

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

C.A.(CAA)/78/MB/2024

*In the matter of the Companies Act,
2013*

AND

*In the matter of Section 230 to 232 of
the Companies Act, 2013 and other ap-
plicable provisions of the Companies
Act, 2013 read with Companies (Com-
promises, Arrangements and Amal-
gamations) Rules, 2016*

AND

*In the matter of Scheme of Amalgama-
tion of Astron Engineers (India) Private
Limited with PNSK Metals Private Lim-
ited*

Astron Engineers (India) Private Limited, (CIN: U28910PN1988PTC020059), a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at GAT No. 131, near Lavale Phata, Post Pirangut Taluka – Mulshi, District – Pune - 412108, Maharashtra, India.

**... First Applicant Company /
Transferor Company**

PNSK Metals Private Limited, (CIN: U25910PN2024PTC229048), a Company incorporated under the provisions of the Companies Act, 2013 having its registered office at GAT No. 131, Near

... Second Applicant Company /

Lavale, Phata, Pirangut, Mulshi, Pune –
412115, Maharashtra, India.

Transferee Company

Together First Applicant Company and Second Applicant Company are known as “Applicant Companies”.

Order Pronounced 17.05.2024

Coram:

MS. REETA KOHLI, HON’BLE MEMBER (J)

MS. MADHU SINHA, HON’BLE MEMBER (T)

For the Applicant Companies:

Mr. Hemant Sethi, Ms. Devanshi Sethi - Hemant Sethi & Co., Advocates

ORDER

Per Coram

1. Learned Counsel for the Applicant Companies submits that the present Scheme is presented under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013, and the rules and regulations framed thereunder for the amalgamation of Astron Engineers (India) Private Limited (“**First Applicant Company**”) and PNSK Metals Private Limited (“**Second Applicant Company**”) and their respective shareholders (“**Scheme**”).
2. Learned counsel for the Applicant Companies submits that the Applicant Companies were incorporated with the main objects to engage in the business of manufacturing of all types of ferrous and non-ferrous products.
3. Learned Counsel for the Applicant Companies further submits that the Scheme has been approved by the Board of Directors of the Applicant

Companies vide board resolutions dated 22nd April 2024, which are annexed as “**Annexure E1**” at Page No. 125 to 128 (Vol. I) and “**Annexure E2**” at Page No. 129 to 132 (Vol. I) to the Company Scheme Application.

4. The Appointed Date for the Scheme is 1st October 2024.
5. Learned Counsel for the Applicant Companies further submits that the management of the Applicant Companies believes that merger of the First Applicant Company with the Second Applicant Company would have, inter alia, the following benefits:
 - i.* Mr. Nitin Kulkarni and his spouse, Mrs. Sujata Kulkarni, promoters and majority shareholders of the Transferor Company, are engaged in and have been managing the business affairs and operations of the First Applicant Company since its incorporation, for more than 35 years.
 - ii.* Ms. Pallavi Kulkarni, their daughter, a chartered accountant, was desirous of starting her own business venture in order to explore her entrepreneurial skills. Accordingly, she incorporated the Second Applicant Company, with investment from her parents, to carry out the business of manufacturing of components and articles from ferrous and non-ferrous metals.
 - iii.* Considering the old age of Mr. Nitin Kulkarni and Mrs. Sujata Kulkarni and their other commitments, it's becoming difficult for them to manage and look after day-to-day operations of and meet the demands of the business of the First Applicant Company. After detailed discussions, the family members came to a consensus that Ms. Pallavi Kulkarni will actively manage the business affairs and day to day operations of the First Applicant Company and Mr. Nitin Kulkarni and Mrs. Sujata Kulkarni will

reduce their involvement in the operations over time and will be involved only in strategic decisions to guide Ms. Pallavi Kulkarni.

- iv.* Considering Ms. Pallavi Kulkarni will be involved in looking after day-to-day operations of both the First Applicant Company and the Second Applicant Company, it is sought to amalgamate both the companies, for the following reasons:
- a. Amalgamation will result in streamlining operations, ease of operations, greater efficiency in resource management, will provide synergies by strengthening the operational capabilities of the amalgamated entity and access to fund flow generated by combined businesses which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize value.
 - b. Amalgamation will enable operational efficiencies and appropriate consolidation of activities enabling pooling of resources resulting in more efficient utilisation of resources, greater economies of scale, integration and streamlining of management structure resulting in optimum utilisation of efforts of Ms. Pallavi Kulkarni and other resources, which will otherwise have to be duplicated in managing multiple entities, resulting in future growth of the business.
 - c. The Amalgamation would lead to simplification of the existing holding structure and reduction of shareholding tiers to remove impediments, if any, in facilitating future expansion plans and create enhanced shareholder value.
 - d. Amalgamation will result in simplicity of operations, reduction of costs associated with various statutory and regulatory

compliances viz statutory filings, regulatory compliances, labour law compliances, factory related compliances, environmental clearances etc., for multiple entities.

v. The creditors of the First Applicant Company and Second Applicant Company will not be affected by the Scheme since the combined assets of the Transferee Company are more than its combined liabilities.

