

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
**(Through physical hearing/VC Mode (Hybrid))**

**C.P.(CAA) No.39/BB/2023**  
**(Second Motion)**

U/ss.230-232, r/w Section 234 and  
other applicable provisions of the  
Companies Act, 2013 R/w the Companies  
(Compromises, Arrangements  
and Amalgamations) Rules, 2016

**IN THE MATTER OF:**

**M/s. Sati Rocks Stones Private Limited**

R/o. at No.C-8, 2nd floor, Room No.4,  
Kudremukh Colony 2nd Block,  
Sarjapur Road, Kormangala,  
Bangalore – 560 034. ... Petitioner No.1/Transferor Company

**M/s. Sati Granites (India) Private Limited**

R/o. at No.C-8, 2nd floor, Room No.4,  
Kudremukh Colony 2nd Block,  
Sarjapur Road, Kormangala,  
Bangalore – 560 034. ... Petitioner No.2/Transferor Company

**M/s. Sati Exports India Private Limited**

R/o. at No.C-8, 2nd floor, Room No.4,  
Kudremukh Colony 2nd Block,  
Sarjapur Road, Kormangala,  
Bangalore – 560 034. ... Petitioner No.3/Transferee Company

**Order delivered on: 28<sup>th</sup> June, 2024**

**CORAM:** 1. Hon'ble Shri K. Biswal, Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner Company : Shri R. Inbaraju, Adv.  
For the ROC & RD : Shri Hemanth Rao, Adv.  
For the IT Department : Shri Ganesh R. Ghale, Adv.

**ORDER****Per: Manoj Kumar Dubey, Member (Technical)**

1. This is a second motion Petition filed on 16.10.2023 by M/s. Sati Rocks Stones India Private Limited (for brevity, the “Petitioner Company No.1/Transferor Company”) and M/s. Sati Granites (India) Private Limited (for brevity, Petitioner Company No.2/Transferor Company) with M/s. Sati Exports India Private Limited (for brevity, “Petitioner Company No.3/Transferee Company”) under Sections 230 and 232 and other applicable provisions of the Companies Act, 2013, *inter-alia* seeking for the sanction of Scheme of Amalgamation between the Petitioner Companies w.e.f. the Appointed Date or such other date as determined in terms of the Scheme, so as to be binding on all the Shareholders and Creditors of the Petitioner Companies etc.
2. The Petitioner Companies filed First Motion Application bearing C.A. (CAA)No.20/BB/2023 before this Tribunal under Sections 230 to 232 of the Companies Act, 2013. Based on the said Application vide Order dated 24.08.2023 of this Tribunal the meetings of Unsecured trade creditors of the Transferor Company No.2 was directed to be convened, and dispensation for convening meeting(s) of Equity shareholders, Secured Creditors and Unsecured Loan Creditors of the Applicant Companies, the OCPS of the Applicant No.3 and Unsecured Trade Creditors of Applicant No.1 was granted.

In compliance with the above directions, meeting of the Unsecured trade creditors of the Transferor Company No.2 has been conducted by the Chairperson and Scrutinizer who have also filed their reports in this regard, which are placed as Annexures - 23 to the Petition. It is seen that the unsecured trade creditors of the Transferor Company No.2 has approved the proposed Scheme.

3. When the Petition was listed on 21.11.2023, the following directions were issued:-  
*“...4. The Petition be listed for hearing on 03.01.2024. At least 10 days before the date fixed for final hearing, the Petitioner Company shall publish the notice of final hearing of the Company Petition in two local newspapers viz. “Business Standard” in English Edition and translation thereof in “Kannada Prabha” in Kannada Edition, as per Rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.*

5. Notice be also served upon the Objector(s) or their representative as contemplated under sub-section (4) of Section 230 of the Act who may have made representation and who have desired to be heard in their representation along with a copy of the Petition and the annexures filed therewith at least 15 days before the date fixed for hearing. It is to be specified in the notices that the objections, if any, to the Scheme may be filed within thirty days from the date of the receipt of the notice, failing which it will be considered that there is no objection to the approval of the Scheme on the part of the objectors.

6. In addition to the above public notice, each of the Petitioner Company shall serve the notice of the Petition on the following Authorities namely, (a) Regional Director (South East Region), Hyderabad; (b) Registrar of Companies, Karnataka, Bengaluru; (c) the office of the Official Liquidator; (d) the Reserve Bank of India (e) Jurisdictional Income Tax Officer, Koramangala, Bengaluru; (f) The Designated Nodal Officer – Principal Chief Commissioner of Income Tax, Karnataka & Goa; along with the copy of this Petition by speed post immediately and to such other Sectoral Regulator(s) who may govern the working of the respective Companies involved in the Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, with a direction that they may submit their representation, if any, within 30 (thirty) days from the date of receipt of such notice, failing which it will be presumed that the said Authority has no representation to make to the Scheme.

7. The Petitioner Company shall host notices of final hearing along with the copy of the scheme on their respective websites, if any.

8. The Petitioner Companies shall at least 7 days before the date of hearing of the Petition file an affidavit of service regarding paper publication as well as service of notices on the Authorities specified above including the sectoral regulator as well as the objectors, if any. The Petitioner Companies shall file compliance report with this Tribunal at least 10 (ten) days before the date fixed for final hearing and report to this Tribunal that the directions regarding the service of notices upon regulatory authorities and publication of advertisement of the notice of hearing in the newspapers have been duly complied with...”

4. In pursuant to the aforesaid notice, the learned Counsel for the Petitioner Companies has filed copies of proof of service of notices along with paper clipping of the Paper Publication vide Diary No.6479 dated 21.12.2023. Further, an affidavit has been filed vide Diary No.23 dated 02.01.2024, stating that the neither the Petitioner Companies nor the Authorized Signatory of the Petitioner Companies have not received any objection pursuant to Section 230 (4) of the Companies Act, 2013 to the proposed Scheme.

5. The main objects, dates of Incorporation, authorized, issued and paid-up share capital, rationale of the scheme and interest of employees have been discussed in detail in first motion order dated 24.08.2023.
6. The Board Resolution of the Petitioner Companies approving the Scheme is annexed as Annexures- 13, 14 & 15 of the Petition.
7. It is further submitted that the Certificate of Statutory Auditors of the Petitioner Companies has been filed, stating that, the Accounting Treatment contained in Clause 12 of the Scheme is in compliance with the applicable Indian Accounting Standards notified by the Central Government under the Section 133 of the Act read with rules made thereunder and other generally accepted Accounting Principles in India. The aforesaid Certificates are attached as Annexures -18, 19 & 20 of the Petition.
8. The learned Counsel for the Petitioner Companies has filed various affidavits with regard to the sectoral regulators, no corporate debt restructuring and no investigations, litigations or proceedings pending against the Petitioner Companies or the Directors of the Company before any Statutory Authorities involved in the matter. The aforesaid Affidavits are attached as Annexures- 24 to 30 of the Petition.
9. The Audited Financial Statement of Petitioner Companies as on 31.03.2023 are attached as Annexures- 4, 8 & 12 of the Petition.
10. As per the Scheme, the “Appointed Date” means 01.04.2023 or such other date as the NCLT may direct.
11. In pursuant to the notice, the Regional Director (RD) and the Registrar of Companies (ROC) have filed a Common Report vide Diary No.446 dated 22.01.2024. Both RD and ROC have raised the following observation vide para 2:
  - 1) As per clause 1 of Part A of the Scheme, the appointed date is 1<sup>st</sup> April 2023.
  - 2) As per the latest shareholders list attached to the last Annual Return filed as on 31.03.2022.

