
(2022) 02 NCLT CK 0086

In the National Company Law Tribunal

Case No : CA (CAA) No. 13/Chd/Hry/2021(First Motion)

Jindal Stainless Steelway Limited Vs

Date of Decision : 25-02-2022

Acts Referred:

Companies Act, 2013 — Section 133, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 230(2)(c), 230(5), 230(7), 232, 232(2)(e), 232(3)
Companies Act, 1956 — Section 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 433, 434
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 6, 8, 14

Citation : (2022) 02 NCLT CK 0086

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Animesh Sharma

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a Joint First Motion Application filed by Applicant Companies namely; Jindal Stainless Steelway Limited (Applicant Company No. 1/Amalgamated Company) and J.S.S. Steelitalia Limited (Applicant Company No. 2/Amalgamating Company) under Section 230-232 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation between the Applicant Companies. The said Scheme is also attached as Annexure A.1 to the Application.

2. The Applicant Companies have prayed for dispensing with the requirement of the convening of the meetings of the Equity Shareholders of both Applicant Companies and of Preference Shareholders and of Secured Creditors of Applicant Company No. 2 and to convene the meetings of Secured Creditors of Applicant Company No. 1 and of Unsecured Creditors of both the Applicant Companies. It

is further prayed for dispensation of the requirement of issuing notices to Unsecured Creditors of Applicant Company No. 1 having unsecured debts equal to or less than Rs. 2,00,000/- as on 28.02.2021.

3. The Applicant Company No. 1/Amalgamated Company is presently engaged in the business of manufacturer, processor, producer, seller, purchaser, assemblers, fitters, engineers, erectors, founders, smelters, refiner, makers, drawers, sinkers, miners, workers, repairers, hire-purchaser, dealers, representatives, contractors, importer, exporter, innovator, creator, developers, whole-seller, dealer, stockiest, distributor, agent, trader, exchanger, fabricator, service-center and jobber of and in forging, casting of steel, stainless and special steels, alloys and ferrous and non-ferrous metals and other allied sectors etc.

4. The Applicant Company No. 2/Amalgamating Company is presently engaged in the business to manufacture high quality stainless steel tubes/pipes and to setup high productivity high quality stainless tubes/pipes manufacturing plants employing state of art high frequency welding technology to manufacture tubular products and flats bars in stainless steel and other steel grades mainly in round, square, rectangular, cross-sections with various size range.

5. It is submitted that the registered office of the Amalgamated Company is at Village Pathredi, Bilaspur, Tauru Road Gurgaon, Haryana-122413 and Amalgamating Company is at Village Pathrari, Bhora Kalan & PO Pathredi, Bilaspur-Tauru Road Gurgaon, Haryana-122413, therefore, both Applicant Companies fall within the territorial jurisdiction of this Bench.

6. The rationale of the scheme is given below:-

i. The Amalgamating Company and the Amalgamated Company are engaged in manufacturing of different stainless steel products and the proposed amalgamation will enable forward integration for the Amalgamated Company.

ii. The Amalgamating Company is the wholly-owned subsidiary of the Amalgamated Company. The proposed amalgamation is of the wholly-owned subsidiary into and with its holding company. The amalgamation will result in simplification of the group and business structure and will reduce compliance costs and help in better utilization of the resources.

iii. The management of the Amalgamating Company and the Amalgamated Company believes that this Scheme would be in the best interest of the respective shareholders, creditors, employees and all other stakeholders of the Amalgamating Company and the Amalgamated Company. The Scheme shall not in any manner be prejudicial to the interests of concerned shareholders, creditors, and / or any other stakeholder.

7. It is stated that the Board of Directors of the Amalgamated Company and Amalgamating Company in their respective meetings held on 3. 02.2021 have considered and unanimously approved the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copies of the Board Resolutions of

the Amalgamated Company and Amalgamating Company are at Annexure A-4 and A-10 respectively of the application. The Amalgamated Company has authorized Mr. Dharendra Bahadur Singh, Chief Financial Officer and Mr. Rajesh Kumar Pandey, Company Secretary and Amalgamating Company has authorized Mr. Vivek Kumar Garg, Wholetime Director, Mr. Yogesh Pareek, Company Secretary to do all acts and deeds and things in relations to the Scheme. The affidavits of Mr. Rakesh Kumar Pandey and Mr. Yogesh Pareek on behalf of Applicant Companies have been filed in support of contents of the application for seeking appropriate orders/directions.

