

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI, COURT-1**

**C.P. (CAA) 57/MB/2024**

**C/w**

**CA (CAA) 238/MB/2023**

*In the matter of*

*the Companies Act, 2013;*

*AND*

*In the matter of*

*Sections 232 to Section 230 of the*

*Companies Act, 2013 and other*

*applicable provisions of the*

*Companies Act, 2013*

*read with Companies*

*(Compromises, Arrangements and*

*Amalgamation) Rules, 2016;*

*AND*

*In the matter of*

*The Scheme of Arrangement and*

*Merger*

*of*

***ISMT Limited***

***("Transferor Company No. 1")***

*With*

*Kirloskar Ferrous Industries*

*Limited*

***("Transferee Company")***

***And their respective Shareholders.***

**ISM Limited**

CIN: L27109PN1999PLC016417 ... **Petitioner Company 1/**  
Transferor Company

**Kirloskar Ferrous Industries Limited**

CIN: L27101PN1991PLC063223 ... **Petitioner Company 2/**  
Transferee Company

***Order delivered on 24.07.2024***

***Coram:***

Shri. Prabhat Kumar (Justice) Shri V. G. Bisht  
Hon'ble Member (Technical) Hon'ble Member (Judicial)

***Appearances :***

For the Applicant(s) : Mr. Hemant Sethi a/w Mr. Narendra Dingankar, Mr. Rushad Irani i/b Pioneer Legal.

For the Regional Director : Mr. Bhagwati Prasad, Assistant Director, Office of Regional Director, Western Region, Mumbai

For the Income Tax Department : Ms. Prachi Wazalwar, Advocate

**ORDER**

1. Heard the learned Counsel for the Petitioners, the Income Tax Department and the Authorized Representative of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition, except as otherwise stated hereunder. An unsecured Creditor of the First Petitioner Company, *viz.* Avignon Shipping Co., SFIO and Income Tax Department has objected before this Tribunal seeking certain clarifications, which are dealt in subsequent paras of this order.
2. The sanction of the scheme is sought under sections 232 r/w Section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of Arrangement and Merger of ISMT Limited (**‘First Petitioner Company/Transferor Company’**) with Kirloskar Ferrous Industries Limited (**‘Second Petitioner Company’ / ‘Transferee Company’**) and their respective Shareholders (**‘Scheme’**).
3. The consideration of the Scheme is determined as per the valuation reports issued by (i) Mr. Amit Suresh Jain, ACA (Registered Valuer Registration No. 1881/RV/05/2019/12675) in respect of the First Petitioner Company; and

(ii) by M/s. BDO Valuation Advisory LLP (Registered Valuer Registration No. IBBI/RV-E/02/2019/103) in respect of the Second Petitioner Company (collectively referred to as “**Valuation Reports**”), both dated Novembers 5, 2022. The share exchange ratio / swap ratio as envisaged in the Scheme has been reproduced hereinunder:

*“Upon coming into effect of this Scheme and in consideration of the merger of the Transferor Company into and with the Transferee Company including transfer and vesting of the Undertaking of the Transferor Company in the Transferee Company, in terms of this Scheme, on the basis of Valuation Report dated 5 November 2022 and Fairness Opinion dated 5 November 2022, the Transferee Company shall without any further application or deed, be required to issue and allot to the shareholders of the Transferor Company whose names are recorded in the register of members as a member of the Transferor Company on the Record Date or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognised by the Board of the Transferee Company, 17 Transferee Company Shares, credited as fully paid-up, for every 100 equity shares of the face value of Rs. 5 each fully paid-up held by such member in the Transferor Company (“**Share Exchange Ratio**”).”*

4. The First Petitioner Company is primarily engaged in the business of manufacturing specialty alloy, bearing steel and

seamless tubes. The equity shares of the First Petitioner Company are listed on BSE Limited (“**BSE**”) and National Stock Exchange of India Limited (“**NSE**”) (both hereinafter collectively referred to as “**Stock Exchanges**”). The First Petitioner is a subsidiary of the Second Petitioner Company.

