

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301

C.P.(CAA)/3(AHM)2024 in C.A.(CAA)/69(AHM)2023

Proceedings under Section 230-232 of Co. Act, 2013

IN THE MATTER OF:

Aditya Birla Money Insurance Advisory Services LimitedApplicant
Aditya Birla Money Mart Limited
Aditya Birla Capital Technology Services Limited
Aditya Birla Financial Shared Services Limited

Order delivered on: 02/07/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT - I
AHMEDABAD**

**C.P.(CAA) No.03/NCLT/AHM/2024
in
CA(CAA) No.69/NCLT/AHM/2023**

[Company Petition under Sections 230-232 read with Section 66 and other applicable provisions of the Companies Act, 2013 (Compromise, Arrangement and Amalgamation) Rules, 2016]

In the matter of Composite Scheme of Arrangement

**Aditya Birla Money Insurance Advisory
Service Limited**

Having Registered office at:
Indian Rayon Compound, Veraval,
Gujarat- 362 266, India.

**... Petitioner No.1
(Transferor Company)**

AND

Aditya Birla Money Mart Limited

Having Registered office at:
Indian Rayon Compound, Veraval,
Gujarat- 362 266, India

**... Petitioner No.2
(Transferor Company/
Amalgamating Company 1)**

AND

**Aditya Birla Capital Technology
Services Limited**

Having Registered office at:

Indian Rayon Compound, Veraval,
Gujarat- 362 266, India

**... Petitioner No.3
(Transferor Company/
Amalgamating Company 2)**

AND

Aditya Birla Financial Shares Services Limited

Having Registered office at:
Indian Rayon Compound, Veraval,
Gujarat- 362 266, India

**... Petitioner No.4
(Amalgamated Company)**

Order pronounced on: 02.07.2024

CORAM:

**Sh. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
Sh. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

Appearance:-

For the Applicant : Mr. Sandip Singhi, Advocate a/w.
: Mr. Mr. Kanishk Pandey, Advocate &
: Ms. Nidhi Patel, Advocate
For the RD : Mr. Shiv Pal Singh, Deputy Director
(NWR)
For the RoC : Ms. Rupa Sutar, Deputy Director
For the OL : Mr. Sandip Tupe, Technical Assistant
For the Income Tax : Ms. Kinjal Vyas, Advocate for
: Ms. Maithili Mehta, Advocate

ORDER

1. The present joint Company Petition has been filed by the Petitioner Companies above named for the purpose of the approval of the Scheme of Arrangement among **Aditya Birla Money Insurance Advisory Services Limited** (hereinafter referred to as the “**Petitioner No.1**”) or the “**Transferor Company**” and **Aditya Birla Money Mart Limited** (hereinafter referred to as the “**Petitioner No. 2**”) or the “**Transferee Company**” or the “**Amalgamating Company 1**” and **Aditya Birla Capital Technology Services Limited** (hereinafter referred to as the “**Petitioner No.3**”) or the “**Amalgamating Company 2**” and **Aditya Birla Financial Shares Services Limited** hereinafter referred to as the “**Petitioner No.4**”) or the “**Amalgamated Company**” under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2013 (for brevity ‘the Rules’) (hereinafter referred to as the ‘SCHEME’) pursuant to the Scheme proposed by the Petitioner Companies and

the said Scheme is also annexed at "**Annexure M**" along with the Petition.

- 2.** An Affidavit in support of the above Petition was sworn by Amber Gupta, Authorized Signatory of the Petitioner No. 1 and the Petitioner No. 2, and Mr. Ankur Garg, Authorized Signatory of the Petitioner No. 3 and the Petitioner No. 4, the same is annexed with the Petition. The above-named Authorised Signatory of Petitioner Companies have been authorized vide Board Resolution dated 03.11.2023.

3. 1ST MOTION APPLICATION – IN BRIEF

- 3.1 The Petitioner Companies had filed the First Motion Application vide CA(CAA)69/AHM/2023 sought reliefs as follows: -

PARTICULARS	EQUITY SHAREHOLDERS	SECURED CREDITORS	UNSECURED CREDITORS	PREFERENCE SHAREHOLDERS MEETING
TRANSFEROR COMPANY	To dispense with	N.A.	N.A.	N.A.
TRANSFeree COMPANY/ AMALGAMATING COMPANY 1	To dispense with	N.A.	N.A.	To Dispense With
AMALGAMATING COMPANY 2	To dispense with	N.A.	To Dispense With	To Dispense With
AMALGAMATED COMPANY	To dispense with	N.A.	To Dispense With	N.A.

