

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

C.P.(CAA) No.43/KB/2021
Connected With
C.A.(CAA) No.1482/KB/2020
And
Company Application No.6/KB/2021

In the Matter of

The Companies Act, 2013 - Section 230(6) (read with Section 232(3))

And

In the Matter of:

Hipoline Commerce Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and an existing Company within the meaning of the Companies Act, 2013 (CIN:U51909WB1995PTC076045) and having its Registered Office at 1, Crooked Lane, Second Floor, Room Nos. 222 & 223, Kolkata-700 069, in the State of West Bengal;

And

In the Matter of:

Lexi Exports Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and an existing Company within the meaning of the Companies Act, 2013 (CIN:U51909WB1993PTC058926) and having its Registered Office at 207, Maharshi Devendra Road, 1st Floor, Room No. 27, Kolkata-700 007 in the State of West Bengal;

And

In the Matter of:

Richie Credit & Finance Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and an existing Company within the meaning of the Companies Act, 2013 (CIN: U65921WB1985PTC117558) and having its Registered Office at 207, Maharshi Devendra Road, 1st Floor, Room No. 27, Kolkata-700 007 in the State of West Bengal;

And

In the matter of:

1. Hipoline Commerce Private Limited
2. Lexi Exports Private Limited
3. Richie Credit & Finance Private Limited

..... Petitioner(s)

Date of Hearing: 02/09/2021

Date of pronouncing the order: 22/09/2021

Coram:

Shri Rajasekhar V.K : **Member (Judicial)**
Harish Chander Suri : **Member (Technical)**

Counsel on Record for the Petitioner(s):

1. Mr. Nirmalya Dasgupta, Advocate
2. Mrs. Debjani Chatterjee, Advocate
3. Mr. Akash Agarwal, Advocate

ORDER

Per Rajasekhar V.K., Member (Judicial)

1. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 for sanction of the Scheme of Amalgamation and Slump Sale which provides for the Slump Sale of Power Plant Undertaking of Gallantt Ispat Limited (**Transferor Company No.1**) to Gallantt Metal Limited (**Transferee Company**) and amalgamation of Gallantt Ispat Limited (after the transfer of the Power Plant Undertaking), AAR Commercial Company Limited (**Transferor Company No.2**), Hipoline Commerce Private Limited (**Transferor Company No.3/Petitioner Company No.1**), Lexi Exports Private Limited (**Transferor Company No.4/Petitioner Company No.2**) and Richie Credit & Finance Private Limited (**Transferor Company No.5/Petitioner Company No.2**) with Gallantt Metal Limited (**Transferee Company**) from the Appointed Date, i.e., April 1, 2019 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation and Slump Sale (“**Scheme**”).
2. The Petition has now come up for final hearing. Ld Counsel for the Petitioners submits as follows:-
 - (a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Nos.1, 2 and 3 at their meetings held on January 18, 2020 and subsequently on May 25, 2020.

- (b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-

“a) The Transferee Company is a pioneer in the Steel and Power sector and is able to attract the best talents available in the industry. The Transferee Company is having its footprints spanning across Gujarat, Maharashtra and Rajasthan. In the same way, The Transferor Company No. 1 is a pioneer in the Steel, Power and Agro sector and has its presence in and is having its footprints spanning across Uttar Pradesh, Bihar, Jharkhand and Delhi NCR.

b) The Transferor Company No. 1 and Transferee Company are under same Promoter Group. Thus, the amalgamation of the two companies operating in similar sectors with strengths in different geographies will ensure focused management in a single combined entity thereby resulting in efficiency of management and maximising overall shareholder value.

c) The Transferor Company No. 2 has plan to enter new business and to develop and complete real estate project. It is exploring further opportunities in the real estate sector and has in the meantime deployed its funds in investment in securities of the Transferor Company No. 1. The Transferor Company No. 1 is also inter alia engaged in the business of real estate. The Transferor Company No. 2 holds significant portion (17.62%) of the equity share capital of the Transferor Company No. 1. The amalgamation into the Transferee Company of the Transferor Company No. 1 and the Transferor Company No. 2 will lead to consolidation of the real estate business.

