

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH III**

**Coram: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)
Dr. V.K. SUBBURAJ, MEMBER (TECHNICAL)**

C.P. No. CAA-07(ND)/2018

CONNECTED WITH

CA (CAA)-117(ND)/2017

IN THE MATTER OF:

**(SECTIONS 230-232 OF THE COMPANIES ACT, 2013)
AND**

IN THE MATTER OF SCHEME OF AMALGAMATION OF

**MAHAVIR BENEFICATION PRIVATE LIMITED
(TRANSFEROR COMPANY/PETITIONER 1)**

WITH

**ARYAN ISPAT AND POWER PRIVATE LIMITED
(TRANSFeree COMPANY/PETITIONER 2)**

AND

Their respective Shareholders and Creditors



MEMO OF PARTIES

MAHAVIR BENEFICATION PRIVATE LIMITED

Company incorporated under the Companies Act, 1956

Having Registered Office at:

1ST Floor Building No.8,

Community Centre, Basant Lok,

New Delhi

.....Transferor Company/ Petitioner 1

ARYAN ISPAT AND POWER PRIVATE LIMITED

Company incorporated under the Companies Act, 1956

Having Registered Office at:

1ST Floor Building No.8,

Community Centre, Basant Lok,

New Delhi

.....Transferee Company/ Petitioner 2

Present:

For the Petitioners: Mr. Rakesh Kumar, Advocate

For OL: Mr. Rohit Saroj, Mr. Amish Tandon, Advocates

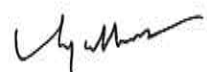
**For Income Tax : Ms. Lakshmi Gurung
Standing Counsel for Income Tax Deptt.**



ORDER

Delivered on: 04.09.2018

1. The present petition has been filed by the companies above named for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders by way of amalgamation of the Transferor/Petitioner Company-1 with the Transferee/Petitioner Company-2 namely Mahavir Benefication Private Limited (for brevity "Transferor Company") and Mr. Aryan Ispat and Power Private Limited (for brevity Transferee Company") under Section 230 to 232 and other applicable provisions of the Companies Act, 2013(for brevity "the Act") read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') in relation to the Scheme of Amalgamation (hereinafter referred to as the 'Scheme') proposed between the applicants and the said Scheme is also annexed as Annexure "P-1" to the petition.
2. From the records, it is seen that the First Motion seeking directions dispensing with the meeting of Equity Shareholders, Secured Creditors, Unsecured Creditors and Preference Share Holders were filed before this Tribunal vide Company Application CA (CAA) – 117 (ND)/2017 and based on such joint application, directions were issued by the Tribunal vide order dated 14.12.2017



where in the meetings of the equity shareholders, secured creditors, unsecured creditors and preference shareholders of the Transferor and Transferee Companies were dispensed with as consents from them had been obtained and were placed on record.

3. Under the circumstances, the Petitioner Companies filed their joint petition for sanction of the Scheme of Amalgamation before this Tribunal, subsequent to the order of dispensation of the meeting in relation to both the Transferor Company and Transferee Company. On 16.03.2018 this Tribunal ordered Notice in the Second Motion petition moved by the Petitioner Companies in connection with the scheme of amalgamation, to the Registrar of Companies, NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Department, Official Liquidator and to such other Objector(s), if any. The Petitioners were also directed vide said order to carry out publication in the newspapers "Financial Express"(English Edition, Delhi)and "Jansatta" (Hindi Edition, Delhi).
4. The petitioners, it is seen from the records, have filed an affidavit on 01.05.2018 in relation to the compliance of the order passed by the Tribunal as noted above and a perusal of the same discloses that the petitioners have

effected the paper publication as directed by the Tribunal in one issue of the 'Financial Express' in English edition and 'Jansatta' in Hindi edition on 16.03.2018. Further, the notices have been served to the Regional Director (NR, MCA), Registrar of Companies (NCT of Delhi & Haryana), Office of the Official Liquidator, and Deputy Commissioner of Income Tax Department in compliance with the directions passed by this Tribunal and in proof of the same acknowledgements/receipts have also been enclosed.

