

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

C.A No. 195/2023
and
CA (CAA) No.29/Chd/J&K/2023
(1st Motion)

Under Sections 230 to 232 and other applicable provisions of 'The Companies Act, 2013' read with 'The Companies (Compromises, Arrangements and Amalgamation) Rules, 2016' and Rule 11 of NCLT Rules, 2016

IN THE MATTER OF SCHEME OF AMALGAMATION OF:

1. AAA VEHICLEADES PRIVATE LIMITED.

CIN: U50100JK2008PTC002864
with its registered office at
Vehicleades, B.C. Road, Jammu,
Jammu and Kashmir-180001.
PAN: AAGCA74208

...Applicant No. 1/ Transferor Company No. 1

AND

2. PATHANKOT VEHICLEADES PRIVATE LIMITED.

CIN: U50102JK1995PTC001455
having its registered office at
B.C Road, Jammu,
Jammu and Kashmir- 180001
PAN: AAACP9610Q

...Applicant No. 2/ Transferor Company No. 2

AND

3. J AND K VEHICLEADES PRIVATE LIMITED.

CIN: U50101JK2001PTC002128
having its registered office at
Vehicleades, B.C Road, Jammu,
Jammu and Kashmir-180001
PAN: AABCJ7387D

... Applicant No. 3/ Transferor Company No. 3

WITH

4. JAMKASH VEHICLEADES PRIVATE LIMITED

CIN: U35912JK1993PTC001343

having its registered office at
Vehicleades, B.C Road, Jammu,
Jammu and Kashmir-180001
PAN: AAACJ4126D

... Applicant No. 4/ Transferee Company

Order delivered on: 07.05.2024

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

Present:

For Applicant Companies: Mr. Nahush Jain, Advocate

**Per: Dr. PSN Prasad, Member (Judicial)
Umesh Kumar Shukla, Member (Technical)**

ORDER

This is a Joint First Motion Application filed by Applicant Companies namely; **AAA Vehicleades Private Limited** (hereinafter referred to as 'Applicant No.1' or 'Transferor Company No. 1'), **Pathankot Vehicleades Private Limited** (hereinafter referred to as 'Applicant No. 2' or 'Transferor Company No. 2'), **J and K Vehicleades Private Limited** (hereinafter referred to as 'Applicant No. 3' or 'Transferor Company No. 3') and **Jamkash Vehicleades Private Limited** (hereinafter referred to as 'Applicant No. 4' or 'Transferee Company') under Sections 230 to 232 and other applicable provisions of 'The Companies Act, 2013' (hereinafter referred to as the 'Act') read with 'The Companies (Compromises, Arrangements and Amalgamation) Rules, 2016' (hereinafter referred to as the 'Rules') in relation to the Scheme of

Amalgamation (hereinafter referred to as the 'Scheme') of the Applicant Companies seeking appropriate order for dispensation/ convening of the meetings of shareholders, secured creditors and unsecured creditors. A copy of the said Scheme is attached as Annexure A-1 of the Application.

2. The registered offices of all the Applicant Companies are situated in the UT of Jammu and Kashmir, therefore, the subject matter of the application is within the jurisdiction of this Bench.

3. The Facts of the case, as stated in the application, are as below:

- (i) AAA Vehicleades Private Limited or Applicant No. 1 was incorporated on 08.01.2008 under the Companies Act, 1956 as a limited company with limited liability and Certificate of Incorporation was issued by the Registrar of the Companies, Jammu and Kashmir. Its registered office address is Vehicleades, B.C Road, Jammu, Jammu and Kashmir, JK-180001. Its authorized share capital is Rs.10,00,00,000/- divided into 10,00,000 equity shares of Rs.100/- each and subscribed, issued & paid up share capital is Rs.9,95,00,000/- divided into 9,95,000 equity shares of Rs.100/- each. Subsequent to 30.09.2021, there has been no change in the capital structure of the company. The main/ principal objects of the company, as set out in its Memorandum of Association are as under:

“(i) To carry on the business in India or elsewhere the business of dealers agents, stockist, distributors, importers, exporters, buyers and sellers of motor vehicles and automobiles of all kinds and descriptions including cars, jeeps, buses, trucks, scooters, motor cycles, mopeds, three wheelers.

