

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

**Coram: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**CA (CAA)-117(ND)/2017**

**IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT, 2013**

**In the matter of:**

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Arrangements) Rules, 2016.

**AND**

**In the matter of Scheme of Amalgamation**

**OF**

**Mahavir Benefication Private Limited**

**(Transferor Company / Applicant)**

**WITH**

**Aryan Ispat and Power Private Limited**

**(Transferee Company/Applicant)**

**And**

**Their Respective Shareholders and Creditors**



**MEMO OF PARTIES**

**MAHAVIR BENEFICATION PRIVATE LIMITED**

Having its registered office at:

1<sup>st</sup> Floor, Building No.8

Community Centre, Basant Lok

New Delhi.

..... TRANSFEROR COMPANY/ APPLICANT

**ARYAN ISPAT AND POWER PRIVATE LIMITED**

Having its registered office at:

1<sup>st</sup> Floor, Building No.8

Community Centre, Basant Lok

New Delhi.

..... TRANSFEREE COMPANY/APPLICANT

**For the Applicants: Mr. Rakesh Kumar, Advocate**



## ORDER

Delivered on: 14-12-2017

1. This is an application which is filed by the petitioner companies herein, namely Mahavir Benefication Private Limited (for brevity "Transferor Company"), with Aryan Ispat and Power Private Limited (for brevity "Transferee Company") under sections 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the "SCHEME" ) proposed between the applicants. The said Scheme is also annexed as Annexure "P-17" to the application. The applicants above named have preferred the instant application in effect for the following purpose as evident inter alia from the reliefs sought for in the Application, namely:
  - I. Dispense with the convening of separate meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company and the Transferee Company.
  - II. Pass such order/further order(s) as this Hon'ble Tribunal may deem fit and proper.
2. An affidavit in support of the above application sworn for and on behalf of the Applicant / Transferor Company by one Mr. Parmod Kumar Jain and for the Transferee Company by one Mr. Rudra Sen Sindhu has been filed, being the Directors of the respective Companies along with the application. Counsel for the joint applicants took us through the averments made in the application as well as the typed set of documents annexed there with. Learned Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that a joint application filed by the applicants are maintainable in view of Rule 3(2) of the Companies (Compromises, Arrangements and Arrangements) Rules 2016 and it is also





represented that the registered office of all the applicant companies are situated within the territorial jurisdiction of this Tribunal and falling within Registrar of Companies, NCT, New Delhi.

3. In relation to Mahavir Benefication Private Limited being the Transferor Company, in the Scheme marked as Annexure – “P-17”, it is represented that it is having 3 Equity Shareholders and all of them have given their consents by way of affidavit . It is further represented by the counsel for Applicants that the Transferor Company has 1 Secured Creditor and 40 Unsecured Creditors. Out of the total number of unsecured creditors it is represented that 20 have given their consents constituting more than 90% in value. It is also represented that the lone secured creditor of the Transferor Company has also given its consent to the scheme by way of consent affidavit. In relation to the shareholders, secured creditors and unsecured creditors of the Transferor Company, it seeks dispensation from convening and holding of the meetings in view of consent by way of affidavits having been obtained and the same has been placed on record.
4. In relation to Aryan Ispat and Power Private Limited being Transferee Company in the Scheme marked as Annexure-“P-17”, Learned Counsel represents that company is having 4 Equity Shareholders and 2 Preference Shareholders and all of them have given their respective consents by way of an affidavit. It is further represented by the counsel for Applicants that the Transferee Company has 1 secured creditor and 206 Unsecured Creditors out of which 19 have given their consents constituting more than 90% in value. It is also represented that the lone secured creditor of the Transferee Company has also given its consent to the scheme by way of consent affidavit. In relation to the shareholders, secured creditors and unsecured creditors of the Transferee Company, it seeks dispensation from convening and holding of the meetings for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent by way of affidavit having been obtained all of which also been placed on record.
5. Learned Counsel for the Applicants also represents that the provisions of Section 233 of the Companies Act 2013 will not apply. In relation to the territorial jurisdiction, Ld. Counsel for the applicant companies submit that since the registered office of the

respective companies fall within the purview of Registrar of Companies, NCT, New Delhi, this Tribunal has the necessary territorial jurisdiction to entertain the joint application.