5. That the Regional Director, Northern Region, MCA to whom notice was issued has filed an Affidavit on 17.05.2018 before this Tribunal, New Delhi and following observations has been made:

- (i) As per petition/scheme, the authorized and paid up share capital of Transferee Company are Rs.2000,00,00,000 and Rs.254,00,00,000 however, as per MCA-21 records, the authorized and paid up share capital of Transferee Company are Rs. 2040,00,00,000 and Rs.294,00,00,000. The Transferee company may be directed to clarify the same.
- (ii) Clause 12 g of the Scheme is not in consonance with the section 232(3)(i) of the Companies Act, 2013 which impacts the revenue of the Government in the form of fee. Hon'ble Tribunal may direct the petitioner companies to comply with

the provisions of the section 232(3)(i) of the Companies Act, 2013.

(iii) It is humbly submitted that filing position of the Transferor Company is up to date, however, the Transferee Company has not filed its balance sheet as at 31.03.2017. No prosecution has been filed against the petitioner companies and no inspection is pending.

6. That the Petitioner Companies have filed an affidavit in relation to the above observation on 18.05.2018 where it is stated as follows:

- (i) The authorized and paid up capital of the Transferee Company is Rs.2040,00,00,000 and Rs.294,00,00,000. It is due to an inadvertent mistake that the authorized and paid up capital of the Transferee Company has been wrongly stated as Rs.2000,00,00,000 and Rs. 254,00,00,000.
- (ii) The Transferor Company and the Transferee Company undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013.
- (iii) The Transferee Company has duly filed its Balance Sheet for the financial year ending as at 31.03.2017. The copy of the challan for filing the E-form AOC-4 (Balance sheet) has been placed on record.

7. Further, the department of Income Tax has filed its report on 21.05.2018 seeking the Tribunal to keep in abeyance the merger proposal as scrutiny proceedings u/s 143 of the Income Tax Act are pending against M/s Mahavir Benefication Private Ltd. The petitioner company filed an undertaking on 05.06.2018 stating that all the assets and liabilities of the Transferor Company including its pending tax assessments will be transferred to the Transferee Company and therefore the Transferor Company undertakes to pay any tax liability arising in future on the Transferor Company. However the department got its stand revised and submitted its revised report on 14.06.2018 in which the department has given its no objection to the scheme of merger subject to the condition that any outstanding taxes as on date and/or demand raised in future shall be paid by the merged company.
8. That the report of the Official Liquidator filed on 18.05.2018 has been placed on record which states that the Official Liquidator has not received any complaint against the proposed scheme of Amalgamation from any person/party interested in the scheme. Hence, no objection has been made in the report submitted by the Official Liquidator.
9. The Petitioner companies in the CA(CAA) – 117/2017 itself have submitted that no investigation proceedings are pending against them under section 210 or any other applicable provisions of the Companies Act, 2013.

10. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the scheme of amalgamation annexed as Annexure – 2 with the Company Petition as well as the prayer made therein.
11. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.
12. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

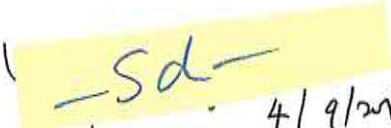
- (1) That all the property, rights and powers of the Transferor Company be transferred without further act or deed to the Transferee company and


accordingly the same shall pursuant to section 232 of the Act, be transferred to and vest in the Transferee company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same;

- (2) That all the liabilities and duties of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company;
- (3) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company;
- (4) That all the employees of the Transferor Company in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service;
- (5) That the Transferee Company do without further application allot to the persons entitled of the Transferor Company, as have not given such notice of

dissent, the shares in the transferee company to which they are entitled under clause no.12 of the said scheme of amalgamation;

- (6) That Transferor Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee company and the files relating to the said both companies shall be consolidated accordingly;
- (7) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.


4/9/2018
Dr. V.K. SUBBURAJ
MEMBER (TECHNICAL)


04/09/18
R. VARADHARAJAN
MEMBER (JUDICIAL)

Deepak