

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, MUMBAI, COURT-II**

**CA 156 of 2021 and CA 261 of 2021**

**In**

**CP (CAA) No. 70/MB/2021**

**Connected with**

**CA (CAA) No. 3083/MB/2019 &  
CA(CAA) No 129/MB II/2019**

**In the matter of:**

The Companies Act, 2013;

And

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

And

Composite Scheme of Amalgamation of Bannipal Steel Limited and Tata Steel BSL Limited into and with Tata Steel Limited.

**Tata Steel Limited**

[CIN: L27100MH1907PLC000260]

...Petitioner Company 1/

Transferee Company

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**Bamnival Steel Limited** ...Petitioner Company 2/  
[CIN: U27310MH2018PLC304494] Transferor Company 1  
**Tata BSL Steel Limited** ...Petitioner Company 3/  
[CIN: L74899DL1983PLC014942] Transferor Company 2

**Order delivered on 29.10.2021**

***Coram:***

Hon'ble Member (Judicial) : Mr. Ashok Kumar Borah

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

***Appearances (via video conferencing):***

For the Financial Creditor : Senior Advocate Mr. Gaurav Joshi, Senior Advocate Mr. Zal Andhyarujina, Adv. Karan Bhide, Adv. Shashank Gautam, Adv. Vijay Purohit, Adv. Priya Patwa, Adv. Devna Arora i/b. AZB & Partners and P&A Law Offices, Advocates.

For the Regional Director : Ms. Rupa Suttar, Assistant Regional Director (Western Region) Ministry of Corporate Affairs.

**ORDER**

***Per: Shyam Babu Gautam, Member (Technical)***

1. The court convened via videoconferencing.
2. Heard the Learned Senior Counsels for the Petitioner Companies, the Officer of the Regional Director, Western Region, Mumbai (“**RD, Mumbai**”) and Regional Director, Northern Region, New Delhi (“**RD,**

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**New Delhi**”). No Objections have been filed qua Petitioner Companies 1 and 2 before this Tribunal to oppose the Company Scheme Petition. Petitioner Company 3 has received certain representations from some of its shareholders and unsecured creditors in respect of the Scheme, and Petitioner Company 3 has dealt with such objections by filing requisite responses which are on record.

3. The Petitioner Companies have jointly filed the present Company Scheme Petition seeking sanction of this Tribunal to the Composite Scheme of Amalgamation of Bannipal Steel Limited and Tata Steel BSL Limited into and with Tata Steel Limited (“**Scheme**”) under Sections 230 to 232 of the read with other applicable provisions Companies Act, 2013 (“**Act**”).
4. The Learned Senior Counsels for the Petitioner Companies stated that the Petitioner Company 1 is engaged in the business of manufacturing steel and offers a broad range of steel products including a portfolio of high value-added downstream products such as hot rolled, cold rolled and coated steel, rebars, wire rods, tubes and wires. The Petitioner Company 1 also has a well-established distribution network. The Petitioner Company 2 is a wholly owned subsidiary of Petitioner Company 1 and was incorporated *inter alia* for the purpose of completing the acquisition of the

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Petitioner Company 3 pursuant to corporate insolvency resolution process of Petitioner Company 3 (“**CIRP**”) undertaken in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”). Petitioner Company 2 doesn’t carry out any business. The Petitioner Company 3 is engaged in the business of manufacturing steel and steel products such as hot rolled, cold rolled and coated steel, cold rolled full hard, galvanized coils and sheets, high tensile steel strips, color coated tiles, precision tubes, large diameter pipes, etc.

5. The Learned Senior Counsels for the Petitioner Companies stated that the Scheme provides for amalgamation of Petitioner Company 2 and Petitioner Company 3 into and with Petitioner Company 1, and consequent dissolution of Petitioner Company 2 and Petitioner Company 3, without winding up.
6. The Learned Senior Counsels for the Petitioner Companies stated that the background, circumstances, rationale and benefits of the Scheme are that:

(a) **Commercial rationale for amalgamation of the Petitioner Company 2 with the Petitioner Company 1**

- (i) The Petitioner Company 2 is a wholly owned subsidiary of the Petitioner Company 1 and

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was incorporated *inter alia* for the purpose of completing the acquisition of the Petitioner Company 3, by way of the CIRP as prescribed under the IBC.

- (ii) The Petitioner Company 2 holds the equity investment in the Petitioner Company 3 and is its holding company. Pursuant to the completion of the proposed amalgamation of the Petitioner Company 3 into and with the Petitioner Company 1, there would no longer be a requirement for the Petitioner Company 2 to exist as a separate legal entity. This amalgamation would also result in simplification of the group structure of the Petitioner Company 1.
- (iii) The amalgamation would result in significant reduction in the multiplicity of legal and regulatory compliances required to be carried out by the Petitioner Company 2 and the Petitioner Company 1.
- (iv) The Petitioner Company 2 being a wholly owned subsidiary of the Petitioner Company 1 is under the management of the Petitioner Company 1 and it would be advantageous to amalgamate the two entities to ensure focused

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management in the Transferee Company,  
thereby resulting in efficiency of management  
and maximizing value to the shareholders.

- (v) This amalgamation will also result in significant reduction of administrative, operational, financial, and managerial and such other costs.

