

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II
CA (CAA) 52/KB/2024**

In the matter of

An application under Section 230-232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromise and Arrangement and Amalgamation) Rules, 2016;

And

In the matter of:

Amit Metaliks Limited (hereinafter referred to as “**AML**” or “**Transferee Company**”) is a company incorporated under the Companies Act, 1956 with CIN U27109WB2004PLC099772 and having its registered office at Raturia Angadpur Industrial Area P. O. Angadpur, Durgapur, West Bengal – 713 215

....Applicant 1

And

In the matter of:

VSP Udyog Private Limited (hereinafter referred to as “**VSP.**” or “**Transferor Company**”) is a company incorporated under the Companies Act, 1956 with CIN U27109WB2002PTC095337 and having its registered office at 238/B, A.J.C. Bose Road, 3rd Floor, FL-A3, Kolkata, West Bengal -700 020.

.... Applicant 2

And

In the matter of

1. Amit Metaliks Limited
2. VSP Udyog Private Limited

...Applicants

Date of pronouncing the order: 25/04/2024

Coram:

Smt Bidisha Banerjee : Member (Judicial)

Shri D. Arvind : Member (Technical)

Appearances (via Hybrid Mode):

For the Applicants: Aditi Jhunjhunwala, Practising Company Secretary

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The court convened by hybrid mode.
2. The instant application has been filed in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 (“**Act**”) for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Amalgamation between Amit Metaliks Limited (**Transferee Company or Applicant Company 1**) and VSP Udyog Private Limited (**Transferor Company or Applicant Company 2**), within the Kolkata jurisdiction of the Hon’ble National Company Law Tribunal (**Transferee Company**) and their respective shareholders. The Scheme provides for merger of Applicant 2 with the Transferee Company from the Appointed Date, viz 1st April, 2023 in the manner and on the terms and conditions stated in the said Scheme of Arrangement (“**Scheme**”).
3. It is submitted by Ld. Authorised Representative appearing for the

Applicants that the shares of none of the Applicant Companies are listed on any of the stock exchanges. Further, the Applicants have the following classes of shareholders and creditors:-

(i) Applicant No.1: 16 Equity Shareholders, NIL Preference Shareholders, 4 Secured Creditor and 564 Unsecured Creditor.

(ii) Applicant No.2: 20 Equity Shareholders, NIL Preference Shareholders, 1 Secured Creditor and 260 Unsecured Creditor.

4. The Board of Directors of the Applicants have, at their Board Meetings held on 20.02.2024, approved and resolved to carry out the Scheme of Amalgamation.
5. It is further submitted that all Equity Shareholders of all the Applicants and more than 90% in value of Unsecured Creditor of the Applicant 1 and Applicant 2 have already given their consent to the Scheme by way of affidavits which are annexed to the Company Application. Ld. Authorized Representative submits that the Applicant Companies have secured creditors and to hold meeting of secured creditors.
6. Directions are sought accordingly for dispensing with meetings of the equity shareholders and unsecured creditors who have already given their consent to the Scheme.
7. Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant(s), we allow the instant application and make the following orders:-

A. Meetings dispensed:

- (a) In view of the consents given on affidavit form by all the equity shareholders of Applicants 1 and 2, meetings of the Equity Shareholders

of Applicants 1 and 2 are dispensed with under Section 230(1) read with Section 232(1) of the Act.

(b) In view of the fact that the Unsecured Creditors being more than 90% in value of the Applicant 1 and 2 has given their consent, meeting of the Unsecured Creditors of Applicant 1 and 2 is dispensed with.

B. Meeting(s) to be held:

Secured Creditors: Secured Creditors of Applicant No 1 and Applicant No.2 companies.

C. Meetings date and time: Secured Creditors of Applicant No 1 and 2 to be convened and held physical on Wednesday, 27th May 2024 at 4.30 P.M. and 5.30 P.M respectively, for considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement.

D. Venue of Meetings: The meeting directed by this Tribunal shall be convened and held at the Conference Room of 238B, A.J.C Bose Road, 3rd Floor, Kolkata-700020, West Bengal, India.

