

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P.(CAA)/99(KB)2024
IN
C.A.(CAA)/111(KB)2024

**CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI BALRAJ JOSHI**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 24TH JUNE 2024

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| IN THE MATTER OF | ANNIKA COMMERCIAL PRIVATE LIMITED |
| UNDER SECTION | SEC. 230-232 - SECOND MOTION |

Appearance via video conference/physically

Mr. Patita Paban Bishwal, Advocate

] For Petitioner

Ms. Suranjana Chatterjee, Advocate

ORDER

1. Ld. Counsel for the petitioner present.
2. The instant petition has been filed under Section 230(6) of the Companies Act, 2013 ("Act") for sanction of the Scheme of Amalgamation of

| | |
|-----------------------------------------|------------------------------------------|
| M/s. ANNIKA COMMERCIAL PRIVATE LIMITED | Transferor Company No. 1/Applicant No. 1 |
| M/s. ARNAV MELTECH PRIVATE LIMITED | Transferor Company No. 2/Applicant No. 2 |
| M/s. EXOTIC MERCHANDISE PRIVATE LIMITED | Transferor Company No. 3/Applicant No. 3 |
| M/s. KANHA DEALERS PRIVATE LIMITED | Transferor Company No. 4/Applicant No. 4 |
| M/s. KESHAV INGOTS PRIVATE LIMITED | Transferor Company No. 5/Applicant No. 5 |

| | |
|----------------------------------------------|--------------------------------------------|
| M/s. MRIGESH DISTRIBUTORS PRIVATE LIMITED | Transferor Company No. 6/Applicant No. 6 |
| M/s. ORRICK TRADING PRIVATE LIMITED | Transferor Company No. 7/Applicant No. 7 |
| M/s. PRATHAMESHWARA VINTRADE PRIVATE LIMITED | Transferor Company No. 8/Applicant No. 8 |
| M/s. SADASHIVA DEALTRADE PRIVATE LIMITED | Transferor Company No. 9/Applicant No. 9 |
| M/s. TIRUMALA MERCHANDISE PRIVATE LIMITED | Transferor Company No. 10/Applicant No. 10 |

with M/S. EKAGRA STEELS PRIVATE LIMITED, being the "**Transferee Company**" whereby and where under the Transferor Companies are proposed to be amalgamated with the Transferee Company from the **Appointed Date, 1st day of April, 2023** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("**Scheme**"). A copy of the said Scheme is annexed to the Company Petition Marked - **Annexure – A-1** in Vol – I at Page No. 79 to 107.

3. It is submitted by Ld. Counsel appearing for the Petitioner(s) that the Appointed Date as per the Scheme is **1st April, 2023**.
4. It is submitted by Ld. Counsel appearing for the Petitioner(s) that none of the Applicant Companies involved in the Scheme are NBFC Company.
5. It is submitted by Ld. Counsel appearing for the Petitioner(s) that the list of Equity Share Holders of the Petitioner Companies as on 27-03-2024 duly certified by the statutory auditor of the Company are all collectively annexed to the Company Petition and marked - **Annexure - A-26** in Vol – IV at Page No. 533-554.
6. It is submitted by Ld. Counsel appearing for the Petitioner(s) that the Petitioner(s) that NIL creditors of the of the Petitioner Companies as on 27-03-2024 duly certified by the statutory auditor of the Company are all collectively annexed to the Company Petition and marked - **Annexure - A-27** in Vol – IV at Page No. 555-565
7. It is submitted by Ld. Counsel appearing for the Petitioner(s) that the Valuation Report dated 21st March, 2024 recommending the Swap Ratio has been prepared by CA Madhumita Karar, having Registration No. – IBBI/RV/06/2018/10341, a registered Valuer. A Copy of the said Report is annexed to the Company Petition Marked - **Annexure A-28** in Vol – IV at Page No. 566-598.

8. 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 26th March, 2024 have passed resolution adopting the proposed Scheme of Amalgamation. A Copy of the Board Resolution is annexed to the Company Petition marked - **Annexure A-24** in Vol – III at Page No. 511-521.
9. It is submitted by Ld. Counsel appearing for the Petitioner(s) that the statutory auditor of the Transferee Company /Petitioner No. 11 have by their certificate dated 27-03-2024 confirmed that the Accounting Treatment proposed in the Scheme of Amalgamation 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 issued by the Statutory Auditor of the Transferee Company / Petitioner No.11 is annexed to the Company Application marked – **Annexure A-25** in Vol - III at Page No. 532.
10. It is submitted by the Ld. Counsel appearing for the Petitioner(s) that the Petitioner(s) have the following classes of the shareholders and creditors:-

| Sl. No. | Name of Applicant Companies | Equity Shareholders (Nos) | Creditor (Nos) |
|----------------|-----------------------------------------|----------------------------------|-----------------------|
| 1 | ANNIKA COMMERCIAL PRIVATE LIMITED | 2 | Nil |
| 2 | ARNAV MELTECH PRIVATE LIMITED | 4 | Nil |
| 3 | EXOTIC MERCHANDISE PRIVATE LIMITED | 2 | Nil |
| 4 | KANHA DEALERS PRIVATE LIMITED | 2 | Nil |
| 5 | KESHAV INGOTS PRIVATE LIMITED | 4 | Nil |
| 6 | MRIGESH DISTRIBUTORS PRIVATE LIMITED | 2 | Nil |
| 7 | ORRICK TRADING PRIVATE LIMITED | 2 | Nil |
| 8 | PRATHAMESHWARA VINTRADE PRIVATE LIMITED | 2 | Nil |

