

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (COURT-1)  
KOLKATA**

Company Petition No. 171/KB/2023  
Connected with  
Company Application (CAA) No. 87/KB/2023

*A petition under section 230 read with section 232 of the Companies Act, 2013,  
read with the Companies (Compromises, Arrangements and Amalgamations)  
Rules, 2016, and other applicable provisions of law.*

**In the matter of:  
A Scheme of Amalgamation of**

Jagannath Cement Works Private Limited (CIN:U26942WB1985PTC038458), a Private company incorporated on 23-January-1985 under the provisions of the Companies Act, 1956, having its registered office at 70, Amhererst Row, Kolkata- 700009, West Bengal, India.

.....Demerged Company/Petitioner Company No. 1/ JCWPL

And

Jagannath Smelters Private Limited(CIN:U27300WB2022PTC252614) a Private company incorporated on 29-March-2022 under the provisions of the Companies Act, 2013, having itsregistered office at 192,Vivekananda Road Kolkata-700006, West Bengal, India

.....Resulting Company/Petitioner Company No.2/ JSPL

1. Jagganath Cements Works Private Limited
2. Jagganath Smelters Private Limited

. . . . . Petitioner(s)

**Date of pronouncing the order:25/04/2024**

**Coram:**

**Rohit Kapoor**

**: Member(Judicial)**

**Balraj Joshi**

**: Member(Technical)**

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**Appearance via video conference/physically**

1. Patita Paban Bishwal, Adv. ] For the petitioner
2. Jyoti Mandal, FCA
  
1. Mr. Sudhir Kapoor, JD ] For RD (ER), MCA

**ORDER**

**Per: Balraj Joshi, Hon'ble Member (Technical)**

1. This Court convened through hybrid mode.
2. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“**Act**”) for sanction of the Scheme of Arrangement involving demerger of Demerged Undertaking of Jagannath Cement Works Private Limited being the Petitioner Company No.1 above named (“**Demerged Company**” or “**Petitioner Company No.1**”) with Jagannath Smelters Private Limited, being the Petitioner Company No.2 above named (“**Resultant Company**” or “**Petitioner Company No.2**”) whereby and where under the Demerged Undertaking of the Demerged Company is proposed to be demerged with the Resultant Company from the Appointed Date, viz **01-April-2022**, in the manner and on the terms and conditions stated in the said Scheme of Arrangement (“**Scheme**”).
3. The Petition has now come up for final hearing. Counsel(s) for the Applicants submits as follows:-
  - (a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on **09-February-2023**
  - (b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-

The Demerged Company operates in two different states, Kolkata and Jharkhand. The operation of both the states are to be demerged and will be called as the Kolkata Head Office and Jamshedpur Branch.

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Given the distinct nature of operations of business in the 2 states, it is proposed to hive-off Jamshedpur Branch from JCWPL into JSPL.

Separation of the division, by way of this Scheme including its business would lead to significant benefits for both the companies. As part of overall strategy for the optimum running, growth and development of the aforementioned businesses, addressing the rapidly changing market trend, peer competition, administrative hassles, need of independent, flexible and focused management for operation of the aforementioned business segments, it is considered desirable and expedient to re-organise and reconstruct the Demerged Company by demerging its aforementioned businesses (i.e. Demerged Undertaking, as defined hereinafter) with and into the Resulting Company. This will result in creation of independent and a robust entity, focusing exclusively on the business of the Demerged Undertakings and the Demerged Company will continue to carry on its Remaining Business (as defined hereinafter).

