

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
BENCH-2**

CA (CAA) 14/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 Silicate Minerals (I) Private Limited
(Applicant Company No. 1/Transferor Company)

WITH

M/s 20 Microns Nano Minerals Limited
(Applicant Company No. 2/Transferee Company)

And

Their Respective Shareholders and Creditors.

Order Pronounced on 03.06.2022

CORAM:

DR. DEEPTI MUKESH HON'BLE MEMBER (JUDICIAL)

AJAI DAS MEHROTRA HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

M/s Silicate Minerals (I) Private Limited,

(CIN: U74140GJ1997PTC031829)

Registered office at;

347 GIDC Industrial Estate Waghodia,

District-Vadodara, Gujarat- 391760.

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

WITH

M/s 20 Microns Nano Minerals Limited,

(CIN: U15543GJ1993PLC020540)

Registered office at;

9-10 GIDC Industrial Estate Waghodia,

District-Vadodara, Gujarat- 391760.

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

For the Applicant: Advocate, Mr. Dhinal Shah.

ORDER

1. The present joint Application is filed under Section 230-232 with other applicable provisions of the Companies Act, 2013 (hereinafter referred to as "**the Act**") read with the Companies (Compromise, Arrangement, and Amalgamations) Rules, 2016. The proposed Scheme of Amalgamation is between Silicate Minerals (I) Private Limited (hereinafter referred to as the

“Transferor Company”) with 20 Microns Nano Minerals Limited (hereinafter referred to as the “Transferee Company”) and their respective Shareholders and Creditors.

2. It is submitted that the registered office 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: U74140GJ1997PTC031829 was incorporated on 03.03.1997 with the name Trio Techno-Consultants Pvt. Ltd. under the provisions of the Companies Act, 1956 with the Registrar of Companies, Gujarat, Dadra and Nagar Haveli. Thereafter, the name of the Company was changed to Platy Minerals Private Limited and further to Silicate Minerals (I) Private Limited on 10.06.2010 and on 26.07.2014 respectively. The Certificates of Incorporation are placed on record. The registered office of the Transferor Company is situated at 347 GIDC Industrial Estate Waghodia, District-Vadodara, Gujarat- 391760. The Authorised Share Capital of the Transferor Company is Rs. 40,00,000/- which is divided into 4,00,000 Equity shares of Rs. 10/- each and Issued, Subscribed and Paid-up Share Capital is Rs. 33,75,300/- which is divided into 3,37,530/- equity shares of Rs. 10/- each.
4. It is submitted that the Transferee Company having CIN: U15543GJ1993PLC020540 was incorporated on 28.10.1993 with the name Speciality Minrals Private Limited under the provisions of the Companies Act, 1956 with the Registrar of Companies, Gujarat, Dadra and Nagar Haveli. Thereafter, the name of the Company was changed to Speciality Minerals Limited and further

to 20 Microns Nano Minerals Limited on 12.11.2008. The Certificates of Incorporation are placed on record. The registered office of the Transferee Company is situated at 9-10 GIDC Industrial Estate Waghodia, District-Vadodara, Gujarat- 391760. The Authorised Share Capital of the Transferee Company is Rs. 20,00,00,000/- which is divided into 2,00,00,000 Equity shares of Rs. 10/- each and the Issued, Subscribed and Paid-up Share Capital is Rs. 8,97,00,200/- which is divided into 89,70,020/- equity shares of Rs. 10/- each.

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 31.03.2021 are placed on record. The unaudited Financial Statements of both the Applicant Companies as of 30.09.2021 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 23/09/2021. Copies of respective Board Resolutions passed on 23/09/2021 of both the applicant companies are placed on record.
7. Both the Applicant Companies provided the certificate from Statutory Auditors confirming the proposed Accounting Treatment conforming with the Applicable Accounting Standard under section 133 of the Companies Act, 2013.
8. It is stated in the Application that there are no proceedings or investigations pending against any of the Applicant Companies

under sections 210-226 of the Companies Act, 2013 and/or under sections 235 to 251 of the Companies Act, 1956.

9. It is submitted that the provisions of the Competition Commission Act, 2002 are not applicable to the present Scheme and hence no notice is required to be served on the Competition Commission of India. Notice to the Reserve Bank of India is also not required as provisions of FEMA Act are not attracted in the present Scheme of Amalgamation as there are no foreign Shareholders in any of the Applicant Companies and no new shares are being allotted to any non-resident.
10. With respect to the **Transferor Company**, it is stated that:
 - a) There are 6 equity shareholders and a certificate from Chartered Accountant certifying the list of shareholders is annexed. All equity shareholders have given their consents by way of affidavits for the proposed composite scheme of amalgamation. The copies of the consent affidavits of all equity shareholders are annexed with the application. Hence, the company is seeking dispensation for holding the meeting of equity shareholders.
 - b) There are no Secured Creditors. Certificate from Chartered Accountant certifying that there are no secured creditors is annexed with the application. Therefore, meeting of Secured Creditors is not required to be convened.
 - c) There are 2 Unsecured Creditors and a certificate from Chartered Accountant certifying the list of the Unsecured Creditors is annexed. Both the Unsecured Creditors have given their consent by way of affidavits for the proposed composite scheme of amalgamation. The copies of the consent affidavits of both the Unsecured Creditors are annexed with the application.

Hence, the company is seeking dispensation for holding the meeting of Unsecured Creditors.

