

IN THE NATIONAL COMPANY LAW TRIBUNAL,

COURT -V, MUMBAI BENCH

CA (CAA) No. 101/MB/2021

CONNECTED WITH

CP (CAA) No. 219/MB/2021

**IN THE MATTER OF SECTIONS
230 TO 232 AND OTHER
APPLICABLE PROVISIONS OF
THE COMPANIES ACT, 2013**

AND

**IN THE MATTER OF THE
SCHEME OF ARRANGEMENT
AND AMALGAMATION
AMONGST MURLI INDUSTRIES
LIMITED AND ASCENSION
MERCANTILE PRIVATE
LIMITED AND ASCENSION
MULTIVENTURES PRIVATE
LIMITED AND DALMIA CEMENT
(BHARAT) LIMITED**

Murli Industries Limited, an unlisted)
public company incorporated under)
the provisions of the Companies Act,)
1956, having corporate identity)
number U01110MH1991PLC064271)

and its registered office at Naranda,)
Korpana Road, Korpana, Chandrapur,) **...First Petitioner Company /**
Maharashtra - 442916.) **Demerged Company/**
Amalgamating Company

Ascension Mercantile Private)
Limited, an unlisted private company)
incorporated under the provisions of)
the Companies Act, 2013, having)
corporate identity number)
U74999MH2018PTC313505 and its)
registered office at 22, Shivam)
Chambers, S.V. Road Goregaon, West) **...Second Petitioner**
Mumbai, Maharashtra – 400062. **Company / Resulting**
Company 1

Ascension Multiventures Private)
Limited, an unlisted private company)
incorporated under the provisions of)
the Companies Act, 2013, having)
corporate identity number)
U74999MH2018PTC314088 and its)
registered office at 22, Shivam)
Chambers, S.V. Road Goregaon, West)
Mumbai, Maharashtra – 400062. **...Third Petitioner Company**
/ Resulting Company 2

Order Delivered on:- 05.05.2022

Coram: Ms. Suchitra Kanuparthi, Hon'ble Member (J)
Ms. Anuradha Sanjay Bhatia, Hon'ble Member (T)

Appearances (via videoconferencing)

For Petitioner Companies: : Senior Counsel Mr. Gaurav Joshi a/w Mr
Ajay Bhargava, Mr Aniket Agarwal, Mr Peshwan Jehangir, Mr Himanshu
Vidhani and Mr Bhanu Chopra i/b Khaitan & Co.

For the Regional Director : Ms. Rupa Sutar, Dy. Director

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. The Bench is convened by video conference.
2. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (“Act”), to the Composite Scheme of Arrangement and Amalgamation amongst Murli Industries Limited (“**First Petitioner Company**” / “**Demerged Company**” / “**Amalgamating Company**”), Ascension Mercantile Private Limited (“**Second Petitioner Company**” / “**Resulting Company 1**”), Ascension Multiventures Private Limited (“**Third Petitioner Company**” / “**Resulting Company 2**”) and Dalmia Cement (Bharat) Limited (“**Amalgamated Company**” / “**DCBL**”) (“Scheme”). The First Petitioner Company, Second Petitioner Company and the Third Petitioner Company (hereinafter collectively referred to as “**the Petitioner Companies**”) are wholly owned subsidiaries of DCBL. The Board of Directors of the

Petitioner Companies and DCBL, have approved the Scheme at their respective board meetings, all held on 23 March 2021.

3. The Learned Counsel for the Petitioner Companies submits that the registered offices of the Petitioner Companies are in Maharashtra and hence the subject matter of the Petition is within the jurisdiction of the National Company Law Tribunal, Mumbai Bench. Further, the registered office of DCBL is situated at Dalmiapuram, Dist Tiruchirappalli, Tamil Nadu- 621651, i.e. outside the jurisdiction of this Hon'ble Tribunal. The Learned Counsel for the Petitioner Companies states that DCBL has filed separate proceedings before the Hon'ble NCLT Chennai Bench for obtaining sanction for the Scheme.

