

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (COURT NO- I)
KOLKATA**

Company Petition CP(CAA) No.10 / KB / 2024
Connected With
Company Application CA (CAA) No. 189/ KB /2023

A petition under section 230 read with section 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions of law.

In the matter of:

A Scheme of Arrangement (Second Motion):

KAYPEE PROPERTIES PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act,1956 (CIN: U70101WB1994PTC064301) and having its Registered Office at 5G/1 EVEREST 46/C CHOWRINGHEE ROAD, KOLKATA - 700071 in the State of West Bengal.

..... **Demerged Company / Petitioner No.1**

-And-

In the Matter of:

P C COMBINES PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 (CIN: U74140WB1994PTC062494) and having its Registered Office at 5G/1 EVEREST 46/C CHOWRINGHEE ROAD, KOLKATA -700071 in the State of West Bengal.

..... **Resulting Company / Petitioner No.2**

In the matter of:

1. **KAYPEE PROPERTIES PRIVATE LIMITED**
2. **P C COMBINES PRIVATE LIMITED**

PETITIONERS.

Date of pronouncing the order: 23/04/2024

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C.P. (CAA) No. 10/KB/2024
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C.A. (CAA) No. 189/KB/2023

CORAM:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conference/physically)

Mrs. Manju Bhuteria, Adv.] For the Petitioner

Ms. Aisha Amin, Adv.]

Mrs. Radhika Patodia, Adv.]

Mr. Alok Tandon,] JD Office of RD, ER

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The instant Company Petition has been filed in the second stage of the proceedings under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“Act”) for sanction and confirmation of the Scheme of Arrangement for demerger of STRATEGIC INVESTMENT DIVISION of the Demerged Company and transfer and vesting of the same in the Resulting Company

Kaypee Properties Private Limited	Demerged Company / Petitioner No.1
P C Combines Private Limited	Resulting Company / Petitioner No.2

from the **Appointed Date** , 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 to the Company Petition marked – **Annexure – A** in VOL 1 at Page No 28 to 44.

2. It is submitted by Ld. Counsel appearing for the Petitioner(s) that the **Appointed Date** as per the **Scheme is 01st April, 2023**.

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3. It is submitted by Ld. Counsel appearing for the Petitioner(s) that the Petitioner No 2 is a **NBFC** Company duly registered with Reserve Bank of India and is holding a valid Certificate of Registration issued by the said Bank.
4. It is submitted by Ld. Counsel appearing for the Petitioner(s) that the list of Equity Share Holders of the Petitioner Companies as on 31-07-2023 duly certified by the statutory auditor of the Company are all collectively annexed to the Company Petition and marked – **Annexure – F** in VOL II at Page No 153 to 154.
5. It is submitted by Ld. Counsel appearing for the Petitioner(s) that NIL Secured Creditors of Petitioner Companies as on 31-07-2023 duly certified by the statutory auditor of the Company is annexed to the Company Petition and marked– **Annexure – G** in VOL II at Page No 155 to 156.
6. It is submitted by Ld. Counsel appearing for the Petitioner(s) that the list of Unsecured Creditors of the Petitioner Companies as on 31-07-2023 duly certified by the statutory auditor of the Company are all collectively annexed to the Company Petition and marked – **Annexure – G** in VOL II at Page No 155 to 156.
7. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Valuation Report dated 28-07-2023 recommending the Swap Ratio has been prepared by Abhishek Gupta, IBBI Registered Valuer. A copy of the said Report is annexed to the Company Petition marked – **Annexure – J** in VOL II at Page No 176 to 192.
8. It is submitted by Ld. Counsel appearing for the Petitioner(s) that the statutory auditors of the Petitioner Companies have by their certificate all dated 31-07-2023 confirmed that the Accounting Treatment proposed in the Scheme of Arrangement is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013 and Rules made there under. A copy of the said Certificate

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issued by Statutory Auditor of the Petitioner Companies are all collectively annexed to the Company Petition marked – **Annexure – K** in VOL II at Page No 193 to 196.

9. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Board of Directors of the Petitioner Companies have at their respective meeting held on 29TH July, 2023 have passed resolution adopting the proposed Scheme of Arrangement. A copy of the Resolution passed by the Board of Directors of the Petitioner Companies are all collectively annexed to the Company Petition marked – **Annexure – L** in VOL II at Page No 197 to 198.
10. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Petitioner(s) have the following classes of shareholders and creditors:-

PARTICULARS	AS ON 31 ST JULY, 2023			
	EQUITY SHARE HOLDERS	PREFERENCE SHARE HOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
DEMURGED COMPANY / PETITIONER NO 1	2	NIL	NIL	1
RESULTING COMPANY / PETITIONER NO 2	3	NIL	NIL	2

11. It is submitted by Ld. Counsel appearing for the Petitioner(s) that by an order dated 06th December, 2023 in Company Application No. C.A (CAA) NO. 189/KB/2023 this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) of the Act:-

a. Meetings dispensed:

Equity Shareholders

Meeting of Equity Shareholders of the Petitioner Companies for considering the Scheme are dispensed with, in view of shareholder representing 100% in value of shares of Petitioner Companies having respectively given their consent to the Scheme by way of affidavits.

Unsecured Creditors

Meeting of Unsecured Creditors of the Petitioner No 1 for considering the Scheme are dispensed with in view of consent by 100% in value of Unsecured Creditors of Petitioner No 1 having respectively given their consent to the Scheme by way of affidavits.

Meeting of Unsecured Creditors of the Petitioner No 2 for considering the Scheme are dispensed with in view of consent by 99.93% in value of Unsecured Creditors of Petitioner No 2 having respectively given their consent to the Scheme by way of affidavits.

b. No requirement of Meetings

Secured Creditors

No requirement of Meeting of Secured Creditors of Petitioner Companies – NIL Creditors duly verified by auditors certificate.

c. Meetings to be held

No meetings are required to be held

12. The Petition has now come up for final hearing. Ld. Counsel for the Petitioners submits as follows:-

(a) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-

a. The demerger of business of DEMERGED DIVISION of the DEMERGED COMPANY and transfer and vesting of the same in the RESULTING COMPANY will enable the RESULTING COMPANY to focus more on demerged division. The DEMERGED COMPANY will also gain from the demerger since it can focus more on remaining activities.

b. As part of an overall Scheme of Arrangement, the management of the DEMERGED COMPANY and RESULTING COMPANY has

concurred on a plan whereby DEMERGED DIVISION of the DEMERGED COMPANY will be demerged to and vested with the RESULTING COMPANY.

- c. The management of the DEMERGED COMPANY is of the opinion that the arrangement will enable it to lend greater focus to the operations of remaining business in the undertaking.
- d. The management of the RESULTING COMPANY is of the opinion that the arrangement will provide greater capacity and better utilization of its resources. The arrangement will also enable it to consolidate its business by restructuring and reorganizing its business activities and capital structure.
- e. Post this restructuring both DEMERGED COMPANY and RESULTING COMPANY are expected to be better poised for meeting future growth opportunities, gain the advantage of cost savings and improvement of their earning potential.
- f. The Board of Directors of the RESULTING COMPANY and DEMERGED COMPANY are of the opinion that the restructuring involving demerger would benefit their shareholders, creditors, employees, the companies concerned.

The business of the TRANSFEROR COMPANY and the TRANSFEREE COMPANY can be combined/adjusted and carried forward conveniently with combined strength;

13. It is submitted by Ld. Counsel appearing for the Petitioner(s) that there are No proceedings or investigations are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).

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Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 31st January,2024 the instant petition was admitted by this Tribunal and fixed for hearing on 04th March,2024 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 31ST January,2024 the Petitioner(s) have duly served such notices on the Regulatory Authorities as below :

NAME OF THE REGULATORY AUTHORITY	DATE OF SERVICE	AFFIDAVIT OF SERVICE	
		ANNEXURE NO	PAGE NO
THROUGH SPECIAL MESSENGER (BY HAND DELIVERY)			
Principal Commissioner of Income Tax - 1	19-02-2024	C	16
Income Tax Officer –Ward – 8 (1)	19-02-2024	C	17
Income Tax Officer –Ward – 8 (1)	19-02-2024	C	18
Regional Director , Eastern Region , Ministry of Company Affairs	16-02-2024	D	22
Upon Registrar Of Companies, West Bengal	16-02-2024	E	24
Upon Reserve Bank of India	16-02-2024	F	26
Upon Official Liquidator	16-02-2024	G	27
BY ELECTRONIC MAIL			
Principal Commissioner of Income Tax - 1	20-02-2024	C	19
Income Tax Officer –Ward – 8 (1)	20-02-2024	C	20
Income Tax Officer –Ward – 8 (1)	20-02-2024	C	21
Regional Director , Eastern Region , Ministry of Company Affairs	17-02-2024	D	23
Upon Registrar Of Companies, West Bengal	17-02-2024	E	25
PAPER PUBLICATION OF NOTICE			
Financial Express – In English	17-02-2024	B	12 to 13
AAjkal – In Bengali Translation	17-02-2024	B	14 to 15

