

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

**Company Petition (CAA) No. 417 /KB/2017**

Connected with

Transfer Application No. 11/KB/2017

In

Company Application No. 896/2016

**Coram : Shri Vijai Pratap Singh, Hon'ble Member(Judicial)**

**&**

**Shri Jinan K.R, .Hon.ble Member(Judicial)**

**In the matter of:**

**SECTIONS 230 to 232 OF THE COMPANIES ACT, 2013**

**And**

**In the matter of Scheme of Amalgamation**

**BETWEEN**

- 1) Jupiter Wagons Limited**, a public limited company incorporated under the Companies Act, 1956, having its registered office at 4/2, Middleton Street, 1<sup>st</sup> Floor, Kolkata – 700001.

.....Applicant / Amalgamated Company.

- 2) Jupiter Alloys & Steel (India) Limited**, a company incorporated under the Companies Act, 1956, having its Registered Office at 11A, Satyen Dutta Road, Kolkata 700029

.....Applicant / Amalgamating Company

**Order delivered on :** 17<sup>th</sup> October 2017



For the Petitioners :

1. Shri Dipak Kumar Khaitan, Pr. C.S.
2. Shri Siddhi Dhandharia, Pr.C.S.

For the Regional Director (Eastern Region)

Shri Tapas Kumar Das, Asstt. Director.

**ORDER**

Per Shri Vijai Pratap Singh, Member (Judicial)

Heard Ld. Pr.C.S., representing the petitioners, Asstt. Director of the Regional Directorate (Eastern Region) was also present.

2. This Company Petition filed by the petitioners jointly is coming to this Tribunal for fixing a date of hearing of the main petition also for a direction in relation to publication of notice in Newspapers as well as to sectoral regulator authorities concerned and calling for the objections, if any, to the Scheme of Amalgamation (Scheme) contemplated between the Petitioners Companies.

3. Upon perusal of the records, it is seen that in the first motion a joint application being CA No. 896 of 2016 was filed earlier before Hon'ble High Court at Calcutta, for dispensation with the convening the meetings of equity shareholders of the Applicant / Amalgamating Company (Jupiter Alloys & Steel & ( India) Limited) and also Applicant / Amalgamated Company (Jupiter Wagons



Limited). The said Company Application was transferred to this Tribunal by virtue of the Notification No. S.O.3677(E) dated 07.12.2016 whereby the relevant sections came into force w.e.f. 15.12.2016 and also by the Company (Transfer of Pending Proceedings) Rules, 2016 which became effective on 15.12.2016. The transferred Company Application was marked as T.A. No. 11/KB/2017. Upon hearing the said application this Tribunal passed separate orders on 14.03.2017, differing on certain points and on that basis the matter was referred to Special Bench for final adjudication. The Special Bench vide its order dated 26.04.2017 dispensed with the meetings of the members and creditors of both the Applicant Companies subject to strict compliance of the conditions laid down therein. Vide another order dated 17.05.2017, this Tribunal dispensed with the meetings of the shareholders of the Applicant Companies taking into account of consent of all the shareholders, by a majority view rendered in separate judgements dated 14.03.2017 and also judgement dated 26.04.2017. By an order dated 14.03.2017, this Tribunal directed the Applicant Companies to issue notices to secured as well as unsecured creditors in terms of the Rule 6 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

4. In compliance with the order dated 26.04.2017, the Applicant Companies have filed separate affidavits dated 25.07.2017 stating, inter alia, that list of creditors was filed with the registry on 11.05.2017; notice upon creditors was served on 10.07.2017; notice upon Regional Director – Eastern Region (Ministry



of Corporate Affairs), Registrar of Companies – West Bengal, and the Official Liquidator was served on 11.07. 2017 and the notice upon Income Tax Authorities within whose jurisdiction the assessments of the Applicant Companies are made, was also served on 12.07. 2017 and the advertisement published in “Financial Express” and in “Dainik Statesman” on 14.07.2017

5. In the second motion the Company Petition being C.P.(CAA) No. 417/KB/2017 has been filed jointly by the Petitioner Companies on 21.08.2017, for fixing a date of hearing as well as for other consequential directions in terms of the provisions of section 230-232 of the Companies Act, 2013 read with Rule 16 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016. The said Company Petition has been filed for sanction of the Scheme of Amalgamation contemplated between the petitioner companies. Other consequential directions are also sought for in relation to the said Scheme as provided in the Companies Act, 2013 read with Rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

6. The said Company Petition was heard on 28.08.2017 when the petitioners were directed to comply with the order dated 14.03.2017 passed by this Tribunal.

7. In compliance with the order dated 28.08.2017, the petitioners have filed separate affidavits dated 20.09.2017 stating, inter alia, that: notice upon all



Secured as well as Unsecured Creditors was served on 04.09.2017; second advertisement published in the "Financial Express" and in the "Dainik Statesman" on 04.09.2017; the Company has not received any objection from any of the creditors, till date and that the Company has not received any objection from any of the Authorities under Section 230(5) of the Companies Act, 2013, i.e. Regional Director, Eastern Region (Ministry of Corporate Affairs), Registrar of Companies, West Bengal, the Official Liquidator, Income Tax Authorities, the notices upon whom have already been served as per order dated 25.04.2017

8. In response to the notices issued by the petitioners, the Regional Director, Eastern Region, representing the Central Government has filed an affidavit dated 06.10.2017 in respect of T.A. No. 11/KB/2017 with the following observations:

- (a) that it is 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 however observed that, both the amalgamating company and the amalgamated company have a foreign investor TATRAVAGONKA A.S. a foreign body corporate, holding 26% shares in each and it is proposed that it shall have 26% shares in the amalgamated company. Though the companies have explained that the equity shares allotted to foreign



company by both the applicant companies have been made under automatic route and the registration number granted to Jupiter Wagons Limited is (PC 2015 CAR 3482) and to Jupiter Alloys & Steel (India) Limited is (PC 2015 CAR 3483). The company has not stated whether the scheme of amalgamation and the consequent change in the share holding has been intimated to the FIPB / RBI. The Hon'ble NCLT may kindly decided the above matter on its own merits.

