

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.7  
C.A.(CAA)/41(AHM)2023

**Proceedings under Section 230-232**

**IN THE MATTER OF:**

Welspun Infraconstruct Pvt Ltd  
Welspun-Kaveri Infraprojects JV Pvt Ltd  
Corbello Trading Pvt Ltd  
RGY Roads Pvt Ltd  
Welspun Enterprises Ltd

.....Applicants

**Order delivered on: 13/09/2023**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr.Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

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

**C.A.(CAA)/41(AHM)2023**

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

**Scheme of Amalgamation in the nature of Merger**

of

Welspun Infraconstruct Private Limited  
(Transferor Company No.1)

Welspun-Kaveri Infraprojects JV Private Limited  
(Transferor Company No.2)

Corbello Trading Private Limited  
(Transferor Company No.3)

RGY Roads Private Limited  
(Transferor Company No.4)

with

Welspun Enterprises Limited  
(Transferee Company)

and

Their respective shareholders

**Order Pronounced on 13.09.2023**

**CORAM:**

**SHAMMI KHAN  
HON'BLE MEMBER (JUDICIAL)**

**KAUSHALENDRA KUMAR SINGH  
HON'BLE MEMBER (TECHNICAL)**

**MEMO OF PARTIES**

**Welspun Infraconstruct Private Limited**

(CIN: U41000GJ2018PTC141883)

Registered address at;

Welspun City, Village Versamedi,  
Taluka Anjar, Dist. Kutch,  
Gujarat – 370110

...Transferor Company No.1

**Welspun-Kaveri Infraprojects JV Private Limited**

(CIN: U41000GJ2021PTC141882)

Registered address at;

Welspun City, Village Versamedi,  
Taluka Anjar, Dist. Kutch,  
Gujarat – 370110

.... Transferor Company No.2

**Corbello Trading Private Limited**

(CIN: U51909GJ2017PTC141193)

Registered address at;

Welspun City, Village Versamedi,  
Taluka Anjar, Dist. Kutch,  
Gujarat – 370110

.... Transferor Company No.3

**RGY Roads Private Limited**

(CIN: U45309GJ2017PTC141194)

Registered address at;

Welspun City, Village Versamedi,  
Taluka Anjar, Dist. Kutch,  
Gujarat – 370110

.... Transferor Company No.4

**With**

**Welspun Enterprises Limited**

(CIN: L45201GJ1994PLC023920)

Registered address at;

Welspun City, Village Versamedi,  
Taluka Anjar, Dist. Kutch,  
Gujarat - 370110

.... Transferee Company

For the Applicants: Learned Senior Counsel Mr. Saurabh Soparkar along with Ld. Counsel Ms. Dharmishtha N. Raval.

### **ORDER**

1. The present joint application is filed under Sections 230-232 with other applicable provisions of the Companies Act, 2013 (hereinafter referred to as “**the Act**”) read with Companies (Compromise, Arrangement and Amalgamations) Rules, 2016 (Rules, 2016”) seeking dispensation of meetings of Equity Shareholders of the Transferor Companies as well as seeking dispensation of meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Transferee Company for the purpose of considering and if thought fit, approving, with or without modification(s), in the proposed Scheme of Amalgamation in the nature of Merger of M/s. Welspun Infraconstruct Private Limited (Transferor Company No.1), M/s. Welspun-Kaveri Infraprojects JV Private Limited (Transferor Company No.2), M/s. Corbello Trading Private Limited (Transferor Company No.3) M/s. RGY Roads Private Limited (Transferor Company No.4) with M/s. Welspun Enterprises Limited (Transferee Company) (collectively referred to as the Applicant Companies) and their respective shareholders and creditors with effect from Appointed Date i.e. April 01, 2022 for the Transferor Company No.1, May 06, 2022 for the Transferor Company No.2, September 05, 2022 for the Transferor Company No.3 and September 28, 2022 for the Transferor Company No.4 as mentioned in the Scheme. This Application was e-filed on 21.06.2023 and physical copy thereof was filed on 22.06.2023

