

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

C.P.(CAA) No. 620/MB-II/2020
Connected with C.A.(CAA) No. 1799/MB-II/2019

In the matter of
Companies Act, 2013

AND

In the matter of
Section 230-232 of the Companies Act,
2013 and other applicable provisions of
the Companies Act, 2013 read with the
Companies (Compromises,
Arrangements and Amalgamations)
Rules, 2016;

In the matter of
Scheme of Merger by Absorption of
LA TIM SOURCING (INDIA)
PRIVATE LIMITED, the Transferor
Company by LA TIM METAL &
INDUSTRIES LIMITED, the
Transferee Company

LA TIM SOURCING (INDIA) PRIVATE LIMITED

CIN: U51909MH2000PTC130170

... Petitioner Company
No. 1



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LA TIM METAL & INDUSTRIES LIMITED
CIN: L99999MH1974PLC017951

... Petitioner Company No. 2

Order delivered on :- 04.08.2023

Coram:

Shyam Babu Gautam
Member Technical

Kuldip Kumar Kareer
Member Judicial

ORDER

Per :- Kuldip Kumar Kareer, Member Judicial

1. The Bench is conveyed by Physical hearing today.
2. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.
3. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Merger by Absorption of LA TIM SOURCING (INDIA) PRIVATE LIMITED, the Transferor Company by



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LA TIM METAL & INDUSTRIES LIMITED, the Transferee
Company.

4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 29th October, 2018 which are annexed with the respective Company Scheme Petitions.
5. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in the Company Scheme Application No. 1799 of 2019 of the Hon'ble Tribunal.
6. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.



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7. The Learned Counsel for the Petitioner Companies states that the First Petitioner Company presently carrying on business of providing heat and cold treatment of iron, steel (including alloy steel) and metal founders, processors, turners, forgers, drawers, rollers and re-rollers of steel shaftings, bars, rods, PPGI-profiling, Corrugation of GI sheets, HR/CR coil cutting, HR plate cutting, CR/GI strip cutting (Slitting), pickling of coils, annealing, color coating line, PPGI printing, roof accessories, sandwich panel for roofing/cladding, plate bending, etc. and that the Second Petitioner Company presently is carrying on business of providing heat and cold treatment of iron, steel (including alloy steel) and metal founders, processors, turners, forgers, drawers, rollers and re-rollers of steel shaftings, bars, rods, PPGI-profiling, Corrugation of GI sheets, HR/CR coil cutting, HR plate cutting, CR/GI Strip cutting (Slitting), pickling of coils, annealing, color coating line, PPGI printing, roof accessories, sandwich panel for roofing/cladding, plate bending, etc.



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8. The rationale for the Scheme of Arrangement of the Petitioner Companies would, inter alia, all the Companies are under the same management. The management is of the opinion that the merger will lead to synergies of operations and more particularly the following benefits:

- a. Reason for necessitating the merger is that the Transferor Company is wholly owned subsidiary of the Transferee Company as the complete shareholding of the Transferor Company is held by Transferee Company (either directly or through nominee).
- b. The merger will lead to greater efficiency in overall combined business including economies of scale, efficiency of operations, cash flow management, increase asset base for the purpose of development of businesses of the combined entity, enhance their growth opportunities and maximize shareholders value.



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- c. The merger will provide for more productive and optimum utilization of various resources by pooling of the managerial, technical and financial resources of the Transferor Company and the Transferee Company which will minimize the administrative compliances and fuel the growth of the business thereby helping effectively address the ever growing competition.
- d. The merger will result in economy of scales, eliminating inter-corporate dependencies, reduction in overheads including administrative, managerial and other expenditure, operational rationalization, organizational efficiency and optimal utilization of resources by elimination of unnecessary duplication of activities and related costs.
- e. The merger will result in a reduction in the multiplicity of legal and regulatory compliances required at present to be separately carried out by the Transferor Company and the Transferee Company.



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9. The Regional Director has filed his Report dated 10th day of November, 2020 *inter-alia* making the following observations in Paragraphs IV (a) to (i) which are reproduced hereunder

Para	Observation by the Regional Director	Undertaking of the Petitioner Company/ Rejoinder
IV(a)	In addition to compliance of AS-14 (IND AS-I03), 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.	So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that in addition to Compliance of AS-14, the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other



