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HINDUSTAN ZINC
Zinc & Silver of India

To
BSE Limited
Phiroze Jeejeebhoy Towers,
Dalal Street
Mumbai – 400 001

September 02, 2022

Kind Attn: Mr. Prasad Bhide, Senior Manager and Ms. Tanmayi Lele, Assistant Manager

[*BSE Scrip Code: 500188*]

Sub: Response to the Observation Letter dated August 23, 2022 issued by BSE Limited

Ref: Application for obtaining approval under Regulation 37 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") for the Scheme of Arrangement between Hindustan Zinc Limited ("Company") and its shareholders under Section 230 and other applicable provisions of the Companies Act, 2013 ("Act") ("Scheme").

Dear Sir, Madam

1. We acknowledge with thanks the receipt of the Observation Letter dated August 23, 2022 ("**Observation Letter**"), issued by your good office in connection with the Scheme.

2. We also take note of the no objection to the Scheme by stating the following in the Observation Letter:

   "In light of the above, we hereby advise that we have no adverse observations with limited reference to those matters having a bearing on listing/de-listing/continuous listing requirements within the provisions of Listing Agreement, so as to enable the company to file the scheme with Hon'ble NCLT."

3. We understand that, pursuant to requirements of Master Circular dated November 23, 2021 on (i) Scheme of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, bearing reference no. SEBI/HO/CFD/DIL1/CIR/P/2021/0000000665 issued by the Securities and Exchange Board of India ("**SEBI**") ("**Master Circular**"), the Observation Letter *inter alia* provides for concerns and comments of the SEBI on the Scheme as specified in Annexure I, Annexure II and Annexure III respectively. Copy of the Observation Letter is annexed hereto as **Exhibit A** for ready reference.

4. In order to provide better context to the comments/ observation made by the SEBI in the Observation Letter, the Company *vide* its email dated August 22, 2022, has submitted the following response to the SEBI on the queries received post filing of the draft Scheme with Stock Exchanges pursuant to Regulation 37 of the LODR Regulations:

   *"Basis our telephonic conversation on 10 August 2022 in connection with the Scheme of Arrangement between Hindustan Zinc Limited ("**Company**") and its shareholders ("**Scheme**"), kindly refer to our responses mentioned below:*

   1. *In terms of provisions of Sections 230 to 232 of the Companies Act, 2013 ("**2013 Act**"), the Board of Directors of the Company, at their meeting held on January 21, 2022, had inter alia*

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unanimously approved the Scheme. The proposed Scheme is an arrangement between the Company and its shareholders. Pursuant to this Scheme, it proposed to transfer the amounts standing to the credit of general reserves account of the Company to the retained earnings account of the Company.

2. *As you are aware, Section 205(2A) of the erstwhile Companies Act, 1956 read with Companies (Transfer of Profits to Reserves) Rules 1975, mandated every company to transfer, in any financial year, a specific portion out of the profits of the company for that year arrived at, after providing for depreciation, to the general reserves account of the company, before declaring any dividend to the shareholders.*

3. *After repealing the 1956 Act and introduction of the 2013 Act, taking into consideration the changing times and evolving law including the appreciating the shareholder rights, the erstwhile provisions relating to transfer of a portion of profits to general reserves account of the company were done away with. Today, there are no corresponding provisions under the 2013 Act or rules made thereunder which mandates a company, to transfer a portion of its profits to its general reserves prior to payment of dividend or mandate a company to continue to maintain a general reserves account. In other words, the legislature has acknowledged that the profits of a company belong to its shareholders and the board of directors of the company and its shareholders are best judge to utilize the same for the benefit of the shareholders in a manner they may deem appropriate.*

