

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. I  
KOLKATA**

CP (CAA) No 188/KB/2023  
Connected with  
CA (CAA) No. 183/KB/2023

*A Petition under Section 230 read with Section 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions of law.*

And

**In the matter of:**

**BANGUR EXIM PRIVATE LIMITED** (hereinafter referred as the Transferor Company No. 1), bearing CIN: U52190WB2011PTC160317, a Company within the meaning of Companies Act, 2013, having its registered office at 31, Chowringhee Road, Kolkata - 700016, in the State of West Bengal, within the aforesaid jurisdiction.

...Petitioner Company No. 1/ Transferor Company No. 1

And

**EAST COAST POWERS LIMITED** (hereinafter referred as The Transferor Company No. 2), bearing CIN: U40105WB2000PLC217963, a Company within the meaning of Companies Act, 2013, having its registered office at 31, Chowringhee Road, Kolkata - 700016, in the State of West Bengal, within the aforesaid jurisdiction.

... Petitioner Company No. 2/ Transferor Company No. 2

And

**JAYSHREE CHEMICALS LIMITED** (hereinafter referred as The Transferee Company), having CIN No. L24119WB1962PLC218608, a Company within the meaning of Companies Act, 2013, having its registered office at 31, Chowringhee Road, Kolkata - 700016, in the State of West Bengal, within the aforesaid jurisdiction.

.... **Petitioner Company No. 3/ Transferee Company**

**In the matter of:**

1. Bangur Exim Private Limited
2. East Coast Powers Limited

.....Petitioners/Transferor Companies

**3. Jayshree Chemicals Limited**

..... Petitioner/ Transferee Company

**CORAM:**

**Rohit Kapoor, Hon'ble Member (Judicial)**

**Balraj Joshi, Hon'ble Member (Technical)**

**Appearances:**

For the Petitioners

: Mr. Shaunak Mitra, Adv

: Ms. Madhuri Pandey, CS

For the Regional Director, (ER), MCA

: Mr. Sudhir Kapoor, Joint Director

Date of pronouncement of the order: 25.04.2024.

**ORDER**

**Per:Balraj Joshi, Hon'ble Member (Technical)**

1. This instant Petition has been filed under sections 230(6) read with Section 232(3) of the Companies Act, 2013 (“Act”) for sanction of the Scheme of Amalgamation of Bangur Exim Private Limited (**Transferor Company No. 1**), East Coast Powers Limited (**Transferor Company No. 2**), with Jayshree Chemicals Limited (**Transferee Company**), w.e.f. **1<sup>st</sup> April, 2023** pursuant to Sec 230-232 of the Companies Act, 2013 and Rules made there under in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”).A copy of the Scheme has been annexed as “**Annexure-E**” from **Page No. 372-395** of Volume-3 of the Petition.

S.No	NAME OF THE COMPANY	COMPANY AS PER THE SCHEME	PARTY TYPE	RELEVANT ANNEXURE, PAGE NO. AND VOLUME OF THE COMPANY PETITION
<b>Appointed Date: 1<sup>st</sup> April, 2023</b>				

1.	Bangur Exim Private Limited	Transferor Company 1	Petitioner Company No. 1	
2.	East Coast Powers Limited	Transferor Company 2	Petitioner Company No. 2	Scheme of Amalgamation is annexed to the Company Petition being - <b>Annexure-E</b> ” from <b>Page No. 372-395</b> of Volume-3 of the Petition.
3.	Jayshree Chemicals Limited	Transferee Company	Petitioner Company No. 3	

2. The Appointed date as per the Scheme is **01<sup>st</sup> April, 2023** or any other date as may be approved by the Hon’ble National Company Law Tribunal, Kolkata Bench.
3. The Petition has now come up for final hearing. Ld. Authorised Representative for the Petitioners submits as follows: -
  - i. The Authorised Representative for the Petitioner Companies submits that the Board of Directors of the Petitioner Companies at their respective Board Meetings held on **12<sup>th</sup> May, 2023, 11<sup>th</sup> May, 2023 and 15<sup>th</sup> May 2023**, had approved the Scheme of Amalgamation between Bangur Exim Private Limited (Transferor Company No. 1), East Coast Powers Limited (Transferor Company No. 2) with Jayshree Chemicals Limited (‘the Transferee Company’). The Board Resolutions of the Petitioner Companies approving the Scheme are annexed with Company Petition as “**Annexure F**” from **Page No. 396 to 398** of Volume-3 of the Petition.

