

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD-1**

**CP. (CAA) No.27/230/HDB/2021**

**Connected with**

**CA (CAA) NO. 18/230/HDB/2021**

U/s 230 to 232 of the Companies Act, 2013

And other Applicable Provisions of the Companies Act, 2013

**IN THE MATTER OF GILCHRIST ENTERPRISES PRIVATE  
LIMITED**

Gilchrist Enterprises Private Limited

Having its registered office at 1-1-151,

Sixth Floor, Sai Ram Towers,

Alexander Road, Secunderabad - 500003,

Telangana.

**....Petitioner / Transferee Company**

**AND**

1. The Registrar of Companies, Telangana

2nd Floor, Corporate Bhawan,

GSI Post, Tattiannaram Nagole, Bandlaguda

Hyderabad - 500 068, Telangana.

2. The Official Liquidator,

1<sup>st</sup> Floor, Corporate Bhawan,

GSI Post, Tattiannaram Nagole,

Bandlaguda, Hyderabad- 500 068, Telangana.

3. The Regional Director, South East Region  
3rd Floor, Corporate Bhawan,  
GSI Post, Tattiannaram Nagole, Bandlaguda  
Hyderabad - 500 068, Telangana.

4. Office of the Deputy Commissioner of Income Tax,  
Circle 3(2), Hyderabad, Telangana.

.... Respondents

**DATE OF ORDER:30.05.2023**

**CORAM**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,  
HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**Counsels / Parties Present**

For the Petitioners : Shri A.Nagaraj Kumar, Advocate.  
For the Regional Director : Shri Shashi Raj Dara, Joint Director.  
For the Official Liquidator : Shri Srinivasa Rao(representative of OL)  
For the E.D : Shri Narender Naik, Advocate.

**ORDER**

1. This Company Petition filed on behalf of Transferee Company i.e  
Gilchrist Enterprises Private Limited under Section 230-232 of the

Companies Act, 2013, by inter-alia seeking for the sanction of Scheme of Arrangement between Alpha Avenues Private Limited, Alpha Villas Private Limited, Beta Avenues Private Limited, Gilchrist Enterprises Private Limited and their respective Shareholders and Creditors;

2. The averments made in the application are briefly described as under:
  - a. **M/s. Gilchrist Enterprises Private Limited** (CIN U74110TG1992PTC063953) was originally incorporated as Gilchrist Investments Private Limited on 20/03/1992 under the provisions of the Companies Act, 1956. The registered office of the Company is same as mentioned in the cause title.
  - b. The main objects of the Transferee Company are to carry on and undertake business of real estate and infrastructure activities such as purchase, construct, erect, build, improve, develop, repair, remodel, demolish and/or maintain, operate, lands, plots, buildings, structured houses, construction of residential and/ or commercial accommodations, apartments, townships, multi-storied complexes, resorts, farm houses, hospitals, schools, place of worship, high ways roads, bridges, Air ports, Sea ports, and/or

carry on all types of construction activities relating to theatres, malls, entertainment clubs, multiplexes, theme parks, and convention centres and also to enter into any agreement, contract or subcontract with any company, firm, association of persons, individuals, local or national authority to carry on such work for which the company is established on such basis as mutually decided in those agreements, contracts or sub-contracts.

Copy of the Certificate of Incorporation, Memorandum and Articles of Association of the Transferee Company are annexed and marked as Annexure-1.

- c. The Present Authorized Share Capital of the Transferee Company is Rs.4,50,00,000/- (Rupees Four Crores Fifty Lakhs Only) divided into 45,00,000 (Fourty Five Lakhs) Equity Shares of Rs. 10/- (Rupees Ten only) each. The Issued, Subscribed and Paid up Share Capital is Rs.4,21,55,540/- (Rupees Four Crores Twenty One Lakhs Fifty Five Thousand Five Hundred Forty Only) divided into 42,15,554 (Fourty Two Lakhs Fifteen Thousand Five Hundred Fifty Four) Equity Shares of Rs. 10/- (Rupees Ten only) each fully paid-up.

Copies of the latest Provisional Balance Sheet as at 31.03.2021 and the Audited Financial Statements as at 31.03.2020 of the Transferee Company are enclosed as Annexure-2.

3. The Board of Directors of Petitioner/ GEPL/ Transferee Company in their meeting held on 23-11-2020 and 03.05.2021 has approved the Scheme of Arrangement with the appointed date as 01.04.2020.

A Copy of the Board Resolution approving the Scheme of Arrangement of Petitioner/ GEPL/ Transferee Company is enclosed and marked as Annexure-5. The Scheme of Arrangement is enclosed and marked as Annexure-3.

