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CA_CAA_80_AB_BASEMETAL

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CA (CAA) No.80/KB/2018

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

In the matter of :

**An application under Sections 230 and 232 of the Companies Act,
2013.**

And

In the Matter of:

**AB BASE METAL MINING COMPANY PRIVATE LIMITED
[CIN:U13209WB 2007PTC120294] a company incorporated under the
provisions of the Act, having its registered office at 10, Camac Street,
18th Floor Kolkata 700017 within the aforesaid jurisdiction.
PAN AAHCA2351G**

And

In the Matter of:

**AB METAL MINING COMPANY PRIVATE LIMITED [CIN:
U13209WB2007PTC120293], a company incorporated under the
provisions of the Act, having its registered office at 10, Camac Street,
18th Floor Kolkata 700017 within the aforesaid jurisdiction.
PAN AAHCA2349G**

And

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In the Matter of :

AB PGM MINING COMPANY PRIVATE LIMITED [CIN:U13209WB 2007PTC120296] a company incorporated under the provisions of the Act, having its registered office at 10, Camac Street, 18th Floor Kolkata 700017 within the aforesaid jurisdiction.
PAN AAHCA2350H

And

In the Matter of:

SL BASE METAL MINING COMPANY PRIVATE LIMITED [CIN:U13209WB 2007PTC120292] a company incorporated under the provisions of the Act, having its registered office at 10, Camac Street, 18th Floor Kolkata 700017 within the aforesaid jurisdiction.
PAN AAMCS2775D

And

In the Matter of:

SL PGM MINING COMPANY PRIVATE LIMITED [CIN: U10200WB 2007PTC120295] a company incorporated under the provisions of the Act, having its registered office at 10, Camac Street, 18th Floor Kolkata 700017 within the aforesaid jurisdiction.
PAN AAMCS2776A

And

In the Matter of :

EMIL COAL MINING LIMITED [CIN: U10300WB2013PLC198443] a Company incorporated under the provisions of the Act, having its registered office at Industry House, 18th Floor, 10, Camac Street, Kolkata 700017 within the aforesaid jurisdiction.
PAN AADCE5461F

And

Sd

In the Matter of:

**ADITYA BIRLA PORTS LIMITED [CIN: U45203OR2010PLC012703] a company incorporated under the provisions of the Act, having its registered office at HIG 51 Jayadev Vihar, opp Pal heights Bhubaneswar Orissa 751013.
PAN AAICA9872D**

And

In the Matter of:

**MANGALAM CARBIDE LIMITED [CIN: U24111WB1981PLC217751] a company incorporated under the provisions of the Act, having its registered office at Industry House, 18th Floor, 10, Camac Street, Kolkata 700017 within the aforesaid jurisdiction.
PAN AACCM1393H**

And

In the Matter of :

**SUNGOD COAL MINING COMPANY PRIVATE LIMITED [CIN: U67120WB 1998PTC086520] a Company incorporated under the provisions of the Act, having its registered office at Industry House, 18th Floor, 10, Camac Street, Kolkata 700017 within the aforesaid jurisdiction.
PAN AADCS7712B**

In the matter of :

**AB BASE METAL MINING COMPANY PRIVATE LIMITED – Transferor Co. No.1
AB METAL MINING COMPANY PRIVATE LIMITED – Transferor Company no.2
AB PGM MINING COMPANY PRIVATE LIMITED – Transferor Company no.3
SL BASE METAL MINING COMPANY PRIVATE LIMITED – Transferor Co. No.4
SL PGM MINING COMPANY PRIVATE LIMITED – Transferor Company no.5
EMIL COAL MINING LIMITED – Transferor Company no.6
ADITYA BIRLA PORTS LIMITED. – Transferor Company no.7
MANGALAM CARBIDE LIMITED – Transferor Company no.8
SUNGOD COAL MINING COMPANY PRIVATE LIMITED – Transferee Company**

9 Applicants

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Counsel on Record :

Ravi S. Asopa, AdvocateFor Petitioners

Date of Pronouncing the Order: March , 2018.

ORDER

Per Shri Jinan K.R., Member (J).

1. The object of this application is to obtain sanction of this Tribunal to the proposed Scheme of Amalgamation of the Transferor Company Nos.1,2,3,4,5,6,7 and 8 with the Transferee Company Sungod Coal Mining Company Private Limited whereby all the properties, assets, rights and claims whatsoever of the Transferor Companies and their entire undertakings together with all their rights and obligations relating thereto are proposed to be transferred to and vest in the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation attached with the application and marked "S".