11. With respect to the **Transferee Company**, it is stated that:
 - a) There are 120 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 is only 1 Secured Creditor and a certificate from Chartered Accountant certifying the same is annexed. The Applicant Company is seeking directions for holding the meeting of sole Secured Creditor.
 - c) There are 47 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.
12. The appointed date as specified in the Scheme is 01st April, 2021 subject to the directions of this Tribunal.
13. Taking into consideration the submissions and the documents filed therewith, we issue the following directions with respect to holding and convening or dispensing the meeting 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:

Convening of the meeting of equity shareholders of the company is hereby dispensed with, in view of 100% consent received by way of affidavits from Shareholders.

b. With respect to Secured Creditors:

As there are no secured creditors in the Company, convening of the meeting of secured creditors is obviated.

c. With respect to Unsecured Creditors:

Convening of the meeting of Unsecured Creditors of the company is hereby dispensed with, in view of 100% consent received by way of affidavits from Unsecured Creditors.

ii) In relation to the Transferee Company:

a. With respect to Equity Shareholders:

The meeting of the Equity Shareholders of Transferee Company shall be convened and held on 20.07.2022 at 01:30 P.M. at 9-10, GIDC Industrial Estate, Waghodia, District: Vadodara, Gujarat 391760, for the purpose of considering and, if thought fit, approving the proposed Scheme of Amalgamation, with or without modifications.

b. With respect to Secured Creditors:

The meeting of the secured creditors of Transferee Company shall be convened and held on 20.07.2022 at 11:30 A.M. at 9-10, GIDC Industrial Estate, Waghodia, District: Vadodara, Gujarat 391760, for the purpose of considering and, if thought fit, approving the proposed Scheme of Amalgamation, with or without modifications.

c. With respect to Unsecured Creditors:

The meeting of the unsecured creditors of Transferee Company shall be convened and held on 20.07.2022 at 12:30 P.M. at 9-10, GIDC Industrial Estate, Waghodia, District: Vadodara, Gujarat 391760, for the purpose of considering and, if thought fit, approving the proposed Scheme of Amalgamation, with or without modifications.

14. 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, Secured/Unsecured Creditors of the Transferee Company; at their respective available addresses either through email or courier or speed post or registered post. In the case of the Equity Shareholders of the Transferee Company, the notices shall be sent in reference to the list of the members appearing on the record of the Transferee Company as of 30th September 2021. The notices shall be sent to the Secured Creditor and Unsecured Creditors of Transferee Company in reference to the list of the creditors appearing on the record of the Transferee Company as of 30th September, 2021 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.

15. 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; indicating the day, the date, the time and the details of modalities for the meeting as aforesaid, shall be published once in English Daily 'Business Standard' Ahmedabad Edition and Gujarati translation thereof in Gujarati daily 'Loksatta Newspaper' Gujarat 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.

16. Mr. Pritesh B Khambholja, Advocate, (Address: B – 105, Titanium Square, S.G. Highway, Thaltej, Ahmedabad) and failing him Mr. Anvesh V Vyas, Advocate (Address: 814, Fortune Business Hub, Near Shell Petrol Pump, Science City Road, Sola, Ahmedabad - 380060) is hereby appointed as Chairperson of the aforesaid meetings and in respect of any adjournment or adjournments thereof.
17. Mr. Umesh Parikh or Mr. Uday Dave, Partner of M/s. Parikh Dave & Associates, Practising Company Secretaries (Address: 5 - D, 5th Floor, Vardan Exclusive, Next to Vimal House, Nr. Stadium Petrol Pump, Navrangpura, Ahmedabad - 380 014) shall act as the scrutinizer of the aforesaid meeting and in respect of any adjournment thereof.
18. The chairperson appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meetings referred to above.
19. 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.
20. 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.

21. The quorum for the meetings of the Transferee Company for Equity Shareholders shall be 15 (Fifteen), for Secured Creditors shall be 1 (One) and for Unsecured creditors it shall be 10 (Ten) persons present in person or by proxy or by an authorised representative and thereafter the persons present shall be deemed to constitute the quorum.
22. Voting by proxy/authorised representative is permitted provided that the proxy is in the prescribed form/authorization duly signed by the person entitled to attend and vote at the aforesaid meeting is filed with the applicant companies not later than 48 hours before the said meeting, vide Rule 10 of the Companies (CAA) Rules, 2016 read with section 105 of the Act.
23. The number and value of the vote of each Equity Shareholder, or the value of debt of the Secured/Unsecured Creditors of the Transferee Company, as the case may be, shall be in accordance with the register or records of the Transferee Company for Equity Shareholders and as per the entries in the books of accounts of the companies for the Secured and 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.
24. In compliance with sub-section (5) of section 230 and Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016, the Applicant Companies shall send a notice in Form No. CAA. 3 along with explanatory statement and disclosures

mentioned under Rule 6, to (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, Gujarat, Dadra and Nagar Haveli (iii) 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, and (iv) the Office of the Official Liquidator stating that representations, if any, to be made by them be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed scheme of arrangement. The said notices shall be sent by registered post or by speed post or by courier or by hand delivery at the office of the aforesaid statutory authorities as required by sub-rule(2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid statutory authorities who desire to make any representation under Subsection (5) of Section 230 shall send the same to this Tribunal with a copy of the same to the Applicant Companies within a period of 30 days from the date of such service.

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

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Abhishek/Steno.