



NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

19. C.P.(CAA)/71/MB/2023
IN
C.A.(CAA)/229/MB/2022
CORAM: SHRI. H.V. SUBBA RAO, MEMBER (J)
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **18.05.2023**

NAME OF THE PARTIES: JSW Ispat Special Products Limited

SECTION 230(I) OF COMPANIES ACT, 2013

ORDER

Mr. Hemant Sethi a/w Ms. Tanaya Sethi, counsel for the Applicant are present through physical hearing and Ms. Rupa Sutar, representative of Regional Director is present through virtual hearing.

C.P.(CAA)/71/MB/2023


Heard the counsel appearing for the Applicant and Ms. Rupa Sutar, representative of Regional Director reported no objection.

Accordingly, the above petition is **allowed**. **Detail order would follow:**

Sd/-
MADHU SINHA
Member (Technical)
Shubham

Sd/-
H.V. SUBBA RAO
Member (Judicial)

Certified True Copy _____
Date of Application 19/5/2023
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Deputy Registrar 09/06/2023
National Company Law Tribunal, Mumbai Bench





IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT III

CP(CAA)/ 71/MB/ 2023

CONNECTED WITH

CA (CAA)/ 229/ MB/ 2022

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013

And

In the matter of Scheme of Arrangement of JSW Ispat Special Products Limited ('JISPL' or 'the Transferor Company') and Mivaan Steels Limited ('MSL' or 'the Transferee Company') and their respective Shareholders and Creditors ('the Scheme' or 'this Scheme')

JSW Ispat Special Products Limited

CIN : L02710MH1990PLC363582

...First Petitioner Company/ Transferor Company

Mivaan Steels Limited

CIN : U27100MH2021PLC371388

...Second Petitioner Company/ Transferee Company

(Collectively referred to as the 'Petitioner Companies')

Order delivered on: 18.05.2023

Coram:

Hon'ble Shri H.V. Subba Rao : **Member (Judicial)**

Hon'ble Smt. Madhu Sinha : **Member (Technical)**





Appearances (via videoconferencing):

For the Petitioners : Mr. Hemant Sethi, i/b. Hemant Sethi &
Co.

For the Regional Director (WR) : Ms. Rupa Sutar, Deputy Director

ORDER

1. The Court is convened by videoconference today.
2. Heard Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
3. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to the said Scheme of Arrangement of JSW Ispat Special Products Limited ('JISPL' or 'the Transferor Company') and Mivaan Steels Limited ('MSL' or 'the Transferee Company') and their respective Shareholders and Creditors.
4. Learned Counsel for the Petitioner Companies state that the Board of Directors of the First Petitioner/Transferor Company has approved the proposed Scheme in its meeting held on February 16, 2022 and the Board of Directors of the Second Petitioner/Transferee Company has approved the Scheme on February 25, 2022. The Appointed Date of the Scheme means the close of business hours on March 31, 2022.
5. The Learned Counsel for the Petitioner Companies states that the rationale for the Scheme is as follows:
The Scheme shall be implemented by the Transferor Company along with the Transferee Company (in its capacity as a wholly owned subsidiary of the Transferor Company) on a slump sale basis.
a) *The management of the Transferor Company believes that the Specified Undertaking forms part of the business of the Transferor Company, and*





that the Specified Undertaking and the Remaining Undertaking, each require dedicated management focus and business strategies to ensure that the respective businesses are given the right impetus for growth and to maximize value for all stakeholders

- b) *The Specified Undertaking comprises of certain manufacturing, mining and other facilities that includes a sponge iron manufacturing plant with a capacity of 0.3 MTPA, ferro alloy plant and steel manufacturing plant with a capacity of 0.25 MTPA, which caters to the commodity grade market*
- c) *The strategic focus of the Specified Undertaking (which is to be transferred to the Transferee Company pursuant to the Scheme) is on commodity steel products that caters to the structural and construction sectors with comparatively lower volume of production and serving customers predominantly around its operating area; whereas, the Transferor Company's strategic focus for its Remaining Undertaking is on special steel products catering to HT grades, IBR grades, RDSO grades, automotive, high manganese grades, cold rolling grades and API grades with comparatively higher volume of production serving customers in the exports and domestic markets covering Northern, Eastern and parts of Western region of India.*
- d) *The transfer of the Specified Undertaking to the Transferee Company will enhance the ability of the Transferor Company and Transferee Company to explore and leverage strategic opportunities for their respective business/ undertakings, including fund raising prospects, with the aim of maximizing value.*
- e) *With a view to achieve dedicated management focus on the respective grades of products and customer segments, facilitate strategic opportunities and to maximize the value of each of the Remaining Undertaking*





and the Specified Undertaking, the management of the Transferor Company proposes to transfer the Specified Undertaking, and vest such Specified Undertaking into the Transferee Company (in its capacity as a wholly owned subsidiary of Transferor Company).

