

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

ITEM No.301

C.P.(CAA)/6(AHM)2024 in C.A.(CAA)/59(AHM)2023

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

IN THE MATTER OF:

Mexus Education Private Limited
Mylife Private Limited
Mitsu Private Limited

.....Applicant

.....Respondent

Order delivered on: 05/07/2024

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 the 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 - I, AHMEDABAD**

**CP(CAA) No.06/NCLT/AHM/2024
in
CA(CAA) No. 59/NCLT/AHM/2023**

[Application under section 230-232 read with Section 66 and other applicable Provisions of the Companies Act, 2013 read with the Companies (Compromise, Arrangement and Amalgamation) Rules, 2016]

**In the matter of Scheme of Arrangement in the nature of
Amalgamation**

In the matter of:

Mexus Education Private Limited

(CIN:U73100GJ2006PTC048747)

Registered office at;
135/2/A, Bilakhia House,
Muktanand Marg, Chala,
Vapi – 396191 In the State of Gujarat

....Transferor Company 1

Mylife Private Limited

(CIN: U34203GJ2006PTC048639)

Bilakhia House, Muktanand Marg, Chala,
Vapi – 396191 in the State of Gujarat

....Transferor Company 2

Mitsu Private Limited

(CIN: U24231GJ1993PTC038905)

Bilakhia House, Muktanand Marg, Chala,
Vapi – 396191 in the State of Gujarat

....Transferee Company

Order pronounced on: 05.04.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

For the Applicant : Ms. Swati Soparkar, Advocate
For the RD : Mr. Shiv Pal Singh, Deputy Director
For the OL : Mr. Sandip Tupe, Technical Assistant
For the Income Tax : Ms. Bhumi Gandhi, Advocate for :
Ms. Maithili Mehta, Advocate

O R D E R
[Per: Bench]

1. The present Company Petition has been filed by the Petitioner Companies above named for the purpose of the approval of the Scheme of Arrangement in the nature of Amalgamation between **Mexus Education Private Limited** (for brevity "Transferor Company 1"), **Mylife Private Limited** (for brevity "Transferor Company 2") and **Mitsu Private Limited** (for brevity "Transferee 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, 2016 (for brevity 'the Rules')

(hereinafter referred to as the 'SCHEME') pursuant to the Scheme proposed by the Petitioner Company and the said Scheme is also annexed at "**Annexure I**" of the Petition.

2. The Scheme inter alia provides for the Arrangement in the nature of amalgamation of **Mexus Education Private Limited** and **Mylife Private Limited** with **Mitsu Private Limited** and Restructure of Share Capital of **Mitsu Private Limited**.

3. Affidavit in support of the above Petition was sworn on behalf of the Petitioner Companies and has been filed by Mr. Sunil Prakash Jain for all the Applicant Company along with the Petition. The above-named Authorised Signatory of Petitioner Companies has been authorized vide Board Resolution dated 25.08.2023 passed by the Petitioner Companies.

4. 1ST MOTION APPLICATION – IN BRIEF

4.1 The Petitioner Companies have filed the First Motion Application vide CA(CAA) No. 59/NCLT/AHM/2023 seeking reliefs as follows: -

	EQUITY SHAREHOLDERS MEETING	PREFERENCE SHAREHOLDER MEETING	SECURED CREDITORS MEETING	UNSECURED CREDITORS MEETING
Transferor company No. 1	To Dispense with	To Dispense with	N.A.	To Dispense with
Transferor Company No. 2	To Dispense with	To Dispense with	N.A.	N.A.
Transferee Company	To Dispense with	N.A.	To Dispense with	N.A.

4.2. From the certificate of incorporation filed, it is evident that the Transferor Company No. 1 is a Private Limited Company having its CIN: U73100GJ2006PTC048747 and its registered address at Plot No. 135/2/A Bilakhia House, Muktanand Marg, Chala, Vapi-396191, in the State of Gujarat. The Transferor Company No. 1 was incorporated under the provisions of Companies Act, 1956 on 21.07.2006 with the Registrar of Companies, Ahmedabad, Gujarat.

