IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, MUMBAI

CP (CAA) No.4440/2019
connected with
CA (CAA) No.181 & 185/2019

In the matter of
The Companies Act, 2013

And

In the matter of
Sections 230 to 232 of the
Companies Act, 2013

And

In the matter of
Scheme of Amalgamation of
Deejay Mining and Exports Private Limited
(Transferor Company)
with
ASI Industries Limited
(Transferee Company)

Deejay Mining and Exports Private Limited
[CIN: U26960MH1995PTC089475]

... First Petitioner /
Transferor Company

ASI Industries Limited
[CIN: L14101MH1945PLC256122]

... Second Petitioner /
Transferee Company

Order pronounced on 23rd April 2020

Coram:

Mr Rajasekhar V.K.	:	Hon'ble Member (Judicial)
Mr V. Nallasenapathy	:	Hon'ble Member (Technical)

Appearances (through video conferencing):

For the Petitioners	:	Ms Sonam Mhatre i/b Dhaval Vussonji & Associates, Advocates
For the Regional Director (WR)	:	Ms Rupa Sutar, Deputy Director

ORDER

Per: V. Nallasenapathy, Member (Technical)

1. The Court convened through videoconferencing today (23.04.2020).

2. Heard the learned counsel for the petitioners and the representative of the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.

3. The sanction of the Tribunal is sought under sections 230-232 of the Companies Act 2013, to the Scheme of Amalgamation *('the Scheme')* of Deejay Mining & Exports Private Limited *('Transferor Company')* with ASI Industries Limited *('Transferee Company')* and their respective shareholders and creditors.

4. The Petitioner Companies have approved the Scheme by passing Board Resolutions dated 16th June 2018 which are annexed to the present Company Petitions (Exhibit 'C') and thereafter have approached the Tribunal for sanction of the Scheme.

5. In accordance with the Order of the Tribunal dated 11th October 2019 in CA (CAA) Nos.181/2019 & 185/2019, a meeting of the shareholders of the Second Petitioner Company was duly convened on 18th November 2019, at which the Scheme was approved by the requisite majority. The Tribunal had, *vide* the same order, dispensed with the meeting of the shareholders of the First Petitioner Company in view of the consent affidavits filed by them.

6. The main objects of the First Petitioner Company are set out in its Memorandum of Association, which are *inter alia* as under:

(a) To establish and carry on business as Quarry masters, Contractors and Stone Merchants and to explore, discover and own Quarries and Mines of all kinds of Stones and Minerals, including Marble, Granite, Laterite, Limestone, Sandstone, Slate and other Stones and to work the same and to deal in and process stones and Minerals of all types and to carry on the business as Exporters of all kinds of stones and minerals by whatsoever name called whether processed or unprocessed, and to install and/or own Polish Factories for polishing, re-polishing and edge-cutting of Rough and Polished stone of all kinds.

राष्ट्रीय कम्पनी विधी अधिकरण
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(b) To work mines or quarries and to find, win, get, crush, smelt, manufacture or otherwise deal with chalk, clay, ores, metals, oil, precious and other stones or deposits or products and to carry on nosiness of mining in all the branches.

(c) To carry on the business as import and export house for all kinds of goods and merchandise.

7. The main objects of the First Petitioner Company are set out in its Memorandum of Association. It is at present engaged *inter alia* in the business of mining and processing of Kotah Stone, other natural stones, wind power generation and trading activities.

8. The amalgamation of the Transferor Company with the Transferee Company would, inter alia, have following benefits:

(a) The amalgamation will improve organisational capability arising from the pooling of manufacturing and marketing resources in one entity. Further, amalgamation will eliminate multiple companies resulting into a simplified structure. This will consolidate the efforts of management and will enable to closely monitor manufacturing and marketing activities. Amalgamation will also provide significant impetus to the growth in the form of enhanced scale of operations leading to optimum utilisation of various resources and infrastructure with reduction in overheads, administrative costs, managerial and other expenditure, provide holistic services, appropriate channelisation of synergies, direct operational efficiencies,

increased asset base and consolidation of revenue and profitability.

(b) Further, the amalgamation will contribute in furthering and fulfilling the objectives and the business strategies of these companies thereby accelerating growth, expansion and development of the business. The amalgamation will also provide the Transferee Company a strong and focussed base to undertake the business more advantageously and thereby enabling the increase in its profitability and net worth for its shareholders.

(c) The amalgamation will also create a focuses entity which will capitalise the strategic investment opportunities and provide a concentrated management focus for development of the business of these companies. The amalgamation would result in improved value for the shareholders of these companies.

(d) The scheme envisages transfer of entire undertaking of the Transferor Company as a going concern to the Transferee Company and is in the interest of its shareholders, creditors, employees and all concerned.

9. The averments made in the Petition and the submissions made by the Learned Advocate for the Petitioner Companies are that the Petitioner Companies have complied with all the requirements as per the directions of the Tribunal and they have filed necessary

Affidavits of compliance in this Tribunal. Further, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder.

