

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH : C-IV**

**CP(CAA)/17/MB/2024**

**IN**

**CA(CAA)/201/MB/2023**

*In the matter of*

*The Companies Act, 2013*

*AND*

*In the matter of*

*Sections 230-232 and other applicable provisions of the Companies Act, 2013 and rules made thereunder;*

*AND*

*In the matter of*

*Scheme of Amalgamation of (Merger by Absorption) of Ascendas IT Park (Pune) Private Limited ('First Petitioner Company' or 'Transferor Company') with Ecospace IT Park Private Limited ('Second Petitioner Company' or 'Transferee Company') and their respective Shareholders.*

Ascendas IT Park (Pune) Private Limited ... First Petitioner Company/  
[CIN: U45202PN2005PTC130716] Transferor Company

Ecospace IT Park Private Limited ... Second Petitioner  
Company  
[CIN: U45200PN2022PTC207687] Transferee Company

***Order delivered on 17.04.2024.***

Coram:

Ms. Anu Jagmohan Singh  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances:*

For the Petitioner(s):

Mr. Ajit Singh Tawar and Mr.  
Kushal Kumar i/b Ajit Singh  
Tawar & Co., Advocates for  
Petitioner Companies

For the Regional Director  
(WR):

Mr. Tushar Wagh, Deputy  
Director from the Regional  
Directors Office

## ORDER

1. Heard the Ld. Counsel for the Petitioner Company and the Officer of the Regional Director, Western Region, Mumbai ("RD"). No objector has come before this Tribunal to oppose the Scheme nor has any party controverted any averments in the Petition.

2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of Amalgamation (Merger by Absorption) of Ascendas IT Park (Pune) Private Limited ('Transferor Company') with Ecospace IT Park Private Limited ('Transferee Company') and their respective shareholders.
3. The Counsel for the Petitioner Companies further submits that the First Petitioner Company is engaged in the business of developing and operating IT/ITES parks on a SEZ land. The Second Petitioner Company is engaged in the business of building, plots and flat and properties belonging to the company acquired by it.
4. The Board of Directors of the First Petitioner Company and the Second Petitioner Company have approved the said Scheme in their respective Board Meetings held on 29<sup>th</sup> Day of June 2023 and on 15<sup>th</sup> Day of June 2023 respectively.
5. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Petition have been filed in consonance with the order dated 31st Day of October 2023, passed by this Tribunal in the connected Company Scheme Application bearing C.A.(CAA)/201/MB-IV/2023.
6. The Learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all

requirements as per the directions of this Tribunal and they have filed necessary affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted by the Petitioner Companies.

7. The Learned Counsel for the Petitioner Companies states that, by sanction of this Scheme of Amalgamation (Merger by Amalgamation) of Ascendas IT Park (Pune) Private Limited ('Transferor Company') with Ecospace IT Park Private Limited ('Transferee Company') and their respective Shareholders will be able to achieve the following rationale:
- a) The proposed amalgamation will result in organizational efficiencies, reduction in overheads, administrative, operational costs and other expenses and optimal utilization of various resources. It will prevent cost duplication and the resultant operations would be substantially cost-efficient.
  - b) Transferor Company and the Transferee Company are under common management and control. The proposed amalgamation of the Transferor Company with the Transferee Company would result in business synergy, consolidation and pooling of their resources.
  - c) The proposed amalgamation will result in significant reduction in multiplicity of legal and regulatory compliances which at present is required to be made separately by the Transferor Company and the Transferee Company.

