

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

C.P (CAA) 27/KB/2021  
Connected with  
C.A. (CAA) No. 942/KB/2020

In the matter of:

The Companies Act, 2013;

-And-

In the matter of:

A petition under Section 230 and Section 232 of  
the Companies Act, 2013

-And-

In the matter of:

(1) **Asian Securities Exchange Private Limited**,  
a company incorporated under The Companies  
Act, 1956 and having its Registered Office at 5  
Bowli Mondal Road, Kolkata- 700026

Transferor Company/Petitioner No. 1

(2) **BNK Commodities Private Limited**, a  
company incorporated under The Companies  
Act, 1956 and having its Registered Office at  
Mayfair Towers, 2, Palm Avenue, Kolkata -  
700019

Transferor Company/Petitioner No. 2

AND

(3) **Patrex Vyapaar Private Limited**, a  
company incorporated under The Companies  
Act, 1956 and having its Registered Office at  
1C/1, Mayfair Towers, 2, Palm Avenue, Kolkata  
- 700019

Transferor Company/Petitioner No. 3

-WITH-



IN THE MATTER OF:

(4) **BNK Securities Private Limited**, a company incorporated under The Companies Act, 1956 and having its Registered Office at 2, Palm Avenue Road, Ground Floor, Kolkata - 700019

Transferee Company/Petitioner

In the matter of:

1. Asian Securities Exchange Private Limited
2. BNK Commodities Private Limited
3. Patrex Vyapaar Private Limited
4. BNK Securities Private Limited

.....  
Petitioners

**Date of Hearing: 18.08.2021**

**Date of pronouncing the order: 08.11.2021**

**Coram:**

**Shri Rajasekhar V.K. : Member (Judicial)**  
**Shri Harish Chander Suri : Member (Technical)**

**Counsel on Record for the Petitioner(s):**

Mr. Shaunak Mitra, Advocate

Mr. Gopal Kumar Khetan, Pr.C.A.

..... For the Petitioners

**ORDER**

**Per: Rajasekhar V.K. Member (Judicial)**

1. The instant company petition has been filed by the Applicants namely Asian Securities Exchange Private Limited , BNK Commodities Private Limited, Patrex



Vyapaar Private Limited (hereinafter referred to as the “Transferor Companies”),with, BNK Securities Private Limited (hereinafter referred to as the “Transferee Company”) under section 230-232 of the Companies Act, 2013 read with Companies( Compromises, Arrangements and Amalgamations) Rules, 2016 for sanctioning the Scheme of Amalgamation proposed between the Transferor Companies and the Transferee Company.

2. The object of this petition is to obtain the approval of the Hon’ble Tribunal for sanctioning the Scheme of Amalgamation of the applicant companies Asian Securities Exchange Private Limited , BNK Commodities Private Limited, Patrex Vyapaar Private Limited, Transferor Companies with BNK Securities Private Limited the Transferee Company where in all assets properties, rights and claims whatsoever of the Transferor and their entire undertaking together with all their rights and obligations relating thereto are proposed to be transferred to and vested with the Transferee Company and on the terms and conditions fully stated in the Scheme of Amalgamation, which has been annexed with the petition.
3. From the records, it is seen that the First Motion seeking direction for dispensing of the meeting of the equity shareholders and creditors were filed before the Tribunal in CA(CAA) No. 942/KB/2020. Based on such application moved under the provisions under section 230-232 of the Companies Act, 2013, direction were issued by the Tribunal on 24<sup>th</sup> November, 2020 Meeting(s) of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Companies for considering the Scheme were dispensed with in view of all such shareholders and creditors having respectively given their consent to the Scheme by way of affidavits.
4. The Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 12<sup>th</sup> day of April, 2021, the Petitioner(s) have duly served such notices on the Regional Director, Kolkata, Registrar of Companies (WB) and The Official Liquidator, High Court, Calcutta, by way of hand delivery on 05<sup>th</sup> July, 2021, the Chief Commissioner of Income Tax, Kolkata and the Income Tax Officer under jurisdiction 11(1) by way of hand delivery on 06<sup>th</sup> July, 2021, Income Tax Officer under jurisdiction 12(1),5(1) and Deputy Commissioner of Income Tax by way of speed post on 12.07.2021 and The Competition Commission of India, by way of speed post on 10.07.2021. The Petitioner(s) have also published such advertisements in two



newspapers viz. "Financial Express" and "Aajkaal" on 13.07.2021. An affidavit of compliance in this regard has also been filed by them on 19.07.2021.

