

NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
Court 2

Free of Cost Copy

CA(CAA) 80 of 2020

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 28.04.2021

Name of the Company: Arcelor Mittal India Pvt. Ltd.
AM Associates India Pvt. Ltd.
Arcelor Mittal Nippon Steel India Ltd.

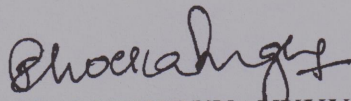
Section 230-232 of the Companies Act, 2013.

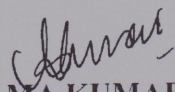
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER
(through video conferencing)

None appeared on behalf of Applicant.

The order is pronounced in the open court vide separate sheet.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 28th day of April, 2021



NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH

COMPANY APPLICATION (CAA) NO. 80 / NCLT/ AHM/2020

IN THE MATTER OF:

ArcelorMittal India Private Limited

A company registered under
the Companies Act, 1956
having its registered office at
office no. 126, 101-104, GCP Business
Centre, opp. Memnagar Fire Station,
Vijay Cross Road, Memnagar,
Ahmedabad- 380014, Gujarat. Applicant Company No.
1/TransferorCompany/

AM Associates India Private Limited

A company registered under the
Companies Act, 2013 having its
Registered office at Chalet No. 29,
Paragraph, B Wing, 17th Floor, Moondeal
Heights, Nr. Novotel Hotel, SG Highway,
Ahmedabad- 380015, Gujarat. ... Applicant Company No.
2/ Transferee
Company

ArcelorMittal Nippon Steel India Limited

A Company registered under
the Companies Act, 1956 having
its Registered office
at AMNS House, AMNS
Township, 27th KM, Surat-Hazaria,
Surat-394270, Gujarat. Applicant Company No. 3/
Amalgamated Company

Order delivered on 28.04. 2021.

Coram:

Hon'ble Ms. Manorama Kumari, Member Judicial

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member Technical



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Appearance:

Mr. Mihir Thakore, learned Senior Advocate, Mr. Navin Pahwa, learned Senior Advocate appearing with Mr. Nirag Pathak, Advocate and Mr. Tarun Dua, Advocate, for the Applicant Companies.

ORDER

[Per: Ms. Manorama Kumari, Member (Judicial)]

1. The instant Company Application is filed by three Applicant Companies under Sections 230 to 232 read with Section 66 of the Companies Act, 2013 (hereinafter referred to as '**the Act**') and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (hereinafter referred to as '**the Rules**'), more particularly as per Rule - 3(2) of the Rules.
2. The proposed scheme is a composite Scheme of Arrangement by and amongst, ArcelorMittal India Private Limited ('**Applicant Company No. 1**'/ '**Transferor Company**'/ '**Amalgamating Company**', as the context may permit), AM Associates India Private Limited ('**Applicant Company No. 2**'/ '**Transferee Company**', as the context may permit) and ArcelorMittal Nippon Steel India Limited ('**Applicant Company No. 3**'/ '**Amalgamated Company**', as the context may permit) (collectively referred as '**Applicant Companies**') and their respective shareholders whereby, the Transferred Undertaking (as defined under the scheme) of the Applicant Company No. 1 gets transferred from and vests into the Applicant Company No. 2 herein along with, reduction of Equity Share Capital of the Applicant Company No. 1 and simultaneously, the Applicant



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Company No. 1 comprising of the Residual Business Undertaking (as defined under the Scheme) amalgamates into and with the Applicant Company No. 3 ("Scheme"), as provided in the Scheme annexed at Annexure - A, as a result of which benefits shall accrue to the Scheme Entities (as defined under the Scheme) and to their respective shareholders.

3. It is submitted by the learned lawyer for the applicant companies that the Applicant Company No. 1 and 2 are private limited companies while Applicant Company No. 3 is a public limited company and number of shareholders in each company is less than ten (10) in number.
4. The registered offices of the Applicant Companies are situated in Ahmedabad and Surat, which is within the State of Gujarat and accordingly, are under the jurisdiction of the National Company Law Tribunal, Ahmedabad Bench, at Ahmedabad.
5. It is further submitted by the learned lawyer for the applicant companies that none of the Applicant Companies are small companies as defined under Section 2(85) of the Act and the Applicant Companies are required to file the present proceedings under Sections 230 to 232 and not under Section 233 of the Act.
6. It is submitted by the learned lawyer for the Applicant Companies that, the present Scheme is proposed in order to simplify and streamline the current organizational structure. It will lead to advantages like, enhancing shareholders' value; creation of focused entity to effectively and efficiently meet the future emerging



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opportunities; flexibility for future fund raising capability; management focus; greater and better transparency; creation of synergies; consolidation of business operations and investments; reduction in costs including administrative, managerial and other expenditure and overheads and; maximization of value. This will be beneficial to the Amalgamating Company/ Transferor Company, the Transferee Company and the Amalgamated Company and their respective shareholders. Hence, the Scheme is in the interests of all the stakeholders including, shareholders, creditors and employees of the respective Applicant Companies and will not be prejudicial in any manner to their interests.