6. Learned Counsel for the Applicant Companies submits that the share capital structure of the Applicant Companies is as follows:

(i) The share capital structure the First Applicant Company as on 31st March 2024 is as under:

Particulars	Amount (INR)
<i>Authorised Share Capital</i>	
5,00,000 Equity shares of Rs.10/- each	50,00,000
Total	50,00,000
<i>Issued, subscribed and paid-up Share Capital</i>	
4,10,061 Equity shares of Rs.10/- each, fully paid up	41,00,610
Total	41,00,610

Subsequent to the date of approval of the Scheme by the Board of Directors, there has been no change in the authorized, issued, subscribed and paid-up share capital of the First Applicant Company.

(ii) The share capital structure of Second Applicant Company as on 31st March 2024 is as under:

Particulars	Amount (INR)
<i>Authorised Share Capital</i>	
1,20,000 Equity shares of Rs.100/- each	12,00,000
Total	12,00,000
<i>Issued, subscribed and paid-up Share Capital</i>	
1,00,000 Equity shares of Rs.100/- each, fully paid up	10,00,000
Total	10,00,000

Subsequent to the date of approval of the Scheme by the Board of Directors, there has been no change in the authorized, issued, subscribed and paid-up share capital of the Second Applicant Company.

7. Learned Counsel for the Applicant Companies submits that the Second Applicant Company shall discharge the consideration to the shareholders of First Applicant Company in accordance with the share exchange ratio based on Valuer's Opinion dated 19th April, 2024 issued by Mr. Pruthvi Mota, Registered Valuer.
8. Learned counsel for the Applicant Companies further submits that, in consideration of transfer and vesting of the business of the First Applicant Company into the Second Applicant Company in accordance with this Scheme, the Second Applicant Company shall issue and allot to the shareholders of First Applicant Company as follows:

Name of equity shareholder of the First Applicant Company (a)	Number of Equity shares held in the First Applicant Company (b)	Discharge of Consideration by Second Applicant Company (c)
Nitin Kulkarni j/w Sujata Kulkarni (or his heirs, executors, administrators or the successors-in-title, as the case may be)	1,52,732	40,000 (Forty Thousand) 0.01% Non-cumulative Redeemable Preference Shares of face value of Rs. 10/- each

Name of equity shareholder of the First Applicant Company (a)	Number of Equity shares held in the First Applicant Company (b)	Discharge of Consideration by Second Applicant Company (c)
Sujata Kulkarni j/w Nitin Kulkarni (or her heirs, executors, administrators or the successors-in-title, as the case may be)	1,14,549	30,000 (Thirty Thousand) 0.01% Non-cumulative Redeemable Preference Shares of face value of Rs. 10/- each
Pallavi Kulkarni (or her heirs, executors, administrators or the successors-in-title, as the case may be)	1,14,549	30,000 (Thirty Thousand) 0.01% Non-cumulative Redeemable Preference Shares of face value of Rs. 10/- each
Kiran Kulkarni (or his heirs, executors, administrators or the successors-in-title, as the case may be)	28,230	10,000 (Ten Thousand) 0.01% Optionally Convertible Redeemable Preference Shares of face value of Rs. 10/- each

9. Learned Counsel for applicant companies submits that there are no proceedings / investigation pending against the Applicant Companies under sections 210-217, 219, 220, 223, 224, 225, 226 & 227 of the Companies Act, 2013, as provided for in Para 26 of the Company Scheme Application.
10. That there are **4** (Four) equity shareholders in First Applicant Company and copy of certificate of an Independent Chartered Accountant certifying list of equity shareholders of the First Applicant Company is annexed as **“Annexure I”** at Page No. 179 to 180 (Vol. II) to the Company Scheme Application. The First Applicant Company has procured consent affidavits in support of Company Scheme Application from **100%** equity shareholders of the First Applicant Company, which

are annexed as **“Annexure J (Collectively)”** at Page No. 181 to 190 (Vol. II) to the Company Scheme Application.

