

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH-V**

**C.P. (C.A.A.) / 216 / MB / 2023**

**IN**

**C.A. (CAA) / 80 / MB / 2023**

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and rules framed thereunder;

AND

In the matter of Scheme of Amalgamation (Merger by Absorption) of Great Software Laboratory Private Limited (“Transferor Company” or “Petitioner Company”) having CIN U72100PN2003PTC018277 by GAVS Technologies Private Limited (“Transferee Company” or “Non-Petitioner Company”) having CIN U72200TN2007PTC062974 and their respective shareholders (“Scheme”)

**Great Software Laboratory Private Limited**

CIN: U72100PN2003PTC018277

.....Transferor Company / Petitioner Company

**GAVS Technologies Private Limited**

CIN: U72200TN2007PTC062974

..... Transferee Company / Non-Petitioner Company

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**Order dated:09.02.2024**

**Coram:**

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

**Appearances:**

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

**For Regional Director:** Rutuja Bankar, AROC.

**ORDER**

***Per: Reeta Kohli, Member (Judicial)***

1. Heard Learned Counsel for the Petitioner Company.
2. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 ("Act") and in the matter of Scheme of Amalgamation (Merger by Absorption) of Great Software Laboratory Private Limited ("Transferor Company / Petitioner Company") and GAVS Technologies Private Limited ("Transferee Company / Non-Petitioner Company") and their respective Shareholders ("Scheme") under the provisions of Sections 230 to 232 and other applicable provisions of the Act and rules framed thereunder.
3. The Learner Counsel for the Petitioner Company submits that the registered office of the Transferee Company / Non-Petitioner Company is situated in the State of Tamil Nadu and accordingly it falls within the jurisdiction of Hon'ble NCLT Chennai. The Transferee

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Company / Non-Petitioner Company has filed a separate Company Petition bearing number C.P.(CAA)/59/CHE/2023 before the Hon'ble Chennai NCLT on 25<sup>th</sup> November, 2023.

4. That Learned Counsel for the Petitioner submits that the Board of Directors of the respective Petitioner and Non-Petitioner Company in their respective meetings held on 3<sup>rd</sup> February, 2023 approved the Scheme. The Appointed Date fixed under the Scheme is 1<sup>st</sup> October, 2022.
5. The Authorised, Issued, Subscribed and Paid-up share capital of the Petitioner Company as on 31<sup>st</sup> March, 2022 is as under:

<b>Particulars</b>	<b>Amount (in INR)</b>
<b><u>Authorized Capital:</u></b>	
4,70,000 equity shares of INR 10 each	47,00,000
20,000 Non-cumulative preference shares of INR 100 each	20,00,000
53,000 Cumulative preference shares of INR 100 each	53,00,000
<b>Total</b>	<b>1,20,00,000</b>
<b><u>Issued, Subscribed and Paid-up Equity Share Capital:</u></b>	
3,04,302 equity shares of INR 10 each	30,43,020
<b>Total</b>	<b>30,43,020</b>

6. The Authorised, Issued, Subscribed and Paid-up share capital of the Non-Petitioner Company as on 31<sup>st</sup> March, 2022 is as under:

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<b>Particulars</b>	<b>Amount (in INR)</b>
<b><u>Authorized Capital:</u></b>	
25,00,000 equity shares of INR 10 each	2,50,00,000
<b>Total</b>	<b>2,50,00,000</b>
<b><u>Issued, Subscribed and Paid up Equity Capital</u></b>	
24,82,594 equity shares of INR 10 each	2,48,25,940
<b>Total</b>	<b>2,48,25,940</b>

7. The Learned Counsel for the Petitioner Company further submits the introduction and rationale for the Scheme:-

**The Transferor Company / The Petitioner Company**

The Petitioner Company is primarily engaged in the business of manufacturing, development and engineering of software products including providing design, development, and maintenance of software products for the customers.

**The Transferee Company / The Non-Petitioner Company**

The Non-Petitioner Company is primarily engaged in the business of software designing, development, maintenance, support services, IT Managed services consulting and business process outsourcing activities and to establish, maintain and run data processing / computer centers and to offer consultancy and data processing and other services that are normally offered by data processing and other computer centers to industrial, business and other types

of customers and to provide communication and information services by means of computer terminals at any location.

