

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-V**

**C.P. (CAA)/256/MB-V/2023  
IN  
C.A. (CAA)/37/MB-V/2023**

*In the matter of the Companies Act, 2013;*

AND

*In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013;*

AND

*In the matter of Scheme of Amalgamation (Merger by absorption) between Urban Akarsh Infrastructure Private Limited (Transferor Company) and Ess Gee Real Estate Developers Private Limited (Transferee Company) and their respective shareholders. ('the Scheme')*

**Urban Akarsh Infrastructure Private Limited** a company incorporated under the Companies Act, 1956 with its registered office at 16th Floor, 'D' Wing, Trade World Kamala Mill City, Senapati Bapat Marg, Kamala Mill Compound Lower Parel(W) Mumbai City MH 400013 IN  
CIN: U45200MH2007PTC168282

...First Petitioner Company/  
Transferor Company

**Ess Gee Real Estate Developers Private Limited** a private limited company incorporated under the Companies Act, 1956 with its registered office at 16th Floor, 'D' Wing, Trade World Kamala Mill City, Senapati Bapat Marg, Kamala Mill

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

Compound Lower Parel(W) Mumbai } ...Second Petitioner Company/  
City MH 400013 IN Transferee Company  
CIN : U45201MH2001PTC130795  
  
*...First Petitioner and Second  
Petitioner Company shall be  
collectively known as Petitioner  
Companies*

**Order Dated: 17.05.2024**

**Coram:**

Hon'ble Ms. Madhu Sinha  
Member (Technical)

Hon'ble Ms. Reeta Kohli  
Member (Judicial)

**Appearance:**

**For the Petitioners:** Adv. Hemant Sethi, Adv. Tanaya Sethi (PH)

**For the Regional Director :** Mr. Altap Shaikh, ICLS (VC)

**ORDER**

1. Heard the learned Counsel for the Petitioners 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.
2. The sanction of the Tribunal is sought under sections 230 to 232 and other

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the **Scheme of Amalgamation** between **Urban Akarsh Infrastructure Private Limited** and **Ess Gee Real Estate Developers Private Limited** and their respective shareholders (**'Scheme'**).

3. The Counsel for the Petitioner Companies further submits that, the First Petitioner Company is currently not doing any business. **The first Petitioner Company is wholly owned subsidiary of the Second Petitioner Company.** The Second Petitioner Company is engaged in the business of real estate development and renewable energy.
4. The Counsel for the Petitioner Companies submits that the proposed Amalgamation was approved unanimously by the Board of Directors of the respective Petitioner Companies on 22<sup>nd</sup> November, 2022. A certified true copy of Board Resolution of respective Petitioner Companies approving the Scheme are annexed to the Company Scheme Petition. The Board of Directors of the respective Petitioner Company believe that the Scheme is in the best interests of the respective entities and their respective stakeholders.
5. The Appointed Date for the Scheme of Amalgamation is 1<sup>st</sup> day of April 2022.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

6. The Learned Counsel appearing on behalf of the Petitioner Companies states that the joint Company Petition have been filed in consonance with the order dated 27<sup>th</sup> July 2023, passed by this Tribunal in the connected Company Scheme Application bearing C.A.(CAA)/37/MB-V/2023.
7. The Learned Counsel appearing on behalf of the Petitioner Companies states 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 the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted by the Petitioner Companies.
8. The Learned Counsel for the Petitioner Companies states that, by sanction of this Scheme of Amalgamation will be able to achieve the following:

**Rationale of the amalgamation:**

- *The Transferor Company is wholly owned subsidiary of the Transferee Company. 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 Transferor Company with the Transferee Company. The amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of*

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

*administrative responsibilities and multiplicity of records and legal and regulatory compliances.*

- *Accordingly, this Scheme of Amalgamation ("Scheme") is being presented for amalgamation of the Transferor Company with the Transferee Company and for various other matters consequential, supplemental and/ or otherwise integrally connected therewith pursuant to Sections 230 to 232 and other relevant provisions of the Companies Act, 2013.*

9. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its Report dated 25<sup>th</sup> November, 2023, inter alia stating that, save and except the observations as stated in paragraph 2 of the report, this Tribunal may pass such order or orders as deemed fit and proper in the facts and merits of the case. The Petitioner Companies have filed an Affidavit in rejoinder dated 1<sup>st</sup> December 2023 to the report filed by the Regional Director with this Tribunal providing clarification/undertakings to the observations made by the Regional Director. The clarifications and undertakings given by the Petitioner Companies are accepted.

10. The observations made by the Regional Director and the clarifications/undertakings given by the Petitioner Companies are summarized in the table below:

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

Par a (2)	RD Report/Observations dated 25 <sup>th</sup> November	Response of the Petitioner Companies.
(a) (i)	<p><i>That on examination of the report of the Registrar of Companies, Mumbai dated 10.11.2023 (Annexed as Annexure A-1) that the Petitioner Companies fall within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and/or representation regarding the proposed scheme of Arrangement has been received against the Petitioner Companies. Further, the petitioner companies have filed Financial Statements up to 31.03.2023</i></p> <p><i>(i) That the ROC Mumbai in his report dated 10.11.2023 has stated that no Inquiry, inspection, investigation &amp; prosecution is pending against the subject Petitioner companies.</i></p>	<p>As regards the observations made in Paragraph 2(a)(i) of the said Report is concerned, it is submitted that the observation made by the ROC is merely factual in nature and no further response in required to that extent.</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

<p>(a) (ii) a)</p>	<p><i>(ii) Further ROC has mentioned as follows: -</i></p> <p><i>a) As per provisions of section 232(3)(i) of CA,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 fees payable by the transferee company on its authorized capital subsequent to the amalgamation. Therefore, 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 its authorized capital subsequent to amalgamation.</i></p>	<p>As regards the observations made in Paragraph 2(a)(ii)(a) of the Report is concerned the Petitioner Companies hereby undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 regarding set-off of fees paid by the Transferor Companies against any fees payable by the Transferee Company on its authorized capital subsequent to the Scheme.</p>
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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

**C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023**

<p>(a) (ii) b)</p>	<p><i>b) Interest of the Creditors should be protected.</i></p>	<p>In so far as observations made in Paragraph 2(a)(ii)(b) of the Report is concerned the Petitioner Companies undertake that the interest of the creditors will be duly protected under the Scheme.</p>
<p>(b)</p>	<p><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></p>	<p>In so far as observations made in Paragraph 2(b) of the Report is concerned the Petitioner company hereby undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 regarding set-off of fees paid by the Transferor Company against any fees payable by the Second Petitioner Company i.e., Transferee Company on its authorized capital subsequent to the Scheme.</p>



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

<p>(c)</p>	<p><i>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the Petitioner Companies shall pass such 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></p>	<p>In so far as observations made in Paragraph 2 (c) of the report is concerned the Transferee Company undertake that in addition to compliance of AS-14 (IND AS-103), the Petitioner Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with all applicable Accounting Standards such as AS-5 (IND AS-8), to the extent applicable.</p>
<p>(d)</p>	<p><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></p>	<p>In so far as observation made in Paragraph 2 (d) of the report is concerned the Petitioner Company submit and confirm that the Scheme enclosed in the Company Application and Company Petition are one and the same and there is</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

		no discrepancy, or no change is 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 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>	In so far as observation made in Paragraph 2 (e) of the report is concerned the Petitioner Company confirms that as per the provisions of section 230(5) of the Companies Act, 2013, the Petitioner Company has served notices to all the concerned authorities; Regional Director, Registrar of Companies, the Official Liquidator and the Income Tax Department. 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. Such issues will be addressed in accordance with the law and the Petitioner Company shall be bound by any decision of

