

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

C.A(CAA)/116(MB)2024

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 read with section 66 and other applicable provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation between India Emerging Companies Investment Limited (“Transferor Company 1/First Applicant Company”); Inshaallah Investments Limited (“Transferor Company 2/Second Applicant Company”) with Niskalp Infrastructure Services Limited (“Transferee Company/Third Applicant Company”) and their respective Shareholders (“Scheme”)

India Emerging Companies Investment Limited

CIN: U99999MH1995PLC085035

...Transferor Company 1/ First Applicant Company

Inshaallah Investments Limited
CIN: U74899MH1994PLC415443

...Transferor Company 2/ Second Applicant Company

Niskalp Infrastructure Services Limited

CIN: U67120MH1989PLC054778

...Transferee Company/ Third Applicant
Company

*The First Applicant Company, Second Applicant Company, Third Applicant Company shall
be collectively referred to as “Applicant Companies”*

Order Dated: 24.07.2024

Coram:

Hon’ble Reeta Kohli, Member (Judicial)

Hon’ble Madhu Sinha, Member (Technical)

For the Applicant Companies: Mr. Hemant Sethi, Ms. Devanshi Sethi, Ms. Tanaya
Sethi i/b Hemant Sethi & Co., Advocates.

ORDER

- 1) The Learned Counsel for the Applicant Companies states that the present Scheme is Scheme of Amalgamation between India Emerging Companies Investment Limited (“Transferor Company 1/First Applicant Company”); Inshaallah Investments Limited (“Transferor Company 2/Second Applicant Company”) with Niskalp Infrastructure Services Limited (“Transferee Company/Third Applicant Company”) and their

respective Shareholders (“Scheme”), under the provisions of Sections 230 to 232 of the Companies Act, 2013.

2) The Learned Counsel for the Applicant Companies states that the Transferor Companies i.e. First Applicant Company and Second Applicant Company are subsidiaries of the Transferee Company i.e. Third Applicant Company.

3) The Learned Counsel for the Applicant Companies states that the resolution passed by the Board of Directors of the Applicant Companies in their respective meetings conducted on 13th May, 2024 approved the Scheme. **The Appointed Date of the Scheme is 1st April, 2024.**

4) The Learned Counsel for the Applicant Companies further submits the nature of business of the Applicant Companies and Rationale for the Scheme: -

i. India Emerging Companies Investment Limited:

The First Applicant Company was engaged in the business of investing and financing activities such as the deployment of its surplus funds which are not immediately required in other investable instruments for the time being.

ii. Inshaallah Investments Limited:

The Second Applicant Company was engaged in the business of investing and financing activities such as deployment of its surplus funds which are not immediately required in other investable instruments for the time being. Currently it is not engaged in any business activity.

iii. Niskalp Infrastructure Services Limited

The Third Applicant Company is engaged in the business of development of infrastructure facilities including allied/incidental services related to infrastructure business.

iv. Rationale of the Scheme:

The Applicant Companies submit that the rationale and benefits of the Scheme as considered by the Board while approving the Scheme:

- a) *Transferor Companies being the direct subsidiaries of the Transferee Company and part of Tata Group and with a view to maintain a simple corporate structure and eliminate duplicate corporate procedures, it is desirable to merge and amalgamate all the undertakings of the Transferor Companies into the Transferee Company. The amalgamation would create economies in administrative and managerial costs and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.*
- b) *The Scheme with effect from the Appointed Date (as hereinafter defined) is in the interest of the shareholders, creditors, and other stakeholders of the Transferor Companies and the Transferee Company. Further, there is no likelihood that any creditors of the Transferor Companies or the Transferee Company will be prejudiced as a result of the Scheme.*

5) The share capital of First Applicant Company as on 31st March, 2024:

Particulars	Amount (in Rs)
<u>Authorised Share Capital</u>	
32,50,000 Equity Shares of Rs. 10/- each	3,25,00,000
TOTAL	3,25,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
24,00,800 Equity Shares of Rs. 10/- each	2,40,08,000
TOTAL	2,40,08,000

A total of 21,29,610 Equity Shares of Transferor Company No. 1 (i.e., 88.70% of the issued, subscribed and paid up Equity Shares) are held by the Transferee Company. The Transferor Company No. 1 is subsidiary of the Transferee Company.

