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27<sup>th</sup> March, 2019

The Listing Department National Stock Exchange of India Ltd. Exchange Plaza Plot No.C/1, G. Block Bandra-Kurla Complex Bandra (E) Mumbai-400051 <b>Stock Symbol &amp; Series : IMFA, EQ</b>	The Deputy General Manager (Corporate Services) BSE Limited Floor 25, P.J. Towers Dalal Street , Fort Mumbai-400001 <b>Stock Code : 533047</b>
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**Sub: Order of Hon'ble National Company Law Tribunal, Cuttack Bench in the matter of Sections 230 to 232 of the Companies Act, 2013 read with the relevant rules**

Sir/ Madam,

Pursuant to Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, we wish to inform you that the Hon'ble National Company Law Tribunal, Bench at Cuttack has passed an order (enclosed herewith) on March 26, 2019, approving the scheme of amalgamation amongst Indian Metals & Carbide Limited (Transferor Company No. 1), B. Panda and Company Private Limited (Transferor Company No. 2) and Indian Metals and Ferro Alloys Limited (Transferee Company) and their respective shareholders and creditors ("**Scheme**") under Sections 230 to 232 of the Companies Act, 2013 read with the relevant rules.

This may kindly be taken on record.

Yours sincerely,

**For Indian Metals & Ferro Alloys Ltd.**

  
**(Prem Khandelwal)**  
**CFO & Company Secretary**

**Encl: As above.**

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

**CP(CAA)No.1483/CTB/2018  
Connected with  
CA(CAA)No. 566/CTB/2018**

**Coram : Shri M.B Gosavi, Hon'ble Member (J)**

**In the matter of**

A petition for sanction of Scheme of Amalgamation made under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations Rules), 2016

And

**In the matter of**

Scheme of Amalgamation

And

**In the matter of**

1. **Indian Metals & Carbide Limited**, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at IMFA Building, Bomikhal, Rasulgarh, Bhubaneswar – 751010 in the State of Orissa within the aforesaid jurisdiction.

Transferor Company No. 1

Sd/

And

2. **B. Panda and Company Private Limited**, a private company incorporated under the provisions of the Companies Act, 1956, having its registered office at IMFA Building, Bomikhal, Rasulgarh, Bhubaneswar – 751010 in the State of Orissa within the aforesaid jurisdiction.

Transferor Company No. 2

And

3. **Indian Metals and Ferro Alloys Limited**, a public company incorporated under the provisions of the Companies Act, 1956, having its registered office at IMFA Building, Bomikhal, Rasulgarh, Bhubaneswar – 751010 in the State of Orissa within the aforesaid jurisdiction.

Transferee Company

And

1. Indian Metals & Carbide Ltd.
  2. B. Panda and Company Pvt. Ltd.
  3. Indian Metals and Ferro Alloys Ltd.
- } Petitioners

### **COUNSELS ON RECORD FOR THE PETITIONERS**

1. Mr. Pawan Sharma, Advocate
2. Mr. Sumit Garg, Advocate

Date of pronouncement of Order: 26<sup>th</sup> day of March, 2019

Sd

## ORDER

Per Shri M.B. Gosavi, Member (J)

1. This is a joint petition to ultimately obtain sanction of the Hon'ble Tribunal to the proposed Scheme of Amalgamation relating to amalgamation of Indian Metals & Carbide Limited (“**IMCL/ Transferor Company No. 1**”) and B. Panda and Company Private Limited (“**BPCO**”/ “**Transferor Company No. 2**”) into Indian Metals and Ferro Alloys Limited (“**IMFA**”/ “**Transferee Company**”) where all the assets, properties, rights and claims whatsoever of transferor companies and their entire undertaking together with all rights and obligations relating thereto are proposed be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the Scheme of Amalgamation (“**Scheme**”), a copy where of is annexed and marked as “**Exhibit 1**” (**Pg: 77-106 Vol.: I**) to the petition.
2. It is further stated in the petition that the amalgamation of IMCL and BPCO respectively into IMFA is being envisaged with a view to consolidate business of IMCL into IMFA and rationalize and streamline the ownership structure of IMFA (**Para 24 Pg: 33 Vol. I**).
3. It is stated in the petition that IMCL is an unlisted public limited company and is a wholly owned subsidiary of the Transferee Company (**Para 2 Pg: 22 Vol. I**).
4. It is stated in the petition that BPCO is a private limited company and holds 51.59% of the entire issued, subscribed and paid-up share capital of the Transferee Company (**Para 9 Pg: 26 Vol. I**).