2. AB Base Metal Mining Company Private Limited, Transferor Company No.1 has an authorized share capital of Rs.10,00,000/- divided into 1,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid up share capital is Rs.5,00,000/- divided into 50,000 Equity Shares of Rs.10/- each all fully paid up. The objects of the Transferor Company No.1 is

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to examine, explore, quarry, mines, smelt and develop appropriate infrastructure including roads, railway siding ports, metallurgical operations etc.

3. AB Metal Mining Company Private Limited is the Transferor Company No.2. The present authorized share capital of the Transferor Company No.2 is Rs.40,00,000/- divided into 4,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid up share capital is Rs.33,00,000 divided into 3,30,000 Equity Shares of Rs.10/- each. The objects of Transferor Company No.2 is to examine, explore, quarry, mines, develop associate infrastructure including roads, railway siding ports and mining and metallurgical operations etc.

4. AB PGM Mining Company Private Limited is Transferor Company No.3. The present authorized share capital of the Transferor Company No.3 is Rs.10,00,000 divided into 1,00,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid up share capital is Rs.5,00,000/- divided into 50,000 equity shares of Rs.10/- each all fully paid up. The objects of the Transferor Company No.3 is to examine, explore, quarry, mines, smelt and to develop associate infrastructure including roads, railway siding ports and to invest in any plant, machinery and conveniences in connection with mining or metallurgical operations etc.

5. SL Base Metal Mining Company Private Limited is Transferor Company No.4. The present authorized share capital of the Transferor

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Company No.4 is Rs.35,00,000/- divided into 3,50,000 equity shares of Rs.10 each. The issued, subscribed and paid up share capital is Rs.34,00,000/- divided into 3,40,000 equity shares of Rs.10/- each all fully paid up. The objects of the Transferor Company No.4 is to examine, explore, quarry, mines, smelt and to develop associate infrastructure including roads, railway siding ports and to invest in any plant, machinery and conveniences in connection with mining or metallurgical operations etc.

6. SL PGM Mining Company Private Limited is the Transferor Company No.5. The present authorized share capital of the Transferor Company No.5 is Rs.40,00,000/- divided into 4,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital is Rs.38,00,000/- divided into 3,80,000 equity shares of Rs.10/- each all fully paid up. The objects of the Transferor Company No.5 is to examine, explore, quarry, mines, smelt and to develop associate infrastructure including roads, railway siding ports and to invest in any plant, machinery and conveniences in connection with mining or metallurgical operations etc.

7. EMIL Coal Mining Limited is the Transferor Company No.6. The present authorized share capital of the 6th Transferor Company is Rs.10,00,00,000/- divided into 1,00,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital is Rs.32,00,000 divided into 3,20,000 equity shares of Rs.10/- each all fully paid up. The objects of the Transferor Company No.6 is to examine, explore, quarry, mines, smelt and to develop associate infrastructure including roads, railway siding ports

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and to invest in any plant, machinery and conveniences in connection with mining or metallurgical operations etc.

8. Aditya Birla Ports Limited is the Transferor Company No.7. The present authorized share capital of Transferor Company No.7 is Rs.10,000,000/- divided into 10,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital is Rs.52,50,000/- divided into 5,25,000 equity shares of Rs.10/- each all fully paid up. The objects of the Transferor Company No.7 is business of designing, developing, building and operation of seaport terminals for bulk, break, liquid cargo and to operation of factories, mills, roads, bridges etc.

9. Mangalam Carbide Limited is Transferor Company No.8 . The present authorized share capital of the 8th Transferor Company is Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital is Rs.7,00,160/- divided into 70,016 equity shares of Rs.10/- each all fully paid up. The object of the Transferor Company No.8 is to manufacture, produce, sell, act as agents of various forms of carbide and carbonate, calcium carbide, hydrated lime, poly-vinyl acetate, poly-vinyl alcohol or gases made from or based on one or more of the products above etc.

10. Sungod Coal Mining Company Private Limited is Transferee Company. The present authorized share capital of the Transferee Company is Rs.30,00,000/- divided into 2,80,000 equity shares of Rs.10/- each and

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2000 Redeemable Cumulative Preference Shares of Rs.1000/- each. The issued, subscribed and paid up share capital is Rs.18,60,000/- divided into 1,86,000 equity shares of Rs.10/- each all fully paid up. The objects of the Transferee Company is to undertake all business activities in connection with coal mining, mining lease for block, survey and preparation of plans for mining etc.

11. The board of directors of the applicant companies have approved the scheme in their respective board meetings held on 29th December 2017 being annexure "T".

