

THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I)

COMPANY PETITION NO. (CAA) 4/Chd/Chd/2022
Connected with
COMPANY APPLICATION NO. (CAA) 35/Chd/Chd/2020

IN THE MATTER OF SCHEME OF AMALGAMATION:

JANAK GLOBAL RESOURCES PRIVATE LIMITED

Registered office at- No. 315, Industrial Area,
Phase-1, Panchkula-134113

...Petitioner No. 1/Transferor Company No. 1

AND

CHANDIGARH MALT PRIVATE LIMITED,

Registered office at No. 63/209, BaghDiwar,
Fatehpuri, Delhi-110006

...Non-Petitioner/Transferor Company No. 2

AND

FAB CRAFT INDUSTRIES PRIVATE LIMITED,

Registered office at SCO 18-19, Sector 9-D,
Chandigarh-160009

...Petitioner No. 2/Transferor Company No. 3

AND

SHIVAKS IMPEX LIMITED,

Registered office at Plot No. 561, Phase-5,
Udhyog Vihar,
Gurugram, Haryana-121001

...Petitioner No. 3/Transferor Company No. 4

AND

AMARTEX INDUSTRIES LIMITED,

Registered office at House No. 1846, Sector-34-D,
Chandigarh-160022

...Petitioner No. 4/Transferee Company

AND

THEIR RESPECTIVE SHAREHOLDERS AND DEBENTURE HOLDERS

Judgement Delivered on: 02.07.2024

Section: 230 to 232 of the Companies Act,2013

CORAM:

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT

For Petitioner Companies : Mr. Atul V Sood, Advocate

For the RD/ROC : Mr. Vineet Khatri, Company Prosecutor

For the OL : Mr. Edward Augustine George, Advocate

For the Income Tax : Mr. Yogesh Putney, Advocate

Judgement

PER: SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)

The present Second Motion Petition is preferred by the Petitioner Companies jointly under Section 230-232 of the Companies Act, 2013 read with the Companies (Compromise, Arrangements, and Amalgamations) Rules, 2016 for approval of the Scheme of Amalgamation (hereinafter referred to as '**Scheme**'), as contemplated amongst the Companies, their Shareholders and Creditors. A copy of the Scheme has been placed on record. The "Appointed date" as per clause 1.3 under Part I of the proposed "Scheme of Amalgamation" is 01.04.2018.

2. The brief particulars of the Companies proposed to be amalgamated, as placed on record, are given in the following paragraphs.

3. Janak Global Resources Private Limited (hereinafter, referred to as **“the Petitioner No. 1/Transferor Company No. 1”**), having CIN U17200HR2010PTC041252 issued by the Registrar of Companies (**“RoC”**) of NCT of Delhi and Haryana, is a company incorporated on 21.09.2010, under the Companies Act, 1956. The Company's registered office is at Plot No. 315, Industrial Area, Phase-1, Panchkula-134113. As per submissions, the company is in the business of designer or fashionable clothes and dress material etc.

4. Chandigarh Malt Private Limited (hereinafter referred to as the **“Non-Petitioner/Transferor Company No. 2”**), having CIN U74899DL1995PTC074798 issued by the Registrar of Companies (**“RoC”**) of NCT of Delhi and Haryana, is a company incorporated on 20.12.1995 under the provisions of the Companies Act, 1956. The Transferor Company No. 2 has its registered office at No. 63/209, Bagh Diwar, Fatehpuri, Delhi-110006. As per submissions, the company is in the business of manufacturing and trading of barley and malt products etc.

5. Fab Craft Industries Private Limited (hereinafter, referred to as **“the Petitioner No. 2/Transferor Company No. 3”**), having CIN U17290CH2012PTC033841 issued by the Registrar of Companies (**“RoC”**) of Punjab, Himachal Pradesh and Chandigarh, is a company incorporated on 05.06.2012, under the Companies Act, 1956. The Company's registered office is at SCO 18-19, Sector 9-D, Chandigarh-160009. As per submissions, the company is in the business of textiles, cotton silk etc.

6. Shivaks Impex Limited (hereinafter, referred to as “**the Petitioner No. 3/Transferor Company No. 4**”), having CIN U74999HR2005PLC035752 issued by the Registrar of Companies (“RoC”) of NCT of Delhi and Haryana, is a company incorporated on 02.06.2005, under the Companies Act, 1956. The Company's registered office is at Plot No. 561, Phase-5, Udhyog Vihar, Gurgaon, Haryana-121001. As per submissions, the company is in the business of trading in various kinds of products.

7. Amartex Industries Limited (hereinafter, referred to as “**the Petitioner No. 4/Transferee Company**”), having CIN U18110CH1988PLC007928 issued by the Registrar of Companies (“RoC”) of Punjab, Himachal Pradesh and Chandigarh, is a company incorporated on 27.01.1988, under the Companies Act, 1956. The Transferor Company's registered office is at SCO No. 18-19, Sector 9-D, Chandigarh-160009. As per submissions, the company is in the business of textiles, cotton silk etc.

8. The Registered offices of Transferor Company No. 1 and Transferor Company No. 4 are in the state of Haryana, and registered offices of Transferor Company No. 3 and Transferee Company are at Chandigarh therefore, the present petition is falls within the jurisdiction of this Bench. **Henceforward, together they are referred to as Petitioner Companies.** Registered Office of the Transferor Company No. 2 (Non-Petitioner) is in Delhi, which is within the jurisdiction of New Delhi Bench and orders pertaining to that company shall be obtained from the New Delhi Bench.

9. The Petitioner Companies have averred the following as regards the *justification and rationale* of the Scheme:

1. *“The Transferor Companies 1 and 3 are engaged in similar business as the Transferee Company and the Transferor Companies 2 and 4 are engaged in products which can be traded in various retail outlets owned by the Transferee Company, which will provide a synergy in terms of a common outlet under which variety of products can be retailed and Transferee Company will be benefitted by the footfall of customers which various requirements under one roof. The Transferor Companies are controlled by the same shareholders, directly or indirectly. This Scheme of Amalgamation, is being undertaken as part of the restructuring plan to simplify the holding structure through consolidation of the companies with commonality of shareholders into one single entity.*

2. *The Scheme is expected to achieve various objectives, including:*
 - a. *The Transferee Company will have the benefit of the combined assets, cash flows and man power of the Transferor Companies. These combined resources will enhance its capability to expand and improve its efficiency of operations, better administration and cost reduction.*

 - b. *The amalgamation would enable seamless access to strong business relationships, closer and better focused attention being given to the businesses of trading on one platform.*

 - c. *The amalgamation would result in consolidation of complementary businesses and related assets of the Transferor Companies with the Transferee Company, leading to synergistic linkages and benefits.*

 - d. *Pursuant to the Scheme, the existing multi-tiered structure would collapse, resulting in the entire business being housed in one entity only (i.e. Transferee Company).*

 - e. *The present scheme is an initial step strategically driven towards attracting investments in future for growth of the group. With the consolidation of similar businesses under a single entity, the entire aggregated turnover of all the companies, value of suppliers, value of business from customers, aggregated assets etc. and the consolidated balance sheet will be reflected under the one single entity i.e. the Transferee Company, making it more suitable and attractive as an investee company for prospective investors.*

f. Further, since strategic and financial investors have a criteria and prefer a certain history of turnover and business data of a prospective investee company, to consider the same for investment, it is found in the best interest of the stakeholders of the Companies to effect the Scheme from an earlier date and keep the Appointed Date as 01.4.2018, so that the Transferee Company is able to project and exhibit historical financial data related to the consolidated businesses and can place itself in a better position for attracting investments to meet its growth plans without undue delay and gestation, thereby unlocking value and maximising shareholders wealth at the earliest.

