IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No.157 of 2015 (O&M)
Date of Decision: 29.04.2016

IN THE MATTER OF:

COMPOSITE SCHEME OF ARRANGEMENT BETWEEN:

KAJARIA EXPORTS PRIVATE LIMITED

. . . . Petitioner Company No.1 /Amalgamating Company No.1

And

PEARL TILE MARKETING PRIVATE LIMITED

. . . . Petitioner Company No.2 /Amalgamating Company No.2

And

CHERI CERAMICS PRIVATE LIMITED

. . . . Petitioner Company No.3/Amalgamating Company No.3

And

KAJARIA SECURITIES PRIVATE LIMITED

. . . . Petitioner Company No.4/Amalgamated Company/Demerged Company

And

KAJARIA PORTFOLIO PRIVATE LIMITED

. . . . Petitioner Company No.5/Resulting Company

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN.

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Present: - Ms.Munisha Gandhi, Sr. Advocate, with
Ms.Salina Chalana, Advocate,
for the petitioner-Companies.

Mr.Deepak Aggarwal, Advocate, with
Mr.D.K. Singh, Official Liquidator.

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RAKESH KUMAR JAIN, J.

The petitioners have prayed for sanctioning of 'Composite Scheme of Arrangement' (Annexure P-1) of Kajaria Exports Private Limited (Petitioner Company No.1 /Amalgamating Company No.1, Pearl Tile Marketing Private Limited (Petitioner Company No.2 /Amalgamating Company No.2), Cheri Ceramics Private Limited (Petitioner Company No.3/Amalgamating Company No.3) and Kajaria Securities Private Limited (Petitioner Company No.4/Amalgamated Company/Demerged Company) with Kajaria Portfolio Private Limited (Petitioner Company No.5/Resulting Company).

This petition is jointly filed by all the Petitioners-Companies under Sections 391 to 394 of the Companies Act, 1956 [for short 'the Act'] for first and second motion.

Convening of meetings of Shareholders of Petitioner-Companies No.1 to 5, Preferential Shareholders and Unsecured Creditors of Petitioner Companies No.1 to 4 were dispensed with vide order dated 18.01.2016.

By virtue of the order dated 18.1.2016, notice was issued to the Regional Director, Ministry of Corporate Affairs, Noida and the Official Liquidator. Notice was also ordered to be published in 'Indian Express' (English) and 'Jansatta' (Hindi), both Delhi/NCR Editions and in the Official Gazette of Government of Haryana. It was also ordered to be uploaded on the website of the Official Liquidator. Affidavit of publication dated 2.3.2016.

The Official Liquidator has submitted his report dated 23.3.2016, in which he has averred that *"in view of the observations of the Chartered Accountant the Official Liquidator most respectfully submits that affairs of the Transferor Companies have not been conducted in a manner prejudicial to the interest of its members, creditors or to the public interest. Hence in our opinion the Scheme of Amalgamation is not against the interest of the members, creditors, and public at large".* Hence, the Official Liquidator has not taken any objection to the Scheme.

Similarly, the Official Liquidator has filed the representation/affidavit of A.K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs dated 23.3.2016 in which the following averments have been made: -

> *"(i) There is no Valuation Report along with the Scheme which has assessed the value of the said Business, states the corresponding Assets and Liabilities which shall stand transferred and enumerates the accounting treatment of the same.*
>
> *In view of the above facts, it is not understood as to how the value of assets and Liabilities of the Amalgamating Companies has been determined as on the Appointed Date i.e. 1.4.2015 and subsequent value of Demerged Undertaking as on 1.10.2015 and the resultant allotment of shares to the shareholders of the Demerged Company.*

(ii) The Amalgamating Company No.1, 2, 3 & 4 are Core Investment Companies.

In this regard, it is stated that the petitioner companies have vide para 9 of their reply stated that none of the Petitioner-Companies are governed or administered by any Government Regulatory Body and further in para 10 of the reply, it is stated that none of the Petitioner-Companies is a Non-Banking Finance Company."