- ii. The circumstances which justify and necessitate the said Scheme of Amalgamation are, *inter-alia*, as follows:
- a) The Amalgamation will enable the Transferor Companies and the Transferee Company to consolidate and broad base their line of business activities under the roof of the Transferee Company by restructuring and re-organizing its business activities and Capital Structure of Transferee Company;
  - b) The Amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration resulting in a better and more productive utilization of various resources leading to increase in profitability;
  - c) The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business. The said Scheme will also enable the undertakings and business of the Transferor Companies and the Transferee Company to obtain greater facilities, possessed and enjoyed by one large company comparison to a number of small companies for raising capital, securing and conducting trade on favorable terms and other benefits;
  - d) The said scheme will contribute in furthering and fulfilling the objects of the companies concerned and, in the growth, and development of businesses by eliminate the need for inter-company transactions between the Transferor Companies and the Transferee Company;
  - e) The said scheme will enable the undertakings concerned to pool their resources and to expand their activities by concentrated management focus and improved organizational capability;
  - f) The said scheme will enable the Company concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;

- g) The said Scheme will result in greater administrative efficiency, enhanced productivity and would result in reduction in multiplicity of legal and regulatory compliances;
- h) The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.
- iii. The Statutory Auditors of Petitioner Companies have by certificate dated **26<sup>th</sup> September, 2023 and 28<sup>th</sup> July, 2023** confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 and the same is marked as “**Annexure M**” from **Page No. 455 - 457** of Volume - 3 of the Petition.
- iv. There are no proceedings pending under sections 235 to 251 of the Companies Act, 1956 and sections 217, 219, 221, 224 and 225 of the Companies Act, 2013 against any of the Petitioner Companies.
- v. It is stated in the , that in accordance with Paragraph 7 of SEBI Circular CFD/DIL3/CIR/2017/21 dated 10th March, 2017 further amended by SEBI Circular CFD/DIL3/CIR/2018/2 dated 3rd January, 2018, further amended by the SEBI Master Circular SEBI/HO/CFD/POD-2/P/CIR/2023/93 dated 20th June, 2023, the provisions of Regulation 37 of the Listing Regulations is not applicable to file draft Scheme of Amalgamation with the Stock Exchange (the BSE Ltd.) proposed to be filed before this Hon’ble Tribunal for obtaining of No-Objection Letter, as this instant Scheme is between a holding company and its wholly-owned subsidiaries. As per Regulation 30 and 37(6) of the Listing Regulations, the Transferee Company has intimated the Stock Exchange on 16th May, 2023, the outcome of the Board Meeting held on 15th May, 2023, in regard to the aforesaid Amalgamation. The Transferee Company further, in continuation with the earlier intimation, disclosed the draft Scheme in accordance with the SEBI Circular/s to the Stock Exchange on 23rd June, 2023 and the same is marked as “**Annexure K**” from **Page No. 443 - 451** of Volume - 3 of the Petition.

- vi. By an Order dated **17<sup>th</sup> October, 2023** in Company Application (CAA) No.183/KB/2023, this Tribunal made the following directions with regard to the meeting(s) of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act in view of the fact that the Transferor Companies and Transferee Company having its registered office under the Jurisdiction of the Hon'ble National Company Law Tribunal, Kolkata bench, for considering the Scheme, the meetings were dispensed with in view of all such class of Shareholders and Creditors have given their consent to the Scheme by way of affidavits. The Order dated **17<sup>th</sup> October, 2023** is annexed as “**Annexure N**” from **Page No. 458 to 468** of Volume-3 of the Petition.
- vii. That the Petitioner Companies has served the notice *Vide* hand delivery and e-mail pursuant to the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 16(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with the Order dated **28<sup>th</sup> November, 2023** of this Hon'ble Tribunal upon the following statutory authorities:

<b>Company</b>	<b>Name of Statutory Authorities</b>	<b>Date of Service</b>	<b>Mode of Service</b>
All Petitioner Companies	Regional Director – Eastern Region (Ministry of Corporate Affairs);	22.12.2023	Hand Delivery
All Petitioner Companies	Registrar of Companies – West Bengal	22.12.2023	Hand Delivery
All Petitioner Companies	Official Liquidator;	22.12.2023	Hand Delivery

Petitioner Company No. 1	Income Tax Authority Ward 10 (2), Kolkata	22.12.2023	Speed Post
Petitioner Company No. 2	Income Tax Authority Circle 1(1), Bhubaneswar	22.12.2023	Speed Post
Petitioner Company No. 3	Income Tax Authority Circle 11 (1), Kolkata	22.12.2023	Speed Post
All Petitioner Companies	Chief Commissioner of Income Tax Department(s)	22.12.2023	Speed Post
Petitioner Company No. 3	BSE Limited, Mumbai	22.12.2023	Speed Post
All Petitioner Companies	All the above Statutory Authorities	26.12.2023	E-mail

- viii. The Petitioner(s) Companies have published advertisements in the Bengali Newspaper i.e, “**Dainik Statesman**”, and English Newspaper i.e, “**Business Standard**” on **23<sup>th</sup> December, 2023**.
- ix. In compliance of the aforesaid orders an affidavit was filed on behalf of the Petitioner Companies through which notices were served upon the necessary statutory authorities was submitted to the Hon’ble Tribunal through e-filing on the NCLT Portal on 27<sup>th</sup> December, 2023 and served the same physically to the Hon’ble National Company Law Tribunal, Kolkata Bench on 29<sup>th</sup> December, 2023.