4. The First Petitioner Company is engaged in the business of manufacturing cement (core business) and paper and solvent extraction (non-core businesses). The Learned Counsel for the Petitioner Companies submits that the Scheme provides for (a) the segregation of non-core businesses of the First Petitioner Company, i.e. the paper business and the solvent extraction businesses into separate companies, being the Second Petitioner Company and Third Petitioner Company, respectively; and (b) consolidation of the residual business (Cement Business) of the First Petitioner Company into its holding company, i.e. DCBL pursuant to the provisions of Sections 230 to 232 and other applicable provisions, if any, of the Companies Act 2013. Pursuant to the sanction of the Scheme, the Paper Business of the First Petitioner Company will stand vested to the Second Petitioner Company and the Solvent Extraction Business will stand vested to the Third Petitioner Company. Pursuant thereto, the First Petitioner Company will be amalgamated with DCBL as a going concern.

5. The Learned Counsel for the Petitioner Companies submits that the circumstances and/or reasons and/or grounds that have necessitated and/or justified the Scheme and some of the major benefits which would accrue from the Scheme are extracted from the Scheme and reproduced hereinbelow:

“ ...

(a) the proposed Scheme would result in segregation of non-core businesses of MIL, a wholly owned subsidiary of DCBL, into separate companies and consolidation of core business (i.e. cement business) of MIL into a single entity, i.e. DCBL;

(b) the consolidation of cement business would lead to better, efficient and economical cost management, cost savings, pooling of resources, optimum utilisation of resources, elimination of duplicative communication and coordination and rationalisation of administrative expenses/services;

(c) the consolidation of cement business would also lead to synergies in operational process and logistics alignment, creating better synergy, better utilisation of human resources and further development and growth of business via a single entity, DCBL;

(d) the single entity i.e. DCBL would have increased capability for offering products and services by virtue of its enhanced resource base and deeper client relationship, resulting in better business potential and prospects for the merged entity;

(e) the proposed Scheme would help DCBL in sharpening its competitiveness and development of long term internal and core competencies through cost savings and benefit of economies of scale unlocked to DCBL;

(f) the proposed Scheme will augment the cement manufacturing footprint and capabilities of DCBL, by increasing the scale of manufacturing operations, thereby helping in rationalising the number of vendors, aggregating the purchases and managing the supply chain more effectively and efficiently;

(g) the demerger of the Demerged Undertaking 1 (defined in Part I below) and Demerged Undertaking 2 (defined in Part I below) of the Demerged Company to Ascension Mercantile and Ascension Multiventures respectively under the Scheme will facilitate independent control and management of such undertakings more conveniently and advantageously through the said two companies with greater focus and attention and facilitate the business considerations and factors peculiar to the said undertakings to be addressed more effectively and adequately by the said two companies. The demerger will enable independent evaluation of the said undertakings through the said two companies and facilitate induction of investors therein more effectively and allow DCBL to continue to focus on its core cement business.

(h) thus, this Scheme, as envisaged, is in the interest of the shareholders, creditors, employees, and other stakeholders of the

Companies (defined in Part I below) by pursuing a focused business approach under DCBL, thereby resulting in overall maximization of value creation of all the stakeholders involved.

...”

6. The Learned Counsel for the Applicant Companies submits that the consideration for the Scheme is as follows:

Demerger of the Paper Business (Demerged Undertaking 1) of the First Applicant Company (Demerged Company) into the Second Applicant Company (Resulting Company 1) :

“Upon this Scheme becoming effective and upon vesting of the Demerged Undertaking 1 of the Demerged Company into the Resulting Company 1 in terms of this Scheme, the Resulting Company 1 shall without any further act, application or deed, issue and allot equity shares, credited as fully paid-up, to the extent indicated below, to the shareholders of the Demerged Company, holding fully paid-up equity shares in the Demerged Company and whose names appear in the register of members of the Demerged Company on the Record Date or to such of their respective heirs, executors, administrators or other legal representative or other successors in title as may be recognised by the Board of Directors of the Resulting Company 1 in the following manner:

1 fully paid up equity share of INR 10 each of the Resulting Company 1 shall be issued and allotted for every 10,000 fully paid up equity shares of INR 2 each held in the Demerged Company.”

