

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

**CA (CAA) NO. 05/Chd/Hry/2017
Date of Order: 04.05.2017.**

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH,
MEMBER (JUDICIAL).**

In the matter of Scheme of Arrangement

BETWEEN

1. **KAJARIA SECURITIES PRIVATE LIMITED**, a company incorporated under the Companies Act, 1956 on June 19, 1986 and having its registered office situated at SF-02, Second Floor, JMD Regent Plaza, Mehrauli Gurgaon Road, Village Sikanderpur Ghosi, Gurgaon, Haryana- 122001.

.....Transferor Company.

2. **KAJARIA CERAMICS LIMITED**, a company incorporated under the Companies Act, 1956 and having its registered office at SF-11, Second Floor, JMD Regent Plaza, Mehrauli Gurgaon Road, Village Sikanderpur Ghosi, Gurgaon, Haryana- 122001.

.....Transferee Company.

AND

Their respective shareholders and creditors.

Application under Sections 230-232 read with Section 66 of the Companies Act, 2013 read with the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.



Present: Mrs. Munisha Gandhi, Senior Advocate with Ms. Salina Chalana, Advocate for applicants.

ORDER.

R.P.NAGRATH, J. (MEMBER JUDICIAL) ORAL.

This application has been jointly filed by the Transferor Company and Transferee Company (Collectively referred as "Applicant Companies"), under Sections 230-232 read with Section 66 of the Companies Act, 2013 (for brevity here-in-after referred as the Act) read with Rule 3 and Rule 18 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in respect of the proposed Scheme of Amalgamation between the applicants. A copy of the said scheme is annexed as Annexure A-1. It is represented that vide resolution Annexure A-5, dated 11.07.2016, while approving the draft scheme, the Board of Directors of A-1 company authorised Chetan Kajaria, Director or Rishi Kajaria Director or Vigyan Deep Sharma, authorised representative of the company for the purpose of giving effect to the resolution and they were all severally authorised on behalf of the Board to file application of Amalgamation and to do all the necessary acts required for the aforesaid purposes etc. and represent the company before various authorities including National Company Law Tribunal. Similar was the resolution Annexure A-11 of the transferee company of the same date. It is, however, represented that by a subsequent resolution, while making little modification in the earlier scheme, another resolution was passed by both

the companies on 24.01.2017 Annexure A-15 (Colly), additionally authorising Mr. Vineet Kumar, authorised signatory to file the application for Amalgamation on behalf of both the companies and to do all the necessary acts required for the said purpose. In the resolution of A-2 company i.e. Kajaria Ceramics Limited, it is recorded that Mr. Vineet Kumar was DGM-Legal of the said company, while additionally authorising him as the authorised signatory.

2. The instant application has been filed with the following prayers:

- i) Dispensing with requirement for convening the meeting of the Equity Shareholders of the Transferor Company and also to dispense with the requirement of issue and publication of notices for the same since all equity shareholders of Transferor Company (comprising 100% in value and 100% in number) have given their consent to the Scheme and towards dispensing with their meeting;
- ii) Dispensing with requirement for convening the meeting of the secured and unsecured creditors of the Transferor Company and also to dispense with the requirement of issue and publication of notices for the same since there are no secured and unsecured creditors of the Transferor Company;
- iii) For a direction to convene meeting of the shareholders of A-2 company with a further prayer that notice to those, who hold less than or equal to 1000 shares be sent by email only, if their email addresses are registered with A-2 company and



dispense with the requirement of issuance and publication of separate notices for the same;

- iv) For a direction to hold the meeting of Equity Shareholders, Secured and Unsecured Creditors or any class thereof of the Transferee Company including the requirement of issue and publication of notices for the same;
- v) Issuing necessary direction for appointment of Chairperson and scrutinizer for the meeting or meetings to be held and terms of appointment and remuneration for the Chairperson;
- vi) Issuing necessary direction fixing the time period within which the chairperson shall report the result of the meeting to this Hon'ble Tribunal.

