

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

CP/72/CAA/2021 in CA/322/CAA/2020

Along with

MA/85/(CHE)/2021inCP/72/CAA/2021

(Under Section 230 to 232 of the Companies Act, 2013)

In the matter of Scheme of Amalgamation

Between

DALMIA REFRACTORIES LIMITED

having its registered office at, Dalmiapuram,
P.O. Kallakudi, Dist. Tiruchirappalli, Tamil Nadu- 621 651

...Petitioner/Transferor Company (1)

And

GSB REFRACTORIES INDIA PRIVATE LIMITED

having its registered office at, Dalmiapuram,
P.O. Kallakudi, Dist. Tiruchirappalli, Tamil Nadu- 621 651

...Petitioner/Transferor Company (2)

And

DALMIA BHARAT REFRACTORIES LIMITED

having its registered office at, Dalmiapuram, Lalgudi,
Dist. Tiruchirappalli, Tamil Nadu- 621 651

...Petitioner/Transferee Company

And

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Order Pronounced on 3rd February 2022

CORAM:

**Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Petitioners : Mr. PH Arvinth Pandian, Senior Advocate
For Mr. Pawan Jhabakh, Advocate*

For Objector : Mr. Kaushik Chatterjee, Advocate

COMMON ORDER

Per: Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)

Under consideration is Company Petition in CP/72/CAA/2021 filed jointly by the abovementioned Petitioner Companies under section 230 - 232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules 2016. The instant Company Petition pertains to the matter of Scheme of Amalgamation by virtue of which the Transferor Company (1) and Transferor Company (2) are to be merged and amalgamated with the Transferee Company, as a going concern.

2. DALMIA REFRACTORIES LIMITED (TRANSFEROR COMPANY – 1)

2.1. The Transferor Company (1) was incorporated under the Companies Act, 1956, in the State of Tamil Nadu, in the name and style of "Dalmia Ceramic Industries Limited" on 21st June 1973. Thereafter, with effect from 1st November 1983, the name of the Transferor Company (1) was changed to "Shri Nataraj Ceramic and Chemical Industries Limited". Thereafter, with effect from 28th March, 2014, the name of the Transferor Company (1) was changed to "Dalmia Refractories Limited". The registered office of the Transferor Company (1) is situated at Dalmiapuram, P.O. Kallakudi, Dist. Tiruchirappalli, Tamil Nadu-



621651. The Equity Shares of the Transferor Company (1) are listed on Metropolitan Stock Exchange of India Limited ('MSEI') and the Calcutta Stock Exchange Limited ('CSE'). The main objects of the Transferor Company (1) are set out in clause III (A) of its Memorandum of Association.

2.2. The Authorized Share Capital, Issued, Subscribed and Paid-up share capital of the Transferor Company (1), as on 31st March, 2021, is as under:

PARTICULARS	AMOUNT (IN CRORES OF RUPEES)
<u>AUTHORIZED SHARE CAPITAL</u>	
50,00,000 Equity Shares of Rs. 10 each	5.00
Total	5.00
<u>ISSUED, SUBSCRIBED AND FULLY PAID-UP SHARE CAPITAL</u>	
31,52,084 Equity Shares of Rs. 10/- each, fully paid up	3.15
Total	3.15

3. GSB REFRACTORIES INDIA PRIVATE LIMITED (TRANSFEROR COMPANY- 2)

3.1. The Transferor Company (2) was incorporated on 11th of March, 2011, under the provisions of the Companies Act, 1956. The registered office of the Transferor Company (2) is situated at Dalmiapuram, P.O. Kallakudi, Dist. Tiruchirappalli, Tamil Nadu - 621651.



The main objects of the Transferor Company (2) are set out in clause III (A) of its Memorandum of Association.

3.2. The Authorized Share Capital, Issued, Subscribed and Paid up share capital of the Transferor Company (2) as on 31st march, 2021, is as under:

PARTICULARS	AMOUNT (IN CRORES OF RUPEES)
<u>AUTHORIZED SHARE CAPITAL</u>	
50,00,000 equity shares of Rs. 10/- each	5.00
Total	5.00
<u>ISSUED, SUBSCRIBED AND FULLY PAID-UP SHARE CAPITAL</u>	
8,37,687 Equity Shares of Rs. 10/- each	0.84
Total	0.84

4. DALMIA BHARAT REFRACTORIES LIMITED (TRANSFEREE COMPANY)

4.1. The Transferee Company was incorporated under the Companies Act, 1956, in the State of Tamil Nadu, in the name and style of "Sri Dhandauthapani Mines and Minerals Limited" on 04th October 2006. Thereafter, with effect from 27th December, 2019, the name of the Transferee Company was changed to "Dalmia Bharat Refractories Limited". The registered office of the Transferee Company is situated at Dalmiapuram, Dist. Tiruchirappalli, Tamil Nadu- 621651. The main object

of the Resulting Company is set out in clause III (A) of its Memorandum of Association.