3. *This Scheme of Amalgamation would be in the interest of the Transferor Companies and the Transferee Company, and their respective shareholders, creditors and other stakeholders and will not be prejudicial to the interests of any concerned shareholders or creditors or general public at large.”*

10. From the records, it is seen that the First Motion Application (CAA) No.35/Chd/Chd/2020 was filed by the Petitioner Companies seeking directions for (a) convening the meetings of the Secured Creditors and Unsecured Creditors of the Petitioner Company 4; and (b) dispensing with the meetings of Equity Shareholders of all Petitioner Companies, Secured Creditors, and Unsecured Creditors of all Transferor Companies. Accordingly, this Tribunal vide its Order dated 10.02.2021 issued directions to dispense with the meetings of Equity Shareholders of all Petitioner Companies, Secured Creditors, and Unsecured Creditors of all Transferor Companies, and ordered convening of the meetings of the Secured Creditors, and Unsecured Creditors of the Petitioner 4/ Transferee Company.

11. Subsequently, the Petitioner Companies moved the Second Motion petition and filed the Reports in compliance with the aforesaid directions. As already noted in the order dated 11.03.2022 of this Adjudicating Authority, the meetings took place as per the

following details:

Sr. No.	Meeting of	Chairpersons /Alternate Chairperson/Scrutinizer	Chairperson's Report		Date of meeting
			Date of filing	Date of Report	
1.	Secured Creditors of Applicant Company No.4	Mr Vaibhav Sharma, Advocate, Ms. Sukriti Rai Advocate,	Diary No.01147/3 Dated 24.09.2021	20.09.2021	18.09.2021
2.	Unsecured Creditors of Applicant Company No.4	Mr. Shankhni Bhardwaj, Company Secretary.	Diary No. 01147/3 Dated 24.09.2021	20.09.2021	18.09.2021

As per Scrutinizer's Reports dated 20.09.2021, the proposed resolution approving the Scheme of Amalgamation was approved and passed by requisite majority of Secured and Unsecured Creditors of the Petitioner 4/ Transferee Company at their respective meetings.

12. Further, the Petitioner Companies sought directions of this Tribunal in connection with the Scheme of Amalgamation for issuance of notices to the i) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi, ii) Jurisdictional Registrar of Companies, iii) Jurisdictional Income Tax Authorities by mentioning PAN of the Company, and iv) Official Liquidator (attached to Punjab and Haryana High Court). Accordingly, directions were issued vide the Order of this Tribunal dated 11.03.2022, requiring the Petitioner Companies to serve notices upon the concerned statutory authorities and carry out necessary publication about the Scheme in "Financial Express" (English) in Haryana and Chandigarh Edition; "Punjab Kesari"

(Hindi) Chandigarh Edition; and “Jansatta” (Hindi) Haryana Edition newspapers.

13. In compliance with the above-stated directions, the Petitioner Companies duly filed an Affidavit of Service on 11.07.2022 vide Diary Number 01594/6, confirming that the aforesaid Notices of the present Company Petition were published in the “Financial Express” (English) in Haryana and Chandigarh Edition on 23.05.2022; “Punjab Kesari” (Hindi) Chandigarh Edition on 24.05.2022; and “Jansatta” (Hindi) Haryana Edition on 23.05.2022 as well as service of notices to the concerned statutory authorities.

14. Accordingly, in response to notice, the RD (North) filed its report dated 23.02.2023 vide Diary No.01594/9 dated 06.03.2023 making the following observations:

10. That as per Clause 31 of ROC, NCT of Delhi & Haryana’s report dated 06.07.2022 following observations have been made: -



As per MCA General Circular no. 9/2019 dated 21.08.2019, if the appointed date is significantly ante-dated beyond a year from the date of filling, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest. In this case, the appointed date is 01.04.2018. However, the justification of the same

being significantly ante-dated in terms of the above circular is not clearly brought out.

- *As it is mentioned in the scheme, share exchange ratio is determined by the Board of Directors or Committee of the Board of Directors of Transferee Company. Further Valuation report furnished with the application is prepared by a Deepak Jindal & Co. Chartered Accountant. Under section 247 of the Companies Act, 2013 valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other asset (herein referred to as the assets) or net worth of a company or its liabilities under the provisions of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer. Further, under rule 11 of the Companies (Registered Valuers and Valuation) Rules, 2017, the transitional arrangement for valuation rendered by a person other than a registered valuer were applicable only up to 31.01.2019. After the expiry of such period, the valuation under Companies Act, 2013 can be done only by a registered valuer. Hence Company may asked to clarify the same.*

- *As per audited financial statements of the Transferor Company 01 for the F.Y. 2020-21 it is seen that the company has given long term loans and advances amounting to Rs. 3,55,00,000/- to the Transferor Company 04 However, such long term loans and advances is not reflecting in the*



balance sheet of the Transferor Company 04 as Non-Current Liabilities. Hence, Company may asked to clarify the same.

- As per the financial statement for FY 2020-21, the Transferor Company no. 01, 02 and 04 have the quantum of investment/loans given which is more than the 50% of the total assets of the company. Also, income from the financial assets is more than 50% of the total income. Therefore, it appears that these Companies are operating as a NBFC, however, it is not registered as NBFC with the RBI.*
- As per the audited financial statement for FY 2020-21, the Transferor Company no. 01, 02 and 04, it has been seen that the revenue from operation last two years is nil. Hence, these companies are dormant u/s 455 of the Companies Act, 2013.*
- As per audited financial statements of the Transferor Company 02 for the F.Y. 2020-21 it is seen that the company has shown in its balance sheet Short Term Provision amounting to Rs.5,23,82,153 which is exactly same as previous year, Hence the nature of this transaction are not in short term. So Company may asked to clarify the same.*

11. That as per Clause 28 of the ROC Chandigarh's Report dated 04.05.2022 following observations have been made :-

- Affidavit regarding compliance of provisions of sections 295, 297, 299 & 301 (Section 184, 185 and 189 of Companies Act, 2013) not furnished by petitioner Companies.*
- The Authorised Capital of the Transferee Company, after the scheme becoming effective, shall be in accordance with section 232 (3) (i) of the Companies Act, 2013. As per 232 (3) (i) of the Companies Act, 2013, The fee, if any, paid by the Transferor Company on its Authorised Capital shall be set-off against any fee payable by the Transferee Company on its authorized capital subsequent to the amalgamation accordingly.*

The above submissions are made in para 1 to 11 above after having examined the Scheme, reply of the Petitioner Companies and report of Registrar of Companies. The Hon'ble Tribunal may be satisfied with respect to Scheme. Further, such orders as may be passed as deemed fit and proper.

