

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (CAA) No.53/BB/2019
Under Sections 230 to 232 of Companies Act, 2013
R/w Companies (Compromises, Arrangements
and Amalgamations) Rules, 2016

**IN THE MATTER OF
SCHEME OF AMALGAMATION
OF**

**THE SANDUR MANGENESE AND IRON ORES LIMITED
(Petitioner Company No.1/Transferee Company)**

WITH

**STAR METALLICS SND POWER PRIVATE LIMITED
(Petitioner Company No. 2/Transferor Company)**

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Order delivered on: 4th March, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

The Sandur Manganese and iron ores Limited

Satyalaya, Door No. 266 (Old No.80),

Ward No. 1, Behind Taluk Office,

Sandur,

Bellary – 583119.

- Petitioner Company No. 1/Transferee Company

Star Metallics and Power Private Limited

Metal & Ferro Alloys Plant,

P.O. Mariyammanahalli,

Vyasankere – 583222.

- Petitioner Company No.2/Transferor Company

Parties/Counsels Present:

For the Petitioners : Saji P John, Advocate & another

For the ROC: Smt. Prema Hatti, Advocate along with Mr. K. Nagaraj, Advocate

For the Income Tax Department: Mr. Ganesh R. Ghale, Advocate

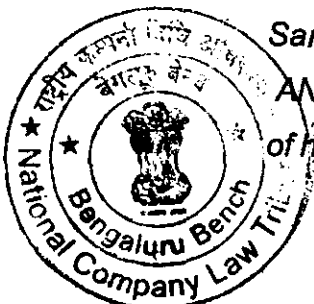


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ORDER***Per: Ashutosh Chandra, Member (Technical)***

1. This Company Petition is filed by the Petitioner Companies under Sections 230 to 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 by *inter alia* seeking that the Scheme of Amalgamation be sanctioned by this Hon'ble Tribunal so as to be binding on the petitioner Company and their respective shareholders and creditors, that with effect from the appointed date the entire business including all movables and immovable and other assets of whatsoever nature and all licenses, rights, privileges, etc., of the petitioner Company No. 2 be transferred without any further act or deed in favour of Petitioner Company and the same be , pursuant to section 230-232 of the Companies Act, 2013 stand transferred to and vested in the Petitioner Company No. 1, etc.
2. Brief facts of the case, as mentioned in the Company Petitions, are as follows:
 - (1) The Sandur Manganese and Iron Ores Limited (hereinafter also referred to as the "**Petitioner Company No.1/Transferee Company**") was incorporated on January 18, 1954 under the provisions of the Companies Act, 1913, under the name and style of "The Sandur Manganese and Iron Ores (Private) Limited". Thereafter it was changed to the present name of "The Sandur Manganese and Iron Ores Limited" w.e.f November 28, 1964 with the Registration No. L85110KA1954PLC000759 and PAN AAAC7495D. The Transferee Company is engaged in the business of mining manganese and iron ores, and production of ferro-alloys. The Registered office of the Petitioner Company No: 1 is situated at 'Satyalaya', Door No.266 (Old No.80), Ward No 1, Behind Taluk Office, Sandur, Bellary-583 119. The main objects of the Transferee Company *inter alia* are '*To purchase or otherwise acquire as may be agreed upon all the right, title and interest whatsoever of his Highness the Ruler of Sandur under and/or in respect of an Agreement dated the 1st May 1953 registered under 1306 of 1953 between the Governor of Madras and his Highness the ruler of Sandur.*

AND FURTHER to purchase or otherwise acquire the right, title & interest of his Highness the ruler of Sandur in another agreement also dated 1st May



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1953 registered under number 1305 of 1953 between the Governor of Madras and his Highness the ruler of Sandur whereby the government has agreed to grant a mining lease to his Highness the ruler of Sandur for mining Manganese, manganiferous and Iron ores upon certain lands situated in the Sandur taluka, District of Bellary or to enter into arrangements with His Highness for joint working and to undertake to perform all the covenants, etc.

- (2) The Authorised, Issued, Subscribed and Paid-Up share capital of the Petitioner Company No: 1/Transferee Company as on 31st March 2019, was as follows:

Authorised Capital	Amount Rs.
1,40,00,000 equity shares of Rs. 10/- each	14,00,00,000/-
1,00,000 16% Preference Shares of Rs. 100 /- each	1,00,00,000 /-
Total	15,00,00,000/-
Issued, Subscribed and Paid-Up Capital	Amount Rs.
87,50,000 Equity Shares of Rs.10/- each fully paid up	8,75,00,000 /-

Subsequent to 31st March 2019 there is no change in the Authorised Issued, Subscribed and Paid-Up share capital of the Petitioner Company no 1.

