

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT-1

C.A. (CAA) No. 3 of 2024

IN THE MATTER OF :

Arcoy Industries (India) Private Limited **Applicant Amalgamated Company**

And

Arcoy India Private Limited **Applicant Amalgamating Company**

And

Their Respective Shareholders and Creditors

Date: 09.02.2024

C O R R I G E N D U M

Order under Rule 154 of NCLT Rules, 2016

The order in this matter was delivered on 01.02.2024. On perusal of the order passed in the captioned matter, it is seen that timing of the meetings of both the Applicant companies i.e. Arcoy Industries (India) Private Limited (Applicant Amalgamated Company) and Arcoy India Private Limited (Applicant Amalgamating Company) are inadvertently being stated as the same i.e. **11:00 AM**.

We hereby rectify the said error, the time for the meeting of the Arcoy Industries (India) Private Limited (Applicant Amalgamated Company) will remain the same i.e. **11:00 AM** and the time for meeting of Arcoy India Private Limited (Applicant Amalgamating Company) will be **01:00 PM**.

Further, in para 4 and para 6 the date is inadvertently stated as "**31.03.2022**" the same is to be read as "**31.03.2023**".

The order dated 01.02.2024 forms part and parcel of this corrigendum.

-Sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
SPECIAL BENCH, COURT- I**

ITEM No.01

C.A.(CAA)/3(AHM)2024

[Application under Sections 230 to 232 read with Section 66 of Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016]

In the matter of **Scheme of Amalgamation** amongst

ARCOY INDUSTRIES (INDIA) PRIVATE LIMITED

CIN NO: U26491GJ1968PTC001520

606, Abhjit Company Building,

Mithakhali Six Roads,

Ahmedabad -380001, Gujarat,

India.

... Applicant Amalgamated Company

And

ARCOY INDIA PRIVATE LIMITED

CIN NO: U65190GJ1969PTC001637

606, Abhjit Company Building,

Mithakhali Six Roads,

Ahmedabad -380001, Gujarat,

India.

... Applicant Amalgamating Company

And

Their Respective Shareholders and Creditors

Order delivered on: 01.02.2024

CORAM:
SHAMMI KHAN, MEMBER (JUDICIAL)
DR. V. G. VENKATA CHALAPATHY, MEMBER (TECHNICAL)

PRESENT:

For Applicant: Ms. Dharmishta Raval, Advocate

ORDER

1. This is a Joint Company Application Viz., C.A.(CAA)/3(AHM)2024 filed by the Applicant Companies, namely **ARCOY INDUSTRIES (INDIA) PRIVATE LIMITED** (for brevity “Amalgamated Company”) and **ARCOY INDIA PRIVATE LIMITED** (for brevity “Amalgamating Company”) under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation (hereinafter referred to as the “SCHEME”) proposed by the Applicant Companies. The said Scheme is also appended as **“Annexure – F”** to the C.A.(CAA)/3(AHM)2024.
2. The Applicant Companies in this Company Application has sought for the following reliefs;

	EQUITY SHAREHOLDERS MEETING	SECURED CREDITORS MEETING	UNSECURED CREDITORS MEETING
AMALGAMATED COMPANY	To Dispense with	To Dispense with	To Convene
AMALGAMATING COMPANY	To Dispense with	To Dispense with	To Convene

3. The Amalgamated Company is a Private Limited Company incorporated under the provisions of Companies Act, 1956 on 04.07.1968 with the Registrar of Companies, Gujarat, under the name and style of “Arcoy Industrial Cements Private Limited”. This name was changed to “**Arcoy Industries (India) Private Limited**” on 13th October, 2005.
4. The authorized, issued subscribed and paid-up share capital of the Amalgamated Company as on 31.03.2022 is as under:

AUTHORIZED SHARE CAPITAL	AMOUNT (IN Rs.)
1,25,000 Equity Shares of Rs.100/- each	12,500,000/-
Total	12,500,000/-
ISSUED, SUBSCRIBED AND PAID-UP SHARE CAPITAL	AMOUNT (IN Rs.)
1,23,000 Equity Shares of Rs.100/- each	12,300,000/-
Total	12,300,000/-

5. The Amalgamating Company was incorporated as Private Limited Company under Companies Act, 1956 on 01.10.1969, with Registrar of Companies, Gujarat, under the name and style of "ARCOY SERVICES PRIVATE LIMITED". This name was changed to “ARCOY INTERNATIONAL PRIVATE LIMITED” on 12th May,2012 and thereafter, was changed to “**ARCOY INDIA PRIVATE LIMITED**” on 3rd July, 2012.