4. *As aforesaid, the amounts standing to the credit of the general reserves account of the Company, is nothing but a part of the post-tax profits of the Company and are accumulated pursuant to mandatory requirements of the erstwhile Companies Act, 1956 and Companies (Transfer of Profits to Reserves) Rules, 1975. The erstwhile provisions of the Companies Act, 1956, while mandating the transfer of amounts to general reserves account also provided for the manner in which the amounts standing to the credit of the general reserves account were required to be utilised. With the repeal of the erstwhile Companies Act, 1956 and Companies (Transfer of Profits to Reserves) Rules 1975, and in absence of any requirements under the 2013 Act or rules made thereunder, the requirement to continue to maintain the said amounts in the general reserves account or transfer the amounts from the general reserves account to the retained earnings account and utilize the same for creating value for the shareholders is completely left at the discretion of the Board of Directors of the Company and its shareholders, in the manner in which the Board of Directors and the shareholders of the Company deem it appropriate. In order to create value for the shareholders, the first step is to transfer the amounts standing to the credit of the general reserves account of the Company to the account from where it was transferred in the first place, i.e. the retained earnings account. This is in line with the cardinal principle of Companies Act that all profits (unless some restrictions are imposed under law) are for the benefit of shareholders of a company as the shareholders are providing the risk capital. We would like to bring to your kind attention that even during the existence of the 1956 Act and Rules framed thereunder, certain companies like Nestle India Limited (C.P No. 141/ 2007, High Court of Delhi) was permitted to transfer the amounts standing to the credit of general reserve account to retained earnings account pursuant to a scheme of arrangement with the shareholders. In the said scheme, the grounds for such transfer was to create shareholder value and that the amounts transferred are nothing but accumulated profits of the company which are required to be utilized for the shareholders to create value for them.*

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5. *Pursuant to the proposed Scheme, the Company believes that it will provide greater flexibility to it to enable, among other things, to issue payouts to its shareholders. Further, if the amounts standing to the credit of the general reserves account of the Company are transferred to retained earnings account, a stronger position of the retained earnings account of the Company will be created which consequently will generate better shareholder value. The Board of Directors of the Company believes that such a transfer would not only be in the interest of shareholders and create higher shareholder value, but also not be prejudicial to the interest of any stakeholders.*

6. *Currently, there is no provision under the Act which enables or restricts the transfer of amounts standing credit to the general reserves of a company to its retained earnings. Further, as aforesaid, even during the existence of the erstwhile Companies Act, 1956, jurisdictional High Courts have permitted company like Nestle India Limited (C.P No. 141/ 2007, High Court of Delhi), to undertake such a transfer through a scheme of arrangement under the erstwhile Sections 391 to 394 of the Companies Act, 1956. Even, under the corresponding provisions of Sections 230 to 232 of the Act, the Securities and Exchange Board of India and the various Benches of the National Company Law Tribunal ("**NCLT**") have permitted companies like Hindustan Unilever Limited (TCSP No. 151 of 2017, NCLT, Mumbai Bench), International Paper APPM Limited (CP No. 416 of 2016, NCLT, Hyderabad Bench), Prime Securities Limited (CP.CAA No. 1084 of 2020, NCLT, Mumbai Bench), The Tata Power Company Limited (CP.CAA No. 42 of 2021, NCLT, Mumbai Bench), Nestle India Limited (CA.CAA.30/230-232/ND/2022, NCLT, New Delhi Bench, currently ongoing) etc. to undertake such a transfer through a scheme of arrangement whereby amounts standing to the credit of the general reserves account were transferred to the retained earnings account. Some companies have undertaken such transfer without undertaking a scheme of arrangement. You will appreciate that, the Company is following the best corporate governance practice for transfer of amounts standing to the credit of general reserves account to retained earnings account through transparent mechanism of scheme of arrangement which will not only be approved by shareholders at an NCLT directed meeting (convened pursuant to the requirements of Section 230 to 232 of the 2013 Act), but will also go through the scrutiny of various regulatory authorities including the NCLT.*

7. *It may be noted that while transfer of amounts standing to credit of the general reserves account to retained earnings account is being proposed and once the Scheme if approved by NCLT, the utilisation of the amounts from the retained earnings account will be undertaken as may be permissible under the relevant provisions of the 2013 Act. The selection of method to reward the shareholders of the Company is dependent upon various external and internal factors like overall business environment of the Indian economy, financial position of the Company etc., which would be quite difficult for the Company to ascertain at this stage. However, kindly note that the Company will duly follow requisite provisions of the Act while determining the exact method to reward its shareholders.*

We request you to kindly take the above responses on record and oblige.

