

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

2. C.P.(CAA)/286(MB)2023C.A.(CAA)/128(MB)2023

IN THE MATTER OF

Ziqitza Health Care Limited

Section 230-232 of the Companies Act, 2013

Order Delivered on 05.07.2024

CORAM:

SHRI. K. R. SAJI KUMAR
MEMBER (J)

MS. MADHU SINHA
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner

For the Respondent:

ORDER

Order pronounced. Scheme is allowed.

Sd/-
MADHU SINHA
Member (Technical)

Sd/-
K. R. SAJI KUMAR
Member (Judicial)

//Anmol//

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

C.P.(CAA)/286/MB/2023

IN

C.A.(CAA)/128/MB/2023

[Under Section 230-232 read with Section 234 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016]

Ziqitza Health Care Limited

[CIN: U85110MH2002PLC138005]

... First Petitioner Company /
Demerged Company

Zenplus Private Limited

[CIN: U85300MH2022PTC386830]

... Second Petitioner Company /
Resulting Company

Order Dated:05.07.2024

CORAM:

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

SMT. MADHU SINHA, HON'BLE MEMBER (T)

Appearances: Hybrid

For the Petitioners : Adv. Hemant Sethi, Adv. Tanaya Sethi i/b Hemant
Sethi & Co., Advocates

For the Regional Director : Mr. Altap Shaikh, AD (PH)

ORDER

1. The sanction of the Tribunal is sought under sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of Arrangement (Scheme) between Ziqitza Health Care Limited (Demerged Company) and Zenplus Private Limited (Resulting Company) (Collectively referred to as Petitioner Companies) and their respective shareholders.
2. The Counsel for the Petitioner Companies submits that, the First Petitioner Company is currently engaged in providing nationwide network of life support ambulance services which would provide basic life support, advance life support and patient transfer services. The Second Petitioner Company was incorporated with an objective to engage in the business of setting up, maintaining and managing hospitals, critical care units, emergency care facilities, mobile medical units of all permitted types such as mobile dialysis unit, medical research centers and provide fire prevention and suppression

rescue services, natural calamity rescue service.

3. The Counsel for the Petitioner Companies further submits that the Scheme was approved by the Board of Directors of the respective Petitioner Companies on 24th March 2023. A certified true copy of the respective Board Resolutions of the Petitioner Companies approving the Scheme are annexed with Company Scheme Petition. The Board of Directors of the respective Petitioner Companies believe that the Scheme is in the best interests of the respective entities and their respective stakeholders including its shareholders, employees, and creditors.
4. The Appointed Date for the Scheme of Arrangement is 1st day of April 2022.
5. The Learned Counsel states that the joint Company Petition have been filed in consonance with the order dated 27th July 2023, passed by this Tribunal in the connected Company Scheme Application bearing C.A.(CAA)/128/MB/2023.
6. The Learned Counsel further submits that the Petitioner Companies have complied with all requirements as per the 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 taken on record by this Tribunal.
7. The Learned Counsel for the Petitioner Companies states that, by sanction of this Scheme, the Petitioner Companies will be able to achieve the following:

Rationale of the Scheme:

- **Platform for growth capital:**

The Demerged Company operates in a sector which is capital intensive and the business require funds to scale and operate at its full potential. The management has identified business undertaking which has huge potential to attract investors and the proposed demerger will provide a platform for investors who can partner with the company in their growth path.

- **Improved management control**

The segregation will ensure adoption of strategies necessary for growth of respective businesses and ensures better management control on the respective businesses.

8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai (RD) has filed Report dated 3rd January 2024, *inter alia*, stating that the observations as stated in paragraph 2 of the Report may be considered by this Tribunal and may pass such order as deemed fit and proper in the facts and merits of the case. The Petitioner Companies have filed an Affidavit in rejoinder dated 4th January 2024 to the Report providing clarification / undertakings to the observations made by the RD. The clarifications and undertakings given by the Petitioner Companies are accepted.
9. The observations made by the RD and the clarifications/ undertakings given by the Petitioner Companies are summarised in the table below:

