

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CSA NO.1556 OF 2018

In the matter of Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of RHI India Private Limited, RHI Clasil Private Limited and Orient Refractories Limited and their respective shareholders.

RHI India Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Neelkanth Business Park, Room Number 604C, Opposite Station, Vidhyavihar (West), Mumbai – 400 086

...First Applicant Company

AND

RHI Clasil Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 301-302, Orbit Plaza, New Prabhadevi Road, Prabhadevi, Mumbai – 400025.

... Second Applicant Company

AND



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Orient Refractories Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at C-604, Neelkant Business Park, Opp: Railway Station, Vidhyavihar (West), Mumbai – 400086.

...Third Applicant Company

The First Applicant Company, the Second Applicant Company and the Third Applicant Company defined hitherto above are collectively referred to as the "**Applicant Companies**".

Order Delivered On: 29thMarch, 2019

CORAM:

Hon'ble Mr. V.P. Singh, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Per Ravikumar Duraisamy, Member

ORDER

1. The Counsel for the Applicant Companies states that the present scheme is a scheme of amalgamation of RHI India Private Limited and RHI Clasil Private Limited (the "**Transferor Companies**") and Orient Refractories Limited (the "**Transferee Company**") and their respective shareholders (the "**Scheme**").
2. The Counsel for the Applicant Companies submits that the First Applicant Company is engaged in the business of, *inter-alia*, purchase, sale, import, export and marketing of refractories, refractory products,



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chemicals, formulations, and related equipment required in industries such as steel plants, furnaces, power houses, and cement plants. The Second Applicant Company is engaged in the business of, *inter alia*, manufacture and marketing of refractories and allied products. The Third Applicant Company is engaged in the business of, *inter alia*, manufacture and marketing of refractory products, systems and services and has various global partners for its international quality products.

3. The Counsel for the Applicant Companies submits that the Applicant Companies are part of the RHIM group of companies (the "**RHIM Group**") and this Scheme is drawn in interest of shareholders and all stakeholders and the Applicant Companies and envisages the following rationale and objectives:

- (i) The proposed amalgamation in the Scheme will lead to/enable: simplification of the corporate structure and consolidation of the India businesses of the RHIM Group; establishing a comprehensive refractory product portfolio; realizing business efficiencies, *inter alia*, through optimum utilization of resources due to pooling of management, expertise, technologies and other resources of the Applicant Companies; improved allocation of capital and optimization of cash flows contributing to the overall growth prospects of the combined company; creation of a larger asset base and facilitation of access to better financial resources; and enhanced shareholder value pursuant to economies of scale and business efficiencies. The proposed Scheme is in the interest of all Applicant Companies and their respective shareholders, employees, and creditors and there is no



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likelihood that the interests of any stakeholders in any of the Applicant Companies would be prejudiced as a result of the Scheme. The proposed Scheme will not impose any additional burden on the members of the Applicant Companies.

4. The Counsel for the Applicant Companies further submit that the board of directors of the respective Applicant Companies at their meetings, all held on July 31, 2018, approved the Scheme. The Appointed Date in the Scheme is January 1, 2019.
5. That the meeting of the equity shareholders of the First Applicant Company be convened and held at Kohinoor Continental, Andheri-Kurla Road, JB Nagar, Andheri, Mumbai - 400059 on Friday, 17th, May 2019 at 10:00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme.
6. That the meeting of the equity shareholders of the Second Applicant Company be convened and held at Kohinoor Continental, Andheri-Kurla Road, JB Nagar, Andheri, Mumbai - 400059 on Friday, 17th, May 2019 at 11:00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme.
7. That the meeting of the equity shareholders of the Third Applicant Company be convened and held at Kohinoor Continental, Andheri-Kurla Road, JB Nagar, Andheri, Mumbai - 400059 on Friday, 17th, May 2019 at 12 noon for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme.
8. That the meeting of the secured creditor of the First Applicant Company be convened and held at Kohinoor Continental, Andheri-Kurla Road, JB Nagar, Andheri, Mumbai - 400059 on Friday, 17th, May 2019 at 2:00



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p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme.

9. That the meeting of the secured creditor of the Second Applicant Company be convened and held at Kohinoor Continental, Andheri-Kurla Road, JB Nagar, Andheri, Mumbai – 400059 on Friday, 17th, May 2019 at 2:30 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme.
10. That the meeting of the unsecured creditors of the First Applicant Company be convened and held at Kohinoor Continental, Andheri-Kurla Road, JB Nagar, Andheri, Mumbai – 400059 on Friday, 17th, May 2019 at 3:00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme.
11. That the meeting of the unsecured creditors of the Second Applicant Company be convened and held at Kohinoor Continental, Andheri-Kurla Road, JB Nagar, Andheri, Mumbai – 400059 on Friday, 17th, May 2019 at 4:30 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme.
12. That the meeting of the unsecured creditors of the Third Applicant Company be convened and held at Kohinoor Continental, Andheri-Kurla Road, JB Nagar, Andheri, Mumbai – 400059 on Friday, 17th, May 2019 at 6:00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme.
13. In view of Regulation 44 (1) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**SEBI LODR**"), the Transferee Company is required to provide the facility of remote e-voting to its shareholders in respect of all shareholder resolutions. Further, circular no. CFD/DIL3/CIR/2017/21