3. The learned senior counsel for the Applicant Companies submits that the Scheme of Arrangement (hereinafter referred to as "Scheme") between Kajaria Securities Private Limited (hereinafter referred to as "KSPL" or "Transferor Company") and Kajaria Ceramics Limited (hereinafter referred to as "KCL" or "Transferee Company") provides for amalgamation of Transferor Company with Transferee Company and reduction of share capital and will be effective from the appointed date i.e. closing hours of business on March 31, 2017. It is stated that the registered offices of both the companies are situated at Gurgaon in Haryana and fall with the territorial jurisdiction of this Tribunal.

4. It is submitted that Transferor Company is engaged in the business of holding investments and presently holds investment in the Transferee Company. The main objects are to carry on the business of

manufacturing of tiles and other ceramics products and to act as marketing agents and to undertake all types of marketing and promotional campaigns and to act as marketing contractors and to arrange exhibitions, shows, release of audio and video cassettes and production thereof, to act as consultants and interior decorators for display of tiles etc. as set out in clause III of the Memorandum of Association of Company (Annexure A-2).

5. It is represented that the present authorised share capital of transferor company is ₹94,10,00,000/- (Rupees Ninety Four Crores Ten Lakhs only) and issued, subscribed and fully paid-up share capital of Transferor Company is ₹1,21,46,000 (Rupees One Crore Twenty One Lakhs Forty Six Thousand only).

6. It is also submitted that main objects of the Transferee Company are to carry on trade or business to manufacture, produce, buy, sell, import, export or otherwise generally deal in any kinds and description of tiles including ceramic, polished vitrified, glazed vitrified and unglazed etc. as set up in detail in clause III of Memorandum of Association (Annexure A-8).

7. The present authorised share capital of transferee company is stated to be ₹35,00,00,000 (Rupees Thirty Five Crores only) and issued, subscribed and fully paid-up share capital of Transferee Company is ₹15,89,38,000 (Rupees Fifteen Crores Eighty Nine Lakhs Thirty Eight Thousand only).

8. The learned counsel further submits that applicant companies had earlier approved the Scheme at their respective Board meetings by passing Board resolution on July 11, 2016 annexed with Application as

Annexure A-5 and Annexure A-11. The original Scheme has also been attached with the application as a part of Annexure A-15 (Colly). It has been further submitted that due to passage of time, and to better reflect the current position, the Board of Directors of Applicant Companies approved the modified Scheme (Annexure A-15) at their respective board meeting by passing Board resolution on January 24, 2017 (Annexure A-15 (Colly)) and the appointed date has been changed from April 1, 2016 to closing hours of business on March 31, 2017 and certain other changes.

9. The learned senior counsel for the applicant companies further represents the shares of Transferee Company are listed on BSE Limited ("BSE") and National Stock Exchange of India Limited ("NSE"). It is submitted that the transferee Company has obtained 'No-Objection/ No adverse observation' letter from BSE on September 19, 2016 and NSE on September 20, 2016 (Annexure A-14 (Colly)). It is further submitted that the BSE as well NSE were also duly informed about the modification of the scheme vide letters dated 10.03.2017 (annexed as a part of Annexure A-15 (Colly)).

10. The learned senior counsel for the applicant has also submitted that the accounts of applicant companies have been prepared and audited for the financial year ending March 31, 2016, which are attached with Application as Annexure A-3 (Colly) and Annexure A-9 (Colly). Further, the latest financial position of these applicant companies reflected in the unaudited financial statements for the year ending on December 31, 2016 are attached with Application as Annexure A-4 and Annexure A-10.

