

IN THE HIGH COURT OF DELHI
COMPANY APPLICATION (MAIN) NO. 51/2016

Reserved on 23rd May, 2016
Date of pronouncement: 30th May, 2016

In the matter of

The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

**Application under Sections 391(1) and 394
read with Sections 100 to 104 of the
Companies Act, 1956**

Scheme of Arrangement between:

Kashi Vishwanath Steels Private Limited

Applicant/Transferor Company No. 1

Kumaun Garhwal Infrastructural Industrial Corporation Private Limited

Applicant/Transferor Company No. 2

AND

Galwalia Ispat Udyog Private Limited

Applicant/Transferee Company

**Through Mr. Rajeev K. Goel, Advocate
for the applicant**

SUDERSHAN KUMAR MISRA, J.

1. This joint application has been filed under Sections 391(1) and 394 read with Sections 100 to 104 of the Companies Act, 1956 by the applicant companies seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders and unsecured creditors and for convening the meetings of the secured creditors of the transferor company no. 1 and the transferee company to consider and approve, with or without modification, the proposed

Scheme of Arrangement between Kashi Vishwanath Steels Private Limited (hereinafter referred to as the transferor company no. 1) and Kumaun Garhwal Infrastructural Industrial Corporation Private Limited (hereinafter referred to as the transferor company no. 2) and Galwalia Ispat Udyog Private Limited (hereinafter referred to as the transferee company).

2. The registered offices of the demerged and resulting companies are situated at New Delhi, within the jurisdiction of this Court.

3. The transferor company no. 1 was originally incorporated under the Companies Act, 1956 on 5th September, 1985 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Kashi Vishwanath Steels Limited. The company changed its name to Kashi Vishwanath Steels Private Limited and obtained the fresh certificate of incorporation on 30th December, 2014.

4. The transferor company no. 2 was originally incorporated under the Companies Act, 1956 on 11th June, 2004 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Kumaun Garhwal Infrastructural Industrial Corporation Limited. The company changed its name to Kumaun Garhwal Infrastructural

Industrial Corporation Private Limited and obtained the fresh certificate of incorporation on 23rd December, 2014.

5. The transferee company was originally incorporated under the Companies Act, 1956 on 5th September, 1985 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Galwalia Ispat Udyog Private Limited. The company changed its name to Galwalia Ispat Udyog Limited and obtained the fresh certificate of incorporation on 29th December, 2006. The company again changed its name to Galwalia Ispat Udyog Private Limited and obtained the fresh certificate of incorporation on 23rd December, 2014.

6. The present authorized share capital of the transferor company no.1 is Rs.5,00,00,000/- divided into 4,75,000 equity shares of Rs.100/- each aggregating Rs.4,75,00,000/- and 25,000 equity shares with differential rights of Rs.100/- each aggregating Rs.25,00,000/-. The issued, subscribed and paid-up share capital of the company is Rs.1,73,68,600/- divided into 1,65,413 equity shares of Rs.100/- each aggregating Rs.1,65,41,300/- and 8,273 equity shares with differential rights of Rs.100/- each aggregating Rs.8,27,300/-. The transferor company no. 1, on 1st February, 2016 and 15th February, 2016, has also issued 4,398 equity shares with differential rights of Rs.100/- each at a price of Rs.5,160/- per share aggregating Rs.2,26,93,680/- and 3,875

equity shares with differential rights of Rs.100/- each at a price of Rs.5,160/- per share aggregating Rs.1,99,95,000/- respectively.

7. The present authorized share capital of the transferor company no.2 is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up share capital of the company is Rs.2,72,04,000/- divided into 27,20,400 equity shares of Rs.10/- each.

8. The present authorized share capital of the transferee company is Rs.15,00,00,000/- divided into 15,00,000 equity shares of Rs.100/- each. The issued, subscribed and paid-up share capital of the company is Rs.10,28,66,600/- divided into 10,28,666 equity shares of Rs.100/- each. The transferee company, on 19th December, 2015 and 12th February, 2016, has also issued 59,171 equity shares of Rs.100/- each at a price of Rs.338/- per share aggregating Rs.1,99,99,798/- and 14,792 equity shares of Rs.100/- each at a price of Rs.338/- per share aggregating Rs.49,99,696/- respectively.

9. Copies of the Memorandum and Articles of Association of the demerged and resulting companies have been filed on record. The audited balance sheets, as on 31st March, 2015, of the demerged and resulting companies, along with the report of the auditors, have also been filed.

10. A copy of the Scheme of Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavits. It has been submitted by the applicants that by way of proposed demerger, the respective Investment Businesses of the transferor company no. 1 and transferor company no. 2 shall merge in the transferee company and the Investment Business of the transferee company shall stand merged in the transferor company no. 1. It is claimed that the proposed demerger will simplify the corporate structure and will enable these companies to directly own various fixed assets belonging to/being used by them and help in raising resources by these companies.

11. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor companies in the following ratio:

“187 equity shares of Rs.100/- each of the transferee company, credited as fully paid up, for every 100 equity shares of Rs.100/- each held by the shareholders in the transferor company no. 1.”

“187 equity shares with differential voting rights of Rs.100/- each of the transferee company, credited as fully paid up, for every 100 equity shares with differential voting rights of Rs.100/- each held by the shareholders with differential voting rights in the transferor company no. 1.”

“86 equity shares of Rs.100/- each of the transferee company, credited as fully paid up, for every 10,000 equity shares of Rs.10/- each held by the shareholders in the transferor company no. 2.”

