

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II
Company Application (CAA) No.130/KB/2024**

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

In the matter of:

A scheme of amalgamation (First Motion)

SHREE CEMENT NORTH PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 2013, having Corporate Identification Number U26940WB2021PTC270991 and its registered office at 21, Strand Road, Customs House, Kolkata 700 001 in the State of West Bengal.

And

Shree Cement East Private Limited, a company incorporated under the provisions of the Companies Act, 2013, having Corporate Identification Number U26999WB2021PTC245736 and its registered office at 21, Strand Road, Kolkata 700 001 in the State of West Bengal.

In the matter of:

1. Shree Cement North Private Limited
2. Shree Cement East Private Limited

.....Applicant

Date of pronouncing the order: 5/7/2024

Coram:

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| Smt Bidisha Banerjee | : | Member (Judicial) |
| Shri D. Arvind | : | Member (Technical) |

Advocates for the Applicant:

1. Mr D N Sharma, Advocate
2. Ms Rusha Mitra, Advocate

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The instant application has been filed in the first stage of the proceedings by Shree Cement North Private Limited and Shree Cement East Private Limited under Section 230(1) read with Section 232(1) of the Companies Act, 2013 (“**Act**”) for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Amalgamation (the “Scheme”) of Shree Cement North Private Limited, the Applicant Company No.1 (“Transferor Company”) with Shree Cement East Private Limited, the Applicant Company No.2 (“Transferee Company”) whereby and whereunder the entire undertaking of the Transferor Company together with all property, rights, powers and all debts, liabilities, duties and obligations relating thereto is proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the said Scheme of Amalgamation (Annexure – A of the application at Pages 38 to 56).
2. Learned Advocate appearing for the Applicant Companies submit as follows:-
 - a. The instant Scheme has been filed for amalgamation of Shree Cement North Private Limited (“Transferor Company”) having Corporate Identification Number (“CIN”) U26940WB2021PTC270991 with Shree Cement East Private Limited (“Transferee Company”) having CIN U26999WB2021PTC245736. The Transferor Company and the Transferee Company are both wholly owned (100%) subsidiaries of Shree Cement Limited, a public listed company.

- b. Both, the Transferor Company and the Transferee Company are, inter alia, engaged in the business of cement manufacturing and sales.
- c. The circumstances which justify and/or have necessitated the said Scheme of Amalgamation and the benefits of the same are, inter alia, as follows: -
 - i. The Transferee Company has been incorporated as a wholly owned subsidiary of Shree Cement Limited. The Transferee Company is engaged in manufacturing and marketing of cement and cementitious product. The Transferee Company has recently set up a 3.0 MTPA Cement Grinding Unit in Purulia district in the State of West Bengal and is in the process of completing pre-project implementation activities at few other locations. The installed cement production capacity of the Transferee Company is 3.00 MTPA as on 31st March 2024.
 - ii. The Transferor Company has also been incorporated as a wholly owned subsidiary of Shree Cement Limited with the object of being engaged in the business of manufacturing and sale of cement. The Transferor Company is yet to commence business operations and is presently in the process of setting up the Cement Grinding unit at Etah, Uttar Pradesh and is also in the process of completing pre-project implementation activities at few locations for setting up cement plants.
 - iii. The Companies are wholly owned subsidiaries of Shree Cement Limited which is among the top three cement manufacturing groups in India. There are several commonalities and synergistic linkages between the Transferee Company and the Transferor Company. Considering the commonalities and possible synergy

benefits, the business of the Transferee Company and the Transferor Company can be combined and carried on together more advantageously.

