

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

**C.P. (CAA) 81/MB/2024
Connected with C.A. (CAA) 206/MB/2023**

[Under Sections 230 to Section 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016]

In the matter of

SCHEME OF AMALGAMATION OF

IL&FS Asian Infrastructure Managers Limited

[CIN: U66020MH2006PLC161439] ...The Transferor Company 1/
First Petitioner Company

AND

IIML Asset Advisors Limited,

[CIN: U74140MH2005PLC158416] ...The Transferor Company 2 /
Second Petitioner Company

WITH

IL&FS Investment Managers Limited

[CIN: L65999MH1986PLC147981] ...The Transferee Company /
Third Petitioner Company

AND

THEIR RESPECTIVE SHAREHOLDERS

Order pronounced on: 26.07.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances : (Hybrid)

For the Applicant(s) : Adv. Hemant Sethi.

For RD : Mr. Bhagwati Prasad.

ORDER

[PER: SANJIV DUTT, MEMBER (TECHNICAL)]

1. Heard the Learned Counsel for the Petitioner Companies and the authorised representative of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai.
2. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (hereinafter referred to as “the Act”) to the Scheme of Amalgamation of IL&FS Asian Infrastructure Managers Limited and IIML Asset Advisors Limited with IL&FS Investment Managers Limited and their respective Shareholders (hereinafter referred to as “the Scheme”). Both the Transferor Companies and Transferee Company are hereinafter referred to as “the Petitioner Companies”.
3. It is observed that the Board of Directors of the Petitioner Companies in their respective Board meetings held on 14.02.2022 and 18.04.2022 have approved the Scheme and the relevant Board Resolutions are annexed to the Company Scheme Application.
4. The Learned Counsel for the Petitioner Companies submits that the proposed amalgamation will result in following benefits:
 - a. *Consolidation of business;*
 - b. *Elimination of multiple entities;*
 - c. *Reducing the multiplicities of legal and regulatory compliances;*

- d. Reducing time and efforts for coordination of financials at group level;*
- e. Elimination of duplicative communication and coordination efforts; and*
- f. Rationalisation of administrative and compliance costs.*

5. It is further submitted that the Petitioner Companies are in similar line of business of fund management and providing financial services. They carry on and undertake the business of arranging, administering and managing funds in India and abroad. They also provide financial advice in connection with evaluation and identification of projects.
6. As per Clause 5 of the Scheme, the First Petitioner Company and the Second Petitioner Company are wholly owned subsidiaries of the Third Petitioner Company and entire issued, subscribed and paid-up share capital of the First Petitioner Company and the Second Petitioner Company is held by the Third Petitioner Company. Accordingly, considering it as a merger of wholly owned subsidiaries with the parent company, no shares are proposed to be issued to the shareholders of the First Petitioner Company and the Second Petitioner Company.
7. The Company Petition is filed in consonance with Sections 230 to 232 of the Act along with the order dated 21.03.2024 passed in CA (CAA) No. 206/(MB)/2023 of this Tribunal.
8. It is submitted that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and have filed necessary affidavits of compliance. Moreover, the Petitioner Companies undertake to comply with all statutory/regulatory requirements, as mandated under the Act and the Rules made

thereunder. The undertaking given by the Petitioner Companies is taken on record.

9. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its Report dated 12.06.2024, *inter alia*, stating its observations on the Scheme in paras 2(a) to (i) of the Report. In response to the observations made by the Regional Director and the RoC, Mumbai, the Petitioner Companies have filed an Affidavit-in-Rejoinder and have given necessary clarifications and undertakings as shown in the Table below :-

Sr. No.	Observation(s) of the Regional Director / RoC Mumbai.	Response of the Petitioner Companies
	RoC Mumbai.	
a)	<i>On examination of the report of the Registrar of Companies, Mumbai dated 22.05.2024 for all Petitioner Companies falls within the jurisdiction of ROC, Mumbai (Copy enclosed as Annexure - A1). It is submitted that no representation regarding the proposed scheme of Amalgamation has been received against the</i>	The Petitioner Companies state that the contents being statement of facts does not require any comments.

