

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

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C.A. No. (CAA) 441/KB/2017

In the Matter of: -

Sections 230 to 232 of the Companies Act,
2013;

And

In the matter of :

Gavrill Metal Private Limited, a Company
incorporated under the provisions of the
Companies Act, 1956 having its

Registered office at 137 Cotton Street,
3rd Floor Kolkata -700007, West Bengal,
within the aforesaid jurisdiction;

~ And ~

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JKP Enterprises Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 8, Munshi Sadaruddin Lane Kolkata-700007 ,West Bengal, within the aforesaid jurisdiction;

~ And ~

Reward Dealcomm Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 8 Munshi Sadruddin Lane Kolkata-700007 ,West Bengal, within the aforesaid jurisdiction;

~ And ~

Rockland Suppliers Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 8, Munshi

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Sadaruddin Lane Kolkata-700007 ,West Bengal, within the aforesaid jurisdiction;

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Shivsathi Sales Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 74/1, Cotton Street 1st Floor, Room No. 61, Kolkata-700007, West Bengal, within the aforesaid jurisdiction;

~ And ~

Shivsathi Vyapaar Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its Registered office at 74/1, Cotton Street 1st Floor, Room No. 61, Kolkata-700007, West Bengal, within the aforesaid jurisdiction;

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Windson Vanijya Private Limited, a
Company incorporated under the
provisions of the Companies Act, 1956

having its Registered office at 8, Munshi
Sadaruddin Lane, Kolkata - 700007, West Ben

gal, within the aforesaid jurisdiction;

~ And ~

1. Gavril Metal Private Limited;
2. JKP Enterprises Private Limited;
3. Reward Dealcomm Private Limited;
4. Rockland Suppliers Private Limited
5. Shivsathi Sales Limited
6. Shivsathi Vyapaar Limited

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7. Windson Vanijya Private Limited

.....Applicants

Date of pronouncement of Order : 09-01-2018

CORAM : Mr. V.P. Singh, Member(Judicial)

Mr. Jinan K.R., Member(Judicial)

For the Applicants :

1. Mr Shashi Agarwal, Pr. Chartered Accountant
2. Mr. Tapas Das , Advocate

Per Shri Jinan K. R.

ORDER

This application has been filed by the Applicant Companies, namely, JKP Enterprises Private Limited, Reward Dealcomm Private Limited, Rockland Suppliers Private Limited, Shivsathi Sales Limited, Shivsathi Vyapaar Limited, Windson Vanijya Private Limited (herein the "Transferor Companies") with Gavrill Metal Private Limited (herein the "Transferee Company") under Section 230 to 232 of the Companies Act,2013 for obtaining sanction of this Tribunal regarding Scheme of Amalgamation

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of the above mentioned companies where under and whereby the entire undertaking of the Transferor Companies with all assets and liabilities relating thereto as a 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, a copy whereof is annexed with the Application and marked "Q".

It is stated in the petition that the amalgamation will enable the companies to expand its business activities by pooling their resources at one place. For the purposes of better, efficient and economical management, control and running of the business of the undertakings concerned and for administrative convenience and to obtain advantage of economy of large scale and to broad base the present business, the present Scheme of Amalgamation is proposed to amalgamate the Transferor Companies with the Transferee Company.

The Scheme of Amalgamation will have beneficial results for the companies concerned, their shareholders, employees and all concerned.

The Board of Directors of all the Applicant Companies have, at their respective meetings, by resolutions, passed unanimously, approved the said draft Scheme of Amalgamation.

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The copies of the Board resolutions passed by the Applicant companies are annexed with the Application and collectively marked "P".

The Auditors of the Transferee Company have not made any adverse remark or comment in their Auditors' Report. The Auditors' Report does not disclose any irregularity or mismanagement in the affairs of the Transferee Company.

Subsequent to the aforesaid audited accounts, there has not been any material change in the affairs of the Transferee Company except in the normal course of business for which the accounts are under preparation.

The affairs of the Transferee Company have been conducted prudently and properly. No petition under Section 397 or 398 of the Companies Act, 1956 and corresponding provisions of the Companies Act, 2013 has, at any point of time, been filed against the Transferee Company.

It is submitted in the Application that the assets of the applicant companies are sufficient to meet all their liabilities. The applicant companies have made due provisions for payment of all liabilities as and when the same will fall due.

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Further, it is stated in the application that the Scheme of Amalgamation does not involve any compromise or composition with the creditors of the applicant companies. The Scheme of Amalgamation will not affect the rights of the creditors of the applicant companies in any manner whatsoever.

It is also stated in the Application that the Scheme of Amalgamation does not contain any clause whatsoever relating to Amalgamation and/or compromise with the creditor and interest of the creditor will not be affected in any manner whatsoever.

It is also submitted in the Application that there are no proceedings pending under Sections 235 to 251 of the Companies Act, 1956 and/or corresponding/applicable provisions of the Companies Act, 2013 against any of the Applicant Companies.

The Applicant Companies stated that the Scheme of Amalgamation does not provide or contain any clause for any kind of corporate debt restructuring.

The Applicant companies have not issued any preference share and accordingly, the Scheme of Amalgamation does not provide for conversion of the preference share into equity shares.

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The copy of the list of the Shareholders as on 31-03-2017 is annexed with

The Applicant companies have not issued any debentures.