An affidavit duly affirmed on 27TH February, 2024 has also been filed with the Registry.

14. All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

15. Pursuant to the said advertisements and notices, the Regional Director, Ministry of Corporate Affairs, Kolkata (“RD”), have filed their representations before this Tribunal.
16. The RD has filed his reply affidavit dated 01st March, 2024 (“RD affidavit”) which has been dealt with by the Petitioner(s) by their Rejoinder affidavit dated 02nd March, 2024 (“Rejoinder”). The observations of the RD and responses of the Petitioner(s) are summarized as under:-

Paragraph 2 (a) of RD Affidavit

That it is submitted that on the examination of the report of the Registrar of Companies, West Bengal, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation.

Further, all the petitioner companies are updated in filing their Financial Statements and Annual Returns for the financial year 31/03/2023.

Paragraph 2 (a) of the Rejoinder

The Deponent has to say that no adverse comments made by the Registrar of Companies, West Bengal in his report to the Regional Director. Further the Registrar of Companies, West Bengal has not received any Complaint and / or representation from any person on the proposed Scheme. Hence no reply is made for the same.

Paragraph 2 (b) of RD Affidavit

It is submitted that the Resulting Company, P C Combines Private Limited is a registered NBFC with Reserve Bank of India (RBI) and its Certificate of Registration no. being B-05.04434 dated 12/05/2005. However, no 'NOC' from the RBI has been provided yet in the matter of proposed amalgamation.

Paragraph 2 (b) of the Rejoinder

The Deponent duly authorised hereby submits that the Resulting Company, P C Combines Private Limited is an NBFC Company duly registered with the Reserve Bank of India. Pursuant to the Scheme there will not be any change

in the shareholding pattern of the Company. The Shareholders who were there will continue to be the shareholders and no shares are allotted to any new shareholders. Further the shareholding pattern would reveal that the change in the percentage of shareholding is only 0.38%. Further in terms of Circular DNBR (PD) CC. No. 065/03.10.001/2015-16 July 09, 2015 prior approval of the Bank is required only when the Change in shareholding is more than 26%. In the instant case since the change is only 0.38% prior approval is not required, however the Company shall comply with circulars issued by the Bank as applicable to it. Copy of the pre post shareholding pattern and the circular referred to above is annexed collectively marked – **ANNEXURE B.**

Paragraph 2 (c) of RD Affidavit

The Petitioner Companies should be directed to provide list / details of Assets, if any, to be demerged / transferred from the Demerged / Transferor Company to the Resulting / Transferee Company upon sanctioning of the proposed Scheme.

Paragraph 2 (c) of the Rejoinder

The Deponent duly authorised hereby confirms that the Petitioner Resulting Company undertakes to file list / details of assets that will be transferred by the Demerged Company upon sanction and confirmation of the Scheme by the Hon'ble Tribunal.

Paragraph 2 (d) of RD Affidavit

That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013, if any applicable, through appropriate affirmation.

Paragraph 2 (d) of the Rejoinder

The Deponent duly authorised hereby confirms that the provisions of Sec 232(3)(i) of the Companies Act, 2013 is not applicable as there is no amalgamation of Capital , hence there will be no adjustments of fees .

Paragraph 2 (e) of RD Affidavit

That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor /Demerged Company to it.

Paragraph 2 (e) of the Rejoinder

The Deponent duly authorised hereby confirms that the Resulting Company undertakes that it shall pay applicable stamp duty on the transfer of the immovable properties from the Demerged Company to it.

