

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD

DIVISION BENCH

COURT - 1

ITEM No.201

C.P.(CAA)/56(AHM)2023 in C.A.(CAA)/19(AHM)2023

Proceedings under Section 230-232 of Co. Act, 2013

IN THE MATTER OF:

Saggezza India Private Limited

.....Applicant

Infostretch Corporation (India) Private Limited

.....Respondent

Order delivered on: 06/06/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-sd-

**SAMEER KAKAR
MEMBER (TECHNICAL)**

-sd-

**SHAMMI KHAN
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT - I
AHMEDABAD**

**C.P.(CAA) No.56/NCLT/AHM/2023
in
CA(CAA) No.19/NCLT/AHM/2023**

[Company Petition under Sections 230-232 of Companies Act, 2013 read with the Companies (Compromise, Arrangement and Amalgamation) Rules, 2016]

In the matter of Scheme of Amalgamation

**SAGGEZZA INDIA PRIVATE LIMITED
CIN: U72200GJ2005PTC132030**

Having Registered office at:
Block- A- 101, Neptune Corporate House,
B/h. Rajpath Club, S.G. Highway, Bodakdev,
Ahmedabad – 380054, Gujarat, India

... Petitioner /
Transferor Company

WITH

**INFOSTRETCH CORPORATION (INDIA)
PRIVATE LIMITED
CIN: U72200GJ2014FTC073319**

Having Registered office at:
Block- A- 101-105, Neptune Corporate House,
B/h. Rajpath Club, S.G. Highway, Bodakdev,
Ahmedabad – 380054, Gujarat, India

... Petitioner /
Transferee Company

Order pronounced on: 06.06.2024

CORAM:

Sh. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

Sh. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

Appearance:-

For the Applicant : Mr. Dhinal Shah, Advocate

For the RD : Mr. Shiv Pal Singh, Deputy Director

For the OL : Mr. Sandip Tupe, Technical Assistant

ORDER

1. The present joint Company Petition has been filed by the Petitioner Companies above named for the purpose of the approval of the Scheme of Amalgamation of **SAGGEZZA INDIA PRIVATE LIMITED** (for brevity "Transferor Company"), with **INFOSTRETCH CORPORATION (INDIA) PRIVATE LIMITED** (for brevity "Transferee Company") under section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') (hereinafter referred to as the 'SCHEME') pursuant to the Scheme proposed by the Petitioner Companies and the said Scheme is also annexed at "**Annexure C**" along with the Petition.

2. An Affidavit in support of the above Petition was sworn by Mr. Vipun Jani, Authorised Signatory and the same is annexed with the Petition. The above-named Authorised Signatory of Petitioner Companies have been authorized vide Board Resolution dated 21.11.2022.

3. 1ST MOTION APPLICATION – IN BRIEF

3.1 The Petitioner Companies had filed the First Motion Application vide CA(CAA)19/AHM/2023 sought reliefs as follows: -

	EQUITY SHAREHOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
TRANSFEROR COMPANY	To dispense with	N.A.	To convene with
TRANSFeree COMPANY	To dispense with	N.A.	To convene with

3.2 Based on such application moved under Sections 230-232 of the Companies Act, 2013; directions were issued by this Tribunal, vide order dated **11.09.2023**, the meetings of Equity Shareholders of the Applicant Companies are hereby dispensed with in view of the consent affidavits attached with the application. The question of holding the meetings of Secured Creditors

of the Applicant Companies does not arise as there are no secured creditors in any of the applicant companies. We also direct to the Applicant Companies for holding and convening the meetings Unsecured Creditors of the Applicant Companies.

4. The Second Motion Petition was filed before this Tribunal by the Petitioner Companies on **29.11.2023** for sanction of the Scheme by this Tribunal.

5. RATIONALE OF THE SCHEME

The Rationale for the Scheme as as envisaged under the Scheme appended at “**Annexure C**” along with the Petition is extracted hereunder:

- i. In order to streamline the current organization structure, the said companies are desirous of entering into the Scheme of amalgamation between SIPL and ICPL. The commercial activities of both the companies are of similar nature and amalgamation will result in business and operational synergies in terms of complete integration of facilities which would result in

optimum utilization of capital and resources and reduction in overall operating and maintenance cost and benefits of economies of scale. It is envisaged that the proposed re-organization would inter alia achieve the following advantages:

- Consolidation of business and operations;
- Streamlining the current organization structures;
- Reduction in multiplicity of legal and regulatory compliances, reduction in overheads including administrative, managerial and other expenditures;
- Greater scale of economy and greater financial strength and flexibility;
- The combination of both the businesses would increase long term value for all the stakeholders; and optimum use of capital resources and increased bargaining powers;
- To invest more aggressively into new and emerging technologies.