4.2. The Authorized Share Capital, Issued, Subscribed and Paid up share capital of the Transferee Company as on 31st March, 2021, is as under:

PARTICULARS	AMOUNT (IN CRORES OF RUPEES)
<u>AUTHORIZED SHARE CAPITAL</u>	
4,00,00,000 equity shares of Rs. 10/- each	40.00
Total	40.00
<u>ISSUED, SUBSCRIBED AND FULLY PAID-UP SHARE CAPITAL</u>	
70,000 Equity Shares of Rs. 10/- each	0.07
Total	0.07

5. It is seen from the records that this Tribunal vide its Order dated 16th April, 2021 passed in MA/15/(CHE)/2021 in CA/322/CAA/2020 ordered the convening, holding and conducting meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Transferor Company (1). The respective chairmen appointed have convened and held the meetings of the Equity Shareholders, Secured Creditors and the Unsecured Creditors of the Transferor Company (1) and have thereafter filed the results of the said meetings, by filing their Respective Chairmen Reports that have been annexed at Page Nos.324 to 360 (For the Meeting of the Equity Shareholders), 361 to 393 (For the

Meeting of the Secured Creditors), 394 to 426 (For the Meeting of the Unsecured Creditors) of Volume II of the typed Set of Papers filed with this Company Petition, which has been taken on record by this Bench.

6. With respect to the Transferor Company (2), this Tribunal vide its Order dated 16th April, 2021 passed in MA/15/(CHE)/2021 in CA/322/CAA/2020, ordered the convening, holding and conducting meetings of the Unsecured Creditors of the Transferor Company (2). The Chairman appointed had convened and held the meeting of the Unsecured creditors of the Transferor Company (2) and had filed the results of the said meeting, by filing the Chairman's Report that has been annexed at Page Nos. 427 to 459 of Volume II of the typed Set of Papers filed with this Company Petition, which has been taken on record by this Bench. Further, this Tribunal has also dispensed with the convening of the meeting of the Equity Shareholders of the Transferor Company (2) and had further recorded that the Transferee Company (2) has no Secured Creditors on the basis of the certificate obtained from the Chartered Accountant in this regard.

7. With respect to the Transferee Company, this Tribunal vide its Order dated 16th April, 2021 passed in MA/15/(CHE)/2021 in CA/322/CAA/2020, ordered the dispensation of the convening of



meeting for the Equity Shareholders of the Transferee Company. Further, this Tribunal, based upon the certificate produced by the Chartered Accountant had recorded that the Transferee Company has no Secured or Unsecured Creditors.

8. The Board of Directors of the Transferor Company (1), Transferor Company (2) and the Transferee Company vide their respective Board Resolutions dated 14th November, 2019 and 5th April, 2021, have approved the said scheme of Amalgamation.

9. On perusal of the rationale of the scheme of Amalgamation, the Board of Directors of the Petitioner Companies have considered the proposed Scheme for the following reasons:

- i) The Scheme will result in financial resources as well as managerial, technical, distribution and marketing resources of the Petitioner Companies being efficiently pooled, leading to a centralized and more efficient management of funds, greater economies of scale and a bigger and stronger resource base for future growth of the refractory business, which are presently divided and are getting dissipated amongst different companies.
- ii) The Scheme will result in consolidation of the refractory business of the Petitioner Companies thereby resulting in expansion and creation of a consolidated refractory business of considerable size.
- iii) The Scheme will result in simplification of the corporate structure with one listed company comprising of the entire refractory business.
- iv) Synergies arising out of consolidation of the refractory business through the Scheme will lead to: (i) alignment of interest of all shareholders and stakeholders, (ii) improved

earnings and cash flow of Third Petitioner Company, and (iii) improved alignments of future debt repayments with improved and unfettered cash flow generated by the consolidated business.

