



**IN THE NATIONAL COMPANY TRIBUNAL
KOLKATA BENCH, (COURT -1)
KOLKATA**

C. A. (CAA) No. 189/KB/2024

An application under Section 230(1) read with Section 232(1) of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and other applicable provisions of the law.

IN THE MATTER OF:

A Scheme of Amalgamation of (First Motion):

BMW IRON & STEEL INDUSTRIES LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having **Corporate Identification No. U27109WB2005PLC102557** and its registered office at 119, Park Street, White House 3rd Floor, Kolkata - 700016, West Bengal, India.

Applicant Company No. 1/ Transferor Company No. 1

-And-

NIPPON CRYO PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having **Corporate Identification No. U27100JH2004PTC010686** and its registered office at Plot No.2 Large Sector, Adityapur Industrial Area Tata Kandra Main Road, Adityapur, Jamshedpur - 832108, Jharkhand, India.

..... *Applicant Company No. 2/ Transferor Company*

No. 2

-And-

BMW INDUSTRIES LIMITED, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having **Corporate Identification No. L51109WB1981PLC034212** and its registered office at 119 Park Street, White House, 3rd Floor, Kolkata-700016, West Bengal, India.

... *Non-Applicant Company/Transferee Company*



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IN THE MATTER OF:

1. BMW IRON & STEEL INDUSTRIES LIMITED
2. NIPPON CRYO PRIVATE LIMITED

.....APPLICANTS

Date of pronouncing of the order: 13.12.2024

CORAM:

Smt. Bidisha Banerjee: Member (Judicial)

Shri Balraj Joshi: Member (Technical)

Appearances (via video conferencing/ physical)

Ms. Khushi Nangalia, PCS.] For the Applicants

ORDER

Per: Smt. Bidisha Banerjee, Member (Judicial)

1. The Court convened through hybrid mode today.
2. 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 (“Act”) for orders and directions with regard to meeting of shareholders and creditors in connection with the Scheme of Amalgamation of the Transferor Companies:

Serial Number	Name of the Company
Applicant Company No. 1/ Transferor Company No. 1	BMW Iron & Steel Industries Limited
Applicant Company No. 2/ Transferor Company No. 2	Nippon Cryo Private Limited



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with **BMW Industries Limited** (“**Non – Applicant Company/Transferee Company**”) whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date i.e. **1st April, 2024** in the manner and on the terms and conditions as stated in the said Scheme of Amalgamation (“Scheme”). The Copy of the said Scheme of Amalgamation is annexed to the Company Application in **Annexure F** in **Volume II** at **Page No. 216 - 256**.

3. The Board of Directors of the Transferor Companies and the Transferee Company at their respective Board Meetings held on the following dates, approved the Scheme of Amalgamation:

Name of the Companies	Date of the Board Meetings
BMW Iron & Steel Industries Limited	14.08.2024
Nippon Cryo Private Limited	14.08.2024
BMW Industries Limited	14.08.2024

4. It is further submitted by the Ld. Authorised Representative appearing for the Applicant Companies that shares of **none** of the Applicant Companies are listed on any Stock Exchange. Further, the Applicant Companies have the following classes of shareholders and creditors: -

Applicant Company	Number of Equity Shareholders as on 30th June, 2024	Number of Secured Creditors as on 30th June, 2024	Number of Unsecured Creditors as on 30th June, 2024
Applicant No. 1	7	NIL	94



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Applicant No. 2	2	1	55
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5. The Ld. Authorised Representative appearing for the Applicant Companies submits that the Applicant Company i.e. BMW Iron & Steel Industries Limited and Nippon Cryo Private Limited are the wholly owned subsidiaries of the Transferee Company i.e. BMW Industries Limited. As a result, upon the Scheme becoming operative, no shares of the Transferee Company shall be allotted in lieu of or in exchange of its holding in the Transferor Companies.
6. The certificate from the Statutory Auditor confirming the Accounting Treatment contained in the scheme in compliance with all the applicable Accounting Standards specified under Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies (Accounts) Rules, 2014 is issued at the request of the Transferee Company pursuant to the requirements under Section 230(7) of the Companies Act, 2013 is annexed with the Company Application in **Annexure N** in **Volume III** at **Page No(s). 417 to 420.**
7. The Ld. Authorised Representative appearing for the Applicant Companies submits that 100% of the Equity Shareholders of the Applicant Companies have given their consent to the Scheme in writing by way of affidavits for the approval of the proposed Scheme of Amalgamation which is annexed with the Company Application being **Annexure I** in **Volume II** at **Page No.267-288.**
8. The Ld. Authorised Representative appearing for the Applicant Companies submits that 1 Secured Creditor (constituting 100% of the total secured debt) of the Applicant Company No. 2 has given its consent through No – objection Letter/Affidavit to proposed Scheme of Amalgamation which is annexed with the Company Application being **Annexure G** in **Volume II** at **Page No. 257 – 264.**