d) The Petitioner Company No. 1 is forming part of the Promoter and Promoter Group of Transferee Company. Amalgamation of the Petitioner Company No. 1 with the Transferee Company would result in clarifying and making transparent the shareholding of the Transferee Company. The Petitioner Company Nos. 2 and 3 are also holding shareholding of Transferee Company. The proposed amalgamation of Petitioner Company Nos. 2 and 3 will also bring in advantages of clarifying and making transparent shareholding of the Transferee Company.

e) The amalgamation will bring in advantages of synergy in operations and economies of scale. The pooling of resources of companies will create strong

financial structure and facilitate resource mobilisation and achieve better cash flows. The combined net worth in a single entity shall facilitate in attracting funds from strategic investors and/or financial institutions at competitive rates. Thus, the synergies created by the merger will increase the operational efficiency and integrate business functions of the amalgamated entity and help to pursue inorganic and organic growth opportunities of such business. It will also lead to more efficient utilisation of capital and create a consolidated base for future growth of the amalgamated entity.

f) The amalgamation particularly of the Transferor Company No. 1 and the Transferee Company will also result in administrative and operational rationalisation, organisational efficiencies, reduction in overheads and other expenses and optimal utilisation of various resources. It will prevent cost duplication, overlapping of administrative responsibilities and multiplicity of records, legal and regulatory compliances generally involved with running two separate entities and more particularly due to the listed status of both the companies involved. It will enable a dedicated management to focus and accelerate growth of the amalgamated entity.

g) The amalgamation will result in not only, pooling of efficient human resources and putting them to optimum utilisation for the growth of the merged entity but also attracting efficient manpower by the merged entity.

h) The amalgamation will enable greater realization of the potential of the businesses of the Transferor and Transferee Companies in the amalgamated entity and have beneficial results for all concerned.

i) The assets of the amalgamated entity will far exceed its liabilities and rights of the creditors of the Transferor Companies and the Transferee Company shall not in any way be prejudiced.

j) The Scheme shall also be in the larger interest of the public shareholders of the Transferor Companies No. 1 and 2 and Transferee Company as amalgamation of the three companies and other companies forming part of this Scheme will lead to cancellation of inter-corporate cross shareholdings of the Transferee Company and

Transferor Companies as well. This will result in reduced combined paid-up capital leading to higher earnings per share.

k) The Scheme also envisages Slump Sale of entire Power Plant Undertaking of the Transferor Company No. 1 as a going concern to the Transferee Company and will thereby preserve the entitlement of the said Power Plant Undertaking to the tax holiday available to the said Undertaking for being engaged in an identified priority area.

l) In view of the aforesaid, the Board of Directors of the Transferor Companies and the Transferee Company have considered and proposed the Slump Sale of the Power Plant Undertaking of Transferor Company No. 1 to the Transferee Company and amalgamation of the entire undertaking and business of the Transferor Companies with the Transferee Company in order to benefit the stakeholders of all the companies. Accordingly, the Board of Directors of the Transferor Companies and the Transferee Company have formulated this Scheme of Slump Sale and Amalgamation for the transfer and vesting of the Power Plant Undertaking of Transferor Company No. 1 and the entire undertaking and business of the Transferor Companies with and into the Transferee Company pursuant to the provisions of Sections 230 to 232 and other relevant provisions of the Companies Act, 2013.”

3. The Statutory Auditors of the Petitioner Nos.1, 2 and 3 have by their certificates dated November 20, 2020 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.
4. No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioners.
5. The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Mr. Vikash Goel, Registered Valuer dated January 17, 2020.
6. The shares of the Petitioners are not listed with any Stock Exchange. However, the shares of the Transferee Company and the Transferor Company No. 1 are listed with the National Stock Exchange and Bombay Stock Exchange whereas the shares of the

Transferor Company No.2 is listed with the Bombay Stock Exchange and Calcutta Stock Exchange.

