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IN THE NATIONAL COMPANY LAW TRIBUNAL
AT JAIPUR

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

CA (CAA) No. 09/230-232/JPR/2023

Section: Section 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

IN THE MATTER OF SCHEME OF AMALGAMATION OF

**M/S SHREE CEMENT NORTH PRIVATE LIMITED
(Transferor Company/Applicant Company No. 1)**

AND

**M/S SHREE CEMENT LIMITED
(Transferee Company/Applicant Company No. 2/)**

MEMO OF PARTIES

M/S SHREE CEMENT NORTH PVT. LTD.

CIN: U26940RJ2021PTC075323

R/o: Bangur Nagar, Beawar-
305901 (Rajasthan)

**...Applicant Company No. 1/
Transferor Company**

AND

M/S SHREE CEMENT LTD.

CIN: L26943RJ1979PLC001935

R/o: Bangur Nagar, Beawar-
305901 (Rajasthan)

**...Applicant Company No. 2/
Transferee Company**

COUNSEL FOR THE APPLICANT(S): Sandeep Taneja, Adv.

Order Pronounced on: 15.12.2023

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ORDER**Per: Shri Rajeev Mehrora, Technical Member**

1. This application is jointly filed by the Applicant Companies herein, namely *M/s Shree Cement North Pvt. Ltd.* ('Transferor Company'/ 'Applicant Company No. 1) and *M/s Shree Cement Limited* ('Transferee Company'/ 'Applicant Company No. 2) under Sections 230-232 of the Companies Act, 2013 read with Rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ('Rules') in relation to the Scheme of Compromise and/or Arrangement by way of amalgamation ('Scheme') proposed between *M/s Shree Cement North Pvt. Ltd.* ('Transferor Company'/ 'Applicant Company No. 1) and *M/s Shree Cement Limited* ('Transferee Company'/ 'Applicant Company No. 2). The said Scheme is annexed with the Application.
2. The Applicant Company has preferred the present Application in effect for the following purpose as evident interalia from reliefs sought for which are as follows:
 - a. *That the convening and holding of the meeting of the equity shareholders of the Applicant Company No. 1 to consider, and if thought fit, approve the Scheme, be dispensed with, in view of the averments made in paragraph 5.9 of the company application;*
 - b. *That the convening and holding of the meeting of the equity shareholders of the Applicant Company No. 2 to consider, and if thought fit, approve the Scheme, be dispensed with, in view of the averments made in paragraph 5.10 to 5.14 of the company application;*
 - c. *That the convening and holding of the meeting of the preference shareholders of the Applicant Company No. 1 and Applicant*

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Company is not required in view of the averments made in paragraph 5.15 of the company application, stating that the Applicant Company No. 1 and the Applicant Company No. 2 do not have any preference shareholders;

- d. That the convening and holding of the meeting of the secured creditors of the Applicant Company No. 1 to consider, and if thought fit, approve the Scheme, be dispensed with, in view of the averments made in paragraph 5.16 to 5.17 of the company application;*
- e. That the convening and holding of the meeting of the secured creditors of the Applicant Company No. 2 to consider, and if thought fit, approve the Scheme, be dispensed with, in view of the averments made in paragraph 5.18 to 5.21 of the company application;*
- f. That the convening and holding of the meeting of the unsecured creditors of the Applicant Company No. 1 to consider, and if thought fit, approve the Scheme, be dispensed with, in view of the averments made in paragraph 5.22 of the company application;*
- g. That the convening and holding of the meeting of the unsecured creditors of the Applicant Company No. 2 to consider, and if thought fit, approve the Scheme, be dispensed with, in view of the averments made in paragraph 5.23 to 5.26 of the company application;*
- h. That this Hon'ble Tribunal be pleased to direct the Applicant company to serve notices upon: i) SEBI; ii) BSE and NSE; iii) the Central Government through the Regional Director, North Western Region, Ministry of Corporate Affairs; iv) the Registrar of Companies and Official Liquidator at Jaipur; v) the Income Tax Authority concerned within whose jurisdiction the assessment of the Applicant companies are made; and vi) any sectoral regulator, if applicable, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016; and*
- i. Any other reliefs that this Hon'ble Tribunal may consider fit and proper.*

3. An affidavit in support of the Petition sworn for and on behalf of the Applicant Companies by one *Mr. Shyam Sunder Khandelwal* has been filed, being the authorized representative of Transferor Company and Company Secretary of Transferee Company along with the Board Resolution dated

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07.11.2023 duly authorizing. Counsel for the Applicant has drawn the attention of this Tribunal to the averments made in the application as well as the set of documents annexed therewith. It is further represented that the Application filed by the Applicant is maintainable in view of Rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and it is also represented that the Registered Office of all the Applicant Company is situated within the territorial jurisdiction of Jaipur Bench of this Tribunal and falls within the purview of Registrar of Companies, Jaipur.

