

ATTENDANCE-CUM-ORDER SHEET OF HEARING

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

IA No.5/2017 MC (C.PTN.No.1/2016 in
CA(CAA)/06/GB/2017
(CP No.1 of 2014)

And

Rst. A.No.01/2017 (MC (C.PTN. No.2/2016 in
CA(CAA)/06/GB/2017
(CP No. 1/2014)

Adhunik Cement Ltd

- Petitioner

PRESENT

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

Date of hearing : 06.03.2017

Name of the Company	
Under Section	391/394

Sl. No.	Name & Designation of Authorized Representative.(in Capital Letters).	Appearing on behalf of	Signature with date
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Misc Case No.1/2016 in CP No. 1 /2014)

ORDER

Heard Mr. A.Sahewalla and Mr. P. Saikia, learned counsel appearing for the petitioner.

This application has been filed under Section 391/394 of the Companies Act, 1956 read with Rule 7 of the Company Court Rules, 1959 seeking condonation of delay in restoring the connected Company Petition (vide Company Petition No. 1/2014).

In order to appreciate the problems, highlighted here, I find it necessary to reproduce the application which gives rise to the present proceeding.

" That the applicant/First Transferor Company, having Corporate Identity No. (CIN) U26942ML 2003PLC 007090, was incorporated on 1st May 2003 under the

Companies Act, 1956 as a public company limited by shares and it was accordingly issued a Certificate of Incorporation by the Registrar of Companies, Assam, Meghalaya, Manipur, Tripura, Nagaland, Arunachal Pradesh & Mizoram, Shillong (ROC Shillong). Subsequently, a Certificate for Commencement of Business pursuant to Section 149(3) of Companies Act, 1956, dated 10th October, 2006 was issued to the Applicant/First Transferor Company by the ROC, Shillong.

That the Second Transferor Company having CIN:U26959AS 2008PLC 008717 was incorporated on 26th June, 2008 under the Companies Act, 1956 under the name of 'Adhunik Cement (Assam) Limited, having its registered office at Anil Plaza II, 3rd and 4th Floor, ABC, G.S.Road, Guwahati, Assam, PIN- 781005 and it was accordingly issued a Certificate of Incorporation by the ROC, Shillong. Further the Second Transferor Company got its Certificate for commencement of business pursuant to Section 149(3) of the Companies Act, 1956 on 9th September, 2008.


That the Second Transferor Company changed its name to 'Adhunik MSP Cement (Assam) Limited and accordingly a fresh Certificate of Incorporation consequent on change of name was issued to the Second Transferor Company on 23rd May, 2011 by the ROC, Shillong.

That the Transferee Company, having corporate identity no. (CIN) U 65191TN 1996PLC0359963, was incorporated under the Companies Act, 1956 on 4th July, 1996 as a public company limited by shares under the name of 'M/s. AVNIJA FINANCE LIMITED' and it was accordingly issued a Certificate Incorporation by the Registrar of Companies Tamil Nadu, Chennai, Andaman and Nicobar (ROC Tamil Nadu). Subsequently, a Certificate for commencement of business pursuant to Section 149(3) of Companies Act, 1956, dated 14th October, 1996 was issued to the Transferee Company by ROC Tamil Nadu.

The Transferee Company changed its name to 'AVNIJA PROPERTIES LIMITED and accordingly a fresh certificate of incorporation consequent on change of name was issued to Transferee Company on 17th July, 2003 by ROC Tamil Nadu. Subsequently the Transferee Company changed its name to 'DALMIA CEMENT (BHARAT) LIMITED and accordingly a fresh certificate of incorporation consequent on change of name was issued to the Transferee Company on 31st December, 2010 by ROC Tamil Nadu.

The registered office of the Transferee Company is situated at Dalmiapuram Lalgudi Taluk, Dalmiapuram 621651, Tamil Nadu.