6. The authorized, issued subscribed and paid-up share capital of the Transferee Company as on 31.03.2022 is as under:

AUTHORIZED SHARE CAPITAL	AMOUNT (IN RS.)
4,75,000 Equity Shares of Rs.10/- each	47,50,000/-
25,000 10% Redeemable Cumulative Preference Shares of Rs. 10/- each	2,50,000/-
Total	50,00,000/-
ISSUED, SUBSCRIBED AND PAID-UP SHARE CAPITAL	AMOUNT (IN RS.)
4,15,000 Equity Shares of Rs. 10/- each fully paid up	41,50,000/-
Total	41,50,000/-

7. Affidavit in support of the above application sworn for and on behalf of the applicant Companies has been filed by Mr.Aditya Harinbhai Choksi in the capacity of authorized signatory for the Amalgamated and Amalgamating Company along with the application and it is also represented that the Registered office of the Amalgamated Company and Amalgamating Company is situated at 606, Abhijit Bldg, Mithakhali Six Road, Ahmedabad-380001, Gujarat within the territorial jurisdiction of the Bench of this Tribunal and falling within the purview of Registrar of Companies Ahmedabad, Gujarat.

8. **ARCOY INDUSTRIES (INDIA) PRIVATE LIMITED**

AMALGAMATED COMPANY

- (i) There are **18 (Eighteen)** Equity Shareholders and list of shareholders to this effect is placed at Page No. 345-346

of the application and consent by way of Affidavits given by all the equity shareholders is placed at Page Nos.347-417 and sought for dispensation with holding of meeting.

- (ii) There is **1 (One)** Secured Creditors and the certificate issued by the Chartered Accountant to this effect is placed at Page No. 418 to 419 of the Application and consent by way of Affidavits given by the Secured Creditors is placed at Page Nos. 420 to 422/A and sought for dispensation with holding of meeting.
- (iii) There are **207 (Two Hundred and Seven)** Unsecured Creditors and the certificate issued by the Chartered Accountant to this effect is placed at Page No. 423 to 427 of the Application and sought for convening, holding and conducting of the meeting.

9. **ARCOY INDIA PRIVATE LIMITED**

AMALGAMATING COMPANY

- (i) There are **4 (Four)** Equity Shareholders and list of shareholders to this effect is placed at Page No. 311-312 of the application and consent by way of Affidavits given by the equity shareholders is placed at Page Nos. 313-336 and sought for dispensation with holding of meeting.
- (ii) There is **1 (One)** Secured Creditor and the certificate issued by the Chartered Accountant to this effect is placed at Page No. 337 to 339 of the Application and

consent by way of Affidavit given by the Secured Creditor is placed at Page Nos. 340 to 342/A and sought for dispensation with holding of meeting.

- (iii) There are **9 (Nine)** Unsecured Creditors and the certificate issued by the Chartered Accountant to this effect is placed at Page No. 343 to 344 of the Application and sought for convening, holding and conducting of the meeting.
10. We have perused the application and the connected documents / papers filed therewith including the Scheme contemplated by the applicant companies.
11. The Applicant Companies has filed its Memorandum and Articles of Association *inter alia* delineating its object clauses as well as their last available Audited Annual Accounts for the year ended 31.03.2022 and Provisional/ Unaudited Financial Statements for the period ended on 31.08.2023.
12. The Board of Directors of the Applicant Companies vide meeting held on **21st July, 2023** had unanimously approved the proposed Scheme as contemplated above and copies of resolutions passed thereon have been placed on record by the applicant companies.
13. The Appointed date as specified in the Scheme is **01.04.2023**.

14. The Statutory Auditors of the Amalgamated and Amalgamating Company have examined the Scheme in terms of provisions of Sec. 232 of Companies Act, 2013 and the rules made thereunder and certified that the Accounting Standards are in compliance with Section 133 of the Companies Act, 2013. The said Certificates of the Statutory Auditors in this regard is placed at **“Annexure G”** of the Applicant Companies typed set of Documents filed along with the application.
15. The copy of the valuation report dated 15th July, 2023 by the Registered Valuer is annexed at **“Annexure- H ”** with the Company Application.
16. Taking into consideration the application filed by the Applicant Companies and the documents filed therewith as well as the position of law, this Tribunal propose to issue the following directions: -

A. IN RELATION TO THE AMALGAMATED COMPANY:

(i) **With respect to Equity shareholders:**

Since it is represented by the Amalgamated Company that there are **18 (Eighteen)** Equity shareholders in the Company whose consents by way of Affidavits have been obtained from all the equity shareholders and are placed on record, the necessity of convening, holding and conducting the meeting is ***dispensed with***.

(ii) **With respect to Secured Creditor:**

Since it is represented by the Amalgamated Company that there is **1 (One)** Secured Creditor in the Company whose consent by way of Affidavit has been obtained and is placed on record, the necessity of convening, holding and conducting the meeting is ***dispensed with***.

(iii) **With respect to Unsecured Creditors:**

Meeting of the Unsecured Creditors of the Amalgamated Company is directed to be held on 18th March, 2024 at 11:00 AM at the Registered Office address of the Amalgamated Company or through video conferencing or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices.

