

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

(6)

CP (CAA) No. 3/CB/2023
Connected With
C A (CAA) No. 2/CB/2022

In the Matter of: -

The Companies Act, 2013;

And

In the Matter of: -

Sections 230 to 232 of the Companies Act, 2013;

And

In the Matter of: -

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

And

In the Matter of :-

Petition for Sanction of Scheme of Amalgamation

And

BETWEEN

M/s C S R DEVELOPERS PRIVATE LIMITED

(FIRST TRANSFEROR COMPANY)

WITH

M/s P.V. RAMANI AGROTECH PRIVATE LIMITED

(FIRST TRANSFEREE COMPANY)

AND

M/s SRI GAYATRI MINERALS PRIVATE LIMITED

(SECOND TRANSFEROR COMPANY)

WITH

M/s SHRI GIRIJA SMELTERS LIMITED

(SECOND TRANSFEREE COMPANY)

AND

M/s BRAHMANI FERRO ALLOYS PRIVATE LIMITED

(THIRD TRANSFEROR COMPANY)

AND

M/s SHRI GIRIJA SMELTERS LIMITED

(FOURTH TRANSFEROR COMPANY)

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M/s VAMSI AGROTECH PRIVATE LIMITED
(FIFTH TRANSFEROR COMPANY)
AND
M/s SRI GAYATRI MINERALS PRIVATE LIMITED
(SIXTH TRANSFEROR COMPANY)
AND
M/s BIRAJA FERRO ALLOYS PRIVATE LIMITED
(SEVENTH TRANSFEROR COMPANY)
WITH
M/s C S R DEVELOPERS PRIVATE LIMITED
(THIRD TRANSFEREE COMPANY)
AND
M/s C. RADHA AGRO-TECH PRIVATE LIMITED
(EIGHTH TRANSFEROR COMPANY)
AND
M/s C S R DEVELOPERS PRIVATE LIMITED
(NINTH TRANSFEROR COMPANY)
AND
M/s SHRI GIRIJA SMELTERS LIMITED
(TENTH TRANSFEROR COMPANY)
AND
M/s VAMSI AGROTECH PRIVATE LIMITED
(ELEVENTH TRANSFEROR COMPANY)
WITH
M/s BRAHMANI FERRO ALLOYS PRIVATE LIMITED
(FOURTH TRANSFEREE COMPANY)
AND
M/s BIRIJA AGRO-TECH PRIVATE LIMITED
(TWELFTH TRANSFEROR COMPANY)
AND
M/s BRAHMANI AGRO-TECH PRIVATE LIMITED
(THIRTEENTH TRANSFEROR COMPANY)
AND
M/s CHINTALAPATI AGRO-TECH PRIVATE LIMITED
(FOURTEENTH TRANSFEROR COMPANY)
AND
M/s C. RADHA AGRO-TECH PRIVATE LIMITED
(FIFTEENTH TRANSFEROR COMPANY)
AND
M/s PERICHERLA AGRO-TECH PRIVATE LIMITED
(SIXTEENTH TRANSFEROR COMPANY)

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AND
M/s P. V. RAMANI AGROTECH PRIVATE LIMITED
(SEVENTEENTH TRANSFEROR COMPANY)
WITH
M/s GIRIJA AGRO-TECH PRIVATE LIMITED
(FIFTH TRANSFEREE COMPANY)
AND
THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS
AND

In the matter of: -

M/s. Brahmani Ferro Alloys Private Limited, having its registered office at N-4/340, 1st Floor, IRC Village, Nayapally, Bhubaneswar, Cuttack, Orissa - 751015, India and CIN: U27101OR1993PTC003252;

Petitioner 1 / Third Transferor Company/Fourth Transferee Company

And

M/s. Biraja Ferro Alloys Private Limited, having its registered office at N-4/340, 1st Floor, IRC Village, Nayapally, Bhubaneswar, Cuttack, Orissa - 751015, India and having CIN U27101OR1993PTC003275;