The Applicant companies further stated that the sanction of the Scheme of Amalgamation will not result in the variation of the shareholders rights and creditors rights.

All the Shareholders of all the Applicant Companies have signed on record

It is further stated in the Application that the assets of the Applicant Companies are sufficient to meet all their liabilities. The applicant companies have made due provisions for payment of all the liabilities as and when the same will fall due.

The copies of such waiver/consent letters received from the Shareholders of

The applicant no. 1, 2, 3, 4 , 5, 6 , 7 are having 10, 3, 4 , 2 , 3 , 3 , 2 nos. equity shareholders, respectively.

It is stated in the Application that the shareholders of all the Applicant Companies have approved the draft Scheme of Amalgamation in their respective extra ordinary general meeting and the said resolution approved by the shareholders of the respective applicant companies has been filed and taken on record by the Registrar of Companies, West Bengal.

Shareholders of all the Applicant Companies to the proposed Scheme of

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The copy of the list of the Shareholders as on 31-03-2017 is annexed with the Application and marked "T".

The copies of the resolution in e-form are annexed with the Application and collectively marked "R".

All the Shareholders of all the Applicant Companies have also given signed letter signifying their consent and approval to the proposed Scheme, wherein all such shareholders have also consented to waive holding of meeting for considering the Scheme of Amalgamation.

The copies of such waiver/consent letters received from the Shareholders of all the Applicant Companies are annexed with the Application and collectively marked "S".

Further all shareholders of the Transferee Company and Transferor Companies has given affidavit annexed with application relating to no-objection to the Scheme and dispensation of the meeting of the Shareholders

It is submitted in the Application that in view of the consent of the Shareholders of all the Applicant Companies to the proposed Scheme of

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Amalgamation and waiver of the requirement of holding the meeting to consider the Scheme of Amalgamation, the convening and holding of meeting of the Shareholders of all the Applicant Companies be dispensed with.

It is also submitted in the Application that all the Unsecured Creditors as on 15-03-2017 of all the applicant Companies has given "No-objection" to the Scheme of Amalgamation by way of Affidavit.

Further, none of the Applicant Companies has any Secured Creditors.

The list of Creditors of Gavrill Metal Private Limited and the certificate of the Chartered Accountant relating to NIL balance, are annexed with the Application and marked collectively as Annexure "U".

It has been stated in the Application that none of the Transferor Companies has any creditors (secured and unsecured) and a certificate of the Chartered Accountant are also annexed.

The Transferee Company has paid the secured creditors in full for which loan closure letter has been annexed and unsecured creditors of Transferee

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Company has also given consent/ no-objection to the said scheme by way of affidavit.

It is submitted in the application that no one will be prejudiced with the Scheme of Amalgamation.

Heard the learned Counsel and the PCS of the applicants, perused the records, documents annexed to the application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed :

a) In view of the individual affidavit by the respective Shareholders of the Applicant Companies, giving consent for the approval of the draft Scheme of Amalgamation, convening and holding of separate meetings of the shareholders of the Transferee Company and the Transferor Companies, are dispensed with.

b) Since the Transferor Companies have no secured creditors and unsecured creditors, convening and holding of separate meetings of the Secured and the Unsecured Creditors of the Transferor Companies, does not arise.

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c) In view of the fact that the Transferee Company has paid the secured creditors in full for which loan closure letter has been annexed with the Application, convening and holding of separate meeting of the Secured Creditors of the Transferee Company, also does not arise ;

d) Since the unsecured creditors of the Transferee Company has given consent/ no-objection to the Scheme of Amalgamation by way of affidavit, convening and holding of separate meeting of the Unsecured Creditors of the Transferee Company, are dispensed with.

e) Let the notice be served by the applicant companies, as per the requirements of sub-section (5) of Section 230 of the Companies Act, 2013, along with the copy of the petition and all other documents including the copy of the Scheme of Amalgamation and the statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal, and the concerned Income-Tax Assessing Officer along with the Chief Commissioner of Income-TAX with PAN Numbers of he Applicant Companies as also on the Official Liquidator attached to the Hon'ble High Court, Calcutta, having jurisdiction over the transferor and the

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transferee companies 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 by registered post or by Speed Post and E-mail, both, within seven days from the date of this order for filing their representation, if any, on the application within 30 days from the date of the notice ;

The Company Application bearing No. CA/CAA/ 441/KB/2017 is

f) The applicants shall file the affidavit within 7 days of serving the notice regarding service of notice ;

Certified copy of this Order may be applied for upon completion of

g) The applicants are further directed to send notice through e-mail also and file copies of the mails along with an affidavit. 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 heir 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 & Amalgamation) Rules, 2016 with necessary variations incorporating the directions therein.

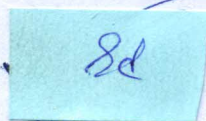
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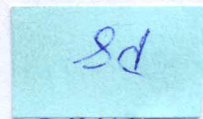
h) The applicant companies shall comply with the proviso to sub-section (3) of Section 232 or proviso to sub-section (7) of Section 230, as may be applicable under the circumstances on or before the date fixed for hearing by filing the certificate of Companies' Auditor.

The Company Application bearing No. CA(CAA) No. 441/KB/2017 is, accordingly, disposed of.

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



(V.P. Singh)
Member(Judicial)



(Jinan K. R.)
Member(Judicial)

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