

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

ITEM No.303

C.P. (CAA)/11(AHM)2024 in C.A.(CAA)/23(AHM)2024

Order under Section 230-232 of Companies Act, 2013

IN THE MATTER OF:

Yizumi Precision Machinery (India) Private Limited
(Transferor Company)

.....Applicant

Yizumi Advanced Processing Technology Private Limited
(Transferee Company)

Order delivered on: 03/07/2024

Coram:

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

PRESENT:

For the Applicant :

For the Respondent :

ORDER

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**

**CP (CAA) No.11/NCLT/AHM/2024
In
CA (CAA) No.63/NCLT/AHM/2023**

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

**In the matter of Scheme of Amalgamation
(Merger by Absorption)**

**YIZUMI PRECISION MACHINERY (INDIA) PRIVATE LIMITED
CIN: U29190GJ2016PTC093223**

Having its registered address at:
C-803, Safal Parivesh, Prahaladnagar,
Ahmedabad, Gujarat-380 015.

... Petitioner /
Transferor Company

With

**YIZUMI ADVANCED PROCESSING TECHNOLOGY PRIVATE LIMITED
CIN: U29230GJ2019FTC108825**

Having its registered address at:
Plot No. 1062 & 1063, GIDC Sanand-II,
Industrial Estate, Dist. Ahmedabad,
Gujarat – 382 170.

... Petitioner /
Transferee Company

And

Their Respective Shareholders and Creditors

Order pronounced on: 03.07.2024

CORAM:

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

Sh. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

Appearance:-

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

ORDER

1. The present Company Petition has been filed by the Petitioner Companies above named for the purpose of the approval of the Scheme of Amalgamation (Merger by Absorption) of **YIZUMI PRECISION MACHINERY (INDIA) PRIVATE LIMITED** (for brevity “Transferor Company”) with **YIZUMI ADVANCED PROCESSING TECHNOLOGY PRIVATE LIMITED** (for brevity “Transferee Company”) under Sections 230-232 read with Sections 66 and 52 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 Companies and the said Scheme is also annexed at "**Annexure-F**" along with the Petition.

2. An Affidavit in support of the above Petition was sworn on behalf of the Petitioner Companies has been filed by Mr. Ramesh Varadan for the Transferor Company and Mr. Yash Anilbhai Shah for the Transferee Company, Authorised Signatories and the same is annexed with the Petition. The above-named Authorised Signatories of Petitioner Companies have been authorized vide Board Resolutions dated 20.07.2023 and 22.07.2023.

3. 1ST MOTION APPLICATION – IN BRIEF

3.1 The Petitioner Companies had filed the First Motion Application vide CA(CAA)63(AHM)2023 sought reliefs as follows: -

	EQUITY SHAREHOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
TRANSFEROR COMPANY	To dispense with	To dispense with	To dispense with
TRANSFEE COMPANY	To dispense with	To dispense with	To dispense with

3.2 Considering the facts of the said application, directions were issued by the Tribunal vide order dated 13.12.2023 and 21.12.2023, to convene the meetings of Equity Shareholders and Unsecured Creditors of the Transferor Company on 29th January, 2024. Further, the meeting of

Secured Creditor of the Transferor Company was dispensed with. The meetings of Equity Shareholders, Secured Creditor and Unsecured Creditors of the Transferee Company were convened on 29th January, 2024.

4. The Second Motion Petition was filed before this Tribunal by the Petitioner Companies on 06.02.2024 for sanction of the Scheme.

5. RATIONALE OF THE SCHEME

Both these companies are part of the same group i.e., Yizumi Group and are engaged in same line of business. The Board of Directors of both the companies considered the merger of both entities which will result in consolidation of businesses as well as simplification of structure (including shareholding structure). The proposed merger envisaged under this Scheme is in line with the current global industry practice to achieve size, scalability, integration, greater financial strength and flexibility there by maximizing shareholder value and to achieve higher long-term financial returns. The proposed scheme is envisaged to result in the following benefits:

- Integration of business operations.
- Greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities.
- Garner the benefits arising out of economies of large scale and lower operating costs.
- Pooling and rationalization of talents in terms of manpower, management, administration etc. to result in savings of costs.
- Avoidance of duplication of administrative functions, reduction in multiplicity of legal and regulatory compliances and cost.
- Integrated operational and marketing strategies, inter-transfer of resources/costs will result in optimum utilization of assets.
- Bring uniformity in corporate policy.
- Benefit of operational synergies to the combined entity and greater leverage in operations, planning and process optimization.
- The proposed amalgamation will be beneficial to

both the companies and their respective shareholders and creditors, employees and other stakeholders and not prejudicial to the interests of the shareholders.

