

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

COMPANY APPLICATION NO.CA (CAA) – 49(PB)/2019

Order Dated: 24.04.2019

Coram:

CHIEF JUSTICE (Rtd.) SHRI M.M. KUMAR

HON'BLE PRESIDENT

&

SHRI S.K. MOHAPATRA

MEMBER (TECHNICAL)

In the matter of:

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

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

OF

NAMAN BROKING SOLUTIONS PRIVATE LIMITED

(APPLICANT /TRANSFEROR COMPANY NO. 1)

AND

VARDAAN COMMERCE PRIVATE LIMITED

(APPLICANT /TRANSFEROR COMPANY NO. 2)

AND

ANANTA VINIMAY PRIVATE LIMITED

(APPLICANT /TRANSFEROR COMPANY NO. 3)

WITH

MARS BULLION TRADE PRIVATE LIMITED

(APPLICANT / TRANSFEREE COMPANY)

**For the Applicants: Mr. Sumit Kumar Batra, Practicing
Company Secretary**

MEMO OF PARTIES:

NAMAN BROKING SOLUTIONS PRIVATE LIMITED

A Company incorporated under Companies Act, 1956

Having its registered office at:

1162, Kucha Mahajani, Chandni Chowk,

Delhi - 110006

... APPLICANT /TRANSFEROR COMPANY NO.1

VARDAAN COMMERCE PRIVATE LIMITED

A Company incorporated under Companies Act, 1956

Having its registered office at:

B-141, Freedom Fighter Enclave, Neb Sarai,

New Delhi - 110068

...APPLICANT /TRANSFEROR COMPANY NO.2

ANANTA VINIMAY PRIVATE LIMITED

A Company incorporated under Companies Act, 1956

Having its registered office at:

**S- 494, 1st Floor, Greater Kailash Part - I,
New Delhi - 110048**

... APPLICANT /TRANSFEROR COMPANY NO.3

MARS BULLION TRADE PRIVATE LIMITED

A Company incorporated under Companies Act, 1956

Having its registered office at:

**1162, Kucha Mahajani, Chandni Chowk,
Delhi - 110006**

.... APPLICANT /TRANSFeree COMPANY

ORDER

M.M. KUMAR, PRESIDENT

This is a First Motion application jointly filed by the Applicant companies herein, Naman Broking Solutions Private Limited (Transferor Company No. 1), Vardaan Commerce Private Limited (Transferor Company No. 2), Ananta Vinimay Private Limited (Transferor Company No. 3) with Mars Bullion Trade Private Limited (Transferee Company) and their respective Shareholders and Creditors under sections 230-232 of the

Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the "SCHEME") proposed amongst the applicants. The said Scheme is annexed (**Annexure A5**). The applicants above named have preferred the instant application for the following purpose which is evident from the reliefs sought for in the Application, namely:

a. Pass an order under section 230-232 of the Companies Act, 2013 to dispense off the meeting of creditors and shareholders as NOC (in the form of affidavits) from all the creditors/shareholders has been attached with the application;

b. Pass an order under section 230-232 of the Companies Act, 2013 to give their approval for amalgamating the transferor companies in transferee company;

- c. Pass any other and further order and/or orders in favour of the applicant which this Hon'ble National Company Law Tribunal, New Delhi may deem fit;
- d. Notice of the present application/ proposed meetings may be directed to be served on (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs; (b) the Registrar of Companies, Delhi and Haryana, New Delhi; (c) The Official Liquidator, Ministry of Corporate Affairs, New Delhi; and (d) the Income tax Department.

2. Affidavits in support of the above application sworn for and on behalf of Applicant Companies by one Mr Raghu Nandan Jalan and Ms. Manju Devi Jalan, being the Directors of the respective Companies, have been filed.

3. It is represented that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. Learned Counsel has taken us through the averments made in the application as well as the typed set of documents annexed there with. It is further represented that the application filed by the applicant is maintainable in view of Rule 3(2) of the Rules.

4. Learned Counsel also submits that the registered offices of the Applicant Companies are situated within the territorial jurisdiction of this tribunal and fall within the territorial jurisdiction of the Registrar of Companies, NCT of New Delhi.