It is further stated that as per the Audited balance sheet made up to March 31, 2019, the summarized position of the Assets and Liabilities of the Petitioner Company No: 1 was as follows:

Liabilities	Amount (In Rs. Lakh)	Assets	Amount (In Rs. Lakh)
Share capital	875.00	Non-current assets	59,642.57
Reserves and surplus	65,717.55	Current assets	23,036.10
Non-current liabilities	624.04		
Current liabilities	15,462.08		
Total	82,678.67	Total	82,678.67

- (3) The Board of Directors of the Petitioner Company No. 1/Transferee Company at their meeting held on 14th February, 2018 for approval of the Scheme under Sections 230 to 232 of the Companies Act, 2013 have approved and adopted for the Scheme of Amalgamation. The Transferee Company had, inter alia, resolved the following (Page No.466 of the Petition):



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"TRUE EXTRACTS FROM THE MINUTES OF 323RD MEETING OF THE BOARD OF DIRECTORS HELD ON 14 FEBRUARY 2018 AT CORPORATE OFFICE AT BENGALURU

To consider and approve scheme of Amalgamation of Star Metallics and Power Private Limited (SMPPL) with the Company and their respective shareholders:

RESOLVED THAT subject to the provisions of Section 230-232 and all other applicable provisions, if any, of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules 2016 and enabling provisions of the Memorandum of Association and Article of Association of the Company and subject to requisite approval of the shareholders and creditors of the company and sanction of the stock Exchange(s), Securities and Exchange Board of India (SEBI) and National Companies Law Tribunal, Bengaluru Bench (NCLT) or any other relevant authority or regulatory authority, body, institution (hereinafter collectively referred to as "Concerned authority") of competent jurisdiction under applicable laws for the time being in force, the Scheme of Amalgamation of Star Metallics and Power Private Limited (Transferor Company) with the Sandur Manganese and Iron Ores Limited (Transferee Company) and their respective Shareholders (herein after referred to as the "Scheme"), as recommended by the Audit Committee, be and is hereby approved ."

And the same has been brought before this Tribunal for approval under Sections 230 to 232 and other relevant provisions of Companies Act, 2013. It is further stated that the Petitioner Company No: 1/ Transferee Company is a listed company with its equity shares listed with BSE Limited.

- (4) Star Metallics and Power Private Limited (hereinafter also referred to as the "Petitioner Company No. 2/Transferor Company") was incorporated on July 23, 2007 under the provisions of the Companies Act, 1956, under the name and style of "**Star Metallics and Power Private Limited**" with the Registration No. U40102KA2007PTC043446 and PAN AALCS1085T. The Registered office of the Petitioner Company No: 2 is situated at Metal & Ferro Alloys Plant P. O. Mariyammanahalli, Vyasankere-583 222. The main objects of Transferor Company *inter alia* are to 'To carry on in India or elsewhere the business of setting up and/or operating power plants to generate electricity using coal, naphta, furnace oil, diesel, natural gas, wind power, bagasse, or any other fuel and/or renewable energy sources including hydro-electric power plants for captive consumption and/or for



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sale to other consumers in the private and public sectors including State Electricity Boards, etc.

- (5) The Authorised, Issued, Subscribed and Paid-Up share capital of the Petitioner Company No: 2 as on 31st March 2019 was as follows:

Authorized share capital	Amount (In Rs.)
10,00,00,000 Equity Shares of face value of Rs.10/- each	1,00,00,00,000/-
Issued, Subscribed and Paid Up Share Capital	Amount (In Rs.)
9,33,79,705 Equity Shares of Rs.10/- each fully paid up	93,37,97,050/-

It is further stated that as per the audited balance sheet made up to March 31, 2019, the summarized position of the assets and liabilities of the Applicant Company No: 2 was as follows:

Liabilities	Amount (In Rs. lakh)	Assets	Amount (In Rs. lakh)
Share capital	9,337.97	Non-Current Assets	14,139.35
Reserves and surplus	7,565.46	Current Assets	3,146.52
Non-Current liabilities	2.20		
Current liabilities	380.24		
Total	17,285.87	Total	17,285.87

- (6) The Board of Directors of the Petitioner Company No. 2/Transferor Company at their meeting held on 14th February, 2018 for approval of Scheme under Sections 230 to 232 of the Companies Act, 2013 have approved and adopted the Scheme of Amalgamation. The Transferor Company had, inter alia, resolved the following (Page No.468 of the Petition):