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		applicable Accounting Standards such as AS-5 etc.
IV(b))	<p>As per Part -II Definition Clause 1(2.2 & 2.5) of the Scheme</p> <p>"Appointed Date" means the April 1, 2018 or such other date as may be fixed by the NCLT.</p> <p>"Effective Date" means the date on which certified copies of the Tribunal's order sanctioning this Scheme are filed with the Registrar of Companies, Mumbai. Any reference in the Scheme to "upon the Scheme becoming effective" or "upon coming into effect of this Scheme" or "effectiveness of the Scheme" shall mean the</p>	<p>So far as the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Appointed Date is 1st April, 2019 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 appointed date. The Petitioner further clarified that the Appointed date shown in Scheme annexed to the Company Application and Company</p>



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<p>Effective date.</p> <p>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 appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.</p> <p>In the present scheme the proposed appointment date is 01.04.2018, which is ante dated and much prior in time, more than 12 months from today. Hence, the appointed date needs to be</p>	<p>Petition filed in the Tribunal is always 1st April, 2019 as also Appointed Dated shown in order dated 16th November, 2019 passed by the Hon'ble Tribunal in CA (CAA) No. 1799/MB/2019 as 1st April, 2019. It is a typographical error in the scheme submitted to the Regional Director by the Petitioner Company and the same is already clarified in the supplementary report filed by the Regional Director.</p>
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	<p>amended in the proposed scheme, say 01.04.2019 or onwards, in view of the para 6(c) of circular Noa. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>	
IV(c))	<p>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.</p>	<p>So far as the observation in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies undertake that this Scheme is approved by the requisite majority of members and creditors as per the directions issued in terms of the NCLT order dated 16th November, 2019.</p>



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IV(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 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.	So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner undertakes that Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same there is no discrepancy or deviation.
IV(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	So far as the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Counsel



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	<p>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).</p>	<p>for the Petitioner Companies submits that the scheme by this Hon'ble Tribunal may not deter any authorities to deal with any of the issues arising after giving effect to the scheme and that the decision of authorities is binding on the Petitioner Company (s).</p>
IV(f)	<p>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</p>	<p>So far as the observation in paragraph IV (f) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be accordance with</p>



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	subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.	provisions of section 232(3)(i) of the Companies Act, 2013.
IV(g)	<p>As per Part IV Clause 16(16.1 to 16.4) of the Scheme (Combination & Reclassification of Authorised Share Capital of the Transferee Company);</p> <p>In this regard it is submitted that the transferee company to comply with the provisions of section 13, Section 14 & Section 61 of the Companies Act, 2013 and any other application provision of the Act.</p>	<p>So far as the observation in paragraph IV (g) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies undertakes to comply with the provisions of Section 13, Section 14 & section 61 of the Companies Act, 2013 along with any other applicable provisions of the Act.</p>
IV(h)	<p>As La Tim Metal & Industries Limited (Transferee Company"). the</p>	<p>So far as the observation in paragraph IV (h) of the Report of</p>



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	<p>equity shares are listed on BSE, hence the petitioner be directed to file an undertaking to the extent it has complied with the directions of issued vide letter No. DCS/AMAL/AJ/R37/1060/2017-18 dated 08.03.2018, by BSE.</p>	<p>the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the undertakes to the extent it has complied with the directions of issued vide letter No. DCS/AMAL/AJ/R37/1060/2017-18 dated 08.03.2018, by BSE.</p>
IV(i)	<p>In view of the observation raised by the ROC Mumbai, mentioned at para 14 above Hon'ble NCLT may pass appropriate orders/ order as deem fit.</p>	<p>So far as the observation in paragraph IV (i) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the interest of Creditors will be protected and that they would be paid in ordinary course of business.</p>



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10. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9. The Representative of the RD has submitted that the explanations and clarifications given by the petitioner companies are found satisfactory and that they have stated no objection to the Scheme. The affidavit filed by the Petitioner Companies and the supplementary report filed by the Regional Director in response to the said affidavit, are accepted by this Tribunal.
11. The Official Liquidator has filed his report on 17th July, 2020 in the Consolidated Company Scheme Petition No. 620 of 2020, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner not prejudicial to the interest of the Shareholders of the Transferor Company and that the Transferor Company may be ordered to be dissolved by this Tribunal.
12. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.





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13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 620 of 2020 is made absolute in terms of clauses (a) to (c).
14. Petitioners are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry.
15. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.



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16. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai.
17. The Appointed Date is 1st April, 2019.
18. Ordered Accordingly. Pronounced in open court today.

Sd/-

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)

Certified True Copy _____
Date of Application 08/08/2023
Number of Pages 17
Fee Paid Rs. 85/-
Applicant called for collection copy on 09/8/2023
Copy prepared on 09/8/2023
Copy issued on 09/8/2023



S. Somnath
Deputy Registrar 09/8/2023
National Company Law Tribunal, Mumbai Bench