

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CA(CAA)No.554/KB/2017

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)

In the matter of :

An application under Sections 230 to 232 of the Companies Act, 2013 and under the provisions of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2016;

IN THE MATTER OF:

JALAN BROTHERS PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having its registered office at 26, Shakespeare Sarani, Kolkata 700 017 in the State of West Bengal within the aforesaid jurisdiction.

.... Transferee Company/Applicant

And

IN THE MATTER OF :

SUSHILA STEEL COMPLEX PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having its registered office at 26, Shakespeare Sarani, P.S. Park Street, Kolkata 700 017 in the State of West Bengal within the aforesaid jurisdiction.

....Transferor Company No.1.

And

DATA WARE PRIVATE LIMITED, a Company incorporated under the provisions of the Indian Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having its registered office at 26, Shakespeare Sarani, P.S. Park Street, Kolkata 700 017 in the State of West Bengal within the aforesaid jurisdiction.

.... Transferor Company No.2

Counsels on Record:

1. Mr. Sandip Kumar Kejriwal, P.C.S. } For the Applicants.

Date of pronouncement of order: 19/02/2018

ORDER

Per Shri Jinan K.R, Member (J).

1. This is a joint application filed by the applicants for sanctioning of the Scheme for Amalgamation of M/s. Jalan Brothers Pvt. Ltd., Transferee Company and the Applicant No.1 with M/s Sushila Steel Complex Pvt. Ltd., Transferor Company and Applicant No.2 and M/s Data Ware Pvt. Ltd., Transferor Company under the provisions of the Companies Act, 2013 whereby and where under all the undertakings of the Transferor Companies together with all the assets and liabilities relating thereto as going concern is proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation, annexed with the Application as "Annexure A-31". It is stated by the applicant that the aforesaid Scheme

of Amalgamation will be of benefit to all concerned and is not opposed to public policy.

2. JALAN BROTHERS PRIVATE LIMITED (JBPL) is the Applicant No.1 and it is a Private Company incorporated under the provisions of Companies Act, 1956 as Company limited by shares on 24th June, 1941. The Corporate Identification Number (CIN) of the Company is U17299WB1941PTC010594. There are total 4 (Four) shareholders in JBPL (Transferee Company) holding 100% of its shares have consented to the Scheme of Amalgamation by way of Affidavit in writing to waive the convening and holding of meeting for consideration and approval of the very same Scheme of Amalgamation and forwarded their respective Affidavits to the proposed Scheme.

3. A List of Secured and Unsecured Creditors as on 30.09.2017 of the JBPL (Transferee Company) is attached with the application and marked as AnnexureA-6. There are 2 (Two) Secured Creditors as on 30.09.2017 and 136 (One Hundred Thirty-six) Unsecured Creditors as on 30.09.2017 in JBPL. Auditors' Certificate verifying the List of Creditors is attached with the application and marked as Annexure-A.

4. As on 31.03.2017, JBPL has an authorized share capital of Rs.15,51,00,000/- (Rupees Fifteen Crore Fifty One Lakhs) only divided into 15,51,000 Equity Shares of Rs.100/- each and the Issued, Subscribed and Paid-up Capital is Rs.1,62,49,700 (Rupees One Crore Sixty Two Lakhs Forty Nine Thousand Seven Hundred) only divided into 1,62,497 Equity Shares of Rs.100/- each, fully paid up.

5. The objects of M/s JBPL is to carry on all or any of the business of wholesale and retail dealers of cloth and in textile fabrics of all kinds, cotton spinners, cloth manufacturers, clothiers, hosiers wool merchants,

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yearn merchants, worsted stuff manufacturers etc. JBPL is presently 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.

6. M/s SUSHILA STEEL COMPLEX PRIVATE LIMITED (SSCPL) is Transferor No.1 bears Corporate Identification Number (CIN) U27310WB1981PTC034380. There are total 5 (Five) shareholders in SSCPL holding 100% of its shares have consented to the Scheme of Amalgamation by way of Affidavit in writing to waive the convening and holding of meeting for consideration and approval of the very same Scheme of Amalgamation and forwarded their respective Affidavits to the proposed Scheme.

7. There are NIL Secured Creditor and NIL Unsecured as on 18.11.2017 in SSCPL . Affidavit verifying the NIL Secured Creditor and NIL Unsecured Creditors as on 18.11.2017 is attached with the Supplementary documents submitted on 12.02.2018 and marked as Annexure-F. Auditors' Certificate verifying the NIL Secured Creditor and NIL Unsecured as on 18.11.2017 is attached with the application and marked Annexure-H of Supplementary documents submitted on 12.02.2018. As on 31.03.2017 SSCPL has an authorized share capital of Rs. 90,00,000 divided into 9,00,000 Equity Shares of Rs.10/- each and Issued, Subscribed and Paid-up Capital is Rs.8,800,300/- divided into 8,80,030 Equity Shares of Rs.10/- each, fully paid up.