- ii. This Scheme would be in the interest of the Transferor Company and the Transferee Company, and their respective shareholder, creditors, if any, and other stakeholders and will not be prejudicial to the interest of any concerned shareholders or creditors.
 - iii. In view of the aforesaid advantages, the Board of Directors of both the Companies have considered and proposed the Scheme of Amalgamation under the provisions of sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Act and Rules thereunder and other Applicable Laws.
- 6.** In the second motion application filed by the Petitioner Companies, this Tribunal directed the Petitioner Companies to issue notice to the Statutory / Regulatory Authorities viz. (i) the Central Government through the office of the Regional Director, North Western Region, (ii) the Registrar of Companies, Gujarat (iii) the Income-Tax Authority with copy also to Principal Chief Commissioner of Income Tax Office

(iv) Official Liquidator (only by the Petitioner Transferor Companies), (v) BSE Limited, National Stock Exchange of India and Securities and Exchange Board of India (only by the Transferee Company) and other sectorial regulators, who may govern the working of the respective companies, as well as for paper publication to be made in **“Business Standard” (Ahmedabad edition)** and **“Jai Hind” (Ahmedabad edition)** in Vernacular Language.

7. In compliance to the said directions issued by this Tribunal, the Petitioner Companies have filed an affidavit of service before the Registry of this Tribunal on 23.02.2024, vide inward diary No. D-1490 and perusal of the same discloses that the Petitioner Companies have effected paper publications as directed by the Tribunal in the **“Business Standard”** in English and in **“Jai Hind”** in Vernacular Language **(Ahmedabad Edition)** on 26.01.2024. It is also seen that notices have been also served to (i) Regional Director, North Western Region on 24.01.2024, (ii) Registrar of Companies, Gujarat on 24.01.2024, (iii)

Income Tax Authority along with Chief Commissioner of Income Tax on 24.01.2024 and 24.01.2024, (iv) Official Liquidator on 24.01.2024 and (v) Reserved Bank of India, on 24.01.2023, the proof of the same by way of affidavits have been enclosed with the separate typed set. Pursuant to the service of notice of the petition the following statutory authorities have responded as follows: -

STATUTORY AUTHORITIES

8. REGIONAL DIRECTOR & REGISTRAR OF COMPANIES

8.1 The Regional Director, North-Western Region (hereinafter referred to as 'RD') to whom the notice was issued, has filed its Report along with the report of Registrar of Companies (hereinafter referred to as 'ROC') before this Tribunal on 01.01.2024 in Inward Diary No. R -766.

Observations of the Regional Director are as under:

- i. In para 5 (i) of RD's report, observation of Registrar of Companies, Gujarat is given wherein it is stated that, there are no

complaints, inquiry, inspection, investigation or prosecution pending against the Petitioner Companies.

- ii. In para 6(iii) of the RD's report, it is stated that, the shareholding pattern as on 31.03.2023 of the petitioner companies that there are Foreign National / NRI / Foreign Bodies Corporate are holding shares in the Petitioner companies. The transferee company is required to be issued the new shares to the Foreign shareholder of the transferor company. The Regional Director is not aware as to whether the Petitioner Companies have complied with the provisions of FEMA and RBI guidelines or not, in this regard. The Hon'ble NCLT may therefore be pleased to direct the Petitioner Companies to undertake about the compliances of FEMA and RBI guidelines, in the matter, from time to time.
- iii. That, as per the financial statements as on 31.03.2023 of the Transferee company Info stretch Corporation (India) Private Limited, the

following body corporate shareholders who have holding 10% or more of total shareholding of the companies:-

Sr No.	Petitioner Company	Name of Shareholder	% of shares held	Remark
1	Infostretch Corporation (india) Private Limited (Transferee Company) State of Gujarat	Infostretch Corporate, USA	99.99%	No eForm BEN-2 has been filed by the petitioner Transferee Company as per records available at MCA 21 Portal.

