

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

ITEM No.302
CP(CAA)/21(AHM)2024 in
CA(CAA)/67(AHM)2023

Order under Section 230 & 232 of Co. Act, 2013

IN THE MATTER OF:

Durga Polysters Private Limited
Durga Processors Private Limited
Durga Avenue Private Limited

.....Applicant

.....Respondent

Order delivered on: 16/07/2024

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 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.21/NCLT/AHM/2024
in
CA(CAA) No. 67/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:

Durga Polysters Private Limited (CIN:
U00064GJ1997PTC144316)

Registered office at;

A-501, ICC, Nr. Kadiwala School, Ring Road,
Surat Textile Market, Surat, Gujarat, India
395002

....Transferor Company

Durga Processors Private Limited

(CIN: U22219GJ1998PTC144314)

Registered office at;

501B, 5th Floor, Building A, ICC, Nr. Kadiwala School, Ring Road,
Surat Textile Market, Surat City, Surat, Gujarat, India 395002

....Transferee Company

Durga Avenue private Limited

(CIN: U00316GJ1995PTC146106)

Registered office at;

502-A & 502-B, 05th Flr, Bldg A, ICC, Nr. Kadiwala School, Ring
Road, Surat Textile Market, Surat, Gujarat, India, 395002.

....Resulting Company

Order pronounced on: 16.07.2024

CORAM:

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

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

For the Applicant : Ms Vaibhavi Parikh, Advocate
For the RD : Mr. Shiv Pal Singh, Deputy Director
For the OL : Mr. Sandip Tupe, Official Liquidator
For the Income Tax : Ms. Kinjal Vyas, Advocate for :
Ms. Maithili Mehta, Advocate

ORDER
[Per: Bench]

1. This is a Joint Company Application Viz., [CP\(CAA\)/21\(AHM\)/2024](#) filed by the Applicant Companies, namely **Durga Polysters Private Limited** (for brevity "Transferor Company"), **Durga Processors Private Limited** (for brevity "Transferee/Demerged Company") and **Durga Avenue Private Limited** (for brevity "Resulting 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 in relation to the Composite Scheme of Arrangement in the nature of

Merger of Durga Polysters Private Limited with Durga Processors Private Limited and subsequent De-merger and Transfer of Investment Business of Durga Processors Private Limited to Durga Avenue Private Limited (hereinafter referred to as the “SCHEME”) proposed by the Applicant Companies. The said Scheme is also appended as **“Annexure –G”** to the typed set filed along with the Application.

2. The Scheme inter alia provides for the Arrangement in the nature of amalgamation of **Durga Polysters Private Limited** with **Durga Processors Private Limited** and Dermerger of Resulting **Durga Processors Private Limited** to **Durga Avenue Private Limited**.
3. Affidavit in support of the above Petition was sworn on behalf of the Petitioner Companies and has been filed by Mr. Kunj Bihari Sultaniafor for Durga Polysters Private Limited and Durga Processors Private Limited and Nandini Sultania for Durga Avenue Private Limited along with the Petition. The above-named Authorised Signatory of Petitioner Companies has been authorized vide Board

Resolution dated 20.11.2023 passed by the Petitioner Companies.

1. 1ST MOTION APPLICATION – IN BRIEF

1.1 The Petitioner Companies have filed the First Motion Application vide CA(CAA) No. 67/NCLT/AHM/2023 seeking reliefs as follows: -

	EQUITY SHAREHOLDERS MEETING	PREFERNCE SHAREHOLDERS MEETING	SECURED CREDITORS MEETING	UNSECURED CREDITORS MEETING
TRANSFEROR COMPANY	To dispense with	N.A	To dispense with	To dispense with
TRANSFEEEE / DEMERGED COMPANY	To dispense with	N.A	To dispense with	To dispense with
RESULTING COMPANY	To dispense with	N.A	N.A	To dispense with

1.2 From the certificate of incorporation filed, it is evident that the Transferor Company is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 26.03.1997 with the Registrar of Companies, Bihar, under the name and style of “**Durga Impex Private Limited** ”. The name of the Company then changed to “**Durga Polymers Private Limited**” with effect from 26.08.2000. The name of the Company then

changed to “**Durga Polysters Private Limited**” with effect from 22.07.2004. Later, the Registered Office of the company was shifted from state of Bihar to the state of Gujarat vide certificate dated 30.08.2023.

