

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

**COMPANY APPLICATION (CAA) NO.150/KB/2024**

***A Petition under Section 230(1) read with Section 232(1) of the  
Companies Act, 2013***

**IN THE MATTER OF :**

**Kesoram Industries Limited, a Company incorporated under the Indian Companies Act, 1913 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. L17119WB1919PLC003429 and its registered office at Birla Building, 9/1 R.N. Mukherjee Road, Kolkata 700 001 in the State of West Bengal.**

**... Demerged Company**

**Date of Hearing: 2<sup>nd</sup> August, 2024**

**Date of pronouncing the order: 7<sup>th</sup> August, 2024**

**Coram:**

**Smt Bidisha Banerjee, Member (Judicial)**

**Shri. D. Arvind, Member (Technical)**

**Appearance: D. N. Sharma, Adv.**

**Aniket Agarwal, Adv.**

**Bhargav Chakraborty, Adv.**

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

**COMPANY APPLICATION (CAA) NO.150/KB/2024**

**ORDER**

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

1. 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 Arrangement between Kesoram Industries Limited, being the Demerged Company abovenamed (“**Demerged Company**”) and UltraTech Cement Limited, being the Resulting Company abovenamed (“**Resulting Company**”) and their respective shareholders, whereby and whereunder the Cement Business division (Demerged Undertaking) of the Demerged Company is proposed to be transferred to and vested in the Resulting Company from 1<sup>st</sup> April, 2024 (“**Appointed Date**”) on the terms and conditions fully stated in the said Scheme of Arrangement (“**Scheme**”). The Scheme is annexed as Annexure “A” at pages 21 to 109 of the application.
2. Leave is sought on behalf of the Applicants to rely upon a supplementary affidavit affirmed on their behalf on 30<sup>th</sup> July, 2024, a scanned copy whereof has been already uploaded by them on the NCLT e-filing portal and the original thereof has also been submitted to the department. Leave, as sought, is granted to the Applicants to rely upon such supplementary affidavit.
3. Ld. Counsel appearing for the Applicant submits as follows:-
  - (a) The registered office of the Applicant is situated within the jurisdiction of this Hon’ble Bench. The registered office of the Resulting Company is situated at Mumbai within the jurisdiction of the Hon’ble National Law Company Tribunal, Mumbai Bench wherein the Resulting

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

**COMPANY APPLICATION (CAA) NO.150/KB/2024**

Company has filed similar proceedings under Sections 230 and 232 of the Act in relation to the Scheme.

- (b) The Board of Directors of the Demerged Company and the Resulting Company at their respective meetings held on 30th November, 2023 by resolutions passed unanimously, approved the said Scheme of Arrangement. The Board Resolutions of the Demerged Company and Resulting Company are annexed as Annexure “F” at pages 264 to 272 of the application.
- (c) The respective Statutory Auditors of the Demerged Company and the Resulting 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. The Certificates on such accounting treatment issued by the respective Statutory Auditors of the Demerged Company and the Resulting Company are annexed as Annexure “G” at pages 273 to 284 of the application.
- (d) The Demerged Company is a listed Company. The Equity Shares of the Demerged Company are listed on BSE Limited (“**BSE**”), National Stock Exchange of India Limited (“**NSE**”) and The Calcutta Stock Exchange Limited (“**CSE**”) (hereinafter collectively referred to as **the “Stock Exchanges”**). The Global Depository Receipts of the Demerged Company are listed on the Societe de la Bourse de Luxembourg, Societe Anonyme. The Demerged Company had filed the Scheme with the Stock Exchanges pursuant to SEBI circular no. SEBI/HO/CFD/POD2/P/CIR/2023/93 dated June 20, 2023 (“**SEBI Scheme Circular**”). BSE and NSE by their Observation Letters dated 13th May, 2024 and CSE by its Observation Letter dated 15th May, 2024 have given their no-objection to the Scheme. The said Observation

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

**COMPANY APPLICATION (CAA) NO.150/KB/2024**

Letters are annexed as Annexure “J” at pages 317 to 327 of the application.