10. The Regional Director has filed his report dated 26th February 2020. In paragraph 4 of the said Report, the Regional Director has stated that:

(a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS -8) etc.;*

(b) *As per Part-I- Definitions Clause 4 (4.3, 4.6 & 4.13) of the Scheme.*

"Appointed Date" for the Purposes of the Scheme means 1st April, 2018 or such other date as may be approved by the NCLT.

"Effective Date" shall mean the last of the dates on which certified copies of the other(S) of NCLT sanctioning the Scheme are filed with ROC by the Transferor Company and by the Transferee Company. References in this Scheme to the date of the "coming into effect of this Scheme" or "effectiveness of this Scheme" shall mean the Effective date;

"Record Date" means the date to be fixed by the board of Transferee Company, with reference to which the eligibility of the shareholder (s) of the Transferor Company for the

purposes of issue and allotment of equity shares of Transferee Company in terms of the Scheme shall be determined;

In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate as appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

Further, the petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

(c) *Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to company petition, are one and same and there is no discrepancy/any change/changes are made, for changes if any, liberty be given to Central government to file further report if any required;*

(d) *Petitioner Company have to undertake to comply with section 232(3) (i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section*

(e) *The petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned*

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authorities which are likely to be affected by Amalgamation. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company (s).

(f) As per part-III, Clause - 17(17.1 to 17.6 of the Scheme (Authorised Share Capital). In this regard it is submitted that the same is subject to compliance with the provisions of section 13, section 14 of the Companies Act,2013 r/w relevant rule (s) of the Companies (Incorporation) Rules,2014;

(g) As ASI Industries Limited ("the Transferee Company") is a listed Company, in view of the provisions of section 230 (5) of the Companies Act,2013 r/w rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules,2016 Hon'ble NCLT may kindly issue notice to other sectoral regulators or authorities (the Securities and Exchange Board of India, Bombay Stock Exchange Limited and National Stock Exchange of India) and/or pass appropriate others/orders as deem fit;

(h) The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230 (6) of the Act in meetings duly held in terms of Section 230 (1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.

(i) In view of the observation raised by the ROC Bombay, mentioned at Para 15 above Hon'ble NCLT may pass appropriate orders/orders as deem fit."

11. The Petitioner Companies have filed a joint affidavit dated 28th February 2020 in response to the various observations made by the RD in his report. The Petitioner Companies have also given necessary undertakings in response to the RD's observations. Further, in response to the clarifications, explanations and undertakings given by the Petitioner companies, the RD has filed a Supplementary Report dated 4th March 2020 accepting the explanations, clarifications and undertakings given by the Petitioner Companies which is summarised as under.

12. Apropos the observations in paragraph 4 of the report of RD, the reply of both the Petitioner companies as stated in their joint affidavit dated 28th February 2020 is as under:

(a) So far as the objection of the Regional Director as stated in paragraph IV(a) of his Affidavit is concerned, the Petitioner Companies in addition to compliance of Accounting Standard AS-14 (IND AS - 103) undertake to pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS -8) etc.

(b) So far as the objection of the Regional Director as stated in paragraph IV(b) of his Affidavit is concerned, the Petitioner Companies undertake that the Appointed date of the Scheme shall be 1st April 2018 and in terms of the provisions of section 232(6) of the Companies Act 2013, the scheme will be given effect from 1st April, 2018 accordingly.

The Petitioner Companies further clarifies that though the

Scheme shall take effect from the Appointed Date but shall be operative from the Effective Date when the last of the approvals of the scheme has been obtained and a certified copy of the order passed by the NCLT sanctioning the Scheme, is filed by the Transferor Company (Deejay Mining and Exports Private Limited) and Transferee Company (ASI Industries Limited) respectively, with the Registrar of Companies, Maharashtra, Mumbai in terms of section 232 (5) of the Companies Act, 2013. However, the scheme shall take effect only from the Appointed Date i.e., 1st April 2018, which is in compliance with the provision of section 232(6) of the Companies Act, 2013. The Petitioner Companies further confirms and undertakes that the scheme shall only be effective with effect from 1st April, 2018 being the Appointed Date and not from any date subsequent to 1st April, 2018.

The Petitioner Companies further clarifies that the Record Date is only for ascertainment of the eligibility of the shareholders of the Transferor Company for the purpose and issue and allotment of equity shares of the Transferee Company.

Further the Petitioner Companies undertake to comply with the requirements and clarification issued vide circular F.No. 7/12/2019-CL-I dated 21.08.2019 issued by Ministry of Corporate Affairs.