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

		such authorities that is made in accordance with law.
(f)	<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>	In so far as observations made in Paragraph 2(f) of the report is concerned submits that pursuant to order dated 27.07.2023 in CA(CAA)/37/2023 Equity shareholders of both Petitioner Companies have consented to the Scheme, hence the meeting of the Equity Shareholders were dispensed with, there were no secured in the Transferor Company. The Transferor Company has one unsecured creditor whose consent has been acquired. The Transferee Company has 2 Secured creditors and 23 Unsecured Creditors out of which consent of 90% in value has been obtained and the meetings have been dispensed with.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

<p>(g)</p>	<p><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 1<sup>st</sup> April 2022.</i></p> <p><i>'Effective Date' means the last of the following dates, namely:</i></p> <p><i>a. That on which the last of the aforesaid consents, approvals, permissions, resolutions, and orders as mentioned in Clause 20 shall be obtained or passed;</i></p> <p><i>or</i></p> <p><i>b. That on which all necessary certified copies of orders under the applicable section(s) of the Act shall be duly filed with the concerned Registrar of Companies.</i></p>	<p>As far as observations made in paragraph 2 (g) of the Report of Regional Director is concerned, the Petitioner companies confirms that the Appointed Date is 1<sup>st</sup> April, 2022 as mentioned in the Scheme which is in compliance with Section 232(6) of Companies Act, 2013 and that the Scheme shall take effect from such Appointed Date. Further the Petitioner Company undertakes to comply with the requirements clarified vide circular No.7/12/2019/CL-I dated 21<sup>st</sup> August 2019 issued by Ministry of Corporate Affairs.</p>
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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

	<p><i>The Petitioner Companies shall undertake 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>	
(h)	<p><i>Petitioner Companies shall undertake to comply with the directions of the Income Tax Department &amp; GST Department, if any.</i></p>	<p>In so far as observations made in Paragraph 2 (h) of the report is concerned the Petitioner companies undertake to ensure compliance of all the directions of the Income tax and GST Department, if any.</p>
(i)	<p><i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory including RERA as both Petitioner Companies are engaged in the business of real estate development.</i></p>	<p>In so far as observations made in Paragraph 2 (i) of the report is concerned the Petitioner companies submit that the Petitioner Companies have no ongoing infrastructure projects and hence the guidelines of RERA do not apply to the Petitioner Company. In any event the present</p>

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

		<p>scheme is a merger between wholly own subsidiary.</p>									
(j)	<p><i>It is observed from the Financial Statements of Petitioner Companies as on 31.03.2022 has issued shares at Security Premium and collected total premium as follows: -</i></p> <table border="1"> <thead> <tr> <th><i>Sr. No</i></th> <th><i>Name of Company</i></th> <th><i>Total amount of Securities Premium collected</i></th> </tr> </thead> <tbody> <tr> <td>1.</td> <td><i>Urban Akarsh Infrastructu re Private Limited</i></td> <td><i>Rs. 244.80 Lakhs</i></td> </tr> <tr> <td>2.</td> <td><i>Ess Gee Real Estate</i></td> <td><i>Rs.727.59 Lakhs</i></td> </tr> </tbody> </table>	<i>Sr. No</i>	<i>Name of Company</i>	<i>Total amount of Securities Premium collected</i>	1.	<i>Urban Akarsh Infrastructu re Private Limited</i>	<i>Rs. 244.80 Lakhs</i>	2.	<i>Ess Gee Real Estate</i>	<i>Rs.727.59 Lakhs</i>	<p>So far as the observation in paragraph 2(j) of the Report of the Regional Director is concerned, the Petitioner Companies states that Securities premium was raised after complying with all relevant provision of Companies Act as well as Income Tax Act. The Issue of Securities at Premium has been done after following due procedures / compliances such as Board Resolution, filing of from 2 with ROC. Also, the said Securities Premium has been appropriately considered and disclosed in the Audited Financial Statements and Income Tax Returns of the relevant Assessment Years from time to time as required under the Income</p>
<i>Sr. No</i>	<i>Name of Company</i>	<i>Total amount of Securities Premium collected</i>									
1.	<i>Urban Akarsh Infrastructu re Private Limited</i>	<i>Rs. 244.80 Lakhs</i>									
2.	<i>Ess Gee Real Estate</i>	<i>Rs.727.59 Lakhs</i>									