“(ii) To carry on the business of importing, exporting, manufacturing, assembling, producing, exhibiting, using, manipulating, working, distributing, buying, selling and otherwise dealing in all kinds of automobile spare parts and accessories for automobiles, omni buses, motor cars, motor cycles, bicycles, tractors, agricultural implements, industrial engines, velocipedes, aero planes, sea planes, hydroplanes,

gliders vehicles and carriages and other vehicles of all kinds, whether moved by mechanical power or not.

(iii) To carry on the business in India and elsewhere to manage, run, establish, install and build service stations, workshops, garages, denting and painting units, battery service stations, fuel stations, petrol pumps, tyre re-trading units, upholstery units, body building units to convert, care, finish, handle, lubricate, hire, alter, improve, clean, service, repair, shape, paint, weld, renovate, import, export, buy, sell, and equip motor vehicles, and automobiles of all descriptions, specifications, varieties, sizes, shapes, dimensions, capacities and to carry on the business of purchase, sale, export, import of oil and petroleum products of all kinds and descriptions.

(iv) To carry on the business of selling and servicing of all kinds of insurance products in retail or wholesale or otherwise and develop create website online portal or mobile application for the selling and servicing of insurance products.”

(ii) Pathankot Vehicleades Private Limited or Applicant No. 2 was incorporated on 08.06.1995 under the Companies Act, 1956 as a limited company with limited liability and Certificate of Incorporation was issued by the Registrar of the Companies, Jammu and Kashmir. Its registered office address is B.C Road, Jammu, Jammu and Kashmir, JK-180001. Its authorized share capital is Rs.1,00,00,000/- divided into 1,00,000 equity shares of Rs.100/- each and subscribed, issued & paid up share capital is Rs.57,00,000/- divided into 57,000 equity shares of Rs.100/- each. Subsequent to 30.09.2021, there has been no change in the capital structure of the company. The main/ principal objects of the company, as set out in its Memorandum of Association are as under:

“(i) To be an automobile dealer of Car, Truck, Scooter & also deal in spare parts, accessories & running of automobiles workshop.

(ii) To carry on the business of selling and servicing of all kinds of insurance products in retail or wholesale or otherwise and develop create website online portal or mobile application for the selling and servicing of insurance products”.

(iii) J and K Vehicleades Private Limited or Applicant No. 3 was incorporated on 23.01.2001 under the Companies Act, 1956 as a limited company with limited liability and Certificate of Incorporation was issued by the Registrar of the Companies, Jammu and Kashmir. Its registered office address is

Vehicleades, B.C Road, Jammu, Jammu and Kashmir, JK-180001. Vehicleades B.C Road, Jammu, Jammu and Kashmir, JK-180001. Its authorized share capital is Rs.2,20,00,000/- divided into 2,20,000 equity shares of Rs.100/- each and subscribed, issued & paid up share capital is Rs.2,18,25,000/- divided into 2,18,250 equity shares of Rs.100/- each. Subsequent to 30.09.2021, there has been no change in the capital structure of the company. The main/ principal objects of the company, as set out in its Memorandum of Association is as under:

- “(i) To be an automobile dealer of Car, Truck, Scooter & also deal in spare parts, accessories & running of automobiles workshop.*
- “(ii) To carry on the business of selling and servicing of all kinds of insurance products in retail or wholesale or otherwise and develop create website online portal or mobile application for the selling and servicing of insurance products”.*

- (iv) Jamkash Vehicleades Private Limited or Applicant No. 4 was incorporated on 04.03.1993 under the name and style of Janki Motors Private Limited under the Companies Act, 1956 as a private limited company with limited liability. In 2002, the Company had changed its name from Janki Motors Private Limited to Jamkash Vehicleades Private Limited. Its registered office address is Vehicleades, B.C Road, Jammu, Jammu and Kashmir, JK-180001. Vehicleades B.C Road, Jammu, Jammu and Kashmir, JK-180001. Its authorized share capital is Rs.10,00,00,000/- divided into 1,00,00,000 equity shares of Rs.10/- each and subscribed, issued & paid up share capital is Rs.9,77,88,250/- divided into 97,78,825 equity shares of Rs.10/- each. Subsequent to 30.09.2021, there has been no change in the capital structure of the company. The main/ principal objects of the company, as set out in its Memorandum of Association is as under:

- “(i) To carry on the business of merchants, agents and dealers of Motor car, bus & Truck, Chassis, jeeps, two wheelers, scooters, Motor cycle & mopeds, three wheelers, auto rickshaws and load carriers, tractors and their accessories, heavy and light earth moving machine and allied accessories, automobiles spare parts readymade bodies and other automobile machinery of all types and kinds.*
- (ii) To carry on the business of representatives of manufacturers of automobile machinery spare parts & accessories.*
- (iii) To carry on the running workshop and to undertake and execute of all type of mechanical & automobiles body building job.*
- (iv) To carry on the business of selling and servicing of all kinds of insurance products in retail or wholesale or otherwise and develop create website online portal or mobile application for the selling and servicing of insurance products.*
- (v) The lists of Directors of Applicant Nos.1, 2, 3 and 4 have been annexed with the Application as Annexure A-8-A, Annexure A-21, Annexure A-34 and Annexure A-47 respectively. The copy of master data, PAN and Certificate of Incorporation of Applicant Nos.1, 2, 3 and 4 have been annexed with the Application as Annexure A-3, Annexure A-15, Annexure A-28 and Annexure A-41 respectively. The certified true copy of Memorandum and Articles of Association of Applicant Nos.1, 2, 3 and 4 have been annexed with the Application as Annexure A-4, Annexure A-16, Annexure A-29, Annexure A-42 respectively.
- (vi) The copy of audited balance sheet and profit and loss account as on 31.03.2021 of Applicant No. 1, 2, 3 and 4 have been annexed with the Application as Annexure A-5, Annexure A-17, Annexure A-30 and Annexure A-43 respectively. The copy of provisional balance sheet and profit and loss account as on 31.03.2022 of Applicant Nos. 1, 2, 3 and 4 have been annexed with the Application as Annexure A-6, Annexure A-18, Annexure A-31 and Annexure A-44 respectively.

(vii) The Board of Directors of the Applicant No. 1, 2, 3 and 4 have approved and recommended the Scheme and exchange ratio at their Board Meetings held on 08.11.2021 respectively and copy of the Board Resolutions dated 08.11.2021 of the Applicant No. 1, 2, 3 and 4 have been annexed with the Application as Annexure A-13, Annexure A-26, Annexure A-39 and Annexure A-52 respectively.

(viii) The benefits of the Scheme of Amalgamation/Merger are as under given below:

- i. Enable the companies to pool their resources. The proposed amalgamation will result in consolidation of the business of the Transferor companies with the business of the Transferee Company;*
- ii. The amalgamated entity will provide strategic and competitive advantage due to its increased size and integration of the businesses and will enable better integration of the businesses and will enable better prospects for the business of the Companies;*
- iii. The amalgamation will result in economies of scale;*
- iv. The amalgamation/merger will provide the companies with the resources to invest in Transferee Company and provide long-term profitable growth to the shareholders. With the increase in competition and squeezing margins, more investment will be needed in the transferee Company.*
- v. The amalgamated/merged company will have better financial and business prospects. The scheme shall be beneficial and will be in public interest, as it will immediately provide strength to the Transferee Company on its merger with the Transferor companies.*
- vi. It would be advantageous to combine the activities of the companies involved in the amalgamation/merger into a single Company. The amalgamation would provide synergistic linkages, besides reduction in costs by combining the total business functions and the related activities and thus contribute to the profitability of the amalgamated Company.*
- vii. A larger growing Company will mean enhanced financial and growth prospects for the people and organization connected with the Company, and will be in public interest.*
- viii. It will be conducive for better and more efficient and economical control and business and financial conduct of the Companies.*
- ix. 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.*
- x. There shall be a significant reduction in the multiplicity of regulatory and legal compliances / filings including accounting, reporting requirements, statutory*

audit requirements, tax filings, multiple records keeping etc. other compliances and consequential reduction in administrative costs and optimal utilization of resources of all the companies.