- v) The Transferee Company, being the consolidated entity will facilitate fund raising (both debt and equity) due to its enlarged net worth base and increased business capability to offer a wider portfolio of products and services to its customers by virtue of its diversified businesses, enlarged resource base and deeper client relationships, thus improving its ability to effectively exploit the growing market potential and enhanced business prospects.
- vi) The Scheme would make it easier to address needs of customers by providing them uniform products and service experience, on-time supplies, improved service levels thereby improving customer satisfaction.
- vii) The Scheme, as envisaged, would enable seamless access to strong business relationships, closer and better focused attention being given to the refractory business which would get integrated, aligned and streamlined, leading to achievement of their full business and growth potential.

10. It is seen that an Application in MA/85/(CHE)/2021 in CP/72/CAA/2021, had been filed before this Tribunal, by 6 (six) Shareholders of the Transferor Company (1), as objectors to the present Scheme. The Learned Counsel for the Applicants in MA No.85 of 2021 in CP/72/CAA/2021 have made their submissions and the Counsels for the Petitioners have made their responses and corresponding written submissions to the above, which are on record before this Tribunal.



11. In consideration of the pleadings filed in MA/85/(CHE)/2021, it is seen that the Applicant / Objectors of the Transferor Company (1), have not objected to the sanction of the Scheme of Amalgamation, but more specifically with respect to there being a better exit option provided to the Applicant/Objectors. In in this regard, it has been submitted by the Learned Senior Counsel for the Petitioner Companies that the said Applicants/Objectors would enjoy the same benefits with respect to the trading platform which existed even prior to the Scheme of Amalgamation. In essence, the rights of the Applicants/Objectors prior to the Scheme of Amalgamation would continue even after the completion of the Scheme of Amalgamation, rendering their rights and interests to be unfettered and not prejudiced in any manner. Finally, it is contended by the Applicants/Objectors, that they have a statutory right under section 232 (3)(h) of the Companies Act, 2013, and based on the same, provision shall be made for payment of the value of the shares held by the Applicants/Objectors and other benefits in accordance with a predetermined formula or valuation. However, the provisions of Section 232(3) of the Companies Act, 2013 clearly stipulates that nothing contained thereunder is a 'Statutory Right', and it is completely up to this Tribunal to pass orders after satisfying themselves on the facts and procedures thereunder.

12. Be that as it may, without going into the merits of the case of the Applicant / Objectors, we are of the considered view that the objections filed by the minority shareholders are not maintainable as it does not cross the minimum threshold limit of 10% as prescribed under the proviso to Section 230(4) of the Companies Act, 2013. The objectors in the present case hold altogether only about 7% shares of the Transferor Company (1). Section 230(4) of the Companies Act, 2013 reads as follows;

230(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement

13. Thus, it is an undisputed fact that the objectors have not satisfied the minimum threshold limit to raise their objection to the scheme as contemplated between the petitioner companies and as a result thereof, they have no *locus standi* to file their objections before this Tribunal. Section 391 of Companies Act, 1956 does not contemplate any threshold limit for the shareholders to object to the Scheme, however on the contrary, Section 230(4) of the Companies Act, 2013 fixes the minimum threshold limit for the



objectors to the scheme to enable such an objector to approach this Tribunal. It is also relevant at this place to extract the Report of the Expert Committee on Company Law which discusses why the threshold limit was fixed;

Rights of minority shareholders during mergers/ amalgamations/ takeovers

8.1 As per existing provisions of the Act, approval of High Court / Tribunal is required in case of corporate restructuring (which, inter-alia, includes, mergers/amalgamations etc.) by a company. The Scheme is also required to be approved by shareholders, before it is filed with the High Court. The scheme is circulated to all shareholders along with statutory notice of the court convened meeting and the explanatory statement u/s 393 of the Act for approving the scheme by shareholders.

8.2 Though there may not be any protection to any dissenting minority shareholders on this issue, the Courts, while approving the scheme, follow judicious approach by mandating publicity about the proposed scheme in newspaper to seek objections, if any, against the scheme from the shareholders. Any interested person (including a minority shareholder) may appear before the Court. There have been, however, occasions when shareholders holding miniscule shareholdings, having made frivolous objections against the scheme, just with the objective of stalling or deferring the implementation of the scheme. The courts have, on a number of occasions, overruled their objections.

8.3 It is, therefore, felt that there should be specific provision in the Act to put a limit (either according to a minimum number of persons or according to a minimum percentage of shareholding) for entitling anybody to object such a scheme. It would also be appropriate to provide for acquisition of remaining 10% shares in a company, of which 90% has been acquired by an acquirer. Such acquisition of 10% shares should be as per Rules to be framed by Central Government.The Committee has also made recommendations separately in para 19 of Chapter X, concerning a threshold limit for maintainability of objections by barring minority shareholders with insignificant stake from obstructing schemes of arrangement.

