

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Company Application CA(CAA) NO. 54/KB/ 2018

In the matter of:

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

And

In the matter of:

1. SP VINTRADE PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at 34A, Metcalfe Street, Kolkata - 700 013 within the aforesaid jurisdiction and represented through its Director Ashish Agarwal.

.... TRANSFEROR COMPANY NO. 1

And

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2. PARAMPARA IMPEX PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at 34A, Metcalfe Street, Kolkata - 700 013 within the aforesaid jurisdiction and represented through its Director Ashish Agarwal.

.... TRANSFEROR COMPANY NO. 2.

3. VARDHAMAN DEVELOPERS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at 34A, Metcalfe Street, Second Floor Room No. 2C/3, Kolkata - 700 013 within the aforesaid jurisdiction and represented through its Director Ashish Agarwal.

.... TRANSFEROR COMPANY NO. 3.

4. VARIETY COMMOTRADE PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at 34A, Metcalfe Street, Kolkata - 700 013 within the aforesaid jurisdiction and represented through its Director Ashish Agarwal.

.... TRANSFEROR COMPANY NO. 4.

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5. BS AGARWAL DEVELOPERS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at 34A, Metcalfe Street, Second Floor Room No., 2C/3, Kolkata - 700 013 within the aforesaid jurisdiction and represented through its Director Ashish Agarwal.

.... TRANSFEROR COMPANY NO. 5.

6. SPA SPONGE & POWER PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at 34A, Metcalfe Street, Second Floor, Room No. 2C/3, Kolkata - 700 013 within the aforesaid jurisdiction and represented through its Director Ashish Agarwal.

.... TRANSFEROR COMPANY NO. 6.

7. SPA METALLICKS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at 34A, Metcalfe Street, Second Floor Room No. 2C/3, Kolkata - 700 013 within the aforesaid jurisdiction

and represented through its Director Ashish Agarwal.

.... TRANSFEROR COMPANY NO. 7.

8. MARITIME MERCHANTS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at 34A, Metcalfe Street, Second Floor Room No. 2C/3, Kolkata - 700 013 within the aforesaid jurisdiction and represented through its Director Ashish Agarwal.

.... TRANSFEROR COMPANY NO. 8.

9. NACHIKETA GIFT-ADS PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 and having its registered office at 34A, Metcalfe Street, Second Floor Room No. 2C/3, Kolkata - 700 013 within the aforesaid jurisdiction and represented through its Director Ashish Agarwal.

.... TRANSFEREE COMPANY

And

1. SP VINTRADE PRIVATE LIMITED
2. PARAMPARA IMPEX PRIVATE LIMITED

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3. VARDHAMAN DEVELOPERS PRIVATE LIMITED
4. VARIETY COMMOTRADE PRIVATE LIMITED
5. BS AGARWAL DEVELOPERS PRIVATE LIMITED.
6. SPA SPONGE & POWER PRIVATE LIMITED
7. SPA METALICKS PRIVATE LIMITED.
8. MARITIME MERCHANTS PRIVATE LIMITED.
9. NACHIKETA GIFT-ADS PRIVATE LIMITED

... APPLICANTS

For the Applicants :

Mrs. Manju Bhuteria, Advocate

Mr. Niladri Khanra, Advocate

Date of Pronouncement of the Order : 1/3/18

ORDER

Per Jinan K.R.

1. The instant application has been filed under section 230 and 232 of the Companies Act 2013 by the Applicant Companies, namely, SP. Vintrade Private Limited, Parampara Impex Private Limited, Vardhan Developers Private Limited, Variety Commotrade Private Limited, BS Agarwal Developers Private Limited, SPA Sponge & Power Private Limited, SPA Metalics Private and Maritime Merchants Private Limited, the "Transferor Companies" and Nachiketa Gift - Ads Private Limited, the "Transferee Company", for direction to

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dispense with the meeting of the equity shareholders and creditors of the applicants.