	<i>Petitioner Companies. Further, the Petitioner Companies has filed Financial Statements up to 31.03.2023.</i>	
a) (i)	<i>The ROC Mumbai in his report dated 22.05.2024 has also stated that No Inquiry, Inspection, Investigations, Prosecutions and Complaint under CA, 2013 have been pending against the Petitioner Companies.</i>	The Petitioner Companies state that the contents being statement of facts does not require any comments.
a) (ii)	<i>Notices should be served to the unsecured creditors of the Second Transferor Company for their representation, if any.</i>	The Petitioner Companies state that the Second Petitioner Company has served notice via email to the sole Unsecured Creditor on its registered email address on 10.04.2024. The proof of the same has been enclosed in the Affidavit of Service filed with the Hon'ble Tribunal on 12.04.2024.

a) (iii)	<p><i>As per the provisions of Section 230(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 set-off against any fees payable by the transferee Company on its authorized capital subsequent to the amalgamation.</i></p> <p><i>Therefore, the remaining fee, if any after setting-off the fees already paid by the transferor company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to the amalgamation.</i></p>	<p>The Petitioner Companies undertake that it would comply with the provisions set out in Section 232(3)(i) of the Companies Act, 2013 and that the fees paid by the Transferor Companies on its authorized share capital shall be set off against fees payable, if any, by the Transferee Company for increase of its authorized share capital subsequent to the amalgamation. Also, the Transferee Company shall pay the balance / difference amount of the fees, as applicable, at the time of increasing the authorised share capital.</p>
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a) (iv)	<i>Interest of the creditors should be protected.</i>	The Petitioner Companies undertake that the interest of all the creditors shall be protected.
a) (v)	<i>May be decided on its merits.</i>	The Petitioner Companies state that the contents being statement of facts does not require any comments.
	Regional Director	
b)	<i>Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies.</i>	The Petitioner Companies submit that same point has been explained in para a(iii) of the Rejoinder Affidavit.
c)	<i>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the resultant company shall pass such</i>	The Petitioner Companies submit that it shall give effect to the accounting treatment in its books of accounts in accordance with the method as prescribed

	<i>accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.</i>	under applicable Indian Accounting Standards read with Section 133 of the Companies Act, 2013, Companies (Indian Accounting Standards) Rules, 2015 and Companies (Indian Accounting Standards) Amendment Rules, 2016.
d)	<i>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.</i>	The Petitioner Companies submit that the Scheme enclosed with the Company Scheme Application and Company Scheme Petition are one and the same and there are no discrepancies, and no changes have been made.
e)	<i>The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the</i>	The Petitioner Companies submit that they have served notices to the relevant applicable regulatory authorities (being i) the Central Government through the office of Regional Director, Western Region, Mumbai, ii) the Registrar of Companies,

	<p><i>Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned.</i></p>	<p>Mumbai, iii) the Income Tax Authority, iv) the Nodal Authority in the Income Tax Department, v) Goods & Service Tax Authorities, vi) Official Liquidator, Bombay (only in case of the Transferor Companies), vii) BSE Limited (only in case of the Third Petitioner Company), viii) National Stock Exchange of India Limited (only in case of the Third Petitioner Company), ix) Securities Exchange Board of India (only in case of the Third Petitioner Company) and x) Reserve Bank of India) as per the directions contained in the NCLT order dated 21.03.2024 in CA(CAA)/206(MB)2023 and NCLT order dated 14.05.2024 in CP(CAA)/81(MB)2024. The rights of the relevant regulatory authorities will not be affected pursuant to the approval of the Scheme as post amalgamation the Third Applicant Company will continue to be in existence.</p>
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f)	<p><i>As per Definition of the Scheme,</i></p> <p><i>"Appointed Date" means 01.04.2022.</i></p> <p><i>"Effective Date" or u</i> <i>coming into effect of this</i> <i>Scheme" or "upon the</i> <i>scheme becoming</i> <i>effective" or</i> <i>"effectiveness of the</i> <i>scheme" means the date</i> <i>on which the certified</i> <i>copies of the orders of</i> <i>National Company Law</i> <i>Tribunal sanctioning this</i> <i>Scheme is filed by IAIML,</i> <i>IAAL and IIML with the</i> <i>jurisdictional Registrar of</i> <i>Companies.</i></p> <p><i>In this regard, it is</i> <i>submitted that Section</i> <i>232 (6) of the Companies</i> <i>Act, 2013 states that the</i> <i>scheme under this</i> <i>section shall clearly</i> <i>indicate an appointed</i></p>	<p>The Petitioner Companies submit that the Appointed Date i.e. 01.04.2022 has been clearly indicated in the Scheme in accordance with provisions of section 232(6) of the Companies Act, 2013 and the Scheme shall be effective from the Appointed Date. Hence, the Petitioner Companies undertake that it is in compliance with the applicable requirements of the Circular no. F. No. 7/12/2019/CL-1 dated 21-08-2019 issued by the Ministry of Corporate Affairs.</p>
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	<p><i>date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.</i></p> <p><i>However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.</i></p> <p><i>The Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	
g)	<p><i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory Authorities, if so required.</i></p>	<p>The Petitioner Companies submit that it shall undertake to comply with the directions of the concerned sectoral Regulatory Authorities, if any.</p>

