

**THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH,  
AT NEW DELHI**

**COMPANY PETITION NO. CA (CAA)-170 (PB)/ 2018**

Under Section 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

In the matter of

Scheme of Amalgamation  
of

Erudite Shares and Securities Private Limited

Applicant/Transferor Company No. 1

AND

Swirl Portfolio Private Limited

Applicant/Transferor Company No. 2

AND

Manomay Apparels Private Limited

Applicant/Transferor Company No. 3

AND

Quiet Minds Resorts Private Limited

Applicant/Transferor Company No. 4

AND

Monk Resorts Private Limited

Applicant/Transferor Company No. 5

AND

Kunsons Metals Limited

Applicant/Transferor Company No. 6

WITH

Balar Marketing Private Limited

Applicant/Transferee Company

*Judgment delivered on: 12.10.2018*

**CORAM:**

**CHIEF JUSTICE (Rtd.) M.M.KUMAR, Hon'ble President**

**S. K. MOHAPATRA, Hon'ble Member (T)**

For Applicants: Mr. Arun Saxena, Ms. Priya Verma, Advocates

: Mr. Shanu Pastore, CS



## ORDER

**S.K. Mohapatra, Member**

1. This application has been jointly filed by the Applicant Companies under Sections 230 and 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, duly supported by separate affidavits of the Applicant Companies, for seeking appropriate orders/directions for dispensing with the respective meetings of shareholders, secured creditors and unsecured creditors of all the applicant companies, in connection with the proposed Scheme of Amalgamation contemplated between the applicant companies. The said Scheme of Amalgamation (hereinafter referred to as the “Scheme”) has been placed on record along with the joint application.
2. It is represented that the registered offices of all the applicant companies are situated in New Delhi and therefore the subject matter of this joint application falls within the Jurisdiction of this Bench.



3. M/s Erudite Shares And Securities Private Limited (Transferor Company No. 1/ Applicant Company No. 1) was incorporated on 21.05.2009 under the provisions of the Companies Act, 1956. The present Authorized Share Capital of the Transferor Company No.1 is Rs. 50,00,000 divided into 5,00,000 Equity Shares of Rs. 10/- each. The present Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 41,21,500/- divided into 4,12,150 Equity Shares of Rs. 10/- each. The registered office of the Transferor Company no. 1 is situated at 304, III Floor, Parmesh Corporate Tower Plot No. 13, Karkardooma community Centre Delhi, East Delhi 110092.
4. It is submitted that the transferor Company no. 1 has 2 Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. It is further represented that the transferor company no. 1 has no secured creditor and 9 unsecured creditors. All the unsecured creditors of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. Certificate of chartered accountant in respect of status of the creditors in the company has been placed on record. Since transferor company no. 1 has no secured creditor the requirement of



convening of meeting of secured creditors does not arise. In relation to the shareholders and unsecured creditors, the transferor company no. 1 seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders and all the unsecured creditors have given consent affidavits in favour of the Scheme.

5. M/s Swirl Portfolio Private Limited (Transferor Company No. 2/Applicant Company No. 2) was incorporated on 15.12.2009 as a private limited company. The present Authorized Share Capital of the Transferor Company no. 2 is Rs. 50,00,000/- divided into 5,00,000 equity shares of Rs. 10 each. The present Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 49,40,000 divided into 4,94,000 equity shares of Rs. 10 each. The registered office of the Transferor Company no. 2 is situated at 304, III Floor, Parmesh Corporate Tower Plot No. 13, Karkardooma community Centre Delhi, East Delhi 110092.

6. It is submitted that the transferor Company no. 2 has 2 Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. It is further represented that the transferor company no. 2 has no secured creditor and 2 unsecured creditors. All the unsecured creditors of



the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. Certificate of chartered accountant in respect of status of the creditors in the company has been placed on record. Since transferor company no. 2 has no secured creditor the requirement of convening of meeting of secured creditors does not arise. In relation to the shareholders and unsecured creditors, the transferor company no. 2 seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders and all the unsecured creditors have given consent affidavits in favour of the Scheme.