7. It is submitted by the learned lawyer for the applicant companies that, the proposed composite Scheme was approved unanimously by the Board of Directors of all the Applicant Companies, by separate Board Resolutions dated 18th September, 2020, copies of which have been filed at **Annexure - Y, Annexure - EE and Annexure - II**, respectively.
8. The Applicant Companies No. 1 & 3 have filed their respective audited financial statements for the year ended on 31st March, 2019 along with, the annual report at **Annexure - D and Annexure - O**, while all the Applicant Companies have filed their respective un-audited financial statements for the year ended on 31st March, 2020 at **Annexure - E, Annexure - J and Annexure - P** and the Supplementary Financial Statements as of 31st July, 2020 at **Annexure - F and Annexure - Q** with un-audited Supplementary Financial Statements for the Applicant Company No. 2 at **Annexure - K** along with, the extracts of



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the Board Resolution dated 18th September, 2020 of the Applicant Companies approving the same at **Annexure - G, Annexure - L and Annexure - R, respectively.**

9. The Valuation Reports dated 16th September, 2020, relating to the Transferred Undertaking of the Applicant Company No. 1; equity valuation of the Applicant Company No. 1 post transfer and vesting of the Transferred Undertaking are annexed at **Annexure - S and Annexure - T,** respectively and; valuation of shares of the Applicant Company No. 1 and Applicant Company No. 3, are also placed on record at **Annexure - U.** The Applicant Companies have also filed their respective Certificates of the Statutory Auditor confirming that, the proposed Scheme is in compliance of and in conformity with the Accounting Standards prescribed under Section 133 of the Act at **Annexure - V, Annexure - W and Annexure - X.**
10. The Applicant Companies have prayed for dispensation from the requirement of convening, holding and conducting the meetings of their respective Equity Shareholders, the Secured Creditors and the Unsecured Creditors but at the stage of admission of the Company Application, an Interlocutory Application No. 889 of 2020 has been filed by one of the unsecured creditors of the Applicant Company No. 3 namely, Essar Bulk Terminal Limited (hereinafter referred to as the "**Objector**") raising objections to the grant of dispensation of the meeting of unsecured creditors of the Applicant Company No. 3.
11. Heard the submissions made by Mr. Mihir Thakore, learned Senior Advocate and Mr. Navin Pahwa, learned Senior Advocate appearing with Mr. Nirag Pathak and Mr. Tarun



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Dua, learned Advocates for the Applicant Companies. Also heard the submissions made by Mr. Saurabh Soparkar, learned Senior Advocate appearing with Mr. Mit S. Thakkar, for the Objector.

12. In the course of hearing of the present Company Application, Mr. Mihir Thakore and Mr. Navin Pahwa learned Senior Advocates appearing for the Applicant Companies submits that, without prejudice to the rights and contentions of the parties in the Interlocutory Application No. 889 of 2020, which is in relation to, holding of the meeting of the Unsecured Creditors of the Applicant Company No. 3 and independent thereof. Further, all the Applicant Companies viz. the Applicant Company No. 1, the Applicant Company No. 2 and the Applicant Company No. 3 have expressed willingness and have no objection, to convene, hold and conduct the meetings of their respective Equity Shareholders, the Secured Creditors and the Unsecured Creditors, to the extent applicable and a Pursis there of dated 21st April, 2021 is also filed on record, declaring the aforesaid.
13. On perusal of record it is found that as on 8th September, 2020, the Applicant Company No. 1 had; two (2) Equity Shareholders and the certificate of Chartered Accountant certifying the number of the Equity Shareholders is placed on record at **Annexure - Z** (Vol. IV/ Pg. No. 751) and; did not have any Secured Creditors and the certificate of Chartered Accountant certifying the nil number of Secured Creditors is placed on record at **Annexure - BB** (Vol. IV/ Pg. No. 800) and Three (3) Unsecured Creditors and the certificate of Chartered Accountant certifying that there is



