

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 14.09.2023, At 10:30 AM**

| | |
|---|---|
| TRANSFER PETITION NO. | |
| COMPANY PETITION/APPLICATION NO. | CP (CAA) No.31/230/2023 |
| NAME OF THE COMPANY | Jaipur Cement Pvt Ltd (Transferor Co.) & Sagar Cements Ltd (Transferee Co.) |
| NAME OF THE PETITIONER(S) | |
| NAME OF THE RESPONDENT(S) | |
| UNDER SECTION | 230 |

ORDER

Present: Ld. PCS M. Vijay Kumar for the Petitioner.

Orders pronounced, recorded vide separate sheets. In the result, this Petition is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

CP (CAA) No.31/230/HDB/2023
connected with
CA (CAA) No. 44/230/HDB/2023
*[Section 230 r/w Section 232 read with
Section 66 of the Companies Act, 2023]*

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

**JAJPUR CEMENTS PRIVATE LIMITED
(TRANSFEROR COMPANY)**

AND

**SAGAR CEMENTS LIMITED
(TRANSFeree COMPANY)**

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

M/s.Jajpur Cements Private Limited,
having its Registered Office at:
Plot No.111, Road No.10,
Jubilee Hills, Hyderabad,
Telangana – 500033.
Represented by its Managing Director
Mr. Sreekanth Reddy Sammidi.

.... First Petitioner /Transferor Company

M/s. Sagar Cements Limited,
having its Registered Office at:
Plot No.111, Road No.10
Jubilee Hills, Hyderabad,
Telangana – 500 033.
Represented by its Managing Director
Dr. Anand Reddy Sammidi.

.... Second Petitioner /Transferee Company

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Coram:

Hon'ble Rajeev Bhardwaj, Member (Judicial)
Hon'ble Sanjay Puri, Member (Technical)

Counsel/Parties present:

For the Petitioner : Mr.M.Vijay Kumar, PCS
For Regional Director : Dr.Raj Singh, ICLS
For Official Liquidator : Official Liquidator

[PER: BENCH]
ORDER

1. This is a Joint Application filed by the Applicant companies, under Section 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013, praying for the sanction of Scheme of Amalgamation between M/s.Jajpur Cements Private Limited (Transferor Company) and M/s.Sagar Cements Limited (Transferee Company), collectively referred to as ('Petitioner Companies') and their respective shareholders and creditors with effect from April 01, 2022.

2. The Registered Offices of the Transferor Company and the Transferee Company are situated in the State of Telangana.

3. The facts of the case in brief are as follows:

D) (a) M/s.Jajpur Cements Private Limited ("Transferor Company"), a private limited company, was originally incorporated on July 19, 2010 with CIN: U26922OR2010PTC012239 and PAN: AACCCJ4151G under the name and style of M/s. Jajpur Cements Private Limited in the State of Odisha. Later on, the Transferor Company had changed its registered office from the State of Odisha to the State of Telangana by virtue of passing a special resolution on 29.09.2022 and after obtaining necessary approval from the Regional Director, Eastern Region, Kolkata dated 05.12.2022. The Registrar of Companies, Odisha at Cuttack, issued a Certificate of Registration of Regional Director's

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order for Change of State on 05.04.2023 under the CIN: U26922TS2010PTC171799. The Transferor Company has its registered office presently at Plot No.111, Road No.10 Jubilee Hills, Hyderabad, Telangana – 500033.

(A copy of the Certificate of Incorporation is annexed to the application and marked as “Annexure-A1”).

b) The authorized, issued, subscribed and paid-up share capital of the Transferor Company as on 31.03.2022 is as follows:

| Share Capital | Amount in Rs. |
|--|----------------------|
| Authorized Capital | |
| 11,00,00,000 (Eleven Crore only) Equity Shares of Rs.10/- (Rupees Ten only) each | 110,00,00,000 |
| Total | 110,00,00,000 |
| Issued, Subscribed and Paid-up Capital | |
| 10,76,80,000 (Ten Crore Seventy-Six Lakh and Eighty Thousand only) fully paid-up Equity Shares of Rs.10/- (Rupees Ten only) each | 107,68,00,000 |
| Total | 107,68,00,000 |

Subsequent to March 31, 2022, there has been no change in the authorised, issued, subscribed and paid-up share capital of the Transferor Company.

(Copies of the Audited Financial Statements as on 31.03.2022 and 31.03.2023 of the Transferor Company are annexed to the application and marked as “Annexure-A2” & “Annexure-A3”).

c) The Transferor Company is engaged in the business of manufacturing, producing, processing, and dealing in cement.

The main objects of the Transferor Company are as follows:

i) To produce, manufacture, treat, process, convert, prepare, refine, import, export, purchase, sell and generally to deal in either as

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principals or as agents either solely or in partnership with others, all types and kinds of cement ordinary, white, coloured, Portland, Pozzolana, Alumina, Blast Furnace, Silica, lime and limestone, clinker and/or by-products thereof, as also cement products of any or all descriptions, such as pipes, poles, slabs, asbestos sheets, blocks, tiles, garden wares, Plaster of pads, lime pipes, building materials and otherwise and articles, things, compounds and preparations connected with the aforesaid products and in connection therewith to take on lease or otherwise acquire, erect, construct, establish, work, operate and maintain factories, quarries, mines and workshop and also to manufacture and sell ready mix cements for constructions of buildings and industrial structures.

ii) To carry on the business of providing services for Technical, managerial and marketing to cement industries.