- d) This arrangement will provide opportunities for creating strategic partnerships and flexibility of fund raising for future growth and expansion and to create a business structure, which is geared to gain benefits from possible growth opportunities
  - e) The Scheme is not in any manner prejudicial to the interests of shareholders or creditors of either the Transferor Company or the Transferee Company. The Scheme is not prejudicial or against public interest in any manner and would serve the interest of all the shareholders, creditors and other stakeholders of the Transferor Company and the Transferee Company
8. The Learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have their Share Exchange Ratio as follows:

*“1 share [One fully paid up equity shares of INR 10 (Indian Rupees ten only) of the Transferee Company shall be issued and allotted for every 1 share [one equity shares of INR 10 (Indian Rupees ten only) each held in the Transferor Company.”*

9. The Learned Counsel for the Petitioner Companies state that as the Transferor Company is a subsidiary of the Transferee Company, hence no consideration shall be payable pursuant to the Amalgamation of the Transferor Company with the Transferee Company, and the shares held by the Transferee Company in the Transferor Company shall stand cancelled without any further act, application or deed.

10. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its Report dated 13<sup>th</sup> day of February, 2024, inter alia stating therein the observations on the scheme as stated in paragraph 2 (a) to (k) of the said Report. In response to the observations made by the Regional Director, the Petitioner Companies have filed reply to affidavit cum rejoinder on 21<sup>st</sup> day of February, 2024 and have given necessary clarifications and undertakings. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

<i>Sr. No. As per Report</i>	<i>RD Report / Observations</i>	<i>Response of the Petitioner Companies</i>
2(a)	<i>That on examination of the report of the Registrar of Companies, Pune dated 13.02.2024 for Petitioner Companies (Annexed as Annexure A-1) that the Petitioner Companies falls within the jurisdiction of ROC, Pune. It is submitted that no complaint/ representation regarding the proposed scheme of Amalgamation has been received in the matter of Petitioner</i>	<i>In so far as observations made in paragraph 2(a) of the Report is concerned, the Petitioner Companies state that the same is a matter of record. The Petitioner companies has complied with Annual Filing of financial statements and annual return for the year up to 31st March, 2023.</i>

<p>2(a)(i)</p>	<p><i>Companies. Further, the Petitioner Companies has filed Financial Statements up to 31.03.2023.</i></p> <p><i>The ROC has further submitted that in its report dated 08.12.2023 which are as under:-</i></p> <p><i>That the ROC Mumbai in its report dated 08.12.2023 has also stated that no Inquiry, Inspection, Investigations, Prosecutions, and</i></p>	<p><i>Response to observation in paragraph 2(a)(i): The Petitioner Companies state that the same is a matter of record.</i></p>
<p>2(a)(ii) (a)</p>	<p><i>Complaints under CA, 2013 have been pending against the Petitioner Companies.</i></p> <p><i>Further ROC has mentioned as follows: -</i></p> <p><i>The Applicant Companies are neither vanishing nor scam related companies.</i></p>	<p><i>Response to observation in paragraph 2(a)(ii)(a): The Petitioner Companies state that the observation of Registrar of Companies, Maharashtra, Pune is a matter of record and the same may be considered by the Hon'ble Tribunal.</i></p>
<p>2(a)(ii) (b)</p>	<p><i>b. Company Secretary has not been appointed in Ascendas IT Park (Pune) Private Limited (Transferor Company), as per the</i></p>	<p><i>Response to observation in paragraph 2(a)(ii)(b): The Transferor Company state that, it has duly complied with the requirement of the provision of</i></p>