**(b) Commercial rationale for amalgamation of the  
Petitioner Company 3 with the Petitioner  
Company 1**

- (i) The Petitioner Company 3 and the Petitioner Company 1 are engaged in the business of manufacture and sale of steel and steel products. The amalgamation will ensure focused management in the combined entity, thereby resulting in efficiency of management and maximizing value for the shareholders. Such restructuring will lead to simplification of group structure by eliminating multiple companies in similar business.
- (ii) The proposed amalgamation of the Petitioner Company 3 with the Petitioner Company 1 in accordance with the terms of this Scheme would enable both the companies to realize benefits of greater synergies between their

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businesses, yield beneficial results and pool financial resources as well as managerial, technical, distribution and marketing resources of each other in the interest of maximizing value to their shareholders and the stakeholders.

(iii) The proposed amalgamation will be beneficial to both the Petitioner Company 3 and the Petitioner Company 1 in the following manner:

- **Operational integration and better facility utilisation:** The amalgamation in accordance with this Scheme will provide an opportunity for reduction of operational costs through transfer of intermediary products between the companies, better order loads for the business through pooling of orders, synergies from sales and production planning across the businesses.
- **Efficient raw material procurement and reduced procurement costs:** Synergy of operations will be achieved as a result of sustained availability of raw materials as well as reduced procurement costs for the Petitioner Company 3. The proposed

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amalgamation would ensure iron ore security for the Petitioner Company 3 from the captive mines of the Petitioner Company 1. Similarly, combined sourcing of other raw materials such as coke, coal, pellet, and limestone by both the Petitioner Company 3 and the Petitioner Company 1 would result in reduction in overall costs of procurement for the amalgamating companies. Besides, certain requirements of the Petitioner Company 3 such as ferro alloys and scrap could be directly met by the Petitioner Company 1 production and procurement arms.

- **Operational Efficiencies:** The amalgamation would result in synergy benefits arising out of single value chain thereby reducing costs and increasing operational efficiencies. Centralization of inventory, from raw material to finished goods and spares, may enable better efficiency, utilization and overall reduction in working capital. The proposed amalgamation would likely result in optimized power consumption, reduced costs, sharing of best practices, cross-

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functional learnings, better utilisation of common facilities and greater efficiency in debt and cash management.

- **Rationalization of Procurement & Logistics costs:** Consolidation and optimization of stockyards could significantly reduce logistics and distribution costs for both the Petitioner Company 3 and the Petitioner Company 1. Clubbing of shipments may help reduce shipping costs, port terminal charges and ocean freight.
- **Enhancing Value in Marketing:** With an overlap in products across the Petitioner Company 3 and the Petitioner Company 1 the combined entity would be better positioned to service customer needs. The Petitioner Company 3 could expand its existing core market in North-India using the strong distribution channel and dealer network of the Transferee Company. Further, the Petitioner Company 3 could also have access to the Petitioner Company 1's branded product portfolio and marketing capabilities. The Petitioner Company 1 would benefit from

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complementary product offerings of the Petitioner Company 3, resulting in a strong presence across market segments. The proposed amalgamation will result in access to new markets and product offerings as well as increased export volumes.

- **Improving Customer Satisfaction and Services:** The proposed amalgamation would make it easier to address needs of customers by providing them uniform product and service experience, on-time supplies, and improved service levels thereby improving customer satisfaction. With common credit management, the customers are expected to benefit from the channel financing benefits from the combined entity.
- **Improved safety, environment and sustainability practices:** Increased coverage of plant automation can be achieved across plants of the Petitioner Company 3, by using the Petitioner Company 1's information technology applications and systems.

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Thus, the proposed amalgamation is beneficial, advantageous and not prejudicial to the interests of the shareholders, creditors and other stakeholders of the Petitioner Company 3 and the Petitioner Company 1 and is beneficial to the public at large.

7. The Board of Directors of the Petitioner Company 1, Petitioner Company 2 and Petitioner Company 3 have approved the Scheme by passing their respective Board Resolutions all dated April 25, 2019, which are annexed to the Company Scheme Petition at Exhibit “P-2”, Exhibit “Q” and Exhibit “R-2”, respectively.
8. The Learned Senior Counsels for the Petitioner Companies further stated that the equity shares of the Petitioner Company 1 and Petitioner Company 3 are listed on the BSE Limited (“**BSE**”) and National Stock Exchange of India Limited (“**NSE**”). The BSE and NSE *vide* their letters dated August 26, 2019 have provided “No-Objection” / “No Adverse Observation” letters to Petitioner Company 1 and Petitioner Company 3, to file the Scheme with this Tribunal and thereafter, the Petitioner Companies have approached this Tribunal seeking its sanction to the Scheme.
9. Learned Senior Counsels appearing on behalf of the Petitioner Companies state that the Petition is filed in consonance with the orders dated February 20, 2020,

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January 11, 2021, January 19, 2021 and February 5, 2021 passed by this Tribunal in the Company Scheme Applications CA (CAA) 3083 / MB / 2019 and CA (CAA) 129 / MB II / 2019 (collectively hereinafter referred as the “**CSA Orders**”).