7. M/s Manomay Apparels Private Limited (Transferor Company No. 3) was incorporated on 17.08.2007 as a private limited company. The present Authorized Share Capital of the Transferor Company no. 3 is Rs. 10,00,000 divided into 1,00,000 equity shares of Rs. 10 each. The present Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 40,00,000 divided into 40,000 equity shares of Rs. 10 each .The registered office of the Transferor Company no. 3 is situated at 304, III Floor, Parmesh Corporate Tower Pot No. 13, Karkardooma community Centre Delhi, East Delhi 110092.



8. It is submitted that the transferor Company no. 3 has 10 Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. It is further represented that the transferor company no. 3 has no secured creditor and 2 unsecured creditors. All the unsecured creditors of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. Certificate of chartered accountant in respect of status of the creditors in the company has been placed on record. Since transferor company no. 3 has no secured creditor the requirement of convening of meeting of secured creditors does not arise. In relation to the shareholders and unsecured creditors, the transferor company no. 3 seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders and all the unsecured creditors have given consent affidavits in favour of the Scheme.

9. M/s Quiet Minds Resorts Private Limited (Transferor Company No. 4) was incorporated on 29.07.2011 as a private limited company. The present Authorized Share Capital of the Transferor Company no.4 is Rs. 25,00,000 divided into 2,50,000 equity shares of Rs. 10 each. The present Issued, Subscribed and Paid up Share Capital of the Company is 10,50,000



divided into 1,05,000 equity shares of Rs. 10 each. The registered office of the Transferor Company no. 4 is situated at 304, III Floor, Parmesh Corporate Tower Pot No. 13, Karkardooma community Centre Delhi, East Delhi 110092,

10. It is submitted that the transferor Company no. 4 has 2 Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. It is further represented that the transferor company no. 4 has no secured creditor and 2 unsecured creditors. All the unsecured creditors of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. Certificate of chartered accountant in respect of status of the creditors in the company has been placed on record. Since transferor company no. 4 has no secured creditor the requirement of convening of meeting of secured creditors does not arise. In relation to the shareholders and unsecured creditors, the transferor company no. 4 seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders and all the unsecured creditors have given consent affidavits in favour of the Scheme.



11. M/s Monk Resorts Private Limited (Transferor Company No. 5) was incorporated on 28.07.2011 as a private limited company. The present Authorized Share Capital of the Transferor Company no. 5 is Rs. 25,00,000 divided into 2,50,000 equity shares of Rs. 10 each .The present Issued, Subscribed and Paid-up Share Capital of the Company is Rs.10,50,000 divided into 1,05,000 equity shares of Rs. 10 each. The registered office of the Transferor Company no. 5 is situated at 304, III Floor, Parmesh Corporate Tower Pot No. 13, Karkardooma community Centre Delhi, East Delhi 110092.

12. It is submitted that the transferor Company no. 5 has 2 Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. It is further represented that the transferor company no. 5 has no secured creditor and 2 unsecured creditors. All the unsecured creditors of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. Certificate of chartered accountant in respect of status of the creditors in the company has been placed on record. Since transferor company no. 5 has no secured creditor the requirement of convening of meeting of secured creditors does not arise. In relation to the



shareholders and unsecured creditors, the transferor company no. 5 seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders and all the unsecured creditors have given consent affidavits in favour of the Scheme.

13. M/s Kunsons Metals Limited (Transferor Company No. 6) was incorporated on 22.11.1985 as a private limited company. The present Authorized Share Capital of the Company o. 6 is Rs. 1,00,00,000 divided into 10,00,000 equity shares of Rs. 10 each. The present Issued, Subscribed and Paid-up Share Capital of the Company is Rs. 39,31,000 divided into 3,93,100 equity shares of Rs. 10 each. The registered office of the Transferor Company no. 6 is situated at D-99, Block D, 3rd Floor, Jhilmil Colony, Delhi East, Delhi - 110095.

