

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(through web-based video conferencing platform)

C.A. (CAA) No.18/BB/2024

Application U/ss. 230 & 232 of the Companies Act, 2013
R/w the Companies (Compromises, Arrangements
and Amalgamations) Rules, 2016

IN THE MATTER OF SCHEME:

Metal Impacts Private Limited

#88/A, Koramangala Industrial Layout,
Bangalore – 560 095.

- Applicant Company No.1/
Transferor Company No.1

Alblanc Private Limited

#88/A, Koramangala Industrial Layout,
Bangalore – 560 095.

- Applicant Company No.2/
Transferor Company No.2

Klas Consultants Private Limited

#88/A, Koramangala Industrial Layout,
Bangalore – 560 095.

- Applicant Company No.3/
Transferor Company No.3

Metal Impacts Aerosols Private Limited

#88/A, Koramangala Industrial Layout,
Bangalore – 560 095.

- Applicant Company No.4/
Transferee Company

Order delivered on: 10.07.2024

CORAM: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Applicant Companies : Shri Abhijit Atur with Ms. Athulya M.P.

ORDER
PER BENCH

1. The present First Motion Application has been filed on 26.02.2024 by the Applicant Companies viz., **Metal Impacts Private Limited** (described in short as “Applicant Company No.1/Transferor Company No.1”), **Alblanc Private Limited** (described in short as “Applicant Company No.2/Transferor Company No.2”), **Klas Consultants Private Limited** (described in short as “Applicant Company No.3/Transferor Company No.3”), **Metal Impacts Aerosols Private Limited** (described in short as “Applicant Company No.4/Transferee Company) under Sections 230 & 232 of the Companies Act, 2013 (hereinafter referred to as the said Act) and other applicable provisions of the said Act, R/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 *inter alia*, for seeking dispensation of meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company No.1; and dispensation of meetings of the Equity Shareholders and Unsecured Creditors of the Applicant Company Nos.2, 3 & 4 for the Scheme of Amalgamation. As there are no Secured Creditors in the Applicant Nos.2, 3 & 4, there is no scope to convene the meeting of Secured Creditors for these companies.
2. The Transferor Company No. 1 / Applicant No. 1 is incorporated under the provisions of the Companies Act, 1956 on 07.10.1978 having CIN:U27320KA1978PTC003387. The company is engaged in the business of manufacturing, buying, selling, exchanging, altering, improving, manipulating, importing, exporting *inter alia* dealing in all kinds of collapsible and rigid aluminium, zinc, lead or other metals/non-metal components, assemblies and accessories; ferrous and non-ferrous, drawn or extruded bars, wires, slugs and conducting processes like chemical treatment, heat treatment, lacquering etc.

3. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Applicant Company No.1/Transferor Company No.1 as on 31.03.2023 is as under:

Equity Share Capital	
Authorised Capital	Amount (Rs.)
Equity Share Capital 70,00,000 equity shares of Rs.10/-	7,00,00,000/-
Issued, Subscribed & Paid-up Capital	Amount (Rs.)
5852147 equity shares of Rs.10/- fully paid up	5,85,21,470/-

4. The Applicant Company No.2/Transferor Company No.2 is incorporated under the provisions of the Companies Act, 1956 on 27.10.1981 having CIN:U31300KA1981PTC004461. As per the Memorandum of Association, the main objects of the Company, *inter alia*, is manufacturing, processing, importing, exporting, consigning, trading, acting as mercantile agents and/or otherwise dealing in casting, ingots, billets, sheets, wires, assemblies, components hardware etc. made out of ferrous and non-ferrous metals and their alloys machineries.
5. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Applicant Company No.2/Transferor Company No.2 as on 31.03.2023 is as under:

Equity Share Capital	
Authorised Capital	Amount (Rs.)
Equity Share Capital 5,00,000 equity shares of Rs.10/-	50,00,000/-
Issued, Subscribed & Paid-up Capital	Amount (Rs.)
4,80,000/- equity shares of Rs.10/- fully paid up	48,00,000/-

6. The Applicant Company No.3/Transferor Company No.3 is incorporated under the provisions of the Companies Act, 1956 on 03.09.1980 having CIN:U74140KA1980PTC003932. As per the Memorandum of Association,

the main objects of the Company, *inter alia*, is consultancy in the field of technology, finance, management, labour and personnel and advertisement, field valuers of land, building, machinery, stocks and share and other moveable and immovable properties.

