

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, Court-II
COMPANY APPLICATION (CAA) NO.128/KB/2024

In the Matter of the Companies Act, 2013 – Section 230(1) read with Section 232(1).

And

In the matter of:

RASHIDHAN SALES PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 2013, having Corporate Identification Number U51909WB2011PTC159353 and registered office at 60, Theatre Road, 2nd Floor, Kolkata 700 017, West Bengal, within the aforesaid jurisdiction.

...Transferor Company

ORISSA METALIKS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 2013, having Corporate Identification Number U27109WB2006PTC111146 and registered office at 1, Garstin Place, Orbit House 3rd Floor, Room No-3B, Kolkata 700 001, West Bengal, within the aforesaid jurisdiction.

...Transferee Company

In the matter of:

1. **RASHIDHAN SALES PRIVATE LIMITED**
2. **ORISSA METALIKS PRIVATE LIMITED**

...APPLICANTS

Date of pronouncing the order: 3/7/2024

Coram:

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 Rashidhan Sales Private Limited and Orissa Metaliks 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 Rashidhan Sales Private Limited, the Applicant Company No.1 (“Transferor Company”) and Orissa Metaliks Private Limited, the Applicant Company No.2 (“Transferee Company”) whereby and whereunder the entire undertakings 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 – G of the application at Pages 228 to 253).
2. Learned Advocate appearing for the Applicant Companies submit as follows:-
 - a. The instant Scheme has been filed for amalgamation of Rashidhan Sales Private Limited (“Transferor Company”) having Corporate Identification Number (“CIN”) U51909WB2011PTC159353 and Orissa Metaliks Private Limited (“Transferee Company”) having CIN: U27109WB2006PTC111146.

- b. The Transferor Company is engaged in the business of manufacturing of iron & steel and offers a broad range of iron and steel products.
- c. The Transferee Company is engaged in the business of manufacturing iron and steel and offers a broad range of iron and steel products including a portfolio of high value added downstream products such as pellets, sinter, coke, sponge iron, Pig iron, MS billets. The Transferee Company also has a well-established distribution network.
- d. The Scheme is intended to restructure these companies and consolidate their business in a manner which is expected to enable better realization of potential of their business, yield beneficial results and enhanced value creation for the said companies, their respective shareholders and stakeholders. The amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits:

Synergies of Business of the Entities involved in the Scheme:

- i. the Transferee Company and Transferor Company are engaged in similar and/or complimentary business and proposed amalgamation pursuant to the Scheme will create synergies amongst the business. The existing operating business and activities of the Transferee Company will continue to constitute the main business and activity of the merged entity with the greater share of the assets and turnover of the merged entity being contributed by such operating business and activities;
- ii. the proposed amalgamation will result in a simplification of the existing corporate structure and eliminate duplications, consequently reducing the administrative costs of maintaining

separate companies, while reducing the multiple legal and regulatory compliances;

- iii. realization of benefits of greater synergies and economies of scale for the business of the Transferee Company and corresponding infrastructure of Transferor Company, yielding beneficial results and pooling and optimal utilization of financial resources as well as managerial, technical, distribution and marketing resources of each other;
- iv. a single operating entity would also result in centralized management and oversight, integrated business approach, overall optimization of operational and administration costs and supporting the group's competitive growth;
- v. adoption of improved safety, environment and sustainability practices owing to a centralized committee at combined level to provide focused approach towards safety, environment and sustainability practices resulting in overall improvement; and
- vi. create value for stakeholders including respective shareholders, customers, lenders and employees.

Cost Benefit:

The implementation of the Scheme would involve incurring costs including, administrative cost, statutory dues, cost of advisors, etc. However the long term benefits are expected to outweigh costs towards implementation of the Scheme.

In view of the aforesaid, the Board of Directors of the respective Companies have considered the proposed amalgamation of the entire undertaking and business of the Transferor Company as a going concern into and with the Transferee Company to benefit the

stakeholders of the respective Companies. Accordingly, the Board of Directors of the respective Companies have formulated this Scheme for the amalgamation of the Undertakings (as defined hereinafter) of the Transferor Company into and with the Transferee Company pursuant to Sections 230 to 232 and other relevant provisions of the Act.

- e. 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 H of the application at Pages 254 to 264).
- f. 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.
- g. The Statutory Auditors of 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 I of the application at Pages 265 to 267)
- h. 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.
- i. 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 Vidhi Chandak (IBBI Registration No. IBBI/RV/06/2019/11186), Registered Valuer and is bonafide and reasonable. (Annexure J of the application at Pages 268 to 287)

- j. Upon the coming into effect of this part of the Scheme and in consideration of the amalgamation by way of transfer and vesting of the Undertaking of Transferor Company, Transferee Company shall, without any further act or deed, issue and allot equity shares ('new equity shares') to the members of the Transferor Company whose names appear in the register of members of the Transferor Company to as on the Record Date in the following manner:

To the Shareholders of Transferor Company:

For every (One Thousand) 1000 fully paid-up equity shares of Transferor Company of Re. 1/- (Rupee One only) and held by the members of the Transferor Company as on the Record Date, 13 equity shares of the Transferee Company having face value of Rs. 10/- (Rupees Ten Only) each, credited as fully paid up shall be issued to the members of the Transferor Company.

Upon the Scheme becoming effective and simultaneous to the new equity shares being issued by the Transferee Company, the equity shares of the Transferee Company held by the Transferor Company on Scheme becoming effective shall be cancelled without any further act or deed.

In view of the aforesaid, the proposed Scheme also provides for consequential change in the share capital of the Transferee Company pursuant to issue of the Transferee Company New Equity Shares to shareholders of the Transferor Company.

- k. The Applicant Companies have the following classes of shareholders:

- i. The Transferor Company has one (1) class of shareholders, viz Equity shareholders. The Transferee Company has two (2) classes of shareholders, viz Equity Shareholders and Preference Shareholders. (Annexure – K of the application at Pages 288 to 304).
 - ii. The Transferor Company has 3 equity shareholders. Consent affidavits of all (100%) equity shareholders of the Transferor Company are annexed as Annexure L of the application at Pages 305 to 320.
 - iii. The Transferee Company has 49 equity shareholders. Consent affidavits of all (100%) equity shareholders of the Transferee Company are annexed as Annexure L of the application at Pages 321 to 560.
 - iv. The Transferee Company has 50 preference shareholders. Consent affidavits of all (100%) equity shareholders of the Transferee Company are annexed as Annexure L of the application at Pages 561 to 807.
1. The Applicant Companies have the following classes of creditors:
 - i. The Transferor Company had one (1) class of creditor as on 29 February 2024, viz Unsecured Creditors. (Annexure – M of the application at Pages 808 to 814). The Transferee Company had two (2) classes of creditors as on 29 February 2024, viz Secured Creditors and Unsecured Creditors. (Annexure – N of the application at Pages 815 to 867).
 - m. The Applicant Companies have obtained net worth certificates issued by chartered accountant certifying pre and post Scheme net worth positions. 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 - O of the application at Pages 868 and 869).

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 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 meeting 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 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 (i) Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; (ii) Registrar of Companies, Kolkata; (iii) Official Liquidator; and (iv) Income Tax Department having jurisdiction over the Applicant Companies, and/or other sectoral regulators or authorities, if any, by sending the same by hand delivery through special messenger or by post and 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 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.128/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)

Order dated 3/7/2024

NKS(LRA)