**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CP No. 174 of 2015 (O&M)

Date of decision : 9.10.2015

In the matter of
The Scheme of Amalgamation of

KEC Metallics Private Limited

.... Petitioner no. 1/ Transferor Company

with

Kamal Encon Industries Limited

.... Petitioner no. 2/ Transferee Company

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Praveen Gupta and
Mr. Simranjyot Singh, Advocates, for the petitioners.

Rajesh Bindal, J.

In this petition filed under the Companies Act, 1956 (for short, 'the Act'), duly supported by affidavits, the petitioner- Companies seek dispensation of the meetings of their Equity Shareholders, Secured and Unsecured Creditors for sanctioning of the Scheme of Amalgamation (Annexure P-4) of KEC Metallics Private Limited (Transferor Company- Petitioner no. 1) with Kamal Encon Industries Limited (Transferee Company- Petitioner no. 2).

It is stated in the petition that the registered office of the petitioner companies is situated at Yamuna Nagar, Haryana.

Main objects of the Transferor/ petitioner no. 1 and Transferee/ petitioner no. 2 are detailed in their respective Memorandum and Articles of Association annexed with the petition at **Annexure P-1/1 and P-2/1,** respectively.

The Board of Directors of the Transferor company have approved the said Scheme in their meeting held on 30.6.2015, vide resolution **Annexure P-1/3**.

The present authorised share capital of the Transferor Company / Petitioner no. 1 is ₹ 2,00,00,000/- divided into 20,00,000 equity shares of ₹

10/- each. The issued, subscribed and paid up share capital of the company is ₹ 1,12,50,000/- divided into 11,25,000 equity shares of ₹ 10/- each.

It has been stated in the petition that subsequent to the date of audited accounts, there has been no substantial change in the financial position of the Transferor company, except those arising out of or resulting from normal course of business.

Transferor Company/ petitioner no.1 has 17 equity shareholders, as per list Annexure P-1/5, out of which 16 have given their consent to the Scheme of Amalgamation, constituting 94.12% in number and 98.80% in value, which are at Annexure P-1/6 (colly).

There is no secured creditor of the Transferor / Petitioner company no. 1. Certificate to this effect of the Director of the Company duly supported by Chartered Accountant are enclosed as Annexure P-1/7 (colly).

Transferor company/ petitioner no. 1 has one un-secured creditor, who has given his consent to the Scheme of Amalgamation. Consent/ NOC to this effect is annexed as Annexure P-1/9.

Transferee company/ petitioner no.2 has 33 equity shareholders, out of which 30 have given their consent to the Scheme of Amalgamation, constituting 90.90% in number and 99.15% in value, which are at Annexure P-2/6 (colly).

Transferee/ petitioner company no. 2 has 3 secured and 4 unsecured creditors. All of them have also given their consent to the scheme of amalgamation and their consents are at Annexure P-2/8 (colly) and P-2/9 (colly), respectively.

Hence, out of 17 shareholders, 16 of the Transferor/ petitioner company no.1, 94.12% in number and 98.80% in value, have given their consent to the Scheme of arrangement/amalgamation. The company has only one unsecured creditor, who has given his consent to the Scheme. There is no secured creditor of the Transferor company/ petitioner no.1. Out of 33 shareholders, 30 shareholders of the Transferee company, 90.90% in number and 99.15% in value, have given their consent to the scheme of amalgamation. Transferee/ petitioner company no. 2 has 3 secured and 4 unsecured creditors, who have given their consent to the scheme of amalgamation.

The petitioner companies have confirmed that there are no investigations or proceedings pending against them under Sections 235 to 251 of the Act.

It was submitted that the proposed scheme of amalgamation is for the benefit of both the companies concerned and their shareholders. The proposed scheme will not adversely affect the rights of any of the creditors of the petitioner companies in any manner whatsoever.

In this view of the aforesaid factual matrix, when 16 out of 17 equity share holders of the Transferor company, 30 out of 33 equity shareholders of Transferee company, all the three secured creditors of the Transferee company, and all the unsecured Creditors of both the Transferor and Transferee companies, have consented to the Scheme of Amalgamation, convening of their meetings are ordered to be dispensed with. Since there is no secured creditor of the Transferor company/ petitioner no. 1, no meeting is required.

First motion petition is disposed of accordingly.

Petitioner is at liberty to move 2nd motion petition.

9.10.2015 (Rajesh Bindal)
vs Judge