- a) Sandeep Jalan, an individual holds majority Equity Shares of 20.82% in the Transferee Company.
  - b) Potential Infra Project Limited holds 100% Preference shares of Transferee Company.
- 3) As per the latest shareholders list attached to the last Annual Return filed as on 31.03.2023:
  - a) Pankaj Chaudhary HUF holds majority Equity shares of 13.66% in Transferor Company 1.
  - b) Sandeep Jalan, an individual holds majority Equity shares of 22.94% in Transferor Company 2.
- 4) As per MCA Records, all the Petitioner Companies have many open charges. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to obtain and furnish No Objection Certificate from the concerned charge holder/s to Hon'ble NCLT before the Scheme is allowed.
- 5) The meeting of Unsecured Trade Creditors of Transferor Company No.2 is to be held on 03.10.2023. The outcome of the same to be taken and to be informed to Hon'ble NCLT.
- 6) As per note no.7 of the Financial Statement for the financial year ending 31.03.2023, Transferor Company No.1 has undisputed statutory dues to the tune of Rs.8.52 lakhs and as per note no.7 of the Financial Statement for the financial year ending 31.03.2022, Transferor Company No.2 has undisputed statutory dues to the tune of Rs.278.22 lakhs. Hon'ble Tribunal may be pleased to direct the Transferor Companies to furnish an undertaking to the Hon'ble NCLT to the effect that it will settle the statutory dues immediately, if not settled so far.
- 7)
  - a) As per note no.8 of the Financial Statements for the financial year ending 31.03.2023, Transferor Company No.1 has undisputed statutory dues to the tune of Rs.1.08 lakhs and
  - b) As per note no.8 of the Financial Statements for the financial year ending 31.03.2022, Transferor Company No.2 has undisputed statutory dues to the tune of Rs.4.71 lakhs.

c) As per note no.8 of the Financial Statements for the financial year ending 31.03.2022, Transferor Company No.2 has undisputed statutory dues to the tune of Rs. 205.86 lakhs.

Hon'ble Tribunal may be pleased to direct the Transferor Companies to furnish an undertaking to the Hon'ble NCLT to the effect that it will settle the statutory dues immediately, if not settled so far.

- 8) The Authorized Share Capital of the Transferee Company may not be adequate to issue shares to the shareholders of the Transferor Companies post sanction of the scheme. Hon'ble Tribunal may be pleased to direct the Transferee Company to furnish an undertaking to the effect that the Company will increase its Authorized Share Capital adequately and file relevant forms with the Registrar of Companies.
- 9) Clause 13 provides for change in object clause of the Transferee Company. Hon'ble Tribunal may be pleased to direct the Transferee Company to file the relevant forms with the Registrar of Companies for the same once the scheme is sanctioned.
- 10) Clause 7 of Part B of the Scheme provides for clubbing of Authorized Share Capital wherein it is stated that the authorized share capital of the Transferee Company shall automatically stand increased without any payment of stamp duty and fees. This term in the Scheme is not in line with the provisions of Section 232 (3) (i) of the Companies Act, 2013. Hon'ble Tribunal may be pleased to direct the Transferee Company to comply with the provisions of the Section and pay the difference of fee, after setting off the fee already paid by the Transferor Companies on its respective capital.
- 11) As per Section 240 of the Companies Act, 2013, the liability in respect of offences committed under the Companies Act by the Officers in default, of the Transferor Companies prior to merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.
- 12) No Employees/workmen of Transferor Companies to be retrenched/terminated in terms of amalgamation of Transferor Companies with Transferee Company. The Hon'ble Tribunal may be pleased to see that the Transferee Company is complying with the

same in letter and spirit and not retrenching the staff or employee of Transferor Companies in the guise of surplus staff on account of merger and need to give a separate undertaking by the Transferee Company in this regard.

- 13) With reference to this Directorate's letter dated 06.12.2023, issued to Pr. Commissioner of Income Tax, Bangalore, till date no reply/comments in the matter have been received by this Directorate with respect to both the Companies. Hon'ble Tribunal may obtain NOC of the Income Tax Department in the matter or may obtain an undertaking from the Transferee Company that has and when the demand arises from the Income Tax Department with respect to Transferor Companies and Transferee Company, Transferee Company is ready to pay the said dues to the respective Income tax Department, if any due.
- 14) Report of Official Liquidator, Karnataka dated 27.12.2023 is filed before the Hon'ble NCLT (BB) and copy of the same has been furnished to this Directorate vide e-mail dated 05.01.2024 (copy enclosed) with respect to C.P(CAA)No.39/BB/2023. Official Liquidator in his report has pointed out certain observations. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to comply with the observations pointed out by the Official Liquidator, before the Scheme is allowed.
- 15) As per clause 6.1 of Part B of the Scheme, the Transferee Company shall issue and allot 1 Equity Share of Rs.10,090/- each (including face value of Rs.100 and premium of Rs.9,990) for every 1,000 Equity Shares of Rs.10/- each held in the Transferor Company No.1

OR

- As per Clause 6.2 of Part B of the Scheme, the shareholders of Transferor Company No.1 may opt for issue and allotment of Optionally Convertible Redeemable Preference Shares instead of Equity Shares in proportion of 0.80unit of Optionally Convertible Redeemable Preference Shares of Rs.10,000 each (including face value of Rs.100 and premium of Rs.9,990) of Transferee

Company shall be issued and allotted for every 1,000 Equity shares of Rs.10 each held in Transferor Company No.1.

- As per clause 6.3 of Part B of the Scheme, the Transferee Company shall issue and allot 3 Equity Shares of 10,090/- each (including face value of Rs.100 and premium of Rs.9,990) for every 1,000 Equity Shares of Rs.10/- each held in the Transferor Company No.1.

OR

- As per Clause 6.4 of Part B of the Scheme, the shareholders of Transferor Company No.2 may opt for issue and allotment of Optionally Convertible Redeemable Preference Shares of Rs.10,000 each (including face value of Rs.100 and premium of Rs.9,990) of Transferee Company shall be issued and allotted for every 1,000 Equity Shares of Rs.10 each held in Transferor Company No.2.

Since there is a variation of the Shareholder's rights if the shareholders opt for preference shares in lieu of equity shares, the provisions of Section 48 of Companies Act, 2013 are to be complied with, as applicable. Further, it is to be clarified if any shareholder of the Petitioner Companies has not consented to such variation of rights.

As both equity shares/Optionally Convertible Redeemable Preference Shares (OCPPS) as proposed to be issued at premium, which is not in line with the provisions of Section 129 read with Section 133 of the Companies Act, 2013, since it is not permitted under Accounting Standard -14 (Pooling of Interest Method) as followed by the Transferee Company for Post Arrangement Accounting Treatment. Also it is not provided in terms of the provisions of Section 230-232 of the Companies Act, 2013. The merger partakes purchase consideration to be paid based upon SWAP of intrinsic value of shares (Net worth per Share) of both the Companies to be computed by the Independent Value. So while SWAP is considered for Exchange Ration to be drawn by considering Net worth per share of the Petitioner Companies,

there exist no consideration for issue of shares at premium towards purchase consideration. The intent of the scheme is not to increase the Authorised Capital of the Transferee Company to give purchase consideration for the present scheme, which is a loss to national exchequer. In view of the above, Petitioner Companies may be directed to amend the said clause in the scheme and furnish the amended scheme by considering valuation report of shares drawn on SWAP basis from any Independent Approved Valuer.

16) As per Para 12.5 and 12.10 of Part-B of the scheme it has been inter-alia stated that “new equity share issued by the Transferee Company to the shareholders of Transferor Companies shall be adjusted to the Reserves”. Further “surplus/deficit if any, of the net assets acquired by the Transferor Companies after making the adjustments shall be credited/debited to or from the Reserves”. Whereas, Petitioner Companies have not stated to which Reserve they are going to be adjusted/credited or debited. Hon’ble Tribunal may be pleased to direct the Petitioner Companies to furnish necessary clarification for the same and if required to amend the scheme accordingly by specifying the Reserve as Capital Reserve and duly be certified by the Directors of the Companies.