Demerger of the Solvent Extraction Business (Demerged Undertaking 2) of the First Applicant Company (Demerged Company) into the Second Applicant Company (Resulting Company 2):

“Upon this Scheme becoming effective and upon vesting of the Demerged Undertaking 2 of the Demerged Company into the Resulting Company 2 in terms of this Scheme, the Resulting Company 2 shall without any further act, application or deed, issue and allot equity shares, credited as fully paid-up, to the extent indicated below, to the shareholders of the Demerged Company, holding fully paid-up equity shares in the Demerged Company and whose names appear in the register of members of the Demerged Company on the Record Date or to such of their respective heirs, executors, administrators or other legal representative or other successors in title as may be recognised by the Board of Directors of the Resulting Company 2 in the following manner:

1 fully paid up equity share of INR 10 each of the Resulting Company 2 shall be issued and allotted for every 10,000 fully paid up equity shares of INR 2 each held in the Demerged Company.”

Amalgamation of the First Applicant Company (Amalgamating Company) with DCBL (Amalgamated Company):

“As the entire paid up share capital of Amalgamating Company are held by Amalgamated Company along with its nominees, it is expressly understood that, upon this Scheme becoming effective, there will be no issue and allotment of any securities by Amalgamated Company in respect of Amalgamation. Consequently,

the investment of Amalgamated Company in entire paid-up share capital of the Amalgamating Company shall stand cancelled in the books of Amalgamated Company, pursuant to Amalgamation.”

7. The Appointed Date as mentioned in the Scheme is 31 March 2020 (close of business hours).
8. The Scheme also provides for Dissolution of the First Petitioner Company pursuant to the Scheme becoming effective.
9. The Learned Counsel for the Petitioner Companies submits that the Company Petition is filed in consonance with Section 230 to 232 and other applicable provisions of the Companies Act, 2013 and the Order dated 23 September 2021 passed in the CA (CAA) No. 101/MB/2021 (“**said Order**”) by this Tribunal.
10. The Learned Counsel for the Petitioner Companies submits that on 15 December 2021, the Company Petition was heard for admission and the date for hearing and final disposal was fixed as 20 January 2022. The Petitioner Companies were directed to cause publication of the advertisement for final hearing of this matter at least 10 (ten) clear days before the date fixed in ‘The Indian Express’ and Marathi translation thereof in ‘Loksatta’. The Petitioner Companies caused publication in the said newspapers on 8 January 2022. Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have also issued notices to the concerned regulatory authorities indicating the date of final hearing.

11. The Learned Counsel for the Petitioner Companies submits that the Petitioner Companies, have filed a Compliance Report with this Hon'ble Tribunal on 28 January 2022 evidencing the publication and service of notices. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal.

12. By way of an Additional Affidavit dated 13 March 2022, the Petitioner Companies have, *inter alia*, also placed on record that one Mr. Arunpal Singh Behal, claiming to be the President of one Murli Industries Workers Union (“**Union**”), has served upon the Petitioner Companies/its Advocates 2(two) letters dated 10 January 2022 and an application dated 16 January 2022. The Counsel for the Petitioner Companies submits that the rights of any workers/employees of the First Petitioner Company, will not be adversely affected by the sanction of the Scheme for the reasons set out in the said Additional Affidavit. In the said Additional Affidavit, the Petitioner Companies have stated that the Union does not have the locus to raise objections to the Scheme, and that the concerns raised are on the basis of conjecture and surmises. The Petitioner Companies have suitably addressed the concerns raised by the Union, *inter alia*, by setting out how the Scheme adequately safeguards the interest of any *bona fide* worker/employee of the First Petitioner Company. No other objector has come before the Tribunal to oppose the Petition and nor has any party controverted any averments made in the Petition.