7. In compliance with Securities and Exchange Board of India (“SEBI”) Circular dated 10th March, 2017 on Schemes of Arrangement, as amended from time to time (“SEBI Circular”), the said Transferor Company Nos. 1 and 2 and the Transferee Company duly filed the Scheme with the said Stock Exchanges for their approval to the same. The said National Stock Exchange and the Bombay Stock Exchange by their respective letters dated November 23, 2020 and November 12, 2020 after receiving comments from SEBI, have confirmed they have ‘no adverse observation’ on the Scheme.
8. By an order dated January 19, 2021 in Company Application (CAA) No.1482/KB/2021 and Company Application No. 6/KB/2021, this Tribunal dispensed the meeting(s) of shareholders of the Petitioners and unsecured creditors of Petitioner No.1 under Section 230(1) [read with Section 232(1) of the Act]. This Tribunal also recorded that there are no unsecured creditors in the Petitioner Nos. 2 and 3 and no secured creditors in any of the Petitioners.
9. Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated April 9, 2021, the instant petition was admitted by this Tribunal and fixed for hearing on June 7, 2021 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated April 9, 2021, the Petitioners have duly served such notices on the Central Government through the Regional Director; Registrar of Companies, West Bengal; the Reserve Bank of India; the Official Liquidator, High Court, Calcutta and the Income Tax Authorities having jurisdiction over the Petitioners on April 23, 2021. The Petitioners have also published advertisements once each in the "Business Standard" and "Dainik Statesmen" in their respective issues both dated May 4, 2021. An affidavit of compliance in this regard has also been filed by them on August 5, 2021.
10. Due to the State wide lockdown imposed by the Government of West Bengal, hearing of the petition was rescheduled to August 9, 2021. Thereafter, at the time of hearing held on August 9, 2021, the Petitioners were directed to file their Rejoinder in response to the Affidavit filed by the Regional Director on August 9, 2021. Pursuant

to such direction, the Petitioners have filed their Rejoinder affidavit dated August 9, 2021.

11. The Registered Office address of the Transferor Company Nos. 1 and 2 and the Transferee Company are situated at New Delhi who have filed appropriate petition before the New Delhi Bench of this Tribunal being C.P. (CAA) No. 69/PB/2021 seeking sanction of the Scheme. Such petition has been admitted by the New Delhi Bench of the Tribunal and is now fixed for final hearing on September 23, 2021.
12. All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bonafide and is in the interest of all concerned.
13. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata, the Official Liquidator, High Court, Calcutta, the Reserve Bank of India and the Income Tax Authorities having jurisdiction over the Petitioners have filed their representations before this Tribunal.
14. The Official Liquidator has filed his report dated July 22, 2021 and concluded as under:-

“9. That the Official Liquidator has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner till the date of filing of this Report.

10. That the Official Liquidator on the basis of Information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner prejudicial to the Interest of its members or to public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable.

11. That in View of the submission made above the Hon'ble National Company Law Tribunal may like to pass such order/orders as deemed fit and proper in the facts and circumstance of the case.”

5. The Regional Director has filed his reply affidavit dated August 9, 2021 which has been dealt with by the Petitioners by their Rejoinder affidavit dated August 9, 2021. The observations of the Regional Director and responses of the Petitioners are summarized as under:-

(a) Observation of the Regional Director contained in Paragraph No. 2(c) of RD Affidavit:

“Appointed Date is 1st April 2019. In terms of the Circular no.09/2019 dated 21.08.2019 of the Ministry of Corporate Affairs, *“where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest”*. It is not ascertainable from the documents provided by the Applicant whether the application for the scheme was filed before Tribunal within a year from 1st April 2019. If the application for the scheme was filed with Tribunal after more than one year from the appointed date, Tribunal may kindly direct the Applicant to bring out the justification for the appointed date being more than one year before date of filing of the application for the scheme, in the scheme according to the Circular. ”

Response of the Petitioners contained in Paragraph No. 2(c) of Rejoinder:

“The draft Scheme was approved by the Board of Directors of the Applicant Companies at their meeting held on 18/01/2019 with the Appointed Date 01/04/2019.

The Transferee Company- GALLANTT METAL LIMITED being a listed Company, the Bombay Stock Exchange accorded their approval to the proposed Scheme vide their letter No DCS/AMAL/JR/R37/1838/2020-21 dated 12/11/2020 with Appointed Date 01st April, 2019.

The Transferee Company- GALLANTT METAL LIMITED being a listed Company, the National Stock Exchange accorded their approval to the proposed Scheme vide their letter No NSE/LIST/23240_II dated 23/11/2020 with Appointed Date 01st April, 2019.

The Transferor Company No.1- GALLANTT ISPAT LIMITED being a listed Company, the Bombay Stock Exchange accorded their approval to the proposed Scheme vide their

letter No DCS/AMAL/JR/R37/1837/2020-21 dated 12/11/2020 with Appointed Date 01st April, 2019.