The proposed restructuring is expected, inter-alia, to result in the following benefits:

- i) Value unlocking of the respective businesses of the Demerged Company based on respective risk return profile and cash flows;
- ii) Provide better flexibility in accessing capital and attract area specific partners and investors;
- iii) Creating opportunities for pursuing independent growth and expansion strategies in the segregated business areas;
- iv) Segregation will allow each Company to create a strong and distinctive platform with focused management teams, which will enable greater flexibility to pursue long term objectives and independent business strategies;
- v) Increasing efficiency in management, control and administration of the affairs of both the Companies;
- vi) Enabling the companies to focus on their core business areas; and

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- vii) Enhancing operational efficiencies, ensuring synergies through pooling of the financial, managerial and technical resources, personnel capabilities, skills, expertise and technologies.
- (c) The Statutory Auditors of the Petitioner Companies have by their certificates dated 28-02-2023 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.
- (d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).
- (e) The exchange ratio of shares in consideration of the Arrangement has been fixed on a fair and reasonable basis and on the basis of the Report thereon of M/s. Manish Gadia, Registered Valuers.
- (f) The shares of the Petitioner Companies are not listed on any Stock Exchange(s).
- (g) By an order dated 24-August-2023 in Company Application (CAA) No.87/KB/2023, this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act:-
- (a) *Meetings dispensed: Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No.1 and Equity Shareholders of the Applicant No.2 are dispensed with under Section 230(1) read with Section 232(1) of the Act. The list of shareholders and Unsecured Creditors of all the Applicant Companies have been verified by the Auditors' Certificate dated 28-February-2023.*
- (b) *The Applicant Companies have NIL Secured Creditors. The NIL Secured Creditors of all the Applicant Companies have been verified by the Auditors' Certificate dated 28-February-2023.*
- (c) *Meetings to be held: No meeting is required to be held.*

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- (h) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order 13-October-2023 the instant petition was admitted by this Tribunal and fixed for hearing on 01-December-2023 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order, the Petitioner(s) have duly served such notices as follows:

S.No	Statutory/ Regulatory Authorities to whom Notice has been sent	Mode & Date of Service of Notice
1.	Notice to the Regional Director, Eastern Region	By Hand delivery on 27 <sup>th</sup> October 2023. By Email on 26 <sup>th</sup> October 2023
2.	Notice to the Registrar of Companies, Kolkata	By Hand delivery on 27 <sup>th</sup> October 2023. By Email on 26 <sup>th</sup> October 2023
3.	Notice to the Official Liquidator, Calcutta High Court	By Hand delivery on 27 <sup>th</sup> October 2023 By Email on 26 <sup>th</sup> October 2023
4.	Notice to the Income Tax Assessing Officer(s), having jurisdiction over the Petitioner Companies	By Hand delivery on 27 <sup>th</sup> October 2023 By Email on 26 <sup>th</sup> October 2023 and 27 <sup>th</sup> October 2023

The Petitioner(s) have also published such advertisements once each in the **Business Standard** (Kolkata Edition) in English and **Aajkaal** (Kolkata Edition) in Bengali in its issues dated 11-November-2023. An affidavit of compliance in this regard has also been filed by them on 19-November-2023.

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- (i) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.
4. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“**RD**”) have filed their representations before this Tribunal.
5. The Regional Director, Eastern Region, Ministry of Corporate Affairs (MCA), has filed his reply affidavit dated 20-December-2023 (“**RD affidavit**”) which has been dealt with by the Petitioner(s) by their Rejoinder/Joint affidavit dated 22-December-2023 (“**Jt. Affidavit**”). The observations of the RD and responses of the Petitioner(s) are summarised as under:-

**(a) Paragraph No 2(a) of RD Affidavit**

*That it is submitted that on examination of report of the Registrar of Companies, West Bengal, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. Further, all the petitioner companies are updated in filing their Financial Statements and Annual Returns for the financial year ended 31/03/2023.*

**Paragraph No.4 of Jt.Affidavit:**

With reference to paragraph 2(a) of the said affidavit, the statements made in the said paragraph is self-explanatory Hence no comments are required to the said statements of the Learned Regional Director.