III. There are no Prosecutions, Compliances, Technical Scrutiny/Inquiry and Inspection pending in this office against the Petitioner Companies.

12. Subsequently, reply affidavit to the Common Report of ROC & RD have been filed by the Petitioner Companies vide Diary No.1294 dated 27.02.2024, *inter alia* stating as under:-

- (a) **Paragraph No.1 & 2:** In para 1 & 2 of the ROC & RD Report submitted that, those are factual statements for which the Petitioner Companies have no further comment.
- (b) **Paragraph No.3 :** The Authorized Signatory of the Petitioner Companies confirms that, the statement made in the para 3 is correct subject to the additional fact that Sandeep Jalan has

acquired 50,000 additional shares of Transferor Company No.2 from other shareholders thereby increasing his stake in the Transferor Company No.2 to 23.68%.

- (c) **Paragraph No.4:** i) It is submitted that the Petitioner Company No.1 has only one secured charge of Rs.24,50,00,000 in favour of HDFC Bank Ltd subsisting as on date. A copy of the Index of Charges as obtained from the MCA website is attached as Annexure-A.

Further, the Petitioner Company No.1/Transferor Company No.1 had already obtained the consent for the proposed scheme from HDFC Bank Ltd and the copy of the same has been already filed before the Hon'ble Tribunal during the first motion Application. A copy of the consent affidavit is enclosed herewith as Annexure-3. Accordingly, the Hon'ble Tribunal had dispensed with the meeting of the secured creditor by order vide dated 24<sup>th</sup> August, 2023. Hence, requested the Hon'ble Tribunal to consider the same.

- ii. The Petitioner Company No.2/Transferor Company has 4 secured charges of Rs.43,53,55,000 in favour of HDFC Bank Ltd subsisting as on date. A copy of the Charges, as obtained from the MCA website is attached as Annexure-4. Further, the Petitioner Company No.2/Transferor Company had already obtained the consent for the proposed scheme from HDFC Bank Ltd and the copy of the same has been already filed before the Hon'ble Tribunal during the first motion Application. A copy of the consent affidavit is enclosed herewith as Annexure-5.

Accordingly, the Hon'ble Tribunal dispensed with the meeting of secured creditor by order dated 24<sup>th</sup> August, 2024. Hence requesting the Hon'ble Tribunal to consider the same.

- iii. The Petitioner Company No. 3/Transferee Company has 15 (Fifteen) secured charges of Rs. 168,72,10,200 (One Hundred Sixty-Eight Crore Seventy-Two Lacs Ten Thousand Two Hundred Only) in favour of HDFC Bank Ltd, Axis Bank Ltd and SIDBI Bank subsisting as on date. A copy of the Index of Charges obtained from the MCA website is attached as Annexure 6.

Further, the Petitioner Company No. 3/Transferee Company had already obtained the consent for the proposed scheme from HDFC Bank Ltd and Axis Bank Ltd, the charge from whom amount to Rs 1,66,04,67,200 as on date. The charges from these two banks constituted 100% of the outstanding charges as on the cut-off date (i.e., 28th February, 2023) and the copy of their consent affidavits have been already filed before the Hon'ble Tribunal during the first motion Application. A copy of the consent affidavits from the secured creditors of Petitioner Company No. 3/Transferee Company is enclosed herewith as Annexure 7. Accordingly, the Hon'ble Tribunal dispensed with the meeting of secured creditor by order dated 24th August, 2024. Hence requesting the Hon'ble tribunal to consider the same.

- (d) **Paragraph No.5:** The Authorized Signatory of Petitioner Company No. 3/Transferee Company undertakes and confirms that the meeting of Unsecured Trade Creditors of Transferor Company 2 was held on 03.10.2023. The outcome of the same was informed to Hon'ble NCLT on 09.10.2023 vide Report dated 09.10.2023. A copy of the report of the Meeting of the Unsecured Trade Creditors of Transferor Company No. 2 is annexed hereto and marked as Annexure 8.
- e) **Paragraph No.6:** The Authorized Signatory of Petitioner Company No. 3/Transferee Company undertakes and confirms that, Pursuant to Clause 5.2 of the Scheme of Amalgamation, all the debts, liabilities, losses including accumulated losses and unabsorbed depreciation, duties and obligations including the statutory dues of the Transferor Companies shall be transferred to and vested in Transferee Company. Hence, upon the Scheme becoming effective the Transferee Company will settle all the undisputed statutory dues of the Transferor Companies as and when the same crystallizes. An undertaking Affidavit to this effect by the Petitioner Company No.1/Transferor Company, Petitioner Company No.2/Transferor Company No.2 and Petitioner Company

No.3/Transferee Company is enclosed herewith and marked as Annexure – 9,10 & 11 respectively.

- f) **Paragraph No.7:** As mentioned in response to paragraph 6 above, the Authorized Signatory of Petitioner Company No. 3/Transferee Company undertakes and confirms that, Pursuant to Clause 5.2 of the Scheme of Amalgamation, all the debts, liabilities, losses including accumulated losses and unabsorbed depreciation, duties and obligations including the statutory dues of the Transferor Companies shall be transferred to and vested in Transferee Company. Hence, upon the Scheme becoming effective the Transferee Company will settle all the undisputed statutory dues of the Transferor Companies as and when the same crystallizes. An undertaking Affidavit to this effect by the Petitioner Company No.1/Transferor Company, Petitioner Company No.2/Transferor Company No.2 and Petitioner Company No.3/Transferee Company is annexed at Annexures -9, 10 and 11 respectively.
- g) **Paragraph No.8:** The Authorized Signatory of Petitioner Company No. 3/Transferee Company undertakes and confirms that, the statement made by RD in its common report is incorrect. As per the clause No.7.2 of the propose scheme of Amalgamation, upon the Scheme becoming effective, the Authorized Share Capital of the Transferee Company shall be increase to Rs.20,00,00,000/- (Rupees Twenty Crores) divided into 19,50,000 (Nineteen Lakhs and Fifty Thousand) Equity Shares of Rs.100/- (Rupees Hundred Only) each and 50,000 (Fifty Thousand) Cumulative Preference Shares of Rs.100/- (Rupees Hundred Only) each. This increased Authorized Share Capital of the Transferee Company would be adequate to issue the proposed consideration in the form of equity or preference shares to the shareholders of Petitioner Company No.1 and Petitioner Company No.2, irrespective of the option selected by shareholders of the Transferor Companies. An undertaking to this effect by the Petitioner Company No.3/Transferee Company is enclosed as Annexure-11.
- h) **Paragraph No.9:** The Authorized Signatory of Petitioner Company No. 3/Transferee Company undertakes and confirms that, as

provided in Clause 13.2 of the proposed Scheme, the Transferee Company shall file with the Registrar of Companies, Bengaluru at Karnataka all requisite forms and complete the compliance and procedural requirements under the Act, if any. An undertaking to this effect by the Petitioner Company No.3/Transferee Company is enclosed as Annexure-11.