4. **Rationale of Scheme of Arrangement:**

That the rationale for proposed scheme of Arrangement of Alpha Avenues Private Limited (hereinafter referred to as “Petitioner” or “AAPL” or “Transferor Company-1”), Alpha Villas Private Limited (hereinafter referred to as “Petitioner” or “AVPL” or “Transferor Company-2”) and Beta Avenues Private Limited (hereinafter referred to as “Petitioner” or “BAPL” or “Transferor Company-3”) with Gilchrist Enterprises Private Limited (hereinafter referred to as “GEPL” or “Transferee Company”) and their respective Shareholders and Creditors is briefly as under:

- (a) The arrangement will provide significant impetus to the growth of the Transferee Company. The arrangement will lead to synergies of operations and a stronger and wider capital and financial base for future growth/expansion of the Transferee Company.
- (b) The arrangement will result in economies of scale, reduction in overheads, administrative, managerial and other expenditure and increase in operational rationalisation, organisational efficiency and optimal utilisation of various resources.
- (c) To increase the efficiency of combined business by pooling of resources and their optimum utilisation, thereby availing synergies from combined resources.
- (d) There shall be impetus and increase in the area of sales, network of the Transferee Company apart from reduction in costs.
- (e) The arrangement shall result in the combination of manpower of both the companies and a single management structure for the company.
- (f) The combined managerial and technical expertise would enable the Transferee Company to develop a business model that would be competitive and cogent.

(g) An opportunity to leverage combined assets and builds a stronger sustainable business. Specifically, the arrangement will enable optimal utilization of existing resources and provide an opportunity to fully leverage capabilities, efficiencies and infrastructure of all the companies.

**5. COMPLIANCE OF ACCOUNTING STANDARD AND VALUATION REPORT**

The Accounting Treatment proposed in the Scheme of Arrangement is in conformity with the accounting standards prescribed under Section 133. A copy of Certificate, issued by the Independent Chartered Accountant PRSV & Co.LLP dated 7<sup>th</sup> December 2020 is annexed to the Application at page no:221.

**6. SHARE EXCHANGE RATIO AND VALUATION:**

Share exchange ratio / Consideration – Upon the Scheme becoming effective, and without any further application, act or deed, in consideration of the transfer and vesting of the Undertaking of the Transferor Company-1, Transferor Company-2 and Transferor Company-3, the Shareholders of the Transferor Company-1, Transferor Company-2 and Transferor Company No.3 whose names

appear in the Register of Members of Transferor Company-1, Transferor Company-2 and Transferor Company-3 as on the Effective Date, upon the Scheme becoming effective, will be issued/allotted fully paid equity shares under the scheme by the Transferee Company in the following manner, subject to the rounding off to one:

Sl. No	Name of Company	Share exchange ratio/consideration
1	Alpha Avenues Private Limited	One fully paid up equity share of Rs 10/- each of the Transferee Company shall be issued and allotted for every <b>2.6206</b> fully paid up equity shares of Rs 10/- each held in Transferor Company-1 totaling to 18,09,401 equity shares of the Transferee Company (hereinafter referred to as “New Equity Shares-1”)
2	Alpha Villas Private Limited	One fully paid up equity share of Rs 10/- each of the Transferee Company shall be issued and allotted for every <b>1.6628</b> fully paid up equity share of Rs 10/- each held in Transferor Company-2 totaling to 21,05,871 equity shares of the Transferee Company (hereinafter referred to as “New



		Equity Shares-2”)
3	Beta Avenues Private Limited	One fully paid up equity share of Rs 10/- each of the Transferee Company shall be issued and allotted for every <b>10.9381</b> fully paid up equity share of Rs 10/- each held in Transferor Company-3 totaling to 70,703 equity shares of the Transferee Company (hereinafter referred to as “New Equity Shares-3)

**7. DECLARATION BY THE PETITIONER COMPANIES**

No petition under Section 241 or 242 of the Companies Act, 2013, has been filed against the Petitioner Companies and there has been no material change in the affairs of the Petitioner Companies, except for what was done in the normal course of business.

There are no proceedings pending under Section 210 to 227 of Companies Act, 2013, against the Petitioner Companies. No petition has been filed or is pending under Section 7 or 9 of the Insolvency and Bankruptcy Code, 2016 against the Petitioner Companies.

8. Earlier the Petitioner Company had filed an application i.e (CAA) No. 18/230/HBD/2021 before this Hon’ble Tribunal. This Hon’ble

Tribunal vide its order dated 28.04.2021 directed the petitioner Company to convene the meeting of equity shareholders of the Company and dispensed with the meetings of secured and unsecured creditors. The Copy of the Order dated 28.04.2021 has been enclosed as Annexure – 7 in the petition. Copy of the service of affidavit is also enclosed as Annexure-8.

9. The meeting of equity shareholders was attended in person by four members together holding Rs. 3,26,00,000/-. All the four members together voted in favour of the resolution. Copy of Chairman Report in Form CAA.4 is enclosed as Annexure-9 to the petition.
10. The Regional Director, vide his report dated 06.01.2022, has not objected to the proposed Scheme but has made certain observations. The Petitioner Company have filed reply Affidavit dated 07.02.2022, in response to the observations made by the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad . The details are given below.