(A copy of the Memorandum of Association and Articles of Association of the Transferor Company is annexed to the application and marked as “Annexure-A1”).

II) (a) M/s. Sagar Cements Limited (“Transferee Company”), a public limited company, bearing CIN: L26942TG1981PLC002887 was incorporated on January 15, 1981, (PAN: AACCS8680H) under the name and style of M/s. Sagar Cements Limited in the then State of Andhra Pradesh (now the State of Telangana by virtue of A.P. State Re-organization Act, 2014). The Transferee Company has its registered office at Plot No. 111, Road No.10, Jubilee Hills, Hyderabad, Telangana - 500033, India. (A copy of the Certificate of Incorporation is annexed to the application and marked as “Annexure-A4”).

b) The authorized, issued, subscribed and paid-up share capital of the Transferee Company as on 31.03.2022 is as follows:

| Share Capital | Amount in Rs. |
|---|---------------|
| Authorized Capital | |
| 69,75,00,000 (Sixty Nine Crore Seventy Five Lakh only) Equity Shares of Rs.2/- (Rupees Two only) each | 139,50,00,000 |

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| | |
|---|----------------------|
| 4,30,00,000 (Four Crore Thirty Lakh only) Preference Shares of Rs.10/- (Rupees Ten only) each | 43,00,00,000 |
| Total | 182,50,00,000 |
| Issued, Subscribed and Paid-up Capital | |
| 11,75,00,000 (Eleven Crore and Seventy Five Lakh only) fully paid-up Equity Shares of Rs.2/- (Rupees Two only) each | 23,50,00,000 |
| Total | 23,50,00,000 |

Subsequent to March 31, 2022, the Transferee Company has issued and allotted 1,32,07,548 fully paid Equity Shares of Rs.2/- (Rupees Two only). With this allotment, the paid-up share capital of the Company has been increased to Rs.26,14,15,096 consisting of 13,07,07,548 equity shares of Rs.2/- each.

(Copies of the Audited Financial Statements as on 31.03.2022 and 31.03.2023 of the Transferee Company are annexed to the application and marked as “Annexure-A5” & “Annexure-A6”.)

The Transferee Company is the Holding Company of the Transferor Company. The equity shares of the Transferee Company are listed and trading on the BSE Limited (“BSE”) bearing Scrip Code: 502090 and National Stock Exchange of India Limited (“NSE”) bearing Symbol: SAGCEM.

c) The Transferee Company is engaged in the business of manufacturing, producing, processing, and dealing in cement and generation of power and their ancillaries etc.

The main objects of the Transferee Company are as follows:

i) To produce, manufacture, refine, prepare, process, purchase, import, export, sell and generally to deal in all kinds of Cement, Cement products of any description, limestone, gypsum, kankar and/or byproducts thereof and in connection therewith to acquire, erect,

construct, establish, operate and maintain cement factories, quarries, workshops and other work relating thereto.

ii) To fabricate, manufacture and deal in all kinds of cement plants, apparatus, mining equipment, tools, utensils and materials and things necessary or convenient for carrying on the manufacture of cement and mining operations.

iii) To own, explore, take on lease, or otherwise acquire any area, mining lease, quarries and to do all such other acts and deal in all such other things as may be conducive to and allied to the business of the company.

iv) To carry on the business of buying and selling cement, bricks, limestone, sand or other earthy material or manufactured product such as tiles, pavement and roofing materials. To deal in lime, plaster, clay, coke, fuel, timber, artificial stone and builders requisites and appliances.

v) To acquire the quarries and mines of Granite and Marble and all kinds of other stones and quarry the same directly or through contractors and to act as dealers, distributors, merchants, exporters, importers, stockists and agents of raw finished, semi-finished granite and marble stones including polished or flamed tiles, panels and tomb stones.

vi) To carry on the business as manufacturers, dealers, distributors, exporters, and importers, stockists, and agents of high-tech building materials like, mortars, glues, gouts, for installation of tiles, pavers, bricks, marbles, water proofing membranes, rapid hardening compounds, non-shrinkable compounds, anticorrosive compounds and plain and corrugated sheets used in building construction by importing technology, know-how by foreign collaboration or indigenously.

vii) To carry on the business as manufacturers, dealers, distributors, exporters, and importers, stockists, and agents of all types of non-explosive demolishing agents used in mining, quarries, and construction works and for demolition of concrete and civil works, by importing technology, know-how by foreign collaboration, or indigenously.

viii) To promote, own, run, install, take over, set up power plants of any kind as may be permitted by law and to generate, co-generate,

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transmit, buy and distribute electric power for captive consumption, accumulation, sale and re-sale.”

