

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **09.05.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER : CA(CAA)/51(CHE)/2022
PETITION NUMBER : CP(CAA)/19(CHE)/2023
NAME OF THE PETITIONER(S) : Danish Steel Cluster Pvt Ltd and Other
NAME OF THE RESPONDENTS :
UNDER SECTION : Sec 230-232 of CA, 2013

ORDER

Present: None for the Applicant.

Vide separate order announced in Open Court, the scheme is approved.

File be consigned to records.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI**

CP (CAA)/19(CHE) 2023 in CA (CAA)/51/CHE/2021

Under Sections 230 to 232 of the Companies Act, 2013
In the matter of *Scheme of Merger (Amalgamation)*

Of

DANISH STEEL CLUSTER PRIVATE LIMITED
Plot no. 132, KIADB Industrial Area
Bommasandra-jigani Link Road,
Jigani,
Bangalore-562 106
Karnataka, India

... Transferor Company

And

SICAGEN INDIA LIMITED
88, MOUNT ROAD
GUINDY
CHENNAI- 600 032

...Applicant/Transferee Company

Order Pronounced on 09th May 2024

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant(s):Chandra, PCS

ORDER

Heard through Video Conferencing

This is a Company Petition filed by **DANISH STEEL CLUSTER PRIVATE LIMITED** (hereinafter “Transferor Company/Non Applicant”) and **SICAGEN INDIA LIMITED** (hereinafter “Applicant/Transferee Company”) (together the “Applicant Companies”) with its Shareholders under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation (hereinafter referred to as the “SCHEME”) proposed by the Applicant Companies herein with its Shareholders. The Scheme is also annexed as **Pgs. 180-202** along with the typeset filed with the Application.

2. 1ST MOTION APPLICATION – IN BRIEF

2.1 The Applicant Companies in this Company Application has sought for the following reliefs;

	EQUITY SHAREHOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
TRANSFEREE COMPANY	To dispense with	To dispense with	To dispense with

2.2. Based on such application moved under Sections 230-232 of the Companies Act, 2013, directions were issued by this Tribunal, vide order dated **13.02.2023** and meetings were ordered to be held for the Equity shareholders and unsecured creditors. The meetings of the secured creditors were dispensed with. The chairperson appointed therein filed the report before this Tribunal and the same is placed as **Page 301-316** of the Application typeset.

2.3 Subsequently, the second motion petition was filed before this Tribunal by the petitioner companies on **05.04.2023** for sanction of the Scheme of Amalgamation by this Tribunal.

3. RATIONALE OF THE SCHEME

3.1 The Transferor Company is a wholly owned subsidiary of the Transferee Company and the Transferor Company's activity

has perfect synergy with one of the activities of the Transferee Company. Considering the synergy of business between the two Companies, the business of the Transferor Company can be carried on more efficiently by the Transferee Company.

3.2 The amalgamation of the Transferor Company with the Transferee Company will result in various benefits for both parties including:

3.2.1 The Transferor Company is a wholly owned subsidiary of the transferee Company and for ease of operations, they propose the scheme of amalgamation.

3.2.2 Integrate, rationalize and streamline the management structure of the merged business.

3.2.3 Combined resources would strengthen the position of the merged entity and result in increasing leveraging capacity of the merged entity.

3.2.4 The amalgamation will ensure focused management in a single combined entity thereby resulting in efficiency of management and maximizing overall shareholder value.

3.2.5 Pooling of available infrastructure, management, administration and marketing which would result in saving of costs.

3.2.6 Amalgamation of the Company would eliminate duplication of work, compliance cost and administrative services besides resulting in cost savings.

3.2.7 Facilitate inter se transfer of resources and costs and optimum utilization of Assets.

3.2.8 Synchronizing of efforts to achieve uniform corporate policy and ease in decision making.

4. In the second motion application filed by the Petitioner Companies, this Tribunal vide order dated **02.05.2023** directed the Petitioner Companies to issue notice to the Statutory / Regulatory Authorities viz. (a) Central Government through the office of the Regional Director (Southern Region), Ministry of Corporate Affairs (MCA) (b) Registrar of Companies, Chennai, MCA, and (c) the Official Liquidator (d) Securities Exchange Board of India (SEBI) (e) Bombay Stock Exchange (BSE) (f) Competition Commission of India (CCI) and

(g) the jurisdictional Income Tax office having jurisdiction and other sectoral regulators, who may govern the working of the respective companies, as well as for paper publication to be made in “The Indian Express”, English (All India Edition) and “Dina Malar” Tamil (Tamil Nadu Edition).

5. In compliance to the said directions issued by this Tribunal, the Petitioner Companies filed an affidavit of service before the Registry of this Tribunal on 15.06.2023. A perusal of the same discloses that the Petitioner Companies effected paper publications as directed by the Tribunal in “The Indian Express” (All India Edition) in English and “Dina Malar” (Tamil Nadu Edition) in Tamil on 03.06.2023 respectively. It is also seen that notices have been served to

S.No	Statutory authorities	Date of Notice
1.	Regional Director, Southern Region, Chennai	08.05.2023
2.	Registrar of Companies, Chennai	08.05.2023
3.	Official Liquidator	08.05.2023
4.	Income Tax Department	08.05.2023

5.	Competition Commission of India	08.05.2023
6.	SEBI, NSE, BSE	08.05.2023

6. Pursuant to the service of notice of the petition, the following statutory authorities have responded as follows:

7.1. REGIONAL DIRECTOR

7.1.1. On issuance of notice, the Regional Director, (*hereinafter referred to as 'RD'*) Southern Region, Chennai has filed his report before this Tribunal on 25.07.2023 and the same is as follows:

Para	Observations
8	That Clause- 12.1 of the Scheme has stated about protection of employees of the Transferor Company. All staff and employees of the Transferor Company, in service on the Effective Date, shall be deemed to have become staffs and employees of the Transferee Company, with effect from the Appointed Date or date of joining whichever is later, without any break in their service and other benefits
9	That as per Clause 11 of the Scheme,, the Transferee Company shall not issue any shares to the Transferor

	Company as consideration, as the entire share capital of the Transferor Company is held by the Transferee Company, which is getting amalgamated with the Transferee Company and entire share capital held by the Transferor Company stands cancelled without any further application, act or deed and without allotment of any new shares upon effectiveness of the Scheme.
11	That clause 18 of the scheme provided for dissolution of the Transferor Company, without being wound up.
12	That as per the RoC, Chennai the Transferee Company are regular in filing their statutory returns and filed upto 2021- 22 and there is no prosecution/complaint/inspection or investigation pending against the Transferee company.

7.1.2. It is stated by the RD that, after examining the scheme, he has decided not to make any objection to the Scheme and has left it to this Tribunal to pass order on merits.

7.2. OFFICIAL LIQUIDATOR

The OL has not filed the Report as the registered office of the Transferor Company is located in Bangalore, Karnataka.

7.3. INCOME TAX AUTHORITIES

7.3.1 Despite private notice having been served vide this Tribunal order dated **02.05.2023** and Public Notice issued in The Indian Express (All Indian Edition) in English and Dinamalar (Tamil Nadu Edition) in Tamil on **03.06.2023**, there is no representation from the Department of Income Tax. This Tribunal in terms of Section 230(5) of the Companies Act, 2013 presumes that the Department of Income Tax does not have any objection to the sanction of the Scheme. Deemed Consent.

7.3.2 Further in Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi has made the following observations with regard to the right of the IT Department in the Scheme of Amalgamation,

“taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in RE: Vodafone Essar Gujarat Limited v. Department of Income Tax (2013)353 ITR 222 (Guj) and the same being

also affirmed by the Hon'ble Supreme Court and as reported in (2016) 66 taxmann.com.374(SC) from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15,2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutory dues from the transferor or transferee or any other person who is liable for payment of such tax dues, the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned."

7.4. SEBI, BSE, NSE

7.4.1. It is seen that the Transferee Company has given an intimation to BSE Limited on 08.05.2023. Since Danish Steel Cluster Private Limited is the wholly owned subsidiary of Sicagen India Limited, as per Regulation 30 read with Regulation 37(6) of SEBI (Listing Obligation and Disclosure Requirements) Regulations there is no requirement of obtaining any No – objection Letter to the Scheme from the Stock Exchange on which the securities of the companies are listed.

8. ACCOUNTING TREATMENT

8.1. The Statutory Auditors of the Petitioner Companies have examined the Scheme and certified that the Petitioner Companies have complied with proviso to Section 230 (7) / Section 232 (3) and the Accounting Treatment contained in the proposed Scheme of Amalgamation is in compliance with the Applicable Indian Accounting Standards. The Certificates issued by the Statutory Auditors certifying the Accounting Treatment of the Petitioner Companies are placed at **Page No. 395** of CA (CAA) 51/ CHE/2022.

8.2 It is stated that, no investigation proceedings are pending against the Transferor or Transferee Companies under the provisions of the Companies Act, 1956 or the Companies Act, 2013 and no proceedings against the petitioner companies for oppression or mismanagement have been filed before this Tribunal or erstwhile Company Law Board.

9. OBSERVATIONS OF THIS TRIBUNAL

9.1. After analyzing the Scheme in detail, this Tribunal is of the considered view that the scheme as contemplated amongst the petitioner companies seems to be *prima facie* beneficial to the Company and will not be in any way detrimental to the interest of the shareholders of the Company. In the absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the Scheme of amalgamation appended at **Page No. 180 to 202** with the Company Petition as well as the prayer made therein.

9.2. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

9.3. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

10. **THIS TRIBUNAL DO FURTHER ORDER:**

- (i) That all properties, right and interest of the Transferor Company shall, pursuant to section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Transferee Company.
- (ii) That all the liabilities, powers, engagements, obligations and duties of the Transferor Company shall pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to the Transferee Company and accordingly the same become the liabilities and duties of the Transferee Company.

- (iii) That the Appointed date for the Scheme shall be **1st October 2021** as mentioned in **clause 3.2** of the SCHEME itself. Further the Appointed date is within one year from the date of filing of Application.
- (iv) That as per Clause 11 of the Scheme, the Transferee Company shall not issue any shares to the Transferor Company as consideration, as the entire share capital of the Transferor Company is held by the Transferee Company, which is getting amalgamated with the Transferee Company and entire share capital held by the Transferor Company stands cancelled without any further application, act or deed and without allotment of any new shares upon effectiveness of the Scheme.
- (v) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.
- (vi) That all the employees of the Transferor Company in service on date immediately preceding the date on which the Scheme finally takes effect shall become the employees of the Transferee Company without any break or interruption in their service.

- (vii) That the Transferee Company shall file the revised Memorandum and Articles of Association with the Registrar of Companies and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company after setting off the fees paid by the Transferor Company.
- (viii) That the Transferor Company and the Transferee Company, shall within thirty days of the date of receipt of this order cause
- (ix) A certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without winding up and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said company shall be consolidated accordingly.
- (ix) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

11. Accordingly, the Company Petition stands **allowed** on the
aforementioned terms.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Vinita Varshini. K

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)