

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT ROOM - V, MUMBAI BENCH**

CA(CAA) 145/MB/2023

**IN THE MATTER OF SECTIONS
230 TO 232 AND OTHER
APPLICABLE PROVISIONS OF
THE COMPANIES ACT, 2013**

AND

**IN THE MATTER OF THE
SCHEME OF AMALGAMATION
OF ULTRATECH NATHDWARA
CEMENT LIMITED, SWISS
MERCHANDISE
INFRASTRUCTURE LIMITED
AND MERIT PLAZA LIMITED
WITH ULTRATECH CEMENT
LIMITED**

**Ultratech Nathdwara Cement Limited
(CIN: U26941WB1996PLC076612)**

...Transferor Company No. 1

and

**Swiss Merchandise Infratsructure
Limited**

(CIN: U45400WB2010PLC154432)

...Transferor Company No. 2

and

Merit Plaza Limited

(CIN: U70109WB2010PLC155943)

...Transferor Company No. 3

**(All Transferor Companies
are in the Jurisdiction of
Kolkata Bench)**

and

UltraTech Cement Limited, a company) ... Applicant Company /
incorporated under the Companies Act,) Transferee Company
1956 and being a company within the)
meaning of the Companies Act, 2013,)
having corporate identity number)
L26940MH2000PLC128420 and its)
registered office at B-Wing, Ahura)
Centre, 2nd Floor, Mahakali Caves Road,)
Andheri East, Mumbai 400 093,)
Maharashtra.)

Order Dated: 04.07.2023

Coram:

Hon'ble Kuldeep Kumar Kareer, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

Appearances:

For the Applicant Company : Senior Counsel Mr Gaurav Joshi, Mr
Peshwan Jehangir, Mr Himanshu
Vidhani, Mr Harsh Salgia i/b M/s.
Khaitan & Co for the Applicant
Company

ORDER

Per: Anuradha Sanjay Bhatia, Member (Technical)

1. The Bench is convened by physical hearing.
2. The Applicant Company is the Transferee Company in a proposed Scheme of Amalgamation of UltraTech Nathdwara Cement Limited ("UNCL"), Swiss Merchandise Infrastructure Limited ("SMIL") and Merit Plaza Limited ("MPL") ("**Transferor Companies**") with the Transferee Company (i.e., the Applicant Company) under Sections 230 to 232 of the Act ("**Scheme**").

3. The said Scheme proposes amalgamation of the Transferor Companies with the Transferee Company.
4. The registered office of the Applicant Company is situated in Mumbai, Maharashtra and hence the subject matter of this Company Scheme Application is within the jurisdiction of the Hon'ble National Company Law Tribunal, Mumbai Bench. The registered offices of the Transferor Companies are situated in Kolkata. The Learned Counsel for the Applicant Company submits that, the Transferor Companies have filed a similar Company Scheme Application before the Hon'ble National Company Law Tribunal, Kolkata Bench.
5. The Applicant Company was incorporated on 24th August, 2000 under the provisions of the Companies Act, 1956 as a Company limited by shares. The Applicant Company is a public company within the meaning of the Companies Act, 2013. The Equity Shares of the Applicant Company are listed on BSE Limited ("BSE") and The National Stock Exchange of India Limited ("NSE"). The Non-Convertible Debentures of the Applicant Company are listed on NSE. The Global Depository Receipts of the Applicant Company are listed on the Luxembourg Stock Exchange. The unsecured fixed rate US Dollar denominated notes in the form of Sustainability Linked non-convertible Bonds issued by the Applicant Company are listed on the Singapore Exchange Securities Trading Limited.
6. The Learned Senior Counsel for the Applicant Company submits that the **rationale of the Scheme** is:
 - i. *"The Transferee Company is the largest cement manufacturing company in India engaged in the business of manufacturing grey cement, white cement, ready mix concrete and various building products, including autoclaved aerated concrete (AAC) blocks and*

waterproofing, grouting and plastering solutions. The Transferee Company has been able to significantly grow its cement manufacturing business over the years by installing and adding new manufacturing capacity itself as also by acquiring existing cement manufacturing business from other companies and successfully integrating such acquired business with itself.