5. There are no proceedings pending under Sections 235 to 251 of the Companies Act, 1956 and Section 217, 219, 221, 224 and 225 of the Companies Act, 2013 against any of the Petitioner companies.
6. The circumstances which justify and necessitate the said Scheme of Amalgamation are, inter alia, as follows:
  - a) All the Transferor Companies and Transferee Company are engaged in the business of investment and trading of stock and shares and also carrying on trading in other activities.
  - b) The Scheme of Amalgamation has been proposed to consolidate the group structure and provide advantages of synergies in business activities.
  - c) The business of the Transferor Companies and Transferee Company can be combined and carried forward conveniently with the combined strength of both the Petitioner Companies.
  - d) The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the Transferee Company;
  - e) The amalgamation will result in usual economies of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources and the business of the companies can be conveniently and advantageously combined together and in general business of the Companies concerned will be carried on more economically and profitably under the said Scheme of Amalgamation.
  - f) The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the Companies concerned. The aforesaid Scheme of Amalgamation will also enable the undertakings and business of the said Petitioner Companies to obtain greater facilities possessed and enjoyed by one large company



compared with a number of small companies for raising capital, securing and conducting trade on favourable terms and other benefits;

- g) The said Scheme of Amalgamation will contribute in furthering and fulfilling the objects of the companies concerned and in the growth and development of these businesses.
  - h) The said Scheme of Amalgamation will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability.
  - i) The said Scheme of Amalgamation will enable the undertakings concerned to pool their resources and to expand their activities;
  - j) The said Scheme of Amalgamation will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;
  - k) The said Scheme of Amalgamation will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.
7. The Regional Director, Eastern Region, Ministry of Corporate Affairs (MCA), Kolkata vide his affidavit filed on 13.08.2021 has reported the following observations:
- a) In regard to Para 2(a) of the affidavit, stating that on examination of the report of the Registrar of Companies, West Bengal, it appears that no complaint and/or representation regarding the proposed Scheme of Amalgamation has been received against the petitioner companies are updated in filing their statutory returns. However, in the said report, ROC, WB stated that a Case No. C/10480/2014 under section 205C read with 629A of the Companies Act, 2013 is pending at Ld. Chief Judicial Magistrate, Alipore against the Transferor Company namely M/s. BNK Commodities Private Limited.
  - b) It was further stated in the Report in regard to Para 2(b) of the affidavit dated 13.08.2021 submitted that the Petitioner Company should undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

- c) It was further stated in the Report in regard to Para 2(c) of the affidavit dated 13.08.2021 submitted that the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Company to it.
- d) It was further stated in the Report in regard to Para 2(d) of the affidavit dated 13.08.2021 that compliance of Accounting Standard-14 or IND-AS 103 as may applicable, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 or IND-AS-8.
- e) It was further stated in the Report in regard to Para 2(h) of the affidavit dated 13.08.2021 that the scheme is approved by the requisite majority of member and creditors as per section 230(6) of the Companies Act, 2013 in meeting duly held in terms of section 230(1) read with sub sections (3) to (5) of section 230 of the said Act and the Minutes thereof are duly placed on record.
- f) It was further stated in the Report in regard to Para 2(f) of the affidavit dated 13.08.2021 that the petitioners to file an affidavit to the extent that the scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no changes made.
- g) It was further stated in the Report in regard to Para 2(g) of the affidavit dated 13.08.2021 that the petitioners need to serve notices to the concerned authorities which are likely to be affected by the amalgamation and arrangement.
- h) It was further stated in the Report in regard to Para 2(h) of the affidavit dated 13.08.2021 that the petitioner Asian Securities Exchange Private Limited is Non-Banking Finance Company. Its financial statements as at 31.03.2020 exhibit that more than 50% of its total assets were financial assets and more than 50% of its income was financial income and functioning without Registration Certificate from the Reserve Bank of India under section 45IA of the Reserve Bank of India Act, 1934 and the same has not been disclosed in the scheme i.e contrary to the provision of section 230(2)(a) of the Companies Act, 2013.
- i) It was further stated in the Report in regard to Para 2(i) of the affidavit dated 13.08.2021 that the petitioner Patrex Vyapaar Private Limited is Non-Banking Finance Company. Its financial statements as at 31.03.2020 exhibit that more than 50% of its total assets were financial assets and more than 50% of its income was financial income and functioning without Registration Certificate from the



Reserve Bank of India under section 45IA of the Reserve Bank of India Act, 1934 and the same has not been disclosed in the scheme i.e. contrary to the provision of section 230(2)(a) of the Companies Act, 2013.

