

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, BENCH-I**

C.A.(CAA)/112/MB-I/2024

*In the matter of
The Companies Act, 2013*

And

*In the matter of
Sections 232 r/w Section 230 of
The Companies Act, 2013 and other
applicable provisions of The Companies Act,
2013 And Rules Framed thereunder as in force
from time to time*

And

*In the matter of
Composite Scheme of Arrangement
of*

UltraTech Cement Limited

CIN No. L26940MH2000PLC128420

**... Applicant Company /
Resulting Company**

Order delivered on : 08.07.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances (through)

For the Applicants : Mr. Gaurav Joshi, Senior Advocate
a/w Mr. Peshwan Jehangir,
Mr. Jamsheed Dadachanji, Ms. Dhruvi
Dharia, Ms. Ishrita Bagchi, Advocates

ORDER

1. The Applicant Company has proposed the Composite Scheme of Arrangement between **Kesoram Industries Limited** (“**Demerged Company/Non-Applicant Company**”) and **UltraTech Cement Limited** (“**Applicant Company**” or “**Resulting Company**”) and their respective shareholders and creditors under Sections 232 r/w Section 230 of the Companies Act, 2013 (“**Scheme**”) and other Applicable provisions of the Companies Act, 2013.
2. The Scheme provides for:
 - (i) the demerger of the Demerged Undertaking (*as defined in the Scheme*) from the Demerged Company and its transfer to and vesting into the Applicant Company on a going concern basis, and issue of shares by the Applicant Company to the shareholders of the Demerged Company; and
 - (ii) reduction and cancellation of the Preference Share Capital (*as defined in the Scheme*) of the Demerged Company.
3. The Board of Directors of the Applicant Company vide resolution dated 30.11.2023 have approved the Scheme. The Appointed date fixed under the Scheme is 01.04.2024.
4. The Applicant Company submits that the Demerged Company is based in West Bengal and therefore, the Demerged Company will file a separate Company Scheme Application before the Hon’ble National Company Law Tribunal, Kolkata Bench.

5. The Applicant Company submits that the Applicant Company is, inter alia, engaged in the business of manufacture and sale of various grades and types of cement, ready mix concrete and other building solutions related products.
6. The consideration for the Scheme is as under:
- (i) 1 (one) fully paid up equity share of INR 10 (Indian Rupees Ten only) each of the Resulting Company for every 52 (fifty two) fully paid up equity shares of INR 10 (Indian Rupees Ten only) each of the Demerged Company held by equity shareholders, on a proportionate basis, whose name is recorded in the register of members and records of the depository as a member of the Demerged Company as on the Record Date;
 - (ii) 54,86,608 (Fifty four lakh eighty six thousand six hundred and eight) fully paid 7.3% non-convertible redeemable preference shares of INR 100 (Indian Rupees Hundred only) each of the Resulting Company for 90,00,000 (Ninety Lakhs) 5% cumulative non-convertible redeemable preference shares of INR 100 (Indian Rupees Hundred only) each of the Demerged Company held by the preference shareholders in the Demerged Company as on Effective Date; and
 - (iii) 8,64,275 (Eight lakh sixty four thousand two hundred and seventy five) fully paid 7.3% non-convertible redeemable preference shares of INR 100 (Indian Rupees Hundred only) each of the Resulting Company for 19,19,277 (Nineteen Lakhs Nineteen Thousand Two Hundred Seventy-Seven) zero% optionally convertible redeemable preference shares of INR 100 (Indian Rupees Hundred only) each of the Demerged Company held by the preference shareholder in the Demerged Company as on the Effective Date.