8. The appointed date of the Scheme is 01.03.2021 as mentioned in the Clause 1.5.1 (vi) of Scheme of Amalgamation attached as Annexure A.1 of the application.

9. It is stated that the Amalgamated Company and Amalgamating Company have filed the audited financial statements as on 31.03.2021 and provisional Financial Statement as on 30.09.2021 which are attached as Annexure A-1 and A-2, respectively of Diary No. 01358 dated 29.11.2021.

10. It is submitted that no investigation proceedings have been instituted or are pending in relation to the Applicant Companies under Sections 235 to 251 of the Companies Act, 1956 or under Sections 206 to 229 of Companies Act, 2013. It is also submitted that no winding up petition (including under Section 433 read with Section 434 of the Companies Act, 1956) has been filed or instituted or pending against any of the Applicant Companies. It is also deposed by the authorized representative of the Applicant Companies that the Scheme does not contemplate any scheme of corporate debt restructuring as provided for under Section 230(2)(c) of the Act. The aforesaid affidavits regarding the applicability of Section 230(2)(c) of the Act are attached as Annexure A-17 of the application.

11. It is submitted that in pursuance of the proviso to Sec. 230 (7) and Section 232 (3) of the Act, the Applicant Companies has filed the certificates dated 15.03.2021 respectively issued by Statutory Auditors of Applicant Companies certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same is attached as Annexure-A-15 of the application.

12. It is further submitted by the counsel for applicant companies that the valuation report is not applicable as the scheme is between the holding company and its wholly owned subsidiary.

13. It is submitted by the learned counsel that the Scheme (Annexure-A1 of the application) also takes care of the interests of the staff/workers and employees of the Amalgamated Companies. By virtue of Clause 3.2, it is stated that upon the Scheme coming into effect, all workmen and employees of the Amalgamating Company, who are on its payrolls and all respective other personnel employed by the Amalgamating Company shall become employed by the Amalgamated Company with effect from the Effective Date, on such terms and conditions as

are no less favourable than those on which they are currently engaged by the Amalgamating Company, without any interruption of service as a result of this Amalgamation and transfer.

14. The Applicant Companies have furnished the following documents:-

- i. List of Secured and Unsecured Creditors of Applicant Company No. 1 duly certified by the Statutory Auditors (Annexure A-6 and A-7 of the application).
- ii. List of Secured and Unsecured Creditors of Applicant Company No. 2 duly certified by the Statutory Auditors (Annexure A-13 and A-14 of the application).
- iii. Certificates of Statutory Auditors to the effect that Accounting treatment proposed in the Scheme is in conformity with Section 133 of Companies Act, 2013 (Annexure A-15 of the application).
- iv. Affidavit of Applicant Companies qua Sectoral Regulators (Annexure A-16 of the application).
- v. Audited Financial Statement as on 31.03.2021 and Provisional Financial Statement As on 30.09.2021 (Annexure A-1 and A-2 of Diary No. 01358 dated 29.11.2021).

15. The Amalgamated Company i.e. Jindal Stainless Steelway Limited CIN: U27109HR2004PLC082454 is a public limited company incorporated under the Companies Act, 1956 on August 6, 2004. The Certificate of Incorporation along with Memorandum and Articles of Association is attached as Annexure – A-2 of the application. The details of the Share Capital Structure of the Amalgamated Company as on February 28, 2021 is given below:-

Particulars

Amount in Rupees

Authorised Capital

3,00,00,000 equity shares of Rs. 10/- each

30,00,00,000

Issued, Subscribed and Paid-up Share Capital

1,40,61,667 Equity Shares of Rs. 10/- each

14,06,16,670

16. The Amalgamating Company i.e. J.S.S. Steelitalia Limited CIN: U27310HR2007PLC036578 is a public limited company incorporated under the Companies Act, 1956 on July 16, 2007. The certificate of incorporation along with Memorandum and Articles of Association is attached as Annexure –A-8 of the application. The details of the Share Capital Structure of the Amalgamating Company as on February 28, 2021 is given below:-