15. The Petitioner Companies filed their Reply vide Diary Number 01594/10 dated 01.01.2024 to the observations made by the RD/RoC, which is tabulated observation-wise in the Synopsis filed by them vide Diary No. 01594/13 dated 11.03.2024 as follows:

S. No.	Observations (Para 3, page 2-3 of Response)	Response
1.	The Appointed Date is 1.4.18. Reference to s per MCA Circular No. 9/2019 dated 21.8.2019.	<ul style="list-style-type: none"> • Date of Board Resolution Approving the Scheme: 15.2.2020/17.2.2020. • Date of filing FMA: 14.9.2020 (note immediately after Board approval, World was hit by Covid-19, hence it took some time to file FMA. • MCA General Circular does not prohibit Appointed Date ante-dated beyond a year. It requires justification for the same to be specifically brought out in the Scheme and it should not be against public policy (<i>Refer to para 6d, attached as Exhibit-2.</i>) • Justification of Appointed Date given in Scheme (<i>Page38, Vol. 1, para B2.f.</i>) which is reproduced as under: <p><i>“Further, since strategic and financial investors have a criteria and prefer a certain history of turnover and business data of a prospective investee company, to consider the same for investment, it is found in the best interest of the stakeholders of the Companies to effect the Scheme from an earlier date and keep the Appointed Date as 01.4.2018, so that the Transferee Company is able to project and exhibit historical financial data related to the consolidated businesses and can place itself in a better position for attracting investments to meet its growth plans without undue delay and gestation, thereby unlocking value and maximising shareholders wealth at the earliest.”</i></p> <ul style="list-style-type: none"> • Hence, justification has been clearly brought out in the Scheme.

		<ul style="list-style-type: none"> • The Appointed Date has been chosen by the stakeholders and unanimously approved in their commercial wisdom under principles of corporate democracy and is not contrary to MCA Circular. • Moreover, in the FMA order dated 10.2.2021, this Hon'ble Tribunal has duly recorded the justification and had recognized Appointed Date as 1.4.2018. <p><i>(please refer to response in para 4, page 3-4)</i></p>
2.	Share exchange ratio is determined by the Board or committee of Board of Directors. W.e.f., 1.2.2019, valuation report has to be by a registered valuer whereas the report attached is not by a registered valuer	<p>The present Scheme doesn't involve corporate debt restructuring. Hence, valuation report is not mandatory and was sought by the Board for guidance. However, valuation report has been obtained from Mr. Harmanjit Singh, Registered Valuer dated 16.12.2023 and the exchange ratio is same.</p> <p><i>(please refer to para 5, page 4-5 of response)</i></p>
3.	As per audited financial statements of Transferor Company 1, for FY 2020-21, company has given long term loans and advances of RS. 3.55 Cr. To Transferor Company 4 which is not reflecting as non-current loan/advance in books of Transferor Company 4, which may be clarified.	<p>The said sum was advance for purchase from Transferor Company 4. The market conditions and spread of Covid-19, the material could not be supplied within one year, due to which the amount could not be adjusted and remain outstanding for more than 1 year and accordingly was reflecting under the head 'Long Term Loans and Advances' in the the Balance Sheet of the transferor company 1.</p> <p>In Balance Sheet of transferor company 4 for FY 2020-21, amount received from transferor company 1 is for supply of material. Due to market conditions and spread of corona, since the materials could not be supplied for the reasons aforesaid, the amount payable is to be adjusted against the supply material, as the nature of the amount payable is current liabilities for transferor company 4. Accordingly, the same is reflected in note 4 under 'Other Current Liabilities'.</p> <p><i>(please refer to para 6, page 5 of response)</i></p>

<p>4.</p>	<p>As per the financial statement for FY2020-21, the Transferor Company no.01, 02 and 04 have the quantum of investment/ loans given which is more than the 50% of the total assets of the company. Also, income from the financial assets is more than 50% of the total income. Therefore, it appears that these Companies are operating as a NBFC however, it is not registered as NBFC with the RBI.</p>	<p>The said companies have neither accepted any deposits from outsiders nor are carrying out any NBFC business as per Auditors Report. All investments and loans are admittedly within the same group companies. Assuming these companies qualify as Core Investment Companies("CIC"), as per RBI Regulations, CIC having asset size below RS. 100 crores are exempted from registration and regulation from RBI. As per A7A of RBI FAQ on CIC is as under:</p> <p><i>"16. Whether CI Cs having asset size below Rs. 100 crore are regulated by the Reserve Bank? Ans: CICs having asset size of below Rs 100 crore are exempted from registration and regulation from the Reserve Bank, except if they wish to make overseas investments in the financial sector. "</i></p> <p>These Companies asset size is admittedly below RS. 100 crores.</p> <p>Attention is also drawn to the decision of the Hon'ble Delhi High Court in Shubh Sponge Iron Private Limited And Ors [2014 SCC OnLine Del 4619] while approving the Scheme, on the issue of registration as a NBFC it recorded that:</p> <p><i>"J 4. In response to the aforesaid observation, the Petitioner Transferee Company in its Reply Affidavit has stated that all the Petitioner Transferor and Transferee Companies are Core Investment Companies (CIC) as defined in the Core Investment Companies (Reserve Bank) Directions, 2011, issued by the Reserve Bank of India, and as per the said Directions, Core Investment Companies are not required registration from the RBI as NBFC. Further, RBI NOC is also not required for amalgamation of Core Investment Companies. The Petitioner Transferee Company has undertaken and confirmed that it will comply with all the compliances of the Reserve Bank of India and will take other necessary steps in this regard, if any. Further, the Petitioner Companies and their Directors. have also undertaken that they will be bound for any action which may be taken by the RBI in future</i></p>
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		<p><i>for any act of commission or omission by the Petitioner Companies with regard to NBFC regulations."</i></p> <p>The transferor company 1, 2 & 4, undertake comply with all the compliances of the Reserve Bank of India and will take other necessary steps in this regard, if any. <i>(para 7, page 5-6 of Affidavit to RD's Response)</i></p>
5	As per audited FS for 2020-21, the Transferor Cos. 1, 2 and 4 have no revenue from operations for last 2 years and these are dormant companies u/s 455	<p>The management of the Petitioner Companies have been exploring options regarding the operations of the group entities as a whole. In order to attract strategic and financial investors in the combined entity the Appointed Date has been ante dated for reasons explained above. Even as on date the companies have not been classified as dormant companies even by the RoC. Further, the companies have not passed such resolution as required u/s 455 and are being shown as "active compliant" in master data of RoC. <i>(para 8, page 6-7 of Affidavit to RD's Response)</i></p>
6.	As per audited financial statements of the Transferor Company 02 for the F.Y. 2020-21 it is seen that the company has shown in its balance sheet short Term Provision amounting to Rs. 5,23,82,153 which is exactly same previous year, Hence the nature of this transaction are not in short term. So, Company may asked to clarify the same.	<p>It has been clarified note no. 5, under short term Provisions of the Balance Sheet of the Petitioner/Transferor Company No 2 for FY 2020-21 an amount has shown as short term provision. The same reflects a provision for Income Tax. The nature of provision for Income Tax is short term irrespective of the amount due is more than one years as income tax liabilities is payable immediately on demand. <i>(para 89 page 7 of Affidavit to RD's Response)</i></p>

