

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

**C.P. (CAA) 996/MB-II/2020
IN
C.A.(CAA) 1067/MB-II/2019**

**Under Section 230 to 232 and other
applicable provisions of the
Companies Act, 2013**

IN THE MATTER OF

**The Scheme of Arrangement and
Amalgamation of Protrans Supply
Chain Management Private Limited**

... ('Transferor Company I')

Ag-Vet Genetics Private Limited

... (Transferor Company II)

with Baramati Agro Limited

... (Transferee Company')

and their respective shareholders

**Protrans Supply Chain
Management Private
Limited**

... Petitioner Company No. 1 / Transferor Company

AND

Ag-Vet Genetics Private Limited

... Petitioner Company No. 2 / Transferee Company

Baramati Agro Limited

... Petitioner Company No. 3 / Transferee Company

Order Pronounced on: 20.09.2021

Coram:

Hon'ble Member (Judicial) : Mr. Ashok Kumar Borah
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Petitioner : Mr. Hemant Sethi, Ms
Vidisha Poonja i/b Hemant
Sethi & Co., Advocates
For the Regional Director (WR) : Ms. Rupa Sutar, Deputy
Director

ORDER

Per: Shyam Babu Gautam, Member Technical

1. The court is convened by video conferencing today.
2. Heard the Learned Counsel for the Petitioner Companies and the representative of the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition to the said Scheme.
3. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to the Scheme of Arrangement and Amalgamation of Protrans Supply Chain Management Private Limited (Transferor Company/Petitioner Company I), Ag-Vet Genetics Private Limited (Transferor Company/Petitioner Company II)with Baramati Agro Limited (the Transferee Company/Petitioner Company III) and their respective shareholders.
4. The Counsel for the Petitioners state that the Petitioner Company I is presently engaged in the Business of Logistics &

Transportation, Petitioner Company II is engaged in the business of Buying, selling, and dealing in poultry, seeds and agricultural products and Petitioner Company III is engaged in the business of farming, agriculture, horticulture dairy, poultry, sugar and farm produce and other allied activities.

5. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies believe that the amalgamation would benefit them and its stake holders on account of following reasons:
- i. *Transferor Company I & II have certain assets / business which include land at certain convenient location and are specialized transport vehicles used in transport services and has related infrastructures. The proposed merger will create a synergy to Transferor as well as Transferee which will enable these business activities to sustain as well as grow at a faster pace.*
 - ii. *The merger of the Transferor Company I and Transferor Company II (herein after collectively referred as Transferor Companies) with the Transferee Company shall provide greater financial strength to the businesses of the Transferor Companies. The financial resources of the Companies will be conveniently merged and pooled together leading to a more effective and centralized management and reduction of administrative and manpower expenses and overheads, which are presently being multiplied because of separate entities.*
 - iii. *The merger of the Transferor Companies with the Transferee Company shall create a company having diversified portfolio of businesses.*
 - iv. *Cost savings are expected to flow from more focused operational efforts, standardization and simplification of business processes, and the elimination of duplication, and rationalization of administrative expenses.*
 - v. *Achieving economies of scale.*

- vi. *The proposed arrangement will provide greater integration and flexibility to Transferee Company and strengthen its position in terms of asset base, revenues & service range. It would also maximize returns to the shareholders.*
- vii. *The Transferee Company is having 21,675 Shareholders holding A Class Equity Shares. Out of 21,675, approximately 21,000 are shareholders holding small amount of equity shares in the Transferee Company. The smaller shareholders of the Transferee Company have been requesting for regular dividends on their investments since they are not interested in seeking management control or running the operations of the Transferee Company. Considering the shareholding pattern of the Transferee Company it is difficult to pass on the benefit of dividend to these small shareholders. The Transferee Company had received requests from some of its smaller shareholders to redeem their investments within a fixed timeframe and also to start paying dividends on such investments on a regular basis. In view of this, it is proposed to convert certain A class Equity Shares into 9% non-cumulative optionally convertible redeemable Preference shares of Rs 10/- each.*
6. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions at their respective board meeting held on 25th February, 2019 which are annexed to the Company Scheme Petition.
7. The Learned Counsel for the Petitioner Companies state that the Joint Petition has been filed in consonance with the order dated 11th June 2020 passed by the National Company Law Tribunal, Mumbai Bench in the Company Application bearing C.A.(C.A.A.)/1067/MB/2019.
8. The Learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary affidavits of compliance. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies

Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.