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

	<p><i>Developers Private Limited</i></p>	<p>Tax Act, 1961 and rules made thereunder and also in compliance with all relevant laws. Further, Petitioner Company has duly undergone the assessment proceedings under the relevant provisions of Income Tax Act, wherever initiated. There has been no demand raised by the Income Tax Department during the relevant assessment which now has become time barred. Furthermore, the Petitioner Companies undertake that the approval of the reduction by this Tribunal will not deter any such Authorities to deal with any of the issues arising after giving effect to the scheme and the decision of such Authorities shall be binding on the Transferee Company.</p> <p>In so far as the Transferor Company is concerned Securities premium was generated in ordinary course of business. In so far as Transferee Company is</p>
<p><i>The company may clarify the status of filing of return of allotment.</i></p> <p><i>Further, the Petitioner Companies shall also satisfy the Hon'ble Bench about assessment of share capital u/s. 68 of the Income Tax Act, 1961, for issue of shares at fair value in order to confirm compliance of Income Tax Laws or Hon'ble NCLT may seek the comments from Income Tax department, if any, on this issue.</i></p>		

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

		<p>concerned the securities premium was generated in the following manner: -</p> <p>(a) Ess Gee Reality Private Limited having Securities Premium of Rs 63,000,000/- was merged with Prime Hygiene Care Private Limited (subsequently the name was changed to Ess Gee Reality Private Limited) pursuant to order dated 28th August 2015 by the High Court and Prime Hygiene Care Private Limited had Securities Premium of Rs. 97,58,500 /-.</p> <p>(b) Ess Gee Reality Private Limited was subsequently merged with Ess Gee Real Estate Private Limited in pursuance of order dated 8th August 2019.</p> <p>(c) Hence the Securities Premium is being reflected in the books of the Transferee Company.</p>
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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

		<p>Copy of relevant forms filed under the Companies act 1956/2013 have been annexed in the Affidavit in Rejoinder as <b>Annexure A</b></p>										
(k)	<p><i>It is observed from financial statements of Petitioner Companies as on 31.03.2022, details of shareholding is as follows: -</i></p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 5%; text-align: center;">S r . N o</th> <th style="width: 25%; text-align: center;">Petition er Compa ny</th> <th style="width: 25%; text-align: center;">Nam e of Shar ehol der</th> <th style="width: 10%; text-align: center;">% of Sh are s hel d</th> <th style="width: 35%; text-align: center;">Remar ks</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	S r . N o	Petition er Compa ny	Nam e of Shar ehol der	% of Sh are s hel d	Remar ks						<p>In so far as observations made in Paragraph 2(k) of the report is concerned it is submitted that the Transferor and Transferee company has filed BEN-2 form. The same as <b>Annexure B</b> in the Affidavit in Rejoinder.</p>
S r . N o	Petition er Compa ny	Nam e of Shar ehol der	% of Sh are s hel d	Remar ks								

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

1	Urban Akarsh Infrastr ucture Private Limited	Ess Gee Real Estate Deve lope rs Pot Ltd	10 0%	No Form BEN- 2 has been filed by the Petitio ner Comp anies per record s availa ble at MCA 21 Portal
<p><i>As per Rule 2(h) of the Companies (Significant Beneficial Owners) Rules, 2018 "significant beneficial owner' in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who is acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company namely:</i></p>				