3.2 Based on such application moved under Sections 230-232 of the Companies Act, 2013; directions were issued by this Tribunal, vide order dated **03.01.2024**, the meetings of Equity Shareholders of the Applicant Companies were dispensed with. The question of holding the meetings of Secured Creditors of the Applicant Companies does not arise as there are no secured creditors in any of the applicant companies. The meeting of unsecured creditors of the amalgamating company No.2 and the amalgamated company was dispensed with.

4. The Second Motion Petition was filed before this Tribunal by the Petitioner Companies on **11.01.2024** for sanction of the Scheme by this Tribunal.

5. RATIONALE OF THE SCHEME

The Rationale for the Scheme as envisaged under the Scheme is extracted hereunder:

I. Simplification of the organizational structure by reduction in number of subsidiaries of Aditya Birla Capital Limited

- II. Administrative and organizational efficiencies, reduction in overheads, compliance cost and other administrative expenses;
 - III. Integration of operations and services provided to Aditya Birla Capital Limited, (Holding Company) and group companies; and
 - IV. Improve organizational capability arising from the pooling of resources with specific focus to Information Technology.
- 6.** In the second motion application filed by the Petitioner Companies, this Tribunal directed the Petitioner Companies to issue notice to the Statutory / Regulatory Authorities viz. (i) the Central Government through the office of the Regional Director, North Western Region, Ministry of Corporate Affairs (MCA) (ii) the Registrar of Companies, Gujarat, (MCA) (iii) the jurisdictional Income-Tax office having jurisdiction over the respective Companies indicating specifically there Permanent Account No. (PAN) in the communication (iv) Office of the Official Liquidator (v) Insurance Regulatory and Development Authority of India (IRDA) w.r.t. Applicant

Company No. 1 and other sectorial Regulators, if any, who may govern the working of the respective Companies involved in the Scheme as well as for paper publication to be made in **“Indian Express” (Gujarati edition)** and **“Sandesh” (Gujarati edition)** in Vernacular Language.

7. In compliance to the said directions issued by this Tribunal, the Petitioner Companies have filed an affidavit of service before the Registry of this Tribunal on 15.02.2024, vide inward diary No. D-1314 and perusal of the same discloses that the Petitioner Companies have effected paper publications as directed by the Tribunal in the **“Indian Express” (Gujarati edition)** and in **“Sandesh” (Gujarati edition)** on 07.02.2024. It is also seen that notices have been also served to (i) Regional Director, North Western Region on 01.02.2024, (ii) Registrar of Companies, Gujarat on 01.02.2024, (iii) Income Tax Authority 01.02.2024, (iv) Official Liquidator on 01.02.2024 and (v) IRDA on 01.02.2024. The proof of the same by way of affidavits has been enclosed with at **“Annexure B (colly)”**. Pursuant to the service of notice

of the petition to Income tax Authorities is annexed at “**Annexure C (Colly)**”. The following statutory authorities have responded as follows: -

STATUTORY AUTHORITIES:

8. INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY (IRDA):

Vide Order dated 18.01.2024 this Tribunal directed the Applicant company to serve notice to the Insurance Regulatory And Development Authority (IRDA) and seek the report from the authority in respect of the proposed Scheme, Despite issuance of notice and public announcement, IRDA has not submitted any report to the notice which was issued by the Tribunal.

It is seen that no document is attached by the applicant to establish that the said certificate is duly surrendered by the Transferor Company but the same is stated on oath by the applicant companies in an affidavit which is filed as a reply to the observations of the Regional Director which was filed on 20.03.2024 vide inward Diary No. D-2483. Hence it is presumed that IRDA has nothing to say in the matter.

9. REGIONAL DIRECTOR & REGISTRAR OF COMPANIES:

9.1 The Regional Director, North-Western Region (hereinafter referred to as 'RD') to whom the notice was issued, has filed its Report along with the report of Registrar of Companies (hereinafter referred to as 'ROC') before this Tribunal on 18.03.2024 in Inward Diary No. R 118.

Observations of the Regional Director are as under:

- 9.2 That, as per Clause 3.3 and 4.3 of the Scheme, the authorized share capital of the petitioner Transferor Company and Amalgamating No. 1 & 2 will be added to the authorized share capital of the petitioner Amalgamated company and the consolidated authorized share capital of the transferee company post-merger will be Rs. 170,05,00,000/-. In compliance with the provisions of Section 232 (3) (1) of the Companies Act, 2013 the petitioner transferee company is under statutory obligation to pay the difference amount of fees, if any which is payable on the enhanced Authorized Capital of Rs. 170,05,00,000/- and the fees which have already been paid by all the petitioner companies at the time of registration/ increase in authorized capital.
- 9.3 The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.
- 9.4 That, the Applicant transferor company is also regulated by the Insurance Regulatory and

Development Authority of India, as sectorial regulator, therefore the petitioner company may also be directed to obtain NOC/Comments if any from Insurance Regulatory and Development Authority of India as sectorial regulatory authority if required.