- j) It is submitted that the Income Tax Department by letter dated 07.07.2021 stated that there is outstanding demands of FBT and income tax for 2008-09 and 2010-11 are lying against Asian Securities Exchange Private Limited (Transferor Company) and they have put their objection over the said assessee company. However, by a subsequent letter dated 19/07/2021, the Income Tax department submitted that as per their record, no outstanding demand lies pending to them against the said Company Asian Securities Exchange Private Limited ( Copies of both letters collectively marked as Annexure-II is enclosed herewith for perusal and ready reference.)
8. The Petitioner Companies have filed their rejoinder affidavit dated 16.08.2021 to the reply affidavit filed by the Central Government, as below:
- a) With regard to the statement in Para 2(a) of the affidavit the Petitioners stated that M/s. BNK Commodities Private Limited, being one of the Transferor Company having case before the LD. Chief Judicial Magistrate, Alipore i.e Case No.C/10480/2014 under section 205C read with 629A of the Companies Act, 2013 has been compounded as on 17/08/2021 copy of the cost challan is also annexed marked as Annexure-I. However, the Transferee Company takes all the responsibilities in connection with this case against M/s. BNK Commodities Private Limited and will be held liable for any matter in relation to this case.
- b) The Petitioners states that upon the scheme coming into effect, the authorized share capital of the transferee company shall in accordance with the relevant provisions of the Companies Act, 2013 and the rules made there under and in terms of its Memorandum of Association would automatically stand enhanced to an amount of Rs. 18,00,00,000/- (Rupees Eighteen Crore Only). The filing fees and stamp duty already paid by the Transferor Company on their respective authorized share capital shall be utilized and applied to the increased share capital of the Transferee Company on such combined authorized share capital. Also, the stamp duty and fees, if any, payable to the Registrar of Companies on the increased authorized share capital shall be paid by the Transferee Company.



c) The Petitioners states that none of the Petitioner Companies have any immovable properties. However, if any, the applicable stamp duty shall be paid to the Concerned Authority on the transfer of the immovable properties, same shall be borne by the Transferee Company.

d) In response thereof, the Petitioners states that they complied with the Accounting Standard-14 or IND-AS 103 as amalgamation being one in the nature of merger, all the assets and liabilities of the Transferor Companies shall be transferred to the Transferee Company at their respective book values by the Board of Directors of the Transferee Company as according to Accounting Standard or IND-AS.

e) In response thereof, the Petitioners states that by an order dated 24<sup>th</sup> day of November, 2020 in Company Application (CAA) No. 942/KB/2020, this Tribunal Dispense the meeting(s) of shareholders and creditors as per section 230(6) of the Companies Act, 2013 in meeting duly held in terms of section 230(1) read with sub sections (3) to (5) of section 230 of the said Act.

f) In response thereof, the Petitioners states that the scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no changes made.

g) In response thereof, the Petitioners states that in compliance with the said order dated 12<sup>th</sup> day of April, 2021, the Petitioner(s) have duly served such notices on the Regional Director, Kolkata, Registrar of Companies (WB) and The Official Liquidator (Kolkata), by way of hand delivery on 05<sup>th</sup> July, 2021, the Chief Commissioner of Income Tax, Kolkata and the Income Tax Officer under jurisdiction 11(1) by way of hand delivery on 06<sup>th</sup> July, 2021, Income Tax Officer under jurisdiction 12(1),5(1) and Deputy Commissioner of Income Tax by way of speed post on 12.07.2021 and The Competition Commission of India, by way of speed post on 10.07.2021. The Petitioner(s) have also published such advertisements in two newspapers viz. "Financial Express" and "Aajkaal" on 13.07.2021. An affidavit of compliance in this regard has also been filed by them on 19.07.2021.

h) In response thereof, the Petitioners states that as per the attached company application and the company petition, that earlier M/s Asian Securities Exchange Private Limited had the Stock Broker Licence and allowed to do business of investment, trading of stock and shares and other activities. However, four years ago the Company surrender the same. All the investment the Company has is from that period only, however our mostly investment is in our group companies which consist



approx 90% of total investment and such holding is not for trading purpose. Asset size of the company is less than Rs. 100 crore. We are never been engaged in other financial activates like to borrow or provide any loan. There is no any loan amount or any kind of deposits in the books. Hence the company falls under definition of Core Investment Companies (CIC). Moreover, we are going for the restructuring due to this so that all these can be consolidate.

