

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
CUTTACK

CP (CAA) No.9/CB/2021  
Connected with  
CA(CAA) No.3/CB/2021

*In the matter of:*

The Companies Act, 2013;

-And-

*In the matter of:*

An application under Sections 230 to 232 of the Companies Act, 2013;

-And-

*In the matter of:*

The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

-And-

*In the matter of:*

**Electrosteel Castings Limited (CIN: L27310OR1955PLC000310)**, incorporated under the provisions of the Indian Companies Act, VII of 1913, having its registered office at Rathod Colony, Rajgangpur, Sundergarh, Odisha 770 017, within the jurisdiction.

... Petitioner

*Coram:*

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

*Appearances (through video conferencing):*

For Petitioner : Mr. Ratnanko Banerji, Sr Adv.  
Mr. D N Sharma, Adv.  
Mr. Trivikram Khaitan, Adv.  
Mr. Shounak Mitra, Advocate  
Mr. Saroj Kumar Ray, PCS  
Mr. Shaswat Kr. Rout, Adv.

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**Order reserved on: 03.12.2021**

**Order pronounced on: 09.12.2021**

**ORDER**

*Per: Satya Ranjan Prasad, Member (Technical)*

1. The instant petition filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“**Act**”) for sanction of the Scheme of Amalgamation of Srikalahasthi Pipes Limited (“**Transferor Company**”) with Electrosteel Castings Limited, being the Petitioner abovenamed (“**Transferee Company**”) has come up for final hearing on 3<sup>rd</sup> December, 2021. As per the Scheme, the Transferor Company is proposed to be amalgamated with the Transferee Company from the Appointed Date, viz 1<sup>st</sup> October, 2020 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“**Scheme**”).
2. The registered office of the Transferor Company is situated at Rachagunneri Village, Srikalahasthi Mandal, Chittoor District, Andhra Pradesh: 517641, which is within the jurisdiction of National Company Law Tribunal, Amaravati Bench. As such, the Transferor Company has already filed a suitable application before the National Company Law Tribunal, Amaravati Bench under Sections 230 to 232 of the Companies Act, 2013. The Petition has been heard and orders passed sanctioning the said Scheme of Amalgamation.
3. The Board of Directors of the Transferor Company and the Transferee Company have, at the respective meetings of the Board of Directors of the Transferor Company and the Transferee Company held on 5<sup>th</sup> October, 2020, approved the said Scheme.
4. It is stated in the Petition that the Statutory Auditors of the Transferee Company, Messrs. Singhi & Co, Chartered Accountants have confirmed that

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the accounting treatment contained in the Scheme is in compliance with applicable Accounting Standards specified under Section 133 of the Companies Act, 2013 and other generally accepted accounting principles.

5. It is also stated in the application that the Transferor Company and Transferee Company are under the control of common promoter group. The Transferee Company along with its promoter group of companies are in a position to and do exercise control over the Transferor Company. The Transferor Company and Transferee Company are engaged in the same line of business, i.e., manufacture and sale of ductile iron pipes and both have common economic objective and strategic goals. It would be advantageous to combine the activities and operations in a single company leading to strong capability in effectively meeting future challenges of competitive business environment. Upon the Scheme coming into effect and without further application, act or deed, the shareholders of the Transferor Company (other than for shares already held by the Transferee Company in the Transferor Company), whose name appear in the Register of Members as on the Record Date (as defined in the Scheme), or to their respective heirs, executors, administrators or other legal representatives or the successors-in-title, as the case may be, shall be eligible to receive 59 (fifty nine) fully paid up equity shares of Re. 1/- each of the Transferee Company for every 10 (ten) fully paid up equity shares of Rs. 10/- each of the Transferor Company held by such shareholder. The share certificates, if any, and/or the shares in electronic form representing the shares held by the Transferee Company in the Transferor Company shall be deemed to be cancelled without any further act or deed for cancellation thereof by the Transferee Company and shall cease to be in existence accordingly.
6. The equity shares of the Transferor Company and the Transferee Company are listed on the BSE Limited and the National Stock Exchange of India Limited ("Stock Exchanges"). As per the provisions of Regulation 37 of SEBI

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(Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Listing Regulations”) and in terms of the SEBI Circular no. CFD/DIL3/CIR/2017/21 dated 10 March, 2017 issued by SEBI, as amended, modified or replaced from time to time (“SEBI Circular”), the Transferor Company and the Transferee Company have filed a copy of the Scheme alongwith requisite documents before the said stock exchanges seeking approval from stock exchanges and SEBI, on the proposed Scheme. The Transferor Company and the Transferee Company had also submitted their respective Reports of Audit Committee on the Scheme with the said stock exchanges. The Transferor Company and the Transferee Company have also filed their respective Complaint Reports before the stock exchanges and have also displayed the requisite documents on their respective websites, as per requirements of SEBI Circular. Subsequent to the said filings with the said stock exchanges, the Transferor Company and the Transferee Company have received observation letters both dated 25 February 2021 from the BSE Limited and the National Stock Exchange of India Limited (“Observation Letters”).

