

IN THE NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH

**CP (CAA)/12/GB/2017 (CA No. 1 of 2014)**

Under section :230/232 of the Companies Act, 2013  
corresponding to Section 391/394 of the Companies Act, 1956.

In the matter of

Adhunik Cement Ltd.

: Petitioner

Coram :

**Hon'ble Mr.Justice P.K.Saikia, Member (Judicial)**

For the Petitioner

: Mr. A.K. Sahewalla and Mr.W.Sharma, Advocates.

For the ROC

Mr.K.Sanyal , Asstt. Director,NE Region, Shillong.

**O R D E R**

**Date: 16.06.2017**

1. Heard Mr. A.K. Sahewalla and Mr. W.Sharma, learned Advocates for the petitioner. Also heard Mr. K.Sanyal, Assistant Director, Office of the RD (NER, Shillong.
2. The instant petition under Sections 391(2) and 394 of the Companies Act, 1956 was filed by the Adhunik Cement Ltd., the petitioner herein, before the Hon'ble High Court of Meghalaya, Shillong for sanction of the proposed scheme of Amalgamation involving the amalgamation of the Transferor Company No.1, Adhunik Cement (Assam) Limited, (hereinafter referred to as ' the Transferor Company No.1') with Dalmia Cement (Bharat) Limited, (hereinafter referred to as ' the Transferee Company") as well as for order for carrying out the same.
3. The instant petition along with all connected records were transferred to this Tribunal pursuant to the enforcement of Section 230 and 232 of the Companies Act,

2013 (corresponding to Sections 391 and 394 of the Companies Act, 1956) which came into effect from 15<sup>th</sup> December, 2016 and also on the enforcement of Companies (Transfer of Pending Proceedings) Rules, 2016, vide gazette notification, dated 7<sup>th</sup> December, 2016. In the meantime, the Ministry of Corporate Affairs, Govt of India, New Delhi (hereinafter referred to as 'MCA') vide gazette notification dated 14<sup>th</sup> December, 2016 has also notified the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

4. Prior to transfer of the instant petition to this Tribunal, the Hon'ble Meghalaya High Court had issued directions (i) dispensing with the requirement of holding meetings of both secured and unsecured creditors and (ii) for convening and holding and conducting the meeting of the shareholders and of the Transferor Company No.1 on 04.11.2014 for the purpose of considering and, if though fit, approving with or without modification, the aforesaid scheme and appointed Mr. Nitesh Mozika, Advocate, and failing him, Mr. Pyllang Nongbri, Advocate as Chairperson to preside over the same and he was inter alia, directed to report the result of the said meeting within three weeks from the conclusion of the said meeting, with the Hon'ble Meghalaya High Court vide order dated 17.09.2014.

5. Pursuant to the aforesaid order of the Hon'ble High Court of Meghalaya, a meeting of the shareholder of the Transferor Company No.1, was convened and held at the registered office of the Transferor Company No.1 at Umsoo Mootang, VIII-Thangksai, P.O. Lumshnong, Dist. Jaintia Hills, in the State of Meghalaya on 04.11.2014 at 11.00 AM under the chairmanship of Mr. Nitesh Mozika. After conclusion of the said meeting, Mr. Mozika submitted his report to the Hon'ble High Court of Meghalaya on 25.11.2014, reporting therein that the seven (7) shareholders of the Transferor Company No.1 who had attended the said meeting had unanimously voted in favour of approving the aforesaid scheme.

6. However, due to lapse of time, the Company Application No.1 of 2014 instituted by the petitioner before the Hon'ble High Court of Meghalaya was dismissed for non-prosecution. Therefore, the petitioner had to file Comp. Application before the Meghalaya High Court under Rule 9 of the Company Tribunal Rules, 1959, seeking recalling of the order dated 03.03.2015, passed by the Hon'ble High Court of

Meghalaya as well as for restoring the said Company Application No.1 of 2014 to the file with its original number. Said application was registered as **MC (Co.Petn) No.1 of 2016**. Since there was delay in filing the aforesaid application, another application seeking condonation of the delay in filing of the aforesaid Restoration Application was also filed, same being **MC (Co.Petn) No.2 of 2016**.

