh Chowdhury Avenue, Kolkata – 700019 in the State of West Bengal.

....Demerged Company No.1

And

Teenlok Impex Private Limited a company incorporated under the Companies Act, 1956 and being a company within the meaning of the Companies Act, 2013, having Corporate Identification No. U51909WB2013PTC198438 and its registered office at “UNNAYANAM”, 20A, Ashutosh Chowdhury Avenue, Kolkata – 700019 in the State of West Bengal.

....Demerged Company No.2

And

Jupiter International Limited, a company incorporated under the Companies Act, 1956 and being a company within the meaning of the Companies Act, 2013, having Corporate Identification No. U51109WB1978PLC031668 and its registered office at 20A, Ashutosh Chowdhury Avenue, Kolkata – 700019 in the State of West Bengal

....Demerged Company No.3/ Resulting Company no. 1

And

Jupiter Green Energy Private Limited a company incorporated under the Companies Act, 2013, having Corporate Identification No.

U40106WB2019PTC230241 and having its registered office at “UNNAYANAM”, 20A, Ashutosh Chowdhury Avenue, Kolkata – 700019 the State of West Bengal.

....Resulting Company no. 2

In the Matter of:

1. Jupiter Solar Power Limited
2. Teenlok Impex Private Limited
3. Jupiter International Limited
4. Jupiter Green Energy Private Limited

.... Applicants

Date of Hearing: 23/11/2021

Date of pronouncing the order: 20/12/2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)
Shri Balraj Joshi : Member (Technical)

Counsel on Record for the Applicants:

1. Mr. Dhirendranath Sharma, Advocate
2. Miss Pritha Basu, Advocate
3. Miss Sarah Perveen, Advocate

ORDER

Per :Rajasekhar V.K., Member (Judicial):

1. The court was convened by video conference today
2. The instant application has been filed in the first stage of the proceedings under section 230(1) read with section 232(1) of the Companies Act, 2013 (“Act”) for orders and directions with regard to meetings of shareholders and creditors in

connection with the Scheme of Arrangements between **Jupiter Solar Power Limited**, being the Applicant No.1 abovenamed ("Demerged Company No.1" or "Applicant No.1"), **Teenlok Impex Private Limited** being the Applicant No.2 abovenamed ("Demerged Company No.2" or "Applicant No.2"), **Jupiter International Limited** being the Applicant No.3 abovenamed ("Demerged Company No.3" or the "Resulting Company no. 1" or "Applicant No.3"), **Jupiter Green Energy Private Limited**, being the Applicant No.4 abovenamed ("Resulting Company no. 2" or "Applicant No.4") whereby and whereunder (i) "Manufacturing Division" of **Jupiter Solar Power Limited** ('Demerged Company No.1') is proposed to be demerged into **Jupiter International Limited** ('Demerged Company No.3' or 'Resulting Company No. 1'), (ii) "Plant & Investment Division" of **Teenlok Impex Private Limited** ('Demerged Company No. 2') is proposed to be demerged into **Jupiter International Limited** ('Demerged Company No.3' or 'Resulting Company no. 1') and (iii) "Trading Division" of **Jupiter International Limited** ('Demerged Company No.3' or 'Resulting Company No.1') is proposed to be demerged into **Jupiter Green Energy Private Limited** ('Resulting Company No. 2') from the Appointed Date, viz. April 1, 2021 in the manner and on the terms and conditions stated in the said Scheme of Arrangement ("**Scheme**").

2. It is submitted by Ld. Counsel appearing for the Applicants that the shares of all the Applicants are not listed on the BSE or NSE. Further, the Applicants have the following classes of shareholders and creditors:-

(a) Applicant No.1:

No. Of equity share-holders	No. Of preference share-holders	Paid up share capital	Secured creditors	Unsecured creditors
7	2	Rs. 25,77,55,000/-	3	275

(b) Applicant No.2:

No. Of equity share-holders	No. Of preference share-holders	Paid up share capital	Secured creditors	Unsecured creditors
2	NIL	Rs. 1,00,000/-	NIL	5

c) Applicant No. 3:

No. Of equity share-holders	No. Of preference share-holders	Paid up share capital	Secured creditors	Unsecured creditors
19	NIL	Rs.14,14,31,580/-	NIL	656

(d) Applicant No.4:

No. Of equity share-holders	No. Of preference shareholders	Paid up share capital	Secured creditors	Unsecured creditors
2	NIL	Rs.1,00,000/-	NIL	1

8. It is further submitted that all shareholders of the Applicant Company nos. 1, 2 and 4 as well as 17 (seventeen) Equity Shareholders out of 19 Equity Shareholders [constituting 99.86% in value] of the Applicant Company no. 3 has considered the proposed Scheme and have given their consent by way of affidavits which are annexed to the application.
9. There are 5 Unsecured Creditors in the Applicant No. 2 and 1 Unsecured Creditor in the Applicant No.4 which is evident from the separate Certificates of the Statutory Auditors of the Applicant Nos. 2 and 4 which are annexed to the application. Each and every Unsecured Creditors of Applicant Company Nos. 2

and 4 have given their consent by way of affidavits which are annexed to the application.

10. There are 275 Unsecured Creditors in the Applicant Company no.1 and 656 Unsecured Creditors in the Applicant Company No. 3. The Statutory Auditors of the Applicant Company nos. 1 and 3 have given their respective Certificates certifying the numbers of unsecured creditors in the Applicant Company Nos. 1 and 3 which are annexed to the Application.
11. There are no secured creditor in the Applicant Company nos.2, 3 & 4. The Statutory Auditors of the Applicant Company nos.2, 3 & 4 have given their respective Certificates confirming that there are no secured creditors in Applicant Company nos.2, 3 & 4 which are annexed to the Application.
12. There are 3 Secured creditors in the Applicant Company no.1. The Statutory Auditors of the Applicant Company No.1 has given their Certificate confirming that there are 3 Secured creditors in the Applicant Company No.1 which are annexed to the Application.
13. Directions are sought accordingly for (a) dispensing with meetings of the Equity Shareholders of the Applicant Nos. 1, 2 & 4 and the meeting of the Preference Shareholders of the Applicant No.1 (b) dispensing with meetings of the Unsecured Creditors of the Applicant Company No. 2 and 4 who have already given their consent to the Scheme (c) convening of meetings of the Unsecured Creditors of the Applicant No.1 and 3 for considering the Scheme under section 230(1) of the Act, (d) recording that there are no Secured Creditors in the Applicant Nos. 2, 3 and 4 and (e) convening of meetings of the Secured Creditors of the Applicant No.1 for considering the Scheme under section 230(1) of the Act.

14. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicants, we allow the instant application and make the following orders:-

(a) Meetings dispensed: (i) Meetings of the Equity Shareholders of the Applicant Nos. 1, 2 & 4 and meeting of the Preference Shareholders of the Applicant Company No.1 are dispensed with under section 230(1) read with section 232(1) of the Act in view of the fact that all such shareholders have already given their consent to the Scheme. (ii) Meetings of the Unsecured Creditors of the Applicant Company Nos. 2 and 4 are dispensed with under section 230(1) read with section 232(1) of the Act in view of the fact that all such creditors have already given their consent to the Scheme. (iii) It is recorded that there are no Secured Creditor in the Applicant Nos. 2, 3 and 4.

(b) Meetings to be held | Date and Times: The following meetings shall be convened and held at the following times on February 10, 2022 for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modification:-

- i. Meeting of the Equity Shareholders of Applicant No. 3 at 11am
- ii. Meeting of the Unsecured Creditors of Applicant No.1 at 1pm
- iii. Meeting of the Unsecured Creditors of Applicant No.3 at 4pm
- iv. Meeting of the Secured Creditors of Applicant No.1 at 3pm

In the event any meeting, as aforesaid, spills over and is concluded after the time fixed for commencement of the succeeding meeting, such succeeding meeting shall be held immediately after such conclusion of the prior meeting.

