

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT-II**

CA (CAA) 52/AHM/2022

[In the matter of Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016]

In the matter of Scheme of Arrangement

Between

Nexion International Private Limited
(Applicant Company No. 1/ Demerging Company)

And

Nexion Surfaces Private Limited
(Applicant Company No. 2/ Resulting Company No. 1)

And

Simpolo Vitrified Private Limited
(Applicant Company No. 3/ Resulting Company No. 2)

And

Their Respective Shareholders

Order Pronounced on: 21.12.2022

CORAM:

DR. DEEPTI MUKESH
HON'BLE MEMBER (Judicial)
MR. AJAI DAS MEHROTRA
HON'BLE MEMBER (Technical)

MEMO OF PARTIES

Nexion International Private Limited

Office No.1104 and 1105, Shapath V,
Opp. Karnavati Club, S. G. Highway
Ahmedabad, Gujarat 380015

**...Applicant Company No. 1/
Demerging Company**

And

Nexion Surfaces Private Limited

Old Ghuntu Road, B/h. Silvenia Ceramic,
8-A National Highway,
Morbi Rajkot, Gujarat - 363642

**...Applicant Company No. 2/
Resulting Company No. 1**

And

Simpolo Vitrified Private Limited

Survey No. 606, Tal. Morbi,
Ghuntu, Gujarat 363642

**...Applicant Company No. 3/
Resulting Company No. 2**

For the Applicants: Mr. Navin Pahwa, Sr. Adv.

ORDER

1. A joint Application has been filed by the Applicant Companies herein, under Sections 230-232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, in relation to the Scheme of Arrangement ('Scheme') in the nature of demerger of Nexion International Private Limited ('Demerging

Company’) into Nexion Surfaces Private Limited (‘Resulting Company No. 1’) and Simpolo Vitrified Private Limited (‘Resulting Company No. 2’). The said Scheme is annexed with the Application.

2. It is submitted that the present Scheme of Arrangement provides for demerger of vitrified tiles business from the Demerging Company and merging into the Resulting Company 1. The Resulting Company 1 is a wholly owned subsidiary of Resulting Company 2. The holding company i.e. Resulting Company No. 2 will issue shares to the shareholders of the Demerging Company on behalf of its wholly owned subsidiary i.e. Resulting Company No. 1 as consideration of the said merger.
3. Affidavits in support of the Application are sworn for, on behalf of the Demerging Company, by one Ms. Bharatbhai Thakarshibhai Aghara and on behalf of Resulting Company No. 1 & 2, by one Mr. Mansukh Tribhovanbhai Kaila being the authorized signatories of the respective Applicant Companies. Respective board resolutions dated 19.06.2022 for the said authorization by all the applicant companies have been filed. It is represented that the Registered Office of all the Applicant Companies are situated within the territorial jurisdiction of this Tribunal and the Registrar of Companies, Ahmedabad.
4. It is submitted that the Demerging Company is incorporated as private limited company under the provision of the Companies Act, 2013 on 24.12.2014 with the Registrar of Companies, Ahmedabad with CIN No. U26933GJ2014PTC081644 under the name and style of ‘Nexion International Private Limited’.

5. The Authorized share capital of the Demerging Company is Rs. 23,00,00,000/- (Rupees Twenty-Three Crores Only) divided into 2,30,00,000 equity shares of Rs.10/- each and issued, subscribed, and paid-up share capital is Rs. 22,26,15,780/- (Rupees Twenty-Two Crore Twenty-Six Lakh Fifteen Thousand Seven Hundred and Eighty Only) divided into 2,22,61,578 equity shares of Rs.10/- each.
6. The main objects of Demerging Company as per Memorandum of Association of Company is to carry on the business to manufacture, produce, treat, process, design, develop, build, compound, cure, crush, distribute, extract, excavate, finish, formulate, grind, handle, fabricate, import, export, purchase, sell, job work, mix, modify, operate, prepare, and to act as brokers, stockiest, wholesalers, retailers, agents, consignors, consignees, indenters, packers, movers, preservers, C & F agents in all types, sizes, varieties, specification, description, kinds and nature of vitrified tiles, natural or artificial marbles, stones, glass and ceramic products.
7. It is submitted that the Resulting Company No. 1 is incorporated as private limited company under the provision of the Companies Act, 2013 on 29.03.2022 with the Registrar of Companies, Ahmedabad with CIN No. U26990GJ2022PTC130486 under the name and style of 'Nexion Surfaces Private Limited'.
8. The Authorized share capital of the Resulting Company No. 1 is Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) divided into 1,50,000 equity shares of Rs.10/- each and issued, subscribed, and paid-up share capital is Rs. 1,00,000/- (Rupees One Lakh Only) divided into 10,000 equity shares of Rs.10/- each.