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only one Un- secured Creditors is placed on record at **Annexure - CC Colly**. (Vol. V/ Pg. Nos. 801-802);

14. On perusal of record it is found that as on 8th September, 2020, the Applicant Company No. 2 had; two (2) Equity Shareholders and the certificate of Chartered Accountant certifying the number of the Equity Shareholders is placed on record at **Annexure - FF** (Vol. V/ Pg. No. 856) and; did not have any Secured Creditors and Un-secured Creditors and the certificate of Chartered Accountant certifying the nil number of Secured Creditors and Un-secured Creditors is placed on record at **Annexure - HH** (Vol. V/ Pg. No. 873);
15. On perusal of record it is found that as on 8th September, 2020, the Applicant Company No. 3 had seven (7) Equity Shareholders and the certificate of Chartered Accountant certifying the number of the Equity Shareholders is placed on record at **Annexure - JJ** (Vol. V/ Pg. Nos. 877-880) and; five (5) Secured Creditors and the certificate of Chartered Accountant certifying the number of Secured Creditors is placed on record at **Annexure - LL** (Vol. V/ Pg. Nos. 886-889) and four (4) Unsecured Creditors (loans and acceptances from the banks) and One Thousand Eight Hundred and Sixty - Four (1,864) Unsecured Creditors (other than loans and acceptances from the banks) and the certificate of Chartered Accountant certifying the same is placed on record at **Annexure - NN** (Vol. V/ Pg. No. 920-1009);
16. Considering the entire facts and circumstances and in particular in view of the declaration made by the Applicant Companies through a Pursis dated 21st April, 2021, placed on record, the objections raised for convening /holding the



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meeting by the Objector is redressed. Accordingly, it is directed that the meetings of; Shareholders and Unsecured Creditors of the Applicant Company No. 1; Shareholders of the Applicant Company No. 2 and; Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company No. 3, be convened, held and conducted for the purpose of considering and approving with or without modification(s), the proposed Scheme within 50 days of the uploading of this order. Upon receipt of the order, the Chairperson shall have the power to fix the date and time of the meeting in terms of the above directions.

17. Since there are no secured creditor in the applicant company no 1 the question of convening/holding the meeting does not arise at all.
18. Since there are no secured and unsecured creditor in the applicant company no 2 the question of convening/holding the meeting does not arise at all.
19. In view of the recent circulars of Ministry of Corporate Affairs *vide* Circular No. 14 of 2020 dated 8th April, 2020, Circular No. 17 of 2020 dated 13th April, 2020 and Circular No. 20 of 2020 dated 5th May, 2020, the aforesaid meetings of; Shareholders and Unsecured Creditors of the Applicant Company No. 1; Shareholders of the Applicant Company No. 2 and; Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company No. 3, shall be convened and conducted through, video conferencing or such other Audio Visual Means, at the option of the respective Applicant Companies, for the purpose of considering and approving with or without modification(s), the proposed Scheme.



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20. It is hereby clarified that, in view of Para A (x) of the MCA Circular No. 14/2020 dated 8th April, 2020, voting through Proxy shall not be permitted for the meeting. However, voting through Authorized Representative is permitted.
21. At least one month before the date of the aforesaid meetings, a notice in Form No. CAA.2 convening the said meetings indicating the day, the date, the time as aforesaid; along with instructions with regard to remote e-voting and e-voting at the respective meetings, together with a copy of the Scheme of Arrangement, copy of the Explanatory Statement required to be sent under Section 102 of the Act read with, Sections 230 and 232 of the Act and Rule 6 of the Companies (CAA) Rules, 2016 shall be sent by the respective Applicant Companies to each of; Shareholders and Unsecured Creditors of the Applicant Company No. 1; Shareholders of the Applicant Company No. 2 and; Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company No. 3, at their respective available addresses, either through e mail or courier or speed post or registered post.
22. At least one month before the date of the aforesaid meetings, an advertisement about convening the aforesaid meetings of Shareholders and Unsecured Creditors of the Applicant Company No. 1; Shareholders of the Applicant Company No. 2 and; Shareholders, Secured Creditors and Unsecured Creditors of the Applicant Company No. 3, indicating the day, the date, the time and the details of modalities for the meetings through video conferencing as aforesaid, shall be published by the respective Applicant Companies in the Newspapers, one in English and another in Vernacular having wide circulation in the area, where



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the registered office of the respective Applicant Companies are situated. The publication shall also indicate that, the statement required to be furnished pursuant to Section 102 of the Act read with, Sections 230 and 232 of the Act can be obtained free of charge at the Registered Offices of the respective Applicant Companies in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.

