

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

C.P. (CAA) / 226 / MB / 2023
c/w
C.A.(CAA)/60/MB/ 2023

In the matter of

The Companies Act, 2013

And

In the matter of

Sections 230 to 232 of the Companies Act, 2013

and other relevant provisions of the Companies
Act, 2013.

And

In the matter of

The Scheme of Merger of

Ayodha Gorakhpur SMS Tolls Private

Limited

(Transferor Company / Petitioner Company 1)

With

SMS Limited

(Transferee Company / Petitioner Company 2)

And their respective shareholders

Ayodhya Gorakhpur SMS Tolls

Private Limited

[CIN: U63000MH2013PTC240214]

Petitioner Company No. 1

SMS Limited

[CIN: U80100MH1997PLC107906]

...Petitioner Company No. 2

Coram:

Smt. Anu Jagmohan Singh

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Order delivered on: 23.07.2024

Appearances :

For the Petitioner(s):

Mr. Nitin Gutka, Associates, PCA.

For the Regional Director:

Mr. Tushar Wagh, Representative of
the Regional Director, Western
Region MCA.

ORDER

1. Heard the Representative 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 Scheme.

2. The Petitioner Companies state that Company Petition (IB) 960/2023, along with other Interlocutory Applications (IA 5497/2023 and IA-371/2024) was filed by SREI Equipment Finance Limited, the Financial Creditors against the Transferee/Petitioner Company 2 i.e. SMS Limited, before the Hon'ble Tribunal Court-I under section 7 of Insolvency and Bankruptcy Code, 2016. The representative of the Petitioner Companies submits that Company Petition (IB) 960/2023, along with other Interlocutory Applications (IA 5497/2023 and IA 371/2024) has been withdrawn by the said Financial Creditors vide an order made by this Bench on 10th June, 2024. The Representative further states that no other insolvency petition under Section 7 and 9 of the Insolvency and Bankruptcy Code, 2016 are filed or pending against the Petitioner Companies.
3. The sanction of the Tribunal is sought under Sections 230-232 and other relevant provisions of the Companies Act, 2013 (the Act) and the Rules framed thereunder for the Scheme of Merger of Ayodha

Gorakhpur SMS Tolls Private Limited ('AGSTPL' or 'Transferor Company') with SMS Limited ('SMSL' or 'Transferee Company') and their respective shareholders hereinafter referred as to "Scheme").

4. Ayodhya Gorakhpur SMS Tolls Private Limited is a wholly owned subsidiary of SMS Limited as the entire share capital of Ayodhya Gorakhpur SMS Tolls Private Limited is held by SMS Limited and its nominees.
5. The Petitioner Companies submit that the Board of Directors of the Petitioner Companies in their respective Board Meetings held on 5th January, 2023 and 26th December, 2022 have approved the Scheme. The Appointed Date of the Scheme is 1st October, 2022.
6. The Petitioner Company 1 is currently carrying on the business of collecting tolls, infrastructure management, operating and maintaining the Ayodhya-Gorakhpur stretch of National Highway - 28 in the State of Uttar Pradesh. The Petitioner Company 2 is carrying on the business of construction & commissioning and lump sum turn-key facilities in various infrastructure projects like road bridges, water supply, power transmission, underground mining work, etc., for

public and private sector enterprises in the Country and waste management activities.

7. The rationale of the Scheme of Merger is summarised as follows:
- a) AGSTPL is a wholly owned subsidiary (100% subsidiary) of SMSL and the proposed amalgamation and reorganisation of the legal entities in the group structure shall ensure optimised corporate holding structure more aligned with the business requirements.
 - b) Implementation of the Scheme shall result in consolidation of businesses, business credentials, business resources and activities, greater integration of operations, financial strength and flexibility under a single unified entity, facilitating optimum utilization of resources for future, avoiding duplication of efforts and resources by economies of scale, sourcing benefits, vendor rationalization, more focused operational efforts, standardization of business processes.
 - c) Consolidated entity to emerge stronger financially resulting in increased business and improved financial leverage.
 - d) Both the companies have common shareholders and control. The

consolidation shall simplify the business structure by eliminating multiple entities and create single unified entity resulting in integration of operations.