4.3. The details of the share capital are as under:

Authorised Capital	Share	Amount In Rs.
2,65,00,000	Equity	26,50,00,000/-
Shares of Rs.10 each		
93,00,000	Preference	93,00,00,000/-
Shares of Rs.100 each		
TOTAL		119,50,00,000/-
Issued, Subscribed and Paid-up Share Capital		Amount In Rs.
2,65,00,000	Equity	26,50,00,000/-

Shares of Rs.10 each	
91,80,000 Preference Shares of Rs.100 each fully paid up	91,80,00,000/-
Total	118,30,00,000/-

4.4. From the certificate of incorporation filed, it is evident that the Transferor Company No. 2 is a Private Limited Company having its CIN: U34203GJ2006PTC048639 and its registered address at Bilakhia House, Muktanand Marg, Chala, Vapi-396191, in the State of Gujarat. The Transferor Company No. 2 was incorporated under the provisions of Companies Act, 1956 on 06.07.2007 with the Registrar of Companies, Ahmedabad, Gujarat.

4.5. The details of the share capital are as under:

Authorised Share Capital	Amount In Rs.
15,00,000 Equity Shares of Rs.10/- each	1,50,00,000/-
4,00,000 Preference Shares of Rs.100/- each	4,00,00,000/-
TOTAL	5,50,00,000/-
Issued, Subscribed and Paid-up Share Capital	Amount In Rs.
15,00,000 Equity Shares of Rs.10/- each fully paid up	1,50,00,000/-
3,95,100 Preference Shares of Rs.100/- each fully paid up	3,95,10,000/-

Total	5,45,10,000/-
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4.6. From the certificate of incorporation filed, it is evident that the Transferee Company was incorporated as Public Limited Company under Companies Act, 1956 on 29.12.1993, with Registrar of Companies, Ahmedabad, Gujarat. The registered office at Bilakhia House, Muktanand Marg, Chala, Vapi – 396191 in the State of Gujarat. The Transferee Company was converted to a Private Limited Company and its name was changed from Mitsu Limited to Mitsu Private Limited with effect from 10.10.2007.

4.7. The details of the share capital are as under:

<u>Authorised Share Capital</u>	<u>Amount In Rs.</u>
1,50,00,000 Equity Shares of Rs. 10/- each	15,00,00,000 /-
<u>Issued, Subscribed and paid-up Share Capital</u>	
17,00,507 Equity Shares of Rs. 10/- each fully paid up	1,70,05,070/-

5. RATIONALE OF THE SCHEME

All the three companies belong to the same group of management viz. Bilakhia group and all the three companies are directly or indirectly Wholly Owned Subsidiaries of Bilakhia Holdings Private Limited (BHPL).

The objective of the proposed amalgamation is to consolidate the business activities of three companies in order to achieve business synergy and to achieve optimum use of the resources. In order to streamline the organization structure, the Board of Directors of all the companies have considered and proposed the present Scheme of Arrangement under the provisions of Sections 230 to 232 and other relevant provisions of the Companies Act, 2013. The Scheme is a part of internal reorganization of the Bilakhia group and does not adversely affect the stakeholders. It is envisaged that the proposed Scheme of Arrangement would interalia result into the following benefits to the Group and all other stakeholders including the promoters/ shareholders, Creditors and will be in the long term interest of the Companies: -

- achieving synergic advantages
- Optimum utilisation of various resources;
- Strengthening of financial position with wider capital base of the merged entity;
- Achieve administrative and operational convenience;
- Reduction in multiplicity of legal and regulatory compliances.
- Consolidation of commercial activities.

In view of the aforesaid advantages, the Board of Directors of the Transferor Companies and the Transferee Company have considered and proposed the Composite

Scheme of Arrangement under provisions of Section 232 and other relevant provisions of the Companies Act, 2013.

- 6.** In the second motion application filed by the Petitioner Companies, this Tribunal vide order dated 25.01.2024 directed the Petitioner Companies to issue notice Statutory / Regulatory Authorities viz. (i) the Central Government through Regional Director, North Western Region, (ii) the Registrar of Companies, Gujarat (iii) the Income-Tax Authority (iv) Official Liquidator and other Ministry of Corporate Affairs who may govern the working of the respective company, as well as for paper publication to be made in **“Indian Express”(Mumbai edition)** in English language and **“Sandesh” (Surat 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 under diary D1208 on 13.02.2024 and a perusal of the same discloses that the Petitioner Companies have effected paper publications as directed by the Tribunal in the