- f) *The management of the Transferor Company and the Transferee Company believe that the transfer of the Specified Undertaking from the Transferor Company and vesting of such Specified Undertaking into the Transferee Company is in the larger interest of the shareholders, creditors and employees of the Transferor Company and the Transferee Company and will enhance the prospects of the future growth of the Transferor Company and the Transferee Company, and is likely to result in the following benefits for the Transferor Company and the Transferee Company:*
- i) *enabling the Transferor Company and Transferee Company to focus on their core business strategies and plans with dedicated management focus on their respective grades of products and customer segments;*
 - ii) *facilitating strategic opportunities for the Transferor Company and Transferee Company;*
 - iii) *creating and enhancing stakeholders' value by unlocking the intrinsic value and growth potential for the respective businesses of the Transferor Company and Transferee Company;*
 - iv) *enhancing ability of each of the Transferor Company and the Transferee Company to raise necessary funds and resources for their respective businesses independently;*
 - v) *imparting better management focus, facilitating administrative convenience and ensuring optimum utilization of various resources of the Transferor Company and Transferee Company;*





- vi) increasing efficiencies in management, control and administration of the affairs of the Transferor Company and Transferee Company;*
- vii) no adverse impact on the operations of the Specified Undertaking or Remaining Undertaking is envisaged on account of this Scheme; and*
- viii) achieving an optimum capital structure with commensurate assets which is likely to enhance the business prospects of the Transferor Company as well as the Transferee Company.*
6. Learned Counsel for the Petitioner Companies submits that the Petition has been filed in consonance with sections 230 to 232 of the Act along with the order dated December 01, 2022 passed by this Tribunal in CA(CAA)/229/MB/2022.
7. The Counsel for the Petitioner Companies further submits that the First Petitioner/Transferor Company is engaged in the business of manufacturing and dealing in steel and allied products. The Second Petitioner/Transferee Company is recently incorporated and yet to commence operations. Its main objects are to inter-alia manufacture, mine, produce, process, trade or otherwise deal in steel, iron, metal, alloy and such products.
8. Learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have made requisite filings to demonstrate compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if and to the extent applicable, as may be required under the Companies Act, 2013 and the rules made thereunder. The said undertaking is accepted.





9. The Regional Director (Western Region) has filed its report dated April 17, 2023 inter-alia stating in paragraphs 2(a) to 2(m). In response to the observations made by the Regional Director, the Petitioner Companies have also given necessary clarifications and undertakings vide their rejoinder affidavit dated May 11, 2023. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Para No. (2)	Regional Director Report/ Observations dated April 17, 2023	Response of the Petitioner Companies
(a)	<p><i>That on examination of the report of the Registrar of Companies, Mumbai dated 24/03/2023 for Petitioner Companies (Annexed as Annexure A-1) that the Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and /or representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, the Petitioner Companies has filed Financial Statements upto 31/03/2022. The ROC has further submitted that in his report dated 24/03/2023 which are as under :-</i></p> <p><i>i. That the ROC Mumbai in his report dated 24/03/2023 has also stated that No Inquiry, Inspection, Investigations, Prosecutions and Complaints under CA, 2013 have been pending against the Petitioner Companies.</i></p>	<p>So far as the observation in paragraph 2(a)(i), 2(a)(ii)(a) & 2(a)(ii)(c) of the Report of the Regional Director is concerned, the Petitioner Companies submits that it is the facts of the case.</p> <p>So far as the observation in paragraph 2(a)(ii)(b) of the Report of the Regional Director is concerned, the Petitioner Companies confirm that notices have been served to the unsecured creditors of the Transferor Company.</p> <p>So far as the observation in paragraph 2(a)(ii)(d) of the Report of the Regional Director is concerned, the Petitioner</p>