"TRUE EXTRACT FROM THE MINUTES OF THE 51ST MEETING OF THE COMPANY HELD ON WEDNESDAY, 14 FEBRUARY 2018, AT BENGALURU-560001

TO CONSIDER AND APPROVE Scheme of Amalgamation of Star Metallics and Power Private Limited (SMPPL) with the Sandur Manganese & Iron Ores Limited (SMIORE), (the Holding Company) and their respective Shareholders:

RESOLVED THAT pursuant to the provisions of Sections 230 to 232 of the Companies Act, 2013 read with the (Compromise, Arrangements and Amalgamations) Rules, 2016 and all other applicable provisions, if any, of the Companies Act, 2013 and related applicable rules and regulations (including any statutory modification or re-enactment thereof) and enabling provisions of

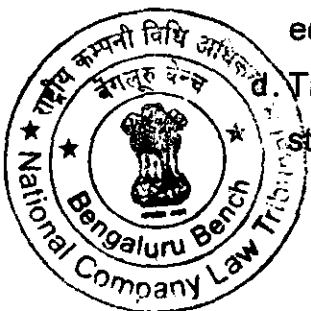


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the Memorandum of Association and Article of Association of Star Metallics and Power Private Limited, (the Company" or "the Transferor Company") and subject to the requisite approval of the shareholders/Creditors of the Company and the Sanction of the National Company Law Tribunal Bengaluru Bench or such other competent authority, as may be applicable, the consent of the Board be and is hereby accorded for the Scheme of Amalgamation of Star Metallics and Power Private Limited (Transferor Company), a subsidiary of The Sandur Manganese and Iron Ores Limited (Transferee Company) and the Company and their respective shareholders (hereinafter referred to as "Scheme" or "the Scheme" or "this Scheme".

And the same has been brought before this Tribunal for approval under Sections 230 to 232 and other relevant provisions of Companies Act, 2013.

- (7) It is stated that M/s. R. Subramanian and Company, LLP, Chartered Accountants, the Statutory Auditors of the Transferee Company has issued a Certificate dated 14th February, 2018, confirming that the Accounting Treatment contained in the Proposed Scheme is in compliance with the applicable Accounting Standards notified by the Central Government under the Companies Act, 2013.
- (8) The benefits sought to be achieved by the Scheme are as follows:
- The Transferee Company, is having Mining Leases No. 2678 and No. 2679 over an area of about 2,000 hectares for mining manganese and iron ores, which leases are due to expire on 31 December 2033. The Transferee Company seeks to have captive use of manganese ore in the existing ferroalloy plant of the Transferor Company and set up a 1 MTPY Integrated Steel Plant in the vicinity of the ferroalloy plant which will enable captive consumption of its iron ore also.
 - In addition, on setting up the proposed integrated steel plant, Transferee Company will become eligible in terms of Rule 6(3) of the Mineral (Auction) Rules 2015, to participate in the auction of 'mines specified for end-use' by the Government of Karnataka.
 - The amalgamation will result in administrative and operational rationalization, synergizing the existing expertise, greater efficiency and economical operations and promote organizational efficiencies.
- The amalgamation would result in greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in



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maximizing overall shareholder value, and will improve the competitive position of the combined entity.

- e. The amalgamation will provide for pooling of the managerial, technical and financial resources of the Transferor Company and the Transferee Company, which will help in increasing the competitiveness of the amalgamated Company.
- f. The amalgamation would result in greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business, which can be deployed more efficiently to fund growth opportunities, to maximize shareholder value.
- g. In view of the aforesaid, the Board of Directors of the Transferor Company as well as the Board of Directors of the Transferee Company have considered and proposed the amalgamation of the Transferor Company with Transferee Company in order to benefit the stakeholders of both the companies. Accordingly, the Board of Directors of both the companies have formulated this Scheme of Amalgamation for the transfer and vesting of the entire undertaking and business of the Transferor Company with and into the Transferee Company pursuant to the provisions of Sections 230 and 232 and other relevant provisions of the Companies Act, 2013.
- (9) In the proposed Scheme of Amalgamation, it is stated that *'Upon coming into effect of the Scheme, and in consideration for the transfer of and vesting of the assets and liabilities of the Transferor Company, the Transferee Company shall, without any further act or deed, issue and allot to the shareholders of the Transferor Company, 1 (One) fully paid up equity share of ₹10 each for every 72 (Seventy-two) fully paid-up equity share of ₹10 each held by the shareholders in the Transferor Company, whose name is appearing in the Register of Members of the Transferor Company on such date (hereinafter referred to as 'Record Date') as may be determined by the Board of Directors of the Transferee Company. The new equity shares to be issued to the members of the Transferor Company pursuant to clause 10.2 shall be in multiples of 1. Any fractional equity shares shall be rounded-off to next higher multiple of 1'*

It is stated that the proposed amalgamation is sought to be made under the provisions of Sections 230 to 232 of the Companies Act, 2013 and other



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applicable provisions of the Companies Act, 2013 read with the Rules made thereunder and the same if sanctioned by this Tribunal will take effect from the Appointed Date i.e. 01st April, 2018.

