

(2023) 06 NCLT CK 0055

In the National Company Law Tribunal

Case No : CA (CAA) No.15/Chd/Pb/2023 (1st Motion)

Belco Special Steels Private Limited Vs

Date of Decision : 15-06-2023

Acts Referred:

Companies Act, 2013 — Section 133, 230, 230(3), 230(5), 232, 232(2)(e)
Companies Act, 2019 — Section 102
Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 — Rule 6, 8, 14

Citation : (2023) 06 NCLT CK 0055

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Atul Sood

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. This is a joint first motion application filed by Applicant Companies namely; Belco Special Steels Private Limited (Applicant Company No. 1/Transferor Company No. 1) and Parkash Multimetals Private Limited (Applicant Company No. 2/Transferor Company No. 2) with Behari Lal Ispat Private Limited (Applicant Company No. 3/Transferee Company) under Sections 230-232 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation and Arrangement between the Applicant Companies. The said Scheme is attached as Annexure A-1 of the Application.

2. The Applicant Companies have prayed for dispensing with the requirement of the convening of the meetings of the Equity Shareholders of the Applicant Companies, Preference Shareholders of Applicant Company 1 and Unsecured Creditors of Applicant Company No.2. Further, to convene the meetings of Secured and Unsecured Creditors of Applicant Company No.1 and Applicant Company 3.

3. The Applicant Company 1/Transferor Company 1 is presently engaged inter alia, in the business of manufacture railway wagons, passenger coach railways or roadways, bus body builders, tramway and their components, jigs and fixtures, precision instruments, gas welding plants, paper and cement plants, general purpose and tool room machinery, hardening annealing and tempering furnaces, motor boats, cable and conductors, etc.

4. The Applicant Company 2/Transferor Company 2 is presently engaged inter alia, in the business of manufacture, import, export, process, cast, roll. Draw, forge, trade or to deal in wholesale or retail or to act as commission agents in all kinds and description of iron and steel, etc.

5. The Applicant Company 3/Transferee Company is presently engaged, inter alia, in the business of produce, manufacture, purchase, refine, prepare, alloys turn to account, import, export, sell and generally, deal in iron, copper, steel, tin-lead, zinc, (iron ore, virgin, scrap, alloy semi-manufactured or finished form or otherwise) and for the purpose of which to purchase, acquire, erect and install factories, etc.

6. It is submitted that the registered offices of Applicant Companies are situated in the State of Punjab, therefore, the territorial jurisdiction of Applicant Companies fall with this Bench.

7. The rationale of the Scheme is given below:-

a. Transferor Companies and Transferee Company are engaged in same segment of the business. Hence, under this Scheme, the Amalgamation of the Transferor Companies into the Transferee Company would enable the Transferee Company to consolidate all the business activities pertaining to the said Transferor Companies into one single entity i.e. the Transferee Company. Further, the management of the Transferee Company would be strengthened as the management of the Transferor Companies and the Transferee Company would be clubbed into the Transferee Company, which would thereby ensure effective management of the affairs of the Transferor Companies and Transferee Company subsequent to their amalgamation. The said amalgamation would also result in streamlining the group structure especially by combining all of them into one single entity and would provide several benefits such as easing the regulatory, statutory and compliance requirements of all the companies and would also work to the advantage of the shareholders of the Companies as the said amalgamation would result in rationalizing the costs/expenses incurred.

b. The amalgamation will contribute in furthering and fulfilling the objectives and business strategies of the companies thereby accelerating growth, expansion and development of the respective businesses through the Transferee Company. The amalgamation will thus enable further expansion of the Transferee Company and provide a strong and focused base to undertake the business more advantageously. Further, this arrangement would bring concentrated management focus, integration, streamlining of the management structure,

seamless implementation of policy changes and shall also help to enhance the efficiency and control of the Transferor Companies and Transferee Company.

c. Further, the independent operations of the Transferor Companies and Transferee Company leads to incurrence of significant costs, duplication of administrative & establishment costs and the amalgamation would enable economies of scale by attaining critical mass and achieving cost saving and better financial management of resources. The amalgamation will thus eliminate a multi-layered structure and reduce managerial overlaps, which are necessarily involved in running multiple entities and also prevent cost duplication that can erode financial efficiencies of a holding structure and the resultant operations would be substantially cost-efficient. This Scheme would result in simplified corporate structure of the Transferee Company and its businesses, thereby leading to more efficient utilization of capital and creation of a consolidated base for future growth of the Transferee Company.

