

**In the National Company Law tribunal  
Single Bench, Chennai**

TP (HC)/12/CAA/2017  
TP (HC)/13/CAA/2017  
TP (HC)/14/CAA/2017  
TP (HC)/15/CAA/2017

**In the matter of Scheme of Arrangement & Amalgamation of**

M/s. OCL India Private Limited  
(Transferor Company 1)

And

M/s. Dalmia Cement East Limited  
(Transferor Company 2)

And

M/s. Sri Rangam Securities & Holdings Limited  
(Transferor Company 3)

And

M/s. Dalmia Bharat Cements Holdings Limited  
(Transferor Company 4)

**With**

M/s. Odisha Cement Limited  
(Transferee Company)

Order delivered on: 11.07.2017

For the Petitioners: P.H. Arvindh Pandian, Sr. Advocate

**Per: K. Anantha Padmanabha Swamy, Member (J)**

**ORDER**

1. Under consideration are four Company Petitions which have been transferred from the Hon'ble High Court of Madras to this Tribunal pursuant to the Companies (Transfer of proceedings) Rules, 2016 and renumbered as TP(HC)/CAA/12&13&14&15/CAA/2017. The Petitioner Companies have prayed for the sanction to the Scheme of Amalgamation (hereinafter referred to as 'Scheme') by virtue of which M/s. OCL India Limited (hereinafter referred as 'Transferor Company 1'), M/s. Dalmia Cement East Limited ('Transferor Company 2'), M/s. Sri Rangam Securities &

Holdings Limited (**‘Transferor Company 3’**) and M/s. Dalmia Bharat Cements Holdings Ltd. (**‘Transferor Company 4’**) are proposed to be amalgamated **with** M/s. Odisha Cement Limited (hereinafter referred as **‘Transferee Company’**) having registered office at Dalmiapuram, Lalgudi Taluk, Dalmiapuram, Tamil Nadu- 621651 as a going concern. Apart from the Transferor Company No. 1, all the companies are within the jurisdiction of RoC, Chennai. Since all companies pertain to the same scheme of amalgamation, I take them together to pass a common final order.

2. The Share Capital of the Companies as on 31<sup>st</sup> March, 2016 are as under:

<b>Particulars</b>	<b>Authorized Capital</b>	<b>Issue, Subscribed &amp; paid-up Capital</b>
Transferee Company	Rs. 10,00,000	Rs. 5,00,000
Transferor Company 1	Rs. 15,00,00,000	Rs. 24,11,13,793
Transferor Company 2	Rs. 1,35,00,00,000	Rs. 135,00,00,000
Transferor Company 3	Rs. 1,00,00,00,000	Rs. 90,85,00,000
Transferor Company 4	Rs. 1,00,00,00,000	Rs. 83,16,00,000

3. At the outset, it is necessary to know the details of the scheme which needs determination. The Transferor Companies 2, 3 & 4 and the Transferee Company are Public Unlisted Companies whereas the Transferor Company 1 is a Public Listed Company. The Board of Directors of the Transferor Companies and the Transferee Company in their board resolutions dated 28<sup>th</sup> March 2016 have approved the said Scheme of Amalgamation. All the orders passed by the Hon’ble Madras High Court in different company Applications in relation to the meetings of the equity shareholders, secured creditors and unsecured creditors of the Applicant companies were complied with.

4. Shri P.H. Arvinth Pandian, the learned Senior Counsel appearing for the Petitioner Companies submitted that the Transferor Companies are engaged in the business of manufacturing and selling cement and refractories, generating power and maintaining & operating rail systems and solid waste management system, which provide services to its cement and refractory business whereas the Transferee Company is engaged in the business of manufacturing and selling cement. The main objects of all companies are common.
5. Learned counsel further submitted that the said scheme is a composite scheme of arrangement and amalgamation between group companies of the Dalmia group and the rational, reason and circumstances of the Scheme are that the scheme is expected to enable better realisation of potential of the business of OCL, DCEL, SRSHL, DBCHL and ODCL in the form of amalgamated ODCL which will yield beneficial results and enhanced value creation for their respective shareholders and better security and protection for their lenders and employees. The companies would benefit from the said Scheme due to the administrative and operational costs that will considerably be reduced; also it will strengthen, consolidate and stabilize the business of these companies and will facilitate further expansion and growth of their business. These combined resources will enhance its capability to expand and improve its efficiency of operations. The learned counsel further submits that no investigation proceedings are pending against the Petitioner Companies under section 235 to 251 or any other provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.



