

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

C.A. (CAA)/846/MB/2018

Under Sections 230 to 232 of the
Companies Act, 2013

In the matter of Scheme of Merger by
Absorption of Kapadia Associates Private
Limited (Transferor Company) with Javaki
Design Private Limited (Formerly Known as
Scoya Commodities Private
Limited)(Transferee Company) and their
respective shareholders

Kapadia Associates Private Limited

(First Applicant Company / Transferor Company)

**Javaki Design Private Limited (Formerly Known as Scoya
Commodities Private Limited)**

(Second Applicant Company / Transferee Company)

Order delivered on 6th day of September, 2018

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Applicants: Mr. Ajit Singh Tawar i/b Ajit Singh Tawar & Co.,
Advocates for Applicant Companies

Per: V. Nallasenapathy, Member (T)

ORDER

UPON the application of the Applicant Companies above named by a
Company Notice of Admission **AND UPON HEARING** Mr. Ajit Singh Tawari/b
Ajit Singh Tawar & Co, Advocates for the Applicant Companies **AND UPON**

READING the Application along with the Notice of Admission dated 2nd day of August, 2018 of Mr. Rakesh Purushottam Surve, Authorised Representative of Applicant Companies, in support of Notice of Admission along with Application and Exhibits therein referred to, **IT IS ORDERED THAT:**

1. The meeting of the Equity Shareholders of the First Applicant Company be convened and held at registered office of the First Applicant Company situated at 112/114 Peninsula Center, Dr S S Rao Road Off Ambedkar Road, Parel (E), Mumbai -400 012, Maharashtra, India on Friday, 12th day of October, 2018 at 10.00 A.M, for the purpose of considering and, if thought fit, approving with or without modification(s), the proposed merger embodied in the Scheme of Merger by Absorption of Kapadia Associates Private Limited (Transferor Company) with Javaki Design Private Limited (Transferee Company) and their respective shareholders ('Scheme').
2. The meeting of the Equity Shareholders of the Second Applicant Company be convened and held at registered office of the Second Applicant Company situated at 112/114 Peninsula Center, Dr S S Rao Road Off Ambedkar Road, Parel (E), Mumbai -400 012, Maharashtra, India on Friday, 12th day of October, 2018 at 11.00 A.M, for the purpose of considering and, if thought fit, approving with or without modification(s), the proposed merger embodied in the Scheme of Merger by Absorption of Kapadia Associates Private Limited ('Transferor Company') with Javaki Design Private Limited ('Transferee Company') and their respective shareholders ('Scheme').
3. At least 30 clear days before the said meeting(s) of the Equity Shareholders of the respective Applicant Company to be held as aforesaid, a notice convening the place, day, date and time of the meeting(s) as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post/ Hand Delivery or through Email (to those shareholders whose email addresses are duly registered with their respective Applicant Company for the purpose of receiving such

notices by email), to each of the Equity Shareholders of the respective Applicant Company, at their last known address or email addresses as per the records of the respective Applicant Company.

4. At least thirty (30) clear days before the meeting(s) of the Equity Shareholders of the respective Applicant Company to be held as aforesaid, a notice convening the said meeting(s), indicating the place, day, date and time of meeting(s) as aforesaid be published stating that the copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the Form of Proxy can be obtained free of charge at the registered office of the respective Applicant Company, as aforesaid and / or at the office of their Advocates, Ajit Singh Tawar & Co., 14, Rajabhadur Building, Ambalal Doshi Marg, Opp. Bombay Mutual Chambers, Fort, Mumbai – 400 023.
5. That a composite notice of the aforesaid meeting(s) of the Applicant Company shall be advertised in two local newspapers viz. 'Free Press Journal' (Mumbai edition) in English and translation thereof in 'Navshakti' (Mumbai edition) in Marathi, both circulated in Mumbai, Maharashtra not less than thirty (30) days before the date fixed for the meeting(s).
6. The Applicant Companies undertakes to:
 - i. Issue Notice convening meeting(s) of the Equity shareholders in Form No. CAA.2 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
 - ii. Issue Statement containing all the particulars as per Section 230(3) of the Companies Act, 2013;
 - iii. Issue Form of Proxy in Form No. MGT-11 as per Rule 19 of the Companies (Management and Administration) Rules, 2014; and
 - iv. Advertise the composite Notice convening meeting(s) in Form No. CAA.2 as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertaking is accepted.