d. The Amalgamation of Transferor Companies and Transferee Company will create synergy benefits for the stakeholders of both the companies and it shall optimize the valuation of the consolidated Transferee Company. The amalgamation would also increase operational efficiency and integrate business functions.

e. The proposed arrangement will provide greater integration and flexibility to the Transferee Company and strengthen its position in the industry, in terms of the asset base, revenues and service range.

f. The other benefits of the proposed amalgamation include:

I. Optimum and efficient utilization of financial resources and rationalization of capital, resources, assets and facilities;

II. Enhancement of competitive strengths including financial resources;

III. Obtaining synergy benefits;

IV. Better management and focus on growing the businesses;

V. Reduction of overheads, administrative, managerial and other expenditure.

VI. Simplify the shareholding structure and reduce shareholding tiers.

8. It is stated that the Board of Directors of the Applicant Companies in their meetings held on 06.02.2023 have considered and approved the Scheme of Amalgamation subject to sanctioning of the same by this Tribunal. The copy of the board resolutions of the Applicant Companies are attached as Annexure A-2, Annexure A-8 and Annexure A-14 of the Application.

9. The appointed date of the Scheme is 01.04.2022 as mentioned in the Para 1.3 Part 1 of Scheme of Arrangement for Amalgamation which is attached as Annexure A-1 of the application.

10. It is submitted that the Scheme of Arrangement for Amalgamation (Annexure A-1) also takes care of the interest of the staff/workmen and employees of the Applicant Companies, by virtue of Clause 6 Part II of the Scheme.

11. It is stated that the Applicant Companies have filed the Audited Financial Statements as on 31.03.2022 and Provisional Financial Statements as on 30.09.2022 as Annexure A-7, Annexure A-13 and Annexure A-19 respectively of the application.

12. It is submitted that, the Applicant Companies have filed certificates dated 15.02.2023, 09.02.2023 and 20.02.2023 issued by Statutory Auditors of Applicant Companies certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same are attached as Annexure A-21 of application.

13. It is further submitted that the valuation report has been submitted by an independent Registered Value viz. Corporate Professionals Valuation Services Private Limited having IBBI Registration number IBBI/RV-E/02/2019/106. A copy of the Valuation Report is attached as Annexure A-20 of the Application. As per the said valuation reports dated 01.01.2023, the following share exchange ratio has been proposed in the Scheme:-

"Behari Lal Ispat Private Limited" (Transferee Company) shall issue and allot 380 Equity Shares of Face Value of INR 10/- (INR) each to Equity Shareholders of "Beico Special Steel Private Limited (Transferor Company 1) for every 100 Equity Shares of Face Value of INR 10/- (INR Ten) each held by them in the Transferor Company 1.

"Behari Lal Ispat Private limited" (Transferee Company) shall issue and allot 299 Equity Shares of Face Value of IN 10/- (INR) each to Equity Shareholders of "Parkash Multimetals Private Limited (Transferor Company 2) for every 100 Equity Shares of Face Value Of INR 10/- (INR Ten) each held by them in the Transteror Company 2.

14. It is deposed by way of an affidavit furnished by the authorised representative of the Applicant Companies that apart from the Registrar of Companies (Chandigarh), Regional Director (Northern Region), Official Liquidator (Attached to High Court of Punjab and Haryana) and the Income Tax Department, the Applicant Companies are not regulated or governed by any sector specific regulator. Hence, notice is not required to be served on any Sectoral regulator or Regulatory Authority. It is stated that the Applicant Companies by way of respective Affidavits have deposed by way of affidavits that there are no legal proceedings pending against the Applicant Companies. The aforesaid affidavits have been attached as Annexure A-23 & A-24 of the Application).

15. The applicant companies have furnished the following documents:-

i. Proposed Scheme of Arrangement for Amalgamation (Annexure A-1 of the

application).

ii. Certificate of Incorporation along with Memorandum and Articles of Association of the Applicant Companies (Annexure A-3 , A-9 and A-15 of the application).

iii. List of Equity Shareholders and Preference Shareholders of the Transferor Company No. 1 as on 31.01.2023 alongwith the consent obtained on affidavits (Annexure A-4 of the application).

iv. List of Equity Shareholders of the Transferor Company No. 2 as on 31.01.2023 along with the consent obtained on affidavits (Annexure A-10 of the application).

v. List of Equity Shareholders of the Transferee Company as on 31.01.2023 along with the consent obtained on affidavits (Annexure A-16 of the application).

vi. List of Secured Creditors of the Applicant Companies duly certified by Bansal Jiwan & Associates, Chartered Accountants as on 31.01.2023 (Annexure A-5, A-11 and A-17 of the application).

