

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – COURT III**

**CP (CAA)/315/MB/C-III/ 2023
CONNECTED WITH
CA (CAA)/240/ MB/ C-III/ 2023**

In the matter of the Companies Act,
2013

And

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

And

In the matter of **Scheme of
Amalgamation** of SPRINGWAY MINING
PRIVATE LIMITED ('SMPL' or 'the
Transferor Company 1') and NKJA
MINING PRIVATE LIMITED ('NMPL' or
'the Transferor Company 2') with JSW
CEMENT LIMITED ('JCL' or 'the
Transferee Company') and their
respective Shareholders ('the Scheme'
or 'this Scheme')

SPRINGWAY MINING PRIVATE LIMITED,

a Company incorporated under the
Companies Act, 1956 and having registered
office at McLeod House, 1st Floor 3, Netaji
Subhas Road, Kolkata – 700001
CIN: U10100WB2010PTC152849

...Transferor Company 1 /
SMPL (Non- Petitioner Company)

NKJA MINING PRIVATE LIMITED,

a Company incorporated under the
Companies Act, 1956 and having its
Registered office at JSW Centre, Bandra
Kurla Complex, Bandra (East) Mumbai –
400051
CIN: U10100MH2012PTC411293

... Transferor Company 2/
First Petitioner Company/
NMPL

JSW CEMENT LIMITED,

a Company incorporated under the Companies Act, 1956 and having its Registered office at JSW Centre, Bandra Kurla Complex, Bandra (East) Mumbai – 400051
CIN: U26957MH2006PLC160839

... Transferee Company/Second
Petitioner Company/JSW

(Hereinafter Transferor Company 2 and Transferee Company are collectively referred to as the ‘Petitioner Companies’)

Order pronounced on 06.05.2024

Coram:

Hon’ble Ms. Lakshmi Gurung : Member (Judicial)
Hon’ble Shri Charanjeet Singh Gulati : Member (Technical)

Appearances:

For the Petitioners : Mr. Hemant Sethi, Ms. Devanshi Sethi
i/b M/s. Hemant Sethi & Co.

For the Regional Director (WR) : Mr. Bhagawati Prasad, Authorised Representative
of Regional Director

Per: Ms. Lakshmi Gurung, Member (Judicial)

ORDER

1. Heard Ld. Counsel for the Petitioner Companies.
2. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to the Scheme of Amalgamation of Springway Mining Private Limited and NKJA Mining Private Limited with JSW Cement Limited and their respective Shareholders.

3. At the outset, it was noted that the registered office of the Transferor Company 1 is situated in the State of Kolkata and is not under jurisdiction of National Company Law Tribunal, Mumbai Bench.
4. The registered offices of the Transferor Company 2 and Transferee Company are situated in the State of Maharashtra and hence they are under the jurisdiction of the National Company Law Tribunal (NCLT), Mumbai Bench.
5. It is submitted that the Transferor Company 1 has filed a separate petition before the Hon'ble NCLT Kolkata Bench being CP (CAA) No. 1 (KB) / 2024 in CA (CAA) /196 (KB) /2023 seeking sanction for the Scheme. Further, submitted that the NCLT Kolkata Bench has sanctioned the Scheme vide order dated 12.03.2024.
6. It is further submitted that the Board of Directors of the Transferor Company 2 have approved the Scheme in their respective meetings held on 02.08.2023 and the Board of Directors of the Transferee Company approved the Scheme in their meeting held on 01.08.2023. Thereafter, the Board of Directors of Transferor Companies and Statutory Auditors of the Transferee Company have approved the modified Scheme of Amalgamation on 04.10.2023.
7. This bench sought clarification regarding the modification in scheme. Pursuant thereto it was submitted that, the Transferee Company vide its board resolution on 01.08.2023 approved the Scheme of Amalgamation. However, the accounting treatment for the Scheme was subject to confirmation from the Statutory Auditors of the Transferee Company at the time of approval of the Scheme by the Board of Directors of the Transferee Company on 01.08.2023. Also, the Transferor Companies vide their

respective board resolutions passed on 02.08.2023 passed the following resolution :

“RESOLVED FURTHER THAT the Board of Directors of the Company be and are hereby authorized for making modifications, amendments, revisions, edits and all the other actions as may be required to finalize the Scheme pursuant to the certificate to be issued by the Statutory Auditors of the Transferee Company i.e., Deloitte Haskins & Sells LLP, Chartered Accountants, on the accounting treatment prescribed in the draft Scheme.”