... Petitioner 2 / Seventh Transferor Company

And

M/s. Birija Agro-Tech Private Limited, having its registered office at N-4/340, 1st Floor, IRC Village, Nayapally, Bhubaneswar, Cuttack, Orissa - 751015, India and having CIN U01119OR2005PTC008113;

... Petitioner 3/ Twelfth Transferor Company

And

M/s. Brahmani Agro-Tech Private Limited, having its registered office at N-4/340, 1st Floor, IRC Village, Nayapally, Bhubaneswar, Cuttack, Orissa - 751015, India and having CIN U01119OR2005PTC008114;

... Petitioner 4/ Thirteenth Transferor Company

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Coram:

Shri P. Mohan Raj
Shri Kaushalendra Kumar Singh

Member (Judicial)
Member (Technical)

Counsels on Record (through Hybrid Mode):

1. For the Petitioner: - CS Saroj Kumar Sahoo (Pr. Company Secretary)

Order Pronounced on: 30.04.2024

ORDER

- (1) The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 (“Act”) for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Arrangement between **Brahmani Ferro Alloys Private Limited** (Third Transferor Company/ Fourth Transferee Company); **Biraja Ferro Alloys Private Limited** (Seventh Transferor Company); **Birija Agro-Tech Private Limited** (Twelfth Transferor Company) and **Brahmani Agro-Tech Private Limited** (Thirteenth Transferor Company) and their respective shareholders. The Scheme provides for Comprehensive Scheme of Arrangement of the Transferor Companies with the respective Transferee Companies from the Appointed Date, viz 1st April, 2020 in the manner and on the terms and conditions stated in the said Comprehensive Scheme of Arrangement (“Scheme”) which is **Annexure A-1** to the Company Petition.
- (2) By an order dated 19th day of April, 2022 in Company Application (CAA) No. 2/CB/2022, this Hon’ble Tribunal waived the meetings of the Equity Shareholders of the Applicant Companies in view of the fact that written consents through affidavits were obtained from those shareholders holding 100% of equity share capital of the company. Further, meetings were directed to be called of the Unsecured Creditors of **Brahmani Ferro Alloys Private Limited** (Third Transferor Company or Fourth Transferee Company or Petitioner 1) through VC/ OAVM on Friday, 27th May, 2022 at 11:00 AM, Unsecured Creditors of **Biraja Ferro Alloys Private Limited** (Seventh Transferor Company or Petitioner 2) through VC/ OAVM on

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Friday, 27th May, 2022 at 03:00 PM, Unsecured Creditors of **Birija Agro-Tech Private Limited** (Twelfth Transferor Company or Petitioner 3) through VC/ OAVM on Friday, 27th May, 2022 at 11:30 AM, and Unsecured Creditors of **Brahmani Agro-Tech Private Limited** (Thirteenth Transferor Company or Petitioner 4) through VC/ OAVM on Friday, 27th May, 2022 at 03:30 PM, for considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement.

- (3) By the said order dated 19th day of April, 2022, this Hon'ble Tribunal directed to serve notice, as per the requirements of Section 230 of the Companies Act, 2013, along with copy of Scheme, copy of Explanatory Statement and others documents on each Unsecured Creditors of Petitioner Companies and further publish such notice convening creditors meeting in two newspaper i.e. "Indian Express" in English and "Samaya " in Oriya, as per the requirements of Section 230 of the Companies Act, 2013 in Form No. CAA-2 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016.
- (4) By the said order dated 19th day of April, 2022, this Hon'ble Tribunal further directed to serve notice including copy of Scheme of Arrangement and the statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs; the Registrar of Companies-cum-Official Liquidator, Orissa; Income Tax Department having jurisdiction over the Applicant Companies in terms of the provisions of Section 230(5) of the Companies Act, 2013, by electronic mail or and delivery through special messenger or by registered post. A copy of the said order dated 19th day of April, 2022 is annexed and marked as "**Annexure A-30**" to the Company Petition.
- (5) In terms of the order of this Hon'ble Tribunal, notices have been sent to all Unsecured Creditors of the Petitioner Companies; Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs; the Registrar of Companies-cum-Official Liquidator, Orissa and the Assessing Officer of Income Tax, and publications of notice of meeting was made in two newspapers as aforesaid on 27th April, 2022. An Affidavit of Service of Notice along with the proof of service of notice to the

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directed authorities in terms of order of Hon'ble NCLT was filed by the Authorized Representative.

