

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV**

**C.P. (CAA)/294/MB/2023 IN
C.A.(CAA)/70/MB/2023**

In the matter of the Companies Act, 2013;

And

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 r/w Companies (Compromises, Arrangements and Amalgamation) Rules, 2016;

And

In the matter of

The Scheme of Arrangement

Between

M/s. Jagadeesh Iron and Steels Private Limited

(“Petitioner Company 1’ or Demerged Company”)

And

M/s. Jagadeesh Castings Private Limited

(“Petitioner Company 2’ or Resulting Company”)

And

their respective shareholders (‘Scheme’)

M/s. Jagadeesh Iron and Steels Private Limited

[CIN: U27106PN2003PTC018272]

... First Petitioner Company/

Demerged Company 1

M/s. Jagadeesh Castings Private Limited

[CIN: U26990PN2021PTC204497]

... Second Petitioner Company /

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Resulting Company

(hereinafter collectively referred to as the "Petitioner Companies")

Order delivered on: 05.06.2024

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Avinash R. Khanolkar a/w Ms.
Surekha Yadav, Adv.

For the Regional Director:

Mr. Altap Shaikh, Authorised
Representative on behalf of RD
(WR) Regional Director, WR,
MCA.

ORDER

1. The sanction of this Tribunal is sought under Section 230-232 of the Companies Act for the Composite Scheme of Arrangement (hereinafter referred as the Scheme) between M/s. Jagadeesh Iron and Steels Private Limited CIN: U27106PN2003PTC018272 (hereinafter referred as the Demerged Company) and M/s. Jagadeesh Castings Private Limited CIN: U26990PN2021PTC204497 (hereinafter referred as the Resultant Company) and with their respective Shareholders.
2. Learned Counsel for the Petitioner Companies submitted that vide Order dated 04.12.2023, this Bench has Admitted the Petition and fixed it for final

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hearing on 18.01.2024. However, on 18.01.2024 it was brought to the notice of this Bench that vide Order dated 18.01.2024 this Bench has Ordered publication of notices in two newspapers which are not having circulation in the local area where the Registered Offices of the Petitioner Companies. Hence, vide an Order dated 18.01.2024 this Bench has ordered for publication of notices in two newspapers viz. Times of India (Circulated in Sangli District) in English and in Dainik Pudhari (Sangli Edition) in Marathi. The Ld. Counsel for the Petitioner Companies submitted that the Petitioner Companies in compliance with the Order dated 18.01.2024 caused publication of notices on 02.03.2024 and necessary Affidavit of Service has been filed on 11.03.2024.

3. The Board of Directors of the Petitioner Companies passed a Resolution, respectively, on 20.02.2023 for the proposed Scheme and proposed the appointed date of the scheme as 01.04.2022.
4. The Demerged Company is incorporated under provisions of the Companies Act, 1956 having the registered office at D / 23, MIDC Miraj, Tal. Miraj, Sangli, Maharashtra- 416410 and having CIN: U27106PN2003PTC018272. The Demerged Company is *inter-alia* engaged in the business foundry manufacturing ferrous and non-ferrous metals and all ancillary activities. The Demerged Company is ongoing concern and generating revenue from its operations.

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5. The Resultant Company is incorporated under provisions of the Companies Act, 2021 having the registered office at Plot P – 60, MIDC Miraj, Tal. Miraj, Sangli, Maharashtra – 416 410. CIN: U26990PN2021PTC204497 and *inter-alia* engaged in the business of casting. The Resulting Company is ongoing concern and generating revenue from its operations.
6. The Ld. counsel for the Petitioner Companies stated that the proposed Scheme *inter-alia* provides for the Casting and Machining undertaking of the Demerged Company to the Resultant Company.
7. The Board of Directors of the Applicant Companies anticipate the following benefits pursuant to the Scheme:
 - i) *The demerger will ensure focused management attention, resources and skill set allocation on Foundry undertaking and Casting undertaking separately.*
 - ii) *The Scheme will provide greater flexibility and operational autonomy in managing the working of the two undertakings of Demerged company viz. Foundry undertaking and Casting undertaking.*
 - iii) *The scheme would also help to achieve economies of scale for the respective undertakings.*
 - iv) *Pursuant to the Scheme, all the shareholders of Demerged company will get shares in Resulting company and there would be no change in economic interest for any of the shareholder of Demerged company, pre and post Scheme.*

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8. The averments made in the Petitions and the submissions made by Learned Counsel for the Petitioner Companies are:

- i) The Petitioner Companies had preferred an Application bearing no. CA (CAA) 70 / MB / 2023 for necessary directions of this Bench. The said Application stood allowed vide an Order dated 09.06.2023.
- ii) The Petitioner Companies have complied with all the requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance with this Tribunal on 04.11.2023. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder, whichever is applicable.