<p><i>requirement of section 203 of Companies Act, 2013.</i></p> <p><i>Hence, the Petitioner Companies shall undertake to submit detail reply against observations mentioned above.</i></p>	<p><i>Section 203, of Companies Act, 2013 and the provisions of erstwhile Companies Act, 1956.</i></p> <p><i>Further, the details of the appointment of the Company Secretary till date are as follow:</i></p> <ul style="list-style-type: none"><li><i>- The Transferor Company had duly appointed Mr. Prashant Patil as Company Secretary w.e.f. 18th February, 2008 under provisions of erstwhile Companies Act, 1956 and said Company Secretary resigned w.e.f. 30th July, 2021. (Copy of appointment and resignation form attached and marked as Annexure A-1 for reference).</i></li><li><i>-The Transferor Company has duly appointed Ms. Arati Godbole as Company Secretary w.e.f. 16th December, 2021 under provisions of Companies Act, 2013 and said Company Secretary resigned w.e.f. 28th February, 2022. (Copy of</i></li></ul>
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		<p><i>appointment and resignation form attached and marked as Annexure A-2 for reference).</i></p> <p><i>-The Transferor Company has duly appointed Ms. Radhika Borwankar as Company Secretary w.e.f. 1st April, 2022 under the provisions of Companies Act, 2013 and the said Company Secretary resigned w.e.f. 15th September, 2023(Copy of appointment and resignation form attached and marked as Annexure A-3 for reference).</i></p> <p><i>The Transferor Company has duly appointed Ms. Radhika Borwankar pursuant to section 203(3) of the Companies Act, 2013 as Company Secretary w.e.f. 01 January, 2024 (Copy of appointment form attached and marked as Annexure A-4 for reference) and till date she is on Board as a Company</i></p>
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		<p><i>Secretary of the Company. In view of the same, the Company is in compliance of the requirement of section 203 of the Companies Act, 2013. Further the Second Petitioner Company / Transferee Company also undertakes to comply with the Section 203 of the Companies Act, 2013.</i></p>
2(b)	<p><i>Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies.</i></p>	<p><i>In so far as observations made in paragraph 2(b) of the Report is concerned, the Petitioner Companies undertake that it shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 and affirm that the Transferee Company shall pay the difference of fees and stamp duty, if any, payable on its authorized capital after set-off against fees and stamp duty, if any, payable on its authorized capital after set-off against fees and stamp-duty paid, by the</i></p>

		<i>Transferor Company on its authorized capital subsequent to amalgamation.</i>
2(c)	<i>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the resultant company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.</i>	<i>In so far as observations made in paragraph 2(c) of the Report is concerned, the Petitioner Companies undertake to pass necessary accounting entries in connection with the Scheme as per AS -14 (IND AS-103) for accounting treatment, to the extent applicable. The Petitioner Companies also undertake to comply with the other applicable Accounting Standards, such as AS-5 (IND AS-8) etc., to the extent applicable.</i>
2(d)	<i>The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.</i>	<i>In so far as the observations made in paragraph 2(d) of the Report is concerned, the Petitioner Companies confirm and undertakes through this affidavit that the Scheme enclosed to the Company Scheme Application and</i>

		<i>Company Scheme Petition are one and same and there is no discrepancy, or no change is made.</i>
<i>2(e)</i>	<i>The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned.</i>	<i>In so far as the observations made in paragraph 2(e) of the Report is concerned, the Petitioner companies provide that they have already served notices under the provisions of Section 230(5) of the Companies Act, 2013 on the concerned authorities in accordance with the directions of this Tribunal. Further, Affidavit of Service for the same have also been filed with this Tribunal.</i>
<i>2(f)</i>	<i>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with</i>	<i>In so far as the observations made in paragraph 2(f) of the Report is concerned, the Petitioner Companies submits that, by order made by the Hon'ble National Company Law Tribunal, Mumbai Bench</i>