6) The share capital of Second Applicant Company as on 31st March, 2024:

Particulars	Amount (in Rs)
<u>Authorised Share Capital</u>	
50,00,000 Equity Shares of Rs. 10/- each	5,00,00,000
10,00,000 Cumulative Redeemable Preference Shares of Rs. 100/- each	10,00,00,000
TOTAL	15,00,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
4,40,020 Equity Shares of Rs. 10/- each	44,00,200
2,00,000 Cumulative Redeemable Preference Shares of Rs. 100/- each	2,00,00,000
TOTAL	2,44,00,200

A total of 3,40,012 Equity Shares of Transferor Company No. 2 (i.e., 77.27% of the issued, subscribed and paid up Equity Shares) are held by the Transferee Company. The Transferor Company No. 2 is a subsidiary of the Transferee Company

7) The share capital of Third Applicant Company as on 31st March, 2024:

Particulars	Amount (in Rs)
<u>Authorised Share Capital</u>	
9,50,00,000 Equity shares of Rs. 10/- each	95,00,00,000
5,00,000 Preference shares of Rs. 100/- each	5,00,00,000
TOTAL	100,00,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
8,00,00,000 Equity shares of Rs. 10/- each	80,00,00,000
5,00,000 Preference shares of Rs. 100/- each	5,00,00,000
TOTAL	85,00,00,000

- 8) There are no proceedings or investigation pending under Section 210- 217, 219, 220, 223 to 227 of the Companies Act 2013 against the Applicant Companies. There is no winding up petition pending against the Applicant Companies either under the Companies Act 1956/2013 or under the Insolvency and Bankruptcy Code 2016.
- 9) The Learned Counsel for the Applicant Companies submit that they have consulted and obtained two valuation reports prepared by separate registered valuer(s). A copy of the Joint Valuation Report prepared by Bansi S Mehta Valuers LLP, Registered Valuer with IBBI Registration No. IBBI/RV-E/06/2022/172 stating the consideration to be allotted in the present Scheme of Amalgamation is annexed to the Company Application. Further, the second Joint Valuation Report prepared by CA Namrata R Dedhia Registered Valuer with IBBI Registration No. IBBI/RV/06/2023/15394 stating the consideration to be allotted in the present Scheme of Amalgamation, a copy of which is annexed to the Company Application. The consideration under the present Scheme of Amalgamation is as follows:

“Upon coming into effect of the Scheme, and in consideration for the transfer of and vesting of the properties, assets, liabilities and Undertaking of the Transferor Companies in the Transferee Company in terms of this Scheme;

(A) To the Equity shareholders of India Emerging Companies Investment Limited;

For every 10,000 (Ten Thousand) Equity Shares of the face and paid-up value of Rs.10/-(Ten) held in India Emerging Companies Investment Limited I (one) Redeemable Preference Shares of face and paid-up value of Rs. 10/- (Ten) in Niskalp Infrastructure Services Limited issued at par ;

(B) To the Equity Shareholders of Inshaallah Investments Limited:-

For every 10,000 (Ten Thousand) Equity Shares of the face and paid-up value of Rs 10/- (Ten) held in Inshallah Investments Limited, I (one) Redeemable Preference Shares (“RPS”) of face and paid-up value of Rs. 10/- (Ten) in Niskalp Infrastructure Services Limited issued at par ;

(C) To the Preference shareholders of Inshaallah Investments Limited;

The entire Preference Share Capital of Inshaallah Investments Limited is held by the Transferee Company i.e. Niskalp Infrastructure Services Limited. Pursuant to the amalgamation, the Preference Share Capital of Inshaallah Investments Limited shall be extinguished. Accordingly, no consideration would be issued for the same.

