

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**  
**COURT III**

3. C.A.(CAA)/13/MB/2023

CORAM: SHRI. KULDIP KUMAR KAREER, MEMBER (J)  
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON **19.01.2023**

NAME OF THE PARTIES: Baisakhi Trade Link Private Limited

SECTION 230-232, 234 OF COMPANIES ACT, 2013

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**ORDER**

CS Mr. Ashish O. Lalpuria, counsel appearing for the Applicant is present  
through virtual hearing.

**C.A.(CAA)/13/MB/2023**

Heard the argument of counsel appearing for the Applicant and the above  
C.A.(CAA)/13/MB/2023 is **allowed**. Detail order follow:

Sd/-  
MADHU SINHA  
Member (Technical)  
//SKS//

Sd/-  
KULDIP KUMAR KAREER  
Member (Judicial)

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT III

**CA(CAA) NO. 13 OF 2023**

In the matter of the Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and Rules framed thereunder as in force from time to time;

AND

In the matter of Scheme of Amalgamation of  
BAISAKHI TRADE LINK PRIVATE LIMITED, the  
Transferor Company; with FABRIMAX  
ENGINEERING PRIVATE LIMITED, the Transferee  
Company.

BAISAKHI TRADE LINK PRIVATE LIMITED, a )  
company incorporated under the Companies Act, )  
1956, having its registered office at 206/1A, BG-01 )  
/BG-02, Gr. Floor, Wing - B, Swami Sadan )  
Complex, Near GPO Square, Civil Lines, Nagpur - )  
440001, Maharashtra )  
CIN: U51109MH2008PTC376909 ) ...Applicant Company 1/  
Transferor Company.

FABRIMAX ENGINEERING PRIVATE )  
LIMITED, a Company incorporated under the )  
Companies Act, 1956, having its registered office )  
at Plot No J-20 MIDC, Hingana Road, Nagpur )

440016, Maharashtra.

)

CIN: U74210MH2005PTC155225

) ...Applicant Company 2/  
Transferee Company.

Order delivered on: 19.01.2023

Coram:

Shri Kuldip Kumar Kareer, Hon'ble Member (Judicial)

Smt. Madhu Sinha, Hon'ble Member (Technical)

For the Applicant(s): Mr. Ashish O. Lalpuria a/w Mr. Kamal Lahoty, Practising  
Company Secretaries

**ORDER**

1. The Court convened by videoconference today on 19/01/2023.
2. Learned Authorised Representative for the Transferor Company and Transferee Company (*Applicant Companies*) states that the present Scheme is an Application for an arrangement embodied in the Scheme of Amalgamation of BAISAKHI TRADE LINK PRIVATE LIMITED the Transferor Company with FABRIMAX ENGINEERING PRIVATE LIMITED, the Transferee Company.
3. The Learned Authorised Representative for the Applicants states that the respective Board of Directors of Transferor Company and the Transferee Company at its respective Board Meeting held on 15<sup>th</sup> December, 2022 approved the Scheme.
4. The Learned Authorised Representative for the Applicants states that appointed date of Scheme of Amalgamation is 1<sup>st</sup> April, 2022.

5. The Learned Authorised Representative for the Applicants submit that the Transferor Company is a wholly owned Subsidiary of Transferee Company.
6. The Learned Authorised Representative for the Applicants submit that the Transferor Company is engaged in the business of trading in Steel and other metals and Transferee Company is in the business of manufacturing, erecting, fabricating, assembly of steel and other structures for Turn Key Projects.
7. The Learned Authorised Representative for the Applicants submit that the paid up share capital of the Transferor Company is Rs. 42,37,500/- divided into 4,23,750 Equity Shares of Rs. 10/- each fully paid up and Transferor Company is Rs. 1,00,00,000/- divided into 10,00,000 Equity Shares of Rs. 10/- each fully paid up.
8. The Learned Authorised Representative for the Applicants submit that since the present Application is for Scheme of Amalgamation of wholly owned Subsidiary (Transferor Company) with its holding Company (Transferee Company), no shares are being issued as the shares held by the Transferee Company in Transferor Company would be cancelled and extinguished upon Amalgamation.
9. The Learned Authorised Representative for the Applicants submit that the rationale for the Scheme is as under:

- (i) The Transferor Company is a Wholly-owned Subsidiary of the Transferee Company and both the Companies are controlled and managed by the same family.
- (ii) The Transferor Company is carrying on the business of trading in Steel and other metals and the Transferee Company is in the business of manufacturing, erecting, fabricating, assembly of steel and other structures for Turn Key Projects.
- (iii) The Transferor Company is a major supplier of steel to the Transferee Company. The proposed amalgamation shall lead to a single company with rationalized structure, greater integration, financial strength and flexibility aiding in achieving economies of scale, sourcing benefits, vendor rationalization, more focused operational efforts, standardization and simplification of business processes and productivity improvements.
- (iv) That both the Transferor and Transferee Companies are managed by the same Family. This will rule out the hurdles relating to transfer of business from one management to another as there will be no change in the management of businesses.
- (v) The proposed amalgamation will reduce managerial overlaps, which are necessarily involved in running multiple entities. It will help to achieve a comparatively simplified corporate structure.

- (vi) Elimination of duplication in administrative, compliance and other overhead costs and multiple records keeping thus resulting in cost savings for the Companies.
  - (vii) Merger of both the companies will result in better planning and utilization of financial resources.
10. The Applicant Company 1/ Transferor Company has 2 (two) equity shareholders. Both of them have given their consent to the Scheme by way of Affidavits are annexed to the Application. In view of this, the meeting of the equity shareholders of the Transferor Company is dispensed with.
  11. The Applicant Company 2/ Transferee Company has 2 (two) equity shareholders. Both of them have given their consent to the Scheme by way of Affidavits are annexed to the Application. In view of this, the meeting of the equity shareholders of the Transferee Company is dispensed with.
  12. That Learned Authorised Representative submits that there are no Secured Creditors in the Transferor Company.
  13. There are 5 (five) Unsecured Creditors in the Applicant Company 1/ Transferor Company with a total outstanding amount of Rs. 1,93,90,946/- (Rupees Eleven One Crore Ninety Three Lacs Ninety Thousand Nine Hundred Forty Six Only) as on 30.11.2022. All of the Unsecured Creditors of the Transferor Company have given their

consent to the Scheme by way of Affidavits are annexed to the Application. In view of this, the meeting of the Unsecured Creditors of the Transferee Company is dispensed with.

14. The Applicant Companies submit that:

- a) Being a merger of wholly owned subsidiary company into its holding company, no shares would be issued or allotted as consideration pursuant to the merger. Accordingly, the rights of members of the Transferee Company are not affected since there will be no issue of shares pursuant to the Scheme and there would be absolutely no change in the equity share capital of the Transferee Company. Also, the present Scheme will not result in any dilution in shareholding of the shareholders of the Transferee Company.
- b) The rights of the creditors of the Transferee Company are not affected since there will be no reduction in their claims and the assets of the Transferee Company, post amalgamation, will be more than sufficient to discharge their claims. Also, the net worth of the Transferee Company is and will continue to remain highly positive post-merger;
- c) The existence of the Transferee Company will remain as before without any change either to its shareholding pattern or debt position pursuant to the Scheme.

- d) No undertaking of the Transferor Company is being parted away or being disposed-off and hence provisions of section 180 of the Companies Act, 2013 are also not applicable;
- e) The networth of the Transferor and Transferee Companies are highly positive with amounts of Rs. 12,92,47,140/- and Rs. 24,34,18,810/- respectively.
15. The Authorised Representative further submits that in view of above, no reconstruction or arrangement happens with its shareholders or creditors, and thus, it does not require to hold shareholder and creditors' meeting for approval of the proposed Scheme, in view of ratio laid down by this Tribunal in *CA(CAA) No 243 of 2017 in the matter of Housing Development Finance Corporation Limited*; in *CA(CAA) No. 915 of 2017 in the matter of Godrej Consumer Products Limited*; in *CA(CAA) No. 899 of 2017 in case of Mahindra CIE Automotive Limited*; in *CA(CAA) No. 1019 of 2017 in case of Godrej Properties Limited*; in *CA(CAA) No. 1615 of 2018 in case of Dolvi Minerals and Metals Private Limited*; in *CA(CAA) No. 396 of 2019 in JSW Logistic Infrastructure Private Limited*; in *CA(CAA) No. 1611 of 2019 in CEAT Specialty Tyres Limited*; in *CA(CAA) No. 3123 of 2019 in JAI Corp Limited* and in *CA(CAA) No. 4149 of 2019 in Godrej Properties Limited* and in various other matter including the judgement of the **National Company Law Appellate Tribunal (NCLAT) in Company Appeal (AT) No. 19 of 2021 in the matter of Ambuja Cements Limited**. The