The Transferor Company No.2- AAR COMMERCIAL COMPANY LIMITED being a listed Company, the Bombay Stock Exchange accorded their approval to the proposed Scheme vide their letter No DCS/AMAL/JR/R37/1839/2020-21 dated 12/11/2020 with Appointed Date 01st April, 2019.

Accordingly the Appointed date cannot be changed or shifted without the prior approval of the exchange.”

Furthermore, the Petitioners have also clarified the reasons for filing the application before this Tribunal after more than one year from the date of the appointed date as contained in paragraph 4.8 of the application being C.A. (CAA) No. 1483/KB/2020 and paragraph 18 of the instant petition.

- b) Observation of the Regional Director contained in Paragraph No. 2(d) of RD Affidavit:
“Petitioner Company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.”

Response of the Petitioners contained in Paragraph No.2(d) of Rejoinder:

“ The Deponents duly authorised hereby undertakes that the Transferee Company shall comply with the provisions of Sec 232(3)(i) of the Companies Act, 2013 in regard to adjustment of fees upon clubbing the Authorised Share Capital of the Transferee Company in post-amalgamation and shall file a detailed statement thereof with the Registrar of Companies at the time of filing of INC-28”

- (c) Observation of the Regional Director contained in Paragraph No.2(e) of RD Affidavit:
“That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Company to it.”

Response of the Petitioners contained in Paragraph No.2(e) of Rejoinder:

“The Deponents duly authroised hereby undertakes that the Transferee Company shall pay applicable stamp duty at each stage on the transfer of the immovable properties from the Transferor Company to it.”

- (d) Observation of the Regional Director contained in Paragraph No.2(f) of RD Affidavit:

“In compliance of the Accounting Standard-14 or IND-AS 103, as may be applicable, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme with other applicable Accounting Standards such as AS-5 or INDAS-8 etc”

Response of the Petitioners contained in Paragraph No.2(f) of Rejoinder:

“The Deponents hereby undertake that in compliance of the Accounting Standard-14 or IND-AS 103, as may be applicable to it and shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 or INDAS-8 etc.”

- (e) Observation of the Regional Director contained in Paragraph No.2(g) of RD Affidavit:

“The Tribunal may kindly seek the undertaking that this scheme is approved by the requisite majority of members and creditors as per section 230(6) of the Companies Act 2013 in meeting duly held in terms of section 230(1) read with sub-sections (3) to (5) of section 230 of the said Act and the Minutes thereof are duly placed on record.”

Response of the Petitioners contained in Paragraph No.2(g) of Rejoinder:

“The Tribunal vide its order dated 19-01-2021 passed in Company Application C.A.(CAA) NO 1482/KB/2020 has recorded that:

a) That the separate affidavits giving no-objection and consent relating to dispensation of meetings of the shareholders provided by each of the shareholders of all the Applicant Companies annexed with Company Application No.6/KB/2021 are accepted. In view of the aforesaid facts and circumstances, the meetings of equity shareholders of the Applicant Companies for approving the proposed Scheme of Amalgamation and Slump Sale is not necessary and the same be treated as dispensed with.

b) *That the affidavit giving no-objection and consent relating to dispensation of meeting of the Unsecured Creditor provided by the Unsecured Creditor of Applicant Company No. 1 annexed with Company Application No.6/KB/2021 is accepted. In view of the aforesaid facts and circumstances, the meetings of Unsecured Creditor of the Applicant approving the proposed Scheme of Amalgamation and Slump Sale, is not necessary/required and the same be treated as dispensed with.*

c) *It is recorded that there are no Unsecured Creditors in the Applicant Company Nos. 2 and 3. In this regard, certificates confirming the same provided by the Statutory Auditors of such Applicant Companies annexed with C.A.(CAA) No. 1482/KB/2020 and Company Application No.6/KB/2021 are accepted.*

d) *It is recorded that there are no Secured Creditors in any of the Applicant Companies. In this regard, certificates confirming the same provided by the Statutory Auditors of such Applicant Companies annexed with C.A.(CAA) No. 1482/KB/2020 and Company Application No.6/KB/2021 are accepted.*

Hence the Scheme has the requisite approval of the members and creditors of the Petitioner Companies.”