Section 45IA of RBI Act shall not apply to non systematically important CICs (Core Investment Company). CIC with an asset size of less than Rs. 100 crores i.e non systematically important CICs, are exempt from obtaining registration.

Hence the company is exempt to register with RBI.

i) In response thereof, the Petitioners states that as per the attached company application and the company petition, that earlier M/s Patrex Vyapaar Private Limited was a Non-Banking Financial Company (NBFC) but due to some technical reason the registration got cancelled. However, our mostly investment is in group companies which consist approx 90% of total investment and such holding is not for trading purpose. Asset size of the company is less than Rs. 100 crore. Hence the company falls under definition of Core Investment Companies (CIC). Moreover, we are going for the restructuring due to this so that all these can be consolidate.

Section 45IA of RBI Act shall not apply to non-systematically important CICs (Core Investment Company). CIC with an asset size of less than Rs. 100 crores i.e non systematically important CICs, are exempt from obtaining registration.

Hence the company is exempt to register with RBI.

9. The Official liquidator attached to the High Court, Calcutta submitted its Report on 12<sup>th</sup> day of August, 2021 wherein he has stated that he is of the opinion that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interests of its members or to public interest as per the Provisions of the Companies Act, 1956/ the Companies Act 2013 whichever is applicable. Further, the Official Liquidator stated that the Tribunal may be pleased to pass such further order or orders as may be deem fit and proper in the matter.
10. The violation pointed out by the Regional Director (ER) in his Report are all technical in nature and are compoundable. The regulatory authorities have not found the scheme itself to be violative of any statute. Technical Violations such as the one pointed out by the Regional Director (ER) would enough to withhold sanction of



Scheme itself. Therefore, while we are inclined to accord sanction to the Scheme, such sanction shall not stand in the way of any action to which the Petitioner Companies may be liable in accordance with law. We leave it to the authorities concerned to see if there has been any violation of provisions of law by the Petitioner Companies and to take action as may be deemed appropriate under the law against the Transferee Company.

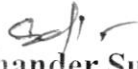
11. Sanction of the Scheme shall not come in the way of any action for violation of any provisions of law committed by any of the Petitioner Companies and the same shall be met and answered by the Transferee Company.
12. Despite several notices having been served, Concerned Income Tax Department has not filed its report in the matter. Therefore, we are constrained to proceed in the matter without a report from Income Tax Department. However, in case of any violation, the Concerned Income Tax Department is free to proceed in accordance with law against the Transferee Company


Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

- a. The Scheme of Amalgamation is sanctioned by this Tribunal to be binding with effect from 01.04.2020 on the Transferor Companies with the Transferee Company and their respective shareholders and all concerned.
- b. All the property, rights and powers of the Transferor Companies, including those described in the Schedule of Assets herein, be transferred to and be vested from the said Appointed Date, without further act or deed, in the Transferee Company pursuant to Section 232(4) of the Companies Act, 2013 read with Companies (Compromise, Arrangements and Amalgamation) Rule, 2016.
- c. All the debts, liabilities, duties and obligations of the Transferor Companies be transferred from the said Appointed Date, without further act or deed to the Transferee Company pursuant to Section 232(4) of the Companies Act, 2013 Companies (Compromise, Arrangements and Amalgamation) Rule, 2016.
- d. All the proceedings and/or suits and/or appeals now pending by or against the Transferor Companies shall be continued by or against the Transferee Company.



- e. The Transferee Company do issue and allot shares to the shareholders of the Transferor Companies as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the authorised share capital.
- f. The Transferor Companies shall stand dissolved without winding up from the appointed date.
- g. In the event any of the Petitioner Companies supplies a computerized printout of the said Scheme of Amalgamation in acceptable form in the department concerned, is hereby directed to append such computerized printout upon verification to the certificate copy of this order without insisting on a handwritten copy thereof.
- h. The Petitioner Companies respectively, do, within 30 days after the receipt of the certified copy of this order, cause a certified copy thereof to be delivered to the Registrar of Companies, West Bengal.
13. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.
14. The Company Petition C.P.(CAA) No. 27/KB/2021 connected with C.A.(CAA) No.942/KB/2021 is disposed of accordingly.
15. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

  
**(Harish Chander Suri)**  
Member (Technical)

  
**(Rajasekhar V. K.)**  
Member (Judicial)

Signed on this, the 08<sup>th</sup> day of November, 2021.

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[Signature]  
DD / DR / AR / Court Officer  
National Company Law Tribunal  
Kolkata Bench