- i) **Paragraph No.10:** It is humbly stated that as per clause 7.1 of the Proposed Scheme, the filing fees and stamp duty already paid by the Transferor Companies on its Authorized Share Capital shall be utilized and applied to the increased share capital of the Transferee Company and shall be deemed to have been, so paid by the Transferee Company on such combined authorized share capital and the difference of fees if any after setting off the fees paid by the Transferor Companies shall be paid by the Transferee Company pursuant to Section 232 (2) (i) of the Companies Act, 2013 for increase in the authorized share capital to that extent and the Transferee Company undertake to file amended Memorandum and Articles of Association with the Registrar of Companies. An undertaking to this effect by the Petitioner Company No.3/Transferee Company is enclosed as Annexure-11.
- j) **Paragraph No.11:** Regarding para 11 of the RD Common Report, as this is a statement on point of law and I have no further comment to make.
- k) **Paragraph No.12:** Regarding para 12 of the RD Common Report, the Authorized Signatory of the Petitioner Company no. 3/ Transferee Company undertakes and confirms that, upon the Scheme becoming effective, no Employees/Workmen of Transferor Companies will be retrenched/terminated due to the terms of the amalgamation of the Transferor Companies with the Transferee Company. The Clause 8 of the Scheme of Amalgamation has already provided for safeguarding the interest of the Employees/workmen of the Transferor Companies upon the amalgamation becoming effective, ensuring and thus ensures their continuity in the Petitioner Company No.3/Transferee Company both in letter and in

spirit. An undertaking to this effect by the Petitioner Company No.3/Transferee Company is enclosed as Annexure-11.

- l) **Paragraph No.13:** The Authorized Signatory of Petitioner Company No. 3/Transferee Company undertakes and confirms that, as and when the demand arises from the Income Tax Department with respect to Transferor Companies and Transferee Company, the Transferee Company is ready to pay the said dues to the respective Income Tax Departments, if any due. An Undertaking Affidavit to this effect by the Petitioner Company No. 3/ Transferee Company is enclosed as Annexure 11.
- m) **Paragraph No.14:** The Authorized Signatory of Petitioner Company No. 3/Transferee Company undertakes and confirms that the Petitioner Companies shall comply with the observations pointed out by the Official Liquidator, before the Scheme is allowed. A copy of the report by the Official Liquidator, Karnataka and our response to the same is enclosed as Annexure 12.
- n) **Paragraph No.15:** Based on para 15 of the RD common report, compliance with section 48 of Companies Act, 2013 has been sought. It is submitted that provisions of section 48 of the Act shall become applicable only after issue of shares, rights attached to the same are varied. In an amalgamation when preference shares are issued towards consideration by the Transferee Company to the shareholders of the Transferor Companies provisions of section 48 of the Act does not apply. Clause 6.2 and 6.4 of the scheme only enable the Transferee Company to issue consideration shares in preference shares to those shareholders of Transferor Company Nos.1 and 2 who opt to receive preference shares instead of equity shares. Therefore, the provisions of section 48 of the Act has no application. Further even assuming any consent is required under section 48 of the Act, in the scheme of arrangement while consent of the shareholders have been obtained for the scheme that include issue of preference shares instead of equity shares to the opting shareholders of the Transferor Companies towards consideration shares, same amounts to consent if any under section 48 of the Act

and separate consent and procedure need to be obtained/followed. Law is well settled in this regard.

Further, para 15 of the RD Common Report contends that Section 129 read with Section 133 of the Companies Act, 2013, is not complied with as it does not permit the pooling of interest method under Accounting Standard-14 on the facts where both equity shares and OCRPS are being issued at a premium. In this regard, it is submitted that para 3(e) of Accounting Standard -14 permits accounting under the pooling of interest method if the following conditions are satisfied:

- (i) All the assets and liabilities of the Transferor Company become, after amalgamation, the assets and liabilities of the Transferee Company.
- (ii) Shareholders holding not less than 90% of the face value of the equity shares of the Transferor Company (other than the equity shares already held therein, immediately before the amalgamation, by the Transferee Company or its subsidiaries or their nominees) become equity shareholders of the Transferee Company by virtue of the amalgamation.
- (iii) The consideration for the amalgamation receivable by those equity shareholders of the Transferor Company who agree to become equity shareholders of the transferee Company is discharged by the Transferee Company wholly by the issue of equity shares in the Transferee Company, except that cash may be paid in respect of any fractional shares.
- (iv) The business of the Transferor Company is intended to be carried on after the amalgamation, by the Transferee Company.
- (v) No adjustment is intended to be made to the book values of the assets and liabilities of the Transferor Company when they are incorporated in the financial statements of the Transferee Company except to ensure uniformity of accounting policies.

It is submitted that all the conditions stipulated above would be complied with in the subject Scheme. It is submitted that OCRPS

would be issued only to one shareholder of Transferor Company No.2 (namely: Jaycee Securities Pvt Ltd) holding 5,40,000 shares equivalent to 7.9% of the total equity shares and one shareholder of Transferor Company No.1 (namely: Jaycee Securities Pvt Ltd) holding 50,000 shares equivalent to 5.5% of the total equity shares who have expressed their consent to receive OCRPS and all other shareholders have expressed that they would be receiving consideration equity shares only. Copy of the said letter received from Equity shareholders of the respective Transferor Companies herewith enclosed and marked as Annexure-13. Therefore, more than 90% of equity shareholders of the Transferor Companies who have agreed to become shareholders of the Transferee Company would be discharged only by issue of equity shares and this is fully in compliance para 3 (e) (iii) and (iv) of AS 14 since preference shares are to be issued only to less than 10% of equity shareholders of Transferor Companies as explained above. Therefore, the observation of the RD that as both equity shares and OCRPS are proposed to be issued, the proposed scheme is not in line with the provisions of section 129 read with section 133 of the Companies Act, 2013 and Accounting Standard 14 is not tenable.

Further, para 15 of the RD Common Report contends that 'that exists no consideration for issue of shares at premium towards purchase consideration'. It has further been alleged that 'the intent of the scheme is not to increase the Authorized Capital of the Transferee Company to give purchase consideration for the present scheme, which is a loss to national exchequer'. This allegation is denied by the undersigned Authorized Signatory of Petitioner Company No.3/Transferee Company as baseless. It is submitted that commercial considerations require that the Petitioner Companies are valued as per the reasonable valuation norms and that thereafter it is the commercial wisdom of the affected parties to accept or reject the said valuation. It is highlighted that the RD has not pointed out any defect in the valuation process and hence it is inappropriate on

the part of RD to seek a valuation report of shares drawn on SWAP basis from another Independent Approved Valuer.

The RD in the said paragraph 15 of the Common Report has stated that premium is embedded in the share exchange process. It is submitted that the value of premium has been disclosed as a reproduction of the valuation report issued by the Registered Valuers who valued the companies under this scheme. We undertake that the Transferee Company shall record the consideration only at face value and will not issue any shares at premium in lieu of consideration for amalgamation to the Transferor Company shareholders.

Therefore, the premium stated in para 6 of the Scheme is for disclosure purposes as per the valuation report issued by the Registered Valuer and not for accounting purpose under the pooling of interest method.

- p) **Paragraph No.16:** The Authorized Signatory of Petitioner Company No. 3/Transferee Company undertakes and confirms that, the Accounting treatment in the books of the Petitioner Company No.3/Transferee Company would be as per “Pooling of Interest” method of accounting prescribed under Accounting Standard 14, issued by the Institute of Chartered Accountants of India and notified by the National Advisory Committee of Accounting Standards, Ministry of Corporate Affairs vide Notification No.G.S.R 739 (E) dated 07.12.2006, as amended from time to time. While para 35 of the aforesaid Accounting Standard 14 prescribes that the adjustments contemplated in para 12.5 and para 12.10 of the Scheme be done from any reserves (as the nature of reserve to be used in not specified therein,) the undersigned undertakes that the adjustment to reserve as contemplated in para 12.5 and para 12.10 of the proposed Scheme of Amalgamation would be done to a Capital Reserve which would not be available for distribution as dividend to the shareholders. Petitioner Companies shall comply with the observations pointed out by the Official Liquidator, before the Scheme is allowed. A copy of the report by the Official Liquidator, Karnataka and our response to the same is enclosed as Annexure -12.