2. An affidavit in support of the present joint application sworn by Mr. Akhil Pillai on behalf of all the Applicant Companies, authorized vide resolutions dated 07.06.2023 by the Applicant Companies, is placed on record.
3. The averments made by the Applicant Companies are summarized as under:
  - (i) The registered office of all the Applicant Companies is situated in the State of Gujarat, under the jurisdiction of the National Company Law Tribunal, Ahmedabad Bench.
  - (ii) The Board of Directors of the Applicant Companies has approved the Scheme of Amalgamation at their respective Board Meetings held on 21.04.2023. Copies of respective Board Resolutions are placed on record.
  - (iii) The Transferor Companies are wholly-owned subsidiaries of the Transferee Company. All the Transferor Companies were engaged in the business of infrastructure development and currently there are no infrastructure developments in the Transferor Companies. The Transferee Company is engaged in the business of development of infrastructure and energy.
  - (iv) The Transferor Company No. 1 was incorporated under the provisions of the Companies Act, 2013 in Delhi on 04.12.2018 in the name of 'Welspun Amravati Highways Private Limited'. Pursuant to issue of fresh certificate of incorporation consequent upon change of name dated 08.04.2021, the name of the Transferor Company No.1 was changed from 'Welspun Amravati Highways Private Limited' to 'Welspun Infraconstruct Private Limited'. Subsequently, pursuant to issue of Certificate of Registration of Regional Director order for Change of State dated 05.06.2023 issued by Registrar of Companies, Ahmedabad, the registered office was

changed from Delhi to Gujarat. The registered address of the Transferor Company No.1 is situated at Welspun City, Village Versamedi, Taluka Anjar, Dist. Kutch, Gujarat – 370110.

As on the date of filing of this application, the Authorized Share Capital of the Transferor Company No.1 was Rs.35,00,000/- divided into 3,50,000 equity shares of Rs. 10/- each and the Issued, Subscribed and Paid-up Share Capital was Rs. 30,97,590/- divided into 3,09,759 equity shares of Rs. 10/- each.

The entire issued, subscribed and paid-up capital of the Transferor Company No.1 is held by the Transferee Company.

- (v) The Transferor Company No. 2 was incorporated under the provisions of the Companies Act, 2013 in Delhi on 10.05.2021. Subsequently, pursuant to issue of Certificate of Registration of Regional Director order for Change of State dated 05.06.2023 issued by Registrar of Companies, Ahmedabad, the registered office was changed from the Delhi to Gujarat. The registered address of the Transferor Company No.2 is situated at Welspun City, Village Versamedi, Taluka Anjar, Dist. Kutch, Gujarat – 370110.

As on 31.03.2023, the Authorised Share Capital of the Transferor Company No.2 was Rs. 1,00,00,000/- divided into 10,00,000 equity shares of Rs. 10/- each and the Issued, Subscribed and Paid-up Share Capital was Rs. 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each.

The entire issued, subscribed and paid-up capital of the Transferor Company No.2 is held by the Transferee Company.

- (vi) The Transferor Company No.3 was incorporated under the provisions of the Companies Act, 2013 in Delhi on 19.07.2017. Subsequently, the registered office was changed from Delhi to Gujarat. The registered address of the Transferor Company No.3 is situated at Welspun City, Village Versamedi, Taluka Anjar, Dist. Kutch, Gujarat – 370110.

As on the date of filing of this application, the Authorized Share Capital of the Transferor Company No. 3 was Rs. 15,00,000/- divided into 1,50,000 equity shares of Rs. 10/- each and the Issued, Subscribed and Paid-up Share Capital was Rs. 9,09,740/- divided into 90,974 equity shares of Rs. 10/- each.

The entire issued, subscribed and paid-up capital of the Transferor Company No.3 is held by the Transferee Company.

- (vii) The Transferor Company No.4 was incorporated under the provisions of the Companies Act, 2013 in Delhi on 25.05.2017. Subsequently, the registered office was changed from Delhi to Gujarat. The registered address of the Transferor Company No.4 is situated at Welspun City, Village Versamedi, Taluka Anjar, Distt. Kutch, Gujarat – 370110.

As on the date of filing of this application, the Authorized Share Capital of the Transferor Company No.4 was Rs. 15,00,000/- divided into 1,50,000 equity shares of Rs. 10/- each and the Issued, Subscribed and Paid-up Share Capital was Rs. 9,07,660/- divided into 90,766 equity shares of Rs. 10/- each.

The entire issued, subscribed and paid-up capital of the Transferor Company No.4 is held by the Transferee Company.

- (viii) The Transferee Company was incorporated under the provisions of the Companies Act, 1956 in Gujarat in the name of 'MSK Projects (India) Limited' on 20.12.1994. Pursuant to issue of fresh certificate of incorporation consequent upon change of name dated 03.12.2010, the name of 'MSK Projects (India) Limited' was changed to 'Welspun Projects Limited'. Subsequently, pursuant to issue of fresh certificate of incorporation consequent upon change of name dated 20.05.2015, the name of 'Welspun Projects Limited' was changed to 'Welspun Enterprises Limited'. The registered address of the Transferee Company is situated at Welspun City, Village Versamedi, Taluka Anjar, Dist. Kutch, Gujarat – 370110.