<b>Observation of Regional Director</b>	<b>Reply filed by the Petitioner Companies by way of an Affidavit</b>
<p>Para 3 (b)</p> <p>The business of transferor companies are in real estate and has been invested in Jagati Publication which are attached by the Enforcement Directorate.</p> <p>Hon’ble Tribunal may direct the petitioner company to obtain no objection certificate if any from the enforcement directorate, before considering the Scheme.</p>	<p style="text-align: center;">-----</p>
<p>Para 3 (c-f)</p> <p>Hon’ble Tribunal may please to direct the Petitioner Companies to pay fee and stamp duty , to preserve the books, comply with statutory laws, and file INC-28 with the Registrar of Companies.</p>	<p>The Petitioner Companies undertake to comply with all the Applicable provisions of Section 239 of the Companies Act, 2013 and all other applicable laws and Rule 17(2) of the Companies Rules, 2013.</p>

<p>Para 4:</p> <p>Hon'ble Tribunal may be pleased to direct the Petitioner Company to comply with the observations pointed out by Official Liquidator, before the scheme is allowed.</p>	<p>It is hereby declared that the Petitioner Company had already complied with observations pointed out by Official Liquidator vide affidavit dated 04.02.2022.</p>
<p>Para 5:</p> <p>Hon'ble Tribunal may be pleased to direct the Petitioner Company to submit an undertaking with respect to dues if any pending before the Income Tax Department.</p>	<p>It is submitted that with respect to the directions of the Hon'ble Tribunal notice was issued to the Income Tax department on 11.08.2021.</p>
<p>Para 6:</p> <p>With reference to this Directorate's letter dated 01.11.2021, issued to the Directorate of Enforcement, Hyderabad, till date no comments has been received.</p>	<p>-</p>
<p>Para 7.</p> <p>Hon'ble Tribunal may please to consider the matter based on the reports submitted by the Chairperson</p>	<p>It is submitted that the Chairpersons had filed their reports dated 26.06.2021 regarding convening of</p>

and scrutinizer.	meetings in the respective companies.
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Regional Director, filed his final report dated 14.03.2022 stating that the replies filed by way of affidavit dated 06.01.2022 have been examined and this Hon'ble Tribunal may consider the same and pass orders as deemed fit and proper in the circumstances.

11. **OFFICIAL LIQUIDATOR'S REPORT:**

The Official Liquidator has filed his report, dated 08.10.2021 vide OLR No.49/2021. Official Liquidator is of the opinion that the affairs of the petitioner Company appears to have not been conducted in a manner prejudicial to the interests of the members or to public interest subject to the observation in para no. 22 of the report. The observations pointed out and the comments offered by the Petitioner Company on the report of Official Liquidator vide affidavit dated 07.02.2022 and final report of OL vide OLR No.10/2022 are mentioned against each.

<b>Observations of OL</b>	<b>Reply by way of Affidavit</b>	<b>Final observation of OL</b>
<p><b>22(a)</b></p> <p>Hon’ble Tribunal may direct the Transferee Company to submit an undertaking to the effect that Record date would be decided and fixed mutually by the Board of Directors of the transferor and transferee companies immediately after the sanction of the Scheme and before dissolution of the Transferor Companies on effective date.</p>	<p>Petitioner company undertake to the effect that Record date would be decided and fixed mutually by the Board of Directors of Transferor Companies and Transferee Company immediately after sanction of the Scheme and before dissolution of the Transferor companies on effective date.</p>	<p>Observation Complied.</p>
<p><b>22 (b):</b></p> <p>Hon’ble Tribunal may be pleased to direct the Transferor and Transferee Companies to submit an undertaking that there would be no retrenchment of any employee who were in service as</p>	<p>Petitioner Company undertakes that there would be no retrenchment of any employee who was in service as on Effective date and Appointed Date (i.e.</p>	<p>Observation Complied.</p>

<p>on Appointed Date (i.e. 04.04.2020) .</p>	<p>01.04.2020).</p>	
<p><b>22(c)</b></p> <p>Hon’ble Tribunal may direct the petitioner companies to submit an undertaking to the effect that “not to deviate from the provisions of Accounting Standard-14-pooling of Interest Method”.</p>	<p>It is submitted that petitioner Company shall account for amalgamation in accordance with the “pooling of Interest Method of Accounting” laid down by the Accounting standard 14 prescribed under the Companies Rules, 2006 including amendments thereto as may be prescribed under the Companies Act, 2013, read with rules made there under.</p>	<p>Observation Complied.</p>
<p><b>22(e)</b></p> <p>As per the information, petitioner companies are holding certain shares in M/s.Jagati Publication Ltd. Out of which</p>	<p>It is submitted that out of 52,80,000 equity shares of Rs.10/- each held by the petitioner/Transferee</p>	<p>Observation Clarified.</p> <p>Since the issue falls outside the</p>

<p>certain shares were attached by Enforcement Directorate. The details of the cases pending with the ED are not known.</p>	<p>Company in Jagati Publications Limited, 12,43,889 equity shares are attached by the Directorate of Enforcement under the Prevention of Money Laundering Act, 2002.</p> <p>Further, submitted that there were no cases pending with the Directorate of Enforcement or any other authority against the petitioner company.</p>	<p>jurisdiction of this office, hence no further observation in this regard.</p>
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In these circumstance, Official liquidator prayed this Hon'ble Tribunal to decide the matter on merits.

