

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

TP (HC)/48/CAA/2017  
TP (HC)/49/CAA/2017  
TP (HC)/50/CAA/2017  
TP (HC)/51/CAA/2017

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

M/s. DCB Power Ventures Limited

(Transferor Company 1)

And

Adwetha Cement Holdings Ltd.

(Transferor Company 2)

And

Dalmia Cement (Bharat) Limited

(Transferee Company 1)

And

Dalmia Power Limited

(Transferee Company 2)

Order delivered on: 16.10.2017

For the Petitioners: Shri P.H. Arvinth Pandian, Sr. Advocate

Shri Vishnu Mohan, Advocate

For the Objector : Shri Raj Jhabakh, 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)48&49&50&51/CAA/2017. The petitioner companies have prayed for the sanction to the Scheme of Arrangement & Amalgamation (hereinafter referred to as 'Scheme') between DCB Power Ventures Limited ("DCB Power" or "Transferor Company

1”), Adwetha Cement Holdings Limited (“ACHL” or “Transferor Company No. 2”), Dalmia Cement (Bharat) Limited (“DCBL” or “Transferee Company 1”), Dalmia Power Limited (“DPL” or “Transferee Company 2”).

2. The proposed Scheme envisages the operations in following sequential manner:-

- i. Transfer and vesting of the entire undertaking, business activities and operations pertaining to the four power plants - two located at Dalmiapuram, Tamil Nadu having power generation capacity of 27 MW and 18 MW, one located at Ariyalur, Tamil Nadu having power generation capacity of 27 MW respectively, and one located at Belgaum, Karnataka having power generation capacity of 27 MW of Transferor Company 1, by way of a slump sale, on a going concern and “as-is-where-is” basis, to Transferee Company 1;
- ii. Reduction of issued, subscribed and paid-up share capital of the Transferor Company 1, held by Transferee Company 1, in accordance with provisions of Sections 391 to 394 read with Sections 100 to 103 and other relevant provisions of the 1956 Act and/or the corresponding and other relevant provisions of 2013 Act, as applicable;
- iii. Amalgamation of Transferor Company 2 with Transferee Company 1; and

- iv. Amalgamation of Transferor Company 1 (post slump sale of its Power Undertakings and its Capital Reduction) with the Transferee Company 2.
3. 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.
4. The details of Share Capitals, equity shareholders, Secured & Unsecured Creditors of the Petitioner Companies are as under:

Particulars	Authorized Capital	I, S & paid-up Capital	Share holders	Secured Creditors	Unsecured Creditors
Transferor Company 1	Rs. 1,00,00,000	Rs. 50,00,000	8	4	Nil
Transferor Company 2	Rs. 10,00,000	Rs. 5,00,000	7	1	Nil
Transferee Company 1	Rs. 1373,00,00,000	Rs. 252,91,90,050	8	61	Rs. 743.19 Cr As per Balance Sheet ending 31.03.2016
Transferee Company 2	Rs. 2,00,00,000	Rs. 50,00,000	7	1	Nil

5. At the outset, it is necessary to know the details of the scheme which needs determination. The Transferor and Transferee Companies are Public Unlisted Companies and the Board of Directors of the Transferor Companies and the Transferee Companies in their

respective board resolutions dated 28<sup>th</sup> March 2016 have approved the said Scheme. The Transferor Company 1 is engaged in the business of operating power plants, Transferor Company 2 is in the business of providing management services to cement companies, Transferee Company 1 is engaged in the business of manufacturing and selling cement and maintaining & operating rail systems and solid waste management system, whereas the Transferee Company 2 is engaged in power related business. The Petitioner companies complied with all the orders passed by the Hon'ble Madras High Court and this Bench.

6. It is pertinent to mention that the requirement of taking out separate proceedings under Section 101 and other relevant provisions of the Companies Act, 1956 and/or the corresponding Sections of Companies Act, 2013 by the Transferor Company No. 1 has been dispensed with by the order of the Hon'ble Madras High Court in Comp. Appln. No. 639 of 2016. Thereafter, the Hon'ble Madras High Court took up the Company Petition and issued notice to statutory authorities and fixed the hearing on 05.12.2016. While things stood thus, the matters transferred to this Tribunal pursuant to the MCA notification dated 7<sup>th</sup> December, 2016. Hence, the Petitions have been transferred at the stage of final hearing.

7. Shri P.H. Arvindh Pandian, the learned senior counsel appearing for the petitioner companies 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 realization of potential of the business of DCB Power, ACHL, DCBL and DPL 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.
8. 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 no objection to the scheme except a few observations by the RD.