In view of the aforesaid, the Board of Directors of both the companies have proposed this scheme for the transfer and vesting of whole of the undertaking of the Transferor Company with and into the Transferee Company pursuant to the provisions of Section 230 to 232 and other relevant provisions of the Act.

It is further clarified that as a consequence of the proposed Scheme of Amalgamation (Merger by Absorption), there will be no change in control or economic beneficial ownership with respect to total shareholding of the promoters/promoter group i.e. the Ultimate Beneficial Owner(s).

- 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, (ii)

the Registrar of Companies, Gujarat, MCA (iii) the office of the Official Liquidator (iv) the jurisdictional Income Tax Officer having jurisdiction over the respective companies indicating specifically their Permanent Account Number (PAN) in the communication and (v) the Reserve Bank of India as well as other Sectoral Regulators, if any, who may govern the working of the respective companies, as well as for paper publication to be made in “**Business Standard**” in English language and “**Lokmitra**” in Vernacular Language both in Ahmedabad Edition.

7. In compliance to the aforesaid directions, the Petitioner Companies have filed an affidavit of service before the Registry of this Tribunal on 10.01.2024 in Inward No. D 261 and a perusal of the same discloses that the Petitioner Companies have effected paper publications as directed by the Tribunal in the “**Business Standard**” in English and in “**Lokmitra**” in Vernacular Language (**Ahmedabad Edition**) on 04.03.2024. It is also seen that notices have been also served to (i) Regional Director, North Western Region (ii) Registrar of Companies, Gujarat (iii) Income Tax Department along with the Principal Chief Commissioner

of Income Tax (iv) the Official Liquidator and (v) Reserve Bank of India on 12.03.2024, the proof of the same by way of affidavits have been enclosed with the separate typed set. Pursuant to the service of notice of the petition, the following statutory authorities have responded as follows:

STATUTORY AUTHORITIES

8. REGIONAL DIRECTOR & REGISTRAR OF COMPANIES

8.1 The Regional Director, North-Western Region (hereinafter referred to as 'RD') to whom the notice was issued, has filed its Report dated 22.03.2024 along with the report dated 05.02.2024 of Registrar of Companies (hereinafter referred to as 'ROC') before this Tribunal on 01.04.2024 vide Inward Diary No. R 133.

Observations of the Regional Director are as under:

- i. In para 5 (i) of RD's report, observation of Registrar of Companies, Gujarat is given wherein it is stated that, there are no complaints, inquiry, inspection, investigation or prosecution pending against the Petitioner Companies. Further, the ROC has made some observations at Para 14 of his report dated 05.02.2024.

- ii. In para 6 (i) of RD's report, it is stated that as per Clause 7.1 of the Scheme, the authorized share capital of the Petitioner Transferor Company amounting of Rs.3,00,00,000/- will be added to the authorized share capital of the Petitioner Transferee Company and the consolidated authorized share capital of the Transferee Company post-merger will be Rs.25,25,00,000/. 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.25,25,00,000/- and the fees which have already been paid by the Petitioner Companies at the time of registration/increase in authorized capital.
- iii. In para 6 (ii) of RD's report, it is stated that Clause 7.3 of the Scheme provides that the capital clause V of the Memorandum of Association of the Transferee Company shall, as a part of and, upon the coming into effect of this Scheme and without any further act or deed, be replaced by the following clause:

“V. The Authorized Share Capital of the Company is INR 57,71,72,600 (Rupees Fifty Seven Crores Seventy One Lakhs Seventy Two Thousand Six Hundred only) divided into 57,71,726 (Fifty Seven Lakhs Seventy One Thousand Seven Hundred Twenty Six Only) equity shares of INR 100/- (Rupees Hundred Only) each and with power to increase and reduce.....”

In this regard, it is submitted that as per MCA 21 Portal, the Authorized Capital of the Transferor Company and Transferee Company is Rs.3 Crores and Rs. 22.25 Crores respectively. According to Clause 7.1 of the Scheme, after merging the authorized capital of the Transferor Company, the consolidated Authorised capital of Transferee Company shall be Rs.25.25 Crores only. Further, if the Transferee Company wants to replace the clause V of MOA with authorised capital of Rs.57,71,72,600/- the company is required to comply the provision of Section 61 r. w. Section 64 of the Companies Act, 2013 for increase in authorized share capital of the Transferee Company and also as to the payment of stamp duty, registration fees etc. and file the relevant e-form with respective Registrar of Companies.