Regards
R Pandwal"

5. Specifically in connection with the Paragraph 16 of Annexure II of the Observation Letter, the SEBI has stated the following:

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16) Incidentally, it may also be mentioned that Hon'ble Supreme Court in the case of National Confederation of Officers Association of Central Public Sector Enterprises and Ors. Vs. Union of India & Ors. vide order dated November 18, 2021 had inter-alia observed that –

"There is sufficient material for registration of a regular case in relation to the 26 percent disinvestment of Hindustan Zinc Limited by the Union Government in 2002. The CBI is directed to register a regular case and proceed in accordance with law."

6. In order to provide better context to the aforesaid comments/ observations made by the SEBI, the Company *vide* its email dated June 9, 2022, has *inter alia* submitted the following response to the SEBI on the queries received post filing of the draft Scheme with Stock Exchanges pursuant to Regulation 37 of the LODR Regulations:

   *"Hindustan Zinc Ltd ("**HZL**") was a public sector undertaking whose shares were divested by the Government of India in the year 2002 as a part of the disinvestment drive. The Hon'ble Supreme Court of India vide its order dated 18 November 2021 directed the Central Bureau of Investigation ("**CBI**") to lodge an FIR for the suspected irregularities in the valuation and the process undertaken by the Government of India for divestment of its holding in HZL. The said order dated 18 November 2021, issued by the Hon'ble Supreme Court of India is already available in the public domain. HZL is not a direct party to the case and case was registered between Union of India v/s National Confederation of Officers Association of Central Public Sector Enterprises and Ors.*

   Since HZL is not a direct party to the case, except for the information available in public domain and the aforesaid cause of action mentioned in the said order issued by the Hon'ble Supreme Court of India, HZL is not privy to any further information and/ or data with respect to the investigation carried out by CBI.

   Further, following the practice of good corporate governance, on November 18, 2021, HZL immediately informed the stock exchanges about the said order issued by the Hon'ble Supreme Court of India. Copy of the said intimation sent to stock exchanges by HZL is attached for your ready reference."

7. We believe that it is relevant to put this information in public domain as it clarifies the nature of the Scheme and the concerns and comments mentioned in your Observation Letter. The Observation Letter and this response letter is also uploaded on the website of the Company and can be accessed from the below mentioned link:

   https://www.hzlindia.com/investors/scheme-of-arrangement/

8. We request you to kindly take this response on record.

Thanking you
For Hindustan Zinc Limited

Rajendra Pandwal
Company Secretary

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Exhibit-A

DCS/IPO/TL/ESOP-IP/2456/2022-23 **"E-Letter"** **August 23, 2022**

The Company Secretary,
HINDUSTAN ZINC LTD.
Yashad Bhawan, Udaipur,
Rajasthan, 313004

Dear Sir,

Sub: Observation Letter regarding the Scheme of Arrangement between Hindustan Zinc Ltd and its Shareholders

We are in receipt of the draft Scheme of Arrangement filed by **Hindustan Zinc Ltd** as required under SEBI Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017; SEBI vide its letter dated August 22, 2022, **has inter alia given concerns on the draft scheme which are placed as Annexure I and it's comment(s) on the draft scheme of Arrangement wherein Company shall ensure that the comments shall be part of the explanatory statement sent to shareholders and before NCLT for the purpose of seeking their approval as Annexure II:**

Annexure I

I.FACTS OF THE CASE IN BRIEF:

1) **Draft Scheme of Arrangement filed by Hindustan Zinc Limited provides for transfer of an amount of Rs.103,83,15,26,729 standing to the credit of the General Reserve to Retained Earnings of the Company.**

2) **Hindustan Zinc Limited is listed on Bombay Stock Exchange Limited and National Stock Exchange of India Limited.**

3) **As per the draft scheme document, the rationale provided by the company for the scheme is as follows:**

   i. **Over the years, the Company has built up significant reserves through transfer of profits to the reserves in accordance with provisions of the erstwhile Companies Act, 1956 and erstwhile Rules notified thereunder, namely, the Companies (Transfer of Profits to Reserves) Rules, 1975.**
   ii. **Steady growth in sales volume, balanced capital expenditure for continuing operations has helped the Company achieve a strong track record of generating cash flows. With healthy business practices in place, the Company expects that it will continue its growth trajectory and its business operations will keep generating incremental cash flow over the coming years.**
   iii. **The company is of the view that the funds represented by the general reserves are in excess of the Company's anticipated operational and business needs in the foreseeable future, thus, these excess funds can be utilized to create further shareholder's value, in such manner and to such extent, as the Board of the Company in its sole discretion, may decide, from time to time and in accordance with the provisions of the Act and other applicable law.**
   iv. **The scheme is in interest of all stakeholders of the Company**

