

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

CA (CAA) No. 324/CB/ 2020

In the matter of:

The Companies Act, 2013;

-AND-

In the matter of:

In the matter of application under Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013;

-AND-

In the matter of:

In the matter of Scheme of Arrangement between Jagdamba Power and Alloys Limited ('the Demerged Company') and Godawari Power and Ispat Limited ('the Resulting Company');

-AND-

In the Matter of:

Jagdamba Power and Alloys Limited, a company incorporated under the Companies Act, 1956, having its Registered office at Hira Arcade, Hira Group of Company, New Bus Stand, Raipur, Chhattisgarh;

... .. **APPLICANT / DEMERGED COMPANY**

-AND-

In the Matter of:

Godawari Power and Ispat Limited, a Company incorporated under the Companies Act, 1956, having its Registered Office at Plot No. 428/2, Phase I, Industrial Area, Siltara-493 111, Dist. Raipur, Chhattisgarh.

... .. **APPLICANT / RESULTING COMPANY**

CORAM: 1. Shri Rajasekhar V.K, Member (Judicial)
 2. Shri Satya Ranjan Prasad, Member (Technical)

Counsel appeared:

1. CS Madhuri Pandey, Practicing Company Secretary

Sd

Date of pronouncement of Order: 26.07.2021.

ORDER

Per: Shri Satya Ranjan Prasad, Member (Technical)

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 for orders and directions with regard to conduct the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors in connection with the Scheme of Arrangement ("Scheme") of Jagdamba Power and Alloys Limited, being the Applicant abovenamed ("Demerged Company") with Godawari Power and Ispat Limited, being the Resulting Company abovenamed ("Resulting Company"). The appointed date fixed under the said Scheme is 01.04.2019. A copy of the Scheme of Arrangement has been annexed with the Application as Annexure "24".
2. The applicant companies state that there are no proceedings pending under Section 235 or 250A of the Companies Act, 1956 or the applicable provisions of the Companies Act, 2013 against any of the Applicant Companies. To their knowledge, no winding- up petition (including under Section 433 read with Section 434 of the Companies Act, 1956) and/or Insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 have been instituted against the Applicant Companies.
3. It is further stated that the Board of Directors of the Applicant Companies, at their Board meetings, held on 24.12.2019 and 24.12.2019, respectively, passed a resolution and have approved the draft Scheme of Arrangement subject to approval of regulatory authorities. Copies of the Board Resolutions are annexed with the application and marked as Annexure "6" and Annexure "17" respectively.
4. The share exchange ratio of the Applicant Companies has been fixed on the basis of the Valuation Report dated 23.12.2019 prepared by an independent

Sd

Chartered Accountant and a registered firm, copy whereof is annexed to the application and marked as Annexure "5".

5. The accounting treatments proposed in the Scheme are in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013. The Auditors certificate dated 24.12.2019 issued to the Demerged Company and the Auditors certificate dated 24.12.2019 issued to the Resulting Company, confirming that the accounting treatments proposed in the Scheme are in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 are annexed with the application and marked as Annexure "7" and Annexure "18".
6. The Authorized Representative for the Applicant / Demerged Company submits that there are only Seven (7) Equity Shareholders in the Applicant / Demerged Company and all the Seven (7) Equity Shareholders have given their no objection in the form of consent affidavit and also consented to waive the holding and convening of the meetings of the shareholders of the Applicant /Demerged Company. Auditor's certificates along with the list and the consent affidavits of the Shareholders are annexed to the application and collectively marked as Annexure "8" and Annexure "9".
7. It is stated in the application that the Demerged Company has two secured creditors and 66 unsecured creditors as on 30.06.2020 duly certified by the statutory auditors. The list of the Secured and unsecured creditor along with Auditor's certificates verifying the same are annexed as Annexure "10" and Annexure "11" and Annexure "12" respectively.
8. The Resulting Company has Nineteen Thousand Seventy-Six Hundred (19076) Equity Shareholders as on 30.06.2020.
9. The Resulting Company has nine secured creditors as on 30.06.2020 and 1349 unsecured creditor as on 30.06.2020. The list of the Secured and unsecured creditor along with Auditor's certificates verifying the same are

Sd

annexed to the application and collectively marked as Annexure "21", Annexure "22" and Annexure "23" respectively.

10. Heard Authorized Representative for the applicants and have perused the application and the concerned documents annexed to the application including the said Scheme, the following orders are passed herein:

ORDER

- (a) In view of the consents given in affidavit form by all the equity shareholders of the Demerged Company, the requirement of convening and holding of meetings of the equity shareholders of the Applicant Company No. 1 cum Demerged Company, is dispensed with;
- (b) A physical meeting of the secured creditors of the Demerged Company be convened at Hira Arcade, Hira Group of Companies, New Bus Stand, Pandri, Raipur, Chhattisgarh, on Monday, the 20th September, 2021 at 11.00 a.m., for considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement by either voting in person, or through authorized representative;
- (c) A physical meeting of the unsecured creditors of the Demerged Company be convened at Hira Arcade, Hira Group of Companies, New Bus Stand, Pandri, Raipur, Chhattisgarh, on Monday, the 20th September, 2021 at 11.45 a.m., for considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement by either voting in person, or through authorized representative;
- (d) A physical meeting of the Equity Shareholders of the Resulting Company be convened at Hira Arcade, Hira Group of Companies, New Bus Stand, Pandri, Raipur, Chhattisgarh on Monday, the 20th September, 2021 at 12.30 p.m. for the purpose of considering and, if