10. The Learned Senior Counsels for the Petitioner Companies submitted that the Petition was admitted by this Tribunal *vide* an order dated May 10, 2021. Further, Petitioner Companies have complied with all the requirements as per the directions of this Tribunal and have filed necessary Affidavits proving such compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with the applicable statutory requirements, if any, as required under the Act and rules made thereunder, the Securities and Exchange Board of India, 1992, and regulations made thereunder, as and when applicable. The said undertakings given by the Petitioner Companies are accepted.
11. The Regional Director, Western Region, Mumbai, (“**RD, Mumbai**”) has filed his report dated June 17, 2021 in respect of Petitioner Company 1 and Petitioner Company 2 (“**P1 and P2 RD Report**”) with this Tribunal, *inter alia*, stating therein that this Tribunal may consider the observations made at Serial No. IV (a) to (r) of the said Report, and pass such other order

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or orders as deemed fit and proper in the facts and circumstances of the case. The observations made by the RD, Mumbai, in paragraph IV of the Report are, reproduced hereunder, for sake of ready reference:

*“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:-*

*(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) As per Part-I-Definitions Clause 111(1.4), 111(1.9) & 111(1.18) of the Scheme*

*“Appointed Date” means April 1, 2019 or such other date as approved by the NCLT;*

*“Effective Date” means the date on which the last of conditions referred to in Clause 25.1 hereof have been fulfilled. Any reference in this Scheme to the date of “coming into effect of the/this Scheme” or Scheme becoming effective” shall be construed accordingly;*

*“Record Date” means the date to be mutually fixed by the Board of Directors of the Transferor Company 2 and the Transferee Company, for the purpose of determining the shareholders of the Transferor Company 2 who shall be entitled to receive fully paid up equity shares of the Transferee Company pursuant to and as contemplated under this Scheme;*

*In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the*

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*appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.*

***Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.***

- (c) The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.*
- (d) Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy/any change/changes are made, for changes if any, liberty be given to Central Government to file further report if any required;*
- (e) The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Amalgamation. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).*
- (f) Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.*

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(g) *The Petitioner Company may be directed to submit undertaking that the petitioner company shall ensure compliance of the all provisions of the Income Tax Act, 1961 including provisions of section 2(1B) of the Income Tax Act.*

(h) *As per Part-II - (Amalgamation of The Transferor Company 1 into and with The Transferee Company ) Clause 7(7.1) of the Scheme (Accounting Treatment). Upon coming into effect of this scheme, the transferee company shall account for the amalgamation of the transferor company 1 in its books of accounts in accordance with pooling of interest method of accounting as laid down in Ind AS 103 (Business Combinations) and relevant clarifications issued by institute of chartered accountants of India (ICAI).*

*In this regards it is stated that in Indian Accounting Standard (Ind AS) 103 - prescribes application of pooling of Interest Method to account for common control business combinations. Under this method: ... Any difference, whether positive or negative, shall be adjusted against the capital reserves (or “Amalgamation Adjustment Deficit Account” in some cases). In view of the above it is submitted that the difference so credited to “Capital Reserve arising out of Amalgamation” shall not be available for distribution of dividend and other similar purposes.*

(i) *As per Part-III- (Amalgamation of The Transferor Company 2 into and with The Transferee Company) Clause 14 (14.1) of the Scheme (Accounting Treatment). Upon coming into effect of this scheme, the transferee company shall account for the amalgamation of the transferor company 2 in its books of accounts in accordance with “pooling of interest method” of accounting as laid down in Ind AS 103 (Business Combinations) and relevant clarifications issued by institute of chartered accountants of India (ICAI).*

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- (j) *As per Part-IV-(General Terms and Conditions ) Clause 21(21.1 to 21.4) of the Scheme ( Amendment to Memorandum of Association of the Transferee Company, Validity of the Existing Resolutions ETC); In this regard it is submitted that Hon'ble Tribunal may kindly direct the petitioner to comply with provisions of Section 13 and Section 232(3)(i) of the Companies Act, 2013 further if any stamp duty is payable the same should be paid in accordance with applicable laws of the State;*
- (k) *The Registered Office of **Tata Steel BSL Limited**, the Transferor Company 2 is situated Delhi is outside the jurisdiction of this Hon'ble Tribunal and falls within the jurisdiction of Hon'ble NCLT, at New Delhi Bench. Accordingly, necessary orders be obtained by the Transferor Company 2 from Hon'ble NCLT, **at New Delhi Bench.***
- (l) *Since the Transferee Company limited by shares, is listed on the Bombay Stock Exchange and the National Stock Exchange, the Petitioner Companies be directed to place on record whether necessary approval from **SEBI and the concerned Stock Exchange** have been obtained and whether the meeting of the Shareholders/class of shareholders have been convened as per the listing/SEBI guidelines.*

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- (m) *Since the Transferee Company listed on **Luxembourg Stock Exchange and the London Stock Exchange**, the Petitioner Company de directed to undertake to comply with all Rules and Regulations as stipulated by London Stock Exchange.*
- (n) *The Petitioner Companies to place on record and to provide details regarding meeting of Shareholders other than Promoters, has been convened or not.*
- (o) *Since the Transferor Company 2 and The Transferee Company have foreign/nonresident shareholders, therefore, it is subject to the compliance of section 55 of the Companies Act, 2013 the **FEMA Regulations/RBI Guidelines by the Transferee Company.***
- (p) *As regards the complaints indicated at para 21 above, under the head -Complaint received against the propose **Scheme**, it is submitted that the petitioners be directed to mention all the facts in this regard about complaints and explain about the allegations made therein, before approval of the scheme.*
- (q) *In view of the observation raised by the ROC Mumbai, mentioned at para 22 above Hon'ble NCLT may pass appropriate orders/ orders as deem fit;*
- (r) *The Petitioner Company be directed to place on record whether necessary NOC/ approval from Competition Commission of India (CCI) have been obtained or not.”*
12. In response to the observations made by the RD, Mumbai in its Report, the Learned Senior Counsels submit that the Petitioner Company 1 and Petitioner Company 2 have filed a joint affidavit dated July 6, 2021 dealing with the observations of the Regional