**12. COUNTER/OBJECTIONS FILED BY THE ENFORCEMENT DIRECTORATE, IN RESPONSE TO THE SUO MOTO NOTICE ISSUED BY THE TRIBUNAL.**

- a. It is averred that the entire Scheme is coloured by illegality, marred by malafides and is liable to be rejected and dismissed with exemplary costs.



- b. It is averred that Hon'ble High Court of Andhra Pradesh, vide order dated 10.08.2011, in Writ petition No.'s 794 and 6604 of 2011 directed the CBI to investigate all aspects of financials. Accordingly CBI, ACB, Hyderabad Branch registered case under prevention of Corruption Act, 1988 against Shri Y.S.Jagan Mohan Reddy and 73 Others.
- c. It is averred that ED also investigating the matter for money laundering, as such the Accused including the petitioners are liable to be punished under Section 4 of PMLA.
- d. It is averred that **Gilchrist Investments Private Limited** is arrayed as Accused No.10 in the Prosecution Complaint. As per the investigation under the PMLA, the ED, Hyderabad after receiving the documents from CBI, Hyderabad, made enquiries. In the course of examination of Accused No.3, Nimmagadda Prasad, it is found that during the period 15.10.2007 to 06.08.2010, M/s.Jagati Publications Limited (Accused No.4) received Rs.450 Crores from the group Companies of Accused No.3 through Cheques and the same were credited to the account of Accused No.4.

- e. It is averred that the petitioner companies was actively involved and were used as vehicles to route bribe amounts in the form of investments in Jagati Publications Limited. Further submitted that Nimmagadda Prasad and his Companies including the petitioners have benefitted to the tune of Rs.378.21 Crores in the form of sale of shares of Y.S.Jagan Mohan Reddy's Companies and obtaining State Largesse.
- f. It is averred that, the Directorate of Enforcement, HIU, New Delhi, vide PAO No.01/2014 dated 04.03.2014, provisionally attached Rs.538 Crores from Y.S.Jagan Mohan Reddy, and his Companies out of the quid pro quo investments of Rs.854.50 Crores and attended benefits thereon and Rs.274.76 Crores from Nimmagadda Prasad and his Companies including the aforesaid petitioner Companies apart from the 1416.9126 Acres of land acquired by Vanpic Projects Private Limited and Vanpic Ports Private Limited. The said PAO was confirmed by the Hon'ble Adjudicating Authority, PMLA New Delhi vide order dated 19.08.2014 in Original Complaint No.276/2014 dated 27.03.2014.

g. It is averred that the petitioner Companies are active conduits and were actually involved in the transfer of proceeds of crime from Accused No.3 to Accused No.1. Therefore, as per the Prosecution Complaint and the pending proceedings before PMLA Special Court, the Companies are liable to be prosecuted under Section 3 of PMLA read with Section 70 of PMLA and punishable under Section 4 of PMLA.

h. The relevant Sections of PMLA are reproduced below:

**3. Offence of money-laundering.**—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering.

**4. Punishment for money-laundering.**—Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees: Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.

**5 Attachment of property involved in money-laundering.** —

(1) Where the Director, or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime;

(b) such person has been charged of having committed a scheduled offence; and

(c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding<sup>9</sup> [one hundred and fifty days] from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 (43 of 1961) and the Director or

the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule:

2. Definitions:-

(d) “Attachment” means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III;

(u) “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;

(v) “property” means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

70. Offences by companies.—

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(i) “company” means any body corporate and includes a firm or other association of individuals; and

(ii) “director”, in relation to a firm, means a partner in the firm.

- i. It is further submitted the above provisions of the PMLA and the upheld order of Hon’ble Supreme Court of India in re *Vijay Madanlal Choudhary and Others Vs Union of India and others SLP(Criminal)*

*no.4634 of 2014* , ED has the power to exercise “Attachment” of “Property” which has “Proceeds of Crime”. Thus ED had attached the property held by the Petitioner Companies and hence the Scheme of Arrangement which will result in dissolution of the Companies and Transfer/Movement of attached assets is illegal and cannot be sustained and thus deserved to be dismissed.

- j. It is averred that the petitioner companies have not disclosed the ongoing pending PMLA proceedings before PMLA Special Court, where petitioner companies are arrayed as Accused 10-13 in Prosecution Complaint.
- k. Further averred that the Prosecution Complaint was filed on March 03, 2021 before PMLA Special Court, however by suppressing the same, the petitioner Companies have filed the Company petitions before this Tribunal, at Hyderabad and obtained orders for conducting meetings of equity shareholders vide order dated 28.04.2021 wherein the Scheme was purportedly approved by the said Equity Shareholder.
- l. It is averred that if the Scheme becomes effective the Transferor Companies i.e Accused No.11, 12, 13 shall be dissolved and cease to exist legally and thus escape Criminal Prosecution under PMLA.

- m. It is submitted that the Scheme under the present petition is a *mala fide*, arrangement among parties, hence cannot be considered as a special circumstance, and the Hon'ble Tribunal is required to balance the legislature Scheme and intent between two special laws, as is the case between IBC and PMLA.
- n. It is averred that the Company petitions are filed to avoid prosecution under PMLA and to further delay the PMLA proceedings. There is no public interest involved in the matter and the Scheme is purely for personal interest.

