

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD.**

**C.P. No.396/2016
In CA. No.1577 of 2016
CP No.397/2016
In CA No.1578 of 2016**

Date of Order: 24.03.2017

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

**IN THE MATTER OF THE COMPANIES ACT, 1956
AND THE COMPANIES ACT, 2013**

AND

**IN THE MATTER OF SECTIONS 391 TO 394 AND OTHER
APPLICABLE PROVISIONS OF THE COMPANIES ACT, 1956 AND
THE COMPANIES ACT, 2013.**

AND

**IN THE MATTER OF THE SCHEME OF AMALGAMATION AND
ARRANGEMENT OF
GULBARGA POWER PRIVATE LIMITED ("Transferor Company")
WITH
KALBURGI CEMENT PRIVATE LIMITED (formerly known as Vicat
Sagar Cement Private Limited) ("Transferee Company")
AND THEIR RESPECTIVE
SHAREHOLDERS & CREDITORS**

BETWEEN:

**GULBARGA POWER PRIVATE LIMITED,
Reliance Majestic,
Road No.10, Banjara Hills,
Hyderabad – 500 034
Telangana State**

Represented by its Authorised Signatory,
Bertrand Desire Henri Lengart,
S/o Henri Lengart, Aged 45 years,
Resident of Villa No.26,
Rajpuspa Open Skies,
Kokapet, Rajendra Nagar,
Hyderabad – 500 075,

....Petitioner/Transferor Company

AND



KALBURGI CEMENT PRIVATE LIMITED

Reliance Majestic,
Road No.10, Banjara Hills,
Hyderabad – 500 034
Telangana State

Represented by its Authorized Signatory
Bertrand Desilre Henri Lengart,
S/o Henri Lengart, Aged 45 years,
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Kokapet, Rajender Nagar,
Hyderabad – 500 075,
Telangana State.

....Petitioner/Transferee Company

Counsel for the Petitioner:

Mr. Pushyam Kiran
Mr. Rajesh Maddy

Counsel for Regional Director:

Mr. Appa Rao, CGSC

Counsel for Official Liquidator:

Official Liquidator

CORAM:

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Hon'ble Mr. Rajeswara Rao Vittalana, Member (Judicial)

ORDER

(As per Ravikumar Duraisamy, Member (T))



1. This Petition was filed under Sections 391 & 394 of the Companies Act, 1956 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh seeking for sanction of the Scheme of Amalgamation between the Transferor Company and Transferee Company so as to be binding on all the shareholders and creditors of the Petitioner Companies.
2. Subsequent to the transfer of the case from the Hon'ble High Court of Judicature at Hyderabad, the case was posted for hearing on 02.02.2017, 03.03.2017 and on 10.03.2017, the matter was reserved for Orders.
3. The Transferor Company was incorporated under the provisions of the Companies Act, 1956 on 15.12.2010 as a Private Limited Company, in

the name and style of Gulbarga Power Private Limited. The Registered Office of the Petitioner company on incorporation was situated at 8-2-472/B/2, Road No.1, Banjara Hills, Hyderabad – 500 034. The Registered office of the Petitioner Company was shifted to its current registered office address that is Reliance Majestic, Road, No.10, Banjara Hills, Hyderabad, Telangana – 500 024, India on 01.05.2012.

4. The authorised Share Capital of the Transferor Company as per the last audited balance sheet as on 31st December, 2015 and as on date is Rs. 61,20,00,000/- (Rupees sixty one crore and twenty lakhs) only divided into 6,12,00,000 (Six Crores and Twelve Lakhs) Equity Shares of Rs. 10 each. The issued, subscribed and paid up share capital of the Transferor Company is Rs. 61,14,86,550/- (Rupees Sixty one crore fourteen lakhs eighty six thousand five hundred and fifty) only divided into 6,11,48,655 Equity Shares of Rs. 10 each.



The main object of the Transferor Company is to carry on the business of development, generation, production, purchase, accumulation, transmission, distribution, sale and supply of electric power energy to utilities, government and commercial customers, etc.

5. The Transferee Company was incorporated under the provisions of the Companies Act of 1956 on 12.08.2008 as a private limited company, in the name and style of Vicat Sagar Cement Private Limited. The name of the Transferee Company was changed to Kalburgi Cement Private Limited on 12.03.2015 by following the applicable provisions of the Companies Act, 2013.
6. The Authorized Share Capital of the Transferee Company as per the last audited balance sheet as on 31.12.2015 and as on date is Rs. 6,10,00,00,000 (Rupees Six Hundred and Ten Crores) only divided into 61,00,00,000 (Sixty One Crore) Equity shares of Rs.10 each. The issued, subscribed and paid up share capital of the Transferee Company is Rs. 5,45,91,97,180 divided into 54,59,19,718 Equity Shares of Rs. 10 each.

The main objects of the Transferee Company are to produce, manufacture, prepare, process, purchase, transport, import, export, sell and generally to deal in all kinds of cement of any description, limestone, clay, gypsum, clinker, and/or by-products, etc.

7. The scheme of amalgamation is entered for following reasons:

- a. The Transferor Company is a subsidiary of the Transferee Company and is engaged solely and exclusively in the production and supply of power to the Transferee Company's cement plants located in Chatrasala Village, Chincholi Taluk, Gulbarga District, Karnataka pursuant to two agreements both dated 29 June, 2011 entered into between the Transferor Company and the Transferee Company.
- b. The Scheme will result in consolidation of the business for holding investments in the shares of the Companies in a single entity and would result in reduction of overheads, administrative, managerial and other expenditure and bring out operational rationalization, organizational efficiency and optimal utilization of various resources.
- c. The scheme will lead to efficient administration and operation of the Companies and also prevent cost duplication thus resulting in higher profits and increased value of shares of the shareholders.
- d. The Scheme will enable maximum utilization of resources of the Companies as it will significantly reduce the maintenance and operation costs of the Companies.
- e. The scheme will increase the bargaining power of the Resulting Company for the purpose of obtaining loans or arranging for finances, as an increase in the total value of the net assets of Resulting Company will enable the Resulting Company to qualify for better terms.
- f. The Scheme will result in the enhancement of shareholders' value and integration of capabilities. The Scheme would also benefit all stake-holders including the shareholders/employees of both Companies.