(A copy of the Memorandum of Association and Articles of Association of the Transferee Company is annexed to the application and marked as “Annexure-A4”.)

4. RATIONALE FOR THE SCHEME :

Currently, the Transferor Company is engaged in the business of manufacturing of cements at its manufacturing unit at Jajpur in Odisha and doing the same business activity of the Transferee Company.

The Board of Directors of the Transferor Company and the Transferee Company envisaged the following benefits pursuant to the Amalgamation of the Transferor Company with the Transferee Company:

- a) Reduction in the cost of overheads and improvement in professional management.
- b) Reduction in multiplicity of legal and regulatory compliances and simplification of group structure.
- c) Enhance the scale of operations thereby providing significant impetus to the growth of the Transferee Company, since both the Transferor and the Transferee Companies are engaged in same line of business that could draw upon synergies between the Transferor Company and the Transferee Company.
- d) Consolidation of the Transferor Company with the Transferee Company by way of amalgamation would lead to a more efficient utilization of capital and improved financial structure.
- e) The benefit of consolidation of financial resources, managerial and technical expertise of the Transferor Company and the Transferee Company shall be available to the Transferee Company leading to the overall optimization of operational and administration costs.
- f) The amalgamation will rationalize and optimize the group legal entity structure to ensure greater alignment of the businesses by reducing number of legal entities and also statutory compliances.

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g) The consolidation of businesses will achieve synergies in business activity, focused attention, centralized administration, economy of operation, integrated business approach and greater efficiency.

5. THE SALIENT FEATURES OF THE SCHEME ARE THE FOLLOWING:

a) On the Scheme becoming operative all the estate, assets (whether movable or immovable, tangible or intangible) properties, rights, claims, title, interest and authorities including accretions and appurtenances of the Undertaking, of whatsoever nature and wherever situate, whether or not included in the books of the Transferor Companies shall be deemed to have been transferred to and vested in the Transferee Company as a going concern as and from the Appointed Date.

b) Upon the coming into effect of this Scheme and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements, schemes, arrangements and other instruments of whatsoever nature, to which the Transferor Companies is a party or to the benefit of which the Transferor Companies may be eligible or for the obligations of which the Transferor Companies may be liable, and which are subsisting or have effect immediately before the Appointed Date, shall continue in full force and effect on or against or in favour, as the case may be, of the Transferee Company.

c) With effect from the Appointed Date, all debts, liabilities, loans raised and used, duties and obligations of the Transferor Companies, whether or not recorded in its books and records shall, without any further act, instrument, deed, matter or thing, be and stand transferred to and vested in and be deemed to be transferred to and vested in the Transferee Company.

d) All the licenses, certificates, permissions, approvals, type Approvals, product approvals, permits, consents, entitlement, quotas, contracts (together with all non-compete covenants), vendor approvals, customer approvals, permissions, registrations, incentives, tax deferrals and benefits, subsidies, concessions, grants, rights, claims, leases, tenancy rights, liberties, special status and other benefits or privileges enjoyed or conferred upon or held or availed of by the Transferor Companies and all rights and benefits that have accrued or

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which may accrue to the Transferor Companies, whether before or after the Appointed Date, without any further act, instrument or deed, cost or charge shall be appropriately mutated by the statutory authorities, bodies/agencies and licensors, concerned therewith in favour of the Transferee upon the vesting and transfer of the Transferor Company pursuant to this Scheme and stand transferred to and vest in or be deemed to be transferred to and vested in and be available to Transferee Company so as to become as and from the Appointed Date.

e) Upon the coming into effect of this Scheme, all legal, taxation or other proceedings, whether civil or criminal (including before any statutory or quasi-judicial authority or tribunal or courts), by or against the Transferor Companies, under any statute, pending on the Appointed Date, shall be continued and enforced by or against the Transferee Company.

f) Upon the Scheme becoming operative, all staff, workmen and employees of the Transferor Companies in service on the Appointed Date shall be deemed to have become staff, workmen and employees of Transferee Company with effect from the Appointed Date, without any break in their service and on the basis of continuity of service, and the terms and conditions of their employment with Transferee Company and such terms shall not be less favourable than those applicable to them with reference to the Transferor Companies on the Appointed Date, as mentioned in the Scheme of Merger i.e., 1st April, 2022.

g) It is expressly provided that, on the Scheme becoming effective, the Provident Fund, Gratuity Fund, Superannuation Fund or any other Statutory or Special Fund existing for the benefit of the staff, workmen and employees of the Transferor Companies shall be transferred to and shall get consolidated with the corresponding funds / as new funds (if needs to be created) of Transferee Company.

6. The Board of Directors of the respective Petitioner Companies at their respective meetings held on 21.12.2022 (Jajpur Cements Private Limited) and 21.12.2022 (Sagar Cements Limited), approved the Scheme of Amalgamation between Jajpur Cements Private Limited (Transferor Company) and Sagar Cements Limited (Transferee Company) and their respective shareholders and creditors.

