

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

Argument heard on 04.04.2017

Order passed on 13.04.2017

TP (HC)/CAA/4/2017

[Connected with CP No. 169 of 2015 and CA No. 95 to 97 of 2015]

AND

TP (HC)/CAA/5/2017

[Connected with CP No. 170 of 2015 and CA No. 98 & 99 of 2015]

AND

TP (HC)/CAA/6/2017

[Connected with CP No. 171 of 2015 and CA No. 93 & 94 of 2015]

**In the matter of Sections 391 to 394 of the Companies Act, 1956 and the
Corresponding Sections 230 to 232 of the Companies Act, 2013**

And

In the matter of Scheme of Amalgamation of

Trinetra Cement Limited

(1st Transferor Company)

And

Trishul Concrete Products Limited

(2nd Transferor Company)

With

The India Cements Limited

(Transferee Company)

Petitioners represented by: Counsel P. S. Raman

Objectors represented by: Counsel Kapil Rustagi

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ANANTHA PADMANABHA SWAMY AND CH. MOHD SHARIEF TARIQ

MEMBERS (JUDICIAL)

ORDER

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL): ORAL

1. Under consideration are three Company Petitions numbered C.P. 169/2015, C.P. 170/2015 and C.P. 171/2015, which have been transferred from the Hon'ble Madras High Court to this Tribunal and renumbered as TP (HC)/CAA/4/2017, TP(HC)/CAA/5/2017 and TP(HC)/CAA/6/2017

respectively. The Petitioner Companies have prayed for the sanction to the Scheme of Amalgamation (hereinafter referred to as '**Scheme**'). As per the Scheme, Trinetra Cement Limited (hereinafter referred as '**1st Transferor Company**') and Trishul Concrete Products Limited (hereinafter referred as '**2nd Transferor Company**') will get merged **with** The India Cements Limited (hereinafter referred as '**Transferee Company**') as going concern. All the three Companies are having their registered offices at Dhun Building, 827, Anna Salai, Chennai- 600002.

2. At the outset, it would be apposite to take stock of the background facts under which the said Scheme of Amalgamation needs determination. All the statutory requirements under law have been fulfilled by the Petitioner Companies and the Hon'ble High Court vide order dated 02.02.2015 in CA No. 95 of 2015 directed to hold the meeting of equity shareholders of the 1st Transferor Company, and in CA No. 96 of 2014 & CA No. 97 of 2015, dispensed with the convening and conducting the meeting of the preference shareholders holding 9% Non-Convertible Cumulative Redeemable Preference Shares and 9% Non-Convertible Non-Cumulative Redeemable Preference Shares of the 1st Transferor Company. In CA Nos. 98 and 99 of 2015, the Hon'ble High Court vide order dated 02.02.2015 dispensed with convening and conducting the meeting of equity shareholders and debenture holders holding Zero% Unsecured Convertible Debentures of the 2nd Transferor Company. The Hon'ble High Court vide order dated 02.02.2015 in CA No. 93 of 2015 directed to convene the meeting of equity shareholders of the Transferee Company. Pursuant to the orders of the Hon'ble High Court,

the Petitioner Companies issued notices to the equity shareholders and other stakeholders and made publications in two newspapers. Accordingly, the petitioner companies complied with all the directions given by the Hon'ble High Court.

3. Before we proceed further, inter alia, it is necessary to know the salient features of the said scheme of Amalgamation which are summarised as follows:-

Part- A deals with definitions and share capitals including Appointed and Effective Date.

Part- B deals with Amalgamation of companies including transfer of assets, debts & liabilities, conversion of debentures issued by the second transferor company into equity shares, dissolution of transferor companies, etc.

Part- C deals with general terms and conditions applicable to the entire scheme including scheme conditional on approval.

4. The learned Counsel for the petitioner companies submits that the Petitioner Companies are engaged in the business of Production, manufacturing, selling and dealing in cement, limestone, ready-mix concrete, bricks, gypsum, asbestos, paints, fixing materials, artificial stones etc.
5. The Counsel for the Petitioner Companies further submits that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation in their board meetings by resolution dated 26.02.2014 and 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. The learned Counsel for the petitioner companies further submits that rational of the said Scheme of Amalgamation is that the Transferor and Transferee Companies desire to carry on business as a composite unit. The Amalgamation of the companies will result in a strong and effective entity capable of carrying on the business activities more efficiently and offering better services to all the stakeholders. The amalgamation will ensure greater operational synergy and expansion of the trading activities, besides saving overheads, administrative expenses, and rationalisation of operations and optimum utilisation of financial, managerial and other resources and pave way for further growth. Further, all the assets and liabilities of both the Transferor companies shall be transferred in favour and vested in the Transferee Company. Also, all the employees of the Transferor companies shall become the employees of the Transferee Company immediately before the Effective Date.
7. To dispose of this petition as per the provisions of the company laws, the notices were issued to the statutory authorities as per the procedure prescribed. However, there were no objection to the scheme under reference.
8. The Counsel for the Petitioner Companies also submitted that the draft scheme was filed with the BSE by both the Transferor Company and the Transferee Company as the BSE was chosen by them as the designated stock exchange and the same was forwarded to the SEBI by BSE for its comment. The SEBI vide its letter dated 26.9.2014 addressed to BSE, instructed the Transferee company to delete the "Part-C" dealing with arrangement between Transferee company and its shareholders from the draft scheme. The