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

	<p>(i) Holds indirectly, or together with any direct holdings, not less than ten percent of the shares;</p> <p>(ii) Holds indirectly, or together with any direct holdings, not less than ten percent of voting rights in the shares;</p> <p>(iii) Has right to receive or participate in not less than ten percent of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;</p> <p>(iv) Has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone:</p>	
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IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

	<p><i>As per section 2(27) of Companies Act,2013 "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner."</i></p> <p><i>No Form BEN-2 has been filed by any of the Petitioner Transferor Company as per records available at MCA21 Portal, even under para no. 3, the radio button of Form BEN-2 e-form by filing up with particulars of holding company under proviso to Rule 8(b) of Companies (Significant Beneficial Owner) Rules, 2018.</i></p>	
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IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

<p><i>However, the Petitioner Transferor Company also have liberty to file Form BEN-2 under other radio button para-3 under other category defined under rule 2(h) of Companies (Significant Beneficial Owners) Rules, 2018 for triggering the SBO like 10% or above shareholders/ right to dividend/ voting right or controlling person or person having significant influence over the non-individual shareholder.</i></p> <p><i>Hence Petitioner Companies shall undertake to comply with the provisions of section 90 of Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019 thereunder and to file Form BEN-2 (Copy Enclosed) for declaring name of the significant beneficial owner with concerned ROC.</i></p>	
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11. The Official Liquidator has filed his report on 1<sup>st</sup> December 2023, inter alia stating their observations. The First Petitioner Company have filed an

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

Affidavit in rejoinder to the report filed by the Official Liquidator with this Tribunal on 29<sup>th</sup> January, 2024 providing clarification/undertakings to the observations made by the Official Liquidator. The clarifications and undertakings given by the First Petitioner Company are accepted.

12. The observations made by the Official Liquidator and the clarifications/undertakings given by the First Petitioner Company are as follows:

13. *The Official Liquidator in Para 7 (I) (a) observed Auditors qualification regarding NBFC registration:*

*The Auditors' report does not have any serious qualifications for any of the financial years under review except the reverse remark not having registration as NBFC under section 45-IA of the RBI Act, 1934 as financial income and assets constitute more than 50% of its total income and total assets respectively for the year wherever such limit of investment and interest income is more than specified limit.*

*It is not clear whether required application is made to RBI or not and whether has permitted the company to do the business as NBFC for the year wherever it is applicable.*

14. In so far as observation 7 I (a) made by the Official Liquidator with relation to the statutory auditors qualification regarding to NBFC Registration, the Petitioner Company submitted that the auditors have not qualified the company as a NBFC but only made a remark. The Company has in the Directors Report (2019-2020) clarified that with respect to the remark in the auditor's report regarding the Registration of company under Section

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

45(1)(a) of the Reserve Bank of India Act, 1934 that the company has been engaged in the business of real estate development since incorporation. However, the Company had surplus funds and the same has been given loan this was the temporary activity of the company and the principal business continues to be that of real estate development and not that of NBFC. However, the Petitioner Company submits that it is pertinent to note that for the financial year 2022-23 there is no such remark of the auditor. Relevant extract of the report of the Statutory Auditor for the foresaid financial year is hereto marked and annexed as **Annexure A to Annexure C** in the Affidavit in Rejoinder to the OL Report. The Petitioner company submits that the Transferor Company on its own addressed a letter dated 13th October 2020 to the Reserve Bank of India and forwarded exception report for their perusal. Copy of the said letter along with report is hereto annexed and marked as **Annexure D** of the said Affidavit. It is pertinent to note that there is no response by the RBI to the Transferor Company. The Transferor Company has on 4th January 2024 addressed letter/notice to the Reserve bank of India and informed them about filing of the Company scheme Petition and that the matter is fixed for final hearing and in any event the Transferor Company has taken steps to merger with the Transferee Company. A Copy of letter dated 4th January 2024 is hereto annexed and marked as **Annexure-E** in the aforementioned Affidavit.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