9. The Regional Director has filed his Report dated 12.03.2024, *inter alia* stating its observations on the proposed Scheme in paragraph 2 (a) to (i) of the said Report. The Petitioners Companies have filed its Joint Affidavit in response to the said Report on 13.03.2024. The observations of the Regional Director and the responses to the same by the Petitioner Companies are being reproduced herein-below:

Para	Observation by the Regional Director	Undertaking of the Petitioner Company/Rejoinder
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<p>2(a)</p>	<p><i>That on examination of the report of the Registrar of Companies, Pune dated 13.10.2023 (Annexed as Annexure A-1) for both Petitioner Companies falls within the jurisdiction of ROC, Pune. It is submitted that no complaint and / or representation regarding the proposed scheme of Amalgamation/Arrangement has been received against the Petitioner Companies. Further, the Petitioner Companies has filed Financial Statements up to 31.02.2022. The ROC, Pune has further submitted that in his report dated 13.10.2023 which are as under :-</i></p> <p><i>i) That the ROC Pune in its report dated 13.10.2023 has also stated that No Inquiry, Inspection, Investigations, Prosecutions and complaint under CA, 2013 have been pending against the Petitioner Companies.</i></p> <p><i>ii) The Transferor and Transferee Company has not filed GNL-1 for the Scheme or Arrangement.</i></p>	<p><i>Apropos the observation made in paragraph 2 (a) of the Report of Regional Director is concerned, the Petitioner Companies submits that they have filed their respective Financial Statements as on 31.03.2023 with the Ministry of Corporate Affairs. The Petitioner Companies further undertakes to submit Form GNL-1 with the ROC, as directed.</i></p>
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	<p><i>Hence, the Petitioner Companies shall undertake to submit detailed reply against observations mentioned above.</i></p>	
2(b)	<p><i>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the transferee company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.</i></p>	<p><i>Apropos the observation made in paragraph 2 (b) of the Report of Regional Director is concerned, the Petitioner Companies undertakes to pass such accounting entries in compliance of AS-14 (IND AS -103) which are necessary in connection with the scheme and comply with other applicable Accounting Standards such as AS-5 or IND AS-8, etc. to the extent applicable.</i></p>
2(c)	<p><i>The Hon'ble Tribunal may kindly direct the Petitioner Companies 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.</i></p>	<p><i>Apropos the observation made in paragraph 2 (c) of the Report of Regional Director is concerned, the Petitioner Companies hereby confirms that the Scheme enclosed to the Company Application and Company Petition are one and the same and there is no discrepancy and / or no changes have been made therein.</i></p>