Para (2)	RD Report/Observations dated 3 rd January 2024	Response of the Petitioner Companies
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<p>(a)</p>	<p><i>That on examination of the report of the Registrar of Companies, Mumbai dated 28.12.2023 for Petitioner Companies (Annexed as Annexure A-1) that the Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no representation regarding the proposed scheme of Arrangement has been received in the matter of Petitioner Companies. Further, the Petitioner Companies has filed Financial Statements up to 31.03.2023.</i></p> <p><i>The ROC has further submitted that in his report dated 28.12.2023 which are as under:</i></p> <p><i>(i) That the ROC Mumbai in his report dated 28.12.2023 has also stated that No Inquiry, Inspection, Investigations, etc. Prosecutions, Technical Scrutiny and Complaint under CA, 2013 have been pending against the Petitioner</i></p>	<p>The contents are factual in nature and does not require any response. Further, the Petitioner Companies confirm that they have filed financial statements with the Registrar of Companies up to 31st March 2023.</p> <p>(i)The contents thereof are correct factual observations and thus, does not require any response.</p> <p>(ii) The Petitioners Companies hereby submits that the Demerged Company has duly submitted MGT 14.</p>
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	<p><i>Companies.</i></p> <p>(ii) <i>Further ROC has mentioned as follows:</i></p> <p>1. <i>Demerged Company have not filed E-Form MGT-14 within prescribed time limit and hence Company may be directed to make an application for adjudication of default u/s 454 r/w Section 118 of the Companies Act, 2013.</i></p> <p>2. <i>Interest of the creditors</i></p>	<p>The board resolution of the Demerged Company approving the Scheme was passed on March 24, 2023 and MGT14 was filed by the Demerged Company on August 21, 2023 i.e. within 300 days from the date of board resolution. Copy of Form MGT 14 along with the challan filed by the Demerged Company is annexed to the affidavit in rejoinder.</p> <p>(iii) The Petitioners Companies hereby undertakes to protect the Interest of the Creditors. There is no compromise of arrangement with the Creditors.</p>
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	<p><i>should be protected.</i></p> <p><i>3. May be decided on its merits.</i></p> <p><i>Hence, the Petitioner Companies shall undertake to submit detail reply against observations mentioned above.</i></p>	
(b)	<p><i>It is submitted that the petitioner Company has stated that the scheme is in compliance of Section 2(19AA), in this regard, petitioner company may be directed to place on record that as to how this scheme is in compliance of Section 2(19AA) of the Income Tax Act, 1961</i></p>	<p>The Petitioner Companies undertake that the present scheme is in compliance with conditions laid down under Section 2(19AA) of the Income-Tax Act, 1961. The Petitioner Companies further submit that the Scheme specifically provides in clause 4 that the Scheme is in compliance with Section 2(19AA) of the Income Tax Act, 1961.</p>

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

C.P.(CAA)/286/MB/2023
IN
C.A.(CAA)/128/MB/2023

(c)	<i>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the resultant company 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 AS8 etc</i>	The Petitioner Companies undertake that in addition to compliance of applicable Accounting Standards, the Resulting Company and Demerged Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards.
(d)	<i>The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and the same and there is no discrepancy, or no change is made.</i>	The Petitioner Companies by way of affidavit in rejoinder have confirmed that the Scheme enclosed to the Company Scheme Application and Company Scheme Petition are one and the same and there is no discrepancy or any changes.
(e)	<i>The Petitioner Companies under provision 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</i>	The Petitioner Companies submit that as per the directions contained in the Order dated 27th July, 2023 passed by the Tribunal in C.A. (CAA) / 128 / MB / 2023, the Petitioner Companies have served notices, as directed by the Tribunal, to all the concerned regulatory

	<p><i>approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned.</i></p>	<p>authorities u/s 230(5) of the Companies Act, 2013. Further, the Petitioner Companies undertake that the approval of Scheme by the Tribunal may not deter 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 Petitioner Companies.</p>
(f)	<p><i>As per Definition of the Scheme,</i></p> <p><i>"Appointed Date" means 1st April 2022, or such other date as may be approved by the Hon'ble NCLT.</i></p> <p><i>"Effective Date" means the last of the dates on which all the conditions and matters referred to in Clause 16 hereof have been fulfilled. References in this Scheme to the date of "coming into effect of this Scheme" or "effectiveness of this Scheme" shall mean the Effective Date.</i></p> <p><i>The appointed date is 01.04.2022 which is antedated more than one year. Hence the</i></p>	<p>The Petitioner Companies submit that Circular No. F. No. 7/12/2019/CL-I dated 21.08.2019 provides that where the appointed date is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest. The Petitioner Companies submit that the Scheme, with the appointed date of April 1, 2022, was approved by the board of directors of Petitioner Companies on March 24, 2023. The Scheme was subsequently filed with the Hon'ble Tribunal on March 30, 2023 i.e., within 12 months from the</p>