9.5 That, as per Clause No. 2.1 of the scheme, which retreated as under :-

2.1 Reduction of the Preference Share Capital of the Transferee Company.

2.1.1 On Part II of the Scheme becoming effective and with effect from the Appointed Date 1, the Transferee Company shall pay off the entire paid-up Preference Share Capital together with premium on redemption to its preference shareholders (as per the terms and conditions of redemption of Preference Shares), which is in excess of the wants of the Transferee Company, out of investments and cash and cash equivalents of the Transferee Company, and consequently, the Preference Share Capital will stand reduced, extinguished and cancelled without any further act, instrument or deed.

9.6 Therefore, the Hon'ble NCLT may direct the Petitioner Transferee / Amalgamating Company No.1 to place on record the terms and conditions for the redemption of preference share capital as decided by the company at the time of issue of shares and also furnish undertaking by the Petitioner Transferee | Amalgamating Company No.1 that the reduction of preference shares by way of redemption is in compliance with the said terms and conditions which are mentioned at the time of issue.

9.7 Hon'ble Bench of National Company Law Tribunal may be pleased to direct the petitioner companies:

- i. To ensure compliance and furnish the clarification, if any. regarding observations made by Registrar of Companies and this Directorate (NWR) in forgoing Paragraph No. 5 and 6 above.
- ii. *To preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central Government as per the Provision Section 239 of the Companies Act, 2013.*
- iii. *To ensure statutory compliance of all applicable Laws and on sanctioning of the present Scheme, the Petitioner Companies shall not be absolved from any of its statutory liabilities, in any manner.*
- iv. *Necessary Stamp Duty on transfer of property/Assets, if any is to be paid to the respective Authorities before implementation of the Scheme.*
- v. *The petitioner companies involved in the scheme to comply with the provisions of Section 232(5) of the Companies Act, 2013 with respect to file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from date of passing order.*
- vi. *The Petitioner companies shall undertake to comply with Income Tax / GST law and any demand / taxes payable on implementation of the said scheme as per law.*
- vii. *Applicant company/ (ies) to pay such amount of legal fees / cost to the Central Government which may be considered appropriate by this Hon'ble NCLT for the legal fees / expenses of the office of the Regional Director for submitting this report and representing the matter on behalf of the Central Government.*

Observations of the Registrar Of Companies are as under:

The Registrar of Companies, Ahmedabad, Gujarat has reported that there are no complaints, inquiry, inspection, investigation or prosecution is pending against the Petitioner companies.

In response to the observations of RD, the Petitioner Companies have filed its reply before this Tribunal on 20.03.2024 vide Inward Diary No. D - 2483.

- a) With reference to the paragraph no. 6(1) of the Representation, we state and submit that no fees would be payable on the enhanced authorised share capital of the Petitioner No. 2/Transferee Company/Amalgamating Company 1 and thereafter of the Petitioner No. 4/Amalgamated Company. However, the Petitioner No. 2/Transferee Company/Amalgamating Company 1 and the Petitioner No. 4/Amalgamated Company shall comply with the provisions of Section 232(3) (i) of the Companies Act, 2013 (hereinafter referred to as the "Act") and undertakes to pay necessary fees, if so

required, in accordance with law. In response to observation at para 6(ii) of RD's report filing an affidavit affirming that the scheme enclosed with the Company Application and Company Petition is consistent without any discrepancy or alteration, is duly confirmed by the Transferor Company. The Transferor Company is confirming that there is no change in the Scheme between Company application and Petition.

- b) With reference to the paragraph no. 6(ii) of the Representation, we state that the Scheme enclosed with the joint company application and with the joint company petition are one and the same and that there is no discrepancy or any change. In response to observation at para 7(ii) of RD's report, the preservation of books of accounts, papers, and records, and compliance with section 239 of the Companies Act, 2013 are accepted by the Transferor Company.
- c) With reference to the paragraph no. 6(iii) of the Representation, we state that no approval is required

to be obtained from Insurance Regulatory and Development Authority of India (hereinafter referred to as "IRDAI"). Further, the Petitioner No. 1/Transferor Company has already surrendered the Corporate Agency Certificate of Registration (COR)-CA 0136, granted by IRDAI to IRDAI, which has been considered by IRDAI on 9 January 2024.