7. The Transferor Company and the Transferee Company had filed application before the Competition Commission of India seeking approval for the proposed Amalgamation of the Transferor Company with the Transferee Company. The Competition Commission of India has, vide its Order dated 27 November 2020, granted approval for the said proposed Amalgamation of the Transferor Company with the Transferee Company, which was communicated to the Advocates of the applicant companies vide their letter dated 14 January 2021.
8. In terms of Order dated 26<sup>th</sup> July, 2021 in CA(CAA) No.3/CB/2021, notice convening meetings of equity shareholders, secured creditors and unsecured creditors of the petitioner company was served on the equity shareholders, secured creditors and unsecured creditors of the petitioner company on 9<sup>th</sup>

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August, 2021 (by email). Further, notice was published once in "Financial Express" in English and once in the "Lokakatha" in Odiya in their respective issues dated the 10<sup>th</sup> August, 2021.

9. Further, in compliance with Section 230(5) of the Companies Act, 2013 and the said order dated 26<sup>th</sup> July 2021 made in the said Company Application, notice along with all accompanying documents has been served on the Statutory/Sectoral Authorities, as directed by the said order, namely the Regional Director, Eastern Region, Kolkata, Registrar of Companies, Cuttack, Assessing Officer of the Income Tax Department having jurisdiction of the Transferee Company, SEBI, BSE Limited, National Stock Exchange of India Limited and the Competition Commission of India by email on 9<sup>th</sup> August, 2021 and by registered speed post / hand delivery on 16<sup>th</sup> August, 2021.
10. Pursuant to order dated 26<sup>th</sup> July, 2021 in CA(CAA) No.3/CB/2021, meetings of equity shareholders, secured creditors and unsecured creditors of the Transferor Company were held through video conference under Section 230(1) read with Section 232(1) of the Act on 10<sup>th</sup> September, 2021.
11. It appears from the Chairperson's Reports that the said Scheme had been approved by the requisite majority of the equity shareholders of the Transferee Company and unanimously by the Secured Creditors and Unsecured Creditors of the Transferee Company at the respective meetings.
12. It has been submitted that in terms of Order dated 7<sup>th</sup> October, 2021 and in compliance with Section 230(5) of the Companies Act, 2013, notice along with all accompanying documents was served again on the Statutory/Sectoral Authorities, as directed by the said order, including on the Regional Director, Eastern Region, Kolkata, Registrar of Companies, Cuttack, Assessing Officer of the Income Tax Department having jurisdiction of the Transferee Company, SEBI, BSE Limited, National Stock Exchange of

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India Limited and the Competition Commission of India on 8<sup>th</sup> October, 2021. Affidavits proving service, as aforesaid, have been filed by the Petitioner. However, none of the statutory Authorities, save and except the Regional Director have filed their representation so far.

13. In terms of Rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Notice of Hearing was published in once in the "Business Standard" in English and once in the "Lokakatha" in Odiya. An Affidavit of Compliance has been duly filed by the Petitioner's Advocates.

14. The Regional Director, Eastern Region, Kolkata has filed its Affidavit affirmed on 16<sup>th</sup> November, 2021. In the said Affidavit, the Regional Director has, *interalia*, made the following observations: -

- (a) The valuation report of Rashmi Shah, FCA is based on the report are based on financial information of the companies till 30<sup>th</sup> June, 2020 while the appointed date as per the scheme is 1st October, 2020;
- (b) the petitioner company should undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013;
- (c) the transferee company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the transferor company;
- (d) the Scheme envisages that the accounting treatment shall be according to pooling of interest method. Paragraph 19.1 of the Scheme provides that the assets and liabilities shall be transferred at carrying values. IND-AS 103 pooling of interest method is allowed only in case of merger of common control entities. The transferor company, in its latest filed Annual Return as at 31<sup>st</sup> March 2021 has shown that the promoter group holds 48.15% shares and the transferee company holds 41.33% shares in the transferor company. Hence, the companies are apparently not in

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common control. As such, the Accounting Treatment (pooling of interest method) as envisaged in the Scheme is not in line with IND-AS 103.