- (e) The Resulting Company had also sought approval of the Competition Commission of India to the acquisition of the Cement Business of the Demerged Company under the provisions of the Competition Act, 2002. By its order dated 19th March, 2024, the Competition Commission of India has given its approval to the said acquisition under Section 31(1) of the said Act. The said order of the Competition Commission of India is annexed as Annexure “K” at pages 328 to 333 of the application.
- (f) The Demerged Company has two classes of shareholders viz., (1) Equity Shareholders and (2) Preference Shareholders and two classes of creditors, viz (1) Secured Creditors and (2) Unsecured Creditors (including deposit holders). Certificate on classes of shareholders and creditors of the Demerged Company as on 30th April, 2024 issued by Chartered Accountants is annexed as Annexure “L” at page 334 of the application.
- (g) The Demerged Company had 88,669 Equity Shareholders as on 31st March, 2024. The shareholding pattern of the Demerged Company is annexed as Annexure “M” at pages 335 to 341 of the application. In the circumstances orders are sought for convening meeting of the Equity Shareholders of the Demerged Company to consider, and, if thought fit, to approve the said Scheme of Arrangement with or without modification. Such meeting is sought to be convened and held through Video Conference (VC) or Other Audio Visual Means (OAVM) in accordance with the Companies Act, 2013 and framework for holding meetings as prescribed by the Ministry of Corporate Affairs by General Circular No.14/2020 dated 8<sup>th</sup> April, 2020, as clarified / extended from time to time, including by General Circular No. 17/2020 dated 13<sup>th</sup>

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

**COMPANY APPLICATION (CAA) NO.150/KB/2024**

April, 2020 and General Circular No.09/2023 dated 25<sup>th</sup> September, 2023 (“**Virtual Meeting Circulars**”).

- (h) The Demerged Company has only 1 (one) Preference Shareholder. The said Preference Shareholder has agreed in writing to the said Scheme of Arrangement by way of affidavit. An updated list of Preference Shareholders of the Demerged Company, certified by Chartered Accountants, and the consent affidavit of the sole Preference Shareholder of the Demerged Company are annexed collectively as Annexure “A” at pages 7 to 11 of the supplementary affidavit. In the circumstances an order is sought for dispensing with the meeting of the Preference Shareholders of the Demerged Company under Section 230(1) read with Section 232(1) of the Companies Act, 2013.
- (i) The Demerged Company has 11 Secured Creditors. An updated list of Secured Creditors of the Demerged Company on 30th June, 2024 certified by Chartered Accountants is annexed as Annexure “B” at pages 12 to 14 of the supplementary affidavit. 10 Secured Creditors of the Demerged Company constituting 99.93% in value of its total Secured Creditors have agreed in writing to the said Scheme of Arrangement by way of affidavits. A list of Secured Creditors of the Demerged Company who have consented to the Scheme and the consent affidavits issued by them are annexed collectively as Annexure “C” at pages 15 to 108 of the supplementary affidavit. In the circumstances an order is sought for dispensing with the meeting of the Secured Creditors of the Demerged Company under Section 230(1) read with Section 232(1) of the Companies Act, 2013.
- (j) In so far as Unsecured Creditors of the Demerged Company are concerned, it is submitted that the Scheme embodies the arrangement between the Demerged Company and the Resulting Company and their shareholders under Section 230(1)(b) read with Section 232(1) of the

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

**COMPANY APPLICATION (CAA) NO.150/KB/2024**

Companies Act, 2013. No change in value or terms or any compromise or arrangement is proposed under the Scheme with any of the Unsecured Creditors of the Demerged Company under Section 230(1)(a) read with Section 232(1) of the Companies Act, 2013. The Demerged Company and the Resulting Company each have a positive net worth with substantial excess of assets over liabilities, and are in a position to meet all their liabilities, as and when they accrue in the ordinary course of business. Further, upon the Scheme coming into effect, the Demerged Company and the Resulting Company will continue to have a positive net worth with substantial excess of assets over liabilities and as such, their assets shall be more than sufficient to discharge their liabilities, as and when they accrue in the ordinary course of business. The pre/post Scheme net worth of the Demerged Company and the Resulting Company as on 31st March, 2024 was as follows:-