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Director as contained in its Report (“**P1 and P2 RD Response**”) with this Tribunal on July 6, 2021, and also served a copy of the Affidavit upon the office of the RD, Mumbai. The responses of the Petitioner Company 1 and Petitioner Company 2 to the observations made by the RD Mumbai in its Report, as contained in the P1 and P2 RD Response are as under.

13. So far as the observation in paragraph IV (a) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 i.e. Transferee Company undertakes to pass such accounting entries as may be necessary in connection with the Scheme, in compliance with Ind AS-103 and with other applicable Accounting Standards.
14. So far as the observation in paragraph IV (b) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 and Petitioner Company 2 submit that the Appointed Date i.e. April 1, 2019 has been clearly indicated in Clause 1.4 of the Scheme in accordance with Section 232(6) of the Act and the Scheme shall take effect from the Appointed Date. Petitioner Company 1 and Petitioner Company 2 further submit that they have already complied with the requirements and clarification of Circular No. F. No. 7/12/2019/CL-I dated August 21, 2019 issued by the Ministry of Corporate Affairs by clearly specifying the

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Appointed Date in the Scheme. Thus, the requirements of the said circular are duly complied with.

15. So far as the observation in paragraph IV (c) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 and Petitioner Company 2 submit as under:

(a) Petitioner Company 1: Pursuant to the directions of this Tribunal passed *vide* the CSA Orders and in terms of Section 230 (1) read with Section 230 (3) to (5) of the Act, the NCLT convened meeting of equity shareholders of the Petitioner Company 1 was duly held on Friday, March 26, 2021 at 11:00 a.m. (IST), when the Scheme has been approved by an over-whelming majority of the equity shareholders (99.99% of the equity shareholders present and voting at the NCLT convened shareholders' meeting) of the Petitioner Company 1. The report of the Chairperson appointed by this Tribunal, setting out the result of the meeting, along with the Affidavit in support thereof, has been filed with this Tribunal on April 13, 2021, and is annexed to the Company Scheme Petition as Exhibit "X". Learned Senior Counsels further submit that are the minutes of the NCLT convened meeting of equity shareholders of Petitioner Company 1 held on March 26, 2021 are annexed as Exhibit "A" to the

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P1 and P2 RD Response, and in terms of the CSA Orders, the convening and holding of meeting of the creditors of the Petitioner Company 1 was dispensed with.

(b) Petitioner Company 2: In terms of the CSA Orders, there was no requirement of convening of meeting of the equity shareholders of the Petitioner Company 2, in view of the consent affidavits obtained from its equity shareholders, and the question of convening and holding of meetings of the creditors of the Petitioner Company 2 didn't arise since Petitioner Company 2 didn't have any creditors as on September 30, 2020.

16. So far as the observation in paragraph IV (d) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 and Petitioner Company 2 undertake that the copy of the Scheme annexed as Exhibit "A" to the Company Scheme Application filed by the Petitioner Company 1 and Petitioner Company 2, viz. CA (CAA) 3083/MB/2019 and the copy of the Scheme annexed to the captioned joint Company Scheme Petition filed by the Petitioner Companies, as Exhibit "A" are one and the same, and there is no discrepancy and deviation. Further, a statement to this effect has also been made in paragraph 18 of the joint Company Scheme Petition filed by the Petitioner Companies.

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17. So far as the observation in paragraph IV (e) of the P1 and P2 RD Report is concerned, it is stated that Petitioner Company 1 and Petitioner Company 2 have served the notices under Section 230(5) of the Act upon all the concerned authorities, as directed by this Tribunal pursuant to the CSA Orders. The Petitioner Company 1 and the Petitioner Company 2 further submit that the issues of the concerned authorities, if any, arising after giving effect to the Scheme shall be addressed subject to the final decision of the concerned authorities in accordance with applicable law and the decisions of the concerned authorities, upon attaining finality, shall be binding on the Petitioner Companies.
18. So far as the observation in paragraph IV (f) of the P1 and P2 RD Report is concerned, Petitioner Company 1 states that there is no need to increase the authorized share capital of the Petitioner Company 1 pursuant to the Scheme, and therefore, the provision of Section 232 (3) (i) of the Act in respect of setting-off of fee payable by the Petitioner Company 1 (Transferee Company) for an increase in the authorized share capital, is not applicable. The Petitioner Company 1 clarifies that the existing authorized share capital of the Petitioner Company 1 is sufficient to issue equity shares to the shareholders of Petitioner Company 3, pursuant to the Scheme.