5. It is stated in the petition that IMFA is a listed public limited company and its equity shares are listed on National Stock Exchange of India Limited and BSE Limited (**Para 17 Pg: 29-30 Vol. I**).
6. The board of directors of the Petitioners, have at their respective meetings, by resolutions passed unanimously, approved the proposed Scheme.
7. It is stated in the petition that the liability of the creditors of any of the Petitioners, under the Scheme, is neither being reduced nor being extinguished. Accordingly, no creditors of the Petitioners would in any way be adversely affected by the Scheme. (**Para 37-39 Pg: 43-47 Vol. I**).
8. It is stated in the petition that there is neither any investigation instituted and/ or pending nor any proceeding pending against the Petitioners under the Companies Act, 2013 or under the corresponding provisions of the Companies Act, 1956 (**Para 34 and 35 Pg: 43 Vol. I**).
9. It is further submitted that the sanctioning of the Scheme will not prejudicially affect any Petitioner and their respective shareholders and creditors nor will any public interest in any manner be adversely affected (**Para 70 Pg: 59 Vol. I**).
10. It is also stated in the petition that IMFA has obtained a certificate from its statutory auditor to the effect that the accounting treatment contained in the Scheme is in compliance with the applicable Accounting Standards as specified under the provisions of Section 133 of the Companies Act, 2013 read with relevant rules made thereunder. A copy of the said certificate is annexed and marked as "**Exhibit 23 (Pg: 351-353 Vol. I)**" to the petition.

11. By an order dated July 12, 2018 passed in Company Application (CAA) No. 566/KB/2018, NCLT, Kolkata waived convening of separate meetings of the unsecured creditors and equity shareholders of IMCL and BPCO for the purpose of considering and if thought fit for approving with or without modification, the said Scheme in view of the written consents obtained from all the equity shareholders and unsecured creditors of IMCL and BPCO. NCLT, Kolkata further directed that since there are no secured creditors in IMCL and BPCO, the convening and holding of a separate meeting of the secured creditors of IMCL and BPCO does not arise. NCLT, Kolkata further directed convening and holding of separate meetings of the secured creditors, unsecured creditors and equity shareholders of IMFA on September 4, 2018 for the purpose of considering and if thought fit for approving with or without modification, the said Scheme.
12. In terms of the order dated July 12, 2018, passed by NCLT, Kolkata, separate meetings of secured creditors, unsecured creditors and equity shareholders of IMFA were duly convened and held on September 4, 2018 at 10:30 a.m., 11:30 a.m. and 12:30 p.m. respectively at Indian Metals and Ferro Alloys Limited, AGM Hall, IMFA Building, Bomikhal, Rasulgarh, Bhubaneswar- 751010, Odisha. The composite advertisement of notices of meetings was also published in the Business Standard (English language daily, Odisha edition) and Pragativadi (Oriya language daily, Odisha edition) on August 3, 2018. Copy of the Chairperson's Affidavit of Service dated August 24, 2018 filed in terms of order of NCLT, Kolkata is annexed and marked as "**Exhibit 32 (Pg: 847-852 Vol. II)**" to the petition. Copy of the Chairperson's Reports dated September 18, 2018 filed in terms of order of NCLT, Kolkata on the result of the meeting of secured creditors, unsecured creditors and equity shareholders of IMFA is annexed and marked as "**Exhibits 34 (Pg: 857-872 Vol. II), 36 (Pg: 877-896 Vol. II) and 39 (Pg: 945-1003 Vol. II)**" respectively to this petition. On perusal of the reports filed by the Chairperson appointed by NCLT, Kolkata, it appears



that the equity shareholders, unsecured creditors and secured creditors of Transferee Company have approved the said Scheme by requisite majority.

13. Further, in terms of the order of NCLT, Kolkata, each of the Petitioners served separate notices upon: (a) Central Government through the office of the Regional Director (Eastern Region), Ministry of Corporate Affairs (MCA), (b) Registrar of Companies, Cuttack, Odisha, (c) Income Tax Department having jurisdiction over the petitioner companies, (d) Official Liquidator, Cuttack, Odisha, (e) Securities and Exchange Board of India (in case of Transferee Company only), (f) NSE (in case of Transferee Company only), (g) BSE (in case of Transferee Company only) but till now no copy of representation/ report has been received from any of the above mentioned statutory authorities except from the Regional Director (Eastern Region) and Official Liquidator, Cuttack. Copy of the notices served on the aforementioned statutory authorities in terms of order of NCLT, Kolkata is annexed and marked as “**Exhibit 40 (Colly) (Pg: 1004-1027 Vol. II)**” to the petition.

