

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-II**

CA (CAA) 48/AHM/2022

[Sections 230-232 and read with other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016]

In the matter of Scheme of Merger

OF

M/s Gujarat Sidhee Cement Limited-22.11.2022
(Applicant Company No. 1/Transferor Company)

WITH

M/s Saurashtra Cement Limited-23.11.2022
(Applicant Company No. 2/Transferee Company)

And

Their Respective Shareholders and Creditors.

Order Pronounced on 12.10.2022

CORAM:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

M/s Gujarat Sidhee Cement Limited,

(CIN: L26940GJ1973PLC002245)

Registered office at;

Sidheegram, PO Prashnawada BO,

Via Sutrapada SO Taluka, District Gir Somnath-362275,

Gujarat.

**... Applicant Company No. 1/
Transferor Company**

WITH

M/s Saurashtra Cement Limited,

(CIN: L26941GJ1956PLC000840)

Registered office at;

Nr. Railway Station, Ranavav-360560,

Gujarat.

**... Applicant Company No. 2 /
Transferee Company**

For the Applicant: Sr. Advocate Mr. Saurabh Soparkar with Ms. Dharmishta Raval with Mr. Nikunt K. Raval, Advocate

ORDER

1. The present joint Application is filed under Section 230-232 with other applicable provisions of the Companies Act, 2013

CA (CAA) 48/AHM/2022

(hereinafter referred to as “**the Act**”) read with the Companies (Compromise, Arrangement, and Amalgamations) Rules, 2016. The proposed Scheme of Amalgamation is between M/s Gujarat Sidhee Cement Limited (hereinafter referred to as the “Transferor Company”) with M/s Saurashtra Cement Limited (hereinafter referred to as the “Transferee Company”) and their respective Shareholders and Creditors.

2. It is submitted that the registered offices of both the applicant companies are situated within the territorial jurisdiction of the Registrar of Companies, Ahmedabad, Gujarat, which are falling under the jurisdiction of this Tribunal.

3. It is submitted that the Transferor Company having CIN: L26940GJ1973PLC002245 was incorporated on 29.03.1973 with the name Cement Corporation of Gujarat Limited under the provisions of the Companies Act, 1956 with the Registrar of Companies, Gujarat. Thereafter, the name of the Company was changed to Gujarat Sidhee Cement Limited on 17.01.1994. The Certificates of Incorporation and change of name are placed on record. The registered office of the Transferor Company is situated at Sidheegram, PO Prashnawada BO, Via Sutrapada SO Taluka, District Gir Somnath-362275, Gujarat. The Authorised Share Capital of the Transferor Company is Rs. 5,43,10,00,000/- which is divided into 54,31,00,000 Equity shares of Rs. 10/- each and Issued, Subscribed and Paid-up Share Capital is Rs. 89,36,22,890/- which is divided into 8,93,62,289/- equity shares of Rs. 10/- each. It is submitted that the Transferor Company holds 1,36,58,267 Equity Shares of Rs. 10 each fully paid up in the Transferee Company holding about 19.42% of the total paid

up Share Capital of the Transferee Company as on 31st of March, 2022.

4. It is submitted that the Transferee Company having CIN: L26941GJ1956PLC000840 was incorporated on 11.06.1956 with the name Saurashtra Cement & Chemical Industries Limited under the provisions of the Companies Act, 1956 with the Registrar of Companies, Gujarat. Thereafter, the name of the Company was changed to Saurashtra Cement Limited on 03.06.1994. The Certificates of Incorporation and change of name are placed on record. The registered office of the Transferee Company is situated at Nr. Railway Station, Ranavav-360560, Gujarat. The Authorised Share Capital of the Transferee Company is Rs. 2,29,60,00,000/- which is divided into 22,96,00,000 equity shares of Rs. 10/- each. The Issued Share Capital of the Company is Rs. 70,34,94,180/- divided into 7,03,49,418 equity shares of Rs. 10 each and Subscribed and Paid-up Share Capital is Rs. 70,33,41,490/- which is divided into 7,03,34,149 equity shares of Rs. 10/- each. It is submitted that presently the Transferee Company holds 22,85,912 equity shares of Rs. 10 each fully paid-up Share Capital in the Transferor Company, holding about 2.59% of the total paid-up Share Capital of the Transferor Company as on 31.03.2022.
5. Applicant Companies are empowered by their respective Memoranda and Articles of Association to enter into a Scheme of Merger. Copies of Memoranda and Articles of Association of both the Applicant Companies are placed on record. The audited Financial Statements of both the Applicant Companies as of 31.03.2022 are placed on record.

