

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

CA (CAA) No.138/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:

A Scheme of Amalgamation of (First Motion):

UltraTech Nathdwara Cement Limited, a company incorporated under the Companies Act, 1956 and is a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U26941WB1996PLC076612 and its registered office at PS Arcadia Central, 5th Floor, 4A Abanindra Nath Thakur Sarani (Camac Street) Kolkata Kolkata WB 700016.

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

And

Swiss Merchandise Infrastructure Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U45400WB2010PLC154432 and its registered office at PS Arcadia Central, 5th Floor, 4A Abanindra Nath Thakur Sarani (Camac Street) Kolkata Kolkata WB 700016.

.... Transferor Company No. 2 / Applicant Company No. 2

And

Merit Plaza Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U70109WB2010PLC155943 and its registered

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

C.A.(CAA) No.138/KB/2023

office at PS Arcadia Central,5th Floor, 4A Abanindra Nath Thakur Sarani
(Camac Street) Kolkata Kolkata WB 700016.

.... Transferor Company No. 3 / Applicant Company No. 3

And

UltraTech Cement Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. L26940MH2000PLC128420 and its registered office at B-Wing Ahura Centre 2nd Floormahakali Caves Road Andheri East Mumbai MH-400093.

.... Transferee Company

IN THE MATTER OF:

1. UltraTech Nathdwara Cement Limited.
2. Swiss Merchandise Infrastructure Limited.
3. Merit Plaza Limited.

.... Applicants

1. UltraTech Cement Limited

....Non-Applicant

Date of Hearing: 03.07.2023

Date of Pronouncement: 04.08.2023

Coram:

Smt.Bidisha Banerjee, Member (Judicial)

Shri.Balraj Joshi, Member (Technical)

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

C.A.(CAA) No.138/KB/2023

Appearances (via Hybrid Mode):

Mr.D.N.Sharma, Adv.

Mr. Aniket Agarwal, Adv.

Mr.Bhargav Chakraborty, Adv

] For the applicants

ORDER

Per: Balraj Joshi, Member (Technical)

1. The court convened through hybrid mode. The instant application has been filed in the first stage of the proceedings 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 of the following Transferor Companies:

SL. No.	Name of the Companies
Transferor Company Number 1	UltraTech Nathdwara Cement Limited
Transferor Company Number 2	Swiss Merchandise Infrastructure Limited
Transferor Company Number 3	Merit Plaza Limited

with **UltraTech Cement Limited**, being the above named "**Transferee Company**" whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the **Appointed Date**, viz. **1st April 2023** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“**Scheme**”).

The Copy of the said **Scheme of Amalgamation** is annexed to the Company Petition being – **Annexure –A**, in Volume I at **Page No(s). 28-47**.

2. The Board of Directors of the Applicant Companies at their Board Meetings, held on 28th April 2023 approved and resolved to carry out the said Scheme of Amalgamation. The copies of the resolution passed by the

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

C.A.(CAA) No.138/KB/2023

applicant companies are annexed with the Company Petition being-
Annexure- J in Volume IV on **Page No(s). 660-671.**

3. It is submitted by the Ld. Counsel appearing for the Applicants that the registered office of the Transferee Company is situated in Mumbai and the Transferee Company has accordingly filed similar proceedings before the Hon'ble Mumbai Bench of the National Company Law Tribunal.
4. It is also submitted by the Ld. Counsel appearing for the Applicants that UltraTech Nathdwara Cement Limited was unable to repay its debts and thus a Corporate Insolvency Resolution Process("CIRP") was initiated against it on 25th July 2017.
5. It is also submitted by the Ld. Counsel appearing for the Applicants that resolution plans were invited from interested applicants and the Committee of Creditors of UltraTech Nathdwara Cement Limited approved the resolution plan of the Transferee Company i.e. Ultra Tech Cement Limited and the same was ultimately approved by NCLT Bench by its order dated 14th November 2018. As per the resolution plan, the entire pre-resolution share capital of UltraTech Nathdwara Cement Limited stood cancelled and the company became a wholly subsidiary company of the Transferee Company i.e. Ultra Tech Cement Limited.
6. It is also submitted by the Ld. Counsel that Swiss Merchantile Private Limited and Merit Plaza Limited are wholly owned subsidiaries of UltraTech Nathdwara Cement Limited and step-down subsidiaries of the Transferee Company. All the Equity Shares of UltraTech Nathdwara Cement Limited, Swiss Merchantile Private Limited and Merit Plaza Limited are held by the respective holding company jointly with their officers.
7. It is further submitted by the Ld. Counsel appearing for the Applicants that the applicants have the following classes of shareholders and creditors:

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

C.A.(CAA) No.138/KB/2023

SL. No.	Name of the Applicant Companies	Equity Shareholders	Un Secured Creditors
1	UltraTech Nathdwara Cement Limited	7	523
2	Swiss Merchandise Infrastructure Limited	7	1
3	Merit Plaza Limited	7	1

8. Ld. Counsel appearing for Applicants submits that the meeting of the Equity Shareholders of all the Applicant Companies are dispensed with in view of shareholders representing 100% in value of shares of Applicant Companies having respectively given their consent to the Scheme by way of affidavits being- **Annexure-P** in Volume-V at **Page No(s).705-755**.
9. Ld. Counsel appearing for the Applicants submits that the meeting of the Unsecured Creditors of the Applicant Company No.1 are dispensed with in view of unsecured creditors representing 97.33% in value of shares of Applicant Companies, having respectively given their consent to the Scheme by way of affidavits being- **Annexure- R** in Volume V at **Page No(s). 756-771**.
10. Ld. Counsel appearing for the Applicants submits that the meeting of the Unsecured Creditors of the Applicant Company No.2 and 3 are dispensed with in view of the unsecured creditors representing 100% in value of shares of Applicant Company, having respectively given their consent to the Scheme by way of affidavits being- **Annexure- R** in Volume V at **Page No(s). 756-771**.
11. The certificate by the Chartered Accountant in respect of the Transferee Company verifying conformity with Accounting Standard under Section

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

C.A.(CAA) No.138/KB/2023

133 of the Companies Act 2013 is annexed with the Company Petition being- **Annexure- K** in Volume IV at **Page No(s). 672-675**.

12. In terms of Securities and Exchange Board of India (“SEBI”) Master Circular dated 23rd November 2021 and SEBI Circulars dated 17th November 2022 and 9th December, 2022 on Scheme of Amalgamation, the requirement of taking approval of Stock Exchanges to a Scheme entailing amalgamation of wholly owned subsidiaries with their listed holding company has been dispensed with and the listed holding company is only required to file the Scheme with the Stock Exchanges for the purpose of disclosure. The Transferee Company herein as the listed holding company of the Transferor Companies was thus not required to take the approval of the Stock Exchanges to the Scheme in terms of the regulatory requirements, as stated above, and has duly filed the Scheme with the Stock Exchanges for the purpose of disclosure. In this regard, a copy of the letter dated 25th May 2023 of the Transferee Company forwarding the Scheme to the Stock Exchanges is annexed as **Annexure-L** in Volume-IV at **Page No. 676** of the application.
13. The Ld. Counsel further submits that there are no secured creditors of all the Applicant Companies and the Petitioner now seeks admission of the instant petition presented by them for sanction of the Scheme. Dispensation of such meetings to consider the Scheme is sought accordingly.
14. The Ld. Counsel for the Petitioners further submits that the present Scheme is an arrangement between the Applicant Companies and none of the members, shareholders, and creditors will be affected by the Scheme.
15. Heard the Ld. Counsel for the petitioners and upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicants, we allow the instant application and make the following orders: -
- a) In view of the consents given through affidavit by all the equity shareholders, and the unsecured creditors of the Applicant Companies, the

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

C.A.(CAA) No.138/KB/2023

meeting of equity shareholders, and the unsecured creditors is hereby dispensed with.

- b) The applicant to serve a 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 also be served on:
- i. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;
 - ii. Registrar of Companies, West Bengal, Kolkata with whom the Applicants are registered;
 - iii. Official Liquidator; High Court at Calcutta;
 - iv. Securities and Exchange Board of India;
 - v. Income Tax Department having jurisdiction over the Applicants.
 - vi. Other sectoral regulators that are likely to be affected by the scheme.
- These notices shall be sent by hand delivery through special messenger or by post and by email within two weeks from the date of receiving this order and 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 Counsel of the said Applicants. 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 of Amalgamation. 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 Amalgamations) Rules 2016 in Form No. CAA3 of the said Rules with necessary variations, incorporating the directions herein.*
- c) The Applicant Companies shall file an affidavit of service, to report to this Tribunal that the directions regarding the issuance of notices have been duly complied with.
16. The application being **CA(CAA) No.138/KB/2023** is **disposed of** accordingly.

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

C.A.(CAA) No.138/KB/2023

17. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Order signed on the 4th Day of August 2023

A.S. LRA