

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENCH AT ALLAHABAD**

**COMPANY PETITION NO. 17/ALD OF 2018
CONNECTED WITH
COMPANY APPLICATION NO. CA(CAA)- 189/(ALD)/2017**

(DISTRICT: HARIDWAR)

IN THE MATTER OF COMPANIES ACT, 2013

And

In the matter of Scheme of Amalgamation of:

KIRBY BUILDING SYSTEMS INDIA PRIVATE LIMITED,
was originally incorporated under the Companies Act, 1956 under name and style of Kirby Building Systems India Limited, later on the company had converted itself into a private limited company on 18.03.2015 after complying with necessary formalities under the Companies Act, 2013 having its registered office at Plot No. 8-15, Phase –III IDA Pashamylaram, Sanga Reddy District Telangana-502307, India, having Corporate Identification Number U28100TG1998PTC029787.

.....Transferor Co.

AND

**KIRBY BUILDING SYSTEMS INDIA (UTTARANCHAL)
PRIVATE LIMITED**

a private company incorporated under the Companies Act, 1956 having its registered office at Plot No. 2, sector 11 integrated industrial estates, Sidcul, Haridwar, Uttaranchal-249403, India, having corporate identification number U45200UR2005PTC029472.

... Petitioner Co./Transferee Co.

JUDGMENT/ORDER DELIVERED ON 12.10.2018

CORAM : Sh. H.P. Chaturvedi, Member (J)
: Ms. Saroj Rajware, Member (T)

For the Petitioner : Sh. Rahul Agarwal, Advocate along with
Sh. Shubham Agarwal, Advocate

For the Central Govt.: Sh. Krishna Dev Vyas, Advocate
Along with
Sh. Kuldeep Singh, STA, O.L. (Allahabad)

PER SE : SH. H.P. CHATURVEDI, MEMBER (J)

ORDER/JUDGMENT

1. The Present application is filed by Transferee/Petitioner Company under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Rules framed there under as in force from time to time for the Sanction of the proposed Scheme of Amalgamation of **KIRBY BUILDING SYSTEMS INDIA PRIVATE LIMITED** (Transferor Company) with **KIRBY BUILDING SYSTEMS INDIA (UTTARANCHAL) PRIVATE LIMITED** (Petitioner Company/ Transferee Company).

2. The proposed company Scheme of Amalgamation has previously been approved by the Board of Directors of both petitioner Transferor Company and Transferee Companies in their respective meetings held on 01.11.2017 and 02.11.2017 respectively.

3. The factual position of the Authorized, Issued, Subscribed and Paid up share Capital of the Transferor Company and Transferee /Petitioner Company are described well in the present Company Petition, which are being reproduced hereunder: -

The share capital structure of the Transferor Company as on 12 December, 2017 is as follows:

Particulars	Rupees
Authorized Capital	
8,80,00,000 equity shares of Rs.10 each	88,00,00,000
12,00,000 5% cumulative redeemable preference shares of Rs.100 each	12,00,00,000
Issued, Subscribed & Paid-up Capital	
4,00,02,200 equity shares of Rs.10 each	40,00,22,000

The share capital structure of the Applicant Company /Transferee Company as on 31 March, 2017 was as under:

Particulars	Rupees
Authorized Capital	
2,00,00,000 equity shares of Rs.10 each	20,00,00,000
Total	20,00,00,000
Issued, Subscribed & Paid-up Capital	
1,87,29,880 equity shares of Rs.10 each	18,72,98,800
Total	18,72,98,800

4. The rationale of the proposed company Scheme are elaborately described in the present Company petition which may be summarized as under:
- a. The Transferor Company and the Transferee Company are into similar business (i.e. pre-engineered steel buildings), thereby the proposed Scheme of Amalgamation will consolidate, expand and increase its presence in the business thereby streamlining of management focus and pruning the operational and administration costs.
 - b. The proposed Scheme of Amalgamation will enable appropriate consolidation of the activities of the Transferor Company and the Transferee Company with pooling and more efficient utilisation of their resources, greater economies of scale, reduction in overheads and other expenses and improvement in various operating parameters.