8. It is submitted that, based on the discussions with and recommendation of the Statutory Auditors, modification to the accounting treatment clause of the Scheme was made and approved by the Finance Committee of the Board of the Transferee Company, the Board of Directors of the Transferor Companies in their meetings held on 04.10.2023. The Statutory Auditors of the Transferee Company issued a certificate on 05.10.2023 certifying the accounting treatment specified in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013. The modified accounting treatment in the Scheme approved on 04.10.2023 is explained as below:

8.1. Upon this Scheme becoming effective, the Transferee Company shall give effect to the accounting treatment in the books of account in accordance with the accounting standards specified under Section 133 of the Act read with the Companies (Indian Accounting Standards) Rule, 2015 or any other relevant or related requirement under the Act to reflect the substance of the transaction.

8.2. The Transferee Company shall record all the assets and liabilities by allocating the purchase consideration to assets and liabilities existing as on the date of acquisition in proportion to their respective fair value as of that date. Accordingly, no goodwill or capital reserve will arise consequent to acquisition.

- 8.3. Inter-company balances (including investments held by the Transferee Company directly or indirectly in the Transferor Companies) between the Transferee Company and the Transferor Companies, if any, appearing in the books of the Transferee Company shall stand cancelled/eliminated.
- 8.4. Any change in the statement in financial position and increase/decrease in the net profit or loss of the Transferor Companies from the acquisition date till the date the Scheme become effective shall be recorded and presented in the books of the Transferee Company in the same manner as would be recorded and presented in the consolidated financial statements of the Transferee Company prepared in accordance with the accounting standards prescribed in accordance with the Companies Act, 2013
9. The Appointed Date fixed under the Scheme is **10th October 2022**. Upon query it was submitted that the acquisition of both Transferor Companies were completed on 10.10.2022.

10. Nature of Business:

- 10.1. The main object of the Transferor Company 1 is mining of limestone and provide integrated cement manufacturing facilities.
- 10.2. The Transferor Company 2 is set up as an investment holding company.
- 10.3. The Transferee Company is engaged in the business of manufacture and sale of cement, ground granulated blast furnace slag and clinker and trading of allied products, etc.

The Rationale of the Scheme

11. Ld. Counsel for the Petitioner Companies submits rationale mentioned in the Scheme is as under:

The amalgamation of the Transferor Company 1 and the Transferor Company 2 with the Transferee Company would have the following benefits:

- *There are several commonalities and synergistic linkages; as such the amalgamation will result in efficiency of management and maximization of value for the all stakeholders;*
- *Greater ability to access and raise funds for carrying on its business and completing projects and carrying on the operations on more favorable terms;*
- *Pooling of the financial, managerial and technical resources, personnel, capabilities, skills, expertise and technologies, leading to optimum use of infrastructure, cost reduction and efficiencies, productivity gains, logistic advantages, reduction of administrative and operational costs, thereby significantly contributing to the future growth.*
- *Greater potential to the combined entity to develop and further grow and diversify with better optimization of funds and efficient utilization of resources;*
- *Ensuring a streamlined group structure by reducing the number of legal entities in the group and reducing the multiplicity of legal and regulatory compliances required at present; and*
- *Administrative and operational convenience*

12. It is submitted that the Petition has been filed in consonance with sections 230 to 232 of the Companies Act, 2013 along with the order dated 25.10.2023 passed by this Tribunal in CA(CAA)/240/MB/2023.

13. Vide order dated 25.10.2023 convening of all meetings of Transferor Company 2 was dispensed with on account of consent affidavits of 100% equity Shareholders and 97.80% of Unsecured Creditors. There are no

Preference Shareholders and no Secured Creditors in Transferor Company 2.