9. The Regional Director has filed a Report dated 09th day of December 2020, based on the report issued by ROC, Pune, stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that: -

IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:

(a) In compliance of AS-14 (Ind AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (Ind AS-8) etc.

(b) As per definition of the Scheme,

“Appointed Date” For the purpose of this Scheme and for Income Tax Act, 1961, the Appointed Date” means 1st April, 2018.

“Effective Date” means the last of the dates on which the certified or authenticated copy of the Order of the NCLT or any other Competent Authority, as the case may be, sanctioning the Scheme are filed with the Registrar of Companies by the Transferor Companies and by the Transferee Company. Any references in this Scheme to the date of “coming into effect of this Scheme” or “effectiveness of this Scheme” or “Scheme taking effect” shall mean the Effective Date; Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

(c) Petitioner Company have to undertake to comply with Section 232(3)(i) of the Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be sett-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation and therefore,

petitioners to affirm, that they comply the provisions of the section.

- (d) *The Petitioner Company in the clause 12 of the Scheme inter alia mentioned that, upon coming into effect of the Scheme, the main Objects in the memorandum of association of each Transferor Company shall be added to the main objects of the memorandum of association of the Transferee Company, to the extent such objects are not already covered by those of the Transferee Company. In this regards, the Deponent prays that, the Hon'ble Tribunal may decide the matter on merit with compliance of section 13 and other applicable provisions of the Companies Act, 2013.*
- (e) *As per MCA portal one complaint is pending against Baramati Agro Limited, Petitioner Transferee Company which was referred by SEBI, and on the basis of that complaint o/o ROC Pune conducted suo moto inquiry and submitted their report, same is under examination.*
- (f) *ROC, Pune vide Report dated 14.10.2020 has interalia mentioned below:-*
- i. *As stated in para 9 above, the part D of the Petition contains conversion of equity shares into preference shares which is not permissible to issue Redeemable Preference Shares against existing equity shares as its value, terms, rights are different and cannot be terms as same kinds of shares to exchange in ratio for consideration. Further , Ministry vide letter no, 03/08/2019. CL V, dated 27th July, 2020 has stated that one litigation in on going w.r.t. conversion of equity shares into preference shares and vice versa whereby reclassification of such type was rejected by ROC, Delhi and has also asked for comments on the conversion of Equity shares into preference shares or vice versa. It is submitted that the equity shareholders are having rights different to that of the preference shareholders which include voting rights. Further, the instant scheme is placed before member of the transferee company having only 48.45% of value which is not representing majority. Hence such conversion many be considered undesirable.*

ii. *Annual Return for the F.Y. 2017-18 the Annual Return of the transferee company vide SRN H41657149 is under status "Pending for upload to investor details". As the Company has not filed the required documents, it has violated provisions of section 92 of the companies Act, 2013.*

iii. *Balance Sheet of Transferee Company as follows:*

31.03.2018 Form PG 243:-

Inter-Corporate deposit from Transferor I – 320341209

Interest on ICD received – 40137947

Interest accrued on ICD from Transferor I – 72145395

Receipt of services from Transferor I – 5060149

From Ag-Vet Genetics Transferor II – 239225

Rendering services from Transferor I – 13200000

From Ag-Vet Genetics Transferor II – 180196

Sale of Goods

Ag-Vet Genetis Transferor I – 15860

Reimbursement of expenses from Transferor I – 70324

Payable in outstanding Balances from Transferor I – 1632499

Receivable in outstanding balance from Ag-Vet Genetics

Transferor II – 15860

Investment

Non-current investment Transferor I – 10000

Corporate guarantee to Transferor I – 160000000

From the above it is seen that there are several transaction entered into by the petitioner companies amongst themselves.

However, the transactions are not correctly recorded by all the companies.

For instance, the inter-corporate Deposits taken by transferee Company from transferor Company is Rs. 32.03 Crores (Refer point no. 12 of page 243 of the petition). Whereas in the balance sheet of the transferor company, the loans & advances are only Rs. 1.60 crores. Thus, there is a clear mismatch. Moreover, the same has been mentioned under liability by the transferor company.