**Rationale of the Scheme:**

8. The rationale for the Scheme is as under:

- a) *greater integration, consolidation of business operations / brand and greater financial strength and flexibility for the Transferee Company, which would result in maximizing overall shareholder value, and will improve the competitive position of the combined entity;*
- b) *ability to win and service large clients globally through a broader portfolio of services;*
- c) *ability to cross-sell a broader bouquet of services to the consolidated client base;*
- d) *enhanced ability to compete in the market due to scale;*
- e) *greater efficiency in cash management and access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value;*
- f) *cost savings expected from focused operational efforts, standardization and simplification of business processes, and synergies between the products and services of the two companies;*
- g) *achieving economies of scale;*
- h) *simplified corporate structure, thereby leading to more efficient utilization of capital and creation of a consolidated base for future growth of the combined entity; and*
- i) *improved management focus, seamless implementation of policy changes and enhanced efficiency and control of the Transferor Company and the Transferee Company.*

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9. The Learned Counsel for the Petitioner Company submits that, the share exchange ratio, as determined by the Valuation Report dated 31<sup>st</sup> January, 2023, issued by CA Harsh Chandrakant Ruparelia, is as follows:

*“84 (eighty four) fully paid-up equity shares of the Transferee Company of INR 10 (Indian Rupees Ten only) each for every 10 (ten) equity shares of Transferor Company of INR 10 (Indian Rupees Ten only) each to be issued to the shareholders of the Transferor Company.”*

10. The Learned Counsel for the Petitioner Company further submits that there are 2 (Two) Equity Shareholders in the Petitioner Company and both the Equity Shareholders have given their consent in writing to the proposed Scheme. In view of the consent affidavits filed by all the Equity Shareholders of the Petitioner Company, the meeting of the Equity Shareholders of the Petitioner Company was dispensed with by this Tribunal by its order dated 8<sup>th</sup> May, 2023.
11. The Learned Counsel for the Petitioner Company further submits that there was 1 (One) Secured Creditor of the Petitioner Company of the value of INR 79,49,92,347.42 (and interest of INR 1,36,314.55 as on 30<sup>th</sup> September, 2022. The 1 (One) Secured Creditors had consented to the proposed Scheme by way of a consent affidavit. In view of the consent affidavit filed by the Secured Creditor of the Petitioner Company, the meeting of the Secured Creditor of the Petitioner Company was dispensed with by this Tribunal by its order dated 8<sup>th</sup> May, 2023.
12. The Learned Counsel for the Petitioner Company further submits that there were 56 (Fifty-Six) Unsecured Creditors in the Petitioner Company of the value of INR 10,934,192.80 in the Petitioner Company as on 30<sup>th</sup> September, 2022. The Petitioner Company had obtained consent to the Scheme from 27 (Twenty-Seven) Unsecured Creditors constituting 94.40% of the total outstanding dues. In view of the consent affidavits filed by all the Unsecured Creditors of the Petitioner Company, the meeting of the Unsecured Creditors of the Petitioner Company was dispensed with by this Tribunal by its order dated 8<sup>th</sup> May 2023.

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13. Learned Counsel for the Petitioner Company further submits that the Company Petition has been filed in consonance with the Order.
14. Learned Counsel for the Petitioner Company states that the Petitioner Company has complied with all the requirements as per the directions of this Tribunal.
15. The Regional Director has filed his report dated 12<sup>th</sup> September, 2023 (“RD Report”) praying that this Tribunal may dispose of the case as deem fit in the facts and merits of the case. In response to the observations made by the Regional Director, the Petitioner Company has also given necessary clarifications and undertakings vide their rejoinder affidavit dated 11<sup>th</sup> December, 2023. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Company are summarized in the table below:-

<b>Para</b>	<b>Observation by Regional Director</b>	<b>Undertaking of the Petitioner Company</b>
2(a)	<i>That on examination of the report of the Registrar of Companies, Pune dated 12.09.2023 for Petitioner Transferor Company (Annexed as Annexure A-1) that the Petitioner Transferor Company falls within the jurisdiction of ROC, Pune. It is submitted that no representation regarding the proposed scheme of Arrangement has been received in the matter of Petitioner Company. Further, the Petitioner Transferor Company has filed Financial Statements up to 31.03.2022. The ROC has further</i>	In so far as the observation made in Paragraph 2(a)(i) of the said Report is concerned, it is submitted that the observation made by the Registrar of Companies, Pune is merely factual in nature and no further response is required to that extent.

