

IN THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, AT KOLKATA

COMPANY PETITION CP(CAA) No. 417/KB/2017
(CONNECTED WITH COMPANY APPLICATION TA NO. 11/KB/2017
CONNECTED WITH COMPANY APPLICATION NO. 896/2016HC)

In the matter of :

The Companies Act, 2013 – Sections 230 to 232
of the said Act and Rules made thereunder

In the matter of :

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 – 700 071 ;

-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 – 700
029 ;

- Applicant/Amalgamating
Companies

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Date of pronouncement of the Order : 8/02/2018

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

For the Petitioners:

CS Deepak Kumar Khaitan, FCS, Pr. CS

CS Siddhi Dhandharia, ACS, Pr. CS,

CS Sonam Agarwal, ACS, Pr. CS,

Ms. Tia Inla, Deputy Director, C/o. Regional Director (Eastern Region),
Ministry of Corporate Affairs

Per Jinan K. R.

ORDER

This is a joint application by the Applicant/ Petitioner Companies i.e. Jupiter Alloys & Steel (India) Limited (Applicant No.1 / Amalgamating Company) & Jupiter Wagons Limited (Applicant No.2 / Amalgamated Company) originally filed under Sections 391-394 of the Companies Act, 1956 in relation to the Scheme of Amalgamation proposed between the applicants (hereinafter referred to as 'the Scheme').

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Both the Applicant Companies jointly filed the second motion on 21.08.2017 vide Company Petition C.P. No. 417/KB/2017 (connected with T.A. No. 11/KB/2017 being the first motion) in which a detailed Order was pronounced on 17.10.2017.

The Order of 17.10.2017 records all the directions and compliances from the beginning which are as follows :-

1. 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.
2. 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).
3. 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 with effect from 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.

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

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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.

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.

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 the Secured as well as the 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. the 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.

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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

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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.

Similarly, the Official Liquidator attached to the Hon'ble 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, the Official Liquidator 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 the 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.

Thereafter, the Petitioners filed respective third affidavits of compliance dated 18.11.2017 complying with the directions passed by this Tribunal on 17.10.2017 as follows :-

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- (a) The notice of hearing was advertised in the 'Financial Express' and in the 'Dainik Statesman' on 04.11.2017 on 04.11.2017 ('Annexure A' and 'Annexure B' of third affidavit of compliance).
- (b) Notice was also served on the Central Government through Regional Director (Eastern Region), Ministry of Corporate Affairs on 03.11.2017 ('Annexure C' of third affidavit of compliance) and on the Registrar of Companies, West Bengal, Ministry of Corporate Affairs on 03.11.2017 ('Annexure D' of third affidavit of compliance) and Income Tax Department (within whose jurisdiction the assessment of the Applicant Company is made) on 03.11.2017 ('Annexure E' of third affidavit of compliance) and on the Official Liquidator on 03.11.2017 ('Annexure F' of third affidavit of compliance).
- (c) It has also been stated by the Petitioners that there is no Sectoral Regulator and the Petitioner Companies are not Non-Banking Financial Companies and hence no notice is required to be issued to any Sectoral Regulator.
- (d) It has also been stated by the Petitioner companies that the said companies have not received any objection from any creditor / others and hence there are no objectors and hence no notice is required to be issued to them and that the said Companies have not received any objection from any of the Authorities as mentioned herein above i.e. Central Government through Regional Director (Eastern Region), Ministry of Corporate Affairs and the Registrar of Companies - West Bengal, Ministry of Corporate Affairs and the Official Liquidator, Calcutta and the Income Tax Authorities.
- (e) The applicant companies have also provided certificate from Auditor stating that the accounting treatment proposed in the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013 ('Annexure G' of third affidavit of compliance).

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Thereafter, by subsequent Orders passed by this Tribunal, the Regional Director (Eastern Region), Ministry of Corporate Affairs was directed to provide further clarification, which was provided by the Regional Director, Eastern Region, vide supplementary affidavit dated 05.02.2018 in addition to the first affidavit dated 06.10.2017, granting consent to the Scheme of the Petitioners and it has been stated in the Affidavit that no approval of FIPB is required since the FIPB has been abolished by the Cabinet in its meeting held on 24.05.2017 and it has also been stated that as per as consolidated FDI Policy (effective from 28.08.2017) it is clear that Government approval would not be required in case of mergers and acquisitions taking place in sectors under automatic route.

Necessary Certificate of compliance dated 19.12.2017, stating the compliance of conditions under automatic route issued by Chartered Accountant has also been annexed by the Regional Director in the aforesaid supplementary affidavit.

The Regional Director has also stated in the said affidavit that it has received necessary valuation certificate regarding shares issued at premium and that it has no comments in the matter.

The petitioner companies have also filed supplementary affidavit dated 18.01.2018 setting out detailed reliefs as prayed for.

Heard the arguments of the Ld. Practicing Company Secretaries for the Petitioner Companies.

The Deputy Director from the office of Regional Director, Eastern Region, Ministry of Corporate Affairs, was present in person, who have mentioned that they have no objection in the matter.