<b>Sl No</b>	<b>Company</b>	<b>Pre-Scheme Net worth (Rs. Crores)</b>	<b>Post-Scheme Net worth (Rs. Crores)</b>
A.	Net worth of Demerged Company	314.19	827.66
B.	Net worth of Resulting Company	55,095.25	64,935.86

- (k) The Unsecured Creditors of the Applicant are not affected in any manner by the Scheme. On the contrary, the Scheme will inure to their benefit and is in their interest. Statements of pre-Scheme and post-Scheme net worth of the Demerged Company and the Resulting Company as on 31st March, 2024, certified by Chartered Accountants, are annexed as Annexure "P" at pages 381 to 388 of the application. In the circumstances, it is submitted that there is no requirement of convening and holding of meetings of the Unsecured Creditors of the

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

**COMPANY APPLICATION (CAA) NO.150/KB/2024**

Applicant as there is no arrangement with them in terms of the Scheme and their rights are not affected under Section 230(1)(a) read with Section 232(1) of the Companies Act, 2013. An order is sought for dispensing with the meeting of Unsecured Creditors of the Applicant accordingly. In this regard, Ld Counsel for the Applicant relies, inter alia, on the following precedents:

- i. Order dated 8<sup>th</sup> October, 2021 of this Hon'ble Tribunal in Company Application (CAA) No.102/KB/2021 [In Re: Singhal Energy Private Limited & Anr- paras 3(d), 3(e), 3(g) and 5(c)]
  - ii. Order dated 28<sup>th</sup> November, 2022 of the Hon'ble National Company Law Appellate Tribunal ("NCLAT") in Company Appeal (AT) No. 82 of 2021 [In Re: Lasa Supergenerics Ltd – paras 8, 9 & 10]
  - iii. Order dated 29<sup>th</sup> February, 2024 of this Hon'ble Tribunal in Company Application (CAA) No.4/KB/2024 [In re: Nourish Co Beverages Limited & Ors – paras 2(g) and 3(b)]
  - iv. Order dated 22<sup>nd</sup> April, 2024 of this Hon'ble Tribunal in Company Application (CAA) No.56/KB/2024 [In Re: ITC Ltd & Anr- paras 6(h), 9, 10, 11 and 12(a)(ii)]
  - v. Order dated 20<sup>th</sup> May, 2024 of this Hon'ble Tribunal in Company Application (CAA) No.51/KB/2024 [In Re: Pricewaterhousecoopers Digital Services Private Limited & Anr- paras 5(c), 6 and 9(c)]
- 4.** Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant, we allow the instant application and make the following orders:-

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

**COMPANY APPLICATION (CAA) NO.150/KB/2024**

**(a) Meetings dispensed:**

- i. Meeting of the Preference Shareholders of the Demerged Company to consider the Scheme is dispensed with under Section 230(1) read with Section 232(1) of the Companies Act, 2013 in view of the consents provided in writing to the proposed Scheme of Arrangement by the sole Preference Shareholder of the Demerged Company by way of affidavit.
  - ii. Meeting of the Secured Creditors of the Demerged Company to consider the Scheme is dispensed with under Section 230(1) read with Section 232(1) of the Companies Act, 2013 in view of the consents provided in writing to the proposed Scheme of Arrangement by 99.93% in value of the Secured Creditors of the Demerged Company by way of affidavits.
  - iii. Meeting of the Unsecured Creditors of the Demerged Company to consider the Scheme is dispensed with under Section 230(1)(a) read with Section 232(1) of the Companies Act, 2013 as there is no compromise or arrangement with them in terms of the Scheme and their rights are not affected.
- (b) **Meeting to be held | Date and Time:** A meeting of the Equity Shareholders of the Demerged Company shall be convened and held at 10:30 a.m. on Friday, 20<sup>th</sup> September, 2024 for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modification.
- (c) **Mode of meeting:** The meeting of the Equity Shareholders of the Demerged Company, as above, shall be convened and held through VC



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

**COMPANY APPLICATION (CAA) NO.150/KB/2024**

/ OAVM in accordance with the Companies Act, 2013 and the framework for holding meetings as prescribed in the Virtual Meeting Circulars.