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<p><i>submitted that in his report dated 12.09.2023 which are as under :-</i></p> <p><i>i. That the ROC Pune in his report dated 12.09.2023 has also stated that No Inquiry, Inspection, Investigations, Prosecutions, Technical Scrutiny and Complaint under CA, 2013 have been pending against the Petitioner Companies.</i></p> <p><i>ii. Further ROC has mentioned as follows:-</i></p> <p><i>a) The Transferee Company has not filed E-form BEN-2 related to declaration of significant beneficial ownership as per the provision of the Companies Act, 2013.</i></p> <p><i>b) The Transferor and Transferee Company has not filed E-form GNL-1 for the scheme of merger and amalgamation.</i></p> <p><i>Hence, the Petitioner Company shall undertake to submit detail reply against observations mentioned above.</i></p>	<p>In so far as the observation made in Paragraph 2(a)(ii) of the said Report is concerned, it is submitted that with respect to:</p> <p>(i) Paragraph 2(a)(ii)(a) – Section 90(1) of the Companies Act, 2013 is not applicable to the shareholders of the Non-Petitioner Company, i.e., GAVS Technologies Limited, BVI and accordingly, the Non-Petitioner Company was not required to file e-form BEN-2 owing to below explanation.</p> <p>The Non-Petitioner Company does not have / had any “Significant Beneficial Owner” as there is no individual</p>
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		<p>who acting alone or together, or through one or more person or trust:</p> <ul style="list-style-type: none"><li>• Holds indirectly, or together with any direct holding, 10% shares or 10% of voting rights in the shares of the Non-Petitioner Company; or</li><li>• Has the right to receive or participate in a financial year in at least 10% of total distributable dividend, or of any other distribution by the Non-Petitioner Company, through indirect holdings alone or together</li></ul>
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		<p>with any direct holdings; or</p> <ul style="list-style-type: none"><li>• Either through indirect holding or together with direct holding has right to exercise or the actual exercise of “significant influence” or “Control” over the Non-Petitioner Company.</li></ul> <p>(ii) Paragraph 2(a)(ii)(b) –</p> <p>The Petitioner Company has filed the e-Form GNL-1 with the Registrar of Companies, Pune in relation to the Scheme on 12 September 2023 and the Non-Petitioner Company has filed the e-Form GNL-1 with the Registrar of Companies, Chennai</p>
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		<p>in relation to the Scheme on 29 September 2023. The copies of the aforementioned e-form GNL-1 along with the respective challans are annexed herewith and collectively marked as <b>Annexure I (COLLY)</b>.</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>In so far as the observation made in Paragraph 2(b) of the said Report is concerned, it is submitted that the Non-Petitioner Company hereby undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 regarding fees payable by the Non-Petitioner</p>

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		Company for increase of its share capital subsequent to the Scheme.
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>	In so far as the observation made in Paragraph 2(c) of the said Report is concerned, the Non-Petitioner Company / Transferee Company undertakes that in addition to compliance of AS-14 or IND AS-103, the resultant company shall pass such accounting entries which are necessary in connection with the Scheme to comply with all applicable Accounting Standards such as AS-5 or IND AS-8, to the extent applicable.
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>	In so far as the observation made in Paragraph 2(d) of the said Report is concerned, the Petitioner Company submits and