12. Auditors of the Transferee Company have also given a certificate under Section 133 of the Companies Act, 2013 dated 29th December 2017 being annexure "W".

13. The share exchange ratio of the Applicant Companies have been fixed on a fair and reasonable basis and on the basis of the Valuation Report dated 29.12.2017 prepared by a firm of Chartered Accountants, a copy whereof is annexed as annexure "V".

14. The applicant no.1 is having 2 Equity Shareholders, the applicant no.2 is having 2 Equity Shareholders, the applicant no.3 is having 2 Equity Shareholders, the applicant no.4 is having 2 Equity Shareholders, the applicant no.5 is having 2 Equity Shareholders, the applicant no.6 is having 7 Equity Shareholders, the applicant no.7 is having 7 Equity Shareholders, the

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applicant no.8 is having 7 Equity Shareholders and the applicant no.9 is having 6 Equity Shareholders. Copies of the list of shareholders of the applicant companies alongwith respective auditor certificates are annexed hereto and collectively marked as "X".

15. There are no creditors in the Transferor Companies. The Transferee Company is having only one unsecured creditor. Copies of the Auditor Certificates for all the companies alongwith the list of unsecured creditor of the Transferee Company are annexed hereto and collectively marked as "U".

16. Each and every Shareholder of the applicant companies have considered the proposed Scheme of Amalgamation and on such consideration have given their consent in writing by way of an affidavit agreeing to the Scheme and also consented to waive the holding and convening of the meetings of the shareholders of the applicant companies concerned. Original consent affidavits received from all the shareholders of the applicants are annexed hereto and collectively marked "Y".

17. Similarly the unsecured creditor of the Transferee Company, under the Act, have given its 'no objection' in writing by way of an affidavit agreeing to the Scheme and also consented to waive the holding and convening of the meeting of the creditors of the applicant company concerned. Original consent affidavit received from the unsecured creditor of the applicant no.9 is annexed hereto and collectively marked "Z".

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18. It is stated in the application that the eight transferor companies and the transferee company belong to common group and common management. There are common shareholders and common directors in the transferor companies and the transferee company. As such, it is stated that the proposed scheme will result in economies of scale, reduction in overheads and result in effective utilization of the combined resources of all the companies and will enable the amalgamated company to effect internal economies and optimize productivity.

19. It is stated in the application that the aggregate assets of the applicant companies are more than sufficient to meet all their liabilities and the said scheme will not adversely affect the rights of any of the creditors and due provisions have been made for payment of all liabilities as and when the same fall due.

20. It is stated in the application that there are no proceedings pending under Sections 206 to 213 of the Companies Act, 2013 against any petitioner Companies. There are also no proceedings pending under Sections 241 and 242 of the Companies Act, 2013 against any of the Companies.

21. Vide this application the following reliefs were sought for:

(a) As the shareholders of the applicant companies have agreed in

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writing to the proposed Scheme of Amalgamation and have also consented to waive the holding and convening of the meeting of shareholders of the applicant companies, holding of the individual meetings of the shareholders be dispensed with.

- (b) In view of the written consent given by all the shareholders of the applicants as aforesaid, prayer is made to dispense with the convening and holding of individual meetings of the shareholders of the applicants under Section 230 of the Companies Act, 2013.
- (c) In view of the full consent of the creditors of the respective applicant companies, it is prayed that meetings of the creditors be dispensed with.

22. The instant petition has been made for sanction of the Scheme of Amalgamation.

Heard the Ld. Counsel and perused the records. The following order is passed:

1. In view of the consent affidavits of all the shareholders annexed to the application the meetings of the shareholders are dispensed with.
2. There are no creditors in the applicant nos.1 to 8 but only one

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unsecured creditor in the applicant no.9. In view of the consent affidavit of the unsecured creditor of the application no.9 the meeting of the unsecured creditors is dispensed with.

3. To serve the notice as per requirements of sub-section (5) of Section 230 of the Companies Act, 2013 along with all the documents including a copy of the Scheme and the Statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal, Official Liquidator, Income Tax Department having jurisdiction over the Transferor Companies and the Transferee Company and such other relevant sectoral regulators/ authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by hand delivery through special messenger or by registered post or speed post and by e-mail within 14 days from the date of this order for filing their representation, if any, within 30 days from the date of notice. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the applicants and/or their Advocates. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 and Companies (Compromises, Arrangements & Arrangement) Rules, 2016 with necessary variations incorporating the directions therein.

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CA (CAA) No. ~~80~~/KB/2018 is disposed of.

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

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(Jinan K.R)
Member (J)

Signed on this, 9th day of March 2018.

PS_Aloke