**13. REPLY AFFIDAVIT FILED BY THE PETITIONERS TO THE COMMON COUNTER/OBJECTION FILED BY ENFORCEMENT DIRECTORATE**

- a. Petitioner Companies denied the averments made by the Enforcement Directorate and submitted that the Company Application was filed on 21.01.2021 before Hon'ble NCLT and Company Petition was filed on 14.07.2021, whereas, the prosecution Complaint filed by Enforcement Directorate before Hon'ble Special Court for CBI Cases was on 16.08.2021, i.e., post filing of the above Company Application by the Petitioners.

- b. Petitioner Companies also filed the relevant Clause of the Scheme of Arrangement which is reproduced below:

“CLAUSE 10. LEGAL PROCEEDINGS

- 10.1 If any suit, appeal or other proceeding of whatever nature by or against the Transferor Companies is pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of or by anything contained in this Scheme, but the said suit, appeal or other legal proceedings before regulators, tribunals or semi-judicial authorities, administrative authorities, courts, may be continued, prosecuted and enforced by or against the Transferee Company, as the case may be, in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Companies as if this Scheme had not been made.
- 10.2 In case of any litigation, suits, recovery proceedings which are to be initiated or may be initiated against the Transferor Companies, the Transferee Company shall be made party thereto and any payment and expenses made thereto shall be the liability of the Transferee Company.
- 10.3 Learned Joint Director, Director of Enforcement, New Delhi, vide Provisional Attachment Order No. 01/2014 dated 04.03.2014 in ECIR/09/HZO/2011, attached 27,17,223 and 9,97,223 equity shares of Jagati Publications Limited, owned and held by Transferor Company-1 and Transferor Company-2 respectively.
- 10.4 Upon the Scheme being effective, the Transferee Company shall forward copy of the order of the Hon’ble NCLT requesting Jagati Publications Limited to effect and transfer the title of the above attached 27,17,223 and 9,97,223 equity shares of Transferor Company-1 and Transferor Company-2 respectively, in the name of the Transferee Company, in the respective statutory registers of Jagati Publications Limited and issue fresh share certificates accordingly. Further the Transferee Company undertakes and authorise Jagati Publications Limited to handover the said fresh shares certificates to replace with the earlier attached share certificates of Transferor Company-1 and Transferor Company-2 respectively, lying with the Learned Joint Director, Director of Enforcement, New Delhi, with the intimation to Transferee Company.”

- c. It is contended that it is in comprehensible that the ED even after perusing the Scheme of Arrangement, has not whispered anything

about the categorical assertions made by the Petitioners vide, Clause 3. Amalgamation of the Transferor Companies with the Transferee Company and Clause 10. Legal Proceedings, including the attachment of shares by ED, however chosen to attribute illegality to the Scheme of Arrangement, and the same exposes ED's double standards.

- d. It is averred that filing of Prosecution Complaint in SC No. 02/2021 on 06.08.2021 (but not 03.03.2021 as claimed by ED) is emerged out of the Provisional Attachment Order and is not a separate legal proceeding as such. Simply because the Petitioner is arrayed as accused in the Prosecution Complaint filed vide SC No. 02/2021, the does not prevent the Petitioner to file / continue the above Company Petition as the proposed Scheme of Arrangement is not going to affect the proceedings in SC No. 02/2021.
- e. It is averred that ED filed Prosecution Complaints against the Petitioner based on the charge sheets filed by CBI in CC No. 14/2012 and CC No.28/2013 on the files of the Hon'ble Principal Special Judge for CBI Cases, as the offences in CBI cases are predicate offences which generated alleged proceeds of crimes and



the Petitioner is not even accused in CC No.14/2012 and CC No.28/2013 which are the basis for ED filing SC No. 02/2021 and SC No. 03/2021.

- f. It is averred that neither the ongoing PMLA Proceedings nor the provisions under PMLA are relevant to the present Company Petition filed under Section 230 to 232 of the Companies Act, 2013.
- g. It is averred that Clause 10.4 of the Scheme of Arrangement itself is explanatory and evident that the Petitioner Company never tried to escape from the attachment of shares. Since the attached shares will be replaced with the Transferee Company shares and the same will remain very much available to be dealt with in the manner prescribed under the PMLA, and there is no question of Transfer / movement of attached assets.
- h. It is averred that the petitioner Companies has not suppressed any material facts and the petitioner Company being a closely held private limited Company denies public interest contentions and allegations made in para 35 to 40 including the applicability of the Hon'ble Supreme Court Judgement, supra, since the said Judgement pertains to listed Company. Hence not applicable to the petitioner.

- i. It is averred that it is misconception of ED besides speculative that the Petitioner Companies will file petitions for discharge in the proceedings in SC. No. 02/2021 on the basis of merger and get discharged as even assuming that the misconceived notion in para 42 is correct, the averment in para 43 will squarely take care of any such misconception.