13. The Official Liquidator (OL) has filed its report, vide Diary No.6532 dated 28.12.2023, *inter-alia* stating as under:

1. Transferor Companies and Transferee Company are registered in the state of Karnataka. This report is in respect of Transferor Companies only which is prepared based on the published financial statements and documents/details furnished by the Petitioner/Transferor Companies.
2. The appointed dated proposed is 01.04.2023.
3. Authorized, Issued and Paid-up Capital of Transferor Company No.1 is Rs.2,00,00,000, Rs.91,50,000/- and Transferor Company No.2 is Rs.8,00,00,000/- and Rs.6,81,30,000/- respectively.

The swap ratio proposed is as follows:

4. A. As per the scheme “1 fully paid up equity shares of Rs.10,090 each (including face value of Rs.100 and premium of Rs.9,990) of the Transferee Company I be issued and allotted for every 1,000 fully paid up equity shares of Rs.10/- each held in Transferor Company No.1.

OR in case the shareholders opt for OCRPS:-

0.80 units of optionally convertible Redeemable Preference shares of Rs.10,000/- each (including face value of Rs. and premium of Rs.9,900) of Transferee Company shall be issued and allotted for every 1000 fully paid up equity shares of Rs.10 each of the Transferor Company No.1.

- B. 3 fully paid up Equity shares of Rs.10,090 each (including face value of Rs.100/- and premium of Rs.9,990) of the Transferee Company be issued and allotted for every 1000 fully paid-up equity shares of Rs.10/- each held in Transferor Company No.2.

OR in case the shareholders opt for OCRPS:-

2.40 units of optionally convertible Redeemable Preference shares of Rs.10,000/- each (including face value of Rs.100 and premium of Rs.9,900) of the Transferee Company shall be issued and allotted for

every 1,000 fully paid-up equity shares of Rs.10/- each held in Transferee Company No.2.

5. A Corporate guarantee of Rs. 21.50 crores has been given by Transferor Company No.1 to the bank in favour of Transferee Company. Once the Transferor Company is going to be merged with Transferee Company, the status of the guarantee needs to be clarified by the Petitioner Companies.
6. There is no cross holding between the Transferor Companies and Transferee Company except the Transferee Company held 11,45,000 shares in Transferor Company No.2. No shares shall be issued by the Transferee Company directly or indirectly and this has to be committed by the Petitioners and such shares shall be extinguished.
7. Transferor Company No.2 and Transferee Company did not file its Balance sheet and Annual Return for the year 2022-23. Needs to file with fine.
8. The Board of Transferor Company Nos. 1 and 2 have approved the scheme on 01.03.2023.
9. There are huge secured charge of different banks in respect of Transferor Company No.1 and one bank in respect of Transferor Company No.2. Specific NOCs from the banks are required before the scheme is allowed.
10. The Hon'ble Tribunal vide its order dated 24.08.2023 has dispensed with the meeting of Equity shareholders, secured creditors, unsecured loan creditors, unsecured trade creditor of Transferor Companies No.1 and 2 except the meeting of unsecured Trade creditor of Transferor Company No.2. The meeting of Trade creditor has therefore held by Transferor Company No.2 on 03.10.2023 and creditors have approved the scheme as per the details provided.
11. In the case of Transferor Company No.1, an amount of Rs.8,52,000 is to be made to MSME as on 31.03.2023. Needs to settle urgently all MSME dues.

12. An undertaking may be obtained from the applicant companies that they will pay applicable stamp duty and other charges to the state Govt. within a reasonable time with an outer-line of 6 months.
  13. If any loans and advances, trade receivable, trade payments, interse between Transferor Companies and Transferee Company, all should be extinguished by filing Applicable Accounting Standards.
  14. As per the disclosures made by Transferor Company No.1 and 2 are MSME Companies.
  - 15.No Employees/workmen of Transferor Company to be retrenched/terminated in the terms of amalgamation of Transferor Company with Transferee Company. The Hon'ble Tribunal may kindly see that Transferor and Transferee will not retrench Swap the staff or employee of Transferor Company in the guise of surplus staff on account of merger. Need to give a separate undertaking by the Transferee Company in this regard.
14. The reply affidavit to the report of the Official Liquidator has been filed by the Petitioner Companies vide Diary No.594 dated 29.01.2024, *inter alia* stating as follows:
- a) **Paragraph No.1 to 4:** In para 1 to 4 of the OL Report submitted that, those are factual statements for which the Petitioner Companies have no further comment.
  - e) **Paragraph No.5:** The Petitioner Company No. 1/Transferor Company has offered its immovable properties as collateral to the loan availed by Petitioner Company No. 3/Transferee Company from HDFC Bank Ltd. Upon the sanction of the proposed Scheme of Amalgamation, these immovable properties of Petitioner Company No. 1/ Transferor Company would be assumed by the Petitioner Company No. 3/ Transferee Company and the charge on such properties in favour of the lender (i.e. HDFC Bank Ltd.) would continue. It is further submitted that HDFC Bank Ltd. (i.e. banker to which such properties have been given as collateral) has already given its consent for the proposed scheme the copy of the same has been already filed before

the Hon'ble Tribunal during the first motion Application. The consent affidavit of the lender (i.e. HDFC Bank Ltd.) is annexed as Annexure - 2. Hence it is requested that the Hon'ble Tribunal considers the same.

Further, on behalf of the Petitioner Company No.3/Transferee Company, undertakes and confirms that pursuant to Clause No. 5 of the proposed Scheme of Amalgamation, upon the scheme becoming effective all the loans, advances and other obligations including any guarantees of the Transferor companies shall be transferred to the Transferee Company. An Undertaking Affidavit to this effect by the Petitioner Company No. 1/ Transferor Company and Petitioner Company No. 3/ Transferee Company is enclosed as Annexure 3 and 4 respectively.

- f) **Paragraph No.6:** The Authorized Signatory undertakes and confirms that the Petitioner Company No. 3/Transferee Company shall neither directly nor indirectly issue any shares with respect to the shares of the Petitioner Company No. 2/Transferor Company held by Petitioner Company No.3/Transferee Company. Further, pursuant to the Clause No.12.4 and 12.9 of the proposed scheme, such shares of Petitioner Company No.2/Transferor Company held by the Petitioner Company No.3/Transferee Company shall be cancelled/ extinguished. An Undertaking Affidavit to this effect by the Petitioner Company No.3/Transferee Company is enclosed as Annexure-4.
- g) **Paragraph No.7:** The Authorized Signatory of the Petitioner Company No. 3/Transferee Company stated that, both the Petitioner Company No.2/Transferor Company and Petitioner Company No.3/Transferee Company held the Annual General Meeting On 30<sup>th</sup> September, 2023 (within the timeline as specified under section 96 of the Companies Act, 2013), However, there was a delay in filing of balance sheet and annual returns of 2022-23 by the Petitioner Company No.2/Transferor Company and Petitioner Company No. 3/ Transferee Company due to technical difficulties in these filings. However, it is also submitted that:

- (i) The filing of balance sheet and annual returns of 2022-23 of Petitioner Company No. 2/Transferor Company No. 2 has been done, along with payment of fine, on 6<sup>th</sup> January, 2024 vide SRN No. F89655120 (Form MGT- 7) and SRN No. F89423339 (Form AOC – 4) filed on 4<sup>th</sup> January, 2024, a copy of which is enclosed as Annexure 5.
- (ii) The filing of balance sheet and annual returns of 2022-23 of Petitioner Company No. 3/ Transferee Company has been done, along with payment of fine, on 17<sup>th</sup> January, 2024 vide SNR No. F90520578 (Form MGT- 7) and SRN No. F90218934 (Form AOC – 4) filed on 13<sup>th</sup> January, 2024, a copy of which is enclosed as Annexure 6.

