

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

CA (CAA) No.38/Chd/Hry/2023

(1st Motion)

**Under Sections 230 to 232 and other
applicable provisions of the Companies
Act, 2013 read with the Companies
(Compromise, Arrangements and
Amalgamation) Rule,2016**

IN THE MATTER OF SCHEME OF AMALGAMATION OF:

Napino Digital Solutions Pvt. Ltd.

with its registered office at

Plot No. 7, Sector 3, IMT Manesar,

Gurgaon-122051, Haryana

PAN: AAHCN6208K

CIN: U31904HR2021PTC095310

...First Applicant Company/Transferor Company

And

Napino Auto and Electronic Private Ltd.

with its registered office at

Plot No. 7, Sector 3, IMT Manesar,

Gurgaon- 122050, Haryana

PAN: AAACN4973G

CIN: U34300HR1991PLC031470

...Second Applicant Company/Transferee Company

Order delivered on: 21.12.2023

**Coram: HON'BLE DR. P.S.N. PRASAD, MEMBER (JUDICIAL)
HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

CA(CAA)No. 38/Chd/Hry/2023
(1st Motion)

Present: -

For the Applicant Companies: Mr. Saurabh Khanna with Mr. Raghav Garg, Advocates.

Per: Dr. P.S.N. Prasad, Member (Judicial)
Mr. Umesh Kumar Shukla, Member (Technical)

ORDER

This is a joint First Motion Application filed by Applicant Companies namely; **Napino Digital Solutions Pvt. Ltd.** (for short hereinafter referred to as First Applicant Company) and **Napino Auto and Electronics Ltd** (for short hereinafter referred to as Second Applicant Company) and under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 (the Act) read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamations between the Applicant Companies. The said Scheme is attached as Annexure C of the Application.

2. It is submitted that the registered office of both First and Second Applicant Companies are situated at Plot No. 7, Sector 3, IMT Manesar, Gurgaon, which are in the State of Haryana and therefore, it is under the territorial jurisdiction of this Bench.

3. The Applicant Companies has prayed for dispensing with requirement for convening the meeting of Equity Shareholders of Applicant Companies in view of the written consent given by 100% equity shareholders of First Applicant Company and 99.99% equity shareholders of Second Applicant Company by way of affidavits.

4. It is further prayed that there is no requirement for convening the meeting of secured creditors of First Applicant Company as there are no secured creditors of First Applicant Company as on the date of filing the petition.

5. It is further prayed to pass necessary directions for convening the meetings of the secured creditors of Second Applicant Company and unsecured creditors of both the Applicant Companies and including but not limited to directions regarding issuance of notices, appointment of Chairpersons, Alternate Chairperson and Scrutinizer, fixing of quorum, fixing of fees of the Chairperson and Scrutinizer and publication of advertisement in the newspapers.

6. The First Applicant Company is presently engaged in the business of developing and selling software relating to internet of things (IOT) products.

7. The Second Applicant Company has set out its main objects to carry on the business of manufacturing and supplying of automotive electronic products.

8. The purpose and rationale of the Scheme as pleaded by the applicant companies is reproduced below:

“Pursuant to the proposed merger, the management of the applicant companies foresee the following benefits: -

- I. Greater integration and financial strength for the amalgamated entity, which would result in maximizing overall shareholder value and will improve the financial position of the amalgamated entity;*
- II. The amalgamation would lead to greater and efficient use of the available resources;*
- III. Reduction of number of entities and administrative cost;*
- IV. Simplification of group structure.”*

9. In part B of the Scheme, it is mentioned that the NDS i.e. the First Applicant Company is a wholly owned subsidiary of Napino Auto and accordingly, pursuant to the scheme, no new shares shall be issued by Napino Auto upon the scheme becoming effective.

10. It is stated that the Board of Directors of the First Applicant Company at their Board meeting held on 06.07.2023 approved and adopted the scheme subject to the approval of the Central Government and other concerned authorities and agencies and the sanctioning of the same by this Tribunal. The certified true copy of the Board Resolution dated 06.07.2023 approving the scheme is attached at Annexure D-1 of the application.

11. It is further stated that the Board of Directors of the Second Applicant Company at their Board meeting held on 06.07.2023 approved and adopted the scheme subject to the approval of the Central Government and other concerned authorities and agencies and the sanctioning of the same by this Tribunal. The certified true copy of the Board Resolution dated 06.07.2023 approving the scheme is attached at Annexure D-2 of the application.