h)	<i>Petitioner Companies shall undertake to comply with the directions of the Income tax department & GST Authorities, if any</i>	The Petitioner Companies has served notice to Income Tax department on 08.04.2024 & 29.05.2024 and to GST department on 08.04.2024 & 28.05.2024 as per the NCLT order dated 21.03.2024 in CA(CAA)/206(MB)2023 and NCLT order dated 14.05.2024 in CP(CAA)/81(MB)2024. As far as the observation of the Regional Director, as stated in paragraph 2(h) of the report and reproduced hereinabove is concerned, the Petitioner Companies submit that it shall undertake to comply with the directions of Income tax department & GST Department, if any.
i)	<i>Petitioner Companies may satisfy the Hon'ble NCLT that the interest of creditors shall be protected on implementation of the scheme.</i>	The Petitioner Companies submit that same point has been explained in para 4(iv) of the Rejoinder Affidavit.

j)	<p><i>The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder.</i></p>	<p>The Petitioner Companies submit that the Scheme is compliant with the provisions of Section 2(1B) of the Income Tax Act, 1961 read with Income Tax Rules, 1962 pursuant to the Scheme.</p>
k)	<p><i>It is observed that the Transferee company is a listed company therefore, petitioner company may be directed to place on record the prior notice issued to NSE, BSE and SEBI and obtain NOC from NSE, BSE, Commodity Exchange and SEBI, if any required in the matter of merger of WOS' s into Holding Company. Therefore,</i></p>	<p>The Petitioner Companies submit that the shares of the Third Petitioner Company are listed on BSE Limited and National Stock Exchange of India Limited. The Third Petitioner Company has filed a letter dated 18.08.2023 with BSE Limited and National Stock Exchange of India Limited, the acknowledgements of which are hereto annexed and marked as Annexure B to the Reply Affidavit. The Petitioner Companies will undertake further</p>

	<i>public interest may be protected in this matter.</i>	compliances, as may be applicable, from time to time.
I)	<i>The Hon'ble NCLT Mumbai, vide order dated 06.07.2023 in CA 179/MB/2023 in CP 3638/2018 has permitted for approval of the scheme of merger/ amalgamation of IL & FS group of Companies by following the process under section 230-232 of the Companies Act, 2013.</i>	The Petitioner Companies state that the contents being statement of facts does not require any comments.

10. The Representative of the Regional Director has submitted that the explanations and clarifications given by the Petitioner Companies are found to be satisfactory and that they have no objection to the Scheme. The undertakings given by the Petitioner Companies are hereby taken on record.

