

S.No.3

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
06-06-2024 AT 10:30 AM**

CP(CAA) No. 04/230/HDB/2024
u/s. 230 of Companies Act, 2013

IN THE MATTER OF:

M/s. Bhubaneshwar Power Pvt Ltd (Transferor Company) and
M/s. Tata Steel Ltd (Transferee Company) and
their respective shareholders and creditors

...Petitioner

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced. In the result, **the scheme of amalgamation is approved** as per the terms and conditions mentioned therein.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD-1**

CP (CAA) No.04/230/HDB/2024
Connected with
CA (CAA) NO.65/230/HDB/2023
U/s 230 and 232 of the Companies Act, 2013

IN THE MATTER OF SCHEME OF AMALGAMATION BETWEEN

BHUBANESHWAR POWER PRIVATE LIMITED

(TRANSFEROR COMPANY)

AND

TATA STEEL LIMITED

(TRANSFeree COMPANY)

Bhubaneshwar Power Private Limited

[CIN:U40109TG2006PTC050759]

Registered office at Tata Steel Office,

Gumidelli Tower at 1-10-30 to 44

Begumpet Airport Road, Begumpet,

Hyderabad, Secunderabad, Telangana,

India – 500 016

...Transferor Company/
Petitioner Company

DATE OF ORDER: 06.06.2024

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

Counsels / Parties Present

For the Petitioner : Mr. Krishna Grandhi, Sr. Counsel
i/b M/s Samvad Partners
Ms. Neha Mirajgaoker, Advocate
Ms. Ekta Bahl, Advocate
Mr. Lalit Munshi, Advocate
Ms. Tanya Kanwar, Advocate

For the Respondent: Mr. D.Vasantrao Meshram, Assistant O.L
Smt. Kusum Yadav, Assistant Regional Director

PER BENCH

1. This Petition is filed by the Petitioner Company under Section 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and other applicable provisions of the Companies Act, 2013 by *inter-alia* praying for sanction of the Scheme of Amalgamation (Annexure-A) (“**Scheme**”) to be operative with effect from the Appointed date i.e. 01.04.2023 binding from the Effective date on the Companies their respective shareholders, creditors, and all other persons concerned.

2 The gist of the averments in brief are: -

2.1 TRANSFEROR COMPANY/APPLICANT

- (A) **BHUBANESHWAR POWER PRIVATE LIMITED** (hereinafter referred to as the “**Transferor Company/Applicant Company**”) was incorporated on July 31, 2006 as a joint venture between Jasper Industries Private Limited (through its SPV, JL Power Ventures Private Limited) holding 74% on one hand and Transferee Company i.e. Tata Steel Ltd. and Tata Steel Mining Limited collectively holding 26% in the Transferor Company. On February 1, 2018, the Transferee Company acquired all the shares of the Transferor Company, held by JL Power Ventures Private Limited. Thereafter, pursuant to scheme of amalgamation of Tata Steel Mining Limited into and with the Transferee Company under the provisions of Section 230 to 232 and other applicable provisions of the Act read with the rules framed thereunder, Tata Steel Mining Limited amalgamated into the Transferee Company with effect from September 1, 2023 (with appointed date as April 1, 2023). Accordingly, the Transferor Company is now a wholly owned subsidiary of the Transferee Company. The Transferor Company/Applicant Company has its registered office at Tata Steel Office, Gumidelli Tower at 1-10-30 to 44 Begumpet Airport Road, Begumpet, Hyderabad, Secunderabad, Telangana, India – 500 016, within the jurisdiction of this Tribunal.
- (B) The capital structure of the Transferor Company/Applicant Company as on November 1, 2023 is as under:

(in Rs.)

Particulars	Amount
Authorized Share Capital	
25,70,00,000 Equity Shares of Rs. 10 each	257,00,00,000
Issued, Subscribed and Paid-up Share Capital	
25,32,51,187 Equity Shares of Rs. 10 each	253,25,11,870

Subsequent to the date of approval of the scheme of amalgamation between the Transferor Company/Applicant Company and the Transferee Company there has been no change in the issued, subscribed, and paid-up share capital of the Transferor Company/Applicant Company.

- (c) The relevant/ main objects of the Transferor Company/Applicant Company are provided in its Memorandum of Association, copy of which is annexed and marked as Annexure-D (Colly). The Transferor Company is engaged in the business of generation of thermal power having one captive thermal power plant of 135 MW (2 Units of 67.50 MW) located near Anantapur Village in Athagarh District in the State of Odisha. The Transferor Company is currently generating thermal power and has long term power purchase agreement with the Transferee Company.
- (d) The financial statements of the Transferor Company/Applicant Company have been audited till March 31, 2023. The audited balance

sheet of the Transferor Company/Applicant Company is summarized as follows:

(Rs. In Lakhs)