- xi. 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.*
- xii Greater integration and greater financial strength and flexibility for the Transferee Company, which would result in maximizing overall shareholder value, and will improve the competitive position of the combined entity.*
- xiii All the employees of the Transferor Companies in service on the Effective Date, if any, shall become the employees of the Transferee Company on and from such date without any break or interruption in service and upon terms and conditions not less favourable than those subsisting in the Transferor Company as on date.*
- xiv It will also help in better tax planning and tax management. It will suffice the purpose of reducing debts by pooling of resources of the merged entities.”*

(ix) The effect of the proposed scheme is reproduced as below:

- “i. The merger of AAA Vehicleades Private Limited, Pathankot Vehicleades Private Limited, J and K Vehicleades Private Limited into Jamkash Vehicleades Private Limited.*
- ii. The existence of the company Jamkash Vehicleades Private Limited shall be final on proposed merger of the all the Companies, however the name AAA Vehicleades, Pathankot Vehicleades, Kangra Vehicleades (A Unit Of Pathankot Vehicleades) and J and K Vehicleades will remain and act as a units/ brands/ divisions of Jamkash Vehicleades Private Limited*
- iii. Other matters consequential or otherwise integrally connected to the foregoing.”*

(x) As per the copy of the Valuation Report dated 18.10.2021 of Mr. Subodh Kumar, IBBI Registered Valuer (Registration No. IBBI/RV/05/2019/11705), Chartered Accountants, Jammu annexed with the Application as Annexure A-2, upon Scheme becoming effective and in consideration of the transfer and vesting of the entire business and the whole of the undertakings of the Transferor companies in the Transferee Company, the Transferee Company shall, without any further act, application, instrument or deed, issue and allot shares in the following ratio:

- “a. 1 (One) equity shares of Rs.10/- each fully paid up to the shareholders of the Transferor company-I (other than Transferee Company), whose name(s) appear in the Register of Members of the Transferor company-I as on the record date or to the*

heirs, executors, administrators or the successor's in-title of such shareholders in the ratio of 1:0.48, 0.48 (Zero point Forty Eight) equity shares of Rs.10/- each in the Transferee Company for every 01 (one) equity shares of Rs. 10/- each in the Transferor company-I ("Transferor companies Share Entitlement Ratio");

- b. 1 (One) equity shares of Rs. 10/- each fully paid up to the shareholders of the Transferor company-II (other than Transferee Company), whose name(s) appear in the Register of Members of the Transferor company-II as on the record date or to the heirs, executors, administrators or the successor's in-title of such shareholders in the ratio of 1:19.31, 19.31 (Nineteen Point Thirty one) equity shares of Rs.10/- each in the Transferee Company for every 01 (one) equity shares of Rs. 10/- each in the Transferor company-II ("Transferor companies Share Entitlement Ratio");*
- c. 1 (One) equity shares of Rs. 10/- each fully paid up to the shareholders of the Transferor company-III (other than Transferee Company), whose name(s) appear in the Register of Members of the Transferor company-III as on the record date or to the heirs, executors, administrators or the successor's in-title of such shareholders in the ratio of 1:1.12, 1.12 (One Point Twelve) equity shares of Rs.10/-each in the Transferee Company for every 01 (one) equity shares of Rs. 10/- each in the Transferor company-III ("Transferor companies Share Entitlement Ratio");*
- d. Accordingly, every equity shareholder (other than the Transferee Company) holding shares in "Transferor companies" i.e. AAA Vehicleades Private Limited, Pathankot Vehicleades Private Limited, J and K Vehicleades Private Limited shall become a shareholder of the "Transferee Company i.e. Jamkash Vehicleades Private Limited by virtue of the merger of Transferor Companies with Transferee Company pursuant to this Scheme. If any shareholder of "Transferor companies" becomes entitled to any fractional shares, entitlements or credit on the issue and allotment of equity shares, the Transferee Company shall not issue fractional share certificates to such shareholder. Such fractional entitlements shall be ignored."*

(xi) The terms of Amalgamation will be as below:

- i. The transfer of the Transferee Company of the whole or any part of the undertaking, property or liabilities of the transferor companies from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;*
- ii. the allotment or appropriation by the transferee Company of any shares, debentures, policies or other like instruments in the Company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:*
Provided that a transferee Company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;
- iii. the continuation by or against the transferee company of any legal proceedings pending by or against any transferor companies on the date of transfer;*
- iv. dissolution, without winding-up, of the transferor Companies;*
- v. where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance*

with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;

However, in the present scheme of merger/amalgamation, there is no non-resident shareholder.