8. It is submitted that the proposed Scheme of Amalgamation would not affect the employees of the Transferee Company and the employees of the Transferor Company in any manner and they would continue to enjoy the same benefits as they used to before the proposed amalgamation. In addition, the Scheme is in the interest of both the Transferee Company and the Transferor Company, their respective shareholders, employees and all concerned.
9. Pursuant to the directions of the Hon'ble High Court, notices were issued to the concerned authorities and notice was published in "Business Standard" and "Andhra Bhoomi" Newspaper on 15.12.2016. In response to the above notice published in the Newspapers the Petitioner has confirmed vide Affidavit, dated 01.02.2017 that no complaint/objection is received against the Scheme
10. The Official Liquidator, submitted a report dated 26.12.2016 wherein it is stated that, based on the information made available by the Petitioner Companies, it appears that the affairs of the Petitioner Companies have not been conducted in a manner prejudicial to the interest of its members or to public.
11. The Regional Director, MCA vide his report dated 5th January, 2017 while submitting the report in response to the notice issued by the Hon'ble High Court of Judicature at Hyderabad, made a valuable observation in response to clause 3.5.2 of the Scheme of Amalgamation as the Scheme shall have to protect the employees of the Transferor company and their interest. In response to the above observation, the transferor company vide reply dated 18.01.2017 submitted that the interest of employees of the Transferor Company sufficiently protected by the clause 3.5.1 of the scheme and the terms of which are not less favourable than those applicable to them as on the date in the scheme becomes effective.



We have considered the above reply of the Transferor Company and would like to reiterate in the interest of the employees of both

Transferor Company and Transferee company that the employees interest are thereby sufficiently protected and should not be put to any less favourable condition than the one existed as on the date of sanction of the scheme.

12. During the hearing held on 02.02.2017, the Bench after perusal of the records noticed that the turnover of both the Transferor Company and Transferee Company is more than Rs. 100 Crores and Rs. 800 Crores respectively. So, a positive confirmation from the Department of Income Tax, Central Excise, Customs, Service Tax and Sales Tax was felt necessary. Therefore the Bench ordered special notice to these Tax Authorities, and directed the Registry of NCLT to issue notice to these departments.

In addition to the above, the Bench also thought it fit to get the information/comments of Karnataka State Electricity Regulatory Authority, Sectoral Regulator for the Transferor Company viz., Gulbarga Power Private Limited

Further as requested by the learned counsel the Bench also permitted the Petitioner to take personal notice directly to these departments to reduce the delay in getting the information/confirmation.



13. The Transferor Company, vide Affidavit dated 28.02.2017, has submitted no objection certificate received from the following Tax Authorities:

- a. Letter dated 20.02.2017 from Income Tax Department.
- b. Letter dated 27.02.2017 from Central Excise Department
- c. Commercial Tax Department, Government of Karnataka letter dated 28.02.2017

14. The Commissioner of Customs, Vijayawada, vide letter dated 23.02.2017, informed that Rs.75,97,071/- and Rs.51,221,014/- are confirmed arrears pending as on date towards redemption fine and

mandatory penalty and the matter is pending before Hon'ble CESTAT, Regional Bench, Hyderabad.

In response to approval from Power Sectoral Regulator, the transferor company vide its Affidavit dated 08.03.2017 submitted a no objection certificate issued by Gulbarga Electricity Supply Company Limited (GESCOM).

15. Upon perusal of the documents it is observed that both the companies have foreign entities as their shareholders especially Transferee Company's entire shareholding is held by only two foreign entities as per the Auditors Financial Statement dt.31.12.2015. However, the scheme submitted do not have any provision relating to approvals received from Banking Regulator, Reserve Bank of India. Therefore, the scheme is subject to necessary approval from RBI/complying with applicable provisions of the Foreign Exchange Management Act, 1999.

16. The Bench has considered the entire material available on record with regard to the proposed Scheme of Amalgamation and considered particularly, the Terms and Conditions with regard to legal proceedings, Employees, dissolution of the Transferor Company, the issue of Shares, Accounting treatment, etc.



17. Having regard to the above material / reports, this Tribunal is of the opinion that the proposed Scheme of Amalgamation is in conformity with the provisions of the Act and the scheme does not affect the interest of the stake holders and the public interest and is intended to further develop the business interests of Transferor and Transferee Companies for the maximum utilisation of available resources. Therefore the Scheme of Amalgamation approved by Board of Directors of the Transferor and Transferee Companies is hereby sanctioned with effect from the appointed date i.e. 1.4.2016.

18. The Transferor Company is directed to file the certified copy of this order with the Registrar of Companies for the State of Telangana and the State of Andhra Pradesh within 30 days from the date of receipt of a copy of this order.

19. The Petitioners are directed to issue newspaper publication with respect to approval of scheme of amalgamation, in the same newspaper in which previous publications were issued. The same is to ensure transparency/dissemination of complete information to all stake holders about the approval granted by Tribunal for the Scheme as proposed. The petitioners are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Amalgamation under the Provisions of the Act.

The Company Petition is allowed accordingly as prayed for.

Sd/-

Sd/-

RAVIKUMAR DURAISAMY

RAJESWARA RAO VITTANALA

MEMBER (T)

MEMBER (J)



V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68