5. The Second Petitioner Company is primarily engaged in the business of manufacturing pig iron and grey iron castings and caters to industry sectors such as tractors, automotives and diesel engines. The equity shares of the Second Petitioner Company are listed on BSE. The Second Petitioner Company is the sole promoter in-charge of the First Petitioner Company
6. The Scheme has been approved by the Board of Directors of the First Petitioner Company and the Second Petitioner Company in their respective meetings held on November 5, 2022. The Appointed Date is mutually agreed between the Parties as April 1, 2023.
7. The Petitioner Companies states that the Petition has been filed in consonance with the order dated January 4, 2024, passed by this Tribunal in the connected Company Scheme Application bearing C.A.(CAA)/238/MB/2023, and order dated January 16, 2024 passed by this Tribunal in CA/18/2024 in the connected Company Scheme Application bearing C.A.(CAA)/238/MB/2023. The Petitioner Companies have complied all the necessary directions contained in order dated

04.01.2024 r/w order dated 16.01.2024 and have necessary affidavit dated 06.03.2024 in compliance before this Tribunal.

8. The Learned Counsel for the Petitioner Companies states that the rationale for the Scheme is as follows:
- a. The synergy arising out of consolidation of the business of the First Petitioner Company and the Second Petitioner Company will make the business activities more sustainable in the long term as well as help them grow at a faster pace;
  - b. The Scheme is expected to create value for stakeholders including respective shareholders, customers, lenders and employees as the combined business would benefit from increased scale, expanded reach, higher cross selling opportunities to a larger base of customers, improvement in productivity amongst others;
  - c. Better administration and cost optimization are expected to flow from more focused operational efforts, standardization and simplification of business processes, and the elimination of duplication, and rationalization of administrative expenses as well as compliance cost;
  - d. Pooling of resources and achieving economies of scale;

- e. The Scheme is expected to lead to greater integration and flexibility to the Second Petitioner Company and to strengthen its position in terms of asset base, revenues and service range;
- f. The Second Petitioner Company has fully backward integrated operations ranging from iron ore mines to machined castings as well as a very strong client base across the globe. The First Petitioner Company is one of the most diversified manufacturers of specialized seamless tubes in the world, producing tubes in the range of 6 to 273 mm diameter. Merging of the business of the First Petitioner Company will bring the benefits of forward integration and diversification of product portfolio to the business of the Second Petitioner Company.
- g. The Scheme would result in mitigating the risks of the First Petitioner Company relating to procurement of certain input raw material.
- h. The First Petitioner Company's investments and business plan had not panned out as expected and that led to its debt obligations becoming stressed. However, with combining of operations of the First Petitioner Company with the Second Petitioner Company, benefits of better terms of finance and availability of capital will help in

streamlining and improving the financial operations of the merged entity.

- i. Accordingly, the Scheme is expected to be in the best interests of the Petitioner Companies and their respective stakeholders, including, their shareholders, and creditors.
9. The Regional Director has filed his Report dated 04.07.2024 making certain observations and the Petitioner Companies have undertaken/made following submission that :
- a. The RoC has categorically noted that none of the Petitioner Companies are vanishing or scam related companies;
  - b. The Scheme adequately protects and secured the interests of the shareholders and creditors of the Petitioner Companies;
  - c. The Petitioner Companies strongly oppose keeping the matter in abeyance, as sought by the Regional Director, on the following grounds
    - i. The Scheme *inter alia*, provides that all claims and actions by or against the Transferor Company pending as on the effective date would be continued and / or enforced by the Transferee Company.
    - ii. All liabilities of the First Applicant / Transferor Company shall become liabilities of the Second Applicant / Transferee Company as on the Effective Date, with effect from the Appointed Date and the



Second Applicant / Transferee Company shall meet, discharge, and satisfy the same.

- iii. From the provisions in the Scheme as well as that of the Companies Act, 2013, it is clear that in the event the SFIO were in the future to have any claim or action against the Transferor Company, the rights of the SFIO would be well protected. The Scheme as such would not affect the rights (if any) of the SFIO in any manner whatsoever.
  - iv. This position is now settled law and has been crystallized by a plethora of judgments. The Petitioner Companies have relied in the matter of **Mel Windmills P. Ltd.** (Company Appeal (AT) No. 4 of 2019); **Bhagwan Dass Chopra** (1987 (Supp) Supreme Court Cases 536) **Yapi Kredi Bank (Deutschland) AG** (ILR (2013) II Delhi 841); **Core Healthcare** ((2007) Comp Cas 204); **Mirasu Marketing Limited** (Company Petition No. 350 of 2008). This Hon'ble Tribunal, in the matter of **Oberoi Constructions Ltd.** (CP (CAA) 27 / MB – III / 2023) has also sanctioned a scheme wherein an investigation into the said company was pending.
- d. The Petition under Sections 241 and 242 read with Sections 246 and 339 of the Companies Act, 2013 filed by the SFIO