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19. So far as the observation in paragraph IV (g) of the P1 and P2 RD Report is concerned, Petitioner Company 1 and Petitioner Company 2 undertake to comply with the applicable provisions of Income Tax Act, 1961 including provisions of Section 2 (1B) thereof, as applicable and to the extent required.
20. So far as the observations in paragraphs IV (h) and (i) of the P1 and P2 RD Report are concerned, the Petitioner Company 1 undertakes that the Capital Reserves, if available, with the Transferee Company, shall not be utilized for distribution of dividends and other similar purposes.
21. So far as the observation in paragraph IV (j) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 states that the Petitioner Company 1 is not undertaking any amendment to its memorandum of association, pursuant to the Scheme, and Clause 21 is merely an enabling provision in the Scheme to facilitate such amendment, in case required. In this regards, the Petitioner Company 1 undertakes to comply with the applicable provisions of the Act, if and when such need arises. Petitioner Company 1 further undertakes to pay applicable stamp duty payable in accordance with the applicable laws.

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22. So far as the observation in paragraph IV (k) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 and Petitioner Company 2 submit that since the registered office of the Petitioner Company 3 (Transferor Company 2) is situated at Delhi, the Petitioner Company 3 had filed its Company Scheme Application viz. CA (CAA)-129 (ND)/2019 before New Delhi Bench of this Tribunal. On September 9, 2019, the Petitioner Company 3 filed an application before the Principal Bench of this Tribunal viz. CA 1955 (PB)/2019, seeking transfer of the said application from New Delhi Bench to Mumbai Bench of this Tribunal, on the ground that the registered office of the Transferee Company is situated at Mumbai. By way of an order dated September 27, 2019, passed by the Principal Bench of this Tribunal, the said application was allowed, the Company Scheme Application CA(CAA)-129 (ND)/2019 was transferred to Mumbai Bench of this Tribunal and was renumbered as CA(CAA) 129/MB - II/2019. Thereafter the Company Scheme Application filed by Petitioner Company 1 and 2, was heard together with transferred application CA (CAA) 129/MB II/2019 of Petitioner Company 3, and this Tribunal *vide* CSA Orders passed direction in respect of holding/ dispensing with the meetings of shareholders and creditors of the Petitioner Companies.

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Subsequently, the Petitioner Companies (including the Petitioner Company 3) jointly filed the above Company Scheme Petition seeking sanction of this Tribunal to the Scheme. In view thereof, Petitioner Company 1 and Petitioner Company 2 submit that there is no requirement to seek further orders/ directions from the New Delhi Bench of this Tribunal.

23. So far as the observation in paragraph IV (l) of the P1 and P2 RD Report is concerned, Petitioner Company 1 and Petitioner Company 2 submit that the BSE and NSE vide their letters dated August 26, 2019 have respectively provided “No-Objection”/ “No Adverse Observation” to the Petitioner Company 1 (Transferee Company) for filing of the Scheme with this Tribunal in accordance with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The Petitioner Company 1 further submits that all the observations made by the Stock Exchanges in their respective “No-Objection” / “No Adverse Observation” have been duly complied with by Petitioner Company 1. The Petitioner Company 1 further submits that the meeting of its equity shareholders was convened in accordance with the listing/ SEBI guidelines, and as required under SEBI guidelines, the number of votes cast by the Public Shareholders of the Petitioner Company 1 in favour of

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the Scheme, was more than the number of votes cast by its Public Shareholders against the Scheme.

24. So far as the observation in paragraph IV (m) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 (i.e. Transferee Company) states that the Global Depository Receipts of the Transferee Company are listed on the Luxembourg Stock Exchange and the London Stock Exchange. In this regard, Petitioner Company 1 undertakes to comply with applicable rules and regulations as stipulated by Luxembourg Stock Exchange and the London Stock Exchange pertaining to matters in relation to the Scheme.
25. So far as the observation in paragraph IV (n) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 submits that pursuant to the CSA Orders, the meeting of equity shareholders of Petitioner Company 1 was held on Friday, March 26, 2021 at 11:00 a.m. (IST) to seek their approval to the Scheme. The resolution proposed for the Scheme was passed with requisite majority of the equity shareholders (which also included the public shareholders of Petitioner Company 1). The Petitioner Company 1 further clarifies that the provisions of paragraph 9(b) of Annexure I of the Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017 issued by the Securities and Exchange Board of India

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(“**SEBI**”) as amended from time to time (“**SEBI Schemes Circular**”) require a listed company to seek approval of majority of public shareholders to the Scheme only if it falls within any of the specific cases mentioned under the SEBI Schemes Circular. For such approval, no separate meeting of public shareholders is required to be convened either under the SEBI Schemes Circular or Sections 230 to 232 of the Act. Petitioner Company 1 submits that at the said meeting, 4,592 public shareholders (fully paid-up and partly paid-up) representing 43,96,87,826 equity shares (Fully paid-up and Partly paid-up) of the Petitioner Company 1 voted in favour of the Scheme and 196 public shareholders (fully paid-up and partly paid-up) representing 45,407 equity shares (fully paid-up and partly paid-up) voted against the Scheme. Therefore, as required under the SEBI Schemes Circular, the number of votes cast by the public shareholders of the Petitioner Company 1 in favour of the Scheme is more than the number of votes cast by its Public Shareholders against the Scheme.

26. So far as the observation in paragraph IV (o) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 undertakes to comply with the applicable guidelines of Foreign Exchange Management Act, 1999/ Reserve Bank of India, as applicable and to the extent required. Further, the Transferor Company 2

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issued preference shares only to the Transferee Company (which is an Indian company), which shall stand cancelled on account of the merger of Transferor Company 2 into Transferee Company, pursuant to the Scheme. In view thereof, Section 55 of the Act is not applicable to the present Scheme.