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		confirms that the Scheme enclosed in the Company Application No. C.A. (CAA) / 80 / MB / 2023 and Company Petition No. C.P. (C.A.A.) / 216 / MB / 2023 are one and the same and there is no discrepancy, or no change is made.
2(e)	<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>	In so far as the observation made in Paragraph 2(e) of this Report is concerned, the Petitioner Company confirms that as per the provisions of Section 230(5) of the Companies Act, 2013, the Petitioner Company has served notices to all the concerned authorities, namely, Regional Director, Registrar of Companies, the Official Liquidator, the Income Tax Department and the Goods and

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		<p>Services Tax Department and the observations made by the concerned authorities will be dealt with by the Petitioner Company, as may be applicable. We further confirm that 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. Such issues will be addressed in accordance with the law and the Petitioner Company shall be bound by any decision of such authorities that is made in accordance with law.</p>
2(f)	<p><i>As per Definition of the Scheme, “Appointed Date” for the purpose of this scheme and for Income Tax Act, 1961, shall mean 1<sup>st</sup> October 2022;</i></p>	<p>In so far as the observation made in Paragraph 2(f) of the said Report is concerned, the Petitioner Company confirms that</p>

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<p><i>“Effective Date” means the date or last of the date on which the conditions set out in Clause 7 of the scheme are satisfied or waived accordance with this scheme.</i></p> <p><i>“Record Date” means the date on which the list of shareholders shall be determined by the Board of Transferor Company and Transferee Company for issuance of shares as consideration to the shareholders pursuant to this scheme in accordance with Clause 6 below;</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>	<p>the Appointed Date under the Scheme is 1 October 2022, which is in compliance with the Companies Act, 2013 and that the Scheme shall take effect from such Appointed Date. Further, the Petitioner Company confirms that the Effective Date of the Scheme is the date or the last of the dates on which the conditions set forth in Clause 17 of the Scheme are satisfied or waived in accordance with the Scheme. The Record Date refers to the date on which the list of shareholders shall be determined by the board of directors of the Petitioner Company and the Non-Petitioner Company for issuance of shares as consideration to the</p>
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		shareholders in accordance with Clause 6 of the Scheme. Additionally, the Petitioner Company undertakes to comply with the requirements clarified <i>vide</i> circular No.7/12/2019/CL-I dated 21 August 2019 issued by the Ministry of Corporate Affairs.
2(g)	<i>Petitioner Companies shall undertake to comply with the directions of Income Tax Department &amp; GST Department, if any.</i>	In so far as the observation made in Paragraph 2(g) of the said Report is concerned, it is submitted that the Petitioner Company and the Non-Petitioner Company hereby undertake to ensure compliance with all the directions of the Income Tax Department and Goods and Services Tax Department (if any) in relation to the Scheme.



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2(h)	<i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.</i>	In so far as the observation made in Paragraph 2(h) of the said Report is concerned, the Petitioner Company submits that it has duly submitted notices to all relevant regulatory authorities namely, Regional Director, Registrar of Companies, the Official Liquidator, the Income Tax Department and the Goods and Services Tax Department and undertakes to comply with the directions of such sectoral authorities, as may be applicable.
2(i)	<i>GAVS Technologies Private Limited (Transferee Company) is having its registered office at New No. 13 (Old No. 11), Rajiv Gandhi Salai (Old Mahabalaipuram Road) Sholinganallur Kancheepuram TN 600119 IN, hence Petitioner Companies shall undertake to obtain approval of Hon'ble NCLT, Tamil Nadu Bench.</i>	In so far as the observation made in Paragraph 2(i) of the said Report is concerned, the Petitioner Company states that the Non-Petitioner Company falls within the jurisdiction of the Chennai Bench of