14. It is submitted that the transferor Company no. 6 has 8 Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. It is further represented that the transferor company no. 6 has no secured creditor and 3 unsecured creditors. All the unsecured creditors of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. Certificate of chartered accountant in



respect of status of the creditors in the company has been placed on record. Since transferor company no. 6 has no secured creditor the requirement of convening of meeting of secured creditors does not arise. In relation to the shareholders and unsecured creditors, the transferor company no. 6 seeks dispensation from convening and holding of their respective meetings on the ground that all the shareholders and all the unsecured creditors have given consent affidavits in favour of the Scheme.

15. M/s Balar Marketing Private Limited (Transferee Company/ Applicant Company No. 7) was incorporated on 20.10.1992 as a private limited company. The present Authorized Share Capital of the Transferee Company is Rs. 9,00,00,000 divided into 90,00,000 equity shares of Rs. 10 each. The present Issued, Subscribed and paid-up Share Capital of the transferee company is Rs. 8,79,11,640/- divided into 87,91,164 equity shares of Rs. 10 each. The registered office of the Transferee Company is situated at 217, Functional Industrial Estate Patpar Ganj, Delhi – 110092.
16. It is submitted that the transferee Company has 22 Equity Shareholders and all the equity shareholders of the company have given their consent affidavits to the Scheme constituting 100% in value and 100% in number. The consent affidavits of each of the members have been placed on record. It is further represented that the transferee company has 4 secured



and 169 unsecured creditors. Out of 4 secured creditors, 2 secured creditors having 98.95% of the total value of secured debt have given their consent affidavits to the Scheme. Certificate of chartered accountant in respect of status of the creditors in the company has been placed on record. Out of 169 unsecured creditors, 137 unsecured creditors having 99.89% in value of the total unsecured debt have given their consent affidavits in favour of the Scheme. In relation to the shareholders, secured creditors and unsecured creditors, the transferee company seeks dispensation from convening and holding of their meetings on the ground that all the shareholders, secured creditors holding 98.95% in value of total debt and the unsecured creditors holding 99.89% in value have given their consent affidavits in favour of the Scheme.

17. Needless to say that under sub-section 9 of Section 230 of Companies Act, meeting of creditors can be dispensed with if creditors having at least 90 % in value agree by way of affidavit in favour of the Scheme. In the present matter as the creditors having more than 90% in value of the debt have given their consent affidavits in favour of the Scheme, the requirement of convening their meeting has been dispensed with.



18. We have perused the joint application and the connected documents / papers filed herewith including the Scheme of Amalgamation contemplated between the Applicant companies.
19. It is seen that the board of directors of all the applicant companies vide separate meetings, held on 02.08.2018 respectively have unanimously approved the proposed Scheme of Amalgamation. Copies of such resolutions passed thereat have been placed on record by the applicant companies.
20. All the applicant companies have filed their respective Memorandum and Articles of Associations. The applicants have also filed their latest audited financial statements for the year ending 31.03.2018.
21. It is submitted that the proposed merger is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013, and the same if sanctioned by this Tribunal the appointed date as provided in the Scheme shall be April 1<sup>st</sup>, 2018.
22. All the companies have submitted that no investigation proceedings have been instituted or pending under Sections 206-229 of the Companies Act, 2013 or under Sections 235-251 of the Companies Act, 1956 against any of the applicant companies.



23. Further, it has been stated in the application that the Scheme will be beneficial to all the applicant companies and their respective shareholders, employees, creditors and other stake holders.

24. The certificates of statutory auditors of all the applicant companies confirming that the accounting treatment in the scheme is in conformity with the Accounting Standard notified by the Central Government under Section 2(2) and Section 133 of the Companies Act, 2013 have been filed.