16. On perusal of the Report of RD, it is seen that RD has not made any adverse comment on the Scheme per se proposed by the

Petitioner Companies or on any of its clauses. It did not point out any clause of the Scheme, which could be deemed as oppressive and against public policy. However, in its report RD initially observed about the Appointed date being antedated beyond a year. In this regard, the Petitioner Companies, through their reply and submissions made by their Ld. Counsel, referred to the MCA Circular stating that the same does not prohibit the Appointed Date being ante-dated beyond a year provided justification for the same is specifically brought out in the Scheme and the same is not against public policy.

During the hearing, Ld. Company Prosecutor appearing for RD categorically stated that the proposed Scheme is not found against the public policy and therefore, they are satisfied with the reply filed by the Petitioner Companies in regard to ante dating of the Appointed Date. Furthermore, during the hearing held on 19.04.2024, Ld. Company Prosecutor appearing for RD submitted that the replies in response to observations of RD filed by the Petitioner Companies are found satisfactory and there are no further observations on behalf of RD. The same submission was reiterated by the Ld. Company Prosecutor in the hearing on 07.06.2024. Hence, it is presumed that RD has no objection to the Scheme and therefore, we would like to proceed in the matter.

17. In response to the Notice, the Official Liquidator (OL) filed its Report dated 18.08.2022 vide Diary Number 01594/7 containing general observations extracted from the financial statements and

the Scheme. There are no specific objections raised by OL to the Scheme. During the hearing of the matter on 07.06.2024, the Ld. Counsel appearing for OL expressed no objection to the Scheme.

18. In response to the notice, the Income Tax Department filed its Report in respect of **Transferor Company No. 1**, vide Diary Number 01594/4 dated 09.05.2022, which reads thus;

1. That the Petition has been filed under Section 230 to 232 of the Companies Act, 2013 for sanctioning of the scheme of amalgamation between the Transferor and Transferee Companies.

2. That the Answering Respondent after consulting the record has found that the Transferor Company No. 1 i.e. M/s Janak Global Resources Private Limited was incorporated on 21.09.2010. The details of Income Tax Return(s) filed by the Transferor Company No. 1 is as under:

A.Y.	Date of filing of ITR	Current Year Losses	Carried forward Losses
2011-12	13.12.2012	-	NIL
2012-13	13.12.2012	-	NIL
2013-14	30.11.2013	-	NIL
2014-15	30.11.2014	1,92,31,777	1,92,31,777
2015-16	28.10.2015	71,418	1,93,03,195
2016-17	17.10.2016	99,61,628	2,92,64,823
2017-18	07.11.2017	3,19,67,631	6,12,32,454
2018-19	31.10.2018	2,78,20,511	8,90,52,965

It is relevant to mention here that the Transferor Company No. 1 has not filed the Return of Income for the Assessment Year(s) 2019-20 and 2020-21 and as per provisions of Section 139(1) of the Income Tax Act, 1961, it is mandatory / compulsory for companies and firms to file a return of income or loss for every previous year on or before the due date in the prescribed form, failing which the said entity is liable for prosecution under Section 276CC of the Income Tax Act, 1961.

3. That the Answering Respondent has further noticed from the record that Assessment under Section 143(3) of the Income Tax Act, 1961 in the case of the Transferor Company No. 1

for the Assessment Year 2016-17 was framed vide order dated 01.12.2018 resulting into an addition of Rs.99,61,628/- on account of Bogus Loss Claim and penalty proceedings under Section 271(1)(c) of the Income Tax Act, 1961 were also initiated. The Transferor Company No. 1 has filed Appeal against the order of assessment dated 01.12.2018 which is pending before the Commissioner of Income Tax (Appeals) Faceless. The penalty proceedings initiated under Section 271(1)(c) of the Income Tax Act, 1961 have been kept in abeyance. It is relevant to mention here that as of now, no demand is outstanding against the Transferor Company No. 1, however, in the eventuality of confirmation of addition by the Commissioner of Income Tax (Appeals), the following demand is likely to arise:

Rate of penalty	Amount (in Rs.)
If penalty @100% u/s 271(1)(c) is levied	30,78,143
If penalty @300% u/s 271(1)(c) is levied	92,34,429

It is further relevant to mention here that the Appeal of the Revenue in the case of Transferor Company No. 1 for the Assessment Year 2014-15 is pending before the Hon'ble Punjab and Haryana High Court at Chandigarh bearing ITA No. 194 of 2019. The said Appeal has been adjourned to await decision of the Hon'ble Supreme Court in SLP (Civil) No. 4866 of 2019.

4. That the Answering Respondent has also noticed that the Registered Address of the Transferor Company No. 1 as per the Master Data is "Plot No. 315, Industrial Area, Phase-1, Panchkula, Haryana", however, the Income Tax Return(s) have been filed at "Plot No. 365, Industrial Area, Phase-1, Panchkula, Haryana".

5. That a perusal of present scheme of amalgamation between the Transferor Company No. 1 and Transferee Company suggests that the same is prejudicial to the interest of the Revenue and does not involve any public interest as such. The Transferor Company No. 1 is a loss-making Company and after amalgamation the losses of the Transferor Company No. 1 will be adjusted against the income of the Transferee Company. The Brought Forward losses shall affect the Revenue adversely.

6. That the Revenue reserves its right to initiate and / or continue any proceedings under the Income Tax Act, 1961 in the case of Transferor Company No. 1 against the Transferee Company, recover any demand payable by the Transferor Company No. 1 from the Transferee Company and the right to determine the tax implications of the Amalgamation contemplated under the scheme in accordance with the provisions of the Income Tax Act, 1961 and the provisions of the Income Tax Act, 1961 shall prevail over anything contrary provided under the Scheme.

