

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
(COURT – 1) MUMBAI BENCH**

CA (CAA) NO. 3919 OF 2019

In the matter of Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and Rules framed thereunder.

AND

In the matter of Scheme of Merger by Absorption of SWASTIKA COMMODITIES PRIVATE LIMITED, ('the Transferor Company') with SWASTIKA INVESTMART LIMITED, ('the Transferee Company') and their respective Shareholders.

Swastika Commodities Private Limited,
a Company incorporated under the
Companies Act, 1956 and having its
Registered office at Flat No. 18, Floor 2,
North Wing, Madhav Nagar,
11/12, S.V. Road, Andheri (W),
Mumbai – 400058

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... First Applicant Company

AND

Swastika Investmart Limited
a Company incorporated under
the Companies Act, 1956 and
having its registered office at
Flat No. 18, Floor 2, North Wing,
Madhav Nagar, 11/12, S.V. Road,
Andheri (W), Mumbai – 400058

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... Second Applicant Company

(Hereinafter collectively referred to as "Applicant Companies")

Order dated : 20.02.2020

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Applicant(s): CS Yogesh Choudhary

Per: V. Nallasenapathy, Member (T)

ORDER

1. The Authorized Representative for the Applicant Companies states that the present Scheme is a Scheme of Merger by Absorption of Swastika Commodities Private Limited (The Transferor Company) with Swastika Investmart Limited (the Transferee Company) and their respective Shareholders.
2. The Authorized Representative for the Applicant Companies further submit that the First Applicant company is presently carrying on business of Commodity (including Commodity Derivatives) broking, trading and hedging, Brokers and traders in all commodities and commodity derivatives and to act as market makers, sub-brokers, underwriters, sub-underwriters, providers of service for commodity related activities. The Second Applicant Company is presently engaged in the business as Broker in Stock and Securities, future and option trading, investors, derivatives traders, consultants in capital market and financial investment, merchant banking in all its aspects, to act as issue house, registrars to issue, transfer agent, depository participant, to acquire and hold one or more membership in stock/security exchanges, clearing houses or association.
3. The Transferee Company is holding the entire share capital of the Transferor Company and as the Transferor Company and Transferee Company's business activities are similar and complement each other, and to achieve *inter-alia* economies of scale and efficiency and to reduce multiplicity of costs, the merger by absorption is being undertaken. The Merger by Absorption of the Transferor Company with the Transferee Company would *inter alia* have the following benefits:
 - a) Greater integration and greater financial strength and flexibility for the Transferee company which would result in maximizing overall shareholders value and will improve the competitive position of the combined entity.

- b) Greater efficiency in cash management of the Transferee Company, and unfettered access to cash flows generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholders value.
- c) Improved organizational capability and leadership, arising from the pooling of human capital who have the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.
- d) Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, and the elimination of duplication, and rationalization of administrative expenses.
- e) Unified entity will have much better risk management capabilities as against separate risk management systems for equity and commodity broking.
- f) It will enable to take benefit of margin fungibility in both equity and commodity derivative exchanges.
- g) Achieving economies of scale.
- h) Greater ability of the Transferee company to raise financial resources, either as equity or debt, based on combined financials.

Further, Securities Exchange Board of India (SEBI) has also issued circular dated 21.09.2017 for Integration of broking activities in Equity Markets and Commodity Derivatives Markets under single entity by way of merging the commodities business in stock broking business.

- 4. The Authorized Representative for the Applicant Companies states that resolutions passed by the Board of Directors of the Applicant Companies in their respective meeting held on 25.07.2019 approved the Scheme. The Appointed Date fixed under the Scheme is 1st April, 2019.
- 5. That the meeting of the Equity Shareholders of the First Applicant Company be convened and held at Flat No. 18, Floor 2, North Wing, Madhav Nagar, 11/12, S.V. Road, Andheri W, Mumbai – 400058 on

Thursday, 9th April 2020 at 11.30 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Merger by Absorption of Swastika Commodities Private Limited , the Transferor Company with Swastika Investmart Limited , the Transferee Company and their respective Shareholders.

6. That the meeting of the Equity Shareholders of the Second Applicant Company be convened and held at Flat No. 18, Floor 2, North Wing, Madhav Nagar, 11/12, S.V. Road, Andheri W, Mumbai – 400058 on Thursday, 9th April, 2020 at 1.30 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Merger by Absorption of Swastika commodities Private Limited, the Transferor Company with Swastika Investmart Limited, the Transferee Company and their respective Shareholders.
7. The Second Applicant Company will also give an option to the Equity Shareholders to vote for approval of Scheme of Merger by Absorption through Postal Ballot and Remote E-Voting.
8. That atleast one month before the said Meetings of the Equity Shareholders of the Applicant Companies to be held as aforesaid, a notice convening the said Meetings at the place, day, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December, 2016 and the prescribed Form of Proxy, shall be sent through Email (to those shareholders whose email addresses are duly registered with the Applicant Companies for the purpose of receiving such notices by email) or in absence of email address by Courier / Registered Post / Speed Post or by Hand Delivery, addressed to each of the Shareholders of the Applicant Companies, at their last known address as per the records of the concerned Applicant Companies.
9. That at least one month before the meetings of the Shareholders of the Applicant Companies to be held as aforesaid, a notice convening the said Meetings, indicating the place, day, date and time of meeting as

aforesaid be published in newspapers as mentioned in Point 9 below and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the concerned Applicant Companies as aforesaid.