13. The Regional Director (“**RD**”) has filed its Report dated 1 March 2022 (“**Report**”) praying that this Tribunal may pass such orders as it thinks fit, save and except as stated in Paragraphs IV (a) to (l). The Petitioner Companies have filed an Affidavit dated 2 March 2022, in Response to the

Report. Thereafter, RD has filed a Supplementary Report dated 4 March 2022 (“**Supplementary Report**”). The summary of observations of the RD, the response of the Petitioner Companies dated 2 March 2022, and the observations of the RD in its Supplementary Report are set out in tabular format below:

Para	RD Observations, Petitioners’ Reply and RD Supplementary Report
IV(a).	<p><u>Observations of the RD:</u></p> <p>In compliance of AS-14 (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS- 8) etc.</p> <p><u>Reply of the Petitioner Companies:</u></p> <p>The Petitioner Companies undertake that in compliance with the said AS 14 (now IND-AS 103), accounting entries which are necessary in connection with the Scheme to comply with other Accounting Standards such as AS-5 (now IND AS-8) etc, if applicable, will be duly passed by them</p> <p><u>Supplementary Report of RD:</u></p> <p>No further observations. Hence in terms of para 6 of the Supplementary report the Regional Director has found the response satisfactory.</p>
IV(b).	<p><u>Observations of the RD:</u></p>

As per Definition of the Scheme,
“Appointed Date” means March 31, 2020 (at close of business hours) or such other date as the Hon’ble NCLT (as defined below) may decide / approve, being the date with effect from which the Scheme shall become operative and / or be deemed to have become operative as stated herein;. And
“Effective Date” “Effective Date” shall mean the last of the dates on which all the conditions and matters referred to in Clause 43 have been fulfilled, obtained or waived. References in this Scheme to date of this Scheme becoming effective’ or ‘this Scheme coming into effect’ shall mean the Effective Date;

In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon’ble Tribunal taking into account its inherent powers.

The appointed date is 31 / 03 / 2020 which is outdated more than one year, the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7 / 12 / 2019 / CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

Reply of the Petitioner Companies:

The Petitioner Companies submit that the Appointed Date in present Scheme is in compliance with the requirements of

	<p>circular no. F. No. 7/12/2019/CI-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs (“said Circular”).</p> <p>It is submitted that the Scheme was approved by the Board of Directors of the Petitioner Companies on 23rd March 2021 and the Company Application was filed on 28 March 2021, which is less than a year prior to the “appointed date” under the Scheme, i.e. 31 March 2020 (closing of business hours). Consequently, the present case is squarely covered by the said Circular.</p> <p><u>Supplementary Report of RD:</u></p> <p>No further observations. Hence in terms of para 6 of the Supplementary report the Regional Director has found the response satisfactory.</p>
IV(c).	<p><u>Observations of the RD:</u></p> <p>It is stated that as per Rule 6(3)(VIII) of the Companies (Arrangements and Amalgamations) Rules, 2016, the petitioner company namely Murli Industries Limited have to disclose the details of investigation or proceedings, if any pending against the company, in the notice given to public, shareholders and creditors etc. In the present case Hon’ble Tribunal has dispensed with the holding of the meeting of the creditors and shareholders in the matter of Murli Industries Limited on the basis of the individual affidavits given by the creditors and shareholders. The petitioner companies ought to have issued notice for the public included this fact of</p>

ongoing investigation in the public notice given by the company, which it has not given.

Reply of the Petitioner Companies:

The Petitioner Companies submit that Rule 6(3)(VIII) of the Companies (Arrangements and Amalgamations) Rules, 2016 is only applicable in cases where meetings of creditors/ shareholders are required to be held for obtaining their sanction to the Scheme. Since, by its Order dated 23 September 2021 this Hon'ble Tribunal was pleased to dispense with the requirements of the Petitioner Companies from holding meetings of equity shareholders and creditors for the reasons set out therein, there is no question of any notice of meetings and explanatory statement thereto being issued to the shareholders and creditors. The said Rule 6(3)(VIII) will have no application in the present matter.

Without prejudice to the same and in any case, it is submitted that Murli Industries Limited is a wholly owned subsidiary of Dalmia Cement (Bharat) Limited ("DCBL"), which is a group company under the same promoter group. DCBL is aware of the investigation proceeding by the ROC that is pending against Murli Industries Limited.

Further, there are no secured creditors of Murli Industries Limited and DCBL holds 92.50% of the total unsecured debt in the Murli Industries as on December 31, 2020.

