

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO 336 OF 2017
POSCO Electrical Steel India Private Limited

.....Petitioner/Transferor Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO 337 OF 2017

POSCO Maharashtra Steel Private Limited
Company

.....Petitioner/Transferee

In the matter of Companies Act, 2013

AND

In the matter of Sections 230 to 232 of the Companies Act,
2013 (corresponding to Sections 391 to 394 of the Companies
Act, 1956) read with Companies (Compromises,
Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Scheme of Amalgamation between POSCO
Electrical Steel India Private Limited and POSCO
Maharashtra Steel Private Limited and their respective
Shareholders.

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner Companies

Coram: B.S.V. Prakash Kumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

Date: 23 March 2017

MINUTES OF ORDER

- 1 Heard the learned counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.
- 2 The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation between POSCO Electrical Steel India Private Limited ("POSCO Electrical") with POSCO Maharashtra Steel Private Limited ("POSCO Maharashtra") and their respective Shareholders.
- 3 The Counsel for the Petitioner Companies submit that POSCO Electrical is engaged in the business of manufacturing different types of steels used in Electrical industry.

POSCO Maharashtra is engaged in the business of manufacturing different types of steel.

- 4 The respective Boards of Directors are of the view that the proposed Scheme of Amalgamation is beneficial to the respective shareholders, employees and all stakeholders of the Petitioner Companies. The proposed Scheme of Arrangement is aimed at achieving the following business and commercial objectives:
 - a. *To integrate and consolidate the business of Transferor Company in a single entity and consolidate resources and assets of the Company for optimal deployment and enhanced overall efficiencies;*
 - b. *To enable better and efficient management, control and running of the businesses to attain operational efficiencies, cost competitiveness, create synergies and capitalize on the growth opportunities to the fullest possible;*
 - c. *The proposed amalgamation would enable them to have access to better financial resources;*
 - d. *The proposed amalgamation and vesting of the Transferor Company into the Transferee Company, with effect from the appointed date, is in the interest of the shareholders, creditors, employees and other stakeholders of all the companies, as it would enable a focused business approach for the maximization of benefits to all stakeholders.*
- 5 The Board of Directors of the Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing necessary Board Resolutions which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.
- 6 The Learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Court / Tribunal and the necessary affidavits of compliance has been filed in the Court / Tribunal. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.
- 7 The Official Liquidator has filed his report on 22nd March, 2017 stating that the affairs of the Petitioner/ Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.

- 8 The Regional Director has filed his report dated 16th March 2017 stating therein that, save and except as stated below, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, it is stated that:
- (a) In addition to compliance of AS-14(IND AS-103), the Transferee Company 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.,*
 - (b) Regarding clause 12 of the Scheme it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the scheme shall be debited to Goodwill Account and will not be adjusted against the Profit & Loss Account of the Transferee Company,*
 - (c) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It appears that the company vide letter dated 3rd January 2017 has served a copy of company petition No. 868 & 867/2016 along with relevant orders etc. to IT Department. Further this Directorate has also issued a reminder letter to the Income Tax Department on 14th March, 2017 to IT Department.*
 - (d) The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
- 9 In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Transferee Company through its Counsel undertakes that it 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.
- 10 In so far as observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the scheme shall be debited to Goodwill Account and will not be adjusted against the Profit & Loss Account of the Transferee Company.
- 11 In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner Company undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

- 12 The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
- 13 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.
- 14 Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No 337 and 336 of 2017 filed by the respective Petitioner Companies is made absolute in terms of prayer clause (a) of CSP No 337 and 336 of 2017 of the respective Petition.
- 15 Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Amalgamation 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 issuance of the order by the Registry.
- 16 The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, 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.
- 17 The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay.
- 18 Costs to be paid within four weeks from today.
- 19 All authorities concerned to act on a certified copy of this order along with the Scheme duly certified by the Deputy Director National Company Law Tribunal, Mumbai Bench.
- 20 Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

B.S.V. Prakash Kumar, Member (Judicial)

Sd/-

V. Nallasenapathy, Member (Technical)