- d) With reference to the paragraph no. 6(iv) of the Representation, we state that the Petitioner No. 2/Transferee Company/Amalgamating Company 1 had allotted 26,00,866-0.1% Redeemable Non-Convertible Non-Cumulative preference shares of Rs. 100/- each at a premium to its holding company viz. Aditya Birla Capital Limited. As per the earlier date of redemption i.e. 21" March 2023, the redemption price per preference share was Rs. 183/-. Subsequently, the date of redemption was revised upto 20 March 2025, which would entail redemption price of Rs. 219/- per preference share based on Internal Rate of Return of 9.40% per annum. We state that the preference shareholder has approved the repayment, on the

preference shares, at a redemption price based on Internal Rate of Return of 9.40% per annum as on the Effective Date and consequent reduction of the preference share capital of the Petitioner No. 2/Transferee Company/Amalgamating Company 1 and the said consent affidavit has been placed on the record of C.A.(CAA)/69 (AHM) 2023 filed before this Hon'ble Tribunal.

- e) With reference to the paragraph no. 7(i) of the Representation, we state and submit that the observations made by the Registrar of Companies are also the observations made by the Regional Director in the present Representation. Having dealt with the observations of the Regional Director, by way of the present joint affidavit in reply, we submit that the present joint affidavit in reply be also considered as the reply to the observations of the Registrar of Companies. In response to observation at para 7(vi) of RD's report, concerning compliance with Income Tax/ GST Law and any demand/ tax payable on the

implementation of the scheme is accepted by the Transferor Company, and they are obligated to fulfil it.

- f) With reference to paragraph no. 7(ii) of the Representation, we state and submit that the Petitioner No. 4/Amalgamated Company undertakes to preserve the books of accounts, papers and records of the Petitioner Nos. 1 to 3 and the same would not be disposed of without prior permission of the Central Government under the provisions of Section 239 of the Act.
- g) With reference to paragraph no. 7(iii) of the Representation, we submit that the Scheme nowhere seeks to absolve any of the Petitioner Companies from any of the statutory liabilities, if any.
- h) With reference to paragraph no. 7(iv) of the Representation, we state that the Petitioner No. 4/Amalgamated Company shall make necessary application, within the prescribed time, to the concerned stamp authority for payment of stamp duty, if any, once the Scheme is sanctioned by this Hon'ble Tribunal and the same is made effective.

- i) With reference to paragraph no. 7(v) of the Representation, we state and submit that the Petitioner Companies shall comply with the provisions of Section 232(5) of the Act and shall file the copy of the order sanctioning the Scheme with the Registrar of Companies within the prescribed time.
- j) With reference to paragraph no. 7(vi) of the Representation, we submit that the Petitioner Companies undertake that they shall comply with Income Tax/GST law including any demand, in accordance with law.
- k) With reference to paragraph no. 7(vii) of the Representation, we state that the Petitioner No. 4/Amalgamated Company shall pay necessary fees/costs to the office of the Regional Director as may be decided/directed by this Hon'ble Tribunal.

10. OFFICIAL LIQUIDATOR:

The Official Liquidator (hereinafter referred to as 'OL') to whom the notice was issued has filed its Three Separate Reports in respect of the Transferor Companies before

this Tribunal on 21.03.2024 in Inward Diary No. D-2495.

Observations of the Official Liquidator (Report 1):

- (i). That, the Hon'ble Tribunal may be pleased to direct the Transferor Company to preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central Government as per the provisions of Section 239 of the Companies Act, 2013.
- (ii). That, the Hon'ble Tribunal may be pleased to direct the Transferor Company to ensure Statutory compliance of all applicable laws and also on sanctioning of the present Scheme, the Transferor Company shall not be absolved from any of its Statutory liabilities, in any manner.
- (iii). Therefore, Aditya Birla Money Insurance Advisory Services Limited, being the Transferor Company, may be dissolved without following the process of winding-up in terms of sub-section 3(d) of Section 232 of the Companies Act, 2013. Further, the Transferor Company being dissolved, the fee, if any paid by the Transferor Company on its Authorized Share Capital shall be set-off against any fees payable by the Transferee Company on its Authorized Capital subsequent to the amalgamation

in terms of sub section 3(i) of Section 232 of Companies Act, 2013.

- (iv). That, the cost of proceedings and related expenses of the office of the Official Liquidator for submitting this report is Rs. 20,000/- approximately. Therefore, this Hon'ble Tribunal may be pleased to direct the Transferee Company to pay such cost and expenses to the Official Liquidator for the Transferor Company or any other amount as may be considered appropriate by this Hon'ble Tribunal by way of submitting Demand Draft/Banker's cheque only in favour of the "Official Liquidator", payable at Ahmedabad.
- (v). That, the Hon'ble Tribunal may be pleased to direct the Petitioner Company to lodge a certified copy of the order along with the scheme, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any.
- (vi). That, Hon'ble Tribunal may direct the companies involved in the scheme to comply with Provision of Section 232(5) of Companies Act, 2013 with respect to filing of certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from the date of passing order.
- (vii). That, subject to complying with the directions of the Hon'ble Tribunal, as prayed by the Official

Liquidator above, Official Liquidator has no further observations or objections based on the information provided by the Transferor Company for consideration of the Hon'ble Tribunal in respect on proposed scheme of Amalgamation between Aditya Birla Money Insurance Advisory Services Limited and Aditya Birla Money Mart Limited and Aditya Birla Capital Technology Services Limited with Aditya Birla Financial Shared Services Limited and their respective Shareholders and Creditors.