DCBL has given its consent to the Scheme and is in fact a part of the Scheme. It is also aware of the inspection / investigation. Furthermore, the admission of the instant Company Petition was duly advertised in 2 newspapers, namely Loksatta (in Marathi) and Indian Express (in English) on 8 January 2022. As such, it is submitted that no further notice is required to be given to the shareholders/ creditors of Murli Industries Limited.

Supplementary Report of RD:

In response to the observation IV(c) of representation, the petitioner company has stated that Rule 6(3) (VIII) of the (Arrangements and Amalgamations) Rules, 2016 is only applicable on the cases in which the meeting of the creditors/shareholders are required, but in the present case the Hon'ble Tribunal has dispensed with the holding of the meetings of the creditors

As per Rule 6(3)(VIII) of the (Arrangements and Amalgamations) Rules, 2016, the notice of the meeting to the creditors and members shall be accompanied by a copy of the scheme of compromise or arrangement and a statement disclosing the details of investigation or proceedings, if any, pending against the company under the Act, of compromise or arrangement, if such details are not already included in the said scheme, still the company has to issue notice in public in newspaper which ought to include the fact of investigation. The petitioner companies have not mentioned in the scheme

	<p>about the ongoing investigation in the scheme Therefore, the reply of the said observations is not satisfactory.</p>
IV(d).	<p><u>Observations of the RD:</u></p> <p>Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.</p> <p><u>Reply of the Petitioner Companies:</u></p> <p>The Petitioner Companies undertake to comply with Section 232(3)(i) of the Companies Act, 2013 and upon implementation of the Scheme and clubbing of authorized share capital of the Amalgamating Company with the Amalgamated Company, the fees if any paid by the Amalgamating Company shall be set off against the fees payable by the Amalgamated Company on its authorized share capital subsequent to its amalgamation.</p> <p><u>Supplementary Report of RD:</u></p> <p>No further observations. Hence in terms of para 6 of the Supplementary report the Regional Director has found the response satisfactory.</p>
IV(e).	<p><u>Observations of the RD:</u></p>

	<p>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.</p> <p><u>Reply of the Petitioner Companies:</u></p> <p>The Petitioner Companies submit that the Hon'ble Tribunal was pleased to dispense with the meetings of the shareholders and creditors of the respective Petitioner Companies as set out in the order dated 23 September 2021 passed in the captioned Company Scheme Application for the reasons set out therein. As such, there is no question of placing minutes of meetings of shareholders and creditors before this Hon'ble NCLT in this regard.</p> <p><u>Supplementary Report of RD:</u></p> <p>No further observations. Hence in terms of para 6 of the Supplementary report the Regional Director has found the response satisfactory.</p>
IV(f).	<p><u>Observations of the RD:</u></p> <p>Clause-13.2(e) and 34.1(e) of Accounting Treatment of the scheme; stated that the difference between the value of net assets of Demerged Undertaking 1 (refer sub-clause (a) above) and the face value of equity share capital issued (refer sub-clause (b) above) shall be debited to goodwill or credited</p>

to capital reserve, as the case may be, All adjustments pursuant to the above shall be recorded as goodwill / capital reserve, as the case may be in accordance with the guidelines of “acquisition method” prescribed under IND AS 103, ‘Business Combinations’ respectively;

In this regard it is submitted that as per Accounting Standard 14, such surplus / deficit if any arising out of the scheme should be credited to the Capital Reserve / Goodwill arising out of amalgamation and it shall not be considered as free reserve and not available for distribution of dividend.

Reply of the Petitioner Companies:

The Scheme, *inter alia*, provides as follows:

“13.2 *In the books of Resulting Company 1:*

(c) The difference between the value of net assets of Demerged Undertaking 1 (refer sub-clause (a) above) and the face value of equity share capital issued (refer sub-clause (b) above) shall be debited to goodwill or credited to capital reserve, as the case may be.

.....

24.2 *In the books of Resulting Company 2:*

(c) The difference between the value of net assets of Demerged Undertaking 2 (refer sub-clause (a) above) and the face value of equity share capital issued (refer sub-clause (b) above) shall be debited to goodwill or credited to capital reserve, as the case may be.