7. The Rationale and benefits of the proposed Scheme of Amalgamation are as follows :

“The transfer of the Demerged Undertaking from the Demerged Company to the Resulting Company pursuant to this Scheme would, inter alia, result in the following benefits for the Demerged Company and the Resulting Company:

(A) in case of the Demerged Company:

- (i) unlocking the value of the Cement Business for the shareholders of the Demerged Company;*
- (ii) assisting in the de-leveraging of its balance sheet including reduction of debt and outflow of interest as well as creation of value for its shareholders; and*
- (iii) focusing on core business areas such as rayon, transparent paper and chemicals.*

(B) in case of the Resulting Company:

- (i) expansion in markets where the Resulting Company has no physical presence;*
- (ii) creating value for shareholders by acquiring ready to use assets which shall create operational efficiencies and reduce time to markets vis-a-vis greenfield projects which are time consuming on account of acquisition of land and limestone mining leases;*
- (iii) good fit for serving existing markets and catering to additional cement volume requirements in new markets;*
- (iv) the transaction will provide the Resulting Company the opportunity to extend its footprint in the highly fragmented, competitive and fast growing Western and Southern markets in the country;*
- (v) it will help enhance the Resulting Company's geographic reach in Southern markets; and*
- (vi) synergies in manufacture and distribution process and logistics alignment leading to economies of scale and creation of efficiency by reducing time to market and benefiting customers.*

The Scheme is in the best interests of the shareholders, employees and the creditors of each of the Demerged Company and the Resulting Company.”

8. The Appointed Date means the opening business hours of 01.04.2024 or such other date as may be mutually agreed by the respective Board of the Demerged Company and the Applicant Company, subject to regulatory approvals from the Competition Commission of India (“CCI”) or any other Appropriate Authority.
9. The Authorized Share Capital of the Applicant Company as on 30.11.2023 was as under:

Particulars	Amount (in Rs.)
Authorized Capital	
78,00,00,000 equity shares of INR 10 each	780,00,00,000
1,02,000 cumulative redeemable preference shares of INR 1,00,000 each	1020,00,00,000
Total	1800,00,00,000
Issued, Subscribed and Paid-up	
28,86,86,874 equity shares of INR 10 each	288,68,66,740
100,000 cumulative redeemable preference shares of INR 1,00,000 each fully paid up	1000,00,00,000
Total	1288,68,66,740

The Resulting Company has outstanding employee stock options under its existing stock option schemes, the exercise of which may result in an increase in the issued and paid up share capital of the Resulting Company.

10. The equity shares of the Applicant Company are listed on BSE Limited (“BSE”) and the National Stock Exchange of India Limited (“NSE”)

(collectively referred to as “**Stock Exchanges**”). The non-convertible debentures and commercial papers of the Applicant Company are listed on NSE. The global depository receipts of the Applicant Company are listed on Luxembourg Stock Exchange and the sustainability linked bonds of the Applicant Company are listed on the Singapore Exchange Securities Trading Limited.

11. The comments of the SEBI contained in the observation letters issued by the BSE and NSE, the details of ongoing adjudication & recovery proceedings, prosecution initiated and all other enforcement action taken against the Applicant Company, its promoters and directors, have been placed on record by the Applicant.
12. The Applicant Company had filed application in relation to the proposed Scheme with the CCI for its approval/ NOC and has received the requisite approval/ NOC dated 19.03.2024 from CCI. The said approval/ NOC issued to the Applicant Company by CCI has also been placed on record.
13. The Applicant Company submits that as on 31.03.2024, the Resulting Company had 3,57,627 Equity Shareholders holding 288,692,005 equity shares. The certificate issued by M/s. G. P. Kapadia & Co., Chartered Accountants, certifying the shareholding pattern of the Applicant Company as on 31.03.2024 as displayed on the BSE and NSE website has been placed on record.
14. A meeting of the Equity Shareholders of the Applicant Company be convened and held within 60 days from the date of communication of this order by the Applicant Company, through video conferencing or other audio-visual means, for the purpose of considering, and, if thought fit, approving, with or without modification(s), the Scheme, wherein the Equity Shareholders of the Applicant Company will be able to cast their votes electronically. In addition to the above, the Applicant Company shall provide facility of remote e-voting to its Equity Shareholders to cast their vote.

15. Further, it is hereby directed as under:

(i) At least 1 (one) month before the aforesaid meeting, notice convening the said meeting at the day, date and time as fixed in accordance with paragraph 14 stated above, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, shall be sent to the Equity Shareholders of the Applicant Company, by electronic mail to their registered e-mail address, as per the records available with the Applicant Company. The Applicant Company shall ensure that their Equity Shareholders whose e-mail addresses' are not available or who have not received notice convening said meeting through e-mail, can access / download the notices from the website of the Applicant Company. Further, the Applicant Company shall ensure that notice convening the meeting is available on the websites of the Stock Exchanges i.e., BSE Limited and National Stock Exchange of India Limited at www.bseindia.com and www.nseindia.com, respectively.