4. It has been submitted that the Applicant Company No. 1/Transferor Company namely, *M/s Shree Cement North Pvt. Ltd.* is a Private Limited company incorporated under the provisions of Companies Act, 2013 on 11.06.2021. The Applicant Company No. 2/ Transferee Company namely, *M/s Shree Cement Limited* was incorporated under the provisions of the Companies Act, 2013 on 25.10.1979.
5. Upon perusal of the Application, the details of the capital structure of the Applicant Company as on 31.03.2023 as reflected in the Audited Balance Sheet is tabulated below for reference:

Sr. No	Name of the Company	Authorized Share Capital	Issued, Subscribed and Fully paid-up Share Capital	Issued, Subscribed and partly paid-up Share Capital
1.	<i>M/s Shree Cement North Pvt. Ltd. (Transferor Company)</i>	Rs. 1000,00,00,000/- divided into 100,00,00,000	Rs. 110,00,00,000/- divided into 11,00,00,000 Equity Shares of INR 10/-each	Rs. 53,90,00,000/- divided into 10,00,00,000 equity shares of INR 10/-

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		Equity Shares of INR 10/-each		each, INR 5.39 paid up.
2.	<i>M/s Shree Cement Limited (Transferee Company)</i>	Rs.60,00,00,000/- divided into 6,00,00,000 Equity Shares of INR 10/-each Rs.15,00,00,000/- divided into 15,00,000 preference shares of INR 100/- each	Rs. 36,08,07,480/- divided into 3,60,80,748 Equity Shares of INR 10/- each	-

6. The Applicant Companies have also filed respective Memorandum and Articles of Association of the Companies, inter alia delineating their object clauses annexed with the Petition as Annexure A & D of the Application. The Applicant Companies have filed Copy of the Audited Financial Statements for the year ending 31.03.2023 and Copy of the Unaudited Financials for the year ending 30.09.2023.
7. The Board of Directors of the Applicant Companies have approved the Scheme of Amalgamation; copy of the Board Resolutions dated 07.11.2023 have been annexed as Annexure- H (Colly). It has been mentioned that the Scheme does not involve any reduction in Share Capital or Corporate Debt Restructuring. Further, no proceedings against the Applicant Company under Sections 210, 212, 213, 221 & 240 of the Companies Act, 2013 are pending against the Applicant Company.

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8. In relation to the Applicant Companies, the details of their Shareholders and Secured and Unsecured Creditors are tabulated as below:

	<i>Transferor Company/ Applicant Company 1</i>	<i>Transferee Company/ Applicant Company 2</i>
<i>Equity Shareholders</i>	2	27,738
<i>Secured Creditors</i>	1	26
<i>Unsecured Creditors</i>	19	79,149

9. In relation to the Transferor Company, it is represented that the Company had 2 Equity Shareholders and no Preferential Shareholders as on 07.11.2023. Also, the Company has 1 Secured Creditor as on 31.10.2023 whereas the count of Unsecured Creditors lies at 19 as on 31.10.2023. Similarly, in relation to the Transferee Company, it is represented that the company had 27,738 Equity Shareholders and no Preferential Shareholders as on 30.09.2023. Also, the Company has 26 Secured Creditor as on 31.10.2023 whereas the count of Unsecured Creditors lies at 79,149 as on 31.10.2023. The same is tabulated as below:
10. The Applicant Company has complied with the proviso to Section 230(7) and Section 232(3) by filing the certificate of the company's auditor in relation to compliance with the Accounting Standards under Section 133 of the Companies Act, 2013 dated 15.11.2023. Further, as per the record, the Applicant company No. 1 is a wholly owned subsidiary of the Applicant Company No. 2 and pursuant to the scheme no consideration is proposed to

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issued, hence, the requirement of obtaining a valuation report is not applicable in this case.

11. It has been submitted that the Transferor Company is a wholly owned subsidiary of the Transferee Company. Thus, the entire economic interest of the Transferor Company is held by the Transferee Company. Hence, upon the scheme becoming effective, interalia, in recognition of the fact that the act prohibits a company from holding its own shares, no shares of the Transferee Company shall be issued and allotted in lieu or exchange of holding of the Transferee Company in the Transferor Company. It has also been submitted that pursuant to the scheme, all the assets and liabilities of the transferor company would be transferred to the Transferee Company in the manner provided in the scheme. As on date, the assets of the Transferee Company exceed its liabilities and would be sufficient to discharge the liabilities in the ordinary course of business.
12. The Applicant has relied on the Judgment of the Hon'ble High Court of Judicature at Bombay in the case of *Mahaamba Investments Limited vs. IDI Limited (2001) 105 CompCas 16* and *Bon Limited dated 12.03.2010 in Company Scheme Petition No. 123 of 2010* to state that the consent affidavits are not required in the present matter. The *Hon'ble NCLAT, Mumbai Bench* has in order dated 04.09.2017 in *Company Scheme Application No. 243 of 2017* observed that when Transferor Company are wholly owned subsidiary of Transferee Company and the financial position of Transferee Company

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is highly positive and merger is not affecting the rights of the Applicant shareholders or creditors, allowing Transferee Company to obtain approval of the scheme without taking shareholders approval is permissible under law and held that Transferee Company need not hold any meeting either with its creditors or its members.