No e Form BEN-2 has been filed by any of the Petitioner Company as per records available at MCA21 Portal, hence, Petitioner Company are under statutory obligation to file the e-form Ben-2 for declaring name of the significant beneficial owner with concerned ROC under the mandate contained in section 90 of Companies Act, 2013 r/w. Companies (significant Beneficial Owners) Amendment Rules, 2019, thereunder.

- iv. In para 7(i) of the RD's report, it is stated that, to ensure compliance and furnish the clarification, if any, regarding observations made by Registrar of Companies and this Directorate (NWR) in forgoing Paragraph No. 5 and 6 above.
- v. In para 7(i) of the RD's report, it is stated that, to preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central Government as per the Provision Section 239 of the Companies Act, 2013.

- vi. In para 7(iii) of the RD's report, it is stated that to ensure Statutory compliance of all applicable Laws and on sanctioning of the present Scheme, the Petitioner Companies shall not be absolved from any of its Statutory liabilities, in any manner.
- vii. In para 7(iv) of the RD's report, it is stated that the Necessary Stamp Duty on transfer of property/Assets, if any is to be paid to the respective Authorities before implementation of the Scheme.
- viii. In para 7(v) of the RD's report, it is stated that the the petitioner companies involved in the scheme to comply with the provisions of Section 232(5) of the Companies Act, 2013 with respect to file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from date of passing order.
- ix. In para 7(vi) of the RD's report, it is stated that The Petitioner companies shall undertake comply with Income Tax /GST law and any

demand /taxs payable on implementation of the said scheme as per law.

- x. In para 7(vii) of the RD's report, it is stated that the Applicant company/(ies) to pay such amount of legal fees/ cost to the Central Government which may be considered appropriate by this Hon'ble NCLT for the legal fees/ expenses of the office of the Regional Director for submitting this report and representing the matter on behalf of the Central Government.
- xi. In para 8 of the RD's report, it is stated that there are no other observations/submissions except stated hereinabove, for consideration of the Hon'ble NCLT in respect of the Scheme proposing an amalgamation of Saggezzza India Private Limited, with Infostretch Corporation (India) Private Limited.

Observations of the Registrar Of Companies are as under:

- i. In para 1 of the ROC report, it is stated that the Transferor Company and Transferee Company are not listed with any Stock Exchange.
- ii. In para 2 of the ROC report, it is stated that Annual Return for the Financial year ended 31.03.2022, it is observed that the Transferor Company and Transferee Company are Wholly owned subsidiary of Foreign Body Corporate (other than NRI) namely Saggezza Inc. USA and Infostretch Corporation, USA respectively. In this regard, the Hon'ble NCLT may kindly direct the Petitioner companies to ensure the compliances pertaining to the FEMA and RBI guidelines in the matter.
- iii. In para 3 of the ROC report, it is stated that The Hon'ble Bench of National Company Law Tribunal may be pleased to direct the petitioner company to preserve its books of accounts, papers and records and shall not be disposed of

without prior permission of Central Government as per the Provision Section 239 of the Companies Act, 2013.

- iv. In para 4 of the ROC report, it is stated that the Registrar of Companies, Ahmedabad further submits that the Hon/ble Bench of National Company Law Tribunal may be pleased to direct the Petitioner Company to ensure Statutory compliance of all applicable Laws and also on sanctioning of the present Scheme, the Transferor Company shall not be absolved from any of its Statutory liabilities, in any manner.
- v. In para 5 of the ROC report, it is stated that the Necessary Stamp Duty on transfer of property/Assets, if any is to be paid to the respective Authorities before implementation of the Scheme.
- vi. In para 6 of the ROC report, it is stated that the Registrar of Companies, Ahmedabad further submits that the Hon'ble Tribunal may direct the companies involved in the scheme to comply

with the provisions of Section 232(5) of the Companies Act, 2013 with respect to file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from date of passing order.

8.2 In response to the observations of RD, the Petitioner Companies have filed its reply before this Tribunal on 19.02.2024 vide Inward Diary No. D - 1381.

a) In response to observation at para 6(i) of RD's report, the petitioner companies to place on record the relevant facts in the matter of compliance of section 232 (3)(i) of the Companies Act, 2013 relating to payment of fees in case of transfer / merge of the authorised share capital of the petitioner transferor company in to the authorised share capital of the petitioner transferee company. In this matter, the company would like to clarify that petitioner Companies have not opted the benefit of merging of the authorised share capital and hence no specific clause has been added in the scheme. In view of

the same the authorised share capital of the petitioner transferor company will not be transferred / merged in the authorised share capital of the petitioner transferee company.