**C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023**

15. *The Official Liquidator in Para 7 (I) (b) and (c) made the following observations:*

*(b) Other explanatory information made by Statutory Auditor during the year 2017-2018 is as under.*

*The disclosure of the income and the additional liability towards income tax, including interest, pursuant to the action u/s132 of the Income Tax Act, 1961 conducted during earlier financial year has been qualified and accepted by the Company based on the application filed with the Income Tax Settlement Commissioner under the provisions of Income Tax Act, 1961 during the year. Accordingly, the income mainly in the nature of cash received (net of expensed and tax liability) has been disclosed as exceptional item (Section 132 refer search & seizure and provided the circumstances under which action is to be taken)*

*(c) There were no transactions relating to previously unrecorded income that were surrendered or disclosed as income in the tax assessments under the Income Tax Act, 1961 during the year except as above.*

16. In relation to observation 7 I (b) & (c), the First Petitioner Company submits that is nothing but reproduction from the auditor's report and therefore require no comments.

17. *The Official Liquidator in para 7 (II) made observations regarding Discrepancy in Audited Statement:*

*We invite attention towards the summarized Balance Sheet for last 5 years which is extracted from Audited Financials as appeared on page No. 10 of this report. Particularly Long term Borrowing as shown in the year 2018-2019 and 2019-2020 which is as under :*



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

**C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023**

<i>Loan from (Rupees)</i>	<i>Balance as at 31/2/2020</i>	<i>Balance as at 31/3/2019</i>	<i>Balance as at 31/3/2018</i>
<i>Term Loan from NBFC (Bajaj Finance Ltd)</i>	<i>5,78,65,901</i>	<i>Nil</i>	<i>5,79,03,867</i>
<i>Term loan from State Bank of India</i>	<i>15,83,77,584</i>	<i>20,12,48,379</i>	<i>Nil</i>

*It is seen from the above figures that there is an outstanding Balance of loan payable to NBFC as on 31/3/2018 and 31/3/2020 of Rs.5,79,03,867 & Rs.5,78,65,901 respectively while no Balance is payable as seen on 31/3/2019 which seems to be wrong. Grouping of Loans from Bajaj Finance Ltd (NBFC) and from State Bank of India is not made properly during the period of 2018-2019. It is interesting to state that the following Auditor's note on NBFC loan during both the period i.e year 31.3.2018 and 31.3.2019 is same.*

18. In so far as observation as paragraph 7(II) of the report of the Chartered Accountant as mentioned in the Official Liquidators report the Petitioner Company submits that is pertinent to note that the outstanding balance of Rs.5,79,03,867/- was repaid therefore the balance as on 31/3/2019 was

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

shown as NIL. The company had taken fresh loan and the outstanding balance as on 31/3/2020 was Rs.5,78,65,901/-. The Petitioner company further mentions that as per the terms and conditions of the loan agreement as entered into with Bajaj Finance Ltd the entire amount had to be paid off in one trench. Further the outstanding balance as on 31/3/2020 was also repaid and a no due certificate has been issued by Bajaj Finance Ltd. The Copy of sanction letter and no due certificate is hereto annexed as **Annexure F and Annexure G** in the Affidavit in Rejoinder. Significantly the auditors have during the relevant period also noted that the loan is repayable in one bullet payment at the end of loan tenure of 180 months. It is further pertinent to note that the Auditor appointed by the Hon'ble tribunal did not ask the Company for any clarifications in this behalf.

