

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

**C.P.(CAA)/12/MB/2024
IN
C.A.(CAA)/86/MB/2023**

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and Section 66 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Composite Scheme of Arrangement between Metropolitan Stock Exchange of India Limited ('MSE' or 'Amalgamated Company' or 'Transferee Company') and MSE Enterprises Limited ('MEL' or 'Amalgamating Company' or 'Transferor Company') and their respective Shareholders (**Scheme**)

Metropolitan Stock Exchange of India Limited

having its registered office at 205(A), 2nd floor, Piramal Agastya Corporate Park, Kamani Junction, LBS Road, Kurla (West), Mumbai - 400 070

CIN U65999MH2008PLC185856

...First Petitioner Company/
Amalgamated Company/
Transferee Company / MSE

MSE Enterprises Limited

having its registered office at 205(A), 2nd floor, Piramal Agastya Corporate Park, Kamani Junction, LBS Road, Kurla (West), Mumbai - 400 070

CIN U72100MH2008PLC188032

...Second Petitioner Company/
Amalgamating Company/
Transferor Company / MEL

(Hereinafter collectively referred to as "Petitioner Companies")

Order pronounced on 06.06.2024

Coram:

MS. LAKSHMI GURUNG, MEMBER (Judicial)
SHRI. CHARANJEET SINGH GULATI, MEMBER (Technical)

Appearances:

For Petitioners	Adv. Hemant Sethi, Adv. Tanaya Sethi i/b Hemant Sethi & Co., Advocates
For RD	Mr. Bhagawati Prasad, Assistant Director
For Income Tax Department	Adv. Kinjal Vyas i/b Adv. Maithili Mehta through VC

*Per: **MS. LAKSHMI GURUNG, MEMBER (JUDICIAL)***

ORDER

1. The present petition seeks sanction of Scheme of Arrangement under sections 230 to 232 read with Section 66 of the Companies Act, 2013 which involves:
 - i. Selective Capital Reduction of Transferor Company;
 - ii. Amalgamation of Transferor Company into Transferee Company.
2. The Transferor Company is also referred to as the Second Petitioner Company or Amalgamating Company or MEL and The Transferee Company is also referred to as First Petitioner Company or Amalgamated Company or MSE.
3. It is submitted that the Transferee Company holds 95.85% equity stake in the Transferor Company, whereas remaining 4.15% Share Capital of the Transferor Company is being held by M/s Multi Commodity Exchange of India Limited and M/s 63 Moons Technologies Limited in the proportion of 2.20% and 1.95% respectively.
4. It is further submitted that M/s 63 Moons Technologies Limited was declared as 'not fit and proper person' by Securities Exchange Board of India (SEBI) vide its order dated 17.12.2013 to hold shares in Multi Commodity Exchange of India Limited (MCX). It is further submitted that the said order of SEBI is under challenge before the Bombay High Court

in Writ Petition No. 337 of 2014 but no stay has been granted. Further, SEBI vide its order dated 19.03.2024, has declared 63 Moons Technologies Limited 'not fit and proper person' to acquire, hold and be entitled to equity shares or rights over equity shares at any future date, in a recognized stock exchange or clearing corporation, either directly or indirectly and shall cease to be entitled to voting rights in the Petitioner Company in respect of shares or instruments held by them, with immediate effect.

5. Selective Capital Reduction of Transferor Company is proposed in following manner:

5.1. The major shareholders of the Transferor Company are as follows:

Sn.	Name of the Shareholder	No. of Shares	% of share capital
1.	Metropolitan Stock Exchange of India Ltd. (Transferee Company)	12,01,71,446	95.85
2.	Multi Commodity Exchange of India Ltd.	27,58,942	2.20
3.	63 Moons Technologies Ltd	24,40,603	1.95
	Total	12,53,70,991	100%

5.2. Out of the 12,53,70,991 fully paid-up equity shares of face value of Rs 10 each of Transferor Company, 51,99,545 (Fifty-One Lacs Ninety Thousand Five Hundred and Forty-Five) shares held by M/s Multi Commodity Exchange of India Limited and M/s 63 Moons Technologies Limited as mentioned in the table above shall be cancelled and extinguished and consequently, the paid-up equity share capital of the Transferor Company as on the effective date shall become Rs. 1,20,17,14,460 divided into 12,01,71,446 equity shares of Rs. 10 each as follows:

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Particulars	As on date of approval of the Scheme		Amount proposed to be reduced		Post Capital reduction in terms of this Scheme	
	No. of Equity Shares	Rs. In Lakhs	No. of Equity Shares	Rs. In Lakhs	No. of Equity Shares	Rs. In Lakhs
Authorised Equity Share Capital	300000000	30,000			300000000	30,000
Issued, Subscribed and fully paid-up Equity Share capital	125370991	12,537.09	5199545	51995450	120171446	12,017.14

- 5.3. It is submitted that the proposed Composite Scheme of Arrangement was approved unanimously by the Board of Directors of the Transferee Company on 02.03.2023 and that Transferor Company on 14.03.2023. The copy of Board Resolutions of respective Petitioner Companies approving the Scheme are annexed with Company Scheme Petition. The Board of Directors of the respective Petitioner Companies believe that the Scheme is in the best interests of the respective Companies and their respective customers, employees, lenders, shareholders, and all other stakeholders of the respective Companies.
6. The Appointed Date of the **Scheme** is **1st April 2023**.
7. The Joint Company Petition has been filed in consonance with the order of the Tribunal dated 18th October 2023, passed in the connected Company Scheme Application bearing C.A. (CAA)/ 86/ (MB)/ 2023.
8. It is submitted that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance. 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.

Rationale of the Scheme:

9. The rationale of the Composite Scheme of Arrangement as mentioned in the scheme is as follows:

“The Amalgamating Company MEL was formerly engaged in the business of providing clearing and settlement services to the Amalgamated Company in respect of all the four segments namely, Currency Derivatives, Equity Derivatives, Equity Cash Market & Debt Segments, and also facilitates settlement of OTC deals on corporate bonds, certificate of deposits, commercial paper and structured debt instruments. Subsequently, in 2018 SEBI allowed interoperability amongst clearing corporations i.e. it allowed market participants to consolidate their clearing and settlement functions at a single clearing corporation, irrespective of the stock exchange on which the trade is executed.

Post introduction of interoperability, MEL had lost most of its business to other clearing corporations inspite of its effort to gain business share by entering into interoperability arrangements with the Indian Clearing Corporation Limited (ICCL) & NSE Clearing Limited (NCL) to extend its clearing and settlement services for trades executed at National Stock Exchange of India Limited (NSE) and BSE Limited (BSE) in addition to MSE. Profit after Tax of MEL has reduced over the years from INR 6.83 crores in FY 19 to INR (6.72) crores in FY 22.

Apart from the services under interoperability, MEL was providing clearing and settlement services to Indian Commodity Exchange Limited (ICEX) in Commodity Derivative segment and Mutual Fund segment, which contributes major income for MEL. In May, 2022 SEBI has withdrawn recognition of ICEX as Stock exchange due to insufficient Net Owned Fund ("NOF"). Securities Appellate Tribunal (SAT) in June 2022 granted time to ICEX to build necessary NOF and directed that the business will remain suspended till NOF restored to statutory limit. Suspension of business of ICEX and agreement with ICEX for providing Clearing and Settlement services has also expired effective September 2, 2022. Hence, besides having no business of Clearing and Settlement from Interoperability and now no business from ICEX, MEL shall have no Clearing and Settlement Business, the core purpose for which it was Incorporated and capitalized by its main parent company

and its other Shareholders. Considering the above, MEL is not able to operate profitably and gain market share, the Board of Directors of MEL have decided to discontinue the clearing corporation business and merge the company with its parent company i.e. MSE for continuance of other eligible business in MSE. SEBI registration for MEL for acting as clearing corporation agent has also been expired as of date.

The management of the respective Companies are of the view that the amalgamation proposed in this Scheme is, in particular, expected to have the following benefits:

- a. Reduction in management overlaps and elimination of legal and regulatory compliances and associated costs due to operation of multiple entities.*
- b. Optimization of the allocated capital and availability of funds which can be deployed more efficiently to pursue the operational growth opportunities.*
- c. Amalgamation will result in pooling of financial, managerial, technical and human resources, thereby creating stronger base for future growth and value accretion for the stakeholders.*
- d. The combined financial strength is expected to further accelerate the scaling up of the operations of the Amalgamated Company.*
- e. The consolidation of funds and resources will lead to optimization of working capital utilization and stronger financial leverage given the simplified capital structure, improved balance sheet, optimized management structure and consolidation of cross location talent pool.*

Further, Amalgamating entity is also undertaking Capital Reduction for reduction of 51,99,545 equity shares constituting 4.15% of its share capital owing to the following reasons/ rationale–

- i. To comply with SEBI direction wherein 63 Moons Technologies Limited was declared not a "fit and proper person" to hold shares in Amalgamating Company and shall cease to be entitled to voting rights in the Amalgamating Company in respect of shares held by them.*
- ii. To distribute cash to its shareholders in proportion to their shareholding, thereby, providing exit opportunities from an illiquid investment.*

iii. Proposed capital reduction will result in 100% shareholding of MEL with MSE and resultant ease of compliances.”