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		<p>the National Company Law Tribunal (“NCLT Chennai”) and has filed a separate Company Application bearing number CA (CAA) / 41 / CHE / 2023 before it. The NCLT Chennai <i>vide</i> order dated 25 September 2023 read with the order dated 10 October 2023 has dispensed with the convening of the meeting of shareholders and secured creditors of the Non-Petitioner Company and has directed the Non-Petitioner Company to convene a meeting of the unsecured creditors for the approval of the Scheme. The Non-Petitioner Company is in the process of convening the aforesaid meeting of the unsecured creditors and pursuant to</p>
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		which it will file a Company Petition before the NCLT Chennai for sanction of the Scheme.															
2(j)	<p><i>As per Financial Statement as on 31.03.2022 submitted by the Petitioner companies, details of shareholding is as follows:-</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">Sr. No.</th> <th style="width: 25%;">Petitioner Company</th> <th style="width: 25%;">Name of Shareholder</th> <th style="width: 10%;">% of shares held</th> <th style="width: 35%;">Remark</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>Great Software Laboratory Private Limited (Transferor Company)</td> <td>Kedaara Capital Fund II LLP</td> <td style="text-align: center;">89.98%</td> <td>No Form BEN-2 has been filed by any of the Petitioner Companies as per records available at MCA21 Portal</td> </tr> <tr> <td style="text-align: center;">2.</td> <td>GAVS Technologies Private Limited (Transferee Company)</td> <td>GAVS Technologies Limited, BVI</td> <td style="text-align: center;">100%</td> <td></td> </tr> </tbody> </table>	Sr. No.	Petitioner Company	Name of Shareholder	% of shares held	Remark	1.	Great Software Laboratory Private Limited (Transferor Company)	Kedaara Capital Fund II LLP	89.98%	No Form BEN-2 has been filed by any of the Petitioner Companies as per records available at MCA21 Portal	2.	GAVS Technologies Private Limited (Transferee Company)	GAVS Technologies Limited, BVI	100%		<p>In so far as the observation made in Paragraph 2(j) of the said Report is concerned, the petitioner company has filed further affidavit dated 9<sup>th</sup> January 2024 and has clarified that Kedaara Capital Growth Fund III LLP, is registered as a Category II Alternative Investment Fund bearing registration number IFSC/AIF2/2021-22/0003 and regulated by the International Financial Services Centres Authority. Since, Kedaara Capital Fund II LLP and Kedaara Capital Growth Fund III LLP are both limited liability partnerships, they do not have any shareholders. Pursuant to</p>
Sr. No.	Petitioner Company	Name of Shareholder	% of shares held	Remark													
1.	Great Software Laboratory Private Limited (Transferor Company)	Kedaara Capital Fund II LLP	89.98%	No Form BEN-2 has been filed by any of the Petitioner Companies as per records available at MCA21 Portal													
2.	GAVS Technologies Private Limited (Transferee Company)	GAVS Technologies Limited, BVI	100%														

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<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>	<p>the notification issued by Ministry of Corporate Affairs dated 8 February 2019, as per Rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018 (“<b>SBO Rules</b>”), registered AIFs are exempted from applicability of the SBO Rules. Accordingly, since Kedaara Capital Fund II LLP and Kedaara Capital Growth Fund III LLP are registered AIFs they are exempted from filing Form BEN-2.</p> <p>Further Section 90(1) of the Companies Act, 2013 is not applicable to the Non-Petitioner Company, i.e., GAVS Technologies Limited, BVI and accordingly, the Petitioner Company and the Non-Petitioner Company were not required to file e-form</p>
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BEN-2 owing to below explanation:

The Petitioner Company and Non-Petitioner Company does not have / had any “Significant Beneficial Owner” as there is no individual who acting alone or together, or through one or more person or trust:

- Holds indirectly, or together with any direct holding, 10% shares or 10% of voting rights in the shares of the Petitioner Company or the Non- Petitioner Company; or
- Has the right to receive or participate in a financial year in at least 10% of total distributable dividend, or of any other distribution by the Petitioner Company or the Non-Petitioner

