

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

CA (CAA) NO. 03/Chd/HRY/2017

Date of order: 03.04.2017

**Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial).
Hon'ble Deepa Krishan, Member (Technical).**

In the matter of:

POSCO India Ahmedabad Steel Processing Center Private Limited,
a company incorporated under the Companies Act, 2013 and having its
Registered Office at Room No. 512, 5th Floor, BPTP Park Centra
Building, Sector 30, Gurgaon-122001 Haryana.

.....Applicant-Transferor Company No. 1.

AND

POSCO India Delhi Steel Processing Center Private Limited, a
company incorporated under the Companies Act, 2013 and having its
Registered Office at Plot No. 193, Sector 4, Phase-II, HSIIDC, Bawal,
Haryana-123501.

.....Applicant-Transferor Company No.2.

AND

POSCO India Chennai Steel Processing Center Private Limited, a
company incorporated under the Companies Act, 2013 and having its
Registered Office at Room No. 512, 5th Floor, BPTP Park Centra
Building, Sector 30, Gurgaon-122001 Haryana.

....Applicant-Transferee Company.

Application under Sections 230 to 232 of the
Companies Act, 2013 read with the Companies
(Compromises, Arrangements and Amalgamations)
Rules, 2016.

**Present: Mr. Dhritiman Bhattacharya, Mr. Gaurav Chopra and Ms.
Deeti Ojha, Advocates for applicants.**

ORDER

R.P. Nagrath, J., Member (Judicial) (Oral):

This is a joint application filed by POSCO India Ahmedabad Steel Processing Center Private Limited, Applicant/Transferor Company No. 1 (for brevity, to be described as A-1), POSCO India Delhi Steel Processing Center Private Limited, Applicant/Transferor Company No. 2 (for short A-2) and POSCO India Chennai Steel Processing Center Private Limited, Applicant/Transferee Company (for brevity, A-3) under Sections 230 to 232 of the Companies Act, 2013 (to be referred hereinafter as the 'Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, the 'Rules'), in connection with the proposed scheme of amalgamation Annexure A (to be referred in brief as the '**Scheme**').

2. It is represented by learned counsel for the applicants that as per Articles of Association Annexure 'C', A-1 Company is engaged in the business of manufacturing and processing of components and parts of all types of metals including steel in primary, semi-finished forms for automobile, home appliances and other industries and steel sheet fabrication etc.; A-2 is engaged in the business of processing of steel coils/sheets for automobile, home appliances and other steel-consuming industries etc. as per Articles of Association Annexure 'K' and A-3 is carrying on the business of manufacturing and processing of steel components and parts for automobile, home appliances and other steel-

consuming industries etc. as per the Articles of Association, Annexure 'S'.

3. The Registered offices of A-1 and A-3 Companies are in Gurgaon whereas that of A-2 Company at Bawal (Haryana) and, therefore, the matter falls within the territorial jurisdiction of Chandigarh Bench of the Tribunal. It is represented that all the three Applicant-Companies are Private Limited Companies.

4. At page 73 of Annexure 'C' is the certificate of incorporation of A-1 company, issued by the Registrar of Companies, Gujarat. This shows the company to have been incorporated on 3rd day of February, 2015. At page 72 of Paper Book, is the certificate issued by Registrar of Companies, Delhi to the effect that the registered office of the Company has been changed from State of Gujarat to Haryana. This certificate is issued on 17th day of October, 2016. Annexure 'G' is the copy of resolution dated 30.12.2016 passed by the Board of Directors of A-1 Company according approval to the draft '**Scheme**' of amalgamation and authorising Mr. Dae Bum Kim, Managing Director of the Company and Mr. Yang Su Lim, Director of the Company jointly and/or severally to take all or any of the steps mentioned therein with regard to the '**Scheme**'.

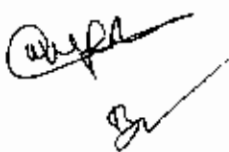
5. Annexure 'K' is the certificate of incorporation of A-2 Company and Annexure 'S' that of A-3, Transferee Company. Annexure 'O' is the resolution of A-2 Company dated 30th September, 2016

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according approval for the draft '**Scheme**' and authorising Mr. Jae Hong Park, Director and/or Mr. Kyoung Wook Cho, Director jointly or severally to take all or any of the steps mentioned therein with regard to the '**Scheme**'. Annexure 'W' is the similar resolution of Board of Directors of A-3 Company dated 30.09.2016 and authorising Mr. SangHun Park, Managing Director and Mr. Young Whan Kim, Director of the Company jointly and/or severally to take all or any of the steps mentioned therein with regard to the '**Scheme**'.

