IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 724 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTIONS NO. 657 OF 2014

Lafarge Aggregates & Concrete India Private Limited …Petitioner Company

AND

COMPANY SCHEME PETITION NO. 725 of 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTIONS NO. 658 of 2014

Arasmeta Coal Mining Company Private Limited …Petitioner Company

AND

COMPANY SCHEME PETITION NO. 726 of 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTIONS NO. 659 of 2014

LI Cement Private Limited …Petitioner Company

AND

COMPANY SCHEME PETITION NO. 727 of 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTIONS NO. 660 of 2014

LI Eastern Private Limited …Petitioner Company

In the matter of the Companies Act, 1956 and the Companies Act, 2013, as may be applicable;

And

In the matter of Sections 391 to 394 of the Companies Act, 1956 and Companies Act, 2013, as may be applicable;

And

Composite Scheme of Amalgamation of Lafarge Aggregates & Concrete India Private Limited; and Arasmeta Coal Mining Company Private Limited; and LI Cement Private Limited; and LI Eastern Private Limited with Lafarge India Private Limited.

Called for Hearing

Ms. Alpana Ghone i/b Khaitan & Co, Advocates for the Petitioners

Ms S I Shah for the Regional Director in all the Company Scheme Petitions

Mr S.Ramakantha for the Official Liquidator in all the Company Scheme Petitions

Mr. Yahya Ghagari i/b Sonal Doshi & Co for Bomanite India, objector in Company Scheme Petition No. 724 of 2014.

Mr. Pravin Gaikwad for Sharma Stones, objector in Company Scheme Petition No. 724 of 2014.

Coram: S. J. Kathawalla, J.

Dated: 13th February 2015

MINUTES OF ORDER

1. Heard the Learned Counsels for Petitioner Companies as well as objectors.

2. The sanction of the Court is sought to the composite Scheme of Amalgamation under sections 391 to 394 of the Companies Act, 1956 and other provisions of the Companies Act, 1956 and Companies Act, 2013 as may be applicable between Lafarge Aggregates & Concrete India Private Limited and Arasmeta Coal Mining Company Private Limited and LI Cement Private Limited and LI Eastern Private Limited with Lafarge India Private Limited.

3. The Learned Counsel for the Petitioners states that the Petitioner Company in CSP No. 724 of 2014 is engaged in the business of manufacture and sale of concrete for building or civil engineering, cement concrete, mining and quarrying rock aggregates and other construction materials and also manufacture and trading of Aggregates. The Petitioner Company in CSP No. 725 of 2014 is authorised by its Memorandum of Association to engage into the business of prospecting, exploring, opening and working mines, drill and sink shafts or wells and to pump, refine, raise, dig and quarry for coal, lignite, ores, other minerals, deposits or products among others. The Petitioner Company in CSP No. 726 of 2014 is authorized by its Memorandum of

Association to engage into the business of producing, manufacturing, treating etc. of all types of cement (excluding Aluminate Cement), lime and limestone, clinker, ready mix concrete, aggregates and/ or by-products thereof. The Petitioner Company in CSP No.727 of 2014 is authorized by its Memorandum of Association to engage into the business of acquiring and holding controlling and other interests and operate any company in India engaged in any business of cement, ready mix concrete and aggregates; and to produce, manufacture, purchase, sell and trade in pack, in all types of cement (excluding Aluminate cement), lime, and limestone, clinker, ready-mix concrete, aggregates and/or by products thereof. The Transferee Company is presently engaged in the business of cement, ready mix concrete and aggregates and to produce, manufacture, purchase, sell and trade in pack, in all types of cement (excluding Aluminate cement), lime, and limestone, clinker, ready-mix concrete, aggregates and/or by products thereof.

4. The Learned Counsel for the Petitioners states that the Scheme of Amalgamation will enable simplification of the corporate structure and appropriate consolidation of the activities of the Transferor Companies and the Transferee Company with pooling and more efficient utilisation of their resources, greater economies of scale, reduction in overheads, other expenses and compliances and improvement in various operating parameters. The same will result in integration of the operations of the said Transferor Companies into Transferee Company (including better resource management). The amalgamation will create a stronger base for future growth, strengthen the brand value for all business lines and allow the Transferee Company to offer

integrated solutions to the customer's needs across the country and enable the business of the merged Transferee Company to be carried on more conveniently and advantageously.

5. The Petitioners have approved the said Scheme of Amalgamation by passing board resolutions which are annexed to the respective Company Scheme Petitions.

6. The Learned Counsel for the Petitioners further states that the Petitioners have complied with all directions passed in the Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the order passed in the respective Company Summons for Direction.