14. The meetings of the shareholders and creditors of the Transferee Company were also dispensed with as the Transferor Company 2 is wholly owned subsidiary of the Transferee Company, relying on the judgment of **Mahaamba Investments Limited v/s. IDI Limited (2001) SCC Online Bom 1174** and other judgments and the Networth Certificate as on 31.03.2023.
15. Learned Counsel has stated that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and have made requisite filings to demonstrate compliance. Moreover, the Petitioner Companies would undertake to comply with all the statutory requirements, if and to the extent applicable, as may be required under the Companies Act, 2013 and the rules made thereunder. The said undertaking is accepted.
16. The Regional Director (Western Region) has filed his report dated 29.01.2024 (hereinafter referred to as ‘RD Report’) inter-alia giving observations in paragraphs 2 (a) to (k). In response to such observations, the Petitioner Companies have given clarifications and undertakings vide their rejoinder affidavit. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Sr. No.	Regional Director Report/ Observations Dated 29.01.2024	Response of the Petitioner Companies vide affidavit dated 05th February, 2024
Para (2) (a)	On examination of the report of the Registrar of Companies, Mumbai dated 26.12.2023 for Petitioner Transferor	As far as the observation of the Regional Director, as stated in 2(a) of the Report and the report of the

<p>Company No. 2 (NKJA Mining Private Limited) and Petitioner Transferee Company (JSW Cement Limited) falls within the jurisdiction of ROC, Mumbai (Copy enclosed as Annexure -A1). It is submitted that no representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Transferor Company. Further, the Petitioner Transferor Company has filed Financial Statements up to 31.03.2023. The ROC, Mumbai has further submitted its report dated 26.12.2023 which as under:</p> <p>i.No Inquiry, inspection, investigation & prosecution is pending against the petitioner companies.</p> <p>ii.Notices should be served to the secured and unsecured creditors of the Transferee Company.</p> <p>iii.26(Twenty-six) "Open" charges are there on the transferee company (list annexed).</p> <p>iv. As per the provisions of Section 232(3)(i) of the Companies Act 2013, where the Transferor Company is dissolved, the fee, if any, paid by the Transferor Company on its authorized capital shall be set-off against any fees payable by the Transferee company on</p>	<p>Registrar of Companies dated 26.12.2023 is concerned, it is stated that:</p> <p>i.The Petitioner Company has no further comments to offer.</p> <p>ii.The Tribunal vide its order dated 25.10.2023 in CA(CAA)/240/MB/2023 dispensed with the convening of the meeting of the creditors of the Transferee Company. Further vide the said order, the Tribunal directed the Transferee Company to serve notices only upon the regulatory authorities. The Transferee Company complied with the directions mentioned in the said order and filed an affidavit of service with the Tribunal on 20.12.2023 proving service of notices upon the regulatory authorities.</p> <p>iii.The open charges pertain to borrowings of the Transferee Company during the ordinary course of business. Further, the Transferee Company will remain in existence post approval of the Scheme and the rights of the</p>
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<p>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 has to be paid by the Transferee Company on the increased authorized capital subsequent to the amalgamation</p> <p>v. Interest of creditors should be protected.</p> <p>vi. May be decided on merits.</p>	<p>pledgee will not be jeopardized pursuant to the Scheme. The Transferee Company undertakes that it would be paid off as per contractual arrangements in the ordinary course of business. Hence the rights of the pledgees will not be jeopardized pursuant to the Scheme.</p> <p>iv. The Scheme does not provide for combination of the Authorised share capital of the Transferor Company 1 and the Transferor Company 2 upon the Scheme becoming effective. Accordingly, the question of the Transferee Company paying the difference of fees and stamp duty does not arise.</p> <p>v. The Transferor Company 2 and the Transferee Company hereby undertake to protect the interest of the creditors, to the extent of dues payable as per the contractual arrangements with them in the ordinary course of business. Furthermore, the rights of creditors of the Transferee Company, the Transferor</p>
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		<p>Company 1 and the Transferor Company 2 will not be affected as there is no compromise or arrangement with the creditors of the Transferee Company, Transferor Company 1 and the Transferor Company 2 pursuant to the Scheme. Further, the assets of the Transferee Company, post the Scheme, will be more than its liabilities and as such sufficient to discharge the liabilities in the normal course of business.</p> <p>vi. The Transferee Company has no further comments to offer.</p>
(b)	<p>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.</p>	<p>As far as the observation of the Regional Director, as stated in 2(b) of the Report and reproduced hereinabove is concerned, the Transferee Company states that the Scheme does not provide for combination of the Authorised share capital of the Transferor Company 1 and the Transferor Company 2 upon the Scheme becoming effective. Accordingly, the question of the Transferee Company paying the difference of fees and stamp duty does not arise.</p>