The quorum for the meeting of the Amalgamated Company shall be as follows:

S.No	CLASS	QUORUM
1	UNSECURED CREDITORS	10

B. IN RELATION TO THE AMALGAMATING COMPANY:

(i) **With respect to Equity shareholders:**

Since it is represented by the Amalgamating Company that there are **4 (Four)** Equity shareholders in the Company whose consents by way of Affidavits have been obtained from all the equity shareholders and are placed on record, the necessity of convening, holding and conducting the meeting is ***dispensed with***.

(ii) **With respect to Secured Creditors:**

Since it is represented by the Amalgamating Company that there is **1 (One)** Secured Creditor in the Company whose consent by way of Affidavit has been obtained and is placed on record, the necessity of convening, holding and conducting the meeting is ***dispensed with***.

(iii) **With respect to Unsecured Creditors:**

Meeting of the Unsecured Creditors of the Amalgamating Company is directed to be held on 18th March, 2024 at 11:00 AM at the Registered Office address of the Amalgamating Company or through video conferencing or if not convenient at any other suitable place for which prior approval shall be sought from this Tribunal within a period of 7 days from the date of this order and prior to the issue of notices.

The quorum for the meeting of the Amalgamating Company shall be as follows:

S.No	CLASS	QUORUM
1	UNSECURED CREDITORS	4

17. The Chairperson appointed for the above said meetings shall be Dr. Madan Bhalachandra Gosavi, Ex-Member Judicial and Ex-Spl. CBI Judge, Mumbai (Mob: 9323931886, Email id: madan.gosavi@rediffmail.com). The Fee of the Chairperson for the aforesaid meeting shall be *Rs.75,000/- (Rupees Seventy-five Thousand Only)* in

addition to meeting his incidental expenses. The Chairperson(s) will file the reports of the meeting within a week from the date of holding of the above said meetings

18. Mohammed Arkam G. Shaikh, Advocate (CS), (Mob: 9265345325, Email id: cs.adv.mgshaikh@gmail.com) is appointed as a Scrutinizer and would be entitled to a fee of Rs. 25000/- (*Rupees Twenty Five Thousand Only*) for services in addition to meeting incidental expenses.
19. In case the quorum as noted above, for the above meeting of the Applicant Companies is not present at the meeting, then the meeting shall be adjourned by half an hour, and thereafter the person(s) present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the applicant companies at least 48 hours before the meeting. The Chairperson appointed herein along with Scrutinizer shall ensure that the proxy registers are properly maintained. However, every endeavour should be made by the applicant companies to attain at least the quorum fixed, if not more in relation to approval of the scheme.
20. The meetings shall be conducted as per applicable procedure prescribed under the MCA Circular MCA General Circular Nos. (i) 20/2020 dated 5th May, 2020 (AGM Circular), (ii) 14/2020, dated 08.04.2020 (EGM

Circular-I) and (iii) 17/2020 dated 13.04.2020 (EGM Circular-II);

21. That individual notices of the above said meetings shall be sent by the Applicant Company through registered post or speed post or through courier or e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, the place and the time as aforesaid, together with a copy of Scheme, copy of explanatory statement, required to be sent under the Companies Act, 2013 and the prescribed form of proxy shall also be sent along and in addition to the above any other documents as may be prescribed under the Act or rules may also be duly sent with the notice.
22. That the Applicant Company shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in the English Daily **“Free Press”** (Gujarat Edition), and **“Lokmitra”** (Gujarat Edition) in Vernacular stating the copies of Scheme, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the respective Applicant Companies.
23. The Chairperson shall as foretasted be responsible to report the result of the meetings within a period of 7 days

of the conclusion of the meetings with details of voting on the proposed scheme.

24. In compliance of subsection (5) of Section 230 and Rule 8 of the Companies (CAA) Rules, 2016, the Applicant Companies shall send a notice in Form No. CAA.3 along with copy of the Scheme : to **(i)** the Central Government through the Regional Director, North Western Region; **(ii)** the Registrar of Companies, Gujarat; **(iii)** the Income Tax Authority concerned and **(iv)** the Official Liquidator (for Transferor Company) as well as other Sectoral regulators who may have significant bearing on the operation of the applicant companies or the Scheme per se along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230 of the Act, shall send the same to this Tribunal with a copy of the same to be supplied to the Applicant Companies.
25. The Applicant Companies are required to serve notice pursuant to Section 230(5) of the Companies Act, 2013 to the regulatory authorities which are likely to be affected.
26. The applicant companies shall further furnish copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every creditor or member of the

applicant companies entitled to attend the meetings as aforesaid.

27. The Authorized Representative of the Applicant Companies shall furnish an affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meetings.
28. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants.
29. The Application stands **allowed** on the aforesaid terms.

-Sd-
DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

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