

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”**

**CP(CAA)No.10/Chd/Hry/2017**

**Under Sections 230-232  
of the Companies Act, 2013**

**In the matter of:**

Kajaria Securities Private Limited  
having its registered office at  
SF-02, Second Floor,  
JMD Regent Plaza, Mehrauli-Gurgaon Road,  
Village Sikanderpur Ghosi,  
Gurgaon, Haryana-122001

... Transferor Company

And

Kajaria Ceramics Limited  
having its registered office at  
SF-11, Second Floor,  
JMD Regent Plaza, Mehrauli-Gurgaon Road,  
Village Sikanderpur Ghosi,  
Gurgaon, Haryana-122001

... Transferee Company

**Order delivered on : 06.02.2018**

**Coram: Honble Mr.Justice R.P.Nagrath, Member (Judicial)**

For the Petitioner : 1.Mrs. Munisha Gandhi, Senior Advocate  
2.Mr.D.Bhattacharyya, Advocate  
3.Ms.Salina Chalana, Advocate

For Official Liquidator  
and the Regional Director, : Ms.Amarpreet Kaur, STA  
Northern Region, Ministry  
Of Corporate Affairs,  
New Delhi.

**Judgment**

This is a joint second motion petition under Sections 230-232 of  
the Companies Act, 2013 filed by the Petitioner-Companies in terms of Rule

15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for short to be referred hereinafter as the 'Rules') for approval of the Scheme of Amalgamation (for brevity, the 'Scheme') of Kajaria Securities Private Limited, the Transferor Company (for short, P-1 company), with Kajaria Ceramics Limited, the Transferee Company (for short, P-2 company). The joint petition is maintainable in terms of Rule 3(2) of the Rules.

2. Petitioner-companies filed first motion petition in CA(CAA)05/Chd/Hry/2017 for dispensing with the meetings of equity shareholders, secured and unsecured creditors of the Transferor Company and convening the meeting of equity shareholders, secured and unsecured creditors of the Transferee Company. The meeting was ordered to be convened as follows:

<b>Meeting of</b>	<b>Date and Time</b>	<b>Venue</b>
Secured Creditors	July 21, 2017 at 11.00 A.M	SF-11, Second Floor, JMD Regent Plaza, Mehrauli-Gurgaon Road, Village Sikanderpur Ghosi, Gurgaon, Haryana -122001
Unsecured Creditors	July 21, 2017 at 12.00 Noon	SF-11, Second Floor, JMD Regent Plaza, Mehrauli-Gurgaon Road, Village Sikanderpur Ghosi, Gurgaon, Haryana -122001
Equity Shareholders	July 21, 2017 at 02.00 P.M.	SF-11, Second Floor, JMD Regent Plaza, Mehrauli-Gurgaon Road, Village Sikanderpur Ghosi, Gurgaon, Haryana -122001

3. The Chairperson, Alternate Chairperson and Scrutinizer were appointed. The chairperson furnished report dated 28.07.2017 of all the meetings of the transferee company which is annexed as Annexure A-7. It

was reported that the equity shareholders, secured and unsecured shareholders of transferee company have unanimously approved the 'Scheme' and necessary proceedings of the meetings were also attached.

4. In respect of the meetings of transferee company, the Chairperson reported that the shareholders approved the Scheme with requisite majority. It is reported that the meeting was attended by 66 equity shareholders of the company who represented 47.92% of the total value of shares of the transferee company, voted in favour of the Scheme.

5. The secured and unsecured creditors unanimously approved the Scheme as per the report of the Chairperson.

6. When the matter was listed on 23.08.2017 following order was passed:-

*"The matter be listed for hearing on 25.09.2017. Notice of hearing be published in the same newspapers in which the notice of meetings was advertised i.e. Business Standard (English) and Business Standard (Hindi), NCR Delhi Edition not later than 10 days before the date fixed for the hearing. The notice of hearing be also uploaded on the website of petitioner-companies. Learned Senior Counsel for the petitioner-companies submits that 'objections' to the 'Scheme' have not been received by the companies.*

*Notice to the Official Liquidator as well as to the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi which is accepted by Mr.Deepankur Sharma, Advocate and Mr.D.K.Singh, official Liquidator also representing the Regional Director. Official Liquidator's report has been received but the report of Regional Director is still to be filed for which*

*the adjournment requested by Mr.D.K.Singh. The report of Regional Director by way of affidavit be filed at least one week before the date fixed with copy advance to the counsel for the petitioner-companies. The petitioners will also file compliance affidavit at least two days before the date fixed, also stating therein if any objections to the 'Scheme' have been received after the advertisement. The Registry will also make the report whether any objections to the 'Scheme' have been received in the Tribunal."*