- (11) It is also stated that no investigation proceedings against the Petitioner Companies under Sections 235 to 251 or any other provisions of the Companies Act, 1956 or Sections 206 to 229 of the Companies Act, 2013 is pending or likely to be pending. Further, there is no other investigation or litigation pending under any other law.
- (12) The petitioner companies have not received any replies from any of the sectoral regulators except as mentioned hereunder:

Reserve Bank of India (RBI):

The RBI vide its letter dated 17 September 2019 addressed to Petitioner Company No. 2 has stated that *"it is the duty of the companies undergoing compromise/arrangement/amalgamation to comply with the requirement of various laws including the rules, regulations and guidelines prescribed by RBI, viz., the companies may have to comply with Foreign Exchange Management Act, 1999, and the rules and regulations made thereunder. It is also submitted that as a regulator it will not be ethical on the part of RBI to vet individual cases, as it will preclude it from taking action on contraventions, if any, committed by such companies."*

Chief Electrical Inspector to Government:

The Chief Electrical Inspector has, vide letter dated 19.09.2019, sought to bring to the attention of the Hon'ble Tribunal that Petitioner Company No. 2 is liable to pay to the State Government dues in connection with payment of electricity tax. It is elaborated therein that the Petitioner Company No.2 has filed an Appeal No.1 of 2017 against the demand for payment of electricity tax raised by the Deputy Electrical Inspector, Bellary for repayment of electricity tax remitted by the Petitioner Company No.2 for the year 2011-12 amounting to Rs.93,43,548/- and to withdraw the demand raised for the year 2015-16 amounting to Rs.1,35,05,749/-. Further, that the aforesaid appeal filed under Section 9A of the Karnataka Electricity (Taxation on Consumption or Sale) Act, 1959 have been heard by the Chief Electrical Inspector to Government and orders have been passed against



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the appeal order no. 1/2017 dated 10.09.2018. Further, based on the aforementioned order dated 10.09.2018, the Deputy Electrical Inspector, Bellary has raised the demand letter dated 17.11.2018 for the period 2011-12 to 2015-16 amounting to Rs.11,21,34,903/-

The Petitioner Company No 2 has issued a reply dated 25.09.2019 clarifying that in respect of the claims raised, an Appeal has been preferred by the said Petitioner Company No. 2 before the Additional Chief Secretary to Government, Energy Department, Vikas Soudha, Bangalore – 1 challenging the order dated 10.09.2018 passed in Appeal no. 1 of 2017 and the final hearing has also been completed and that order of the Addl. Chief Secretary to Government, Bangalore is awaited. It has been further clarified that the Petitioner Company No.2 is exempted from the payment of Electricity Tax. Further, that the Karnataka Electricity Regulatory Commission (KERC) had already upheld the request for refund of electricity tax. In this regard it is submitted that the Petitioner Company No 1 undertakes to pay any liability of the Petitioner Company No 2 subject to the outcome of the appeal and/or any further remedy available under the relevant statutes to challenge the levy.

3. It is stated that the Transferor Company had filed C.A. (CAA) No.45/BB/2019 before this Tribunal. The Tribunal vide its Order dated 09.08.2019 has directed for convening the meeting of the Equity Shareholders, Secured and Unsecured Creditors of the Petitioner Company No.1 and Unsecured Creditors of Petitioner Company No. 2. Further the meetings of Shareholders and Secured Creditors of Petitioner Company No. 2 were dispensed with.
4. This Tribunal vide its Order dated 23.10.2019 directed the respective Petitioner Companies to issue Notice to the Regional Director (SER), Registrar of Companies, Bangalore, The Designated Nodal Officer, Income Tax Department, Official Liquidator, DY. Commissioner of Income Tax, Directorate of Enforcement, Directorate of Enforcement, FEMA and prevention of Money Laundering, The Reserve Bank of India, The Secretary Competition Commission of India, BSE Limited, Karnataka Power Transmission Corporation Ltd, (KPTCL), Karnataka Pollution Control Board, Additional Chief Secretary of Government, Department of Factories and Boilers, Directorate General of Mines Safety,



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Gulbarga Electricity Supply Company Limited (GESCOM), Ministry of Environment, Forest and Climate Change, Central GST and CX Zone, Department of Electrical Inspectorate, Karnataka Udyog Mitra, Department of Mines and Geology and other relevant sectoral regulators and also directed to carry out paper publication in the newspapers in 'The Hindu' English edition as well as in 'Sanjevaani' Kannada edition and to file proof of the same.