- e) Combined entity would be able to effectively optimize the overall administrative and statutory compliances and reduce time and efforts for coordination of financials at group level.
 - f) The proposed amalgamation will eliminate the duplication in administrative cost and multiple record keeping thus resulting in cost savings for the Companies. The proposed amalgamation would also reduce the overall compliance cost of the combined entity.
8. The Petitioner Companies further submit that the Present Company Scheme Petitions is filed in consonance with Section 230-232 of the Companies Act, 2013 and in terms of the order dated 16th May, 2023 passed in C.A. (CAA)/60/MB/2023 by this Tribunal.
9. The Petitioner Companies submit that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary affidavits of compliance with this Tribunal.

Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made thereunder to give effect to the Scheme.

10. Ld. Counsel for the Petitioner Company submits that the

Consideration for the Scheme:-

All the Equity Shares of the Transferor Company are owned/held by the Transferee Company and its nominee and therefore there would be no issue of shares by the Transferee Company.

11. In view of the above, the management of the Petitioner Companies has decided and made requisite applications and/or petitions before the National Company Law Tribunal ("NCLT") under Sections 230 to 232 and other relevant provisions of the Companies Act, 2013, for the sanction of this Scheme.

12. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 6th December, 2023. In paragraphs 2(a) to (j) of the Report, the RD has made certain observations. In response to the observations made by the Regional Director, the

Petitioner Companies have given necessary undertakings and clarification as per the affidavit in rejoinder dated 8th December, 2023.

The said observation of RD and the response of the Petitioner Companies are summarised in the table below:

No. Para (2)	RD Report/Observations dated 6th December, 2023	Response of the Petitioner Companies in its Affidavit in Rejoinder dated 8th December 2023
(a)	<i>In compliance of AS-14 (IND AS-103), the Transferor company and 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.</i>	<i>As regards the observation made in paragraph 2(a) of the said Report, the Petitioner Companies undertake that the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Merger to comply with accounting standards AS-14 (IND AS-103) and any other applicable accounting standards including AS-5 (IND AS-8) to the extent applicable.</i>
(b)	<i>As per Definition of the Scheme, "Appointed Date" For the purpose of this Scheme and for Income Tax Act, 1961, the "Appointed Date" means October 01, 2022; and "Operative Date" shall means the date on which certified copies of the NCLT's order sanctioning this Scheme are filed by the companies with the Registrar of Companies, Mumbai. Any references in this Scheme to "upon this Scheme becoming effective" or "upon coming into</i>	<i>As regards the observation made in paragraph 2(b) of the said Report, the Petitioner Companies submits that the Appointed Date i.e. 1st October, 2022 has been clearly indicated in the Scheme in accordance with the provision of Section 232(6) of the Companies Act, 2013 and the scheme shall become operative from the appointed date. The Effective Date is an operative date and is defined in clause 2.2 of the Scheme of Merger. Further, the Petitioner Companies have complied with the requirements and clarification of circular no. F. No. 7/12/2019/CL-I dated</i>

	<p><i>effect of this Scheme” or “upon the Scheme coming into effect” or “upon this Scheme becoming operative” or “upon coming into operation of this Scheme” shall be construed to be a reference to the Operative Date;</i></p> <p><i>In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed 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. 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>	<p><i>21.08.2019 issued by the Ministry of Corporate Affairs (“Circular”) and the Appointed Date is in accordance with the provisions thereof. The Circular clarifies that a company may choose the appointed date to be a specific calendar date and the Petitioner Companies have accordingly complied with the requirements of the Circular.</i></p>
<p>(c)</p>	<p><i>The Transferor company and Transferee company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee and stamp duty paid by the transferor company on its authorised capital shall be set-off against fees and stamp duty</i></p>	<p><i>As regards the observation made in paragraph 2(c) of the said Report, the Petitioner Companies submit that the Transferee Company undertakes to comply with the proviso of section 232(3)(i) of the Companies Act, 2013, as applicable, and pay the difference of fees and stamp duty on increasing the authorized capital after setting-off of the fee and stamp duty paid</i></p>