12. The scheme refers to the appointed date in Part A (clause 1.2) as the "Appointed date", means 01.10.2022 or such other date as may be fixed or approved by the NCLT.

13. It is stated that the First Applicant Company has filed the audited financial statements for the year ending 31.03.2022 and provisional/unaudited financial statement for the period ending 31.03.2023, which are annexed as Annexure A-2 and A-3 respectively of the application.

14. It is stated that the Second Applicant Company has filed the audited financial statements for the period ending 31.03.2022 and provisional/unaudited financial statement for the period ending 31.03.2023, which are attached at Annexure-B-2 and B-3 respectively of the application.

15. It is submitted that the certificate issued by the statutory auditor for the Second Applicant company in relation to accounting treatment proposed in the Scheme of Amalgamation has been annexed as Annexure E.

16. The Scheme (Annexure C) refers to the services and benefits of staff, workmen and employees of the Applicant Companies, by virtue of Clause 8 of the Scheme.

17. The application in para 25 has pointed out that there are no winding up petition and/or insolvency proceeding under the Insolvency and Bankruptcy Code, 2016 pending against any of the applicant Companies and no investigation or proceedings under the Companies Act, 2013 have been instituted or are pending in relation to the applicant Companies.

18. The Applicant Companies has furnished the following documents:

- Proposed Scheme of Arrangement (Annexure-C of the application).
- Certificate of Incorporation along with Memorandum and Articles of Association of the Applicant Companies (Annexure- A-1 and B-1 for the First Applicant Company and Second Applicant Company respectively of the application).
- Certificate of CA stating list of Equity Shareholders of the First Applicant Company as on 15.06.2023 (Annexure- F of the application).
- Consent Affidavits of Equity Shareholders of the First Applicant Company (Annexure F-1 of the application).
- Consent Affidavits of Equity Shareholders of the Second Applicant Company as on 30.06.2023 (Annexure G of the application).

- Consent Affidavits of Equity Shareholders of the Second Applicant Company (Annexure G-1 of the application).
- Certificate of CA dated 07.07.2023 certifying that there are no Secured Creditor of the First Applicant Company as on 15.06.2023. (Annexure H of the application).
- Certificate of CA dated 07.07.2023 certifying list of Unsecured Creditors of the First Applicant Company as on 15.06.2023. (Annexure H-1 of the application).
- Certificate of CA dated 07.07.2023 certifying list of Secured Creditors of the Second Applicant Company as on 15.06.2023 (Annexure I of the application).
- Certificates of CA dated 07.07.2023 certifying list of unsecured Creditors of Second Applicant Company as on 15.06.2023 (Annexure I-1 of the application).
- Certificate of Statutory Auditors of Second Applicant Company in relation to accounting treatment is annexed as Annexure E of the application.
- Audited Financial Statement for the year ending 31.03.2022 and unaudited/provisional statement for period ending 31.03.2023 of the First Applicant Company (Annexure- A-2 and A-3 respectively of the application).
- Audited Financial Statement for the year ending 31.03.2022 and unaudited/provisional statement for period ending 31.03.2023 of the Second Applicant Company (Annexure- B-2 and B-3 respectively of the application).
- Copy of Company Master Data of First Applicant Company and Second Applicant Company (Annexure- A and B of the Application respectively).

