

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, (COURT NO.-II)  
KOLKATA**

Company Application (CAA) No.218/KB/2023

*An application under Section 230(1) read with Section 232 (1) of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules,2016, and other applicable provisions of the law.*

**IN THE MATTER OF:**

Shree Cement East Private Limited, a company incorporated under the provisions of the Companies Act, 2013, having Corporate Identification Number U26999WB2021PTC245736 and its registered office at 21, Strand Road, Kolkata 700 001 in the State of West Bengal.

.... Applicant.

**Date of pronouncing the order:**

**CORAM:**

**SMT. BIDISHA BANERJEE** : **MEMBER (JUDICIAL)**  
**SHRI D. ARVIND** : **MEMBER (TECHNICAL)**

**For the Applicants** : 1. Mr. D N Sharma Advocate  
2. Ms. Rusha Mitra, Advocate

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

1. This Court is convened through hybrid mode.
2. Heard the Learned Counsels for both the parties.
3. The instant application has been filed in the first stage of the proceedings by Shree Cement East Private Limited under Section 230(1) read with Section 232(1) of the Companies Act, 2013 ("Act") for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Amalgamation (the "Scheme") of Shree Cement East Private Limited, being the Applicant Company abovenamed (the "Transferor Company 2"), Shree Cement North Private Limited (the "Transferor Company 1") and Shree Cement Limited

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, (COURT NO.-II)  
KOLKATA**

C.A.(CAA) No.218/KB/2023

(the "**Transferee Company**") whereby and whereunder the entire undertakings of the Transferor Company 1 and the Transferor Company 2 (collectively, the "**Transferor Companies**") together with all property, rights, powers and all debts, liabilities, duties and obligations relating thereto is proposed to be transferred to and vested in the Transferee Company on the terms and conditions fully stated in the said Scheme of Amalgamation (Annexure – A of the application at Pages 46 to 63).

4. Learned Counsels for the Applicant Company submits as follows: -
- (a) The Board of Directors of the Transferor Company 2 at its meeting held on 7 November 2023 by resolution passed unanimously, approved of the said Scheme of Amalgamation of the Transferor Company 1 and Transferor Company 2 with the Transferee Company. The Boards of Directors of the Transferor Company 1 and Transferee Company have also unanimously approved of the said Scheme of Amalgamation at their meeting held on 7 November 2023 (Annexure – K of the application at Pages 410 to 420).
  - (b) The Auditors of the Transferee Company have confirmed that the accounting treatment in the said Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 (Annexure – L of the application at Pages 421 to 425).
  - (c) The Transferee Company as the listed holding company of the Transferor Companies was not required to take the approval of the Stock Exchanges to the Scheme in terms of the said Circular and has duly filed the Scheme with them for the purpose of disclosure. (Annexure – T of the application at Pages 455).
  - (d) The Transferor Company 1 and the Transferee Company having their respective registered offices in the State of Rajasthan have taken necessary steps to file a similar application in relation to the said Scheme under Section 230(1) of the Companies Act, 2013 in the Hon'ble Jaipur Bench of the National Company Law Tribunal.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, (COURT NO.-II)  
KOLKATA**

C.A.(CAA) No.218/KB/2023

- (e) The Applicant Company has the following classes of shareholders and creditors:
- i. One class of shareholders, viz Equity shareholders (Annexure – M of the application at Page 426).
  - ii. Two classes of creditors, viz Secured Creditors and Unsecured Creditors. (Annexure – P of the application at Page 440).
- (f) The entire Issued, Subscribed and Paid Share Capital of the Applicant Company is held by the Transferee Company along with its nominees and the Applicant Company is thus a wholly owned (100%) subsidiary of the Transferee Company. (Annexure – N of the application at Page 427)
- (g) The Transferee Company along with its nominee shareholder have given their consent in writing to the proposed Scheme by way of affidavits (Annexure – O of the application at Pages 442 to 451).
- (h) As on 31 October 2023, the Applicant Company had one secured creditor. (Annexure – Q of the application at Pages 441). Since filing of the company application, the Applicant Company has been able to obtain approval from the said secured creditor. (Annexure – A-1 of the supplementary affidavit at Pages 6 to 10).
- (i) The Applicant Company and the Transferee Company **have obtained net worth certificates issued by chartered accountant dated 23 November 2023 certifying pre-Scheme net worth position of the Applicant Company as on 30 September 2023 and pre and post Scheme net worth position of the Transferee Company as on 30 September 2023** (Annexure – S of the application at Pages 452 to 454). Referring to paragraphs 8.9, 8.10 and 8.11 of the application and the pre-Scheme net worth position of the Applicant Company and the pre-Scheme and post Scheme net worth position of the Transferee Company, the Learned Advocate states and submits that the net worth of the Companies are highly positive. Upon the Scheme coming into effect, the Transferee Company

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, (COURT NO.-II)  
KOLKATA**

C.A.(CAA) No.218/KB/2023

would be in a position to meet their liabilities, as and when they accrue and in the ordinary course of business.

