

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CA (CAA) No. 106/KB/2021

In the matter of:

Section 230 read with section 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013;

And

In the matter of:

KKALPANA INDUSTRIES (INDIA) LIMITED, [CIN: L19202WB1985PLC039431], having its registered office at 2B, Pretoria Street, Kolkata-700071, West Bengal;

... Demerged Company

And

In the matter of:

DDEV PLASTIKS INDUSTRIES LIMITED, [CIN: U24290WB2020PLC241791] having its registered office at 2B, Pretoria Street, Kolkata- 700071, West Bengal;

... Resulting Company

And

In the matter of:

1. **KKALPANA INDUSTRIES (INDIA) LIMITED**
2. **DDEV PLASTIKS INDUSTRIES LIMITED**

... APPLICANTS

Date of Hearing: 09/06/2021

Date of Pronouncement: 14/06/2021

Counsel appeared through video conferencing:

1. Ms. Shruti Swaika, Advocate
2. Ms. Iram Hassan, Advocate
3. Mr. Sanket Sarawgi, Advocate

Coram: Shri Rajasekhar V.K., Hon'ble Member (Judicial)

Shri H.C. Suri, Hon'ble Member (Technical)

ORDER

Per: Harish Chander Suri, Member (Technical)

- 1) This instant application has been filed by the Applicant Companies, namely, Kkalpana Industries (India) Limited (**Demerged Company**) and Ddev Plastiks Industries Limited (**Resulting Company**) for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Arrangement between **Demerged Company** and **Resulting Company** mentioned above. The Scheme provides for demerger from the **Appointed Date**, viz., **1st April, 2021** in the manner and on the terms and conditions stated in the said Scheme of Arrangement ("**Scheme**"). A copy of the said Scheme is annexed as **Annexure F** at page 364 of the application.
- 2) The circumstances and/or reasons and/or grounds that have necessitated and/ or justified the arrangement are stated in the said Scheme. They are *inter alia*, as follows:
 - (a) The Demerged Undertaking and the Remaining Undertaking have their own set of strengths and dynamics in the form of nature of risks, competition, challenges, opportunities and business methods, leading to different growth potentials. Hence, segregation of the two undertakings would enable a

focused management to explore the potential business opportunities effectively and efficiently;

- (b) The demerger would result in achieving efficiency in operational processes by designing and implementing independent strategies specifically designed for the two businesses and in optimizing profitability. This would in turn enhance the shareholders' wealth.
- (c) Targeting and attracting new investors with specific focus and expertise in the two businesses, thereby providing the necessary funding impetus to the long-term growth strategy of the two businesses;
- (d) The Compounding Business Undertaking of the **Demerged Company** is an old and diverse undertaking, that caters to a range of sectors *viz.*, housing wiring, high voltage cables, packaging, white goods, automotive, footwear, to name a few. The Compounding Business Undertaking has proved its significant resistance to market volatility over the years and therefore, on a standalone basis, it has scope for enhanced valuation and entry of strategic domestic/ international players by way of technological tie-ups/ direct acquisition of stake in the business. Hence, demerger of the Compounding Business Undertaking would help in targeting and attracting new investors with specific focus and expertise in the business, thereby providing the necessary funding impetus to the long-term growth strategy of the businesses.
- (e) The remaining Undertaking of the **Demerged Company**, inter alia, comprises of a Reprocessing Business Unit located in Falta, West Bengal, and it holds a license for reprocessing of plastic waste which has restriction on transferability. A similar license is also held in a Dubai based wholly owned subsidiary ['WOS'] of the **Demerged Company**. Since ultimate ownership of such licenses relating to the Remaining Undertaking rests with the **Demerged Company**, the Reprocessing Business Undertaking along

with its corresponding licenses as aforesaid, would be continued to be retained by the **Demerged Company**.

- (f) Further, given the recent international trends and demand for recycling of plastics (recognized as upcycling across the world), the Reprocessing Business Undertaking has significant long-term growth prospects. Moreover, growth potential of the Reprocessing Business Undertaking is substantially high. Hence, demerger of the Compounding Business Undertaking would also enhance the standalone valuation for Reprocessing Business Undertaking. Such higher growth and valuation potentials would be attractive to specific set of strategic domestic/ international players who would look to target direct acquisition of stake in the business. The transfer and vesting of the Demerged Undertaking to the **Resulting Company** will enable better focus and management of the Demerged Undertaking and the Remaining Undertaking.
- (g) The Reprocessing Business Undertaking is a debt free unit and has significantly lower working capital requirement as compared to the Compounding Business Undertaking. Hence, demerger of the Compounding Business Undertaking would help in independently managing the different funding requirements of the two business, both in terms of type of funds and amount of infusion required for the businesses.
- (h) As part of expansion plans for Reprocessing Business Undertaking, the **Demerged Company** intends to explore chemical recycling and other recycling activities, which are also expected to attract strategic domestic and international investors.
- (i) Pursuant to the Scheme, the equity shares issued by the **Resulting Company** would be listed on BSE. Therefore, the existing shareholders of the **Demerged Company** would hold the shares of two listed entities after the Scheme becoming effective. Such shareholders would then be able to choose