9. The Regional Director, Southern Region (In short, 'RD') in its report affidavit dated 22<sup>nd</sup> February, 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 8 of the report, the RD has observed that ROC, Chennai has referred a complaint of one Mr. Ramesh Shiledar making allegations against the ultimate holding company M/s. Dalmia Bharat Limited regarding purchase of its own shares for funds which were mobilized through the first and second Transferor Companies. It is also stated therein that MCA has ordered inspection of the ultimate holding company which is in progress but there is no complaint pending against the Petitioner companies. Further, in para 9 of the report it is pointed out that as per Clause 10 in Part III of the scheme of the Transferee Company No. 1 has stated that it shall discharge the slump sale consideration of Rs. 95 crores to the transferor company no. 1 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. It has been further stated that 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 no. 1, it has explained that it will discharge the consideration by issuing commercial papers and if not feasible, by any other valid instrument. The report further states that from the reply it is clear that the transferee company no. 1 has not decided on the nature of the instrument for settlement of the slump sale consideration. It has been stated that in the light of the proposal being adhoc in nature, this Tribunal may consider the issue and direct the transferee company no. 1 to give its firm proposal regarding the nature of instruments for paying the consideration of the slump sale to the transferor company no. 1.

10. With regard to the first observation made by the RD, the learned senior counsel for the Petitioner Companies submitted that Mr. Ramesh Shiledar has been making several frivolous and baseless allegations against the Transferee Company No. 1 as well as the holding company i.e. Dalmia Bharat Limited, and that the shareholding of the said person is miniscule i.e. 10 shares. Further it was submitted that the inspection ordered on Dalmia Bharat Limited has no bearing on the present

scheme since it is not party to the scheme and it has been clearly stated by RD that no complaint is pending against the Petitioner companies.

11. The learned senior counsel submitted in respect of the second observation that the present scheme envisages slump sale of power undertakings of Transferor Company No. 1 on an 'as is where is' basis to the Transferee Company No. 1 for a consideration of Rs. 95 crore by issue of commercial paper. The consideration thus received is accounted for in terms of Clauses 12 & 13 in Part III of the scheme in the books of both the aforesaid companies with effect from the Appointed Date.
12. The Learned Senior Counsel further submitted that for completion of the slump sale transaction, consideration is necessarily required to be paid by the Transferee company no. 1 to the Transferor company no. 1. 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 No.1 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.

13. The Official Liquidator (in short OL) in its Comprehensive Report dated 12<sup>th</sup> April, 2017 submitted that M/s G. Mukunthan & Co. Chartered Accountants (**Auditor**) appointed on the order of the Hon'ble Madras High Court in C.P. Nos. 365 and 366 of 2017 has scrutinized the books and accounts of the Transferor Company No. 1 & 2. The Auditor has observed that the said Transferor Companies have maintained proper books of accounts in accordance with normally accepted accounting principles and that all entries have been made in the statutory registers in accordance with the requirements of the Companies Act 1956 and also that the affairs of the Transferor Companies have not been conducted in a manner prejudicial to the interest of its members or to public interest. The OL has also mentioned in para 8 that notice from Mr. Raj Kumar Jhabakh, Advocate vide letter dated 28<sup>th</sup> February, 2016 was received on 2<sup>nd</sup> March, 2017 stating that M/s. Paharpur Cooling Towers Limited have raised objection to the Scheme on the ground that a winding up petition filed by them is pending against Transferee Company No. 1 and Transferee Company No. 1 is obligated to pay outstanding dues to a tune of Rs. 1,46,42,788/- to M/s. Paharpur Cooling Towers Limited. The OL has also stated that a reply notice has been received from Mr.

Vishnu Mohan, counsel for Transferee Company No. 1 dated 3<sup>rd</sup> March, 2017 received on 6<sup>th</sup> March, 2017.

14. The OL further submits that as per clause 4(h) of Part III of the proposed scheme the interests of all the employees in the services of the Transferor Companies are safeguarded. As per Clause 33 of Part V of the Scheme, the Transferee Company No. 1 shall pay to the equity shareholders of Transferor Company No.2 INR 10/- for every shares held by them in Transferor Company No.2 as on the Record Date by way of bankers cheques. Further as per Clause 52(a) of Part V, upon reduction of issued, subscribed and paid-up share capital of the Transferor Company No. 1 will be held by Transferee Company No. 2 and Transferor Company No.1 will be a wholly owned subsidiary of Transferee Company No. 2 and in consideration of the transfer and vesting of the Amalgamation undertaking 2 to and with DPL, no shares of DPL shall be required to be issued and allotted by it to shareholders of Transferor Company No.1.
15. Before concluding with the matter, it is pertinent to mention that M/s. Paharpur Cooling Towers (**Objector**) wherein M/s. Paharpur Cooling Towers Limited placed their objections before this Tribunal on 05.07.2017. The objection of M/s. Paharpur Cooling Towers was on

the basis of pending proceedings in C.P. No. 105 of 2016 initially filed before the Hon'ble Madras High Court which was subsequently transferred to this Tribunal pursuant to the MCA notification dated 7<sup>th</sup> December, 2016.