(f) Observation of the Regional Director contained in Paragraph No.2(h) of RD Affidavit:

“The Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and the same and there is no discrepancy or no change is made.”

Response of the Petitioners contained in Paragraph No.2(h) of Rejoinder:

“The Deponents duly authroised hereby affirms that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.”

6. The Reserve Bank of India has provided their No Objection to the Scheme vide their letters dated July 27, 2021 issued on all the Petitioners. Such letters are annexed to the Rejoinder as Annexure- C.

7. The Income Tax Authorities having jurisdiction over the Petitioners have also provided their no objection to the Scheme through their letters dated 23/03/2021 issued on each of the Petitioners and such letters have been annexed to the Rejoinder as Annexure- D.

8. Heard submissions made by the Ld. Counsel appearing for the Petitioners and Regional Director. Upon perusing the records and documents in the instant proceedings and considering the submissions and on being satisfied with the clarifications provided by the Petitioners, we allow the petition and make the following orders:-

- (a) The Scheme of Amalgamation and Slump Sale mentioned in paragraph 1 of the petition, being Annexure "A" hereto, be and is hereby sanctioned by this Tribunal to be binding with effect from April 1, 2019 on Hipoline Commerce Private Limited, Lexi Exports Private Limited and Richie Credit & Finance Private Limited, their respective shareholders and creditors and all concerned;
- (b) All the property, rights and powers of the Hipoline Commerce Private Limited, Lexi Exports Private Limited and Richie Credit & Finance Private Limited, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to Gallantt Metal Limited and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vest in Gallantt Metal Limited for all the estate and interest of Hipoline Commerce Private Limited, Lexi Exports Private Limited and Richie Credit & Finance Private Limited but subject nevertheless to all charges now affecting the same, as provided in the Scheme;
- (c) All the debts, liabilities, duties and obligations of Hipoline Commerce Private Limited, Lexi Exports Private Limited and Richie Credit & Finance Private Limited be transferred from the said Appointed Date, without further act or deed to Gallantt Metal Limited and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of Gallantt Metal Limited;
- (d) The employees of Hipoline Commerce Private Limited, Lexi Exports Private Limited and Richie Credit & Finance Private Limited shall be engaged by Gallantt Metal Limited, as provided in the Scheme;

- (e) Tll proceedings and/or suits and/or appeals now pending by or against Hipoline Commerce Private Limited, Lexi Exports Private Limited and Richie Credit & Finance Private Limited be continued by or against the Transferee Company, as provided in the Scheme;
- (f) Gallantt Metal Limited do without further application issue and allot to the shareholders of Hipoline Commerce Private Limited, Lexi Exports Private Limited and Richie Credit & Finance Private Limited, the shares in Gallantt Metal Limited to which they are entitled in terms of the Scheme;
- (g) Each of the Transferor Companies shall stand dissolved without winding up.
- (h) The undertakings given by the petitioner companies by way of their rejoinder affidavits are accepted by this Tribunal, and this Tribunal orders that the petitioner Companies shall be bound by them.
- (i) Leave is granted to the Petitioners to file the Schedule of Assets of Hipoline Commerce Private Limited, Lexi Exports Private Limited and Richie Credit & Finance Private Limited in the form as prescribed in the Schedule to Form No.CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;
- (j) Hipoline Commerce Private Limited, Lexi Exports Private Limited, Richie Credit & Finance Private Limited and Gallantt Metal Limited shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies, West Bengal for registration and on such certified copies being so delivered, Hipoline Commerce Private Limited, Lexi Exports Private Limited and Richie Credit & Finance Private Limited shall be dissolved with effect from the date or last of the dates of filing of the certified copies of the order, as aforesaid (Effective Date) and the Registrar of Companies, West Bengal shall transmit all documents relating to Hipoline Commerce Private Limited, Lexi Exports Private Limited and Richie Credit & Finance Private Limited and registered with him to the Registrar of Companies, Delhi and Haryana, who on receipt of all such documents shall place all such documents on the file kept by him in relation to Gallantt Metal Limited and the files relating to the said companies shall be consolidated accordingly.

9. The Petitioners shall supply legible print out of the scheme and schedule of assets in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.
10. Company Petition (CAA) No.43/KB/2021 is disposed of accordingly.
11. Urgent certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V K
Member (Judicial)

Signed on 22nd September, 2021

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