9. The main objects of Resulting Company No. 1 as per Memorandum of Association of Company is to carry on in India or elsewhere the business to manufacture, process, produce, design, develop, build, convert, cure, crush, distribute, display, exchange, barter, explore, extract, excavate, finish, formulate, grind, handle, fabricate, import, export, buy, sell, job work, mix, modify, market, operate or prepare tiles of all shapes, sizes, varieties, specifications, descriptions, applications etc.
10. It is submitted that the Resulting Company No. 2 is incorporated as private limited company under the provision of the Companies Act, 1956 on 18.09.2007 with the Registrar of Companies, Ahmedabad with CIN No. U26914GJ2007PTC051766 under the name and style of 'Simpolo Vitriified Private Limited'.
11. The Authorized share capital of the Resulting Company No. 2 is Rs. 15,00,00,000/- (Rupees Fifteen Crore Only) divided into 1,50,00,000 equity shares of Rs.10/- each. The issued, subscribed, and paid-up share capital is Rs. 7,19,92,000/- (Rupees Seven Crore Nineteen Lakh Ninety-Two Thousand Only) divided into 71,99,200 equity shares of Rs.10/- each.
12. The main objects of Resulting Company No. 2 as per Memorandum of Association of Company is to carry on in India or elsewhere the business to manufacture, process, produce, design, develop, build, convert, cure, crush, distribute, display, exchange, barter, explore, extract, excavate, finish, formulate, grind, handle, fabricate, import, export, buy, sell, job work, mix, modify, market, operate or prepare tiles of all shapes, sizes, varieties, specifications, descriptions, applications etc.

13. The Applicant Companies have filed their respective Memoranda and Articles of Association inter alia delineating their object clauses. The Demerging Company and Resulting Company No. 2 have filed their last available audited financial statements for the year ended on 31.03.2021 and provisional financial statements as on 31.03.2022. The Resulting Company No. 1 has filed its provisional financial statement as on 31.03.2022.
14. The Applicants have furnished certificates from their respective Chartered Accountants certifying the details of the Shareholders, Secured Creditors and Unsecured Creditors in all the companies as on 31.05.2022 which are as follows:

Sr. No.	Name of the Company	No. of Shareholders	No. of Secured Creditors	No. of Unsecured Creditors
1.	Nexion International Private Limited	2 Equity Shareholders	1	868
2.	Nexion Surfaces Private Limited	2 Equity Shareholders	NIL	1
3.	Simpolo Vitrified Private Limited	44 Equity Shareholders	2	3584

The Applicant Companies contends that all the shareholders of all the Applicant Companies have given their consent through affidavits which are on record and the sole unsecured creditor of Resulting Company No. 1 was repaid on 13.06.2022. In the circumstances, the Applicants seek dispensing with the convening / holding of the meetings of the shareholders of all Applicant Companies and submits that there is no requirement of holding any meeting of unsecured creditors of Resulting

Company No. 1. With respect to secured and unsecured creditors of Demerged Company and Resulting Company No. 2 directions for convening and holding of their meetings are sought.

15. The Board of Directors of the Applicant Companies in their respective board meetings held on 19.06.2022 have unanimously approved the proposed Scheme as contemplated above and copy of resolutions passed thereon have been placed on record by the companies.
16. On behalf of all the Applicant Companies it is stated that no investigation or proceedings under Section 210 to 227 of the Companies Act, 2013 are pending or instituted against any of the Applicant Companies.
17. The Applicant Companies have complied with the proviso to Section 230 (7) and Section 232 (3) by filing the certificates from the statutory auditors of all the Applicant Companies in relation to compliance with the Accounting Standards under section 133 of the Companies Act, 2013. Copies of certificate of statutory auditors of all Applicant Companies are annexed.
18. It is stated that the equity shares of the Applicant Companies are not listed on stock exchanges and hence notice is not required to be served on the Stock Exchanges. Considering the nature of business of the Applicant Companies, Competition Commission of India will not be regulatory authority for the purpose of the present Scheme and not required to be served the notice.
19. The copy of valuation report by the registered valuer is annexed with the application.