- (e) the petitioner company should undertake that the Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Companies Act, 2013 in meetings duly held in terms of Section 230(1) read with sub-sections (3) to (5) of Section 230 of the Act and Minutes thereof are duly placed on record;
- (f) the petitioners should file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and no discrepancy or change is made;
- (g) the petitioners, under the 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 and approval of the Tribunal should not deter such authorities to deal with any of the issues arising after giving effect to the Scheme;
- (h) In paragraph 4.1 and 9 of the Scheme it has been stated that all assets and properties and liabilities, whether or not recorded in the books of accounts of the transferor company shall constitute the undertaking which shall be transferred to the transferee company. Therefore, the Scheme goes beyond the Accounting Standard and principles of accounting, since all assets and liabilities envisaged to be transferred may include assets not recorded in the books of account hence their transfer at "carrying" value is not possible, there being no "carrying value" of such assets in the books of accounts of the transferor company.
- (i) The "No Objection" of National Stock Exchange of India Limited and BSE Limited, both dated 25.02.2021 is valid for six months from the date of the said letters;

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- (j) As per instructions of Ministry of Corporate Affairs, New Delhi, copy of the Scheme was forwarded to the Income Tax Department on 1.10.2021 for their views / observations which are still awaited.

15. The petitioner company has filed their Rejoinder Affidavit duly affirmed on 17<sup>th</sup> November, 2021. In the said Affidavit, the petitioner has stated as under:

- (a) In the instant case the valuer has taken 30th June, 2020 as the base figure for computation of figures and thereafter made necessary adjustments of any changes or deviation in figures till the date preceding the Appointed Date to derive at the exchange ratio of shares. The exchange ratio of shares have been prepared by the registered valuer as per the prescribed parameters and generally accepted accounting principles and those applicable to determination of exchange ratio of shares. Further, Ashika Capital Limited, SEBI Registered Merchant banker has further certified that the share exchange ratio is fair to the shareholders of transferor company and the transferee company, which has been annexed to the Company Petition and marked "W" thereto.
- (b) The petitioner company has undertaken to comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013 in so far as payment of fees on merger of authorized share capital of the transferor company with the transferee company is concerned.
- (c) The petitioner company has undertaken to make payment of stamp duty as may be applicable for transfer of the immovable properties of the transferor company to the transferee company under the said scheme of amalgamation.
- (d) Mr Mayank Kejriwal is the Managing Director of the Transferor Company as also the Joint Managing Director of the Transferee Company and is entrusted with substantial powers of management of the affairs of both the companies.

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Mrs. Priya Manjari Todi, Non-Executive Director of the Transferor Company is the daughter of said Mr Mayank Kejriwal. Further, Mr Ashutosh Agarwal, director of the Transferor Company is the Chief Financial Officer of the Transferee Company. Mr. Rajkumar Khanna, the Chairman of the Transferor Company is also a director on the Board of the Transferee Company. Going by this, 4 out of 7 number of directors on Board of the Transferor Company were "related party" of the Transferee Company and the Transferee Company controls the Board of the Transferor Company. Also, all policy decisions of the Transferor Company are carried out by the Transferee Company. Hence, the Transferor Company is controlled by the Transferee Company and the promoter group of the Transferee Company exercises control over the Transferor Company. Further, the pooling of interest method as prescribed in Appendix C of IND-AS 103 is applicable in cases where the involved entities are ultimately controlled by same party both before and after the business combination which is applicable in instant case. As per Paragraph 6 of Appendix C of IND AS 103, it is not necessary for combining entities to be included as part of the same consolidated financial statements for a business combination to be regarded as one having entities under common control. As such, common control accounting is applicable in the instant case. Further, Singhi & Co, Chartered Accountants, statutory auditors of the Transferee Company have confirmed that the Accounting treatment as prescribed in the Scheme is in compliance with SEBI Regulations and Circulars issued thereon and applicable Accounting Standards in terms of the provisions of Sections 230 and 232 of the Companies Act, 2013 notified by the Central Government under Section 133 of the Companies Act, 2013 read with Rules made thereunder and other Generally Accepted Accounting Principles, as applicable, a copy whereof has been enclosed in the Company Petition

- (e) The equity shareholders of the transferee company have approved the Scheme by requisite majority and the secured

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creditors and unsecured creditors of the transferee company have unanimously approved the said Scheme at the respective meetings held on 10<sup>th</sup> September, 2021. The Chairman of the said meetings, duly appointed by this Hon'ble Tribunal has filed his reports of the said meetings including the Minutes of the meetings before this Hon'ble Tribunal, copies whereof have been annexed to the Confirmation Petition and marked "M", "N" and "O" thereto respectively.