5. In the facts and circumstances and in view, inter alia, of the consent affidavits obtained, as aforesaid and the pre-Scheme net worth position of the Applicant Company and the pre-Scheme and post Scheme net worth position of the Transferee Company, orders and directions are sought accordingly for

- (a) *dispensing with the convening and holding of meeting of the equity shareholders of the Applicant Company in view of the consents provided in writing to the proposed Scheme by way of affidavits by all (100%) equity shareholders of the Applicant Company,*
- (b) *dispensing with the convening and holding of meeting of the secured creditors of the Applicant Company in view of the consent provided in writing to the proposed Scheme by way of affidavits by 100% in value of the secured creditor of the Applicant Company,*
- (c) *issue of a direction that meeting of the unsecured creditors of the Applicant Company under Section 230(1) read with Section 232(1) of the Companies Act, 2013 is not required to be held or meeting of creditors, if any, may be dispensed with,*
- (d) *service of notices on the Statutory Authorities pursuant to Section 230(5) of the Companies Act, 2013, and*
- (e) *issue of a direction to file confirmation petition under Section 230(6) read with Section 232(3) of the Companies Act, 2013 by the Applicant Company for obtaining sanction of this Hon'ble Tribunal to the said Scheme.*

6. We have perused the records and documents in the instant proceedings and considered the submissions made by the Ld. Counsel on behalf of the Applicant Companies.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, (COURT NO.-II)  
KOLKATA**

C.A.(CAA) No.218/KB/2023

**7. Judicial Precedents, we are relying upon:**

- (a) *Ambuja Cements Limited in Company Appeal (AT) No.19 of 2021* reported in MANU/NL/0128/2021 that:

*“the net worth of the Appellant Company is highly positive and there is no Secured Creditors in the Appellant Company. However, there are Unsecured Creditors in the Appellant Company which are only Trade Creditors for an amount of Rs. 1,108 Crores as on 31.03.2020” and.*

*“That Transferor Company being a wholly owned subsidiary of the Appellant, it need not issue any shares to the shareholders. Hence, the scheme would not result in any dilution in shareholding of the Appellant Company “and further.*

*“That under the scheme there is no compromise or arrangement with the shareholders or creditors and no sacrifice of any amounts due to the Creditors. Hence, the Scheme would not prejudicially affect the creditors or shareholders of the Appellant Company “*

**But where,** *“The Learned NCLT rejected the dispensation of the meeting of the Equity Shareholder and the Creditors of the Company for the reason that the Appellant Company i.e; Transferor Company has large no of shareholders and creditors and none of them have filed their consent and no objection towards the scheme of merger/amalgamation”.*

**The Hon’ble NCLT observed as under,** *“We are of the view that from the above scheme of liabilities of the transferor company will be undertaken by the Appellant Company and there is no dilution in the shareholding of the Appellant Company. From the certificate issued by the Chartered Accountant it seems that the Appellant Company have no secured creditors as on 31.03. 2020.Further, it is on record that the net worth Pre- merger of the Appellant Company as per the certificate issued by the Chartered Accountant shows Rs. 22,750.15 Crores. While*

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, (COURT NO.-II)  
KOLKATA**

C.A.(CAA) No.218/KB/2023

so, there net worth of the Appellant Company post-merger will be Rs. 22,714.77 crores. From the perusal of the certificate issued by the Chartered Accountant the net worth of the Appellant Company is positive.”

**(Emphasis Added)**

- (b) *Halaplay Technologies Private Limited and Openplay Technologies Private Limited* order dated 31.03.2023 reported in MANU/NC/1859/2023 at Para 10 (d) that:

“Thus, for both the Applicant Companies, net worth is highly positive. Further, the proposed scheme is for the Arrangement of demerger and the scheme by way of arrangement does not affect the rights of all the stakeholders of the Applicant Companies and there is no dilution in the Shareholding in the Applicant Companies.”

**(Emphasis Added)**

8. In terms of foregoing discussions and decisions supra, we allow the instant application and make the following orders:

- (a) Meeting of the Equity Shareholders of the Applicant Company is dispensed with under Section 230(1) read with Section 232(1) of the Act.
- (b) Meetings of the creditors of the Applicant Companies are dispensed with under Section 230(1) read with Section 232(1) of the Act.
- (c) Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall be served on the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; Registrar of Companies, Kolkata; and Income Tax Department having jurisdiction over the Applicant Company, and other sectoral regulators or authorities, if any, by sending the same by hand delivery through special messenger or by

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, (COURT NO.-II)  
KOLKATA**

C.A.(CAA) No.218/KB/2023

post and by email in terms of Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 with necessary variation. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Advocates of the said Applicant Company. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Demergers) Rules 2016 in Form No. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

- (d) The Applicant Company shall file its confirmation petition for sanction of the Scheme under Section 230(6) read with Sections 232(3) of the said Act within three weeks from the date of receiving this order.
9. The Applicant Company to file an affidavit proving service of notices, as aforesaid, within a period of two weeks from the date of dispatch thereof.
10. The Company Application being C.A. (CAA) No.218/KB/2023 is disposed of accordingly.
11. Urgent certified copies of this Order, if applied for with the registry of this Adjudicating Authority, be supplied to parties upon compliance of all requisite formalities.

**D Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**This Order is signed on the 20<sup>th</sup> Day of December 2023.**  
Tiwari, V. [LRA]