

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**  
**COURT-IV**

**COMPANY PETITION NO. (CAA) 7 (ND)/2024**  
**CONNECTED WITH**  
**COMPANY APPLICATION NO. (CAA) 74 (ND)/2023**

**IN THE MATTER OF:**

Section 230-232 of the Companies Act, 2013 read along with Companies  
(Compromises, Arrangements and Amalgamations) Rules, 2016

**IN THE MATTER OF:**

**ANGUL ENERGY LIMITED**

**...APPLICANT COMPANY/TRANSFEROR COMPANY**

**WITH**

**TATA STEEL LIMITED**

**...NON-APPLICANT/TRANSFeree COMPANY**

**Order Pronounced on: 18.04.2024**

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER**  
**(JUDICIAL)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant : Sr. Adv. Arun Kathpalia, Adv. Milan Negi, Adv. Nikhil  
Jha, Adv. Asmita, Adv. Ramya Hariharan  
For the RD : Mr. Himanshu Singhal, Proxy-Counsel  
For the OL : Ms. Hemlata Rawat, Mr. Rahul Bhatt, Adv.  
For Income Tax Deptt. : Mr. Prashant Meharchandani, Sr. St. Counsel,  
Mr. Akshat Singh, Jr. St. Counsel, Mr. Utkarsh  
Kandpal, Adv.

## **ORDER**

**PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)**

1. This is a second motion application filed by the applicant company herein namely M/s Angul Energy Limited (hereinafter referred Applicant Company/Transferor Company) under sections 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 between M/s Angul Energy Limited (Applicant Company/Transferor Company) and M/s Tata Steel Limited (Non-Applicant/Transferee Company) for the purpose of the Sanction of the proposed Scheme of Amalgamation between the Transferor Company and the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred to as the "Scheme"), has been placed on record.
2. The Transferor Company/Applicant Company i.e., M/s Angul Energy Limited was incorporated on 14.09.2005, under the provisions of the Companies Act, 1956 bearing CIN: U40105DL2005PLC140748, having its registered office at Ground Floor, Mira Corporate Suites, Plot No. 1 & 2, Ishwar Nagar, Mathur Road, New Delhi-110065. The Authorized Share Capital of the Transferor Company/Applicant Company is Rs. 210,00,00,000/- divided into 21,00,00,000 Equity shares of Rs. 10/- each.  
  
The Issued, Subscribed and Paid-up Share Capital of Transferor

Company/Applicant Company is Rs. 10,00,01,420/- divided into 1,00,00,142 Equity Shares of Rs. 10/- each.

3. The Non-Applicant Company/Transferee Company i.e., M/s Tata Steel Limited is a public limited company was incorporated on 26.08.1907 under the provisions of the Companies Act, 1956 bearing CIN: L27100MH1907PLC000260 having its registered office at Bombay House, 24, Homi Mody Street, Fort, Mumbai-400001. The Authorized Share Capital of the Transferee Company is Rs. 31,315 Crores divided into (i) 24715,00,00,000 ordinary shares of Re. 1 each amounting Rs. 24,715 Crores; (ii) 35,00,00,000 "A" Ordinary shares of Rs. 10 each amounting Rs. 350 Crores; (iii) 2,50,00,000 Cumulative Redeemable Preference Shares of Rs. 100/- each amounting Rs. 250 Crores; and (iv) 60,00,00,000 Cumulative Convertible Preference Shares of Rs. 100/- each amounting Rs. 6,000 Crore. The issued share capital of the Transferee Company is Rs. 1231.02 Crores divided into 1231,02,16,859 ordinary shares of Re. 1/- each and the subscribed and paid-up share capital of the Company is Rs. 1,229.98 Crores divided into (i) 1229,73,37,309 ordinary shares of Re. 1 each fully paid-up amounting to Rs. 1,229.73 Crores; and (ii) Amount paid-up on 58,11,460 ordinary shares of Re. 1/ each forfeited amounting Rs. 0.25.

4. The Scheme of Amalgamation also involves M/s Tata Steel Limited (Transferee Company), whose Registered office is situated in Mumbai

falling within jurisdiction of the National Company Law Tribunal, Mumbai Bench and is non-applicant company before this Bench.

