

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**  
**KOLKATA BENCH, KOLKATA**

**CP (CAA) No.740/KB/2018**  
**CA (CAA) No.554/KB/2017**

In the matter of:

An application under Sec.230 – 232 of the Companies Act, 2013 read with Rule 15 of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2016

And

In the matter of:

Jalan Brothers Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 26, Shakespeare Sarani, Kolkata 700 017, West Bengal.

And

In the matter of:

Sushila Steel Complex Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 26, Shakespeare Sarani, Kolkata 700 017, West Bengal.

And

In the matter of:

Data Ware Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 26, Shakespeare Sarani, Kolkata 700 017, West Bengal.

And

In the matter of:

- |                                    |                         |
|------------------------------------|-------------------------|
| 1. Jalan Brothers Pvt. Ltd.        | : (Transferee Company)  |
| 2. Sushila Steel Complex Pvt. Ltd. | : (Transferor Co. No.1) |
| 3. Data Ware Pvt. Ltd.             | : (Transferor Co. No.2) |

.....Applicant/Petitioners

Order Delivered on 20<sup>th</sup> July 2018

For the Applicant/Petitioners

: Mr. Sandip Kumar Kejriwal, PCS

Sd

**ORDER**

**Per Madan Gosavi, Member (J)**

This is a Joint Petition for sanctioning of the Scheme of Amalgamation of (1) Sushila Steel Complex Pvt. Ltd., and (2) Data Ware Pvt. Ltd. (hereinafter referred to as the Transferor Company) and Jalan Brothers Pvt. Ltd. (hereinafter referred to as the Transferee Company) under Section 230 to 232 of the Companies Act, 2013 and their respective shareholders for obtaining sanction of this Tribunal regarding Scheme of Amalgamation.

2. The object of this petition is to obtain sanction of Tribunal to the Scheme of Amalgamation whereby and where under: -

i) The entire undertaking of the Transferor Companies together with all assets and liabilities relating thereto ongoing concern are proposed to be transferred to and vested in the Transferee Company on the terms and conditions as fully stated in the Scheme of Amalgamation. A copy of the Scheme of Amalgamation has been annexed with the application as Annexure A-1.

3. It is stated in the petition that the applicant companies are engaged in the business of wholesale and retail dealers of Electronic Goods and any other business as stated in the Memorandum of Association of the Company.

4. It is further stated in the petition that the Petitioners stated that the proposed re-alignment will create enhanced value for all the stakeholders of the Companies as it would facilitate focused strategy, direction and business planning to optimize operational, managerial, financial, technical and marketing capabilities of each business. It will help in optimization of the resources and reduction of the operational costs.

5. It is further stated in the petition that the amalgamation will enable the Transferee Company to consolidate its line of business by restructuring and re-organising its business activities and capital structure.

6. It is stated in the petition the the Scheme of Amalgamation will enable the companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages.

7. The Board of Directors of the Transferor Companies and the Transferee Company has, at their respective Board Meeting held on 18/11/2017, passed resolution approving the Scheme of Amalgamation. Copy of the resolutions passed by the Board of Directors of the applicant companies are annexed with the application as Annexure A-18.

8. The Auditors of the Transferee Company have certified that the Accounting Treatment proposed in terms of clause 8 Part II of the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. Copy of the certificate issued by the Auditors with regard to Accounting Treatment is annexed with the application as Annexure A-19.

9. It reveals from the record that there are 4 shareholders in the Transferee Company, 5 shareholders in Transferor Company No.1 and 5 shareholders in Transferor Company No.2 and all the Shareholders of the applicant companies had consented to the Scheme of Amalgamation by way of affidavit. Copy of the list of shareholders of the Transferee Company and the Transferor Companies are annexed with the application as Annexure A-20, Annexure A-21 and Annexure A-22.

10. It further reveals from the record, there are NIL Debenture Holders in the Transferee Company and both the Transferor Companies as on 18/11/2017. Copy of the list of Debenture Holders of the Transferee Company and Transferor Companies are annexed with the application as Annexure A-24, Annexure A-25 and Annexure A-26.

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11. It is further stated that in the Application that the Transferee Company has 2 Secured Creditors and 136 Unsecured Creditor as on 30.09.2017. Copy of the list of Secured and Unsecured Creditors of the Transferee Company are annexed with the application as Annexure A-27.

12. Auditor Certificate verifying the list of Shareholders of Transferee Company and Transferor Companies are annexed with the application as Annexure A-23.

13. The Transferor Company No.1 has NIL Secured Creditor and NIL Unsecured Creditors as on 18/11/2017. Copy of the list of Secured and Unsecured Creditors of the Transferor Company No.1 is annexed with the application as Annexure A-28.

14. The Transferor Company No.2 have 1 Secured Creditor and 3 Unsecured Creditors as on 30/09/2017. Copy of the list of Secured and Unsecured Creditors of the Transferor Company No.2 is annexed with the application as Annexure A-29.

15. The Auditor Certificate verifying the list of Secured and Unsecured Creditors and the debenture holders of Transferee Company and Transferor Companies are annexed with the application as Annexure A-30.

16. It appears from the record that pursuant to order dated 19/2/2018 passed by this Tribunal in C.A. (CAA) No.554/KB/2017, this Tribunal directed the Transferee Company and Transferor Company No.2 to convene and hold meeting of Secured and Unsecured Creditors of the Transferee Company and Transferor Company No.2 for seeking their approval to the proposed Scheme of Amalgamation and dispensed with the meeting of secured and unsecured

creditors of the Transferor Company No.1 as there being NIL Secured and Unsecured Creditors.