- ii. *UNCL is also engaged in the business of manufacturing grey cement at its unit situated in District Sirohi in the State of Rajasthan. However, its business had been adversely impacted and since it was unable to repay its debts, a Corporate Insolvency Resolution Process (“CIRP”) in terms of the provisions of the Insolvency and Bankruptcy Code, 2016 (“Code”) was initiated against it by the Bank of Baroda, a financial creditor, under Section 7 of the Code. The Hon’ble National Company Law Tribunal, Kolkata Bench admitted the said application of the financial creditor for initiation of CIRP of UNCL on 25th July, 2017.*
- iii. *In terms of the Code, plans for resolution of corporate insolvency of UNCL were invited from interested applicants. The Transferee Company also submitted a plan for resolution of corporate insolvency of UNCL. From the resolution plans submitted by various applicants, the Committee of Creditors of UNCL formed under the Code approved the resolution plan submitted by the Transferee Company. The same was ultimately approved by the Hon’ble National Company Law Appellate Tribunal by its order dated 14th November, 2018 under Section 31 of the Code.*
- iv. *The said resolution plan became effective on 20th November, 2018. The entire pre-resolution debts owed to the financial creditors, operational creditors and other creditors stood discharged by payment of the amounts apportioned for them under the resolution plan. The resolution plan thereby enabled and resulted in a fresh start for the business of UNCL under the new management of the Transferee Company. As part of the resolution plan, UNCL became a wholly owned subsidiary of the Transferee Company with the entire pre-resolution share capital of UNCL standing cancelled and the entire post-resolution share capital of UNCL being issued to and held by the Transferee Company and its nominees.*

- v. *The business of UNCL has since turned around and stabilised under the Transferee Company's management with good capacity utilisation. The turnover of UNCL has increased from INR 1165.06 crores in the financial year 2018-2019 to INR 2072.17 crores in the financial year 2022-2023. Further, UNCL which had reported loss of INR 743.24 crores for the financial year 2018-19 reported profits of INR 92.08 crores in the financial year 2022-2023.*
- vi. *In order to integrate the business of UNCL with the business of the Transferee Company more beneficially, it is considered desirable and expedient to now amalgamate UNCL with the Transferee Company in the manner and on the terms and conditions stated in this Scheme of Amalgamation.*
- vii. *The other two Transferor Companies herein, viz SMIL and MPL, were wholly owned subsidiaries of UNCL at the time of approval of the resolution plan and thus came in the fold of the Transferee Company along with UNCL pursuant to the resolution plan. The said two Transferor Companies are thus step-down subsidiaries of the Transferee Company. However, the said companies do not have a significant business at present and as such no useful purpose is being served by continuing with them as separate entities. It is thus considered desirable and expedient to reduce the number of companies and also amalgamate the said two step-down subsidiaries with the Transferee Company as part of this Scheme of Amalgamation.*
- viii. *The other benefits and advantages of the amalgamation are, inter alia, as follows:-*
- (a) *The amalgamation will enable the Transferee Company to absorb the business of UNCL completely for carrying on the same more effectively and beneficially and deriving the utmost value from the amalgamated business.*
- (b) *The business of the amalgamated entity will be carried on more efficiently and economically pursuant to the amalgamation as a result, inter alia, of pooling and more effective utilisation of the combined resources of the said companies, reduction in overheads, costs and expenses, economies of scale, elimination of duplication of work and*

rationalization and reduction of compliance requirements which will be facilitated by and follow the amalgamation.

(c) *The amalgamation will lead to reduction and rationalisation of multiple entities in the group.*

(d) *The amalgamation will enable greater realisation of the potential of the business of UNCL and the Transferee Company in the amalgamated entity.*

ix. *The Scheme is proposed to the advantage of the Transferor Companies and the Transferee Company and will have beneficial results for the said companies, their shareholders, employees and all concerned.”*

7. The Appointed Date as mentioned in the Scheme means the 1st day of April, 2023. Further, the Board of Directors of the Applicant Company and the Transferor Companies vide their respective resolutions all dated 28th April 2023 approved the scheme. Pursuant to the said Board Resolutions, the Applicant Company has also submitted the Scheme with NSE and BSE vide its letter dated 25th May 2023.
8. The Learned Senior Counsel for the Applicant Company submits that as on March 31, 2023, the Applicant Company has 3,66,437 equity shareholders holding 28,86,86,345 equity shares and just 1 (one) Preference Shareholder holding 1,00,000 Cumulative Redeemable Preference Shares of Rs.1,00,0000 each. As such there is no question of holding a meeting of the Preference Shareholder.
9. The Learned Senior Counsel for the Applicant Company submits that as on 31st March, 2023 the Applicant Company has 15 Secured Creditors (including Debenture holders) having a total secured outstanding debt of Rs.668,10,00,000.