13. It has been submitted that in view of Regulation 37(6) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with SEBI Master Circular No. SEBI/HO/CFD/POD-2/P/CIR/2023/93 dated 20.06.2023, seeking prior approval from Securities and Exchange Board of India ('SEBI'), BSE and NSE is not required. Further, in compliance with Regulation 37(6) of the SEBI LODR, the Transferee Company has filed the copy of the aforesaid scheme and board resolution of the Applicant companies approving the Scheme, with BSE and NSE for the purpose of disclosure. In this regard, copy of the letter dated 17.11.2023 of the Transferee Company forwarding the Scheme to the BSE and NSE is annexed with the Application as Annexure R (Colly).
14. Taking into consideration the Application filed by the Applicant Companies and the documents filed therewith, this Tribunal proposes and hereby issues the following directions with respect to calling, convening and holding of the meetings of the Equity Shareholders, Preference Shareholders, Secured

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and Unsecured Creditors or dispensing with the same as well as issue of notices, including by way of paper publication, as follows:

In relation to Applicant Transferor Company -

14.1. *With respect to Equity Shareholders:*

Since, it is represented that there are 2 (Two) Equity Shareholders in the Transferor Company, and it is seen that the consent affidavits have been placed on record as Annexure – I (Colly), therefore, the necessity of convening and holding a meeting to consider the approval of the Scheme is dispensed with.

14.2. *With respect to Preference Shareholders:*

Since, it is represented that there are no Preference Shareholders in the Transferor Company, therefore, the necessity of convening and holding a meeting to consider the approval of the Scheme is dispensed with.

14.3. *With respect to Secured Creditors:*

Since, it is represented that there is 1 (One) Secured Creditor in the Transferor Company, and it is seen that the consent affidavit has been placed on record vide Diary No. 2975/2023 dated 15.12.2023 as Annexure – A, therefore, the necessity of convening and holding a meeting to consider the approval of the Scheme is dispensed with.

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14.4. *With respect to Unsecured Creditors:*

Since, it is represented that there are 19 (Nineteen) Unsecured Creditors in the Transferor Company, and it is seen that the consent affidavits have been placed on record as Annexure – P (Colly), therefore, the necessity of convening and holding a meeting to consider the approval of the Scheme is dispensed with.

In relation to Applicant Transferee Company -

14.5. *With respect to Equity Shareholders:*

Since, it is represented that there are 27,738 (Twenty-Seven Thousand Seven Hundred and Thirty-Eight Only) Equity Shareholders in the Transferee Company, and it is seen that for the purpose of considering and if thought fit approving, with or without modifications, to the proposed Scheme of Arrangement, is dispensed with, in view of the averments made in the Application stating the shareholding and other rights of the members of the Transferee Company will remain unaffected as no new shares are being issued pursuant to the Scheme.

14.6. *With respect to Preference Shareholders:*

Since, it is represented that there are no Preference Shareholders in the Transferee Company, therefore, the necessity of convening and holding a meeting to consider the approval of the Scheme is dispensed with.

14.7. *With respect to Secured Creditors:*

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Since, it is represented that there are 26 (Twenty-Six) Secured Creditor in the Transferee Company, and it is seen that for the purpose of considering and if thought fit approving, with or without modifications, to the proposed Scheme of Arrangement, is dispensed with, in view of the averments made in the Application stating the Scheme would not adversely affect the ability of the Applicant Company to honor its commitments or to pay its debts in the ordinary course of business.

14.8. *With respect to Unsecured Creditors:*

Since, it is represented that there are 79,149 (Seventy-Nine Thousand One Hundred and Forty-Nine) Unsecured Creditor in the Transferor Company, and it is seen that for the purpose of considering and if thought fit approving, with or without modifications, to the proposed Scheme of Arrangement, is dispensed with, in view of the averments made in the Application stating the Scheme would not adversely affect the ability of the Applicant Company to honor its commitments or to pay its debts in the ordinary course of business.

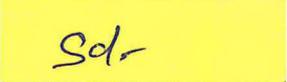
15. The Applicant Company is directed to send notice individually along with a copy of the Scheme to the Income Tax Authorities (indicating the respective PAN Nos.), ROC concerned, Official Liquidator and Regional Director (North Western Region), Reserve Bank of India, SEBI, BSE and NSE as well as other sectoral regulators or authorities, if applicable, as an advance

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notice for their representation/ observation, if any. The Applicant Companies shall file affidavit regarding sectoral regulators that may be concerned and include a specific prayer with respect to notices to relevant regulators and authorities also at the stage of second motion.

16. The Applicant Companies shall file the petition for issuance of notice and fixing date for the approval of the Scheme in due course.
17. Hence, this Application bearing CA (CAA) No. 09/230-232/JPR/2023 stands allowed on the aforesaid terms.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**