

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

CP/493/CAA/2021

In

CA/11/CAA/2020

(Under Section 230 to 232 of the Companies Act, 2013)

In the matter of Scheme of Arrangement

Between

DALMIA CEMENT (BHARAT) LIMITED,

having its registered office at Dalmiapuram,

Dist. Tiruchirappalli, Tamil Nadu - 621 651

... First Petitioner/Transferor Company

And

DALMIA BHARAT REFRACTORIES LIMITED,

having its registered office at Dalmiapuram,

Dist. Tiruchirappalli, Tamil Nadu - 621 651

... Second Petitioner/Transferee Company

And

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Order Pronounced on 3rd February 2022

CORAM:

Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

*For Petitioners : Mr. PH Arvindh Pandian, Senior Advocate
For Mr. Pawan Jhabakh, Advocate*

ORDER

Per: Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)

Under consideration is Company Petition in

CP/493/CAA/2021 filed jointly by the above mentioned Petitioner

Companies under section 230 -232 of the Companies Act, 2013 r/w

the Companies (Compromises, Arrangements & Amalgamations)

Rules 2016. The instant Company Petition pertains to the Scheme

CP/493/CAA/2020 in CA/11/CAA/2020

Dalmia Cements (Bharat) Limited with Dalmia Bharat Refractories Limited

1 of 9



of Arrangement by virtue of which the Refractory undertaking (as defined in the Scheme of Arrangement) of the First Petitioner/Transferor Company shall be transferred and vested to the Second Petitioner/Transferee Company and further issuance of Equity Shares and Compulsorily Convertible Debenture ('CCD') of the Second Petitioner/Transferee Company to the First Petitioner/Transferor Company.

**2. DALMIA CEMENT (BHARAT) LIMITED
(TRANSFEROR COMPANY)**

2.1. The FirstPetitioner/ Transferor Company was incorporated under the Companies Act, 1956, in the State of Tamil Nadu, in the name and style of "Avnija Finance Limited" on 04th day of July 1996. Thereafter, with effect from 17th July, 2003, the name of the First Petitioner/Transferor Company was changed to "Avnija Properties Limited". Thereafter, with effect from 31st December, 2010, the name of the First Petitioner/Transferor Company was changed to "Dalmia Cement (Bharat) Limited".The registered office of the First Petitioner/Transferor Company is situated at Dalmiapuram, Dist. Tiruchirappalli, Tamil Nadu- 621651. The main objects of the First Petitioner/Transferor Company are set out in clause III (A) of its Memorandum of Association.



2.2. The Authorized Share Capital, Issued, Subscribed and Paid-up share capital of the First Petitioner/Transferor Company, as on 31st March, 2020, is as under:

PARTICULARS	AMOUNT (IN CRORES OF RUPEES)
AUTHORIZED SHARE CAPITAL	
38,53,50,000 Equity Shares of Rs. 10 each	385.35
3,00,00,000 Preference Shares of Rs. 100 each	300.00
72,30,00,000 Unclassified Shares of Rs. 10 each	723.00
Total	1408.35
ISSUED, SUBSCRIBED AND FULLY PAID-UP SHARE CAPITAL	
31,40,45,267 Equity Shares of Rs. 10/- each, fully paid up	314.04
Total	314.04

**3. DALMIA BHARAT REFRACTORIES LIMITED
(TRANSFEREE COMPANY)**

3.1. The Second Petitioner/Transferee Company was incorporated under the Companies Act, 1956, in the State of Tamil Nadu, in the name and style of "Sri Dhandauthapani Mines and Minerals Limited" on 04th day of October 2006. Thereafter, with effect from 27th December, 2019, the name of the Second Petitioner/Transferee Company was changed to "Dalmia Bharat Refractories Limited". The registered office of the Second Petitioner/Transferee Company is situated at Dalmiapuram, Dist. Tiruchirappalli, Tamil Nadu- 621651. The main objects of the Second



Petitioner/Transferee Company are set out in clause III of its Memorandum of Association (in short "MoA").

3.2. The Authorized Share Capital, Issued, Subscribed and Paid-up share capital of the Second Petitioner/Transferee Company as on 31st March, 2020, is as under:

PARTICULARS	AMOUNT (IN CRORES OF RUPEES)
AUTHORIZED SHARE CAPITAL	
4,00,00,000 equity shares of Rs. 10/- each	40.00
Total	40.00
ISSUED, SUBSCRIBED AND FULLY PAID-UP SHARE CAPITAL	
70,000 Equity Shares of Rs. 10/- each	0.07
Total	0.07

4. This Tribunal vide its Order dated 29th May, 2020 passed in CA/11/CAA/2020 ordered the convening, holding and conducting meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the First Petitioner/Transferor Company. The respective Chairmen appointed have convened and held the meetings of the Equity Shareholders, Secured Creditors and the Unsecured Creditors of the First Petitioner/Transferor Company and have thereafter filed the results of the said meetings, by filing their

respective Chairmen Reports that have been annexed at Page Nos. 287 to 330 (For the Meeting of the Equity Shareholders), 375 to 419 (For the Meeting of the Secured Creditors), 420 to 468 (For the Meeting of the Unsecured Creditors) of Volume II of the typed



Set of Papers filed with this Company Petition, which has been taken on record by this Tribunal.