<u>Equity & Liabilities</u>	Amount
Share Capital	25,325.12
Other Equity	11,252.98
Non-current Liabilities	30,653.68
Current Liabilities	8,917.75
Total	76,149.53
<u>Assets</u>	
Non-current Assets	64,837.93
Current Assets	11,311.60
Total	76,149.53

A copy of the audited financial statements of the Transferor Company/ Applicant Company for the Financial Year 2022-2023 are annexed and collectively marked as **ANNEXURE “E”**. Further, there has been no substantial change in the financial position of the Transferor Company/Applicant Company except as arising in the usual course of business. The unaudited financial position of the Transferor Company as on September 30, 2023 is as follows:

(Rs. In Lakhs)

<u>Equity & Liabilities</u>	Amount (Rs.)
Share Capital	25,325.12
Other equity	12,860.81
Non-current Liabilities	25,679.75
Current Liabilities	9,301.73
Total	73,167.41

<u>Assets</u>	
Non-current Assets	62,631.01
Current Assets	10,536.40
Total	73,167.41

The copy of unaudited supplementary financial statement as of September 30, 2023 of the Applicant Company / Transferor Company is annexed and marked as **ANNEXURE “F”**.

- (e) It is stated that the affairs of the Transferor Company/Applicant Company have been conducted prudently and properly and no investigation proceeding is pending against the Transferor Company/Applicant Company. A copy of an affidavit to this effect is annexed and marked as **ANNEXURE “G”**.

2.2 TRANSFEREE COMPANY/TATA STEEL LIMITED

- (A) **TATA STEEL LIMITED** (hereinafter referred to as the “**Transferee Company**”) was incorporated on August 26, 1907 in the name and style of ‘The Tata Iron and Steel Company Limited’ and is a validly existing company within the provisions of the Act. Subsequently, the name of the Transferee Company was changed to Tata Steel Limited and consequently and a new certificate of incorporation issued on August 12, 2005. The Corporate Identification Number of the Transferee Company is L27100MH1907PLC000260, and the registration number is 000260. A copy of the Certificate of Incorporation along with the updated Memorandum of Association

and Articles of Association of the Transferee Company, is annexed and collectively marked as **ANNEXURE “I (COLLY.)”**.

- (B) The Transferee Company has its registered office at Bombay House, 24-Homi Mody Street, Fort, Mumbai, Maharashtra 400001.
- (C) It is averred that the Transferee Company is one of the leading global steel companies, with over 100 (hundred) years of experience in the steel sector and is a pioneer of steel manufacturing in India and is also amongst the lowest cost integrated steel manufacturers in India, with 100% (hundred percent) captive iron ore sources. The Transferee Company caters to customers across all segments through its well-established distribution network. It has operations in India, Europe and Southeast Asia.
- (D) The capital structure of the Transferee Company as on November 1, 2023, is as under:

(₹ crore)

Authorised share capital:		Amount
17,50,00,00,000	Ordinary Shares of ₹1/- each	1,750.00
750,00,00,000	Equity Shares of ₹10/- each	7,500.00
35,00,00,000*	“A” Ordinary Shares of ₹10/- each	350.00
2,50,00,000*	Cumulative Redeemable Preference Shares of	250.00

	₹100/- each	
60,00,00,000*	Cumulative Convertible Preference Shares of ₹100/- each	6,000.00
Total:		15,850.00
Issued share capital:		Amount
1223,44,16,550	Ordinary Shares of ₹1/- each	1,223.44
Total:		1,223.44
Subscribed and Paid-up share capital:		Amount
1222,15,37,000 **	Ordinary Shares of ₹1/- each fully paid up	1,222.15
<i>Amount paid-up on 58,11,460 Ordinary Shares of ₹1 each forfeited</i>		0.25
Total:		1,222.40

**'A' Ordinary Shares and Preference Shares included within the authorised share capital are for disclosure purposes and have not yet been issued.*

*** Includes 4,370 equity shares of Re. 1/- each, on which first and final call money has been received and the partly paid-up equity shares have been converted to fully paid-up equity shares but are pending final listing and trading approval under the ISIN INE081A01012, and hence, continue to be listed under partly paid-up ISIN IN9081A01010 as on November 1, 2023.*

Note: Paid-up capital includes 1,16,83,930 Ordinary Shares of ₹1/- each held by Rujivalika Investments Limited (a wholly owned subsidiary of Tata Steel Limited w.e.f. May 8, 2015), which do not carry any voting rights.