- (f) The petitioner company has stated that the Scheme of Amalgamation enclosed with the Company Application and the Company Petition are one and the same and there is no discrepancy or change made in the said Scheme.
- (g) Notice has been served on all the statutory authorities as required under Section 230(5) of the Companies Act, 2013 on 13<sup>th</sup> August, 2021 and again on 8<sup>th</sup> October, 2021 pursuant to Orders dated 26<sup>th</sup> July, 2021 and 7<sup>th</sup> October, 2021 respectively. The petitioner company and/or its Advocates have not received any observation or objection from any other authority, other than the Regional Director. Further, the petitioner company and the transferee company have received Observation Letters from all the stock exchanges in which their shares are listed and have also received approval from the Competition Commission of India, copies whereof have been annexed to the Company Petition and marked "P" and "Q" thereto.
- (h) All the assets and liabilities as appearing in the books of accounts of the transferor company as on the date preceding the Appointed Date will get transferred to the transferee company at the carrying values. The transfer will also include intangible assets and rights and entitlements of the transferor company, which are not recorded in the books of accounts. All transfers will take place at books values and the transfer will not involve any regularization of assets or transfer of assets not appearing in the books of accounts of the transferor company, other than the intangible assets,

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which do not appear in the books of a company. Thus, there is no defect in the Scheme.

- (i) The Company Application, being C.A.(CAA) No.3/CB/2021 was filed on May 6, 2021, which is within six months from the date of receipt of observation letters of the stock exchanges.
- (j) notice has been sent to the income tax authorities on 13<sup>th</sup> August, 2021 and again on 8<sup>th</sup> October, 2021 pursuant to Orders dated 26<sup>th</sup> July, 2021 and 7<sup>th</sup> October, 2021 respectively. However, no intimation has been received from the said authorities. As such, it is presumed that the income authorities have no objection to the said Scheme.

16. In view of the aforesaid, the petitioner company has prayed for sanction of the Scheme and passing of orders as mentioned in the Confirmation Petition.

17. It has been further submitted that despite publication of notice of hearing in newspapers in Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016, no other person has filed any opposition or objection before this Tribunal in the instant matter.

18. Considering the aforesaid factual position of the present case for sanctioning of the Scheme of Amalgamation, it seems that all statutory compliances have been fulfilled. Therefore, the Petition filed is made absolute in terms of prayers made in the Petition. We therefore pass orders, sanctioning the Scheme of Amalgamation as annexed to the Petition and pass orders in terms of prayers (a) to (g) of the said petition, which are reproduced below:

- (a) The Scheme of Amalgamation of Srikalahasthi Pipes Limited with Electrosteel Castings Limited as mentioned in paragraph 1 of this petition and annexed, being Annexure "A" hereto be sanctioned by this Hon<sup>ble</sup> Tribunal so as to be binding with effect from the 1<sup>st</sup> day of October 2020 on the Petitioner and its shareholders and creditors and all

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concerned;

- (b) All the properties, rights, interests and powers of Srikalahasthi Pipes Limited be transferred to and vest without further act or deed in Electrosteel Castings Limited and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 be transferred to and vest in Electrosteel Castings Limited for all the estates and interests of Srikalahasthi Pipes Limited therein, but subject nevertheless to all charges now affecting the same;
- (c) That all the employees of the Transferor Companies in Service, if any, on the date immediately preceding the date on which the scheme takes effect, i.e., the effective date shall become the employees of the Transferee Company on such date without any break or interruption in service and upon terms and conditions not less favourable than those subsisting in concerned Transferor Company on the said date;
- (d) All the debts, liabilities, duties and obligations of Srikalahasthi Pipes Limited, be transferred without further act or deed to Electrosteel Castings Limited and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013 be transferred to and become the debts, liabilities, duties and obligations of Electrosteel Castings Limited;
- (e) All legal proceedings and/or suits and/or appeals, complaints etc. now pending by or against Srikalahasthi Pipes Limited be continued by or against Electrosteel Castings Limited;
- (f) Leave is granted to Electrosteel Castings Limited to file the Schedule of Assets of Srikalahasthi Pipes Limited within three weeks from the date of the order to be made herein
- (g) Electrosteel Castings Limited within 30 days after the date of the order to be made herein cause a certified copy thereof to be filed with the Registrar of Companies, Cuttack;
- (h) That the Transferor Companies shall be dissolved without

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IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

CP (CAA) No.9/CB/2021

Connected with

CA(CAA) No.3/CB/2021

*In re: Electrosteel Castings Limited*

winding up from the date of filing of the certified copy of this order with the Registrar of Companies, Odisha, Cuttack and the Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on the file kept by him in relation to the transferee company and the files to the said transferee company and Transferor Companies shall be consolidated accordingly;

- (i) Any person interested shall be at liberty to apply to this Tribunal in the above matter for such directions as may be necessary.

19. The Petitioner shall supply legible print out of the scheme and the schedule of assets in acceptable form to the Registry and the Registry will append such printout, upon verification, to the certified copy of the order.

20. Company Petition No. C.P (CAA) No.9/CB/2021 is hereby disposed of accordingly.

21. Urgent certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.



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**Satya Ranjan Prasad**  
Member (Technical)



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**P. Mohan Raj**  
Member (Judicial)

Signed this 9<sup>th</sup> day of December, 2021.

Ravijeet\_P.S.