14. Pursuant to the order dated November 14, 2018 passed by NCLT, Kolkata, the respective Petitioners, *inter alia*, directed to again serve notices upon: (a) Central Government through the office of the Regional Director (Eastern Region), MCA, (b) Registrar of Companies, Cuttack, Odisha, (c) Income Tax Department having jurisdiction over the petitioner companies, (d) Official Liquidator, Cuttack, Odisha, (e) Securities and Exchange Board of India (in case of Transferee Company only), (f) NSE (in case of Transferee Company only), (g) BSE (in case of Transferee Company only). In compliance with the order dated November 14, 2018, all the Petitioners served a notice of the petition, along with the relevant documents, again on the said statutory authorities. Further, notice of hearing of the petition was also published by the Petitioners in the Business Standard (English language daily, Odisha edition) and Pragativadi (Odia language daily,

Odisha edition) on December 20, 2018. An affidavit of service in respect of compliance with the directions of the order dated November 14, 2018 was filed by all the three Petitioners with NCLT, Kolkata on December 24, 2018.

15. Upon receipt of the notice from the Petitioners, the Official Liquidator, Cuttack has filed its report dated December 7, 2018 wherein the Official Liquidator has stated that as per the available records it has not received in the recent past any
16. complaint including against the Scheme and there is no inquiry, inspection and investigation conducted/ pending by this office against the transferor companies.
17. Upon receipt of the notice, the Regional Director, has filed an affidavit dated January 3, 2019, *inter-alia*, making the following observations:

“2(a) That it is submitted that on examination of the report of the Registrar of Companies, Odisha it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation, and the companies are also updated in filing their statutory returns.

(b) It is submitted that the Transferee Company may be directed to pay the applicable stamp duty for the transfer of the properties by virtue of the scheme.

(c) It is submitted that the BPCO did not disclose the requisite particulars in form AOC-1 in respect of its step down subsidiary, IMFA and several other companies in its financial statement for 2017-18. Therefore, the company made irregular filing of its financial statement in the public domain in the MCA portal contrary to the provisions of Section 137 and 129 of the Companies Act, 2013. BPCO should file the proper financial statement complying with the provisions of section 131 of the Companies Act, 2013. Once the merger takes place, BPCO shall not be in a position to file the said





financial statement and the MCA portal would continue to host the defective financial statement.

(d) It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 31.08.2018 with a request to forward their comments/observations/objections, if any, on the proposed Scheme of Amalgamation within 15 days, and no reply has been received by this Directorate from the said Authority till date.”

18. In response to the said affidavit of the Regional Director, the Petitioners and BPCO filed a joint reply and an additional affidavit respectively with NCLT, Kolkata in respect of the observations of the Regional Director.

19. Further, upon receipt of the joint reply of the Petitioners and an additional affidavit of BPCO, the Regional Director, has filed an affidavit dated February 18, 2019, *inter-alia*, making the following observations:

“2(a) That it is submitted that on examination of the rejoinder filed by the petitioner companies, in clause 4, the Transferee Company undertakes to pay the stamp duties as per the provisions of the applicable laws, and the same may be considered by the Hon’ble Tribunal.

(b) It is submitted that in the contentions made in clause 5 of the rejoinder it is admitted the lapse made in filing of the financial statement of the transferor company, B. Panda and Company Private Limited. But fact remains that the said company has refrained from filing correct set of financial statement with the correct AOC-1 although under extent law the company is free to do so. No reason has been furnished in the Rejoinder in this regard. Unless the Transferor Company files the correct set of financial statement with Registrar of Companies the public domain MCA website would continue to host the

defective set of financial statement and once merged the Transferor Company would be beyond the requirement of filing the revised/corrected set of financial statement. Regarding the submission of petitioner that corrected AOC-1 was filed by additional attachment to AOC-4 on 05.01.2019 the matter was checked but the technical service provider for this deponent could not find the said document as having filed. Hence it is prayed that petitioner may be directed to provide the SRN against which the additional attachment to AOC-4 for 2017-18 was filed to enable this deponent to verify the matter.”

20. In response to the said affidavit of the Regional Director dated February 18, 2019, BPCO filed a reply with NCLT, Kolkata in respect of the observations of the Regional Director which has been taken on record. In the said reply BPCO has stated that after receipt of copy of the said affidavit dated February 18, 2019 of the Regional Director, BPCO has filed corrected AOC-1 as an attachment to e-Form GNL-2 on February 20, 2019 (**Pg: 9-21 of the reply dated February 22, 2019 filed by BPCO with NCLT, Kolkata on February 25, 2019**) which has been accepted by the MCA by its e-mail dated February 20, 2019 (**Pg: 22 of the reply dated February 22, 2019 filed by BPCO with NCLT, Kolkata on February 25, 2019**) and hence this observation now stands resolved.