- vi. the transfer of the employees of the transferor companies to the Transferee Company;*
- vii. where the transferor companies are dissolved, the fee, if any, paid by the transferor companies on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation. The Authorised Capital of the Transferee Company/Applicant Company-IV after the sanctioning of the scheme of merger/amalgamation by the Hon'ble National Company Law Tribunal shall be Rs.23,20,00,000/- (Rupees Twenty Three Crore and Twenty Lacs Only) divided into 2,32,00,000/- (Two Crore Thirty Two Lakh Only) Equity Shares of Rs.10/-(Rupees Ten Only) each i.e. combined authorised capital of the companies involved in the scheme of merger/amalgamation; and*
- viii. such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out:*
- ix. Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect.”*

(xii) The Statutory Auditors of the Applicant Companies have issued the certificate to the effect that the accounting treatment proposed in the Scheme of merger/ amalgamation of the Applicant Companies is in conformity with the Accounting Standard prescribed under Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies (Accounts) Rules, 2014, which have been annexed with the Application as Annexure A-14, Annexure A-27, Annexure A-40 and Annexure A-53 for the Applicant No. 1, 2, 3 and 4 respectively.

(xiii) The present scheme would be in the best interest of the Transferor Companies and Transferee Company and their respective shareholders, public interest and others.

- (xiv) The Scheme is does not intend in any manner, to have any beneficial effect on the material interest, if any, of the Directors of the Applicant Companies, except to the extent of their shareholdings in the Transferee Company, if any.
- (xv) The Directors of all the Applicant Companies and also their relatives have no material interests in the proposed Scheme of Amalgamation/ Merger except for commonality in shareholding. The Directors and Key Managerial Personnel of the Applicant Companies shall not be deemed to be interested in the proposed Scheme save to the extent of the shares held by them in the applicant companies, if any.
- (xvi) No proceedings under Sections 235 to 251, 397 and 398 of the Companies Act, 1956 and/ or Sections 206 to 229 and 241 of the Companies Act, 2013 have ever been instituted against the Applicant Companies.
- (xvii) The scheme of Amalgamation/merger does not intend in any manner, the reduction of share capital of the Applicant Companies or corporate debt restructuring of any of the Applicant Companies pursuant to Section 230(2)(b) and (c) of the Companies Act, 2013, and hence a creditor's responsibility statement and other requirements under Section 230(2)(c) are not applicable to the present case.
- (xviii) The assets of the amalgamated company shall be sufficient to meet the liabilities of Transferor Companies.
- (xix) The Applicant Companies are not governed by any of the Sectoral Regulators/ Authorities including CCI, IRDA, SEBI, RBI or other

authorities. Therefore, no notice is required to be issued to any sectoral regulator. The affidavit with regard to same is annexed with the application as Annexure A-54.

(xx) The Applicant Companies have not filed any application, writ petition or suit before any other court covering the matter in respect of which the present petition has been filed.

(xxi) As on 30.09.2021, Transferor Company No.1 has 04 equity shareholders, 02 secured creditors and 97 unsecured creditors representing amount of Rs.9,95,00,000/-, Rs.1,06,78,63,150/- and Rs.39,74,02,241/- respectively and no preference shareholders. The lists of equity shareholders, secured creditors and unsecured creditors dated 30.09.2021 certified by Chartered Accountant have been annexed with the Application as Annexure A-7, Annexure A-9 and Annexure A-11 respectively and their consents by way of affidavits have been annexed with the Application as Annexure A-8, Annexure A-10 and Annexure A-12 respectively.

(xxii) As on 30.09.2021, Transferor Company No. 2 has 02 equity shareholders, 10 secured creditors and 95 unsecured creditors representing amount of Rs.57,00,000/-, Rs.58,21,94,940/- and Rs.27,96,31,184.60/- respectively and no preference shareholders. The lists of equity shareholders, secured creditors and unsecured creditors dated 30.09.2021 certified by Chartered Accountant have been annexed with the Application as Annexure A-19, Annexure A-22 and Annexure A-24 respectively and their consents by way of affidavits have been annexed with the Application as Annexure A-20, Annexure A-23 and Annexure A-25 respectively.

(xxiii) As on 30.09.2021, Transferor Company No.3 has 03 equity shareholders, 03 secured creditors and 34 unsecured creditors representing amount of Rs.2,18,25,000/-, Rs.15,85,06,810.11/- and Rs.2,31,97,330/- respectively and no preference shareholders. The lists of equity shareholders, secured creditors and unsecured creditors dated 30.09.2021 certified by Chartered Accountant have been annexed with the Application as Annexure A-32, Annexure A-35 and Annexure A-37 respectively and their consents by way of affidavits have been annexed with the Application as Annexure A-33, Annexure A-36 and Annexure A-38 respectively.

