

ATTENDANCE-CUM-ORDER SHEET OF HEARING

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH

TP No. 37/391/394/GB/2017 (CP No. 15/2016)

Adhunik MSP Cement (Assam) Ltd.

- Petitioner.

PRESENT

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

Date of Order: 29.03.2017

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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ORDER

Heard Mr. A.K.Sahewalla, Mr.W.Sharma, Mr. S.Saikia, and Mr. P. Saikia, learned counsel for the petitioners. Also heard Mr. K.Sanyal, Asstt. Director, Office of the RD (NER), Shillong who appears on behalf of ROC/Official Liquidator and other Central Govt. Departments.

The instant petition under Sections 391(2) and 394 of the Companies Act, 1956 was filed before the Hon'ble Gauhati High Court, Guwahati by the Adhunik MSP Cement(Assam) Ltd., the petitioner (also referred to as 'the Transferor Company No.2') for sanction of the proposed scheme of amalgamation/ arrangement involving amalgamation of the Adhunik MSP Cement (Assam) Ltd (also referred to as 'the Transferor Company) with Dalmia Cement (Bharat) Limited. (hereinafter referred to as 'the Transferee Company as well as for order for carrying out the same.

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) with effect from 15th December, 2016, issued by the Ministry of Corporate Affairs, Govt of India, New Delhi (hereinafter referred to as "MCA") and the enforcement of Companies (Transfer of pending

proceedings) Rules, 2016, vide gazette notification, dated 7th December, 2016. w.e.f. 15th December, 2016. The MCA, vide gazette notification dated 14 December 2016 has also notified the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

Prior to transfer of the instant petition to this Tribunal, the Hon'ble Guwahati High Court had dispensed with the meetings under Section 391 of the Companies Act, 1956 in terms of the order dated 27/06/2014, rendered by the Hon'ble High Court of Gauhati. Pursuant to the said order, the scheme underwent some modification and accordingly, a modification application was filed along with the second motion application and the same was registered as Co.Appl 06/2016 and Co.Pet 18/2014 respectively.

After hearing, the Hon'ble Gauhati High Court was pleased to allow the petitioner to file a second motion petition cum modification application. Pursuant there to a petition was filed which was registered as Co. Pet 15/2016 for an order sanctioning the scheme under Sections 391 and 394 of the Companies Act, 1956 (corresponding to Sections 230 and 232 of the Companies Act, 2013), in the terms of prayer(s), so mentioned in the petition aforesaid.

In the meantime, the notification dated 7th December, 2016 was issued by the Ministry of Corporate Affairs for which Company Petition No. 15/2016 was transferred to this Bench presumably to take up the proceeding from the stage in which it was received for further progress of the same in accordance with the prescriptions in Section 230 to 232 of the Companies Act, 2013.

On receipt of the proceeding on transfer, same was renumbered and thereafter, this Tribunal admitted the petition by an order dated 20th of January 2017 and directed notices of the petition to be served by the petitioners on the Regional Director, Registrar of Companies, Official Liquidator and Income Tax Department as well as the Securities Exchange Board of India (in short 'SEBI') and also directed advertisement of notice of hearing of this petition to be published in the required number of newspapers in accordance with prescription of law stating therein the next date of hearing.

In compliance with the said order of this Tribunal, the petitioners have duly effected service of notices of the petition on the said Authorities and advertised the notice of the hearing in "The Assam Tribune, (Local Edition)" and in Assamese Language in the "Dainik Axom" (local edition) on 16.02.2017. It has also been stated that notices were delivered to the Postal Department on 3rd February, 2017 and same were received by the aforesaid authorities in between 3rd and 8th February, 2017. All these were also affirmed by the petitioner having filed an Affidavit.

In response to the said notices, ROC/Official Liquidator and the Income Tax Department have not filed any objection till date but Regional Director, NER, Ministry of Corporate Affairs, Shillong, had filed an Affidavit, the relevant part of which is reproduced below: -

"Para 2 That it is submitted that on examination of the petition in detail and report of the Registrar of Companies, North Eastern Region it appears that no complaint and/or representation has been received against the proposed Scheme of Arrangement/ Amalgamation. The Central Government has, therefore, decided, that the petition/application need not be opposed & the matter be decided by this Hon'ble Tribunal on its merits".

"Para 3 The statements made in paragraph 1 are true to the best of my knowledge and those made in paragraph 2 are the information derived from the records of the case. Further I am to submit that the Company has served the copy of the Petition with the Income Tax Department, Guwahati and Shillong on 03.02.2017, so far no objection has been received from the said department till date. Further, Registrar of Companies and Official Liquidator were also served with the copies of the petition. Creditors of both the transferor companies have given their no objection to the proposed scheme of amalgamation. As per the submission made by the petitioner companies, since both the transferor companies are 100% holding and subsidiaries, therefore share valuation is not required as there is no allotment of further shares taking place to the members of the petitioner companies. However, on queries raised and replies submitted by the petitioner companies to the Registrar of Companies, petitioner companies may be directed to confirm the non-existence of intangible assets by way of supplementary affidavits. Hence, my humble submissions before this Hon'ble Tribunal is to consider the disposal of the present case on its merits".

Mr. Sahewalla, learned counsel appearing for the petitioner, now, submits that the queries, raised by Regional Director, Shillong, in his affidavit aforesaid have already been met and as such, there was due compliance of the directions so rendered by R.D.NER, Shillong through the affidavit aforesaid.

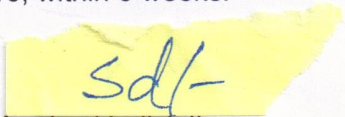
Since the notices have been served on ROC/Official Liquidator and the Income Tax Department on 08.02.2017 and since they have not raised any objection against the prayer, made in this proceeding, since it appears from the affidavit of Regional Director, NER, Shillong that this court may sanction of scheme of amalgamation/arrangement, as prayed for by the petitioner, and since the counsel for the petitioner further submits that queries in the aforesaid affidavit have already been met, in my opinion, the prayers in the petition need favourable consideration of this Tribunal.

Accordingly, the petition is allowed in terms of prayer made in the petition.

The petitioners would do the needful to file form no.INC-28 in due course.

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.

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 (Compromises, Arrangements & Amalgamations) Rules, 2016, within 6 weeks.



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

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