II.COMMENTS OF SEBI ON THE DRAFT SCHEME OF ARRANGEMENT:

1) **In terms of section 205(2A) of the erstwhile Companies Act, 1956, it was mandatory for companies to transfer a certain percentage of profits, not exceeding ten percent, to the reserves, which would be beneficial to both, company and shareholders, because such reserves would be available to the company for ploughing them back for expansion of the activities of the companies and would also be available for declaration of dividends in a lean year.**

2) **The erstwhile Companies (Declaration of Dividend out of Reserves) Rules, 1975 provided that in event of inadequacy or absence of profits in any year, dividend may be declared by a company for that year out of accumulated profits earned by it in previous years and transferred by it to reserves, subject to conditions that-**

   i. **Rate of dividend declared shall not exceed dividend declared for previous five years or 10% of paid up capital, whichever is less.**
   ii. **Total amount to be transferred from general reserve shall not exceed 10% of paid-up capital and free reserves and amount be first utilized to set off the losses before declaring dividend.**
   iii. **Balance of reserves after such transfer shall not fall below 15% of the paid up capital.**

3) **However, section 123 of the Companies Act, 2013, which corresponds to section 205(2A) of the erstwhile Companies Act, 1956, made effective from September 12, 2013, provides that a company may, before declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Thus, in terms of the above first proviso, to section 123(1) of the Companies Act, 2013, such transfer of profits to reserves has not been made compulsory.**

4) **Incidentally, the second proviso to section 123 of Companies Act, 2013 still provides that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf.**

5) **In this regard, the Companies (Declaration and Payment of Dividend) Rules, 2014, states as under –**

   In the event of inadequacy of absence of profits in any year, a company may declare dividend out of free reserves subject to the fulfilment of the following conditions, namely:-

   i. **The rate of dividend declared shall not exceed the average of rate at which dividend was declared by it in the three years immediately preceding that year. Provided that this sub-rule shall not apply to a company which has declared any dividend in each of the three preceding financial years.**
   ii. **The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid up share capital and free reserves as appearing in the latest audited financial statement.**

iii. The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.

iv. The balance of reserves after such withdrawal shall not below fifteen percent of its paid up share capital as appearing in the latest audited financial statement.

6) As a result of this scheme, the funds which were meant for restrictive use, as part of general reserve, would now be available for any purpose, including distribution as dividend, after transfer to P&L Account, which does not have any apparent restrictions on its use.

7) By transferring funds from general reserves to P&L Account, the companies are practically re-transferring funds which had been transferred to the general reserve as per the compulsory provisions existing then under the erstwhile Companies Act, 1956. However, no such explicit provision is provided in the extant law and it is silent on enabling/restraining such retransfer. Nevertheless, the purposes for which general reserve could be utilized does not envisage transfer of the general reserve (compulsory) to P&L Account for an unfettered and unrestricted use.

8) The freedom to transfer profits to reserves on a voluntary basis, as outlined in para 3 above, would be prospective in nature, after notification of the 2013 Act. In effect, the company is attempting to apply the provision for voluntary transfer to reserves, on a retrospective basis by transferring back the entire general reserve to P&L account.

9) Further, though the extent provisions of the Companies Act, 2013 do not make it mandatory for transfer to general reserves, Companies (Declaration and Payment of Dividend) Rules, 2014 exist which in effect are having similar provisions as that of Companies (Declaration of Dividend out of Reserves) Rules 1975. Thus, the right of payment of dividend out of reserves is not an unfettered right and is subject to conditionalities. The only provision done away with is the compulsory transfer from profits to reserves which gives freedom to the companies in this respect.

10) Consequently, the limited freedom given to companies through the Companies Act, 2013, is with respect to whether or not profits may be transferred to reserves, and not an untrammelled right to utilize the already existing compulsorily transferred reserves in total disregard to the restrictions on usage as contained in the Companies (Declaration and Payment of Dividend) Rules, 2014.