6. The affidavits of Mr. Yang Su Lim, Mr. Jae Hong Park and Mr. SangHun Park, Directors of Applicant-Companies, respectively have also been filed in support of the joint application. This joint application has been filed with the following prayers:-

- a) Issuing/passing necessary direction/order in respect of Applicant-Companies for the purpose of convening the meeting of the Equity shareholders and Unsecured Creditors including the requirement of issue and publication of notices for the same;
- b) Issuing necessary direction for appointment of Chairperson and Scrutinizer for the meetings to be held and terms of appointment and remuneration for the Chairperson;
- c) Issuing necessary directions for fixing the quorum of each meeting;



- d) Issuing necessary direction fixing a time period within which the Chairperson shall report the result of the meeting to this Tribunal;
- e) Issuing directions for permitting the filling of application, petition, other documents as may be required for the purpose of sanctioning the proposed Scheme;
- f) Dispensing the meeting of the Secured Creditors of all the Applicant-Companies since there are no secured Creditors of any of the Applicant-Companies as on date; and
- g) Passing such other and further orders as are deemed necessary in the facts and circumstances of the case.

7. Mr. D. Bhattacharya along with Mr. Gaurav Chopra, counsel for the applicants took us through the averments made in the application as well as the documents annexed therewith. Learned counsel have drawn our attention to the affidavit of the aforesaid Directors of the Applicant-Companies at Page No. 337-339, 340-342, 343-345 respectively confirming that in terms of Section 230 (2) of the Act, the '**Scheme**' does not envisage reduction of share capital of the **Third Applicant-Company** and the proposed '**Scheme**' is not a corporate debt restructuring '**Scheme**'.

8. It is further represented that the capital structure of the Applicant-Companies as on 31st March, 2016 as per their latest audited financial statements has been disclosed in the application and that

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subsequent to 31st March, 2016 till the date, there have been no additions/changes in their share capital. The Applicant-Companies have also filed their respective list of share holders as on 08.02.2017 which is annexed as Annexure 'H', 'P' and 'X' respectively of the application.

9. The Applicant-Companies have also filed their respective audited financial statement as on 31.03.2016 as at Annexures 'D', 'L' and 'T', respectively and provisional financial statement of A-1 Company, Annexure 'E' as on 31.12.2016; in respect of A-2 Company as on 31.01.2017 at Annexure 'M'; and for A-3 Company, the provisional financial statement as on 31.12.2016 is at Annexure 'U'.

10. It is also represented by the learned counsel that all the Applicant-Companies are subsidiaries of POSCO Korea and are engaged in the similar line of business and in order to achieve the rational as set out in the '**Scheme**' at Annexure 'A' of the application, the Board of Directors of the respective Applicant-Companies have passed resolutions dated 30.12.2016, approving the '**Scheme**'. The '**Scheme**' also takes care of the interests of staff/workers and employees of the Transferor-Companies. It is provided as under:-

On the '**Scheme**' becoming effective all the staff, workmen and employees of Transferor-Companies shall be deemed to have become the employees of Transferee-Company without any break or interruption in their services, on not less favourable terms and conditions on which they are engaged as on the Effective Date. The Transferee-

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Company further agrees that for the purpose of payment of any retirement benefit/compensation, such immediate uninterrupted past services with the Transferor-Companies, shall also be taken into account. The Transferee-Company undertakes to continue to abide by the terms of agreement/settlement entered into by the Transferor-Companies, with employees or Associations of the Transferor-Companies.

11. The '**Scheme**' envisages that with effect from the Appointed Date i.e. **1st April, 2016**, the First and Second Applicant-Companies shall merge in the Third Applicant-Companies and all the assets and liabilities of both the applicant companies shall also be transferred to and vested in and assumed by the Third Applicant-Companies. The '**Scheme**' thus states that it shall be effective from the Appointed Date but shall be operative from the Effective Date as defined in the '**Scheme**'.