27. So far as the observation in paragraph IV (p) of the P1 and P2 RD Report is concerned, Petitioner Company 1 states that as mentioned in paragraph 21 of the Report, the RD has received two complaints viz. one each from Mr. Paras Mal Bhutoria and Mr. Jatinder Singh Ahuja in respect of the Scheme. As regards the complaint of Mr. Paras Mal Bhutoria, the Petitioner Company 1 states that by its letter dated June 25, 2021, Petitioner Company 1 has appropriately responded to the said complaint. It is pertinent to mention that Mr. Paras Mal Bhutoria also filed a similar complaint before the SEBI, which has been disposed off by the SEBI. Further, as regards the complaint filed by Mr. Jatinder Singh Ahuja, Petitioner Company 1 states that in spite of the fact that the said complainant is not a shareholder of the Petitioner Company 1, Petitioner Company 1 responded to the said complaint by its letter dated May 24, 2021 enclosed to an e-mail dated May 28, 2021 sent to the Registrar of Companies, Mumbai (“ROC”) and RD. The copies of the letter

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dated June 25, 2021 and the e-mail dated May 28, 2021 along with a copy of the letter dated May 24, 2021, both sent to the ROC, are annexed to the P1 and P2 RD Response as Exhibit “B” and Exhibit “C”, respectively. In any event, the above complainants have also filed an Application before this Tribunal, on the same subject matter which is on the records of this Tribunal. It is pertinent to mention that the Scheme has been approved by an overwhelming majority of equity shareholders of the Petitioner Company 1 (99.99% of the equity shareholders present and voting at the NCLT convened shareholders’ meeting) at the NCLT convened meeting held on March 26, 2021.

28. So far as the observations in paragraph IV (q) of the P1 and P2 RD Report is concerned, the Petitioner Companies state as under:

(a) Petitioner Company 1 states that as mentioned in paragraph 22 of the P1 and P2 RD Report, ROC had received 10 complaints in respect of the Petitioner Company 1 *vide* SRN Numbers mentioned therein, which are pending. Petitioner Company 1 states that all such complaints as reported by the ROC, have been adequately responded to by the Petitioner Company 1, by way of its letter dated July 2, 2021 sent to the ROC. In the said letter, the Petitioner Company 1 has *inter*

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*alia* intimated the ROC that each of such complaints were adequately responded by the Petitioner Company 1, while briefly setting out a response to the respective complaints, and requested the ROC to treat the said complaints as closed. A copy of the letter dated July 2, 2021 sent by the Petitioner Company 1 to the ROC in respect of the said 10 complaints (along with Annexures) is annexed as Exhibit “D” to P1 and P2 RD Response.

(b) As regards the interest of the creditors, Petitioner Company 1 submits that pursuant to the directions of this Tribunal, the Petitioner Company 1 has sent notices to its secured and unsecured creditors having outstanding amount of ₹10,00,000/- (Rupees Ten Lakh) or more as on September 30, 2020, stating therein that representations, if any, may be submitted to this Tribunal within a period of 30 (thirty) days from the date of receipt of the notices with a copy to the Petitioner Company 1. Pursuant to such notices, none of the creditors have filed any representation. The Petitioner Company 2 states that Petitioner Company 2 doesn't have any creditors. In view of the above, the interests of the aforesaid creditors for Petitioner Company 1 are duly protected.

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29. So far as the observation in paragraph IV (r) of the P1 and P2 RD Report is concerned, the Petitioner Company 1 and Petitioner Company 2 state that approval of Competition Commission of India (“**CCI**”) is not required in terms of the applicable laws and rules. The amalgamation contemplated under the Scheme is benefitted from the intra-group exemption set out under Item 9 to Schedule 1 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 and therefore no approval is required to be obtained from the CCI. In view of the above, the approval of CCI has not been obtained by the Petitioner Companies.
30. Upon perusal of the responses of the Petitioner Companies as contained in the P1 and P2 RD Response, as detailed in paragraphs 12 to 29 hereinabove, the office of RD, Mumbai filed a supplementary report dated July 13, 2021 with this Tribunal (“**Supplementary Report**”). The Supplementary Report, *inter alia* states that the Petitioner Company 1 and Petitioner Company 2 have submitted their replies by way of the P1 and P2 RD Response, and a copy of the same was annexed as Annexure A to the Supplementary Report. As regards the replies of the Petitioner Company 1 and Petitioner

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Company 2 to paragraphs (IV) (a), (b), (d), (e), (g) to (j), (l) and (m), the officer appearing for the RD submits that the replies submitted by the Petitioner Companies in P1 and P2 RD Response are satisfactory. As regards the replies of the Petitioner Companies 1 and 2 to paragraphs (IV) (c), (f) (k), (n) (o) (p) (q) and (r) of the P1 and P2 RD Report, the Supplementary Report states that the Tribunal may pass appropriate orders as deem fit.

31. The observations made by the RD, Mumbai in its report dated June 17, 2021, have been reproduced in paragraph 11 above. The clarifications and undertakings given by the Petitioner Company 1 and Petitioner Company 2 to the P1 and P2 RD Report have been explained in paragraphs 13 to 29 above. The clarifications and undertakings of the Petitioner Company 1 and Petitioner Company 2 are accepted by this Tribunal, and the said Petitioner Companies are directed to comply with the same.
  