Further, the corporate guarantee given by the transferee company to the Transferor-I is Rs. 16 crores, However, the same is not

disclosed by the transferor in its financial statements nor in notes to accounts. Hence the veracity and true & correct picture of the financials is not clear and hence interest of shareholders and creditors may be taken into consideration while deciding the application on its merits.

10. In response to the report of the Regional Director, the Petitioner Companies have filed Affidavit in Rejoinder dated 11th December, 2020 and have clarified as under:-
- a. Apropos observations made in paragraph IV(a) of the Report of the Regional Director are concerned, the Petitioner Companies undertake that in addition to compliance of AS – 14 (IND AS-103), the Transferee Company shall pass such Accounting entries, which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND-AS-8) etc. to the extent applicable.
 - b. Apropos the observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Companies undertake and confirm that, the Scheme shall be operative w.e.f. 1st April, 2018 as mentioned in the scheme. Accordingly, the effective date is not in contravention with the provisions of section 232(6) of the Companies Act, 2013. It is further undertaken that the Petitioner Companies will comply with the requirements and clarifications issued vide Circular No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.
 - c. Apropos observations made in paragraph IV (c) of the Report of the Regional Director are concerned, the Transferee Company undertakes that the Authorized Share Capital of Transferor Companies shall be merged with that of the Transferee Company in accordance with the provision of Section 232(3)(i) of the Companies Act, 2013.
 - d. Apropos observations made in paragraph IV (d) of the Report of the Regional Director are concerned, the Transferee Company undertakes that the main objects of each Transferor Company shall be added to the main objects of the memorandum of association of transferee company, to the

extent such objects are not already covered by those of the Transferee Company and comply with the provisions of Section 13 and other applicable provisions of the Companies Act, 2013 if any.

- e. Apropos observations made in paragraph IV (e) of the Report of the Regional Director are concerned, the said suo moto inquiry of the o/o ROC, Pune is under examination and yet to be completed, further the said inquiry is related to Transferee Company which is going to continue in existence and not going to get dissolved unlike Transferor Companies. The Transferee Company/ Petitioner Company III undertakes that, it would provide all necessary information and explanation to complete the said inquiry as and when called for.
- f. Apropos observations made in paragraph IV(f) (i) of the report of Regional Director is concerned, the petitioner Companies state that the interpretation and reference of the ROC Pune is incorrect. The Petitioner Companies further state that the conversion of shares from one type to another, for example from Equity shares to Preference Shares, is not barred by any provision of the law, and in fact and in law, such conversion only amounts to reorganization of the Share Capital of the Companies which is permissible under section 61 of the Companies Act 2013. In accordance with the relevant provisions of the law and the judicial precedents being relied upon by the Petitioner Companies, a Scheme of Compromise or Arrangement may involve increase, consolidation, or subdivision of shares or reduction of share capital. Therefore, the conversion of equity shares into preference shares as sought by the Petitioners under the Scheme cannot be deemed to be impermissible. In reply to the comments of o/o ROC Pune the Petitioner Companies submit as follows;
 - i. *Pursuant to section 43 of the Companies Act, 2013 both equity share capital and preference share capital appear in the balance sheet under "Share Capital" and as per provisions of Section 43 of the Companies Act 2013 there can be only two classes of shares viz. Equity and Preference and combination of two depict the total share capital. When shares of one class are converted into another class (for*

instance, equity shares into preference or vice versa) and value of the paid-up share capital does not undergo any change, the subscribed and paid-up capital remains unchanged; only the nomenclature of shares undergo change.

ii. *Section 230 of the Companies Act 2013 (“the Act”) contains provisions concerning compromise or make arrangements with creditors and members. According to subsection (1) of section 230, where a compromise or arrangement is proposed—*

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them,

iii. *Under section 230 of the Act, a scheme of Compromise or Arrangement may be in the form of reorganization of share capital of a company and the Explanation appended to subsection (1) gives an inclusive definition of the expression ‘arrangement’ as including ‘reorganization of share capital’.*

