

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM :

Shri V. P. Singh,
Hon'ble Member (J)
&
Shri Jinan K. R,
Hon'ble Member (J)

**CP (CAA) No. 417/KB/ 2017 connected with TA. (CAA) No. 11/KB/2017
(arising out of CA No.896/2016)**

In the matter of:

Sections 230 to 232 of the Companies Act, 2013 and the
Rules made thereunder;

-And-

In the matter of:

Scheme of Amalgamation

Jupiter Wagons Limited, a public limited company incorporated
under the Companies Act, 1956 having its registered office at
4/2, Middleton Street, 1st floor, Kolkata- 700071;

..Applicant/ Amalgamated Company

-And-

Jupiter Alloys & Steel (India) Limited, a public limited
company incorporated under the Companies Act, 1956 having
its registered office at 11, Satyen Dutta Road, Kolkata- 700029;

.. Applicant/Amalgamating Company

Sd

Sd

Counsels on Record for the Applicants:

1. CS Deepak Kumar Khaitan, Practising CS]
 2. CS Siddhi Dhandhanian, Practising CS]
 3. CS Shruti Singhania, Practising CS] For the Petitioners
 4. Mr. Soumabho Ghosh, Advocate]
 5. CS Sonam Agarwal, Practising CS]
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1. Ms. Tiainla, Deputy Director] O/o RD(ER), Ministry of Corporate Affairs

Date of pronouncing the order: 14.12.2017

ORDER

Per Shri V. P. Singh, Member(J):

This is a petition filed jointly by the petitioners, namely the Petitioner no.1, Jupiter Alloys & Steel (India) Limited (hereinafter referred to as the Applicant/ Amalgamating Company) and the Petitioner No. 2 abovenamed, Jupiter Wagons Limited (hereinafter referred to as "The Applicant/ Amalgamated Company") for sanctioning the scheme of arrangement, a copy of which has been annexed and marked as Annexure "A" to this petition.

The object of this petition is to obtain sanction of this Tribunal to a compromise or arrangement between Jupiter Alloys & Steel (India) Limited and Jupiter Wagons Limited and their respective shareholders in terms of the scheme of amalgamation as initially filed before the Hon'ble High

Court at Calcutta and subsequently transferred to this Hon'ble Bench vide T.A. No.11 of 2017. Copy of the modified Scheme of Amalgamation has been annexed and marked as Annexure "B" at page 851 to 875 to the application. Certified true copies of the Board Resolution of Amalgamating Company and Amalgamated Company held on 24th November, 2016 approving the instant application and granting necessary authorizations have been annexed and marked as Annexure "C" at page 876 to 878 to the application.

We have heard the arguments of the Ld. Counsel appeared for the Applicants and on perusal of the records, it appears that the Regional Director, Ministry of Corporate Affairs, Eastern Region has submitted in his affidavit, affirmed on 6th October, 2017, the observations of the Central Government on the scheme. The relevant observations made in sub-para (b) and (c) are as under:

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 (FC 2015

CAR 3482) and to Jupiter Alloys & Steel (India) Limited is (FC 2015 CAR 3483). The company has not stated whether the scheme of amalgamation and the consequent change in the shareholding has been intimated to the FIPB/RBI. The Hon'ble NCLT may kindly decide 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".

In respect of the said observations, clarifications/ compliance from the side of the Petitioner companies are necessary. Therefore, we hereby direct the Petitioners to submit explanation before the Regional Director regarding point nos. (b) and (c) of the Report and after submission of explanation, the Regional Director is hereby directed to submit a Report as to whether the objections raised in their report have been settled or not.

It is further observed that the Petitioner in the Relief clauses has sought the following relevant relief in clause (i) of para 16 of the petition.

- 1) The said compromise or arrangement is sanctioned by this Tribunal as to be binding on all the creditors and members of the said company and on the said company and on all concerned.

Sd

Sd

Relief clauses are not given in details. In Relief clauses, there should be details of relief on which the petitioner seeks relief, that may be sanctioned by the Tribunal. Therefore, the petitioner is directed to submit the amended copy of the Company Petition specifying the details of relief clauses.

List the matter on 19th January, 2018.

Urgent Photostat certified copy of this order, is applied or, be supplier to the parties, subject to compliance with all requisite formalities. A copy of the Order may be sent to the Regional Director for his further report.

Sd

(Jinán K. R.)
Member(J)

Sd

(V. P. Singh)
Member(J)

4/12/17

Signed on this, the 14th day of December, 2017

Mst/PS