

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
TRANSFER COMPANY SCHEME PETITION NO. 338 OF 2017
IN
B.H.C. COMPANY SCHEME PETITION NO. 881 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 772 OF 2016

In the matter of the Companies Act, 1956 or
any re-enactment thereof;

-And-

In the matter of Petition under Sections 391
to 394, of the Companies Act, 1956 or any
re-enactment thereof;

-And-

In the matter of UltraTech Cement Limited
[CIN: L26940MH2000PLC128420], a
company, incorporated under the Companies
Act, 1956 having its registered office at 2nd
Floor, Ahura Centre, B-Wing, Mahakali
Caves Road, Andheri (East), Mumbai –
400093;

-And-

In the matter of Scheme of Arrangement
between Jaiprakash Associates Limited and
Jaypee Cement Corporation Limited and
UltraTech Cement Limited and their
respective shareholders and creditors.

UltraTech Cement Limited	[CIN: }	
L26940MH2000PLC128420],	a company,	}
incorporated under the Companies Act, 1956,		}
having its registered office at 2 nd Floor, Ahura		}
Centre, B-Wing, Mahakali Caves Road, Andheri		}
(East), Mumbai – 400093	}	...Petitioner Company

Called for Hearing

Mr. Janak Dwarkadas Senior Advocate along with Dr. Birendra Saraf, Mr. Tapan Deshpande and Ms. Priya Patwa, Advocates i/b. Cyril Amarchand Mangaldas, Advocates for the Petitioner Company
Mr. S. Ramakantha, Joint Director for Regional Director

Coram: B.S.V. Prakash Kumar, Member (Judicial)

V Nallasenapathy, Member (Technical)

Date: 15th February, 2017

MINUTES OF ORDER

1. Heard counsel for the Petitioner Company. No Objector appears before this Tribunal to oppose the Petition and the Scheme nor has any party controverted the averments made in the Petition.
2. Learned Senior Counsel appearing for the Petitioner Company states that the Petition has been filed to seek sanction to the Scheme of Arrangement between Jaiprakash Associates Limited (Transferor1) and Jaypee Cement Corporation Limited (Transferor2) (together referred to as "Transferor Companies") and UltraTech Cement Limited (Petitioner/Transferee Company) and their respective shareholders and creditors (Scheme), pursuant to the provisions of Sections 230 - 232 and other relevant provisions of the Companies Act, 2013.
3. The Petitioner/Transferee Company is engaged in the business of manufacture and sale of various grades and types of cement, ready mix concrete and other cement related products. Transferor1 is engaged, *inter alia*, in the business of manufacture and sale of cement and clinker. Transferor2 is engaged, *inter alia*, in the business of manufacture and sale of cement and clinker. The Learned Advocate for the Petitioner/Transferee Company says that the background,

circumstances, rationale and significant benefits of the Scheme are as under: The transfer of the JAL Business and the JCCL Business pursuant to this Scheme would *inter alia* result in the following benefits: In case of the Transferor1 and the Transferor2: (a) unlocking of value for the Transferor1 and the Transferor2 by transfer of part of their assets; and (b) helping the Transferor1 and the Transferor2 in deleveraging their balance sheets, including reduction of debt and interest outgo and the Transferor1 and the Transferor2 will continue to be competitors as well as creation of value for the shareholders of the Transferor1 and the Transferor2. In case of the Petitioner Company: (a) a strategic fit for serving existing markets, enabling the Transferee to cater additional volumes, entry into some of the growing markets of India, including the Satna cluster in Madhya Pradesh (East), Uttar Pradesh (East), coastal Andhra Pradesh, Himachal Pradesh, and Uttarakhand; (b) synergies in manufacture and distribution process and logistics alignment leading to economies of scale and creation of efficiencies by reducing time to market, enhancing competitiveness and benefitting consumers; and (c) creating value for shareholders by acquiring ready to use assets reducing time to markets, availability of land, mining leases, fly ash and railway infrastructure leading to logistical alignment and efficiency improvement. The Board of Directors of the Petitioner/ Transferee Company and the Transferor Companies, have approved the said Scheme by passing their respective board resolutions which are annexed to the Petition.

4. The Learned Advocate for the Petitioner/Transferee Company states that the Petitioner/Transferee has complied with all the directions passed by the Hon'ble Bombay High Court in the Company Summons for Direction No. 772 of 2016 and that the Company Scheme Petition

No. 881 of 2016 has been filed in the Hon'ble Bombay High Court and now transferred to this Tribunal and is in consonance with the order passed in the said Company Summons for Direction.

5. The Learned Senior Counsel appearing on behalf of the Petitioner/Transferee Company has stated that the Petitioner/Transferee Company has complied with all the requirements as per directions of the Hon'ble Bombay High Court and it has filed necessary Affidavits of compliance in the Hon'ble Bombay High Court. Moreover the Petitioner/Transferee Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted.