When a word is defined to ‘mean’ something, the definition is prima facie restrictive and exhaustive, whereas, where the word defined is declared to ‘include’ a particular meaning, the definition is prima facie extensive or inclusive. The word ‘means’ is restrictive and the expression ‘includes’ is expansive. Both the words may however be used simultaneously, and in such a case, it is the restricted meaning which should primarily be assigned. But when the expansive meaning can be applied without violence to the Act, that meaning may be given. “It is common for a statute to contain a provision that certain words and phrases shall, when used in the statute, bear particular meanings. Sometimes, it is provided that a word shall “mean” what the definition section says it shall mean: in this case the word is restricted to the scope indicated in the definition section. Sometimes, however, the word “include” is used in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things

as they signify according to their natural import but also those things which the interpretation clause declares that they shall include. In other words, the word in respect of which “includes” is used bears both its extended statutory meaning in its ordinary, popular, and natural sense whenever that word be properly applicable (Regional Director, Employees' State Insurance Corporation v High Land Coffee Works of P.F.X. Saldanha & Sons 1991 (3) SCR 307: AIR 1992 SC 129: 1991 (3) SCC 617.)

- iv. The Supreme Court in **SLP No 984 of 2006 Rajendra Prasad Gupta verses Prakash Chandra Mishra & Ors** held “Courts are not to act upon principal that every procedure is to be taken as prohibited unless it is expressly provided for by the Code , but on the converse principal that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principal prohibition cannot be presumed”.
- v. As held by the Hon’ble Bombay High Court in **Vasant Investment Corporation Ltd CA No 178 of 1978** every alteration of the memorandum of association required under a scheme of compromise or arrangement cannot be looked upon as an ultra vires act. In the first place, under section 391, the Court has very wide power of reconstituting company. When, for example, a scheme is proposed which involves a restructuring of the capital of the company – as in a case where the rights of the various shareholders are sought to be altered – it can also be said that under the existing memorandum and articles of association of the company, the rights of the shareholders are fixed in a certain way and to change them would involve sanctioning an act which is ultra vires the memorandum and articles of association. Strictly speaking, such an act may be considered as ultra vires. But, in fact, the very purpose of a scheme of reconstruction is to make suitable alterations in the structure of the company to enable it to function. A scheme, therefore, which contains such ultra vires provisions can be sanctioned, and is in fact, sanctioned in a number of cases.

vi. With regard to MCA letter refereed by the o/o ROC Pune viz. letter no, 03/08/2019. CL V, dated 27th July, 2020 the Petitioner Companies submitted that as per the settled principle by the Hon'ble Supreme court in several cases the said letter cannot be binding on the court or Tribunal or Petitioner companies in this case unless the same are made part of substantive law or delegated legislation and in support of the same view the Petitioner Companies would like to highlight following case laws;

(a) In **Union of India V. Rakesh Kumar (2001) 4 SCC 309**, the Supreme Court held Government cannot amend or substitute statutory the rules by administrative instructions, but if the rules are silent on any particular point the Government can fill the gaps and supplement the rules by issuing instruction not inconsistent with the rules.

(b) In **Shikshan Prasarak Mandal V. Ramesh Narayan 2016 (3) ABR 86 (FB)** no circular or view of the executive bind the court when interpreting a legal provision.

(c) As regards Office Memorandum (OM) Lokur J. observed that an OM cannot be used to interpret a provision of law; no importance can be given to an OM. An OM can always be withdrawn modify or amended on the whim of the executive Government reference Mohan Lal V. Principal Secretary 2014 AIR SCW 329.

(d) In **Bengal Iron Corporation & Anr. V. Commercial Tax Officer & Ors. 1993 (47) ECR 23 (SC)**, it was held that Government's clarification and circular are merely their understanding of the statutory provisions, and are not binding on quasi-judicial authorities. It is only for the courts to interpret the statues.

(e) The Supreme Court in the matter of **Subhash Ramkumar Bind and Ors. Vs State of Maharashtra** held that an administrative instruction issued cannot substitute with the requirement of a notification in the official gazette and that it cannot possibly be a substitute for a notification which stands as a requirement of the Statute.

(f) A similar view was perceived in the case of **Rajinder Singh vs The State of Punjab and Ors.** wherein the Supreme Court held that that; (Page 3 @Para 8).

“The settled position of law is that no Government Order, Notification or Circular can be a substitute of the statutory rules framed with the authority of law.”

