

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (CAA) NO.740/KB/2018

Connected with

C.A. (CAA) NO. 554/KB/2017

In the matter of:

A Petition under Section 230 to 232 and other applicable provisions of the Companies Act, 2013.

-And-

In the matter of:

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

-And-

In the matter of:

JALAN BROTHERS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at 26 Shakespeare Sarani, Kolkata-700017 within the aforesaid jurisdiction;

.....Transferee Company

-And-

In the matter of:

SUSHILA STEEL COMPLEX PVT LTD, a company incorporated under the Companies Act, 1956 and having its registered office at- 26, Shakespeare Sarani, P.S.- Park Street, Kolkata-700017 within the aforesaid jurisdiction;

-And-

In the matter of:

DATA WARE PVT LTD, a company incorporated under the Companies Act, 1956 and having its registered at, 26, Shakespeare Sarani, Kolkata-700017 within the aforesaid jurisdiction.

.....Transferor Companies

In the matter of:

1. JALAN BROTHERS PRIVATE LIMITED
2. SUSHILA STEEL COMPLEX PVT LTD
3. DATA WARE PVT LTD

.....PETITIONERS

CORAM: Shri Madan B Gosavi, Member (Judicial)

For the Petitioners:

1. CS Sandip Kumar Kejriwal, Practising Company Secretary

Mr. KS Pradhan, Joint Director, Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs

Date of pronouncement of the order: 4.09.2018 ✓

ORDER

Per : Shri Madan B Gosavi, Member (Judicial)

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1. This joint petition has been filed by SUSHILA STEEL COMPLEX PVT LTD and DATA WARE PVT LTD, the "Transferor Companies" with JALAN BROTHERS PVT. LTD., the "Transferee Company" for sanctioning of the Scheme of Amalgamation under the provisions of sections 230 to 232 of the Companies Act , 2013 read with the relevant rules made thereunder.

2. The object of this petition is to ultimately obtain sanction of this Tribunal to the proposed Scheme of Amalgamation of SUSHILA STEEL COMPLEX PVT LTD and DATA WARE PVT LTD, the petitioner nos.2 and petitioner nos.3, being the transferor companies above named with JALAN BROTHERS PVT. LTD., the petitioner no.1, the Transferee company where all the properties, assets, rights and claims whatsoever of the Transferor Company and their entire undertakings together with all rights and obligations relating thereto are proposed to be transferred to and vested in the Transferee Company on the terms and conditions as fully stated in the said Scheme of Amalgamation w.e.f. 1st April, 2017. The Scheme of Amalgamation is annexed with the Petition and marked as "**Annexure A-1**".

3. The Petitioner companies stated in the affidavit that none of the petitioner companies is listed with any stock exchange and are not registered with the Reserve Bank of India as Non-Banking Financial Companies. It has also been stated that the proposed scheme of amalgamation will not attract the provisions of the Competition Act, 2002 and hence no approval of the Competition Commission of India is required.

4. The petition states that the Transferee Company and the Transferor Companies are engaged in the business of wholesale and retail dealers of Electronic Goods etc.

5. The petitioners further submitted that this proposed scheme of amalgamation result in consolidation of the business in one entity and strengthen the position of the merged entity. The amalgamation of Transferor Companies with JBPL, will combine

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synergies and enable the amalgamated companies to focus on its business of wholesale and retail dealers of Electronic Goods and other business and the financial resources of all the companies will be conveniently merged and pooled together leading to a more effective and centralized management and reduction of administrative and manpower expenses and overheads which are presently being multiplied because of separate entities. All the petitioner companies belong to the same group and are managed and controlled by the same management. This amalgamation would lead to a more efficient utilization of capital for future growth of the amalgamated entity and result in larger pool of various resources as well as manpower and will create a synergy, which will enable the Transferee Company to grow and prosper at a faster pace.

6. The petitioners further contended that in compliance of the order of this Tribunal dated 09th May, 2018, the requirement of convening the meetings of secured and unsecured creditors of SUSHILA STEEL COMPLEX PVT LTD, petitioner nos.2, were dispensed with in view of NIL Secured and Unsecured Creditors and the meeting of the equity shareholders of all the petitioner Companies were also dispensed with in view of written consents by shareholders, by way of affidavits, to the Scheme of Amalgamation. It is further contended that the meeting of the Secured and Unsecured Creditors of JALAN BROTHERS PVT. LTD., the Transferee Company, being the Petitioner No. 1 and Data Ware Pvt. Ltd, Transferor Company, being the Petitioner No. 3 were held on 26.03.2018 and / or 29.03.2018 as per the direction given by the Honb'le Tribunal, Kolkata Bench and accordingly the Chairperson had submitted his report to the said meetings.

7. Upon compliance of the directions of this Tribunal by Order dated 9th May, 2018, passed in CA(CAA) No. 554/KB/2017, the Petitioner Companies had filed this Petition bearing CP(CAA) No. 740/KB/2018.