- b) In response to observation at para 6(ii) of RD's report filing an affidavit affirming that the scheme enclosed with the Company Application and Company Petition is consistent without any discrepancy or alteration, is duly confirmed by the Transferor Company. The Transferor Company is confirming that there is no change in the Scheme between Company application and Petition.
- c) In response to observation at para 6(iii) of RD's report, the Regional Director, regarding the compliances with FEMA and RBI guidelines, it is hereby confirmed that the company has complied with the FEMA and RBI guidelines and further undertake to comply with the same from time to time and undertaking of compliances are duly accepted by the Transferor company.

- d) In response to observation at para 7(ii) of RD's report, the preservation of books of accounts, papers, and records, and compliance with section 239 of the Companies Act, 2013 are accepted by the Transferor Company.
- e) In response to observation at para 7(iii) of RD's report, regarding compliance with statutory obligations of all applicable laws and the non-absolution of the Transferor company from any of its statutory liabilities upon sanctioning of the present Scheme are acknowledged by the Transferor company.
- f) In response to observation at para 7(iv) of RD's report concerning the payment of necessary stamp duty on the transfer of property / assets are accepted by the Transferor Company, and we express our willingness and hereby confirm to remit any such stamp duty as may be prescribed under the law.
- g) In response to observation at para 7(v) of RD's report, concerning compliance with the

provision of Section 232(5) of the Companies Act, 2013, to file a certified copy of the order sanctioning the scheme with the Registrar of Companies within 30 days from the date of passing / receipt of Certified copy of an order, is acknowledged by the Transferor company.

- h) In response to observation at para 7(vi) of RD's report, concerning compliance with Income Tax/ GST Law and any demand/ tax payable on the implementation of the scheme is accepted by the Transferor company, and they are obligated to fulfill it
- i) In response to observation at para 7(vii) of RD's report, concerning the cost of proceedings and related expenses of the office of the Regional Director, North-Western Region, Ahmedabad are acknowledged, and the Transferor company expresses a willingness and hereby confirm to remit any such fee as may be prescribed under the law.

j) It is further stated that no other observations/ submissions/ contentions, except those stated hereinabove, stand pending for consideration of the Hon'ble NCLT in respect of the Scheme of Amalgamation.

9. OFFICIAL LIQUIDATOR:

9.1 The Official Liquidator (hereinafter referred to as 'OL') to whom the notice was issued, has filed its Separate Reports in respect of the Transferor Companies before this Tribunal on 21.12.2023 in Inward Diary No. D-5359.

OBSERVATIONS OF THE OFFICIAL LIQUIDATOR

- i. In OL's report, it is stated that Saggezza India Private Limited Transferor Company was incorporated as a company limited by shares with the Registrar of Companies, Chennai under the Provisions of the Companies Act, 1956 on 19.09.2002. Subsequently, the company shifted its registered office from the State of Tamil Nadu to the state of Gujarat on 26.04.2022. The Corporate identification Number (CIN) of the Transferor Company is U72200GJ2005PTC132030.

- ii. In para v the OL's report, it is stated that the Transferor Company has not accepted any Deposits u/s 73 of the Companies Act, 2013 and maintaining of cost record is not applicable to the company. Further, the Transferor Company is not required to register with RBI as a NBFC.
- iii. In para vi of the OL's report, it is stated that the Income Tax Assessment of the Transferor Company has been completed upto A.Y. 2023-24.
- iv. In para viii of the OL's report, it is stated that the Certificate dated 09.03.2023 from statutory Auditor of the Transferor Company namely M/s. MSKA & Associates, Chartered Accounts, mentions:

“Based on our examination, as above, and according to the information and explanations given to us, we certify that the proposed accounting treatment in the books of Transferor Company specified in clause 8.8 of part II of the Draft Scheme is in compliance with the applicable accounting standards prescribed under Section 133 of the Act read with Companies (Accounts) Rules, 2014. The specified accounting treatment in clause 8.8 of Part II of the Draft Scheme, duly authenticated on behalf of the Company, is reproduced in Annexure I to this Certificate and is initially by us only for the purposes of identification”

- v. In para 8 of the OL report it is stated that Clause 7 of the Scheme mentions about the consideration of shares, 100 (One Hundred) Equity Share as fully paid up of ICPL (Transferee Company) for every 565 (Five Hundred Sixty Five) equity shares of SIPL (Transferor Company).
- vi. It is stated that in para 9, Clause 10 of the Scheme of Amalgamation relates to effect of scheme of Employees of the Transferor Company, upon the Scheme becoming effective, all staff, workmen and employees of the Transferor Company, if any, who are in service as on the Effective Date shall become staff, workmen and employee of the Transferee Company, without any break in their service and on the basis of continuity of service.