In so as the loan taken from State Bank of India is concerned the outstanding balance as on 31/3/2019 was Rs. 20,12,48,379/- whereas the amount was reduced to Rs.15,83,77,584/- as on 31/3/2020. Further the Chartered Accountant appointed by this Hon'ble tribunal has wrongly and incorrectly recorded the grouping of loans from Bajaj Finance Ltd and State Bank of India. It is pertinent to mention that there is no such qualification of the statutory auditor on the issue raised by the Chartered Accountant.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

19. The official Liquidator in Para 7 (III) of the report made the following observation regarding Finance Business:

*Activities during 2017 to 2022 (Ratio of revenue by way of sale of flats & interest earned)*

*It is stated that the transferor company is a builder & developer and as such completed the real estate construction in hand by the year 2014-2015 and whatever constructed the flats/ shops etc. are being sold during subsequent periods.*

*Revenue analysis and ratio with total income as under:*

Year	% of Sale of Flats	Ratio of Interest Income	Rental & others
2018-2019	89%	11%	-
2019-2020	Nil	96%	4%
2020-2021	42%	55%	3%
2021-2022	32%	65%	-

*Yearly head wise revenue is tabulated as under :*

Particulars	2021-2022		2020-2021		2019-2020		2018-2019		2017-2018	
	Ratio to Total Income	Rs.	Ratio to Total Income	Rs.	Ratio to Total Income	Rs.	Ratio to Total Income	Rs.	Ratio to Total Income	Rs.
1. Sale of flats	32%	1150000	42%	1775220	Nil	Nil	89%	101816750	95%	3950000
2. Operating Revenue including rental	-	356000	2%	630934	4%	1517269		62279	4%	1675086

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

**C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023**

3.		250110		230572		3,15,53,		1244157		37175
Interest	68%	00	55%	09	96%	355	11%	1	1%	2
4. Profit from Partners hip Firm		30000	1%	339000	-	-	-	-	-	
<b>Total Income</b>	<b>100 %</b>	<b>3,68,97, 000</b>	<b>100 %</b>	<b>4,17,79, 343</b>	<b>100 %</b>	<b>3,30,70, 624</b>	<b>100 %</b>	<b>11,43,20 ,600</b>	<b>100 %</b>	<b>41546 838</b>

*It is Concluded from the above chart that, Company is also doing the business as financier or have the investment by way of loan to related party, advances, other loan and investment in share which is seen in the summarized Audited Balance Sheets as given in this report for the period under Audit.*

*My view is also supported by the Statutory Auditors who pointed out in his Audit Reports that Financial Income & Assets constitute more than 50% of its Income & Total Assets respectively, rendering the company to seek registration as NBFC under section 45-I-A of RBI Act, 1934 and as such it is felt that company is also doing the business of Finance & Investment.*

*We referred the Director Reports where in principal business activities is shown as construction business only and ratio is taken as 97%/100% as the case may be of the total income in stated of above ratio*

*During the year 2021-22 Statutory Auditor has in his audit note no. (xvi)(b) specifically stated that the company has conducted Non-Banking Financial Activities without a valid certificate of registration from the Reserve Bank of India as per the Reserve Bank of India Act, 1934.*

20. In so far as observation made in 7 (III) of the report of the Official Liquidator, The Petitioner submits that the principal business of the company is construction activities. However, the Company had surplus funds and the same has been given as a loan this was the temporary activity of the company and the principal business continues to be that of real estate development and not that of NBFC. However, it is pertinent to note that the

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

Statutory auditor has no qualification to make remark for the financial year 2022-23. In any event the Petitioners are taking steps to dissolve the company. As stated in the forgoing paras of the affidavit in response, necessary intimation was given to the RBI and there has been no response.

21. *The Official Liquidator in para 7 (IV) has made observations regarding Loans:*

*Term Loan from NBGC, Term loan from bank, bank overdraft & advances from related parties: In fact, the company has strong base having huge reserves & surplus as compared to share capital. There is no need to obtain the funds from the above as no any new construction activities has begun during the period under review, same amount is seen paid to related parties as loan / advances, means huge funds are routed through this company.*

22. In so far as observation made in 7(IV) regarding term loan, the Petitioner Company submits that it was a commercial decision taken by the management of the company. The term loan in question has been repaid the no due certificate issued by State Bank of India is annexed and marked as Annexure H in the Affidavit in Response.