- iv. To 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.

- v. In para 6 (iv) of the RD's report, it is stated that the petitioner company has submitted letter dated 18.01.2024, pursuant to this Directorate's letter dated 01.01.2024 stating that there are Foreign National/NRI/foreign Bodies Corporate is holding shares in the Petitioner Companies. The Petitioner Companies are required to be complied with the provisions of FEMA and RBI guidelines, in this regard. To direct the Petitioner Companies to ensure about the compliances of FEMA and RBI guidelines, in the matter, from time to time.
- vi. In para 7(i) of the RD's report, it is stated that the Petitioner Companies have to ensure compliance of observation made by the Registrar of Companies and this Directorate.
- vii. In para 7(ii) of the RD's report, it is stated that the Petitioner Companies be directed 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.

- viii. In para 7(iii) of the RD's report, it is stated that the Petitioner Companies be directed 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.
- ix. In para 7(iv) of the RD's report, it is stated that necessary Stamp Duty on transfer of property/Assets, if any, is to be paid to the respective Authorities before implementation of the Scheme.
- x. In para 7(v) of the RD's report, it is stated that 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.
- xi. In para 7(vi) of the RD's report, it is stated that the Petitioner Companies shall undertake comply with Income Tax/GST law and any demand /taxes payable on implementation of the said scheme as per law.

xii. In para 7(vii) of the RD's report, it is stated that the Applicant company/(ies) have to pay such amount of legal fees / cost to the Central Government.

8.2 In response to the observations of Regional Director and Registrar of Companies, the Petitioner Companies have filed an additional affidavit before this Tribunal on 19.06.2024 vide Inward Diary No. D 4759.

a) In response to observation at para 5(i) of RD based on report dated 05.02.2024 of Registrar of Companies have confirmed that there are no complaints, inquiry, inspection, investigation or prosecution pending against the Petitioner Companies. Clarification/explanation is sought for the observations made vide Para 6 of the said affidavit.

b) In response to observation at para 6(i) of RD's report regarding compliance of Section 232(3)(i) of the Companies Act, 2013, the Petitioner Companies undertakes to pay such difference, if any applicable, for the amount of fees payable as on dated on the proposed enhancement of Authorized Capital.

c) In response to observation at Para 6(ii) of RD's Report as well as Point No. 14(5) of the ROC's Report dated

05.02.2024, the Petitioner Companies submits that Clause 7.3 and 7.4 of the Scheme refers to the amendments in the MOA and AOA of the Transferee Company in the post scheme scenario. It is envisaged that the Capital Clause shall on the Effective Date stand substituted to read as follows:

“The Authorised Share Capital of the Company in INR.57,71,72,600/- (Rupees Fifty Seven Crores Seventy One Lakhs Seventy Two Thousand Six Hundred Only) divided into 57,71,726 (Fifty Seven Lakhs Seventy One Thousand Seven Hundred Twenty Six Only) equity shares of INR 100/- (Rupees Hundred Only).”

It has been pointed out vide the representation that the consolidation of the Authorised Capital of the Transferor Company with the Authorised Capital of the Transferee Company amounts to Rs.25,25,00,000/- only. In this regard, it is respectfully submitted the out discrepancy in the Scheme. It is not disputed that the consolidation of the Authorised Capital of Transferor Company with that of the Transferee Company under Clause 7.1 of the Scheme shall amount of Rs.25,25,00,000/-.

However, in this regard, it is hereby clarified that considering the proposed Exchange Ratio, the Transferee Company shall need the Authorised Capital to the extent of Rs.57,71,72,600/-. Apart from the consolidation of the Authorised Capital of the Transferor Company with that of the Transferee Company, it will be necessary for the Transferee Company to increase its Authorised Capital to the required extent. The Petitioner Transferee Company had already initiated the requisite process to increase its Authorised Capital in compliance with the requisite procedure under the Act. The Petitioner Transferee Company had made payment of the requisite fees and applicable stamp duty by following the applicable provisions of law under Section 61 read with Section 64 and file requisite forms with the Registrar of Companies. Copy of the Master Data Dated 28th May, 2024 reflected on the portal of Ministry of Corporate Affairs is annexed with the additional affidavit. The same confirms that the Authorised Capital of the Transferee Company has been increased to Rs.54,71,72,600/-. In view of the same, after

considering the consolidation of the Authorised Capital of the Transferor Company with that of the Transferee Company, the Authorised Capital as on Effective Date, shall be the said amount of Rs.57,71,72,600/-, as envisaged vide Clause 7.3 and 7.4 of the Scheme.