5. Pursuant to the above directions, the Petitioners have filed Compliance Affidavit dated 20.11.2019 affirming compliance of the Order passed by the Tribunal dated 23.10.2019. Further, they have also furnished copies of the newspaper publication for having taken advertisement in 'The Hindu', English edition as well as in 'Sanjevaani', Kannada edition on 16.11.2019 in relation to the date of hearing of the Petition.
6. Pursuant to the notice issued, the ROC, Karnataka, Ministry of Corporate Affairs vide ROC's report bearing No.ROCB/Legal/C.P(CAA)NO.53/BB/2019 dated 21.01.2020 has submitted an affidavit on behalf of the Central Government, Karnataka wherein it is inter alia submitted that the Transferee Company is a listed Company and its equity shares are listed on BSE Limited and obtained NOC from BSE Limited. The Transferee Company may be directed to show the compliance of LODR. It is also submitted that as per Clause 12 of the Scheme, it is stated that upon the Scheme becoming effective, Transferee Company shall be required to pay any fee/stamp duty for its increased authorised capital. In this regard, the Transferee Company shall comply with Section 232(2) (i) of Companies Act, 2013, and pay difference fee, after setting of the fee already paid by the Transferor Companies on their respective capital. Transferee Company shall give an undertaking to that effect.it is further submitted that the Transferee Company ought to have appointed CFO under Section 203 of the Companies Act, 2013 from 01.04.2014. But has appointed only from 26.05.2015. Transferee Company may file adjudication application for the lapse and get it adjudicated before the approval of the Scheme.
7. Pursuant to the notice issued, The Registrar of Companies vide letter No. ROCB/Legal/C.P (CAA) No. 45/BB/2019 dated 21.11.2019 has submitted a report, wherein it is inter alia observed that the Transferee Company is a listed company and its equity shares are listed on BSE Limited and obtained NOC from BSE Limited. The Transferee Company may be directed to show compliance of LODR



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and As per Clause 12 of the Scheme, it is stated that upon the Scheme becoming effective, Transferee Company shall not be required to pay any fee/stamp duty for its increased authorised capital. In this regard, the Transferee Company shall comply with Section 232(2)(i) of Companies Act, 2013, and pay difference fee, after setting of the fee already paid by the Transferor Companies on their respective capital. Transferee Company shall give an undertaking to that effect. It is further observed that the Transferee Company ought to have appointed CFO under Section 203 of the Companies Act, 2013 from 01.04.2014. But has appointed only from 26.05.2015. Transferee Company may file adjudication application for the lapse and get it adjudicated before the approval of the Scheme, as per MCA records, the transferor Company has two open charges and Transferee Company has one open charge and the transferee Company being listed company had many related transactions with associate company, KMPs, etc. Compliance of section 188 read with rules made thereon and also LODR need to be explained.

8. It is seen that the Authorized Signatory of the Petitioner Companies has filed an Affidavit dated 04.02.2020 furnishing response to the observations of ROC, Karnataka and Regional Director by inter alia stating as follows:

- (1) Regarding the observation at Paragraph No. 3 by the RD and Paragraph No. 1 of ROC report- the Transferee Company made an application with BSE Limited on 14 March 2018 seeking its no-objection, and has received observation letter dated 18 March 2019 with 'No-adverse observation' from BSE Limited. The said 'No Objection Certificate' from BSE Limited is already produced as **ANNEXURE G** to the Petition
- (2) Regarding the observation at Paragraph No. 4 by the RD and Paragraph No. 2 of ROC Report -The Transferee Company undertakes to pay the difference stamp duty after setting of the stamp duty already paid by the Transferor Company on its Authorised Capital and Undertaking to this effect is furnished at **ANNEXURE – A** of the Affidavit.
- (3) Regarding the observation at Paragraph No. 5 by the RD and Paragraph No. 4 of ROC Report - the Board of Directors of the Transferee Company in its 258th meeting held on 25 April 2006, nominated K. Raman to be the CFO in accordance with the provisions of Clause 49 (V) of the Listing Agreements with the Stock Exchanges. It is contended that the Company has had a Chief Financial Officer (CFO) before the commencement of