6. The Board of Directors of both Applicant Companies have approved the Scheme of Amalgamation at their respective Board Meetings held on 05/02/2022. Copies of respective Board Resolutions passed on 05/02/2022 of both the applicant companies are placed on record.
7. Both the Applicant Companies provided the certificate from Statutory Auditors confirming that the proposed accounting treatment conforms to the applicable Accounting Standards under section 133 of the Companies Act, 2013.
8. The Applicant Companies have placed on record the valuation report by the registered Valuer and a Fairness Opinion given by Edelweises Financial Services Limited (Advisors).
9. The Applicant Companies have submitted that no investigation or proceedings against the Applicant Companies under Section 210 to 226 of the Companies Act, 2013 as well as Section 235 to 251 of the Companies Act, 1956, or the like, are pending.
10. The Applicant Companies have further submitted that the provisions of the Competition Act, 2002 are not applicable in the present case. Hence, no notice is required to be served to the Competition Commission of India.
11. It is submitted that the Applicant Transferee Company is a manufacturing company and 100% Foreign Direct Investment is allowed under automatic route in all manufacturing companies as per the Consolidated Policy on FDI of the Government of India

and no approval under the FEMA is required. Further there will be no in-flow or out-flow of capital on approval of Scheme of Amalgamation. Hence, no notice is required to be issued to the RBI.

12. It is submitted that the shares of the Transferor Company are listed on BSE and NSE. The shares of the Transferee Company are listed on BSE. The Transferor Company has duly submitted the Scheme to NSE and BSE and the Transferee Company has submitted the Scheme to BSE in terms of the Master Circular No. SEBI/HO/CFD/DIL1/CIR/P/2020/249 dated 22.12.2022 r.w. Master Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021/000000665 dated 23.11.2021, SEBI/HO/CFD/SSEP/CIR/P/2022/003 dated 03.01.2022 and SEBI/HO/CFD/DIL2/CIR/P/2022/11 dated 01.02.2022 (SEBI Circular) for their approvals. Apart from the above, the Transferor Company and the Transferee Company also submitted the Report of its Audit Committee on the Scheme and various other documents to the stock exchanges and also displayed the same on their website in terms of the SEBI Circular and addressed all queries on the said documents. The Compliance Report required to be filed in terms of the said SEBI Circular was also duly filed by the Transferor Company and Transferee Company. BSE and NSE by their respective letters No. (i) DCS/AMAL/TL/IP/2350/2022-23 dated May 31, 2022, (ii) DCS/AMAL/TL/IP/2351/2022-23 dated May 23, 2022, for the Transferor Company and (iii) NSE/LIST/30104_II dated June 01, 2022 for the Transferee Company have confirmed that they have no adverse observation on the Scheme pursuant to the said SEBI Circular. However, the Stock Exchanges have also required the Applicant Companies to

make various disclosures to the stock exchanges and the Hon'ble Tribunal while seeking approval of the scheme of Amalgamation. The copies of the said observation letter issued by BSE and NSE are annexed with the application.

13. It is submitted by the Applicant Companies that they shall comply with the observations of the Stock Exchanges.

14. With respect to the **Transferor Company**, it is stated that:

a) There are 57,515 equity shareholders and a certificate from Chartered Accountant certifying the list of shareholders is annexed. The Company is seeking directions for holding the meeting of Equity Shareholders.

b) There are 2 Secured Creditors and a certificate from Chartered Accountant certifying the list of the Secured Creditors is annexed. Out of two Secured Creditors, HDFC Bank Ltd., has given a consent affidavit. Out of total dues of Rs. 41,53,16,980/- of Transferor Company of Secured Creditors, HDFC Bank Limited dues are Rs. 41,13,51,376/- which constitutes 93.70% of the total dues. The copy of the consent affidavit is placed on record. Hence, the company is seeking dispensation for holding the meeting of Secured Creditors.

c) There are 2298 Unsecured Creditors and a certificate from Chartered Accountant certifying the list of the Unsecured Creditors is annexed. The Company is seeking directions for holding the meeting of Unsecured Creditors.