Transferor company and the Transferee company thereafter vide its letter dated 26.9.2014 addressed to the BSE agreed to the modifications suggested by SEBI and deleted Part-C i.e. the Clause 16 of the draft scheme and Part-D of the draft scheme was re-classified as Part-C and the draft scheme was re-numbered. Accordingly, the scheme of amalgamation was revised and approved by the Board of Directors of the Petitioner companies at a meeting held on 26.5.2014.

9. However, the objections have been raised by the Objectors, who are a group of minority shareholder of the Transferor Company, a listed subsidiary of the Transferee Company. Shri Kapil Rustagi, the Counsel for the Objectors submits that after detailed research, analysis and having a close scrutiny of the said scheme, valuation report, fairness report and other financial documents of the Transferor Company, they have arrived at conclusion that the objectives of the said scheme are misleading. He further submits that there are apparent manipulation in the valuation report prepared by RGN Price & Co., Chartered Accountants and fairness opinion report prepared and opined by M/s Real Growth Securities Pvt. Ltd. Moreover, the valuation report, fairness report, holding of board meeting etc., all were done on a single day and therefore prayed that the above Company Petitions be dismissed and render justice.
10. With regard to the objections raised by the Objectors, Shri P. S. Raman, the Counsel for the Petitioner Companies submits that the objections are totally mischievous, malafide and not sustainable and out to be rejected. He submits that the objections have been filed with the sole objective and motto of making

personal gains through unjust means by protracting and denying the scheme. Neither the objectors nor their family members attended the meeting either in person or through proxy to vote against the resolution passed at the meeting convened on the order of the Hon'ble Madras High Court. Also, 93.80% of the non-promoter shareholders voted in favour of the resolution and the percentage of shareholding held by the Objectors and their family members comprised only 0.70% of the total paid up equity share capital of the company. Moreover, the contentions, i.e. 'the proposed scheme is nothing but a sham undertaken by the majority shareholders to play fraud on the minority for the sole financial benefit of the promoters' as have been made by the objectors are ex facie without substance or any basis and is belied by the conduct of the Objectors themselves who have increased their shareholding almost four fold since voting. In relation to the objection that the valuation report, fairness report, holding of board meeting etc., being done on a single day, the counsel referred the landmark Judgement of the Apex Court given in **Miheer H. Mafatlal vs. Mafatlal Industries Ltd.**, reported in AIR 1997 SC 506 wherein it was held that there is nothing wrong if all these were carried out on a single day.

11. The Counsel for the Petitioner Companies have referred two more cases in support of his arguments i.e. **Shailesh P. Mehta Vs. Reliance Petroleum Ltd.**, reported in (2010) 154 Comp Cas 303 and **Reliance Communications Ltd., In Re** reported in **Re (2010) 154 Comp Cas 286 (Guj)** wherein it was held *that the possibility of violation of accounting standards cannot be the basis for straightaway disapproving a scheme of arrangement. Moreover, in*

the said matters, it was found that the objector was not present at the meeting when the scheme was considered and approved and therefore, to raise any such objection at the court stage was an afterthought. The approval was by an overwhelming majority of shareholders. The objection was rejected and the scheme approved.

12. In the matter in hand, also the Objectors did not participate in the meeting when the scheme was considered and approved, so to raise any such objection at the court stage is afterthought, and do not merit consideration, because the commercial decisions of the entities cannot be interfered by the court. Therefore, the objections of the objectors stand rejected, being devoid of merits.
13. Further perusal of the scheme shows that the accounting treatment seems to be 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 it will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the said Scheme is 1st January, 2014.
14. We do not feel that any modification is required in the said Scheme of amalgamation 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 fulfilled. Taking into consideration all the above, the Company Petitions are allowed and the scheme of amalgamation annexed

with the petition is hereby sanctioned which shall be binding on the Transferor Companies, the Transferee Company and secured & unsecured creditors both.

15. While approving the scheme as above, we further clarify 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.
16. The Petitioner 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.
17. The Petitioner Companies do file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
18. 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.

(ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)