11. The Share exchange ratio, under the Scheme has been determined in accordance with the report dated July 8, 2016 issued by M/s J.N. Sharma & Co., Chartered Accountants. The Transferee Company has obtained the Fairness Opinion Report dated July 9, 2016 issued by M/s SPA Capital Advisors Ltd. [Category-I Merchant Banker] stating that the share exchange ratio pursuant to Scheme as recommended by M/s. J.N. Sharma & Co., Chartered Accountants is fair. The Share exchange ratio and Fairness Opinion Report are attached with Application as Annexure A-16.

Transferor Company:

12. It is submitted that the Transferor Company has 6 equity shareholders as on December 31, 2016. The list of equity shareholders along with the affidavits of all the equity shareholders (constituting 100% in number and in value), giving their consent and approving the Scheme and agreeing to waive their right to seek a meeting of equity shareholders of Transferor Company are attached with the Application as Annexure A-6 (Colly). It is prayed that requirement for convening the meeting of the Equity Shareholders of the Transferor Company be dispensed with and also to dispense with the requirement of issue and publication of notices.

13. It is also represented by the learned senior counsel that the Transferor Company does not have any secured and unsecured creditors as on December 31, 2016. The certificate of M/s U.K. Goenka & Co., Chartered Accountants dated 14.03.2017, certifying the abovementioned status of secured and unsecured creditors, is at (Annexure A-7). It is also prayed that the requirement for convening the meeting of the secured and

unsecured creditors of the Transferor Company may be dispensed with and also to dispense with the requirement of issue and publication of notices for the same, since there are no secured and unsecured creditors of Transferor Company.

Transferee Company:

14. It is represented that the Transferee Company has 33,628 equity shareholders as on December 31, 2016. It is submitted that out of 33,628 equity shareholders, 21,287 equity shareholders hold less than 1000 shares and have registered their email ids with Transferee Company. It is prayed that necessary directions/order in respect of Transferee Company may be passed for the purpose of permitting the Transferee Company to serve notice of meeting to the shareholder holding less than or equal to 1000 shares via email only and dispense with the requirement of issuance and publication of separate notices qua the same. It is further prayed that necessary directions/order may be passed for the purpose of convening the meeting of the Equity Shareholders of the Transferee Company including the requirement of issue and publication of notices for the remaining equity shareholders.

15. It is further submitted that on December 31, 2016, the transferee company has 5 secured creditors as per the list, containing amount due to them, duly certified by the Chartered Accountant on 14.03.2017, attached with Application as Annexure A-13 (Colly). It is prayed that necessary directions/order may be passed for the purpose of convening the meeting of the Secured creditors thereof of the Transferee

Company including the requirement of issue and publication of notices for the same.

16. As on December 31, 2016, the transferee company has 3,494 unsecured creditors as per the list, containing amount due to them, duly certified by the Chartered Accountant on 14.03.2017, attached with Application as Annexure A-13 (Colly). It is prayed that necessary directions/may be passed for the purpose of convening the meeting of the unsecured creditors thereof of the Transferee Company including the requirement of issue and publication of notices for the same.

17. The learned counsel submits that the certificate dated 08.03.2017 of the statutory auditor of the Applicant Companies, U.K. Goenka and Company, confirming the compliance of the accounting standards is attached as Annexure A-17.

18. The learned counsel represents that there are no proceedings pending under Section 206 to 229 of the Companies Act, 2013 against Applicant Companies. It is further submitted that the Scheme is not prejudicial to the interest of the Equity Shareholders, or Creditors of the Applicant Companies. In compliance with the order dated 28.04.2017, the learned counsel for the applicants filed affidavit of Vinit Kumar, the authorised signatory of both the companies stating that apart from SEBI, BSE and NSE, there is no other regulatory authority in respect of both the companies.

19. In view of the above, I hereby dispense with the requirement to convene the meeting of equity shareholders of Transferor Company as it is represented that 100% shareholders, in number and value have given




their consent to the proposed scheme by way of their respective affidavits (Annexure A-6 (Colly)).