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		<p>Company, through indirect holdings alone or together with any direct holdings; or</p> <ul style="list-style-type: none"><li>• Either through indirect holding or together with direct holding, has right to exercise or the actual exercise of “significant influence” or “Control” over the Petitioner Company or the Non-Petitioner Company.</li><li>• Nonetheless, the Petitioner Company or Non-Petitioner Company undertakes to comply with the requirements / consequences, if any, of Section 90 of the Companies Act, 2013 in the event is applicable / crystallized. The list of shareholders of the Petitioner Company</li></ul>
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		and the Non-Petitioner Company as on 1 November 2023 is annexed and marked as Annexure II and Annexure III, to the affidavit in rejoinder .
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16. The clarifications and undertakings given by the Petitioner Company are accepted by this Tribunal.
17. The Official Liquidator has filed his report dated 15<sup>th</sup> September, 2023. In response to the observations made by the Official Liquidator, the Petitioner Company has also given necessary clarifications and undertakings *vide* their rejoinder affidavit dated 12<sup>th</sup> December, 2023. The observations made by the Official Liquidator and the clarifications and undertakings given by the Petitioner Company are summarized in the table below:-

<b>Para</b>	<b>Observation by Official Liquidator</b>	<b>Undertaking of the Petitioner Company</b>
4	<i>That the Official Liquidator submits that the details of summary of findings as reported by the Transferor Company under the heading are as under:</i>	In so far as the observations made in Paragraph 4 of the said Report

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<p>a) <i>“Are there any serious allegation and or complaints against the company, if so, whether they need further problem in light of the subsequent development?</i></p> <p><i>Reply :- There are no serious allegations and/or complaints against the Transferor Company.</i></p> <p>b) <i>Is the Auditor’s report qualified for any financial years, if so, are the explanations of the company satisfactory?</i></p> <p><i>Reply:-</i></p> <p><b><u>(I) AUDITOR’S REPORT FOR FY 31 MARCH 2022</u></b></p> <p><i>(i) Paragraph vii(b) – According to the information and explanations given to us, there are no dues of income tax, sales, tax, GST, wealth tax, service tax, customs duty and cess, which have not been deposited on account of any dispute. However, accordingly to information and explanations given to us, the following dues of Income tax have not been deposited by the Company on account of dispute:</i></p>	<p>is concerned, it is submitted that the observations made by the Official Liquidator are merely factual in nature and no further response in required to that extent.</p>										
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"><i>Name of the Statute</i></th> <th style="width: 20%;"><i>Nature of Dues</i></th> <th style="width: 15%;"><i>Amount (in Rs)</i></th> <th style="width: 20%;"><i>Period to which the amount relates</i></th> <th style="width: 30%;"><i>Forum where dispute is pending</i></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><i>Income Tax</i></td> <td style="text-align: center;"><i>Assessment order dated 19/12/2019</i></td> <td style="text-align: center;"><i>8,83,820 paid under</i></td> <td style="text-align: center;"><i>AY 2017-18</i></td> <td style="text-align: center;"><i>CIT (A)</i></td> </tr> </tbody> </table>		<i>Name of the Statute</i>	<i>Nature of Dues</i>	<i>Amount (in Rs)</i>	<i>Period to which the amount relates</i>	<i>Forum where dispute is pending</i>	<i>Income Tax</i>	<i>Assessment order dated 19/12/2019</i>	<i>8,83,820 paid under</i>	<i>AY 2017-18</i>	<i>CIT (A)</i>
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	<i>Act, 1961</i>		<i>protest 1,76,770 Balance 7,07,050</i>		
	<i>Income Tax Act, 1961</i>	<i>Rectification</i>	<i>1,13,540</i>	<i>AY 2018- 19</i>	<i>Assessing Officer</i>
	<i>Income Tax Act, 1961</i>	<i>Rectification</i>	<i>28,81,130</i>	<i>AY 2018- 19</i>	<i>CIT Appeal Filed</i>
	<i>Finance Act, 1994</i>	<i>Show cause cum Demand Notice for Rectification</i>	<i>5,29,476</i>	<i>AY 2016- 17 (Oct. 2016 and March 2017)</i>	<i>Commissioner of CGST Audit</i>
	<i>Income Tax Act, 1961</i>	<i>TDS</i>	<i>2,43,060</i>	<i>Up to 31/03/2017</i>	<i>Assessing Officer TDS</i>
	<i>Income Tax Act, 1961</i>	<i>TDS</i>	<i>5,39,480</i>	<i>AY 2017- 21</i>	<i>Assessing Officer TDS</i>

