



Orient Refractories Limited

(An RHI Magnesita Company)



8 June 2021

Department of Corporate Services
Bombay Stock Exchange Ltd.
Phiroze Jeejeebhoy Towers
Dalal Street, Mumbai-400001.

STOCK CODE: 534076

Department of Corporate Services
National Stock Exchange of India Ltd.
Exchange Plaza, Bandra Kurla Complex
Bandra (East), Mumbai

STOCK CODE: ORIENTREF

Dear Sir/Madam,

Subject: Certified True Copy of the Order of the Hon'ble National Company Law Tribunal, Mumbai Bench, Mumbai ("NCLT Mumbai") in the matter of Scheme of Amalgamation of RHI India Private Limited ("Transferor Company 1"), RHI Clasil Private Limited ("Transferor Company 2") and Orient Refractories Limited ("Company") and their respective shareholders and creditors

This is with reference to the captioned subject and in furtherance to our communication dated 18 May 2021 regarding the sanction/ approval of scheme of amalgamation between Transferor Company 1, Transferor Company 2 and the Company ("**Scheme**"), wherein we had informed that the NCLT Mumbai has passed an order on 5 May 2021 ("**Order**"), *inter alia*, sanctioning the Scheme.

The Company has obtained a certified true copy of the Order and the Scheme. The said copies of the Order and the Scheme are enclosed herewith.

This is for your information and record.

Thanking you,

Yours sincerely,
for **Orient Refractories Limited**

Sanjay Kumar
Company Secretary

Encl.: a/a

Orient Refractories Limited

CIN: L28113MH2010PLC312871
C-604, Neelkanth Business Park,
Opp. Railway Station, Vidhyavihar (West),
Mumbai, MAHARASHTRA-400086
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IN THE NATIONAL COMPANY LAW TRIBUNAL
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C.A. 14/2021
C.A. 15/2021
C.A. 20/2021

In
CP (CAA)/ 2199/MB-IV/2019

Under Section 230-232 of Companies Act,
2013

In the matter of

RHI India Private Limited,
having its registered office at
Neelkanth Business Park,
Room Number 604C,
Opposite Railway Station,
Vidhyavihar (West),
Mumbai – 400 086

..... First Petitioner
Company/Transferor
Company No.1

And

RHI Clasil Private Limited,
1956 having its registered office
at 301-302, Orbit Plaza,
New Prabhadevi Road, Prabhadevi,
Mumbai – 400 025.

.... Second Petitioner
Company/Transferor
Company No. 2

And

Orient Refractories Limited,
1956 having its registered office at C-604,
Neelkanth Business Park, Opp.
Railway Station, Vidhyavihar (West),
Mumbai –400 086.

....Third Petitioner
Company/Transferee
Company

Order pronounced on: 5.05.2021

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mrs. Suchitra Kanuparth
Hon'ble Member (Judicial)



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Appearances (through video conferencing)

For the Petitioner : Mr. Adhish Sharma, Advocate

For the Regional Director : Ms. Rupa Sutar, Deputy Director

ORDER

Per: Suchitra Kanuparthi, Member (Judicial)

1. The Court is convened through videoconference.
2. The Hon'ble NCLAT vide order dated 19.01.2021 in Company Appeal (AT) No. 128 of 2020 arising out of impugned order dated 2nd March 2020 passed by NCLT, Mumbai Bench, Company Scheme Petition No. 2199 of 2019 directed NCLT to approve the scheme of the Applicants and further ordered at Para 35 & 36 as follows:-

"35. We are of the opinion that since a considerable amount of time have been lost and as the Appellants are agreeing under the scheme that the appointed date may be such date as the NCLT may decide i.e. the valuation date (31.07.2018). Therefore, in view of the foregoing discussions and observations the appeal is allowed and the appointed date shall be the valuation date i.e. 31.07.2018. However, this is decided by considering the facts of the case and it will in no way shall be used as a precedent as the General Circular issued by the Ministry of Corporate Affairs have made the reasonable



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clarification in regards to the appointed date under section 232(6) of the Companies Act, 2013.