7. Learned counsel for the petitioners submits that the petitioner-companies filed affidavit dated 11.07.2017 stating the compliance of various directions of holding meetings as contained in the order dated 23.08.2017 relating to sending individual notices of separate meetings. The Chairperson also filed his affidavit dated 28.07.2017 reiterating the facts. It is stated in the said affidavit attached with the record of the first motion that notice of meeting was sent to 7930 equity shareholders and all the unsecured and secured creditors through courier and 25,698 equity shareholders through e-mail by NDSL, of the Petitioner Company No.2. The transferee company is a listed company. Notices were also published in the newspapers and on the website of SEBI, NSE and BSE. Notices were sent to the Regional Director, Registrar of Companies, Official Liquidator and Income Tax Authorities on 16.06.2017. Along with the compliance affidavit of authorised representatives of the petitioner companies, copies of individual notice sent as well as copies of e-mail attaching notices, postal receipts and notice of meeting published on the website of the company as directed were also filed. Newspaper publications of the advertisement as directed were also attached. It was also

stated in the said affidavit that the Transferee Company also sent notices to BSE, NSE where the shares of the transferee company are listed. It was further stated that notices were sent to the statutory authorities, i.e. Central Government through the Regional Director, Northern Region, Ministry of Corporate Affairs, Registrar of Companies, Commissioner of Income Tax, SEBI and the Official Liquidator to comply with the directions issued by this Tribunal in the order dated 04.05. 2017.

8. As directed vide order dated 23.08.2017 affidavit of compliance dated 27.09.2017 of Mr. Vinit Kumar, authorised signatory of the petitioner companies along with documents has been filed. Along with this affidavit, the copies of newspaper publications dated 02.09.2017 have been attached.

9. The Registry made a report on 22.09.2017 that the reports of Regional Director and Official Liquidator have been received. Apart from that, it has been reported by Registry that there is no objection received from any quarter to the proposed Scheme.

10. I have heard learned counsel for petitioner-companies and Ms.Amarpreet Kaur, STA representing the Regional Director, Northern Region, and the Official Liquidator and perused the records.

11. The main objects, authorised and paid up share capital have been discussed in detail in the order disposing of the first motion petition on 04.05.2017.

12. The rationale of the Scheme is as under:

*“The Amalgamation of KSPL into KCL would not only lead to simplification of the shareholding structure and reduction of the shareholding tiers, but also demonstrate the promoter group direct commitment to and engagement with KCL.*

*There would be no change in the promoter shareholding of KCL. The promoters would continue to hold the same percentage of shares collectively in KCL, pre and post amalgamation of KSPL into KCL.*

*All costs and charges of any nature arising or incurred in connection with and implementing this Scheme shall be borne by KSPL and or / its members.*

*Further this Scheme also provides that Promoters shall indemnify KCL and keep KCL indemnified for any contingent liabilities and obligations including all demands, claims, suits, proceedings and the like which may be instituted by any third party(ies) including governmental authorities in KCL and are directly relatable to KSPL or which may devolve on KCL on account of this Scheme.”*

13. The share valuation report dated 09.02.2016 and the certificate of the Statutory Auditor are attached with the paper book of the first motion petition.

14. The Scheme also takes care of the interest of the employees for which a detailed reference is made in para 14 of the Scheme which is as under:-

*“On the Scheme coming into effect, all staff and employees of KSPL in service on such date shall be deemed to have become staff and employees of KCL without any break in their service and on the basis of continuity of service and the terms and conditions of their employment with KCL shall not be less favourable than those applicable to them with reference to KSPL on the Effective Date.*

*Upon the Scheme coming into effect, the existing Provident Fund, Gratuity Fund, Superannuation Fund and/or schemes and trusts, including employee’s welfare trust, if any, created by KSPL for its employees shall be transferred to KCL. KSPL shall take all steps necessary for the transfer, where applicable, of the Provident Fund, Gratuity Fund, Superannuation Fund and/or schemes and trusts, including employee’s welfare trust, pursuant to the Scheme, to KCL. All obligations of KSPL with regard to the said fund or funds as defined in the respective trust deed and rules shall be taken over by KCL from the Effective Date to the end and intent that all rights, duties, powers and obligations of KSPL in relation to such Fund or Funds shall become those of KCL and all the rights, duties and benefits of the employees employed in KSPL under such Funds and Trusts shall be fully protected, subject to the provisions of law for the time being in force. It is clarified that the services of the staff, workmen and employees of KSPL will be treated as having been continuous for the purpose of the said Fund or Funds.”*

15. From the relevant paragraph there seems to be no adverse impact on the service conditions of the employees of the Transferor Company.

