

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (SPECIAL) COURT NO. II
KOLKATA**

Company Petition (CAA) NO. 32/KB/2023
Connected with
Company Application (CAA) NO. 164/KB/2022

*A Petition under Sections 230 to 232 and other applicable provisions of the
Companies Act, 2013, read with the Companies (Compromises, Arrangements and
Amalgamations) Rules, 2016.*

IN THE MATTER OF:

A Scheme of Amalgamation (Final Motion):

S & T MINING COMPANY LIMITED [CIN: U13100WB2008PLC129436]; a company incorporated under the Indian Companies Act, 1956 and a public limited company within the meaning of the Companies Act, 2013 and having its Registered Office at Tata Centre, 43 Jawaharlal Nehru Road, Kolkata – 700071, within the aforesaid jurisdiction;

**.....Transferor Company / Petitioner Company
And**

TATA STEEL LIMITED [CIN: L27100MH1907PLC000260]; a company incorporated under the Indian Companies Act, 1882 and a public limited company within the meaning of the Companies Act, 2013 and having its Registered Office at Bombay House, 24-Homi Mody Street, Fort, Mumbai 400001, Maharashtra in the state of Maharashtra;

..... Transferee Company

And

IN THE MATTER OF:

S & T Mining Company Limited

..... Transferor Company / Petitioner Company

Date of hearing: June 15, 2023

Date of pronouncing the order: November 10, 2023

CORAM:

SMT. BIDISHA BANERJEE

: MEMBER (JUDICIAL)

SHRI BALRAJ JOSHI

: MEMBER (TECHNICAL)

Appearance:

For the Petitioner Company

1. Mr.Ratnanko Banerji, Sr. Adv.
2. Mr. Soorjya Ganguli, Advocate
3. Ms. Pooja Chakrabarti, Advocate
4. Ms. Kiran Sharma, Advocate
5. Mr. Aritra Deb, Advocate

For RD(ER) MCA:

Mr. Alok Tandon, JD

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ORDER

Per: Balraj Joshi, member (Technical)

1. This Court is congregated through hybrid mode.
2. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“Act”) for sanction of the Scheme of Amalgamation of **S & T Mining Company Limited**, being the Transferor Company/ Petitioner Company, into and with **Tata Steel Limited**, Transferee Company whereby and whereunder the Transferor Company is proposed to be amalgamated into and with the Transferee Company from the *Appointed Date, viz. 1st April, 2022* in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”).
3. The Petition has now come up for final hearing. Counsel for the Transferor Company/ Petitioner Company submits as follows: -
 - (a) The Scheme was approved unanimously by the Board of Directors of the Transferor Company/ Petitioner Company at their meeting held on 21st September, 2022.
 - (b) The circumstances and/or grounds that have necessitated and/or justified the Scheme and the advantages thereof as detailed in the Scheme *inter alia* include:
 - (i) The Transferee Company is one of the leading global steel companies, with over 100 (hundred) years of experience in the steel sector and is a pioneer of steel manufacturing in India. The Transferor Company/ Petitioner Company is a wholly-owned subsidiary company of the Transferee Company. The proposed amalgamation will consolidate the Transferor Company/Petitioner Company into and with the Transferee Company which will ensure creation of a combined entity, resulting in simplification of management structure, leading to better administration and reduction in costs. Further, such restructuring will lead to simplification of group structure by eliminating multiple companies within the group.