8. The objects of SSCPL are to carry on the business of manufacturers, founders, casters, melters, makers, refiners, converters, processors, fabricators, drawers, rollers, components, tools, appliances, forgings and other engineering products. SSCPL is presently engaged in

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the business of wholesale and retail dealers of Electronic Goods and any other business as stated in the Memorandum of Association of the Company.

9. M/S DATA WARE PRIVATE LIMITED (DWPL) is the Applicant No.3 bearing CIN U31300WB1981PTC034305. There are 5 (Five) shareholders in DWPL holding 100% of its shares have consented to the Scheme of Amalgamation by way of affidavit in writing to waive the convening and holding of meeting for consideration and approval of the very same Scheme of Amalgamation and forwarded their respective Affidavits to the proposed Scheme.

10. A List of Secured and Unsecured Creditors as on 30.09.2017 of the DWPL attached with the supplementary documents submitted on 12.02.2018 states that there are 1 Secured Creditor as on 30.09.2017 and 3 Unsecured Creditors as on 30.09.2017. Auditors' Certificate verifying the 1 Secured Creditor as on 30.09.2017 and 3 Unsecured Creditors as on 30.09.2017 is attached with the supplementary documents submitted on 12.02.2018 and marked as Annexure-E of the supplementary documents submitted on 12.02.2018. DWPL has an authorized share capital of Rs.80,00,000/- (Rupees Eighty Lakhs only) divided into 80,000 Equity Shares of Rs.100/- each and the Issued, Subscribed and Paid-up Capital is Rs. 7,951,700/- (Rupees Seventy Nine Lakhs Fifty One Thousands and Seven Hundred) only divided into 79,517 Equity Shares of Rs.100/- each, fully paid up.

11. The objects of DWPL is setting up data processing center using computer system and for the purpose to acquire, purchase or take on lease or on hire computer system including computer accessories etc. It acts to evaluate, manage, advise select offer consultancy services and



supply personnel in respect of all sorts of projects, technical, industrial, commercial, mercantile, socio-economical or otherwise through computers, automotive machines and / or by any other means etc.

12. Vide the application bearing No.CA(CAA) No.554/KB/2017 the applicants sought the following reliefs:

- (a) An order dispensing with the holding of meeting of shareholders of Transferee Company and the Transferor Companies in view of the consent of shareholders as pleaded in paragraph xxi of the application.
- (b) An order of holding of meeting of secured and unsecured creditors of the Transferee Company and the Transferor Companies in view of the statements as pleaded in paragraph xxiii of the Application.

Vide the application, the following is also praying in the alternative:

- (i) An order directing holding of meetings of the shareholders and secured and unsecured creditors of Transferee Company and the Transferor Companies and with necessary direction as to issuance and publication of notices in the manner as may be directed by the Hon'ble Tribunal.
- (ii) A fit and competent person be appointed as chairman of the meeting of each of the Transferee Company and the Transferor Companies with a direction to file the report within such time as this Tribunal may deem fit.

13. It is submitted by the Applicants that Jalan Brothers Pvt. Ltd., Transferee Company, Sushila Steel Complex Pvt. Ltd., Transferor Company and Data Ware Pvt. Ltd., Transferor Company, as on 31-03-

2017, have been duly audited and the audited balance sheet as on the said date, related statement of profit and loss accounts and the auditor's report thereon are annexed with the application marked "Annexure A-32", "Annexure A-33" and "Annexure A-34". The Supplementary Accounting Statement of all the Applicant Companies, as on 31-12-2017 are submitted via supplementary documents on 12.02.2018.

14. Subsequent to the date of the aforesaid balance sheet there has been no substantial change in the financial position of both the applicant Companies, except those arising or resulting from the normal course of business.

15. The applicants submitted that the proposed re-alignment will create enhanced value for all 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.

16. The Transferee Company and Transferor Companies have been authorized by their respective clauses of Memorandum of Association to enter into an Amalgamation including Amalgamation with another company.

The Board of Directors of the Transferee Company and the Transferor Companies respectively have, at their Board meetings, held on 18-11-2017 approved and resolved to carry out the said Scheme of Amalgamation which is subject to approval of this Tribunal. The relevant extracts from the minutes of the meeting of the Board of Directors of all the applicant companies held on 18-11-2017 is also annexed with the application and marked as "Annexure A-35".