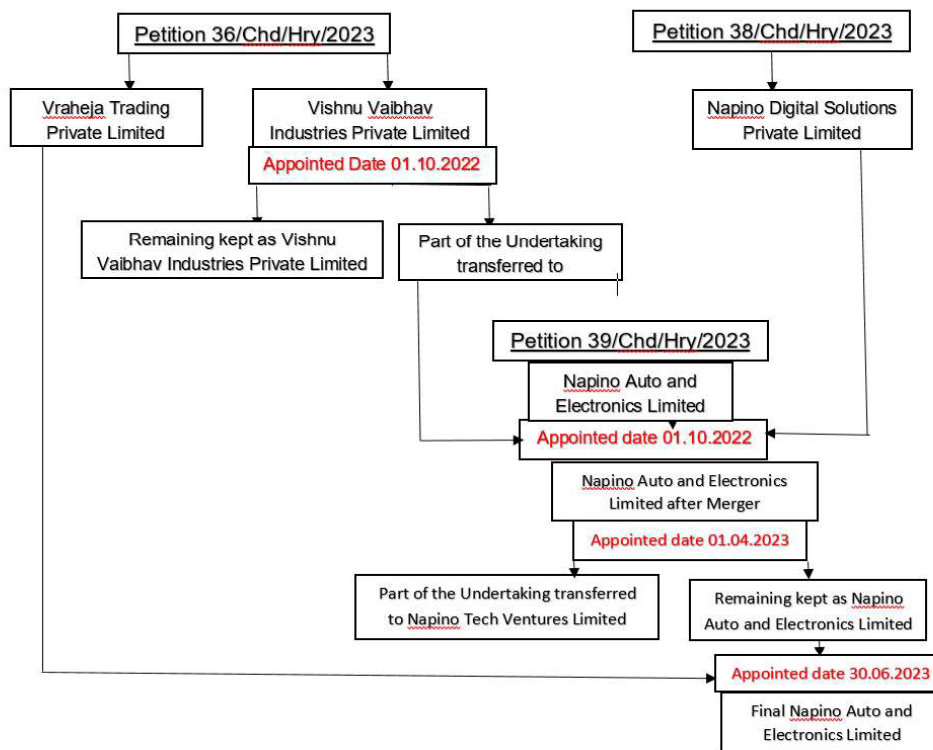
- Certified true copy of list of directors of First Applicant Company and Second Applicant Company as on June 15,2023. (Annexure A4 and B4 of the application respectively).
- Certified true copy of Board Resolution of First Applicant Company and Second Applicant Company dated July 6,2023 (Annexure D1 and D2 of the application).

19. The Applicant Companies have furnished the details of the Shareholders, Secured Creditors and Unsecured Creditors as follow:

Name of the Applicant Companies	Shareholders along with their consent on affidavit		Creditors along with their consents on affidavit			
	Equity Shareholders	Consents submitted on affidavit	Secured Creditors	Consents submitted on affidavit	Unsecured Creditors	Consents submitted on affidavit
First Applicant Company/ Transferor Company	2	2 in number/ 100% in value	0	NA	64	N/A meeting to be convened
Second Applicant Company/ Transferee Company	11	10 in number 99.99% in value	4	N/A Meeting to be convened	524	N/A Meeting to be convened

20. Accordingly, the directions of this Bench in the present case are as under-

- It is noted that there are two other connected petitions (CA(CAA) 36/Chd/Hry/2023 and CA(CAA)39/Chd/Hry/2023 pending for approval of this Tribunal involving Napino Auto and Electronics Limited. On examination of these petitions, it is noted that different appointed dates have been mentioned for different proposals as shown in the flow-chart given below:



On perusal of the above flow-chart, it is noted that the Vishnu Vaibhav Industries Private Ltd (hereinafter referred to as VVIPL) is proposed to be demerged on 01.10.2022 and the demerged undertaking of VVIPL (Petition No. 36) and Napino Digital Solutions Private Ltd (hereinafter referred to as NDSPL) (Petition No. 38) are proposed to be merged in Napino Auto and Electronics Ltd. (hereinafter referred to as NAEL) on 01.10.2022. After the merger of above undertaking/company, NAEL is proposed to be demerged on 01.04.2023 (Petition No. 39). Thereafter, on 30.06.2023, Vraheja Trading Pvt. Ltd. (hereinafter referred to as VTPL) (Petition No. 36) is proposed to be merged with the demerged undertaking of NAEL. In view of the above interplay of the companies involved in the said three petitions, this tribunal hereby prescribes the appointed date of scheme as 01.04.2023.

- II. The meeting of the Equity Shareholders of both Applicant companies and requirement of issue and publication of notices is dispensed with in view of the fact that 2 out of 2 equity shareholders holding 100% shares of First Applicant Company and 10 out of 11 equity shareholders holding 99.99% of shares of Second Applicant Company have given their consent to the scheme.
- III. The meeting of the Secured Creditors and the requirement of issue and publication of notices of the First Applicant Company is being dispensed with, since there are no secured creditors of First Applicant Company.
- IV. The meetings of the unsecured creditors of First Applicant Company be convened, as prayed for, on such date, time and venue either personally/ physically or through video conferencing with facility of remote e-voting, as may be decided by the Chairperson with the consent of Alternate Chairperson and Scrutiniser subject to individual notice of the meeting being issued. The quorum of the meeting of the Unsecured Creditors shall be 26 in number or 40% in value of the Unsecured Creditors.
- V. The meetings of the Secured and unsecured creditors of Second Applicant Company be convened, as prayed for, on such date, time and venue either personally/ physically or through video conferencing with facility of remote e-voting, as may be decided by the Chairperson with the consent of Alternate Chairperson and Scrutiniser subject to individual notice of the meeting being issued. The quorum of the meeting of the Secured and Unsecured Creditors shall be 2 and 210 respectively in number or 40% in value of the Secured and Unsecured Creditors.