- d) In response to observation at para 6(iii) of RD's report, it is submitted that the Scheme enclosed with the company application and the company petition is the same and there is no discrepancy or change in the same.
- e) In response to observation at para 6(iv) of RD's report, the Petitioner Companies submitted that they have complied with the applicable provisions of FEMA as well as RBI regulations and further undertakes to comply with the same while implementing the Scheme.
- f) The Petitioner Companies undertake to comply with all Statutory/Regulatory compliances.

9. OFFICIAL LIQUIDATOR:

9.1 The Official Liquidator (hereinafter referred to as 'OL') to whom the notice was issued, has filed its Report in respect of the Transferor Company before this Tribunal on 07.06.2024 in Inward Diary No. R 249.

OBSERVATIONS OF THE OFFICIAL LIQUIDATOR

- i. In para 11 of the OL's report, it is stated that the Official Liquidator vide letter dated 21.02.2024 appointed M/s. Kiran Shah & Associates, panel Chartered Accountants, to scrutinize the Book of Accounts and affairs fo the Transferor Company. The Chartered Accountants submitted his report dated 01.04.2024, wherein some observations were raised with respect to the Scheme. In response to said observations, the management of the Transferor Company has given their reply. It is observed from the reply that the Transferor Company accepted to the typographical errors in the Scheme. The errors in the scheme as well as response of the management is given as under;

Sr.	Observations	Response by the team of management
1.	Clause 4(a) & (b) are not found in the Scheme.	Para 4 of the Scheme does not have sub-para (a) & (b), the reference be please considered as 4.1(a) and 4.1 (b) of the Scheme.
2.	Regarding sub clause d of clause 4.1 of the Scheme, reference is made for clause 1, however, the said clause is not found in the Scheme.	We agree, the reference made of Clause I of the Scheme is a typographic error the same is referencing to Clause 4.1(a), 4.1(b) and 4.1(c)

3.	Regarding clause 4.3 of the Scheme, reference is made for clause 4.1, clause 4.2 and clause 4.3 in relation to the transfer and vesting of the assets; however, the same is found inconsistent with the contents of the Scheme considering that only clause 4.1 relates to the transfer and vesting of the assets whereas clause 4.2 relates to the transfer and vesting of the liabilities and clause 4.3 relates to the encumbrances instead of transfer and vesting of the assets.	We agree, the reference made to Clause 4.2 and Clause 4.3 in Clause 4.3(a) may be construed to be not pertinent and the relevant referencing should be to Clause 4.1 i.e., Transfer and Vesting of Assets.
4.	Regarding Schedule I of the Scheme, proposal is made for the amendment / addition of certain clauses relating to the objects to the Memorandum of Association of the Transferee Company and the same appears to be unwarranted.	As far as the requirement of the relevant amendment in this regard is concerned, we would like to draw your good self's attention to following Board Resolutions passed by the Transferee Company in this regard. Board Resolution passed by the Transferee Company dated 22 nd July, 2023.

The aforesaid typographical errors in the Scheme does not have a material impact, however, the Company

should have been careful in drafting the Scheme as the same will be part of the record. In view of the above observations and typographical errors in the Scheme, the Tribunal may be pleased to direct the Transferor Company to rectify the Scheme and file fresh Scheme or may pass other appropriate order as this Tribunal may deem fit and proper in the interest of justice.

- ii. In para 12 of the OL's report, it is stated 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 Provision of Section 239 of the Companies Act, 2013.
- iii. In para 13 of the OL's report, it is stated 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.
- iv. In para 14 of the OL's report, it is stated that 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.

- v. In para 15 of the OL's report, it is stated that the cost of proceedings and related expenses of the office of the Official Liquidator for submitting this report is Rs. 20,000/- each approximately.
- vi. In para 16 of the OL's report, it is stated that the 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.
- vii. In para 17 of the OL's report, it is stated that Tribunal may direct the companies involved in the scheme to comply with Provision of Section 232(5) of Companies Act, 2013 with respect to file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from the date of passing order.