	<p><i>payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to undertake that the transferee company shall pay the difference of fees and stamp duty.</i></p>	<p><i>by the Transferor Company while giving effect to increase in the authorized share capital of the Transferee Company.</i></p>
<p>(d)</p>	<p><i>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with 7 subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.</i></p>	<p><i>As regards the observation made in paragraph IV(d) of the said Report, the Petitioner Companies submit that, the meetings of the equity shareholders of the Petitioner Companies were dispensed with in view of the consent affidavits obtained from all the equity shareholders of the Petitioner Companies. The meeting of the secured creditors of the Petitioner Company 1 was dispensed with in view of the NOC obtained from sole secured creditors and filed with Company Scheme Petition. The meeting of the secured creditors of the Petitioner Company 2 was dispensed with in view of the NOC obtained from 7 secured creditors, representing 78.67% of the total value of the secured creditors of the value of Rs. 401,91,00,000/- and filed with additional affidavit. The meeting of the unsecured creditors of the Petitioner Company 1 was not required to be convened as individual notices were given to all unsecured creditors. The meeting of the unsecured creditors of the Petitioner Company 2 was not required to be convened as individual notices were given to its unsecured creditors having the balance of Rs. 1,00,000/- and above. Therefore, the</i></p>

		<i>question of holding a meeting and placing on record the minutes of such meeting before this Hon'ble Tribunal does not arise.</i>
(e)	<i>The Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the Transferor company and Transferee company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder;</i>	<i>As regards the observation made in paragraph IV(e) of the said Report, the Petitioner Companies submit that, the Transferee Company undertakes to comply with provisions of section 2(1B) and all other applicable provisions of the Income Tax Act, 1961, as applicable.</i>
(f)	<i>The Hon'ble Tribunal may kindly direct the Transferor company and Transferee company to file an affidavit to the extent that the Scheme enclosed to the Company Application and the Company Petition are one and the same and there is no discrepancy, or no change is made.</i>	<i>As regards the observation made in paragraph 2(f) of the said Report, the Petitioner Companies submits that, the Scheme enclosed to the Company Scheme Application and Company Scheme Petition are one and same, and there is no discrepancy or deviation or changes. The Petitioner Companies state that a statement to this effect has also been made in paragraph 28 of the Company Scheme Petition.</i>
(g)	<i>The Transferor company and Transferee company shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required.</i>	<i>As regards the observation made in paragraph 2(g) of the said Report, the Petitioner Companies submits that the Petitioner Companies does not carry on the business that requires approval of sectoral regulators.</i>
(h)	<i>The Transferor company and Transferee company may be asked to submit NoC from NHAI since it is engaged in road construction business.</i>	<i>As regards the observation made in paragraph 2(h) of the said Report, the Petitioner Companies submits that the Petitioner Company 1 is in the business of collection of Toll and maintenance and is not engaged in any road construction</i>

		<p><i>business. However, the Petitioner Company 1 has duly served notices to NHAI pursuant to order dated 16th May, 2023, passed by this Hon'ble National Company Law Tribunal, Mumbai bench. Till date, no representation has been received from NHAI. As per Section 230(5) of the Companies Act, 2013, if the concerned authority do not make representations within a period of thirty days from the date of receipt of such notice, it is presumed that the authorities have no representation to make on the Scheme. It is therefore submitted that No Objection Certificate from the NHAI Regulatory Authority is not required to be obtained.</i></p>								
(i)	<p><i>It is observed from latest MGT-7 for the year ending 31.03.2022 filed by the Transferor Company that Transferor company has following corporate body shareholders having more than 10% shareholding, but form Ben-2 has not been filed:-</i></p> <table border="1" data-bbox="316 1438 817 1814"> <thead> <tr> <th data-bbox="316 1438 475 1814"><i>Name of the Company</i></th> <th data-bbox="475 1438 587 1814"><i>Name of the shareholder</i></th> <th data-bbox="587 1438 689 1814"><i>Percentage of shareholding</i></th> <th data-bbox="689 1438 817 1814"><i>Status of Ben-2</i></th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	<i>Name of the Company</i>	<i>Name of the shareholder</i>	<i>Percentage of shareholding</i>	<i>Status of Ben-2</i>					<p><i>As regards the observation made in paragraph 2(i) of the said Report, the Petitioner Companies submits that filing of Form BEN-2 is not applicable to the Petitioner Companies and the explanation for the same is enclosed herewith as Annexure A to the affidavit dealing with the observation of Regional Director dated 6th December, 2023. Further, the Petitioner Companies submits that Registrar of Companies may take appropriate action, if required to deal with the non-compliance of provisions of Section 90 of the Companies Act, 2013 read with the Companies (Significant Beneficial Owners) Rules, 2018, amended from time to time by the Petitioner Companies. All issues arising thereunder shall be decided in accordance with law.</i></p>
<i>Name of the Company</i>	<i>Name of the shareholder</i>	<i>Percentage of shareholding</i>	<i>Status of Ben-2</i>							