15. With respect to the **Transferee Company**, it is stated that:

- a) There are 16,683 equity shareholders and a certificate from Chartered Accountant certifying the list of shareholders is annexed. The Applicant Company is seeking directions for holding the meeting of Equity Shareholders.
 - b) There are 3 Secured Creditors and a certificate from Chartered Accountant certifying the list of the Secured Creditors is annexed. Out of three Secured Creditors, HDFC Bank Ltd., has given a consent affidavit. Out of total dues of Rs. 51,02,55,626/- HDFC Bank Limited dues are Rs. 50,23,62,636/- which constitutes 98.45% of the total dues. The copy of the consent affidavit is placed on record. Hence, the company is seeking dispensation for holding the meeting of Secured Creditors.
 - c) There are 2689 Unsecured Creditors and a certificate from Chartered Accountant certifying the list of the Unsecured Creditors is annexed. The Applicant Company is seeking directions for holding the meeting of Unsecured Creditors.
16. The appointed date as specified in the Scheme is 01st January, 2022 subject to the directions of this Tribunal.
17. Taking into consideration the submissions and the documents filed therewith, we issue the following directions with respect to convening and/or dispensing the meetings of the Equity Shareholders, Unsecured and/or Secured Creditors as well as issue of notices including by way of paper publication as follows:

i) In relation to the Transferor Company:

- a. With respect to Equity Shareholders:

The meeting of the Equity Shareholders of the Transferor Company as per the Register of Members as on 30.09.2022 shall be convened on 22nd November, 2022 at 11.30 AM at the Registered office of the Company at Sidheegram, PO-

Prashnawada BO, Tal: Sutrapada, Pin Code: 362275, Dist: Gir Somnath, Gujarat OR through Video Conference, as prayed, for the purpose of considering and, if thought fit, approving with or without modifications the proposed scheme.

b. With respect to Secured Creditors:

Convening of the meeting of Secured Creditors of the company is hereby dispensed with, in view of consent from Secured Creditors constituting 93.70% of total debt by way of affidavits placed on record.

c. With respect to Unsecured Creditors:

The meeting of the Unsecured Creditors of the Transferor Company as per the list of the unsecured creditors appears in the Books of Company on 30.09.2022, shall be convened and held on 22nd November, 2022, at 3.30PM at the Registered office of the Company at Sidheegram, PO-Prashnawada BO, Tal: Sutrapada, Pin Code: 362275, Dist: Gir Somnath, Gujarat OR through Video Conference, as prayed, for the purpose of considering and, if thought fit, approving with or without modifications the proposed scheme.

ii) In relation to the Transferee Company:

a. With respect to Equity Shareholders:

The meeting of the Equity Shareholders of the Transferee Company as per the Register of Members on 30.09.2022 shall be convened on 23rd November, 2022 at 10.30AM at the Registered office of the Company at Near Railway Station, Ranavav 360 560, Gujarat OR through Video Conference, as prayed, for the purpose of considering and, if thought fit, approving with or without modifications the proposed Scheme.

b. With respect to Secured Creditors:

Convening of the meeting of Secured Creditors of the company is hereby dispensed with, in view of consent from Secured Creditors constituting 98.45% of total debt by way of affidavits placed on record.

c. With respect to Unsecured Creditors:

The meeting of the Unsecured Creditors of the Applicant Transferee Company as per the list of the unsecured creditors appears in the Books of Company on 30.09.2022, shall be convened on 23rd November, 2022 at 12.30PM at the Registered office of the Company at Near Railway Station, Ranavav 360 560, Gujarat OR through Video Conference, as prayed, for the purpose of considering and, if thought fit, approving with or without modifications the proposed scheme.

18. In view of the recent circulars of Ministry of Corporate Affairs; viz. 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 and General Circular No.2/2022 dated 5th May, 2022, the meetings of Shareholders as well as the Unsecured Creditors of both the Applicant Companies may be convened and conducted through video conferencing or other Audio Visual Means or other means as may be permitted under law. Both the Applicant Companies shall appoint agencies as mandated by law.
19. At least one month before the date of the meetings, a notice in Form No. CAA 2 convening the said meetings indicating the day, the date, the time as aforesaid, 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, as well as other requisite documents, shall be sent to each of the Equity Shareholders, Unsecured Creditors of both the Applicant Companies; at their respective available addresses either through email or courier or speed post or registered post. In the case of the Equity Shareholders of both the Applicant Companies, the notices shall be sent in reference to the list of the members appearing on the record of the Applicant Companies as of 30th September 2022. The notices shall be sent to the Unsecured Creditors of both the Applicant Companies in reference to the list of the creditors appearing on the record of the Transferee Company as of 30th September, 2022 and the voting percentage of such creditors as per list is to be decided after considering the amount of debt as on the date of voting, which is to be ensured by the Chairperson.