6. To dispose of this petition as per the provisions of the Companies Act, 2013, notices were issued to the statutory authorities as per the procedure prescribed. However, there were a few observations to the scheme under reference by the RD.
7. The Regional Director, Southern Region (In short, 'RD') in its report affidavit dated 11.4.2017 submitted that the Transferor Companies are regular in filing its statutory returns and no investigation is pending against them, therefore RD decided not to make any objection to the Scheme and submitted that the petition may be disposed of on merits. However, in Para 9 of the report pointed out that as per Clause 21 of the scheme of the Transferee company, it has stated that it shall discharge the slump sale consideration of Rs. 124 crores to the Second transferor company by issue of commercial paper or any other instrument on such terms and conditions or in any other manner as may be mutually agreed between the boards of the companies. ROC, Chennai has opined that the proposal is adhoc and the same cannot be considered. When the matter was taken up with the transferee company, it has explained that it will discharge the consideration by issuing commercial papers and if not feasible, by any other valid instrument. From the reply it is clear that the transferee company has not decided on the nature of the instrument for settlement of the slump sale consideration. In the light of the proposal being adhoc in nature, this Tribunal may consider the issue and direct the transferee company to give its firm proposal regarding the nature of instruments for paying the consideration of the slump sale to the Second transferor company.
8. With regard to the observation made by the RD, the learned counsel for the Petitioner Companies submitted that the present scheme envisages transfer of

Rail and Solid Waste Management System Undertakings of the Transferor Company 2 to the Transferee Company on an “as is where is” basis for a consideration of Rs. 124 Crore by issue of commercial paper. The effective date in respect of this part of the scheme is the date on which the certified copy of the sanction of the scheme by this Tribunal is filed with the Registrar of Companies by DCEL and ODCL. The consideration thus received is accounted for in terms of Clauses 22 & 23 of the scheme in the books of both the aforesaid companies with effect from the Appointed Date.

9. The Learned Counsel further submitted that for completion of the slump sale transaction, consideration is necessarily required to be paid by the Transferee Company to the Transferor Company 2. The flexibility to issue “commercial paper or such other instrument” has been kept in Clause 21 of the scheme solely to ensure that Transferee Company is able to discharge the consideration for Slump sale, in case issuance of a particular commercial paper becomes infeasible due to any restriction from any government/regulatory authorities or change of law.
10. With regard to the Transferor Company 1, the BSE vide its Observation Letter dated 12.07.2016 has given ‘No Adverse Observation’ with limited reference to those matters having a bearing on listing requirements within the provisions of Listing Agreement whereas the NSE in its Observation Letter dated 12.07.2016 also conveyed ‘No Objection’ in terms of regulation 94 of SEBI (LODR) Regulations, 2015. However, both the stock exchanges have directed the respective company to duly comply with various provisions as required under SEBI Circular.