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In view of the facts stated above, the following orders in terms of prayers made in the petition and in terms of the detailed reliefs, as set out in the Supplementary Affidavit dated 18-01-2018, filed by the Petitioner Companies, are passed :

- (i) That the said compromise or arrangement by way of Scheme which is annexed as Annexure B at page no. 851 to 875 to the Petition is sanctioned as to be binding on all the creditors and members of the Petitioner Companies and on the Petitioner Companies and on all concerned with effect from the appointed date i.e. 1st April, 2016.
- (ii) That upon the Scheme becoming effective, all present and future assets and liabilities of the Applicant/ Amalgamating Company, and the entire business of the Applicant/Amalgamating Company, shall stand transferred to and vested in the Applicant/Amalgamated Company, as a going concern, without any further act or deed.
- (iii) That all contracts, agreements, and other instruments, for the purpose of carrying on the business of the Applicant/Amalgamating Company, of every kind and description of whatsoever nature in relation to the Applicant/Amalgamating Company shall be in full force and effect on, against or in favour of the Applicant/Amalgamated Company and may be enforced as fully and effectually as if, instead of the Applicant/Amalgamating Company, the Applicant/ Amalgamated Company had been a party thereto;
- (iv) That any notice, disputes, pending suits, appeals or other proceedings of whatsoever nature relating to the Applicant/Amalgamating Company, whether by or against such Applicant/Amalgamating Company, shall not abate, be discontinued or in any way be prejudicially affected by reason of the

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amalgamation of the Applicant/Amalgamating Company or of anything contained in this Scheme,

- (v) That all permanent employees, employees/personnel engaged on contract basis and contract labourers and interns/trainees of the Applicant/Amalgamating Company, shall become employees, employees/ personnel engaged on contract basis, contract labourers or interns/trainees, as the case may be, of the Applicant/ Amalgamated Company on such terms and conditions as are no less favourable than those on which they are currently engaged by the Applicant/Amalgamating Company, without any interruption of service as a result of this amalgamation and transfer.
- (vi) That all the intellectual property rights of any nature whatsoever, including any and all registrations, goodwill, licenses, trademarks, service marks, copyrights, domain names, applications for copyrights, trade names and trade marks, appertaining to the Applicant/Amalgamating Company, if any, shall stand transferred to and vested in the Applicant/Amalgamated Company
- (vii) That all approvals, consents, exemptions, registrations, no-objection certificates, permits, quotas, rights, entitlements, licenses and certificates of every kind and description whatsoever in relation to the Applicant/Amalgamating Company shall be in full force and effect in favour of the Applicant/Amalgamated Company and may be enforced as fully and effectually as if, instead of the Applicant/Amalgamating Company, the Applicant/ Amalgamated Company had been a party thereto;
- (viii) That upon the Scheme becoming effective and with effect from the Appointed Date, the authorised share capital of the Applicant/Amalgamating Company, shall stand transferred to and be

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merged with the authorised share capital of the Applicant / Amalgamated Company and the authorised share capital of the Amalgamated Company shall stand enhanced by an aggregate amount of Rs.4,50,00,000/- and the resultant authorised share capital of the Amalgamated Company shall increase from existing Rs.2,30,00,000/- divided into 23,00,000 equity shares of Rs.10/- each to Rs.6,80,00,000/- divided into 68,00,000 equity shares of Rs.10/- each.

- (ix) That upon the Scheme becoming effective the Applicant/Amalgamated Company shall issue fully paid-up equity shares to the shareholders of the Amalgamating Company on the share swap ratio of 661:100. The Amalgamated Company shall issue, in aggregate, 28,30,019 fully paid-up equity shares of Rs.10/- each to the shareholders of the Amalgamating Company whose names are recorded in the register of members of the Amalgamating Company on the Record Date, in such a manner that each such equity shareholder of the Amalgamating Company shall be issued 661 fully paid-up equity shares of Rs.10/- each of the Amalgamated Company for every 100 fully paid-up equity shares of Rs.100/- each held by such equity shareholder in the Amalgamating Company as on the Record Date.
- (x) That upon the Scheme becoming effective, the Applicant/Amalgamating Company shall stand dissolved, without any further act or deed, without being wound-up.
- (xi) That upon the Scheme becoming effective, allotment of new shares to the foreign shareholder in the Amalgamated/ Transferee Company will be made under the automatic route and all necessary compliances under Foreign Exchange Management Act, 1999 shall be complied in accordance with the law.

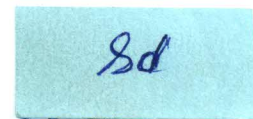
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The Petitioner Companies are also directed to file a copy of this Order with the Registrar of Companies, West Bengal within 30 days from the date of receipt of this Order, and the Registrar of Companies, West Bengal, shall consolidate the files of both the companies and comply with this Order.

In the event of the petitioner Companies supplying the legible computerized print out of the said compromise or arrangement by way of Scheme and the 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 a hand-written copy thereof.

Accordingly, Company Petition C.P.(CAA) No.417/KB/2017 connected with T.A. No.11/KB/2017 (C.A. No. 896/2016 HC) is hereby disposed of.

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



(Jinan K. R.)

Member (Judicial)

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