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

C.P.(CAA)/286/MB/2023
IN
C.A.(CAA)/128/MB/2023

	<i>petitioner company should be directed to amend its appointed date in compliance of Ministry's circular no. F. No. 7/12/2019/CL-I dated 21.08.2019.</i>	appointed date. The same therefore, meets the requirements clarified vide Circular No. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs. Further, the Petitioner Companies undertake to comply with requirements of the Circular, if any.
(g)	<i>Petitioner Companies shall undertake to comply with the directions of the Income Tax Department & GST Department, if any.</i>	The Petitioner Companies, undertake to comply with the directions of the Income Tax Department and GST Department, if any. The Petitioner Companies have not received any directions/notice from the Income-tax Department.
(h)	<i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.</i>	The Petitioner Companies undertake to comply with directions of the sectoral regulator, if any.
(i)	<i>Petitioner Companies has foreign shareholders; hence Petitioner Companies shall undertake to comply with rules, regulations, guidelines of FEMA, FERA and RBI.</i>	The Petitioner Companies undertake to comply with applicable rules, regulations, guidelines of FEMA, FERA and RBI to the extent applicable.
(j)	<i>The Hon'ble NCLT may kindly direct the Demerged Company to</i>	The Petitioner Companies submit that the Petitioner Companies have

	<p><i>disclose the details of Assets and Liabilities to be transferred to the Resulting Company to enable this Directorate to comment upon the scheme. However, both Petitioner Companies shall ensure to protect the interest of the creditors of the Demerged Undertaking as on appointed date.</i></p>	<p>already submitted the details of Assets and Liabilities to be transferred to the Resulting Company pursuant to the Scheme vide its reply dated 1st November, 2023. List of assets and liabilities to be transferred to the Resulting Company pursuant to Scheme is annexed to the affidavit in rejoinder. The Petitioners Companies further undertakes to protect the Interest of the Creditors, if any.</p>																
(k)	<p><i>As per shareholding pattern as on 31.03.2023 submitted by the Petitioner company, details of shareholding are as follows:</i></p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th style="width: 5%;"><i>Sn o.</i></th> <th style="width: 15%;"><i>Petitioner Company</i></th> <th style="width: 25%;"><i>Name of the Shareholder</i></th> <th style="width: 15%;"><i>% of shares held</i></th> <th style="width: 40%;"><i>Remark</i></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td rowspan="3" style="vertical-align: top;"><i>Ziqitza Health Care Limited</i></td> <td style="vertical-align: top;"><i>Acumen Fund Inc.</i></td> <td style="text-align: center;"><i>21.8%</i></td> <td rowspan="3" style="vertical-align: top;"><i>No From BEN-2 has been filed by any of the Petitioner Companies as per records available at</i></td> </tr> <tr> <td></td> <td style="vertical-align: top;"><i>Mather and Co Private Limited</i></td> <td style="text-align: center;"><i>13.72%</i></td> </tr> <tr> <td></td> <td style="vertical-align: top;"><i>Global Medical Impex Pte Limited</i></td> <td style="text-align: center;"><i>10.71%</i></td> </tr> </tbody> </table>		<i>Sn o.</i>	<i>Petitioner Company</i>	<i>Name of the Shareholder</i>	<i>% of shares held</i>	<i>Remark</i>	1.	<i>Ziqitza Health Care Limited</i>	<i>Acumen Fund Inc.</i>	<i>21.8%</i>	<i>No From BEN-2 has been filed by any of the Petitioner Companies as per records available at</i>		<i>Mather and Co Private Limited</i>	<i>13.72%</i>		<i>Global Medical Impex Pte Limited</i>	<i>10.71%</i>
<i>Sn o.</i>	<i>Petitioner Company</i>	<i>Name of the Shareholder</i>	<i>% of shares held</i>	<i>Remark</i>														
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	<table border="1" data-bbox="493 277 1350 510"> <tr> <td data-bbox="493 277 571 510">2.</td> <td data-bbox="571 277 722 510"><i>Zenplus Private Limited</i></td> <td data-bbox="722 277 914 510"><i>Ziqitza Health Care Limited</i></td> <td data-bbox="914 277 1139 510"><i>100%</i></td> <td data-bbox="1139 277 1350 510"><i>MCA 21 Portal.</i></td> </tr> </table> <p data-bbox="427 568 1406 891"><i>No Form BEN-2 has been filed by any of the Petitioner Company as per records available at MCA21 Portal, hence Petitioner Companies shall undertake to comply with the provisions of section 90 of the Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder and to file Form BEN-2 for declaring name of the significant beneficial owner with concerned ROC.</i></p>	2.	<i>Zenplus Private Limited</i>	<i>Ziqitza Health Care Limited</i>	<i>100%</i>	<i>MCA 21 Portal.</i>			
2.	<i>Zenplus Private Limited</i>	<i>Ziqitza Health Care Limited</i>	<i>100%</i>	<i>MCA 21 Portal.</i>					
	<p data-bbox="427 936 1417 1144"><i>Response of the Petitioner Companies against observation (k):</i> As far as observation made in paragraph 2 (k) of the Report of Regional Director is concerned, the Petitioner Companies state the following with respect to requirement of filing Form BEN-2:</p> <table border="1" data-bbox="456 1218 1362 1973"> <thead> <tr> <th data-bbox="456 1218 612 1469">Name of The Company</th> <th data-bbox="612 1218 780 1469">Name of the Shareholder</th> <th data-bbox="780 1218 971 1469">Percentage of Shareholding</th> <th data-bbox="971 1218 1362 1469">Reason for not filing BEN-2</th> </tr> </thead> <tbody> <tr> <td data-bbox="456 1469 612 1973">Ziqitza Health Care Limited</td> <td data-bbox="612 1469 780 1973">Acumen Fund Inc</td> <td data-bbox="780 1469 971 1973">21.8%</td> <td data-bbox="971 1469 1362 1973">Acumen Fund Inc is a not-for-profit corporation and has no shareholders. Copy of declaration received by the Demerged Company from Acumen Fund Inc is also annexed.</td> </tr> </tbody> </table>	Name of The Company	Name of the Shareholder	Percentage of Shareholding	Reason for not filing BEN-2	Ziqitza Health Care Limited	Acumen Fund Inc	21.8%	Acumen Fund Inc is a not-for-profit corporation and has no shareholders. Copy of declaration received by the Demerged Company from Acumen Fund Inc is also annexed.
Name of The Company	Name of the Shareholder	Percentage of Shareholding	Reason for not filing BEN-2						
Ziqitza Health Care Limited	Acumen Fund Inc	21.8%	Acumen Fund Inc is a not-for-profit corporation and has no shareholders. Copy of declaration received by the Demerged Company from Acumen Fund Inc is also annexed.						