**(b) Paragraph No.2(b) of RD Affidavit:**

*The Petitioner Companies should be directed to provide list /details of Assets, if any, to be demerged/transferred from the Demerged/Transferor Company*

*to the Resulting/Transferee Company upon sanctioning of the proposed Scheme of Arrangement.*

**Paragraph No.5 of Jt. Affidavit:**

With reference to paragraph 2(b) of the said affidavit, the statement(s) made in the said paragraph is self-explanatory and when directed, the list/ details of assets, if any, to be demerged from the Demerged Company to the Resulting Company upon sanctioning of the proposed Scheme of Arrangement will be duly provided.

**(c) Paragraph No.2(c) of RD Affidavit:**

*In clause 18.1 of Part IV of the Scheme, it is stated that consequent upon the Demerger, the Authorised Share Capital of the Resulting Company will increase by Rs. 1,10,00,000/- and accordingly it is stated that the Authorised Share Capital of the Company shall be Rs. 1,25,00,000/- divided into 12,50,000 Equity Shares of Rs. 100/- each. However, as per clause 16.1 of Part IV of the said Scheme, upon coming into effect of this Scheme and in consideration to the Demerger of the Demerged Undertaking with and into the Resulting Company, the Resulting Company shall issue 5 (five) Equity Shares of face Value of Rs. 100/- each for every 2(two) Equity shares of face value of Rs.100/- each held in the Demerged Company. Therefore, the Resulting Company is required to issue 1,24,644 new Equity Shares of face value of Rs.100/- Each to the members of the Demerged Company. The Resulting Company is already having issued, subscribed and paid up Share Capital of Rs.1,00,000/- divided into 1,000 Equity Shares of Rs.100/- each. Therefore, the Authorized Share Capital of the Resulting Company shall be at least for Rs.1,25,64,400/-, Rs.1,24,64,400/- (1,24,644 × 100/-) for fresh issue and Rs.1,00,000/- (1,000 × 100) existing issued and paid-up capital, in order to allot fresh Equity Shares to the members of the Demerged /Transferor Company. Hence, the amount quantified in clause 18.1 of the scheme as the Authorised Share Capital consequent upon the Demerger is not proper and*

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*the Scheme appears defective. Hon'ble Tribunal may direct the Petitioner Resulting Company to undertake and confirm through appropriate affirmation that the Resulting Company will increase its Authorised Share Capital to such amount as will be required to allot shares to the members of the Demerged Company after payment of requisite Government fees as prescribed under the Companies Act, 2013.*

**Paragraph No.6 of Jt. Affidavit:**

With reference to paragraph 2(c) of the said affidavit, save what are matters of record, I submit as follows:

- a) That due to typographical error it is stated in clause 18.1 of Part IV of the Scheme of Arrangement, that consequent upon the Demerger, the Authorised Share Capital of the Resulting Company will increase by Rs. 1,10,00,000/- and accordingly the Authorised Share Capital of the Company shall be Rs. 1,25,00,000/- divided into 12,50,000 Equity Shares of Rs.100/- each instead of that consequent upon the Demerger, the Authorised Share Capital of the Resulting Company will increase by Rs. 1,11,00,000/- and accordingly the Authorised Share Capital of the Company shall be Rs. 1,26,00,000/- divided into 1,26,000 Equity Shares of Rs. 100/- each and hence **the clause 18.1 of Part IV of the Scheme of Arrangement, should be read as**

“Consequent upon the demerger, the authorised share capital of the Resulting Company will be increased by Rs1,11,00,000/- on the Effective Date. Accordingly, Clause V of the Memorandum of Association of the Resulting Company shall stand modified, and will be stated as under:

The Authorised Share Capital of the Company is Rs1,26,00,000/- (Rupees One Crore Twenty Six Lakhs only) divided into 1,26,000 (One Lakh Twenty Six Thousand) Equity Shares of Rs.100/- (Rupees Hundred) each with such rights, privileges and conditions attaching thereto as are provided by the regulations of the Company for the time being, with power to increase and decrease the capital of the Company and to divide the



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shares in capital for the time being into several classes and to attach thereto, respectively, such preferential rights, privileges or conditions as may be determined by or in accordance with the Articles of the Company for the time being and to modify or abrogate any such rights, privileges or conditions in such manner as may be permitted by the act or provided by the Articles of the Company for the time being.”