On perusal of above it appears that the petitioners Transferor company has made Provisions for transfer of the employees of the transferor Company to be transferred in terms of sub section 3(g) of Section 232 of companies Act, 2013.

- vii. It is stated in para 10 that that Hon'ble Tribunal may be pleased to direct the Transferor Company to preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central Government as per the Provision of Section 239 of the Companies Act, 2013.
- viii. It is stated in para 11 that the Hon'ble Tribunal may be pleased to direct the Transferor Company to ensure Statutory compliance of all applicable laws and also on sanctioning of the present Scheme, the Transferor Company shall not be absolved from any of its Statutory liabilities, in any manner.
- ix. It is stated in para 12 that Saggezza India Private Limited, being the Transferor Company, may be dissolved without following the process of winding-up in terms of sub-section 3(d) of Section 232 of the Companies Act, 2013. Further, the Transferor company being dissolved, the fee, if any paid by the Transferor Company on its Authorized Share Capital shall be set-off against any fees payable by the Transferee Company on its Authorized Capital subsequent to the

amalgamation in terms of sub section 3(i) of Section 232 of Companies Act, 2013.

- x. In para 13 it is stated that the cost of proceedings and related expenses of the office of the Official Liquidator for submitting this report if Rs.10,000/- approximately. Therefore, this Hon'ble Tribunal may be pleased to direct the Transferee Company to pay such cost and expenses to the Office of Official Liquidator for the Transferor Company or any other amount as may be considered appropriate by this Hon'ble Tribunal by way of submitting Demand Draft/ Banker's cheque only in favour of the Official Liquidator, payable at Ahmedabad.
- xi. In para 14 it is stated that, the Hon'ble Tribunal may be pleased to direct the Petitioner Company to lodge a certified copy of the order along with the scheme, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any
- xii. In para 15 it is stated that, That, Hon'ble Tribunal may direct the companies involved in the scheme to comply with Provision of Section 232(5) of Companies Act, 2013 with respect to file certified copy of order sanctioning the scheme

with Registrar of Companies within 30 days from the date of passing order.

9.2 In response to the observations of Official Liquidator, the Petitioner Companies have filed its reply before this tribunal on 19.02.2024 vide Inward Diary No. D - 1385.

- i. In response to the Observation in para no. 10 of the OL's Report, the Petitioner Transferor Companies undertakes to preserve its book of accounts, papers and records and that the same shall not be disposed of without the prior permission of Central Government as per the Provision of Section 239 of the Companies Act, 2013.
- ii. In response to the Observation in para 11 of the OL's report, the Petitioner Transferor Companies undertakes to ensure statutory compliance of all applicable laws. Further the Petitioner Transferor Companies also undertakes that on sanctioning of the Scheme, in shall not be absolved from any of its statutory liabilities, in any manner.

- iii. In response to the Observation in para 12 of the OL's report, the Petitioner Transferor Company submits that the Scheme contains provisions for aggregation of the authorized share capital of the Petitioner Transferor Companies with the Petitioner Transferee Company. The Petitioner Companies undertakes to abide and comply by the terms of sub-section 3(i) of Section 232 of the Companies Act, 2013.
- iv. In response to observation at para 13 of OL's report, the Petitioner Transferor Companies undertakes to pay such cost and expenses to the office of Official Liquidator as is quantified and directed by this Hon'ble Tribunal.
- v. In response to observation at para 14 of OL's report, the Petitioner Companies undertakes to lodge a certified copy of order along with the Scheme, with the concerned Superintendent of Stamps for the purposes of adjudication of stamp duty payable, if any.

vi. In response to observation at para 15 of OL's report, the Petitioner Companies undertakes to comply with the provisions of Section 232(5) of the Companies Act, 2013 with respect to filing of certified copy of the order sanctioning the Scheme with the Registrar of Companies within 30 days from the date of passing of the order by this Hon'ble Tribunal.