- c.** To achieve synergistic integration and consolidation of the businesses presently being carried on by the Transferor Company and the Transferee Company which shall be beneficial to shareholders, creditors and employees of such companies as such proposed Scheme of Amalgamation would create greater synergies between the businesses of these companies and would enable them to have access to better financial resources as well as increase the managerial efficiencies, while effectively pooling the technical, distribution and marketing skills of each other.
- d.** To achieve consolidation, greater integration and financial strength and flexibility which will maximise overall shareholder value and improve the competitive position of the combined entity.
- e.** To achieve greater efficiency in cash management and unfettered access to cash flows generated by the combined business which can be deployed more effectively to fund organic or inorganic growth opportunities.
- f.** The proposed Scheme of Amalgamation will result in reduction of multiplicity of entities, thereby reducing compliance cost of multiple entities. Therefore, the proposed Scheme of Amalgamation shall be beneficial to

the shareholders, creditors and employees of the two companies.”

5. It is also submitted that the Board of Directors of the Transferor Company as well as Transferee /Petitioner Company respectively have determined the share exchange ratio as under:-

“....The Transferee Company shall issue and allot equity shares to the shareholders of the Transferor Company, where the shareholder opts to receive shares instead of cash. The Transferee Company shall without any further application, act, instrument or deed, issue and allot to the shareholders of the Transferor Company, whose names are registered in the register of members of the Transferor Company on the Record Date (to be fixed by the Board of Directors of the Transferee Company), equity shares of Rs. 10/- (Rupees Ten Only) each credited as fully paid up of the Transferee Company, in the ratio of Twenty one equity shares of the face value of Rs. 10/- (Rupees Ten Only) for every One Hundred equity shares of Rs. 10/- (Rupees Ten Only) each credited as fully paid-up held on the Record Date by the equity shareholders in the Transferor Company.”

6. The Transferee /Petitioner Company has also annexed the fairness opinion given by Sudhanshu Sharma & Associates, Chartered Accountants in relation to the share exchange ratio.
7. It is submitted that the proposed company Scheme would not adversely affect the rights or interest of any creditor of the Transferor Company and the Petitioner Company / Transferee Company or their respective shareholders, in any manner whatsoever, and the Scheme of Amalgamation is not intended, in any manner, to have any beneficial effect on the material interest,

if any, of the directors of Petitioner Company/ Transferee Company or Transferor Company. Further no instances of mismanagement in the affairs have been noticed or reported by the auditors of the Transferor Company or the Petitioner Company /Transferee Company.

8. A perusal of the present petition discloses that initially the Transferee /Petitioner Company has earlier filed Company Application/ CA No.189/ALD/2017 seeking direction for dispensation of its meetings with shareholders and Unsecured Creditors for the purpose of sanction of the proposed company Scheme of Amalgamation. Accordingly, this Court by its previous order dated 27.12.2017 (passed by the Single Bench) allowed the above mentioned prayers, by dispensing with such meetings and directed further to issue notice of hearing in respect of present company scheme petition to the Central Government through the Regional Director, the Registrar of Companies and the Official Liquidator and also to make paper publication in this respect in English and Hindi newspapers.
9. In compliance thereof, the Transferee /Petitioner Company has filed Memorandum of Service, confirming that notices have been duly published in “Hindustan Times” (English, New Delhi Edition) and “Hindustan” (Hindi, Dehradun Edition). The Transferee /Petitioner Company has duly served on notices to the Central Government through the Regional Director, the Registrar of Companies, the Official Liquidator, Allahabad and Deputy Commissioner of Income Tax, Haridwar.

10. In response to the above stated notice, the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi submitted its report through a representation/ affidavit, wherein it is stated that there is nothing objectionable in the Scheme of Amalgamation. The Regional Director, however has made some observation in paragraph 14 of the said report that the Petitioner Company/Transferee Company to be insisted to give an undertaking to pay the stamp duty as may be applicable consequent upon the transfer of assets due to the Amalgamation of undertakings/ assets.
11. In response to the above observation, Petitioner Company/Transferee Company vide its affidavit dated 03.10.2018 has given an undertaking to make payment of the stamp duty, if any.
12. We have gone through the report of the Official Liquidator, Uttrakhand, which is filed through Registrar of Companies, Kanpur, annexed along with the report of Regional Director, (Northern Region), Ministry of Corporate Affairs, New Delhi and after perusing the same we are of the view that the sanction of the present scheme is not against public policy, nor it would be prejudicial to the public interest at large.
13. The learned counsel for the Petitioner Company/Transferee Company also brought to our notice and on record an order dated 05.10.2018 passed by Hon'ble NCLT, Hyderabad in CP No.324/230/HDB/2018 connected with CA