(xxiv) As on 30.09.2021, Transferee Company has 02 equity shareholders, 12 secured creditors and 70 unsecured creditors representing amount of Rs.9,77,88,250/-, Rs.1,01,25,62,520.54 and Rs.33,75,54,250.99/- respectively and no preference shareholders. The lists of equity shareholders, secured creditors and unsecured creditors dated 30.09.2021 certified by a Chartered Accountant have been annexed with the Application as Annexure A-45, Annexure A-48 and Annexure A-50 respectively and their consents by way of affidavits have been annexed with the Application as Annexure A-46, Annexure A-49 and Annexure A-51 respectively.

(xxv) The Applicant Companies have prayed for dispensing with the requirement of convening the meetings of equity shareholders of Applicant No. 1, 2, 3 and 4 in view of the fact that all of their equity shareholders have consented to the waiver of the meetings to be convened for sanctioning of the Scheme, subject to necessary directions of the Tribunal.

(xxvi) As per the application, only 1.25%, 2.60%, 9.72% and 4.40% of value of the secured creditors of Applicant No. 1, 2, 3 and 4 respectively have given their consents in writing in form of affidavits to the proposed Scheme and the consents of remaining secured creditors were awaited. It is not necessary that the meeting of secured creditors of the Applicant Companies be convened and held on the receipt of consent of more than 90% of the secured creditors. The Applicant Companies have prayed for dispensing with the holding the meetings of secured creditors of Applicant No. 1, 2, 3 and 4, if their consents have been received subsequently.

(xxvii) The Applicant Companies have prayed for dispensing with the requirement of convening the meetings of unsecured creditors of Applicant No. 1, 2, 3 and 4 in view of the fact that 99.32%, 93.72%, 92.34% and 98.68% of value of unsecured creditors of Applicant No. 1, 2, 3 and 4 respectively have consented to the waiver of the meeting to be convened for sanctioning of the Scheme, subject to necessary directions of Tribunal.

(xxviii) The Amalgamation and Merger of the respective Transferor Companies with the Transferee Company shall take effect from the Appointed Date as mentioned in the Scheme of Amalgamation/ Merger, which in Clause 1.2, Part-A of the Scheme, has been mentioned as 01.04.2021 or such other date as may be approved by this Tribunal.

(xxix) Subsequently, Applicant Companies filed C.A No.195/2023, vide diary no. 03461 dated 18.10.2023 with the following prayer:

- To take on record the original consent affidavits of secured creditors of Applicant Companies (attached with the CA as Annexure A10A, Annexure

A23A, Annexure A36A, and Annexure A49A respectively), to consider dispensation of meetings of the said secured creditors of the Applicant No. 1, 2, 3 and 4 while passing the orders for dispensation of the meeting in CA (CAA) No.29/Chd/J&K/2023.

- To take on record affidavit in terms of Section 230(2) of the Companies Act, 2013 (attached with the CA as Annexure A-55) as well as affidavit for non-applicability of CCI (attached with the CA as Annexure A-60).
- To take on record audited financials of the Applicant No. 1, 2, 3 and 4 as on 31.03.2022 (annexed with the CA as Annexure A-56A, Annexure A-57A, Annexure A-58-A and Annexure A-59A respectively) and financials of the applicant companies as on 31.03.2023 (annexed with the CA as Annexure A-56B, Annexure A-57B, Annexure A-58B and Annexure A-59B respectively).
- To consider application as part and parcel of the Company Application CA (CAA) NO. 29/CHD/J&K/2023 (first motion application), while passing orders for dispensation of meetings or convening of meetings of shareholders and creditors (secured and unsecured) of all Applicant Companies, or any other order as deemed appropriate.

4. The above documents were taken on record by this Tribunal vide its order dated 15.12.23. In view of the above, C.A No.195/2023 now stands allowed.