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(Certified true copy of the Board Resolutions passed by the Board of Directors of the Petitioner Companies approving the Scheme of Amalgamation are annexed to the application and marked as “Annexure-A9” & “Annexure-A10”).

7. It is submitted that the Petitioner Companies had jointly filed an application CA (CAA) No. 44/230/HDB/2023, wherein this Hon’ble National Company Law Tribunal vide Orders dated June 30, 2023 dispensed with the requirement of conducting the meetings of Equity Shareholders, Unsecured Creditors and Secured Creditors of the Petitioner Companies.

(A copy of the said order of this Hon’ble National Company Law Tribunal is annexed to the application and marked as “Annexure-A11”).

8. It is stated by the Petitioner Companies that there are no winding up petitions initiated against any of the Petitioner Companies.

9. DECLARATION BY THE PETITIONER COMPANIES:

a) No petition under Sections 241 or 242 of the Companies Act, 2013 has been filed against any of the Petitioner Companies and there has been no material change in the affairs of any of the Petitioner Companies, except for what was done in the normal course of business.

b) There are no proceedings pending under Sections 210 to 227 of Companies Act, 2013, against any of the Petitioner Companies.

c) The Scheme of Amalgamation between Jajpur Cements Private Limited (Transferor Company) and Sagar Cements Limited (Transferee Company) and their respective shareholders and creditors does not have any adverse effect on any of the shareholders or creditors or other stakeholders of the respective Petitioner Companies in any manner whatsoever.

10. In order to achieve the aforesaid objectives, the Board of Directors of the Petitioner Companies have proposed to consolidate the Transferor Company and the Transferee Company into a single Company, by assimilating the asset businesses carried on by the Transferor Company and the Transferee Company.

11. EFFECT OF SCHEME:

It is submitted that the Scheme shall not have any adverse effect on any key managerial personnel, directors, promoters, non-promoter members, creditors or any employee, if any, of the Transferor Company or the Transferee Company. The Scheme shall also not have any effect on material interests of any of directors and key managerial personnel of Transferor Company or the Transferee Company. As stated above, any outstanding amounts payable by the Transferor Company shall stand transferred onto the Transferee Company and shall be payable by the Transferee Company. Further, the services of all transferred employees, if any, and managerial personnel of the Transferor Company to the Transferee Company will be treated as having been continuous for the purpose of the aforesaid employee benefits and/or liabilities.

12. CANCELLATION AND NO ISSUE OF SHARES:

The entire issued and paid-up equity share capital of the Transferor Company is held by the Transferee Company and its nominees. Accordingly, the equity shares held by the Transferee Company in the Transferor Company shall, on and from the end of the Transition Period, be cancelled or shall be deemed to have been cancelled without any further act or deed, and accordingly, no shares of the Transferee Company shall be issued to the shareholders of the Transferor Company in lieu of the said amalgamation.

The shares of the Transferor Company, in relation to the shares held by its members, shall without any further application, act,

instrument or deed be deemed to have been automatically cancelled and be of no effect on and from the end of the Transition Period.

13. ACCOUNTING TREATMENT :

(A) Accounting Treatment in the books of Transferee Company

Upon the Scheme coming into effect from the Appointed Date, the Transferee Company shall account for the merger of the Transferor Company with the Transferee Company in accordance with “the Pooling of Interest method” as per Appendix C of Indian Accounting Standard (Ind AS) 103 “Business Combinations” prescribed under Section 133 of the Act, relevant clarifications issued by the Ind AS Transaction Facilitation Group (ITFG) of the Institute of Chartered Accountants of India and other generally accepted accounting principles in India as follows:

- i) With effect from the appointed date, all the assets, liabilities and reserves if any of the Transferor Company shall be recorded by the Transferee Company at their carrying amounts i.e. Book value and in the same form as appearing in the Separate Financial Statements of transferor company.
- ii) The identity of the reserves shall be preserved and shall appear in the financial statements of the Transferee Company in the same form and at the carrying amount as appearing in the separate financial statements of the Transferor Company.
- iii) Any inter-company balance(s) if any between the Transferor Company and the Transferee Company shall stand cancelled and corresponding effect shall be given in the books of account and the records of the Transferee Company.
- iv) In case of any difference in any of the accounting policies between the Transferor Company and the Transferee Company, the accounting policies followed by the Transferee Company shall prevail to

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ensure that the financial statement of the Transferee Company reflects the financial position on the basis of consistent accounting policies.

v) The financial information in the financial statements in respect of prior periods should be restated as if the business combination had occurred from the beginning of the preceding period in the financial statements, irrespective of the actual date of the combination.

(B) Accounting Treatment in the books of Transferor Company :

As the Transferor Company shall stand dissolved without being wound up upon the Scheme becoming effective, hence there is no accounting treatment prescribed under this Scheme in the books of the Transferor Company

(Certificate issued by M/s. Deloitte Haskins & Sells, Chartered Accountants, Statutory Auditors of the Transferee Company confirming the accounting treatment proposed in the Scheme are annexed to the application and marked as “Annexure-A7”.)