16. Shri Raj Jhabakh, learned counsel appearing for the objector submitted that in the aforesaid petition, the objector has raised a claim of Rs. 1,46,42,788/- along with interest totally amounting to Rs. 2,02,26,781.21/-. It was further submitted by the objector that the Scheme cannot be sanctioned since mandatory provisions of law have not been complied with, and DCBL has not disclosed the pendency of the pending winding up proceeding. The learned counsel for the objector also submitted that the reports of the meeting of Secured creditors was not served upon the objector and also that the company failed to give list of unsecured creditors and failed to convene or seek dispensation of meetings of unsecured creditors. It was further submitted by the learned counsel for the objector that the pendency of winding up proceedings was not disclosed to the secured creditors during the meeting for consideration of the Scheme. The objector also drew attention of this Bench to paragraph 48 of the petition filed by DCBL wherein it has been stated that unsecured creditors are non-

material and cyclical in nature and their liabilities shall be continued to be paid off by Transferee Company No. 1 in the normal course of business. The learned counsel for the objector also relied on the decisions in *Miheer Mafatlal v. Mafatlal Industries [1996] 4 Comp LJ 124 (SC)* stating that the present proceedings are in violation of the observations therein.

17. With regard to the above objection, Shri P.H. Arvinth Pandian, learned Senior Counsel for the Petitioner Companies vehemently opposed the objections raised by the objector and submitted that the objections can be raised by persons having outstanding debt not less than 5% of the total outstanding debt as per the last audited financials and even if assuming hypothetically that the objector is an unsecured creditor, his claim is only about Rs. 1.46 Crores, which is much lesser than the total outstanding debt as per the last audited financials of the Transferee Company 1. Therefore, the objector cannot even raise an objection to the scheme in terms of section 230(4) of the Companies Act 2013. He also submitted that the claim of the objector does not deserve to be entertained since the principal amount claimed is about Rs. 1.46 crores and the same does not have any bearing on the decision of the secured

creditors who are much larger in number and the claim does not even constitute 0.025% of the total outstanding debt of the company

18. He further submitted that the winding up petition filed by the objector was rejected by this Tribunal vide its order dated 06.07.2017, thus the objector has no *locus standi* to maintain the present objection as the objector is neither a shareholder nor a creditor and furthermore, the objector's claim has been rejected by this Tribunal. He further submitted that the present objection is frivolous and solely aimed at arm-twisting the Transferee Company 1 to make payments which are not legally due. He further submitted that the present objection is not maintainable both in eyes of law or on facts and the objector is adamant on forum shopping and finally prayed to reject the objection raised by the objector and sanction the proposed scheme.

19. Having perused the record and hearing submissions of the learned counsel for the petitioner and objector, I am of the opinion that the present objection raised by M/s. Paharpur Cooling Towers Limited is not maintainable in facts and circumstances of the present case. As per the latest audited financials of the company, the company has sufficient assets to meet its liability. Also, the objector has already moved a winding up petition before the Hon'ble Madras High Court for the

same subject-matter. Moreover, the winding up/insolvency petition filed before the NCLT, Chennai Bench has been rejected. In the circumstances, the objections raised by the objector are rejected.

20. 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 prejudicial 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 statutory authorities have also submitted that the petition may be decided appropriately by this Tribunal.
21. 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 considerations 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 shareholders and creditors.

22. 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 permission that may have to be obtained or even compliances that may have to be made as per the mandate of law.
23. The Transferee Company No. 1 is also directed to discharge Rs. 95 crores to the Transferor Company No. 1 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.
24. The Transferor Companies shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies, Chennai.
25. Upon receiving the certified copy of this order, the RoC, Chennai is directed to place all documents relating to the Transferor Companies with that of the Transferee Company and the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company

26. 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.
27. The Companies do file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
28. 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 14th December 2016.
29. Accordingly, the Company Petition nos. TP(HC)48&49&50&51/CAA/2017 disposed of and the scheme of Arrangement & Amalgamation stands sanctioned.

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

RLS