No.174/230/HDB/2018 filed by Transferor Company, whereby it was pleased to sanction the present company scheme of Amalgamation on behalf of the Transferor company, which shall form part of this order and is hereby annexed.

- 14.** Upon hearing Sh. Shubham Agarwal, Advocate for the Petitioner Company/Transferee Company and the representative of Regional Director, (Northern Region), Ministry of Corporate Affairs, New Delhi and in view of the approval of the proposed company Scheme without any modification by the Hon'ble NCLT, Hyderabad as well as by the Shareholders and Unsecured Creditors of the Petitioner Company/Transferee Company and by considering the Report of the Official Liquidator reporting therein that the affairs of the Transferee /Petitioner Company does not seem to have been conducted in a manner prejudicial to the interests of any person/party or to public interest at large. Hence, this Tribunal finds that the proposed company Scheme of Amalgamation does not seem to be contrary to the public policy, nor prejudicial to the interest of shareholders or detrimental to the interest of public at large.
- 15.** In addition to above, all the statutory compliance either seems to have been complied with or further undertaken for making compliances by Transferee /Petitioner Company. Therefore, the present Petition deserves to be allowed in terms of its Prayer clause. In the result, the Scheme of Amalgamation annexed to Company Petition is duly approved and hereby sanctioned.

16. In the result, the proposed Company scheme of Arrangement/amalgamation which is annexed to the Company Petition stand approved and sanctioned. Petitioner Companies are required to act upon as per terms and condition of the sanctioned Company Scheme and the same to be binding on its shareholders, secured creditors and unsecured creditors of the above named petitioner companies and also on the petitioner companies with effect from the appointed date i.e. 1st day of April, 2017.
17. While approving the Scheme as above, it is clarified that this order should not be construed as, in any way, granting exemption from payment of stamp duty (if any is applicable), taxes (including income tax, GST or any other charges, if any are applicable) and payment in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law.
18. The counsel for the Transferee /Petitioner Company to furnish copy of the draft order of the sanction of the Scheme in the prescribed format under Companies Compromise, Arrangement and Amalgamations Rules, 2016 read with other Rules for scrutiny and authentication by the Registry of this Tribunal.
19. The Transferee /Petitioner Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Transferor Company shall be dissolved and the Registrar of

Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said two companies shall be consolidated accordingly.

20. Consequent upon the amalgamation and upon Scheme becoming effective, the name of Transferee Company shall stand changed from **Kirby Building Systems India (Uttaranchal) Private Limited** to **'Kirby Building Systems& Structural India Private Limited'** Clause I of the Memorandum of Association shall stand altered accordingly.
21. Further, upon Scheme becoming effective and consequent upon the amalgamation of the Transferor Company with the Transferee Company, the authorized Share Capital of the Transferor Company shall stand merged into and combined with the authorized Share Capital of the Transferee Company, without any further act of deed, and without payment of any registration or filing fee on such combined authorized Share Capital, the Transferor Company and the Transferee Company having already paid such fees. The Memorandum and Articles of association of the Transferee Company (relating to authorized share capital) shall stand altered accordingly.
22. All concerned regulatory authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Assistant Registrar, National Company Law Tribunal, Allahabad Bench.
23. Leave is granted to the Petitioner to file the Schedule of Assets.

24. Any person interested shall be at liberty to apply before this Tribunal in the above matter for such directions as may be necessary.

25. Accordingly, the present Company Petition bearing CP No.17/ALD/2018 is allowed and stands disposed of.

Dated: 12.10.2018

SAROJ RAJWARE
MEMBER (TECHNICAL)

H.P. CHATURVEDI
MEMBER (JUDICIAL)

Typed by:
Kavya Prakash Srivastava
(*Stenographer*)