whether they want to remain invested in either or both the businesses/operations of the **Demerged Company**, giving them flexibility in managing their investment in the two businesses having differential dynamics.

- 3) The instant application has been filed in the first stage of the proceedings under Section 230 read with Section 232 of the Companies Act, 2013 for dispensation of the meeting of the shareholders and creditors of the **Resulting Company** and for holding of the meeting of the shareholders and creditors of the **Demerged Company**.
- 4) It is submitted by the Ld. Counsel appearing for the Applicants that the shares of the Applicant No. 1 are listed on the BSE Limited and The Calcutta Stock Exchange Ltd. and the shares of the Applicant No. 2 are not listed.
- 5) The share capital of the Demerged Company as on 31st December, 2020 is as follows:

Particulars	Amount (INR)
Authorized Equity Share Capital 153,000,000 Equity Shares of INR 2/- each	306,000,000
Issued, Subscribed and Paid-up Equity Share Capital 94,072,930 Equity Shares of INR 2/- each	188,145,860
<i>There has been no change in the Authorized, Issued, Subscribed and Paid-Up Share Capital of the Demerged Company after 31st December, 2020.</i>	

- 6) The share capital of the Resulting Company as on 9th December, 2020 is as follows:

Particulars	Amount (INR)
Authorized Equity Share Capital	
150,000 Equity Shares of INR 10/- each	1,500,000
Issued, Subscribed and Paid-up Equity Share Capital	
10,000 Equity Shares of INR 10/- each	100,000
<i>The entire issued, subscribed and paid up equity share capital of the Resulting Company has been subscribed by the Demerged Company and its nominees and presently the Resulting Company is a wholly owned subsidiary of the Demerged Company. There has been no change in the Authorized, Issued, Subscribed and Paid-Up Share Capital of the Resulting Company since 9th December 2020.</i>	

- 7) Applicants submitted that the Board of Directors of the Applicant Companies have, at their respective Board Meetings by a resolution passed unanimously approved the said Scheme of Arrangement which are annexed as **Annexure - G**, at pages 399 – 408 of the application.
- 8) It is submitted that the shareholding pattern of the **Demerged Company** as on 31st December, 2020 filed with stock exchanges and a copy of the same as

certified by the Chartered Accountant is annexed to the application as **Annexure - H** at pages 409 - 415. List of shareholders of the Resulting Company duly certified by the Chartered Accountant is annexed as **Annexure - I** at pages 416 - 421 of the application. The shareholders of the **Resulting Company** have consented to the present Scheme as would appear from their consent affidavits. The consent affidavit of shareholders, are annexed as **Annexure - J** at pages 422 – 456 of the application. In view of the said consent affidavits, the Applicants have prayed for dispensation of meeting of the shareholders of the **Resulting Company**.

- 9) The Chartered Accountant of the Applicants have given certificates with respect to the list of creditors which are part of **Annexure - K** at pages 457 - 468 of the application.
- 10) The certificate under proviso to Section 230 (7) certifying that the accounting treatment proposed in the Scheme of Arrangement is in conformity with the Accounting Standards prescribed under section 133 of the Companies Act, 2013 and same is annexed to the application as **Annexure - L** at pages 469 - 472.
- 11) Learned Counsel of the Applicants submits that the aggregate assets of the Applicant Companies are more than sufficient to meet all their liabilities and the said Scheme will not adversely affect the rights of any creditors of the Applicant Companies in any manner whatsoever and due provisions have been made for payment of all liabilities as and when the same fall due in usual course.
- 12) Learned Counsel of the Applicants also submits that the Scheme is not within the purview of the Competition Act, 2002.
- 13) Learned Counsel of the Applicants further submits that the Scheme does not provide for corporate debt restructuring and for any compromise with the creditors of the Applicants.