against the Transferor Company and its' erstwhile directors (CP 216 / MB / 2022) which is pending before this very bench of this Tribunal, the Ld. Advocate for the SFIO has on April 5, 2024 made a statement before this Tribunal that the aforesaid investigation was over and the report had been filed with the Ministry of Corporate Affairs for acceptance. The aforesaid CP 216 / MB / 2022 was filed by the SFIO, inter alia, seeking disgorgement of assets allegedly siphoned off by the erstwhile KMPs of the Transferor Company. The aforesaid CP 216 / MB / 2022 was filed by the SFIO, inter alia, seeking disgorgement of assets allegedly siphoned off by the erstwhile KMPs of the Transferor Company. The said order has not been challenged by the SFIO till date. Thus, even this Tribunal has recognized that the Transferor Company is not a suspect in the said investigation as it is not involved in any alleged misdeeds and has accordingly ordered deletion of its' name in the aforesaid CP 216 / MB / 2022. The erstwhile promoters of the Transferor Company would continue as shareholders in the Transferee Company basis the share swap ratio as per the Scheme.

- e. The Second Petitioner Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with all applicable Accounting Standards such as AS-5 (IND AS-8), to the extent applicable;

- f. The Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made;
  - g. The Petitioner Companies shall comply with the requirements clarified vide circular No.7/12/2019/CL-I dated 21st August, 2019 issued by the Ministry of Corporate Affairs;
  - h. The approval of the Scheme by this Tribunal may not deter Income Tax authorities to deal with Income Tax related issues arising after coming into effect of the Scheme and the Petitioner Companies submit that any Income Tax related issues arising out of the Scheme will be met and answered during the course of regular Income Tax assessment in accordance with the provisions of the Income Tax Act, 1961 and as per applicable law;
  - i. No Objection Certificates from NSE and BSE are annexed to the captioned Company Petition;
  - j. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.
10. Mr. Bhagwati Prasad from the Office of Regional Director (WR), Mumbai, appeared on the date of hearing and request this Bench to keep the matter in abeyance until the SFIO; provides its comments.

11. The Petitioner Companies states that the Securities and Exchange Board of India has approved the Scheme and no other authorities have objected to the Scheme. He states that interest of the Ministry of Corporate Affairs and the SFIO are adequately protected and not adversely affected under the Scheme and under any provision of law, and the approval to the Scheme cannot be delayed on the grounds that the SFIO has not provided any comments on the Scheme. He submits that the Petitioner Companies undertake to provide their cooperation to the SFIO, in accordance with law and without prejudice to their rights and contentions. These contentions protects the interest of SFIO/Government of India in case any claim against the Transferor company is found tenable on the basis of SFIO Report by any authority and the Transferee Company shall comply with the same. SFIO/Government of India shall be entitled to proceed against the Transferee Company in relation to deeds of Transferor Company subsequent to the implementation of scheme. Moreover, the Petitioner Companies has undertaken to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made thereunder.

12. The Official Liquidator has filed his report dated April 26, 2024, *inter alia* stating therein its observations to the Scheme as stated in paragraph 5 and 6 of the said Report. In response to the observations made by the Official Liquidator, the Petitioner

Companies have filed reply affidavit cum rejoinder on May 15, 2024. The observations made by the Official Liquidator and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

- i. The Company has obtained the necessary permissions / approval from its' shareholders for payment of the excess remuneration to the Erstwhile Non-Executive Director.
  - ii. The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 specifically state that the consent of SEBI to the Scheme must be obtained by the listed entities by applying to the stock exchanges where they are listed. Both the Petitioner Companies have received such consent / no adverse observations from both BSE and NSE on July 25, 2023.
13. The clarifications and undertakings given by the Petitioner Companies in relation to the report of Official Liquidator are accepted by this Tribunal.
14. The Deputy Commissioner of Income Tax, Circle 1 (1), Pune (“DCIT”) has filed his report dated May 16, 2024, *inter alia* stating therein the observations on the Scheme as stated in paragraphs 4 to 9 of the said Report. In response to the observations made by the DCIT, the Petitioner Companies have

filed reply affidavit cum rejoinder on July 5, 2024. The observations made by the DCIT and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