(E) It is stated that subsequent to the date of approval of the Scheme of Amalgamation by the Board of Directors of the Transferee Company, there has been a change in the issued, subscribed, and paid-up share capital of the Transferee Company. The authorized, issued, subscribed and paid-up share capital of the Transferee Company as on December 1, 2023 is as below:

(₹ crore)

Authorised share capital:		Amount
24715,00,00,000	Ordinary Shares of ₹1/- each	24,715.00
35,00,00,000*	'A' Ordinary Shares of ₹10/- each	350.00
2,50,00,000*	Cumulative Redeemable Preference Shares of ₹100/- each	250.00
60,00,00,000*	Cumulative Convertible Preference Shares of ₹100/- each	6,000.00
Total:		31,315.00
Issued share capital:		Amount
1231,02,16,859	Ordinary Shares of ₹1/- each	1,231.02
Total:		1,231.02
Subscribed and Paid-up share capital:		Amount
1229,73,37,309**	Ordinary Shares of ₹1/- each fully paid up	1,229.73
Amount paid-up on 58,11,460 Ordinary Shares of ₹1/- each forfeited		0.25
Total:		1,229.98

**'A' Ordinary Shares and Preference Shares included within the authorised share capital are for disclosure purposes and have not yet*

been issued.

***Includes 4,370 equity shares of Re. 1/- each, on which first and final call money has been received and the partly paid-up equity shares have been converted to fully paid-up equity shares but are pending final listing and trading approval under the ISIN INE081A01012, and hence, continue to be listed under partly paid-up ISIN IN9081A01010 as on December 1, 2023.*

Note: Paid-up capital includes 1,16,83,930 Ordinary Shares of ₹1/- each held by Rujvalika Investments Limited (a wholly owned subsidiary of Tata Steel Limited w.e.f. May 8, 2015), which do not carry any voting rights.

Subsequent to the above, there has been no change in the issued, subscribed, and paid-up share capital of the Transferee Company.

- (F) It is further stated that the equity shares of the Transferee Company are listed on the BSE Limited ("**BSE**") and the National Stock Exchange of India Limited ("**NSE**"). The global depository receipts of the Transferee Company are listed on the Luxembourg Stock Exchange and the London Stock Exchange. Further, the unsecured redeemable non-convertible debentures of the Transferee Company are listed on the wholesale debt market segments of the BSE.
- (G) The financial position of the Transferee Company as appearing in the audited balance sheet (standalone) as on March 31, 2023 is summarized as follows:

<u>Equity & Liabilities</u>	Amount (Rs.) (in Crore)
Share Capital	1,222.40
Other equity	1,33,575.11
Non-current Liabilities	52,556.61
Current Liabilities	46,437.30
Total	2,33,791.42
<u>Assets</u>	
Non-current Assets	1,99,841.90
Current Assets	33,949.52
Total	2,33,791.42

A copy of the audited financial statements of the Transferee Company for the Financial Year 2022-2023 are annexed to the application and collectively marked as **ANNEXURE “K”**.

Further the audited balance sheet (standalone) as on September 30, 2023 is summarized as follows: <u>Equity & Liabilities</u>	Amount (Rs.) (in Crore)
Share Capital	1,222.40
Other equity	1,25,473.47
Non-current Liabilities	56,311.95
Current Liabilities	51,977.82
Total	2,34,985.64
<u>Assets</u>	
Non-current Assets	1,99,752.54
Current Assets	35,206.40
Assets held for sale	26.70
Total	2,34,985.64

A copy of the latest audited financial results for the quarter ended September 30, 2023 are annexed hereto and collectively marked as

ANNEXURE “L”. After the date of the aforesaid accounts, there has been no substantial change in the financial position of the Transferee Company except as arising in the usual course of business.

3. BOARD OF DIRECTORS

The Board of Directors of the Petitioner Company and Transferee Company in their respective Board Meetings held on October 31st, 2023 and November 1st 2023 respectively considered and approved the Scheme of Amalgamation. The certified true copies of the Board Resolutions passed by the Petitioner Company and the Transferee Company is annexed as **Annexure N** and **Annexure O** to the Petition.

4. BENEFITS ARISING OUT OF AMALGAMATION:

The Applicant Company submits that the rationale behind the amalgamation, *inter alia* have following benefits:

- (a) The amalgamation will consolidate the Transferor Company/ Applicant Company into and with the Transferee Company which will result in focused growth, operational efficiencies, and enhance business synergies. In addition, resulting corporate holding structure will bring enhanced agility to business ecosystem of the merged entity.
- (b) The amalgamation will ensure consolidation of all power assets under a single entity, which will increase system agility for power generation and allocation and will help the Transferee Company to improve its plant reliability, ensuring steady source of power supply while

optimising cost. Further, such restructuring will lead to simplification of group structure by eliminating multiple companies in similar operation.