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dated March 10, 2017, issued by the Securities and Exchange Board of India requires the Transferee Company to provide the facility of e-voting to its public shareholders. The Transferee Company to offer the facility of voting by postal ballot and e-voting so as to enable its shareholders, including public shareholders, to consider and approve the Scheme. Accordingly, the equity shareholders of the Transferee Company are allowed to avail: (i) remote e-voting facility; (ii) voting by postal ballot; and/or (iii) voting by ballot at the venue for the said meeting to be held Friday, 17th, May 2019 at 12 noon. The e-voting facility and postal ballot facility for the shareholders of the Transferee Company shall be provided in compliance with the conditions specified under the Companies (Management and Administration) Rules, 2014 as amended, Regulation 44 of the SEBI LoDR and Secretarial Standard on General Meetings (SS2) issued by the Institute of Company Secretaries of India and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the "**Amalgamation Rules**"), as applicable.

14. That at least one month before the said meetings of the shareholders, secured creditors and unsecured creditors of the Applicant Companies to be held as aforesaid, a notice convening the said meetings indicating the place, day, date and time of meeting as aforesaid, together with a copy of the Scheme, a copy of explanatory statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 (the "**Act**") read with Rule 6 of the Amalgamation Rules and the prescribed form of proxy, (with instructions with regard to e-voting and voting by postal ballot in case of Third Applicant Company only) shall be sent by hand delivery / registered post/ speed post / courier or through email (to those shareholders whose email address are duly registered with the respective Applicant Companies for the purpose of receiving such



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notices by email), at their last known address or email address as per the records of the respective Applicant Companies.

15. That the notice of the aforesaid meetings, indicating the place, date and time of said meetings be published and advertised in two local newspapers, viz. 'Times of India, Mumbai' in English language and 'Mumbai Lakshadeep' in Marathi language, having circulation in Mumbai, by the respective Applicant Companies, not less than 30 days before the date fixed for the said meetings stating that copies of the Scheme and the explanatory statement required to be furnished pursuant to Section 230(3) of the Act read with Rule 6 of the Amalgamation Rules and the form of proxy can be obtained free of charge at the registered offices of the respective Applicant Companies as aforesaid.
16. The Directors /Company Secretary of the respective Applicant Companies, vide affidavit dated February 6, 2019 and February 7, 2019 undertake to:
 - i. issue notice convening the meeting of the equity shareholders as per Form No. CAA 2 (Rule 6) of the Amalgamation Rules to the equity shareholders of the respective Applicant Companies;
 - ii. issue explanatory statement containing all the particulars as per Section 230 of the Act;
 - iii. issue form of proxy/ies as per Form No. MGT- 11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and
 - iv. advertise the notice convening the meeting as per Form No. CAA 2 (Rule 7) of the Amalgamation Rules.

The above undertaking given by the respective Applicant Companies is accepted.



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17. That Mr. Seshachalam, Advocate (Contact No. 9930267855) failing whom Mr.SanjeevBhardwaj, Director of the First Applicant Company shall be the Chairman of the aforesaid meeting of the equity shareholders, secured creditors and unsecured creditors of the First Applicant Company to be held at Kohinoor Continental, Andheri-Kurla Road, JB Nagar, Andheri, Mumbai – 400059on Friday, 17th, May 2019 or any adjournments, thereof.
18. That Mr. Seshachalam, Advocate failing whom Dr.VenkataRajuRudraraju,Directorof the Second Applicant Company shall be the Chairman of the aforesaid meeting of the equity shareholders,secured creditors and unsecured creditors of the Second Applicant Company to be held at Kohinoor Continental, Andheri-Kurla Road, JB Nagar, Andheri, Mumbai – 400059on Friday, 17th, May 2019 or any adjournments, thereof.
19. That Mr. Seshachalam, Advocate failing whom Dr.Vijay Sharma, Director of the Third Applicant Company shall be the Chairman of the aforesaid meeting of the equity shareholders and unsecured creditors of the Third Applicant Company to be held at Kohinoor Continental, Andheri-Kurla Road, JB Nagar, Andheri, Mumbai – 400059on Friday, 17th, May 2019 or any adjournments, thereof.
20. The fee fixed for Chairmen for all the above meetings shall be Rs. 1,50,000/- excluding taxes.
21. That the Chairman appointed for the aforesaid meeting of each of the respective Applicant Companies to issue the advertisement and send out notices of the meetings referred to above. The said Chairman of each of the respective Applicant Companies shall have all powers as per articles of association and also under the Act in relation to the conduct of the