20. Further, the requirement to convene the meetings of secured and unsecured creditors of Transferor Company is also dispensed with, since it has no secured and unsecured creditors.

21. Permission is also granted for issuing the notice of meeting to the shareholders of the Transferee Company, holding less than or equal to 1000 shares and whose e-mail ID's are registered with the Company, to be served via email only and dispense with the requirement of issuance and publication of separate notices qua the same.

22. I hereby issue the following directions for calling/convening and holding the meetings of equity shareholders, unsecured and secured creditors of Transferee Company at registered office of the transferee company at SF-11, Second Floor, JMD Regent Plaza, Mehrauli Gurgaon Road, Village Sikanderpur Ghosi, Gurgaon, Haryana- 122001 as suggested by the learned counsel for the applicant companies, for which the suitable arrangement shall be made for sufficient space at the responsibility of Transferee Company.

23. The notice in form CAA.2 as provided in rule 6 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 and containing all the necessary requirements as mentioned in the Rules and also specifically detailing the availability of the latest financial statements of the company upto 31.03.2017 for inspection by the members and the creditors for the following meetings shall be issued by the Transferee Company as applicable in each of the case:-

- i) The meeting of equity shareholders shall be convened on 21.07.2017 at registered office of company which is at SF-11, Second Floor, JMD Regent Plaza, Mehrauli Gurgaon Road, Village Sikanderpur Ghosi, Gurgaon, Haryana- 122001 at 2.00 p.m. The quorum for the meeting shall be minimum 50 equity shareholders personally present or minimum 25% of the share value in terms of the total issued share capital of the Transferee Company, whichever is higher. It is also directed that if the required Quorum is not present at the commencement of meeting, then the meeting will be adjourned for 30 minutes, and thereafter the persons present in the meeting, either in person or through proxy, would be treated as proper quorum;
- ii) It is further directed that the meeting of secured creditors shall be convened on 21.07.2017 at registered office of company which is at SF-11, Second Floor, JMD Regent Plaza, Mehrauli Gurgaon Road, Village Sikanderpur Ghosi, Gurgaon, Haryana- 122001 at 11.00 a.m. The quorum for the meeting shall be 3 in number or 25% in value of the total secured debt, whichever is higher. It is also directed that if the required Quorum is not present at the commencement of meeting, then the meeting will be adjourned for 30 minutes, and thereafter
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the person present in the meeting, either in person or through proxy, would be treated as proper quorum; and

- iii) It is further directed that the meeting of unsecured creditors shall be convened on 21.07.2017 at registered office of company which is at SF-11, Second Floor, JMD Regent Plaza, Mehrauli Gurgaon Road, Village Sikanderpur Ghosi, Gurgaon, Haryana- 122001 at 12.00 noon. The quorum for the meeting shall be 40 in number or 25% in value of the total unsecured debt, whichever is higher. It is also directed that if the required Quorum is not present at the commencement of meeting, then the meeting will be adjourned for 30 minutes, and thereafter the person present in the meeting, either in person or through proxy, would be treated as proper quorum.

24. The Transferee Company is directed to prepare the latest list of all the unsecured and secured creditor as on December 31, 2016 and of equity shareholders as on December 31, 2016 for issuing notices to them. Mr. Justice (Retd.) J.C.Verma, Mobile No 9417012730, Address: House No.90, Sector 11, Chandigarh is appointed as the Chairperson for all the meetings of the shareholders and the secured and unsecured creditors of the Applicant Company to be called under this Order and the relevant law and shall be paid a consolidated fee of ₹1 Lacs for his service as a Chairperson. Mr.Harnam Sharma, District & Sessions Judge (Retd.), Mobile No. 09910384647, Address: House No.427/16 near Rajiv Chowk, Civil Lines, Gurgaon, is appointed as Alternate Chairperson for all the meetings to be called under this Order and the relevant law and shall be