	Ayodhya Gorakhpur SMS Tolls Private Limited (Transferor Company)	SMS Limited	100 %	Not filed	
	SMS Limited (Transferee Company)	Best Power Plus Private Limited	21.68 %	Not filed	
	<p>Therefore, the Transferor company may be directed to clarify and comply with the same as required u/s. 90 of the Companies Act, 2013 r/w rules 2A, 3 & 4 of the Companies (Significant Beneficial Owners) Rules, 2019.</p>				
(j)	<p>That on examination of the report of the Registrar of Companies, Mumbai dated 27.07.2023 (Annexed as Annexure A-1)) that the Transferor company and Transferee company fall within</p>				

<p><i>the jurisdiction of ROC, Mumbai. It is submitted that no complaint and /or representation regarding the proposed scheme of Amalgamation has been received against the Transferor company and Transferee company. Further, the Transferor company and Transferee company have filed Financial Statements up to 31.03.2022 further observations in ROC report are as under: -</i></p> <p><i>i. That the ROC Mumbai in his report dated 27.07.2023 has stated that no Inquiry, inspection, investigation & prosecution is pending against the Transferor company and Transferee company.</i></p> <p><i>ii. 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. Therefore,</i></p>	<p><i>As regards the observation made in paragraph 2(j)(i) of the said Report, the Petitioner Companies submits that the contents thereof are correct and factual observations and thus, do not require any response.</i></p> <p><i>As regards the observation made in paragraph 2(j)(ii) of the said Report, the Petitioner Companies submit that the Transferee Company undertakes to comply with the proviso of section 232(3)(i) of the Companies Act, 2013, as applicable, and pay the difference of fees and stamp duty on increasing the authorized capital after setting-off of the fee and stamp duty paid by the Transferor Company while giving effect to increase in the authorized share capital of the Transferee Company.</i></p>
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	<p><i>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><i>iii. There are some charges is open in Transferor company.</i></p> <p><i>iv. Interest of the Creditors should be protected.</i></p>	<p><i>As regards the observation made in paragraph 2(j)(iii) of the said Report, the Petitioner Companies submit that the Scheme becoming effective, open charges registered in the name of the Transferor Company, if any, shall be transferred to and continued against the Transferee Company. Such open charge(s) shall be discharged by the Transferee Company in due course.</i></p> <p><i>As regards the observation made in paragraph 2(j)(iv) of the said Report, the Petitioner Companies submit that the Scheme does not contemplate any arrangement or compromise with the creditors of any of the Petitioner Companies. The liabilities towards the creditors of any of the Petitioner Companies are neither being reduced nor being extinguished and, pursuant to the Scheme, all assets and liabilities of the Transferor Company would be transferred to the Transferee Company. Also, the net worth of the Transferor Company and Transferee Company are positive and post-merger the assets of the Transferee Company are more than sufficient to discharge its liabilities of the Petitioner Companies. Accordingly, post-merger, the interest of the creditors is protected.</i></p>
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	<p>v. <i>May be decided on its merits.</i></p>	<p><i>As regards the observation made in paragraph 2(j)(v) of the said Report, the Petitioner Companies submit that the contents of the paragraph are formal in nature and does not warrant any response.</i></p>
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13. Mr. Tushar Wagh, Ld. Authorised Representative of the Regional Director, Western Region, Ministry of Corporate Affairs who was present at the time of final hearing, has stated that the explanation and representation given by the Petitioner Companies is satisfactory and that they have no objection for approving the Scheme by this Tribunal.