23. *The Official Liquidator in para 7 (V) has made observations regarding NBFC Registration:*

*There is no any mention in the Directors Report on the point of applicability of NBFC registration under section 45-IA of the RBI Act, 1934, however Auditors in*

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

*his report says that the company has been advised based on legal view to approach Reserve Bank of India for the determination of issue involved as the principal business of the company continues to be Real Estate Development and not thar of NBFC.*

*However it is not clear whether company has applied to RBI for determination, whether the transaction of finance is under purview and registration as NBFC under section 450I-A of the RBI Act, 1934. The current status or compounding of offense if any is not clear*

24. In so far as observation made in 7 (V) regarding registration of the company as a NBFC the Petitioner Company submits that the Transferor Company has in the Directors Report (2019- 2020) clarified that with respect to the remark in the auditor's report regarding the Registration of company under Section 45(1)(a) of the Reserve Bank of India Act, 1934 that the company has been engaged in the business of real estate development since incorporation. The Transferor company is also taking steps to dissolve the company. The company had way back in 2020 informed the RBI and forwarded exception report more particularly stated herein above.
25. *The Official Liquidator in para 7 (VI) has made observations regarding Search & Seizure in earlier period:*

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V**

**C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023**

*There were no transactions relating to previously unrecorded income that were surrendered or disclosed as income in the tax assessments under the Income Tax Act, 1934 (43 of 1961) during the period under audit except in earlier period where search and seizure operation under section 132 of the income tax Act were carried which was settled during the year 2017-2018 which is mentioned in Note. 19 under the heard "other explanatory information" forming part of the Audited Financial Statement for the year ended 31.3.2018 which is as under:-*

*" The disclosure of the income and additional liability towards income tax including interest, pursuant to the action u/s 132 of the Income Tax Act, 1961 conducted during the previous financial year has been quantified and accepted by the company based on the application filed with the Income Tax Settlement Commission under the provisions of the Income Tax Act, 1961 during the year. Accordingly, the income mainly in the nature of cash received (net of expenses and tax liability) has been disclosed as exceptional item"*

26. In so far as paragraph 7(VI) is concerned the Petitioner Company submits that there has been no search and seizure during the last five years. Queries raised regarding Note 19 is pertaining to the financial year 2016-17, the chartered Accountant is supposed to audit accounts for the last 5 years as indicated by him in his scope of assignment which being the period of financial years 2017-18, 2018-19, 2019-20, 2020-21, 2021-2022. Hence he is

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

not qualified to audit for the financial year 2016-2017. All dues of income tax has been paid then notices under section 230(5) of the Companies Act 2013 has been given to the concerned Income tax department.

27. Further heard, **authorized representative of Regional Director, MCA(WR)** who is present at the time of hearing **has reported no objections for allowing the Company petition by the Tribunal.**
28. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
29. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P.(CAA)/256/MB-V/2023 filed by the Petitioner Companies are made absolute in terms of prayers clause of the said Company Scheme Petition.
30. The Scheme of Amalgamation (Merger by Absorption) is hereby sanctioned, and the appointed date of the Scheme is fixed as 1<sup>st</sup> day of April 2022.
31. The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-Form INC-28 in addition to physical copy, within 30 days from the date of receipt of order, duly certified by the Designated Registrar of this Tribunal.



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - V

C.P.(CAA)/256/MB-V/2023  
IN  
C.A.(CAA)/37/MB-V/2023

32. The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Designated Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified copy of order.
33. All concerned regulatory authorities to act on a copy of this Order duly certified by the Registry of this Tribunal, along with a copy of the Scheme.
34. Ordered accordingly. C.P.(CAA)/256(MB)2023 is **admitted** and **disposed of**.

SD/-

**MADHU SINHA**  
**Member (Technical)**  
/Abhay/

SD/-

**REETA KOHLI**  
**Member (Judicial)**