(ii) At least 30 (thirty) days before the meeting of the Equity Shareholders of the Applicant Company at the date and time fixed in accordance with what has been stated above, notice be published each in "***Business Standard***" in English having nation-wide circulation, and "***Navshakti***" in Marathi having circulation in Maharashtra, stating that copies of the Scheme and the said statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013.

(iii) The Applicant Company undertakes to:

a) Issue notice convening meeting of the Equity Shareholders of the Applicant Company as per Form No CAA.2 in accordance with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

- b) Issue statement containing all the particulars as per Section 230 of the Companies Act, 2013;
 - c) Advertise the notice convening meeting as per Form No. CAA.2 in accordance with Rule 7 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016; and
 - d) Publish the notice convening the meeting of Equity Shareholders of the Applicant Company on the website of the Applicant Company.
16. Mr. Pravin Varma, IRS Retired, Email: varmaprav@gmail.com, Mobile No.9833941958, is appointed as the Chairperson and Mr. Mitesh Shah, ICSI No. F10070 COP 12891, Contact No: 9820464964, Email: csmjshah@gmail.com is appointed as scrutinizer of the meeting of the Equity Shareholders of the Applicant Company including for any adjournment or adjournments thereof. The Chairperson shall be paid a fee of INR 1,00,000/- (Rupees One Lakh Only) for conducting and convening the aforesaid meeting and Scrutinizer shall be paid Rs.25,000/- (Rupees Twenty Five Thousand Only).
17. Since the meeting is being held through video conferencing or other audio-visual means mode, physical attendance of members has been dispensed with. Accordingly, the facility for appointment of proxies by the members will not be available for the meeting and hence the requirement to send the proxy form and attendance slip along with the notice of the meeting is dispensed with. However, the voting by the authorised representative, in case of a body corporate be permitted, provided that the authorisation duly signed is filed with the Applicant Company in physical mode at its registered office or electronic mode at its designated email address, at least 48 (forty eight) hours before the aforesaid meeting, as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

18. The Chairperson appointed for the aforesaid meeting to issue notice of the meeting referred above. The Chairperson shall have all powers under the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as may be applicable for meeting of the Equity Shareholders of the Applicant Company, in relation to the conduct of the meeting including for deciding procedural questions that may arise at the meeting or at any adjournment thereof or any other matter including, any amendment to the Scheme or resolution, if any, proposed at the said meeting.
19. The quorum for the meeting of the Equity Shareholders of the Applicant Company shall be calculated as per Section 103(1) of the Companies Act, 2013. If the quorum is not present within 30 minutes of the scheduled meeting time, then the Equity Shareholders so present shall constitute quorum for the said meeting.
20. The value and number of the equity shares of each Equity Shareholder of the Applicant Company shall be in accordance with the books/records maintained by the Applicant Company or depository records, and where the entries in the books/records are disputed, the Chairperson of the meeting shall determine the value and number for the purpose of the aforesaid meeting and his decision in that behalf would be final.
21. The Chairperson shall file an affidavit not less than 7 (seven) days before the date fixed for holding the meeting of the Equity Shareholders of the Applicant Company and report to this Tribunal that the directions regarding the issue of notices and advertisements have been duly complied with, as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
22. The Chairperson shall report to this Tribunal, the result of the aforesaid meeting within 7 (seven) days of the conclusion of the said meeting and the said report shall be verified by his undertaking as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