- (c) It is further submitted that, the transferee company has issued shares at high premium after the appointed date, the details of such allotment provided by the company is enclosed herewith for the kind perusal of the Hon'ble Tribunal and marked as "Annexure A".
- (d) 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 13.07.2017 with a request to forward their comments / observations / objections, if any, on the proposed scheme of amalgamation within 15 days from receipt of the letter, and no reply received from said authority regarding the scheme till date.

9. Similarly, the Official Liquidator, High Court, Calcutta, has also filed his report dated 25.08.2017 vide his letter dated 25.08.2017 in respect of the said T.A. No. 11/KB/2017. In the said report, he has stated that on the basis of the verifications carried out in accordance with the general accepted auditing practices and conventions including test checks by Shri Shashi Agarwal,



Chartered Accountant, (who has examined the books, records and other documents of the Transferor company), he is of the opinion that the affairs of the Transferor company, Jupiter Alloys and Steel (India) Limited have not been conducted in the manner prejudicial to the interest of its members or to public interest.

10. The petitioners have also filed an application being I.A. No. 424/KB/17 seeking an order for (a) final disposal off the matter expeditiously and preferably before 20.10.2017 and for that purpose relevant directions be issued in accordance with the Companies Act, 2013 and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 including Regulation 16 thereof i.e. direction for newspaper publications and date of final hearing; (b) granting extension of time upto 30 days from the date of receipt of the certified true copy of the final order in the matter to the Amalgamated Company, Jupiter Wagons Limited, for filing its IT Return for the Financial Year ended on 31.03.2017 with the merged accounts of the Amalgamating Company. i.e. Jupiter Alloys and Steel (India) Limited and also granting extension to the amalgamating company, where required. In the said application, it has been stated, inter alia, that the Petitioners / Applicants have already complied with the directions in terms of the order passed by the Special Bench on 26.04.2017 and also by this Tribunal on 28.08.2017. In course of hearing the Ld.C.S, representing Petitioners / Applicants furnished a copy of the order dated 27.09.2017 passed by the Hon'ble Principal Bench of the NCLT, New Delhi, in C.P. No. 417/2017 – C.A.-



338(PB)/2017, a copy of which is annexed to the application being Annexure-A, the relevant portion of which reads as under :

“.....It appears that the order has been passed oblivious of the fact that after that order dated 14.03.2017 the matter was transferred constituting Special Bench and direction issued to place before Hon'ble Member (J) Ms. Manorama Kumari. The aforesaid facts along with any other fact may be brought to the notice of the Hon'ble Division Bench by filing an application on Judicial side. Accordingly, the applicant / petitioner would be well advised to move appropriate application on Judicial side before the Hon'ble Division Bench.

With the aforesaid observation the application stands disposed of.”

11. In view of the above position, it is now hereby ordered as follows :

- i) Date of hearing of the joint Company Petition filed by the petitioners for the sanction of the Scheme of Amalgamation is fixed on 05.12.2017.
- ii) Notice of hearing of the said Company Petition shall be advertised in the same Newspapers where earlier advertisements were made, i.e. “Financial Express” (English Newspaper) and “Dainik Statesman” (Bengali Newspaper) not less than 10 (Ten) days before the aforesaid date fixed for hearing.
- iii) In addition to the above public notice, each of the Petitioners shall serve the 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, Ministry of



Corporate Affairs, (c) Income Tax Department, (d) Official Liquidator and to such other Sectoral Regulatory Authorities who may govern the working of the respective companies involved in the Scheme at least 30 days before the date fixed for hearing of the above Petition.

- iv) Further, notice shall also be served to Objector(s) or to their representative, if any, as contemplated under the Sub-Section (4) of Section 230 of the Act who may have made representation and who have desired to be heard in their representation along with a copy of the Petition and the Annexures filed therewith at least 15 days before the date fixed for hearing.
- (v) Both the Petitioners shall, at least 7 days before the date of hearing of the Petition, file an affidavit of service in relation to paper publication effected as well as service of notices on the Authorities specified above including the Sectoral Regulator as well as to Objectors, if any.
- (vi) Objections, if any, to the Scheme contemplated by the authorities to whom notice has been given on or before the date of hearing fixed herein, may be filed, failing which it will be considered that there is no objection to the sanction of the Scheme on the part of the authorities by this Tribunal and subject to other condition being satisfied as may be applicable under the Companies Act, 2013 and relevant rules framed thereunder.
- (vii) The Petitioner Companies shall individually comply with proviso to sub section (3) of Section 232 or proviso to sub section (7) of Section 230, as



may be applicable under the circumstances on or before the date fixed for hearing by filing the certificate of Company's Auditor.

- (viii) The next date of hearing of the Petition shall be on 05.12.2017 for consideration of the sanction of the Scheme of Amalgamation as contemplated between the Petitioner Companies.

*sdf*

(Jinan K.R.)  
Member(J)

*sdf*

(Vijai Pratap Singh)  
Member (J)

Signed this 17<sup>th</sup> day of October, 2017.