5. The Petitioner Company submit that the proposed scheme of amalgamation of the Transferor Company with and into the Transferee Company would have the following benefits: -

i. The Transferee Company is one of the leading global steel companies, with over 100 years of experience in the steel sector and is a pioneer of steel manufacturing in India. The Transferee Company also operates coal and waste heat recovery-based captive power plants to cater to its power requirement. The Transferor Company, which is a subsidiary company of the Transferee Company is engaged in the business of generation of thermal power and has entered into a tolling arrangement with the Transferee Company and is operating as an external processing agent of the Transferee Company by converting coal into power. The scheme of amalgamation will result in:

- a) Consolidation of business of the Companies which will result in focused growth, operational synergies and enhance business synergies.
- b) It will help the simplification of group structure by eliminating multiple companies in similar operations.

- c) Pooling of financial, managerial, technical resources, personnel, capabilities, skills expertise and technologies which will help in optimum use of infrastructure and rationalization of cost thus maximizing shareholder value.
6. The Appointed date as fixed for the proposed Scheme of Amalgamation is 01.04.2022 or such other dated as may be approved by this Tribunal.
  7. From the record, it is seen that the First Motion joint application was filed before this Tribunal vide CA(CAA)74/ND/2023 and Vide order dated 10.11.2023, the meeting of Equity Shareholders and Unsecured Creditors of the Transferor Company/Petitioner Company was dispensed with. Since, there are nil secured creditors in the Petitioner Company, therefore, requirement of convening meeting of the secured creditors did not arise.
  8. The Petitioner Company, vide order dated 30.01.2024 were also directed to carry out publication in the newspapers. It is seen from the records that the petitioner company have filed an Affidavit dated 21.02.2024, affirming compliance and disclosing that the applicant have effected publication in “Business Standard” (English Language and Hindi Language, Delhi Edition) both dated on 15.02.2024. In addition to the public notice, notices were served on the Regional Director (Northern Region), Official Liquidator, the Income Tax Department and Registrar of Companies, NCT of Delhi and Haryana.

9. Pursuant to the notice issued to the Regional Director, Official Liquidator and the Income Tax Department, the Regional Director and the Official Liquidator have filed their response/reply in the matter.
10. The Regional Director (RD) in its report affidavit dated 26.02.2024 has made certain observations with regard to the proposed scheme of Amalgamation among the Petitioner Company and in response to the same, the Petitioner Company had filed their reply on 13.03.2024, wherein the Petitioner Company gave clarification and undertaking to address the observations made by the Regional Director. The details of the same are given below:

S. No.	Observation of the RD in its report affidavit dated 26.02.2024	Reply dated 26.02.2024 of the Petitioner Company
1.	As per petition the appointed date is 1 <sup>st</sup> April 2022, whereas General Circular No. 09/2019 dated 21.08.2019 issued by Ministry of Corporate Affairs states that when the 'appointed date' is significantly ante dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.	As per the Paragraph 8.2 of Part I of the Scheme is reproduced hereinbelow: 8.2 "That the Appointed Date is being fixed as the opening of business on April 1 <sup>st</sup> , 2022, to enable consolidation of the books of the Transferor Company with the Transferee Company with ease for the entire financial year 2022-2023. That keeping the appointed date as April 1, 2022, being the start of the financial year, is in the interest of the companies and their shareholders and is not prejudicial to the public interest in any manner. That 99.99% of the shareholding of the Transferor Company being held by the Transferee Company, no public interest is being affected by keeping the Appointed date as April 1, 2022.