Particulars

Amount in Rupees

Authorised Capital

25,000,000 Equity Shares of Rs. 10/- each

25,00,00,000

10,000,000 compulsorily convertible Preference Shares of Rs. 10/- each

10,00,00,000

Total

35,00,00,000

Issued, Subscribed and Paid-up:

23,374,818 Equity Shares of Rs. 10/- each fully paid up

233,748,180

9,783,518 compulsorily convertible Preference Shares of Rs. 10/- each

97,835,180

Total

33,15,83,360

17. The Applicant Companies have furnished the details of the Shareholders. Secured Creditors and Unsecured Creditors as follow:

Name of the Applicant Companies

Shareholders along with their consent

Creditors along with their consents

Equity Shareholder

Consent submitted on affidavit

Preference Shareholders

Consent submitted on affidavit

Secured Creditors

Consent submitted on affidavit

Unsecured Creditors

Consent submitted on affidavit

Applicant Company No.1

7

(Seven)

100%

NIL

N.A

5 (five) secured creditors

Meetings to be convened

1824

(One Thousand Eight Hundred and Twenty Four) Unsecured Creditors

Meetings to be convened

Applicant Company No.2

7

(Seven)

100%

1 (one)

100%

NIL

N. A.

18

(Eighteen)

Unsecured Creditors

Meetings to be convened

18. It is submitted that as per list of Equity shareholders duly certified by statutory auditors, there are 7 (seven) Equity Shareholders of the Applicant Company No. 1 as on 28.02.2021 which is attached as Annexure A-5 of the application. The consent of all the Equity Shareholders to the proposed Scheme of Amalgamation have been received by way of affidavit and the same are part of Annexure A-5 of the application. The list of Secured and Unsecured Creditors of Applicant Company No. 1 duly certified by the Statutory Auditors is attached as Annexure A-6 and A-7 respectively of the application. As per the certificate dated 27.08.2021 issued by Statutory Auditors, there are 5 (five) secured creditors and 1824 (One Thousand Eight Hundred and Twenty Four) unsecured Creditors as on 28.02.2021 of the Applicant Company No. 1.

19. It is submitted that as per list of Equity shareholders duly certified by statutory auditors, there are 7 (seven) Equity Shareholders of the Applicant Company No. 2 as on 28.02.2021 which is attached as Annexure A-5 of the application. The consent of all the Equity Shareholders to the proposed Scheme of Amalgamation have been received by way of affidavit and the same are part of Annexure A-11 of the application. The list of Preference Shareholders of Applicant Company No. 2 duly certified by the Statutory Auditors is attached as Annexure A-12 of the application. As per list of Preference Shareholders, there is only 1 (one) Preference Shareholders and the consent of the same is part of Annexure A-12 of the application. The list of Secured and Unsecured Creditors of Applicant Company No. 2 duly certified by the Statutory Auditors is attached as Annexure- A-13 and A-14 of the application. As per the certificate issued by Statutory Auditors dated 18.03.2021, there are NIL secured creditors and 18 (Eighteen) Unsecured Creditors as on 28.02.2021 of the Applicant Company No.2.

20. This Bench has decided the issue of dispensation of meeting of shareholders in the cases of: CA (CAA) No.2/Chd/Hry/2021 Goibibo Group Private Limited & Ors. dated 23.12.2021; CA No.189/2021 & CA (CAA) No.41/Chd/Pb/2021 G.N.A Transmissions Pvt. Ltd. & Ors. dated 23.12.2021; and CA (CAA) No.35/Chd/Hry/2021 NAM Estates Private Limited dated 23. 12.2021. In the aforementioned orders, after discussing the differing views of coordinate Benches, this Bench has followed the decisions of the Hon'ble NCLAT in DLF Phase-IV Commercial Developers Limited and Others with DLF Limited, (Company Appeal (AT) No.180 of 2019) dated 19.08.2019 and Alovera Tradelink Pvt. Limited and Others Vs. Ostwal Physchem (India) Limited in Company Appeal (AT) No.178/2019 decided on 06.08.2019 on this issue and has held that "depending on the facts and circumstances of each case, the NCLT has the powers to dispense with the meetings of shareholders and others by using judicial discretion".