- (6) The meeting of the Unsecured Creditors of Brahmani Ferro Alloys Private Limited (Third Transferor Company or Fourth Transferee Company or Petitioner 1) was held in terms of the direction of this Hon'ble NCLT through VC/ OAVM on Friday, 27th May, 2022 at 11:00 AM and as per the Chairman's Report dated 02nd June, 2022, the Comprehensive Scheme of Arrangement has been approved by the Unsecured Creditors with requisite majority. A copy of Chairman's Report along with Affidavit verifying the Report is annexed and marked as "**Annexure - 33**" to the Company Petition.
- (7) The meeting of the Unsecured Creditors of Biraja Ferro Alloys Private Limited (Seventh Transferor Company or Petitioner 2) was held in terms of the direction of this Hon'ble NCLT through VC/ OAVM on Friday, 27th May, 2022 at 03:00 PM and as per the Chairman's Report dated 02nd June, 2022, the Comprehensive Scheme of Arrangement has been approved by the Unsecured Creditors with requisite majority. A copy of Chairman's Report along with Affidavit verifying the Report is annexed and marked as "**Annexure - 34**" to the Company Petition.
- (8) The meeting of the Unsecured Creditors of Birija Agro-Tech Private Limited (Twelfth Transferor Company or Petitioner 3) was held in terms of the direction of this Hon'ble NCLT through VC/ OAVM on Friday, 27th May, 2022 at 11:30 AM and as per the Chairman's Report dated 02nd June, 2022, the Comprehensive Scheme of Arrangement has been approved by the Unsecured Creditors with requisite majority. A copy of Chairman's Report along with Affidavit verifying the Report is annexed and marked as "**Annexure - 35**" to the Company Petition.
- (9) The meeting of the Unsecured Creditors of Brahmani Agro-Tech Private Limited (Thirteenth Transferor Company or Petitioner 4) was held in terms of the direction of this Hon'ble NCLT through VC/ OAVM on Friday, 27th May, 2022 at 03:30 PM and as per the Chairman's Report dated 02nd June, 2022, the Comprehensive Scheme of Arrangement has been approved by the Unsecured Creditors with requisite majority. A copy

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of Chairman's Report along with Affidavit verifying the Report is annexed and marked as "**Annexure - 36**" to the Company Petition.

- (10) A certificate from Statutory Auditor relating to compliance of Accounting Standard is annexed and marked as "**Annexure - 26 to 29**" to the Company Petition.
- (11) It is submitted by the Petitioner that there are no proceedings pending under Sections 235 to 251 of the Companies Act, 1956 and/or corresponding provisions of Companies Act, 2013 against any of the Petitioner Company.
- (12) It is further submitted by the Petitioners that the Scheme does not provide (contain any clause) for any kind of Corporate Debt Restructuring.
- (13) It is further submitted by the Petitioners that the assets of the Applicant Companies are sufficient to meet all their liabilities. The Applicant Companies have made due provisions for payment of all liabilities as and when the same will fall due. Further, the said Scheme of Arrangement does not involve any compromise or composition with the creditors of the Applicant Companies and Scheme will not affect the rights of the creditors of the Applicant Companies in any manner whatsoever.
- (14) This Tribunal has passed an order dated 05th September, 2023 in the said Company Petition, directing publication to be effected of the hearing of the Petition, issuance of the notices of this Petition to the concerned statutory authorities for their objections, if any.
- (15) It has been stated that notice of petition was served upon the Central Government, Statutory Authorities and publications of notice of petition was made in two newspapers - "Dumani Mail" (English) and "Samaya" (Oriya) on 28th September, 2023.
- (16) Further, on perusal of the records it is found that the report of the Central Government through Regional Director, Eastern Region, Kolkata, MCA, is on record and that the Petitioner has filled Affidavit and Undertaking before the Bench for complying the observation of the Regional Director, Eastern Region, Kolkata, MCA .
- (17) Further on perusal of the records it is found that the NOC of Income tax Authorities is also on Records.