23. That as on 30.04.2024, the Applicant Company had 1 (one) Preference Shareholder holding 100,000 preference shares of the Applicant Company. The present Scheme is not an arrangement with the preference shareholder of the Applicant Company. Pursuant to the proposed Scheme, there will be no change in number, interest rate, terms and conditions of preference shares held by the sole Preference Shareholder of the Applicant Company. The net-worth of the Applicant Company prior to giving effect to the Scheme as of 31.03.2024 is Rs. 59,095.24 crores and provisional net-worth after giving effect to the Scheme is Rs. 64,935.86 crores. A copy of the net-worth certificate issued by M/s. G.P. Kapadia & Co., Chartered Accountants has also been placed on record.
24. The Applicant Company submits that the transfer of the Demerged Undertaking from the Demerged Company to the Applicant Company under the Scheme, will not affect or adversely impact the rights of the sole Preference Shareholder of the Applicant Company in any manner in view of the strong financial position of the Applicant Company. The strength of the financial position of the Applicant Company has been set out in its financial statements placed on record. The Applicant Company further submits that the certificate issued by M/s. G.P. Kapadia & Co., Chartered Accountants certifying (i) the name of the sole Preference Shareholder, number of preference shares and percentage of holding held by the sole Preference Shareholder as on 30.04.2024; and (ii) that pursuant to the Scheme, there will be no change in the number, interest rate, terms and conditions of the preference shares held by the sole Preference Shareholder of the Applicant Company. Since there is only one Preference Shareholder and its rights are not being impacted in any manner by the Scheme, the question of holding a meeting of Preference Shareholders does not arise. The Applicant Company is directed to issue notice by post / courier / email / hand-delivery to the Preference Shareholder at its last known email address / address as per the records of the Applicant Company, with a direction that they may submit their representations, if any, to the Tribunal with a copy to the Applicant Company within 30 (thirty) days

from the date of receipt of such notice, failing which, it shall be presumed that they have no objection to the proposed Scheme.

25. The Applicant Company submits that as on 30.04.2024, there are 16 Secured Creditors (including debenture holders) of the Applicant Company having an outstanding amount of INR 517,47,83,989. The Applicant Company has filed consents of 15 secured creditors out of total 16 secured creditors representing 93.75% in number and 96.62% in value of the total aggregate outstanding secured debt of the Applicant Company vide Additional Affidavit dated 19.06.2024. In view of the above, the requirement of convening and holding a meeting of the secured creditors of the Applicant Company is dispensed with. The Applicant Company is directed to issue notice by post / courier / email / hand-delivery to the Preference Shareholder at its last known email address / address as per the records of the Applicant Company, with a direction that they may submit their representations, if any, to the Tribunal with a copy to the Applicant Company within 30 (thirty) days from the date of receipt of such notice, failing which, it shall be presumed that they have no objection to the proposed Scheme.
26. That as on 30.04.2024, there are 10,894 Unsecured Creditors (including debenture holders) of the Applicant Company having an outstanding amount of INR 4848,00,27,154.64. The certificate issued by M/s. G. P. Kapadia & Co., Chartered Accountants, certifying the number and outstanding amount due from Unsecured Creditors (including debenture holders) as on 30.04.2023 has been placed on record.
27. A meeting of the Unsecured Creditors of the Applicant Company be convened and held within 60 days from the date of communication of this order by the Applicant Company, through video conferencing or other audio-visual means, for the purpose of considering, and, if thought fit, approving, with or without modification(s), the Scheme, wherein the Unsecured Creditors of the Applicant Company will be able to cast their votes

electronically. In addition to the above, the Applicant Company shall provide facility of remote e-voting to its Unsecured Creditors to cast their vote.

28. Further, it is hereby directed as under:

(i) At least 1 (one) month before the aforesaid meeting, notice convening the said meeting at the day, date and time as fixed in accordance with paragraph 14 stated above, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, shall be sent to the Unsecured Creditors of the Applicant Company, by electronic mail to their registered e-mail address, as per the records available with the Applicant Company. The Applicant Company shall ensure that their Unsecured Creditors whose e-mail addresses' are not available or who have not received notice convening said meeting through e- mail, can access / download the notices from the website of the Applicant Company. Further, the Applicant Company shall ensure that notice convening the meeting is available on the websites of the Stock Exchanges i.e., BSE Limited and National Stock Exchange of India Limited at www.bseindia.com and www.nseindia.com, respectively.

(ii) At least 30 (thirty) days before the meeting of the Unsecured Creditors of the Applicant Company at the date and time fixed in accordance with what has been stated above, notice be published each in "*Business Standard*" in English having nation-wide circulation, and "*Navshakti*" in Marathi having circulation in Maharashtra, in which the registered office of the First Applicant Company is situated.