14. CONSOLIDATION OF AUTHORISED CAPITAL:

a) Upon the Scheme becoming effective, the authorized share capital of the Transferee Company shall automatically stand increased without any further act, instrument or deed, by the authorised share capital of the Transferor Company, amounting in aggregate to Rs.292,50,00,000/- (Rupees Two Hundred Ninety Two Crores and Fifty Lakhs only) divided into 124,75,00,000 Equity Shares of Rs.2/- each amounting to Rs.249,50,00,000/- (Rupees Two Hundred Forty Nine Crores and Fifty Lakhs only) and 4,30,00,000 Preference Shares of Rs.10/- each amounting to Rs.43,00,00,000/- (Rupees Forty Three Crores only).

b) The memorandum and articles of association of the Transferee Company (relating to authorised share capital) shall without any further

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act, instrument or deed, be and stand altered, modified and amended, and the order of the NCLT to the Scheme shall be deemed to be sufficient for the purpose of effecting this amendment, and no further resolution(s) under any other applicable provisions of the Act would be required to be separately passed, as the case may be and for this purpose the stamp duty and fees paid on the authorised capital of the Transferor Company shall be utilized and applied to the increased authorised share capital of the Transferee Company and there would be no requirement for any other further payment of stamp duty and / or fee by the Transferee Company for increase in the authorized share capital to that extent. Pursuant to the Scheme becoming effective and consequent upon the amalgamation of the Transferor Company into the Transferee Company, the authorised share capital of the Transferee Company will be as under:

| Authorized Share Capital | Amount in Rs. |
|---|----------------------|
| 124,75,00,000 (One Hundred Twenty Four Crore Seventy Five Lakh only) Equity Shares of Rs.2/- (Rupees Two only) each | 249,50,00,000 |
| 4,30,00,000 (Four Crore Thirty Lakh only) Preference Shares of Rs.10/- (Rupees Ten only) each | 43,00,00,000 |
| Total: | 292,50,00,000 |

c) Clause V of the Memorandum of Association of the Transferee Company shall, without any further act, instrument or deed, be and stand altered, modified and amended pursuant to applicable provisions of the Companies Act, 2013 as the case may be and be replaced by the following clause:

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a) The Authorised Share Capital of the Company is Rs.292,50,00,000/- (Rupees Two Hundred Ninety Two Crores and Fifty Lakhs only) divided into 124,75,00,000 (One Hundred Twenty Four Crores and Seventy Five Lakhs only) Equity Shares of Rs.2/- (Rupees Two only) each and 4,30,00,000 (Four Crores Thirty Lakhs only) Preference Shares of Rs.10/- (Rupees Ten only) each.

b) Article 3 of the Articles of Association of the Transferee Company shall, without any further act, instrument or deed, be and stand altered, modified and amended pursuant to applicable provisions of the Companies Act, 2013 as the case may be and be replaced by the following clause:

c) The Authorised Share Capital of the Company is Rs.292,50,00,000/- (Rupees Two Hundred Ninety Two Crores and Fifty Lakhs only) divided into 124,75,00,000 (One Hundred Twenty Four Crores and Seventy Five Lakhs only) Equity Shares of Rs.2/- (Rupees Two only) each and 4,30,00,000 (Four Crores Thirty Lakhs only) Preference Shares of Rs.10/- (Rupees Ten only) each to be increased, reduced or otherwise dealt with, in accordance with the provisions of the Companies Act, 2013.

(A signed copy of the Scheme of Amalgamation between Jajpur Cements Private Limited (Transferor Company) and Sagar Cements Limited (Transferee Company) and their respective shareholders and creditors are annexed to the application and marked as “Annexure-A8”.)

15. The Petitioner Companies had filed CA (CAA) No. 44/230/HDB/2023, seeking to fix a new date and time for convening the meetings of the equity shareholders of Transferor Company and Meetings of Secured and Unsecured Creditors of Transferee Company, which was allowed by this Adjudicating Authority vide order dated 30.06.2023. The present Company Petition is filed in pursuance of the Order dated 30.06.2023 passed in CA (CAA) No. 44/230/HDB/2022. The Petitioner Companies have complied with all the requirements as

per directions of this Tribunal and have filed necessary affidavits of compliance with the Tribunal.

16. As per the directions of this Tribunal vide order dated 30.06.2023, the Petitioner Companies issued notices to the following Statutory Authorities:

a) Notices were served on the Central Government through the Regional Director (SER), Registrar of Companies (RoC), Official Liquidator, Hyderabad, Income Tax Authorities for intimating the Scheme of Amalgamation.

b) The Income-tax Officer, Range Code 4, Ward Jajpur, Odisha, for the Transferor Company and The DCIT 3(1) Hyderabad, Telangana, for the Transferee Company pursuant to Section 230 to 232 of the Companies Act, 2013 R/w. Rules made thereunder.

c) To the Stock Exchanges viz. BSE Ltd., Phiroze Jeejeebhoy Towers, Dalal Street, Mumbai - 400001, Maharashtra and National Stock Exchange Limited, Exchange Plaza, Plot no. C/1, G Block, Bandra-Kurla Complex Bandra (E) Mumbai - 400051, Maharashtra, under Rule 16 of the Companies (Compromises, Arrangements and amalgamations) Rules, 2016

d) Notice of this petition be published in the “Business Standard” (English Daily), Hyderabad Edition and “Nava Telangana” (Telugu Daily), Hyderabad Edition both to be published as contemplated under Rule 16 of the Companies (Compromises, Arrangements and amalgamations) Rules, 2016.