14. The Official Liquidator, High Court of Bombay, at Nagpur, has filed its report dated 8th August, 2023 setting out his observations on the Scheme as stated in Paragraph 13(a) & 13(b) of the Report. In response to the observations made by the Official Liquidator, the Petitioner Companies have given necessary clarifications by way of an Affidavit dated 27th October, 2023. In the said Report it is, inter alia, mentioned that:

Para	Official Liquidator Report /	Response of the Petitioner
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No.	Observations dated 8th August, 2023	Companies in its Affidavit in Rejoinder dated 27th October, 2023
13(a)	The matter is related to Income Tax Department. However, the Transferee Company / resultant entity should comply with the relevant provisions of the Income Tax ACT, 1961 and other Tax Department.	As regards the observation made in paragraph 13(a) of the said Report, Petitioner Company 1 states that the Income Tax demand of Rs. 4,52,00,150/- for AY 2015-16 has been adjusted against the Income Tax Refund due of Rs. 4,44,99,260/- for AY 2020-21 and balance of Rs.7,00,890/- has been adjusted against Income Tax Refund due for AY 2022-23. Further the Income Tax demand of Rs. 94,82,360/- for AY 2021-22 has been adjusted against the Income Tax Refund due of Rs. 3,31,31,473/- for AY 2022-23. As regards the Service Tax

		<p>Demand of Rs. 17,39,03,815 pertaining to period from October 2013- June-2017 vide Show Cause Notice dated 09.04.2019 vide Document No DGGSTI / NZU / 110 /2018 / 1554 the Petitioner Company 1 has already submitted a reply dated 6th June, 2019 which are self-explanatory. Hereto marked and annexed as Annexures A, B, and C to the affidavit dealing with the observation of the Official Liquidator dated 8th August, 2023 are the refund adjustment letter/ email and reply to show cause notice to the Service Tax Department. The Transferee Company states that as per clause 12.1 of the Scheme, all the Tax</p>
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		liabilities, etc. of the Transferor Company will be treated as liabilities of the Transferee Company from the effective date and with effect from the appointed date. In any event, the Transferee Company undertakes to comply with the relevant provisions of the Income Tax Act, 1961, and other Tax Department post-merger.
13(b)	On perusal of the records as submitted by the Transferor Company it is noticed that there are huge amount of Loan / Inter Corporate Deposits has been given by the Applicant Company/Transferor Company to various parties without interest and still pending for receivable. The Transferor Company has to	

	<p>recover the Loan / Inter Corporate Deposits from the borrowers. The Hon'ble Tribunal may take a note of this point and direct to the Transferor Company to clarify on this issue to recover the outstanding loan amounts as stated Sr.no. 01 to 09 above from the borrower.</p>	
		<p>As regards the observation made in paragraph 13(b) of the said Report, Petitioner Company 1 states that the loan/inter-corporate deposits amount as mentioned in Sr. No. 2, 3, and 5 are recovered fully, and loan/inter-corporate deposits amount as mentioned in Sr. No. 4 & 7 are recovered partly. The loan/inter-corporate deposits amount</p>

		outstanding as on date are as below:	
SR NO	PARTY NAME	AMOUNT AS PER NOTICE O/S	AMOUNT AS ON DATE O/S
1	Divinutty	45,00,000/-	45,00,000/-
2	Fabtech Engineering Pvt Ltd	2,00,00,000/-	-
3	G H Rasoni University Amravati	1,509/-	-
4	Jain Engineering Works	11,80,89,619/-	3,97,78,143/-
5	Oracity Life Sciences	5,00,000/-	-
6	San Commercial Pvt Ltd	80,00,000/-	80,00,000/-
7	Veetrag Exploration & Minerals Pvt Ltd	9,78,11,066/-	2,39,54,066/-
8	Veetrag Hospitality Pvt Ltd	1,05,08,000/-	1,05,08,000/-
9	V K Sancheti	33,83,899/-	33,83,899/-
GRAND TOTAL		26,27,94,093/-	9,01,24,108/-
<p>As stated above, the Petitioner Company has recovered loan/inter-corporate deposits of Rs.17,26,69,985/- representing 66% of the total loan/inter-corporate deposits. Further, Petitioner Company 1 is in the process of recovering the pending loan/inter-corporate deposits. The above loan in the nature of loan repayable on demand and Petitioner Company 1 has not demanded such loans since there is no requirement of funds to carry on the day-to-day activities.</p>			