36. We, therefore, direct the NCLT, Mumbai Bench to approve the proposed scheme without any further delays in order to meet the ends of justice. We also direct the Regional Director, Western Region, Ministry of Corporation Affairs, Mumbai to monitor that the scheme is implemented according to appointed date as 31.7.2018."

3. The erstwhile bench vide order dated 02.03.2020, did not approve the scheme on two basic grounds namely:

- (i) that the appointed date of the scheme is 01.01.2019 whereas the valuation date is 31.07.2018; and
- (ii) that this scheme is against the public policy.

4. The Hon'ble NCLAT at Para 28 to 35 of the judgment have dealt with all the objections of the Hon'ble Tribunal and held that the Ministry of Corporate Affairs, in its general circular bearing No. 09 of 2019 dated 21.08.2019 made clarification u/s 232(6) of Companies Act, 2013 and according to the circular, Section 232(6) of the Companies Act enables companies in question to choose and state in the scheme the



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appointed date. This date may be specific calendar date or may be tied to the occurrence of an event such as grant of license by competent authority or fulfilment of any preconditions agreed upon by the parties or any other requirement as agreed upon between the parties which is relevant to the scheme. The Hon'ble NCLAT further directed that in view of the affidavit filed by the appellant the appointed date shall be construed and be same as the valuation date i.e. 31.07.2018.

5. The Hon'ble NCLAT also observed that there were no objections raised by any minority shareholders against the scheme and as such the commercial wisdom of the shareholders cannot be overlooked. Further, the Hon'ble NCLAT also laid down that the scheme cannot be violative of public policy just on the ground that the NCLT considered that the scheme appears to benefit only a few shareholders of transferor company without any reasonable findings for the same.

6. The Hon'ble NCLAT at para 30 and 31 held as follows:

"30. On the basis of the arguments we have come to conclusion that at the statutory meetings 139 public



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shareholders including public institutions voted either in person or by postal ballots or by remote e-voting and over 92% of the public institutions and over 81% of other public shareholders participated by voting. All Public institutions and 99.73% of other public shareholders voted in favor of the scheme, making the tally at 99.74%. Further no minority shareholders have come forward to oppose the scheme.

31. Since, no objections have been raised by SEBI or any regulatory authority to whom notices had been issued under section 230(5) of the Companies Act, 2013 and also, as the scheme has been accorded an approval by an overwhelming majority of 99.95% of the relevant stakeholders (which includes 96.05% of the PublicShareholders). We are of the view that before the NCLT, Mumbai the Appellants brought to their notice that all the procedures prescribed u/s 230-232 of the Companies Act, 2013 were followed. This was noticed by the NCLT. However, by impugned order dated 02.03.2020, the NCLT rejected the Scheme of Amalgamation on certain ground which was not required to be noticed for determination of Amalgamation u/s 230-232 of the Companies Act, 2013.”

In view of the aforesaid findings and directions of Hon'ble NCLAT in Company Appeal (AT) No. 128 of 2020 dated 19.01.2021 to approve the scheme, this Court doth orders as follows:



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- (i) Heard the learned counsel for the Petitioner Companies in the matter of Scheme of Amalgamation of RHI India Private Limited, RHI Clasil Private Limited and Orient Refractories Limited and their respective shareholders (the "Scheme"). No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
- (ii) The sanction of the Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the proposed Scheme.
- (iii) The learned counsel for Petitioner Companies states that the First Petitioner Company is primarily engaged in business of purchase, sale, import, export and marketing of refractories, refractory products, chemicals, formulations and related equipment required in industries such as steel plants, furnaces, power house and cement plants. The Second Petitioner Company is engaged in the business of manufacturing and marketing of refractories and allied products. The Third Petitioner Company is engaged in the business of manufacture and marketing of refractory



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products, systems and services and has various global partners for its international quality products.