11. The Official Liquidator has filed his report dated 17.05.2024. (hereinafter referred to as "the OL Report"). It is observed that based on scrutiny of audited accounts of Transferor Company 1 and Transferor Company 2, the Official Liquidator has submitted details of summary of findings in paragraphs 3 to 5 of the OL

Report. It is noted that in paragraphs 6 to 8 of the OL Report, the Official Liquidator has made certain observations. Paragraphs 6 and 7 of the OL Report deal with the qualified opinion of the Statutory Auditors of both the Transferor Companies in the report annexed to the financial statements as on 31.03.2023 which is identically worded in case of each Transferor Company and which reads as under:-

“Attention is invited to Note -- to the Financial Statements which describes the situation faced by the Company in view of the ongoing investigation by Serious Fraud Investigation Office of Ministry of Company Affairs (‘SFIO’) against Infrastructure Leasing & Financial Services Limited (‘IL&FS’ or ‘the Ultimate Holding Company’) and its subsidiaries (including the Company). Further, the National Company Law Tribunal (‘NCLT’) has ordered re-opening of books of accounts of IL&FS and its two subsidiaries (other than this Company) for the past financial years referred in the note. In view of the aforesaid ongoing investigations of the entire IL&FS Group (including the Company) by the SFIO and re-opening of books of accounts of the Ultimate Holding Company and of its subsidiaries by the NCLT, we are unable to comment on the consequential impact(s) upon conclusion of the said investigation and re-opening of the books of account on these Financial Statements.”

12. The Petitioner Companies have filed an affidavit in rejoinder to OL’s Report dated 07.06.2024. The Petitioner Companies submit that this investigation is against IL&FS and all its group companies

by the SFIO. As a part of the investigation, SFIO sought various information and the Transferor Companies have provided the necessary information to the investigation agencies. The management of the Transferor Companies confirm that this investigation will not have any adverse impact on this proposed Scheme. It is also pertinent to note that as per the order dated 11.02.2019 of the Hon'ble National Company Law Appellate Tribunal, each of the Transferor Companies has been classified as 'Green Entities' i.e., the entities of the IL&FS Group which were considered financially stable to meet all their payment obligations (both financial and operational) as and when they become due.

13. Further, in paragraph 8 of the OL Report, it is stated that from the Assets and Revenue of the Transferor Companies as on 31.03.2023, it appears to be a deemed NBFC. Therefore, there may be applicability of provision of Section 45-IA of the Reserve Bank of India Act, 1934. In this connection, the Applicant Companies have submitted that as per the audited financial statements of Transferor Companies as on 31.03.2023, the total income and total assets of the Transferor Companies comprise of the following:-

Particulars	Amount in INR	
	First Petitioner Company	Second Petitioner Company
Assets		
Non-Current Assets (income-tax assets)	4,82,527	47,39,300
Investments (in mutual funds)	-	11,77,55,772
Cash and cash equivalent	7,69,290	8,28,978
Other bank balances (fixed deposit)	5,22,45,232	-

Other financial assets (interest accrued on fixed deposit and security deposit respectively)	20,29,241	57,000
Other current asset (indirect tax recoverable)	-	6,768,246
Total assets	5,55,26,290	13,01,49,296

Amount in INR

Particulars	First Petitioner Company	Second Petitioner Company
Income		
Revenue from Operations	-	-
<u>Other Income:</u>		
Interest on Fixed Deposits	25,96,666	2,50,645
On Sale of other Current investments	-	12,39,355
Net gain arising on financial assets designated as at FVTPL - investments	-	42,56,950
Total Income	25,96,666	57,46,950

14. As per Section 45-I(f) of the Reserve Bank of India Act, 1934, a Non-Banking Financial Company ('NBFC'), *inter alia*, is a non-banking institution which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner. The term 'principal business' is not defined by the said Act. As per the guidance issued by the RBI in its FAQs dated 10.01.2017, financial activity as principal business is when a company's financial assets constitute more than 50 per cent of the total assets **and** income from financial assets constitutes more than 50 per cent of the gross income. A company which fulfils both these criteria

will have to be registered as NBFC by Reserve Bank of India ('RBI'). It is submitted that the total income of the First Petitioner Company is entirely on account of interest on fixed deposits. The assets of the First Petitioner Company mainly consist of fixed deposits and other cash and bank balances. The First Petitioner Company has not taken and/or given any loans. The RBI has expressly clarified in its circular number DNBS (PD)CC.No.259/03.02.59/2011-12 dated 15.03.2012 that "*Investments in fixed deposits cannot be treated as financial assets and receipt of interest income on fixed deposits with banks cannot be treated as income from financial assets as these are not covered under the activities mentioned in the definition of "financial Institution" in Section 45I(c) of the RBI Act 1934*".