(g) In so far as the issue of whether the Equity Shareholders can be reclassified as Preference Shareholders is concerned the Counsel for the Petitioner Companies submits that the word “arrangement” has not been defined under the Act however, the term in itself carries a very wide import. The Division Bench of Punjab & Haryana High Court in the matter of **Q.H Talbros Ltd.** inter-alia observed that; (Page 10 Para @14);

“A Merger and a Demerger are not the only components of a composite scheme of arrangement. The term arrangement in section 391 is of wide amplitude. It is defined in the Act. Corporate affair are often complex involving the interplay of innumerable factors including those relating to policy matters, management and financial aspects and legal issues. The Scheme often requires considerations of various enactments and adherence to various legal provisions not only under the Companies Act but also under other enactments. Financial aspects are not limited in their nature or in scope. Each component is studied, and the resultant arrangement is arrived at after taking all of them into consideration. There are consequential acts to be performed as an integral part of the scheme. Many of them, therefore, involve other arrangements such as reduction in share capital and the amendment of the Memorandum of Association and the Articles of Association of the company. These very components can constitute one composite scheme/arrangement under Section 391 of the Act. The legislature, therefore advisedly did not restrict scope of the term arrangement by defining it. A view to the contrary would place an unwarranted fetter upon the activities of a company and restrict the

choice of it's members, creditors, debentures holders and other stakeholders."

(h) Further, the Chancery Division in **Re Savoy Hotels Ltd** (Page 652 @Para g) ;

"..there can be no doubt that the word 'arrangement' in s 206 has for many years been treated as being one of very wide import....beyond that it is neither necessary nor desirable to attempt a definition of arrangement"

- g. Apropos observation made in paragraph IV(f) (ii) of the report of Regional Director is concerned, the Petitioner Companies state that for the FY 2017-18 the Petitioner Company III had filed the Annual return vide SRN H41657149. However due to technical issue pertaining validating excel file for investors details viz. non availability of "Client ID numbers" for Non-Dematerialised shares, the Petitioner Company III could not upload the investor details i.e. List of Shareholders in the prescribed format (Excel Sheet). However, considering the ongoing "Companies Fresh Start Scheme 2020" (CFSS) introduced by the Ministry of Corporate Affairs (MCA) vide General Circular no. 12/2020 issued on 30th March, 2020 and extended till 31st December, 2020, the Petitioner Company III has filed form MGT-7 along with investor details under the CFSS, Vide SRN, R69246130. Copy of the MCA receipt evidencing payment of fees and Email received from MCA21 Administrator confirming approval status of MGT-7 filed under CFSS is enclosed herewith. Further the Petitioner Company III shall comply with filing of Immunity form as prescribed under CFSS as and when made available by the MCA.
- h. Apropos observation made in paragraph IV (f)(iii) of the report of Regional Director is concerned, the Petitioner Companies state that :-
- i. *The para pertaining to Inter Corporate Deposits (ICD) appears to be typographical error as per the said report it is mentioned that Petitioner Company III (Transferee*

- Company) has taken Inter Corporate Deposit (ICD) from Transferor Company I whereas Petitioner Company III (Transferee Company) has extended ICD to Transferor Company I. Also the ICD amounts are matching and the same are disclosed in the notes to accounts of the respective financial statements reference Note. No. B(4)(b) 'Current Liabilities' for transferor Company I and Reference Note No. 2.58 (D) 12 for Transferee Company.
- ii. The Petitioner Companies further state that figures of 'Interest on ICD received' is also matching and the same are disclosed in the financial statement of Transferor Company I reference Note. No. B.17(b) (A) (4) Related Party Transactions_ 'Interest on ICD and Note No. 2.58 (D) 9 for Transferee Company'.
 - iii. The Petitioner Company III states that figures of 'Interest on ICD received' is also matching and the same are disclosed in the financial statement of Transferor Company I reference Note. No. B.4.1.(C) (C) 'Interest payable on ICD' and Note No. 2.58 (D) 10 for Transferee Company.
 - iv. The Petitioner Companies state that figures of 'Receipt of services' is having minor difference with Transfer Company I, Financial Statement Reference Note. No. B.17.(B).(A) (1) rendering of Services for transferor Company I and Note No. 2.58 (D) 4 for transferee Company. The said difference is due pending reconciliation of accounts.
 - v. The Petitioner Companies state that figures of 'Reimbursement of expenses' is having minor difference with Transfer Company I, Financial Statement reference note No. B.17.(B).(A) (2) and Note No. 2.58 (D) 11 for transferee company. The said difference is due pending reconciliation of accounts.
 - vi. The Petitioner Companies state that incase of Noncurrent – Investment made by Petitioner Company III in Transferor Company I, the Transferor Company I has not given details of the same as part of its Share capital since the shareholding is less than 5% and hence not applicable.
 - vii. The Petitioner Companies state that the amounts referred to in the para IV(f) iii with regard to Transferor Company II and Transferee Company more particularly described below ;