(c) Mode of meetings: The meetings, as above, shall be held physically at UNNAYANAM, 20A, Ashutosh Chowdhury Avenue, Kolkata- 700 019 subject to the orders of the Government with regard to restrictions due to Covid then in force permitting the same. In the event, the meetings cannot be held physically due to the said restrictions or considering the unprecedented COVID-19 pandemic, the meetings, as above, shall be convened and held

virtually via video conferencing or other audio visual mode (“**Virtual Mode**”). The mode of meetings shall be fixed accordingly by the Applicants at the time of issuance of the notice of meetings and such mode shall be specified in the notice. Subject to the directions and matters dealt with herein, if meetings are held virtually, as above then such meetings shall be held in accordance with the framework provided therefor in the Ministry of Corporate Affairs General Circular No.14/2020 dated 8th April, 2020, as clarified / extended from time to time, including by General Circulars bearing No.17/2020 dated 13 April 2020, No.22/2020 dated 15 June 2020, No.33/2020 dated 28 September 2020 and No.39/2020 dated 31 December 2020 and No.10/2021 dated 23 June, 2021 (“**Virtual Meeting Circulars**”). It is clarified that the framework provided in such Virtual Meeting Circulars for general meetings shall in such event be followed with necessary variations for the class meetings directed to be held by this order.

- (d) Advertisement: At least 30 (thirty) clear days before the meetings to be held, as aforesaid, an advertisement of the notice of meetings be published once each in the ‘**Financial Express**’ in English and ‘**Aajkal**’ in Bengali as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- (e) Individual Notices: At least 30 (thirty) clear days before the date of the meetings to be held, as aforesaid, notices convening the said meetings, along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Act disclosing necessary details and the prescribed form of proxy, shall be sent to each of the respective Equity Shareholders of the Applicant No.3, Unsecured Creditors of the Applicant Company Nos. 1 & 3 and Secured Creditors of the Applicant Company No.1 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by registered post or air mail or courier and electronic mail (“**email**”) or through personal messenger at their respective or

last known addresses. The said notices along with accompanying documents shall also be displayed on the Notice Board of the concerned Applicant at its registered office and shall also be posted on the website, if any, of such Applicant.

- (f) Chairperson: Mr. Shailendra Jain, advocate (Ph. No. 9831836383) and failing him Mr. Niladri Khanra, advocate (Ph. No. 983671490) is appointed as the Chairperson of the meetings to be held, as aforesaid. The Chairperson shall be paid a consolidated sum of Rs. 1,00,000/- for conducting the aforesaid meetings as Chairperson.
- (g) Scrutinizer: Ms. Arti Vyas, PCS (Ph. No. 9748836498) and failing her Ms. Megha Mittal, PCS (Ph No. 9830117943) is appointed as the Scrutinizer of the meetings to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of Rs. 75,000/- for acting as Scrutinizer.
- (h) Quorum and Attendance: The quorum for the said meetings of persons entitled to attend the same shall be determined in accordance with section 103 of the Companies Act, 2013. For the meetings to be held physically, only attendance of such persons physically at the venue shall be counted for quorum. For the meetings to be held in the Virtual Mode, attendance of such persons in Virtual Mode shall be counted for the purpose of quorum. Attendance at such meetings shall be recorded in the minutes of the meetings instead of taking physical attendance slips. As per lists of shareholders and creditors annexed to the application, the Applicant No.3 has 19 Equity Shareholders, the Applicant No.1 has only 275 Unsecured Creditors & 3 Secured Creditors and the Applicant No.3 has 656 Unsecured Creditors. Accordingly, the quorum for the said meetings shall be the following number of shareholders & creditors respectively present in person or by proxy:-
- i. Meeting of Equity Shareholders of Applicant No.3:- Quorum of 5 (five).
 - ii. Meeting of Unsecured Creditors of Applicant No.1:- Quorum of 5 (five).
 - iii. Meeting of Unsecured Creditors of Applicant No.3:- Quorum of 5 (five).

iv. Meeting of Secured Creditors of Applicant No.1:- Quorum of 2 (two).

In case the quorum of any meeting is not present within half an hour from the time appointed for the meeting, the Chairperson may adjourn such meeting to any date/time and take a decision on the quorum for the adjourned meeting. It is clarified that if the meetings are held in Virtual Mode, attendance of such persons in Virtual Mode shall be counted for the purpose of quorum. Attendance at such meetings shall be recorded in the minutes of the meetings instead of taking physical attendance slips.