11. In relation to the observations made by the BSE & NSE, the learned counsel submitted that the Petitioner Company undertakes to comply with the relevant provisions as and when required under the SEBI Circulars.
12. The Official Liquidator (In short, 'OL') in its three separate reports dated 20<sup>th</sup> April, 2017 submitted that M/s. R. Mugunthan, M/s. Manian & Narayanan and M/s. Maharaj N. R. Suresh & Co., Chartered Accountants, the Auditors appointed on the order of this Tribunal, have scrutinized the books and accounts of the Transferor Company 2, Transferor Company 3 and Transferor Company 4 respectively. The Auditors have observed that the said three Transferor Companies have maintained and written up all the statutory books in accordance with normally accepted accounting principle and policies in accordance with the requirements of the Companies Act, 2013 and also the affairs of the company have not been conducted in a manner prejudicial to the interest of its members, creditors or to public interest and submitted that the petition may be decided appropriately.
13. The OL further submits that as per Clause 56(a) of Part- VI of the proposed scheme, the interests of all the employees in the services of the Transferor Companies are safeguarded. As per Clause 21 of Part-VI of the scheme, the Transferee Company shall discharge the slump sale consideration of INR 124 Crores payable by it to the Transferor Company 2 by issue of commercial paper or such other instruments as agreed between the Board of Directors of both the companies. As per Clause 62 of Part- VI of the scheme, the entire issued, subscribed and paid-up capital of the Transferor Company 2 is held by the Transferor Company 3 and its nominees, and further, the entire issued,



subscribed and paid-up capital of the Transferor Company 3 is held by the Transferor Company 4 and its nominees. Thus, both the Transferor Company 2 and 3 are wholly owned subsidiaries, directly or indirectly of the Transferor company 4. In view of such position, upon the scheme becoming effective, all the shares of the Transferor Company 2 and 3 held by its members, shall, without any application, act, consideration, instrument or deed be deemed to have been automatically cancelled and be of no effect. As per clause 64(b) of Part- VI of the said scheme, the Transferee company shall, without any further application or deed, issue and allot to the entitled shareholders of the Transferor company 4 whose name appears on the register of members as on Record date 2, in proportion to their respective shareholding in the Transferor company 4, in aggregate, 3,43,00,000, 0.1% Optionally Convertible Redeemable Preference Shares of the Transferee Company of Rs. 10/- each at a premium of INR 90 Per Share.

- 14.** Before concluding this matter, it would be pertinent to mention that this matter was reserved on 20<sup>th</sup> April 2016 and was reopened as it was observed that the issue of Slump Sale u/s 2(42C) of the Income Tax Act, 1961 is involved in the said scheme of Amalgamation. Since no notice had been given to the Income Tax Authorities (in short, 'IT authority') as per circle jurisdiction of respective companies so far, the Registry as well as Companies were directed to issue notice to them. When matter was listed on 10<sup>th</sup> June

2017, Shri Arvind Pandian, learned Senior Counsel appearing for the petitioner companies submitted that the petitioner companies had already given private notices to the concerned IT authorities and no representation was received till date and he also placed on record the proof of service along with the copies of notices sent to the Income tax authorities as per circle jurisdiction of the respective companies.

15. Since IT Authorities have not made any representation till date and having perused the record submitted in this regard, this bench is of the opinion that Income Tax authorities have no any representation to make.

16. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of amalgamation will not cost any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the said Scheme is 1<sup>st</sup> January, 2015.

17. This Bench does not feel that any modification is required in the said Scheme as the same appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances have been made. Taking into consideration all the above, the Company



Petition is allowed and the scheme of arrangement and amalgamation annexed with the petition is hereby sanctioned which shall be binding on the Transferor Companies, the Transferee Company and all creditors.

- 18.** While approving the scheme as above, it is further clarified that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law. However, this order shall be subject to the confirmation of the order of concerned NCLT Bench within whose jurisdiction the registered office of the Transferor Company 1 is situated.
- 19.** The Transferee Company is also directed to discharge Rs. 124 Crores to the Transferor Company 2 as consideration of the Slump Sale by issuing commercial paper or any other instruments which is valid and not barred by any law as on the date of discharge.
- 20.** The Companies to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.
- 21.** The Companies do file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.

22. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 as has been notified on 14<sup>th</sup> December, 2016.
23. Accordingly, the Company Petition stands disposed of.



**K. Anantha Padmanabha Swamy, Member (J)**