

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH**

C.P.(C.A.A)/1993/MB/ 2018

Under Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 and the Rules framed thereunder as in force from time to time

AND

In the matter of Composite Scheme of Merger (by absorption) and arrangement between Krishnaping Power Private Limited ("the Transferor Company") and Krishnaping Alloys Limited ("the Transferee Company") and their respective shareholders and creditors

KRISHNAPING POWER PRIVATE LIMITED

....Petitioner/ Transferor Company

WITH

KRISHNAPING ALLOYS LIMITED

....Petitioner/ Transferee Company

Order delivered on: 30.08.2018

**Coram:**

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

**For the Petitioner(s):** Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co.

**For the Regional Director:** Mr. S Ramakantha , Joint Director for Regional  
Director

**Per: V. Nallasenapathy, Member (T)**

**ORDER**

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Merger (by Absorption) and

Arrangement (hereinafter referred to as **Scheme**) of Krishnaping Power Private Limited (Transferor Company) with Krishnaping Alloys Limited (Transferee Company) and their respective shareholders and creditors.

2. The Transferor Company and the Transferee Company have approved the said Scheme by passing their respective Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The Transferor Company is primarily engaged in the business of generation and distribution of electricity.
4. The proposed Scheme will have the following benefits:

The management believes that the merger would result in

- Consolidation of businesses;
- Synergies in the business carried on by Krishnaping Power and Krishnaping Alloys; and
- Efficaciousness in business.

Further, the merger may also result in greater administrative and efficiency.

5. The averments made in the Petition and the submissions made by the Learned Advocate for the Petitioners are:

(i) The Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made thereunder whichever is applicable.

(ii) The Regional Director has filed his Report dated 20<sup>th</sup> day of August, 2018 stating therein that save and except the observations as stated in paragraph IV (a) to (g) of the report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

- a) *The Petitioners under the provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or Merger (by Absorption) and Arrangement. Further, the approval of the scheme*

*by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).*

- b) In addition to compliance of AS-14 (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.*
- c) The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.*
- d) It is observed that the Petitioner companies have not submitted admitted copy of the admitted Petition, and Minutes of Order for admission of the Petition. In this regard, Petitioner companies have to undertake to submit the same for the record of Regional Director.*
- e) As per Clause 1.3 of the Scheme, Appointed Date means April 1, 2018 or such other date as may be fixed or approved by the National Company Law Tribunal. In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent power.*
- f) Petitioner in the clause 6.4 of the scheme has inter alia mentioned that the accounting policies followed by the Transferee Company will prevail and the difference till the Appointed Date will be quantified and adjusted in the Capital Reserve Account. In the regard the Deponent prays that the above said balance shall be adjusted in the Profit and Loss Account instead of Capital Reserve Account.*
- g) Petitioner in the clause 5.4 of the scheme has inter alia mentioned that Transferee Company shall, if necessary and to the extent required, increase or reclassify its Authorized Share Capital to facilitate issue of equity shares under this Scheme. In that regard, Petitioner company have to undertake to comply with provisions of*

*Companies Act, 2013 read with Rules & file form SH-7 and MGT-14 with Registrar of Companies.*

- (iii) Apropos the observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies hereby clarify that an affidavit, stating that the notices have been served to concerned authorities as required under Section 230(5) of the Companies Act, 2013, have been annexed with the Company Petition. 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 Scheme. The decision of such authorities will be binding on the Petitioner Companies.
- (iv) Apropos the observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Transferee Company undertakes that it will comply with the Accounting Standard - 14. Further, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with other Accounting Standards such as Accounting Standard - 5, as may be applicable.
- (v) Apropos the observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies submit that the Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.
- (vi) Apropos the observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies submit that a copy of the admitted petition has been filed with the office of Regional Director on 27<sup>th</sup> June 2018. Further, the minutes of order for admission of petition shall be submitted to the Regional Director once it is uploaded on the NCLT website.
- (vii) Apropos the observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel undertake that the Appointed Date has been fixed as April 1, 2018 as mentioned in Clause 1.3 of the Scheme which is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall be effective from such Appointed Date.

- (viii) Apropos the observations made in paragraph IV (f) of the Report of Regional Director is concerned, the Petitioners undertakes to comply with all applicable accounting standards. The above undertaking is accepted.
- (ix) Apropos the observations made in paragraph IV (g) of the Report of Regional Director is concerned, the Learned Advocate for the Transferee Company clarifies that the Authorised Capital of the Transferor Company shall be merged with that of the Transferee Company in terms of Clause 7 of the Scheme. The Learned Advocate further submits that the Transferee Company shall increase the Authorized Capital to the extent required on issue of equity shares and comply with the applicable provisions of the Companies Act, 2013.
- (x) The Official Liquidator has filed his report dated 24<sup>th</sup> July, 2018 in Company Petition 1993 of 2018, inter alia stating that the affairs of the Transferor Company have been conducted in a proper manner and further that the Transferor Company may be ordered to be dissolved without winding up.
6. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this bench, to the Petitioner Companies, do Order that:
- a. All the assets and liabilities including taxes and charges, if any, and duties of the Transferor Company, shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the assets and liabilities and duties of the Transferee Company.
  - b. The clarifications and undertakings given by the Learned Advocate for the Petitioners to the observations made in the Report of Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
  - c. In lieu of the consideration of the Scheme,  
*"One fully paid up Equity Share of Rs. 10/- in Krishnaping Alloys Limited for every One Equity Share of Rs. 10/- each held in Krishnaping Power Private Limited."*
  - d. Transferor Company is to be dissolved without winding-up.

- e. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
  - f. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically, along with E-form INC 28 in addition to the physical copy, within 30 days from the date of receipt of the order by the Registry, duly certified by the Assistant Registrar of the National Company Law Tribunal, Mumbai Bench.
  - g. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The costs to be paid within four weeks from the date of receipt of order.
  - h. The Transferor Company to pay costs of Rs. 25,000/- each to the Official Liquidator, Mumbai. The costs to be paid within four weeks from the date of receipt of order.
  - i. All authorities concerned, to act on a certified copy of this order along with Scheme duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.
  - j. Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
  - k. Any concerned Authority is at liberty to approach this Bench for any further clarification/direction under this Scheme.
  - l. The Scheme is sanctioned and the Appointed date of the Scheme is fixed as 1<sup>st</sup> April, 2018.
7. Ordered accordingly.

SD/-

V. NALLASENAPATHY  
MEMBER (T)

SD/-

BHASKARA PANTULA MOHAN  
MEMBER (J)