10. The Learned Senior Counsel for the Applicant Company submits that as on 31st March, 2023 the Applicant Company has 26,401 Unsecured Creditors (including Debenture holders and Bond holders) having a total unsecured outstanding debt of Rs. 8,937.30 crores.
11. The Learned Senior Counsel for the Applicant Company submits that the instant Scheme embodies the arrangement between the Transferor Companies and their shareholders as contemplated under Section 230(1)(b) of the Companies Act, 2013. However, in so far as the Transferee Company is concerned, there is no compromise or arrangement whatsoever between the Transferee Company and any classes of its shareholders or creditors under Sections 230 and 232 of the Companies Act, 2013. UltraTech Nathdwara Cement Limited (UNCL) is a wholly owned (100%) subsidiary of the Transferee Company. Swiss Merchandise Infrastructure Limited (“SMIL”) and Merit Plaza Limited (“MPL”) are wholly owned (100%) subsidiaries of UltraTech Nathdwara Cement Limited (UNCL) and step-down subsidiaries of the Transferee Company. The entire share capital of the Transferor Companies is thus held under the Transferee Company, as aforesaid. **In terms of the Scheme, no new shares are to be issued to the shareholders of the Transferor Companies by the Transferee Company. Accordingly, there is no exchange ratio of shares or valuation report thereon.**
12. The Learned Senior Counsel for the Applicant Company submits that the Scheme does not involve any reorganisation of share capital or debt of the Transferee Company or the Transferor Companies. In terms of the Scheme, the entire Undertakings of the Transferor Companies, along with all their assets and liabilities, will be transferred to and vested in the Transferee Company. There is no reduction or change in the value of the debts of any creditors in terms of the Scheme. The Transferor Companies and the Transferee Company have a combined positive net worth of

Rs.53,408 crores as on 31st March, 2023 as is evident from a certificate issued in this regard by chartered accountants of the Transferee Company. The combined net worth of the Transferor Companies and the Transferee Company, post amalgamation, will continue to be positive and their aggregate assets more than sufficient to meet their aggregate liabilities, in the ordinary course of business. The shareholding and other rights of the shareholders of the Transferee Company will remain unaffected as no new shares are being issued and there is no change in the capital structure. By virtue of the Scheme, there will be no change in control and management of the Transferee Company. Further, the rights of the creditors of the Transferee Company will also not be affected in any manner by the Scheme.

13. The Learned Senior Counsel for the Applicant Company submits that the Hon'ble High Court of Judicature at Bombay in the case of **Mahaamba Investments Limited V/s. IDI Limited** [(2001) 105 Company Cases pages 16 to 18], inter alia, observed and held that if a Scheme does not provide for issue of any equity shares to the shareholders of the Transferor Company, being a wholly owned subsidiary, and the creditors of the Transferee Company are also not likely to be affected by the Scheme, inter alia, meetings of the shareholders of the Transferee Company are not required to be convened and a separate application by the Transferee Company for sanction of the Scheme is not necessary. This ruling has also been approved by this Tribunal in **Oberoi Construction Limited**, CA (CAA) No. 225 of 2022 and **Pidilite Adhesives Limited**, CA (CAA) No. 237 of 2021. It has been held that where there is no compromise or arrangement with any shareholders of the Transferee Company and their rights are not affected, convening of meetings of shareholders of the Transferee Company is not required and may be dispensed with.

14. Accordingly, the requirement to hold meetings of the shareholders, of the Applicant Company is dispensed with.
15. A meeting of the secured creditors of the Applicant Company be convened and held on 4 September 2023, at 11:00 a.m. (IST) through video conferencing or other audio-visual means, for the purpose of considering, and, if thought fit, approving, with or without modification(s), the Scheme, wherein the secured creditors of the Applicant Company will be able to cast their votes electronically. In addition to the above, the Applicant Company shall provide facility of remote e-voting to its secured creditors to cast their vote.
16. A meeting of the unsecured creditors of the Applicant Company be convened and held on 4 September 2023, at 11:30 a.m. (IST) through video conferencing or other audio-visual means, for the purpose of considering, and, if thought fit, approving, with or without modification(s), the Scheme, wherein the unsecured creditors of the Applicant Company will be able to cast their votes electronically. In addition to the above, the Applicant Company shall provide facility of remote e-voting to its unsecured creditors to cast their vote.
17. In terms of the meetings to be convened of secured creditors and unsecured creditors of the Applicant Company, it is hereby directed as under:
 - i. At least one month before the said meetings of the secured creditors and unsecured creditors of the Applicant Company to be held as aforesaid, a notice convening the said meetings at the day, date and time as fixed in accordance with para nos. (15) and (16) above, together with a copy of the Scheme, a copy of the Statement required to be sent under Section 230(3) of the Companies Act, 2013 read

with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, shall be sent to all the secured creditors and unsecured creditors of the Applicant Company by electronic mail to their registered e-mail address, as per the records of the Applicant Company, in terms of circular dated December 28, 2022 read together with circulars dated April 8, 2020, April 13, 2020, June 15, 2020, September 28, 2020, December 31, 2020, June 23, 2021, December 8, 2021, and May 5, 2022 (including any amendments and clarifications thereto), issued by the Ministry of Corporate Affairs, as applicable to the manner in which notices are required to be sent. The Applicant Company shall ensure that, the secured creditors and unsecured creditors of the Applicant Company whose e-mail addresses are not available with the Applicant Company are issued physical copies of the notices by registered post / speed post / hand delivery. Further, notices of the meetings of the secured and unsecured creditors shall be uploaded on the website of the Applicant Company and the websites of the Stock Exchanges, i.e., BSE and NSE at www.bseindia.com and www.nseindia.com, respectively. The said notices will mention the procedure to register and vote on the resolution proposed under respective notices.