**14. OBSERVATION BY THE TRIBUNAL**

- a. We have heard Shri A.Nagaraj Kumar, learned counsel for the Petitioner Companies, Shri Shashi Raj Dara, Joint Director from R.D, Shri Srinivas Rao, for O.L and Shri Narender Naik, for Enforcement Directorate. Perused the record and the undertakings given by the Petitioners.
- b. The 3<sup>rd</sup> Respondent/ Regional Director vide his final report dated 14.03.2022 has stated that petitioner Companies have replied to the observations made by the 3<sup>rd</sup> Respondent and stated that this Tribunal may direct the Petitioner Companies to submit all the facts/affidavits wherever required besides to decide the matter on merits.

- c. The 2<sup>nd</sup> Respondent/Official liquidator had opined that the affairs of the petitioner company appears to have not been conducted in a manner prejudicial to the interests of the members or to public interest subject to the observation in para no.22 for which the Petitioner Company filed reply by way of Affidavit. The Official Liquidator filed his final report dated 11.02.2022 and prayed this Tribunal may decide the matter on merits.
- d. However, the Enforcement Directorate had opposed the scheme of Amalgamation, mainly by contending that,
- i) the petitioner Companies are active conduits and were involved in the transfer of proceeds of crime from Accused No.3 to Accused No.1 in CC No. 14/2012 and CC No.28/2013 and as per the Prosecution Complaint besides the pending proceedings before PMLA Special Court, the Petitioner Companies are liable to be prosecuted under Section 3 read with Section 70 of PMLA and punished under Section 4 of PMLA.
  - ii) that if the Scheme becomes effective the Transferor Companies i.e Accused No.11, 12, 13 in SC.No. 02/2021 and SC.No. 03/2021 shall be dissolved and ceases to legally exist, which would pave way for escaping from Criminal Prosecution under PMLA.
  - iii) that the petitioner companies have not disclosed the ongoing pending PMLA proceedings before PMLA Special Court, where petitioner companies are arrayed as Accused 10-13 in Prosecution Complaint.

- e. *Per Contra*, the Petitioners would contend that, ED filed Prosecution Complaints against the Petitioners based on the charge sheets filed by CBI in CC No. 14/2012 and CC No.28/2013 on the files of the Hon'ble Principal Special Judge for CBI Cases, and the Petitioners are not even accused in CC No.14/2012 and CC No.28/2013, basing on which ED filed SC No. 02/2021 and SC No. 03/2021 against the Petitioners herein.
- f. It is further submitted that the Petitioner filed Company Application before this Tribunal on 21.01.2021 and the Company Petition was filed on 14.07.2021. Whereas, Complaint filed by ED before Hon'ble Special Court for CBI Cases on 16.08.2021.
- g. Relying on clause 10.1 of the scheme it is contended that, from the said clause since it is clear that, if any suit, appeal or other proceeding of whatever nature by or against the Transferor Companies is pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of or by anything contained in this Scheme, but the said suit, appeal or other legal proceedings before regulators, tribunals or semi-

judicial authorities, administrative authorities, courts, may be continued, prosecuted and enforced by or against the Transferee Company, as the case may be, in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Companies as if this Scheme had not been made, the plea that if the Scheme becomes effective the Transferor Companies arrayed as Accused No.11, 12, 13 in SC.No.02/2021 and SC.No.03/2021, before the Special Court, shall be dissolved and ceases to legally exist, paving way for escaping from the ongoing Criminal Prosecution under PMLA, cannot be countenanced.

- h. It is further submitted that, despite being fullaware of the intent and the purport of the Scheme of Arrangement, the ED failed to even whisper anything about the Clauses 3&10 of the scheme, *supra*.
- i. It is reiterated that the proposed Scheme of Arrangement will not impact the proceedings initiated by ED against the petitioners, in any way, as according the petitioners, in terms of clause 10.4 of the scheme, up on the Scheme becoming effective, the Transferee

Company shall forward copy of the order of this Tribunal, requesting Jagati Publications Limited to effect and transfer the title of the above attached 27,17,223 and 9,97,223 equity shares of Transferor Company-1 and Transferor Company-2 respectively, in the name of the Transferee Company, in the respective statutory registers of Jagati Publications Limited and issue fresh share certificates accordingly. Further the Transferee Company undertakes and authorise Jagati Publications Limited to handover the said fresh shares certificates to replace with the earlier attached share certificates of Transferor Company-1 and Transferor Company-2 respectively, lying with the Learned Joint Director, Director of Enforcement, New Delhi, with the intimation to Transferee Company.

- j. As regards suppression of information relating the criminal proceedings Ld. counsel invited our attention to para 2 of the Petition and stated that the attachment order issued by the Joint Director of Enforcement Directorate, New Delhi vide Provisional Attachment Order No.01/2014 Dated 04.03.2021 in ECIR/09/HZ0/2011, attaching 27,17,223 and 9,97,223 equity

shares of Jagati Publications Limited, owned and held by Transferor Company-1 and Transferor Company-2 respectively, has been specifically mentioned.