- VI. In case the required quorum as noted above for the meetings is not present at the commencement of the meeting, the meeting shall be adjourned by 30 minutes and thereafter the persons present and voting shall be deemed to constitute the quorum.
- VII. Mr. Reshabh Bajaj, Advocate, Address: SCO 2468, Sector 22-C, Chandigarh-160022, Mobile No. 9855452676, email: reshabh@hotmail.com, is appointed as the Chairperson for the meeting to be called under this order. An amount of Rs.1,00,000/- (Rupees One Lakh Only) be paid for his services as the Chairperson.
- VIII. Mr. Anuj Kumar Agarwal, Address: 101, Siddarth Chambers 1, Kalu Sarai, Hauz Khas, New Delhi 110016 Mobile No. 9810347977, e-mail id: delhi@vsnlaw.in is appointed as the Alternate Chairperson for the meeting to be called under this order. An amount of Rs.75,000/- (Rupees Seventy Five Thousand only) be paid for his services as the Alternate Chairperson.
- IX. Mr. Sumit Ghai, Address: 426, MIG Flats, near Army Apartments, Phase 3, Balmiki Nagar, Urban Estate, Dugri, Ludhiana, Punjab-141013 Mobile No. 9463640466, email id: cssumitghai@gmail.com, is appointed as the Scrutinizer for the meeting to be called under this order. An amount of Rs.50,000/- (Rupees Fifty Thousand Only) be paid for his services as the Scrutinizer.
- X. The fee of the Chairperson, Alternate Chairperson and Scrutinizer and other out of pocket expenses for them shall be borne by the Applicant Companies jointly.

- XI. The Applicant companies are required to serve the notices to the unsecured creditors of the First Applicant company and Secured and Unsecured Creditors of the Second Applicant Company as discussed in Para IV and V above respectively, through courier or speed post or registered post, or through courier or e-mail, 30 days in advance before the scheduled date of meeting, indicating the day, date, the place and time as aforesaid, together with a copy of the Scheme, copy of explanatory statement with Valuation Report, copy of the order and any other documents as may be prescribed under the Act as per the list of creditors as on the date of passing of this Order in the same manner as the notices are to be served to various authorities as per Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- XII. It is directed that the audited accounting statement of Applicant Companies as on 31.03.2023 and the provisional accounting statement on a subsequent date in terms of Section 232 (2) (e) of the Act be also circulated for the aforesaid meeting.
- XIII. It is also directed that along with the notices, Applicant Companies shall also send, statements explaining the effect of the scheme on the creditors, key managerial personnel, promoters and non-promoter members etc. along with effect of the scheme of arrangement on any material interests of the Directors of the Company or the debenture trustees, if any, as provided under sub-section (3) of Section 230 of the Act.

- XIV. The Applicant Companies shall publish advertisement at least 30 days before the aforesaid meeting, indicating the day, date and place and the time of meeting as aforesaid, in newspapers having wide circulation in Haryana, where the registered Office of the applicant companies are situated namely "Financial Express" (English) and "Dainik Bhaskar (Hindi). It be stated in the advertisement that the copies of "Scheme", the Explanatory Statement required to be published pursuant to Section 230 to 232 of the Act. The Applicant Companies shall also publish the notice on its website, if any.
- XV. It shall be the responsibility of the Applicant Companies to ensure that the notices are sent under the signature and supervision of the authorized representative of the company on the basis of Board resolutions and that they shall file their affidavits in the Tribunal at least ten days before the date fixed for the meeting.
- XVI. Voting shall be allowed on the "Scheme" through electronic means which will remain open for a period as mandated under Clause 8.3 of Secretarial Standards on General Meetings to the Applicant Companies under the Act and the Rules framed thereunder.
- XVII. The Scrutinizer's report will contain his/her findings on the compliance to the directions given in Para XI to XVI above.
- XVIII. The Chairperson shall be responsible to report the result of the meeting to the Tribunal in Form No. CAA-4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 7 (seven) days of the conclusion of the meeting. The Chairperson would be

fully assisted by the authorized representative/ Company Secretary of the Applicant Companies and the Scrutinizer, who will assist the Hon'ble Chairperson and Alternate Chairperson in preparing and finalizing the report.