1.3 The authorized, issued subscribed and paid-up share capital of the Transferor Company as on 31.03.2023 is as under:

AUTHORIZED SHARE CAPITAL	AMOUNT (IN Rs.)
25,00,000 Equity Shares of Rs.10/- each	2,50,00,000
Total	2,50,00,000
ISSUED, SUBSCRIBED AND PAID-UP SHARE CAPITAL	AMOUNT (IN Rs.)
12,79,800 Equity Shares of Rs.10/- each	1,27,98,000
Total	1,27,98,000

1.4 From the certificate of incorporation filed, it is evident that the Transferee/Demerged Company is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 on 02.04.1998 with the Registrar of Companies, Bihar, under the name and style

of “**Durga Agencies Private Limited**”. The name of the Company then changed to “**Durga Processors Private Limited**” with effect from 16.08.2002. Later, the Registered Office of the company was shifted from state of Bihar to the state of Gujarat vide certificate dated 30.08.2023.

1.5 The authorized, issued subscribed and paid-up share capital of the Transferee Company as on 31.03.2023 is as under:

AUTHORIZED SHARE CAPITAL	AMOUNT (IN RS.)
35,00,000 Equity Shares of Rs.10/- each	3,50,00,000
Total	3,50,00,000
ISSUED, SUBSCRIBED AND PAID-UP SHARE CAPITAL	AMOUNT (IN RS.)
28,97,225 Equity Shares of Rs. 10/-each	2,89,72,250
Total	2,89,72,250

1.6 From the certificate of incorporation filed, it is evident that the Resulting Company is a Private Limited Company incorporated under the provisions of the

Companies Act, 1956 on 21.06.1995 with the Registrar of Companies, Bihar, under the name and style of “**Durga Waxes Private Limited**”. The name of the Company then changed to “**Durga Avenue Private Limited**” with effect from 07.07.2016. Later, the Registered Office of the company was shifted from state of Bihar to the state of Gujarat vide certificate dated 07.11.2023.

1.7 The authorized, issued subscribed and paid-up share capital of the Resulting Company as on 31.03.2023 is as under:

AUTHORIZED SHARE CAPITAL	AMOUNT (IN RS.)
4,60,00,000 Equity Shares of Rs.10/- each	46,00,00,000
Total	46,00,00,000
ISSUED, SUBSCRIBED AND PAID-UP SHARE CAPITAL	AMOUNT (IN RS.)
1,13,89,068 Equity Shares of Rs. 10/-each	11,38,90,680
Total	11,38,90,680

4. RATIONALE OF THE SCHEME

- i. **Operational Efficiency:** Both Durga Polysters Private Limited and Durga Processors Private Limited are engaged in the business of dyeing and printing of textile fabrics and allied activities. Both the Companies are situated adjacent to each other and share common geographical presence. The amalgamation of Durga Polysters Private Limited into Durga Processors Private Limited will ensure synergies through pooling of production facilities, financial, managerial and technical resources and also will provide Durga Processors Private Limited with track record, brand, strong base, required expertise, experienced employees for carrying out the business and exploiting its immovable and moveable properties. Thus, resulting in ease of operating of operations.
- ii. **Investment Opportunity:** Durga Polysters Private Limited and Durga Processors Private Limited are engaged in the business of Dyeing and Printing of Textile Fabrics and holds investment in Shares and Fixed Deposit Receipts. Durga Avenue Private Limited

is a core Investment Company of the group and invests in various companies and firms, either by investing or by lending. Durga Avenue Private Limited gets various new and novice investment opportunities from time to time. Subsequent to amalgamation of Durga Polysters Private Limited into Durga Processors Private Limited, the promoters and shareholders of Durga Processors Private Limited propose to de-merge the Investment Division ("De-merged Undertaking" as defined hereunder) along-with all its related rights and liabilities of the De-Merged Company viz. Durga Processors Private Limited into Resulting Company viz. Durga Avenue Private Limited.