PRAYER

It is, therefore, respectfully prayed that the interest of the Revenue may be safeguarded while considering the scheme of amalgamation between the Transferor Company No. 1 and Transferee Company and the Companies may also be directed to discharge the demand, if any, found later on. It is further prayed that liberty may kindly be granted to the Revenue to proceed against the Companies for non-filing of the return of income / other default(s) under the provisions of the Income Tax Act, 1961.

19. The Sr. Standing Counsel representing IT Department separately filed Income Tax Department Reports dated 29.04.2022, 29.04.2022 and 20.10.2021 in respect of Transferor Company No. 3, 4 and Transferee Company respectively vide Diary Number 01594/3 dated 05.05.2022.

The relevant extract of Report dated 29.04.2022 in respect of Transferor Company No. 3 (Fab Craft Industries Pvt. Ltd) reads thus:

PRELIMINARY SUBMISSIONS:

1. That the Petition has been filed under Section 230 to 232 of the Companies Act, 2013 for sanctioning of the scheme of amalgamation between the Transferor and Transferee Companies.

2. That the Answering Respondent after consulting the record has found that the Transferor Company No. 3 i.e. M/s Fab Craft Industries Private Limited was incorporated on 08.06.2013 and as of now, no demand is outstanding against the Company nor any proceedings are pending. The details of last 5 Income Tax Return(s) is as under:

A.Y.	Returned Income	Demand	Whether Scrutiny yes or no	Losses	Unabsorbed Depreciation
2014-15	NIL	NIL	No	1,45,296	NIL
2015-16	NIL	NIL	No	43,72,611	NIL
2016-17	NIL	NIL	No	1,10,255	NIL
2017-18	NIL	NIL	No	5,28,065	NIL
2018-19	NIL	NIL	No	1,82,91,661	NIL

3. That a perusal of present scheme of amalgamation between the Transferor Company No. 3 and Transferee Company suggests that the same is prejudicial to the interest of the Revenue and does not involve any public interest as such. The Transferor Company No. 3 is a loss-making Company and losses of the Transferor Company No. 3 after amalgamation will be adjusted against the income of the Transferee Company. The Brought Forward losses shall affect the Revenue adversely.

4. That the Revenue reserves its rights to determine the tax implications of the amalgamation contemplated under the scheme in accordance with the provisions of the Income Tax Act,


1961 and the provisions of the Income Tax Act, 1961 shall prevail over anything contrary provided under the scheme.

5. That apart from the aforesaid, the Revenue does not have any reservation to the proposed scheme of amalgamation.

PRAYER

It is, therefore, respectfully prayed that in view of the aforesaid, the interest of the Revenue may be safeguarded while considering the scheme of amalgamation between the Transferor Company No. 3 and Transferee Company and the Companies may also be directed to discharge the demand, if any, found later on.

PLACE: CHANDIGARH
DATED: 29.04.2022


(ANSWERING RESPONDENT)
(सुखवंत सिंह) Sukhwant Singh, Income Tax Officer,
आपत्कृत अधिकारी Ward 2(1), Chandigarh
Income Tax Officer
वार्ड 2 (1), चण्डीगढ़
Ward 2(1), Chandigarh

The relevant extract of the Report dated 29.04.2022 in respect of Transferor Company No. 4 (Shivaks Impex Ltd) reads thus:

2. That the Answering Respondent after consulting the record has found that the Transferor Company No. 4 i.e. M/s Shivaks Impex Limited was incorporated on 02.01.2006 and as of now, no demand is outstanding against the Company nor any proceedings are pending. The details of last 8 Income Tax Return(s) is as under:

A.Y.	Returned Income	Demand	Whether Scrutiny yes or no	Losses	Unabsorbed Depreciation
2011-12	1,65,065	NIL	No	NIL	NIL
2012-13	6,41,670	2,53,115	Yes	NIL	NIL
2013-14	15,45,440	8,340	Yes	NIL	NIL
2014-15	2,05,350	58,230	Yes	NIL	NIL
2015-16	NIL	NIL	No	11,02,551	NIL
2016-17	NIL	NIL	No	11,28,485	NIL
2017-18	NIL	NIL	No	7,33,576	459
2018-19	NIL	NIL	No	8,89,66,476	414

3. That a perusal of present scheme of amalgamation between the Transferor Company No. 4 and Transferee Company suggests that the same is prejudicial to the interest of the Revenue and does not involve any public interest as such. The Transferor Company No.4 is loss-making and losses of the Transferor Company No. 4 after amalgamation will be adjusted against the income of the Transferee Company. The Brought Forward losses / Unabsorbed Depreciation shall affect the Revenue adversely.

4. That the Revenue reserves its rights to determine the tax implications of the amalgamation contemplated under the

scheme in accordance with the provisions of the Income Tax Act, 1961 and the provisions of the Income Tax Act, 1961 shall prevail over anything contrary provided under the scheme.

5. That apart from the aforesaid, the Revenue does not have any reservation to the proposed scheme of amalgamation.

PRAYER

It is, therefore, respectfully prayed that in view of the aforesaid, the interest of the Revenue may be safeguarded while considering the scheme of amalgamation between the Transferor Company No. 4 and Transferee Company and the Companies may also be directed to discharge the demand, if any, found later on.

PLACE: CHANDIGARH

DATED: 29.04.2022



(ANSWERING RESPONDENT)

(सुखवंत सिंह)
(Sukhwant Singh)
आयकर अधिकारी
Income Tax Officer
वार्ड 2 (1), चण्डीगढ़
Ward 2(1), Chandigarh

The relevant extract of Report dated 20.10.2021 in respect of Transferee Company (Amratex Industries Limited) reads thus:

2. In this connection, it is submitted that this office is in receipt of the CA No. 88/2021 in CA(CAA) No. 35/CHD/2020 - in the matter of Scheme of Amalgamation and Arrangement between Janak Global Resources Pvt. Ltd., Chandigarh Malt Pvt. Ltd., Fab Craft Industries Pvt. Ltd., Shivaks Impex Limited with Amartex Industries Limited. It is submitted that from the above said applicants, M/s Amartex Industries Limited (transferee company) is being assessed in this office. From the perusal of the information available on the ITBA system of this office, it is gathered that no demand is outstanding against the assessee but the assessment proceedings for the A.Y. 2013-14 are pending against the assessee.

3. Further, it is observed from the paper book that the following transferor company has incurred loss in different Assessment Year :-

Sr. No.	Name of the transferor company	A.Y.	Loss after tax (in Rs.)
1.	Janak Global Resources Private Limited	2021-22	(-)11,000/-
2.	Fab Craft Industries Private Limited	2020-21	(-)2,956/-
3.	Fab Craft Industries Private Limited	2019-20	(-)11,17,183/-
4.	Shivaks Impex Limited	2020-21	(-)20,05,648/-

As per the scheme of amalgamation, the losses of the transferor company would be set-off against the profit of the transferee company. Therefore, the amalgamation of transferor company into transferee company will erode the profits of the transferee company to the extent of set off losses, hence, it is detrimental to the interest of revenue.