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

C.P.(CAA)/286/MB/2023
IN
C.A.(CAA)/128/MB/2023

			Hence, there is no requirement of filing BEN-2 as per the provisions of Section 90 of the Companies Act, 2013 read with the relevant rules.
Ziqitza Health Care Limited	Mather and Co Private Limited	13.72%	<p>There is no individual shareholder with a majority stake in Mather and Co Private Limited. Copy of list of shareholders of Mather and Co Private Limited is annexed to the affidavit in rejoinder .</p> <p>Hence, there is no requirement of filing BEN-2 as per the provisions of Section 90 of the Companies Act, 2013 read with the relevant rules.</p>
Ziqitza Health Care Limited	Global Medical Impex Pte Limited	5.22%	Global Medical Impex holds less than 10% in the Demerged Company. Hence, there is no requirement of filing BEN-2 as per the provisions of Section 90 of the

			Companies Act, 2013 read with the relevant rules.
Zenplus Private Limited	Ziqitza Health Care Limited	100%	<p>There is no individual shareholder with a majority stake, directly or indirectly, in Ziqitza Health Care Limited. Copy of the declaration stating that there is no significant beneficial owned in Ziqitza Health Care Limited (as a 100% shareholder of Zenplus Private Limited) is annexed to the affidavit in rejoinder. Copy of list of shareholders of Ziqitza Health Care Limited is annexed to the affidavit in rejoinder.</p> <p>Hence, there is no requirement of filing BEN-2 as per the provisions of Section 90 of the Companies Act, 2013 read with the relevant rules.</p>

The Petitioner Companies undertake to comply with the provisions of Section 90 of the Companies Act, 2013 read with the Companies