17. It is submitted by the applicants that there are no investigation proceedings pending under the applicable sections of the Companies Act, 1956 or any other proceedings under the Companies Act of 2013 against any of the Applicant Companies. No proceeding under Section 397 or 398 of the Companies Act of 1956 or applicable section under Companies Act, 2013 has ever been launched against any of the applicant companies.

18. The applicants further submitted that the assets of all the Applicant Companies are sufficient to meet all its liabilities. The Scheme of Amalgamation does not involve any compromise or composition or arrangement with any of the creditors of the Applicant Companies in any manner whatsoever. The said Scheme of Amalgamation will not adversely affect the rights of any of the creditors of any applicant companies in whatever manner whatsoever and it is nowhere prejudicial to the interest of the creditors, if any, of the Applicant Companies. The Applicant Companies have made due provisions for payment of all liabilities as and when the same will fall due.

19. The applicants also submitted that the present Scheme of Amalgamation does not contain or provide for Corporate Debt Restructuring. None of the Directors of the applicant companies have any material interest in the proposed Scheme of Amalgamation except as shareholders in general the extent of which will appear from the Register of Directors shareholding maintained by the respective applicant companies.

20. The statutory Auditors of the Transferee Company have certified that the Accounting treatment proposed in terms of clause 8 of PART II of the Scheme is in conformity with the Accounting Standards



prescribed under Section 133 of the Companies Act, 2013. The certificate issued by the statutory Auditors is also annexed with the application and marked as "Annexure A-36".

21. The said Scheme of Amalgamation will not adversely affect the rights of any of the creditors of any applicant companies in whatever manner whatsoever and it is nowhere prejudicial to the interest of the creditors, if any, of the Applicant Companies. The Applicant Companies have made due provisions for payment of all liabilities as and when the same will fall due.

22. The provisions of the Monopolies and Restrictive Trade Practice Act, 1969 are not applicable to the said Scheme of Amalgamation. None of the applicant companies are registered under the provisions of the Monopolies and Restrictive Trade Practice Act, 1969 or are liable to be registered under the provisions of the said Act and the provisions of the said Act will not come into existence upon Amalgamation of the applicant companies.

23. It is submitted in the application that the report determining the number of and exchange ratio of shares which, shall be issued and allotted to the equity shareholders of Transferor companies by the Transferee company for implementation of the terms of the scheme has been prepared by a reputed firm of Chartered Accountants and such recommendations have, been accepted by the Board of Directors of the respective companies. Copies of such valuation report is also annexed with the application and marked as "Annexure A-37".

24. Heard the Ld. Counsel for the applicants and the documents annexed to the application and the supplementary affidavits and heard the submissions made on behalf of the applicants and pass the following orders:

- a) In view of the consents given in affidavit form by all the Shareholders of the transferee and transferor companies, meeting of shareholders of the transferee and transferor companies are hereby dispensed with.
- b) In view of the fact transferee company has 2 (two) Secured Creditors as on 30.09.2017, therefore, the meeting of the Secured Creditors of the Transferee Company shall be convened and held at 26 Shakespeare Sarani, Kolkata-700017 on Monday, the 26th day of March, 2018 at 11:00 A.M. for the purpose of considering, and if thought fit approving with or without modification the proposed scheme of Amalgamation between JALAN BROTHERS PVT LTD and SUSHILA STEEL COMPLEX PVT. LTD and DATA WARE PVT. LTD.
- c) In view of the fact transferee company has 136 (One hundred and thirty six) Unsecured Creditors as on 30.09.2017, therefore, the meeting of the Unsecured Creditors of the Transferee Company shall be convened and held at 26 Shakespeare Sarani, Kolkata-700017 on Monday, the 26th day of March, 2018 at 12:00 Noon for the purpose of considering, and if thought fit approving with or without modification the proposed scheme of Amalgamation between JALAN BROTHERS PVT LTD and SUSHILA STEEL COMPLEX PVT. LTD and DATA WARE PVT. LTD.