(c) *So far as the objection of the Regional Director as stated in paragraph IV(c) of his Affidavit is concerned, the Petitioner Companies undertake and confirm that the Scheme enclosed to the Company Application and Company Petition is one and same and there is no discrepancy / deviation /and no*

change or changes are made to the Scheme. Further the Petitioner Companies have made the said averment in para 37 of Company Scheme Petition filed with the said National Company Law Tribunal

(d) *So far as the objection of the Regional Director as stated in paragraph IV(d) of his Affidavit is concerned, the fee, if any, paid by the Transferor Company on its authorised capital shall be set-off against any fees payable by the Transferee Company on its authorised capital subsequent to the amalgamation and the Petitioner Companies undertake to comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013 and fee if any payable by the Transferee Company shall be in accordance with the provisions of Section 232(3) (i) of the Companies Act, 2013.*

(e) *So far as the objection of the Regional Director as stated in paragraph IV(e) of his Affidavit is concerned, the Petitioner Companies confirm that the Petitioner Companies have complied with the provisions of section 230(5) Companies Act, 2013 and as directed by Hon'ble National Company Law Tribunal in its order dated 11th October 2019 served notices to concerned authorities which are likely to be affected by the Amalgamation. The copy of the joint Affidavit of Service dated 8th November, 2019, has been filed by the Petitioner Companies with NCLT for proving publication of public notices and dispatch of individual notices.*

Further the Petitioner Companies confirms that the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is

binding in the Petitioner Companies.

(f) So far as the objection of the Regional Director as stated in paragraph IV(f) of his Affidavit is concerned, the Petitioner Companies states that clause 17 (17.1 to 17.6 of the Scheme) (Authorised Share Capital) relates to transfer and clubbing of authorised share capital of the Transferor Company with the authorised share capital of the Transferee Company. The Petitioner Companies have already given undertaking in para 7 of this affidavit that the Petitioner Companies shall comply with the provisions of section 232(3)(i) of the Companies Act, 2013. The Petitioner Companies further confirm that clause (17.1 to 17.6 of the Scheme) (Authorised Share Capital) will not attract the provisions of section 13 and 14 of the Companies Act, 2013 r/w relevant rules of the Company (Incorporation) Rules, 2014.

(g) So far as the objection of the Regional Director as stated in paragraph IV(g) of his Affidavit is concerned, the Petitioner Companies submits that as stated in Paragraph 36 to the Petition filed by the Transferee Company, BSE Limited has already granted No Objection Letter dated 22nd November, 2018 to the scheme of amalgamation between the Petitioner Companies, copy of which is already annexed as Exhibit- 'N' to the Petition by the Transferee Company filed before this Hon'ble Tribunal. The Petitioner Companies further clarify that BSE Limited has given its NOC after receipt of observations from Securities and Exchange Board of India (SEBI). The Petitioner Companies further submits that the observations made by SEBI and BSE have already been incorporated in the Scheme, which is already approved by the Equity shareholders of the Petitioner Companies.

Further the shares of the Transferee Company (ASI Industries Limited) are not listed on National Stock Exchange of India Limited (NSE).

(h) So far as the objection of the Regional Director as stated in paragraph IV(h) of his Affidavit is concerned, the Petitioner Companies confirm that the Scheme is approved by the requisite majority of the members of the Second Petitioner Company as per section 230(6) of the Companies Act, 2013 in their meeting duly held in terms of section 230(1) read with sub-section (3) to (5) of section 230 of the Companies Act, 2013. The Petitioner Companies further submit that they have filed the Chairman's report with NCLT and the copy of the same is annexed to the Company Scheme Petition as Annexure "J". Further the Petitioner Companies submit that pursuant to an Order dated 11th October 2019 had dispensed with the Meeting of the Equity shareholder of the First petitioner Company and also directed to issue notices to Secured and Unsecured Creditors of the Petitioner Companies.

(i) So far as the objection of the Regional Director as stated in paragraph IV (i) (ROC Observations in para 15) of his Affidavit is concerned, the Petitioner Companies submits that on sanctioning of the Scheme by National Company Law Tribunal, pursuant to clause 3.1 of the Scheme, all assets and liabilities of the Transferor Company will be transferred to the Transferee Company."

13. The observations made by the Regional Director have been explained and clarified in terms of the preceding paragraph. The clarifications and undertakings given by the Petitioner Companies

are hereby accepted.

14. The Official Liquidator has filed his report dated 13th February 2020 in CA (CAA) Nos.181/2019 and 185/2019 *inter alia* stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

15. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

16. The Appointed Date of the Scheme is fixed as 1st April 2018.

17. The Transferor Company shall be dissolved without winding-up.

18. The prayers made in the above Company Petition are made absolute.

19. The Petitioner Companies are directed to lodge a certified copy of this Order and the Scheme with the concerned Superintendent of Stamps, within 60 working days from the date of receipt of certified copy of order, for adjudication of stamp duty payable, if any, on the above.

20. The Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in Form INC-28 within 30 days from the date of issue of the order by the Registry, duly

certified by the Deputy/ Assistant Registrar of this Tribunal.

21. All concerned regulatory authorities to act on a copy of this Order duly certified by the Deputy/ Assistant Registrar of this Tribunal, along with a copy of the Scheme.

22. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

23. Pronounced today (23.04.2020) in Open Court. File be consigned to records.

Sd/-
V. Nallasenapathy
Member (Technical)
23.04.2020

Sd/-
Rajasekhar VK
Member (Judicial)

Certified True Copy
Copy Issued "free of cost"
On 13/05/2020

Assistant Registrar
National Company Law Tribunal Mumbai Bench