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T.A.No. 11 of 2017
Connected with C.A.No. 896 of 2016
Jupiter Wagons Ltd.

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CORAM

Shri Vijay Pratap Singh
Hon'ble Member (J)

Ms. Manorama Kumari
Hon'ble Member (J)

Shri S. Vijayaraghavan
Hon'ble Member (T)

T.A.No.11/2017 connected with C.A. No.896/2016

In the matter of :

The Companies Act, 1956;

And

In the matter of :

Sections 391 to 394 of the Companies Act, 1956;

And

In the matter of:

An Application under section 391(1) of the Companies Act, 1956;

And

In the matter of:

Jupiter Alloys & Steel (India) Limited, a Company incorporated under the provisions of the Companies Act, 1956 and a Company within the

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meaning of the Companies Act, 1956, having its registered office at 11, Satyen Dutta Road, Kolkata – 700 029;

... Applicant/ Amalgamating Company
And

In the matter of:

Jupiter Wagons Limited, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 4/2, Middleton Street, 1st floor, Kolkata – 700 071;

... Applicant/ Amalgamated Company

Counsels on Record:

1. Mr. Deepak Kumar Khaitan, F.C.S.] For both the Applicant
Practising Company Secretary] Companies

Date of Pronouncing the order :

ORDER

Per Shri Vijai Pratap Singh, Member(J)

In this case earlier the matter was heard before the Bench comprising of myself and Mr. S. Vijayaraghavan, Member (Technical). But both the member differ on certain points and gave separate judgements and on that basis the matter was referred to the Hon'ble President under the provisions of Section 419(5) of the Companies Act, 2013 for constituting larger Bench for decisions on the following points on issue.

"Whether the Tribunal has power to grant dispensation of the shareholders' meeting regarding the proposed scheme of amalgamation where all the shareholders have given consent, whereas the Companies Act, 2013 has authorized only for the dispensation of the meeting of creditors where

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creditors having at least 90% value agreed and confirmed by way of an affidavit scheme of compromise or arrangement?"

Hon'ble President, NCLT referred the matter to the matter to the 3rd Member, Ms. Manorama Kumari, Member (Judicial) who has given a separate judgement and has passed order, which is annexed herewith as **Annexure C.**

It appears that Member (Judicial), Ms. Manorama Kumari has taken a view which is in consonance with the view of the Member (Technical) Mr. S. Vijayaraghavan and decided the matter and passed the following order along with the main judgement.

"Regard being had to the precedents set forth by the Hon'ble High Courts, I am of the view that I have no reason to depart from the precedents created by the Hon'ble High Courts to dispense with the requirements of convening the meetings of the shareholders and creditors of the Company, if Bench is satisfied in all respects. In the instant case both the applicant companies have few shareholders and all of them have given their written consents/affidavits and post merger there shall be positive net worth and the creditors are not compromised."

Judgement passed by the majority will prevail. Hence meeting of shareholders is dispensed with on account of consent of all the shareholders.


We have perused the documents annexed to the application and pass the following orders:


In view of the order dated 26/04/2017 passed by Ms. Manorama Kumari, Member (Judicial) both the applicants have submitted a list of Secured and Unsecured Creditors vide their letter dated 09/05/2017. In case they seek dispensation they may do so after obtaining the consent of all the creditors – Secured and Unsecured, and submit affidavit annexing those consent letter to this Tribunal. In case they do not submit any affidavit regarding this, necessary order for convening creditors' meeting will be issued by this Tribunal.

Copy of the both the judgements dated 14/03/2017 passed by ourselves are annexed herewith as **Annexure A** and **Annexure B** respectively and the judgement dated 26/04/2017 passed by Ms. Manorama Kumari, Member (Judicial) being **Annexure C** shall form part of this order.

The petition is fixed for hearing on 17/07/2017.

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


(S. Vijayaraghavan)
Member (Technical)


(Vijai Pratap Singh)
Member (Judicial)

Signed on this, the 17th day of May, 2017.

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KOLKATA BENCH
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CORAM

**Shri Vijay Pratap Singh
Hon'ble Member (J)**

**Shri S. Vijayaraghavan
Hon'ble Member (T)**

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... **Applicant/ Amalgamated Company**

Counsels on Record:

1. Mr. Deepak Kumar Khaitan, F.C.S.] For both the Applicant
Practising Company Secretary] Companies

Date of Pronouncing the order : 14 - 3 - 2017

ORDER

Per Shri Vijai Pratap Singh, Member(J)

This is an application filed by the Applicant Companies namely, Jupiter Alloys & Steel (India) Limited (Amalgamating Company) and Jupiter Wagons Limited (Amalgamated Company) under Sections 391 to 394 of the Companies Act, 1956. The corresponding new provisions are contained in Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation proposed between Jupiter Alloys & Steel (India) Limited (Amalgamating Company) and Jupiter Wagons Limited (Amalgamated Company). The aforesaid Scheme has been also annexed with the application.

The applicants submitted that this instant application was earlier filed with Hon'ble High Court at Calcutta being C.A. no.896 of 2016 earlier for sanction of a Scheme of Amalgamation before the Hon'ble High Court at Calcutta on 14.12.2016, which has now come for consideration before this Tribunal by virtue of notification no.S.O.3677(E) dated 7th December, 2016 in which relevant sections came into force with effect from 15th December, 2016 and by the Companies (Transfer of Pending Proceedings) Rules, 2016, which became effective on 15.12.2016.

The objects of this application is to ultimately seek and obtain the sanction of this Tribunal to a Scheme of Amalgamation proposed to be

made between the Jupiter Alloys & Steel (India) Ltd. and Jupiter Wagons Limited and their respective shareholders (hereinafter referred to as the Scheme) under the Scheme of Amalgamation.

Heard the Ld. Pr.C.S representing both the Applicant Companies for dispensation of their respective members' meeting. In relation to the above, it is necessary to go into the provisions of Companies Act, 2013 and the rules framed thereunder.

For ready reference Section 230 and 232 of the Companies Act, 2013 and relevant part of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 are given below.

Sec 230 Companies Act 2013

[(1) Where a compromise or arrangement is proposed--

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them, the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator ²[appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be,] order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Explanation.--For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

(2) The company or any other person, by whom an application is made under subsection (1), shall disclose to the Tribunal by affidavit--