“Indian Express”(Mumbai edition) in English and in **“Sandesh”** in Vernacular Language **(Surat Edition)** on 09.02.2024. It is also seen that notices have been also served to (i) the Central Government through Regional Director, North Western Region, (ii) the Registrar of Companies, Gujarat (iii) the Income-Tax Authority, (iv) the Official Liquidator on 06.01.2024 and the proof of the same by way of affidavits have been enclosed with Annexure. Pursuant to the service of notice of the petition the following statutory authorities have responded as follows: -

STATUTORY AUTHORITIES

8. REGIONAL DIRECTOR

8.1 The Regional Director, North Western Region, MCA, and RoC, Ahmedabad have filed their common observations before this Tribunal on 18.03.2024 vide inward diary no. R119.

Observations of RD are as under:-

- (i)** Clause No. 11 of the scheme relates to the Consideration. The petitioner companies have

submitted the share exchange ratio/ valuation report dated 17.08.2023 prepare by Gaurav Jain, Independent Registered valuer, having IBBI Registration No. IBBI/RV/06/2021/13914, recommending the said share exchange ratio. The said valuation is an expert opinion duly accepted by the shareholders of the all-applicant companies. This directorate has not received any objection from any one of the stack holders. Therefore, this directorate has no scope to comment on the share exchange ratio/ valuation report.

- (ii)** That, as per Clause No. 15 of the Scheme, the present authorized share capital of the petitioner Transferor Company no.1 is amounting Rs. 1,19,50,00,000/- and out of this, only authorized share capital of Rs 83,00,00,000/- will be added to the authorized share capital of the petitioner transferee company and authorized share capital of the petitioner Transferor Company no. 2 will not be added. Accordingly the consolidated authorized share capital of the transferee company post-merger will be Rs. 98,00,00,000/-. In compliance with the provisions of Section 232 (3) (i) 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. 98,00,00,000/- and the fees which have already been paid by all the petitioner companies at the time of registration / increase in authorized capital.

- (iii)** That, the 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.

The RD is seeking following directions with respect to the Petitioner Companies: -

- (iv)** 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.
- (v)** 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.

- (vi)** 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.
- (vii)** Necessary Stamp Duty on transfer of property/Assets, if any is to be paid to the respective Authorities before implementation of the Scheme
- (viii)** 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.
- (ix)** 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.
- (x)** 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 ROC are as under:-

The Registrar of Companies, Ahmedabad, Gujarat has reported that there are no complaints, inquiry, inspection, Investigatio, or prosecution is pending against the petitioner companies. A cvopy of the ROC report is enclosed and marked as **Annexure-A** to the representation.

8.2 The applicant filed an additiona affidavit to the reply to the representation filed by RD along with RoC on 03.05.2024 vide inward diary no. D3782. In the reply, the Petitioner Companies have stated as under:-

- I. Vide Para 5 it is confirmed that the Registrar of Companies, Gujarat. has reported that there are no complaints, Inquiry, inspections, investigation or prosecution pending against the Petitioner Companies.

- II. Para 6 of the representation of the Regional Director pertains to the observations. Sub para (i) refers to Clause 11 of the Scheme which pertains to the Consideration. It is noted that the proposed Share Exchange Ratio has been recommended by a Registered Valuer and the same has been accepted by the shareholders of all the companies. The directorate has not received any objection in this regard from any stake holders. In view of the same, the directorate has not made any observation/comment on the same.
- III. The Regional Director vide Para 6 (ii) refers to the proposed transfer of only part of the Authorised Share Capital of only the Petitioner Transferor Company-1 and consolidation of the same with the Authorised Capital of the Transferee Company, as envisaged under Clause 15 of the proposed Scheme and the consequent amendment in the Capital Clause of the Petitioner Transferee Company. It is

observed by the Regional Director that under Section 232 (3) (i) of the Companies Act, 2013, the Transferee Company shall get the set off only for the amount of fees paid by the said Transferor Company. In view of the same, the Transferee Company will be required to pay the difference of amount of fees payable on the enhanced Authorised Capital as on date and the actual amount of fees paid by the Transferor Company at the relevant point of time. In this regard, it is respectfully submitted that the Transferee Company hereby undertakes to pay such difference, if any applicable, for the amount of fees payable as on date on the proposed enhancement of Authorised Capital.