2. The object of this application is to ultimately obtain sanction of this Tribunal to the Scheme of Amalgamation of SP. Vintrade Private Limited, Parampara Impex Private Limited, Vardhan Developers Private Limited, Variety Commotrade Private Limited, BS Agarwal Developers Private Limited, SPA Sponge & Power Private Limited, SPA Metalics Private and Maritime Merchants Private Limited, the "Transferor Companies" with Nachiketa Gift -Ads Private Limited, the "Transferee Company".

3. It has been stated in the Application that the applicant no. 1 have 4 (Four) Equity Shareholders and 2 (two) Unsecured Creditors, the Applicant no. 2 have 2 (two) Equity Shareholders and there is no creditors, the applicant no. 3 have 4(four) equity shareholders and there is no creditors, the applicant no.4 have 2 (two) equity shareholders and 1(one) unsecured creditors, the applicant no. 5 have 4 (four) equity shareholders and 1 (one) unsecured creditors, the applicant no. 6 have 4(four) equity shareholders and 1 (one) unsecured creditors, the applicant no. 7 have 4(Four) equity shareholders and 1 (one) unsecured creditors, the applicant no. 8 have 7 (Seven) equity shareholders and there is no creditors, and the applicant no. 9 have 5(five) equity shareholders and one unsecured creditors.

4. There are no secured creditors in any of the applicant companies.

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5. All the shareholders and the Unsecured Creditors have given their consent to the scheme of amalgamation by way of affidavit and the said affidavit of consent are annexed to the application filed by the applicants.

6. All the applicants have filed their respective Memorandum and Articles of Association as well as the last audited balance sheet for the year ended 31st March 2017 and provisional financial statement as on 31st October 2017.

7. The Board of Directors of all the applicants vide separate meetings have unanimously passed resolutions and approved the Scheme of Amalgamation and the copies of the resolutions have been filed along with the application being annexure " P-62".

8. Heard the learned Counsel for the applicants, perused the records, documents annexed to the Application and affidavits filed in the instant proceedings and after hearing the submissions made on behalf of the applicants, the following orders are passed :

i) The holding of meeting of the Equity shareholders of SP Vintrade Private Limited, the Transferor Company No. 1/Applicant Company No. 1, is dispensed with as there are only 4 (four) equity shareholders and they have given their consent and their affidavit of consent have been placed on record.

ii) The meeting of the unsecured creditors of the applicant company no. 1 is dispensed with, as there are only 2 (two) unsecured creditors and their affidavit of consent have been placed on record. Since there

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is no secured creditors in the applicant company no. 1 accordingly meeting of the secured creditors does not arise.

iii) The holding of meeting of the Equity shareholders of Parampara Impex Private Limited, the Transferor Company No. 2/Applicant Company No. 2., is dispensed with as there are only 2 (two) equity shareholders and they have given their consent and their affidavit of consent have been placed on record.

iv) As there are no secured and unsecured creditors in the Applicant Company no. 2, convening and holding of meeting of the creditors of the Applicant Company No.2, does not arise.

v) The holding of meeting of the Equity shareholders of Vardhaman Developers Private Limited, Transferor Company No. 3/Applicant Company No. 3., is dispensed with as there are only 4 (four) equity shareholders and they have given their consent and their affidavit of consent have been placed on record.

vi) As there are no secured and unsecured creditors in the Applicant Company no. 3, convening and holding of the meeting of the creditors of the Applicant Company No.3 does not arise.

vii) The holding of meeting of the Equity shareholders of Variety Commotrade Private Limited, the Transferor Company No. 4/Applicant Company No. 4. is dispensed with as there are only 2 (two) equity shareholders and they have given their consent and their affidavit of consent have been placed on record.

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viii) The meeting of the unsecured creditors of the applicant company no. 4 is dispensed as there are only 1 (one) unsecured creditor and their affidavit of consent have been placed on record. Since there is no secured creditors in the applicant company no. 4, convening and holding of the meeting of the secured creditors of the Applicant Company No.4 does not arise.

ix) The holding of meeting of the Equity shareholders of BS Agarwal Developers Private Limited, the Transferor Company No. 5/Applicant Company No. 5. is dispensed with as there are only 4 (four) equity shareholders and they have given their consent and their affidavit of consent have been placed on record.