”

	<p>The Petitioner Companies submit that the Scheme duly provides that, the surplus / deficit, if any, arising out of the Scheme, will be debited to goodwill or credited to capital reserve of the respective Resulting Company, as the case may be. The same shall not be considered as free reserve and will not be available for distribution of dividend.</p> <p><u>Supplementary Report of RD:</u></p> <p>No further observations. Hence in terms of para 6 of the Supplementary report the Regional Director has found the response satisfactory.</p>
IV(g).	<p><u>Observations of the RD:</u></p> <p>The Petitioner Company states that, the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder;</p> <p><u>Reply of the Petitioner Companies:</u></p> <p>The Petitioner Companies undertake to comply with the applicable provisions of the Income-tax Act, 1961, including Section 2(1B) or any amendments thereto, to the extent applicable.</p> <p><u>Supplementary Report of RD:</u></p> <p>No further observations. Hence in terms of para 6 of the Supplementary report the Regional Director has found the response satisfactory.</p>
IV(h).	<p><u>Observations of the RD:</u></p>

It is submitted that the petitioner Company has stated that the scheme is in compliance of Section 2(19AA), in this regard, petitioner company may be directed to place on record that as to how this scheme is in compliance of Section 2(19AA) of the Income Tax Act, 1961.

Reply of the Petitioner Companies:

The Petitioner Companies submit that the Scheme is in compliance with Section 2(19AA) of the Income-tax Act, 1961, inter alia, since (i) the properties and liabilities pertaining and/or relatable to the Demerged Undertakings, being transferred, becomes the properties and liabilities of the Resulting Companies upon demerger;

(ii) consideration for the above transfer is discharged in the form of issue of equity shares by the Resulting Company 1 & Resulting Company 2 on a proportionate basis to shareholders of the Demerged Company, **holding not less than three-fourths in value of the shares in the Demerged Company** and such shareholders shall become shareholders of Resulting Companies; and

(iii) transfer of Demerged Undertakings is on-going concern basis.

Supplementary Report of RD:

No further observations. Hence in terms of para 6 of the Supplementary report the Regional Director has found the response satisfactory.

IV(i). **Observations of the RD:**

	<p>The Petitioner Companies be directed to place on record of this Tribunal the list of assets to be demerged with complete details (item wise) of its assets and valuation.</p> <p><u>Reply of the Petitioner Companies:</u></p> <p>The Petitioner Companies submit the list of assets to be demerged with complete details of the assets and their value are annexed hereto and marked as Exhibit “A”.</p> <p><u>Supplementary Report of RD:</u></p> <p>No further observations. Hence in terms of para 6 of the Supplementary report the Regional Director has found the response satisfactory.</p>
IV(j).	<p><u>Observations of the RD:</u></p> <p>The Petitioner Company to place on record as to what is the business left in demerged company after transfer of Demerged undertaking.</p> <p><u>Reply of the Petitioner Companies:</u></p> <p>Murli Industries Limited (First Petitioner Company) is engaged in 3 businesses, namely (i) the Cement business; (ii) the Paper business; and (iii) the Solvent business.</p> <p>Pursuant to the Scheme being made effective, (i) the Paper business of Murli Industries Limited (First Petitioner Company) will be demerged into Ascension Mercantile Private Limited (Second Petitioner Company); and, the Solvent business of Murli Industries Limited (First Petitioner</p>

	<p>Company) will be demerged into Ascension Multiventures Private Limited (Third Petitioner Company). As such, the Cement Manufacturing business will be left in Murli Industries Limited (First Petitioner Company). The Scheme further provides for the amalgamation of Murli Industries Limited (First Petitioner Company, which will continue to have its Cement business), with Dalmia Cement Bharat Limited (the Amalgamated Company) at which stage, Murli Industries Limited (First Petitioner Company) will stand dissolved, without winding up as more particularly set out in the Scheme.</p> <p><u>Supplementary Report of RD:</u></p> <p>No further observations. Hence in terms of para 6 of the Supplementary report the Regional Director has found the response satisfactory.</p>
IV(k).	<p><u>Observations of the RD:</u></p> <p>As per MCA portal various complaints and prosecutions are pending and an investigation is also under process against the Demerged Company namely Murli Industries Limited, therefore, the present scheme may not be allowed to the extend of demerger till pendency of present pending prosecutions and investigation as the demerger may effect the ongoing proceeding of investigation.</p> <p><u>Reply of the Petitioner Companies:</u></p> <p>As stated hereinabove, as more particularly set out in the Scheme legal proceedings that are filed by or pending against</p>