- x. All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.
4. Pursuant to the said advertisements and notices, the Regional Director, Ministry of Corporate Affairs, Kolkata (“RD”) and Official Liquidator, High Court of Calcutta (“OL”) have filed their representations before this Tribunal.
5. The Official Liquidator has filed his report dated 20<sup>th</sup> February, 2024 and concluded as under:

*“14. That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956/ the Companies Act, 2013 whichever is applicable.*

*15. That in View of the submission made above the Hon’ble National Company Law Tribunal may like to pass such order/orders as deemed fit and proper in the facts and circumstance of the case.”*

6. The Regional Director, Eastern Region, Kolkata Vide his representation dated **04<sup>th</sup> January, 2024** (“RD Representation”) which has been dealt with by the Petitioners by rejoinder/undertaking dated **09<sup>th</sup> January, 2024** (“Rejoinder”). The same was e-filed through the NCLT Portal on **09<sup>th</sup> January, 2024** Vide **Filing No. 1908134037992023/2** and the same was physically submitted on **15<sup>th</sup> January, 2024**. The observations of the RD and responses of the Petitioner(s) are summarized as under: -

**(a) Paragraph No.2 (a) of RD Affidavit:**

*That it is submitted that on examination of report of the Registrar of Companies, West Bengal, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. Further, all the petitioner companies are updated in filing their Financial Statements and Annual Returns for the financial year 31 /03/2023.*



**Paragraph No. 3(i) of Rejoinder:**

With regard to statements in Paragraph 2(a), I would like to say that the statements contained therein, are affirmations and submissions by the respondent to this Hon'ble Tribunal and do not require any reply on the same.

**(b) Paragraph No.2 (b) of RD Affidavit:**

*In clause 1.1 (c) of Part-I of the Scheme, it is, inter alia, stated that the Appointed Date in relation to the Scheme shall mean 1st April, 2023 or such other date as may be approved by the Hon'ble National Company Law Tribunal or other Appropriate Authority or the Board of Directors.*

**Paragraph No. 3(ii) of Rejoinder:**

With regard to statements in Paragraph 2 (b), I would like to say that the statements contained therein, are affirmations and submissions by the respondent to this Hon'ble Tribunal and do not require any reply on the same.

**(c) Paragraph No.2 (c) of RD Affidavit:**

*That it is submitted that Transferee Company, Jayshree Chemicals Limited is listed on Bombay Stock Exchange Limited (BSE) and both the Transferor Companies are wholly owned subsidiary of the said Transferee Company. The Transferee Petitioner Company by a communication, inter alia, submitted that the Transferee Company is listed on Stock Exchange but it does not require to obtain the 'No Objection' letter from the Stock Exchange as the instant Scheme has been filed between a holding Company and its Wholly owned subsidiaries. In terms of Regulation 37 (6) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, prior approval of BSE in case of mergers involving wholly owned subsidiary company is not required and*

*only the listed holding Company is required to file the Scheme of Amalgamation with the concerned Stock Exchanges for the purpose of disclosure and hence the NOC is not required from Stock Exchanges in the present Scheme.*

**Paragraph No. 3(iii) of Rejoinder:**

With regard to statements in Paragraph 2 (c) I would like to say that the statements contained therein, are affirmations and submissions by the respondent to this Hon'ble Tribunal and do not require any reply on the same.

**(d) Paragraph No.2 (d) of RD Affidavit:**

*The Petitioner Companies should be directed to provide list/ details of Assets, if any, to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme.*

**Paragraph No. 3(iv) of Rejoinder:**

With regard to statements in Paragraph 2 (d) I would like to say that the Assets and Liabilities of all the Transferor Companies will be vested to the Transferee Company as per the terms mentioned in the Scheme of amalgamation. However, the Transferee Company undertakes to submit the list/ details of Assets if any to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the Proposed Scheme at the time of application of the Drawn-up Order from the Hon'ble NCLT Bench, Kolkata upon sanctioning the Scheme of Amalgamation as directed by the Hon'ble Bench.

**(e) Paragraph No.2 (e) of RD Affidavit:**

*That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.*

**Paragraph No. 3(v) of Rejoinder:**

With regard to statements in Paragraph 2 (e), I undertake that if required, the Transferee Company shall pay the requisite amount of fees with respect to increase in Authorized Capital of the Transferee Company subsequent to approval of scheme of Amalgamation to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013.