7. The Authorized, Subscribed, Issued and Paid-up Share Capital of the Applicant Company No.3/Transferor Company No.3 as on 31.03.2023 is as under:

Equity Share Capital	
Authorised Capital	Amount (Rs.)
Equity Share Capital 5,00,000 equity shares of Rs.10/-	50,00,000/-
Issued, Subscribed & Paid-up Capital	Amount (Rs.)
3,47,350/- equity shares of Rs.10/- fully paid up	34,73,500/-

8. The Applicant Company No.4/Transferee Company is incorporated under the provisions of the Companies Act, 1956 on 13.06.1985 having CIN:U67120KA1985PTC006961. The Transferee Company was originally incorporated under the name and style of '*M.I.L. Aerosols Private Limited*' and subsequently, on 11th December 2023, and changed its name to *Metal Impacts Aerosols Private Limited* and obtained a fresh Certificate of Incorporation from the Registrar of Companies, Karnataka. As per the Memorandum of Association, the main objects of the Company, *inter alia*, is being engaged in the industry, trade or business of fabricators, assemblers, importers, exporters, traders, agents, dealers of machineries, machine tools, machine parts and accessories, tools and implements of all kinds, jigs, fixtures, gauges, moulds, dyes, patterns, castings, ingots, billets, sheets, rods, bars, collapsible tubes and rigid aluminium, zinc, lead or other metals and non-metal containers, components, assemblies and accessories.
9. The Authorized, Subscribed, Issued and Paid-up Share Capital of the Applicant Company No.4/Transferee Company as on 31.03.2023 is as under:

Equity Share Capital	
Authorised Capital	Amount (Rs.)
Equity Share Capital 3,00,000 equity shares of Rs.10/- each	30,00,000/-
Issued, Subscribed & Paid-up Capital	Amount (Rs.)
2,96,950 equity shares of Rs.10/- each fully paid up	29,69,500/-

10. The Board of Directors of the Applicant Companies have approved and adopted the Scheme of Amalgamation in their respective meetings held on 14th December 2023. Certified true copy of resolution passed in the Board meeting of the Applicant Companies are attached to the Application as Annexure Q, R, S and T respectively. The Appointed Date fixed under the Scheme is 01.04.2024.
11. It is submitted that the rationale for Scheme of Amalgamation of the Transferor Companies with the Transferee Company is, *inter alia*, as follows:
- i. Improve organizational capability and leadership, arising from the pooling of human capital that has the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.
 - ii. Greater integration, consolidation of business operations and greater financial strength & flexibility for the Transferee Company, which would result in maximizing overall shareholder value, and will improve the competitive position of the combined entity.
 - iii. Greater efficiency in cash management of the Transferee Company, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value etc.
12. The instant Application has been filed seeking for the following reliefs:
- a. *Dispense with the meetings of the Equity Shareholders of the Applicant Companies in view of the consent affidavits furnished by the Shareholders;*

- b. Dispense with the meeting of the Secured Creditors of the Applicant Company No.1 in view of the consent affidavits furnished by the Secured Creditors;*
- c. Dispense with the meeting of the Secured Creditors of the Applicant Company No.2 to 4 since there are no secured creditors in the said companies;*
- d. Dispense with the meeting of the Unsecured Creditors of the Applicant Companies in view of the consent affidavits furnished by the Unsecured Creditors etc.*