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- (ii) The Transferee Company and the Transferor Company/ Petitioner Company believe that the reduction of administrative and operational costs due to the amalgamation of the non-operational undertaking into the Transferee Company would maximize shareholder value of the Transferee Company.
- (iii) The Scheme would result in the following synergies:
- A. ensuring a streamlined group structure by reducing the number of legal entities in the group structure which will significantly reduce multiplicity of legal and regulatory compliance requirements and costs and will enhance the business oversight and eliminate duplicative communication and co-ordination efforts across multiple entities;
 - B. simplification of management structure, better administration and reduction in administrative and operational costs over a period of time, better utilization of common facilities, sharing of best practices and cross-functional learning, the elimination of duplication and multiplicity of compliance requirements and rationalization of administrative expenses;
 - C. reducing time and efforts for consolidation of financials and efficient tax planning at the group level; and
 - D. adoption of improved safety, environment and sustainability practices owing to a centralized committee at combined level to provide focused approach towards safety, environment and sustainability practices resulting in overall improvement.
- (c) The assets of the Transferor Company/Petitioner Company and the Transferee Company are sufficient to meet all liabilities arising upon the amalgamation and that the said Scheme will not adversely affect the rights of any of the creditors of the Transferor Company/Petitioner Company and the Transferee Company in any manner whatsoever.
- (d) The present Scheme does not contain or provide for any corporate debt

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restructuring. The present Scheme of Amalgamation does not provide for any compromise with the creditors of the Transferor Company/Petitioner Company and the Transferee Company.

- (e) The Statutory Auditors of the Transferor Company/Petitioner Company and the Transferee Company have vide their certificates dated September 21, 2022 and September 22, 2022 respectively, confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.
- (f) No proceedings are pending under Sections 235 to 251 of the Companies Act, 1956 and Sections 217, 219, 221, 224 and 225 of the Companies Act, 2013 against the Transferor Company/Petitioner Company.
- (g) The shares of the Transferor Company/ Petitioner Company are not listed on any of the stock exchanges.
- (h) This Tribunal has vide its order dated 12th January, 2023 in Company Application (CAA) No. 164/KB/2022, made the following directions with regard to meetings of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act: -

(i) **Meetings dispensed:**

i. **Equity Shareholders**

The meeting of the Equity Shareholders of the Petitioner Company for considering the Scheme has been dispensed with, in view of all shareholders of the Petitioner Company having given their consent to the Scheme by way of affidavits.

ii. **Secured Creditors**

The meeting of the Secured Creditors of the Petitioner Company for considering the Scheme has been dispensed with in view of NIL Secured Creditors of the Petitioner Company.

iii. **Unsecured Creditors**

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The meeting of the Unsecured Creditors of the Petitioner Company for considering the Scheme has been dispensed with in view of receipt of consent from more than 99% in value of Unsecured Creditors of the Petitioner Company to the Scheme by way of affidavits.

(ii) **Meetings to be held:**

No meetings are required to be held.

- (i) The said order further directed that no application or proceedings for sanction of the Scheme under Sections 230 and 232 of Companies Act, 2013 are required to be taken by the Transferee Company as the Transferor Company/ Petitioner Company is a wholly-owned subsidiary of the Transferee Company and that the Scheme does not involve any compromise or arrangement whatsoever between the Transferee Company and its shareholders or creditors or any other class of persons within the meaning of Sections 230 or 232 of Companies Act, 2013 or any reorganization or restructuring of the capital of the Transferee Company and no shares are to be issued by the Transferee Company.
- (j) Consequently, the Transferor Company/ Petitioner Company presented the instant petition for sanction of the Scheme. This Tribunal admitted the instant petition vide an order dated 21st April, 2023 and fixed the final hearing on 15th June, 2023 upon issuance of notices to the Statutory Authorities and advertisement of date of hearing. In compliance with the said order dated 21st April, 2023, the Transferor Company/ Petitioner Company has duly served such notices vide speed post and email on the statutory authorities viz., (i) the Income Tax Department having jurisdiction, over the Transferor Company/ Petitioner Company, (ii) the Official Liquidator, High Court, Calcutta, (iii) the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, (iv) the Registrar of Companies, West Bengal, Kolkata, (v) Securities and Exchange Board of India, (vi) BSE Limited and (vii) National Stock Exchange of India

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Limited and have also published such advertisements in the “*Business Standard*” in English and “*Aajkal*” in Bengali in their respective issues dated 2nd June, 2023. An affidavit of compliance in this regard has also been filed by the Transferor Company/Petitioner Company on 12th June, 2023.

(k) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Transferor Company/ Petitioner Company. The Scheme has been made *bona fide* and is in the interest of all concerned.