**(f) Paragraph No.2 (f) of RD Affidavit:**

*That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.*

**Paragraph No. 3(vi) of Rejoinder:**

With regard to statements in Paragraph 2 (f), I would like to say that we undertake to pay the applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

**(g) Paragraph No.2 (g) of RD Affidavit:**

*The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.*

**Paragraph No. 3(vii) of Rejoinder:**

With regard to statements in Paragraph 2 (g), I affirm that the scheme enclosed to the Company Application and Company Petition are one and same and there is no change or discrepancy is made.

**(h) Paragraph No.2 (h) of RD Affidavit:**

*It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 21/11/2023 for their*

*views/observation in the matter. However, no such views/observation in the matter from the Income Tax Department has been received yet. Hon 'ble Tribunal may peruse the same and issue order as deemed fit and proper.*

**Paragraph No. 3(viii) of Rejoinder:**

About statements in Paragraph 2 (h), I would like to say that the statements contained therein, are affirmations and submissions by the respondent to this Hon'ble Tribunal and do not require any reply on the same.

7. Heard Ld. Advocate for the Petitioner Companies and have also considered the consent affidavits given by the members and creditors of the Petitioner Companies to the said Scheme. We also take on record, the statement of the Joint Director (ER) that the RD's office has no objection if the scheme is sanctioned. Further pursued the Representation filed by Registrar of Companies, Official Liquidator and the relevant income tax authorities and there appears to be no impediment in sanctioning the present Scheme. Consequently, sanction is hereby granted to the Scheme under Section 230 & 232 of the Companies Act, 2013.
8. No objector has approached, neither to the Petitioner Companies nor before the Tribunal to oppose this Scheme of Amalgamation.
9. The requirement of determining swap-ratio by way of valuation report issued by an Independent Registered Valuer does not arise, in view of the fact that if the Scheme of Amalgamation provides for no issue of equity shares to the members of the Transferor Companies, being a wholly owned subsidiaries of the Transferee Company. An undertaking, issued by management of the Transferee Company, with respect to non-requirement of valuation is annexed with the Application and marked as "**Annexure P**" **at page number 490 in Volume 3 of the Petition.**
10. Since all the requisite statutory compliances have been fulfilled, the Company Petition filed by the Petitioner Companies are made absolute in terms of the Scheme as stated in '**Annexure E**' is sanctioned and the appointed date of the Scheme is fixed as **1<sup>st</sup> April, 2023** and shall be binding on the Transferor Companies with the Transferee Company

and their respective shareholders and all concerned and it is accordingly ordered as under:

- a) Pursuant to Section 230 to 232 of the Companies Act, 2013 and as stated in the Scheme of Amalgamation all the property, rights, powers, interests, assets and undertakings of the Transferor Companies, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;
- b) All the debts, liabilities, duties and obligations of the Transferor Companies be transferred from the said Appointed Date, without further act or deed to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;
- c) The employees of the Transferor Companies shall be transferred to and be engaged by the Transferee Company, as provided in the Scheme;
- d) All proceedings and/or suits and/or appeals now pending by or against the Transferor Companies be continued by or against the Transferee Company, as provided in the Scheme;
- e) The Transferee Company do without further application issue and allot to the shareholders of the Transferor Companies, the shares in the Transferee Company to which they are entitled in terms of the Scheme;
- f) On the Scheme becoming effective, the Transferor Companies shall stand dissolved without being wound up and without any further act by the parties.

- g) That any person/authority aggrieved shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
- h) The Petitioner Companies do within 30 days after the receipt of the certified copy of this order, cause a certified copy thereof to be delivered to the Registrar of Companies, Kolkata for registration and on such certified copies being so delivered, the Transferor Companies shall be dissolved with effect from the date or last of the dates of filing of the certified copies of the order, as aforesaid (Effective Date) and the Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said companies shall be consolidated accordingly.
- i) In case of any default, including in provisions of income tax in respect of transferred company, the income tax department, the ROC West Bengal, and all others statutory departments/authorities shall be at liberty to initiate appropriate proceedings against the transferee company which after the sanction of the Scheme by this tribunal is in any case shall be responsible for the liabilities/non-compliances of the transferee company as well.
- j) Any person or entity that is aggrieved by the subject Amalgamation shall be at liberty to approach this Tribunal for any directions that may be required.
- k) The Petitioner(s) shall supply legible print out of the scheme and schedule of assets in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.
- l) The Company Petition (CAA) No. 183/KB/2023 connected with Company Application (CAA) No. 188/KB/2023 is **disposed of** accordingly.

- m) Certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

Signed this 25<sup>th</sup> day of April, 2024

BD