25. Taking into consideration the application filed jointly by the Applicant Companies the following directions are issued: -

**A. In relation to the Transferor Company No. 1:-**

- i. The meeting of Equity Shareholders is dispensed with as there are only two equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*
- ii. The meeting of secured creditors is also dispensed with because there is no secured creditor in the company and therefore, the requirement of convening meeting of secured creditors does not arise.*



iii. *The meeting of unsecured creditors is also dispensed with because there are 9 unsecured creditors in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*

**B. In relation to the Transferor Company No. 2:-**

- i. *The meeting of Equity Shareholders is dispensed with as there are only two equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*
- ii. *The meeting of secured creditors is also dispensed with because there is no secured creditor in the company and therefore, the requirement of convening meeting of secured creditors does not arise.*
- iii. *The meeting of unsecured creditors is also dispensed with because there are 2 unsecured creditors in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*



**C. In relation to the Transferor Company No. 3:-**

- i. The meeting of Equity Shareholders is dispensed with as there are only ten equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*
- ii. The meeting of secured creditors is also dispensed with because there is no secured creditor in the company and therefore, the requirement of convening meeting of secured creditors does not arise.*
- iii. The meeting of unsecured creditors is also dispensed with because there are 2 unsecured creditors in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*

**D. In relation to the Transferor Company No. 4:-**

- i. The meeting of Equity Shareholders is dispensed with as there are only two equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*



- ii. *The meeting of secured creditors is also dispensed with because there is no secured creditor in the company and therefore, the requirement of convening meeting of secured creditors does not arise.*
- iii. *The meeting of unsecured creditors is also dispensed with because there are 2 unsecured creditors in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*

**E. In relation to the Transferor Company No. 5:-**

- i. *The meeting of Equity Shareholders is dispensed with as there are only two equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*
- ii. *The meeting of secured creditors is also dispensed with because there is no secured creditor in the company and therefore, the requirement of convening meeting of secured creditors does not arise.*



iii. *The meeting of unsecured creditors is also dispensed with because there are 2 unsecured creditors in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*

**F. In relation to the Transferor Company No. 6:-**

i. *The meeting of Equity Shareholders is dispensed with as there are only eight equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*

ii. *The meeting of secured creditors is also dispensed with because there is no secured creditor in the company and therefore, the requirement of convening meeting of Secured creditors does not arise.*

iii. *The meeting of unsecured creditors is also dispensed with because there are 3 unsecured creditors in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*



**G. In relation to the Transferee Company:-**

- i. The meeting of Equity Shareholders is dispensed with as there are only twenty-two equity shareholders in the company and all of their consent affidavits in favour of the Scheme have been placed on record.*
- ii. The meeting of secured creditors is also dispensed with as secured creditors having 98.95% in value of the secured debt have given their consent affidavits in favor of the Scheme.*
- iii. The meeting of unsecured creditors is also dispensed with as unsecured creditors having 99.89% in value of the unsecured debt have given their consent affidavits in favor of the Scheme.*

26. In view of the above the present joint application stands allowed by dispensing with the meetings of shareholders and creditors of all the applicant companies.

27. The applicant companies are directed to serve notice of the proposed Scheme on the Regional Director, Ministry of Corporate Affairs, B-2 Wing, 2<sup>nd</sup> Floor, Paryavaran Bhavan, CGO Complex, New Delhi-110 003,

Registrar of Companies at 4<sup>th</sup> Floor, IFCI Tower, 61, Nehru Place, New Delhi-110 019; the Official Liquidator, Lok -Nayak -Bhavan, 8<sup>th</sup> Floor, Khan Market, New Delhi -110 001; and the office of the Income Tax Department, Income Tax Officer, At Chamber No. 428-429, Income Tax Cell, Delhi High Court including the office of the Income Tax Department, Income Tax Officer, Additional Commissioner of Income Tax, Special Range-4, Central Revenue Building, IP Estate, New Delhi-110 002. The notices to Income Tax authorities shall disclose sufficient details like PAN card numbers, ward numbers and assessing officers so that proper reply may be filed.

Let copy of the order be served to the parties.



**(M.M. KUMAR)**

**PRESIDENT**



**(S. K. MOHAPATRA)**

**MEMBER (T)**

Deepak Kumar