- iii. **Focused Growth Strategy:** Further, the group is currently operating its Textile Business through both the Transferor and Transferee Companies. With an objective to exploit and expand the manufacturing facilities of both the Companies, which are similar and complement to each other, management and shareholders of both the Companies have decided to amalgamate the Transferor and Transferee

Companies. Such restructuring would further lead to simplification of group structure by eliminating multiple companies, thus enabling on core competencies.

- iv. **Segregation of Business:** Further, Dyeing and Printing of Textile Fabrics Business and Investment Business of Durga Polysters Private Limited and Durga Processors Private Limited are inherently distinct and diverse in its business characteristics, growth trajectories, risk profiles and require entirely different approaches. Subsequent to amalgamation of Durga Polysters into Durga Processors, the management considers it prudent to de-merge the Investment Business (which is not related directly to the textile business) from Durga Processors and merge into Durga Avenue.
- v. **Flexibility in Operations:** Further, the proposed de-merger of Investment Business will provide flexibility in running the business operations of the Dyeing and Printing of Textile Fabrics by pursuing independent growth strategies.

- vi. **Administrative Efficiency:** The merger of Investment Business of the De-merged Company into Durga Avenue Private Limited will provide separate and independent administrative setup for the Dyeing and Printing of Textile Fabrics Business and will ensure the required depth and focus of the management. De-merger will help in adoption of strategies necessary for the growth of both the businesses.
- vii. **Optimisation of Resources:** This Composite Scheme of Arrangement will provide independence to the management in decisions regarding the use of their respective cash flows. It will enable the said businesses to be carried on more conveniently and advantageously. Hence cost optimisation, economies of scale and specialisation can be achieved.
- viii. **Value Unlocking:** The management believes that the proposed Scheme will create enhanced value for shareholders and allow a focused strategy in operations, which would be in the best interest of the shareholders, employees and other stakeholders in each of the companies.

5. In the second motion application filed by the Petitioner Companies, this Tribunal vide order dated 05.04.2024 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”(Surat edition)** in English language and **“Divya Bhaskar”(Surat Edition)** in Vernacular Language.
6. 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 D3945 on 09.05.2024 and a perusal of the same discloses that the Petitioner Companies have effected paper publications as directed by the Tribunal in the **“Indian Express”(Surat edition)** in English and in **“Divya Bhaskar”** in Vernacular Language **(Surat Edition)** on 30.04.2024. 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 30.04.2024 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

7. REGIONAL DIRECTOR

7.1 The Regional Director, North Western Region, MCA, and RoC, Ahmedabad have filed their common observations before this Tribunal on 01.07.2024 vide inward diary no. R 217.

Observations of RD are as under:-

- i. Clause No. 12 & 24 of the scheme relates to the Consideration. The petitioner companies have submitted the share exchange ratio/ valuation report dated 28.07.2023 prepare by CS Ranjit kejriwal,, the Registered Valuer Registration, No.

IBBI/RV/03/2019/11612, 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 the Scheme, the authorized share capital of the petitioner Transferor Companies amounting to Rs. 2,50,00,000/- 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. 6,00,00,000/-. 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. 6,00,00,000/- 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 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.
- 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 & 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.

7.2 In response to the Report filed by the ROC and RD the Applicant filed reply to the Report on 04.06.2024 vide vide diary no. D4395 which is stated as under:

- a) as far as the observation of the Regional Director stated in paragraph 6 (ii) of his report are concerned, the Petitioner Companies states that they will pay the difference amount of fees, if any; in compliance with the provisions of section 232(3) (i) of The Companies Act, 2013 on the enhanced capital of Rs. 6,00,00,000/-.
- b) As far as the observation of the Regional Director stated in paragraph 6 (iii) of his report are concerned, the Petitioner Companies states that the scheme enclosed to the company application and company petition are one and the same and there is no discrepancy, or no changes have been made.
- c) As far as the observation of the Regional Director stated in paragraph 7 (i) of his report are concerned, the Petitioner Companies will comply the paragraph No 5 & 6 of the report and the same has been affirmed in para 4 & 5 above.

