

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**ALLAHABAD BENCH**

**Company Application No.189/ALD/2017**

[Under Section 230-232 of the Companies Act, 2013, Section 66 and other applicable provisions of the Companies Act, 2013 and Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016]

**IN THE MATTER OF THE COMPANIES ACT, 2013**

**IN THE MATTER OF**

**KIRBY BUILDING SYSTEMS INDIA PVT. LTD.**

was originally incorporated under the Companies Act, 1956 under name Kirby Building Systems India Limited, later on the company had changed itself into a private limited company on 18.03.2015 after complying with necessary formalities under the Companies Act having its registered office at Plot No.8-15, Phase-III IDA Phashyamyalam, Telangana-5023078, India, Corporate Identification Number U28100TG1998PTC029787.

..... (TRANSFEROR COMPANY)

**AND**

**KIRBY BUILDING SYSTEMS INDIA (UTTARANCHAL) PVT. LTD.**

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

..... (TRANSFeree COMPANY)

**AND**

**THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS**

**JUDGMENT/ORDER DELIVERED ON 27.12.2017**

**Coram**

: Hon'ble Shri H.P. Chaturvedi, Member (J).

**For the petitioner**

: Sh. Rahul Agarwal, Advocate.

*Along with*

Sh. Shubham Agarwal, Advocate.

**PER: SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)**



1. The Present application is filed under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 for the Sanction of Proposed Scheme of Amalgamation of **KIRBY BUILDING SYSTEMS INDIA PRIVATE LIMITED (Transferor Company)** with **KIRBY BUILDING SYSTEMS INDIA (UTTARANCHAL) PRIVATE LIMITED (Transferee Company)**.

2. The Applicant Company namely **KIRBY BUILDING SYSTEMS INDIA (UTTARANCHAL) PRIVATE LIMITED** being transferee company has sought for following prayers:

I. Dispense with the meetings of the Equity shareholders and Unsecured Creditor of the Transferee / Applicant Company

II. Pass such other and further orders or direction in the matter as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

3. It is submitted that the proposed Company Scheme of Amalgamation has already been approved by the Board of Directors of transferor Company in its meeting duly convened on 1 November, 2017 and further, *been approved by the Board of Directors of transferee Company in its meeting duly convened on 2 November, 2017.*



It is reported that all the Equity Shareholders have given consent for dispensation with the meeting. Further there is no Secured Creditor in Transferee Company and out of total (i.e. 386), 75 Unsecured Creditor constituting more than 90% of total amount due have given their written consent in the form of Affidavit to the Scheme of Amalgamation. For the sake of convenience, a chart of the Status of the Equity shareholder, Secured and



unsecured Creditors of the Applicant Company / Transferee Company is given as under:

EQUITY SHAREHOLDER	SECURED CREDITOR	UNSECURED CREDITOR
2  (Consent given)  Annexure -18	Nil  (C.A certificate is annexed)  Annexure -20	386  (75 unsecured Creditor Constituting more than 90% of total amount due have given their written consent through Affidavit to the scheme of Amalgamation)  Annexure – 21

5. We heard the submissions of **Shri Rahul Agarwal**, the counsel for the Applicant Company / Transferee Company, we are of the view that the relief sought for, in Company Application can be granted. Hence the present Company Application allowed in the term of the of its '**Prayer Clause**'/**Relief Clause** with the following directions:

1. The meetings of the Equity shareholders of the Applicant Company/ Transferee Company are dispensed with. As the written consent to the proposed Scheme of Amalgamation is given by all the equity shareholders (i.e. two) of the Applicant Company/ Transferee Company by way of affidavit is annexed with present Application in Annexure –18

2. As it is matter of record *out of total (i.e. 386), 75 Unsecured Creditor constituting more than 90% of total amount due have given their written consent in the form of Affidavit* to the proposed Scheme of Amalgamation (annexed with present Application in Annexure –21).

The meetings of Unsecured Creditor of the Transferee



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Company / Applicant Company are dispensed with, pursuant to Section 230(9) of the Companies Act, 2013.

**230. Power to compromise or make arrangements with creditors and members**

XXXXXX

(9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

XXXXXX

3. A notice to be issued by Registry of this Tribunal as well as by the Counsel of Applicant Company / Transferee Company to the Central Government through the office of **Regional Director (Northern Region)** Ministry of Corporate Affairs, New Delhi, **Registrar of the Companies (UP) at Kanpur** and **Official Liquidator (Allahabad)**, by serving a copy present Application along with proposed Scheme of Amalgamation, for their comments and objections if any to the present Scheme.

4. The Applicant Companies as well as Registry of this Tribunal is directed to serve a notice to the concerned **Income Tax Authority**, within whose jurisdiction the Applicant Companies being assessed, pursuant to Companies Act, 2013 and Companies (Compromise, Arrangements and Amalgamations) Rule, 2016.

5. Further Applicant Company/ Transferee Company shall have sent notice to such *other regulatory bodies who may have significant bearing on the proposed company scheme and on the operation of the present applicant company, for their comments and objections, if any.*



*[Handwritten signature]*



6. The Applicant company further directed to effect Paper Publication in respect of hearing of present application in Hindi and English Version of Newspaper having wide circulation where the registered office of the Applicant Company/ Transferee Company is situated.

7. The Applicant company to file an affidavit of service of the directions given by the Tribunal and do report to this Tribunal that directions regarding issue of notices are duly complied with.

8. Further, the Applicant Company/ Transferee Company is at liberty to file Second Motion Petition at Appropriate Stage before this Tribunal.

9. The Present Company Application to be clubbed together as and when the Second Motion Company Petition is filed.



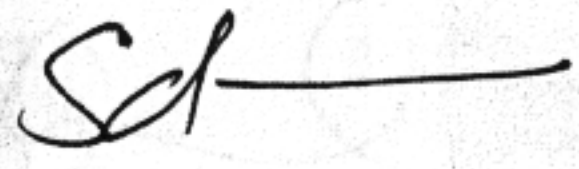
With the above stated observations /directions present Company Application is allowed stands disposed of.

**Date: 27.12.2017**

*Typed by*

Aparna Trivedi

Law Research Associate

  
**H.P. Chaturvedi**  
(Member Judicial)