8. Further, the petitioner companies, in compliance of order dated 19th February, 2018 of this Tribunal, passed in CP(CAA) No. 740/KB/2018, connected with CA(CAA) No. 554/KB/2017, served notice in form CAA-3 along with the Scheme of Amalgamation, a

statement as required under section 230 of the Companies Act, 2013 upon the Central Government through Regional Director, ROC, West Bengal, the Official Liquidator and the Income Tax Department within whose jurisdiction the assessment of the petitioners are made. A copy of Affidavit of Service affirmed on 5th March, 2018 has been attached to the petition at "**Annexure A-34**" evidencing publication of notice in newspapers and service of notice upon the regulatory authorities.

9. The petitioners have also submitted that in compliance with section 230(7) of the Companies Act, Statutory Auditor of the transferee company has certified that the Accounting Treatment is in conformity with the Accounting Standards under section 133 of the Act. A copy of the said certificate is attached to the petition as "**Annexure A-19**".

10. The Regional Director , Eastern Region , Ministry of Corporate Affairs has, vide his affidavit affirmed on 28th August, 2018 has reported as below :

" (a) That it is submitted that on the examination of the report of the Registrar of Companies , West Bengal it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation . The petitioner Companies are also updated in filing their statutory returns . It is further submitted that on examination of the proposed Scheme of Amalgamation , it appears that the proposed scheme is not prejudicial to the interest of members / shareholders and/or public . The Central Government has, therefore , decided that the instant petition / scheme need not be opposed .

(b) It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi , a copy of

the Scheme was forwarded to the Income Tax Department on 23.02.2018 with a request to forward their comments / observations / objections, if any, within 15 days from the date of notice, and no report has been received from the said Department by this Directorate till date."

11. The Official Liquidator attached to Hon'ble High Court, Calcutta vide his report dated 28-08-2018 has observed that after scrutiny of the report submitted by the Chartered Accountant appointed by him, the Official Liquidator is of the opinion that the affairs of the Transferor Companies, namely, Sushila Steel Complex Private Limited and Data Ware Private Limited, have not been conducted in a manner prejudicial to the interest of their members or to public.

12. Heard the arguments of Ld. PCS for the Petitioner Companies and the Ld. Joint Director, Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs.

13. In view of the facts stated above and absence of any objection and since all requisite compliance has been fulfilled, the following orders in terms prayers made in the petition, with modification by this Tribunal are passed :

- a. The Scheme of Amalgamation, being Annexure A-1 to the Petition, is sanctioned by this Tribunal to be binding on all the equity shareholders of the petitioner companies and all concerned with effect from 1st April, 2017.

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- b. All the properties, rights and interest of SUSHILA STEEL COMPLEX PVT LTD and DATA WARE PVT LTD are transferred to and vested in without further act or deed in JALAN BROTHERS PVT. LTD. and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in JALAN BROTHERS PVT. LTD. for all the estate and interest of SUSHILA STEEL COMPLEX PVT LTD and DATA WARE PVT LTD but subject nevertheless to all charges, now affecting the same.
- c. All the liabilities and duties of SUSHILA STEEL COMPLEX PVT LTD and DATA WARE PVT LTD are transferred without further act or deed to JALAN BROTHERS PVT. LTD. and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the liabilities and duties of JALAN BROTHERS PVT. LTD.
- d. All the proceedings and/or suit appeals now pending by or against SUSHILA STEEL COMPLEX PVT LTD and DATA WARE PVT LTD shall be continued by or against JALAN BROTHERS PVT. LTD.
- e. The Transferee Company do issue and allot shares to the shareholders of SUSHILA STEEL COMPLEX PVT LTD and DATA WARE PVT LTD as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the authorized share capital.
- f. Post dissolution of the transferor companies, the fee paid by the transferor companies on their Authorized Share Capital to be set off against the fee payable by the Transferee Company on its authorized share capital subsequent to the amalgamation.

- g. Leave is granted to the petitioner Companies to file schedule of assets of the transferor Company within 60 days from the date of this order.
- h. The Transferor Companies SUSHILA STEEL COMPLEX PVT LTD and DATA WARE PVT LTD shall stand dissolved from the appointed date, without winding up.
- i. The Transferee Company, JALAN BROTHERS PVT. LTD. and Transferor Companies SUSHILA STEEL COMPLEX PVT LTD and DATA WARE PVT LTD shall within 30 days after the date of obtaining the Certified Copy of this order , cause certified copies of this order to be delivered to the Registrar of Companies/ West Bengal for registration respectively;
- j. That, any person interested be at liberty to apply to this Tribunal in the above matter for any direction that may be necessary;

14. In the event of the petitioner companies supplying the legible computerized print out of the scheme and schedule of assets in acceptable form to the department, the department will append such computerized print out, upon verification to be certified copy of the order without insisting on hand-written copy thereof.

15. Accordingly, the Company Petition No. 740/KB/2018 connected with Company Application No. 554/KB/2018 is disposed of.

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16. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

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Member (Judicial)

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