10. That the Notice of the Meetings of the Applicant Companies shall be advertised in two local newspapers viz. “Free Press Journal” in English and “Navshakti” in Marathi, both circulated in Mumbai, not less than thirty (30) days before the date fixed for the meeting.
11. That Mr. Sunil Nyati, Director of the First Applicant Company, and failing him, Mr. Anil Nyati, Whole Time Director of First Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the First Applicant Company to be held at Flat No. 18, Floor 2, North Wing, Madhav Nagar, 11/12, S.V. Road, Andheri W, Mumbai – 400058 on Thursday, 9th April 2020 at 11.30 a.m or any adjournment or adjournments thereof.
12. That Mr. Sunil Nyati, Managing Director of the Second Applicant Company, and failing him, Mrs. Anita Nyati, Whole Time Director of the Second Applicant Company, and failing him Mr. Anil Kumar Nyati, Director of Second Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Second Applicant Company to be held at Flat No. 18, Floor 2, North Wing, Madhav Nagar, 11/12, S.V. Road, Andheri W, Mumbai – 400058, on Thursday, 9th April 2020 at 1.30 p.m. or any adjournment or adjournments thereof.
13. That the Chairman appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the Meetings referred to above. The said Chairman shall have all powers as per Articles of Association and under the Companies Act, 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise at the meetings or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).

14. That the quorum of the aforesaid meetings of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
15. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meetings, are filed with the Applicant Companies at their respective Registered Office(s) at Flat No. 18, Floor 2, North Wing, Madhav Nagar, 11/12, S.V. Road, Andheri W, Mumbai – 400058 not later than forty eight (48) hours before the aforesaid meetings.
16. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the Applicant Companies or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.
17. That CS Nitin Singhai, Practicing Company Secretary is hereby appointed as Scrutinizer of the meeting of the Equity Shareholders of the Applicant Companies proposed to be held on Thursday, 9th April 2020 at the place and time as mentioned in paragraphs 4 and 5 above and his remuneration is fixed as Rs.20,000/- (Rupees Twenty thousand only) for both meetings together.
18. That the Chairman is directed to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and to report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
19. That the Chairman of the meetings is directed to report to this Tribunal, the results of the aforesaid meetings within thirty (30) days of the conclusion of the meetings.
20. The First Applicant Company and Second Applicant Company are directed to serve notices along with copy of scheme upon :- (i) concerned Income Tax Authority within whose jurisdiction the Applicant Companies assessments are made. The Addresses of the Income Tax Authority are as under:

Name of Company	PAN Number	Designation of Authority	Address
Swastika Commodities Private Limited (Transferor Company)	AACCS3050K	Deputy Commissioner/ Assistant Commissioner Circle (4) (21)	Pratishtha Bhavan, 6 th Floor, 99 Maharshi Karve Road, New Marine Lines Mumbai 400020
Swastika Investmart Limited (Transferee Company)	AABCS6585J	Deputy Commissioner/ Assistant Commissioner Central Circle 4(2)	Pratishtha Bhavan, 6 th Floor, 99 Maharshi Karve Road, New Marine Lines Mumbai 400020

(ii) the Central Government through the Office of Regional Director, Western Region, Mumbai, and (iii) Registrar of Companies; with a direction that they may submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Companies, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

21. The Second Applicant Company is listed on the Bombay Stock Exchange. Pursuant to Sub clause 6 of Rule 37 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, the Bombay Stock Exchange does not need to give approval to the said scheme. However, as per the Said Rule – the Second Applicant Company is hereby directed to file with the Bombay Stock Exchange the copy of the draft scheme for the purposes of disclosure.

22. The First Applicant Company is also directed to serve notice along with copy of scheme upon Official Liquidator pursuant to section 230(5) of the Companies Act, 2013. M/s P.R. Agarwal & Awasthi, Chartered Accountants, having office at 42, Gopal Bhavan, 199, Princess Street, Mumbai 400002 are appointed to assist the Official Liquidator to scrutinize the books of accounts of the First Applicant Company. The Transferee Company to pay fees of ₹50,000/- (Rupees

Fifty thousand only) for the said services. If no response is received by the Tribunal from the Official Liquidator within 30 days of the date of receipt of notice, it will be presumed that the Official Liquidator has no objection to proposed scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

23. The Authorized Representative for the Applicant Companies submits that there are Secured and Unsecured Creditors in the First Applicant Company and Second Applicant Company. The Authorized Representative for the Applicant Companies submits that since the Scheme is an arrangement between the Applicant Companies and their respective shareholders, only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1) (b) of the Companies Act, 2013. This bench hereby directs the First Applicant Company and Second Applicant Company to issue notice to all its Secured and Unsecured Creditors of the value above Rs.5,00,000/- (Five Lakhs Only) as on 31st December 2019, either by email if available or if no email is available, by Courier /Registered Post /Speed Post or by Hand Delivery with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Companies.
24. The Applicant Companies to file affidavit of service in the Registry proving dispatch of notices to the shareholders as directed in clause 8 above, creditors above the threshold limit as stated in clause 23 above, publication of notices in newspapers as directed in clause 10 above and to the regulatory authorities as directed in clause 20 above and to report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy
Member (T)

Jenny DSouza - steno

Sd/-

Suchitra Kanuparthi
Member (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.A.(CAA) 3919/230-232/2019

CORAM:

SMT. SUCHITRA KANUPARTHI

MEMBER (J)

SHRI V. NALLASENAPATHY

MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 20.02.2020

NAME OF THE PARTIES: Swastika Commodities Pvt Ltd

Section 230-232 of Companies Act 2013.

ORDER

33. C.A.(CAA)3919/230-232/2019

This company application allowed, vide separate orders.

Sd/-

V. NALLASENAPATHY

Member (Technical)

Sd/-

SUCHITRA KANUPARTHI

Member (Judicial)