	<p>the Demerged Company are not to abate, be discontinued or in any way be prejudicially affected by reason of anything contained in the Scheme . As such, there will be no legal impediment in the continuation of any investigation/ prosecution/ proceedings to the extent and manner set out in the Scheme and the same will be suitably dealt with in accordance with and subject to law, even after the Scheme is sanctioned.</p> <p><u>Supplementary Report of RD:</u></p> <p>In response to the observations made in para IV(k) of the representation the petitioner company has stated that there will not be legal impediment in the continuation of any investigation/prosecution/proceedings and the same will be suitably dealt with in accordance with and subject to law, even after the scheme is sanctioned. In this regard, it has already been slated in the report dated 01,03.2022 that demerger shall effect the ongoing proceeding of investigation, therefore the reply of the petitioner company is not satisfactory. Further, investigation is done in cases where the gravity of complaints/ public interest is very important and hence the companies Rules has provided for full disclosures to the public.</p>
IV(1).	<p><u>Observations of the RD:</u></p> <p>The Hon’ble Tribunal may hereby kindly consider the report of ROC as narrated in Para III (21) above who has also</p>

objected to the present scheme in view of complaint / investigation pending against Murli Industries Limited.

Reply of the Petitioner Companies:

It is submitted that the investigations pending against Murli Industries Limited pertain to a period, before the commencement of the Corporate Insolvency Resolution Process pursuant to which it was acquired by and became a wholly owned subsidiary of the Amalgamated Company in terms of the resolution plan approved by this Hon'ble Tribunal under the provisions of the Insolvency and Bankruptcy Code, 2016.

In any case, as per the terms of the Scheme, legal proceedings that are filed by or pending against Demerged Company are to continue even after the Scheme being sanctioned, as more particularly set out in the Scheme. As such, there will be no legal impediment in the continuation of any pending prosecution/ proceedings consequent to the Scheme being sanctioned in the manner set out therein, and the same will be suitably dealt with in accordance with and subject to applicable law, even after the Scheme is sanctioned.

The Petitioner Companies are bound to comply with the applicable provisions of law and will deal with the creditors in the ordinary course of business, as per law.

Supplementary Report of RD:

	No further observations. Hence in terms of para 6 of the Supplementary report the Regional Director has found the response satisfactory.
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14. With regard to the two observations in paragraphs IV(c) and IV(k) of the Report, as continuing in the Supplementary Report of the Regional Director, the Learned Counsel for the Petitioner Companies further submits that the Regional Director has, *vide* its letter dated 14 June 2021, informed the First Petitioner Company that the investigation under section 210(1)(c) of the Companies Act, 2013 may be initiated against it and sought certain documents / information from the First Petitioner Company. The documents / information sought from First Petitioner Company largely pertain to a period before the First Petitioner Company was acquired by the Amalgamated Company. Upon the Resolution Plan of DCBL being approved and implemented under the Insolvency and Bankruptcy Code, 2016, the First Petitioner Company became a wholly owned subsidiary of DCBL and also underwent a change in management. As more particularly set out in the Scheme and in the manner set out therein, nothing in the Scheme would prevent the continuation of any legal proceedings that are filed by or pending against the First Petitioner Company. The same would be dealt with as per law and there will be no legal impediment in the continuation of any investigation, merely because the Scheme was sanctioned. However, the Learned Counsel for the Petitioner Companies submit that any investigations/ prosecution against the First Petitioner Company that relate to any offence committed by it prior to the commencement of Corporate Insolvency Resolution Process will be expressly barred by Section 32A of the Insolvency and Bankruptcy Code, 2016. Reliance was also placed on the judgment of the Hon'ble Supreme