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9. The Ld. Authorised Representative appearing for the Applicant Companies submit that the Transferee Company is listed with the BSE Limited and The Calcutta Stock Exchange Limited. In accordance with the provisions of Regulation 37(6) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with the provisions of SEBI Master Circular No. SEBI/HO/CFD/POD-2/P/CIR/2023/93 dated June 20, 2023, the draft Scheme of Amalgamation has been filed with the said Stock Exchanges for the purpose of disclosures. The Copy of such intimation is annexed with the Company Application being **Annexure K** in **Volume II** at Page No. **291 to 294**.
10. Directions are sought accordingly for:
- i. Dispensing with the meeting of the Equity Shareholders of both the Applicant Companies.
 - ii. Dispensing with the meeting of the Secured Creditor of the Applicant Company No. 2.
 - iii. Convening with the meeting of the Unsecured Creditors of both the Applicant Companies.
11. Heard the Ld. Authorised Representative for the Applicant Companies and upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicants, we allow the instant application and make the following orders:

A. Meetings dispensed:

Meetings of the Equity Shareholders of both the Applicant Companies and of the Secured Creditor of the Applicant Company No. 2 are dispensed with under Section 230(1) read with Section 232(1) of the Act.



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B. Meeting to be held:

1. The meeting of the **Unsecured Creditors** of the Applicant Company No. 1 as on **30th September, 2024** duly certified by the Chartered Accountant shall be convened and held physically at the Registered Office of the Company i.e. 119, Park Street, White House 3rd Floor, Kolkata-700016, West Bengal, India, on Wednesday, 29th January, 2025 at 1 P.M. for the purpose of considering, and, if thought fit, approving the said scheme, with or without modification.
2. The meeting of the **Unsecured Creditors** of the Applicant Company No. 2 as on **30th September, 2024** duly certified by the Chartered Accountant shall be convened and held through Video Conferencing or Other Audio-Visual Mode on Wednesday, 29th January, 2025 at 12:15 P.M. for the purpose of considering, and, if thought fit, approving the said scheme, with or without modification.

C. Advertisement:

At least 30 (thirty) clear days before the meeting to be held, as aforesaid, an advertisement of the notice of meeting, stating that copies of the Scheme and the statement containing necessary details required to be filed pursuant to section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 is being sent with the notice of meeting, be published once each in the “**Business Standard**” in English and “**Aajkaal**” in Bengali as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

D. Individual Notices:



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At least 30 (thirty) clear days before the date of the meeting to be held, as aforesaid, notice convening the said meeting, along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Companies Act, 2013 shall be sent to each of the Unsecured Creditors of both the Applicant Companies as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by registered post or speed post or air mail or courier or email or through personal messenger at their respective or last known addresses. The said notice along with accompanying documents shall also be displayed on the notice board of concerned Applicant at its registered office and shall also be posted on the website, if any, of such Applicant.

E. Chairperson:

Ms. Shreya Choudhary, having Mobile No. 7003307421 and email-id: choudaryshreya87@gmail.com is appointed as the Chairperson of the meetings to be held, as aforesaid. The Chairperson shall be paid a sum of Rs. 70,000/- (Seventy Thousand only) for conducting the aforesaid meeting as Chairperson.

F. Scrutinizer:

Ms. Swati Bajaj email-id: swati@bajajtodi.in is appointed as the Scrutinizer of the meetings to be held, as aforesaid. The Scrutinizer shall be paid a sum of Rs.60,000/-(Sixty Thousand only) for conducting the aforesaid meeting as Scrutinizer.