(c)	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 AS-8 etc.	As far as the observation of the Regional Director, as stated in 2(c) of the Report and reproduced hereinabove is concerned, the Transferee Company undertakes that in addition to compliance with 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 standards including IND AS-8, etc.
(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.	As far as the observation of the Regional Director, as stated in 2(d) of the Report and reproduced hereinabove is concerned, the Transferee Company undertakes that the Scheme enclosed to the Company Application and the Scheme enclosed to the Company Petition are one and the same and there is no discrepancy or no change is made.
(e)	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	As far as the observation of the Regional Director, as stated in 2(e) of the Report and reproduced hereinabove is concerned, the Transferee Company has served notices under provisions of section 230(5) of the Companies Act, 2013

	<p>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.</p>	<p>as directed by the Hon'ble Tribunal to all the concerned regulatory authorities. Further, the Transferee Company undertakes that the approval of the proposed Scheme by the Hon'ble Tribunal may not deter such authorities to deal with any issues arising after giving effect to the Scheme in accordance with the appropriate applicable law.</p>
(f)	<p>As per Definition of the Scheme, "Appointed Date" means 10th October, 2022 or such other date as may be approved by the National Company Law Tribunal or such other Appropriate Authority; and "Effective Date" or "coming into effect of this Scheme" or upon the scheme being effective" or "effectiveness of the Scheme" means the last of the date or dates on which all the conditions and matters referred to in Clause 16 are fulfilled, obtained or waived off and the certified copy of the order of the National Company Law Tribunal, Mumbai Bench sanctioning this Scheme of Amalgamation is filed by the Transferor Company 2 and the Transferee Company with the Registrar of Companies, Mumbai and the certified copy of the order of the National</p>	<p>As far as the observation of the Regional Director, as stated in 2(f) of the Report and reproduced hereinabove is concerned, the Transferee Company undertakes that the Appointed Date would be 10th October, 2022 as mentioned in Clause 1 under the Definition Clause of the Scheme which is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall take effect from such Appointed Date. Further, the Transferee Company undertakes that the aforesaid Appointed Date complies with the requirements specified in the Ministry of Corporate Affairs ('MCA') Circular F.No.7/12/2019/CL -I ('Circular') dated August 21, 2019</p>

	<p>Company Law Tribunal, Kolkata Bench sanctioning this Scheme of Amalgamation is filed by the Transferor Company 1 with the Registrar of Companies, Kolkata.</p> <p>Further the Petitioners may be asked to satisfy the Hon'ble NCLT about compliance of circular no. F.No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>	
(g)	<p>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required.</p>	<p>As far as the observation of the Regional Director, as stated in 2(g) of the Report and reproduced hereinabove is concerned, the Transferee Company undertakes to comply with the directions, if any, of the specific sectoral regulator.</p>
(h)	<p>Petitioner Companies shall undertake to comply with the directions of the Income Tax Department & GST Authorities, if any.</p>	<p>As far as the observation of the Regional Director, as stated in 2(h) of the Report and reproduced hereinabove is concerned, the Transferee Company undertakes to comply with all the provisions of Income Tax Act, 1961, Central Goods and Services Tax Act, 2017, Integrated Goods and Services Tax Act, 2017, State Goods and Services Tax Act, 2017, Union Territory Goods and Services Tax Act, 2017 and rules thereunder. Further, the</p>

		<p>Petitioner Company states that the tax implications, if any, arising out of the Scheme shall be dealt in accordance with the Income Tax Law and Goods and Service Tax Law.</p>
(i)	<p>Petitioner Companies may satisfy the Hon'ble NCLT that the interest of creditors shall be protected on implementation of the scheme.</p>	<p>As far as the observation of the Regional Director, as stated in 2(i) of the Report and reproduced hereinabove is concerned, the Transferor Company 2 states that it has obtained consents from its unsecured creditors representing 97.80% of the total outstanding unsecured creditors as on June 30, 2023. The Transferee Company states that the Transferor Company 1 has obtained consents from its unsecured creditors representing 99.99% of the total outstanding unsecured creditors as on June 30, 2023.</p> <p>Furthermore, the Transferee Company submits that the rights of creditors of the Transferee Company, the Transferor Company 1 and the Transferor Company 2 will not be affected as there is no compromise or arrangement with the creditors of the Transferee Company, the Transferor Company</p>