- (c) The financial, managerial and technical resources, personnel, capabilities, skills, expertise and technologies of both the companies pooled in the merged entity, will lead to optimum use of facilities, rationalisation of cost in the areas of operations and administrative overheads, thereby maximising shareholder value of the merged entity;
- (d) The Scheme of Amalgamation would result in the following synergies:
 - i. The amalgamation is expected to result in better alignment, optimized power cost, sharing of best practices, cross-functional learning and better utilisation of common facilities. It would result in synergy benefits arising out of single value chain thereby optimising costs and increasing operational efficiencies.
 - ii. The proposed amalgamation will also assist in sourcing of stores, spares, MRO, and services can be managed centrally which will increase scale of operations thereby improving negotiating power, reducing sourcing and inventory management cost.
 - iii. The proposed amalgamation is also in line with group level 5S strategy - simplification, synergy, scale, sustainability, and speed, wherein it will simplify group holding structure, improve agility to enable quicker decision making, eliminate

administrative duplications, consequently reducing administrative costs of maintaining separate entities;

- iv. The amalgamation will also lead to adoption of improved safety, environment and sustainability practices owing to a centralized committee at combined level to provide focused approach towards safety, environment and sustainability practices resulting in overall improvement. Further, overall technology maturity can be enhanced by the companies through unfettered access to each other's information technology applications and systems.
5. It is submitted by the Applicant Company that the assets of the Transferee Company and the Transferor Company/ Applicant Company are sufficient to meet all their liabilities and the Scheme of Amalgamation shall not prejudicially affect the rights or interests of the creditors of the Amalgamating Companies, in any manner. Further the Amalgamating Companies have made due provisions for payment of liabilities as and when the same would fall due.
 6. It is averred that the entire paid-up share capital of Transferor Company/Applicant Company as on the date of filing of this application is held by the Transferee Company (along with its nominee) i.e., the Transferor Company/Applicant Company is the wholly owned subsidiary of the Transferee Company. A certificate by an independent chartered accountant dated December 1, 2023

certifying the shareholding pattern of the Transferor Company/Applicant Company as on September 30, 2023 is annexed and marked as ANNEXURE “Q”.

7. It is stated that since the Transferee Company is the 100% shareholder of the Transferor Company/Applicant Company (along with its nominees), all the shares held by the Transferee Company in the Transferor Company/Applicant Company will stand cancelled as a result of the aforesaid amalgamation and neither any shares will be issued to the shareholders of the Transferor Company/Applicant Company, nor shall any consideration be paid. In view of the same, there **was no requirement of valuation of shares of the Amalgamating Companies**. It is further stated that there is no impact of the Scheme of Amalgamation on the shareholders or creditors or stakeholders of the Transferee Company within the meaning of Sections 230 to 232 of the Act.
8. It is further stated that the Scheme of Amalgamation does not involve any reconstruction or arrangement of the Transferee Company with its existing equity shareholders, and does not involve any reorganization or restructuring of the share capital of the Transferee Company.
9. It is stated that, in terms of Regulation 37(6) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**Listing Regulations**”) read with Master Circular No. SEBI/HO/CFD/POD-2/P/CIR/2023/93 dated

June 20, 2023 issued by the Securities and Exchange Board of India ('SEBI'), the requirement of obtaining prior approval of the stock exchanges in case of mergers involving wholly owned subsidiary companies has been dispensed with and only the listed holding company is required to file the Scheme of Amalgamation along with board resolution passed by the Board of Directors of Transferee Company, approving such Scheme of Amalgamation with the stock exchanges for the purpose of disclosure. It is stated that the Transferee Company, as a listed entity, was thus not required to obtain approval of the stock exchanges in terms of the aforesaid regulatory requirements and has duly filed the Scheme of Amalgamation along with board resolution passed by the Board of Directors of Transferee Company, approving such Scheme of Amalgamation as per Regulation 37(6) of the Listing Regulations issued by the SEBI. The Transferee Company being a listed company has also made disclosure in terms of Regulation 30 of the Listing Regulations issued by the SEBI read with Master Circular No. SEBI/HO/CFD/PoD2/CIR/P/2023/120 dated July 11, 2023. A copy of the said disclosure submitted by the Transferee Company under Regulation 30 of the Listing Regulations to the stock exchanges and the copy of the filing made as per the requirement under Regulation 37(6) of Listing Regulations read with Master Circular No. SEBI/HO/CFD/POD-2/P/CIR/2023/93 dated June 20, 2023 (*without enclosures*) are annexed and marked as **ANNEXURE "P (COLLY)"**.

10. Accounting Treatment

The Statutory Auditors of the Transferor Company/Applicant Company have provided certificate dated November 1, 2023 and the Statutory Auditors of the Transferee Company have provided certificate dated November 1, 2023, certifying the accounting treatment proposed in terms of Clause 16 and 17 of PART II of the Scheme of Amalgamation being in compliance with the accounting standards prescribed under Section 133 of the Act, are collectively annexed hereto and marked as **ANNEXURE “U (COLLY)”**.

11. DECLARATION BY THE PETITIONER COMPANIES

The Scheme of Amalgamation does not contain or provide for corporate debt restructuring. As per Section 230(2)(c) of the Companies Act, 2013 it is hereby declared that the Scheme being filed herein is not a corporate debt restructuring scheme and hence a creditor’s responsibility statement and other requirements under Section 230(2)(c) of the Companies Act, 2013 are not applicable to the present case. Affidavit confirming the same is annexed hereto and marked as **ANNEXURE “V”**.