5. With respect to the Second Petitioner/Transferee Company in CA/11/CAA/2020, this Tribunal had ordered the convening, holding and conducting meetings of the Equity Shareholders of the Second Petitioner/Transferee Company. The Chairman appointed had convened and held the meeting of the Equity Shareholders of the Second Petitioner/Transferee Company and filed the results of the the said meeting, by filing the Chairman's Report that has been annexed at Page Nos. 331 to 374 of Volume II of the typed Set of Papers filed with this Company Petition, which has been taken on record by this Bench. Further, the Second Petitioner/Transferee Company has no Secured or Unsecured Creditors and have furnished certificates from their Chartered Accountants to this effect, that have been annexed at Page Nos. 281 to 284 of Volume II of the typed Set of Papers filed with this Company Petition.

6. The Board of Directors of the First Petitioner/Transferor Company and the Second Petitioner/Transferee Company vide their respective Board Resolutions dated 14th November, 2019, have approved the said scheme of Arrangement.



7. On perusal of the rationale of the scheme of Arrangement, the Board of Directors of the Petitioner Companies have considered the proposed Scheme for the following reasons:

- i) The First Petitioner Company is primarily engaged in the manufacture and marketing of cement along with its associated activities like power generation, maintaining and operating rail systems and solid waste management system.
- ii) The First Petitioner Company, which currently also houses refractory operations in India and outside India (through its subsidiaries) intends to segregate the entire refractory operations from its primary cement operations and house the same in the Second Petitioner Company, an existing entity.
- iii) The Second Petitioner Company is currently a subsidiary of the First Petitioner Company in which the First Petitioner Company holds 99.99% of the issued, subscribed and paid up equity share capital.
- iv) The transfer of refractory operations from the First Petitioner Company to the Second Petitioner Company would assist in creating a sharper and efficient focus and accountability, individually in both cement and refractory operations.
- v) A separate scheme of amalgamation and arrangement which has been approved by the Board of the Second Petitioner Company, inter alia provides for merger of Dalmia Refractories Limited ("DRL") and GSB Refractories India Private Limited ("GSB India") into the Second Petitioner Company thereby creating a consolidated refractory business of considerable size.

8. The Regional Director, Ministry of Corporate Affairs (In short, 'RD'), vide the Report Affidavit (for brevity, 'Report') dated

21.12.2021 has concluded that they have no objections to the said scheme (as recorded at paragraph 15 of the Report), other than the observations made thereunder. Specifically, it has been observed in paragraph 12 of the RD's Report that the Ministry of Corporate Affairs had ordered inspection under Section 206(5) of



the Companies Act, 2013, against M/s. Dalmia Bharat Limited. Further, based on the inspection report (1/77/2017-CL-II) dated 10th December, 2019, the ministry had ordered investigation against Dalmia Group of companies through Serious Fraud Investigation Office ('SFIO'), which included the First Petitioner/Transferor Company herein.

9. However, in paragraph 13 of the RD's Report it is clarified that the office of the Director General of Corporate Affairs, New Delhi, with respect to the present Scheme of Arrangement, vide letter No.1/77/2017/CL-II(SR) dated 15thDecember, 2021, had communicated that they had been informed by the SFIO that no prejudice would be caused to the ongoing investigation by SFIO due to the proposed Scheme. Further, the Petitioner Companies have also undertaken to cooperate with the SFIO in furnishing of any required information in the investigation process, even after the approval the Scheme, and to this effect, have filed a detailed Affidavit in response to the RD's Report, dated 22.12.2021, before this Tribunal, and the same has been taken on record.

10. It is further recorded that as per the report of the Registrar Companies, Chennai, the First Petitioner/Transferor Company and the Second Petitioner/Transferee Company are regular in filing their statutory returns.

11. The Accounting Treatment prescribed and followed in the present Scheme of Arrangement is in conformity with the Accounting Treatment Standards laid down under Section 133 of the Companies Act, 2013. The Appointed date of the said Scheme is 1st April, 2019. The said Scheme of Arrangement will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditor/s in any manner.

12. The Scheme does not require any modification as it 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 under section 230-232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Scheme of Arrangement between the First Petitioner/Transferor Company and the Second Petitioner/Transferee Company was duly approved by the shareholders of the respective companies. Taking into consideration all the above, the Company Petitions are allowed and the Scheme of Arrangement annexed with the petition is hereby sanctioned which shall be binding on all the members, creditors and shareholders.



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.

14. The Companies to the said Scheme or other persons 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. The Petitioner Companies shall file with the Registrar of Companies, the certified copy of this Order, within 30 days of the receipt of the order.

15. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016.

16. Accordingly, the Scheme annexed with the petitions stands sanctioned and the Company Petition Nos. CP/493/CAA/2020 stands disposed of.



-Sd-

B. ANIL KUMAR
MEMBER (TECHNICAL)

DEPUTY REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH
CORPORATE BHAVAN, 3rd FLOOR,
29, RAJAJI SALAI, CHENNAI-600001

-Sd-

Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

25 Feb 2022

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