The Authorized Signatory undertakes and confirms that if there are any discrepancies or any further action or clarifications required to be performed by the Petitioner Company No.2/Transferor Company or Petitioner Company No.3/Transferee Company in this matter, the same would be undertaken by the undersigned. An Undertaking Affidavit to this effect by the Petitioner Company No. 2/ Transferor Company and Petitioner Company No.3/Transferee Company is enclosed as Annexure 7 and 4 respectively.

- h) **Paragraph No.8:** In para 8 of the OL Report submitted that, those are factual statements for which the Petitioner Companies have no further comment.
- i) **Paragraph No.9:** i) the Petitioner Company No.1/Transferor Company has only one secured charge of Rs 24,50,00,000 in favour of HDFC Bank Ltd subsisting as on date. A copy of the Index of Charges, as obtained from the MCA website is attached as Annexure 8. Further, the Petitioner Company No.1/Transferor Company had already obtained the consent (annexed as Annexure 2) for the proposed scheme from HDFC Bank Ltd and the copy of the same has been already filed before the Hon'ble Tribunal during the first motion Application.

ii. The Petitioner Company No. 2/Transferor Company No. 2 has one secured charge of Rs 43,53,55,000 in favour of HDFC Bank Ltd subsisting as on date. A copy of the Index of Charges, as obtained from the MCA website is attached as Annexure 9. Further, the Petitioner Company No. 1/Transferor Company No. 1 had already obtained the consent (attached as Annexure 2) for the proposed scheme from HDFC Bank Ltd and the copy of the same has been already filed before the Hon'ble Tribunal during the first motion Application.

j) **Paragraph No.10:** In para 10 of the OL Report submitted that, those are factual statements for which the Petitioner Companies have no further comment.

k) **Paragraph No.11:** It is submitted that the amount of Rs 8,52,000 outstanding to MSME as on 31.03.2023 by the Petitioner Company No. 1/Transferor Company has been already paid on various dates. Copy of the Petitioner Company No.1/Transferor Company ledger and bank statement confirming the said MSME payment are attached herewith and marked as Annexure 10.

Further, the Authorized Signatory of Petitioner Company No.3/Transferee Company undertaken that upon the approval of the proposed scheme by the Hon'ble NCLT, if any MSME outstanding payables of the Petitioner Company No. 1/Transferor Company and Petitioner Company No. 2/Transferor Company arise in future, the Petitioner Company No. 3/ Transferee Company will settle the same within the timeline as permitted by law. Undertaking affidavit of the Petitioner Company No.3/ Transferee Company to effect the same is enclosed as Annexure 4.

l) **Paragraph No.12:** Regarding para 12 of the OL report, the Authorized Signatory of the Petitioner Company No.3/Transferee Company undertakes and confirms that the Petitioner Company No. 3/Transferee Company will pay off all the applicable stamp duty and other charges to the state Govt. within a reasonable time with an outer-line of 6 months. Undertaking affidavits of the Petitioner Company No.1/Transferor Company, Petitioner Company No. 3/Transferee Company and Petitioner Company No. 2/Transferor

Company to affect the same is enclosed as Annexures- 3, 4 & 7 respectively.

- m) **Paragraph No.13:** Regarding para 13 of the OL report, the Authorized Signatory on behalf of the Petitioner Company No. 3/ Transferee Company humbly stated that, if there are any loans and advances, trade receivables, trade payments, inter-se between Transferor Companies and Transferee Company, the same shall be extinguished by as per the applicable Accounting standards.

It is humbly submitted that, Clause 12.4 and 12.9 of the proposed Scheme of Amalgamation has already provided for cancellation of all inter-company balances, amounts and investments, which include loans and advances, trade receivables, trade payments, inter-se between Petitioner Companies. An Undertaking Affidavit to this effect by the Petitioner Company No. 3/Transferee Company is enclosed as Annexure - 4.

- n) **Paragraph No. 14:** In para 14 of the OL Report submitted that, those are factual statements for which the Petitioner Companies have no further comment.

- o) **Paragraph No.15:** Regarding para 15 of the OL Report, the Authorized Signatory of the Petitioner Company no. 3/ Transferee Company undertakes and confirms that, upon the Scheme becoming effective, no Employees/Workmen of Transferor Companies will be retrenched/ terminated due to the terms of the amalgamation of the Transferor Companies with the Transferee Company.

It is humbly submitted that Clause 8 of the Scheme of Amalgamation has already provided for safeguarding the Interest of the Employees / workmen of the Transferor companies upon the amalgamation becoming effective, ensuring and thus ensures their continuity in the Petitioner Company No. 3/ Transferee Company both in letter and in spirit. An Undertaking affidavit in this regard by the Petitioner Company No. 3/ Transferee Company is enclosed as Annexure – 4.

15. The Income Tax Department has filed its report vide Diary No.1016 dated 14.02.2024, by *inter alia* stating as follows:

- 1) The Petitioner has filed for the Scheme for amalgamation between M/s. Sati Rock Stone Private Limited, M/s. Sati Granites India Private Limited and M/s. Sati Exports India Private Limited and their respective shareholders under Section 230 and 232 of the Companies Act, 2013.
  - 2) It is stated that the AO has conveyed no objection in the amalgamation of M/s. Sati Rock Stones Pvt. Ltd. and M/s. Sati Granites (India) Pvt. Ltd. with M/s. Sati Exports India Pvt. Ltd.
16. Reply affidavit to the report of Income Tax Department has been filed by Petitioner Companies vide Diary No.1282 dated 26.02.2024, inter alia stating as under: -
- a) The Authorised Signatory of the Petitioner Companies are well acquainted with the facts of the case and duly authorized by the Petitioner Companies to make the affidavit on its behalf.
  - b) The Petitioner Companies had submitted a Joint Petition in Form CAA-5 on October 10, 2023 to this Hon'ble National Company Law Tribunal, Bengaluru Bench ("NCLT" or "Tribunal") for sanction of Scheme of Amalgamation of M/S. Sati Rocks Stones Private Limited (Petitioner Company No.1/ Transferor Company No.1) and M/S. Sati Granites (India) Private Limited (Petitioner Company No.2/ Transferor Company No.2) with M/S. Sati Exports India Private Limited (Petitioner Company No.3/ Transferee Company) and their respective Shareholders and Creditors ("Scheme").
  - c) Whereas the Petitioner Companies have received a report from the Income-tax Department ("ITD") dated February 05, 2024 ("IT Report"). Copy of the said IT Report enclosed as Annexure 1.
  - d) Whereas, the Income-tax Department in the IT Report has concluded that "This office has no objection in the amalgamation of M/s Sati Rock Stones Private Limited. and M /s Sati Granites (India) Private Limited with M/s Sati Exports India Private Limited"
  - e) Whereas, the said IT Report state that, following proceedings are pending against the Petitioner Company No. 2 / Transferor Company and Petitioner Company No. 3/ Transferee Company:
    1. **Sati Rock Stones Private Limited** – Nil
    2. **Sati Granites (India) Private Limited** -

- a. AY 2014-15 to 2019-20: Appellate proceedings pending before CIT (Appeals)-11, Bangalore
- b. AY 2014-15 to 2019-20: Penalty proceedings kept in abeyance

**3. Sati Exports India Private Limited:**

- a. **AY 2020-21:** Draft order u/s 144C rws 143(3) of the IT Act, 1961 passed on 27-09-2023 Proceedings are pending before DRP-II Bangalore.
- b. **AY 2021-22:** Draft order u/s 144C rws 143(3) of the IT Act, 1961 passed on 28-12-2023 Proceedings are pending before DRP-II Bangalore.
- c. **AY 2014-15 to 2019-20:** Appellate proceedings pending before CIT (Appeals)-11, Bangalore.
- d. **AY 2014-15 to 2019-20:** Penalty proceedings kept in abeyance
- e. **FY 2019-20:** TDS queries raised by TDS Officer

In this regards, the Authorised Signatory of the Petitioner Company No.3/ Transferee Company humbly stated that since the Petitioner Company No.3/ Transferee Company will remain in existence after the Scheme is effective, it is undertaken that the proceedings pending against the Petitioner Company No.3/Transferee Company will continue.