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|----|--------------------------------------|---|-----|
| 9 | SADASHIVA DEALTRADE PRIVATE LIMITED | 2 | Nil |
| 10 | TIRUMALA MERCHANDISE PRIVATE LIMITED | 2 | Nil |
| 11 | EKAGRA STEELS PRIVATE LIMITED | 4 | Nil |

11. It is submitted by Ld. Counsel appearing for the Petitioner(s) that by an order dated 21st May, 2024 in Company Application No. being CA (CAA) No. 111/KB/2024 this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) of the Act:-

- (a) **Meetings of Equity Shareholders dispensed:** Meetings of the Equity Shareholders of the Petitioner No.1, Petitioner No.2, Petitioner No.3, Petitioner No.4, Petitioner No.5, Petitioner No.6, Petitioner No.7, Petitioner No.8, Petitioner No.9, Petitioner No. 10 and Petitioner No. 11 for considering the Scheme were dispensed with in view of all such shareholders having given their consent to the Scheme by way of affidavits.
- (b) **No Requirement of Meetings of Creditors:** Since the Petitioner Company No. 1, 2, 3, 4, 5, 6, 7, 8, 9,10 and 11 does not have any creditor, hence the question of conducting meeting of the creditor does not arise.
- (c) **Meetings to be held:**
No meetings are required to be held.

12. The Learned Counsel for the Petitioner(s) further submits that in compliance with Section 230(5) of the Companies Act, 2013 and the said order dated 21st May, 2024 in Company Application No. CA (CAA) No. 111/KB/2024 notice along with all accompanying documents has already been served on the Statutory/Sectoral Authorities, as directed by the said order as below:

| NAME OF THE REGULATORY AUTHORITY | DATE OF SERVICE | AFFIDAVIT OF SERVICE | |
|-------------------------------------------------------------|-----------------|----------------------|----------|
| | | ANNEXURE No. | PAGE No. |
| THROUGH SPECIAL MESSANGER (BY HAND OR BY SPEED POST) | | | |
| Regional Director, Eastern | 30.05.2024 | A | 10 |

| | | | |
|----------------------------------------------------------------|------------|---|-----------------------|
| Region, Ministry of Company Affairs | | | |
| Registrar of Companies, West Bengal | 30.05.2024 | B | 12 |
| Official Liquidator, High Court at Calcutta | 29.05.2024 | C | 14 |
| Income Tax Officer - Ward - 1(1) | 27.05.2024 | D | 16, 17, 18, 19,27, |
| Income Tax Officer - Ward - 5(1) | 27.05.2024 | D | 16, 17, 18, 20,26,28, |
| Income Tax Officer - Ward - 7(1) | 28.05.2024 | D | 16, 17, 18, 21,25,29, |
| Income Tax Officer - Ward - 9(1) | 28.05.2024 | D | 16, 17, 18, 22,23,24, |
| BY ELECTRONIC MAIL | | | |
| Regional Director, Eastern Region, Ministry of Company Affairs | 24.05.2024 | A | 11 |
| Registrar of Companies, West Bengal | 24.05.2024 | B | 13 |
| Official Liquidator, High Court at Calcutta | 24.05.2024 | C | 15 |
| Income Tax Officer - Ward - 1(1) | 24.05.2024 | D | 30 |
| Income Tax Officer - Ward - 5(1) | 24.05.2024 | D | 30 |
| Income Tax Officer - Ward - 7(1) | 24.05.2024 | D | 30 |
| Income Tax Officer - Ward - 9(1) | 24.05.2024 | D | 30 |

An affidavit duly affirmed on 30th May, 2024 has also been filed with the Registry.

Copy of acknowledgements evidencing service upon Regulatory Authorities are also collectively annexed to the Company Petition and marked - **Annexure A-30** in Vol – IV at Page No. 609 to 681.

The authorities, as aforesaid, have not filed their representation so far.

13. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Petitioner(s), we admit the instant petition and fix the next date of hearing on **30th July, 2024**.

14. At least 10 (ten) clear days before the said date fixed for hearing, the Petitioners shall cause notice of hearing to be advertised in the **FINANCIAL EXPRESS** in English and **AAJKAAL** in Bengali as per Rule 16(1) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (“CAA Rules”)
15. Another notice pursuant to Section 230(5) of the Companies Act, 2013 along with accompanying documents, including the copies of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013, as sent earlier, shall be served again on the aforesaid Statutory Authorities by sending the same to them *by hand delivery through special messenger or by post and by email* within two weeks from the date of receiving this order. The notice shall specify the next date of hearing of the petition, as aforesaid, and state that representation, if any, and if not already filed, should be filed before this Tribunal no later than 7 (seven) days before the next date of hearing of the petition and a copy of such representation should be simultaneously sent to the Advocate of the said Petitioners. If no such representation is received by the Tribunal within such period, it shall be presumed that such Authorities have no representation to make on the said Scheme. Such notice shall be sent in Form No. CAA3 of the CAA Rules with necessary variations, incorporating the directions herein.
16. The Petitioners to file an affidavit confirming compliance of the abovementioned directions of this Tribunal, 3 (Three) days before the next date of hearing.
17. The Petitioners may also file their rejoinder affidavit(s) dealing with the objections/ observations, if any, of the Authorities, 2 (Two) days before the next date of hearing.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)