vii. List of Unsecured Creditors of the Transferor Company 1 duly certified by the Statutory Auditor as on 31.01.2023 (Annexure A-6, A-12 and A-18 of the application).

viii. Certificates of Statutory Auditors dated 15.02.2023, 09.02.2023 and 20.02.2023 to the effect that Accounting treatment proposed in the Scheme is in conformity with Section 133 of the Companies Act, 2013 (Annexure A-21of the application).

ix. Audited Financial Statements as on 31.03.2022 and Provisional Financial Statements as on 30.09.2022 of the Applicant Companies (Annexure A-7, A-13 and A-19 respectively of the application).

x. Affidavit of the Applicant Companies with regard to pending Legal proceedings (Annexure A-23 of the application).

xi. Affidavit of the Applicant Companies with regard to Sectoral Regulator (Annexure A-24 of the application).

16. The Applicant Companies have furnished the details of the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors along with consent on affidavits which is as follow:

Name of

the Applicant Companies

Shareholders along with their consent on affidavits

Creditors along with their consent on affidavits

Equity Shareholder(A)

Consent of (A) with % age

Preference Shareholder(B)

Consent of (B) with % age

Secured

Creditors (C)

Consent of (C)

Unsecured creditors (D)

Consent of (D)

Applicant Company No.1

12

100%

03

100%

02

meeting to be convened

85

meeting to be convened

Applicant Company No.2

12

100%

Nil

NA

Nil

NA

Nil

NA

Applicant Company No.3

28

100%

Nil

NA

meeting to be convened

256

meeting to be convened

17. Accordingly, the directions of this Bench in the present case are as under:-

I. In relation to the Transferor Company No. 1/Applicant Company No.1:

a) The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consents by way of affidavits have been received;

b) The meetings of the Preference Shareholders of Transferor Company No. 1/Applicant Company No.1 is dispensed with as all the preference shareholders have given their consent by way of affidavits;

c) The meeting of the Secured Creditors of the Applicant Company No. 1/Transferor Company No. 1 be convened as prayed for on 12.08.2023 at 10:30 AM through video conferencing, subject to notice of the meeting being issued. The quorum of the meeting of the Secured Creditors shall be 2 in number or 40% in value of the Secured Creditors;

d) The meeting of the Unsecured Creditors of the Applicant Company No.1/Transferor Company 1 be convened as prayed for on 12.08.2023 at 12:30 PM through video conferencing, subject to notice of the meeting being issued. The quorum of the meeting of the Unsecured Creditors shall be 34 in number or 40% in value of the Unsecured Creditors;

II. In relation to the Transferor Company No. 2/Applicant Company No.2:

a) The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consents by way of affidavits have been received;

b) Since, there are no Secured and Unsecured Creditors in the Transferor Company 2/Applicant Company No.2, therefore there is no scope for any meeting.

III. In relation to the Transferee Company /Applicant Company No.3:

a) The meeting of the Equity Shareholders of Transferee Company/Applicant Company No.3 is dispensed with as the consent has been received by way of affidavits.

b) The meeting of the Secured Creditors of the Applicant Company No. 3/Transferee Company be convened as prayed for on 12.08.2023 at 02:30 PM through video conferencing, subject to notice of the meeting being issued. The quorum of the meeting of the Secured Creditors shall be 3 in number or 40% in value of the Secured Creditors;

c) The meeting of the Unsecured Creditors of the Applicant Company No.3/ Transferee Company be convened as prayed for 12.08.2023 at 04:30 PM through video conferencing, subject to notice of the meeting being issued. The quorum of the meeting of the Unsecured Creditors shall be 103 in number or 40% in value of the Unsecured Creditors.

IV. In case the required quorum as noted above for the meetings is not present at the commencement of the meeting, the meeting shall be adjourned by 30 minutes and thereafter the persons present and voting shall be deemed to constitute the quorum.

V. Mr. Amar Vivek Aggarwal, Advocate Address: Sai Sadan, #551, Sector 8B, Chandigarh, 160009 Mobile No. +91 9814027754, 172-2541551, email id: amarvivek551@gmail.com is appointed as the Chairperson for the meetings to be called under this order. An amount of ₹ 1,50,000/- (Rupees One Lakh Fifty Thousand Only) be paid for his services as the Chairperson.

VI. Mr. Sushant Kareer, Advocate, address: House no 262, sector 7-A, Chandigarh, Mobile No. 9855290999, email: kareer.law@gmail.com is appointed as the Alternate Chairperson for the meetings to be called under this order. An amount of ₹ 1,35,000/- (Rupees One Lakh Thirty Five Thousand Only) be paid for his services as the Alternate Chairperson.