17. It is submitted that the sanctioning of the Scheme of Amalgamation would be beneficial to the Transferor Company, and as well as the Transferee Company and as well as to their shareholders, creditors, employees and other stakeholders.

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18. The Regional Director (South East Region), Ministry of Corporate Affairs, Hyderabad has filed its Report on 22.08.2023, inter alia, stating that the Hon'ble Tribunal may be pleased to consider the observations as pointed out therein and pass such orders after hearing the Income Tax Department.

19. In response to the observations made by the Regional Director, the Petitioner Companies have given necessary undertakings and clarifications through their reply affidavit filed on 24.08.2023. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

| Para Nos. | Regional Director's Report/observations dated 22nd August, 2023 | Reply Affidavit filed by the Petitioner Companies vide Memo dated 24.08.2023 |
|------------------|---|--|
| Page 2 Para 4 | The Transferee company is a public listed company and as per the details furnished by the transferee company to the Hon'ble NCLT, it has 9 secured creditors amounting to Rs.8,646,448,871 as on 30.09.2022. It is silent that the company has furnished consent from the secured creditors or not. Further, Hon'ble NCLT has dispensed with the meeting of secured creditors vide order 30-06-2023. Since, the transferee company being public listed company and in interest of public/stakeholders is involved, Hon'ble NCLT may direct the petitioner companies to furnish NOC before approval of the Scheme. | The Petitioner Transferee Company in the petition requested the Hon'ble NCLT to dispense with the meeting of secured creditors for the purpose of obtaining their approval for the scheme of amalgamation. The same has been reviewed by the Hon'ble NCLT by considering the earlier orders by various tribunals as specified below, and vide its order dt. 30.06.2023 dispensed with the meeting of secured creditors. Relying on the order pronounced by the Hon'ble NCLT, the Company is not required to obtain any NOC from the secured creditors. |

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| | | <p>a. Orders pronounced by the Hon'ble NCLT Hyderabad Bench in CA(CAA)23/230/HDB/2022 in re., Scheme of merger of APDL ESTATES LIMITED with GOCL CORPORATION LIMITED, and the Hon'ble NCLT Mumbai Bench in C.A. (CAA) No.2629/MB/2019 in re., scheme of merger of Ness Software Services Private Limited with Ness Technologies (India) Private Limited where the facts of the matter were similar to that in the instant case, in consonance with the ratio of the said Hon'ble Tribunal in re., (i) Housing Development Finance Corporation Limited, in re., in CSA No.243 of 2017, (ii) Godrej Consumer Product Limited, in CSA No.915 of 2017, (iii) Mahindra CIE Automotive Limited, in CSA No.899 of 2017 and (iv) Godrej Properties Limited, in CSA No.1019 of 2017, had dispensed with requirement to hold meeting of shareholders and creditors of the Transferee Company therein.</p> <p>b. Further NCLAT in the matter of of Patel Hydro Power Private Limited and Ors Vs. Patel Engineering Limited in (COMPANY APPEAL (AT) No 37 of 2021) held as follows "12. To reiterate, we observed 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</p> |
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| | | <p>being issued by the ‘Transferor Company’ and no compromise is offered to any Secured and Unsecured Creditors of the ‘Transferee Company’. Therefore, NCLAT has 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. Therefore, NCLAT hold that obtaining 90% consent Affidavits from its unsecured Creditors is not required keeping in view the facts of the attendant case.”</p> |
| <p>Page No.3 para 5(b)</p> | <p>5(b) Clause No. 22 of Part I of the scheme provides automatic increase of the Authorised Capital of Transferee Company by adding existing Authorised Capital Transferor Company. The Transferee Company shall pay differential and registration fee and stamp duty payable on such increase Authorised Capital after deducting such fee and duties already paid by the Transferor Company prior to merger.</p> | <p>An undertaking from the Transferee Company is annexed to the application as Annexure-B, an undertaking to pay the registration fee and stamp duty on increase Authorised Capital after deducting such fee and duties already paid by the Transferor Company prior to merger.</p> |
| <p>Page No.3. Paras 5(d), 5(e) and 5(f)</p> | <p>5(d) Hon’ble Tribunal may be pleased to direct the Petitioner Company(s) to preserve its books of accounts and papers and records and shall not be disposed off without the prior permission of the Central Government in terms of Section 239 of the Companies Act, 2013.</p> | <p>The undertakings from the Transferee Company and the Transferor Company are annexed to the application as Annexure-C1 & Annexure-C2 undertakings to comply with the directions as the Hon’ble NCLT may direct.</p> |