		<p>It is further submitted that the aforesaid justification for ante-dating the appointed date of the scheme beyond one year from the date of filing, has also been reproduced in paragraph 2.3 of the Company Scheme Petition. The Petitioner Company craves leave to refer to the same at the time of hearing, if necessary.</p> <p>It is also submitted that the Scheme was approved by the Board of Directors of the Petitioner Company and the Transferee Company on 06.02.2023. Therefore, at the point of time, the appointed date of 01.04.2022 was not ante-dated beyond a year. In view of the Transferee Company being a listed company, the Transferee Company was required to submit the Scheme to the BSE Limited and the NSE for obtaining their no-objection to the Scheme. The no-objection letters to the Scheme were received by the Transferee Company from the BSE and the NSE only on July 26, 2023. Only on receipt of the no objection letters from BSE and the NSE, the Petitioner Company and the Transferee Company could initiate the process for filing the Company Scheme Application with the respective NCLT. It is therefore stated that the Appointed Date is not significantly ante-dated beyond a year from the date of filing.</p> <p>It is also submitted that for the reasons mentioned hereinabove ante dating of the appointed date beyond a year is not against public interest. The Petitioner Company therefore submits that it has duly complied with the provisions of the General Circular No. 09/2019 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>
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11. The Official Liquidator has filed its report dated 22.02.2024, wherein no specific objection has been raised against the approval of the Scheme. It is submitted in the report that on the basis of information submitted by the Petitioner Companies and post Insolvency Resolution Process Balance Sheets is of the view that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest in terms of the provisions of the Companies Act, 2013.
12. Despite of service there is no representation on behalf of the Income Tax Department. Therefore, the presumption under Section 230(5) of the Companies Act, 2013 is attracted wherein, it is provided that within a period of 30 days from the date of receipt of notice, if the authority fails to file its report, it shall be presumed that they have no representation to make on the proposal.
13. The “no adverse observation/no objection” letters dated 26.07.2023 issued by the BSE to Transferee Company is annexed as Annexure A-U (Page no. 3051-3053) of the Company Scheme Application. The “no adverse observation” letter dated 26.07.2023 issued by NSE is annexed as Annexure A-V (Page No. 3054-3056) of the Company Scheme Application respectively.
14. The petitioner company filed an affidavit dated 26.12.2023 affirming that no enquiry, inspection, investigation, is initiated or any prosecution is



pending against M/s Angul Energy Limited (Transferor Company) under the Companies Act, 2013 or erstwhile Companies Act, 1956 or under any other acts or laws for the time being in force.

15. The petitioner company have placed on record respective certificate from statutory auditors of the Transferor Company and Transferee Company certifying that the accounting treatment provided in the scheme is compliant with the applicable Accounting Standards as specified under Section 133 of the Companies Act, 2013.
16. The Petitioner Company in its affidavit dated 26.12.2023 stating and confirming that the Transferor Company is not governed by any sectoral authority and/or any other regulatory authority or body, therefore no approval and permission is required to be obtained from any sectoral authority or regulatory authority before filing the present petition for sanctioning of the Scheme of Amalgamation; and the applicant company is not required to obtain any approval and/or serve a copy of the scheme of amalgamation to any sectoral authority or regulatory authority.
17. The shareholders of the petitioner company are the best judges of their interest, being fully conversant with market trends, and therefore, their decision should not be interfered with by the Tribunal for the reason that it is not a part of the judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme, of which sanction is sought under

Section 230-232 of the Companies Act of 2013, will not ordinarily interfere with the corporate decisions of companies as approved by shareholders and creditors.

18. It has also been affirmed in the petition that the Scheme is in the interest of all the Petitioner Company including their shareholders, creditors, employees and all concerned. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner Company to the proposed Scheme, there appears to be no impediment in sanctioning the present Scheme.

19. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following directions: -

- (i) The Petitioner shall however remain bound to comply with the statutory requirements in accordance with the law.
- (ii) Notwithstanding the above, if there is any deficiency found or, violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken in accordance with the law, against the concerned persons, directors and officials of the petitioner.
- (iii) While approving the Scheme as above, we further clarify 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, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

20. This Tribunal further directs with respect to the Transferor Company and the Transferee Company, that:

- i. Upon the sanction becoming effective from the appointed date i.e., 01.04.2022 as provided under the Scheme, the Transferor Company shall stand dissolved without undergoing the process of winding up.
- ii. All contracts of the Transferor Company, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;
- iii. All the employees of the Transferor Company shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged by the Transferor Company, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;
- iv. All liabilities of the Transferor Company, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the

Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.

- v. All proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.
- vi. Any person interested or effected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

21. Further, the Petitioner Company shall within thirty days of the date of the receipt of this order, cause 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 and the Registrar of Companies shall place all documents relating to the Transferor Company on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Company shall be consolidated accordingly.

22. In compliance with the requirement of Section 232 (7) of the Act, the transferee company shall until the full implementation of the Scheme of Amalgamation shall file a statement every year in the Form CAA 8 along with the required fees with the Registrar of Companies as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.

23. The petition stands allowed on the above terms.

24. Let copy of the order be served to the parties.

**Sd/-**

**DR. SANJEEV RANJAN  
MEMBER (TECHNICAL)**

**Sd/-**

**MANNI SANKARIAH SHANMUGA SUNDARAM  
MEMBER (JUDICIAL)**