12. While it is so, on 04.01.2023, this Tribunal upon hearing the Applicant Company in respect of the prayer for dispensing the meetings of shareholders and creditors and also no separate application is required to be filed by the Transferee Company in seeking approval of sanction

of Scheme, this Tribunal passed the following order in CA (CAA) NO.65/230/HDB/2023:

“19. In view of the above, this Tribunal allow the Application and pass the following order:-

- (a) Hereby dispense with convening the meeting of equity Shareholders and unsecured creditors of the Applicant/Transferor Company.*
- (b) We order that no application or proceedings for sanction of the Scheme under Sections 230 and 232 of Companies Act, 2013 are required to be taken by the Transferee Company separately in the instant matter.”*

- 13.** After complying with the directions of this Tribunal *vide* order dated 04.01.2024, Petitioner Company had filed the present Company Petition for sanction of the Scheme. Thus, this Tribunal *vide* order dated 01.02.2024 ordered notices to be issued to all the statutory authorities as per Rule 16 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Subsequently notices were issued on all the statutory Authorities. It is further submitted that the Petitioner Companies as per the order of this Tribunal, carried out publication in the Business standard (English) and Nava Telangana (Telugu) Newspapers on 29.02.2024 and filed the Compliance affidavit with this Tribunal on 12.03.2024.

14. REGIONAL DIRECTOR, SOUTHEAST REGION REPORT:

- The Regional Director *vide* his report dated 15.03.2024 opining no objections to the proposed Scheme but pointed out certain observations. The Petitioner Companies have filed affidavit dated

28.03.2024, in response to the observations made by the Regional Director, Southeast Region, Ministry of Corporate Affairs, Hyderabad.

Observations made by the Regional Director	Reply to the observations by the Petitioner Company
<p>Para 4(b)</p> <p>It is submitted that Clause 22.2 of Part III of the Scheme provides for an automatic increase in Authorized Capital of the Transferee Company with that of the Transferor Company. The Transferee Company shall pay the differential fee and stamp duty payable on the said increase in Authorized Capital after deducting such fees and duties paid by the Transferor Company before the merger.</p>	<p>The Transferee Company has undertaken, that the Transferee Company shall pay the differential fee and stamp duty payable on the increase in Authorized Capital of the Transferee Company post approval of the Scheme, after deducting such fees and duties paid by the Petitioner Company / Transferor Company before the merger.</p>

Para 4(d)

As per the Foot note to note no. 4 of the balance sheet as at 31.03.2023 it is mentioned that company has freehold land amounting to Rs. 11.10 lakhs which is not in the name of the company. However, the scheme of amalgamation is silent about this property.

The Petitioner Company / Transferor Company submits that Note 4 (foot note) of the Balance Sheet of the Transferor Company as at 31st March 2023 says as below:

“...The Title deeds of all Immovable properties are held in the name of the company except for the following:

<i>Description of Property</i>	<i>Gross carrying Value (in Lakhs)</i>	<i>Held in the name of</i>	<i>Whether promoter, director or their relative or employee</i>	<i>Date of capitalisation</i>	<i>Reason for not being held in the name of the Company</i>
<i>Freehold Land</i>	<i>11.10</i>	<i>Not applicable</i>	<i>No</i>	<i>March 1, 2023</i>	<i>Original Title Deed not available with Company</i>

The above note was mentioned in the audited balance sheet for period ending 31st March 2023 of the Petitioner Company/ Transferor Company as the original title deed of the said land was not available with the Petitioner Company/Transferor Company at the relevant time. The Petitioner Company/ Transferor Company however submits that the said land is registered in their name. The Petitioner Company/ Transferor Company had subsequently applied for a certified copy of the title deed,

	<p>which was received on 10th July 2023 from the local authority where the land is situated. Accordingly, in the unaudited balance sheet of Petitioner Company/ Transferor Company for the quarter ending 30th September, 2023 the said note/observation of the auditor was removed (Refer Exhibit-F, at Page 166 of the Company Petition). Thus, there is no specific mention of this land in the Scheme, as the land was always in the name of the Petitioner Company/ Transferor Company, and even the certified true copy of the title deed has been obtained by the Petitioner Company/Transferor Company by them.</p>
<p>Para 4(e) It is stated that the Hon'ble Tribunal may be pleased to direct the petitioner companies to preserve its books of Accounts and papers and records and shall not be dispose off without the prior permission of the Central Government in terms of the provisions of section 239 of the CA, 2013.</p>	<p>Petitioner Company / Transferor Company's undertaking to that effect is provided in the affidavit annexed at Annexure – D of the reply. Further, since the present Scheme is for Amalgamation of the Petitioner Company / Transferor Company with the Transferee Company, upon which the Petitioner Company / Transferor Company shall stand dissolved, the Transferee Company has also confirmed in its undertaking annexed as Annexure B, that post approval of the Scheme, the Transferee Company shall preserve the books of Accounts and papers and records of the Transferor Company, and the same shall not be disposed off without the prior permission of the Central</p>