11. That there are **3** (Three) equity shareholders in Second Applicant Company and copy of certificate of an Independent Chartered Accountant certifying list of equity shareholders of the Second Applicant Company is annexed as **“Annexure O”** at Page No. 279 to 280 (Vol. II) to the Company Scheme Application. The Second Applicant Company has procured consent affidavits in support of Company Scheme Application from **100%** equity shareholders of the Second Applicant Company, which are annexed as **“Annexure P” (Collectively)** at Page No. 281 to 288 (Vol. II) to the Company Scheme Application.
12. In view of the fact that 100% equity shareholders of the Applicant Companies have given their consent affidavits, the meetings of the Equity Shareholders of the Applicant Companies are hereby dispensed with.
13. In view of the fact that the Applicant Companies do not have Preference Shareholders, the question of holding and convening the meetings of the Preference Shareholders of the Applicant Companies does not arise.
14. That there are **3** (Three) Secured Creditors of Rs. 4,52,93,175/- in value in the First Applicant Company. The copy of certificate of an Independent Chartered Accountant certifying list of secured creditors of the First Applicant Company is annexed as **“Annexure K2”** at Page No. 192 to 194 (Vol. II) to the Company Scheme Application. First Applicant Company has procured the Consent Affidavits from **100%** Secured Creditors which are annexed as **“Annexure-L” (Collectively)** at Page No. 195 to 196 (Vol. II) to the Company Scheme Application.
15. That there are **No** secured creditors in the Second Applicant Company as on 31st March 2024. The copy of certificate of an Independent Chartered Accountant certifying No Secured Creditors of the Second

Applicant Company is annexed as “**Annexure - Q**” at Page No. 289 to 290 (Vol. II) to the Company Scheme Application.

16. In view of the fact that **100%** secured creditors of the First Applicant Company have given their consent affidavit, the meeting of the Secured Creditors of the First Applicant Company is hereby dispensed with. Further, in view of the fact that there are **No** Secured Creditors of the Second Applicant Company, the question of holding and convening the meetings of the Secured Creditors of the Second Applicant Company does not arise.
17. Learned Counsel for the Applicant Companies submits that there are **43** (Forty -Three) [out of which 39 creditors (including unsecured loan) have outstanding credit balance and 4 unsecured creditors have debit balance as on 31st March 2024] Unsecured Creditors in the First Applicant Company. The copy of certificate of an Independent Chartered Accountant certifying list of Unsecured Creditors of the First Applicant Company is annexed as “**Annexure – K2**” at Page No. 192 to 194 (Vol. II) to the Company Scheme Application. The First Applicant Company has obtained consent affidavits from 38 unsecured creditors (out of 39 unsecured creditors having outstanding credit balance as on 31st March 2024) representing **99.99%** of value of its unsecured creditors which are attached as “**Annexure – N**” (**collectively**) at Page No. 200 to 278 (Vol. II) to the Company Scheme Application.
18. That there is **1** (One) Unsecured Creditor in the Second Applicant Company. The copy of certificate of an Independent Chartered Accountant certifying list of Unsecured Creditors of the Second Applicant Company is annexed as “**Annexure Q**” at Page No. 289 to 290 (Vol. II) to the Company Scheme Application. Second Applicant Company has procured **100%** consent affidavits from the Unsecured

Creditors which are annexed as “**Annexure S**” at Page No. 292 to 293 (Vol. II) to the Company Scheme Application.

19. In view of the fact that more than **99%** in value of Unsecured Creditors of the First Applicant Company and **100%** Unsecured Creditors of the Second Applicant Company have given their consent affidavits, the meetings of Unsecured Creditors of the Applicant Companies are hereby dispensed with, in accordance with section 230(9) of the Companies Act, 2013.
20. The Applicant Companies are directed to serve notice of the present Application along with its enclosures on –
 - i. the Central Government through the office of Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai;
 - ii. Registrar of Companies, Maharashtra at Pune;
 - iii. Income Tax Authority within whose jurisdiction the respective Applicant Companies are assessed to tax; for the First Applicant Company - PAN: AABCA7703J, Income Tax Officer – Circle 6(1)(2), Mumbai, Aayakar Bhawan, Mumbai; for the Second Applicant Company - PAN: AAOCP5624Q, Income Tax Officer – Circle 2, Pune, PMT Building, Swargate, Pune and also the Nodal Authority in the Income-tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address – 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400020, Phone No. 022-22017654 [Email: Mumbai.pccit@incometax.gov.in];
 - iv. Concerned Jurisdictional GST Authority within whose jurisdiction the First Applicant Company having GSTIN: 27AABCA7703J1ZQ is assessed to tax;

- v. To the official liquidator, High Court, Bombay in so far as First Applicant Company is concerned;

pursuant to sub-section (5) of Section 230 of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, through R.P.A.D or by Email or by speed post or registered post or by courier or hand delivery with a direction that they may submit their representations, if any, within a period of 30 (thirty) days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the respective Applicant Companies, failing which, it shall be presumed that the authorities have no representations to make on the Scheme.

21. The Applicant Companies to file affidavit of service in the Registry proving dispatch of notices to the Regulatory Authorities to report to this Tribunal that the directions regarding the issue of notices have been duly complied with.
22. Ordered accordingly.

Sd/-

Madhu Sinha
Member (Technical)
/Priyanka/

Sd/-

Reeta Kohli
Member (Judicial)