<p><i>7 sub section (3) to (5) of Section 230 of the Act and the Minutes, thereof are duly placed before the Tribunal.</i></p>	<p><i>on the 31st October, 2023, the Company Scheme Application No. CA(CAA)/201/MB-IV/2023 filed by the Petitioner Companies was admitted by the Division Bench at NCLT, Mumbai Bench (Tribunal). The Hon'ble Tribunal was pleased to dispense with the convening and holding of the meetings of the equity shareholders of the Petitioner Companies in view of the fact that consent affidavits were obtained from 99.99% of the entire equity share holding of the First Applicant Company and 100% equity shareholders of the Second Applicant Company.</i></p> <p><i>-The First Applicant Company was directed to issue notice to the balance one equity shareholder whose consent was not received. There are no Secured Creditors in both the</i></p>
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		<p><i>Applicant Companies so question of holding meetings in this regard does not arise. The Hon'ble Tribunal was pleased to dispense with the convening and holding of the meetings of the unsecured creditors of the Petitioner Companies in view of the fact that consent affidavits were obtained from 97.4% of the total unsecured creditors of the First Applicant Company and 100% unsecured creditor of the Second Applicant Company. The First Applicant Company was directed to issue notice to the remaining unsecured creditors whose consent was not received.</i></p> <p><i>Pursuant to the directions contained in the said order of the Hon'ble Tribunal, the First Petitioner Company has served a notice upon its remaining unsecured creditors and remaining 1 equity share holder</i></p>
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		<i>with a direction that they may submit their representations, if any, to the Tribunal within 30 days.</i>
2(g)	<p><i>As per Definition of the Scheme, "Appointed Date" means the 11th day of May, 2023 maybe fixed or approved by the National Company Law Tribunal at Mumbai or such other competent authorities;</i></p> <p><i>"Effective Date" means the date on which the certified or authenticated copies of the order(s) sanctioning the Scheme, passed by the National Company Law Tribunal of Judicature at Mumbai are filed with the Registrar of Companies, Pune, Maharashtra;</i></p> <p><i>"Record Date" means the date to be fixed by the Board of the Transferee Company for determining the Equity</i></p>	<p><i>In so far as the observations made in paragraph 2(g) of the Report is concerned, the Petitioner Companies state that, Appointed Date as per Clause 1.4 of the Scheme 11th May, 2023. which is in a compliance with Section 232(6) of the Companies Act, 2013 and in compliance of the circular No. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs and further submits that the Scheme shall be effective from the Appointed Date.</i></p>

	<p><i>Shareholders of the Transferor Company to whom the equity shares of the Transferee Company will be allotted pursuant to the Scheme.</i></p> <p><i>It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	
2(h)	<p><i>Petitioner Companies shall undertake to comply with the directions of concerned sectoral Regulatory, if any.</i></p>	<p><i>In so far as the observations made in paragraph 2(h) of the Report is concerned, the Petitioner Companies undertake to comply with the directions of the Income Tax Department &amp; GST Department, if any.</i></p>
2(i)	<p><i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.</i></p>	<p><i>In so far as the observations made in paragraph 2(i) of the Report is concerned, the Petitioner Companies undertake to comply with the</i></p>



				directions of sectoral regulator(s), if any.	
2(j)	As per shareholding pattern as on 31.03.2023 submitted by the Petitioner company, details of shareholding are as follows:			In so far as the observations made in paragraph 2(j) of the Report is concerned, the Petitioner Companies states	
	Sr. No.	Petitioner Company	Name of Shareholder	% of shares held	Remains per S.90 of the Companies Act, 2013, Form BEN-2 has to be filed for giving declaration with respect to the
	1	Ascend as IT Park Private Limited	Ascendes India Development VII Pte. Ltd, Singapore	78.5 %	Significant beneficial owners of the company, disclosing their interest in the company by way of shareholding or voting rights.
			Maharashtra Industrail Development Corporation	21.5 %	Significant beneficial owners affected by individuals holding indirectly, or together with any direct holdings, not less than ten percent of the shares or voting rights. The Petitioner Companies hereby submit that there is/are no individual(s), holding indirectly, or together with any direct holdings, not less than ten percent, of the shares or voting rights in the

				<p><i>MCA21 of the Petitioner Companies (or holding majority stake in shares/voting rights in the shares of the respective registered corporate shareholders of the (Petitioner Companies), and hence, filing of Form BEN-2, as per the provisions of Section 90 of the Companies Act, 2013, is not applicable to the Petitioner Companies. Further, the</i></p>
2	<i>Ecospace IT Park Private Limited</i>	<i>Ascendas Property Fund (India) Pte. Ltd</i>	<i>100%</i>	<p><i>Petitioner Companies undertake to comply with the provisions of Section 90 of the Companies Act, 2013 read with Companies Rules, 2018 as amended from time to time and make necessary filings with the Registrar of Companies as and when the provisions of Section 90 of the Companies Act, 2013 are triggered and to the extent as applicable.</i></p>
<p><i>No Form BEN-2 has been filed by any of the Petitioner Company as per records available at MCA21 Portal, hence Petitioner Companies shall undertake to comply with the provisions of section 90 of Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder and to file Form BEN-2 for declaring name of the significant beneficial owner with concerned ROC.</i></p>				