4. Further, section 79 of the Income Tax Act, 1961 holds that in case of a company in which public are not substantially interested, no loss shall be carried forward and set off against the income of the previous year, unless at least 51% of the voting power of the company are beneficially held (on the last day of the previous year in which the loss is sought to be set off) by the same person(s) who holds at least 51% of the shares on the last day of the financial year in which the loss was incurred. In the present case, the shareholding pattern of one of the loss making transferor company i.e. M/s Janak Global Resources Private Limited is as under :-

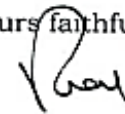
A.Y.	Loss	Name of the Shareholder	Shareholding
2021-22	(-)11,000/-	Sangeeta Grover	20%
		Varun Grover	20%
		Arun Grover	20%
		Karan Grover	20%
		Shivam Grover	20%

Whereas the shareholding pattern of the profit making transferee company i.e. M/s Amartex Industries Ltd. is as under :-

Name of the Shareholder	Shareholding
Arun Grover	61%
Sangeeta Grover	9.6%
KVS International Pvt.	28.2%

It is clear from the above that the shareholding held by the beneficial person of 51% or more in the transferor company i.e. M/s Janak Global Resources Private Limited on the last day of the financial year in which the loss was incurred has been less than 51% shareholding in the transferee company i.e. M/s Amartex Industries Ltd. on the last day of the previous year in which the loss is sought to be set off. Therefore, the loss of the transferor company shall not be carried forward and set off against the income of the previous year of the transferee company as it is in contravention of section 79 of the Income Tax Act, 1961. Hence, the amalgamation of transferor company into transferee company will erode the profits of the transferee company to the extent of set off losses, hence, it is detrimental to the interest of revenue.

Yours faithfully



(Pardeep Kumar Gagneja)
Dy. Commissioner of Income Tax,
Circle-1(1), Chandigarh

20. The Petitioner Companies have filed Reply to the observations of the Income Tax Department vide Diary Number 01594/8 dated 02.01.2023, which read thus:

2. That the Response to the aforesaid representations are as under:

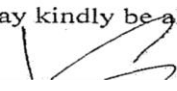
(i) At the outset, it is most humbly submitted that by way of the sanction of the Scheme, the rights of the Income Tax Department shall not be prejudiced in any manner and all proceedings that may be initiated against the Transferor Companies may be continued against the Transferee Company and any proceedings that would have been initiated against the Transferor Companies may be initiated against the Transferee Company;

(ii) That similarly, any proceedings initiated by the Transferor Companies, shall be continued by the Transferee Company pursuant to the sanction of the Scheme;

(iii) That as regards set-off of carry forward losses, the same shall be determined as per the Income Tax Act by the revenue authorities and by way of the present Petition, no such set-off are sought to be adjudicated from this Hon'ble Tribunal

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sufficiently protected and hence, the Petition may kindly be allowed in the interest of justice.



21. From the reports of the Income Tax Department (“ITD”) for the Petitioner Companies, as reproduced in para 18 & 19 above, it is observed that the ITD has raised mainly the following observations/objections:

21.1 The Transferor Company No. 1 has not filed the Returns of Income for the Assessment Years 2019-20 and 2020-21, which as per Section 139 (1) of the Companies Act is mandatory. Further, there are certain penalty proceedings initiated, which are under Appeal and kept in abeyance. In the eventuality of confirmation, the Transferor Company No. 1 will be liable to pay certain demands.

The ITD in its prayer has requested that the Transferor Company No. 1/ Transferee Company may be directed to discharge the demand, if any, found later on.

21.2 As regards the Transferor Company No. 3, there is neither any demand nor any proceeding pending. The Transferor Company No. 3 is a loss making company and losses of the Transferee Company No. 3 after Amalgamation will be adjusted against the income of the Transferee Company and the brought forward losses shall affect the Revenue adversely. In its prayer, the ITD has sought a direction to the Petitioner/Transferee Company for discharge of the demand, if any, found later on.

21.3 As regards the Transferor Company No. 4, there is neither any demand nor any proceeding pending. The Transferor Company No. 4 is a loss making company and losses of the Transferee Company No. 4 after Amalgamation will be adjusted against the income of the Transferee Company and the brought forward losses shall affect the Revenue adversely. In its prayer, the ITD has sought a direction to the Petitioner/Transferee Company for discharge of the demand, if any, found later on.

21.4 As regards the Transferee Company, the ITD has observed that losses of the Transferor Companies would be set off against the profit of the Transferee Company. Therefore, the amalgamation of Transferor Companies into Transferee Company will erode the profits of the Transferee Company to the extent of set off losses, hence, the Scheme is detrimental to the interest of Revenue.

22. During the hearing on 07.06.2024, when the Ld. Sr. Standing Counsel representing IT Department raised some objection regarding non-filing of returns of Income by the Transferor Company No.1 for the Assessment Years 2019-20 and 2020-21, Ld. Counsel for the Petitioner Companies submitted that they have already filed an undertaking vide dairy no. 1594/08 dated 02.01.2023 stating that any proceedings, that Income Tax Department may have initiated against the Transferor Company No.1, can be initiated against Transferee Company. Rights of the Income Tax Department shall not be prejudiced in any manner.

23. At this stage, we refer to the order of the Coordinate Bench-VI NCLT dated 23.11.2022 in “**Transcend Electronics Private Limited and Ors. with DMI Developers Private Limited**”; C.P.(CAA)/82 (ND)2020, in which the issues of setting off losses and reduction of tax liability raised by the Income Tax Department have been dealt with in detail. The relevant excerpts of the order read thus:

17. Heard and records meticulously perused. After a careful perusal of the scheme of amalgamation, we are of the view that the Petitioner Companies have spelt out the operational synergies, which in the opinion of this Tribunal justify the claim of the Petitioner Companies that the Scheme was for business consolidation and the tax benefits were merely consequential. Further, the treatment of carry forward and set off of losses in the present scheme of amalgamation is to be done as per the relevant provisions of the Income Tax Act, 1961 and the rules made thereunder. Further, even if the Scheme is approved by this Tribunal, it does not override the provisions under the ITA, and therefore, the issues concerning carry forward of losses and avoidance of capital gain may come up for consideration at the time of assessment of the Petitioner Companies, and the Assessing Officer may decide to allow or disallow any benefit to the Petitioner Companies as per the provisions under the Income Tax Act and the rules made thereunder.