- d) As far as the observation of the Regional Director stated in paragraph 7 (ii) of his report are concerned, the Petitioner Companies will not dispose of its books of accounts, papers and records without prior permission of the Central Government as per the provision section 239 of the Companies Act, 2013.
- e) As far as the observation of the Regional Director stated in paragraph 7 (iii) of his report are concerned, the Petitioner Companies will comply with all applicable laws and not be absolved from any of its statutory liabilities, in any manner on sanctioning of the present scheme.
- f) As far as the observation of the Regional Director stated in paragraph 7 (iv) of his report are concerned, the Petitioner Companies shall pay the necessary stamp duty on transfer of property/assets, if any to the respective authorities before implementation of the scheme.
- g) As far as the observation of the Regional Director stated in paragraph 7 (v) of his report are concerned, the Petitioner Companies will file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from date of the receipt of certified copy of the order.

- h) As far as the observation of the Regional Director stated in paragraph 7 (vi) of his report are concerned, the Petitioner Companies will undertake to comply with Income Tax/GST law and any demand/taxes payable on implementation of the said scheme as per law.
- i) As far as the observation of the Regional Director stated in paragraph 7 (vii) of his report are concerned, the Petitioner Companies will pay such amount of legal fees/cost to the Central Government which may be considered appropriate by the Hon'ble NCLT for the legal fees/expenses of the office of the Regional Director for submitting report and representing the matter on behalf of the Central Government.

8. OFFICIAL LIQUIDATOR:

8.1 The Official Liquidator have filed their observations before this Tribunal on 29.05.2024 under Inward Diary No. R 223 making following observations:

- a) To direct the Transferor Company to preserve its book of accounts, papers and records and shall not be disposed of

without prior permission of the Central Govt. as per the Provision of Section 239 of the Companies Act, 2013.

- b) To direct the Transferor Company to ensure Statutory Compliance of all applicable laws. And, on sanctioning of the present scheme, the Transferor Company shall not be absolved from any of its Statutory liabilities, in any manner.
- c) That, M/s. Durga Polysters 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.
- d) To direct the Transferee Company to pay such cost and expenses to the Office of 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.

- e) 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.
- f) To 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.

7.2 In response to the Report filed by the OL the Applicant filed rely to the Report on 04.06.2024 vide vdiary no. D4395 which is staed as under:

- i. As far as the observation of the Official Liquidator stated in paragraph 11 of his report are concerned, the Petitioner Company will not dispose of its books of accounts, papers and records without prior permission of the Central Government as per the provision section 239 of the Companies Act, 2013.

- ii. As far as the observation of the Official Liquidator stated in paragraph 12 of his report are concerned, the Petitioner Company will comply with all applicable laws and not be absolved from any of its statutory liabilities, in any manner on sanctioning of the present scheme.
- iii. As far as the observation of the Official Liquidator stated in paragraph 13 of his report are concerned, the Petitioner Company will pay the difference amount of fees, if any; after set off fees paid by the Transfer company on its Authorised Capital in terms of sub section 3(i) of section 232 of Companies Act, 2013.
- iv. As far as the observation of the Official Liquidator stated in paragraph 14 of his report are concerned, the Petitioner Company will pay such amount of cost of proceedings and related expenses of the office of the Official Liquidator which may be considered appropriate by the Tribunal in favour of the Official Liquidator, Payable at Ahmedabad.
- v. As far as the observation of the Official Liquidator stated in paragraph 15 of his report are concerned, the Petitioner Company will submit a certified copy of the order along with the scheme with the concerned Superintendent of

Stamp for the purpose of adjudication of stamp duty. The petitioner company also states that they shall pay stamp duty, if any required.

- vi. As far as the observation of the Official Liquidator stated in paragraph 16 of his report are concerned, the Petitioner Company will file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from date of the receipt of certified copy of the order.

9. INCOME TAX DEPARTMENT:

9.1 Income Tax Department filed its report on 26.06.2024 vide diaryt No. R298 stating that there is no Income Tax demand is outstanding against **Durga Polysters Private Limited, Durga Processors Private Limited** and **Durga Avenue Private Limited**.