32. The Regional Director, Northern Region, New Delhi (“**RD, New Delhi**”) has filed his report dated July 16, 2021 in respect of Petitioner Company (“**P3 RD**”

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**Report”)** with this Tribunal, *inter alia*, stating therein that this Tribunal may consider the submissions made in paragraph 1-3 of the P3 RD Report and consider such orders as may be deemed fit and proper in the circumstances of the case. The observations made by the RD, New Delhi in paragraph 11 of the Report are, reproduced hereunder, for sake of ready reference:

*“11. That as per the report of Registrar of Companies, the Transferor Company No.2 has filed its Annual Return and Balance Sheet up to 2019-20 and the Transferee Company has filed its Annual Return and Balance Sheet up to 2019-20. No prosecution has been filed & no inspection or investigation has been conducted in respect of the Petitioner Companies. As per the ROC Report dated 23.06.2021, the following observations are made :-*

*1. In the attached scheme, there is no clause regarding addition of authorized share capital of Transferor Company No.2 with the authorized share capital of Transferee Company. Hence it is clarified from the petitioners whether any authorized share capital of Transferor Company No. 2 has to be increased into the authorized share capital of Transferee Company and, if so, Transferee company may kindly be directed to comply the provisions of section 232(3)(i) of the Companies Act, 2013.*

*2. As per record, the SFIO has conducted investigation in the matter of Company Bhushan Steel Limited (now known as Tata Steel BSL Limited), hence directorate may seek NOC from the SFIO in this regard.*

*3. As per the MCA portal, this office has received a complaint from one of the shareholder Mr. Vijesh*

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*Vishwanathan which is in reference to the proposed scheme of Amalgamation of Tata Steel BSL Limited with the Tata Steel Limited in regard to share swap ratio of 15:1. He stated in the complaint that he is a public shareholder of Tata Steel BSL Limited, with current shareholding of 164205 shares. The said scheme was beneficial for all parties involved, when it was approved on 25.04.2019. But the Scheme could not be implemented due to reasons beyond the control companies involved. A gap of almost 2 years is enough for the change of matrices of the Valuation report, which is being relied upon now. The said scheme now is against the public/ minority shareholdings interest holding 27.35% equity share in Tara Steel BSL Limited f or the following reasons.*

*A. Fair Exchange ratio of 15 Tata Steel BSL Limited (FV Rs. 21/-) for 1 share of Tata Steel Limited (FV Rs. 101/-), is based on valuation reports which is almost 2 years old and hence cannot be the basis as on date. And as an icon group Tata 's cannot accept the valuation report which his more than 6 month old, which is against all norms of Corporate Governance.*

*B. Public /Minority shareholding 27.35% share capital of Tata Steel BSL Limited as on date will be left with only 1.6285% of holding in amalgamated company Tata Steel Limited. The Scheme, if implemented as such will cause huge loss to the Public/ Minority shareholders of Tata Steel BSL Limited.*

*The complainant has requested that as fresh swap ratio should be computed by considering recent valuations of the company so that the interest of public shareholders is safeguarded.*

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*Another Complaint dated 28. 04. 2021 is received from Sh. Jatinder Singh Ahuja in regard to share exchange ratio.”*

33. In response to the observations made by the RD, New Delhi in its Report, the Learned Senior Counsels submit that the Petitioner Company 3 has filed affidavit dated July 18, 2021 dealing with the observations of the RD, New Delhi as contained in its Report (“**P3 RD Response**”) with this Tribunal on July 18, 2021, and also served a copy of the Affidavit upon the office of the RD, New Delhi. The responses of the Petitioner Company 3 to the observations made by the RD, New Delhi in its Report, as contained in the P3 RD Response are as under.
34. So far as the observation in paragraph 11(1) of the P3 RD Report is concerned, Petitioner Company 3 states that there is no need to increase the authorized share capital of the Petitioner Company 1 (Transferee Company) pursuant to the Scheme, and therefore, the provision of Section 232 (3) (i) of the Companies Act, 2013 in respect of setting-off of fee payable by the Petitioner Company 1 (Transferee Company) for an increase in the authorized share capital, is not applicable. The Petitioner Company 3 clarifies that the existing authorized share capital of the Petitioner Company 1 is sufficient to issue equity shares to the

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shareholders of Petitioner Company 3, pursuant to the Scheme.

35. So far as the observation in paragraph 11(2) of the P3 RD Report is concerned, Petitioner Company 3 states that the SFIO basis order of the MCA filed a criminal complaint before the Ld. Special Court, Dwarka which took cognizance and summoned Petitioner Company 3 as one of the accused. However, the Hon'ble Delhi High Court vide order dated March 16, 2021 set aside the cognizance order and quashed the criminal complaint relying on Section 32A of the Insolvency and Bankruptcy Code, 2016.
36. So far as the observation in paragraph 11(3) of the P3 RD Report is concerned, the Registrar of Companies, New Delhi, ('RoC') in their report has stated that their office is in receipt of two complaints viz. one each from Mr. Vijesh Viswanathan and Mr. Jatinder Singh Ahuja in respect of the Scheme. As regards, the complaint of Mr. Vijesh Viswanathan, the Petitioner Company 3 states that vide email dated June 29, 2021, the RoC had forwarded the complaint of Mr. Vijesh Viswanathan and sought a response from the Petitioner Company 3 on the same. The Petitioner Company 3 vide its letter dated July 11, 2021, Petitioner Company 3 has appropriately responded to the said complaint. Further, as regards the complaint filed by Mr. Jatinder Singh