E. Advertisement: At least 30 (thirty) clear days before the meeting(s) to be held, as aforesaid, an advertisement of the notice of meeting(s) be published once each in the FINANCIAL EXPRESS in English and Bengali translation thereof in AAJKAL as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

F. Individual Notices: At least 30 (thirty) clear days before the date of the meeting(s) to be held, as aforesaid, notices convening the said meeting(s), along with all documents required to be sent with the same, including a copy of the said Scheme, statement prescribed under the provisions of the Act disclosing necessary details and the prescribed form of proxy, shall be sent to all Secured Creditors of Applicant No 1

and No.2 as per Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, by speed post or e-mail or through courier or through personal messenger at their respective or last known addresses. The said notices along with accompanying documents shall also be posted on the websites of the Applicant(s), if any.

G. Chairperson:

Advocate Jayati Chowdhury (Mob. No. **9931208685**) is appointed as the Chairperson of the meeting(s) to be held, as aforesaid. The Chairperson shall be paid a consolidated sum of **Rs. 1,00,000/-** (Rupees **one lakh** only) for conducting the aforesaid meeting as Chairperson.

H. Cut-off date:

The cut-off date for determining the eligibility to vote and value of votes shall be **determined by the Board of director of the transferee company** for the meeting of secured Creditors of the Applicant No. 1. The value of the votes cast shall be reckoned and scrutinized with reference to the said dates.

I. Quorum and Attendance: The quorum for the said meeting (s) shall be as laid down in Section 103 of the Companies Act, 2013 or where the number is less than 2 than such number of creditors less than 2 shall be the quorum. In the event no quorum is present at the said meeting(s) within 30 minutes from commencement of meeting then in such event the Creditors physically present at the venue of such meeting shall constitute the quorum. In case there is no creditor present for any of the meeting, then the meeting shall stand adjourned to the same day and time in the next week with notice of the adjourned meeting may be sent over email or by way of speed post.

- J. Mode of Voting:** Voting on the resolution shall be through Ballot Paper at the venue of the meeting and the Applicant Company 1 and 2 shall make necessary arrangement for voting accordingly.
- K. Voting procedure:** Subject to the directions and matters dealt with herein, the procedure for voting by polling paper/ ballot paper and conduct of voting, in so far as the same is prescribed by the Companies (Management & Administration) Rules, 2014 (“the said Rules”), and the forms there under shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.
- L. Proxies and Board Resolutions:** Voting shall be allowed on the proposed Scheme by proxy at the meeting of the secured creditors of Applicant No. 1 and Applicant No.2, provided that the proxies are in the prescribed form duly signed by the persons(s) entitled to attend and vote at the meeting is filed with the Applicant at its Registered Office not later than forty-eight hours before the meetings. In case of a Body Corporate, being a Equity Shareholder or Unsecured Creditors or Secured Creditors for both of Applicant No 1 and 2 opting to attend and vote at the meeting, as aforesaid, through its authorized representative, such Body Corporate may do so provided a certified copy of the resolution of its Board of Directors or other governing body authorizing such representative to attend and vote at the meeting on its behalf is deposited at the registered office of the Applicant No 1 not later than forty-eight hours before the time for holding the meeting.
- M. Issue of notice:** That the Chairperson appointed for the said meeting(s) or any person authorized by the Chairperson do issue and send the notices of the aforesaid meeting(s).
- N. Chairperson report:** The Chairperson do report to this Tribunal the results of the said meeting(s) within four weeks from the date of the

conclusion of the said meeting(s). Such report shall be in Form No. CAA4 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

8. Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall also be served on the:

- a) Regional Director, Eastern Region,
- b) Ministry of Corporate Affairs, Kolkata;
- c) Registrar of Companies with whom the Applicant(s) are registered;
- d) Official Liquidator; and
- e) Income Tax Department having jurisdiction over the Applicant(s),

by sending the same by hand delivery through special messenger or by post or by email within two weeks from the date of receiving this order. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Authorised Representative of the said Applicant(s). 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 of Amalgamation. Such notice shall be sent pursuant to Section 230 (5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA3 of the said Rules with necessary variations, incorporating the directions herein.

9. The Applicants to file an affidavit proving service notices and publication of advertisement and compliance of all directions contained herein at least a week before the meeting(s) to be held .

10. The Application for confirmation and sanction of the Scheme to be filed within 4 weeks from the date of filing of the Report by the Chairperson.
11. The application being **CA (CAA) No.52/KB/2024** is **disposed of** accordingly.
12. Certified copy of the order may be issued, if applied for, upon compliance with all the requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed this, on the 25th day of April, 2024.

NKS(LRA)