That the Second Transferee Company is a wholly owned subsidiary of First Transferor Company and the First Transferor Company is a wholly owned subsidiary of the Transferee Company. The management of the Transferee Company and the First Transferor Company and Second Transferor Company (Transferor Companies) believe that the amalgamation would be prudent since a single entity would result in better synergy of operations and administrative efficiency, enable cost reduction and have effective control over the affairs of the combined company. It was envisaged that the proposed Scheme of Arrangement will be beneficial to the Transferor Companies and will result in better and more efficient operation of the Transferee Company after such amalgamation. Therefore, a scheme of arrangement was entered into amongst the applicant/First Transferor Company and the Second Transferor and Transferee Company.



That pursuant to the said Scheme of Arrangement, the Applicant/First Transferor Company had instituted Company Pet No. 1/2014 before this Hon'ble Court.

That when for quite a long time when no information of the progress of the case was received by the Applicant/First Transferor Company from their engaged counsel, they engaged the services of an Advocate's clerk on or about 27.04.2016 to enquire and to inform about the status of the case. It was only on 03.06.2016, that it was learnt from the said Advocate's Clerk that the company Pet No. 1/2014 was dismissed for non prosecution by order dated 03.03.2015.

That the Applicant/First Transferor Company states that when the information regarding the dismissal was learnt from the Advocate's Clerk, the Applicant/ First Transferor Company requested the Advocate's Clerk to obtain the certified copies and accordingly the same was applied on 03.06.2016 and the same was received by the advocate's clerk only on 03.06.2016. It appears that due to inadvertence, the date of 03.04.2016 appears along with the signature of the certifying authority of this Hon'ble Court. Be it as it may, the Company Petition No. 1/2014 was dismissed for non prosecution by order dated 03.03.2015, about which the Applicant Company came to learn for the first time only on 03.06.2016. It is further stated that due to inadvertence and their lack of knowledge of the Applicant/First Transferor Company, and for non taking of steps by the engaged counsel to pursue the said Company pet. No. 1/2014, the said case was dismissed for non prosecution by the order dated 03.03.2015 as aforesaid. The non prosecution of the case was unintentional and caused only because of the lack of information and/or knowledge by the management of the Applicant/First Transferor Company.

(Copy of the order dated 03.03.2015 is annexed hereto and marked as Annexure-1)

That the applicant states that the said information about the dismissal of the Company Pet No. 1/2014 was circulated amongst the Transferor Companies and Transferee Company. Thus, the Board of Directors of the Applicant/First Transferor Company passed a resolution through circulation on 12.5.2016 authorising Sri Rajesh Kiyawat to take steps for restoration of the said case and accordingly petitions were prepared and filed before this court.

(copy of the Resolution dated 12.05.2016 is annexed hereto and marked as Annexure-2)

That the applicant states that the non prosecution of the case was unintentional and only due to inadvertence, which was beyond their control. Moreover, if the said application is not restored to file, the First Transferor Company, Second Transferor Company as well as the Transferee Company as well as their respective shareholders and management will all suffer irreparable prejudice and, as such, this is a fit and proper case wherein your Lordships would kindly be pleased to condone the delay of 441 days in filing the restoration application against the order dated 03.03.2015 passed by this Hon'ble Court in Company Pet No. 1/2014 and condone the delay and restore the said application to file.

That the applicant undertakes to diligently pursue the said case upon its condonation to file.

The applicant therefore prays -

- a. That Your Lordships would kindly be pleased to condone the delay of 441 days in filing the application for recalling of the order dated 03.03.2015 passed by this Hon'ble Court in Company Pet No. 1/2014 to file;
- b. And/or be pleased to pass such further or other order or orders as to your Lordships may deem fit and proper under the facts and circumstances of the case"

And for this act of kindness, the applicant as in duty bound, shall ever pray".

Issue notice to the ROC, Shillong, Meghalaya. The notice is made returnable on 16.03.2017.

Petitioner is directed to take immediate steps in matter of service of notice upon the ROC, Shillong, Meghalaya.

If the ROC fails to response to the direction of this Court on the next date, necessary order would be passed in accordance with law.

List the matter on 16.03.2017 along with Restoration Application No. 01 01 of 2017 for further orders.

Registry is directed to send a copy of this order to the ROC, Shillong, Meghalaya for information and necessary action.



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

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