6. The Regional Director has filed an Report dated 19th January, 2017 *inter alia* stating therein that save and except as stated in paragraph IV (a) to (e), of the said Report, it appears that the Scheme was not prejudicial to the interest of the shareholders and public. The observations made by the Regional Director in paragraph IV are for sake of ready reference reproduced hereunder:

IV. *The observations of the Regional directors on the proposed Scheme to be considered by the Hon'ble NCLT are as under:-*

- (a) *That as per clause 14(e) of the Scheme regarding compliance of Accounting Standard in respect of Amalgamation, it is stated that the transferee company to comply with IND As- 103. In this regard it is submitted since the said Accounting Standard is not notified, the Transferee Company, in addition to compliance of AS- 14 shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS- 5 etc.,*
- (b) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect to the*

scheme. The decision of the Income Tax Authority is binding on the petitioner Company.

(c) The registered Office of the M/s Jaiprakash Associates Limited and M/s Jaypee Cement Corporation Limited the Transferor Companies are situated in the State of Uttar Pradesh and falls within the jurisdiction of Hon'ble NCLT at Allahabad. Accordingly, similar approval be obtained by both the Transferor Companies from Hon'ble NCLT at Allahabad.

(d) That the Appointed Date is not specifically specified. Both Appointed Date & Effective Dates are prospective. That as per Part I Definitions (c) of the Scheme the Appointed Date shall be the effective date and as per Part – I Definitions (o) of the Scheme the Effective Date means the date on which the Scheme becomes effective in accordance with its terms, which shall be the Closing Date.

In this regard it is submitted that as per provisions of section 232 (6) of the Companies Act, 2013 the scheme shall clearly indicate as appointed date which it shall be effective and the scheme shall be deemed to be effective from such date and not a date subsequent to the appointed date

(e) As per Part – I Definitions (III) of the Scheme. The Long Stop Date means 16th August 2017 or such other date which is mutually agreed in writing between Transferor -1 and the Transferor – 2 and the Transferee Company.

In this regard it is submitted that the Long Stop Date shall not be later than 16th August, 2017 or such other date as may be decided by the Hon'ble NCLT at Bombay and Hon'ble NCLT at Allahabad and should not be the date mutually agreed in writing between Transferor – 1 and the Transferor- 2 and the Transferee Company. ”


7. As far as the observation in paragraph IV (a) of the said Report is concerned, the Petitioner/Transferee Company through its counsel states that clause 14 (e) of the Scheme stipulates that accounting will be done, based on current Accounting Standard/IND AS 103, as applicable and undertakes to pass such accounting entries which will be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS 5 corresponding to IND AS 8.


8. As far as the observation in paragraph IV (b) of the Report of the Regional Director is concerned, counsel for the Petitioner Company states that the Scheme is in compliance with the Income Tax Act 1961. The tax implication if any, arising out of the Scheme shall, in any event, be subject to final decision of the Income Tax Authority and the final orders, if any, of the appeals that may be preferred therein. Sanction to the Scheme by this Hon'ble Tribunal may not limit the powers of the Income Tax Authority to scrutinize the tax return filed by the Petitioner Company.
9. As far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned, counsel for the Petitioner Company states that the Petitions filed by Jaiprakash Associates Limited and Jaypee Cement Corporation Limited, the Transferor Companies seeking sanction to the Scheme are pending for hearing before the Hon'ble National Company Law Tribunal, Allahabad. The effectiveness of the Scheme is subject to sanction of the Scheme by the National Company Law Tribunal, Allahabad Bench.
10. As far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Petitioner/Transferee Company through its counsel states that the Appointed Date in the Scheme is defined as "shall be the Effective Date" and the Effective Date is defined as the date on which the Scheme becomes effective in accordance with its terms which shall be the Closing Date. Counsel for the Petitioner Company states that the "Appointed Date" and the "Effective Date" are the same date, in accordance with the provisions of section 232(6) of the Companies Act, 2013.

11. As far as the observation in paragraph IV (e) of the said Report is concerned, the Petitioner/Transferee Company through its counsel undertakes to this Hon'ble Tribunal that the Long Stop date of the Scheme will be August 16, 2017 and upon sanction to the Scheme by this Hon'ble Tribunal, any change in the Long Stop Date will be subject to leave of the Hon'ble Tribunals at Mumbai and Allahabad.
12. Mr. S. Ramakantha, Joint Director, in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the explanation and the undertakings given hereinabove by the Petitioner / Transferee Company through its Counsel.
13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, Transfer Company Scheme Petition No. 338 of 2017 filed by the Petitioner/Transferee Company is made absolute in terms of prayer clauses (a) and (b).
15. The Petitioner Company to lodge a copy of this order along with the sanctioned Scheme attached thereto with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the order.
16. The Petitioner Company is directed to file copy of this order alongwith a copy of the sanctioned Scheme attached thereto with the concerned Registrar of Companies, electronically, along with e Form INC 28 in addition to physical copy within 30 days of receipt of copy of this order

along with the sanctioned Scheme, duly authenticated by the Registrar/Officer of this National Company Law Tribunal.

17. The Petitioner/Transferee Company to pay costs of this Company Scheme Petition of INR 25,000/- to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.
18. Filing and issuance of the drawn up order is dispensed with.
19. All concerned authorities to act on a copy of this order along with the sanctioned Scheme, duly authenticated by the Registrar/Officer of this National Company Law Tribunal.


B.S.V. Prakash Kumar,
Member (Judicial)


V Nallasenapathy
Member (Technical)