G. Quorum and Attendance:

The quorum for the said meeting of persons entitled to attend the same shall be determined in accordance with Section 103 of the Companies Act, 2013.



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For the meetings to be held through virtual mode and physically, only attendance of such persons present in virtual mode/physically at the venue shall be counted for quorum. In case the quorum of any meeting is not present within half an hour from the time appointed for the meeting, the Chairperson may adjourn such meeting to any date/time and take a decision on the quorum in the adjourned meeting.

H. Cut-off date:

The cut-off date for determining the eligibility to vote and value of votes shall be 30th September, 2024 for the meeting of the Unsecured Creditors of both the Applicant Companies. The value of the votes cast shall be reckoned and scrutinized with reference to the said dates.

I. Mode of Voting:

1. At the venue of the meeting of Unsecured Creditors of the Applicant Company No. 1 held physically, voting shall be conducted physically by polling paper, shall be in accordance with the Companies (Management & Administration) Rules, 2014, and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.
2. Voting in the meeting held through Virtual Mode shall be conducted by way of E-voting facility in case of meeting of the Unsecured Creditors of Applicant Company No. 2, in accordance with the Companies Act, 2013.

J. Proxies & Board Resolution:

A person, including a Body Corporate, entitled to attend and vote at the meeting, as aforesaid, may do so personally or by proxy, provided the certified copy of resolution of the Board of Directors or other governing



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body of such person, where it is a Body Corporate, authorizing its representative to attend and vote at such meeting on its behalf, as the case may be, is deposited at the registered office of the Applicant Companies. A person, including a Body Corporate, entitled to attend and vote at the meeting, as aforesaid, may do so personally or by proxy, provided that the proxy forms duly signed by the respective persons shall be deposited at the registered office of the Applicant Company No. 1 or by email not later than 48 (forty-eight) hours before the time for holding the meeting. The facility for appointing Proxy shall not be available in case of meeting of Applicant Company No. 2.

- K.** That the Chairperson appointed for the said meeting or any person authorised by the Chairperson do issue and send the notice of the aforesaid meeting.

- L.** The resolution for approval of the Scheme of Amalgamation put to a meeting shall, if passed by a majority in number representing three-fourths in value of the Unsecured Creditors of both the Applicant Companies casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under Section 230(1) read with Section 232(1) of the Companies Act, 2013.

- M.** The Chairperson do report to this Tribunal the results of the said meetings within four weeks from the date of the conclusion of the said meeting. Such report shall be in Form No. CAA-4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

- N.** The votes cast shall be scrutinized by the Scrutinizer. The Scrutinizer shall prepare and submit the respective reports on the meeting along with all papers relating to the voting to the chairperson of the meeting at the



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Scrutinizer's earliest convenience and in any case within 3 days of the conclusion of the meeting. The Chairperson shall declare the results of the meeting after submission of the report of the Scrutinizer. The declaration of result by the Chairperson shall also be displayed on the Notice Board of the concerned Applicant at its registered office and shall also be posted on the website, if any, of such Applicant.

O. The value of each of the Unsecured Creditors of both the Applicant Companies shall be in accordance with its books and records, where entries in the books are disputed, the chairperson shall determine the value for purpose of the said meeting.

12. The Applicant Companies to serve a notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall also be served on:

- the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;
- the Registrar of Companies, Kolkata, West Bengal and Ranchi, Jharkhand;
- the Official Liquidator, High Court, Calcutta and Ranchi, Jharkhand;
- the Income Tax Department having jurisdiction over the Applicants
- Jurisdictional GST authorities and other such authorities who may be affected by the scheme.

These notices shall be sent by hand delivery or by post or by speed post or by courier and by email within two weeks from the date of receiving this order. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such



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representation being simultaneously sent to the Authorised Representative of the said Applicant Companies. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme of Amalgamation. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in Form No. CAA 3 of the said Rules with necessary variations, incorporating the directions herein.

13. The Applicant Companies shall file an affidavit of service with the registry in regard to the directions given in this Order to report to this Tribunal that the directions regarding the issuance of notices have been duly complied with.
14. The application being **Company Application (CAA) No. 189/KB/2024** is disposed of accordingly.
15. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order signed on 13.12.2024.

A.D[Steno]