IV. Vide para 6 (iii) of the affidavit, the Regional Director has sought confirmation from the petitioners with regard to the Scheme. It is hereby confirmed that the Scheme as annexed to the Company Application being CA CAA 59 of

2023 is verbatim the same as annexed to the Company Petition viz. CP CAA 6 of 2024 and that there is no discrepancy or there is no change made.

- V. The said authority has further requested the Hon'ble Tribunal to direct the petitioner companies (i) to ensure compliance and furnish clarification, if any; (ii) to preserve the books and records of the Transferor Companies as per Section 239 of the Act; (iii) to ensure statutory compliances of all applicable laws by all the companies and no absolution to be granted upon sanction of the scheme; (iv) to pay the requisite Stamp Duty on transfer of Assets; (v) filing of the copy of the order sanctioning the scheme in compliance with Section 232 (5) of the Act; (vi) compliance with the applicable provisions of Income Tax and all other applicable tax laws; (vii) payment of legal fees/cost as may be directed by the Hon'ble

Tribunal. The petitioners hereby undertake to comply with all the aforesaid statutory requirements in accordance with the directions of the Hon'ble Tribunal.

9. OFFICIAL LIQUIDATOR:

9.1 The Official Liquidator have filed their observations before this Tribunal on 01.05.2024 under Inward Diary No. R195 making following observations:

- I. Clause III (A) of Memorandum of Association (MOA) states the main object of the Transferor Company and Clause III (B) (32) of MOA provides that the company may amalgamate directly or indirectly to benefit the company.
- II. The details of Directors and shareholding pattern of the Transferor company is as under:

Details of Directors of the Transferor Company:

Sr.	Name of Directors	DIN
1	Dr. P.K Minocha	00090060
2	Sohil Sirkhaji	08723249

The Details of Equity Shareholder of Transferor Company is as under:

Sr. No.	Name of shares Holders	No. of Shares Held Rs. 10/- each	% of Holding
1	Mylife Private Limited	26,49,99,990	99.99
2	Mr. Anjum Bilakhia Jointly with Mylife Pvt. Ltd.	1	0.01
	Total	26,50,00,000	100.00

The details of Preference Shareholder of Transferor Company is as under:

Sr. No.	Name of Shares Holders	No. Of Shares Held Rs. 100/each	% of Holding
1	Minix Holding Pvt. Ltd 8% Non Cumulative, Non Covertiable, Redeemable Preference	67,00,000	72.98

	Shares		
2	Minix Holding Private Limited- 12% non cumulative, non convertible, redeemable Preference Shares.	20,00,000	21.79
3	Bilakhia Holding Private Limited 12% Non cumulative, Non convertible, redeemable preference shares.	4,80,000	5.23
	Total	91,80,000	100.00

Prayer made by Official Liquidator which is shown as under:-

- I. That, the Transferor Company has not accepted any Deposits u/s 73 of the Companies Act, 2013 and maintaining of cost record is not applicable to the company. Further, the Transferor Company is not required to register with RBI as a NBFC.

II. That, the Certificate dated 14.09.2023 from the Statutory Auditor of the Transferor Company namely M/s. Gopalkrishnan Aiyer & Co., LLP, Chartered Accountants, mentions:

*"Based on our examination and according to the information and explanations given to us, we are of the opinion that the accounting treatment contained in Clause 12 of the Scheme and as reproduced in **Annexure 'A'**, is in compliance with the Accounting Standards notified under Section 133 of the Companies Act, 2013, read with the rules there under and Other Generally Accepted Accounting Principles, as applicable."*

That,

- III. 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.)
- IV. To direct the Transferor Company to ensure Statutory compliance of all applicable laws and also on

sanctioning of the present Shceme, the Transferor Company shall not be absolved from any of its statutory liabilities, in any manner.

- V. Therefore, Mexus Education Private 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.
- VI. 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 1.) "Official Liquidator", payable at Ahmedabad.

- VII. 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.
- VIII. 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.