- b) The Petitioner Resulting Company undertake and confirm and also affirm that the Resulting Company will increase its Authorised Share Capital to such amount as will be required to allot shares to the members of the Demerged Company after payment of requisite Government fees as prescribed under the Companies Act, 2013.

**(d) Paragraph No.2(d) of RD Affidavit:**

*That the Resulting Company should be directed to pay applicable stamp duty on the transfer/demerge of the immovable properties from the Demerged/Transferor Company to it.*

**Paragraph No.7 of Jt. Affidavit:**

With reference to paragraph 2(d) of the said affidavit, the Resulting Company will pay applicable stamp duty on the transfer of the immovable properties from the Demerged/Transferor Companies to it pursuant to the Scheme of Arrangement.

**(e) Paragraph No.2(e) of RD Affidavit:**

*The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.*

**Paragraph No.8 of Jt. Affidavit:**

With reference to paragraph 2(e) of the said affidavit, I duly affirm on behalf of the Petitioner Companies that the Scheme enclosed to the Company Application and Company Petition are one and the same and there is no discrepancy or no changes is made.

**(f) Paragraph No.2(f) of RD Affidavit:**

*It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 06/09/2023 for their views/ observation in the matter. However, no such views/observation in the matter from the IncomeTax Department has been received yet. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.*

**Paragraph No.9 of Jt. Affidavit:**

*With reference to paragraph 2(f) of the said affidavit, save what are matters of record, the Petitioner Company(ies) have not received any observation from the office of the Income Tax Department.*

6. Heard submissions made by the Ld. Counsel appearing for the Petitioner, RD. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-
- (a) The Scheme of Arrangement mentioned in paragraph 1 of the petition, being Annexure "A" hereto, be and is hereby sanctioned by this Tribunal with appointed date as 01-April-2022 (“**Appointed Date**”) and the same shall be binding on Jagannath Cement Works Private Limited being the Petitioner Company No.1 above named (“**Demerged Company**” or “**Petitioner Company No.1**”) and Jagannath Smelters Private Limited, being the Petitioner Company No.2 above named (“**Resultant Company**” or “**Petitioner Company No.2**”) and their respective shareholders and creditors and all concerned;

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- (b) All the property, rights and interest of the Demerged Undertaking of the Demerged Company, be transferred to and vested in without further act or deed in the Resulting company and, accordingly, the same shall pursuant to Section 232 of the Companies Act, 2013, read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in the Resulting Company therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;
- (c) All the debts, liabilities, duties and obligations in relation to the Demerged Undertaking of the Demerged Company be transferred from the said Appointed Date, without further act or deed to the Resulting Company and, accordingly, the same shall pursuant to Section 232 of the Companies Act, 2013, read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the debts, liabilities, duties and obligations of the Resulting Company;
- (d) All proceedings and/or suits and/or appeals including any proceedings under IT Act, now pending or contemplated by or against the Demerged Undertaking of the Demerged Company be continued by or against the Resulting Companies, as provided in the Scheme, for which all the necessary records shall be preserved by the Resulting company till the culmination of such proceedings.;
- (e) The Resulting Company do without further application, issue and allot to the shareholders of the Demerged Company, the shares in the Resulting Companies to which they are entitled in terms of the Scheme;
- (f) Leave is granted to the Petitioner(s) to file the Schedule of Assets & liabilities of the Demerged Undertaking of the Demerged Company in the form as prescribed in the Schedule to Form No. CAA-7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;
- (g) That any person/authority aggrieved shall be at liberty to apply before this Tribunal in the above matter for any direction that may be necessary;

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- (h) The Demerged Company and the Resulting Companies shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration (Effective date).
7. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.
8. Company Petition (CAA) No. 171/KB/2023 is disposed of accordingly.
9. Certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

**(Balraj Joshi)**  
Member (Technical)

**(Rohit Kapoor)**  
Member (Judicial)

Order signed on 25.04.2024

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