- iv. In view of the aforesaid, including commonality of business interests, portfolio fit and objectives of the Companies and synergies that exist between them, it is considered desirable and expedient to amalgamate the Transferor Company with the Transferee Company in the manner and on the terms and conditions stated in this Scheme of Amalgamation.
- v. The amalgamation of the Transferor Company with the Transferee Company will result in following benefits and advantages:
 - a. The business of the Transferee Company will be carried on more efficiently and economically and inter alia result in pooling and more effective utilization of the combined resources of both the Companies, reduction in costs and expenses and rationalization and reduction of compliance requirements.
 - b. The consolidation of the Transferor Company with the Transferee Company will result in the formation of a stronger company having greater capacity to access and raise funds for carrying on its business and pursuing and completing its various projects and plans therein, including marketing and selling its products and conducting trade on more favorable terms.
 - c. As such the amalgamation of the Transferor Company with the Transferee Company will result in operational synergies and enable greater realization of the potential of the businesses of the Transferor Company and the Transferee Company.
 - d. The Scheme is proposed to the advantage of the

Transferor Company and the Transferee Company and will be in the interests of the respective Companies, their shareholders, employees and all stakeholders concerned.

- d. The Board of Directors of the respective Transferor Company and Transferee Company have, at their respective board meetings, passed the resolution approving the Scheme. (Annexure F of the application at Pages 220 to 227).
- e. The Scheme is an internal restructuring exercise and there would be no change in control or management of the Transferee Company as such under the Scheme.
- f. The Statutory Auditors of the Transferor Company and the Transferee Company have provided a certificate to the effect that the accounting treatment proposed in the Scheme is in conformity with the Indian Accounting Standard procedure under Section 133 of the Companies Act, 2013. (Annexure G of the application at Pages 228 to 230B)
- g. None of the Directors of any of the Applicant Companies have any material interest in the Scheme except as Directors and shareholders in general and the extent of which will appear from the Register of Director's shareholdings maintained by the respective Applicant Companies.
- h. The valuations of the shares of the Applicants have been arrived after careful consideration and after considering all relevant facts and has been carried out and approved by Mr Pradhan Priya Dass, Registered Valuer bearing IBBI Registration No.: IBBI//RV/06/2022/14558 and is bonafide and reasonable. (Annexure G of the application at Pages 231 to 232)

- i. Upon coming into effect of the Scheme and in consideration for the amalgamation of the Transferor Company with the Transferee Company, the Transferee Company shall, without any further application, act, deed, consent or instrument, issue and allot, on a proportionate basis to each shareholder of the Transferor Company, whose name is recorded in the register of members as member of the Transferor Company as on the Effective Date, in the following ratio:

“9 (Nine) fully paid up equity shares of Rs.10 (Indian Rupees Ten only) each of the Transferee Company, credited as fully paid up, for every 10 (Ten) equity share of Rs. 10 (Indian Rupees Ten only) each of the Transferor Company”

“5 (five) fully paid up equity shares of Rs. 10 (Indian Rupees Ten only) each of the Transferee Company credited as fully paid up, for every 10 (Ten) equity shares of Rs. 10 (Rupees Ten only) each partly paid up with Rs. 5.39 (Indian Rupees Five and Thirty-nine paise only) of the Transferor Company”

(the “Share Exchange Ratio”).

The equity shares to be issued by the Transferee Company pursuant to this clause, as aforesaid, will be referred to as the “Transferee Company New Equity Shares”. Fractional entitlement of shares, if any, will be rounded up to the nearest integer.

- j. The Applicant Companies have the following classes of shareholders:
- i. The Transferor Company has one (1) class of shareholders, viz Equity shareholders. (Annexure – H of the application at Page 233). The Transferor Company has only 2 equity shareholders. List of equity shareholders of the Transferor Company is annexed as Annexure I of the application at Page 235. Consent affidavits

of all (100%) equity shareholders of the Transferor Company are annexed as Annexure J of the application at Pages 237 to 246.

ii. The Transferee Company has one (1) class of shareholders, viz Equity shareholders. (Annexure – H of the application at Page 234). The Transferee Company has only 2 equity shareholders. List of shareholders of the Transferee Company is annexed as Annexure I of the application at Page 236. Consent affidavits of all (100%) equity shareholders of the Transferee Company are annexed as Annexure J of the application at Pages 247 to 256.