9.2 The applicant filed an additional affidavit to the reply to the representation filed by Official Liquidator on 03.05.2024 vide inward diary no. D3782. Which is stated as under:-

The other regulatory authority viz. Official Liquidator has made separate representations dated 1 May 2024 for the Transferor Companies. It has been observed that the Transferor Companies have conducted the business in accordance with Objects Clause and the same has not been conducted in any manner prejudicial to the interest of its members or public interest, hence the petitioner transferor companies

may be dissolved without following the process of winding up. Further, the Official Liquidator has sought directions to be issued (i) to preserve the books of accounts, papers and records of the Transferor Company and not to dispose of the same without prior permission of the Central Govt. as per the provisions of Section 239 of the Companies Act, 2013; (ii) to ensure statutory compliances by the Transferor Companies and no absolution to be granted as a result of the Scheme. The Petitioner Companies are duty bound to comply with the said directions issued by the Hon'ble Tribunal while sanctioning the proposed scheme and has already undertaken for such compliances in para 6 hereinabove.

10. INCOME TAX DEPARTMENT:

10.1 It is noticed that this company has filed its return of income upto A.Y. 2023-24. The assessee company has filed its return of income for A.Y. 2023-24 on 30.10.2023 declaring total business loss of Rs.4,85,27,327/-. Further, on verification of system of

this office, it is noticed that there is no outstanding demand in the case of M/s. Mexus Education Pvt. Ltd.

10.2 It is noticed that this company has filed its return of income upto A.Y. 2023-24. The assessee company has filed its return of income for A.Y. 2023-24 on 25.10.2023 declaring total income of Rs.Nil. Further, on verification of system of this office, it is noticed that there is no outstanding demand in the case of M/s. Mylife Pvt. Ltd.

10.3 It is noticed that there is no outstanding demand in the case of M/s. Mitsu Pvt. Ltd and no proceedings are pending in this case.

10.4 The Income Tax Dept. has filed its representations dated 20th March 2024. The same confirms that there no outstanding demands in case of any of the Petitioner Companies and hence the said dept. has no objection to the proposed scheme; subject to reserving their right to invoke the applicable provisions of Income Tax Act at the time of assessments. All the Petitioner Companies undertake to abide by the applicable provisions of the Income Tax Act and

accept the right of the Income Tax Dept. to invoke the applicable provisions at the time of the assessment.

11. ACCOUNTING TREATMENT

- i. Notwithstanding anything in the other parts of the Scheme, the amalgamation of the Transferor Companies with the Transferee Company shall be accounted for in the books of account of the Transferee Company in accordance with 'Pooling of Interest Method' of accounting as per Accounting Standard (AS-14) prescribed under Section 133 of the Act, which is applicable to the Transferee Company since this is a common control business combination.
- ii. The Petitioner Companies have annexed a copy of the certificate issued by the statutory auditor of the Petitioner Companies, to the effect that the accounting treatment specified in the Scheme of Arrangement is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 at ***Annexure – J.***

12. Valuation Reort

12.1 The learned counsel for the petitioner Companies invited the attention of this Tribunal to the Valuation Report dated 17.08.2023 obtained from, one Mr. Gaurav Jain, registered Valuer, determining the share entitlement ratio for the proposed schem and the same is place on record.

13. It is stated that the petitioner has filed an additional affidavit on 06.11.2023 vide inward diary no. D 4413 to place on record the supplementary unaudited provision Balance Shet as at 30th September, 2023 and profit & Loss account for the period ended 30th September 2023 of all the three applicant companies.

14. It is stated that the petitioner has filed an additional affidavit on 03.05.2024 vide inward diary no. D3742 to place on record the schedule of Assests of Mexus Education Pvt. Ltd and Mylife Pvt. Ltd. The petitioner Transferor Companies, proposed to be transferred to Mitsui Pvt. Ltd. the petitioner Transferee Company.

15. 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 Company and will not be in any way detrimental to the interest of the shareholders of the Company. 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 I**" of this petition among the Transferor Companies and Transferee Company to the typed set filed along with the Company Petition as well as the prayer made therein.
- B. The Learned Counsel for the Petitioner companies submitted that no investigation proceedings are pending against the Transferor or Transferee Companies under the provisions of the Companies Act, 1956 or the Companies Act, 2013 and no proceedings against the petitioner companies for oppression or

mismanagement have been filed before this Tribunal or erstwhile Company Law Board.

- 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 IT 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.”*

16. THIS TRIBUNAL DO FURTHER ORDER:

- i. The Scheme of Amalgamation as annexed as **Annexure ‘I’** to 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. The Transferor Companies shall be dissolved without winding up.
- iii. The Transferor Companies shall, together with all its properties, rights and powers 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 Company.
- iv. 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.

