

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

COMPANY SCHEME PETITION NO 93 OF 2017

Nirchem Cement Limited

.....Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO 94 OF 2017

**Lafarge India Limited (Name changed to Nuvoco Vistas Corporation Limited
w.e.f. 10th March 2017)**

.....Petitioner/Transferee Company

In the matter of Sections 230 - 232 and any other applicable provisions of the Companies Act, 2013 read with Companies (Compromise, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Scheme of Amalgamation of Nirchem Cement Limited with Lafarge India Limited

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners in both Petitions.

Mr. Ramesh Golap, Assistant Director in the office of Regional Director

Mr. Pola Raghunath, Deputy RoC in the office of Registrar of Companies, Mumbai

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

V. Nallasenapathy, Member (Technical)

Date: 6th April 2017

MINUTES OF ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.

2. The Counsel for the Petitioner Companies submits that the name of the Transferee Company has been changed from Lafarge India Limited to Nuvoco Vistas Corporation Limited with effect from 10th March 2017. Accordingly, in all future regulatory filings, compliances pertaining to this Scheme, the name of Lafarge India Limited will be replaced with Nuvoco Vistas Corporation Limited.
3. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of Nirchem Cement Limited ('Transferor Company') with Lafarge India Limited (Name changed to Nuvoco Vistas Corporation Limited w.e.f. 10th March 2017) ('Transferee Company').
4. The Counsel for the Petitioners submit that Transferee Company is a wholly owned subsidiary of the Transferor Company. Transferor Company is engaged in the business of manufacturing and selling of clinker and all the kinds of cement and cement products including portland cement (Portland pozzolona cement, special cement, masonry cement, lime pozzolona cement etc.) or any description (pipes, poles, asbestos, sheets, blocks, tiles, garden wares etc.) lime, limestone, gypsum kankar, ready mix, concrete, aggregates and / or bye-products thereof. The Transferee Company has significantly enlarged its operations across its three business divisions - Cement, Aggregates and Concrete. The Transferee Company deals in all types of cement (excluding Aluminate Cement), lime and limestone, clinker, ready

mix concrete, aggregates and / or by-products thereof and / or any input material thereof e.g.: pet coke, cementations products etc.

5. The Counsel for the Petitioners submit that the rationale for the scheme is that the proposed Scheme of Amalgamation is aimed at achieving the following business and commercial objectives:

- (a) Lafarge and Nirchem are in the same business of manufacturing and sale of cements and other related products and readymade mix, which can be carried out more efficiently under one amalgamated entity;*
- (b) Lafarge is a wholly owned subsidiary of Nirchem so consolidation would lead to more efficient utilization of capital for enhanced development and growth of the consolidated business in one entity;*
- (c) The proposed amalgamation will result in administrative and operational rationalization, organizational efficiencies, reduction in overheads, administrative and operational costs and other expenses and optimal utilization of various resources. It will prevent cost duplication that can erode financial efficiencies of a holding structure and the resultant operations would be substantially cost-efficient and achieve better cash flow. The synergies created by the amalgamation would increase operational efficiency and integrate business functions.*
- (d) The proposed amalgamation will eliminate a multi-layered structure and reduce managerial overlap, which are necessarily involved in running multiple entities. Lafarge is a wholly owned subsidiary of Nirchem and all the shares of Lafarge are presently held by Nirchem in its own name and six individual shareholders as a nominee of Nirchem and as such this Scheme envisages transfer of the entire undertaking of Transferor Company to the Transferee Company.*

6. The Counsel for the Petitioners submit that the Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by

passing the Board Resolution which are annexed to the respective Company Scheme Petitions.

7. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the orders passed in Company Summons for Direction.
8. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Court / Tribunal and they have filed necessary affidavits of compliance in the Court / Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.
9. The Official Liquidator has filed his report on 06th March 2017 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved.
10. The Regional Director has filed an Report dated 09th March 2017 stating therein, save and except as stated in paragraph IV(a) to (d), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV, of the said Report it is stated that:

(a) In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in

connection with the scheme to comply with other applicable Accounting Standards such as AS -5 (IND AS-8) etc.

(b) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 28/01/2017 and 30/01/2017 has served a copy company petition no. 93 and 94 along with relevant orders etc., further the Regional Director has also issued a reminder 07/03/17, to IT Department. However, as on date there is no response from the Income Tax Department.

(c) The tax implication if any arising out of this scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble 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.

(d) That in view of para 11 supra Hon'ble NCLT may be kindly issue notice to ROC Mumbai, u/s 230(5) of the Companies Act, 2013.

11. In so far as observations made in paragraph IV(a) of the Report of Regional Director is concerned, the Transferee Company through its counsel undertakes that in order to comply with the Ind AS 103 i.e. Accounting Standards prescribed under section 133 of the Act and rules made thereunder and as stated in the Auditor's certificate on accounting treatment, the accounting effect of clause 16.4 of the Scheme shall be given only to the extent of "Investment in the Transferee Company held by the Transferor Company shall be cancelled". Further, the Transferee Company undertakes that it shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS -5 (IND AS-8) etc.

12. In so far as observations made in paragraph IV(b) and IV(c) of the Report of Regional Director are concerned, the Petitioners through its Counsel submits that the Petitioners undertake to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
13. The observations made by the Regional Director have been explained by the Petitioners in paragraphs 10 to 12 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
14. In so far as observations made in paragraph IV(d) of the Report of Regional Director is concerned, the counsel for the Petitioners Companies vide their replies dated 27.3.2017 have duly replied to all the observations initially made by Roc office and after considering the replies of the company, *ibid*, including the financials of the transferor company as at appointed date 4.10.2016, the Registrar of Companies has filed Report dated 30th March 2017 and has made the following observations and it is observed that the Company need to undertake the following compliances before Hon'ble NCLT.

1. **Record Date:** *With reference to para no. 14.1 and 14.1.1 of the Scheme, Appointed Date need to be considered as Record Date considering that there is no further issue of shares nor any transfer of shares subsequent to the appointed date 4.10.2016.*
2. **Power to revoke & cancel the Scheme:** *With reference to para no 23.1 of the Scheme, Company may need to undertake not to carry out any amendments to the scheme on their own without the*

approval of Hon'ble NCLT so as to comply with section 231(1) of the Companies act, 2013.

15. As far as observations made in paragraph 1 of the Report of Registrar of Companies is concerned, the Petitioners through their Counsel undertakes and confirms that the Appointed Date shall be the Record Date.
16. In so far as observations made in paragraph 2 of the Report of Registrar of Companies is concerned the Petitioners through their Counsel undertakes that no modification to the Scheme shall be effected by the Board of Directors without the leave of this Tribunal except to comply with the observations made by the Regional Director.
17. The observations made by the Registrar of Companies have been explained by the Petitioners in paragraphs 15 and 16 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
18. 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.
19. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 93 of 2017 filed by the Transferor Company is made absolute in terms of prayer clause (a) of the Petition and Company Scheme Petition No. 94 of 2017 filed by the Transferee Company is made absolute in terms of prayer clauses (a) to (c) of the Petition.
20. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies,

electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.

21. The Petitioner Company to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
22. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Transferor Company to pay cost of Rs. 25,000/- to the Official Liquidator, High Court Bombay.
23. Costs to be paid within four weeks from the date of receipt of the order.
24. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
25. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (Technical)

Sd/-

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