

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

CSA NO 861 OF 2017

In the matter of the Companies Act, 2013;  
AND

In the matter of Sections 230 to 232 of the Companies Act, 2013;  
AND

In the matter of Scheme of Amalgamation between Morganite  
Crucible (India) Limited having CIN  
L26920MH1986PLC038607 ('MCIL' or 'Transferee Company')  
and Diamond Crucible Company Limited having CIN  
U27100MH1981PLC269185 ('DCCL' or 'Transferor Company')  
and their respective Shareholders and Creditors ('the Scheme')

Morganite Crucible (India) Limited, a Company incorporated }  
under the provisions of Companies Act, 1956 having its }  
registered office at B-11, MIDC Waluj, }  
Aurangabad, Maharashtra – 431136 }  
CIN: L26920MH1986PLC038607 }

.....First Applicant Company

Diamond Crucible Company Limited, a Company }  
incorporated under the provisions of Companies Act, 1956 }  
having its registered office at B-11, MIDC Waluj, }  
Aurangabad, Maharashtra – 431136 }  
CIN: U27100MH1981PLC269185 }

.....Second Applicant Company

Order delivered on 13<sup>th</sup> September, 2017

Coram:

Hon'ble Shri. **B.S.V. Prakash Kumar**, Member (J)  
Hon'ble Shri. **V. Nallasenapathy**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for Applicant

Per: Shri. **V. Nallasenapathy**, Member, (T)

**ORDER**

1. The Counsel for the Applicants submit that the present Scheme is an Amalgamation of Morganite Crucible (India) Limited and Diamond Crucible Company Limited and their respective shareholders and creditors.

2. The First Applicant Company is engaged in the manufacturing and selling of silicon carbide and clay graphite crucibles and its accessories. The Second Applicant Company, a wholly owned subsidiary of the First Applicant Company is engaged in the business of manufacturing and selling of clay graphite crucibles and its accessories.
3. The Counsel for the Applicants further submit that the Transferor Company was formed to carry out business in accordance with the aforementioned objects, and are thereby proposed to be merged with the Transferee Company in order to achieve operational, financial and administrative synergies, leverage combined assets and build a stronger sustainable business.
4. The Counsel for the Applicants further submit the rationale for the Scheme is that the both Transferor and Transferee Company are engaged in the same line of business and share common corporate values and culture. With a view to maintain simple corporate structure and eliminate duplicate corporate procedures, it is desirable to integrate and consolidate the Transferor Company with Transferee Company. The merger of Transferor Company with Transferee Company shall result in –
  - a. *Economies of scales, reduction in overheads including administrative, managerial and other expenditure, operational rationalization, organizational efficiency, and optimal utilization of resources*
  - b. *Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by both the Transferor Company and the Transferee Company*
  - c. *Achieving business and administrative synergies for the Morganite Group; and*
  - d. *Pooling of managerial, technical and financial resources of the Transferee Company, the Transferor Company leading to increased competitive strength, cost reduction, and efficiencies, productivity gains and logistic advantages to the business operations, optimising the working capital usage, which is very critical for the operations considering circumstances for availing working capital credit.*
5. That the meeting of the Equity Shareholders of the First Applicant Company be convened and held at its registered office at B-11, MIDC Waluj, Aurangabad, Maharashtra – 431136 on 2<sup>nd</sup> November, 2017 at 11 AM for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme is an Amalgamation of Morganite Crucible (India) Limited



("MCIL" or the "Transferee Company") and Diamond Crucible Company Limited ("DCCL" or the "Transferor Company") and their respective shareholders and creditors.

6. That the meeting of the Equity Shareholders of the Second Applicant Company be convened and held at its registered office at B-11, MIDC Waluj, Aurangabad, Maharashtra – 431136 on 2<sup>nd</sup> November, 2017 at 10 AM for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme is an Amalgamation of Morganite Crucible (India) Limited ("MCIL" or the "Transferee Company") and Diamond Crucible Company Limited ("DCCL" or the "Transferor Company") and their respective shareholders and creditors.
7. That at least one month before the said Meetings of the Shareholders of the said Applicant Companies to be held as aforesaid, a notice convening the said Meetings at the place, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14<sup>th</sup> December 2016, the prescribed Form of Proxy shall be sent by Courier / Registered Post / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the Applicant Companies for the purpose of receiving such notices by email), addressed to each of the Shareholders of the Applicant Companies, at their last known address or email addresses as per the records of the Applicant Companies.
8. That at least one month before the meetings of the Shareholders of the Applicant Companies to be held as aforesaid, a notice convening the said Meetings, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the said Applicant Companies as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
9. That the notice of the Meetings of the Equity Shareholders of the Applicant Companies shall be advertised in two local newspapers viz. "The Times of India" in English and "Sakal" in Marathi, both circulated in Aurangabad not less than 30 days before the date fixed for the meeting.