2 (k)	<i>The Petitioner Companies shares held by foreign companies; hence Hon'ble NCLT may kindly direct the Petitioner Companies to comply with the Regulations of RBI/FEMA/FERA.</i>	<i>As regard to observation made in the para 2 (k) of the report of the Regional Director, the Petitioner Companies undertake to comply with the regulations of the RBI / FEMA / FERA as may be applicable.</i>
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11. The Official Liquidator has filed its Report dated 29<sup>th</sup> day of January, 2024, inter alia stating therein the observations in paragraph nos. 5 and 6 of the said Report. In response to the observations made by the Official Liquidator, the First Petitioner Company have filed reply to affidavit cum rejoinder on 21<sup>st</sup> day of February, 2024 and have given necessary clarifications and undertakings. The observations made by the Official Liquidator and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

<b><i>Sr. No. As per records</i></b>	<b><i>Liquidator Report/ Observations</i></b>	<b><i>Response from the Petitioner Companies</i></b>
5.	<i>With reference to clause No. 8.1 of the Scheme it is stated that such clauses override the provisions of Companies Act, 2013 namely Section 232(3)(i) which inter-alia</i>	<i>As regard to observation made in the para 5 of the report of the Official Liquidator, the First Petitioner Companies undertake to comply with</i>

	<p><i>provides that, 'if a company is dissolved, the fees paid by such company on its Authorized Capital shall be set off against any fees payable by the transferee company on its Authorized Capital. Hon'ble Tribunal may be pleased to direct Transferee Company to pay differential amount, if any, after setting off fees already paid by the Transferor Company.</i></p>	<p><i>section 232(3)(i) of the Companies Act, 2013 and affirm that the Transferee Company shall pay the difference of fees and stamp duty, if any, payable on its authorized capital after set-off against fees and stamp duty paid by the Transferor Company on its authorized capital subsequent to amalgamation.</i></p>
6.	<p><i>It has been noticed from the Financial Statement as at 31.03.2023 of the Transferor Company owes Rs.30.00 Lakhs to MSMED Act, 2006 the buyer has make payment within 45 days of it becoming due. In case of failure to pay to the MSME supplier, the company is liable to pay compound interest rate. Hon'ble Tribunal may require the Transferor Company to clarify whether they have paid the said amount to the MSME Creditor or whether there is any dispute with</i></p>	<p><i>As regard to observation made in the para 6 of the report of the Official Liquidator, the First Petitioner Company herewith confirm that the MSME dues were paid off within a period of 45 days of it becoming due and there were no outstanding dues payable beyond 45 days. Hence, the question of compound interest does not arise for the Petitioner Companies.</i></p>

	<p><i>respect to the payment of such amount. In case of dispute with regard to amount due whether the reference has been made to MSME facilitation council constituted by the respective Government or not. Company may also be required to produce form MSME-1 filed with the ROC from the above said dues.</i></p>	<p><i>- The First Petitioner Companies further confirm that there was no dispute with respect to the payment of MSME dues and question of reference to be made to MSME facilitation council constituted by the respective Government does not arise and filing of MSME - 1 was not required.</i></p>
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12. The Income Tax Department has filed its Notice dated 20<sup>th</sup> day of February, 2024, inter alia stating therein the observations in paragraph no. 2 of the said Notice. In response to the observations made by the Income Tax Department, the Petitioner Companies have filed reply to affidavit cum rejoinder on 27<sup>th</sup> day of February, 2024 and have given necessary clarifications and undertakings. The observations made by the Income Tax and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