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paid a consolidated remuneration of ₹50,000/-. Dr. S. Chandrasekaran, Mobile No.9871529529, Address: 11-F, Pocket Four, Mayur Vihar, Phase-I, New Delhi-110091, a practicing Company Secretary is appointed as the Scrutinizer for the meeting of equity shareholders of the Applicant Company including for conducting the postal ballot and e-voting process and also for the meeting of the secured and unsecured creditors of the Applicant Company and shall be paid a consolidated fee of ₹50,000/-. The said fees shall be in addition to any expenses incurred by the Chairperson, Alternate Chairperson and the Scrutinizer, such as travelling expenses etc. shall be borne by the transferee company.

25. It is further directed that the individual notice in Form CAA.2 of the said meeting shall be sent by the Transferee Company through speed post or through courier service or emails, 30 days in advance before the scheduled date of the meeting and it is further clarified that as per the relevant rules applicable, notices shall indicate the day, date, place and time as aforesaid. A copy of Scheme, copy of explanatory statement, required to be sent under Companies Act, 2013 and the prescribed form of proxy and any other document as may be prescribed under the Act shall be sent along with the notice

26. That the Transferee company shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date, time and place of the meetings as aforesaid, to be published in the "Business Standard" (English) and "Business Standard" (Hindi) stating that the copies of the Scheme, explanatory statement required to be furnished pursuant to Section 230 and Section

232 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Transferee Company. The Transferee Company shall also publish the notice on its website and on the website of Securities and Exchange Board of India, BSE & NSE.

27. It shall be the responsibility of the Transferee Company to ensure that the notices are sent under the signatures and supervision of the authorised representative on the basis of Board resolution and that they shall file their affidavit of service in the Tribunal at least 10 days before the date fixed for the meetings.

28. As prayed for in the Application, (a) voting for the meeting of the equity shareholders of Transferee Company shall be allowed on the proposed Scheme by voting in person, by proxy, through postal ballot or through electronic means; (b) voting for the meeting of the secured creditors of Transferee Company shall be allowed on the proposed Scheme by voting in person and by proxy and; (c) voting for the meeting of the unsecured creditors of Transferee Company shall be allowed on the proposed Scheme by voting in person and by proxy.

29. The Chairperson or Alternate Chairperson shall be responsible to report the result of the meetings to the Tribunal in Form No. CAA.4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 10 days of the conclusion of the meetings. He would be fully assisted by the authorised Company Secretary of Transferee Company and the Scrutinizer, who will assist the Hon'ble Chairperson or Alternate Chairperson in preparing and finalizing the reports.

30. Voting by proxies is permitted and will be considered for the purpose of computing the Quorum of the aforesaid meetings, provided that the proxy in the prescribed form and duly signed by the person entitled to attend and vote at the said meeting, or by his authorized representative, is filed with the registered office of the Transferee Company, as applicable, at least 48 hours before the said meeting. The Chairperson or Alternate Chairperson appointed for the aforesaid meetings shall verify that the proxy registers are properly maintained.

31. The Applicant Companies shall individually and in compliance of Section 230(5) of Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, send notices in Form No. CAA.3 along with a copy of the Scheme, the explanatory statement and the disclosures mentioned in Rule 6 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 to (i) the Central Government through the Regional Director, Northern Region, (ii) the Registrar of Companies, NCT Delhi and Haryana (iii) the Income Tax Authorities, (iv) BSE, (v) NSE, (vi) SEBI (vii) the Official Liquidator, stating that representations, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representations shall be simultaneously sent to the concerned companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

32. The application stands allowed in the aforesaid terms. It is directed that the learned counsel/ authorised representative of the Applicant companies shall deliver the copy of this order to the Hon'ble

Chairperson, Alternate Chairperson and Scrutinizer immediately. A copy of the order be supplied to the counsel for the Applicant Companies forthwith.



(Justice R.P. Nagrath)
Member (Judicial)

May 04, 2017.
Ashwani