6. We have perused the joint application and the connected documents / papers filed therewith including the Scheme of Arrangement contemplated between the Applicant companies.
7. From the certificate of incorporation filed, it is evident that Transferor Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 13<sup>th</sup> June, 2008 vide CIN: U36109DL2008PTC179475 with Registrar of Companies, NCT of Delhi & Haryana under the name and style of "Mahavir Benefication Private Limited".
8. The Authorized Share Capital of the Transferor Company is Rs. 2,60,00,000/- (Rupees Two Crores and Sixty Lacs Only) divided into 26,00,000 (Twenty Six Lacs) Equity Shares of Rs.10/- (Rupees Ten only) each. The Issued, Subscribed and Paid-up Share Capital of the Transferor Company is Rs. 2,60,00,000/- (Rupees Two Crores and Sixty Lacs Only) divided into 26,00,000 (Twenty Six Lacs) Equity Shares of Rs.10/- (Rupees Ten only) each.
9. From the certificate of incorporation filed, it is evident that the Transferee Company is a private limited company incorporated under the provisions of Companies Act, 1956 on 28<sup>th</sup> April, 2003 vide CIN: U27102DL2003PTC259757 with Registrar of Companies, NCT of Delhi & Haryana under the name and style of "Aryan Ispat and Power Private Limited".
10. The Authorized Share Capital of the Transferee Company is Rs. 2000,00,00,000/- (Rupees Two Thousand Crores Only) divided into 20,00,00,000 (Twenty Crores) Equity Shares of Rs.100/- (Rupees Hundred only) each and Rs. 40,00,00,000/- (Rupees Forty Crores Only) divided into 40,00,000 (Forty Lacs) Preference Shares of Rs. 100/- each. The Issued, Subscribed and Paid-Up Share Capital of the Transferee Company as on date is Rs. 254,00,00,000/- (Rupees Two Hundred Fifty Four Crores Only divided into) divided into 2,54,00,000 (Two Crores and Fifty Four Lacs) Equity Shares of Rs. 100/- (Rupees



Hundred) each fully paid up and Rs. 40,00,00,000/- (Forty Lacs) Preference Shares of Rs. 100/- (Rupees Hundred) each fully paid up.

11. The applicant companies have filed their respective Memorandum and Articles of Association inter alia delineating their object clauses as well as their last available audited financial statements for the year ended 31.03.2017.
12. The Board of Directors of the Applicant companies vide separate meetings held on 25.04.2017 and 28.04.2017, have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions passed thereon have been placed on record by the companies. The Appointed date as per the scheme is stated to be 01.04.2017.
13. Both the companies have submitted that no investigation proceedings are pending against them under Section 201 or any other applicable provisions of the Companies Act, 2013.
14. Taking into consideration the application filed jointly by the Applicant Companies and the documents filed therewith, this tribunal propose to issue the following directions with respect to calling, convening and holding of the meetings of the Equity Shareholders, Preference Shareholders, Secured and Unsecured Creditors, or dispensing with the same as well as issue of notices including by way of paper publication as follows:-

**A) In relation to the Transferor Company:**

**(i) With respect to Equity shareholders:**

Since it is represented by the Transferor Company that all the Equity shareholders in the Transferor Company has given their consents and are placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.



(iii) With respect to Secured Creditor:

Since it is represented by the Transferor Company that there is one Secured Creditor in the Transferor Company, whose consent has been obtained and is placed on record, therefore, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

(iv) With respect to Unsecured Creditors:

Since it is represented by the Transferor Company that there are 40 Unsecured Creditors, out of which 20 unsecured creditors (constituting more than 90% in value) have given their No Objection by way of consent affidavits and are placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

**B) In relation to Transferee Company:**

(i) With respect to Equity shareholders:

Since it is represented by the Transferee Company that there are 4 Equity shareholders in the Company whose consents have been obtained and are placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

(ii) With respect to Preference shareholders:

Since it is represented by the Transferee Company that there are 2 Preference shareholders in the Company whose consents have been obtained and are placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.



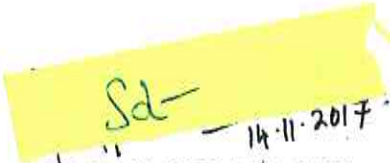
(ii) With respect to Secured Creditor:

Since it is represented by the Transferee Company that there is one Secured Creditor in these Transferee Company, whose consent have been obtained and is placed on record, therefore, the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Transferee Company that out of 206 unsecured Creditors in the Company, 19 unsecured Creditors (constituting more than 90% in value) have given their No Objection by way of consent affidavits and are placed on record, therefore the necessity of convening and holding a meeting to consider and if thought fit, the approval of the scheme is dispensed with.

The application stands allowed on the aforesaid terms. Let the petition for approval of the scheme of Amalgamation be filed within a period of seven days from the date of this order.

  
(R. VARADHARAJAN)  
MEMBER (JUDICIAL)

**U.D Mehta**

**Assisted by: Ms. Madhuri Jain**