As on the date of approval of the Scheme by the Board of Directors of the Transferee Company, the Authorised Share Capital was Rs. 275,00,00,000/- divided into 27,50,00,000/- equity shares of Rs. 10/- each and the Issued, Subscribed and Paid-up Share Capital was Rs.



138,38,30,560/- divided into 13,83,83,056 equity shares of Rs. 10/- each.

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

- (ix) The Applicant Companies are empowered by their respective Memorandum of Association and Articles of Association to enter into a Scheme of Amalgamation. Copies of Memorandum of Association and Articles of Association of the Applicant Companies are placed on record.

The audited financial statements as on 31.03.2023 of the Applicant Companies are placed on record.

- (x) The certificate issued by the statutory auditors of the Applicant Companies to the effect that the accounting treatment specified in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013, is annexed with the application as Annexure-H (colly.)

- (xi) The Applicant Companies are part of the same group. Accordingly, the provisions of the Competition Act, 2002 are not applicable in the present case as merger or amalgamation of two enterprises in which more than fifty per cent (50%) shares or voting rights in each of such enterprises are held by enterprise(s) within the same group is specifically exempt under Schedule I of

The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011.

- (xii) There is no foreign shareholder in the Transferor Companies and no shares are proposed to be issued to a foreign shareholder. Hence, no notice is required to be issued to Reserve Bank of India.
- (xiii) The Transferee Company is a listed entity, and the Scheme involves amalgamation of wholly owned subsidiaries with the parent company. Hence, in terms of provisions contained in Master Circular issued by Securities and Exchange Board of India (SEBI/HO/CFD/DIL1/CIR/P/2021/0000000665) dated November 23, 2021, observations / no-objection letter from Securities and Exchange Board of India, BSE Limited and National Stock Exchange of India Limited is not required. However, in terms of the said master circular, the Transferee Company has filed the draft Scheme with BSE Limited and National Stock Exchange of India Limited for the purposes of disclosures.
- (xiv) The Scheme does not provide for reduction of share capital of the Applicant Companies.
- (xv) The Scheme does not involve any corporate debt restructuring.
- (xvi) There are no investigation or proceedings under the Companies Act, 1956 / Companies Act, 2013 have been instituted or are pending in relation to the Applicant

Companies.

- (xvii) The director and key managerial personnel of the Applicant Companies are not in any manner interested in the Scheme except in the capacity of the shareholder.
- (xviii) There are no winding up / liquidation proceedings / corporate insolvency resolution process is pending against the Applicant Companies
- (xix) The Applicant Companies have following Equity Shareholders, Secured and Unsecured Creditors as on 20.06.2023 as per the Certificate issued by the Chartered Accountant:-

Sr. No.	Name of the Company	No. of Equity Shareholders	No. of Secured Creditors	No. of Unsecured Creditors
1	Welspun Infraconstruct Private Limited	7	Nil	Nil
2	Welspun-Kaveri Infraprojects JV Private Limited	2	Nil	Nil
3	Corbello Trading Private Limited	7	Nil	Nil
4	RGY Roads Private Limited	2	Nil	Nil
5	Welspun Enterprises Limited	51,789	4	1954

All the Equity Shareholders of the Transferor Companies have given their consent in writing, in the form of affidavits, approving the Scheme of Amalgamation and thereby waiving their right to convene meetings of Equity Shareholders of the

Transferor Companies. The Consent Affidavits of Equity Shareholders of the Transferor Companies are annexed at Annexure-I1 (Colly), Annexure-J1 (Colly), Annexure-K1(Colly) and Annexure L1(Colly) respectively, to this application. The Chartered Accountant has issued certificates dated 20.06.2023 certifying the number and shareholding of the Equity Shareholders of Transferor Companies.

Hence, the Transferor Companies seek dispensation for holding the meetings of all the Equity Shareholders. There are no Secured and Unsecured Creditors in the Transferor Companies as on 20.06.2023 and the certificates from Chartered Accountant to that effect are annexed with the Application.