5. In relation to Naman Broking Solutions Private Limited being the Transferor Company No.1 , it is submitted that the Company has 7 (seven) Equity Shareholders and all the equity shareholders have given their consent by filing affidavits in support of the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. It is further represented that the Transferor Company No. 1 has neither

any secured or unsecured creditors. The certificates of chartered accountant in respect of creditors have also been placed on record. As the company has no secured or unsecured creditors, the requirement of convening meeting of the same does not arise. In relation to the shareholders, the Transferor Company No. 1 seeks dispensation from convening and holding of their meeting on the ground that the same have given their consent affidavits in favour of the Scheme.

6. Naman Broking Solutions Private Limited (Applicant/Transferor Company No.1) was incorporated as a private limited company under the provisions of the Companies Act, 1956 on 06.03.2007. The Share Capital structure of the Applicant Company on the date of filing of this Application is as follows:

Particulars	Amount in INR
Authorised Share Capital	
10,00,000 Equity shares of Rs.10/- each	1,00,00,000

Total	1,00,00,000
Issued, Subscribed and Paid-up Share Capital	
4,70,000 Equity Shares of Rs.10/- each	47,00,000
Total	47,00,000

7. In relation to Vardaan Commerce Private Limited being the Transferor Company No.2, it is submitted that the Company has 6 (six) Equity Shareholders and all the equity shareholders have given their consent by filing affidavits in support of the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. It is further represented that the Transferor Company No. 2 has no secured or unsecured creditors. The certificates of chartered accountant in respect of creditors have also been placed on record. As the company has no secured or unsecured creditors, the requirement of convening meeting of the same does not arise. In relation to the shareholders, the Transferor Company No. 2 seeks

dispensation from convening and holding of their meeting on the ground that the same have given their consent affidavits in favour of the Scheme.

8. Vardaan Commerce Private Limited (Applicant/Transferor Company No.2) was incorporated as a private limited company under the provisions of the Companies Act, 1956 on 11.12.1995. The Share Capital structure of the Applicant Company on the date of filing of this Application is as follows:

Particulars	Amount in INR
Authorised Share Capital	
3,10,000 Equity shares of Rs.10/- each	31,00,000
Total	31,00,000
Issued, Subscribed and Paid-up Share Capital	
3,04,200 Equity Shares of Rs.10/- each	30,42,000
Total	30,42,000

9. In relation to Ananta Vinimay Private Limited being the Transferor Company No.3, it is submitted that the Company has 6 (six) Equity Shareholders and all the equity shareholders have given their consent by filing affidavits in support of the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. It is further represented that the Transferor Company No. 3 has no secured or unsecured creditors. The certificates of chartered accountant in respect of creditors have also been placed on record. As the company has no secured or unsecured creditors, the requirement of convening meeting of the same does not arise. In relation to the shareholders, the Transferor Company No. 3 seeks dispensation from convening and holding of their meeting on the ground that the same have given their consent affidavits in favour of the Scheme.

10. Ananta Vinimay Private Limited (Applicant/Transferor Company No.3) was incorporated as a private limited company under the provisions of the Companies Act, 1956

on 22.11.2005. The Share Capital structure of the Applicant Company on the date of filing of this Application is as follows:

Particulars	Amount in INR
Authorised Share Capital	
5,70,000 Equity shares of Rs.10/- each	57,00,000
Total	57,00,000
Issued, Subscribed and Paid-up Share Capital	
5,70,000 Equity Shares of Rs.10/- each	57,00,000
Total	57,00,000

11. In relation to Mars Bullion Trade Private Limited being the Transferee Company, it is submitted that the Company has 4 (four) Equity Shareholders and all the equity shareholders have given their consent by filing of affidavits in support of the Scheme. The consent affidavits of each of the members have been placed on record. It is further represented that the

Transferee Company has no secured creditors and 9 (nine) unsecured creditors. The consent of the unsecured creditors constituting 100% in value by way of affidavit in the favour of the Scheme have been placed on record. The certificates of chartered accountant in respect of creditors have also been placed on record. As the company has no secured creditors, the requirement of convening meeting of the same does not arise. In relation to the shareholders and unsecured creditors, the Transferee Company seeks dispensation from convening and holding of their meeting on the ground that they have given their consent affidavits in favour of the Scheme.