21. Accordingly, the directions of this Bench in the present case are as under:-

I. In relation to Applicant Company No.1/Amalgamated Company:

a. The meetings of the Equity Shareholders is dispensed with keeping in view the shareholding and ownership pattern of the company and the fact that the consent by way of affidavits has been received;

b. The meetings of the Secured Creditors will be convened as prayed for on 16.04.2022 at 10:00 AM through Video Conferencing with facility of remote e-voting, subject to notice of meeting being issued. The quorum of the meeting of the unsecured creditors shall be 2 in number or 40% in value of the unsecured creditors;

c. The meetings of the Unsecured Creditors to whom more than or equal to Rs. 1,00,000/- is payable, to be convened as prayed for on 16.04.2022 at 12:00 PM through Video Conferencing with facility of remote e-voting, subject to notice of meeting being issued. The quorum of the meeting of the unsecured creditors shall be 730 in number or 40% in value of the unsecured creditors;

II. In relation to Applicant Company No.2/Amalgamating Company

- a. The meetings of the Equity Shareholders is dispensed with keeping in view the shareholding and ownership pattern of the company and the fact that the consent by way of affidavits has been received;
- b. The meetings of the Preference Shareholder is dispensed as the Applicant Company No. 2 has 1 (one) Preference Shareholder and the consent by way of affidavit of the same has been received;
- c. Since, there are no Secured Creditors in the Applicant Company No. 2. Therefore, there is no scope for any meeting;
- d. The meeting of the Unsecured Creditors is to be convened as prayed for on 16.04.2022 at 4:00 PM through Video Conferencing with facility of remote e-voting, subject to notice of meeting being issued. The quorum of the meeting of the unsecured creditors shall be 8 in number or 40% in value of the unsecured creditors;

III. In case the required quorum as noted above for the meetings is not present at the commencement of the meeting, the meeting shall be adjourned by 30 minutes and thereafter the persons present and voting shall be deemed to constitute the quorum.

IV. Mr. Akshay Bhan, Senior Advocate, address: #302, Sector 10-B, Chandigarh-160011, Mobile No. 9501059250, email id: akshaybhan302@gmail.com, is appointed as the Chairperson for the meeting to be called under this order. An amount of ₹ 2,00,000/- (Rupees Two Lakhs Only) be paid for his services as the Chairperson.

V. Mr. Sham Sunder, Address: Flat No. 5154, Category-I, MHC, Manimajra, Sector 13, Chandigarh, Mobile No. 9930773154, e-mail id: ssgarg59@gmail.com is appointed as the Alternate Chairperson for the meeting to be called under this order. An amount of ₹ 1,50,000/- (Rupees One Lakh Fifty Thousand Only) be paid for his services as the Alternate Chairperson.

VI. Ms. Niharika Sohal, address: #3158, Ground Floor, Sector 23-D, Chandigarh-160023, Mobile No. 9888023441, email id: niharikasohal@gmail.com, is appointed as the Scrutinizer for the above meeting to be called under this order. An amount of ₹ 1,00,000/- (Rupees One Lakh Only) be paid for her services as the Scrutinizer.

VII. The fee of the Chairperson, Alternate Chairperson and Scrutinizer and other out of pocket expenses for them shall be borne jointly by the Applicant Company No.1/Amalgamated Company and Applicant Company No.2/Amalgamating Company.

VIII. It is further directed that individual notices of the said meetings shall be sent by Applicant Company No.1/Amalgamated Company to all the Secured Creditors; and to Unsecured Creditors to whom an amount of Rs. 2,00,000 or

more is payable as on 28.02.2021 and Applicant Company No.2/Amalgamating Company to all the unsecured creditors; through registered post or speed post or through courier or e-mail, 30 days in advance before the schedule date of meeting, indicating the day, date, the place and time as aforesaid, together with a copy of the Scheme, copy of explanatory statement as discussed in para 6 of this order required to be sent under the Companies Act, 2013 and the applicable Rules and any other documents as may be prescribed under the Act shall also be duly sent with the notice.