- k. That a part, the RD in his observations in Para 6 of affidavit dated 06.01.2022, in response to the averment relating to the above to Directorate's letter dated 01.11.2021 made in the petition, has specifically observed that, "till date (date of filing the final report) no comments has been received from the ED". Therefore, the contention of the Enforcement Directorate that petitioners have indulged in suppression of material information regarding on going PMLA proceedings before PMLA Special Court, despite having knowledge of the same is absolutely baseless.
- l. We have anxiously considered the afore mentioned rival submissions besides carefully perused the record placed before us, and we are of the firm view that, none of above pleas put forth by the Enforcement Directorate, are tenable and sustainable either under law or also on facts, hence, liable to be rejected. We

hereunder state the reasons for reaching this conclusion by the Bench.

- m. A bare perusal of the company petition, reply affidavit and the observation of the RD, clearly discloses that in paras 10.3 and 10.4 of page 128 of the Company Petition the petitioner have referred to the subject attachment order issued by the Joint Director of Enforcement Directorate, New Delhi vide Provisional Attachment Order No.01/2014 Dated 04.03.2021 in ECIR/09/HZ0/2011, in respect of 27,17,223 & 9,97,223 equity shares of Jagati Publications Limited, owned and held by Transferor Company-1 and Transferor Company-2 respectively.
- n. That a part it is also clear from the observations of the RD in Para 6 of final report dated 06.01.2022 wherein it has been observed that “with reference to this Directorate’s letter dated 01.11.2021, issued to the Directorate of Enforcement, Hyderabad, till date no comments have been received”.
- o. So much so, the plea that the petitioners indulged in suppression of material information well within their knowledge, as such the company petition is liable to be dismissed, is liable to be rejected.



- p. Now coming to the next contention of the ED that in the event of the scheme as proposed is allowed in terms of Section 230 of Companies Act, the Transferor Companies stands dissolved without going through the process of winding up with effect from the effective date or such other date as may be fixed by the Tribunal, consequently, the Transferor Companies ceases to exist legally hence the proceedings before PMLA Special Court, pending against the Transferor Companies, (Accused No.11 to 13) will stand abated is concerned, at the outset it is to be noted that there is no mandatory requirement in terms of Section 230 of Companies Act, that consequent upon the scheme being sanctioned and becoming effective the transferor company shall necessarily be dissolved for all purposes. Needless to say that any scheme sanctioned shall always be subject to the terms of order of the Tribunal.
- q. Reference in this regard can be made to Section 240 of the Companies Act which is as below:

***“240. Liability of officers in respect of offences committed prior to merger, amalgamation, etc.— Notwithstanding anything in any other law for the time being in force, the liability in respect of offences***

*committed under this Act by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.”*

- r. Moreover, dissolution of a Company can take place not only when liquidation is complete, but also in terms of Section 248 of the Companies Act, where under the Registrar, after the time mentioned in the notice may unless the cause to the contrary is shown by the Company, strike of its name from the Registrar of the Companies and shall publish notice thereof in the official Gazette and on publication in the official Gazette of the said notice, the Company shall stand dissolved.
- s. However, it is pertinent to refer to sub section 7 of Section 248, which categorically states that “the liability if any, of every director, manager or other officer who was exercising any power of management, and of every member of the Company dissolved under sub section (5), shall continue and may be enforced as if the Company has not been dissolved.
- t. Even though in terms of Section 70 of PMLA, where a person contravenes any of the provisions of the PMLA or

any rule or direction or order made thereunder, is a Company, every person who at the time of contravention was committed, at the time of contravention, was in charge of and was responsible of the Company and for the conduct of business of the Company as well as the Company shall be deemed to be guilty of contravention and shall be liable to be prosecuted and punished accordingly, the well settled legal position as well as the legislative intent in so far as the effect of dissolution of a Company on the ongoing criminal or civil proceedings against a company being existing liability be is civil or criminal of a Director, Member or an Officer of a Company which has been dissolved, shall remain unaffected.

- u. In this context we carefully refer to the ruling of Hon'ble Supreme Court of India, in Ajay Kumar Radheyshyam Goenka Vs. Tourism Finance Corporation of India Limited wherein it was held that:

“24. The concept of restitution is a common law principle and it is a remedy against unjust enrichment or unjust benefit. The court cannot be used as a tool by a litigant to perpetuate illegality. A person who is on the right side of the law, should not have a feeling that in case he is dragged in litigation, and wins, he would turn out to be a loser and that in case he is dragged in litigation, and wins, he would turn out to be a loser and wrongdoer as a real gainer, after 20 or 30 years. Thus, the members who have obtained stay in appeal or on recovery

proceedings or the case is pending, cannot take advantage of the fact that the period fixed for the Liquidator under the Act is over.

- v. Reference in this regard can also be made to Section 240 of the Companies Act which is as below:

Liability of officers in respect of offences committed prior to merger, amalgamation, etc.— Notwithstanding anything in any other law for the time being in force, the liability in respect of offences committed under this Act by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.”