		<p>1 and the Transferor Company 2 pursuant to the Scheme. Further, the assets of the Transferee Company, post the Scheme, will be more than its liabilities and as such sufficient to discharge the liabilities in the normal course of business and the creditors would be paid off as per contractual arrangements with them in the ordinary course of business by the Transferee Company. Hence the rights of the creditors will not be jeopardized pursuant to the Scheme.</p>
(j)	<p>The First Transferor Company is registered in the jurisdiction of ROC, Kolkata, West Bengal, hence Petitioner Companies shall undertake to obtain approval from Hon'ble NCLT, West Bengal.</p>	<p>As far as the observation of the Regional Director, as stated in 2(j) of the Report and reproduced hereinabove is concerned, the Transferee Company submits that the Transferor Company 1 has filed a separate petition before the Hon'ble National Company Law Tribunal, Kolkata Bench being CP (CAA) No. 1 (KB)/2024 in C.A.(CAA)/196(KB)2023 seeking sanction for the Scheme. The Hon'ble National Company Law Tribunal, Kolkata Bench vide its order dated January 11, 2024 admitted the said petition and fixed the returnable date on February 19,</p>

		<p>2024. The copy of the order dated December 20, 2023 admitting C.A.(CAA)/196(KB)2023 and copy of the order dated January 11, 2204 admitting C.P.(CAA) No. 1 (KB)/2024 is enclosed as Annexure B1-B2 to the affidavit in response to the Report.</p>
(k)	<p>It is observed from latest MGT-7 for the year ending 31.03.2023 filed by the petitioner Transferor Company No. 2 (NKJA Mining Private Limited) have corporate body shareholder namely JSW Cement Limited having 100% shareholding, but form Ben-2 has not been filed. Therefore, petitioner company may be directed to clarify and comply with the same as required u/ s. 90 of the Companies Act, 2013 r.w. companies (Significant Beneficial Owners) Rules, 2018</p>	<p>As far as the observation of the Regional Director, as stated in 2(k) of the Report and reproduced hereinabove is concerned, the Transferor Company 2 submits that as per Rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018, the reporting requirements of Form BEN-2 are not applicable to a company if its holding company is a reporting company as per the said rules and section 90 of the Companies Act, 2013. The holding company of the Transferor Company 2 is the Transferee Company and the Transferee Company is a holding reporting company in terms of section 90 of the Companies Act, 2013 and said rules. The copy of challan of form BEN-2 filed by the Transferee Company is enclosed as Annexure C1.</p>

		<p>Further, the said rules also provide that the details of such holding reporting company shall be reported in Form BEN-2. The Transferor Company 2 has filed Form BEN-2 to disclose the name of the holding reporting company. The copy of the form and challan of form BEN-2 filed by the Transferor Company 2 is enclosed as Annexure C2. Accordingly, the Transferor Company 2 submits that it is in compliance with the provisions of section 90 of the Companies Act, 2013 and Companies (Significant Beneficial Owners) Rules, 2018.</p>
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17. Mr. Bhagawati Prasad, Authorized representative for the Regional Director is present and submits that most of the observations in RD Report are routine in nature and after the undertakings and clarifications offered by the Petitioner Companies, Regional Director has no further observations/objection for approving the Scheme.

18. We note that the Transferee Company has given undertaking to protect the interest of the creditors of the Transferor Company No. 1 and Transferor Company No. 2 as payable to them in the ordinary course of business and their rights will not be affected in any manner. We also note that the Transferee Company's net worth is significant to honour the undertaking given by it.

19. The Official Liquidator, High Court, Bombay, has filed report dated 17.01.2024. A brief synopsis of the observations made by the Official Liquidator along with the response of the First Petitioner Company is given below:

Observation made by the Official Liquidator	Response of the First Petitioner Company vide affidavit dated 05th February, 2024
<p>As per the Financial Statements as at 31.03.2023 the company has negative net worth. Even when the company’s net worth is negative, the Financial Statements has been prepared on the going concern basis. There may be breach of fundamental principle of accounting. Hon’ble Tribunal may require the company to explain in this respect.</p>	<p>With reference to paragraph 5 of the OL Report, the First Petitioner Company respectfully submits that the concept of going concern assumes that a company will continue operating in the future and will not be liquidated or discontinued. Accordingly, a going concern company may be a company with positive net worth or negative net worth.</p> <p>It is further submitted that the First Petitioner Company is a wholly owned subsidiary of JSW Cement Limited i.e., the Transferee Company. The negative net worth of the First Petitioner Company as on 31st March, 2023 is majorly on account of a loan taken from the Transferee Company amounting to Rs. 19,12,396/- (Rupees Nineteen Lakhs Twelve Thousand Three Hundred Ninety-Six only) for meeting</p>