7. Mr. Rakesh Purushottam Surve, Authorised Signatory of the First Applicant Company, failing him, Mr. Pramod Sutar, Authorised Signatory of the First Applicant Company shall be the Chairman of the meeting of the Equity Shareholders of the First Applicant Company to be held as aforesaid or any adjournments thereof.
8. Mr. Rakesh Purushottam Surve, Authorised Signatory of the Second Applicant Company, failing him, Mr. Pramod Sutar, Authorised Signatory of the Second Applicant Company shall be the Chairman of the meeting of the Equity Shareholders of the Second Applicant Company to be held as aforesaid or any adjournments thereof.
9. The Scrutinizer for the aforesaid meeting(s) shall be Mr. Harsh Ruparelia, Membership No. - 160171, Firm Registration No.- 141432W, of Harsh Ruparelia & Co., Practicing Chartered Accountants, who shall be paid an amount of Rs. 6,000/- (Rupees Six Thousand Only)/- per Applicant Company for the services.
10. The Chairman of the respective Applicant Company appointed for the aforesaid meeting(s) to issue the advertisement and send out the notices of the meeting(s) referred to above. The said Chairman of the meeting(s) shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting(s) by any person(s).
11. The quorum of the aforesaid meeting(s) of the Equity Shareholders of the respective Applicant Company shall be as prescribed under Section 103 of the Companies Act, 2013.
12. The 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 meeting(s), is filed with the respective Applicant Company at their

registered office not later than 48 hours before the aforesaid meeting(s) as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

13. The value and number of shares of each Equity Shareholder shall be in accordance with the books/register of the respective Applicant Company and where the entries in the books / register are disputed, the Chairman of the meeting(s) of the respective Applicant Company shall determine the value for the purpose of the aforesaid meeting(s) and his decision in that behalf would be final.
14. The Chairman for the respective meeting(s) to file an affidavit not less than seven days before the date fixed for the holding of the respective meeting(s) of shareholders and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.
15. The Chairman of the meeting(s) of the respective Applicant Company to report this Tribunal, the result of the aforesaid meeting(s) within thirty (30) days of the conclusion of the meeting(s).
16. The Counsel for the Applicant Companies further submit that since there are no Secured Creditors in the respective Applicant Company, the question of holding the meeting or sending of notices to Secured Creditors of the Applicant Companies does not arise.
17. The Counsel for the First Applicant Company further submits that since there are no Unsecured Creditors in the First Applicant Company, the question of sending of notices to Unsecured Creditors of the First Applicant Company does not arise.
18. The Counsel for Second Applicant Company further submits that since the Scheme is an arrangement between the Applicant Companies and their respective shareholders, only a meeting(s) of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. This bench hereby directs the Second Applicant Company to issue notice to all its

Unsecured Creditors as required under section 230(3) of the Companies Act 2013, by Courier / Registered Post / Speed Post / Hand Delivery or through Email with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Second Applicant Company.

19. The Applicant Companies to serve the notice upon the Central Government through the office of the concerned Regional Director, Western Region, Mumbai, pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Tribunal from the Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
20. The Applicant Companies to serve the notice upon the concerned Registrar of Companies, pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
21. The Applicant Companies to serve the notice upon the concerned Income Tax Authority, pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Tribunal from the concerned Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that the Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

22. The First Applicant Company to also serve the notice upon the concerned office of the Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing M/s. S. M Pradhan & Co., Chartered Accountants, having their office at 5, Vijaylaxmi, Gokhale Road, Mulund (East), Mumbai - 400081, Contact No. 022-21636889, email id: smp@smpradhanca.com, with remuneration of Rs.50,000/- along with applicable taxes, for the services. If no response is received by the concerned Office of the Official Liquidator within 30 days of the date of receipt of the notice it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
23. The Applicant Companies to file an Affidavit of Service of the directions given by the Tribunal not less than seven (7) days before the date fixed of the aforesaid meeting(s) and to report to this tribunal that the direction regarding the issue of notices and advertisements have been duly complied with.

SD/-

V. Nallasenapathy
Member (T)

SD/-

BhaskaraPantula Mohan
Member (J)