

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

C.P.(CAA)/299/MB-V/2023

Connected with

C.A.(CAA)/164/MB-V/2023

In the matter of
Companies Act, 2013

AND

In the matter of
Section 230-232 of the Companies Act,
2013 and other applicable provisions of
the Companies Act, 2013 read with the
Companies (Compromises, Arrangements
and Amalgamations) Rules, 2016;

In the matter of
Scheme of Amalgamation of Cosmea
Financial Holdings Private Limited
("Cosmea Financial" or "Transferor
Company") with Cosmea Investments
Private Limited ("CIPL" or "Transferee
Company") and their respective
shareholders ("the Scheme")

COSMEA FINANCIAL HOLDINGS

PRIVATE LIMITED

CIN: U67190MH2020PTC350651

... First Petitioner Company

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**COSMEA INVESTMENTS PRIVATE
LIMITED**

CIN: U64990MH2023PTC403091

...Second Petitioner Company

Order Dated: 15.05.2024

Coram:

Ms. Reeta Kohli : Member (Judicial)
Ms. Madhu Sinha : Member (Technical)

Appearances:

For the Petitioners : Mr Shyam Kapadia and Mr
Ahmed M Chunawala, i/b Rajesh
Shah & Co, Advocates

ORDER

FINAL ORDER:

1. The Bench is conveyed by Physical hearing today.
2. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any

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party controverted any averments made in the Petitions to the said Scheme.

3. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Amalgamation of Cosmea Financial Holdings Private Limited, the Transferor Company with Cosmea Investments Private Limited, the Transferee Company.
4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 16th June 2023 which are annexed to the respective Company Scheme Petitions.
5. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in the Company Scheme Application No. 164 of 2023 of the Hon'ble Tribunal.
6. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all

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requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.

7. The Learned Counsel for the Petitioner Companies states that the First Petitioner Company is operating in capital market, banking and wellness platform segments as under: Capital market segment offers Broking & Distribution, Structured and Prop trading, Institutional broking, Wealth/PMS, Investment & Asset management and AIF, Wellness platform offers financial product distribution, payments and wallets, Mass Wealth Robo Advisory and health and education wellness, Banking sector comprises of the Asset Reconstruction and Loan Sourcing

8. The rationale for the proposed Scheme of Amalgamation is as under:

Cosmea Financial has applied for Small Finance Bank license ("SFB") and General Insurance license. In order to primarily comply with the conditions with respect to Non-Operative Financial Holding Company (NOFHC) / Core Investment Company (CIC) guidelines for setting up SFB and also to achieve optimal and efficient utilization of capital,

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enhance operational and management efficiencies and have a simplified organizational structure, it is proposed to amalgamate the Transferor Company with the Transferee Company.

9. The Regional Director has filed his Report dated 11th January 2024 inter-alia making the following observations in paragraphs 2 (a) to (i) which are reproduced hereunder:

Para	Observation by the Regional Director	Undertaking of the Petitioner Company/Rejoinder
2(a)	That on examination of the report of the Registrar of Companies, Mumbai dated 06.11.2023 for Petitioner Companies falls 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 Company. Further, (Petitioner	So far as the observation in paragraph 2(a) of the Report of the Regional Director is concerned, the Petitioner Companies submit that the Transferor