23. Mr. Abhishek Nagori, Practicing Chartered Accountant (Membership No. 107954), is hereby appointed as Chairperson of all the aforesaid meetings and in respect of any adjourned meeting thereof.
24. Mr. Lokesh Khadaria, Practicing Chartered Accountant (Membership No. 107691), shall act as the Scrutinizer for all the aforesaid meetings.
25. The Chairperson of the meetings shall have all powers under the Rules for deciding any questions, that may arise at the aforesaid meetings; or amendment(s) to the aforesaid Scheme or resolution, if any, proposed at the aforesaid meetings by any person(s); and to ascertain the decision of the respective meetings on a poll, i.e. e-voting.
26. The quorum for the aforesaid meetings of the respective Applicant Companies shall be as follows:

I. Applicant Company No. 1

- A. For the meeting of Shareholders of the Applicant Company No. 1, the quorum shall be one (1) Shareholder;



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- B. For the meeting of Unsecured Creditors of the Applicant Company No. 1, the quorum shall be two (2) Unsecured Creditor;

II. Applicant Company No. 2

- A. For the meeting of Equity Shareholders of the Applicant Company No. 2, the quorum shall be one (1) Shareholder;

III. Applicant Company No. 3

- A. For the meeting of Shareholders of the Applicant Company No. 3, the quorum shall be five (5) Shareholders;

- B. For the meeting of Secured Creditors of the Applicant Company No. 3, the quorum shall be two (2) Secured Creditors and;

- C. For the meeting of Unsecured Creditors of the Applicant Company No. 3, the quorum shall be Seventy-Five (75) Unsecured Creditors.

In case the quorum for the any of the aforesaid meetings is not met within half-an-hour from the time appointed for holding of the respective meetings, then the provisions of sub-sections (2) and (3) of Section 103 of the Companies Act, 2013 shall be applicable *mutatis mutandis* to such meeting and to the adjourned meeting.

27. Further, no meetings are required to be convened, held or conducted for; the Secured Creditors of the Applicant Company No. 1 and Secured and Un-secured Creditors of



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the Applicant Company No. 2, as there are no Secured Creditors for the Applicant Company No. 1 and Secured and Un-secured Creditors of the Applicant Company No. 2, as on 8th September, 2020;

28. The number and value of vote of each of the aforesaid meetings of the respective Applicant Companies, shall be in accordance with their respective books of accounts as on 8th September 2020. In the event of the dispute, the Chairperson shall decide the same.
29. The Chairperson shall file an affidavit not less than 7(seven) days before the date fixed for the holding of the respective meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of the Companies (CAA) Rules, 2016.
30. It is further directed that the Chairperson shall report to this Tribunal the result of the said meetings in Form No. CAA.4 along with affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 within 30 (Thirty) days from the date of the respective meetings.
31. All the three Applicant Companies shall serve notice upon -
(1) Central Government through the Regional Director, North Western Region, Ministry of Corporate Affairs, Ahmedabad; (2) The Registrar of Companies, Gujarat; (3) The Department of Income - Tax only for the Transferor Company clearly indicating PAN of the Transferor Company; (4) The Official Liquidator. The said Notices shall be sent either by the Registered Post or by Speed Post or by Courier or by Hand - Delivery, at the offices of the

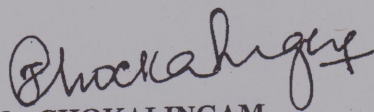


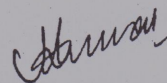
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aforesaid authorities, as per Form No. CAA.3, as required under Sub - rule (2) of Rule - 8 of the Rules. The aforesaid authorities, who desire to make any representation under Sub - section (5) of Section - 230 of the Act, shall send the same, to this Tribunal within a period of thirty (30) days from the date of the receipt of such Notice, failing which it will be deemed that, they have no representation to make or objection to raise to the proposed Scheme of Arrangement.

32. Accordingly, the present Company Application filed by the Applicants is disposed of in the aforesaid terms. In view of the orders passed in the instant Company Application, the Interlocutory Application filed by the Objector stands disposed of.


Mr. CHOKALINGAM
THIRUNAVUKKARASU
MEMBER (TECHNICAL)


Ms. MANORAMA KUMARI
MEMBER (JUDICIAL)



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