15. Further, Clause (xvi) of the CARO [Companies (Auditor's Report) Order, 2020] issued by the statutory auditor for FY 2022-23 for the First Petitioner Company has been reproduced below:

- a) *In our opinion, the Company is not required to be registered under Section 45-IA of the Reserve Bank of India Act, 1934. Accordingly, paragraph 3(xvi) of the Order is not applicable to the Company.*
- b) *The Company has not conducted any Non-Banking Financial or Housing Finance activities without obtaining a valid CoR from the Reserve Bank of India as per the Reserve Bank of India Act, 1934.*
- c) *The Company is not a Core Investment Company ('CIC') as defined in the regulations made by Reserve Bank of India.*

Considering the above, it is submitted that the First Petitioner Company is not a deemed NBFC and the provisions of Section 45-IA of the RBI Act, 1934 read with the circular are not applicable to it.

16. As regards the second Petitioner Company, it is submitted that:

- i. The total income of the Second Petitioner Company is majorly on account of net gain on fair value changes on account of revaluation of the investment. Further, there is income from fixed deposits and sale of other current investments.
- ii. The said revaluation has been done in accordance with the requirements of Indian Accounting Standards mandated by Companies Act, 2013 to reflect their fair value.
- iii. As submitted above, financial activity is considered as the principal business when a company's financial assets constitute more than 50 per cent of the total assets and income from financial assets constitutes more than 50 per cent of the gross income. Both these tests are required to be satisfied to determine the principal business of a company.
- iv. While the credit recorded in the statement of profit and loss on account of net gain on fair value changes pursuant to revaluation of the investment may be treated as 'Income', it cannot be treated as a real income from financial assets since the same is not in the nature of a real revenue / gain by putting the said asset to use. It is merely a notional income recorded in the financial statements to comply with the requirements of Indian Accounting Standards. Also, the intention is to determine the 'principal business' of an entity. Mere changes in the valuation of assets/ investments held cannot determine the nature of principal business of any entity.

17. Further, Clause (xvi) of the CARO Report issued by the statutory auditor for FY 2022-23 for the Second Petitioner Company has been reproduced below:

- a. In our opinion, the Company is not required to be registered under Section 45-IA of the Reserve Bank of India Act, 1934. Accordingly, paragraph 3(xvi) of the Order is not applicable to the Company.*
- b. The Company has not conducted any Non-Banking Financial or Housing Finance activities without obtaining a valid CoR from the Reserve Bank of India as per the Reserve Bank of India Act, 1934.*
- c. The Company is not a Core Investment Company ('CIC') as defined in the regulations made by Reserve Bank of India.*

Hence, it is submitted that the Second Petitioner Company is not a deemed NBFC and the provisions of Section 45-IA of the RBI Act, 1934 are not applicable to it. The clarifications offered by the Petitioner Companies in response to observations in the OL Report are taken on record.

18. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this Scheme and it shall be open to the Income Tax authorities to take necessary action, if any, as warranted under the applicable provisions of the Income-tax Act, 1961.

19. From the materials available on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law or contrary to public interest/policy.

20. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry of this Tribunal.
21. The Petitioner Companies are further directed to provide a copy of this Order and the Scheme duly authenticated by the Deputy Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of certified copy from the Registry of this Tribunal.
22. All authorities concerned to act on a copy of this Order along with the Scheme duly authenticated by the Deputy Registrar of this Tribunal.
23. Any person interested in the above matter is at liberty to apply to this Tribunal for such directions as may be necessary.
24. The Appointed Date of the Scheme is 01.04.2022.
25. Accordingly, the above C.P. (CAA) 81/MB/2024 is allowed and disposed of.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

//Deepa//

Sd/-
K.R. SAJI KUMAR
MEMBER (JUDICIAL)