Observations of the Official Liquidator (Report 2):

- (i). That, the Hon'ble Tribunal may be pleased to direct the Transferor Company to preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central Government as per the provisions of Section 239 of the Companies Act, 2013.
- (ii). That, the Hon'ble Tribunal may be pleased to direct the Transferor Company to ensure Statutory compliance of all applicable laws and also on sanctioning of the present Scheme, the Transferor Company shall not be absolved from any of its Statutory liabilities, in any manner.
- (iii). Therefore, Aditya Birla Money Mart Limited, being the Transferor Company, may be dissolved without following the process of winding-up in

terms of sub-section 3(d) of Section 232 of the Companies Act, 2013. Further, the Transferor company being dissolved, the fee, if any paid by the Transferor Company on its Authorized Share Capital shall be set-off against any fees payable by the Transferee Company on its Authorized Capital subsequent to the amalgamation in terms of sub section 3(i) of Section 232 of Companies Act, 2013.

- (iv). That, the cost of proceedings and related expenses of the office of the Official Liquidator for submitting this report is Rs. 20,000/- approximately. Therefore, this Hon'ble Tribunal may be pleased to direct the Transferee Company to pay such cost and expenses to the Official Liquidator for the Transferor Company or any other amount as may be considered appropriate by this Hon'ble Tribunal by way of submitting Demand Draft/Banker's cheque only in favour of the "Official Liquidator", payable at Ahmedabad.
- (v). That, the Hon'ble Tribunal may be pleased to direct the Petitioner Company to lodge a certified copy of the order along with the scheme, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any.

- (vi). That, Hon'ble Tribunal may direct the companies involved in the scheme to comply with Provision of Section 232(5) of Companies Act, 2013 with respect to filing of certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from the date of passing order.
- (vii). That, subject to complying with the directions of the Hon'ble Tribunal, as prayed by the Official Liquidator above, Official Liquidator has no further observations or objections based on the information provided by the Transferor Company for consideration of the Hon'ble Tribunal in respect on proposed scheme of Amalgamation between Aditya Birla Money Insurance Advisory Services Limited and Aditya Birla Money Mart Limited and Aditya Birla Capital Technology Services Limited with Aditya Birla Financial Shared Services Limited and their respective Shareholders and Creditors.

Observations of the Official Liquidator (Report 3):

- (i). That, the Hon'ble Tribunal may be pleased to direct the Transferor Company to preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central Government as per the provisions of Section 239 of the Companies Act, 2013.

- (ii). That, the Hon'ble Tribunal may be pleased to direct the Transferor Company to ensure Statutory compliance of all applicable laws and also on sanctioning of the present Scheme, the Transferor Company shall not be absolved from any of its Statutory liabilities, in any manner.
- (iii). Therefore, Aditya Birla Capital Technology Services Limited, being the Transferor Company, may be dissolved without following the process of winding-up in terms of sub-section 3(d) of Section 232 of the Companies Act, 2013. Further, the Transferor Company being dissolved, the fee, if any paid by the Transferor Company on its Authorized Share Capital shall be set-off against any fees payable by the Transferee Company on its Authorized Capital subsequent to the amalgamation in terms of sub section 3(i) of Section 232 of Companies Act, 2013.
- (iv). That, the cost of proceedings and related expenses of the office of the Official Liquidator for submitting this report is Rs. 20,000/- approximately. Therefore, this Hon'ble Tribunal may be pleased to direct the Transferee Company to pay such cost and expenses to the Official Liquidator for the Transferor Company or any other amount as may be considered appropriate by this Hon'ble Tribunal by way of submitting Demand Draft/Banker's cheque only in favour of the "Official Liquidator", payable at Ahmedabad.
- (v). That, the Hon'ble Tribunal may be pleased to direct the Petitioner Company to lodge a certified copy of the order along with the scheme, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any.
- (vi). That, Hon'ble Tribunal may direct the companies involved in the scheme to comply with Provision of Section 232(5) of Companies Act, 2013 with

respect to filing of certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from the date of passing order.