10) The Learned Counsel for the Applicant Companies submits that the present Scheme includes reduction of preference share capital of Transferee Company. The Learned

Counsel for the Applicant Companies states that there are 5,00,000 Preference Shares in the Transferee Company are held by Tata Industries Limited. Tata Industries Limited have written off the said investments made in the Transferee Company in their books of account. As an integral part of this scheme, 5,00,000 Preference shares held by Tata Industries Limited in the Transferee Company shall get cancelled/extinguished by way of reduction of capital, without payment of any consideration. Copy of consent letter dated 21st May 2024 of Tata Industries Limited consenting to the reduction of preference shares held by them in the Transferee Company is annexed to the Company Application.

Equity Shareholders of the Applicant Companies

- 11) The Learned Counsel for the First Applicant Company submits that there are 74 (Seventy-Four) Equity Shareholders as on 30th April, 2024. A copy of the Chartered Accountant certificate certifying the Equity Shareholders of the First Applicant Company is annexed to the Company Application.
- 12) The Learned Counsel for the Second Applicant Company submits that there are 11 (Eleven) Equity Shareholders as on 30th April, 2024. A copy of the Chartered Accountant certificate certifying the Equity Shareholders of the Second Applicant Company is annexed to the Company Application.
- 13) The Learned Counsel for the Third Applicant Company submits that there are 34 (Thirty-Four) Equity Shareholders as on 30th April, 2024. A copy of the Chartered Accountant certificate certifying the Equity Shareholders of the Third Applicant Company is annexed to the Company Application.

- 14) The Tribunal directs that the meeting(s) of the Equity Shareholders of the Applicant Companies be convened and held within 70 days from the date of uploading of the order at a date and time as may be decided by the Chairperson through physical means at the Applicant Companies registered office(s) being 2nd Floor, Army & Navy Building, 148, Mahatma Gandhi Road, Fort, Mumbai – 400001, Maharashtra for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangements embodied in the Scheme of Amalgamation between India Emerging Companies Investment Limited (“Transferor Company 1/First Applicant Company”); Inshaallah Investments Limited (“Transferor Company 2/Second Applicant Company”) with Niskalp Infrastructure Services Limited (“Transferee Company/Third Applicant Company”) and their respective Shareholders.
- 15) That at least thirty days before the said Meeting(s) of the Equity Shareholders of the Applicant Companies to be held as aforesaid, a notice convening the said Meetings at the place, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Sections 230(3), 232(1), 232(2) and 102 of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Air Mail / Courier / Registered Post / Hand Delivery / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the respective Applicant Companies for the purpose of receiving such notices by email), addressed to each of

the Equity Shareholders of the respective Applicant Companies at their last known address or email addresses as per the records of the respective Applicant Companies .

16) That at least thirty days before the meetings of the Equity Shareholders of the Applicant Companies to be held as aforesaid, a notice convening the said Meetings, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) 232(1), 232(2) and 102 of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Companies as aforesaid.

17) That the Notice of the aforesaid Meeting(s) for the Applicant Companies shall be advertised in two local newspapers viz. "Business Standard" in English having India wide circulation and "Nav Shakti" in Marathi circulated in Maharashtra, not less than 30 days before the date fixed for the meeting.

18) That **Mr. S Bhaskar**, (Independent Director of the Second Applicant Company) and failing him, **Mr. Kamlesh M Parekh** (Independent Director of the Third Applicant Company) and failing him, **Mr. Zubin D Mistry** (Independent Director of the Second Applicant Company and Third Applicant Company) shall be the **Chairman** of the aforesaid meeting(s) of the Equity Shareholders of the Applicant Companies to be held at 2nd Floor, Army & Navy Building, 148, Mahatma Gandhi Road, Fort, Mumbai – 400001.