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2(d)	<p><i>The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned.</i></p>	<p><i>Apropos the observation made in paragraph 2 (d) of the Report of Regional Director is concerned, the Petitioner Companies submits that the notices under Section 230(5) of the Companies Act, 2013 have been submitted to the concerned authorities viz. (i) Central Government through the office of Regional Director, Western Region, Mumbai, (ii) Jurisdictional Registrar of Companies, (iii) Jurisdictional Income Tax Authority, (iv) Jurisdictional GST Authority and (v) Ministry of Corporate Affairs in the month of July 2023. Necessary Affidavit of Service of such notices dated 06.10.2023 has already been submitted before this Hon'ble Bench and copy of the same has also been attached to the Petition as Annexure 7. In accordance thereto, the Petitioner Companies undertakes that the decision of the</i></p>
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		<p><i>concerned authorities, if any, on any issues arising after giving effect to the Scheme shall be binding on Companies and the Petitioner Companies shall abide by the same to the extent applicable.</i></p>
2(e)	<p><i>As per Definition of the Scheme.</i></p> <p><i>“Appointed Date” shall be 1st April 2022.</i></p> <p><i>“Effective Date” shall be the last date of which certified/authenticated copy of the order of National Company Law Tribunal sanctioning this Scheme is filed with the Registrar of Companies, Pune, Maharashtra on MCA Portal.</i></p> <p><i>“Record Date” or “Specified Date” means the date to be fixed by the Board of Directors of the JISPL for the purpose of determining the members of JCPL to whom shares of the JCPL will be allotted pursuant to the Scheme.</i></p>	<p><i>Apropos the observation made in paragraph 2 (e) of the Report of Regional Director is concerned, the Petitioner Company states that the proposed Scheme is duly in compliance with the Circular issued by Ministry of Corporate Affairs viz. circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 and hence, a change in appointed date may not be ordered. The proposed appointed date of the Scheme of Arrangement is 01.04.2022 and the Scheme has been presented before this Hon’ble Bench on 13.03.2023 i.e. within completion of one year from the proposed appointed date. And therefore, it is again being reiterated</i></p>

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	<p><i>In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.</i></p> <p><i>It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	<p><i>that the proposed Scheme is in compliance with the circular mentioned herein.</i></p>
2(f)	<p><i>Petitioner Companies shall undertake to comply with the directions of Income tax department, if any.</i></p>	<p><i>Apropos the observation made in paragraph 2 (f) of the Report of Regional Director is concerned, the Petitioner Companies hereby undertakes to comply with the directions of Income tax</i></p>

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		<i>department as may be issued, if any, to the extent applicable.</i>
<i>2(g)</i>	<i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.</i>	<i>Apropos the observation made in paragraph 2 (g) of the Report of Regional Director is concerned, it is hereby stated and submitted that the Petitioner Companies are not Governed by any Sectoral Regulatory Authority. And therefore, question of compliance of directions with the Sectoral Regulatory Authority will not arise. However, for the sake of compliance, if any, the Petitioner Companies hereby undertakes to comply with directions, to the extent applicable, of the applicable Sectoral Authority.</i>
<i>2(h)</i>	<i>The Petitioner Company may be directed to undertake that the present scheme is in compliance with Section 2(19AA) of the Income Tax, Act, 1961.</i>	<i>Apropos the observation made in paragraph 2 (h) of the Report of Regional Director is concerned, the Petitioner Companies hereby undertakes that the present scheme is in compliance with Section 2(19AA) of the Income Tax</i>

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		<i>Act, 1961 and state that no part of the proposed Scheme is in contravention with the provisions of the Income Tax Act, 1961.</i>
2(i)	<i>The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder.</i>	<i>Apropos the observation made in paragraph 2 (i) of the Report of Regional Director is concerned, the Petitioner Companies undertakes that, the Petitioner Companies will comply with the provisions of Income Tax Act, 1961 and Rules thereunder, as applicable.</i>

10. Mr. Altap Shaikh, Authorised Representative of office of Regional Director (WR), Mumbai, appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.

11. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.

12. Since all the requisite statutory compliances have been fulfilled, CP(CAA)-294(MB)/2023 is made absolute in terms of the prayer clauses of the said

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joint Company Petition. Therefore, the Scheme is hereby **sanctioned**. This Bench further orders that –

- i) The Appointed Date is fixed as 01.04.2022. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders Secured Creditors, Unsecured Creditors/Trade Creditors, Employees and/or any other stakeholders concerned.
- ii) The Transferor Company be dissolved without winding up.
- iii) The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in E-Form INC-28 within 30 days from the date of issuance of the certified copy of the Order from the Registry.
- iv) The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy Registrar or the Assistant Registrar, as the case may be, of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified copy of order.
- v) The Petitioner Companies shall comply with all the undertakings given by them.

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- vi) The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
- vii) All concerned shall act on a copy of this Order along with the Scheme duly authenticated by the Registrar of this Tribunal.
- viii) Any person interested in the above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.

13. With the above directions, C.P.(CAA)/294/MB/2023 c/w CA(CAA)/70/MB/2023 is **allowed** and **disposed-off**. File to be consigned to records.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)

05.06.2024/-