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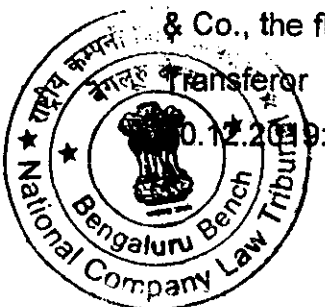
Companies Act, 2013, however, has filed form DIR-12 for appointment of CFO under the provisions of Section 203 of the Act on 26.05.2015. The Company undertakes to file an adjudication application for the lapse. However, it is prayed that the approval of the Scheme be not subject to adjudication of the said lapse.

(4) Regarding the observation at Point No. 3 of the ROC report- the said open charges registered under Charge ID 100250572 in the index of the Transferee Company have been created to secure financial assistance of Rs. 470 crore being availed by the Transferee Company from its Secured Creditors. This Hon'ble Tribunal vide order dated 09.08.2019, inter-alia directed that meeting of the Secured Creditors of the Transferee Company. The same has been duly convened and the Secured Creditors attended the meeting and extended their consent by voting in favour of the scheme. It is further submitted that the other open charge under charge ID 100144316 in the index of charges of the Transferee Company pertains to financial assurances in the form of Bank Guarantee for an amount not exceeding Rs. 39 crore required to be furnished to the Indian bureau of Mines in terms of Rule 27(1) of mines Conservation and Development Rules (MCDR), 2017 in connection with its mining business.

(5) Regarding the observation at Point No. 5 of the ROC report- Prior approval of the Audit Committee is obtained for all transaction entered into with related parties in terms of Section 177 of the Companies Act, 2013 and Regulation 23(2) of the securities and Exchange Board of India (listing obligations and disclosure requirements) Regulations, 2015. The Company has not entered into any contract of arrangements with related parties which are/were not at arm's length basis. Further there are no material contracts or arrangement or transactions entered into with related parties.

9. Official Liquidator has filed OLR No.09 of 2020 dated 04.02.2020 in C.P. (CAA) No.53/BB/2019 by inter alia stating that the Official Liquidator for scrutiny of the books of accounts and records of the Transferor Company has engaged M/s. HRA & Co., the firm of Chartered Accountants, which after examining the affairs of the

Transferor Company, has inter alia concluded as under in their report dated



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"4. That the Transferor Company has also provided details on the affairs of the company on 27.01.2020 in reply to the questionnaire sent to it by the Official Liquidator. On the scrutiny of the reply it has been observed that:

10 as per S.No. 23 of the reply of the questionnaire, the Transferor Company has written off bad debts as below:-

- a) 2015-16 Rs. 6,16,155 (Tata Power Limited)*
- b) 2016-17 Rs. 24,02,421 (Focus Product Scheme)*

The Company may be directed to explain and justify before this Hon'ble Tribunal as to why the above bad debts were written off.

5. The Company has maintained books of accounts and statutory registers and papers up to date. The Company is in general, regular in paying undisputed taxes and salaries of the employees. The Company has been regular in holding meeting of Directors as required under the law. On the examination of the Books of Accounts and papers of the Company and as per the explanations and information provided by the Company, we report as follows:

We have obtained all the information and explanations, which to the best of our knowledge and belief were necessary for the purposes of our Audit. Based on the scrutiny of books and records maintained and according to the information and explanation obtained from the company, we are of the opinion that

- a. The Company has maintained proper books, statutory registers and records by the Companies Act.*
- b. The affairs of the Company have not been conducted in a manner prejudicial to the interests of the members or the public interest."*

10. In response to the abovementioned report of the Official Liquidator the Petitioner Companies have filed a reply affidavit dated 06.02.2020 in which it is stated as follows:

Regarding the observation No. 4 (i):

(a) Financial year 2015-16: Tata Power Limited- Rs. 6,16,151/-

As per contract with Tata Power Trading Corporation Ltd, the Company during the year 2014-15 supplied power to Andhra Pradesh Power Coordination Committee (APPCC). As per contract, APPCC has to pay at least 85% of contracted power, if the power purchased is less than 85% of contracted power. For any shortfall, 20% of contracted price was payable. But APPCC through Tata Power Trading Corporation Limited, paid only for 82.21% of power supply.

ence, there was a short fall of 508375 units to be paid by APPCC. This issue was taken up and advised by the trading agent viz., Tata Power Trading, the Transferor Company raised a claim for Rs.6,16,151 (508375 units *Rs. 6.06 per



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unit* 20%) as compensation. However, APPCC, the AP Government agency, did not accept the claim as they stated that they could not take the power due to interstate grid disturbances where many factors affected the Grid Frequency. Hence, the Company decided to withdraw the claim as the reason stated by APPCC were genuine and due to external factors. Hence, the amount was written off in the books of accounts as bad debts.