21. Further, upon receipt of the joint reply of the Petitioners and an additional affidavit of BPCO, the Regional Director, has filed an affidavit dated February 26, 2019, *inter-alia*, making the following observations:

“2(a) That it is submitted that on examination of the rejoinder filed by the petitioner companies, in clause 2 it is stated that the petitioner company has filed a revised GNL-2 form along with the corrected form AOC-1 for the financial year 2017-18 on 20.02.2018, and also stated that the inadvertent mistake has been rectified and the same may be considered by the Hon’ble

Tribunal. The said contention is not in order since the revised form AOC-1 is required to be filed as an attachment to form AOC-4 not form GNL-2. Therefore, the filing is flawed and is not in accordance with the norms.”

22. In response to the affidavit of the Regional Director dated February 26, 2019 and in compliance with the order dated February 27, 2019 passed by NCLT, Kolkata, BPCO has filed an additional affidavit on March 18, 2019 wherein BPCO has stated that it has filed corrected e-Form AOC-4 (Standalone) and e-Form AOC-4 (CFS) for the financial year 2017-18 bearing SRN H47093448 (**Pg: 8 of the additional affidavit dated March 14, 2019 filed by BPCO with this Tribunal on March 18, 2019**) and SRN H47100334 (**Pg: 50 of the additional affidavit dated March 14, 2019 filed by BPCO with this Tribunal on March 18, 2019**) respectively with MCA on March 13, 2019. It is further stated that the corrected e-Form AOC-4 (Standalone) and e-Form AOC-4 (CFS) have been approved by MCA *vide* its e-mail dated March 13, 2019 (**Pg: 121-122 of the additional affidavit dated March 14, 2019 filed by BPCO with this Tribunal on March 18, 2019**) and hence this observation now stands resolved.
23. The income-tax department in spite of the notice has not submitted any observation/ comment on the Scheme.
24. Further, despite publication of notices of hearing in newspapers in Form NCLT 3A of the National Company Law Tribunal Rules, 2016, no other person has filed any opposition or objection before this Tribunal.
25. Heard the arguments of the Ld. Counsel for the Petitioners and the Ld. Joint Director, Office of the Regional Director (Eastern Region), MCA.

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26. Now, after filing the petition before this Tribunal and perusing the documents submitted by the Petitioners, it is ordered as follows:

- (a) The Scheme of Amalgamation is sanctioned to be binding on the Petitioners and their respective shareholders and creditors and all concerned;
- (b) All the property, rights and powers of the transferor companies, including those mentioned in the Schedule of Assets, be transferred, without further act or deed to the Transferee Company and, accordingly, the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the estate and interest of the transferor companies therein, but subject nevertheless to all charges now affecting the same;
- (c) All the debts, liabilities, duties and obligations of the transferor companies be transferred without further act or deed to the Transferee Company 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 the Transferee Company;
- (d) All proceedings and/ or suits and/ or appeals now pending by or against the transferor companies be continued by or against the Transferee Company;
- (e) Leave is granted to the Petitioners to file the Schedule of Assets of the transferor companies within four weeks from the date of this order;
- (f) The transferor companies and the Transferee Company do within 30 days after the date of this order, cause a certified copy of the order to be delivered to the Registrar of Companies, Cuttack for registration;


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- (g) The authorized share capital of the transferor companies be merged with the authorized share capital of the Transferee Company without any further act or deed on the part of the Petitioners and without payment of any further fees and it shall not be necessary for the Transferee Company to hold any general meeting of its shareholders for the purpose;
- (h) The transferor companies be dissolved without winding up from the date of filing of the certified copies of this order with the Registrar of Companies, Cuttack by the Petitioners;
- (i) The Registrar of Companies, Cuttack upon receiving such certified copies of this order, is directed to place all documents relating to the transferor companies and register with him, on the file kept by him in relation to the Transferee Company and the files relating to the transferor companies and the Transferee Company shall be consolidated accordingly;
- (j) Any person interested shall be at liberty to apply before this Tribunal in the above matter for such directions as may be necessary.

In the event the Petitioners supply legible computerized printouts of the Scheme and Schedule of Assets in acceptable form to the department, the department will append such computerized printout, upon verification to be certified copy of the order without insisting on a hand-written copy thereof.

Sd

The Company Petition C.P. (CAA) No. 1483/CTB/2018 connected with C.A (CAA) No. 566/CTB/2018 is hereby disposed of.

  
**M.B. Gosavi**  
**Member (Judicial)**

Signed on this, the 26<sup>th</sup> day of March, 2019

***Shailen (Steno)***