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<p>Transferor Company has filed Financial Statements up to 31.03.2022, hence Petitioner Transferor Company shall undertake to file the Financial Statement up to 31.03.2023) and Petitioner Transferee Company has filed Financial Statements up to 31.03.2023.</p> <p>The ROC has further submitted that in his report dated 06.11.2023 which are as under:-</p> <p>i. That the ROC Mumbai in his report dated 21.07.2023 has also stated that No Inquiry, Inspection, Investigation Prosecutions, Technical Scrutiny, Complaints under CA, 2013 have been pending against the Petitioner Companies.</p> <p>ii. Further ROC has mentioned as follows:-</p> <p>a) The Transferor Company i.e., Cosmea</p>	<p>Company viz., Cosmea Financial Holdings Private Limited is concerned, they have filed the Audited Balance Sheet dated 31.03.2023.</p> <p>Annexed hereto and marked as Exhibit A is a copy of the same.</p> <p>So far as the observation in paragraph 2(a)(i) of the Report of the Regional Director is</p>
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	<p>Financial Holdings Private Limited has applied for Small Finance Bank License and General Insurance License.</p> <p>b) There are two charges pending against Transferor Company.</p> <p>c) The Transferor Company and Transferee Company are directed by NCLT to convened and held meeting of secured creditors on 09.11.2023 at 11:00 am.</p> <p>d) 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 any fees payable by the transferee company on its authorized capital shall be set off against any fees payable by the transferee</p>	<p>concerned, the Petitioner Companies submit that it is the facts of the case.</p> <p>So far as the observation in paragraph 2(a)(ii)(a) of the Report of the Regional Director is concerned, the Petitioner Companies submit that it is the facts of the case.</p> <p>So far as the observation in paragraph 2(a)(ii)(b)</p>
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	<p>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 the increased authorized capital subsequent to amalgamation.</p> <p>e) Interest of the Creditor should be protected</p>	<p>of the Report of the Regional Director is concerned, the Transferee Company submits that the charge created against the Transferor Company is on account of loan facility availed by group company by pledging the shares of Transferor Company. The Transferee Company further submits that the said charge would continue on the shares of the</p>
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		<p>Transferee Company issued upon the scheme becoming effective. NOC received from the creditor ‘Globe Fincap Limited’ has been annexed as “Annexure A”.</p> <p>So far as the observation in paragraph 2(a)(ii)(c) of the Report of the Regional Director is concerned, the Transferee Company submits that the Petitioner Company</p>
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		<p>No. 1 have called the meeting of Secured Creditors (Debenture Holders) and the same was unanimously approved.</p> <p>So far as the observation in paragraph 2 (a)(ii)(d) of the Report of the Regional Director is concerned, the Transferee Company undertakes to comply with provisions of Section 232(3)(i) of the</p>
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		<p>Companies Act, 2013 and further submits that the fees (if any) payable by the Transferee Company on clubbing of authorized share capital of the Transferor Company shall be set off against the fees already paid by the Transferor Company for their authorized share capital in accordance with the provisions of Section 232(3)(i) of the</p>
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		<p>Companies Act, 2013.</p> <p>So far as the observation in paragraph 2 (a)(ii)(e) of the Report of the Regional Director is concerned, the Petitioner Companies submit that the Scheme is not prejudicial to the interests of the shareholders and creditors and interests of the creditors will be protected and there</p>
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		is no compromise or arrangement with the creditors.
2(b)	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.	So far as the observation in paragraph 2 (b) of the Report of the Regional Director is concerned, the Transferee Company undertakes to comply with the provisions of section 232(3)(i) of the Companies Act, 2013. The fees (if any) payable by the Transferee Company

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		on clubbing of authorized share capital of the Transferor Company shall be set off against the fees already paid by the Transferor Company for their authorized share capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.
2(c)	In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the resultant company shall pass such accounting	So far as the observation in paragraph 2 (c) of

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	<p>entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS 5 or IND AS-8 etc</p>	<p>the Report of the Regional Director is concerned, the Transferee Company undertakes that in addition to compliance of IND AS 103 for accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting</p>
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		standards such as IND AS-8 as applicable.
2(d)	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.	So far as the observation in paragraph 2 (d) of the Report of the Regional Director is concerned, the Transferee Company submits that the Scheme enclosed to Company Application & Company Petition, are one and same and there are no discrepancy / any

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		change / changes are made.
2(e)	<p>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 such binding on the petitioner companies concerned.</p>	<p>So far as the observation in paragraph 2 (e) of the Report of the Regional Director is concerned, the Transferee Company submits that the Petitioner Companies have served notices under the provisions of section 230(5) of the Companies Act, to all the concerned authorities as</p>

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		<p>directed by the Hon'ble Tribunal which are likely to be affected by the Scheme. Further, the Transferee Company submits that the approval of the Scheme by the Hon'ble Tribunal would not deter such authorities to deal with any of the issues arising after giving effect to the Scheme and the decision of such authorities would be binding on the</p>
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		Petitioner Companies.
2(f)	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.	So far as the observation in paragraph 2 (f) of the Report of the Regional Director is concerned, the Transferor Company submits that the Petitioner Companies has obtained the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly

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		held in terms of Section 230(1) read with 7 subsection (3) to (5) of Section 230 of the Act and the Minutes, thereof shall be duly placed before the Tribunal.
2(g)	<p>As per the Definition of the Scheme.</p> <p>"Appointed Date" means May 31, 2023, or such other date as the Tribunal may direct / fix;</p> <p>"Effective Date" means last of the dates on which the certified copies of the order / confirmation order sanctioning this Scheme of Amalgamation, passed by the Tribunal or any other competent authority or any other appropriate authority under the applicable provisions of the Act, as may be applicable, are</p>	<p>So far as the observation in paragraph 2 (g) of the Report of the Regional Director is concerned, the Transferee Company submits that the Appointed Date is 31st May, 2023. The</p>

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<p>filed with the Registrar of Companies, by the Transferor Company and the Transferee Company. All references in this Scheme to the date of “coming into effect of this Scheme” or “effectiveness of this Scheme” or “Scheme taking effect” shall mean the Effective Date;</p> <p>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 of its inherent powers.</p> <p>The Petitioners may be asked to comply with the requirements as clarified vide circular no.</p>	<p>Transferee Company further submits that they will comply with the requirements as to Appointed Date and clarified vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry.</p>
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	F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs	
2(h)	Petitioner Companies shall undertake to comply with the directions of Income tax department and the GST Authorities, if any.	So far as the observation in paragraph 2 (h) of the Report of the Regional Director is concerned, the Transferee Company submits that the Petitioner Companies shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder, as well

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		as the Good and Service Act and Rules thereunder.
2(i)	Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required.	So far as the observation in paragraph 2 (i) of the Report of the Regional Director is concerned, the Transferee Company submits that the Petitioner Companies are not governed by any sectoral regulatory authority.

10. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 above. The Representative of

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the RD has submitted that the explanations and clarifications given by the Petitioner Companies are found satisfactory and that they have no objection to the Scheme.

11. The Official Liquidator has filed his Report dated 11th January 2024 inter-alia making the following observations in paragraphs 5 to 6 which are reproduced hereunder:

Para	Observation by the Official Liquidator	Undertaking of the Petitioner Company/Rejoinder
5	<i>With reference to clause No. 15.1 of the scheme it is stated that such clauses override the provision of Companies Act, 2013 namely Section 232(3)(i) which inter-alia provides that, 'if a company is dissolved the fee paid by such company on its Authorized Capital shall be set off against any fees</i>	So far as the observation in paragraph 5 of the Report of the Official Liquidator is concerned, the Transferee Company states that Clause 15.1 of the Scheme provides for increase in the authorized share capital of the Transferee Company by the authorized share capital of the

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	<p><i>payable by the transferee company on its Authorized Capital. Accordingly, clause No. 15.1 may be modified.</i></p>	<p>Transferor Company without any further payment of stamp duty and / or fees on such increase to the extent such stamp duty and / or fees already paid by the Transferor Company on their respective authorized share capital. Accordingly, clause 15.1 of the Scheme does not override the provisions of section 232(3)(i) of the Companies Act, 2013. Further, the Transferee Company undertakes to comply with provisions of Section 232(3)(i) of the Companies Act, 2013. The fees (if any) payable by the Transferee Company on clubbing of authorized share capital of the Transferor</p>
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		<p>Company shall be set off against the fees already paid by the Transferor Company on its authorized share capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.</p>
6	<p><i>From the Assets and Revenue of the Cosmea Financial Holdings Private Limited (Transferor Company) as at 31.03.2023 it appears to be a deemed NBFC. There may be applicability of provisions of Section 45-IA of Reserve Bank of India Act. Hon'ble Tribunal may require the Company to clarify on this</i></p>	<ol style="list-style-type: none">1. The observation in paragraph 6 of the Report of the Official Liquidator pertains to applicability of provisions of Section 45-IA of Reserve Bank of India Act. In relation to this, we submit as under:2. Details of the revenue of the Transferor Company as per audited financials as on 31st March 2023 are as under