So far as the demerger of the Investment Business of the transferee company into the transferor company no. 1 is concerned, the transferor company no. 1 shall issue and allot equity shares to the shareholders of the transferee company in the following ratio:

“05 equity shares of Rs.100/- each of the transferor company no. 1, credited as fully paid up, for every 10,000 equity shares of Rs.100/- each held by the shareholders in the transferee company.”

12. It has been submitted by the applicants that no proceedings under Sections 235 to 251 of the Companies Act, 1956 or under the corresponding provisions of the Companies Act, 2013 are pending against the applicant companies.

13. The Board of Directors of the transferor and transferee companies in their separate meetings held on 21st March, 2016 have unanimously approved the proposed Scheme of Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the demerged and resulting companies have been placed on record.

14. The transferor company no. 1 has 93 equity shareholders, including 02 equity shareholders with differential voting right, and 143

unsecured creditors. 72 out of 91 equity shareholders, being 79.12% in number and 93.18% in value, both the equity shareholders with differential voting rights and 92 out of 143 unsecured creditors, being 64.34% in number and 86.66% in value, have given their consents/no objections in writing to the proposed Scheme of Arrangement. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders, including equity shareholders with differential voting rights, and unsecured creditors of the transferor company no. 1 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement is dispensed with.

15. The transferor company no. 2 has 13 equity shareholders. All the equity shareholders have given their consents/no objections in writing to the proposed Scheme of Arrangement. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meeting of the equity shareholders of the transferor company no. 2 to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement is dispensed with. There is no secured or unsecured creditor of the transferor company no. 2, as on 16th February, 2016.

16. The transferee company has 22 equity shareholders and 245 unsecured creditors. 21 out of 22 equity shareholders, being 95.45% in number and 99.99% in value, and 178 out of 245 unsecured creditors, being 72.65% in number and 87.32% in value, have given their consents/no objections in writing to the proposed Scheme of Arrangement. Their consents/no objections have been placed on record. They have been examined and found in order. In view thereof, the requirement of convening the meetings of the equity shareholders and unsecured creditors of the transferee company to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement is dispensed with.

17. The transferor company no. 1 has 04 secured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Arrangement. Considering the facts and circumstances aforesaid, the meeting of the secured creditors of the transferor company no. 1 shall be held on 2nd July, 2016 at 10:00 a.m. at Kashi Vishwanath Steels Private Limited, Narain Nagar Industrial Estate, Bazpur Road, Kashi Pur, Distt. Udham Singh Nagar, Uttarakhand. Mr. Rajeev Kumar, Advocate, (Mobile No. 9810466870) is appointed as the Chairperson and Mr. Pranav Gautam, Advocate, (Mobile No. 7838490860) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the secured creditors of the

transferor company no. 1 shall be 02 in number and more than 25% in value of the total secured debt.

18. The transferee company has 02 secured creditors and a direction is sought to convene and hold their meeting to seek their approval to the proposed Scheme of Arrangement. Considering the facts and circumstances aforesaid, the meeting of the secured creditors of the transferee company shall be held on 2nd July, 2016 at 11:00 a.m. at Kashi Vishwanath Steels Private Limited, Narain Nagar Industrial Estate, Bazpur Road, Kashi Pur, Distt. Udham Singh Nagar, Uttarakhand. Mr. Akhil Mittal, Advocate, (Mobile No. 9891180590) is appointed as the Chairperson and Mr. Varun Jamwal, Advocate, (Mobile No. 8860878830) is appointed as the Alternate Chairperson to conduct the said meeting. The Quorum of the meeting of the secured creditors of the transferee company shall be 01 in number and more than 25% in value of the total secured debt.

19. Learned counsel for the applicants also seeks dispensation of requirement of publication of notices of the aforesaid two meetings in the newspapers on the ground that the number of secured creditors of the applicant companies are very less and the transferor company no. 1 and the transferee company has only 04 and 02 secured creditors respectively. He further submits that instead of carrying out the

publication, the secured creditors will be served through registered post, courier as well as by hand. I found merit in the request made by learned counsel for the applicant and accordingly, dispensed with the requirement of publication of notices of the meetings in the newspapers. The notices of the meetings of the said secured creditors shall be served to them through registered post, courier as well as by hand.

20. In case the quorum as noted above for the above meetings is not present at the meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form duly signed by the person entitled to attend and vote at the meetings is filed with the registered offices of the transferor and transferee companies at least 48 hours before the meetings. The Chairpersons and Alternate Chairpersons shall ensure that the proxy registers are properly maintained.

21. The Chairpersons and Alternate Chairpersons shall ensure that notices for convening the aforesaid meetings of the secured creditors of the transferor company no.1 and the transferee company, along with copies of the Scheme of Arrangement and the statement under Section 393 of the Companies Act, 1956, shall be sent to the secured creditors of

the transferor company no.1 and the transferee company by registered post, courier as well by hand at their registered or last known addresses at least 21 days before the date appointed for the meetings, in their presence or in the presence of their authorized representatives.

22. The Chairpersons and Alternate Chairpersons will be at liberty to issue suitable directions to the management of the transferor and transferee companies so that the aforesaid meetings of the secured creditors of the transferor company no.1 and the transferee company are conducted in a just, free and fair manner.

23. The fee of the Chairpersons and the Alternate Chairpersons for the aforesaid meetings shall be Rs.50,000/- each in addition to meeting their incidental expenses. The cost of travelling, stay and food etc. of the Chairpersons and Alternate Chairpersons shall also be borne by the applicants. The Chairpersons will file their reports within two weeks from the date of holding of the aforesaid meetings.

24. The application stands allowed in the aforesaid terms.

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SUDERSHAN KUMAR MISRA, J.

May 30, 2016