- (i) Mode of Voting: At the venue of the meetings held physically, voting shall be conducted physically by polling paper. In the event the said meetings are held in Virtual Mode, voting in the meetings shall be by e-voting only. Further, in case of meeting of the Equity Shareholders of the Applicant Nos. 3 and also the meetings of Unsecured Creditors of the Applicant Nos. 1& 3 and the meeting of Secured Creditors of the Applicant No. 1 , facility for voting by postal ballot/ remote e-voting shall also be provided during the period from 10.02.2022 (9:00 A.M.) to 11.02.2022 (5:00 P.M.). The facility for remote e-voting shall be disabled at 5:00 P.M on 11.02.2022
- (j) Cut-off date: The cut off date for determining the eligibility to vote and value of votes shall be February 3 , 2022 [not earlier than 7 days from date of shareholders' meetings] for the meetings of shareholders and January 25, 2022 [not earlier than 15 days from date of creditors meetings] for the meetings of creditors. The value of the votes cast shall be reckoned and scrutinized with reference to the said dates.
- (k) Voting procedure: Subject to the directions and matters dealt with herein, the procedure for voting and conduct of voting, in so far as the same is prescribed by the Virtual Meeting Circulars and Companies (Management & Administration) Rules, 2014 (“**the said Rules**”), and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.

- (l) Proxies & Board Resolutions: A person, including a Body Corporate, entitled to attend and vote at a meeting, as aforesaid, may do so personally or by proxy, provided the proxies in the prescribed form duly signed by such person and/or the certified copy of resolution of the Board of Directors or other governing body of such person, where it is a Body Corporate, authorising its representative to attend and vote at such meeting on its behalf, as the case may be, is deposited at the registered office of the concerned Applicant Company not later than 48 (forty eight) hours before the time for holding such meeting. If the meetings are held in virtual mode, the board resolutions and authorisations may be deposited by the concerned shareholders and creditors within the prescribed time physically at the registered office of the concerned Applicant Company, as aforesaid, or scanned copies thereof may be sent by them by email to the concerned Applicant Company.
- (m) That the Chairperson appointed for the said meetings or any person authorised by the Chairperson do issue and send the notices of the aforesaid meetings. Further, the Chairperson shall have all other powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with the other applicable rules and provisions in relation to conduct of the meetings, including for deciding procedural questions that may arise at the meeting or at any adjournment thereof, or any other matter relating to the meetings, including an amendment to the Scheme, if any proposed by any persons.
- (n) The votes cast shall be Scrutinised by the Scrutinizer. The Scrutinizer shall prepare and submit the respective reports on the meetings along with all papers relating to the voting to the Chairperson of the meetings at the Scrutinizer's earliest convenience and in any case within 3 days of the conclusion of the meetings. The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutinizer. The declaration of results by the

Chairperson shall also be displayed on the Notice Board of the concerned Applicant at its registered office and shall also be posted on the website, if any, of such Applicant.

- (o) The value of each of the Equity Shareholders of the Applicant No.3, Unsecured Creditors of the Applicant Company No.1 & 3 and Secured Creditors of the Applicant Company No.1 shall be in accordance with the books and records of the respective concerned Applicants and, where entries in the books are disputed, the Chairperson shall determine the value for purposes of the said meetings.
- (p) The resolution for approval of the Scheme of Arrangement put to a meeting shall, if passed by a majority in number representing three-fourths in value of the respective shareholders and creditors casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under section 230(1) read with section 232(1) of the Companies Act, 2013.
- (q) The Chairperson to report to this Tribunal the results of the said meetings within four weeks from the date of the conclusion of the said meetings. Such report shall be in Form No. CAA4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.
15. Notice under section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall be served on the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; Registrar of Companies, West Bengal; Official Liquidator, High Court, Calcutta, and Income Tax Department having jurisdiction over the Applicants, by sending the same by hand delivery through special messenger or by registered post and by email within two weeks from the date of receiving this order. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously

sent to the Advocates of the said Applicants. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme. Such notice shall be sent pursuant to section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA3 of the said Rules with necessary variations incorporating the directions herein.

16. The Applicants to file an affidavit proving service of notices of meeting(s) and publication of advertisement and compliance of all directions contained herein atleast a week before the meetings to be held.
17. The Application for confirmation and sanction of the Scheme to be filed within 4 weeks from the date of filing of the Report by the Chairperson.
18. The application being **Company Application No.173/KB/2021** is disposed of accordingly.

(Balraj Joshi)
Member (Technical)

(Rajasekhar V.K.)
Member (Judicial)

20/12/2021

Suman M. (LRA)