- i. The interest of the Income Tax Department is well protected by the Scheme. Clause 6 of Part C of the Scheme makes it amply clear that if any suit, appeal or other proceedings of whatever nature by or against the Transferor Company be pending on the Effective Date, the same shall not automatically abate or be discontinued or in any way be prejudicially affected by reasons of the merger of the Transferor Company or by anything contained in this Scheme but the proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Company as if this Scheme had not been made.
- ii. The Transferor Company is dealing with the claims of the Income Tax Department as per the provisions of applicable law and post the merger, the same will be dealt by the Transferee Company as per the provisions of the Scheme.

15. The observations made by the DCIT have been explained by the Petitioner Companies in the paragraph above. The rejoinder dated July 5, 2024 filed by the Petitioner Companies, the clarifications and undertakings given by the Petitioner Companies are accepted by this Tribunal.
16. One Avignon Shipping Company (“**Avignon**”), a sole proprietorship owned by one Mr. Rajdeepak Bhargava, who is a creditor of the First Petitioner Company has filed a representation before this Tribunal dated March 21, 2024. *Vide* the said representation, Avignon has claimed that it has certain disputes with the First Applicant Company. Avignon has further alleged that the First Applicant Company has misrepresented the amount claimed by Avignon in the list of creditors. Avignon has sought a clarification that the persons named in the criminal complaint filed by it continue to be liable along with the First and / or Second Applicant Company and the amounts claimed by Avignon would be paid by the concerned entity after the present Scheme is approved.
17. The First Petitioner Company has filed a response to Avignon’s representation on May 14, 2024. The First Petitioner Company has denied Avignon’s contentions and states that the disputes with Avignon are currently being adjudicated upon before various civil and criminal courts. The First Petitioner Company has also stated that the amount reflected in the list of unsecured

creditors is classified as a liability due to Avignon's claim being disputed. The said amount has been arrived at using applicable and widely accepted accounting standards.

18. The First Petitioner Company has stated that Clause 6 in Part C of the Scheme provides that all suits, actions, claims and legal proceedings of whatever nature in the name of the First Petitioner Company on the Effective Date would not abate or be discontinued automatically as of the Effective Date or in any way be prejudicially affected by reason of the present merger and may be continued, prosecuted and enforced by or against the Second Petitioner Company in the same extent as it would have been against the First Petitioner Company had the present Scheme not been made. In such circumstances, the rights of Avignon are not affected in any way. Further, the provisions of S. 232 (3) (b) of the Companies Act, 2013 provides that this Tribunal may in its final order make provisions for the continuation of any pending legal proceedings, filed by or against the First Petitioner Company, against the Second Petitioner Company after the approval of the Scheme.
19. The Petitioner Companies submits that if, any liability were to arise against the First Petitioner Company from Avignon's claims as adjudicated by the competent Courts, the same would be taken over / discharged by the Second Applicant Company post the Effective date, subject to applicable law and without



prejudice to the rights of the Petitioner Companies. The aforesaid contentions of the First Petitioner Company are accepted and there is no need for any further clarification.

20. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. All the assets and liabilities including taxes and charges, if any and duties of the Transferor Company, shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the assets, liabilities and duties of the Transferee Company.
21. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition bearing C.P.(CAA)/57/MB /2024 filed by the Petitioner Companies is made absolute in terms of prayers clause of the said Company Scheme Petition. The Transferor Company be order to be dissolved without winding up.
22. The 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, in addition to the physical copy within 30 days from the date of issuance of the order duly certified by the Registrar, National Company Law Tribunal, Mumbai Bench.

23. The Petitioner Companies are to lodge a copy of this order and the Scheme duly certified by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order from the National Company Law Tribunal, Mumbai Bench.
24. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Registry, National Company Law Tribunal, Mumbai Bench.
25. Any Authorities/ Person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
26. The Scheme is **sanctioned**, and the Appointed Date of the Scheme is fixed as April 1, 2023 for both the Petitioner Companies for the purposes of Section 232(6) of the Companies Act, 2013.
27. File is consigned to records.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)