14. When the statute prescribes certain things to be done in a particular manner, then this Tribunal, which is constituted under the statute is required to act within the statute and cannot act in derogation to what has been stated in the statute. When proviso to Section 230(4) of the Companies Act, 2013 states that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent of the shareholding, then unless there is an exception carved out to the said proviso, the Tribunal is bound to reject the objections raised by the objectors *in limine* who are holding less than ten per cent of the shareholding. The Division Bench – II, of this Tribunal in the matter of **Elgi Ultra Industries -Vs- Elgi Ultra Limited** in CP/451&452/CAA/2019 has rejected the objection raised by an objector representing 1.69% stake in the Demerged Company on the ground that he is not holding ten percent of the shareholding as mandated under Section 230(4) of the Companies Act, 2013.

15. Thus, for the reasons stated supra, the objection as raised by the minority shareholders is dismissed on the ground that the objectors have no *locus standi*, as they failed to meet the minimum threshold limit of ten percent shareholding as prescribed under section 230(4) of the Companies Act, 2013. Upon due



consideration of the above, the Application in MA/85/(CHE)/2021 stands **dismissed**.

16. The Regional Director, Ministry of Corporate Affairs (In short, 'RD') vide the Report Affidavit (for brevity, 'Report') dated 21.12.2021 has concluded that they have no objections to the said Scheme (as recorded at paragraph 17 of the Report), other than the observations made thereunder. Specifically, it has been observed in paragraph 15 of the RD's Report that the Ministry of Corporate Affairs had ordered inspection under Section 206(5) of the Companies Act, 2013, against M/s. Dalmia Bharat Limited. Further, based on the inspection report (1/77/2017-CL-II) dated 10th December, 2019, the ministry had ordered investigation against Dalmia Group of companies through Serious Fraud Investigation Office ('SFIO'), and that 99% of the shares of the Petitioner/Transferee Company in this Scheme, is held by M/s. Dalmia Cement (Bharat) Limited, which is under investigation.

17. However, in paragraph 16 of the RD's Report it is clarified that the office of the Director General of Corporate Affairs, New Delhi, with respect to with respect to the Scheme of Arrangement (Demerger) in CA/11/CAA/2020 (involving Dalmia Cement (Bharat) Limited and Dalmia Bharat Refractories Limited [the Transferee Company in the present Scheme]) vide letter No.1/77/2017/CL-



II(SR) dated 15th December, 2021, had communicated that "no prejudice would be caused to the ongoing investigation by SFIO due to the proposed scheme". Further, the Petitioner Companies have undertaken to cooperate with the SFIO in furnishing of any required information in the investigation process, even after the approval the Scheme, and to this effect, have filed a detailed Affidavit in response to the RD's Report, dated 22.12.2021, before this Bench, and the same has been taken on record. As per the report of the Registrar of Companies, Chennai, the Petitioner Companies are regular in filing their statutory returns.

18. The Accounting Treatment provided and followed in the present Scheme of Amalgamation are in conformity with the Accounting Standards specified under Section 133 of the Companies Act, 2013. The Appointed date of the said Scheme is 1st April, 2020. The said Scheme of Amalgamation will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditor/s in any manner.

19. The Scheme does not require any modification as it appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances have been made under section 230-232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and

Amalgamations) Rules, 2016. The Scheme of Amalgamation between the Petitioner Companies was duly approved by the shareholders of the respective companies. Taking into consideration all the above, the Company Petitions are allowed and the Scheme of Arrangement annexed with the petition is hereby **sanctioned** which shall be binding on all the members, creditors and shareholders.

20. The Transferor Company (1) and the Transferor Company (2) shall be dissolved without the process of winding up from the date of filing of the certified copy of this Order with the Registrar of Companies, Chennai. Further, the Transferee Company is directed to file its amended memorandum of Association and the Articles of Association with the Registrar of Companies, Chennai, for their record.

21. While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.



22. The Companies to the said Scheme or other persons interested shall be at liberty to apply to this Tribunal for any direction that may be necessary with regard to the working of the said Scheme. The Petitioner Companies shall file with the Registrar of Companies, the certified copy of this Order, within 30 days of the receipt of the order.

23. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.

24. Accordingly, the Scheme annexed with the petitions stands sanctioned and the Company Petition Nos. CP/72/CAA/2021 stands **disposed of**.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Raymond