10. INCOME TAX DEPARTMENT:

Income Tax Department filed its report before this Tribunal on 25.10.2023 under Inward Diary No. R - 699 stating that the PAN of Infostretch corporation (India) Private Limited (Transferee Company) (AADCI5195G) lies with this office i.e. Circle-2(1)(1) and on verification from ITBA portal it is found that no proceedings as well as demand is pending in the case of Infostretch corporation (India) Private Limited.

11. RESERVE BANK OF INDIA

Reserve bank of India has filed its report on 05.10.2023 before this Tribunal and states that the duty of the companies, undergoing compromise/ arrangement /

amalgamation to comply with the requirements of various laws including the rules, regulations and guidelines prescribed by RBI, viz. The companies may have to comply with foreign exchange management act, 1999, and the rules and regulations made thereunder. It is also submitted that as a regulator it will not be ethical on the part of RBI to vet individual cases, as it will preclude it from taking action on contraventions, if any, committed by such companies.

11.1 In response to the observations of the Reserve Bank of India, the Petitioner Companies have filed its reply before this tribunal on 19.02.2024 vide Inward Diary No. D - 1381.

I. It is stated that pertaining to adherence to the various laws including the rules, regulations, and guidelines prescribed by the Reserved Bank of India for entities undergoing compromise, arrangement, or amalgamation, are duly acknowledged and accepted by the Transferee Company.

II. It is further stated that no other observations / submissions/ contentions, except those stated hereinabove, stand pending for consideration of the Hon'ble NCLT in respect of the Scheme of Amalgamation.

12. VALUATION REPORT

As per the Valuation Report duly conducted by, Mr. Abhishek Chhajed, Registered Valuer having RV Registration No. – IBBI/RV/03/2020/13674, it is seen that the Transferor Company i.e. Seggezza India Private Limited the Fair Value per share is 2890.21 and for the Transferee Company i.e. Infostretch Corporation (India) Private Limited the Fair Value per share is 16,341.75, and the said valuation report is annexed at page No. 179 in the Petition.

13. ACCOUNTING TREATMENT

Learned Counsel for the Petitioner Companies have stated that the Statutory Auditors has certified that the Accounting Treatment proposed in terms of clause 8 of the Scheme is in conformity with the applicable

Accounting Standards. The Certificate issued by the Statutory Auditors certifying the Accounting Treatment of the Petitioner Companies is placed at '**Annexure C (Colly)**' of the typeset.

14. OBSERVATIONS OF THIS TRIBUNAL:

A. After analysing the Scheme in detail, this Tribunal is of the considered view that the scheme as contemplated amongst the petitioner companies seems to be *prima facie* beneficial to the Companies and will not be in any way detrimental to the interest of the shareholders of the Petitioner Companies. Considering the record placed before this Tribunal and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Amalgamation appended at "**Annexure C**" to the typed set filed along with the Company Petition as well as the prayer made therein.

B. Learned Counsel for the Petitioner Companies submitted that no Winding up/Liquidation

Proceedings/Corporate Insolvency Resolution Process proceedings have been filed or pending against the Petitioner Companies under the Companies Act, 2013 or the corresponding provisions of the Companies Act, 1956. Further, no investigation or proceedings under the Companies Act, 1956/ Companies Act, 2013 have been instituted or are pending in relation to the Petitioner Companies.

- C. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.
- D. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting approval of the said loan assignments and exemption from payment of stamp

duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

E. Further, it becomes relevant to discuss that in Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi has made the following observations with regard to the right of the Income Tax Department in the Scheme of Amalgamation,

*“taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in **RE: Vodafone Essar Gujarat Limited v. Department of Income Tax (2013)353 ITR 222 (Guj)** and the same being also affirmed by the Hon'ble Supreme Court and as reported in **(2016) 66 taxmann.com.374(SC)** from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated*

April 15,2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutory dues from the transferor or transferee or any other person who is liable for payment of such tax dues, the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned.”

15. THIS TRIBUNAL DO FURTHER ORDER:

- i. The Scheme of Amalgamation as annexed herewith as **“Annexure-A”** is hereby sanctioned and it is declared that same shall be binding on the Petitioner Companies and their Shareholders and Creditors and all concerned under the scheme;
- ii. All the properties, rights and powers of Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Act, stand transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Companies.