XIX. The Applicant Companies shall individually and in compliance of sub-section (5) of Section 230 of the Act and Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA-3 along with copy of the Scheme, Explanatory Statement, Copy of this order above and the disclosures mentioned in Rule 6 of the "Rules" to (i) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi (ii) Registrar of Companies, NCT of Delhi and Haryana (iii) the Official Liquidator (attached to Punjab and Haryana High Court); (iv) Income Tax Department through the Nodal Officer – Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh by mentioning the PAN number of the Applicant Companies; and to such other Sectoral Regulator(s) governing the business of the Applicant Companies, if any, stating that report on the same, if any, shall be sent to this Tribunal within a period of 30 days from the date of receipt of such notice and copy of such report shall be simultaneously sent to the applicant companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

XX. The Applicant Companies shall furnish a copy of the Scheme, Explanatory Statement, Accounting Statements (as referred to para XII above) and the disclosures mentioned in Rule 6 of the "Rules" free of charge within one

day of any requisition for the Scheme made by any creditor or member/shareholder.

XXI. The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meeting.

XXII. All the aforesaid directions are to be complied with strictly in accordance with the applicable laws including forms and formats contained in the Rules as well as the provisions of the Companies Act, 2013 by the Applicant Companies.

21. With the aforesaid directions, this First Motion Application stands disposed of. A copy of this order be supplied to the learned counsel for the Applicant Companies who in turn shall supply a copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer immediately.

-Sd-
(Umesh Kumar Shukla)
Member (Technical)

-Sd-
(Dr. P.S.N. Prasad)
Member (Judicial)

December 21, 2023

Vanshika

IN THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH (COURT – II)
(Through Hybrid Mode)

Item No. 4

COMP.APPL/14(CH)2024
In
CA(CAA) No. 38/Chd/Hry/2023
(1st Motion)
(Disposed of on 21.12.2023)
(Pb & Hry HC Directions)

IN THE MATTER OF

Napino Auto and Electronics Ltd.

...

Petitioner Company

Under Section: 230-232, CA 2013

Rule: 11 of NCLT, 2016

Order delivered on 17.05.2024

CORAM:

SHRI. SATYA RANJAN PRASAD,
HON'BLE MEMBER (T)

SHRI. P.S.N. PRASAD,
HON'BLE MEMBER (J)

PRESENT:

For the Applicant : Mr. Anand Chhibar, Senior Advocate with Mr.
Companies Shikhar Sarin, Advocate.

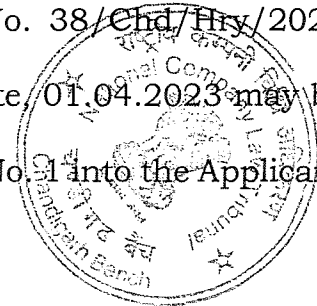
ORDER

COMP.APPL/14(CH)2024

Heard the submissions made by the learned counsel for the petitioner. The learned counsel for the petitioner has provided justification for having appointed date as prayed for in the application so as to make the scheme commercially viable and legally compliable. Having heard the submissions and having considered the facts and circumstances, COMP.APPL/14(CH)2024 stands allowed.

Consequently, the order passed in CA(CAA) No. 38/Chd/Hry/2023 stands modified only with regard to the appointed date, 01.04.2023 may be read as 01.10.2022 for merger of Applicant Company No. 1 into the Applicant

May 17, 2024
Mukta



Company No. 2. This order may be read as a part of the order dated 21.12.2023.

This Tribunal is of the view that since the petitioner has justified the appointed date. No specific order has been passed, wherever the context require. Let this daily order may be taken into account.

The main matter stands disposed of.

The case folders and connected papers are consigned to record room.

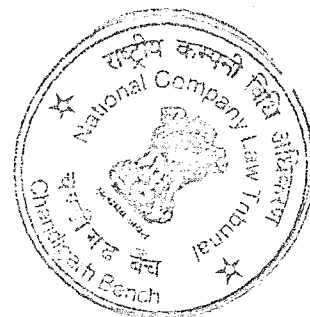
The learned counsel for the petitioner is directed to ensure that meetings are conducted at the earliest in the best interest of their proposal.

Sd/-
(SATYA RANJAN PRASAD)
HON'BLE MEMBER (T)

Sd/-
(DR. P.S.N. PRASAD)
HON'BLE MEMBER (J)

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DD/DR/AR/Court Officer
National Company Law Tribunal
Chandigarh Bench, Chandigarh



May 17, 2024
Mukta

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