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| | <p>5(e) Hon'ble Tribunal may be pleased to direct the Petitioner Company(s) to ensure statutory compliance of all applicable laws and also on sanctioning of the present scheme the applicant company shall not be absolved for any of its statutory liability in any matter.</p> <p>5(f) Hon'ble Tribunal may be pleased to direct the Petitioner Company(s), involved in the scheme to comply with Rule 17(2) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2013 with respect to filing of order for confirmation of scheme to be filed in Form No. INC-28 with the concerned office of Registrar of Companies by the Petitioner Company.</p> | |
| <p>Page 4, Para 6</p> | <p>The Directorate has received report of the Official Liquidator, Hyderabad vide e-mail No. 49 of 2023 dated 21.08.2023 by pointing out certain observations vide para 22 of his report. Hon'ble Tribunal may be pleased to direct the Petitioner companies to comply with the observations pointed out by Official Liquidator, before the scheme is allowed.</p> | <p>It is hereby declared that the Petitioner Companies will comply with observations pointed out by Official Liquidator. The Petitioner Companies have enclosed as Annexure-D to the application, an affidavit with respect to observations pointed out by Official Liquidator.</p> |
| <p>Page 4, Para 7</p> | <p>With reference to this Directorate's letter dated 18-07-2023, issued to The Addl. Commissioner of Income Tax, Hyderabad, the Deputy Commissioner of Income Tax, Circle (3)(1) has furnished reply stating that the Transferee company owes dues right from 2014-2015 to 2022-23. Hence, the Hon'ble Tribunal please to hear the Income Tax Department with respect to Transferor Company and Transferee Company before the approval of the</p> | <p>An undertaking from the Transferee Company have enclosed as Annexure-E to the application, an undertaking stating that the dues if any, payable by the Transferor Company shall be paid as and when demand is made by the said statutory authorities.</p> |

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| | scheme. Further, the transferee company shall furnish an undertaking stating that the dues if any, payable by the transferor company shall be paid as and when demand is made by the said statutory authorities. | |
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20. Hence, from the above report of the RD, it can be understood that there are no tenable objections raised and that the queries posed to the companies were also answered. Hence, the direction as sought for by the Regional Director (RD) would stand complied.

21. The Official Liquidator (OL) made certain observations in his reports filed on 21st August, 2023. In response, the Petitioner Companies filed their reply vide their letters dated 24th August, 2023. In the report filed by the OL on 21st August, 2023, OL made certain observations and Petitioner companies replied for the same, which are tabulated as under:

| Para No. | Observations of the Official Liquidator (Vide report dated 21.08.2023) | Copy of Memo received by the Official Liquidator on 24.08.2023 from the Transferee Company | Further observations of the Official Liquidator |
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| Page No.7 22(2) | That clause 16.1(a) of part-II of the scheme seeks to protect the employees of the Transferor Companies, who are in employment as on the effective date. Hence, this Hon'ble tribunal may be pleased to direct the Transferor and Transferee companies to submit an undertaking (on an affidavit duly | The transferor company hereby undertakes to protect the employees of the company. The transferor company hereby submits the duly notarized affidavit stating that there would be no retrenchment of any employee who were in service as on appointed date as well is annexed as | Observation complied |

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| | notarized) to this Hon'ble Tribunal to the effect that there would be no retrenchment of any employee who were in service as on Appointed date as well. | Annexure-B. to the application | |
| Page No.7 22(5) | That clause 20 of part-II of the scheme "upon the Scheme coming into effect from the Appointed Date, the Transferee Company shall account for the merger of the Transferor Company with the Transferee Company in accordance with "Pooling of Interest Method" as per Appendix C of Indian Accounting Standard (Ind AS). Hence, this Hon'ble Tribunal may be pleased to direct the Transferor and Transferee Companies to submit an undertaking to this Hon'ble Tribunal to the effect that they will not to deviate from the provisions of Indian Accounting Standard (Ind AS) 103 "Business Combinations" as stated in the Scheme. | The transferor company hereby undertakes that it will not deviate from the provisions of Indian Accounting Standard (Ind AS) 103 "Business Combinations" as stated in the Scheme. The undertaking is annexed to the application as Annexure-C. | Clarification given. |

22. Finally, the Official Liquidator (OL) accepted the submissions made by the Petitioners and did not raise any objections for accepting the Scheme of Amalgamation of the Petitioner Companies.

23. A copy of the Auditor's Certificate issued by M/s.Deloitte Hanskins & Sells, Chartered Accountants, certifying that the Scheme of Amalgamation of M/s.Jajpur Cements Private Limited/Transferor Company and M/s.Sagar Cements/Transferee Company which is in accordance with the accounting treatment as prescribed under Section 133 of the Companies Act, 2013 and rules made thereunder is filed at page No. 457 of the application.