<p>ii. Further ROC has mentioned as follows:-</p> <p>a. NOC given by BSE and NSE dated 18.08.2022.</p> <p>b. Notice should be served to the unsecured creditors of the Transferor Company.</p> <p>c. 4 charges are open of Transferor Company.</p> <p>d. As per provisions of section 232(3)(i) of CA, 2013 where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting off the fees already paid by the transferor company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to amalgamation.</p> <p>e. Interest of creditors should be protected.</p> <p>Hence, the Petitioner Companies shall undertake to provide detail reply against observations mentioned above.</p>	<p>Companies submits that the present scheme is a Scheme of Arrangement of the Transferor Company and the Transferee Company involving the transfer of the Specified Undertaking of the Transferor Company to the Transferee Company through a Slump Sale. Hence, post this Scheme becoming effective the Transferor Company shall not be dissolved and the provisions of section 232(3)(i) of the Companies Act, 2013 shall not be applicable to the present scheme.</p> <p>So far as the observation in paragraph 2(a)(ii)(e) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the interest of creditors will be protected.</p>
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(b)	<p><i>Transferee Company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger transfer of companies.</i></p>	<p>So far as the observation in paragraph 2(b) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the present scheme is a Scheme of Arrangement of the Transferor Company and the Transferee Company involving the transfer of the Specified Undertaking of the Transferor Company to the Transferee Company through a Slump Sale. Hence, post this Scheme becoming effective the Transferor Company shall not be dissolved and the provisions of section 232(3)(i) of the Companies Act, 2013 shall not be applicable to the present scheme. Further, the Transferee Company shall pay appropriate fee on its increase in authorised share capital whenever required pursuant to the Scheme.</p>
(c)	<p><i>In compliance of 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 to comply</i></p>	<p>So far as the observation in paragraph 2(c) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Petitioner Companies undertakes</p>





	<p><i>with other applicable Accounting Standards including AS-5 or IND AS-8 etc.</i></p>	<p>that in addition to compliance of IND AS 103 for accounting treatment, if applicable, the Petitioner Companies shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as IND AS-8 as applicable.</p>
(d)	<p><i>The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent 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.</i></p>	<p>So far as the observation in paragraph 2(d) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, and no change is made.</p>
(e)	<p><i>The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the</i></p>	<p>So far as the observation in paragraph 2(e) of the Report of the Regional Director is concerned, the Petitioner Companies confirm that notices have been served to the concerned authorities which are likely to be affected by the Scheme of Arrangement.</p>





	<p><i>scheme. The decision of such authorities shall be binding on the petitioner companies concerned.</i></p>	<p>Further, the Petitioner Companies state that the approval of the Scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issue arising after giving effect to the Scheme and the decision of such authorities not disputed by the Petitioner Companies is binding on the Petitioner Companies.</p>
(f)	<p><i>As per Definition of the Scheme "Appointed Date" means the close of business hours on March 31, 2022, or such other time and date as may be fixed or approved by the Tribunal, being the time and date with effect from which this Scheme will be deemed to be effective;</i></p> <p><i>"Effective Date" means the date on which all of the conditions and matters referred to in Clause 19 of this Scheme have occurred or been fulfilled. References in this Scheme to the date of "coming into effect of this Scheme", the "effectiveness of this Scheme", the "Scheme coming into effect" and other similar expressions, shall mean the Effective Date;</i></p> <p><i>It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No.</i></p>	<p>So far as the observation in paragraph 2(f) of the Report of the Regional Director is concerned, the Petitioner Companies submits that the Appointed Date is the close of business hours on March 31, 2022. Further, the Petitioner Companies confirms and undertakes that upon the order sanctioning this Scheme as passed by the Hon'ble Tribunal, is filed by Petitioner Companies with Registrar of Companies, Mumbai, the Scheme shall take effect from the Appointed date and the same will be in compliance with the clarifications issued vide circular no. F. No. 7/12/2019/CL-1</p>





	<i>7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i>	dated 21.08.2019 issued by the Ministry of the Corporate Affairs.
(g)	<i>Petitioner Companies shall undertake to comply with the directions of Income tax department, if any.</i>	So far as the observation in paragraph 2(g) of the Report of the Regional Director is concerned, the Petitioner Companies undertake that no specific directions have been received from the income tax department.
(h)	<i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.</i>	So far as the observation in paragraph 2(h) of the Report of the Regional Director is concerned, the Petitioner Companies undertake to comply with directions of Sectoral Authorities, if any.
(i)	<i>Petitioner Companies has foreign shareholders, hence Petitioner Companies shall undertake to comply with Rules, Regulation and guidelines of RBI, FEMA, FERA.</i>	So far as the observation in paragraph 2(i) of the Report of the Regional Director is concerned, the Petitioner Companies undertake to comply with the Rules, Regulations and guidelines of RBI, FEMA and FERA, to the extent applicable.