Sd

thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement by either voting in person, or through authorized representative;

- (e) A physical meeting of the secured creditors of the Applicant/Resultant Company be convened at Hira Arcade, Hira Group of Companies, New Bus Stand, Pandri, Raipur, Chhattisgarh, on Monday, the 20th September, 2021 at 01.00 p.m., for considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement by either voting in person, or through authorized representative;
- (f) A physical meeting of the unsecured creditors of the Applicant/Resultant Company be convened at Hira Arcade, Hira Group of Companies, New Bus Stand, Pandri, Raipur, Chhattisgarh, on Monday, the 20th September, 2021 at 01.45 p.m., for considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement by either voting in person, or through authorized representative;
- (g) That the quorum for the aforesaid meetings of the equity shareholders, secured creditors and unsecured creditors shall be as prescribed under section 103 of the Companies Act, 2013. In the event no quorum is present within 15 minutes from commencement of meeting then in such event the equity shareholders/ creditors present shall constitute the quorum;
- (h) The Company shall have the option to provide a virtual meeting and online polling/e-voting platform to its concerned shareholders and Creditors via video conferencing or other audio-visual mode (VC/OAVM), on the same day, date and time as directed for the respective physical meetings for the purpose of considering and if

Sd

thought fit, approving, with or without modification, the said Scheme of Arrangement. Such virtual meetings shall be fully compliant with the circulars issued by the Ministry of Corporate Affairs for conducting meetings of shareholders through the virtual platform.

- (i) That at least 30 clear days before the said Meeting of the Equity Shareholders and Creditors of both the Applicant Companies to be held as aforesaid, a notice convening the said Meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, arrangements and amalgamations) Rule, 2016 and the prescribed Form of Proxy, shall be sent by Registered Post or by courier or by speed post or hand delivery or by e-mail to the registered e-mail address to each of the Equity Shareholders/Creditors of the Applicant Companies at their respective registered or last known addresses as per the records of the Applicant Company;
- (j) That At least 30 clear days before the Meeting of the Equity Shareholders and Creditors of both the Applicant Companies to be held as aforesaid, a notice convening the said meeting indicating the place, date and time aforesaid and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230 (3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and that the form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid, be published once each in 'Hitavada' in English and 'Dainik Bhaskar' in Hindi, both circulated in Raipur, Chhattisgarh not less than thirty (30) days before the date fixed for the meeting;
- (k) CS Brajesh R. Agrawal (FCS 5771 CP 5641) of M/s. B. R. Agrawal &

Sd

Associates, Company Secretaries in practice, shall be the Chairman for the aforesaid meetings of both the Applicant Companies or any adjournments thereof at a consolidated remuneration of Rs. 60,000/-;

- (l) The Scrutinizer for all the proposed meetings or any adjournments thereof and for voting on postal ballot and through electronic means or online poll shall be CS Rahul Agarwal (ACS 61842; CP 23142) Practicing Company Secretary, Mobile no. 7873613445 at a consolidated remuneration of Rs. 40,000/-;
- (m) That the voting shall be allowed on the proposed Scheme by voting in person, by proxy or through electronic means. The voting by proxy or authorised representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Corporate Office at first floor, Hira Arcade, Pandri, Raipur, Chhattisgarh not later than, 48 hours before the aforesaid meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- (n) The value and number of the shares of each member shall be in accordance with the books / register of the Applicant Company or depository records and where the entries in the books / register or depository records are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final. The cut-off date for determining the membership shall be 31st May 2021;
- (o) The Chairman to report to this Tribunal, the result of the aforesaid meeting within four weeks of the conclusion of the meeting of the Applicant Company, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises,

Arrangements and Amalgamations) Rules, 2016;

- (p) The Applicant Companies to serve the notice upon the Regional Director, North Western Region, Ministry of Corporate Affairs, Ahmadabad, pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- (q) The Applicant Companies to serve the notice upon the concerned Registrar of Companies, Bilaspur, Chhattisgarh pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- (r) The Applicant Company/Resulting Company to serve the notice of Meeting of the Applicant Company upon the Securities and Exchange Board of India, Mumbai ('SEBI') pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received from SEBI within 30 days, it may be presumed that SEBI has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

Sd

-
- (s) The Applicant Company / Resulting Company to serve the notice of Meeting of the Applicant Company upon National Stock Exchange of India Limited, Mumbai ('NSE') pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received from NSE within 30 days, it may be presumed that NSE has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- (t) The Applicant Company/ Resulting Company to serve the notice of Meeting of the Applicant Company upon the BSE Ltd, Mumbai ('BSE') pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received from BSE within 30 days, it may be presumed that BSE has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- (u) The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction the respective Applicant Company's assessment are made, pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- (v) The Applicant Companies to file an affidavit of service of the directions given by the Tribunal not less than seven days before the date fixed for the hearing of the Petition and do report to this Tribunal that the direction regarding the issue of notices on all the authorities have been duly complied with;
- (w) CA (CAA) No. 324/CB/2020 is disposed of accordingly;

sd

- (x) The Registry is directed to send e-mail copy of the order forthwith to all the parties inclusive of the Counsel;
- (y) Urgent certified copies of this Order, if applied for, may be supplied to the parties upon compliance of all requisite formalities



Satya Ranjan Prasad
Member (Technical)



Rajasekhar V.K.
Member (Judicial)

Signed on this, the 26th day of July 2021.

Ravijeet_P.S.