20. Heard submissions and perused documents. We issue following directions with respect to calling, convening and holding of the meetings of the Shareholders, Secured and Unsecured Creditors or dispensing with the same as well as issue of notices including by way of paper publication:

(A) In relation to the Demerging Company:

- (i) With respect to Equity Shareholders:

In view of 100% consent affidavits of all the Equity Shareholders are placed on record, the necessity of convening / holding a meeting to consider, and if thought fit, the approval of the Scheme, is dispensed with.

- ii) With respect to Secured Creditors:

The meeting of sole secured creditor of the company shall be convened on 09.02.2023 at 10.00 am.

- iii) With respect to Unsecured Creditors:

The meeting of unsecured creditors of the company shall be convened on 09.02.2023 at 12:00 pm. Quorum of the meeting shall be 85 in number wise.

(B) In relation to the Resulting Company No. 1:

- (i) With respect to Equity Shareholders:

In view of 100% consent affidavits of all the Equity Shareholders are placed on record, the necessity of convening / holding a meeting to consider and if thought fit, the approval of the Scheme is dispensed with.

- ii) With respect to Unsecured Creditors:

As the sole Unsecured Creditors is repaid and no unsecured creditors are there as on date hence, need of convening / holding a meeting of unsecured Creditors, is obviated.

iii) With respect to Secured Creditors:

As there are no Secured Creditors in the Company, need of convening / holding a meeting of Secured Creditors, is obviated.

(C) In relation to the Resulting Company No. 2:

(i) With respect to Equity Shareholders:

In view of 100% consent affidavits of all the Equity Shareholders are placed on record, the necessity of convening / holding a meeting to consider and if thought fit, the approval of the Scheme is dispensed with.

ii) With respect to Secured Creditors:

The meeting of secured creditors of the company shall be convened on 09.02.2023 at 4.00 pm. Quorum of the meeting shall be 1

iii) With respect to Unsecured Creditors:

The meeting of unsecured creditors of the company shall be convened on 09.02.2023 at 2:00 pm. Quorum of the meeting shall be 250 in number wise.

21. In view of the recent circulars of Ministry of Corporate Affairs; viz. Circular No. 14 of 2020 dated 8th April 2020, Circular No. 17 of 2020 dated 13th April 2020 and Circular No. 20 of 2020 dated 5th May 2020 and General Circular No.2/2022 dated 5th May, 2022, the meetings of Secured Creditors as well as the Unsecured Creditors of the Resulting

Companies No. 1 & 2 may be convened and conducted through video conferencing or other Audio Visual Means or other secured virtual mode as may be permitted under law. Both the Applicant Companies shall appoint agencies as mandated by law.

22. In case the meetings are not conducted through VC/OAVM, the venue of all the meetings to be convened of secured and unsecured creditors of the Demerging Company and Resulting Companies No. 2 shall be Simpolo Vitrified Private Limited, Old Ghuntu Road, Morbi, Gujarat – 363642. The meetings and all relevant steps related thereto / therewith vis-à-vis the Scheme shall also be governed by the following further directions.
- (i) In case the quorum as noted above for the said meetings of the Secured Creditors and Unsecured Creditors of the Applicant Companies is not present at the respective time of the meeting, then the meeting lacking quorum shall be adjourned by half an hour, and thereafter the concerned persons present and voting shall be deemed to constitute the quorum for that meeting. The quorum would include Creditors in person or by an authorized representative.
 - (ii) It is however clarified that in view of para-A (x) of the MCA Circular No. 14/2020 dated 8th April 2020, that in case of meeting through video conference or other audio visual means, the voting through Proxy shall not be permitted. However, voting through Authorized Representative is permitted.
 - (iii) Mr. Ashwin Gal and failing him, Mr. Samir Shah, is appointed as the Chairperson and Mr. Uday Girishbhai Dave, Practicing Company Secretary, and failing him, Mr. Umesh Govindprasad Parikh, Practicing Company Secretary is appointed as the Scrutinizer for the meetings of Secured Creditors and Unsecured

Creditors of the Applicant Company No. 1 & 3, which is / are herein directed to be convened by this Tribunal.