16. As regards the legal proceedings it is stated in para 11 of the Scheme which is as under:-

*“All suits, action, legal proceedings of whatsoever nature by or against KSPL pending and/or arising at the Appointed Date and relating to KSPL or its properties, assets, debts, liabilities, duties and obligations, shall be continued and/or enforced until the Effective Date as desired by KCL and as and from the Effective Date shall be continued and enforced by or against KCL in the same manner and to the same extent as would or might have been continued and enforced by or against KSPL.*

*On and from the Effective Date, KCL may, if required, initiate any legal proceedings in its name in relation to KSPL in the same manner and to the same extent as would or might have been initiated by KSPL.”*

17. The Official Liquidator has filed his report dated 22.08.2017. The Regional Director Mr.S.B.Gautam has filed report by way of affidavit dated 12.09.2017 and the report of the Registrar of Companies dated 02.08.2017.

18. The Regional Director has observed that there is no interest of foreign/non-resident parties in the Transferor Company. However, foreign/non-resident parties holds equity shares in the Transferee Company. The petitioner-companies may also be directed to comply with the provisions of FEMA/RBI as may be applicable. It was also observed that both the transferor and transferee companies are regular in filing their statutory returns and no prosecution proceeding has been filed against them and no complaints are pending and no inspection or investigation has been



conducted in respect of these companies. It was stated that the report of Registrar of Companies may be taken into consideration before sanction of the Scheme.

19. The petitioner-companies filed reply to the report of Regional Director along with affidavit of Mr.Vinit Kumar, the authorised representative of both the companies in which it is undertaken to comply with all the provisions of FEMA/RBI guidelines. It was also mentioned that the petitioner companies have already sent letters dated 10.03.2017 and 15.03.2017 to the concerned stock exchanges intimating about the change in Appointed Date. However, the petitioner companies have received no reply/observations from the stock exchanges. Copies of these letters are at Annexure A-1 attached with this affidavit. The undertaking on behalf of both the companies is made part of this Judgement.

20. The Official Liquidator in his report has submitted that the Transferor Company was asked to furnish certain information/records which were furnished on 26.07.2017. Also the profit before exceptional and extraordinary items & taxes and Reserve and Surplus of Transferor Company were mentioned as follows:-(in ₹)

Particulars	31.03.2012	31.03.2013	31.03.2014	31.03.2015	31.03.2016	31.03.2017
Reserve & Surplus	73,877,167	89,949,237	109,042,872	131,950,393	508,115,689	664,857,892
Profit before exceptional and extraordinary items &	8,289,716	16,272,070	19,144,716	22,910,391	120,782,492	156,742,203

taxes						
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21. In view of the above, there is no impediment in the sanction of the Scheme. The Scheme (Annexure A-1) is approved. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law. With the sanction of the Scheme, all the equity shares held by the Transferee Company and its nominees in the Transferor company shall stand cancelled and the Transferor Company shall stand dissolved with the process of winding up.

**THIS TRIBUNAL DO FURTHER ORDER:**

1. That all the property, rights and powers of the Transferor Company (P-1) stand transferred, without further act or deed, to the Transferee Company (P-2) and accordingly, the same shall pursuant to sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company but subject nevertheless to all charges now affecting the same; and
2. That all the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to sections 230 to 232 of the Companies Act, 2013, be transferred to and

become the liabilities and duties of the Transferee Company;  
and

3. That all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and
4. That all the employees of the Transferor Company shall be transferred to the Transferee Company in terms of the 'Scheme'; and
5. That the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme'; and
6. That the Petitioner Companies do, within 30 days after the date of 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 without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the Transferee Company and files relating to the said Transferor, Transferee Companies shall be consolidated accordingly, as the case may be; and
7. That the Transferee Company shall deposit an amount of ₹50,000/- (Rupees fifty Thousand Only) with the Pay &

Accounts Office in respect of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi and ₹50,000/- (Rupees fifty thousand only) in favour of "The Company Law Tribunal Bar Association, Chandigarh" within a period of five weeks from the date of receipt of certified copy of this order; and

8. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

27. As per the above directions Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 formal orders be issued on the petitioners on filing of the Schedule of Property i.e. (i) freehold property of the Transferor-Company; and (ii) leasehold property of the Transferor-Company by way of affidavit of the Transferor Company.

Sd/-  
(Justice R.P.Nagrath)  
Member (Judicial)

February 06, 2018  
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