20. At least one month before the date of meetings, an advertisement about convening the aforesaid meetings of Equity Shareholders, Secured/Unsecured Creditors of the Transferee Company/Transferor Company; indicating the day, the date, the time and the details of modalities for the meeting as aforesaid, shall be published in “Business Standard”, Mumbai and Ahmedabad, English daily and Gujarati translation thereof in Gujarati daily “Jai Hind” Rajkot edition. 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 from the Registered Office of the Applicant Transferee Company in accordance with the second

proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.

21. Adv Prashant Patel and in his absence Adv Tejas Pandya, shall be the Chairman/Chairperson of the aforesaid meetings of the equity shareholders and unsecured creditors of the Transferor Company to be held on Tuesday the 22nd November, 2022 and in respect of any adjournment thereof.
22. Adv Dipak Rachchha and in his absence Adv Tejas Pandya, shall be the Chairman/Chairperson of the aforesaid meetings of the equity shareholders and unsecured creditors of the Transferee Company to be held on Wednesday the 23rd November, 2022 and in respect of any adjournment thereof.
23. Mr. Ashish Shah of M/s. Ashish Shah & Associates Practicing Company Secretaries and in his absence Mr. Sachin Ahuja of M/s. Sachin Ahuja & Associates, Chartered Accountants shall act as the Scrutinizer for the aforesaid meetings of the Transferor Company.
24. Mr. Ravi Kapoor, Practicing Company Secretary and in his absence Mr. Sachin Ahuja of M/s. Sachin Ahuja & Associates, Chartered Accountants shall act as the scrutinizer of the aforesaid meetings of the Transferee Company.
25. The chairperson appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meetings referred to above.

26. The chairperson shall file an affidavit not less than 7(seven) days before the date fixed for the holding of the meetings and report to this Tribunal that the directions regarding issuance of notices and advertisement of the meeting have been duly complied with as per Rule 12 of the Companies (CAA) Rules, 2016.
27. It is further ordered that the Chairperson of the company shall report to this Tribunal the result of the meeting in Form No. CAA.4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in from No. CAA.4 within seven days after the conclusion of the meeting.
28. The quorum for the aforesaid meeting of the Equity Shareholders and Unsecured Creditors of Applicant Companies shall be as prescribed under Section 103 of the Companies Act, 2013 and would include Equity Shareholders and Unsecured Creditors in person or by an authorised representative and thereafter the persons present shall be deemed to constitute the quorum.
29. It is however clarified that in view of para A (x) of the MCA Circular No. 14/2020 dated 8th April 2020, that in case of meeting through video conference or other audio visual means, the voting through Proxy shall not be permitted. However, voting through Authorized Representative is permitted.
30. The number and value of the vote of each Equity Shareholder, or the value of debt of the Unsecured Creditors of the Applicant Companies, as the case may be, shall be in accordance with the register or records of the Applicant Companies for Equity Shareholders and as per the entries in the books of accounts of the companies for the Unsecured Creditors; and where the entries

in the records are disputed, the Chairperson of the meetings shall determine the value for the purposes of the meetings.

31. In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, the Applicant Companies shall send a Notice of meeting in Form No. CAA 3 with a copy of the Scheme of Arrangement, the Explanatory Statement and the disclosures mentioned under Rule 6 to (1) Central Government through the Regional Director, North Western Region, (2) the Registrar of Companies, Gujarat; and (3) to the Income Tax Department along with full details of assessing officer and PAN numbers of all the applicant companies with the copy also to the Chief Commissioner of Income Tax Office, (4) Official Liquidator (5) Reserve Bank of India; (6) BSE Limited; (7) National Stock Exchange Limited; (8) Securities and Exchange Board of India; (9) Competition Commission of India; stating that representations, if any, to be made by them shall be made within a period of 30 (Thirty) days from the date of receipt of such notice, failing which it will be deemed that they have no objection to make on the proposed Scheme of Arrangement. The said notices shall be sent forthwith after the notice for the meetings are sent to the concerned Equity Shareholders and Unsecured Creditors of the Applicant Companies, either by Registered Post or by Speed Post or by Courier or by Hand Delivery at the offices of the authorities as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230 shall send the same to this Tribunal with a copy of the same to be supplied to the Applicant Company.

32. The Application is allowed and disposed of in terms of the above directions.

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**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

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**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)**

Abhishek Steno/Abhishek LRA