(l) Pursuant to the said advertisements and notices, the Regional Director, Ministry of Corporate Affairs, Kolkata (“**RD**”) and the Official Liquidator, High Court of Calcutta (“**OL**”) have filed their representations before this Tribunal.

4. The Official Liquidator has filed his report dated 2nd March, 2023 and concluded as under: -

*“That the Official liquidator on the basis of information submitted by the Petitioner Company is of the view that the affairs of the aforesaid Petitioner Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to **public interest** as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable”.*

5. The RD has filed his reply affidavit dated 5th June, 2023 (“**RD affidavit**”) which has been dealt with by the Petitioner by their Affidavit-in-Rejoinder dated 13th June, 2023 (“**Rejoinder**”). The observations of the RD and responses of the Petitioner are summarized as under: -

(a) Paragraph No. 2(a), (b) and (c) of RD affidavit: -

That it is submitted that the Transferee Company namely TATA STEEL LIMITED is registered in the State of Maharashtra under the ROC, Mumbai which is not under the jurisdiction of this Deponent. Hence, this Deponent has no comment on it.

That it is submitted that on the examination of report of the Registrar of Companies, West Bengal it appears that no complaint and/or representation has been received against the proposed Scheme of

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Amalgamation so far in respect of Transferor Company, S & T Mining Company Limited. Further, the said Transferor Company is updated in filing their Financial Statements and Annual Returns for the financial year 31/03/2022.

The Transferor Company, S & T Mining Company Limited is a wholly owned subsidiary of the Transferee Company which is listed on the National Stock Exchange of India Limited (NSE) and BSE Limited (BSE). The Transferor Company submitted that in terms of the Regulation 37(6) of SEBI (Listing Obligation and Disclosure Requirement) Regulation, 2015, the requirement of obtaining prior approval of concerned Stock Exchanges in cases of mergers involving wholly owned subsidiary companies has been dispensed with and only the listed holding company is required to file Scheme of Amalgamation with the Stock Exchanges for the purpose of disclosures. Accordingly, the Scheme of Amalgamation along with the Board resolution passed by the Board of Directors of the Transferee Company approving such Scheme of Amalgamation has been duly filed with NSE and BSE for disclosure purpose only.

Paragraph No. 3(a) of Rejoinder: -

It is stated and submitted that the contents of paragraph 1, paragraph 2(a), paragraph 2(b) and paragraph 2(c) of the Reply are matters of record.

(b) Paragraph No. 2(d) of RD affidavit: -

The Petitioner Company should be directed to provide list/details of Assets, if any, to be transferred from the Transferor Company to the Transferee Company upon sanctioning of the proposed Scheme.

Paragraph No. 3(b) of Rejoinder: -

- a. *With regard to the contents of paragraph 2(d) of the Reply, it is stated and submitted that all the assets of the Transferor Company/Petitioner Company appearing as on April 1, 2022 will be transferred to the*

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Transferee Company. A schedule of assets is annexed at Page 6 of the Rejoinder.

(c) Paragraph No. 2(e) of RD affidavit: -

That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

Paragraph No. 3(c) of Rejoinder: -

With regard to the contents of para 2(e) of the Reply, it is stated and submitted that the Transferee Company shall comply with the provisions prescribed under section 232 (3) (i) of the Companies Act, 2013 as applicable.

(d) Paragraph No. 2(f) of RD affidavit: -

That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties, if any, from the Transferor Company to it.

Paragraph No. 3(d) of Rejoinder: -

With regard to the contents of para 2(f) of the Reply, it is stated and submitted that the Transferor Company/Petitioner Company does not have immovable property and hence, there is no separate stamp duty payable for the transfer of immovable properties in the proposed Scheme of Amalgamation. However, in any event, the Transferee Company shall pay all applicable stamp duty, if payable, in course of implementation of the proposed Scheme of Amalgamation upon receipt of approval of this Hon'ble Tribunal.

(e) Paragraph No. 2(g) of RD affidavit: -

The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no

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change is made.