10. Post reduction of share capital, the Transferor Company shall become wholly-owned subsidiary company of the Transferee Company i.e. the entire paid up equity share capital of the Transferor Company shall be beneficially held by the Transferee Company and no new equity shares of the Transferee Company shall be issued and allotted in respect of shares held by the Transferee Company in the Transferor Company. Upon the Scheme becoming effective, the entire share capital of the Transferor Company shall be cancelled and extinguished without any further act, deed or instrument as an integral part of this Scheme.

11. **Consideration:**

For reduction of share capital

In consideration for the cancellation of the share capital, the Transferor Company shall pay INR 10/- per share to the shareholders against cancellation of their respective shareholding in the Transferor Company. Consideration price of INR 10 per share has been determined basis the valuation report issued by Registered Valuer Niranjan Kumar (IBBI Registration No. -IBBI/ RV/ 06/ 2018/ 10137) and fairness opinion issued by Kunvarji Finstock Private Limited, SEBI Registered Category I Merchant Banker (Registration Number - INM000012564).

For amalgamation of Transferor Company with the Transferee Company:

After the share capital reduction of the Transferor Company, it shall become wholly owned subsidiary company of the Transferee Company as the entire paid up equity share capital of the Transferor Company shall be beneficially held by the Transferee Company.

Therefore, no new equity shares of the Transferee Company shall be issued and allotted in respect of shares held by the Transferee Company in the Transferor Company. Upon the Scheme becoming effective, the entire share capital of the Transferor Company shall be cancelled and extinguished without further act.

12. The Valuation Report and the Fairness Opinion are annexed to the Company Scheme Petition.

13. The Transferee Company is a recognized Stock Exchange with permission to operate in currency derivatives, equity and equity derivatives and the main object of the Transferor Company was to act as central counterparty to provide novation and clearing & settlement services to various Exchanges. However, recognition of Transferor Company as Clearing Corporation was not renewed by Securities and Exchange Board of India (SEBI) and hence effective October 3, 2022, Transferor Company has ceased to be SEBI recognized entity. Consequent to such de-recognition, object clause of the Transferor Company was amended to act as the technical and management consultants in relation to all aspects of data processing, data processing systems, computer systems, application and systems software, process control systems, computers and all the branches of computer science in India and abroad.

14. **Meetings of the Petitioner Companies:**

14.1. As per the directions of the Tribunal vide its Order dated 18.10.2023, the meeting of Equity Shareholders of the Transferee Company was held on 07.12.2023 at 11.00 am and the meeting of Equity Shareholders of the Transferor Company was held on 07.12.2023 at 2.00 pm. Mr. Mukesh Kumar Siroya was appointed the Chairman and Mr. Harsh Ruparelia was appointed as Alternate Chairperson. Also Mr. Rajesh Kumar Mittal was appointed as the Scrutinizer of the meeting.

Requisite quorum was present and the Scheme was approved by the 99.99% of the Equity Shareholders of the Transferee Company and 100% of the Equity Shareholders of the Transferor Company. The Chairman Reports are annexed to the Company Scheme Petition.

14.2. There are no Secured Creditors in the Transferor and Transferee company. Hence, the question of convening and holding the meetings of Secured Creditors of the Transferor and Transferee company did not arise.

14.3. The Tribunal dispensed the meeting of Unsecured Creditors of the Transferor and Transferee company, with the direction to issue notices to the Unsecured Creditors of the Transferor and Transferee company.

15. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its Report dated 26th February 2024, inter alia stating that, save and except the observations as stated in paragraph 2 of the report, this Tribunal may pass such order or orders as deemed fit and proper in the facts and merits of the case. The Petitioner Companies have filed an Affidavit in rejoinder dated 27th February 2024 to the report filed by the Regional Director with this Tribunal providing clarification/undertakings to the observations made by the Regional Director. The observations made by the Regional Director and the response/ clarifications/undertakings given by the Petitioner Companies are summarized in the table below:

RD Report/Observations dated 26th February 2024	Response of the Petitioner Companies.
2	
The observations in ROC report and the clarifications/undertakings given by the Petitioner Companies are as under:	

Para 2 (a)	
<p>That on examination of the report of the Registrar of Companies, Pune dated 06.02.2024 (Annexed as Annexure A-1) for Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and/or representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies.</p> <p>Further, Petitioner Amalgamated Company has filed Financial Statements up to 31.03.2022, hence Petitioner Amalgamated Company shall undertake to file its Financial Statements up to 31.03.2023 with the ROC, Mumbai before approval of this scheme. Further, Petitioner Amalgamating Company has filed Financial Statements up to 31.03.2023.</p>	<p><i>As regards the observation made in Paragraph 2(a) of the said Report it is concerned, it is submitted by the First Petitioner Company that it has filed annual financial statement up to 31st March 2022. However, the First Petitioner Company has not filed its financial statements up to 31st March 2023 on account of preparing and validating accounts in XBRL format. The First Petitioner Company undertakes to comply with requirements of filing its financial statements for the period ended 31st March 2023 before the Registrar of Companies.</i></p>
2 (a) (i)	
<p>The ROC Mumbai in its report dated 06.02.2024 stated that No Inquiry, Investigations and Prosecutions under Companies Act, 2013 are pending against the Petitioner Companies. But as per records available at this</p>	<p><i>As regards the observation made in Paragraph 2(a)(i) of the said Report it is concerned, it is submitted by the First Petitioner Company that, it being the surviving entity, any inspection pending against it under</i></p>

Directorate, the inspection is pending against Metropolitan Stock Exchange of India Limited ("MSE" / "Amalgamated Company") wherein PF letter is issued and reply from the subject company is still pending.	<i>the provisions of the Companies Act 2013 shall continue.</i>
2 (a) (ii) (a)	
Further ROC has mentioned as follows:- a. The Petitioner Companies has not filed form GNL-1.	
Response of the Petitioner Companies: <i>As regards the observation made in Paragraph 2(a)(ii)(a) of the said Report it is concerned, it is submitted by the Petitioner Companies that Form GNL-1 has been filed by the First Petitioner Company and Second Petitioner Company on 19th January 2024.</i>	
2 (a) (ii) (b)	
b. The Petitioner Companies has not filed form MGT-14.	
Response of the Petitioner Companies: <i>As regards the observation made in Paragraph 2(a)(ii)(b) of the said Report it is concerned, it is submitted by the Petitioner Companies that Form MGT -14 has been filed by the First Petitioner Company and Second Petitioner Company on 29th March 2023 and 30th January 2024 respectively.</i>	
2 (a) (ii) (c)	
c. Petitioner Amalgamated Company has filed Financial Statements up to 31.03.2022, hence Petitioner Amalgamated Company shall undertake to file its Financial Statements up to 31.03.2023 with the ROC, Mumbai before approval of this scheme.	

Response of the Petitioner Companies:

As regards the observation made in Paragraph 2(a)(ii)(c) of the said Report it is concerned, it is submitted by the Petitioner Companies that The First Petitioner Company undertakes to comply with requirements of filing its financial statements for the period ended 31st March 2023 before the Registrar of Companies.

2 (a) (ii) (d)

d. Authorised and paid-up share capital of Amalgamating company does not match with master data and scheme.

Response of the Petitioner Companies:

As regards the observation made in Paragraph 2(a)(ii)(d) of the said Report it is concerned, it is submitted by the Petitioner Companies that The Authorised and paid-up share capital of Amalgamating company matches with master data and scheme considering the fact that the authorized capital in accounts are given in "Lakhs".

2 (a) (ii) (e)

e. Certain complaints are pending against the amalgamated company.

Response of the Petitioner Companies:

As regards the observations made in Para 2(a)(ii)(e) of the said report is concerned, it is submitted that observation made by the Registrar of Companies is merely factual in nature and no further response is required to that extent.

2 (a) (ii) (f)

f. Notice in form CAA-3 is required to be issued to other sectorial regulators or authorities.