- (iv) The rationale for the Scheme is that the proposed amalgamation 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; realising business efficiencies, inter alia, through optimum utilisation of resources due to pooling of management, expertise, technologies and other resources of the Petitioner Companies; improved allocation of capital and optimisation 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 Petitioner Companies and their respective shareholders, employees, and creditors and there is no likelihood that the interests of any stakeholders in any of the Petitioner Companies



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would be prejudiced as a result of the Scheme. The proposed Scheme will not impose any additional burden on the members of the Transferor Companies or the Transferee Company.

Para 4 of NCLAT Order

“The Appellant no. 1 & 2 herein are the transferor companies and 3rd Appellant is the transferee company. Appellants herein are a part of RHI Magnesita group of companies. The 3rd appellant is a subsidiary of Dutch US Holding, BV which is ultimately owned by RHI Magnesita N.V., Netherlands (RHIM). Two group companies of RHIM being Dutch Brasil Holdings, BV, the Netherlands and VRD Americas BV, the Netherlands, hold 100% of 1st appellant and 2nd appellant is a subsidiary of VRD Amercas BV, the Netherlands, which is ultimately owned by RHIM. “

The Petitioner Companies have approved the said Scheme by passing the board resolutions, each dated 31 July 2018, which are annexed to the joint company scheme petition.

- (v) The learned counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in the Company order for Directions and that the joint company scheme petition was



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been filed in consonance with the orders passed in the Company order for Directions.

- (vi) The learned counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies through their learned counsel undertake to comply with all applicable statutory requirements, as required under the Companies Act, 2013 and the rules made thereunder. The said undertaking is accepted.
- (vii) The Applicant companies in the scheme at Para 3 entails details of the proposed transfer/amalgamation of transferor companies with and into the transferee company with regard to all assets, leased and licensed agreement, all immovable properties of transferor companies, all liabilities including all secured and unsecured creditors, permits, contracts, legal proceedings, employees, intellectual property, inter se transactions, borrowings limits and corporate approval, taxes, creditors, transfer of



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authorised share capital, change of name of transferee company and record date.

- (viii) Upon the scheme become effective, in consideration of amalgamation of the transferor companies with the transferee company, the transferee company without any further act or deed or without any further payment on the basis of valuation report dated 31.07.2018 and fairness report dated 31.07.2018, issue and allot the shareholders of transferor company.

For every 100 equity shares of Transferor Company 1 of face value of INR 10 each held in Transferor Company 1, every shareholder of Transferor Company 1, shall without any application, act or deed, be entitled to receive 7,044 equity shares of face value of INR 1 each of the Transferee Company, credited as fully paid up on the same terms and conditions of issue as prevalent in the Transferee Company; and

For every 1000 equity shares of Transferor Company 2 of face value of INR 10 each held in Transferor Company 2, every shareholder of Transferor Company 2, shall without any application, act or deed, be entitled to receive 908 equity shares of face value of INR 1 each of the Transferee Company, credited as fully



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paid up on the same terms and conditions of issue as prevalent in the Transferee Company; and

- (ix) The Regional Director has filed his report dated 24 June 2019 stating therein that the Tribunal may consider the observations and pass such order or orders as deemed fit and proper in the facts and circumstances of the case post considering the observations made at Sr. No. IV (a) to (f) mentioned in his report.

In paragraphs IV (a) to (f) it is stated that:

- (a) *The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned 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).*
- (b) *It is observed that the Petitioner companies have not submitted a Chairman's Report, admitted copy of the Petition, and Minutes of Order for admission of the Petition. In this regard, the Petitioner has to submit the same for the record of Regional Director.*



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- (c) *The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.*
- (d) *(d)In addition to compliance of AS-14 (IND AS-103), the Petitioner Companies 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.*
- (e) *(e) 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 share 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.*
- (f) *As per Definition of the scheme, "Appointed Date" means 1st day of January, 2019 or such other date as may be approved by the NCLT or such competent authority as may be applicable. 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 an appointed date from which it shall be effective and the scheme shall be deemed effective.*



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from such date and 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.