25. CONSIDERATION:

a) The Amalgamating Company is a wholly owned subsidiary of the Amalgamated Company and its entire equity share capital is held by the Amalgamated Company in its own name and/or jointly with its nominees under Section 187 of the Companies Act 2013 (corresponding Section 49 of the Companies Act, 1956). Accordingly, there would be no issue of equity shares of the Amalgamated Company to the shareholders (including those holding the shares as nominees of the Amalgamated Company) of the Amalgamating Company. Pursuant to the merger of the Amalgamating Company with the Amalgamated Company, the investment in the equity shares of the Amalgamating Company, appearing in the books of account of the Amalgamated Company will stand cancelled.

b) The rights and interests of the members, employees and creditors of transferee Company and the transferor Company will not prejudicially be affected by the "Scheme of Merger".

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c) The Transferor Company and Transferee Company herein are listed companies on the Bombay Stock Exchange and notice has been issued to the Stock Exchange for the Scheme of Merger.

d) No investigation proceedings under Companies Act, 2013 are pending against the Transferor Company and Transferee Company.

e) Upon the Scheme becoming effective, Merger of the Transferor Company with the Transferee Company shall be accounted in the books of accounts of the Transferee Company, in accordance with the method of accounting, in accordance with applicable Accounting Standards, as amended from time to time.

26. We have heard the Learned PCS for Petitioner Companies and perused the material papers on record. Considering the entire facts and circumstances of the case and on perusal of the Scheme, Reports of the Regional Director, Official Liquidator, and reply/undertakings of the Petitioner Companies thereon and the documents produced on record, the Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under Section 230 to 232 of the Companies Act, 2013.

ORDER

27. After hearing the Learned Counsel for the Petitioner Companies and after considering the material on record, this Adjudicating Authority pass the following order:

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- i) The Scheme of Amalgamation, which is filed at page nos. 344 to 391 of the Application filed by the Petitioner Companies is hereby sanctioned and confirmed with appointed date as 01/04/2022 and shall be binding on all the members, employees, creditors, concerned statutory, regulatory authorities and all other stakeholders of the Petitioner Companies.
- ii) While approving the Scheme, we make it clear that this order should not be construed as an order in anyway granting exemption from payment of stamp duty, taxes or any other charges, if any, payable, in accordance with law or in respect of any permission/ compliance with any other requirement which may be specifically required under any law.
- iii) The whole of the assets, property, rights and Liabilities of the Transferor Companies shall be transferred without the requirement of any further act or deed to the Petitioner/Transferee Company.
- iv) We direct the Petitioner companies to comply with all the observations pointed out by the Regional Director and Official Liquidator, if any.
- v) We direct the Petitioner Companies to preserve the books of accounts and papers and records and the same shall not be disposed of without the prior permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.
- vi) We direct the Petitioner Companies to ensure statutory compliance of all applicable laws and also on sanctioning of the present Scheme the Petitioner Companies shall not be absolved for any of its statutory liability in any manner.
- vii) We direct the Petitioner Companies involved in the Scheme to comply with Rule 17 (2) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2013. The Petitioner Companies within 30 days after the date of receipt of certified copy of the order, shall cause certified copy to be delivered in the Form INC-28 to the Registrar of Companies concerned for registration and on such certified copy being

delivered, Registrar of Companies concerned shall take all necessary consequential action in respect of the Petitioner Companies.

viii) The Petitioner Companies are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Amalgamation under the provisions of the Companies Act, 2013 and submit necessary compliance and undertaking relating to the objections raised by the Regional Director (SER), MCA, Government of India, Hyderabad and Official Liquidator, Hyderabad.

ix) All the legal proceedings pending by or against the Transferor Companies shall be continued by or against the Transferee Company.

x) Though no representation has been received from the Income Tax Authorities despite service of notice by the Petitioner Companies, the tax implications, if any, arising out of the Scheme is subject to final decision of the Tax Authorities concerned and the decision of the Tax Authorities concerned shall be binding on the Transferee Company.

xi) The Transferee Company is directed to strictly comply with the Accounting Treatment Standards prescribed under Section 133 of the Companies Act, 2013.

xii) The sanction of the Scheme by this Adjudicating Authority shall not forbid the Revenue Authority from taking appropriate recourse for recovering the existing and previous tax liabilities of the Transferor and Transferee Companies.

xiii) We direct the Transferee Company to comply with the provisions of Section 2(41) of the Companies Act, 2013.

xiv) The Transferor Company shall be dissolved without going through the process of winding up.

xv) The Petitioner Companies shall until the completion of the Scheme of Amalgamation, file a statement in such form and within such time as prescribed with the Registrar every year duly certified by the Chartered Accountant or a Cost Accountant or a Company Secretary to the effect that the Scheme of Amalgamation is being complied in

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accordance with the orders of the Adjudicating Authority as required under Section 232(7) of the Companies Act, 2013.

xvi) All concerned shall act on a copy of this order alongwith Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal.

xvii) Any person shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

xviii) Accordingly, the Scheme is allowed and the Company Petition bearing CP(CAA)No.31/230/HDB/2022 connected with CA(AA) No. 44/230/HDB/2023 stands disposed of.

Sd/-

Sanjay Puri
Member (Technical)

Sd/-

Rajeev Bhardwaj
Member (Judicial)

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