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Ahuja, Petitioner Company 3 states that it is not in receipt of the representation dated April 28, 2021 from Mr. Jitender Ahuja, through the RoC. However, apart from the aforesaid letter, Mr. Jitender Ahuja has written several representations regarding the Scheme and the share exchange ratio to various regulators including SEBI, and the Petitioner Company 3 has appropriately responded to such representations on numerous occasions. Vide email dated June 10, 2021 in response to the reply of the Petitioner Company 3 dated May 31, 2021 to the complaint of Mr. Jitender Singh Ahuja on the SCORES platform dated May 12, 2021, SEBI affirmed that the response of the Petitioner Company 3 was satisfactory and closed the complaint.

37. The observations made by the RD, New Delhi in its Report have been reproduced in paragraph 32 above. The clarifications and undertakings given by the Petitioner Company 3 to the P3 Report have been explained in paragraphs 34 to 36 above. The clarifications and undertakings of the Petitioner Company 3 are accepted by this Tribunal, and Petitioner Company 3 is directed to comply with the same.
38. In respect of the Petitioner Company 2, the Official Liquidator, High Court, Bombay has filed his report dated

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July 7, 2021 *inter alia*, stating that the affairs of the Petitioner Company 2 (Transferor Company 1) have been conducted in a proper manner.

39. In respect of the Petitioner Company 3, the Official Liquidator, High Court, Delhi has filed his report dated July 12, 2021 *inter alia*, stating that the affairs of the Petitioner Company 3 (Transferor Company 2) do not appear to have been conducted in a manner prejudicial to the interest of its members or public interest as per the provisions of the Companies Act, 1956/ Companies Act. 2013, whichever is applicable.
40. Learned Senior Counsels for the Petitioner Companies submitted that the Petitioner Company 3 has received certain representations from its shareholders and creditors pursuant to the notices issued by the Petitioner Company 3. The Petitioner Company 3 received representations from certain shareholders holding 7,64,791 equity shares which is approximately 0.0699% vide Company Application No. 156 of 2021 and Company Application No. 261 of 2021 in respect of the share exchange ratio in relation to the Scheme which was appropriately responded to by the Petitioner Company 3 vide response dated June 15, 2021. The Petitioner Company responded that as per Proviso to Section 230(4) of the Companies Act, 2013 (“**CA 2013**”) any objection to Compromise or arrangement

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shall be made only by person holding not less than ten percent of shareholding or having outstanding debt amounting to not less than five per cent of the total outstanding debt as per the latest audited financial statement. The Petitioner Company 3 has also received objections from creditors regarding claims pertaining to the pre-CIRP period. The Petitioner Company 3 has filed appropriate responses to the said claims of the objecting creditors. In response to Creditors objections, Counsel for Petitioner company submitted that clause 18(e) of the scheme provides the definition of undertaking 2 to include all undertaking and business of the Company as a going concern including the assets, properties, investments, rights, approvals, licenses and powers, leasehold rights and all its debts, outstanding liabilities, duties, obligations and employees. Clause 18(i) of the Scheme provides that upon the Scheme coming into effect, the Undertaking 2 shall without any further act, instrument or deed be and stand transferred to and vested in and/or be deemed to have been and stand transferred to and stand vested in the Transferee company, as a going concern, so as to become the undertaking of the Transferee Company, with effect from the Appointed Date.

41. Therefore, as per above submissions and clear position of law the grievances of the objector is addressed

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accordingly and nothing survives in CA 156 of 2021 and CA 261 of 2021, Accordingly both CA 156 of 2021 and CA 261 of 2021 disposed of as dismissed.

42. From the material on record and after perusing the clarifications and submissions of the Petitioner Companies to the Reports filed by the Regional Directors, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
43. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition filed by the Petitioner Companies is made absolute in terms of prayer clauses (a), (b), (c), and (d) of the joint Company Scheme Petition. The Scheme is hereby sanctioned with the 'Appointed Date' as April 1, 2019.
44. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with e-Form INC-28, within 30 days from the date of receipt of the certified copy of this order along with the sanctioned Scheme from the Registry duly certified by Deputy/ Assistant Registrar of the National Company Law Tribunal, Mumbai Bench.

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45. The Petitioner Company 1 (Transferee Company) to lodge a copy of this Order along with a copy of the Scheme duly certified by Deputy/ Assistant Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days of receipt of the certified copy of this order.
46. All concerned authorities to act on certified copy of this order along with the sanctioned Scheme, duly certified by Deputy/ Assistant Registrar of the National Company Law Tribunal, Mumbai Bench.
47. Any person interested is at liberty to apply to this Tribunal in these matters for any directions or modifications that may be necessary.

Dated the 29th day of October, 2021

**Sd/-**

**SHYAM BABU GAUTAM**  
**Member (Technical)**  
29.10.2021  
SAM

**Sd/-**

**ASHOK KUMAR BORAH**  
**Member (Judicial)**