- (d) **Advertisement:** At least 30 (thirty) clear days before the meeting to be held, as aforesaid, an advertisement of the notice of meeting be published once each in The Business Standard in English and Aajkal in Bengali as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The said advertisement shall, inter alia, state all matters required to be included in the advertisement in accordance with paragraph 1(i)(A)(II) of General Circular No. 17/2020 dated 13<sup>th</sup> April, 2020 issued by the Ministry of Corporate Affairs.
- (e) **Individual Notices:** At least 30 (thirty) clear days before the date of the meeting to be held, as aforesaid, notice convening the said meeting, along with all documents required to be sent with the same, including a copy of the said Scheme and statement prescribed under the provisions of the Companies Act, 2013 disclosing necessary details shall be sent through electronic mode to those Equity Shareholders who have registered their e-mail addresses with the Company or with the Depositories. In accordance with the Virtual Meeting Circulars, the said notice along with accompanying documents shall also be made available to all the Equity Shareholders who have not registered their e-mail addresses with the Company or with the Depositories by the Demerged Company posting such notice and accompanying documents on the website of the Demerged Company. Additionally, the hard copies of the notice and accompanying documents shall be provided by the Demerged Company to any Equity Shareholders who may request for the same. Since the meeting is being held through Virtual Mode, Attendance Slip and Route Map are not required to be annexed to the notice convening the said meeting.

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

**COMPANY APPLICATION (CAA) NO.150/KB/2024**

- (f) **Chairperson: Advocate Urmila Chakraborty, Mobile No. 9038456899** is appointed as the Chairperson of the meeting to be held, as aforesaid. The Chairperson shall be paid a consolidated sum of **Rs. 1,00,000/-** for conducting the aforesaid meeting as Chairperson.
- (g) **Scrutinizer: Anjan Kumar Roy, Email Id: anjanroy\_2003@yahoo.co.in , Mobile No. 9831891949** is appointed as the Scrutinizer of the meeting to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of **Rs. 80,000/-** for acting as Scrutinizer.
- (h) **Quorum and Attendance:** The quorum for the said meeting of Equity Shareholders of the Demerged Company shall be 30 Equity Shareholders present at the meeting in accordance with the Companies Act, 2013 and the Virtual Meeting Circulars. Attendance at such meeting shall be recorded through electronic mode.
- (i) **Mode of Voting:** The Equity Shareholders of the Demerged Company shall have the facility and option of voting on the resolution for approval of the Scheme by casting their votes by e-voting (“**e-voting**”) during the meeting or by remote electronic voting (“**remote e-voting**”) during the remote e-voting period commencing on 16<sup>th</sup> September, 2024 at 9:00 AM (IST) and ending on 19<sup>th</sup> September, 2024 at 5:00 PM (IST). The Equity Shareholders of the Demerged Company may opt to exercise their votes only in one mode, i.e. by (a) remote e-voting or (b) by e-voting at the meeting. In case they cast their votes by remote e-voting, they will nevertheless be entitled to attend the meeting in accordance with the Companies Act, 2013 and the Virtual Meeting Circulars and participate in the discussions in the meeting but not to vote again by e-voting at the meeting.