- (x) In so far as observations made in paragraph IV(a) of the Report of the Regional Director are concerned, the Petitioner Companies have served notices to all the regulatory authorities concerned, as required under section 230(5) of the Companies Act, such as the Income Tax Authority concerned, the Regional Director, Ministry Corporate Affairs, Western Region, Mumbai, the Registrar of Companies, Maharashtra, Mumbai, the Reserve Bank of India, the Competition Commission of India, the Official Liquidator, High Court of Bombay, BSE Limited, the National Stock Exchange of India Limited, and the Securities and Exchange Board of India. Further, the approval of the Scheme by this Tribunal will deter such authorities to deal with any of the issues arising after giving effect to the Scheme. All issues arising out of the Scheme will be met and answered in accordance with law.



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- (xi) In so far as observations made in paragraph IV(b) of the Report of the Regional Director are concerned, the Petitioner Companies have through their learned counsel submitted a copy of the Chairman's Report together with an admitted copy of the petition and Order for admission of the petition.
- (xii) In so far as observations made in paragraph IV(c) of the Report of the Regional Director are concerned, the Petitioner Companies through their learned counsel have filed an undertaking stating that the Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one and the same and there is no discrepancy or deviation.
- (xiii) In so far as observations made in paragraph IV(d) of the Report of the Regional Director are concerned, the Transferee Company undertakes that 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



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with other applicable Accounting Standards such as AS-5 (IND AS-8).

- (xiv) In so far as observations made in paragraphs IV(e) of the Report of Regional Director are concerned, the Petitioner Companies undertake to comply with provisions of Section 232(3)(i) of the Companies Act, 2013.
- (xv) In so far as observations made in paragraph IV(f) of the Report of the Regional Director are concerned the Petitioner Companies confirm and undertake that the Appointed Date has been fixed as the 1st day of January, 2019 which is in compliance with section 232(6) of the Companies Act, 2013 and the Scheme shall be effective from such Appointed Date but shall be operative from the Effective Date.

7. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.

8. The Official Liquidator has filed his report, inter alia, stating therein that the affairs of the Transferor Companies have been



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conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

9. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public interest.
10. Since all the statutory compliances have been fulfilled in C.P. (CAA)/ 2119/MB-IV/ 2020 Connected with C.A.(CAA)/ 1556/ MB-IV/ 2018, this bench hereby sanctions this Scheme in its absolute terms.
11. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme, duly certified by the Joint Registrar of this Tribunal, with the Registrar of Companies concerned, electronically in E-form INC-28 within 30 days from the date of receipt of the Order.
12. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Joint Registrar of this Tribunal, within 60 days from the date of Order, with the Superintendent of Stamps concerned, for the purpose of adjudication of stamp duty, if any, payable.



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13. The Petitioner Companies shall comply with the undertakings given by it.
14. All concerned shall act on a copy of this Order along with Scheme duly authenticated by the Joint Registrar of this Tribunal. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
15. Any person interested shall be at liberty to apply to the Tribunal in above matter for any direction that may be necessary.
16. All the Interlocutory Applications vide C.A. 14 of 2021, 15 of 2021 and 20 of 2021, have common prayers and are disposed of in view of the approval of the scheme.



C.A. 14/2021

C.A. 15/2021

C.A. 20/2021

In

CP (CAA)/ 2199/MB-IV/2019

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17. In view of the above observations, the Company Petition is
allowed.

Sd/-

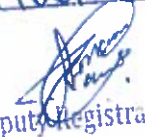
Rajesh Sharma
Member (Technical)
05.05.2021

/NP/

Sd/-

Suchitra Kanuparthi
Member (Judicial)

Certified True Copy
Copy Issued "free of cost"
On 07/06/2024


Deputy Registrar
National Company Law Tribunal Mumbai Bench
Government of India