Court in *Manish Kumar v. Union of India*, (2021) 5 SCC 1 and *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, (2021) 9 SCC 657 in this regard. The Learned Counsel for the Petitioner Companies submits that in any event, without prejudice to the aforesaid and as a matter of abundant caution, in view of the submissions of the Regional Director, the First Petitioner Company informed its shareholders, including DCBL which apart from being the parent shareholder also held 92.5% of the debt of the First Petitioner Company (as per the latest audited financial results) regarding the letter dated 14 June 2021. After taking due notice of the same, all the equity shareholders, including DCBL that, have given their consent to the Scheme, which have been placed on record *vide* Additional Affidavit dated March 13, 2022. The matter was place for clarification on 20.04.2022 and 21.04.2022, with regard to observations of RD that reply of the Petition is not satisfactory the however during the course of hearing the representative of RD was also present, it was clarified that notices or meeting is not necessary, and the meeting were dispensed with. There is no requirement with regard to publication of notice with reference to investigation therein and as the meeting were dispensed, publication requirement is also dispensed with.

15. The Regional Director has also raised an additional objection in paragraph 5 of the Supplementary Report with regard to the signatory of the Response of the Petitioner Companies, which is reproduced hereinafter:

“5. It is further observed that the applicant company has submitted it’s rejoinder vide letter acknowledgment dated 02.03.2022, however, it is submitted that in the letter dated 02.03.2022 of the Transferee Company, the name, address, designation of the Person who has signed the letters is not mentioned which is Violation of Rule 7 of the Companies (Registration Offices and Fees) Rules,

2014, therefore, petitioner companies may be directed to submit application for self adjudication before respective ROC.”

16. In this regard, the Counsel for the Petitioner Companies submits that the Response to the Report has been executed and issued by the Authorized Signatory of the Petitioner Companies. Board Resolutions in favour of the said Authorized Signatory are annexed to the Company Petition.
17. Further, the Official Liquidator *vide* his Report dated 12 March 2022 filed with the Hon’ble Tribunal, submitted that subject to what is mentioned in para 6 to 10 of its report, the Scheme appears to be not prejudicial to the interests of the public and sought that the said report be taken on record and this Hon’ble Tribunal may pass appropriate orders in the matter. In para 6 to 10 of his Report, the Official Liquidator has set out that certain winding up petitions had been filed and are pending against the First Petitioner Company before the Hon’ble Bombay High Court, Nagpur Bench, from a period prior to the initiation of Corporate Insolvency Resolution Process of the First Petitioner Company. The Official Liquidator has sought that the Petitioner Companies be directed to obtain necessary directions from the Hon’ble High Court regarding the pending winding up petitions. Learned Counsel for the Petitioner Companies submits that the said winding up petitions would stand automatically abated as per the terms of the Resolution Plan and law, especially by virtue of Section 31 of the Insolvency and Bankruptcy Code, 2016. In support of his submission, the Learned Counsel for the Petitioner Companies cited the judgment of the Hon’ble Supreme Court in *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, (2021) 9 SCC 657. The Counsel for the Petitioner Companies states that in any event, the Petitioner Companies will approach or cause to be approached the Hon’ble High Court of Bombay, Nagpur Bench to obtain necessary orders as may

be required for the formal disposal of such winding up petitions from the records of the Hon'ble High Court, to the extent and manner required under law.

18. From the material on record, the Scheme annexed as Exhibit A-1 to the Company Petition appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
19. Since all the requisite statutory compliances have been fulfilled, CP (CAA) No. 219/MB/2021 is made absolute in terms of the prayer clauses 21 (a) to (e) as well as (g) and (h) thereof.
20. The Scheme is hereby sanctioned, with the Appointed Date fixed as 31 March 2020 (at close of business hours) as defined under the Scheme.
21. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, within 30 days from the date of receipt of the certified copy Order by the Petitioner Companies.
22. The Second and Third Petitioner Companies to lodge a copy of this Order along with the Scheme duly authenticated/certified by the Deputy Director or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified Order from the Registry of this Tribunal.

23. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

24. Ordered accordingly.

Sd/-
Anuradha Sanjay Bhatia
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)