The Transferee Company seeks dispensation with the holding of the meeting of the equity shareholders, secured creditors and unsecured creditors in view of the following:

- (a) Being an amalgamation of wholly owned subsidiary company into its holding company, no shares would be issued or allotted as consideration pursuant to the amalgamation. Accordingly, the rights of members of the Transferee Company are not affected since there will be no issue of shares pursuant to the Scheme and there would be absolutely no change in the share capital of the Transferee Company. Also, the present Scheme will not result in any dilution in shareholding of the Transferee Company.

- (b) The rights of the creditors of the Transferee Company are not affected since there will be no reduction in their claims and the assets of the Transferee Company, post amalgamation, will be more than sufficient to discharge their claims. Also, the net worth of the Transferee Company is and will continue to remain highly positive post-amalgamation. A certificate from Chartered Accountant certifying the net worth of the Transferee Company pre and post amalgamation is annexed with the Application.
- (c) The existence of the Transferee Company will remain as before without any change either to its shareholding pattern or debt position pursuant to the Scheme.
- (d) No undertaking of the Transferee Company is being parted away or being disposed off and hence provisions of Section 180 of the Companies Act, 2013 are also not applicable.
- (e) It is respectfully submitted that the Hon'ble High Court of Judicature at Bombay in the case of ***Mahaamba Investments Limited V/s. IDI Limited (2001)*** 105 Company Cases page 16 to 18 inter alia observed and held that if the Scheme of Amalgamation provides for no issue of equity shares to the members of the transferor companies, the creditors of the transferee company, are not likely to be affected by the Scheme. Further, the Hon'ble High Court of Bombay in an unreported judgement of Bon Limited dated March 12, 2010 in Company Scheme Petition No. 123 of 2010, reiterated that a separate petition by the transferee company would not be necessary, if the Scheme, by way of transfer of undertaking, does not (a) involve the re-organization of the capital of the transferee

company; and (b) affect the rights of the members or creditors of the transferee company, as between themselves and the company. The said observations are squarely applicable to the proposed Scheme wherein the Transferor Companies are being merged into the Transferee Company and the Transferor Companies being a wholly owned subsidiary of the Transferee Company.

- (f) Reliance is also placed on the judgment of Hon'ble National Company Law Appellate Tribunal ('Hon'ble NCALT') in the case of **Ambuja Cements Limited** (Company Appeal (AT) No. 19 of 2021). The Hon'ble NCALT held in paragraph 29 and 39 as under:

*“29. From the perusal of the pleadings it is amply clear that the Appellant Company is a 100% holding of its Subsidiary i.e. the transferor Company. Therefore, there is no issuance of any new shares, there is no reorganization of share capital of the Appellant Company and no arrangement wherein shareholders have to compromise with creditors of the Transferor Company. Further, we have also seen that the net worth of the Appellant Company is highly positive in compare to the net worth of the Transferor Company.”*

*“39. In view of the forgoing reasons we set aside the order of the Learned NCLT dated 10.12.2020 in CA (CAA) No. 50 of 2020. Accordingly, we dispense with the meetings of the Equity shareholder, Secured and Unsecured Creditors of the Appellant Company. The matter is remanded back to the NCLT for further Consideration.”*

- (g) Reliance is also placed on the judgment of

Hon'ble NCALT in case of **Gujarat Ambuja Exports Ltd** (Company Appeal (AT) No. 59 of 2021). The Hon'ble NCALT held in paragraph 20 and 21 as under:

*“20. This Tribunal has placed reliance in ‘DLF Phase IV, Commercial Developers Limited and Ors.’ in Company Appeal (AT) No. 180 of 2019 and observed that the scheme would not prejudicially affect the Creditors or Shareholders of the Appellant Company when an Application is filed by the ‘Transferor Company’ or ‘Transferee Company’, a separate Application is not necessary and dispensed with the meeting of the equity Shareholders and Creditors of the Appellant Company. At the cost of repetition, keeping in view that the financial position of the ‘Transferee Company’ is highly positive, the merger does not involve any compromise/arrangement with any Creditor of the Company, that there would be a positive net worth and Creditors would not be compromised, the Tribunal ought to have exercised the discretion in dispensing with the requirement of convening the meeting which would facilitate ease of doing business and save time and resources. To reiterate, we observe that the rights and liabilities of Secured and Unsecured Creditors were not getting affected in any manner by way of the proposed scheme as no new shares are being issued by the ‘Transferor Company’ and no compromise is offered to any Secured and Unsecured Creditors of the ‘Transferee Company’. Therefore, we are of the considered view that when the ‘Transferor and Transferee Company’ involve a parent Company and a Wholly Owned Subsidiary the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors can be dispensed with as the facts of this case*