- iii. All licenses, permissions, permits, approvals, certificates, clearances, authorities, leases, tenancy, assignments, rights, claims, liberties, special status, other benefits or privileges and any power of attorney relating to the Transferor Company shall stand transferred to and vested in the Transferee Company, without any further act or deed. The Transferee Company shall be bound by the terms thereof, the obligations and duties thereunder, and the rights and benefits under the same shall be available to the Transferee Company.
- iv. All the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- v. All contracts, agreements, insurance policies, bonds and all other instruments of whatsoever nature or description, of the Transferor Company, shall stand

transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually against the Transferee Company.

- vi. All taxes paid or payable by the Transferor Company including existing and future incentives, un-availed credits and exemptions, the benefit of carried forward losses and other statutory benefits, which shall be available to and vest in the Transferee Company. The Tax liability of the Transferor Company shall become a liability of the Transferee Company and any proceedings against the Transferor Company shall continue against the Transferee Company.
- vii. All proceedings now pending by or against the Transferor Company shall be continued by or against the Transferee Company.
- viii. That the Appointed Date for the scheme shall be **1st April, 2022** as mentioned in **Clause 1.2** of the Scheme.

ix. Consideration:

Upon coming into effect of the Scheme and in consideration for amalgamation of the Transferor Company with the Transferee Company, ICPL shall without any further application or deed, issue and allot equity shares of face value of INR 10/- each, credited as fully paid up, to all the shareholders of SIP, fully or proportionately, whose name appears in the register of members itself as on the Record Date or to their respective heirs, executors, administrators, legal representatives or the successors in title as may be recognized by the Board of Directors of the Transferee Company in the following manner, in accordance with the share swap, ratio determined by the Registered Valuer:

“100(one Hundred) new equity share of Rs.10/- (Rupees Ten) each, fully paid up of ICPL (Transferee Company) to be issued for every 565 (Five Hundred Sixty Five) equity shares of Rs. 10/- (Rupees Ten) each held by the shareholders of SIP (Transferor Company) on the Record Date.”

- x. All employees in the service of the Transferor Company shall be deemed to have become the employees of the Transferee Company on a date on which the Scheme finally takes effect on the basis that their services shall be deemed to have been continuous and not have been interrupted by reasons of the said transfer than those on which they were/are engaged, as on the Effective Date.
- xi. The Petitioner Companies within thirty days of the date of the receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the entire Undertaking of the Transferor Company shall stand transferred to the Transferee Company and the Registrar of Companies shall place all documents relating to the Petitioner Companies to the file kept by him in relation to the Transferee Company and the files relating to the said two companies shall be treated accordingly;

- xii. All concerned Authorities to act on the copy of this order along with the Scheme authenticated by the Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme immediately;
- xiii. The Petitioner Companies are directed to lodge a copy of this Order and the approved Scheme and Schedule of Assets of the Petitioner Transferor Companies attached as **Annexure-B** with this order, duly authenticated by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for adjudication of stamp duty, and pay requisite stamp duty payable, if any, within 60 days from the date of this Order.
- xiv. The Petitioner Companies are further directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-form INC-28 in addition to a physical copy within 30 days from the date of issuance of the certified copy of the Order by the Registry as per relevant provisions of the Act.

- xv. The legal fees and expenses for the office of the Regional Director are quantified at Rs. 20,000/-. The said fees to the Regional Director shall be paid by the Transferee Company.
- xvi. The legal fees and expenses for the office of the Official Liquidator are quantified at Rs. 20,000/-. The said fees to the Official Liquidator shall be paid by the Transferee Company.
- xvii. The Income Tax Department will be free to examine the aspect of any tax payable as a result of the sanction of the Scheme and if it is found that the Scheme of Arrangement ultimately results in tax avoidance or is not in accordance with the applicable provisions of Income Tax Act, then the Income Tax Department shall be at liberty to initiate appropriate course of action as per law. Any sanction of the Scheme of Arrangement under Sections 230-232 of the Income Tax Act, 2013 shall not adversely affect the rights of Income Tax Department or any past, present or future proceedings and the sanction of the scheme shall

not come in its way for the appropriate course of action as per law for the tax liabilities, if any.

xviii. Any person aggrieved shall be at liberty to apply to this Tribunal for any directions that may be necessary.

16. Accordingly, the Company Petition stands **allowed** on the aforementioned terms.

-sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

VP