Response of the Petitioner Companies:

The Petitioner Companies in compliance with the Order of Hon'ble Tribunal Mumbai Bench – III dated 18th October 2023 and the provision of Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 has send notices to (i) concerned Income Tax Authority within whose jurisdiction the respective Petitioner Companies assessments are made, i.e., for First Petitioner Company at 14(1)(1), Aaykar Bhavan, Mumbai, having PAN AAFCM6942F, and for Second Petitioner Company, Income Tax Authority, Mumbai having PAN AAFCM7981E, and to the Nodal Officer at Pr. CCIT, 3rd Floor, Aaykar Bhavan, Maharashi Karve Road, Mumbai 400020; (ii) the Central Government, through the office of the concerned Regional Director; (iii) the concerned Registrar of Companies; (iv) the Securities and Exchange Board of India; (v) GST Department, in so far as the First Petitioner Company – 07AAFCM6942F1ZE having jurisdiction at Delhi, 19AAFCM6942F1Z9 having jurisdiction at West Bengal, 24AAFCM6942F1ZI having jurisdiction at Gujarat, 33AAFCM6942F1ZJ having jurisdiction at Tamil Nadu, 36AAFCM6942F1ZD having jurisdiction at Telangana, 09AAFCM6942F1ZA & 09AAFCM6942F2Z9 having jurisdiction at Uttar Pradesh, 23AAFCM6942F1ZK having jurisdiction at Madhya Pradesh and 27AAFCM6942F1ZC having jurisdiction at Maharashtra, and so far as the Second Petitioner Company – 27AAFCM7981E1Z5 having jurisdiction at Maharashtra; and (vi) the Official Liquidator, High Court, Bombay.

2 (a) (ii) (g)

g. Necessary stamp duty on transfer of property/Assets is to be paid to the respective authorities before implementation of the scheme.

Response of the Petitioner Companies:

As regards to the observation made in Para 2(a)(ii)(g) of the said Order, the Petitioner Companies humbly submit and undertake that on approval of the Scheme by this Hon'ble Tribunal, the Petitioner Companies shall be required to file the certified true copy of the order with their respective Registrar of

Companies in Form INC 28, within 30 days from the date of receipt of such order, in order to give effect to the Scheme. Accordingly, post approval of the Scheme by this Hon'ble Tribunal and effectiveness of the Scheme (i.e. filing of Form INC 28 by the Petitioner Companies with the Registrar of Companies), the Petitioner Companies shall submit requisite application with the jurisdictional stamp duty authority for adjudication and discharge of applicable stamp duty on the aforesaid order of the NCLT within the stipulated time period.

2 (a) (ii) (h)

h. Employee clause is not mentioned in the scheme.

Response of the Petitioner Companies:

As regards to the observation made in Para 2(a)(ii)(h) of the said Order the Petitioner Companies humbly submit that, the said clause is mentioned in the clause 15.2(x) Composite Scheme of Arrangement. The same is reproduced as below:

(x) All workmen and employees of the Amalgamating Company, who are on its payrolls and all other personnel employed by the Amalgamating Company shall be employed by the Amalgamated Company with effect from the Effective Date, on such terms and conditions as are no less favourable than those on which they were engaged with the Amalgamating Company immediately prior to the Effective Date, without any interruption of service as a result of this amalgamation and transfer. With regard to provident fund, gratuity fund, superannuation fund and any contributions required to be made in relation to employees under any statute or regulation, leave encashment and any other special scheme or benefits created or existing for the benefit of the personnel employed by the Amalgamating Company immediately prior to Part C of the Scheme coming into effect on the Effective Date and transferred to the Amalgamated Company, the Amalgamated Company shall stand substituted for the Amalgamating Company for all intents and purposes

whatsoever, upon Part C of this Scheme becoming effective on the Effective Date, including with regard to the obligation to make contributions to the said funds in accordance with the provisions of such schemes or funds in the respective trust deeds or other documents and/or in accordance with the provisions of Applicable Laws or otherwise. All existing contributions made to such schemes and funds and all benefits accrued thereto shall also stand transferred in the name of the Amalgamated Company and all such benefits and schemes shall be continued by the Amalgamated Company for the benefit of such personnel employed by the Amalgamating Company and transferred to the Amalgamated Company, on the same terms and conditions. Further, it is the aim and intent of the Scheme that all the rights, duties, powers and obligations of the Amalgamating Company in relation to such schemes or funds shall become those of the Amalgamated Company. It is clarified that the services of all personnel employed by the Amalgamating Company who are entitled to the benefits under such schemes and funds, will be treated as having been continuous and uninterrupted for the purpose of the aforesaid schemes or funds. Without prejudice to the aforesaid, the Board of Directors of the Amalgamated Company, if it deems fit and subject to Applicable Laws, shall be entitled to: (a) retain separate trusts or funds within the Amalgamated Company for the erstwhile fund(s) of the Amalgamating Company; or (b) merge the pre-existing funds of the Amalgamating Company with other similar funds of the Amalgamated Company.