7. The Learned Counsel for the Petitioners has further stated that the Petitioners have complied with all the requirements as per directions of this Court and have filed necessary affidavits of compliance in the Court. Moreover, the Petitioners undertake to comply with all statutory requirements, if any, under the Companies Act, 1956 and/or Companies Act, 2013 and rules made thereunder, whichever is applicable. The said undertaking is accepted.

8. The Official Liquidator has filed its report on 5th February 2015 in Company Scheme Petition No 724, 725, 726 and 727 of 2014 stating therein that the affairs of the Petitioners have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved without winding up.

9. The Regional Director has filed an affidavit on 10 February 2015, *inter alia*, stating therein that save and except as stated in paragraph 6 (a) and (b) of the said affidavit, it appears that the Scheme of Amalgamation is not prejudicial to the interest of the shareholders and the public.

"6.

(a) Clause 12(f) of the scheme provides for adjustment of differences in Accounting Policies between the Transferor Companies and the Transferee Company. In this regard, it is submitted that in addition of the compliance of Accounting Standard – 14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 etc.

(b) That the Deponent further submits that the Tax issue if any arising out of this Scheme shall be subject to the final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not defer the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company."

10. In so far as the observation in paragraph 6 (a) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioners states that the Transferee Company undertakes to pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with other applicable Accounting Standards.

11. In so far as the observation in paragraph 6 (b) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioners states that the Transferor Companies and the Transferee Company are bound to comply with all applicable provisions of the Income Tax Act, 1961 and that all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.

12. The Learned Counsel for the Regional Director on instructions of Mr Chandanamuthu, Joint Director - Legal, in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioners hereinabove. The above undertakings are accepted.

13. The Learned Counsel for the Petitioner Company states that three unsecured creditors of Lafarge Aggregates and Concrete India Private Limited., viz Bomanite India, Sharma Stones (Mumbai) Private Limited and M/S G.K. Granites have objected to the proposed Scheme of Amalgamation for alleged non-payment of dues by its Affidavits dated 16th January 2015, 21 January 2015 and Company Application (L) 115 of 2015 dated 5 February 2015 respectively. The said Company has filed three separate Affidavits of Mr. Mohit Kapoor (Director of said Company) dated 10 February 2015 in response to the objections filed.

The Learned Counsel for the Petitioner Company states that Bomanite India has issued a no-objection letter dated 11th February 2015 stating that they have received a sum of Rs. 11,00,000 in full and final settlement of their dues and have no objection to the said Scheme of Amalgamation. Sharma Stones (Mumbai) Pvt. Ltd. has also issued a no-objection letter dated 12th February 2015 stating that they have received a sum of Rs. 37,00,000 in full and final settlement of their dues and have no objection to the said Scheme of Amalgamation. In so far as the objection raised by M/S G.K. Granites in CA (L) 115 of 2014 is concerned, the Learned Counsel for Petitioner Company states that the Scheme does not affect the rights of the creditors and no compromise or arrangement is called for with any of the creditors including M/S G.K. Granites. It is open to M/S G.K. Granites to pursue its legal remedies against the Transferee Company as may be advised for recovery of their dues. The Transferee Company shall abide by the final outcome of the said remedies, if any, in favour of M/S G.K. Granites.

14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provision of law and is not contrary to public policy.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 724 to 727 of 2014 are made absolute in terms of prayer clauses (a), (j) and (m).

16. The Transferee Company M/s Lafarge India Private Limited is directed to lodge a copy of this order and the Scheme of Amalgamation, duly authenticated by the Company Registrar, High Court (O.S), Bombay with the concerned Superintendent of Stamps, for purposes of adjudication of stamp duty payable, if any, on the same within 60 (sixty) days from the date of the Order.

17. The Transferee Company M/s Lafarge India Private Limited is directed to file a copy of this order alongwith a copy of the Scheme with the concerned Registrar of Companies, electronically, along with Form INC 28 in addition to a physical copy as per relevant provisions of the Companies Act, 1956 and the Companies Act, 2013 and rules made thereunder whichever are applicable.

18. The Petitioner Companies are directed to pay costs of INR 10,000 each to the Regional Director, Western Region, Mumbai and INR 10,000 each to the Official Liquidator in all the Company Scheme Petitions. Costs to be paid within four weeks from the date of the order.

19. Filing and issuance of the drawn up order is dispensed with.

20. All concerned regulatory authorities to act on a copy of this order along with the Scheme of Amalgamation attached thereto, duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(S. J. Kathawalla, J)