- a. *Receipt of services from Transferor Company II Rs. 2,39,225/-*
- b. *Sale of goods to Transferor Company Rs. 15,860/-*

are mentioned by the Transferor Company II in the financial statement , the same are covered in the profit and loss account. It is pertinent to note that for Transferee company the transactions entered in to with Transferor Company II were a related party transaction pursuant to section 2 (76) Companies Act, 2013 however for transferor company II, the Transferee Company was not a related party pursuant to section 2 (76) of the Companies Act, 2013 consequently the necessary disclosure was made by the Transferee Company only.

Further the amount referred to in the Report regarding rendering of services to Transferor Company II of Rs. 1,80,196/- appears to be an error since the same amount is pertaining to another company viz. Ag-Vet Marketing Limited which not part of the Scheme.

- i. *Apropos observation made in paragraph IV (f)(iii) of the report of Regional Director is concerned in respect corporate guarantee, the Petitioner Companies states that Corporate Guarantee of Rs.16,00,00,000/- is given to Transferor Company I against the loan taken from Yes Bank Ltd by Transferor Company I in the FY 2014-15. Considering its nature, it is appearing in the Contingent Liability of Transferee Company as upon failure in repayment of the said loan by Transferor Company I, Transferee Company would be liable to repay the same. The status of said term loan as on 31.03.2018 is appearing in the financials of Transferor Company in note no.B.4. The Petitioner Company III states that apart from minor differences due to reconciliation of accounts and time difference in finalisation of Accounts by Transferor Companies and Transferee Company, financials are disclosing true & correct picture.*

11. The Regional Director has filed its Supplementary Report dated 16th December, 2020 taking into consideration report issued by ROC Pune and stated that the Petitioner Companies have replied satisfactory to para IV a to e and the other matters be considered on merit. Further the Regional Director had stated in the report that the Regional Director is not convinced with the reply filed by the Petitioner Companies with regard to MCA letter refereed by the ROC Pune viz. letter no, 03/08/2019. CL V, dated 27th July, 2020.
12. The observations made by the Regional Director mentioned in para 9 above have been explained by the Petitioner Companies in para 10 above. Further, the Petitioner Companies have also filed affidavit in rejoinder dated 11 December 2020 to the report of Regional Director. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
13. The Official Liquidator has filed his report dated 08th October, 2020 *inter alia*, stating therein that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members or to the public interest.
14. No objections were received from the Jurisdictional Income Tax Department of the Petitioner Companies.
15. The Petitioners through their Counsel submit that and all tax issues arising out of the Scheme will be met and answered in accordance with law.
16. From the material on record, the Scheme appears to be fair and reasonable and is not contrary to public policy.
17. All the assets and liabilities including taxes and charges, if any and duties of the Transferor Company, shall pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
18. Since all the requisite statutory compliances have been fulfilled C.P. (CAA) 996/MB-II/2020 is made absolute in terms of prayer clause of the Company Petition. The Transferor Companies are ordered to be dissolved without winding up.

19. The Petitioners are directed to file a certified copy of this Order along with the copy of Scheme with the concerned Registrar of Companies, electronically, in e-form INC-28 within 30 days from the date of receipt of the Order duly certified by the Deputy/Assistant Registrar of Tribunal.
20. The Petitioners shall lodge a copy of this order duly certified by the Deputy/Assistant Registrar of this Tribunal along with Scheme, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within a period of 60 working days from the date of the receipt of the order by the Transferee Company.
21. Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-

ASHOK KUMAR BORAH
MEMBER (JUDICIAL)