- (iv) The honorarium of the Chairperson for all the aforesaid meetings of the Applicant Companies shall be Rs. 80,000/- and the honorarium of the Scrutinizer shall be Rs. 50,000/-, in addition to re-imburement of their incidental and out of pocket expenses. In case of unavailability of the Chairperson for any reason, the Alternate Chairperson shall discharge the responsibilities/ functions of the Chairperson and shall be paid on pro-rata basis for any meeting(s) conducted at the scale of Chairperson.
- (v) The Chairperson appointed for the said meeting(s) or any designated person in the Applicant Companies duly endorsed/ authorized by the Chairperson shall vet, issue and send notices of convening the said meeting(s) referred to above. Subject to the directions contained herein, the Chairperson shall have all powers pursuant to Sections 230(1) and 232(1) of the Companies Act, 2013, including inter-alia the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Companies (Management & Administration) Rules, 2014, and any other applicable rules / guidelines / standards, etc. in relation to the conduct of the meeting(s) including for deciding any procedural questions that may arise at the meeting or at any adjournment thereof or any related matter such as any matter put by any Shareholder or Creditor at the meeting(s).
- (vi) Individual notice(s) convening the aforesaid meetings shall be separately sent by the Applicant Company No. 1 & 3 to their Secured Creditors and Unsecured Creditors as aforementioned, by post/ air mail, courier/ messenger and e-mail, at their particular last-known addresses on record of the Applicant Company No. 1 & 3,

at least 30 (thirty) clear days in advance before the scheduled date of the meeting, indicating the day, date, place and the time as above-stated. The respective notices shall be sent together with a copy of Scheme of Arrangement, copy of explanatory statement disclosing necessary details, and the prescribed form of proxy, as required to be sent under the Companies Act, 2013. Additionally, any other document, as may be prescribed under the Act or Rules, or which may be needed for instruction / elaboration, such as guidelines for ballot, voting, proxy, etc. shall be also sent along with the corresponding notices. General notices and accompanying documents shall also be placed on the website of the Applicant Companies. The notices shall be sent in reference to the list of the creditors appearing on record of the Demerging Company and Resulting Company No. 2 as on 31.05.2022 and the voting percentage of such creditors as per list is to be decided after considering the amount of debt as on the date of voting, which is to be ensured by the chairperson.

- (vii) The Applicant Companies shall publish advertisement with a clear gap of at least 30 days prior to / before the aforesaid meetings, indicating the day, date and the place and time as aforesaid, to be published in 'Business Standard', English daily Ahmedabad edition and 'Jai Hind', Gujarati, Ahmedabad Edition. The publication shall also indicate that the copies of Scheme of Arrangement, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013, and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies to the concerned persons.
- (viii) In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, the Applicant Companies shall

send a Notice of meeting in Form No. CAA 3 along with copy of the Scheme and requisite documents and disclosures as required under the provisions of the Companies Act, 2013, to the Central Government through the Regional Director, North Western Region, the Income Tax Authorities (indicating the respective PAN Nos.), ROC concerned, as well as other regulators or authorities, if applicable, under the provisions of the Companies Act, 2013, inter-alia being Section 230(5), read with Companies (Companies, Arrangements, Amalgamations) Rules, 2016. These notices shall also specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the said notices, with a copy of such representation being additionally sent to the advocates of the said Applicant. If no such representation is received by the Tribunal within such period, it may be presumed that such authorities have no representation to make on the said Scheme of Arrangement.

- (ix) The votes cast at the meetings shall be scrutinised by the Scrutiniser. The Scrutiniser shall prepare and submit the respective reports on the meetings along with all papers relating to the voting to the Chairperson of the meetings within 3 days of the conclusion of the meetings. The Chairperson shall declare the results of the meetings after submission of the reports of the Scrutiniser to him. The declaration of results by the Chairperson shall also be published in the same newspapers in which notice of the meetings is advertised.
- (x) The authorized representative of the Demerging Company & Resulting Company 3 shall furnish an affidavit of service of notice of meeting and publication of advertisement and compliance of the

directions contained herein at least a week before the proposed meeting.

- (xi) The Chairperson shall furnish a report to this Tribunal on results of the said meetings within seven days from the date of the conclusion of the said meetings and his report on the respective meetings shall be in the prescribed Form / format of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, duly supported by affidavit.
- (xii) All the aforesaid directions shall be complied with in accordance with the provisions of the Companies Act, 2013, and the Rules made thereunder, as applicable for the proposed Scheme of Arrangement and any related or incidental matters, including but not limited to forms or formats as may be prescribed under the Rules, guidelines, standards, etc.

23. The Application is allowed and disposed of in terms of the above directions.

-Sd-

**AJAI DAS MEHROTRA,
MEMBER (TECHNICAL)**

-Sd-

**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)**

Mansi J./LRA