IX. It is further directed that along with the notices, Applicant Company No.1/Amalgamated Company and Applicant Company No.2/Amalgamating Company shall also send, statements explaining the effect of the scheme on the creditors, key managerial personnel, promoters and non-promoter members etc. along with effect of the arrangement on any material interests of the Directors of the Company or the debenture trustees, if any, as provided under sub-section (3) of Section 230 of the Act.

X. It is also directed that the provisional accounting statement of Applicant Company No.1/Amalgamated Company and Applicant Company No.2/Amalgamating Company as on 31.12.2021 or as on a subsequent date be also circulated for the aforesaid meeting in terms of Section 232 (2) (e) of the Act.

XI. That the Applicant Company No.1/Amalgamated Company and Applicant Company No.2/Amalgamating Company shall publish advertisement in "Financial Express" (English, Delhi NCR Edition) and "Jansatta" (Hindi, Delhi NCR Edition) with a gap of at least 30 clear days before the aforesaid meeting, indicating the day, date and place and the time of meeting as aforesaid. It be stated in the advertisement that the copies of "Scheme", the Explanatory Statement required to be published pursuant to Section 230 to 232 of the Act. The Applicant Company No.1/Amalgamated Company and Applicant Company No.2/Amalgamating Company shall also publish the notice on its website, if any.

XII. It shall be the responsibility of the Applicant Company No.1/Amalgamated Company and Applicant Company No.2/Amalgamating Company to ensure that the notices are sent under the signature and supervision of the authorized representative of the company on the basis of Board resolutions and that they shall file their affidavits in the Tribunal at least ten days before the date fixed for the meeting.

XIII. Voting shall be allowed on the "Scheme" through electronic means which will remain open for a period as mandated under Clause 8.3 of Secretarial Standards on General Meetings to the Applicant Company No.1/Amalgamated Company and Applicant Company No.2/Amalgamating Company under the Act and the Rules framed thereunder.

XIV. The Scrutinizer's report will contain her findings on the compliance to the directions given in Para VII to XIII above.

XV. The Chairperson shall be responsible to report the result of the meeting to the Tribunal in Form No. CAA-4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 7 (seven) days of the conclusion of the meeting. He would be fully assisted by the authorized representative/Company Secretary of the Applicant Company No.1/Amalgamated Company and Applicant Company No.2/Amalgamating Company, and the Scrutinizer, who will assist the Hon'ble Chairperson and Alternate Chairperson in preparing and finalizing the report.

XVI. The Applicant Company No.1/Amalgamated Company and Applicant Company No.2/Amalgamating Company shall individually and in compliance of sub-section (5) of Section 230 of the Act and Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA-3 along with copy of the Scheme, Explanatory Statement and the disclosures mentioned in Rule 6 of the "Rules" to (i) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi (ii) Registrar of Companies, Punjab and Chandigarh (In case of Applicant Company No.1); Registrar of Companies, NCT (iii) Official Liquidator; (iv) Income Tax Department through the Nodal Officer – Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh by mentioning the PAN number of the Applicant Companies; and such other Sectoral Regulator(s) governing the business of the Amalgamating Company, if any, stating that representation, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representation shall be simultaneously sent to the concerned companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

XVII. The Applicant Company No.1/Amalgamated Company and Applicant Company No.2/Amalgamating Company shall furnish a copy of the Scheme free of charge within one day of any requisition for the Scheme made by any creditor or member/shareholder entitled to attend the meeting as aforesaid.

XVIII. The authorized representative of the Applicant Company No.1/Amalgamated Company and Applicant Company No.2/Amalgamating Company shall furnish an affidavit of service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meeting.

XIX. All the aforesaid directions are to be complied with strictly in accordance with the applicable laws including forms and formats contained in the Rules as well as the provisions of the Companies Act, 2013 by the Applicant Company No.1/Amalgamated Company and Applicant Company No.2/Amalgamating Company.

22. With the aforesaid directions, this First Motion Application stands disposed of. A copy of this order be supplied to the learned counsel for the Applicant Companies who in turn shall supply a copy of the same to the Chairperson,

Alternate Chairperson and the Scrutinizer immediately.