- 14) Learned Counsel of the Applicants also submits that no proceedings are pending against the Applicant Companies under sections 210 to 217 of the Companies Act, 2013 and that no investigation proceedings are pending against the Applicant Companies.
- 15) The valuation report of shares of the Applicant Companies for determining the share entitlement ratio, carried out by the Registered Valuer, Mr. Abhinav Agarwal, is annexed to the application as **Annexure - M** at pages 473-481. Further, fairness opinion issued by the SEBI Registered Category I Merchant Banker providing that the share entitlement ratio is fair and reasonable to the equity shareholders is annexed to the application as **Annexure - N** at pages 482-488.
- 16) The applicant No. 1 (**Demerged Company**) has received the observation letter dated 1st April, 2021 from the designated stock exchange, BSE Limited, stating the SEBI's observations and the same is annexed to the application as **Annexure O** at page 489. Subsequently, the applicant No. 1 (**Demerged Company**) has also received an observation letter dated 8th April, 2021 from The Calcutta Stock Exchange Ltd. and the same has been filed by way of a supplementary affidavit dated 4th May, 2021.
- 17) Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicants, we allow the instant application and make the following orders:-
- a. In view of the fact that the shareholders of the **Resulting Company** have given their consent by way of affidavit to the proposed Scheme of Arrangement, the meeting of the shareholders of the Resulting Company is hereby dispensed with.

- b. In view of the fact that the **Resulting Company** have no creditors, either secured or unsecured, the meeting of the creditors of the Resulting Company does not arise, hence dispensed with.
- c. A meeting of the equity shareholders of **Demerged Company** shall be convened via video conferencing or other audio-visual mode (“**Virtual Mode**”) and held at the registered office of the **Demerged Company** on 29th July, 2021 at 11.30 A.M. for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Arrangement.
- d. A meeting of the secured creditors of the **Demerged Company** shall be convened via video conferencing or other audio-visual mode (“**Virtual Mode**”) and held at its registered office on 29th July, 2021 at 2.00 P.M. for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Arrangement.
- e. A meeting of the unsecured creditors of the **Demerged Company** shall be convened via video conferencing or other audio-visual mode (“**Virtual Mode**”) and held at its registered office on 29th July, 2021 at 4.00 P.M. for the purpose of considering, and if thought fit, approving, with or without modification, the proposed Scheme of Arrangement.
- f. Subject to the directions and matters dealt with herein, such meetings shall be held virtually in accordance with the framework provided therefor in the Ministry of Corporate Affairs General Circular No.14/2020 dated 8th April, 2020, as clarified/extended from time to time, including by General Circulars bearing No.17/2020 dated 13 April 2020, No.22/2020 dated 15 June 2020, No.33/2020 dated 28 September 2020 and No.39/2020 dated 31 December 2020 (“**Virtual Meeting Circulars**”).

- g. That at least 30 (thirty) clear days before the date of the said meetings an advertisement convening the same and stating that copies of the said Scheme of Arrangement and the Statement containing necessary details required to be filed pursuant to Section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 is being sent with notice, shall be published once each in “*The Business Standard*” (English) and “*Aajkal*” (Bengali) as per requirements of Section 230 of the Companies Act, 2013 in Form CAA 2 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.
- h. That in addition, at least 30 (thirty) clear days before the meeting to be held as aforesaid, a notice convening the said meetings at the place/mode and time as aforesaid together with a copy of the said Scheme, the Statement disclosing necessary details required to be filed pursuant to Section 230 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 shall be sent by e-mail to the shareholders, secured and unsecured creditors of the **Demerged Company**, whose e-mail addresses are duly registered with the **Demerged Company**, addressed to each of the shareholder, secured and unsecured creditor, at their last known e-mail address as per the records of the **Demerged Company**. Shareholders, secured and unsecured creditors, whose e-mail address are not available, shall be provided an opportunity by way of notice in the advertisement of notice mentioned in para 9(g) above to register their e-mail address to receive the notice of the said respective meetings.
- i. Notice shall be served as per requirement of Sub-Section 5 of Section 230 of the Companies Act, 2013 alongwith all the documents including a copy of the Scheme and the Statement disclosing necessary details on the Central Government through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, the Registrar of Companies, West Bengal, Kolkata, Competition Commission of India, Income Tax Authorities having

jurisdiction over the applicant companies, and Stock Exchanges, i.e., BSE Limited and The Calcutta Stock Exchange Ltd., and such other sectoral regulators/authorities, if applicable, by sending the same by hand delivery through special messenger or by post or by email, within 14 days from the date of this order for filing their representation, if any, within 30 days from the date of receipt of the notice. The notice shall specify that representation, if any should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being sent simultaneously to the Applicants' Advocate. If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Arrangement. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with rule 8(2) of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016 in Form No. CAA.3 of the said Rules with necessary variations incorporating the directions herein either by e-mail or speed post or by personal messenger.