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- meetings, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).
22. That the quorum of the aforesaid meetings of the shareholders, secured creditors and unsecured creditors shall be as prescribed under Section 103 of the Companies Act, 2013.
23. That voting by proxy or authorized representative in case of body corporate be permitted provided that a proxy in the prescribed form / authorization duly signed by the person entitled to attend and vote at the meetings, is filed with the First Applicant Company at its registered office at 604C, Neelkanth Business Park, Opp. Rly Station, Vidyavihar (West), Mumbai - 400 086 and the Second Applicant Company at its registered office at 301-302, Orbit Plaza, New Prabhadevi Road, Prabhadevi, Mumbai - 400 025 and the Third Applicant Company at its registered office at C-604, Neelkanth Business Park, Opp. Railway Station Vidhyavihar (West), Mumbai - 400 086 respectively, not later than 48 hours before the aforesaid meetings.
24. That the value and number of the shares of each equity shareholder shall be in accordance with the books / register of the respective Applicant Companies or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the meetings of each of the respective Applicant Companies shall determine the value for the purpose of the aforesaid meetings and his decision in this behalf shall be final.
25. That Mr. Suyash Mohan Guru, Advocate (Contact No. 9560038621) is hereby appointed as scrutinizer of the meetings of the equity shareholders, secured creditors and unsecured creditors of all the



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- Applicant Companies, proposed to be held at Kohinoor Continental, Andheri-Kurla Road, JB Nagar, Andheri, Mumbai - 400059 on Friday, 17th, May 2019 or any adjournments thereof, for the purpose of conducting the voting process including by remote e-voting, voting conducted through postal ballot and voting at the venue of the meeting of the equity shareholders of the Third Applicant Company. The fee of the professional appointed as scrutinizer of the aforesaid meetings shall be Rs. 50,000/- excluding applicable taxes, if any.
26. That the Chairman of the meeting of each of the respective Applicant Companies to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report to this Tribunal that the directions regarding the issue of notices and advertisement have been duly complied with.
27. Since the list of equity shareholders of the Third Applicant Company as of the record date to whom the notice of the aforesaid meeting of the equity shareholders will be issued, is voluminous, the Third Applicant Company is allowed to submit the said list with the Registry in a form of a Compact Disc.
28. That the Chairman of the meeting of each of the respective Applicant Companies to report to this Tribunal, the results of the aforesaid meetings within three days of the conclusion of the meeting.
29. That the Third Applicant Company is directed to display the Scheme on its own website as well as on the websites of the stock exchanges on which it is listed.
30. The First Applicant Company is directed to serve notices along with a copy of Scheme upon:- (i) concerned Income Tax Authority within whose jurisdiction the First Applicant Company's (PAN AADCR6670B)



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- assessments are made, (ii) the Central Government through the Office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies, Mumbai, (iv) Reserve Bank of India, Mumbai, (v) Competition Commission of India and any other applicable regulatory authority with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal and copy of such representations shall simultaneously be served upon the First Applicant Company, failing which, it shall be presumed that the authorities have no representation to make on the proposals.
31. The First Applicant Company is also directed to serve notices along with a copy of the Scheme upon the Official Liquidator. M/s. P.R. Agarwal & Awasthi Chartered Accountants (Contact No. 022-32514265/22093908) are appointed to assist the Official Liquidator to scrutinize books of accounts of the First Applicant Company. The First Applicant Company to pay fees as mutually agreed between the parties.
32. The Second Applicant Company is directed to serve notices along with a copy of Scheme upon:- (i) concerned Income Tax Authority within whose jurisdiction the Second Applicant Company's (PAN AAFC4819H) assessments are made, (ii) the Central Government through the Office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies, Mumbai, (iv) Reserve Bank of India, Mumbai, (v) Competition Commission of India and any other applicable regulatory authority with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal and copy of such representations shall simultaneously be served upon the Second Applicant Company, failing



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which, it shall be presumed that the authorities have no representation to make on the proposals.

33. The Second Applicant Company is also directed to serve notices along with a copy of the Scheme upon the Official Liquidator. M/s. P.R. Agarwal&AwasthiChartered Accountants (Contact No. 022-32514265/22093908) are appointed to assist the Official Liquidator to scrutinize books of accounts of the Second Applicant Company. The Second Applicant Company to pay fees as per their mutual agreement.
34. The Third Applicant Company is directed to serve notices along with a copy of Scheme upon:- (i)concerned Income Tax Authority within whose jurisdiction the ThirdApplicant Company's (PAN AABCO3850A) assessments are made, (ii) the Central Government through the Office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies, Mumbai, (v) BSE Limited, (vi) National Stock Exchange of India Limited, (vii) Reserve Bank of India, Mumbai,(v) Competition Commission of India and any other applicable regulatory authority with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal and copy of such representations shall simultaneously be served upon the ThirdApplicant Company, failing which, it shall be presumed that the authorities have no representation to make on the proposals.
35. That theApplicant Companies are directed to file affidavit of service in the Registry proving dispatch of notices to the shareholders, secured creditors and unsecured creditors, publication of notices in the newspapers and to all the regulatory authorities as stated in clauses



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above and do report to this Tribunal after seven days before the date of the meeting that the directions regarding the issue of notices have been duly complied with.

SD/-

**RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)**

SD/-

**V.P. SINGH
MEMBER (JUDICIAL)**

Date: 29.03.2019

Pratiksha Shukla



Certified True Copy
Copy Issued "free of cost"
On 2-4-2019


Assistant Registrar
National Company Law Tribunal Mumbai Bench