	<p>Government in terms of the provisions of Section 239 of the Companies Act, 2013.</p>
<p>Para 4(f) It is stated that the Hon’ble Tribunal may be pleased to direct the petitioner companies to ensure statutory compliance of all applicable laws and also on sanctioning of the present scheme the applicant company shall not be absolved for any of its statutory liability in any manner</p>	<p>The undertaking of the Petitioner Company / Transferor Company to that effect is provided in the affidavit already annexed at Annexure – D. Further, since the present Scheme is for Amalgamation of the Petitioner Company / Transferor Company with the Transferee Company, upon which the Petitioner Company / Transferor Company shall stand dissolved, the Transferee Company has also confirmed in its undertaking annexed as Annexure B that the Transferee Company shall ensure statutory compliance of all applicable laws and on sanctioning of the present Scheme, the Transferee Company shall not be absolved from any of its statutory liability in any manner.</p>
<p>Para 4(g) It is stated that the Hon’ble Tribunal may be pleased to direct the petitioner companies involved in the scheme to comply with rule 17(2) of “The Companies (Compromise, Arrangement and Amalgamation) Rules, 2013 with respect to filing of order for confirmation of shceme to be filed in form</p>	<p>The undertaking of the Petitioner Company / Transferor Company to that effect is provided in the affidavit already annexed at Annexure – D. Further, since the present Scheme is for Amalgamation of the Petitioner Company / Transferor Company with the Transferee Company, upon which the Petitioner Company / Transferor Company shall stand dissolved, the Transferee Company has also confirmed in its undertaking annexed as Annexure B that the Transferee Company shall comply with Rule 17(2) of the Companies (Compromise, Arrangement and Amalgamation) Rules 2013 and shall file the order for confirmation of Scheme in form INC-28 with the Registrar of Companies.</p>

<p>INC-28 with the O/o. ROC, by the petitioner company</p>	
<p>Para 4 It is stated that with reference to the Directorate’s letter dated 14.02.2024, issued to the Addl. Commissioner of I.Tax, Hyderabad, till date no reply/comments in the matter has been submitted to this Directorate. Hon’ble Tribunal may be pleased to direct the Petitioner Companies to furnish an undertaking that, if any demand arises from the Income Tax Department with respect to Transferor Companies and Transferee Company, Transferee Company is ready to pay the said statutory dues.</p>	<p>The undertaking of the Petitioner Company / Transferor Company to that effect is provided in the affidavit already annexed at Annexure – D. Further, since the present Scheme is for Amalgamation of the Petitioner Company / Transferor Company with the Transferee Company, upon which the Petitioner Company / Transferor Company shall stand dissolved, the Transferee Company has also confirmed in its undertaking annexed as Annexure B that the Transferee Company shall, if any demand arises from the Income Tax Department with respect to Petitioner Company / Transferor Companies and/or the Transferee Company, pay the said statutory dues.</p>
<p>Para 5(c) It is stated that as per the Balance Sheet as at 31.03.2023, of the transferor</p>	<p>The undertaking of the Petitioner Company / Transferor Company to that effect is contained in the affidavit of undertaking already annexed at <u>Annexure – D</u>.</p>

<p>company it has made investments and availed loans from banks/financial institutions. In this regard, Transferor Company may be directed to furnish an undertaking stating that necessary compliances have been made under section 185/186 of the Companies Act, 2013.</p>	
<p>Para 5(d) Para 22 of the Scheme speak about amendment of object Clause of (Memorandum of Association) of the Transferee Company, but the Scheme is silent about the compliances of Section 13 of the Companies Act, 2013 and filing of requisite E-form is mandatory in nature since to bring the amended object</p>	<p>The Petitioner/Transferor Company has submitted that as per Clause 26 of the Scheme, the Petitioner Company / Transferor Company and the Transferee Company, through mutual consent and acting through their respective Boards, jointly and mutually agreed in writing do all such acts, deeds and things as may be necessary, desirable or expedient for carrying the Scheme into effect. Further, the Transferee Company will, as required, under Applicable Law undertake any filings with the regulatory authorities in order to give formal effect to the provisions of the Scheme. Clause 26 of the Scheme is set out hereinbelow: “26. Removal of Difficulties</p>

Clause in the Memorandum of Association to the MCA Portal. In view of the above, it is prayed to direct the petitioner companies to suitably amend the Scheme.