5. The details furnished by the Applicant Companies in the Application/ CA No.195/2023 with regard to consent of the equity shareholders, secured creditors and unsecured creditors is as follows:

Name of the Applicant Companies	Equity Shareholders		Secured Creditors		Unsecured Creditors	
	Total Number	Consents on Affidavits	Total Number	Consents on Affidavits	Total Number	Consents on Affidavits
Applicant No. 1/ Transferor Company No. 1	4	4 constituting 100% of shareholding	2	2 constituting 100% in value	97	76 constituting 99.32% in value
Applicant No. 2/ Transferor Company No. 2	1	1 constituting 100% of shareholding	10	9 constituting 95.87% in value	95	63 constituting 93.72% in value
Applicant No. 3/ Transferor Company No. 3	3	3 constituting 100% of shareholding	3	3 constituting 100% in value	34	25 constituting 92.34% in value
Applicant No. 4/ Transferee Company	2	2 constituting 100% of shareholding	12	11 constituting 95.80% in value	70	50 constituting 98.68% in value

ANALYSIS AND FINDING

6. Since this is the first motion application seeking order for dispensation/ convening of the meetings of shareholders/ creditors, the analysis has been limited to that and other issues would be analysed at the time of second motion petition of the Applicant Companies. The Applicant Companies have submitted their audited financial statements as on 31.03.2022 and 31.03.2023, but the list of equity shareholders and secured/ unsecured creditors as on 30.09.2021 certified by the Chartered Accountants have been furnished along with the Application.

7. From the audited financial statements as on 31.03.2023, it is noted that the composition of equity shareholders as furnished vide list of equity shareholders of Applicant Companies remained the same, but the composition of Secured and Unsecured Creditors have significantly changed.

8. In view of the above, the directions of this Bench in the present case are as under:

- I. The 'Appointed Date' shall be 01.04.2024.
- II. The meetings of the equity shareholders of Applicant No. 1 to 4 are dispensed with keeping in view the shareholding and ownership pattern and the fact that the consent to the proposed scheme of amalgamation by way of affidavits has been furnished by all the equity shareholders of respective

Applicant companies as per the list of equity shareholders certified by the Chartered Accountants. The requirement of issue and publication of notices for the same are also being dispensed.

III. It has been submitted in the joint application that Applicant No.1, 2, 3 and 4 have received the consents by way of affidavits of 100%, 95.87%, 100% and 95.80% of the amount of secured creditors respectively and the consent of 99.32%, 93.72%, 92.34% and 98.68% of the amount of unsecured creditors respectively. Keeping in view of the above and the observations in para 6 of this order, the convening of meeting of the secured and unsecured creditors of Applicant Companies are dispensed with subject to strict compliance of the conditions laid down herein:

- a. The Applicant No.1, 2, 3 and 4 shall file their respective complete list of current secured creditors as well as unsecured creditors duly certified by the Statutory Auditors of the respective Companies on the date of passing of this Order, with the Registry within a fortnight from the date of Order.
- b. The Applicant No.1, 2, 3 and 4 are required to serve the notices through speed post/ courier/ email upon their current secured creditors as well as unsecured creditors having outstanding debt amounting to not less than one percent of total outstanding debt of respective secured creditors as well as unsecured creditors of the respective company as per the complete list of respective secured creditors as well as unsecured creditors as on the date of passing of this Order in the same manner, as the notices shall 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 with suitable changes in the notice relating to waiver of the meetings and with a direction that they may submit their representations, if any, to the Tribunal and a copy of the same shall be simultaneously served on the concerned Applicant Company. If no response is received from such creditors within 30 days of the date of receipt of the notice, it shall be presumed that such creditors have no objection to the proposed Scheme.

- c. The notices to be served under Section 230 (5) of the Companies Act, 2013 as aforesaid shall contain all disclosures as mentioned in Rule 6(3) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 irrespective of the fact that meetings have been dispensed with.
- d. All the Applicant Companies shall furnish a copy of the Scheme free of charge within 1 day of any requisition for the same made by every creditor as mentioned above or member of the concerned Applicant Companies.
- e. All the Applicant Companies to serve the notice upon the (a) Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; (b) concerned Registrar of Companies; (c) concerned Income Tax Department; (d) concerned Official Liquidator and to such other Sectoral Regulator(s) governing the business of the Applicant Companies, if any, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations)

Rules, 2016 with suitable changes in the notice relating to waiver of the meetings. If no response is received by the Tribunal from the above authorities within 30 days of the date of receipt of the notice it will be presumed that such authorities have no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

f. All the Applicant Companies shall file an affidavit in compliance of all the conditions laid down herein along with original proof of service to all the authorities and creditors.

9. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition in accordance with Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 15 days after the expiry of period of 30 days as mentioned in Section 230(5) of the Companies Act, 2013.

10. A copy of this order be supplied to the learned counsel for the Applicant Companies.

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

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

May 07, 2024
AKS