	<p>working capital requirements. The Transferee Company has also agreed to provide continuous financial support to the First Petitioner Company to ensure that it continues to operate as a going concern and meets its liabilities as and when they fall due for payment. It is further submitted that the net worth of the Transferee Company is significantly positive and there is no real or substantial adverse impact on the financial position of the Transferee Company on account of the proposed Scheme.</p> <p>Accordingly, despite the negative net worth of the First Petitioner Company, the financial statements of the First Petitioner Company have been prepared on going concern basis and in respectful submission of the First Petitioner Company, there cannot be breach of principles of accounting.</p> <p>Therefore, there is no fundamental breach of principle of accounting. In any event there is no bar under the Companies Act, 2013 for a company with negative net worth to merge with</p>
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	its holding company. Furthermore, the First Petitioner Company undertakes to comply with all principles of accounting which may be applicable to it from time to time.
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20. The Statutory Auditors of the Transferee Company have examined the Scheme in terms of provisions Sections 230-232 and certified that the accounting treatment specified in the Scheme is in compliance with all applicable accounting standards specified under section 133 of the Companies Act, 2013.
21. The Learned Counsel for the Petitioner Companies states that as per clause 5 of the Scheme, the entire issued, subscribed and paid-up capital of the Transferor Company 1 is held by the Transferor Company 2 and the Transferee Company, and the entire issued, subscribed and paid-up capital of the Transferor Company 2 is held by the Transferee Company. Accordingly, no shares shall be issued by the Transferee Company to the shareholders of the Transferor Company 1 and the Transferor Company 2 pursuant to the Scheme becoming effective.
22. No objector has come before this Tribunal to oppose the Scheme in relation to the Petitioner Companies nor has any party controverted any averments made in the Petition.
23. From the material on record, the Scheme to the Company Scheme Petition appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

24. Since all the requisite statutory compliances have been fulfilled CP(CAA)/315/MB /2023 is made absolute in terms of the prayer clauses of the said Company Scheme Petition.
25. The Income Tax Department will be at liberty to examine the aspect of any tax payable because of this scheme and it shall be open to the income tax authorities to take necessary action as permissible under the Income Tax Law.
26. Further, effectiveness of this Scheme shall not deter any regulatory authorities to initiate action, proceedings, prosecution, investigation or any regulatory action against the Petitioner Companies.
27. The shareholders and Creditors of the Petitioner Companies are the best judges of their interest. Their decision should not be ordinarily interfered with by the Tribunal as per the decision of Hon'ble Supreme Court in **Miheer H. Mafatlal vs. Mafatlal Industries Ltd [JT 1996 (8) 205]**.

ORDER

28. The said Scheme of Amalgamation is hereby **sanctioned** with the Appointed date as 10.10.2022 and with following further directions:
- a. The Transferor Companies shall be dissolved without winding up.
 - b. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically in e-Form INC-28 within 30 days from the date of receipt of the Certified copy of the Order from the Registry.

- c. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Registrar with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the Certified copy of the Order from the Registry.
 - d. Petitioner Companies are directed to serve copy of this order to concerned Income Tax Authorities and GST Authorities.
29. While approving the Scheme, we clarify that this Order should not, in any way, be construed as an Order granting exemption from payment of stamp duty, taxes or other charges, if any, and payment in accordance with law or in respect of any permission or compliance with other requirements which may be specifically required under any law.
30. The Petitioner Companies shall comply with all the undertakings given by them.
31. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
32. All the employees of the Transferor Companies in service, on the date immediately preceding the date on which the Scheme takes effect i.e. the Effective Date, shall become the employees of the Transferee Company on such date, without any break or interruption in service and upon terms and conditions not less favourable than those subsisting in the concerned Transferor Companies on the said date.
33. Any proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.

34. All the properties, rights, liabilities, duties and powers of the Transferor Companies, be transferred without further act or deed, to the Transferee Company and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee Company.
35. The Registrar of Companies is entitled to proceed against the Transferee Company for violation/offences committed by Transferor Companies, if any.
36. 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.
37. Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
38. Any concerned authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
39. Ordered accordingly. Thus, CP (CAA)/ 315/ MB/ C-III/ 2023 in CA (CAA)/ 240/ MB/ C-III/ 2023 shall stand to be **disposed of**.

‘Files to be Consigned to the Records’

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

(Saayli, LRA)

Sd/-

LAKSHMI GURUNG
MEMBER (JUDICIAL)