10.1 In response to the observations of The Official liquidator, the Petitioner Companies have filed its reply before this Tribunal on 21.03.2024 vide Inward Diary No. D - 2497.

- i. With reference to the contents of (i) paragraph no. 11 of the Report No. 1; (ii) paragraph no. 12 of the Report No. 2; and (iii) paragraph no. 11 of the Report No. 3, we state that that the Petitioner No. 4/Amalgamated Company undertakes to preserve the books of accounts, papers and records of the Petitioner No. 1 to Petitioner No. 3 and the same will not be disposed of without the prior permission of the Central Government as per the provisions of Section 239 of the Companies Act, 2013 (hereinafter referred to as the "Act").
- ii. The contents of (i) paragraph no. 12 of the Report No. 1; (ii) paragraph no. 13 of the Report No. 2; and (iii) paragraph no. 12 of the Report No. 3 are vague and general. We state and submit that the Scheme

nowhere proposes absolving the Petitioner No. 1 to Petitioner No. 3 from any of their liabilities, if any.

- iii. With reference to the contents of (i) paragraph no. 13 of the Report No. 1; (ii) paragraph no. 14 of the Report No. 2; and (iii) paragraph no. 13 of the Report No. 3, we state that the Petitioner No. 4/Amalgamated Company shall comply with the provisions of Section 232(3)(i) of the Act and undertakes to pay necessary fees, if so required, in accordance with law.
- iv. With reference to the contents of (i) paragraph no. 14 of the Report No. 1; (ii) paragraph no. 15 of the Report No. 2; and (iii) paragraph no. 14 of the Report No. 3, we state that the Petitioner No. 1 to Petitioner No. 3 and/or the Petitioner No. 4/Amalgamated Company undertakes to pay the cost to the Official Liquidator, as directed by this Hon'ble Tribunal.
- v. With reference to the contents of (i) paragraph no. 15 of the Report No. 1; (ii) paragraph no. 16 of the Report No. 2; and (iii) paragraph no. 15 of the Report No. 3, we state and submit that the Petitioner No.

4/Amalgamated Company, shall make an application, as per the provisions of law, with the concerned Collector of Stamps seeking opinion/adjudication in respect of proper stamp duty payable on the order passed by this Hon'ble Tribunal sanctioning the Scheme.

- vi. With reference to the contents of (i) paragraph no. 16 of the Report No. 1; (ii) paragraph no. 17 of the Report No. 2; and (iii) paragraph no. 16 of the Report No. 3, we state that the Petitioner Companies shall file the certified copy of the order sanctioning the Scheme with the Registrar of Companies within 30 (thirty) days from the date of receipt of the certified copy of the order.
- vii. With reference to the contents of (i) paragraph no. 17 of the Report No. 1; (ii) paragraph no. 18 of the Report No. 2; and (iii) paragraph no. 17 of the Report No. 3, we do not offer any comments.

11. INCOME TAX DEPARTMENT:

The counsel for the Income Tax Department filed its report before this Tribunal on 18.04.2024 under Inward

Diary No. R - 155 stating that the Communication was made to the department seeking details of outstanding demand. However, No response is received from the department after several reminders.

12. VALUATION REPORT:

The Learned Counsel for the Petitioner Companies invited the attention of this Tribunal to the Valuation Report dated 03.11.2023 obtained from, one Mr. Vaibhav Mandhana, Registered Valuer having RV Registration No. – IBBI/RV/06/2020/13124, determining the share entitlement ratio for the proposed scheme and the same is placed on record. The valuation report given by the registered valuer is attached with the petition at **“Annexure O”**.

13 ACCOUNTING TREATMENT:

Learned Counsel for the Petitioner Companies have stated that the Statutory Auditors has certified that the Accounting Treatment proposed in terms of clause 3.6 of part-III of the Scheme is in conformity with the applicable

Accounting Standards. The Certificate issued by the Statutory Auditors certifying the Accounting Treatment of the Petitioner Companies is placed at **‘Annexure T, U and V’** of the typeset.

14. OBSERVATIONS OF THIS TRIBUNAL:

- A. After analysing the Scheme in detail, this Tribunal is of the considered view that the scheme as contemplated amongst the petitioner companies seems to be *prima facie* beneficial to the Companies and will not be in any way detrimental to the interest of the shareholders of the Petitioner Companies. Considering the record placed before this Tribunal and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Amalgamation appended at **“Annexure M”** to the typed set filed along with the Company Petition as well as the prayer made therein.
- B. Learned Counsel for the Petitioner Companies submitted that no Winding up/Liquidation

Proceedings/Corporate Insolvency Resolution Process proceedings have been filed or pending against the Petitioner Companies under the Companies Act, 2013 or the corresponding provisions of the Companies Act, 1956. Further, no investigation or proceedings under the Companies Act, 1956/ Companies Act, 2013 have been instituted or are pending in relation to the Petitioner Companies.

C. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

D. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting approval of the said loan assignments and exemption from payment of stamp duty, taxes or any other charges, if any, payment is

due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

E. Further, it becomes relevant to discuss that in Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi has made the following observations with regard to the right of the Income Tax Department in the Scheme of Amalgamation,

*“taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in **RE: Vodafone Essar Gujarat Limited v. Department of Income Tax (2013)353 ITR 222 (Guj)** and the same being also affirmed by the Hon'ble Supreme Court and as reported in **(2016) 66 taxmann.com.374(SC)** from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated*

April 15,2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutory dues from the transferor or transferee or any other person who is liable for payment of such tax dues, the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned.”

15. THIS TRIBUNAL DO FURTHER ORDER:

- i. The Scheme of Amalgamation which is annexed as **“Annexure-M”** of the Petition is hereby sanctioned and it is declared that same shall be binding on the Petitioner Companies and their Shareholders and Creditors and all concerned under the scheme;
- ii. All the properties, rights and powers of Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Act, stand transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Companies.

- iii. All licenses, permissions, permits, approvals, certificates, clearances, authorities, leases, tenancy, assignments, rights, claims, liberties, special status, other benefits or privileges and any power of attorney relating to the Transferor Company shall stand transferred to and vested in the Transferee Company, without any further act or deed. The Transferee Company shall be bound by the terms thereof, the obligations and duties thereunder, and the rights and benefits under the same shall be available to the Transferee Company.
- iv. All the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- v. All contracts, agreements, insurance policies, bonds and all other instruments of whatsoever nature or description, of the Transferor Company, shall stand transferred to and vested in the Transferee Company

and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually against the Transferee Company.

- vi. All taxes paid or payable by the Transferor Company including existing and future incentives, un-availed credits and exemptions, the benefit of carried forward losses and other statutory benefits, which shall be available to and vest in the Transferee Company. The Tax liability of the Transferor Company shall become a liability of the Transferee Company and any proceedings against the Transferor Company shall continue against the Transferee Company.
- vii. All proceedings now pending by or against the Transferor Company shall be continued by or against the Transferee Company.
- viii. That the definitions for deciding the Appointed date and the effective date for the proposed date is reproduced as under: (Definitions: Clause 1 of Part 1):
 - 1.1.7: **“Appointed Date 1”** means the end of the day immediately preceding the Effective Date.

1.1.8: **“Appointed Date 2”** means the Effective Date.

1.1.12: **“Effective Date”** means the last of the dates on which all the approvals or events specified under clause 5.4 of part V of the scheme are obtained or have occurred or the requirement of which have been waived. Reference in this scheme to “upon the coming into effect of this scheme” or “upon this scheme becoming effective” or “effective of this scheme” or “scheme coming into effect” shall mean the Effective Date.

The Clause 5.4 of Part V of the proposed scheme is hereby reproduced:

“The Scheme is and shall be conditional upon subject to:

- b) The scheme being approved by the respective requisite majorities of the classes of members and creditors (where applicable) of the companies in accordance with the Act or dispensation having been received from the Tribunal in relation to obtaining such approval from the shareholders and/or creditors or any Law permitting the respective Companies not to convene the meetings of its shareholders and/or creditors;*
- c) The scheme being confirmed/approved by the Tribunal, either on terms as originally approved by the Companies, or subject to such modifications approved by the Tribunal, which shall be in form and substance acceptable to the Companies, each acting reasonably and in good faith;*
- d) The Transferor Company surrendering its registration, granted to it under the provisions of Insurance Regulatory and Development Authority*

of India (Registration of Corporate Agents) Regulations, 2015, to Insurance Regulatory and Development Authority of India; and
e) *Certified copies of the confirmations orders of the Tribunal confirming/sanctioning the Scheme being filed with the ROC by the respective Companies.”*

Since the conditions as mentioned in 5.4 (a) to (c) have been/ are being complied with as on the date of this order and the condition mentioned in 5.4 (d) is merely a formality, the Effective Date and the Appointed Date are hereby fixed as the date of Pronouncement of this Order.

ix. Consideration:

Upon the coming into effect of this Scheme, and in consideration of the transfer of and vesting of the Undertakings of the Amalgamating Companies in the Amalgamated Company in terms of the Scheme:

(a) the Amalgamated Company shall, without any further application, act, instrument or deed, issue and allot to the equity shareholders of the Amalgamating Company 1 whose names are recorded in the register of members as a member of the Amalgamating Company 1, on the Record Date, fully paid-up equity

shares, free and clear from all encumbrances together with all rights and benefits attaching thereto in the ratio of 31 (Thirty One) Amalgamated Company Shares, credited as fully paid-up, for every 1000 (One Thousand) equity shares of the face value of Rs. 10/- (Rupees Ten only) each fully paid-up and held by such equity shareholder in the Amalgamating Company 1 ("Share Swap Ratio 1");

(b) the Amalgamated Company shall, without any further application, act, instrument or deed, issue and allot to the equity shareholders of the Amalgamating Company 2 whose names are recorded in the register of members as a member of the Amalgamating Company 2, on the Record Date, fully paid-up equity shares, free and clear from all encumbrances together with all rights and benefits attaching thereto in the ratio of 57 (Fifty Seven) Amalgamated Company Shares, credited as fully paid-up, for every 1000 (One Thousand) equity shares of the face value of Rs. 10/- (Rupees Ten only) each fully paid-up and held by such

equity shareholder in the Amalgamating Company 2 ("Share Swap Ratio 2");

(c) the Amalgamated Company shall, without any further application, act, instrument or deed, issue and allot to the 0.001% compulsorily convertible preference shareholder(s) of the Amalgamating Company 2 whose names are recorded in the register of members as a preference shareholder of the Amalgamating Company 2 on the Record Date, 38,477 (Thirty Eight Thousand and Four Hundred and Seventy Seven) Amalgamated Company Shares, credited as fully paid-up against the entire paid-up 0.001% compulsorily convertible preference shares of Rs. 10/- (Rupees Ten only) each held by such preference shareholder(s) in the Amalgamating Company 2 ("Share Entitlement Ratio 1"); and

(d) the Amalgamated Company shall, without any further application, act, instrument or deed, issue and allot to the 0.001% Class B compulsorily convertible

preference shareholder(s) of the Amalgamating Company 2 whose names are recorded in the register of members as a preference shareholder of the Amalgamating Company 2 on the Record Date, 38,477 (Thirty Eight Thousand Four Hundred and Seventy Seven) Amalgamated Company Shares, credited as fully paid-up against the entire paid-up 0.001% Class B compulsorily convertible preference shares of Rs. 10/- (Rupees Ten only) each held by such preference shareholder(s) in the Amalgamating Company 2 ("Share Entitlement Ratio 2").

- x. All employees in the service of the Transferor Company shall be deemed to have become the employees of the Transferee Company on a date on which the Scheme finally takes effect on the basis that their services shall be deemed to have been continuous and not have been interrupted by reasons of the said transfer than those on which they were/are engaged, as on the Effective Date.
- xi. The Petitioner Companies within thirty days of the date of the receipt of this order, cause a certified copy

of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the entire Undertaking of the Transferor Company shall stand transferred to the Transferee Company and the Registrar of Companies shall place all documents relating to the Petitioner Companies to the file kept by him in relation to the Transferee Company and the files relating to the said two companies shall be treated accordingly;

- xii. All concerned Authorities to act on the copy of this order along with the Scheme which is annexed at **“Annexure M”** of the Petition, The Registrar of this Tribunal shall issue the certified copy of this order immediately;
- xiii. The Petitioner Companies are directed to lodge a copy of this Order and the approved Scheme, duly Certified by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for adjudication of stamp duty, and pay requisite stamp duty payable, if any, within 60 days from the date of this Order.

- xiv. The Petitioner Companies are further directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-form INC-28 in addition to a physical copy within 30 days from the date of issuance of the certified copy of the Order by the Registry as per relevant provisions of the Act.
- xv. The legal fees and expenses for the office of the Regional Director are quantified at Rs. 20,000/-. The said fees to the Regional Director shall be paid by the Transferee Company.
- xvi. The legal fees and expenses for the office of the Official Liquidator are quantified at Rs. 20,000/-. The said fees to the Official Liquidator shall be paid by the Transferee Company.
- xvii. The Income Tax Department will be free to examine the aspect of any tax payable as a result of the sanction of the Scheme and if it is found that the Scheme of Arrangement ultimately results in tax avoidance or is not in accordance with the applicable provisions of Income Tax Act, then the Income Tax

Department shall be at liberty to initiate appropriate course of action as per law. Any sanction of the Scheme of Arrangement under Sections 230-232 of the Income Tax Act, 2013 shall not adversely affect the rights of Income Tax Department or any past, present or future proceedings and the sanction of the scheme shall not come in its way for the appropriate course of action as per law for the tax liabilities, if any.

xviii. Any person aggrieved shall be at liberty to apply to this Tribunal for any directions that may be necessary.

16. Accordingly, the Company Petition CP(CAA) No. 3 of 2024 stands **allowed** on the aforementioned terms.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)
RS

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)