12. Mars Bullion Trade Private Limited (Applicant/Transferee Company) was incorporated as a private limited company under the provisions of the Companies Act, 1956 on 21.02.2011. The Share Capital structure of the Applicant Company on the date of filing of this Application is as follows:

Particulars	Amount in INR
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Authorised Share Capital	
1,00,000 Equity shares of Rs.10/- each	10,00,000
Total	10,00,000
Issued, Subscribed and Paid-up Share Capital	
30,000 Equity Shares of Rs.10/- each	3,00,000
Total	3,00,000

13. The above application has been placed before us and this tribunal proceeds to entertain the same. The registered offices of the applicant companies is situated within New Delhi which are subject to the territorial jurisdiction of Registrar of Companies, NCT, New Delhi as well as that of this Tribunal.

14. We have perused the Application and the connected documents / papers filed along with the Scheme of Amalgamation contemplated amongst the Applicant Companies.

15. The Applicant Companies have filed their Memorandum and Articles of Association as well as provisional balance sheet as on 31.01.2019.
16. The appointed date as specified in the Scheme is 01.04.2018 subject to the directions of this Tribunal.
17. The Board of Directors of the Applicant/ Transferor Companies and the Applicant/ Transferee Company vide Board Resolutions passed on 11.02.2019 have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions have also been placed on record by the Applicant Companies herein.
18. The Certificates of statutory auditors of all the applicant companies confirming that the accounting treatment in the scheme is in conformity with the Companies (Accounting Standards) Rules, 2016 and Generally Accepted Accounting Principles in India (India GAAP) and is in conformity with

Section 133 of the Companies Act, 2013 have been placed on record.

19. Taking into consideration the joint application and the documents filed therewith showing compliance of various provisions of the Companies Act and the rules framed there under, we propose to issue the following directions with respect to convening and holding of the meetings of the Shareholders, Secured and Unsecured Creditors or dispensing with the same as follows:-

Sr. No.	In respect of Equity Shareholders	In respect of Secured Creditors	In respect of Unsecured Creditors
1. Transferor Company No.1	The meeting of Equity Shareholders is dispensed with as their consent by way of affidavits in favour of the Scheme has been placed on record.	The meeting of Secured Creditors would not need to be held because there are no	The meeting of Unsecured Creditors would not need to be held

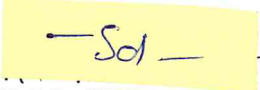
		Secured creditors in the company.	because there are no Unsecured creditors in the company.
2. Transferor Company No.2	The meeting of Equity Shareholders is dispensed with as their consent by way of affidavits in favour of the Scheme has been placed on record.	The meeting of Secured Creditors would not need to be held because there are no Secured creditors in the company.	The meeting of Unsecured Creditors would not need to be held because there are no Unsecured creditors in the company.
3. Transferor Company No.3	The meeting of Equity Shareholders is dispensed with as their	The meeting of Secured Creditors	The meeting of unsecured

	consent by way of affidavits in favour of the Scheme has been placed on record.	would not need to be held because there are no Secured creditors in the company.	creditors would not need to be held because there are no unsecured creditors in the company.
4. Transferee Company	The meeting of Equity Shareholders is dispensed with as their consent by way of affidavits in favour of the Scheme has been placed on record.	The meeting of Secured Creditors would not need to be held because there are no Secured creditors in the company.	The meeting of unsecured Creditors is dispensed with as their consent by way of affidavits constituting 100% in value in favour of the Scheme has

			been placed on record.
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20. Notice of this Application shall also be served on the **Regional Director**, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryavaran Bhavan, CGO Complex, New Delhi -110003, **Registrar of Companies** at 4th Floor, IFCI Tower, 61 Nehru place, New Delhi -110019 ; **the Official Liquidator**, Lok Nayak Bhavan, 8th Floor, Khan Market, New Delhi – 110001 ; **the Income Tax Department through the Income Tax Cell** at DCIT (High Court Cell), Lawyer's Chamber, Block No. 1, Room No. 428 & 429, Delhi High Court, New Delhi, along with full details of assessing officer. The notices to Income Tax authorities shall disclose sufficient details like PAN card numbers, ward numbers and assessing officers so that proper reply is filed. The Applicant Companies are also directed to disclose in the notices whether any investigation proceedings are pending against them under the provisions of the Companies Act, 2013 as on the date of this Application.

The application stands allowed on the aforesaid terms.


(M.M. KUMAR)
PRESIDENT


(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

24.04.2019
(VIDYA)