- d) In view of the fact transferor company / Applicant No. 2 have NIL Secured and Unsecured Creditors as on 30.09.2017, therefore, the question of convening and holding of separate meeting of the Secured and Unsecured Creditors of the transferor company / Applicant No. 2 does not arise.
- e) In view of the fact transferor company / Applicant No. 3 has 1 (One) Secured Creditor as on 30.09.2017, therefore, the meeting of the Secured Creditor of the transferor company / Applicant No. 3 shall be convened and held at 26 Shakespeare Sarani, Kolkata-700017 on Monday, the 26th day of March, 2018 at 01:00 P.M. for the purpose of considering, and if thought fit approving with or without modification the proposed scheme of Amalgamation between JALAN BROTHERS PVT LTD and SUSHILA STEEL COMPLEX PVT. LTD and DATA WARE PVT. LTD.
- f) In view of the fact transferor company / Applicant No. 3 has 3 (Three) Unsecured Creditors as on 30.09.2017, therefore, the meeting of the Unsecured Creditors of the transferor company / Applicant No. 3 shall be convened and held at 26 Shakespeare Sarani, Kolkata-700017 on Monday, the 26th day of March, 2018 at 02:00 P.M. for the purpose of considering, and if thought fit approving with or without modification the proposed scheme of Amalgamation between JALAN BROTHERS PVT LTD and SUSHILA STEEL COMPLEX PVT. LTD and DATA WARE PVT. LTD.
- g) That at least 30 (thirty) clear days before the date of the said meetings of the Transferee Company/ Applicant No. 1 (Jalan Brothers Pvt. Ltd.) and the Transferor Company / Applicant No. 3

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(Data Ware Pvt. Ltd), an advertisement convening the meetings of the Secured and Unsecured creditors of the Transferee Company/ Applicant No. 1 (Jalan Brothers Pvt. Ltd.) and the Transferor Company / Applicant No. 3 (Data Ware Pvt. Ltd) and stating that copies of the said Scheme of Amalgamation and of the Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and a form of proxy can be obtained free of charge at the Registered Office of the concerned Transferee company and Transferor Company / Applicant No. 3 or at the office of their Advocate, Mr. Sandip Kumar Kejriwal, PCS, be inserted once each in the local daily Bengali newspaper and in the widely circulated English newspaper.

- h) That in addition, at least 30 (thirty) clear days before the meetings to be held as aforesaid, a notice convening the said meetings at the place and time as aforesaid together with a copy of the said Scheme of Amalgamation, a copy of the Statement required to be sent under the Act and the prescribed form of Proxy be sent by registered post or by hand or by courier or by email, both addressed to each of the Secured and Unsecured creditors of the concerned Transferee Company/ Applicant No. 1 (Jalan Brothers Pvt. Ltd.) and the Transferor Company / Applicant No. 3 (Data Ware Pvt. Ltd) at their respective or last known addresses.
- i) To serve the notice as per requirements of sub-section (5) of Section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme and the Statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata,

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Registrar of Companies, West Bengal; and Income Tax Department having jurisdiction over the Transferor company and the Transferee Company and such other relevant 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 through email or by registered post or speed post within 30 days from the date of this order for filing their representation, if any, within 30 days from the date of notice. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the applicants and/or their Advocates. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 and Companies Compromises, Arrangements & Arrangement) Rules, 2016 with necessary variations incorporating the directions therein.

- j) Mr. Promod Kumar Drolia, Advocate (Mobile No.9433144468) shall be the Chairperson for the said meetings of the secured and Unsecured creditors of the Transferee Company and Transferor Company / Applicant No. 3 to be held as aforesaid at a consolidated remuneration of Rs. 50,000/- (Rupees Fifty Thousands only).
- k) The Chairperson appointed for the said meetings or any person authorized by him/her do issue and send out the notice of the said meetings referred to above.



- l) The quorum for meeting of the Equity Shareholders of the applicant companies be fixed in accordance with Section 103 of the Companies Act, 2013 present either in person or by proxy.
- m) That voting by proxy be permitted, provided that a proxy in the prescribed form duly signed by the person(s) entitled to attend and vote at the meeting, is filed with the concerned Transferee Company at their Registered Office not later than forty-eight hours before the meetings.
- n) The Chairperson shall have the power to adjourn the meeting, if necessary, and to conduct the procedure for the adjourned meeting as deemed necessary under the Act.
- o) The value of each member/creditor shall be in accordance with the respective books of the concerned Transferee Company and where entries in the books are disputed, the Chairperson concerned shall determine the value for the purpose of the meeting.
- p) The Chairperson do report to this Court the results of the said meetings within four weeks from the date of the conclusion of the respective meetings and his report shall be verified by his affidavit.

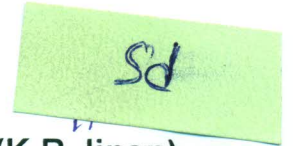
25. The application bearing No. CA(CAA) No. 554/KB/2017 is, accordingly, disposed of.

Parties and the Chairpersons to act on the order.



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Certified copy of this Order may be issued, if applied for, upon compliance of all requisite formalities.



(K.R Jinan)
Member(Judicial)

Signed on 19th day of February 2018.

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