*substantiate that the rights of the Equity Shareholders of the ‘Transferee Company’ are not being affected.”*

*“21. For all the aforementioned reasons, we allow this Application and set aside the direction in respect of the Transferee Company issued by the NCLT, to convene the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors on 22.04.2021.”*

(h) Further reliance is also placed on the judgment of this Tribunal in the case of

(i) Welspun Corp Limited  
(CA(CAA)/30(AHM)2023),

(ii) Elecon Engineering Company Limited  
(CA(CAA) No. 150/NCLT/AHM/2018),

(iii) Pranay Holdings Limited and Others  
(CA(CAA) No. 01/NCLT/AHM/2019) and

(iv) Nilkamal Limited  
(C.A.(CAA)/24(AHM)2021).

(xx) Rationale of the Scheme

The Scheme is expected to achieve the followings:

- (i) Streamlining the structure of the Transferee Company by way of reduction in the number of entities / subsidiaries and making it simple and transparent;
- (ii) Elimination of doubling of related costs, thereby reducing operational and administrative expenses and overheads, and lead to better cost and



operational efficiencies; and

- (iii) Reducing the multiplicities of legal and regulatory compliances.

4. It is stated that the net worth of the Transferee Company as per the latest financial statements as on 31.03.2023 is approximately INR 2,23,401 lakhs. Further, the net-worth of the Transferor Company No.1 as on 20.06.2023 is INR 5.74 lakhs, the net-worth of the Transferor Company No.2 as on 20.06.2023 is INR 0.14 lakhs, the net-worth of the Transferor Company No.3 as on 20.06.2023 is INR 1.71 lakhs and the net-worth of the Transferor Company No.4 as on 20.06.2023 is INR 1.62 lakhs. The Chartered Accountant C S Mangal & Co has given a certificate dated 20.06.2023, certifying the net-worth of the Applicant Companies. The said certificate is attached herewith as Annexure-N (Colly). Since the net-worth of the Transferee Company is significantly positive, there is no real or substantial adverse impact of the Scheme on the financial statements of the Transferee Company. Under these circumstances, the meetings of the Equity Shareholders, Secured Creditors and the Unsecured Creditors of the Transferee Company is not required to be called for as the interest of the Equity Shareholders, Secured Creditors and the Unsecured Creditors of the Transferee Company is in no way affected by the present Scheme.

5. We have heard Ld. Sr. Counsel Mr. Saurabh Soparkar along with Ld. Counsel Ms. Dharmishta Raval, representing the Applicant Companies and perused the documents annexed with the application. It appears that the present Company

Application complies with all provisions of Sections 230-232 of the Companies Act, 2013 and Rules provided thereunder. Taking into consideration the submissions and the documents filed therewith, we issue the following directions:-

- (i) The meetings of the Equity Shareholders of the Transferor Companies are hereby dispensed with in view of their consent affidavits.
- (ii) Since there are no Creditors in the Transferor Companies, convening of meetings of the Creditors do not arise at all.
- (iii) The meetings of the Equity Shareholders, Secured and Unsecured Creditors of the Transferee Company are hereby dispensed with.
- (iv) In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, 2016, the Applicant Companies shall send a notice in Form No.CAA.3 with a copy of the Scheme, the Explanatory Statement and the disclosures mentioned in Rule 6 of the Companies (CAA) Rules, 2016 to **(i)** the Central Government through the Regional Director, North Western Region, **(ii)** the Registrar of Companies, Gujarat, **(iii)** to the Income Tax Department along with full details of assessing officer and PAN numbers of all the Applicant Companies with copy also to the Principal Chief Commissioner of Income Tax Office, **(iv)** the Official Liquidator (only by the Transferor Companies), **(v)** BSE Limited (only by the Transferee Company), **(vi)** National Stock Exchange of India Limited (only by the Transferee

Company) and **(vii)** Securities and Exchange Board of India (only by the Transferee Company), to such other sectoral regulatory authorities who may govern the working of the Applicant Companies, stating that representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed Scheme. The said notices shall be sent forthwith by email or by registered post or by speed post or by courier or by hand delivery at the office of the authority as required by sub-rule (2) of Rule 8 of the Companies (CAA) 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.

6. The Company Application, i.e. C.A.(CAA)/41(AHM)2023 is allowed and disposed of in terms of the above directions.

**-Sd-**  
**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

Sudha-Steno

**-Sd-**  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**