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<i>Income Tax Act, 1961</i>	<i>Assessment order dated 19/09/2022</i>	<i>68,460</i>	<i>AY 2018-19</i>	<i>Assessing Officer TDS</i>	
<p><i>c) Whether the company has been audited, if not why? Reply:- Yes, the statutory audit of the Transferor Company is conducted in accordance with the applicable laws.</i></p> <p><i>c) (a) If the company has been incurring losses for the last years before going to amalgamation. Analysis the reasons for deterioration in financial position of the company by inter-alia drawing up comparative profit and loss accounts by calculating the ration of each important item of expenditure as percentage of turnover i.e. Not sales for these years (The object is to find out the possibility of any misfeasance malfeasance etc.) Reply: - During the financial year 2021-22, before going into amalgamation, the Transferor Company had incurred certain one-time charges in relation to acquisition of companies and if we add back these expenses then the Transferor Company had substantial profit as compared to loss reported in audited financial statement for the year ended March 31, 2022. Historically, Transferor Company is a profit making company. (b) A similar analysis may also be necessary in case of a company showing profits, but steep fall thereof not accompanies by suitable explanations.</i></p>					

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	<p><i>d) Whether directors of the company derived any undue benefit direct or indirect, if any transaction including intercompany loans and investments, sole selling agencies, managerial remunerations, etc. which the company might have made.</i></p> <p><i>Reply: - No undue benefits derived by the directors of the Transferor Company</i></p>	
5	<p><i>It has been noticed from the Financial Statement as at 31.03.2022 of Transferor Company that the company owes Rs.8.94 Lakhs to MSME In this respect it is stated that under MSMED Act, 2006 the buyer is to 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 be require the Transferor Company to clarify whether they have paid the said amount to the MSME creditor or whether there is any dispute with respect to payment of such amount. In case of dispute with regard to amount due whether the reference has been made to the MSME facilitation council constituted by the respective Government or not. Company may also be required to produce form MSME-I filed with the ROC for the above said dues.</i></p>	<p>In so far as the observation made in Paragraph 5 of the said Report is concerned, it is submitted by the Petitioner Company that the dues of ~INR 8.94 lakh were owed to MSME, which were outstanding as on 31 March 2021. The current status of the said MSME dues outstanding as on 31 March</p>