12. The share exchange ratio has been determined in accordance with the recommendations of Deloitte Haskins and Sells LLP, Chartered Accountants, which has been accepted by Board of Directors of the respective Companies and the same has been annexed at Annexure 'B' of the application. It is, thus, represented by the learned counsel for the Applicants that based upon the above valuation report, the Transferee-Company shall issue and allot equity shares to the shareholders of the Transferor-Companies in the following ratio:-

(i) Aggregate of 10,518 (Ten thousand five hundred and eighteen) equity shares of the Transferee-Company having face value of ₹ 10 (Rupees ten only) each fully paid-up for every 1,000 (One thousand) equity shares of Transferor-Company No. 1 having face value of ₹ 100 (Rupees hundred only) each fully paid-up.

(ii) Aggregate of 548 (Five hundred and forty eight) equity shares of the Transferee-Company having face value of ₹ 10 (Rupees ten only) each fully paid-up for every 1,000 (One thousand) equity shares of Transferor-Company No. 2 having face value of ₹ 10 (Rupees ten only) each fully paid-up.

13. Learned counsel for the applicants have further represented that in relation to the members/equity share holders, secured and unsecured creditors, the following details emerge from the application:

	First Applicant Company (Transferor company 1)	Second Applicant Company (Transferor company 2)	Third Applicant Company (Transferee company)
Shareholders as on 08.02.2017	2	4	3
Secured creditors.	NIL	NIL	NIL
Unsecured creditors as on 10.01.2017	16	14	10

14. Having perused the joint application of the Applicant-Companies and hearing the learned counsel, we direct convening of the meeting of the equity shareholders and unsecured creditors of the

Applicant-Companies as follows (there being no secured creditors of the Applicants) :-

(i) The notice for the meetings shall be issued by the Transferor-Companies and Transferee Company as follows:

In relation to Transferor-Company No. 1

- a) Meeting of equity shareholders be convened on 25.05.2017 at 11.00 a.m. at the Conference Hall, Room No. 512, 5th Floor, BPTP Park Centra Building, Sector 30, Gurgaon-122001, Haryana, India subject to notice of meeting being issued.
- b) Meeting of unsecured creditors on 25.05.2017 at 02.00 p.m. at the Conference Hall Room No. 512, 5th Floor, BPTP Park Centra Building, Sector 30, Gurgaon-122001, Haryana, India subject to notice of meeting being issued.

In relation to Transferor-Company No. 2.

- a) Meeting of equity shareholders on 25.05.2017 at 12 O' Clock at the Conference Hall Room No. 512, 5th Floor, BPTP Park Centra Building, Sector 30, Gurgaon-122001, Haryana, India subject to notice of meeting being issued.
- b) Meeting of unsecured creditors on 25.05.2017 at 03.00 p.m. at the Conference Hall Room No. 512, 5th Floor, BPTP Park Centra Building, Sector 30, Gurgaon-122001, Haryana, India subject to notice of meeting being issued.

In relation to Transferee-Company.

- a) Meeting of equity shareholders on 26.05.2017 at 11.00 a.m. at the Conference Hall Room No. 512, 5th Floor, BPTP Park Centra Building, Sector 30, Gurgaon-122001, Haryana, India subject to notice of meeting being issued.
 - b) Meeting of unsecured creditors on 26.05.2017 at 12.00 Noon p.m. at the Conference Hall Room No. 512, 5th Floor, BPTP Park Centra Building, Sector 30, Gurgaon-122001, Haryana, India subject to notice of meeting being issued.
- ii) The quorum of the meeting of the equity shareholders of transferor company No. 1 shall be 2 in number. For Transferor-Company No. 2 and the Transferee-Company for quorum shall be 4 and 3 in number respectively.
- iii) The quorum of the meeting of the unsecured creditors of each of the transferor company No. 1, transferor company No. 2 and the transferee company shall be 16, 14 and 10 respectively.
- iv) In case the quorum, as noted above is not present, the meeting shall be adjourned by 30 minutes and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of constituting the quorum, the valid proxies shall also be considered if the proxy is in prescribed form, duly signed by the person entitled to attend

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and vote at the meeting, filed with the registered office at least 48 hours before the meeting.