In relation to all the pending proceedings against the Sati Granites (India) Private Limited (Petitioner Company No.2/Transferor Company No. 2), the Authorized Signatory stated that, pursuant to clause no. 9 of the said Scheme, upon the Scheme being effective, all the proceedings of whatever nature by or against the Transferor Companies pending, including those arising on account of taxation laws and other allied laws, will be continued by or against the Petitioner Company No.3/Transferee Company. Hence the authorized Signatory of the Petitioner Company No.3/ Transferee Company undertakes and confirms that above-mentioned statement. Copy of the Undertaking Affidavit giving effect to the same is enclosed as Annexure -2.

- f. Whereas, as per Annexure-A of the IT Report stated that, following tax demand pending for recovery against the Petitioner Company No. 2 / Transferor Company and Petitioner Company No.3/Transferee Company:

**1. Sati Rock Stones Private Limited – PAN: AAUCS9322E (Transferor Company No.1)**

Nil

**2. Sati Granites (India) Private Limited – PAN: AAQCS1509R (Transferor Company No.2)**

Sl. No.	AY	Demand u/s	Demand Outstanding (in Rs.)
1	2014-15	147	1,19,20,060
2	2015-16	147	79,43,110
3	2016-17	147	47,54,630
4	2017-18	147	44,03,860
5	2018-19	143(3)	44,48,995
6	2019-20	143(3)	26,29,810
7	2020-21	143(1)	53,570

**3. Sati Granites (India) Private Limited – PAN: AAICS6978A (Transferee Company)**

Sl. No.	AY	Demand u/s	Demand Outstanding (in Rs.)
1	2009-10	143(3)	41,764
2	2009-10	220(2)	8,160
3	2010-11	143(1)	3,30,450
4	2011-12	143(3)	2,07,674
5	2013-14	143(3)	1,31,294
6	2014-15	147	7,58,920
7	2014-15	154	4,67,215
8	2015-16	147	14,10,280
9	2016-17	147	49,79,905
10	2016-17	220(2)	1,558
11	2017-18	147	69,42,962
12	2018-19	143(3)	84,91,372
13	2019-20	143(3)	73,23,922
14	2020-21	143(1)	2,99,500

In this regards, the Authorised Signatory of the Petitioner Company No. 3/ Transferee Company humbly stated that since the Petitioner Company No. 3/ Transferee Company will remain in existence after

the Scheme becomes effective, and therefore undertaken to address as per law, the above-mentioned outstanding demands or any other demand if arising from the ongoing proceedings.

In relation to the tax demand pending for recovery against the Sati Granites (India) Private Limited (Petitioner Company No. 2/ Transferor Company No. 2), stated that pursuant to the clause no. 5.3 of the said Scheme, upon the Scheme become effective, all debts, liabilities, duties and obligations of the Transferor Companies shall be debts, liabilities, duties and obligations of Petitioner Company No. 3/ Transferee Company. Hence the authorized signatory of the Petitioner Company No. 3/ Transferee Company undertakes and confirms that above-mentioned demands and proceedings will be addressed in accordance with law. Copy of the Undertaking Affidavit giving effect to the same is enclosed as Annexure -2.

- g. As stated in clause (d) above the Income Tax Department has conveyed it's no objections in the proposed Scheme, the Petitioner Companies humbly request the Hon'ble National Company Law Tribunal please consider the same and take into records.

17. The Petitioner Companies has filed RBI letter dated 21.12.2023 along with the reply affidavit to it vide Diary No.1283 dated 26.02.2024. In this letter from RBI, it is stated as under:

- a) As per Para A.2 of Master Direction-Export of Goods and Services, it is stated that: "It is obligatory on the part of the exporter to realize and repatriate the full value of goods software/services to India within a stipulated period from the date of export, as under:"

- i. It has been decided in consultation with the Government of India that the period of realization and repatriation of export proceeds shall be nine months from the date of export for all exporters including Units in Special Economic Zones (SEZs), Status Holder Exporters, Export Oriented Units (EOUs), Units in Electronic Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) & Bio-Technology Parks (BTPs) until further notice."

However, as per EDPMS (Export Data Processing and Monitoring System)\* data as on November 30, 2023, the Shipping Bills outstanding beyond 9 months as follows:

Company Name	Shipping bills outstanding	
	Count	Amount
Sati Rocks Stones Private Limited	Nil	Nil
Sati Granites (India) Private Limited	55	4,86,69,265
Sati Exports India Private Limited	498	50,03,19,313

b) In terms of Regulation 15 of Notification No. FEMA 23(R) 2015-RB dated January 12,2016, it is stated that:

“Where an exporter receives advance payment (with or without interest), from a buyer/third party named in the export declaration made by the exporter, outside India, the exporter shall be under an obligation to ensure that-

- i. the shipment of goods is made within one year from the date of receipt of advance payment.”

However, as per EDPMS data as on November 30, 2023, the Inward Remittance Messages (IRMs) outstanding beyond 1 year for the 3 Companies as follows:

Company Name	IRM outstanding	
	Count	Amount
Sati Rocks Stones Private Limited	6	17,98,296
Sati Granites (India) Private Limited	108	10,03,52,460
Sati Exports India Private Limited	956	70,53,35,709

c) As per Para B.5 of Master Direction-Import of Goods and Services, it is stated that –

“Remittances against imports should be completed not later than six months from the date of shipment, except in cases where amounts are withheld towards guarantee of performance, etc.”

However, as per IDPMS (Import Data Processing and Monitoring System)\* data as on November 30, 2023, Bill of Entries outstanding beyond 6 months as follows:

Company Name	BOE outstanding	
	Count	Amount
Sati Rocks Stones Private Limited	2	22,64,563
Sati Granites (India) Private Limited	48	3,83,56,115
Sati Exports India Private Limited	5	1,17,15,279

d) As per Para C.10 of Master Direction-Import of Goods and Services, it is stated that –

“In case an importer does not furnish any documentary evidence of import, as required under paragraph C.7 of Section III, within 3 months from the date of remittance involving foreign exchange irrespective of value, the AD Category – I bank should rigorously follow- up for the next 3 months.”

However, as per IDPMS data as on November 30, 2023, the Outward Remittance Messages (ORMs) outstanding beyond 6 months as follows:

Company Name	ORM outstanding	
	Count	Amount
Sati Rocks Stones Private Limited	3	19,57,678
Sati Granites (India) Private Limited	1	14,77,173
Sati Exports India Private Limited	NIL	NIL

Further, it may be noted that EDPMS and IDPMS database are based on the reporting done by different stakeholders like Customs, STPI, SEZ and AD Banks, and RBI does not modify/amend/cancel the details/data available in the EDPMS/IDPMS. Hence, for latest and updated data, the primary source in this regard will be authentic.