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- (18) In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner Company, there appears to be no impediment in sanctioning the present Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 230 to 232 of the Companies Act, 2013. The Petitioner shall however, remain bound to comply with the statutory requirements in accordance with law.
- (19) While approving the Scheme as above, we further clarify that this order should not be construed as an order in granting any exemption from payment of stamp duty, taxes including income tax, GST etc. or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.
- (20) In view thereof, we have perused the documents annexed to the petition and having heard the submissions made of the petitioners, pass the following orders: -
- a. That the Comprehensive Scheme of Arrangement between the Transferor Companies and the Transferee Companies and their respective Shareholders and Creditors providing for the Comprehensive Scheme of Restructuring of the Petitioner companies M/s. Brahmani Ferro Alloys Private Limited, M/s. Biraja Ferro Alloys Private Limited, M/s. Birija Agro tech Private Limited, M/s. Brahmani Agro tech Private Limited, and other matters incidental thereto be sanctioned by this National Company Law Tribunal to be binding with effect from appointed date i.e. 01.04.2020 on the Transferee Company, the Transferor Company, their shareholders, and all concerned;
 - b. That the said Petitioner/Transferor Companies with all its assets, properties, rights, powers, titles, and interest thereof be transferred to and vested without any further act or deed in the Transferee Company and accordingly the same shall pursuant to Section 230 to 232 of the Companies Act, 2013 be transferred to and vested in the Transferee Company for all the estates and interests of the said

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Transferor Company therein but subject nevertheless to all charges, now affecting the same;

- c. That all the liabilities and duties of the Petitioner/Transferor Companies be transferred without any further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 230 to 232 of the Companies Act, 2013 be transferred to and become the liabilities and duties of the said Transferee Company;
- d. That all proceedings and/or suits and/or appeals now pending by or against the Petitioner/Transferor Companies shall be continued by or against the Transferee Company;
- e. That the Transferee Company do without further application allot to such members of the Transferor Company herein the shares in the Transferee Company to which they are entitled as per the said Comprehensive Scheme of Arrangement;
- f. That the Petitioner/Transferor Companies shall within 30 days after 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, respectively;
- g. The Petitioner Company No. 2/ Transferor Company 7 shall be dissolved without winding up from the date of filing of the certified copy of this order with the Registrar of Companies, Cuttack and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files to the said Transferee Company and the Transferor Company shall be consolidated accordingly;
- h. The Petitioner Company No. 3/ Transferor Company 12 shall be dissolved without winding up from the date of filing of the certified copy of this order with the Registrar of Companies, Cuttack and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files to the said


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Transferee Company and the Transferor Company shall be consolidated accordingly;

- i. The Petitioner Company No. 4/ Transferor Company 13 shall be dissolved without winding up from the date of filing of the certified copy of this order with the Registrar of Companies, Cuttack and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files to the said Transferee Company and the Transferor Company shall be consolidated accordingly;
 - j. That any person interested shall be at liberty to apply to this National Company Law Tribunal in the above matter for any directions that may be necessary;
- (21) In the event of the Petitioners supply legible computerized printout of the Scheme in acceptable form to the department, the department will append such computerized printout, upon verification to the certified copy of the order without insisting on a hand-written copy thereof.
- (22) Accordingly, Company Petition (CAA) No. 3/CB/2023 connected with Company Application (CAA) No. 2/CB/2022 stands disposed of with the aforesaid directions.
- (23) Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.
- (24) The approval of the scheme granted herein above is subject to the approval granted by jurisdictional NCLT Benches as regards other petitioner companies.


Kaushalendra Kumar Singh
Member (Technical)


P. Mohan Raj
Member (Judicial)

Signed on this, the 30th day of April, 2024

Kaushal_P.S.