Paragraph 2 (f) of RD Affidavit

The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph 2 (f) of the Rejoinder

The Deponent duly authorised by the Petitioner Companies hereby affirms that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph 2 (g) of RD Affidavit

It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 11/01/2024 for their views/observation in the matter, the authority has not forwarded their report and the same is still awaited.

Paragraph 2 (g) of the Rejoinder

The Income Tax authorities have not made any observations on notice served by the office of the Regional Director.

Further the Petitioner Companies have also complied with the directions contained in the order passed by the Hon'ble Tribunal and have effected service upon the Income Tax Department. However the said department have

not made/ filed observation pursuant to the said notices filed by the Petitioner Companies.

Heard submissions made by the Ld. Counsel appearing for the Petitioner, submissions made by the RD. The statement of the Joint Director (MCA) that the Directorate has no objection to the scheme is taken on record. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

- a. The **Scheme of Arrangement** mentioned in this Petition being **Annexure “A”** hereto be sanctioned by this Tribunal with Appointed date as 1st day of April, 2023, and the same shall be binding on KAYPEE PROPERTIES PRIVATE LIMITED, P C COMBINES PRIVATE LIMITED and their respective shareholders & all concerned.
- b. All the properties, rights and interest in relation to STRATEGIC INVESTMENT DIVISION OF KAYPEE PROPERTIES PRIVATE LIMITED – DEMERGED COMPANY shall stand transferred to and vested in without any further act or deed in P C COMBINES PRIVATE LIMITED pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 for all the estate and interest of STRATEGIC INVESTMENT DIVISION OF KAYPEE PROPERTIES PRIVATE LIMITED – DEMERGED COMPANY, now affecting the same;
- c. All the liabilities and duties in relation to STRATEGIC INVESTMENT DIVISION OF KAYPEE PROPERTIES PRIVATE LIMITED – DEMERGED COMPANY shall stand transferred to and vested in without further act or deed to P C COMBINES PRIVATE LIMITED and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read

with Companies (Compromises, Arrangements) Rules, 2016 be transferred to and become the liabilities and duties of P C COMBINES PRIVATE LIMITED;

- d. That all proceedings and/or suit, appeals initiated by or against investment undertaking of STRATEGIC INVESTMENT DIVISION OF KAYPEE PROPERTIES PRIVATE LIMITED – DEMERGED COMPANY now pending shall stand transferred to and be continued by or proceeded against P C COMBINES PRIVATE LIMITED;
- e. This sanction shall not come in the way of any proceedings being instituted against any of the constituent companies by RBI , Income Tax and such other statutory authorities that might be affected. The Transferee /Resulting Company shall preserve relevant records as required under Section 239 of the Companies Act 2013.
- f. That P C COMBINES PRIVATE LIMITED do issue and allot shares to the shareholders of STRATEGIC INVESTMENT DIVISION OF KAYPEE PROPERTIES PRIVATE LIMITED – DEMERGED COMPANY as envisaged in the Scheme of Arrangement and for that, if necessary, to increase the authorized share capital;
- g. That the schedule of assets & liabilities in relation to STRATEGIC INVESTMENT DIVISION OF KAYPEE PROPERTIES PRIVATE LIMITED – DEMERGED COMPANY, being ANNEXURE – A to the Scheme of Arrangement be filed within a period of 60 days from the date of the order by STRATEGIC INVESTMENT DIVISION OF KAYPEE PROPERTIES PRIVATE LIMITED – DEMERGED COMPANY to be made herein;
- h. STRATEGIC INVESTMENT DIVISION OF KAYPEE PROPERTIES PRIVATE LIMITED – DEMERGED COMPANY and P C COMBINES PRIVATE LIMITED- RESULTING COMPANY shall within 30 days after the date of obtaining the Certified Copy of the order to be made herein cause

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certified copies of this order to be delivered to the Registrar of Companies, West Bengal for registration respectively;

i. Any person/ authority aggrieved shall be at liberty to apply to this Tribunal in the above matter for any direction that may be necessary;

17. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets and liabilities in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.
18. The Company Petition **C.P.(CAA)No.10/KB/2024** connected with Company Application **C.A.(CAA) NO 189/ KB/2023** is disposed of accordingly.
19. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

Balraj Joshi
Member(Technical)

Rohit Kapoor
Member(Judicial)

Signed on this, the 23rd day of April,2024.