VII. Mr. Rattan Lal, Practicing Company Secretary address: 3rd Floor, SCF-14, I-Block Market, Opp. Durga Mata Mandir Sarabha Nagar, Ludhiana – 141001, Mobile No. 82840-00886, email id: rattanchanjotra@gmail.com, is appointed as the Scrutinizer for the above meetings to be called under this order. An amount of ₹ 1,00,000/- (Rupees One Lakh Only) be paid for his services as the Scrutinizer.

VIII. The fee of the Chairperson, Alternate Chairperson and Scrutinizer and other out-of-pocket expenses for them shall be borne by the Applicant Company No.1 & 3 Jointly.

IX. It is further directed that individual notices of the said meetings shall be sent by the Applicant Company No. 1 & 3 to its respective Secured Creditors and Unsecured Creditors through registered post or speed post or through courier or e-mail, 30 days in advance before the scheduled date of the meetings, indicating the day, date and time as aforesaid, together with a copy of the Scheme, copy of the explanatory statement with Share Exchange Ratio as discussed in para 12 of this order as required to be sent under the Companies Act, 2013 and the applicable Rules and any other documents as may be prescribed under the Act shall also be duly sent with the notice.

X. It is further directed that along with the notices, Applicant Companies shall also send, statements explaining the effect of the scheme on the creditors, key managerial personnel, promoters and non-promoter members, etc. along with the effect of the scheme of Arrangement for Amalgamation on any material

interests of the Directors of the Company or the debenture trustees if any, as provided under sub-section (3) of Section 230 of the Act.

XI. That the Applicant Company No. 1 & 3 shall publish an advertisement with a gap of at least 30 clear days before the aforesaid meeting, indicating the day, date and place and the time of the meeting as aforesaid, to be published in "Financial Express" (English) and "Punjabi Jagran" (Punjabi), both in Punjab Edition. The publication shall also indicate that the explanatory statement required to be furnished pursuant to Sections 230 & 232 read with Section 102 of the Companies Act, 2019 can be obtained free of charge at the registered office of the Applicant Companies. The Applicant Companies shall also publish the notice on its website, if any.

XII. Voting shall be allowed on the "Scheme" through electronic means which will remain open for a period as mandated under Clause 8.3 of Secretarial Standards on General Meetings to the Applicant Companies under the Act and the Rules framed thereunder.

XIII. It is also directed that the Un-audited Financial Statements (Provisional) of the Applicant Companies not older than 6 months' from the date of the meeting be also circulated for the aforesaid meeting(s) in terms of Section 232 (2) (e) of the Act.

XIV. The Scrutinizer's report will contain his/her findings on compliance with the directions given in Para VIII to XIII above.

XV. The Chairperson shall be responsible to report the result of the meeting to the Tribunal in Form No. CAA-4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 7 (seven) days of the conclusion of the meeting. The Chairperson would be fully assisted by the authorized representative/Company Secretary of the Applicant Companies and the Alternate Chairperson. The Scrutinizer will assist the Hon'ble Chairperson and Alternate Chairperson in preparing and finalizing the report.

XVI. The Applicant Company No. 1 & 3 shall individually and in compliance with sub-section (5) of Section 230 of the Act and Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA-3 along with copy of the Scheme, Explanatory Statement and the disclosures mentioned in Rule 6 of the "Rules" to (i) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi; (ii) Jurisdictional Registrar of Companies; (iii) the Official Liquidator; (iv) Income Tax Department through the Nodal Officer – Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh by mentioning the PAN number of the Applicant Companies; and to such other Sectoral Regulator(s) governing the business of the Applicant Companies, if any, stating that report on the same, if any, shall be sent to this Tribunal within a period of 30 days from the date of receipt of such notice and copy of such report shall be simultaneously sent to the applicant companies, failing which it shall be presumed that they

have no objection to the proposed Scheme.

XVII. The Applicant Companies shall furnish a copy of the Scheme free of charge within one day of any requisition for the Scheme made by any creditor or member/shareholder entitled to attend the meeting as aforesaid.

XVIII. The authorized representative of the Applicant Company No.1 & 3 shall furnish an affidavit of service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meeting.

XIX. All the aforesaid directions are to be complied with strictly in accordance with the applicable laws including forms and formats contained in the Rules as well as the provisions of the Companies Act, 2013 by the Applicant Companies.

18. With the aforesaid directions, this First Motion Application is allowed and stands disposed of. A copy of this order be supplied to the learned counsel for the Applicant Companies who in turn shall supply a copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer immediately.