\* EDPMS and IDPMS are comprehensive IT- based systems for better monitoring of export of goods and software from India and import of goods to India, respectively. The data in these systems are based on the Shipping Bills/Softex Forms/Bill of Entries, which are received from Customs

(ICEGATE), SEZ and STPI respectively and the data related outward/inward remittance for the goods and software exported/imported through customs/STPI/SEZ are reported by AD banks in EDPMS/IDPMS.

18. In the reply affidavit dated 26.02.2024, RBI letter it has been explained as under:

1. In terms of the shipping bills outstanding beyond 9 months, the Authorized Signatory of the Transferee Company has understood that, as per the RBI letter there are shipping bills which are outstanding for collections (for more than 9 months) amounting to Rs 54,89,88,578/- (Rs. 4,86,69,265/- with respect to Sati Granites (India) Private Limited and Rs. 50,03,19,313/- with respect to Sati Exports India Private Limited as per the RBI letter, the Petitioner Company No.3 had submitted the response to the same in letter to the Reserve Bank of India (RBI) on 20th January, 2024 and a copy of the same has been already enclosed as Annexure 2.

Further, the authorized signatory of the Transferee Company undertakes and confirms that, the outstanding amounts as mentioned in the RBI letter with respect to EDPMS data will be rectified as per law and also confirms that, pursuant to Clause 5.3 of the Scheme of Amalgamation, upon the Scheme becoming effective, all the liabilities, duties and obligations of the Transferor Companies shall be transferred to the Transferee Company. Hence, the authorized signatory of the Transferee Company undertakes and confirms that the Transferee Company shall perform all outstanding collection/ remittance activities of the Transferor Companies with respect to compliance under the Foreign Exchange Management Act and the rules and regulations thereto. An Undertaking affidavit confirming the same by the Transferee Company is enclosed as Annexure 3.

2. In terms of the Inward Remittance Messages (IRMs) outstanding beyond 1 year, the Authorized Signatory of the Transferee Company understand that as per the said RBI letter there are Inward Remittance Messages (IRM) (more than 1 years but less than 3 years) amounting to Rs 80,74,86,465 (Rs 17,98,296 with respect to Sati Rocks Stones Private Limited; Rs. 10,03,52,460 with respect to Sati Granites (India)

Private Limited and Rs. 70,53,35,709 with respect to Sati Exports India Private Limited) which have not been set off against the outstanding shipping bills or are pending export. Further, and humbly stated that the Petitioner Company No.3 had submitted the response in letter to the Reserve Bank of India (RBI) on 20th January, 2024 and a copy of the same has been enclosed herewith as Annexure 2.

Further, the Authorized Signatory of the Transferee Company undertakes and confirms that the outstanding amounts as mentioned in the RBI letter with respect to IRM data will be rectified as per law and also confirms that pursuant to Clause 5.3 of the Scheme of Amalgamation, upon the Scheme becoming effective, all the liabilities, duties and obligations of the Transferor Companies shall be transferred to the Transferee Company. Hence, the authorized signatory of the Transferee Company undertakes and confirms that the Transferee Company shall perform all outstanding collection / remittance activities of the Transferor Companies with respect to compliance under the Foreign Exchange Management Act and the rules and regulations thereto. An Undertaking affidavit confirming the same by the Transferee Company is enclosed as Annexure 3.

3. In terms of the Bill of Entries (BoEs) outstanding beyond 6 months, the Authorized Signatory of the Transferee Company understood that as per the said RBI letter, there are Bill of Entries outstanding as per IDPMS data (as on 30 November 2023) for more than 6 months amounting to Rs 5,23,35,957 (Rs 22,64,563 with respect to Sati Rocks Stones Private Limited; Rs. 3,83,56,115 with respect to Sati Granites (India) Private Limited and Rs. 1,17,15,279 with respect to Sati Exports India Private Limited). With respect to this anomaly, and humbly stated that the Transferee Company undertakes to rectify the same as per law post the approval of the merger scheme by the Hon'ble NCLT. An Undertaking affidavit confirming the same by the Transferee Company is enclosed as Annexure 3.
4. The authorized signatory of the Transferee Company understood that as per the RBI letter, there are Outward Remittance Messages (ORMs) outstanding as per IDPMS data (as on 30 November 2023) for more than

6 months amounting to Rs.34,34,851 (Rs.19,57,678 with respect to Sati Rocks Stones Private Limited and Rs. 14,77,173 with respect to Sati Granites (India) Private Limited). Further, we humbly state that the Petitioner Company No.3 had submitted the response in letter to the Reserve Bank of India (RBI) on 20th January, 2024 and a copy of the same has been enclosed as Annexure 2.

Hence, the authorized signatory of the Transferee Company undertakes and confirms that, the IDMPS data will be rectified as per law and also confirms that pursuant to Clause 5.3 of the Scheme of Amalgamation, upon the Scheme becoming effective, all the liabilities, duties and obligations of the Transferor Companies shall be transferred to the Transferee Company. Hence, the authorized signatory of the Transferee Company undertakes and confirms that the Transferee Company shall perform all outstanding collection/remittance activities of the Transferor Companies with respect to compliance under the Foreign Exchange Management Act and the rules and regulations thereto. An Undertaking affidavit confirming the same by the Transferee Company is enclosed as Annexure 3.

19. Heard the Learned Counsel for the Petitioner Company and Learned Counsels appearing for the ROC/RD, OL, RBI and I.T Department.
20. The reports of the ROC, RD, OL, RBI and IT Dept., are taken on record. Similarly, reply filed by the Petitioner Company to the above mentioned reports are also taken on record.
21. On 01.05.2024 during the course of hearing, the Counsel for the ROC submitted that they have no further observations after considering the reply filed by the Counsel for the Petitioner Company to their report.
22. In view of the above discussion, it is observed that the objections/observations to the Scheme received from RD, ROC, OL, RBI and IT Dept., have been adequately replied by the Petitioner Companies and hence there is no impediment in approval of the Scheme.
23. The Scheme of Amalgamation appended at "**Annexure -16**" is approved with the Appointed Date being 01.04.2023 and thus we hereby declare that the same is binding on all the shareholders and creditors of the Transferor as well as Transferee Companies. While approving the Scheme, it is

clarified that this order should not be construed as an order in anyway granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law. With the sanction of the Scheme, the Transferor Companies shall stand dissolved without being wound-up, without any further act or deed.

**AND THIS TRIBUNAL DOES FURTHER ORDER:**

- (i) That the Petitioner Companies do, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company and the files relating to Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and
- (ii) That the Petitioner Companies shall deposit an amount of **Rs.75,000/-** with the “Pay & Accounts Officer, Chennai in respect of the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad” and **Rs.25,000/-** in favour of “The Prime Minister’s National Relief Fund”, within a period of four weeks from the date of receipt of certified copy of this Order; and
- (iii) The Petitioner Companies are directed to make compliance to the provisions of Section 170A of the Income Tax Act, 1961 within the stipulated period of time.
- (iv) That any person interested shall be at liberty to apply this Tribunal in the above matter for any directions that may be necessary.
- (v) The approval/sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act,2013 and that the authorities under both the Acts, are at liberty to take appropriate action, in accordance with law, if so advised.
- (vi) The Petitioner Companies have given various undertaking in response to observations made in the reports of the ROC/RD, IT Department,

OL and the observations in the letter dated 21.12.2023 from RBI. They are directed to ensure compliance of the same.

24. As per the directions, Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioner Companies on filing of the Schedule Property i.e., (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company by way of affidavit of the Transferor Company respectively.
25. **Accordingly, C.P. (CAA) No.39/BB/2023 is disposed of.**
26. Copy of this Order be communicated to the PCS for the Petitioner Companies.

**-Sd-**  
**MANOJ KUMAR DUBEY**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**K.BISWAL**  
**MEMBER (JUDICIAL)**