17. The Meeting of the secured and unsecured creditors of the Transferee Company was directed to be held on 26/3/2018. Further, the Meeting of the secured and unsecured creditors of the Transferor Company No.2 was directed to be held on 26/3/2018. For this purpose, Advocate Pramod Kumar Drolia Das was appointed as the Chairperson by this Tribunal for all the said meeting of the applicant companies and to file his report to the on 14.05.2018. Furthermore, the holding of meeting of equity shareholders of the Transferee Company and Transferor Companies were dispensed with in view of consent received in the form of an affidavit by all the equity shareholders of respective companies.

18. the applicant companies to publish advertisement in the leading dailies in English and Bengali.

19. Pursuant to the said direction of the Tribunal, the applicant companies published advertisement in Form No.NCLT CAA-2. The Chairman conducted the meeting in the manner as directed and filed his report. The reports of the Chairperson appointed by this Tribunal have been filed on 14/5/2018.

20. Ld. Counsel for the applicant companies submitted that the notice in terms of the order of the Tribunal dated 19/2/2018, along with all documents, as directed by this Tribunal to be served, was duly served notices in terms of Section 230 (5) of the Companies Act, 2013 on

(a) The Central Government through The Regional Director, Eastern Region, Ministry of Corporate Affairs;

(b) The Registrar of Companies, West Bengal;

(c) The Official Liquidator;

(d) Income Tax Officers including the Commissioner of Income Tax having

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jurisdiction over the petitioners.

21. Ld. Counsel for the applicant companies submits that in compliance with Sec.230 (7) of the Act, the Auditor of the company has certified that the accounting treatment proposed in the Scheme of Amalgamation is in conformity with the accounting standards under Sec.133 of the Act. Copy of the certificate of the Chartered Accountant is annexed with the application as Annexure A-19.
22. List of equity shareholders as on 18/11/2017 of the applicant companies duly certified by the Chartered Accountant is annexed with the application as Annexure A-20, A-21 and A-22 respectively.
23. List of secured and unsecured creditors as on 30/9/2017 of the Transferee Company duly certified by the Chartered Accountant is annexed with the application as Annexure A-27.
24. List of secured and unsecured creditors as on 30/9/2017 of the Transferor Company No.1 and Transferor Company No.2 is annexed with the application as Annexure A-28 and A-29 respectively.
25. Ld. Counsel for the applicant companies further submitted that no proceedings are pending under Sections 206 to 213 of the Companies Act, 2013 against any of the Petitioner Companies as also no proceedings are pending under Sections 241 and 242 of the said Act or any other proceedings whatsoever.
26. There are no investigations or proceedings pending under Sections 235 to 251 of the Companies Act, 2013 against any of the Petitioner Companies.
27. Ld. Counsel further submitted the Scheme of Amalgamation does not contain for any Corporate Debt Restructuring.
28. Ld. Counsel for the applicant companies submitted that no one will be prejudiced if the proposed Scheme of Amalgamation is sanctioned and the sanction of the scheme will be beneficial and in the interest of the applicant companies, their shareholders, creditors, employees and all concerned.

29. Pursuant to the order of the Tribunal dated 19/2/2018, the petitioners have filed this petition for the relief as prayed for mentioned in the petition for sanctioning of the Scheme of Amalgamation.

30. Heard Ld. Counsel for the applicants. In view of absence of any objection and since all the requisite compliance has been fulfilled, the following order is passed: -

**ORDER**

- (i) The date of hearing of the petition filed jointly by the Petitioners for the sanction of the Scheme is fixed on 3/9/2018.
- (ii) Notice of hearing of this petition in form NCLT 3A shall be advertised once in English daily "The Business Standard" and in Bengali "Dainik Statesman" daily newspaper, not less than 10 days before the aforesaid date fixed for hearing.
- (iii) In addition to the above public notice, the petitioner companies shall serve notice of the petition on the following authorities, namely,
  - (a) Central government through Regional Director, Eastern Region, Ministry of Corporate Affairs,
  - (b) Registrar of Companies, West Bengal,
  - (c) The Income Tax Department of the office having jurisdiction over the respective petitioner companies,
  - (d) Official Liquidator and such other relevant and sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed Scheme by sending the same by hand delivery through special messenger or by registered post or Speed Post within 7 days from the date of this order for filing their representations., if any, on the petition. Notice along with

the copy of the application and other related documents with PAN Numbers of the Applicant Companies should be served upon the Chief Commissioner of Income Tax by Mail and Speed Post or by Messenger. Petitioner Companies are also directed to mention their respective PAN Number everywhere.

- (iv) The notice shall specify that representations, if any should be filed before this Tribunal within 30 days of date of receipt of the notice with a copy of such representations being sent simultaneously to the petitioners and/or their Authorised Representatives. If no such representations are received by the Tribunal within the said period, it shall be presumed that such authorities have no representations to make on the Scheme of Amalgamation.
- (v) Petitioner Companies at least 7 days before the date of hearing of the petition shall file an affidavit of service in relation to the paper publication as well as service of notices and the Authorities specified above including the Sectoral Regulators.

31. The Company Petition being CP (CAA) No.740/KB/2018 [in CA (CAA) No.544/KB/2017], is directed to be listed for further hearing on 3/9/2018.
32. There shall be no order as to costs.
33. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

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**Madan Gosavi**  
**Member (J)**

Signed on 20<sup>th</sup> July 2018