11) In a nutshell, the prospective nature of the Section 123 of the Companies Act, 2013 as well as the retention of restrictions on payment of dividend out of accumulated reserves as enshrined in the Companies (Declaration and Payment of Dividend) Rules, 2014, suggests that the lawmakers had neither intended unrestricted use of accumulated profits to pay dividend, nor transfer of reserves to P&L account to possibly pay dividend in this circumlocutory manner. Thus, the conduct of the company may be at variance with the spirit of the law.

12) Once the scheme is permitted, Hindustan Zinc Limited, is free to use the money liberally disregarding the conservative policies as are contained in Companies (Declaration and Payment of Dividend) Rules, 2014.

13) **Also, in the instant case, it has not been specified how shareholder value is intended to be created. Such vagueness of purpose, and conduct of the management with respect to the possible usage outlined in the paras above, may not be in the interest of shareholders.**

14) **In view of the above, the proposed scheme may not be justified, both from the legal and the corporate governance point of view.**

15) **It may also be mentioned that in respect of some Schemes providing for similar transactions, in past, the Ministry of Corporate Affairs, had contended before Hon'ble National Company Law Tribunal that Scheme is not in the public interest as it is framed to circumvent the provisions of Section 123 of Companies Act, 2013 and the Companies (Declaration and Payment of Dividend) Rules, 2014.**

16) **Incidentally, it may also be mentioned that Hon'ble Supreme Court in the case of National Confederation of Officers Association of Central Public Sector Enterprises and Ors. Vs. Union of India & Ors. vide order dated November 18, 2021 had inter-alia observed that –**

"There is sufficient material for registration of a regular case in relation to the 26 percent disinvestment of Hindustan Zinc Limited by the Union Government in 2002. The CBI is directed to register a regular case and proceed in accordance with law."

III.

"Company is advised to make Stock Exchanges a party in the matter and they should suitably articulate the said concerns before the NCLT during the proceedings regarding this scheme."

Accordingly, based on aforesaid comment offered by SEBI, the company is hereby advised:

i. To provide additional information, if any, (as stated above) along with various documents to the Exchange for further dissemination on Exchange website.
ii. To ensure that additional information, if any, (as stated aforesaid) along with various documents are disseminated on their (company) website.
iii. To duly comply with various provisions of the circulars.

In light of the above, we hereby advise that we have no adverse observations with limited reference to those matters having a bearing on listing/de-listing/continuous listing requirements within the provisions of Listing Agreement, so as to enable the company to file the scheme with Hon'ble NCLT.

Further, where applicable in the explanatory statement of the notice to be sent by the company to the shareholders, while seeking approval of the scheme, it shall disclose information about unlisted company involved in the format prescribed for abridged prospectus as specified in the circular dated March 10, 2017.

Kindly note that as required under Regulation 37(3) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the validity of this Observation Letter shall be six months from the date of this Letter, within which the scheme shall be submitted to the NCLT.

The Exchange reserves its right to withdraw its 'No adverse observation' at any stage if the information submitted to the Exchange is found to be incomplete / incorrect / misleading / false or for any contravention of Rules, Bye-laws and Regulations of the Exchange, Listing Agreement, Guidelines/Regulations issued by statutory authorities. Please note that the aforesaid observations does not preclude the Company from complying with any other requirements.

Further, it may be noted that with reference to Section 230 (5) of the Companies Act, 2013 (Act), read with Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules 2016 (Company Rules) and Section 66 of the Act read with Rule 3 of the Company Rules wherein pursuant to an Order passed by the Hon'ble National Company Law Tribunal, a Notice of the proposed scheme of compromise or arrangement filed under sections 230-232 or Section 66 of the Companies Act 2013 as the case may be **is required to be served upon the Exchange seeking representations or objections if any.**

In this regard, with a view to have a better transparency in processing the aforesaid notices served upon the Exchange, the Exchange has **already introduced an online system of serving such Notice along with the relevant documents of the proposed schemes through the BSE Listing Centre.**

Any service of notice under Section 230 (5) or Section 66 of the Companies Act 2013 seeking Exchange's representations or objections if any, **would be accepted and processed through the Listing Centre only and no physical filings would be accepted.** You may please refer to circular dated February 26, 2019 issued to the company.

Yours faithfully,

Sd/-

Prasad Bhide
Senior Manager

Sd/-

Tanmayi Lele
Assistant Manager