18. At this juncture, it will be advantageous to refer the Hon'ble NCLAT Judgement in the matter of Joint Commissioner of Income Tax

(OSD), Circle (3)(3)-1, Mumbai Vs. Reliance Jio Infocomm Ltd. & Ors. Company Appeal (AT) No. 113 of 2019 wherein the Hon'ble NCLAT observed that Mere fact that a Scheme may result in reduction of tax liability does not furnish a basis for challenging the validity of the same.

19. Further, the Division Bench of the Hon'ble Gujarat High Court in "Vodafone Essar Gujarat Ltd. v. Department of Income Tax (2013) 176 Com Cas 7 (Guj)" while rejecting the objection of the Income Tax Department held:

"The main contention of the Income Tax Department is that the Scheme is floated with the sole object to avoid tax liability. Except the Income Tax Department no objections were raised by anyone against sanctioning the Scheme. In this connection, it is submitted by Mr Mihir Thakor, learned Counsel for the Department that the transaction in question is nothing, but a transaction of assets of passive infrastructure of the transferor company into Indus, but the said transaction is given colour by an artificial device and with a view to save income-tax liability two stages are created by the appellant group i.e. Vodafone i.e. introducing a pre-ordained device/ conduit in the form of a new Company (the present Transferee Company) and transferring by way of Gift to this new Company and thereafter amalgamating this new Company into Indus. Both the stages are done under the guise of scheme u/s 391 to legitimise the same by obtaining the seal of the Hon'ble Court and evade payment of Income Tax, stamp duty and VAT and other taxes.

It is, no doubt, true as argued by Mr Thakor that in case the Scheme is sanctioned, it may result into tax avoidance on the part of the appellant, but it is required to be noted that even if the ultimate effect of the Scheme may result into some tax benefit or even if it is framed with an object of saving tax or it may result into tax avoidance, it cannot be said that the only object of the Scheme is tax avoidance. Considering the various clauses of the Scheme it is not possible for us to come to a conclusion that the Scheme is floated with the sole object of tax avoidance. In its commercial wisdom if the Company has decided to have a particular arrangement by which there may be even benefit of saving income-tax or other taxes, that itself cannot be a ground for coming to the conclusion that the sole object of framing the Scheme is to defraud the Income Tax Department or other taxing authorities.

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20. On similar facts the coordinate NCLT, Chandigarh Bench, in the case of Panasonic India Pvt. Ltd. & Panasonic Life Solutions India Pvt. Ltd. in CP(CAA) No. 8/CHD/HRY/2021 the Income Tax Department had objected to amalgamation of transferor company M/s. Panasonic India Pvt. Ltd. having carried forward losses of Rs. 364 Crore with the transferee company M/s. Panasonic Life Solutions India Pvt. Ltd. on grounds of potential loss of revenue has elaborated on this issue as under:

In the present case, the Petitioner Companies have spelt out the operational synergies, which in the opinion of the NCLT justify the claim of the Petitioner Companies that

the Scheme was for business consolidation and the tax benefits were merely consequential.

We emphasize that the treatment of carrying forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger etc. of companies are clearly spelt out under Section 72A of the Income Tax Act, 1961 read with Rule 9(C) of the Rules. Further conditions regarding carrying forward and set off losses in cases of certain companies are equally clearly spelt out in Section 79 of the Income Tax Act, 1961. These provisions, in our opinion, are sufficient to protect the interest of revenue in any case of amalgamation or demerger etc. Even if a proposal of a Scheme of Amalgamation has been approved by the Adjudicating Authority, it is clarified that no provision of such a Scheme can override the existing provisions of the Income Tax Act. In any case, the above issues will come up for the consideration of the Assessing Officer at the time of assessment of the petitioner companies, and the Department can

21. The approval of the proposed scheme of amalgamation by this Tribunal shall not in any manner deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies and the decision of the Income Tax Authority will be binding on the Petitioner Companies. Further, this Tribunal is not shutting out the legitimate interest of the income-tax authorities to recover the lawful dues payable by the petitioner companies either the Transferor Companies or Transferee Companies, and the scheme provides the savings in relation to the liabilities as well, the rights of the tax authorities remain intact, and they can proceed against the companies in accordance with the law, if any amount is found due and payable or violation of any taxation law or procedure is found by the Income Tax Authority. Therefore, the provisions prescribed under the Income TAX Act, 1961 are sufficient to protect the interest of the revenue in case of proposed scheme of amalgamation.

24. At this juncture, we consider it worthwhile to refer to the Judgement dated 05.04.2022 of Hon'ble Supreme Court in **“Principal Commissioner of Income Tax (Central) - 2 vs. Mahagun Realtors (P) Ltd. Civil Appeal No. 2716 of 2022 out of SLP(C) No.4063 of 2020”**: [MANU/SC/0410/2022], the relevant extracts of which reads as reproduced overleaf:

“18. Amalgamation, thus, is unlike the winding up of a corporate entity. In the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed; it ceases to exist. Yet, in every other sense of the term, the corporate venture continues-enfolded within the new or the existing transferee entity. In other words, the business and the adventure lives on but within a new corporate residence, i.e., the transferee company. It is, therefore, essential to look beyond the mere concept of destruction of corporate entity which brings to an end or terminates any assessment proceedings. There are analogies in civil law and procedure where upon amalgamation, the cause of action or the complaint does not per se cease-depending of course, upon the structure and objective of enactment. Broadly, the quest of legal systems and courts has been to locate if a successor or representative exists in relation to the particular cause or action, upon whom the assets might have devolved or upon whom the liability in the event it is adjudicated, would fall.

.....

28. This Court notices that there are not less than 100 instances under the Income Tax Act, wherein the event of amalgamation, the method of treatment of a particular subject matter is expressly indicated in the provisions of the Act. In some instances, amalgamation results in withdrawal of a special benefit (such as an area exemption Under Section 80IA) - because it is entity or unit specific. In the case of carry forward of losses and profits, a nuanced approach has been indicated. All these provisions support the idea that the enterprise or the undertaking, and the business of the amalgamated company continues. The beneficial treatment, in the form of set-off, deductions (in proportion to the period the transferee was in existence, vis-à-vis the transfer to the transferee company); carry forward of loss, depreciation, all bear out that under the Act, (a) the business-including the rights, assets and liabilities of the transferor company do not cease, but continue as that of the transferor company; (b) by deeming fiction-through several provisions of the Act, the treatment of various issues, is such that

the transferee is deemed to carry on the enterprise as that of the transferor.