- v. 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.
- vi. 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.
- vii. 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.

- viii. All proceedings now pending by or against the Transferor Company shall be continued by or against the Transferee Company.
- ix. That the Appointed Date for the scheme shall be **1st Septembe, 2023** as mentioned in **Clause 1.2 of Part-I** of the Scheme.
- x. Consideration/ Issue of Shares:
- Upon this Scheme becoming effective and in consideration of the transfer of and vesting of the Undertakings of the Transferor Companies in the Transferee Company pursuant to this Scheme, the Transferee Company shall without any further application, act, instrument or deed, issue and allot Shares to the shareholders the Transferor Companies in accordance with the Exchange Ratio certificate. The shares shall be issued to the Equity shareholders of the Transferor Companies whose names appear in the

Register of Members of the Transferor Companies on the Date to be determined by the Board of Directors of the Transferee Company, or to such of their respective heirs, executors, administrators or successors or other legal representatives in title in the following proportion:

- a) 1 (One) equity share of Rs.10/- (Rupees Ten only) each credited as fully paid-up of Mitsui, the Transferee Company to be issued to Bilakhia Holdings Private Limited for 2,65,00,000 equity shares of the face value of Rs. 10/- (Rupees Ten only) of Mexus, Transferor Company-1 which is presently held by Mylife, the Transferor Company-2 and entire paid-up equity shares of Mylife, the Transferor Company-2 are held by Bilakhia Holdings Private Limited. As Mylife, the Transferor Company-2 will also be amalgamated into Mitsui, the Transferee Company; therefore, 1 (One) equity share of Mitsui, the Transferee Company will be issued to Bilakhia Holdings Private Limited.
- b) 1 (One) New Equity Share of Rs.10/- (Rupees Ten only) each credited as fully paid-up of Mitsui, the

Transferee Company to be issued to Bilakhia Holdings Private Limited for 15,00,000 equity shares of the face value of Rs. 10/- (Rupees Ten only) each held by it in Mylife, the Transferor Company-2.

- c) 1 (One) New Preference Share of Rs.100/- (Rupees One Hundred only) each credited as fully paid-up of Mitsu, the Transferee Company to be issued at par for every 1 (One) Preference Share of the face value of Rs. 100/- (Rupees One Hundred only) each held by the Preference Shareholders in Mexus, the Transferor Company-1 with the same terms and conditions.
- d) 1 (One) New Preference Share of Rs.100/- (Rupees One Hundred only) each credited as fully paid-up of Mitsu, the Transferee Company to be issued at premium of Rs. 900/ each for every 1 (One) Preference Share of the face value of Rs.100/- (Rupees One Hundred only) each held by the Preference Shareholders in Mylife, the Transferor Company-2 with the same terms and conditions.

- Upon the Scheme becoming effective, the new equity as well as preference shares of the Transferee Company to be issued and allotted to the shareholders of Transferor Companies shall be subject to the Scheme and the provisions of the memorandum and Articles of Association of the Transferee Company and shall rank Paripassu in all respects including dividends with the then existing equity and/or preference shares of Transferee Company. The issue and allotment of new Shares by the Transferee Company to the shareholders of the Transferor Companies as provided in the Scheme is an integral part hereof and shall be deemed to have been carried out pursuant to the Act.
- The resolution for approval of this scheme by the shareholders of all the Companies shall be deemed to be the due compliance of the provisions of Section 42,55,62 of the Companies Act, 2013 and the other relevant and applicable

provisions of the Act and rules framed thereunder for the issue and allotment of shares by the Transferee Company to the shareholders of Transferor Company as provided in the Scheme.

- xi. All concerned Authorities to act on the copy of this order along with the Scheme authenticated by the Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme immediately;
- xii. The Petitioner Companies are directed to lodge a copy of this Order and the approved Scheme duly authenticated 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.
- xiii. 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.

- xiv. 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.
- xv. 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.
- xvi. 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.

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

17. Accordingly, the Company Petitions stands **allowed** on the aforementioned terms.

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SAMEER KAKAR
MEMBER (TECHNICAL)

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SHAMMIKHAN
MEMBER(JUDICIAL)