k. The Applicant Companies have the following classes of creditors:

i. The Transferor Company had 2 classes of creditor, viz (1) Secured Creditors and (2) Unsecured Creditors. The Transferee Company had two (2) classes of creditors viz Secured Creditors and Unsecured Creditors. (Annexure – K of the application at Pages 257 and 258). List of Secured creditors of the Transferor Company and the Transferee Company as on 30 April 2024 are annexed as Annexure L of the application at Page 259 and 260. List of Unsecured creditors of the Transferor Company and the Transferee Company as on 30 April 2024 are annexed as Annexure M of the application at Page 261 and 272.

ii. All such respective secured creditors (100%) of the Applicant Companies have given their approval to the proposed Scheme. The consent affidavits of the said secured creditors of the Transferor Company (constituting 100% in value) and Transferee Company (constituting 100% in value)) are annexed as Annexure O (at Pages 275 to 294).

iii. The consent affidavits of the unsecured creditors of the Transferor Company (constituting 96.04% in value) and Transferee Company

(constituting 74.29% in value) are annexed as Annexure P (at Pages 295 to 302A).

- iv. The Applicant Companies have also obtained net worth certificates issued by chartered accountant certifying pre and post Scheme net worth positions. The Pre-Scheme and Post-Scheme net worth of the Transferee Company stands at INR 563.16 Crores and INR 724.45 Crores as on 31 March 2024 with liquid assets of INR 5.36 Crore as on 31 March 2024 lying in Current Account with Banks, Margin Money as Fixed Deposits with Bank and in Current Investments. The merged Transferee Company would continue to have positive net-worth and would be in a position to meet their liabilities, as and when they accrue and in the ordinary course of business. As such, the creditors of the Applicant Companies are not adversely affected in any manner by the Scheme. (Annexure - N of the application at Pages 273 to 274).
3. In the facts and circumstances and in view, inter alia, of the consent affidavits obtained, as aforesaid and the net worth positions of the Applicant Companies, orders and directions are sought accordingly for (a) dispensing with the convening and holding of meeting of the equity shareholders of the Applicant Companies in view of the consents provided in writing to the proposed Scheme by way of affidavits by all (100%) equity shareholders of the Applicant Companies, (b) issue of a direction that meetings of the secured and unsecured creditors of the Applicant Companies under Section 230(1) read with Section 232(1) of the Companies Act, 2013 is not required to be held or meeting of creditors, if any, may be dispensed with, (c) service of notices on the Statutory Authorities pursuant to Section 230(5) of the Companies Act, 2013, and (d) issue of a direction to file confirmation petition under Section 230(6) read with Section 232(3) of the Companies Act, 2013 by

the Applicant Companies for obtaining sanction of this Hon'ble Tribunal to the said Scheme.

4. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant Companies and relying on the judgement in the matter of **Ambuja Cements Limited** reported in MANU/NL/0128/2021: Company Appeal (AT) No.19 of 2021 and order of this Tribunal dated 31 March 2023 passed in the matter of **Halaplay Technologies Private Limited & Another** (Company Application CAA No.20/KB/2023) cited by the Learned Advocate, we allow the instant application and make the following orders:-
- (a) Meetings of the Equity Shareholders of the Applicant Companies are dispensed with under Section 230(1) read with Section 232(1) of the Act.
 - (b) Meetings of the creditors of the Applicant Companies are dispensed with under Section 230(1) read with Section 232(1) of the Act.
 - (c) 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 be served on the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; Registrar of Companies, Kolkata; Official Liquidator; and Income Tax Department having jurisdiction over the Applicant Companies, and other sectoral regulators or authorities, if any, by sending the same by hand delivery through special messenger or by post or by email in terms of Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 with necessary variation. 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 Advocates 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. 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. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

- (d) The Applicant Companies shall file its confirmation petition for sanction of the Scheme under Section 230(6) read with Sections 232(3) of the said Act within three weeks from the date of receiving this order.
- (e) The Applicant Companies to file an affidavit proving service of notices, as aforesaid, within a period of two weeks from the date of despatch thereof.
- (f) The **Company Application being C.A. (CAA) No.130/KB/2024** is **disposed of** accordingly.

5. Urgent Photostat certified copies of this Order, if applied for, be supplied to parties upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed this, on the 5th day of July , 2024

NKS(LRA)