19) That the **Chairman** appointed for the aforesaid Meeting(s) to issue the advertisements and send out the notices of the Meeting(s) referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).

20) That the quorum of the aforesaid meetings of the Equity Shareholders of the Applicant Companies shall be as prescribed under Section 103 of the Companies Act, 2013.

21) In case if the quorum as noted above is not present at the respective meetings, then the meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purpose of quorum valid proxies will be considered, if the proxy in the prescribed form, duly signed by the person signed by the persons entitled to attend and vote at the said meeting(s) is filed with the registered office of the Applicant Companies at least 48 hours before the meetings.

22) That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meetings, are filed with the Applicant

Companies at their registered office at not later than 48 hours before the aforesaid meetings.

23) That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the respective Applicant Companies and where the entries in the books / register / depository records are disputed, the chairman of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.

24) That **Mr. Umesh P Bhaskeri**, Practicing Company Secretary is hereby appointed as **Scrutinizer** of the meeting of the Equity Shareholders of the Applicant Companies to be held at 2nd Floor, Army & Navy Building, 148, Mahatma Gandhi Road, Fort, Mumbai – 400001 . The fees of the Scrutinizer is fixed at INR 25,000/- (Rupees Twenty Five Thousand Only).

25) That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.

26) That the Chairman of the meetings to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings.

Preference Shareholders of the Applicant Companies

27) The Learned Counsel for the First Applicant Company submit that there are no Preference Shareholders in the First Applicant Company . Since, the First Applicant

Company does not have any Preference Shareholder, the question of convening and holding the meeting of the Preference Shareholders of the First Applicant Company does not arise and the same is not required to be convened.

28) The Learned Counsel for the Second Applicant Company submits that there is 1 (One) Preference Shareholder in Second Applicant Company and the consent affidavit of the sole Preference Shareholder of the Second Applicant Company been annexed to the Company Application. In view of the fact that the sole Preference Shareholder of the Second Applicant Company has given their consent to the Scheme, the meeting of the Preference Shareholder of the Second Applicant Company is hereby dispensed with. Certificate of Chartered Accountant of the Second Applicant Company certifying the list of Preference Shareholders of the Second Applicant Company has been annexed to the Company Application.

29) The Learned Counsel for the Third Applicant Company submits that there is 1 (One) Preference Shareholder in Third Applicant Company and the consent letter of the sole Preference Shareholder of the Third Applicant Company been annexed to the Company Application. In view of the fact that the sole Preference Shareholder of the Third Applicant Company has given their consent to the Scheme, the meeting of the Preference Shareholder of the Third Applicant Company is hereby dispensed with. Certificate of Chartered Accountant of the Third Applicant Company certifying the list of Preference Shareholders of the Third Applicant Company has been annexed to the Company Application.

Secured Creditors of the Applicant Companies

- 30) The Learned Counsel for the First Applicant Company submit that there are no secured creditors in the First Applicant Company as on 30th April, 2024. Since, the First Applicant Company does not have any secured creditors, the question of convening and holding the meeting of the secured creditors of the First Applicant Company does not arise and the same is not required to be convened. Chartered Accountant of the First Applicant Company certifying the list of Secured and Unsecured Creditors of the First Applicant Company has been annexed to the Company Application.
- 31) The Learned Counsel for the Second Applicant Company submit that there are no secured creditors in the Second Applicant Company as on 30th April, 2024. Since, the Second Applicant Company does not have any secured creditors, the question of convening and holding the meeting of the secured creditors of the Second Applicant Company does not arise and the same is not required to be convened. Chartered Accountant of the Second Applicant Company certifying the list of Secured and Unsecured Creditors of the Second Applicant Company has been annexed to the Company Application.
- 32) The Learned Counsel for the Third Applicant Company submit that there are no secured creditors in the Third Applicant Company as on 30th April, 2024. Since, the Third Applicant Company does not have any secured creditors, the question of convening and holding the meeting of the secured creditors of the Third Applicant Company does not arise and the same is not required to be convened. Chartered Accountant of the Third Applicant Company certifying the list of Secured and

Unsecured Creditors of the Third Applicant Company has been annexed to the Company Application.