It is also averred that *"the deponent states that as per Clause 11.1 of Part II of the Scheme it has been stated that the amalgamation shall be accounted for in the books of account of KSPL according to the purchase method under Accounting Standard (AS) 14: "Accounting for Amalgamations" as notified by Ministry of Corporate Affairs".*

The Petitioners-Companies have filed in Court the counter-affidavit dated 1.4.2016 of Vigyan Deep Sharma, authorised signatory of the Petitioner-Companies to the report of the Regional Director in which the following averments have been made in para 4:-

"Further, the Regional Director has filed affidavit to this Hon'ble Court and deponent hereby files reply as follows: -

1) It is submitted that Para 1-8 of the affidavit are general submissions to this Hon'ble

Court and do not require any comment.

2) *That in para 9 (i) of the affidavit, the Regional Director submits that no valuation report has been appended alongwith the scheme, outlining the corresponding assets and liabilities which shall stand transferred. He further states that it is not understood as to how the value of the assets and liabilities has been determined along with the resultant allotment of shares to the shareholders of the demerged company.*

3) *In response, the deponent most humbly submits that the determination of the swap ratio is solely within the purview of the shareholders and is not a submit matter of regulatory oversight. However, it is submitted that the swap ratio has in fact been determined after seeking a report of a Chartered Accountant. The Report of Fair share exchange ratio of Chartered Accountant is attached herewith and marked as Annexure A-1. The deponent further assures this Hon'ble Court that all transactions have been concluded in good faith, with*

the interest of all stake-holders in mind.

4) *In response to the observations made in para 9(ii) of the affidavit, it is submitted that Amalgamating Companies are exempted to take registration from RBI since their assets' size is less than INR 100 crore. This exemption is mentioned in FAQ as circulated by RBI and are attached herewith as Annexure A-2.*

5) In response to the observations made in para 10 of the affidavit, it is submitted that Scheme shall be accounted as per the prescribed Accounting Standards and certificate from Statutory Auditor in this regard is attached herewith as Annexure A-3.

6) In response to the observations made in Para 11, it is submitted that the interests of the employees have already been taken care of in clause 26.1 of Part III of the scheme where it has been stated that all the employees of the Amalgamating Companies shall continue in amalgamated Company on existing or similar terms and conditions as to remuneration and other benefits, and without any

> *breach or interruption of services. The Amalgamated Company undertakes to fulfil the aforestated obligation."*

The above stated explanation submitted by Vigyan Deep Sharma, authorised signatory of the Petitioner-Companies sufficiently meets the queries raised by the Regional Director.

The Petitioner-Companies have confirmed that there are no investigation proceedings pending against them under Sections 235 to 251 of the Act.

For the reasons aforestated and on consideration of all the relevant facts and the procedural requirements in terms of Section 391-394 of the Act and the relevant Rules and on due consideration of the reports of the Regional Director, Ministry of Corporate Affairs, New Delhi and the Official Liquidator, the Composite Scheme of Arrangement is hereby sanctioned and as a result thereto, the Assets and Liabilities of the Petitioner-Amalgamating Companies No.1 to 3 shall stand vested in Petitioner-Company No.4/Amalgamated Company/Demerged Company, and the Amalgamating Companies No.1 to 3 shall be dissolved without being wound up and "Investment Business Undertaking" of Petitioner-Company No.4/Amalgamated Company/Demerged Company shall demerge into Petitioner-Company No.5/Resulting Company and the Assets and Liabilities of "Investment Business Undertaking" of Petitioner-Company No.4/Amalgamated Company/Demerged Company shall stand vested in Petitioner-Company No.5/Resulting Company. The Petitioner-Companies shall be required to comply with the procedural requirement with regard to Accounting Standard 14 issued by the Institute of Chartered Accountants of India.

The Composite Scheme of Arrangement shall be binding on the Petitioners-Companies, their respective Shareholders, Creditors and all concerned.

Let formal order of sanction of the Composite Scheme of Arrangement be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt thereof.

A notice of the order be published in 'Indian Express' (English) and 'Jansatta' (Hindi), both Delhi/NCR Editions and in the Official Gazette of Government of Haryana.

Any person interested shall be at liberty to apply to the Court for any direction(s) as per law.

Learned counsel for the Petitioner-Companies stated that the Petitioner-Companies would voluntarily deposit a sum of ₹1,00,000/- in the Common Pool Fund Account of the Official Liquidator within four weeks. The statement is accepted.

Disposed of accordingly.

(RAKESH KUMAR JAIN)
JUDGE

29.04.2016
Vivek