

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P.(CAA)/120(KB)2024
IN
C.A.(CAA)/121(KB)2024

CORAM: 1. HON'BLE MEMBER(J), SMT. BIDISHA BANERJEE
2. HON'BLE MEMBER(T), SHRI D. ARVIND

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 19TH JULY 2024

IN THE MATTER OF	DIVINE MERCHANTS PRIVATE LIMITED
UNDER SECTION	SEC. 230-232 - SECOND MOTION

Appearances (via video conferencing/physically)

Mr. P.P.Bishwal, Adv.] For the Petitioner
Ms. Suranjana Chatterjee, Adv.]

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. DIVINE MERCHANTS PRIVATE LIMITED	Transferor Company No. 1/Applicant No. 1
M/s. FLYING BIRD MARKETING PRIVATE LIMITED	Transferor Company No. 2/Applicant No. 2
M/s. NAMISH FERRO ALLOYS PRIVATE LIMITED	Transferor Company No. 3/Applicant No. 3
M/s. SHIVKRIPA FERROCAST PRIVATE LIMITED	Transferor Company No. 4/Applicant No. 4
M/s. SIDDESHWARI STEELS PRIVATE LIMITED	Transferor Company No. 5/Applicant No. 5

with M/S. ASHIRWAD SPONGE IRON 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. 58-85.

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-16** in Vol – III at Page No. 373-384.
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-17** in Vol – III at Page No. 385-392.
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-18** in Vol – III at Page No. 393-415
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-14** in Vol – III at Page No. 361-366.
9. It is submitted by Ld. Counsel appearing for the Petitioner(s) that the statutory auditor of the Transferee Company /Petitioner No. 6 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. 6 is annexed to the Company Application marked – **Annexure A-15** in Vol - III at Page No. 372.

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	DIVINE MERCHANTS PRIVATE LIMITED	5	Nil
2	FLYING BIRD MARKETING PRIVATE LIMITED	4	Nil
3	NAMISH FERRO ALLOYS PRIVATE LIMITED	7	Nil
4	SHIVKRIPA FERROCAST PRIVATE LIMITED	7	Nil
5	SIDDESHWARI STEELS PRIVATE LIMITED	8	Nil
6	ASHIRWAD SPONGE IRON PRIVATE LIMITED	12	12

11. It is submitted by Ld. Counsel appearing for the Petitioner(s) that by an order dated 18th May, 2024 in Company Application No. being CA (CAA) No. 121/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 and Petitioner No.6, 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 and 6 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 18th June, 2024 in Company Application No. CA (CAA) No. 121/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 Region, Ministry of Company Affairs	20.06.2024	A	433
Registrar of Companies, West Bengal	20.06.2024	B	436
Official Liquidator, High Court at Calcutta	20.06.2024	C	439
Income Tax Officer - Ward - 9(1)	21.06.2024	D	442, 443, 444
Income Tax Officer - Ward - 11(1)	21.06.2024	D	442, 443, 445
Income Tax Officer - Ward - 9(1)	21.06.2024	D	442, 443, 446
Income Tax Officer - Ward - 23(1)	24.06.2024	D	442, 443, 447,448
Income Tax Officer - Ward - 24(1)	24.06.2024	D	442, 443, 449,450
Income Tax Officer - Circle - 23(1)	24.06.2024	D	442, 443, 451,452
BY ELECTRONIC MAIL			
Regional Director, Eastern Region, Ministry of Company Affairs	19.06.2024	A	434-435
Registrar of Companies, West Bengal	19.06.2024	B	437-438
Official Liquidator, High Court at Calcutta	19.06.2024	C	440-441
Income Tax Officer - Ward - 1(1)	19.06.2024	D	453-454
Income Tax Officer - Ward - 5(1)	19.06.2024	D	453-454

Income Tax Officer - Ward - 7(1)	19.06.2024	D	453-454
Income Tax Officer - Ward - 9(1)	19.06.2024	D	453-454
Income Tax Officer - Ward - 24(1)	19.06.2024	D	453-454
Income Tax Officer - Circle - 23(1)	19.06.2024	D	453-454

An affidavit duly affirmed on 26th June, 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-20** in Vol – III at Page No. 425-493.

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 **30/08/2024**.
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.
18. Urgent Certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

D. ARVIND
Member (Technical)

BIDISHA BANERJEE
Member (Judicial)