13. It is stated that as per the Certificate dated 11.01.2024 issued by M/s. M. Venkatachalam & Associates, Chartered Accountants, there are six (6) Equity Shareholders in the Applicant Company No.1 as on 31.10.2023. All the Equity Shareholders of the Applicant Company No.1 have given their consents by way of affidavits to the Scheme.
14. It is also stated that as per the Certificate 11.01.2024 issued by M/s. M. Venkatachalam & Associates, Chartered Accountants, there is only one (1) secured creditor in the Applicant Company No.1 as on 31.10.2023 for the value of Rs.14,69,81,303/- (Rupees Fourteen Crore Sixty Nine Lakh Eighty One Thousand Three Hundred and Three Only) and twenty nine (29) Unsecured Creditors in the Applicant Company No.1 amounting to Rs.39,46,85,092/- (Rupees Thirty Nine Crore Forty Six Lakh Eighty Five Thousand and Nine Two Only) as on 31.10.2023. The sole Secured Creditor and all the Unsecured Creditors of the Applicant Company No.1 have given their consents by way of affidavits to the Scheme.
15. It is further stated that as per the Certificate dated 11.01.2024 issued by M/s. M. Venkatachalam & Associates, Chartered Accountants, there are four (4) Equity Shareholders in the Applicant Company No.2 as on 31.10.2023. All the Equity Shareholders of the Applicant Company No.2 have given their consents by way of affidavits to the Scheme.
16. It is stated that as per the Certificate 11.01.2024 issued by M/s. M. Venkatachalam & Associates, Chartered Accountants, there is no Secured Creditor in the Applicant Company No.2 as on 31.10.2023 and has two (2) Unsecured Creditors in the Applicant Company No.2 amounting to Rs.1,03,49,948/- (Rupees One Crore Three Lakh Forty-Nine Thousand

Nine Hundred and Forty Eighty Only) as on 31.10.2023. Both the Unsecured Creditors of the Applicant Company No.2 have given their consents by way of affidavits to the Scheme.

17. It is also stated that as per the Certificate dated 11.01.2024 issued by M/s. M. Venkatachalam & Associates, Chartered Accountants, there are three (3) Equity Shareholders in the Applicant Company No.3 as on 31.10.2023. All the Equity Shareholders of the Applicant Company No.3 have given their consents by way of affidavits to the Scheme.
18. It is further stated that as per the Certificate 11.01.2024 issued by M/s. M. Venkatachalam & Associates, Chartered Accountants, there is no Secured Creditor in the Applicant Company No.3 as on 31.10.2023 and has one (1) Unsecured Creditor in the Applicant Company No.3 amounting to Rs.8,50,000/- (Rupees Eighty Lakh Fifty Thousand Only) as on 31.10.2023. The sole Unsecured Creditor of the Applicant Company No.3 has given his consent by way of affidavit to the Scheme.
19. It is stated that as per the Certificate dated 11.01.2024 issued by M/s. M. Venkatachalam & Associates, Chartered Accountants, there are three (3) Equity Shareholders in the Applicant Company No.4 as on 31.10.2023. All the Equity Shareholders of the Applicant Company No.4 have given their consents by way of affidavits to the Scheme.
20. It is stated that as per the Certificate 11.01.2024 issued by M/s. M. Venkatachalam & Associates, Chartered Accountants, there is no Secured Creditor in the Applicant Company No.4 as on 31.10.2023 and has one (1) Unsecured Creditor in the Applicant Company No.4 amounting to Rs.57,75,500/- (Rupees Fifty Seven Lakhs Seventy Five Thousand Five Hundred Only). The sole Unsecured Creditor of the Applicant Company No.4 has given his consent by way of affidavit to the Scheme.
21. The Learned Counsel for the Applicant Companies submitted that the Affidavits dated 19.03.2024 of the Authorized Representatives of the Applicant Companies have been filed stating that no litigations or proceedings are pending against the Applicant Companies under Section 210 to 226 of the Companies Act, 2013; there is no winding up or

liquidation proceedings under Section 271 of the Companies Act, 2013 or Part II of the IBC, 2016 being filed or pending against the Applicant Companies.