v) Justice (Retd.) S.D. Anand (Mobile No. 8968326699) is appointed as the Chairperson for the meetings to be called under this Order. He shall be paid a lump sum fee of ₹ 3 lacs for his services as the Chairperson.

vi) Mr. Sourab Arora (Mobile No. 9815797779) # 916, Sector 7-B, Chandigarh is appointed as the Alternate Chairperson for the meetings to be called under this Order. He shall be paid a lump sum fee of ₹ 1.5 lacs for his services as the Alternate Chairperson.

vii) Mr. Aseem Chhabra (Mobile No. ~~769678888~~ ⁷⁶⁹⁶⁷⁸⁸⁸⁸¹), email Aseem.c@rediffmail.com is appointed as the Scrutiniser for the meetings to be called under this Order. He shall be paid a lump sum fee of ₹ 1.5 lacs for his services as the Scrutiniser.

xiii) The fee of the Chairperson, Alternate Chairperson and Scrutinizer shall be borne by the Transferee-Company. The travelling expenses, boarding and lodging for them shall also be borne by the Transferee-Company.

ix) It is further directed that individual notices of the said meetings shall be sent by the Applicant-Companies to all the members and the creditors as per list filed with the joint application through registered post or speed post or through courier or through email at least 30 days in advance before the scheduled date of meeting indicating the date, time

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and venue of the meeting together with copy of the '**Scheme**', Explanatory Statement required to be sent under the Companies Act, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 along with proxy forms and other documents as prescribed under the Act and the Rules. The Scrutinizer appointed for the aforesaid meetings shall verify that the proxy registers are properly maintained.

x) The Applicant-Companies shall jointly publish advertisement in the Indian Express(English, Delhi Edition) and Jan Satta (Hindi, Delhi Edition) at least 30 clear days in advance before the meetings in the form prescribed under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. It be stated in the advertisements that copies of the '**Scheme**' of amalgamation, the Explanatory Statement required to be published pursuant to Sections 230 to 232 of the Act and the forms of proxy shall be provided free of charge at the registered office of the Applicant-Companies. The Applicant-Companies shall also publish the notice on their respective websites, if any.

xi) Voting shall be allowed in person or by proxy and the same will be considered for the purpose of counting or quorum of the aforesaid meetings, provided that the proxy in the prescribed form and duly signed by the person entitled to attend and vote at the said meeting or by his authorised representative is filed with the registered office of the Applicant-Companies. The Chairperson shall file a report regarding the



result of the meetings in Form No. C.A.A. 4, as per Rule 14 of the Rules within 3 working days of the conclusion of the meeting. The Chairperson shall be fully assisted by the authorised Company Secretary of each Company and the Scrutinizer. They will also assist the Chairperson and Alternate Chairperson in performing and finalising the report to the extent required.

xii) The Petitioner/Applicant-Companies shall individually and in compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA 3 along with a copy of the '**Scheme**', the explanatory statement and the disclosures mentioned in Rule 6 of the Rules to (i) the Central Government through the Regional Director, Ministry of Corporate Affairs, Northern Region, (ii) the Registrar of Companies, Haryana (iii) Official Liquidator, (iv) the Income Tax Authorities and to such other Regulators having significant bearing on the operation of Petitioners/Applicant-Companies stating that representations, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representations shall be simultaneously sent to the concerned companies, failing which it shall be presumed that they have no objection to the proposed '**Scheme**'.

xiii) The Applicant-Companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme

made by any creditor or member/equity shareholder attending the meetings as aforesaid.

xiv) The authorised representatives of the Applicant-Companies shall furnish affidavit of service of notices to creditors and members and publication of advertisement in newspapers at least 7 days before the date of the meeting.

xv) It is directed that all the Applicant-Companies shall not change the share structure or make any change/addition in the share capital till the 'Scheme' is approved.

xvi) All the directions shall be complied in accordance with the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the formats prescribed thereunder.

15. The application stands allowed in the aforesaid terms. It is directed that the learned counsel/authorised representative of the Applicant-Companies shall deliver the copy of this order to the Chairperson, Alternate Chairperson and Scrutinizer immediately. A copy of the order be supplied to the counsel for the Applicant-Companies forthwith.

(Deepa Krishnan)
Member (Technical)

(Justice R.P. Nagrath)
Member (Judicial)

April 03, 2017.

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