- w. In so far as the liability of the Company is concerned, it is also pertinent to refer to the well settled legal proposition that a company is a “juristic person,” therefore, a company has to act through a living human being. Collectively, decisions on behalf of the company, are taken by the board of directors of a company.
- x. Therefore, when the Civil or Criminal liability of the directors of the Company will continue to remain, notwithstanding the dissolution of a company, the argument that criminal liability of the petitioner Company becomes extinct consequent to its dissolution cannot be countenanced. (xii). Having perused

Clauses 10.1 to 10.4 of the scheme we are fully convinced that, neither the provisional order of attachment nor the ongoing proceedings against the transferor companies before the Special Court, under PMLA, will be impacted, if the proposed scheme is allowed.

- y. So much so we do not find any force in the contentions of the Enforcement Directorate, that the present scheme of amalgamation if allowed would provide a safe exit for the transferor company or its Directors, Officers, Managers etc., to escape from the pending proceedings under PML Act.

15. Therefore, in the light of our discussions as above, upon careful consideration of the submissions made and on perusal of the records placed before us, we pass the following:

**ORDER**

- A. The Scheme of Arrangement (Annexure-3) is hereby sanctioned and shall be effective from the appointed date as mentioned in the Scheme of Amalgamation i.e. 01.04.2020, and shall be binding on all the members, employees, creditors and all other stakeholders of the Petitioner Companies.

- B. While approving the Scheme, we make it clear that this order should not be construed as an order in anyway granting exemption from payment of Stamp Duty, taxes or any other charges, if any, payable in accordance with law or in respect of any permission/compliance with any other requirement which may be specially required under any law.
- C. The whole of the assets, property, rights and liabilities of the Transferor Company, shall be transferred without the requirement of any further act or deed to the Transferee Company.
- D. The total number of 3,714,446 equity shares of Jagati Publication limited, owned by the Transferor Companies which are under attachment by Enforcement Directorate shall be forwarded to Jagati Publication limited, to effect transfer of these shares in the name of Transferee Company in the respective statutory registers of Jagati Publications Limited and to issue fresh share certificates.
- E. Upon effecting the transfer of shares in the manner afore stated, Jagati publication limited should handover the fresh shares certificates after replacing the same with the share certificates of Transferor Companies to the Enforcement Directorate, New Delhi with the intimation to Transferee Company.

- F. The above process shall be completed within 30 days from the date of receipt of this order by Jagati Publications Limited and the Transferee Company.
- G. That the suits, Appeals or other proceedings what so ever which are now pending, including the proceedings in SC- No.2 of 2021 and SC- No.-3 of 2021, before the Special Court under PML Act, against the Transferor Companies, Directors, Officers, Managers, shall continue, as if the Transferor Companies have not been dissolved.
- H. We make it clear that the above directions relating to the 3,714,446 equity shares is subject to final outcome of the proceedings in SC- No.2 of 2021 and SC- No.-3 of 2021, before the Special Court under PML Act.
- I. The Transferor Company shall be dissolved without going through the process of winding up, however, subject to our observations as above.
- J. We direct the Petitioner companies to comply with all the observations pointed out by the Regional Director and Official Liquidator.

- K. We direct the Petitioner Companies to preserve the books of accounts and papers and records and the same shall not be disposed of without the prior permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.
- L. We direct the Petitioner Companies to ensure statutory compliance of all applicable laws and also on sanctioning of the present Scheme the Petitioner Companies shall not be absolved of any of their statutory liability in any manner.
- M. We direct the Petitioner Companies involved in the Scheme to comply with Rule 17 (2) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2013. The Petitioner Companies within 30 days after the date of receipt of certified copy of the order, shall cause certified copy to be delivered in Form INC-28 to the Registrar of Companies concerned for registration and on such certified copy being delivered, Registrar of Companies concerned shall take all necessary consequential action in respect of the Petitioner Companies.
- N. Though no representation has been received from the Income Tax Authorities despite service of notice by the Petitioner Companies, the tax implications, if any, arising out of the scheme is subject to final



decision of Tax Authorities concerned and the decision of the Tax Authorities concerned shall be binding on the Transferee Company.

- O. The Petitioner Companies are directed to strictly comply with the Accounting Treatment Standards prescribed under Section 133 of the Companies Act,2013.
- P. The sanction of the Scheme by this Tribunal shall not forbid the revenue authority from taking appropriate recourse for recovering the existing and previous tax liabilities of the Transferor and Transferee Companies.
- Q. We direct the Transferee Company to comply with the provisions of Section 2 (41) of the Companies Act, 2013.
- R. The Petitioner Companies shall until the completion of the Scheme of Amalgamation, file a statement in such form and within such time as prescribed with the Registrar every year duly certified by a Chartered Accountant or a Cost Accountant or a Company Secretary to the effect that the Scheme of Amalgamation is being complied with in accordance with the orders of the Tribunal as required under Section 232 (7) of the Companies Act, 2013.

S. Any person shall be at the liberty to apply to the Tribunal in the above matter for any directions that may be necessary. Accordingly the CP (CAA) **27/230/HDB/2021** is hereby allowed and disposed of.

Charan Singh  
Member Technical

Dr. Venkata Ramakrishna Badarinath Nandula  
Member Judicial

Pavani