30. *The combined effect, therefore, of Section 394(2) of the Companies Act, 1956, Section 2(1A) and various other provisions of the Income Tax Act, is that despite amalgamation, the business, enterprise and undertaking of the transferee or amalgamated company- which ceases to exist, after amalgamation, is treated as a continuing one, and any benefits, by way of carry forward of losses (of the transferor company), depreciation, etc., are allowed to the transferee. Therefore, unlike a winding up, there is no end to the enterprise, with the entity. The enterprise in the case of amalgamation, continues.”*

(Emphasis placed)

25. A combined reading of the judgments (ibid) shows that NCLT does not determine the issue of set-off/ carry-forward losses under the Income Tax Act and there are enough provisions / safeguards available with the Income Tax Department under the Income Tax Act and Rules made thereunder. Hence, the Income Tax Department would be free to determine the issue of set-off /carry forward losses as per provisions of the Income Tax Act and Rules made thereunder. In our considered view, proceedings under section 230-232 of the Companies Act, 2013 are not the proceedings under the Income Tax Act. Moreover, there is no legal bar on amalgamation of a loss-making company into a profit-making company.

26. Nevertheless, we allow the prayers of the Income Tax Department as under:

26.1 The Income Tax Department will be at liberty to proceed

against the Transferor Company No.1 for not filing the Returns of Income for the Assessment Years 2019-20 and 2020-21/other default(s) under the provisions of Income Tax Act, 1961 [or even they would have liberty to ask the Transferor Company No.1/Transferee Company to file such returns in accordance with law].

26.2 As already undertaken by the Petitioner Companies, the Income Tax Department would be at liberty to recover all its outstanding demand/dues against the Transferor Companies, whenever arising, from the Transferee Company as per law. The Petitioner companies have filed an affidavit that they have no objection if all the outstanding demand, liability and legal proceedings of Transferor Companies are transferred to the Transferee Company.

26.3 Regarding the set-off losses proposed, if any, the scheme under consideration or the directions issued by this Tribunal would not prevent the Income Tax Department from allowing or disallowing the such set-offs or effect thereof in accordance with the provisions of the Income Tax act, 1961 and Rules made thereunder.

Adjudicating, whether the Applicant Companies have violated Section 79 of the Income Tax Act is beyond the jurisdiction of this Tribunal.

27. It has been averred by the Petitioner Companies in para 33 of its petition that the provisions of Competition Act are not applicable to the Petitioner Companies on the ground of assets/ turnover and hence, no notice was required to be issued to the Competition Commission. The earlier order of this Tribunal has also noted so.

28. The Petitioner companies through their averments in the pleadings and submissions made by their Ld. Counsel during the course of hearing spelt out that the proposed “Scheme of Amalgamation” is aimed at operational synergies, linkages, consolidation of business, simplification of structure, improving administration & efficiency, and the tax benefits are consequential.

We are of the view that if the Scheme is not oppressive or/and against the public policy, and to which RD and OL had already expressed their no objection, this Tribunal cannot reject the Scheme merely because the Income Tax Department consider it prejudicial to its revenues.

29. Given the foregoing facts and discussion and upon considering the approval accorded by the Members and Creditors of all the Petitioner Companies to the proposed Scheme and no objection given by the Regional Director (North) MCA, Official Liquidator, and no sustainable objection remaining of the Income Tax Department, or any other interested party, there does not appear to be any impediment in granting sanction to the proposed Scheme.

Accordingly, subject to the Petitioner Companies complying with the requirement of various laws including the rules, and regulations, sanction is hereby granted to the Scheme of Amalgamation proposed by the Petitioner Companies under Section 230 to 232 of the Companies Act, 2013. The sanctioned Scheme of Amalgamation shall be binding on all the Transferor Companies and Transferee Company (Petitioner Companies) and their Shareholders and

Creditors. The Petitioner Companies shall remain bound to comply with all the statutory requirements in accordance with law.

30. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rule, or regulation, the sanction granted by this Authority to the Scheme will not come in the way of action to be taken, albeit, in accordance with the law, against the concerned persons, Directors, and Officials of the Petitioner Companies.

31. While approving the Scheme as above, it is clarified that this Order should not be construed as an order in any way granting exemption from payment of Stamp Duty, Taxes, or other statutory dues if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement, which may be specifically required under any law. Further, the approval of the Scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act, 1961, or serve as any exemption or defense for the Petitioner Companies against tax treatment in accordance with the provisions of the Income Tax Act, 1961 and the rules and regulations made thereunder.

32. This Tribunal further directs with respect to Petitioner Transferor Companies and Transferee Company, that:

- a) Upon the sanction becoming effective from the appointed date of amalgamation i.e., 01.04.2018, the Petitioner Transferor Companies shall stand dissolved without undergoing the process of winding up.

b) All benefits, entitlements, incentives, and concessions under incentive schemes and policies that the Transferor Company is entitled to include under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax, and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/ deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives, and concessions;

c) All contracts of the Petitioner Transferor Companies, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Petitioner Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;

d) All the employees of the Petitioner Transferor Companies shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged by the

Transferor Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

e) All liabilities of the Petitioner Transferor Companies, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Company Act, 2013, to the extent they are outstanding as of the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations, etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company as if it had incurred such liabilities.

f) All proceedings including criminal proceedings now pending by or against the Petitioner Transferor Companies shall be continued by or against the Transferee Company.

g) The Income Tax department is permitted to retain its recourse for recovery in respect of demand and any other future liabilities of the Transferor Companies as well as the Transferee Company, in respect of the assets sought to be transferred under the proposed scheme to the Transferee Company. The Income Tax Department would be at liberty to recover all its outstanding demand/dues of the Transferor Companies from the Transferee Company as per law. The Transferee Company

will clear all the pending statutory dues including income tax dues after exercising all Appellate jurisdiction and as per final orders. The scheme shall not come in the way of the statutory authorities including the Income Tax Department to recover any of their dues. All the contentions of the parties shall remain open before the relevant fora, where disputes are pending.

h) The Income Tax Department will be at liberty to proceed against the Transferor Company No.1 for not filing the Returns of Income for the Assessment Years 2019-20 and 2020-21/other default(s) under the provisions of Income Tax Act, 1961 [or even they would have liberty to ask the Transferor Company No.1/Transferee Company to file such returns in accordance with law]. The status of dissolution of Transferor Companies shall not come in the way of parties for filing pending Income Tax Returns.

i) Regarding the set-off losses proposed, if any, the scheme under consideration or the directions issued by this Tribunal would not prevent the Income Tax Department from allowing or disallowing the such set-offs or effect thereof in accordance with the provisions of the Income Tax act, 1961 and Rules made thereunder.

j) The Petitioner Companies shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 regarding fee payable on its revised authorized share capital, if applicable.

k) That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

33. The Petitioner Companies shall, within thirty days of the date of the receipt of this Order or on sanction of the Scheme with respect to the Transferor Company No.2 by the Bench of jurisdiction, whichever is later, cause a Certified Copy of this Order to be delivered to the Registrar of Company for registration and on such Certified Copy being so delivered, the Transferor Companies shall be dissolved and the Registrar of Company shall place all documents relating to the Transferor Companies on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Companies shall be consolidated accordingly.

34. The Company Petition is allowed and disposed of in the aforesaid terms.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(HARNAM SINGH THAKUR)
MEMBER (J)