(iii) The Applicant Company undertakes to:

- a) Issue notice convening meeting of the Equity Shareholders of the Applicant Company as per Form No CAA.2 in accordance with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- b) Issue statement containing all the particulars as per Section 230 of the Companies Act, 2013;
- c) Advertise the notice convening meeting as per Form No. CAA.2 in accordance with Rule 7 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016; and
- d) Publish the notice convening the meeting of Unsecured Creditors of the Applicant Company on the website of the Applicant Company.

29. Mr. Pravin Varma, IRS Retired, Email: varmaprav@gmail.com, Mobile No.9833941958, is appointed as the Chairperson and Mr. Mitesh Shah, ICSI No. F10070 COP 12891, Contact No: 9820464964, Email: csmjshah@gmail.com is appointed as scrutinizer of the meeting of the Unsecured Creditors of the Applicant Company including for any adjournment or adjournments thereof. The Chairperson shall be paid a fee of INR 1,00,000/- (Rupees One Lakh Only) for conducting and convening the aforesaid meeting and Scrutinizer Shall be paid Rs.25,000/- (Rupees Twenty Five Thousand Only).

30. Since the meeting is being held through video conferencing or other audio-visual means mode, physical attendance of members has been dispensed with. Accordingly, the facility for appointment of proxies by the members will not be available for the meeting and hence the requirement to send the proxy form and attendance slip along with the notice of the meeting is dispensed with. However, the voting by the authorised representative, in case of a body corporate be permitted, provided that the authorisation duly signed is filed with the Applicant Company in physical mode at its registered office or electronic mode at its designated email address, at least 48 (forty eight) hours

before the aforesaid meeting, as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

31. The Chairperson appointed for the aforesaid meeting to issue notice of the meeting referred above. The Chairperson shall have all powers under the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as may be applicable for meeting of the Unsecured Creditors of the Applicant Company, in relation to the conduct of the meeting including for deciding procedural questions that may arise at the meeting or at any adjournment thereof or any other matter including, any amendment to the Scheme or resolution, if any, proposed at the said meeting.
32. The quorum for the meeting of the Unsecured Creditors of the Applicant Company shall be calculated as per Section 103(1) of the Companies Act, 2013. If the quorum is not present within 30 minutes of the scheduled meeting time, then the Unsecured Creditors so present shall constitute quorum for the said meeting.
33. The Chairperson shall file an affidavit not less than 7 (seven) days before the date fixed for holding the meeting of the Unsecured Creditors of the Applicant Company and report to this Tribunal that the directions regarding the issue of notices and advertisements have been duly complied with, as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
34. The Chairperson shall report to this Tribunal, the result of the aforesaid meeting within 7 (seven) days of the conclusion of the said meeting and the said report shall be verified by his undertaking as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
35. The Applicant Company has received observation letters dated 13.05.2024 from BSE and NSE, respectively. The observation letter dated 13.05.2024 received from NSE, NSE has processed the Scheme post its comments and observations and has informed the Applicant Company that the Applicant

Company is not required to issue notices to NSE. Accordingly, the requirement of serving notice to NSE is dispensed with.

36. The Applicant Company shall serve notice upon:

- (i) the Central Government through the Regional Director, Western Region, Ministry of Corporate Affairs;
- (ii) the Registrar of Companies, Mumbai;
- (iii) The Assistant Commissioner of Income Tax, Central Circle-1(4), 9th Floor, Old CGO Building, M K Road, Mumbai – 400 020 (Applicant Company having PAN: AAACL6442L);
- (iv) Jurisdictional Office of Goods and Service Tax;
- (v) BSE Limited;
- (vi) Securities and Exchange Board of India;
- (vii) CCI; and
- (viii) Any other sectoral regulator, as applicable, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 (Thirty) days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

37. The Applicant Company shall file Affidavit of Service with the Registry evidencing compliance with the directions given in this Order.

Sd/-

Prabhat Kumar
Member (Technical)
/SP/

Sd/-

Justice V.G. Bisht
Member (Judicial)