15. The Official Liquidator, High Court, Nagpur has filed its report stating that the affairs of the Petitioner Companies have been conducted in proper manner and there are no adverse findings made by the Official Liquidator, High Court, Nagpur, in the conduct of the Petitioner Companies. The observations made by the Official Liquidator, High

Court, Nagpur are taken on record.

16. The Income Tax department (Assistant Commissioner of Income Tax, Circle-1, Nagpur) vide its letter dated 7th June, 2023 has intimated to this Tribunal that, tax amounts are outstanding of various Assessment Year (A.Y). In response to the said letter, Petitioner Company 2 vide their letter dated 3rd August, 2023, submitted the appropriate reply giving information about the appeal and rectification pending with the various forums. The response to the observation of the Income Tax Authority has been placed on record. The Representative for the Petitioner Companies further submits that the Petitioner Company 2 undertakes to comply with the direction of the Income Tax Authority in accordance with the applicable of law.
17. The Assistant Commissioner of Central Tax, Kharagpur CGST Division vide its letter dated 20th July, 2023 intimated to this Tribunal that there is a tax demand of CGST of Rs.15,75,379/- on account of excess input tax credit claim by Petitioner Company 2 in the FY 2017-
18. In response to the letter dated 20th July, 2023, the Petitioner Company 2 vide its letter dated 2nd August, 2023 emailed on 3rd

August, 2023 and sent via speed post on 7th August, 2023 submitted their response to the observation of Goods and Service Tax Authority that the matter is still pending for the adjudication. The Response to the observation has been placed on record.

18. The Assistant Commissioner of Central Tax, Kharagpur CGST Division vide its letter dated 11th December, 2023 intimated to this Tribunal that there is a tax demand of CGST of Rs. 15,75,379/- and issue shall be taken into consideration by the Hon'ble NCLT, Mumbai bench. The Representative of the Petitioner Companies states that the explanation for the tax demand of CGST of Rs. 15,75,379/- is already explained in para 18 above. Hence, no further explanation is required. The Representative for the Petitioner Companies further submits that the Petitioner Company 2 undertakes to comply with the direction of the Goods and Service Tax Authority in accordance with the applicable of law.
19. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of

the Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law against the Petitioner Company 2.

20. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law, and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.
21. Since all the requisite statutory compliances have been fulfilled, the consolidated Company Scheme Petition in C.P. (CAA) 226 / MB / 2023 filed by Petitioner Companies is made absolute in terms of clause (a) to (c) of the said Company Scheme Petition. Therefore, the Scheme is hereby sanctioned. This Bench further orders that -
- i. The Appointed Date of the Scheme is 1st October, 2022.
 - ii. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Creditors and Employees.
 - iii. The Transferor Company will be dissolved, without winding up.

- iv. 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 assets and liabilities including taxes, charges and duties of the Transferee Company.
- v. The Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in E-Form INC-28 within 30 days from the date of receipt of the Order from the Registry.
- vi. The Petitioner Companies are directed to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, payable, if any, within 60 clear working days from the date of receipt of the certified copy of the Order from the Registry of this Tribunal.
- vii. The Petitioner Companies shall comply with all the undertakings given by them.

- viii. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
- ix. All concerned regulatory authorities are to act on a copy of this Order duly certified by the Deputy Registrar / Assistant of this Tribunal along with a copy of the Scheme.
- x. Any person or any Authority, whose interest is adversely affected, shall be at liberty to approach appropriate Forum or to take appropriate action as permissible under law.
22. With the above directions, C.P. (CAA)/226/MB/2023 c/w C.A (CAA)/60/MB/2023 is **allowed** and disposed of. File to be consigned to records.

Sd/-
Anu Jagmohan Singh
Member (Technical)
/svr/

Sd/-
Kishore Vemulapalli
Member (Judicial)