10. 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(colly)***.

11. Valuation Reort

- 11.1 The Learned Counsel for the Petitioner Companies invited the attention of this Tribunal to the Valuation Report dated 28.07.2023 obtained from, one Mr. Ranjit Kejriwal, Registered Valuer, recommendation of Share Exzchange Ratio and share entitlement ratio for the proposed composite scheme of Arrangement and the same is placed on record.

12. 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 G**" 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.”*

13. THIS TRIBUNAL DO FURTHER ORDER:

- i. The Scheme of Amalgamation as annexed as **Annexure ‘G’** 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 April, 2023** as mentioned in **Clause 1.4 of Part-A** of the Scheme.

x. Consideration/ Issue of Shares:

- Upon the Scheme becoming effective, in consideration of the amalgamation of the Transferor Company with the Transferee Company, the Transferee Company shall, without any further act or deed, issue and allot its shares, at par credited as fully paid up to the extent indicated below, to the members of Transferor Company, whose name is recorded in the register of members of the Transferor Company on the Record Date 1 in the following ratio:

With respect to the Equity Shareholders of the Transferor Company: - "775 (Seven Hundred Seventy-Five) Equity Shares of the Transferee Company of the face value of Rs.10/- (Rupees Ten only) each, credited as fully paid-up for every 467 (Four Hundred Sixty-Seven) Equity Shares of Rs.10/- (Rupees Ten only) each fully paid-up held by such members in the Transferor Company".

- The Equity Shares issued and allotted pursuant to Composite Scheme of Arrangement shall be hereinafter referred to as 'New Equity Shares'.
- Upon the Scheme becoming effective and upon the New Equity Shares being issued and allotted as per Clause 12.1 above, the Equity Shares of Transferor Company in physical form shall be deemed to have been automatically cancelled and be of no effect on and from the Record Date.
- The Transferee Company in respect of fractional entitlement shall issue no fractional shares, if any, to the Shareholders of the Transferor Company and the fractions shall be rounded up to the nearest whole

number. Further, each Shareholder of the Transferor Company shall get at least one share of the Transferee Company.

- The New Equity Shares to be issued and allotted as per Clause 12.1 above shall be subject to the provisions of Memorandum and Articles of Association of the Transferee Company.
- The issue and allotment of 'New Equity Shares' to the respective Shareholders of the Transferor Company as provided in this Scheme, is an integral part thereof and shall be deemed to have been carried out without requiring any further act on the part of the Transferee Company or its shareholders and as if the procedure laid down under Sections 42 and 62 of the Act and any other applicable provisions of the Act, and such other statues and regulations as may be applicable were duly complied with.
- The Share Certificates in relation to the shares held by the Equity Shareholders of the Transferor Company whose names are recorded in the Register of Members of the Transferor Company on the Record

Date 1, fixed by the Board of Directors of the Transferee Company, shall be deemed to have been automatically cancelled and be of no effect on and from such Record Date 1, without any further act, instrument or deed.

- In so far as the Equity Shares of the Transferor Company, if any, held by the Transferee Company on the Effective Date are concerned, such shares would be cancelled and to that extent the Transferee Company is required to issue less number of shares.
- In so far as the Equity Shares of the Transferee Company, if any, held by the Transferor Company is concerned, such shares would be cancelled on the effective date.
- For the purpose as aforesaid the Transferee Company shall, if and to the extent required, apply for and obtain the requisite approvals including that of the appropriate authorities concerned for issue and allotment by the Transferee Company to the other members other than the Transferor Company, respective members of the Transferor Company of the

Equity Shares in the said re-organized share capital of the Transferee Company in the ratio as aforesaid.

- The shares of the Transferor and the Transferee Company are not listed on any stock exchange. The Equity Shares of the Transferee Company issued in terms of the Clause 12.1 above shall be issued only in physical form and shall not be admitted to be listed and/or admitted to trading on any Stock exchange/s, whether in India or abroad.
- 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.

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

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**SAMEER KAKAR
MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN
MEMBER(JUDICIAL)**

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