26.1 The Companies through mutual consent and acting through their respective Boards, jointly and as mutually agreed in writing may:

(a) give such directions (acting jointly) and agree to take steps, as may be necessary, desirable or proper, to resolve all doubts, difficulties or questions arising under this Scheme, whether by reason of any orders of the Competent Authority, under or by virtue of this Scheme in relation to the arrangement contemplated in this Scheme and/or matters concerning or connected therewith or in regard to and of the meaning or interpretation of the Scheme or implementation thereof or in any manner whatsoever connected therewith, or to review the position relating to the satisfaction of various conditions of this Scheme and if necessary, to waive any of those to the extent permissible under Applicable Law; and/or

(b) do all such, deeds and things as may be necessary, desirable or expedient for carrying the Scheme into effect.

26.2 Without prejudice to the other provisions of the Scheme and notwithstanding the vesting of the Undertaking into the Transferee Company by virtue of the Scheme itself, in order (i) implementation of the provisions of the Scheme; and (ii) continued vesting of the benefits, exemptions available to the Transferor Company in favour of the Transferee Company, the Transferee Company may at any time after the coming into effect of this Scheme in accordance with the provisions hereof,

if so required, under the Applicable Law, or otherwise, execute deeds (including deeds of adherence), confirmation or other writings or tripartite agreements with any party to any contract or arrangement in relation to which the Transferor Company has been a party, including any filings with the regulatory authorities in order to give formal effect to the above provisions and to carry out or perform all such formalities or compliances referred to above on the part of the Transferor Company.”

Thus, in light of the above, the Transferee Company has confirmed in its undertaking annexed as Annexure B that it will take all due steps, as will be required, including but not limited to taking all necessary steps under Section 13 of the Companies Act, 2013 and filing of all requisite E-forms with the Registrar of Companies, regarding amendment of the object clause of the Memorandum of Association of the Transferee Company. Thus, no amendment to the Scheme is not required to be carried out, as observed by the RD in its Report.

- The Regional Director filed further report dated 10.04.2024 stating that petitioner company has complied with the observations raised by the Deponent and hence matter may be decided on merits.

15. OFFICIAL LIQUIDATOR’S REPORT:

The Official Liquidator has filed his report, vide OLR No. 12/2024 dated 12.03.2024 stating certain observations at point no.22 of his report. The observations pointed out has been replied by the petitioner companies vide affidavit’s dated 13.03.2024. Further Official Liquidator vide O.L.R.No14./2024, dated 23.04.2024 filed the final report with regard to the paragraph 22(1),(2) and (8) which is stated below as remarks.

Observations of OL	Reply by way of Affidavit	Remarks of OL
<p>22(1) Clause 12.2.8 of Part-II of the Scheme seeks to protect all the employees of the Transferor Company only if they are in service on the Effective Date. Hence, this Hon’ble Tribunal may be pleased to direct the Transferor and Transferee Companies to submit an undertaking to this Hon’ble Tribunal to the effect that there would be no retrenchment of any employees who were in service as on Appointed Date (i.e. 01-04-2023) as well.</p>	<p>Petitioner Company undertakes that until the sanction of the Scheme there would be no retrenchment of any employees who were in service of the Transferor Company as on Appointed Date i.e. 01st April, 2023. The undertaking provided by the Petitioner Company and the Transferee Company are at Annexure – B and Annexure – C, respectively, of the Reply.</p>	<p>No further observations</p>

<p>22(2) That, as per Clause 16.1 of Part-II of the Scheme “Notwithstanding anything to the contrary contained herein, the Transferee Company shall account for the amalgamation of the Transferor Company in its books of accounts in accordance with ‘pooling of interest method’ of accounting as laid down in the Appendix C of Indian Accounting Standards (INDAS) 103- Business Combinations, other accounting principles prescribed under the Companies (Indian Accounting Standard) Rules, 2015 (As amended) notified under Section 133 of the Act and relevant clarifications issued by Institute of Chartered Accountants of India (“ICAI”). Hence, this Hon’ble Tribunal may be pleased to direct the Transferor and Transferee Companies to submit an undertaking to the effect that “they will not deviate from the</p>	<p>The petitioner company undertakes that the accounting treatment, as necessary, of the present Scheme, shall be done in accordance with the Indian Accounting Standards (INDAS) – 103 (Accounting for Amalgamations) – Pooling of Interest Method, and the Transferor Company shall not deviate from the same. The undertaking provided by the Petitioner Company and the Transferee Company are at Annexure – D and Annexure – E, respectively, of the Reply.</p>	<p>No further observation</p>
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<p>provisions of Indian Accounting Standards (INDAS) -103 (Accounting for Amalgamations) – Pooling of Interest Method”.</p>		
<p>22(8) Transferee Company comes in the Jurisdiction of Hon’ble NCLT, Mumbai. Hence Hon’ble Tribunal may sanction the Scheme subject to the orders obtained by Hon’ble NCLT, Mumbai.</p>	<p>It is submitted that this Hon’ble Tribunal had <i>vide</i> order dated 4th January 2024 passed in captioned Company Application No.CA (CAA) No. 65 of 2023 (First Motion Application) filed by the Petitioner Company / Transferor Company, had ordered that no separate application is required to be taken out by the Transferee Company i.e., Tata Steel Limited under Section 230 and 232 of the Companies Act, 2013. The relevant extract of the 4 th January 2024 order is reproduced hereinbelow: “19... (b) We order that no application or proceedings for sanction of</p>	<p>Matter may be decided on merits</p>