(b) Financial year 2016-17: Focus Product Scheme- Rs. 24,02,241/-

The Company received an export benefit incentive in the form of scripts dated 23.05.2014 for Rs. 39,25,111/-. The same can be adjusted against Customs duty payable against future imports by the Company but to be utilised within 18 months from the date of issue. The Company utilized the said script for payment of duty to the extent of Rs. 15,22,690/- only. The balance amount of Rs. 24,02,421/- could not be utilised within the expiry date, as there were no imports during the period. The issue was taken up with the DGFT for revalidation but in the absence of specific provision in the policy, the request was not accepted. Hence, as advised by statutory auditors, the amount was written off in the books of account during the financial year 2016-17.

Both the write off relates to due from Government Departments (Central/State).

11. The Office of the Joint Director, Directorate of Enforcement, Bengaluru Zonal office vide letter No. F.No. 01/NCLT/BGZO/2019/6346 dated 25.11.2019 sought following details from the petitioner Companies:

- (i) Copy of FIR filed u/s 154/157 of Cr.p.c, 1973
- (ii) Copy of Charge sheet filed u/s 173(2) of Cr.p.c, 1973
- (iii) Copy of any private Complaint filed u/s 200 of Cr.p.c, 1973
- (iv) Any other pending criminal cases before any court of law in India.
- (v) Any pending investigation/adjudication under PMLA, 2002, FEMA, 1999, FOEA, 2018.

12. In response to the abovementioned letter from Enforcement Directorate dated 25.11.2019 the authorized representatives of the petitioner companies have filed an affidavit dated 05.02.2020, in which the response is as follows:

Copy of FIR filed under section 154/157 of the Code of Criminal Procedure, 1973.



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No FIR has been filed against the Petitioner Companies and its Directors under section 154/157 of the Code of Criminal Procedure, 1973 ("Cr. P.C., 1973").

- 2 Copy of Charge sheet filed under section 173(2) of the Code of Criminal Procedure, 1973.

No charge sheet has been filed against the Petitioner Companies and its Directors under section 173(2) of the Cr. P.C., 1973.

- 3 Copy of any private complaint filed under section 200 of the Code of Criminal Procedure, 1973

No private complaint has been filed against the Petitioner Companies and its Directors under section 200 of the Cr. P.C., 1973.

- 4 Any other pending criminal cases before any Court of Law in India.

There are no criminal cases pending before any Court of Law in India against the Petitioner Companies and its Directors.

- 5 Any pending investigation/adjudication under the PMLA, 2002, FEMA, 1999, FOEA, 2018

No investigation/adjudication under the PMLA, 2002, FEMA, 1999 and FOEA, 2018 are pending against the Petitioner Companies and its Directors."

13. In compliance with the observations of the Competition Commission of India, the Transferor and Transferee Companies has executed an affidavit dated 04.02.2020 submitting that the Petitioner Companies are not required to issue notice of Combination/ file the Scheme with the Competition Commission of India as they do not come up to the threshold prescribed under the Competition Act, 2002 (as enhanced by the Central Government vide its Notification No. S.O. 675(E) dated March 4, 2016). However Notice of Petition vide NCLTB/ CP (CAA) No. 53/BB/ 2019 along with the Petition and the annexure issued by Speed Post (EK043037657IN). The same is delivered on 11.11.2019.

14. The Ministry of Labour and employment, Directorate-General of Mines Safety, Southern Zone- Bengaluru vide its letter No. SZ/DDG/2306 dated 29.11.2019 has stated that due to urgent pre-occupation it is not possible to attend the above mentioned hearing on 29.11.2019.

The Karnataka Power Transmission Corporation Ltd. (KPTCL) vide letter No. TCE/CS/B37/B36/1515/2019-20/532 dated 27.11.2019 has submitted that M/s



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Star Metallics and Power Private Limited is a STOA generator having a plant capacity of 32 MW who is under open access since June 2011 for exporting the power and also is an EHT consumer of GESCOM. However it doesn't have any dues to be paid to Karnataka Power Transmission Corporation Limited as on 25.11.2019.

16. In conclusion, it is stated that the notices were sent to all the statutory authorities. However, some of the statutory authorities have not made any representation regarding the said notices. Therefore, it is deemed that such authorities have no objection relating to the scheme of amalgamation.