22. It is stated that the Affidavits dated 19.03.2024 of the Authorised Representatives of the Applicant Companies have been filed stating that there are no regulatory authority to which the Applicant Companies have to intimate regarding the proposed merger.
23. It is also stated that the Affidavits dated 19.03.2024 of the Authorised Representatives of the Applicant Companies have been filed stating that the Scheme does not involve any corporate debt restructuring or any arrangement with the creditors of the Transferor Companies or the Transferee Company and therefore, the interest of the creditors of the Applicant Companies are not prejudiced; the Scheme does not contemplate any reduction of capital or extinguish any liability of any member or shareholder. Only the equity shares held by the Transferee Company in the Transferor Companies shall be cancelled without any further act or deed. Further, all assets and liabilities of the Transferor Companies are proposed to be transferred to the Transferee Company on a going concern basis. Therefore, the Scheme is not prejudicial to the interest of the creditors of the Transferor Companies and Transferee Company.
24. As per the Statutory Auditor of the Applicant Companies i.e., M/s. M. Venkatachalam & Associates, Chartered Accountants, vide Certificates dated 11.01.2024, have *inter alia* opined that the proposed accounting treatment contained in Clause 10.1 of the Scheme is in compliance with the relevant provisions of Section 230 to 232 of the Companies Act 2013, with reference to the applicable Accounting Standards notified under Section 133 of the Companies Act, 2013 read with the rules made thereunder, and other Generally accepted Accounting Principles in India.
25. The Applicant Companies have filed Audited Financial Statement for the year ending as on 31.03.2023 as Annexures-D1, H1, L1 & P1 & Provisional Financial Statement as on 31.10.2023 as Annexures- D2, H2, L2 & P2 to the Application.

26. Clause 6.1 of the Scheme states that on the Scheme becoming effective, all permanent employees of the Transferor Companies, who are in service on the date immediately preceding the Effective Date shall become the employees of the Transferee Company, without any break or interruption in their services, on same terms and conditions on which they are engaged as on the Effective Date and shall in no event be less favourable than those applicable to them respectively prior to the Effective Date. The Transferee Company further agrees that for the purpose of retrenchment or payment of any retirement benefit / compensation, gratuity or superannuation, such immediate uninterrupted past services with the Transferor Companies shall also be taken into account.
27. We have heard the learned Counsel for the Applicant Companies and have perused the records. In view of the aforesaid discussion, the following directions are issued:
- (i) Since Equity Shareholders of the Applicant Companies constituting 100% of the total value as on 31.10.2023 have given consents to the “Scheme” and also for dispensing their meetings, the meetings of the Equity Shareholders of the Applicant Companies are hereby dispensed with;
 - (ii) Since the sole Secured Creditor of the Applicant Company No.1 / Transferor Company No.1 has given consent to the “Scheme” and also for dispensing the meeting, the meetings of the Secured Creditor of the Applicant Company No.1 is hereby dispensed with.
 - (iii) Since there are no Secured Creditors in the Applicant Company Nos.2, 3 & 4, there is nothing to convene meeting of the Secured Creditors.
 - (iv) Since the Unsecured Creditors of the Applicant Companies have given their consents to the “Scheme” and also for dispensing their meetings, the meeting of the Unsecured Creditors of the Applicant Companies are hereby dispensed with;
 - (v) **It is noticed that along with the Petition, the Petitioner Companies have given affidavits regarding pending litigation**

for specific Sections of the Companies Act and the IBC. However, the Petitioner Companies are directed to file the list of pending litigations/investigations and proceedings along with an affidavit in respect of all other Laws/Acts as well, along with their second motion petition for approval of the Scheme.

- (vi) All the aforesaid directions are to be compiled with strictly in accordance with the applicable laws including forms and formats contained in the “Rules” as well as the provisions of the Companies Act, 2013, by the Applicant Companies.

28. In view of the above, the First Motion Application bearing **C.A.(CAA)No. 18/BB/2024 stands allowed**, giving liberty to the Applicant Companies to file Second Motion Petition with the direction that the Applicant Companies shall make specific prayer for sending notice to (a) Central Government through the office of the Regional Director (South East Region); (b) Concerned Registrar of Companies; (c) Official Liquidator; (d) Principal Chief Commissioner of Income Tax, Karnataka & Goa - Nodal Officer of Income Tax Department (e) jurisdictional Income Tax Authorities by disclosing the PAN numbers of the Applicant Companies in the title of the Second Motion Petition; and (f) other relevant statutory authorities/sectoral regulators applicable.

Sd/-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

Sd/-
(T. KRISHNAVALLI)
MEMBER (JUDICIAL)