	(Significant Beneficial Owners) Rules, 2018, amended from time to time and make necessary filings with Registrar of Companies, if applicable, or comply with directions, if any, issued by the concerned Registrar of Companies in this regard. Without prejudice to the above, the Petitioner Companies shall continue to remain in existence post effectiveness of the Scheme and shall not have any prejudicial impact on the powers and rights of the concerned Registrar of the Companies in accordance with the applicable provisions of the Companies Act, 2013.
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10. The Income-tax Officer, Ward – 8(3)(1), Mumbai *vide* his letter dated 26th December 2023 has provided comments on the Scheme, *inter-alia*, stating that any sanction to the Scheme should not adversely impact the rights of the Income tax Department for any present or future proceedings and the Income-tax Department should be at liberty to take appropriate action as per law in case of an event of any tax avoidance or violation of Income-tax laws. The Petitioner Companies have filed an Affidavit in reply dated 23rd January 2024 to the letter filed by the Income Tax Department with this Tribunal providing undertakings to the comments made by the Income-tax Department. The undertakings given by the Petitioner Companies are taken on record.
11. The comments made by the Income-tax Department and the undertakings given by the Petitioner Companies are summarised in the table below:

Para	Income Tax Department Letter/ Comments dated 26 th December 2023	Response of the Petitioner Companies
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4(i)	<p><i>It is clear that all pending proceedings against Zenplus Private Limited shall be continued against the Resultant Company. Therefore, the scheme should be without prejudice to the rights of the Income Tax Department and the Income Tax Department is free to proceed against the Resultant Company for all its proceedings.</i></p>	i. All pending proceedings under the Income-tax Act, 1961 of the Demerged Undertaking of the Demerged Company shall be transferred and continued against the Resultant Company. Therefore, the Scheme is without prejudice to the rights of the Income Tax Department and the Income Tax Department is free to proceed against the Resultant Company for all its proceedings.
4(ii)	<p><i>At the moment this scheme is not being examined with reference to the taxation aspects vis-à-vis other such scheme/s, if any. In future, if it is discovered that this scheme or similar such schemes are in any way acting as a device for tax-avoidance , then the department will be at liberty to initiate the appropriate course of action as per law.</i></p>	ii. The Income-tax Department is at liberty to initiate the appropriate course of action as per law in relation to the Scheme. iii. The Income-tax Department is free to examine the aspect of any tax payable as a result of

4(iii)	<i>The Income-tax department will be free to examine the aspect of any tax payable as a result of the scheme and in case it is found that the scheme ultimately results in tax avoidance or is not in accordance to the provisions of the provisions of the Income Tax Act, then the Department will be at liberty to initiate the appropriate course of action as per law.</i>	the Scheme. iv. The rights of the Income-tax Department remain intact to take out appropriate proceedings regarding raising of any tax demand against the Resultant Company at any future date and these rights should not be adversely affected in view of the sanction of the Scheme by the Hon'ble Tribunal.
4(iv)	<i>It is further requested that the rights of the Income Tax Department should remain intact to take out appropriate proceedings regarding raising of any tax demand against the Resultant Company at any future date and these rights should not be adversely affected in view of the sanction of the scheme.</i>	v. It is further clarified that all issues arising out of income tax will be met and answered in accordance with law.

5	<i>It is reiterated that any sanction to the Scheme of Merger under section 230 to 232 of the Companies Act, 2013 should not adversely impact the rights of the Income Tax Department for any present or future proceedings. The Department should be at liberty to take appropriate action as per law in case of an event of any tax-avoidance or violation of Income Tax Law or any other similar issue.</i>
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12. Upon this Scheme becoming effective and in consideration of the demerger of the Demerged Undertaking (as defined in the Scheme) of the Demerged Company into the Resulting Company, a wholly owned subsidiary of the Demerged Company, pursuant to this Scheme, the existing share capital of the Resulting Company shall get cancelled and the Resulting Company shall, without any further act or deed issue and allot equity shares at par on a proportionate basis to each member of Demerged Company, whose name is recorded in the register of members of the Demerged Company as holding shares on the Specified Date, in the ratio of 1 (one) equity share of ₹ 10/- each fully paid up of Resulting Company for every 1 (one) equity share of ₹ 10/- each

fully paid up held in Demerged Company.

13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P.(CAA)/286/MB/2023 filed by the Petitioner Companies are made absolute in terms of prayers clause of the said Company Scheme Petition.
15. The Scheme of Arrangement is hereby sanctioned, and the appointed date of the Scheme is fixed as 1st day of April 2022.
16. 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 Registrar / Assistant Registrar of this Tribunal.
17. The Petitioner Companies to submit a certified copy of this order and the Scheme duly authenticated by the Registrar / Assistant 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.

18. 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.

Sd/-

MADHU SINHA
MEMBER (TECHNICAL)

Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)

//VLM//