17. In conclusion, it has been stated by the Regional Director that, on a consideration of the materials on record, the Scheme appears to be fair, reasonable and is not detrimental against the Members or Creditors or contrary to public policy and the same can be approved.

18. We have considered the facts of the case as mentioned in the Petition, the reports of the Regional Director, MCA, in which the para wise replies of the Petitioner Company to his observations have been duly examined, and the relevant provisions contained in the Companies Act, 2013 and other related Acts and Rules. In his report the Regional Director, MCA has concluded that the Scheme appears to be fair, reasonable and not detrimental against the Members or Creditors or contrary to public policy and the same can be approved. We also find that the Scheme of Amalgamation seeks to achieve administrative and operational rationalization, synergizing the existing expertise, greater efficiency and economical operations and promote organizational efficiencies, greater integration and greater financial strength, maximizing overall shareholder value, and will improve the competitive position of the combined entity etc. Hence the same has been proposed for commercial expediency.

19. On a consideration of the facts of the case as mentioned in the preceding paragraphs, which are not elaborated here again to avoid duplication and repetition, we are satisfied that the procedure specified in sub-sections (1) and (2) of section 232 of the Companies Act, 2013 has been complied with, and hence the Scheme of Amalgamation, as approved by the Boards of both the Transferor and Transferee Company, is hereby sanctioned, as prayed, and in view whereof, this Tribunal passes the following further Order:



[Handwritten Signature]

- (1) Sanctioning the Scheme of Amalgamation should not be construed as an order in any way granting exemption from payment of Stamp Duty, taxes or other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specially required under any law, and the same shall be dealt with by the respective Authority in accordance with the extant Laws and Rules governing such Duty, taxes or other charges, as applicable; and
- (2) The Transferor Company be transferred without further act or deed to the Transferee Company and accordingly, the same shall, pursuant to section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the state and interest of the Transferor therein, but subject nevertheless, to all the charges now affecting the same; and
- (3) All the liabilities including taxes and charges, if any, and duties of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly 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; and
- (4) The tax implications, if any, arising out of the Scheme are subject to final decision of Concerned Tax Authorities and the decision of the Concerned Tax Authorities shall be binding on the Transferee Company; and
- (5) All the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company, if any; and
- (6) Any liability arising from non-compliance to the provisions contained in section 135, shall stand transferred to and be the liability of the Transferee Company; and
- (7) The Petitioner Companies shall within thirty days of the date of the receipt of this Order cause a certified copy of this Order along with a copy of Scheme of Amalgamation to be delivered to the Registrar of Companies for registration in accordance with applicable rules and regulations; and

The acceptance of the Scheme is subject to compliance of the following directions:



- a. *The Petitioner Companies shall comply with all the Regulations of RBI and FEMA, as may be applicable.*
- b. *Petitioner Companies shall file all the due Statutory Returns immediately.*
- (9) *The Petitioner Companies will ensure compliance to all conditions mentioned in the Letter No. DCS/AMAL/PB/R 37/1431/2018-19 dated 18.03.2019 of the Bombay Stock Exchange;*
- (10) *The Petitioner Companies will ensure compliance to all provisions of the Companies Act 2013, as may be applicable, and will submit Quarterly/Annual Status Reports of such compliances through an Affidavit by the Managing Director/Director of the Company along with CA/ICWA/CS Certificates;*
- (11) *Transferor Company or its Authorized Signatories are directed that after the completion of the process of amalgamation to handover the possession of the Books of Accounts and other relevant documents of the Transferor Company to the Transferee Company for the purpose of section 239 of the Companies Act, 2013;*
- (12) *This Order is limited to the Scheme of Amalgamation, and it will not come in the way of Registrar of Companies or any other authority to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the Company or any of its personnel prior or during the approval of the Scheme;*
- (13) *If any of the Companies party to this Scheme contravene any of the provisions of section 232, they shall be liable to be punished with fine as contemplated in section 232(8) of the Act;*
- (14) *Any person shall be at the liberty to apply to the Tribunal in the above matter for any directions that may be necessary.*
- (15) *C.P. (CAA) No. 53/BB/2019 stands disposed of. I.As pending, if any, also stand disposed of.*

[Signature]
ASHUTOSH CHANDRA
MEMBER, TECHNICAL



[Signature]
RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

CERTIFIED TO BE TRUE COPY
 OF THE ORIGINAL

[Signature]
 Deputy/Registrar
 National Company Law Tribunal
 Bengaluru Bench

[Signature]
 Rajeswara M