<b><i>Sr. No. As per records</i></b>	<b><i>Income Tax Report/ Observations</i></b>	<b><i>Response from the Petitioner Companies</i></b>
2.	<i>That on examination of the records of the Income Tax, Pune</i>	<i>As regard to observation made in Paragraph No.2 of the</i>

<p><i>dated 20.02.2024 for Petitioner Companies, it is seen that, total demand of Rs. 11,89,53330/- is outstanding against the Company as on date, the details of demand as under:</i></p>					<p><i>Notice of the Income Tax department.</i></p> <p><i>The brief facts in respect of the demand amounting to Rs. 20,39,470 for AY 2018-19 and Rs. 11,69,13,860 for AY</i></p>
<i>A.</i>	<i>Dem and Rais ed Date</i>	<i>Dem and Raise d Unde r Secti on</i>	<i>Dem and Outst andin g (Rs.)</i>	<i>Amo unt Colle ctible</i>	<p><i>2023-24 as highlighted by the Deputy Commissioner of Income Tax are as under:</i></p> <p><i>i. For Assessment Year ('AY') 2018- 19, the Transferor Company had filed its Return of Income ('ROI') determining a tax liability of Rs.</i></p>
<i>2018-2019</i>	<i>27/08/2020</i>	<i>154</i>	<i>20,39,470</i>	<i>20,39,470</i>	<p><i>5,52,90,377 which was discharged by way of Tax Deducted at Source ('TDS') amounting to Rs. 6,05,25,325 (as in form 26AS) and</i></p>
<i>2023-24</i>	<i>09/01/2024</i>	<i>143(1)</i>	<i>11,69,13,860</i>	<i>11,69,13,860</i>	<p><i>advance tax of Rs. 21,75,803. Accordingly, a refund of Rs. 74,10,750 was claimed by the Transferor Company.</i></p>
			<i>Total</i>	<i>11,89,53,330/-</i>	<p><i>Thereafter, the aforesaid ROI was processed and an intimation under section</i></p>