9.2 In response to the observations of Official Liquidator, the Petitioner Companies have filed additional affidavit before this Tribunal on 19.06.2024 vide Inward Diary No. D 4759.

- i. In response to the Observation in Para 11 of the OL's report, the Petitioner Companies accept the inadvertent error resulting in typographical errors. It is also realized and accepted that the Main Objects Clause of the Transferee Company already includes the commercial activities of the Petitioner Transferor Company and it is not necessary to amend the Objects Clause of the Petitioner Transferee Company. In view of the same, taking notice of the observations of the Official Liquidator, the Board of Directors of the Petitioner Companies vide their respective Resolutions dated 17th June, 2024 have approved the Modified Scheme rectifying the aforesaid inadvertent errors. The copy of the Board Resolution and Modified Scheme are annexed with the Additional Affidavit. It is further respectfully submitted that the above referred rectifications do not affect the Scheme

in any material way and do not affect the rights and interests of any parties. In view of the same, it is further prayed that the said Modified Scheme be considered for the sanction of the Scheme.

- ii. They undertake 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 Government as per the provisions of Section 239 of the Companies Act, 2013 as well as undertake to comply with the Statutory Compliance.

10. INCOME TAX DEPARTMENT:

10.1 In pursuance to the notice, Income Tax Department has filed two separate reports on 04.04.2024 and 15.05.2024 vide Inward No. R 141 & R 207, respectively. However, the Income Tax Department confirming that they have no objection to the proposed Scheme. Further, the Department have sought liberty to reserve their right to invoke applicable provisions of the Income Tax Act at the time of assessment proceedings, including the availability of depreciation in the books of the Transferee Company.

10.2 In response to the observation of the Income Tax Department, the Petitioner Companies filed an additional affidavit dated 19.06.2024 vide Inward Diary No. D 4759 wherein Petitioner Companies undertake to abide by the applicable provisions of the Income Tax Act and accept the right of the Income Tax Department to invoke the applicable provisions including to examine availability of depreciation, at the time of the assessment.

11. RESERVE BANK OF INDIA

11.1 In pursuance to the notice, the Reserve Bank of India has filed its report dated 10.01.2024 vide Inward Diary No. 79. However, the Reserve Bank of India submits that it is the duty of the companies undergoing compromise/arrangement/amalgamation to comply with the requirements of various laws including the rules, regulations and guidelines prescribed by RBI, viz. the companies may have to comply with Foreign Exchange Management Act, 1999, and the rules and regulations made thereunder. It is also submitted that as a Regulator, it will not be ethical on the part of RBI to vet

individual cases, as it will preclude it from taking action on contraventions, if any, committed by such companies.

11.2 In response to the observation of the Reserve Bank of India, the Petitioner Companies filed an additional affidavit dated 19.06.2024 vide Inward Diary No. D 4759 wherein Petitioner Companies undertake to comply with the requisite provisions for implementation of the Scheme subject to sanction of the same by this Tribunal.

12. VALUATION REPORT

The Petitioner Companies have already placed on record a copy of the Valuation Report obtained from, Mr. Roshan Nilesh Vaishnav, CA, Registered Valuer dated 08.07.2023 with Registration No. IBBI/RV/06/2019/11653 with the 1st motion applicaiton.

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 9 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 G (Colly)**' 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 F**" 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 (Merger by Absorption) is annexed as **Annexure-F** 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 Company 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.
- 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, if any, shall be continued by or against the Transferee Company.

viii. That the Appointed Date for the scheme shall be **1st April, 2023** as mentioned in **Clause 1.3** of the Scheme.

ix. Consideration:

Pursuant to the Scheme coming into effect and without any further application, act or deed, the Transferee Company shall issue and allot:

“12 Equity shares of Rs.100 each fully paid up in its equity shares capital in respect of every 1 equity share of Rs.100 hold by person whose name appear in the register of members of the Transferor Company (or to such of their respective heirs, executors, administrators or other legal representative or other successors in title as may be recognized by the Board of Directors of the Transferee Company) as on the Record Date.”

x. All employees in the service of the Transferor Company shall be deemed to have becomes 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 authenticated by the Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme immediately;
- xiii. The Petitioner Companies are directed to lodge a copy of this Order and the approved Scheme and Schedule

of Assets of the Petitioner Transferor Company with this order, duly authenticated/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 Amalgamation 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 Amalgamation under Sections 230-232 of the Companies 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 stands **allowed** on the aforementioned terms.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

SK

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)