Unsecured Creditors of the Applicant Companies

33) As on 30th April, 2024, there are 2 (two) unsecured creditors in the First Applicant Company amounting to Rs. 20,97,09,750/- (Rupees Twenty Crores Ninety-Seven Lakhs Nine Thousand Seven Hundred and Fifty Only). Both the unsecured creditors in First Applicant Company being 100% of the value of the unsecured creditors has provided its consent affidavit(s) to the proposed scheme of Merger annexed to the Company Application. In view of the consent affidavits tendered by both the Unsecured Creditors of the First Applicant Company, the meetings of the Unsecured Creditors is hereby dispensed with. Certificate of the Chartered Accountant certifying the list of Unsecured Creditors of the First Applicant Company has been annexed to the Company Application.

34) As on 30th April, 2024, there are 4 (Four) unsecured creditors in the Second Applicant Company amounting to Rs. 68,30,30,813 /- (Rupees Sixty-Eight Crores Thirty Lakhs Thirty Thousand Eight Hundred Thirteen Only). All the unsecured creditors of Second Applicant Company being 100% of the value of the unsecured creditors have provided their consent affidavit(s) to the proposed scheme of Merger annexed to the Company Application. In view of the consent affidavits tendered by the Unsecured Creditors of the Second Applicant Company, the meetings of the Unsecured Creditor is hereby dispensed with. Certificate of the Chartered Accountant certifying the list of

Unsecured Creditors of the Second Applicant Company has been annexed to the Company Application.

35) As on 30th April, 2024, there is 1 (One) unsecured creditors in the Third Applicant Company amounting to Rs. 233,66,85,245/- (Rupees Two Hundred and Thirty-Three Crores Sixty-Six Lakhs Eighty-Five Thousand Two Hundred and Forty-Five Only). The sole Unsecured Creditor being 100% of the value of the unsecured creditors has provided its consent affidavit(s) to the proposed scheme of Merger annexed to the Company Application. In view of the consent affidavit tendered by the Unsecured Creditor of the Third Applicant Company, the meeting of the Unsecured Creditor is hereby dispensed with. Certificate of the Chartered Accountant certifying the list of Unsecured Creditor of the Third Applicant Company has been annexed to the Company Application.

36) The Applicant Companies are accordingly directed to serve notices along with copy of Scheme upon:-

- (i) concerned Income Tax Authorities having the following PAN's within whose jurisdiction the Applicant Company's assessments are made and to the Concerned Nodal Office at Pr. CCIT, Mumbai 3rd Floor, Aaykar Bhavan, Maharashtra Karve Road, Mumbai 400020 (Email id: Mumbai.pccit@incometax.gov.in);

India Emerging Companies Investment Limited	AAACI1395P
Inshaallah Investments Limited	AAACI1590E
Niskalp Infrastructure Services Limited	AABCN9239J

- (ii) the Central Government through the office of Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, Maharashtra;
- (iii) Registrar of Companies, Mumbai, Maharashtra;
- (iv) Concerned Goods and Service Tax Department; in so far as the Third Applicant company is concerned.
- (v) Official Liquidator, Bombay High Court for the First Applicant Company and Second Applicant Company.

pursuant to sub-section (5) of Section 230 of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Companies, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

37) The Applicant Companies to file an affidavit of service of the directions given by the Tribunal for proving service of notice to the Equity shareholders and to the Regulatory Authorities have been duly complied with.

38) Ordered accordingly.

Sd/-

Madhu Sinha
Member (Technical)
//VLM//

Sd/-

Reeta Kohli
Member (Judicial)