10. That Mr. Mukund Nilkanth Bhogale, Director of the First Applicant Company, and failing him, Mr. Subhash Kolapkar, Director of the First Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the First Applicant to be held at B-11, MIDC Waluj, Aurangabad, Maharashtra – 431136 on 2<sup>nd</sup> November, 2017 at 11 AM or any adjournment or adjournments thereof.
11. That Mr. Aniruddha Ajit Karve, Director of the Second Applicant Company, and failing him, Mr. Ian Keith Arber, Director of the Second Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Second Applicant to be held at B-11, MIDC Waluj, Aurangabad, Maharashtra – 431136 on 2<sup>nd</sup> November, 2017 at 10 AM or any adjournment or adjournments thereof.
12. That the Chairman appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the Meetings referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).
13. That the quorum of the aforesaid meetings of the Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
14. The voting for the First Applicant Company shall be allowed on the proposed scheme by voting in person, by proxy or through postal ballot or through electronic means. The voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meetings, are filed at its Registered Office at B-11, MIDC Waluj, Aurangabad, Maharashtra – 431136 not later than 48 hours before the aforesaid meeting.
15. The voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meetings, are filed with the Second Applicant Company at its Registered Office at B-11, MIDC Waluj, Aurangabad, Maharashtra – 431136 not later than 48 hours before the aforesaid meeting.
16. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the said Applicant Companies or depository records and where the entries in the books / register / depository records are



disputed, the Chairman of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.

17. That Mr. Prasad Takalkar, Partner, KMP & Associates, is hereby appointed as Scrutinizer of the meetings of the Equity shareholders of the Applicant Companies proposed to be held on 2<sup>nd</sup> November, 2017 at B-11, MIDC Waluj, Aurangabad, Maharashtra – 431136 and his remuneration is fixed as Rs. 20,000/- .
18. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
19. That the Chairman of the meetings to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings.
20. The First Applicant and Second Applicant is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the said Applicant Companies assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies (iv) Bombay Stock Exchange (for First Applicant Company only) (v) Securities Exchange Board of India (for First Applicant Company only), with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the said Applicant Companies, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
21. The Applicant Company is also directed to serve notice along with a copy of the Scheme upon the Official Liquidator. M/s. Shah & Gutka, Chartered Accountants are appointed to assist the Official Liquidator to scrutinize the books of accounts of the Applicant Company for the last five (5) years. The fees of the Chartered Accountant is fixed at Rs. 2,00,000/-. The Official Liquidator may submit his representations, if any, within a period of thirty (30) days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Company, failing which, it shall be presumed that the Official Liquidator has no representations to make on the proposals.
22. The Counsel for the First Applicant Company submits that there are no Secured Creditors in the First Applicant Company, therefore the question of sending notices to the Secured Creditors does not arise. The Counsel for the First Applicant

Company further submits that since the Scheme is an amalgamation between the Applicant Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby directs the First Applicant Company to issue notice to all its Unsecured Creditors with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.

23. The Counsel for the Second Applicant Company submits that there are no Secured Creditors in the Second Applicant Company, therefore the question of sending notices to the Secured Creditors does not arise. The Counsel for the Second Applicant Company submits that since the Scheme is an amalgamation between the Applicant Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby directs the Second Applicant Company to issue notice to all its Unsecured Creditors with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
24. The said Applicant Companies to file affidavit of service in the Registry proving dispatch of notices to the shareholders, Creditors, publication of notices in newspapers and to the regulatory authorities as stated in clauses 20 & 21 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

**V. Nallasenapathy, Member (T)**

Sd/-

**B.S.V. Prasad Kumar, Member (J)**