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		<p>2021 and 31 March 2022 along with relevant remarks has been attached and marked collectively as <b>Annexure A</b> and <b>Annexure B</b>, respectively. The Petitioner Company was not liable to make payment to the supplier as per the compound interest rate as the payments were made within 45 days of it becoming due. Further, it is submitted that the Petitioner Company does</p>
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		not have any outstanding dues owed to MSME as on date.																							
6	<p><i>The details in respect of the bad debts / advance written off by the Transferor Company are as follows:</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2" style="text-align: left;"><i>Particulars</i></th> <th colspan="3" style="text-align: center;"><i>Amount (Rs. In Lakhs)</i></th> <th rowspan="2" style="text-align: left;"><i>Explanation</i></th> </tr> <tr> <th style="text-align: center;"><i>21-22</i></th> <th style="text-align: center;"><i>20-21</i></th> <th style="text-align: center;"><i>19-20</i></th> </tr> </thead> <tbody> <tr> <td style="text-align: left;"><i>Bad Debts written off</i></td> <td style="text-align: center;">1,130.79</td> <td style="text-align: center;">28.83</td> <td style="text-align: center;">32.95</td> <td style="text-align: left;"><i>Debtors no longer receivable hence written off</i></td> </tr> <tr> <td style="text-align: left;"><i>Advance written off</i></td> <td style="text-align: center;">-</td> <td style="text-align: center;">-</td> <td style="text-align: center;">-</td> <td style="text-align: center;">-</td> </tr> <tr> <td style="text-align: left;"><i>Provision for doubtful debts</i></td> <td style="text-align: center;">93.21</td> <td style="text-align: center;">1,146.38</td> <td style="text-align: center;">1,175.21</td> <td style="text-align: left;"><i>Provision for doubtful debts was taken for debtors outstanding more than 6 months for FY 2019-20 and 2020-21 and for more than 2 year for FY 2021-21.</i></td> </tr> </tbody> </table>	<i>Particulars</i>	<i>Amount (Rs. In Lakhs)</i>			<i>Explanation</i>	<i>21-22</i>	<i>20-21</i>	<i>19-20</i>	<i>Bad Debts written off</i>	1,130.79	28.83	32.95	<i>Debtors no longer receivable hence written off</i>	<i>Advance written off</i>	-	-	-	-	<i>Provision for doubtful debts</i>	93.21	1,146.38	1,175.21	<i>Provision for doubtful debts was taken for debtors outstanding more than 6 months for FY 2019-20 and 2020-21 and for more than 2 year for FY 2021-21.</i>	<p>In so far as the observation made in Paragraph 6 of the said Report is concerned, it is submitted that the Petitioner Company had written off bad debts of INR 1130.79 lakhs as on 31 March 2022. The details in respect of the bad debts / advances written off by the Petitioner Company is attached</p>
<i>Particulars</i>	<i>Amount (Rs. In Lakhs)</i>			<i>Explanation</i>																					
	<i>21-22</i>	<i>20-21</i>	<i>19-20</i>																						
<i>Bad Debts written off</i>	1,130.79	28.83	32.95	<i>Debtors no longer receivable hence written off</i>																					
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	<p><i>The amount written off during the Financial Year ended on 31.03.2022 is Rs. 1130.79 Lakhs whereas the revenue of company is Rs.36,335.99 Lakhs. It is found that company has written of Bad Debts / Advance to the tune of Rs. 1130.79 Lakhs which is more than 1% of turnover. Company has failed to take legal steps for recovery of the said amount. It reflects poor corporate governance of company and has caused loss to the company! Hon'ble Tribunal may be pleased to direct the company to clarify in this respect.</i></p>	<p>herewith as <b>Annexure C</b> to the Affidavit in rejoinder, which have been outstanding for a period of more than 360 days. The Petitioner Company had reached out to most of the debtors through various channels, such as phone calls and emails, for the recovery of these debts. Some of these debtors had not responded to any of the above modes of recovery hence no repayment</p>
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		<p>plan was implemented for such debts and other debtors were unable to pay because of financial difficulty. Provisions for doubtful debts were already taken on FY 2020-21, hence in order to follow the accounting standard practice, it was necessary to write off the bad debts as on FY 2021-22 when such debts were considered to be uncollectible / irrecoverable.</p>
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		<p>Further, the Petitioner Company would have incurred excessive legal costs, in taking legal actions / measures or filing suits, which would have been more than the recovery of bad debts from the rest of the old debtors' enlisted in <b>Annexure C</b>. Therefore, it was decided not to initiate further legal steps post rigorous follow-ups and recovery</p>
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		attempts with the debtors.
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18. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
19. Ms. Rutuja Bankar, AROC representative of the RD (WR) MCA, present at the time of hearing via video conferencing has submitted that the explanations and clarifications given by the Petitioner Companies are found to be satisfactory and stated that they have no objection for approving the Scheme by this Tribunal.
20. Since all the requisite statutory compliances have been fulfilled, C.P. (C.A.A.) / 216 / MB / 2023 is made absolute in terms of the prayer clauses of the said Company Scheme Petition.
21. The Scheme is hereby sanctioned with the Appointed Date of 1<sup>st</sup> October 2022.
22. The Petitioner Company is 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 within 30 (Thirty) days from the date of receipt of the certified copy of Order by the Petitioner Company. The Scheme will become effective on filing of the copy of this order with the concerned Registrar of Companies.
23. The Petitioner Company to lodge a copy of this Order along with the Scheme duly authenticated / certified by the Designated Registrar of this Tribunal with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 (Sixty) days from the date of receipt of the certified Order from the Registry of this Tribunal.

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24. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the Designated Registrar of this Tribunal.
25. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.
26. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
27. Ordered accordingly.

SD/-

**Madhu Sinha**

**Member (Technical)**

/Aakansha/

SD/-

**Reeta Kohli**

**Member (Judicial)**