7. The said application seeking the condonation of the delay as well as the company application seeking restoration of company petition to the file were subsequently transferred to this Tribunal and **were renumbered as IA 5 of 2017**. After hearing the party, this Tribunal was pleased to condone the delay in preferring the connected restoration application and after hearing the applicant, the restoration application was also allowed, vide its order dated 29<sup>th</sup> March, 2017. Thereafter, the second motion petition was numbered as **CP(CAA)No.12/GB/2017**.

8. Since the aforesaid scheme had undergone some modification which was approved by the shareholders by way of affidavit, accordingly, a modification application was also filed by the petitioners along with the second motion petition under sections 391 and 394 of the Companies Act, 1956 (corresponding to sections 230 and 232 of the Companies Act, 2013) seeking an order sanctioning the modified scheme and the same were registered as **IA 15/ 2017 in CP(CAA) No.12/GB/2017 respectively**.

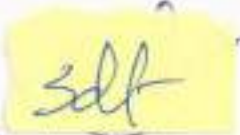
9. It may be stated that *clause 21 of the said scheme deals with modification or amendment of the scheme which runs as follows: -*

*"The Board of Directors of Transferor Companies and DCBL reserves the right to withdraw the scheme at any time before the 'Effective Date' and may assent to any modification(s) or amendment(s) in this scheme which the High Court(s) and/or any other authorities may deem fit to direct or impose or which may otherwise be considered necessary or desirable for setting any question or doubt or difficulty that may arise for implementing and/or carrying out the scheme and the Board of Directors of Transferor Companies and DCBL and after the dissolution of Transferor Companies, the Board of Directors of DCBL be and are hereby authorised to take such steps and do all acts, deeds and*

*things as may be necessary, desirable or proper to give effect to this scheme and to resolve any doubts, difficulties or questions whether by reason of any orders of the High Court(s) or of any directive or orders of any other authorities or otherwise howsoever arising out of, under or by virtue of this scheme and/or any matters concerning or connected therewith".*

10. After hearing, this Tribunal vide its orders dated 28<sup>th</sup> April 2017 was pleased to allow the modifications in the aforesaid scheme and admitted the petition by an order dated 28<sup>th</sup> day of April 2017 and directed notices of the petition to be served on the Regional Director, Registrar of Companies, the Official Liquidator, the Income Tax department, Reserve Bank of India as well as the Securities and Exchange Board of India (SEBI) and also directed advertisement of notice of hearing of the petition to be published in two newspapers in accordance with prescription of law stating therein the next date of hearing.
11. In compliance with the aforesaid order of this Tribunal, the petitioners have duly effected service of notices of the petition on the said authorities and have also advertised the notice of the hearing in the "Shillong Times" (published from Shillong)" and in the Khasi Language in the Mawphor Daily" (published from Shillong) and have also affirmed the same having filed a compliance Affidavit.
12. In response to the said notices, Regional Director has responded to and filed affidavit stating that they are not opposing the scheme of amalgamation. No other observation or any objection has been made to the sanction of the scheme by the said authority in pursuance to the directions rendered by this Tribunal in its order dated 28<sup>th</sup>, April, 2017.
13. In view of the foregoing reasons and discussions and having gone through the scheme of Amalgamation and also being satisfied that due procedures having been followed, I am of the opinion that there appears to be no impediment to the grant of sanction to the scheme of Amalgamation under section 230 of the Companies Act, 2013.
14. Consequently, I allow the petition in terms of prayers made in the petition.

15. The petitioners would do the needful to file form no. INC-28 in due course.
16. The Registrar is directed to draw up and issue certified copies of this order pursuant to and by combining Form Nos. CAA 6 and CAA 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 with necessary variations.
17. The schedule of properties shall be furnished by the Transferor Company to the Registrar of this Tribunal in accordance with Form No CAA 7 of the Companies (Compromise, Arrangement & Amalgamations) Rules, 2016 within 6 weeks from the date of receipt of certified copy of this order.

  
Member (Judicial)  
National Company Law Tribunal  
Guwahati Bench: Guwahati.

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