		<p><i>143(1) of the Income Tax Act 1961 (“the Act”) Act was issued wherein the Income tax authorities (‘ITA’) had only considered TDS/ advance tax amounting to Rs. 5,37,15,481 against the TDS/ advance tax payment for AY 2018-19 of Rs 6,27,01,128 resulting into an income tax demand of Rs. 20,23,883.</i></p> <p><i>- In response to such intimation, the First Petitioner Company had filed rectification applications on 02 March 2020, 15 June 2020 and 05 August 2020 highlighting that the TDS claimed by the Company is in line with the TDS appearing in Form 26AS and short grant of TDS credit by the ITA was a mistake apparent from record – copy of Form 26AS is attached as Annexure A1 to</i></p>
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		<p><i>the Joint Affidavit in Reply to Report of Income Tax Authorities dated 27th February 2024. However, ITA has retained the demand raised earlier while passing the rectification orders as on 03 June 2020, 12 July 2020 and 27 August 2020.</i></p> <p><i>- Aggrieved by such rectification orders, the First Petitioner Company had preferred an appeal under section 246A(1)(c) of the Act before the CIT(A) where the matter is currently pending. Further, the First Petitioner Company has filed a stay application requesting the AO to grant stay on demand till the appeal preferred before the CIT(A) for the subject AY is disposed-off. Copy of e-Proceeding Response Acknowledgement is attached</i></p>
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		<p><i>herewith as Annexure A2 to the Joint Affidavit in Reply to Report of Income Tax Authorities dated 27th February 2024.</i></p> <p><i>ii. For AY 2023-24, the First Petitioner Company had filed its ROI determining a tax liability of Rs. 15,49,82,694 discharging it by way of TDS amounting to Rs. 14,14,72,552/- (as in form 26AS) and advance tax of Rs. 1,40,00,000/-. Accordingly, a refund of Rs. 4,89,860 was claimed by the First Petitioner Company. Thereafter, the aforesaid ROI was processed and an intimation under section 143(1) of the Act was issued wherein the ITA had only considered TDS/ advance tax amounting to INR 5,33,55,492 against the TDS/ advance tax payment</i></p>
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		<p><i>for AY 2023-24 of 15,54,72,556 resulting into an income tax demand of INR 11,69,13,860. In response to such intimation, Petitioner Companies has filed a rectification request over the Income tax portal on 06 February 2024 due to short grant of TDS by the ITA – copy of Form 26AS for AY 2023-24 is attached as Annexure B1 to the Joint Affidavit in Reply to Report of Income Tax Authorities dated 27th February 2024. Further, the Petitioner Companies has also filed a stay application requesting the AO to grant stay on demand till the disposal of the rectification application. Rectification order in this regard is awaited. Copy of proof of online rectification request is attached herewith as</i></p>
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		<p><i>Annexure B2 to the Joint Affidavit in Reply to Report of Income Tax Authorities dated 27th February 2024.</i></p> <p><i>b. Further, the Petitioner Companies have already submitted in Clause 12.2 and 12.3 of the Scheme of Amalgamation filed before the Hon'ble tribunal:</i></p> <p><i>“12.2 All tax assessment/ adjudication proceedings/ appeals of whatsoever nature by or against the Transferor Company pending and/ or arising at the Appointed Date and relating to the Transferor Company shall be continued and/ or enforced until the Effective Date by or against the Transferor Company. As and from the Effective Date, the tax proceedings shall be continued and enforced by or against the Transferee</i></p>
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		<p><i>Company in the same manner and to the same extent as would or might have been continued and enforced by or against the Transferor Company."</i></p> <p><i>"12.3 The aforementioned proceedings shall not abate or be discontinued nor be in any way prejudicially affected by reason of the amalgamation of the Transferor Company with the Transferee Company or anything contained in the Scheme."</i></p> <p><i>c. Further, it is also submitted by the Petitioner Companies in paragraph 14 of the Joint Affidavit in reply to the report of the Regional Director and Official liquidator filed before the Hon'ble tribunal:</i></p> <p><i>"As regard to observation made in the para 2 (h) of the report of the Regional</i></p>
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		<i>Director, Petitioner Companies undertake to comply with the directions of the Income Tax Department &amp; GST Department, if any".</i>
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13. Mr. Tushar Wagh, Dy. Director (WR), Mumbai, Maharashtra appeared on behalf of the Regional Director and submitted that their observations/objections have been satisfactorily explained by the Petitioner Company and are acceptable. Hence, the Regional Director does not have any further objection to the proposed Scheme Company Petition.
14. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any Authority or Creditors or Members or any other stakeholders.
15. Since all the requisite statutory compliances have been fulfilled, the Petition filed by the Petitioner Company is made absolute in terms of prayer clauses (a) of the Company Scheme Petition.
16. In view of the above, the Scheme is hereby sanctioned with the 'Appointed Date' as May 11, 2023.

17. The Petitioner Company is directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with e-Form INC-28, within 30 days from the date of receipt of the certified copy of this order along with the sanctioned Scheme from the Registry duly certified by the Deputy/Assistant Registrar of the National Company Law Tribunal, Mumbai Bench.
18. The Petitioner Company is directed to lodge a copy of this Order along with a copy of the Scheme duly certified by the Deputy/ Assistant Registrar of the National Company Law Tribunal, Mumbai Bench with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days of receipt of the certified copy of this order.
19. All concerned authorities to act on the certified copy of this order along with the sanctioned Scheme, duly certified by the Deputy/Assistant Registrar of the National Company Law Tribunal, Mumbai Bench.
20. Petitioner Company is at liberty to apply to this Tribunal in this matter for any directions or modifications that may be necessary.
21. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition bearing CP(CAA)/17/MB-IV/2024 is

made absolute in terms of prayers clause of the said Company Scheme  
Petition.

22. With the above directions, CP(CAA)/17/MB-IV/2024 is allowed  
and disposed of. File to be consigned to records.

23. Ordered accordingly.

Sd/-

**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**  
**17.04.2024.**

Sd/-

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**