- ii. At least 30 (Thirty) days before the meetings of the secured creditors and unsecured creditors of the Applicant Company to be held as aforesaid, a notice convening the said meeting, at the date and time fixed in accordance with para nos. (15) and (16) above be published each in 'Business Standard' in English having nation-wide circulation, and 'Navashakti' in Marathi having circulation in Maharashtra, stating that copy of the Scheme and the said statement required to be furnished pursuant to Section 230(3) of the

Companies Act, 2013 can be obtained free of charge by emailing the Applicant Company at sharesutcl@adityabirla.com.

18. The Applicant Company undertakes to:
- (i) Issue notice convening meetings of the secured creditors and unsecured creditors of the Applicant Company as per Form No CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
 - (ii) Issue statement containing all the particulars as per Section 230 of the Companies Act, 2013; and
 - (iii) Advertise the notice convening meetings as per Form No. CAA.2 (Rule 7) of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

The undertaking is accepted.

19. Mr. Kumar Mangalam Birla and failing him, Mr. Arun Adhikari and failing him, Mr. K.C. Jhanwar and failing them, any other director of the Applicant Company is hereby appointed as the Chairperson for the respective meetings of the secured creditors and unsecured creditors of the Applicant Company.
20. Mr. B. Narasimhan, Company Secretary (Membership No. FCS 1303, COP No. 10440), Proprietor of BN & Associates, Company Secretaries and failing him, Mr. Anish Gupta, Company Secretary (Membership No. F5733, COP No. 4092), Partner of VKMG & Associates LLP, Company Secretaries, is hereby appointed as a Scrutiniser for the respective meetings of the secured creditors and unsecured creditors of the Applicant Company.
21. The quorum for the aforesaid meetings of the secured Creditors will be 2 secured creditors (in number) and for the unsecured creditors will be 30

unsecured creditors (in number) of the Applicant Company attending the meeting.

22. The Chairperson appointed for the aforesaid meetings of the Applicant Company to issue notice of the respective meetings of the secured creditors and unsecured creditors referred above. The Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as may be applicable for meetings of secured creditors and unsecured creditors convened and held through video conferencing or other audio-visual mode, in relation to the conduct of the meetings including for deciding procedural questions that may arise at the meetings or at any adjournment thereof or any other matters including, an amendment to the Scheme or resolution, if any, proposed at the meetings by any secured creditors and unsecured creditors.
23. The value and number of the secured creditors and unsecured creditors shall be in accordance with the books/ records maintained by the Applicant Company or depository records and where the entries in the books/ records / depository records are disputed, the Chairperson of the meetings shall determine the value and number for the purpose of the aforesaid meetings and his decision in that behalf would be final.
24. The Chairperson shall file a compliance report not less than 7 (Seven) days before the date fixed for holding of the meetings of the secured creditors and unsecured creditors of the Applicant Company and report to this Tribunal that the directions regarding the issue of notices and advertisements have been duly complied with, as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

25. The voting for the meetings of the secured creditors and unsecured creditors of the Applicant Company on the Scheme shall be allowed electronically at the said meetings and through remote e-voting by secured creditors and unsecured creditors, as the case may be, or by their respective authorized representative(s). The voting by the authorized representative, in case of a body corporate be permitted, provided that the authorization duly signed is filed with the Applicant Company, in physical mode, at its registered office or electronic mode at its designated email address, at least 48 (Forty Eight) hours before the aforesaid meetings, as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
26. The Chairperson shall report to this Tribunal, the result of the aforesaid meetings within 30 (Thirty) days of the conclusion of the said meetings of the secured creditors and unsecured creditors of the Applicant Company, and the said report shall be verified by his undertaking as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
27. The Applicant Company shall serve notices upon: (i) the Central Government through the Regional Director, Western Region, Ministry of Corporate Affairs; (ii) the Registrar of Companies, Mumbai; (iii) the Income Tax Authority within whose jurisdiction the Applicant Company's assessment is made; (iv) the Goods & Services Tax Authority; (v) BSE Limited; (vi) National Stock Exchange of India Limited; (vii) Securities and Exchange Board of India; and any sectoral regulator, as applicable, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 (thirty) days of the date of

receipt of the notice, it will be presumed that they have no objection to the proposed Scheme.

28. The Applicant Company shall file an Affidavit with the Registry evidencing compliance with the directions given in this Order.
29. Ordered Accordingly.

SD/-
Anuradha Sanjay Bhatia
Member (Technical)

SD/-
Kuldip Kumar Kareer
Member (Judicial)