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		<table border="1"><thead><tr><th style="text-align: center;">Particulars</th><th style="text-align: center;">INR in crs</th></tr></thead><tbody><tr><td>Total revenue of the Transferor Company</td><td style="text-align: right;">17.47</td></tr><tr><td><u>Breakup of revenue</u></td><td></td></tr><tr><td>Revenue from operations</td><td style="text-align: right;">0.19</td></tr><tr><td>Fees and commission</td><td style="text-align: right;">0.10</td></tr><tr><td>Net gain on fair value changes</td><td style="text-align: right;">14.81</td></tr><tr><td>Dividend Income</td><td style="text-align: right;">0.28</td></tr><tr><td>Interest Income</td><td style="text-align: right;">2.08</td></tr></tbody></table> <p style="text-align: justify; padding-left: 40px;">The total revenue of the Transferor Company is majorly on account of net gain on fair value changes on account of revaluation of the investment in Reliance Asset Reconstruction Company Limited ("Reliance ARC"). Further the income i.e.,</p>	Particulars	INR in crs	Total revenue of the Transferor Company	17.47	<u>Breakup of revenue</u>		Revenue from operations	0.19	Fees and commission	0.10	Net gain on fair value changes	14.81	Dividend Income	0.28	Interest Income	2.08
Particulars	INR in crs																	
Total revenue of the Transferor Company	17.47																	
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		<p>interest and dividend income has been earned is on account of investment in group companies.</p> <p>3. The said revaluation has been done in accordance with the requirements of Indian Accounting Standards mandated by Companies Act, 2013 to reflect their fair value.</p> <p>4. Indian Accounting standards 113 (IND AS 113-Fair Value Measurement) defines Fair Value as “The price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market</p>
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		<p>participants at the measurement date.”</p> <p>5. Income is defined in the Framework for the Preparation and Presentation of Financial Statements issued by the Institute of Chartered Accountants of India as:</p> <p><i>“Income is increase in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases of liabilities that result in increases in equity, other than those relating to contributions from equity participants.”</i></p> <p>6. Basis the aforesaid definition, the changes in fair value may be treated as a form of</p>
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		<p>income. However, it is submitted that as per Reserve Bank of India press release no. 1998-99/1269 dated April 8, 1999 a company will be treated as a non-banking financial company (NBFC) if its financial assets are more than 50 per cent of its total assets (netted off by intangible assets) and income from financial assets is more than 50 per cent of the gross income. Both these tests are required to be satisfied as the determinant factor for principal business of a company.</p> <p>7. While the credit arising in the</p>
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		<p>profit and loss statement may be treated as 'Income', it cannot be treated as a real income from financial asset or cannot be treated as financial income since the same is not in the nature of a real revenue / gain by putting the said asset to use. Also, the intention of the said press release is to determine the "principal business" of an entity. Mere valuation changes of assets / investments held, cannot determine the nature of principal business of any entity. Further, this could lead to a situation where the</p>
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		<p>principal business criteria would be meet merely based on valuation of assets without that company engaged into such business.</p> <p>8. Hence, considering that the gain on account of revaluation of investment is an income recognized in P&L but not in nature of financial income and applying the principal business test as specified in the said press release, it may be concluded that the Transferor Company is not a deemed Non-Banking Finance Company, since its income from financial asset is less than 50% of its total</p>
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		<p>income.</p> <p>9. Further, the Transferor Company has not been incorporated to undertake any NBFC activity as is clear from its Memorandum of Association. Further the income i.e., interest and dividend income has been earned from investments in group companies.</p> <p>10. Clause (xvi) of the CARO Report 2016 issued by the statutory auditor for FY 2022-23 for the Transferor Company has been reproduced below:</p> <p><i>a. "In our opinion and as per</i></p>
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		<p><i>information and explanation given to us, The Company is not required to be registered under section 45-IA of the RBI Act, 1934.</i></p> <p><i>b. In our opinion, there is no Core Investment Company within the group and accordingly, reporting under clause 3(xvi)(d) of the Order is not applicable.”</i></p> <p>11. Considering the above, the Transferor Company is not eligible to undertake NBFC activity and consequently provisions of Section 45-IA of RBI Act, are not applicable. A certificate from the Statutory</p>
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		Auditors of the Transferor Company confirming this position is attached as Annexure A.
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12. The observations made by the Official Liquidator have been explained by the Petitioner Companies in Para 11 above.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 299 of 2023 is made absolute in terms of clauses 29. (A) to (E) of the said Company Scheme Petition.

15. The First Petitioner Company be dissolved without winding up.

16. Petitioners are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, within 30 days from the date of receipt of the Order from the Registry.

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Connected with

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17. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.
18. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.
19. The Appointed Date is **31st May, 2023**.
20. Ordered Accordingly, C.P. (CAA)/ 299 of 2023 is **“allowed”**

Sd/-

Madhu Sinha
Member (Technical)

//VLM//

Sd/-

Reeta Kohli
Member(Judicial)