Transferee Company submits that the facts in the present case are similar to the facts of above cases therefore no meeting of shareholders and/or creditors of the Transferee Company are required to be convened. This Bench is of the view that the present case is similar to the above cases and since the Transferor Company is a wholly-owned subsidiary of the Transferee Company, the meetings of the Secured Creditors and Unsecured Creditors of the Transferee Company is dispensed with.

16 The Applicant Companies to serve the notice of the present Application complete with enclosures upon –

(a) The Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai,

(b) Registrar of Companies, Mumbai

pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from such authorities within 30 (thirty) days of the date of receipt of the notice it will be presumed that they have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

17. The Applicant Companies to serve the notice of the present Application complete with enclosures on the Income Tax Authorities within whose jurisdiction the respective applicant companies are assessed to tax

clearing indicating PAN of the concerned Company, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016:

<b>Name of Company</b>	<b>PAN</b>
Transferor Company	AADCB6180C
Transferee Company	AAACF9150H

If no response is received by the Tribunal from such authorities within 30 (thirty) days of the date of receipt of the notice it will be presumed that they have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The Applicant Companies to serve notice upon the GST Authorities falling within the appropriate jurisdiction. If no response is received by the Tribunal from such authorities within 30 (thirty) days of the date of receipt of the notice it will be presumed that they have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
19. Additionally, the Transferor Company is directed to serve notice along with a copy of the Scheme upon the Official Liquidator, Bombay High Court, Nagpur Bench, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. CHETAN MALVIYA & COMPANY, Chartered Accountants having their office

at: 304, Zal Complex, Residency Road, Sadar, Nagpur – 440001. C/o. Mukesh Janani Partner 11, Champa Gali, M. J. Market, Above Badshah Cold Drinks, Zaveri Bazar, Mumbai - 400002.; having contact number: (+91) 9730080480/ 9921548387 [Email: chetanngp@yahoo.com] are appointed to assist the Official Liquidator, Bombay High Court, Nagpur Bench to scrutinise the books of accounts of the Transferor Company for past 5 (five) years. The fee of the Chartered Accountant is fixed at Rs. 1,50,000/- inclusive of all taxes. The Official Liquidator, Bombay High Court, Nagpur Bench shall submit his report to the Tribunal within a period of 30 (thirty) days from the date of the receipt of such notice, failing which it shall be presumed that the Official Liquidator has no objection to the proposed Scheme. A copy of the report shall simultaneously be served upon the Transferor Company.

20. The Applicant Companies shall host the notices on their respective websites, if any.
21. The Applicant Companies to serve notices upon any other sectoral authorities, if applicable, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the concerned sectoral authorities or authorities within thirty days (30) of the date of receipt of the notice, it will be presumed that the concerned sectoral regulators or authorities

have no objection to the proposed Scheme.

22. That the Applicant Companies to file an Affidavit of Service of the directions given by the Tribunal in the Registry for service of notice to the regulatory authorities as stated above and do report to this Tribunal within 10 (ten) days that the directions regarding the issue of notices have been duly complied with. The Applicant Companies are also directed to include in the affidavit of service of proof of dispatch of documents sent to all its creditors, wherever applicable.
23. The Applicant Companies shall file compliance report with the registry in regard to the directions given in this Order in lieu of customary Affidavit of Service proving dispatch of Notices to relevant Creditors of the Applicant Companies and service of Notice to the Regulatory Authorities by the Applicant Companies.
24. Order accordingly. Pronounced in open Court today.

**Sd/-**  
**Madhu Sinha**  
**Member (Technical)**

**Sd/-**  
**Kuldip Kumar Kareer**  
**Member (Judicial)**