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

**COMPANY APPLICATION (CAA) NO.150/KB/2024**

- (j) **Cut-off date:** The cut-off date for determining the eligibility of the Equity Shareholders of the Demerged Company to vote and value of votes shall be 13<sup>th</sup> September, 2024. The value of the votes cast shall be reckoned and scrutinized with reference to the said date.
- (k) **Agency for e-voting:** The Demerged Company shall engage any of the agencies which are approved by the Ministry of Corporate Affairs under Rule 20 of the Companies (Management & Administration) Rules, 2014 for providing the platform for both remote e-voting and e-voting at the meeting.
- (l) **Authorisations:** Since the meeting is being held in Virtual Mode, physical attendance of Equity Shareholders is dispensed with and facility for attending or voting by proxy will not be available. However, an Institutional / Corporate Equity Shareholder (i.e. other than individuals, HUFs, NRIs, etc.) desirous of attending and / or voting by e-voting or remote e-voting may do so, provided a duly signed and certified copy of the Board of Directors/ governing body resolution / other document, as the case may be, authorising their representative to attend and / or vote on their behalf is (a) deposited physically at the registered office of the Demerged Company or (b) emailed to corporate@kesoram.com .
- (m) **Chairperson to conduct meeting:** The Chairperson appointed for the said meeting or any person authorised by the Chairperson do issue and send the notice of the aforesaid meeting. Further, the Chairperson shall have all other powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with the other applicable rules and provisions in relation to conduct of the meeting, including for deciding procedural questions that may arise at the meeting or at any adjournment thereof, or any other matter relating to the meeting, including an amendment to the Scheme, if any, proposed by any person(s).

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

**COMPANY APPLICATION (CAA) NO.150/KB/2024**

- (n) **Scrutinizer's Report/ Declaration of Results:** The votes cast shall be scrutinised by the Scrutinizer pursuant to Rule 21 of the Companies (Management & Administration) Rules, 2014. The votes cast through remote e-voting and e-voting at the meeting shall be consolidated. It is clarified that the responsibility for issuance of the notices shall be of the Chairperson or any person authorised by the Chairperson, as aforesaid, and not of the Scrutinizer. The Scrutinizer shall prepare and submit the report on the meeting along with all papers relating to the voting to the Chairperson of the meeting within two working days from the conclusion of the meeting. The Chairperson shall declare the results of the meeting after submission of the report of the Scrutinizer. The declared results shall be displayed on the Notice Board of the Demerged Company at its registered office and shall also be posted on its website. Such results shall also be forwarded to the Stock Exchanges where the shares of the Demerged Company are listed.
- (o) **Value:** The value of each Equity Shareholder of the Demerged Company shall be in accordance with the Register of Members of the Demerged Company and, where entries in the said Register are disputed, the Chairperson of the meeting shall determine the value for purposes of the said meeting.
- (p) **Date of resolution:** The resolution for approval of the Scheme of Arrangement put to the meeting shall, if passed by a majority in number representing three-fourths in value of the Equity Shareholders of the Demerged Company casting their votes through remote e-voting or e-voting at the meeting, as the case may be, shall be deemed to have been duly passed on the date of such meeting under Section 230(1) read with Section 232(1) of the Companies Act, 2013.
- (q) **Report on meeting:** The Chairperson shall report to this Tribunal the results of the said meeting within four weeks from the date of the

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

**COMPANY APPLICATION (CAA) NO.150/KB/2024**

conclusion of the said meeting. Such report shall be in Form No. CAA.4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

- (r) **Confirmation petition:** The Applicant shall file their confirmation petition for sanction of the Scheme under Section 230(6) read with Section 232(3) of the said Act within four weeks from the date of filing of the report of the Chairperson on the meeting.
- 5.** 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 sent by email and post to (1) the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; (2) Registrar of Companies, Kolkata; (3) Income Tax Department having jurisdiction over the Applicant; (4) Competition Commission of India; (5) BSE Limited; (6) National Stock Exchange of India Limited; and (7) The Calcutta Stock Exchange Limited.
- 6.** 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. 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 Arrangement. 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. CAA.3 of the said Rules with necessary variations, incorporating the directions herein, within three working days from the last date of sending the notice of meeting to the shareholders, as aforesaid.

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

**COMPANY APPLICATION (CAA) NO.150/KB/2024**

7. The Applicant to file affidavit proving services of notices, as aforesaid, within a period of two weeks from the date of dispatch thereof.
8. The **Company Application being C.A. (CAA) No.150/KB/2024** is **disposed** of accordingly.
9. Urgent Certified Copy of this order, if applied for, be supplied to the parties upon compliance with all the requisite formalities.

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

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

**This Order is signed on the 7<sup>th</sup> Day of August, 2024**

Oindrila, K. (LRA)