	<p>the Scheme under Sections 230 and 232 of Companies Act, 2013 are required to be taken by the Transferee Company separately in the instant matter.”</p> <p>Thus, in light of the same, no separate application is required to be taken out by the Transferee Company.</p>	
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- 16.** We have heard Mr. Krishna Grandhi, learned Senior Counsel and Ms. Tanya Kanwar for the Petitioner Company; and Smt. Kusum Yadav for R.D and Mr. D. Vasant Rao Meshram, Assistant Official Liquidator. Perused the records and other documents placed before us. As regards to the observations pointed out by the Regional Director and compliance filed by the petitioner company, it appears that Petitioner Company undertake to comply the necessary observations whenever required. The Official liquidator had also raised certain observations for which the Petitioner Company filed its reply by way of Affidavit. After hearing the Counsel for the Petitioner Company and considering the material on record, we are of the view that scheme is not opposed to

public interest and the proposed Scheme is in the interests of the Transferor Company, the Transferee Company and their respective shareholders, employees, creditors and all persons concerned. Hence the scheme can be approved with appointed date as 01.04.2023. All the statutory compliances have been made under Section 230 to 232 of the Companies Act, 2013. Hence ordered.

17. ORDER

- (i). The Scheme of Amalgamation is hereby sanctioned with appointed date as 01.04.2023 and shall be binding on all the members, employees, creditors and all other stakeholders of the Petitioner Company/Transferor Company and Tata Steel Ltd./Transferee Company, and all concerned.
- (ii). While Approving the Scheme, we made it clear that this order should not be construed as an order in anyway granting exemption from payment of Stamp Duty, taxes or any other charges, if any, payable in accordance with law or in respect of any permission/compliance with any other requirement which may be specially required under any law.
- (iii). The whole of the assets, property, rights and Liabilities of the Transferor Company shall be transferred without the requirement of any further act or deed to the Transferee Company.

- (iv). We direct the Petitioner company to comply with all the observations pointed out by the Regional Director.
- (v). We direct the Petitioner company to comply with all the observations pointed out by the Official Liquidator.
- (vi). We direct the Petitioner Company to preserve the books of accounts and papers and records and the same shall not be disposed of without the prior permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.
- (vii). We direct the Petitioner Company/Transferee Company to ensure statutory compliance of all applicable laws and also on sanctioning of the present Scheme the Petitioner Companies shall not be absolved for any of their statutory liability in any manner.
- (viii). All the legal proceedings pending by or against the Transferor Company shall be continued by or against the Transferee Company, as provided in the Scheme.
- (ix). We direct the petitioner Company to comply with the observations, if any, with the Income Tax Authorities and other statutory authorities as per law.
- (x). The Transferor Company shall stand dissolved without winding up in accordance with the Scheme.

- (xi). The Petitioner Company is directed to strictly comply with the Accounting Treatment Standards prescribed under Section 133 of the Companies Act, 2013.
- (xii). The sanction of the Scheme by this Tribunal shall not forbid the revenue authority from taking appropriate recourse for recovering the existing and previous tax liabilities of the Transferor and Transferee Companies.
- (xiii). We direct the Transferee Company to comply with the provisions of Section 2 (41) of the Companies Act, 2013.
- (xiv). The Petitioner Company shall until the completion of the Scheme of Amalgamation, file a statement in such form and within such time as prescribed with the Registrar every year duly certified by a Chartered Accountant or a Cost Accountant or a Company Secretary to the effect that the Scheme of Amalgamation is being complied with in accordance with the orders of the Tribunal as required under Section 232 (7) of the Companies Act, 2013.
- (xv). We direct the Petitioner Company involved in the Scheme to comply with Rule 17 (2) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2013. The Petitioner Company/Transferee Company within 30 days after the date of receipt of certified copy of the order, shall cause certified copy to be delivered in Form INC-28 to the Registrar of Companies concerned for registration and on such

certified copy being delivered, Registrar of Companies concerned shall take all necessary consequential action in respect of the Petitioner Company/Transferee Company.

- (xvi). The Petitioner Company is further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Amalgamation under the provisions of the Companies Act, 2013 and submit necessary compliance and undertaking relating to the objections raised by the Regional Director (SER), MCA, GoI, Hyderabad.
- (xvii). All concerned shall act on a copy of this order along with the Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal.
- (xviii). Petitioner/Transferor and Transferee Company shall be at the liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- (xix). Accordingly, the **CP (CAA) 04/230/HDB/2024** is hereby allowed and disposed of.

SD

Charan Singh

Member Technical

Pavani

SD

Dr. Venkata Ramakrishna Badarinath Nandula

Member Judicial