x) The meeting of the unsecured creditors of the applicant company no. 5 is dispensed as there are only one unsecured creditor and their affidavit of consent have been placed on record. Since there are no secured creditors in the applicant company no. 5, convening and holding of the meeting of the secured creditors of the Applicant Company No. 5 does not arise.

xi) The holding of meeting of the Equity shareholders of SPA Sponge & Power Private Limited, the Transferor Company No. 6/Applicant Company No. 6. is dispensed with, as there are only 4 (four) equity shareholders and they have given their consent and their affidavit of consent have been placed on record.

xii) The meeting of the unsecured creditors of the applicant company no. 6 is dispensed as there are only 1 (one) unsecured creditor and their affidavit of consent have been placed on record. Since there are no secured creditors in the applicant company no. 6, convening and

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holding of the meeting of the Secured Creditors of the Applicant Company No.6 does not arise.

xiii) The holding of meeting of the Equity shareholders of SPA Metalicks Private Limited, the Transferor Company No. 7/Applicant Company No. 7. is dispensed with as there are only 4(four) equity shareholders and they have given their consent and their affidavit of consent have been placed on record.

xiv) The meeting of the unsecured creditors of the applicant company no. 7 is dispensed as there are only 1 (one) unsecured creditor and their affidavit of consent have been placed on record. Since there are no secured creditors in the applicant company No. 7, convening and holding of the meeting of the Secured creditors of the Applicant Company No. 7 does not arise.

xv) The holding of meeting of the Equity shareholders of Maritime Merchants Private Limited, the Transferor Company No. 8/Applicant Company No. 8. is dispensed with as there are only 7 (Seven) equity shareholders and they have given their consent and their affidavit of consent have been placed on record.

xvi) As there are no secured and unsecured creditors in the applicant company no. 8, convening and holding of the meeting of the secured and the unsecured creditors of the Applicant Company No.8 does not arise.

xvii) The holding of meeting of the Equity shareholders of Nachiketa Gift-Aids Private Limited, the Transferee Company /Applicant Company No. 9. is dispensed with as there are only 5 (five) equity

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shareholders and they have given their consent and their affidavit of consent have been placed on record.

xviii As there are no secured and unsecured creditors in the Transferee/ Applicant Company no. 9, convening and holding of the meeting of the secured and unsecured creditors of the Transferee Company/Applicant Company No. 9 does not arise.

xix) Let the notice be served by the Applicant Companies, as per requirements of sub-section (5) of Section 230 of the Companies Act 2013 along with all the documents including a copy of the scheme of amalgamation and the statement disclosing necessary details on the Central Government, through the Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata, Registrar of Companies, West Bengal, Reserve Bank of India and the concerned Income-Tax Assessment Officer/ the Chief Commissioner of Income Tax having jurisdiction over the Transferor companies and the Transferee Company, as also the Official Liquidator and such other relevant sectoral regulators/ authorities, if applicable, which are likely to be affected by the proposed scheme, by sending the same by e-mail, or by hand delivery, through special messenger, or by registered post or Speed post, by E-Mail, both, within 7 days from the date of this order for filling their representation if any within 30 days from the date receipt of the notice with a copy of such representation being sent simultaneously to the applicants and shall individually and/or their advocates . If no such representation is received by the Tribunal within the said period ,it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation. Such Form No. CAA-3 of the Companies (Compromise, Arrangements,

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Amalgamations) Rules 2016 with necessary variations incorporating the directions therein.

xx) The Applicants shall file affidavit within 7 days of serving the notice regarding the service of notice ;

xxi) The Applicants are further directed to send notice through e-mail also and file copies of the mails along with an affidavit. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the Applicants and/or their Advocates, in advance ;

xxii) If no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation ;

xxiii) The Applicant companies shall comply with the proviso to sub-section (3) of Section 232 or proviso to sub-section (7) of Section 230, as may be applicable under the circumstances on or before the date fixed for hearing by filing the certificate of Companies' Auditor.

9. The Company Application CA(CAA) No. 54/KB/2018 is disposed of accordingly.

10. Urgent certified copy of this order, if applied for be issued upon compliance with all requisite formalities.

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(Jinan K.R.)

Member(Judicial)

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