- j. Chairperson: Mr. Deepak Khaitan, C.S. (Mob- 9830306692/9007055560) shall be the Chairperson for the said meetings of the shareholders and unsecured and secured creditors of **Demerged Company** to be held as aforesaid. The consolidated remuneration shall be of Rs.75,000/- (Rupees Seventy-five thousand only) for conducting the aforementioned meetings.
- k. Scrutiniser: Mr. Deepak Pandey, Chartered Accountant, Membership no.30692, (Mob- 9038033777), shall be the Scrutiniser for the said meetings of the shareholders and unsecured and secured creditors of the **Demerged Company** to be held as aforesaid. The consolidated remuneration shall be of Rs.60,000/- (Rupees Sixty thousand only) for conducting the aforementioned meetings.

- l. Quorum and Attendance: The quorum for the said meetings of persons entitled to attend the same shall be determined in accordance with section 103 of the Companies Act, 2013. For the meetings to be held in the Virtual Mode, attendance of such persons in Virtual Mode shall be counted for the purpose of quorum. Attendance at such meetings shall be recorded in the minutes of the meetings instead of taking physical attendance slips. In case the quorum of any meeting is not present within half an hour from the time appointed for the meeting, the Chairperson may adjourn such meeting to any date/time and take a decision on the quorum for the adjourned meeting.
- m. Proxies & Board Resolutions: If a Body Corporate chooses to vote by remote e-voting, a scanned copy of such board resolution shall be sent by e-mail to the Scrutiniser and, if it chooses to vote by postal ballot, certified copy of such board resolution shall be sent to the Scrutiniser along with the postal ballot form. It is clarified that proxies can only attend at the venue of the meeting and vote thereat by polling paper/e-voting and are not entitled otherwise to attend or to vote by remote e-voting or postal ballot.
- n. Mode of Voting: Voting in the meetings held in Virtual Mode shall be by e-voting only. Further, in case of meetings of the Equity Shareholders of the applicant no. 1 (Demerged Company), facility for voting by remote e-voting shall also be provided during the period from 26/07/2021 (9.00 A.M.) to 28/07/2021 (5.00 P.M.). The facility for remote e-voting shall be disabled at 5.00 P.M. on 28/07/2021.
- o. Cut-off date: The cut-off date for determining the eligibility to vote and value of votes shall be 22/07/2021 for the meeting of shareholders and as per Chartered Accountant's Certified List annexed to the application for the meetings of creditors. The value of the votes cast shall be reckoned and scrutinised with reference to the said dates.

- p. Voting Procedure: Subject to the directions and matters dealt with herein, the procedure for voting by e-voting and conduct of voting, in so far as the same is prescribed by the Virtual Meeting Circulars and Companies (Management & Administration) Rules, 2014 (“**the said Rules**”) and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.
- q. That the Chairperson appointed for the said meeting(s) or any person authorised by the Chairperson do issue and send the notices of the aforesaid meetings.
- r. The votes cast shall be Scrutinised by the Scrutiniser. Votes cast in all the modes shall be consolidated. The Scrutinizer shall prepare and submit the respective reports on the meeting(s) along with all papers relating to the voting to the Chairperson of the meeting(s) within 3 days of the conclusion of the meeting(s). The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutiniser. The declaration of results by the Chairperson shall also be posted on the website of the Applicant(s) and in case an Applicant does not have a website, the declaration of results shall be published in the same newspapers in which notice of the meetings were advertised.
- s. The value of each shareholder and creditor shall be in accordance with the books and records of the Applicant and, where entries in the books are disputed, the Chairperson shall determine the value for purposes of the said meetings.
- t. The resolution for approval of the Scheme of Arrangement put to a meeting shall, if passed by a majority in number representing three-fourths in value of the respective shareholders/creditors casting their votes, as aforesaid, shall be deemed to have been duly passed on the date of such meeting under section 230(1) read with section 232(1) of the Companies Act, 2013.

- u. That the chairperson do report to this Tribunal the results of the said meetings within 4 (four) weeks from the date of conclusion of the meetings and the report shall be in Form CAA 4 pursuant to Rules 13(2) and 14 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016, verified by affidavit.
- 17) The Applicants to file an affidavit proving service of notices of meetings and publication of advertisement and compliance of all directions contained herein at least a week before the meetings to be held.
- 18) The applicants are at liberty to file second motion petition within two weeks from the date of filing of the report by the Chairperson of the meetings.
- 19) The application being CA(CAA) No. 106/KB/2021 is disposed of accordingly.
- 20) The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 21) Certified copy of the order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Signed this 14th day of June 2021.

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