Paragraph No. 3(e) of Rejoinder: -

With regard to the contents of para 2(g) of the Reply, it is stated and submitted that the Scheme enclosed to the Company Application and Company Petition are one and the same and that there is no discrepancy, or change is made.

(f) Paragraph No. 2(h) of RD affidavit: -

It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 08/02/2023 for their views/observation in the matter. However, no such views/observation in the matter from the Income Tax Department has been received yet. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

Paragraph No. 3(f) of Rejoinder: -

With regard to the contents of the para 2(h) of the Reply, it is stated and submitted that, the Transferor Company/Petitioner Company has already served notices to all concerned authorities including the Income Tax Authority and undertakes to abide by the decisions of all authorities, which are likely to be affected by the proposed Scheme of Amalgamation.

6. It has been submitted that despite publication of notice of hearing in newspapers in Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016, no other person has filed any opposition or objection before this Tribunal in the instant matter.
7. Heard submissions made by the Ld. Counsel appearing for the Transferor Company/ Petitioner Company. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders: -
 - i. The Scheme mentioned in the Petition, being Annexure A, is hereby sanctioned by this Tribunal with the Appointed Date fixed as 1st April,

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2022, and shall be binding on the Transferor Company, Transferee Company and all their shareholders, creditors, other stakeholders and all concerned; in respect of sanctioning the scheme of non-petitioner companies named hereinabove by the respective Bench(es) of NCLT under whose jurisdiction these companies fall. This sanction is limited to the issues related to the Petitioner Company whose Registered office is situated under the jurisdiction of this Bench of this Tribunal.

- ii.** All the assets, properties, rights and interest of the Transferor Company/ Petitioner Company be transferred from the said Appointed Date, without any further act or deed, to the Transferee Company and become the assets and vest in the Transferee Company with all the estate and interest of Transferor Company/ Petitioner Company in accordance with the Scheme and pursuant to Section 232 read with Section 230 of the Companies Act 2013;
- iii.** All the liabilities and duties of the Transferor Company/ Petitioner Company be transferred with effect from the said Appointed Date, without further act or deed, to the Transferee Company and the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company;
- iv.** All proceedings and/or suit and appeals now pending by or against the Transferor Company/ Petitioner Company shall be continued by or against the Transferee Company, as provided in the Scheme;
- v.** The schedule of assets in respect of the Transferor Company/Petitioner Company be filed within a period of 60 (sixty) days from the date of order made herein;
- vi.** Upon the Scheme becoming effective, the Transferor Company/ Petitioner Company shall stand dissolved without winding up;
- vii.** With effect from the Appointed Date and up to and including the Effective Date, all legal, arbitration, and tax assessment proceedings/appeals of whatsoever nature by or against the Transferor

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Companies pending and/or arising on or after the Appointed Date shall be continued and/or enforced by or against the Transferee Company. Any compounding/penalties/liabilities/taxes required to be done on behalf of the Transferor Companies for any violation of the Companies' Act shall be the responsibility of the Transferee Company. The Transferee Company shall also preserve the necessary records in respect of any such pending proceedings, at least till the culmination of such proceedings.

- viii.** The Transferor/ Petitioner Company and the Transferee Company do each within 30 (thirty) days of the date of the receipt of certified copy of this order, cause a certified copy to be delivered to their respective/ jurisdictional Registrar of Companies.
 - ix.** All concerned authorities to act on certified copy of this order along with the sanctioned Scheme.
 - x.** Any person/authority interested/aggrieved shall be at liberty to apply before this Learned Tribunal in the above matter for such directions as may be necessary.
8. The Transferor Company/ Petitioner Company shall supply legible printout of the Scheme and schedule of assets and liabilities in acceptable form to the registry and the registry will, upon verification, append such printout, to the certified copy of the order.
9. Company Petition *C.P.(CAA) No. 32/KB/2023* connected with *C.A.(CAA) No. 164/KB/2022* is disposed of accordingly.
10. Certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 10th Day of November, 2023.

Bose, R.K. [LRA]