2 (a) (ii) (i)

- i. As per provisions of section 232(3)(i) of CA, 2013 where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting off the fees already paid by the transferor company on its

authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to amalgamation.

Response of the Petitioner Companies:

As regards the observation made in Para 2(a)(ii)(i) of the said Report, the Amalgamating Company undertake to comply with the provisions set out in Section 232(3)(i) of the Companies Act, 2013 and that the fee, if any, paid by the Amalgamating Company on its authorized share capital shall be set off against any fees payable by the Amalgamated Company on its authorized share capital subsequent to the Amalgamation, if applicable and the Amalgamated Company shall pay the difference of fees and stamp duty, if any.

2 (a) (ii) (j)

j. Interest of the Creditor should be protected. The Petitioner Companies may please be directed to submit reply on the above observations of jurisdictional ROCS. However, Inspection u/s 206(5) of the CA, 2013 is ordered by the Ministry in the matter of Transferee Company namely Metropolitan Stock Exchange of India Limited being carried out by the Regional Director, Western Region Office and detailed observations in this regard given at para 2(k) of this Report.

Response of the Petitioner Companies:

As regards the observation made in Para 2(a)(ii)(j) of the said Report, Petitioner Companies hereby submit that the present Scheme is an arrangement between the Petitioner Companies and its shareholders as contemplated in Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no compromise or arrangement with creditors. It is also submitted that the Scheme does not affect the rights and interests of the creditors of the Petitioner Companies as no sacrifice is called for. It is further stated that there is no diminution of

liability of any of the creditors of the Petitioner Companies who will be paid off in the ordinary course of business.

Para (2) (b)

Transferee company should undertake to comply with the provisions of section 232(3)(1) 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 companies.

As regards the observation made in Paragraph 2(b) of the said Report it is concerned, it is submitted by the Petitioner Companies that the Amalgamating Company undertake to comply with the provisions set out in Section 232(3)(i) of the Companies Act, 2013 and that the fee, if any, paid by the Amalgamating Company on its authorized share capital shall be set off against any fees payable by the Amalgamated Company on its authorized share capital subsequent to the Amalgamation, if applicable and the Amalgamated Company shall pay the difference of fees and stamp duty, if any.

Para (2) (c)

In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other

As regards the observation made in Paragraph 2(c) of the said Report it is concerned, it is submitted that in addition to compliance with IND AS-103 (AS-14 not applicable), in connection with the Scheme, the First

<p>applicable Accounting Standards including AS-5 or IND AS-8 etc.</p>	<p><i>Petitioner Company being the Amalgamated Company shall pass such accounting entries which are necessary to comply with all other applicable Indian Accounting Standards to the extent applicable.</i></p>
<p>Para (2) (d)</p>	
<p>The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed with the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.</p>	<p><i>As regards the observation made in Paragraph 2(d) of the said Report it is concerned, the Petitioner Companies humbly submits that the Scheme includes Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.</i></p>
<p>Para (2) (e)</p>	
<p>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 from dealing 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.</p>	<p><i>As regards the observation made in Paragraph 2(e) of the said Report it is concerned, it is submitted that observation made by the Regional Director is merely factual in nature and no further response is required to that extent.</i></p>

Para (2) (f)

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 7 subsection (3) to (5) of Section 230 of the Act and the Minutes, thereof are duly placed before the Tribunal.

Response of the Petitioner Companies:

As regards the observation made in Paragraph 2(f) of the said Report it is concerned, the Petitioner Companies undertakes that Scheme is approved by the requisite majority of members as per Section 230(6) of the Act in the respective meetings duly held in terms of Section 230(1) read with 7 subsection (3) to (5) of Section 230 of the Act. Minutes of the respective meetings have been submitted by the Chairperson as a part of affidavit on 14th December 2023. Further, Petitioner Companies are in receipt of order dated 18th October 2023 from Hon'ble NCLT, wherein Hon'ble NCLT has dispensed of the requirement of holding of meeting of unsecured creditors and have directed the Companies to issue notices to unsecured creditors with the direction that they may submit their representation.

Please find below relevant extract of the order:

"24 The Learned Counsel for the Applicant Companies submits that the present Scheme is an arrangement between the Applicant Companies and its shareholders as contemplated in Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no compromise or arrangement with creditors. It is also submitted that the Scheme does not affect the rights and interests of the Unsecured Creditors of the Applicant Companies as no sacrifice is called for. It is further stated that there is no diminution of liability of any of the Unsecured Creditors of the Applicant Companies who will be paid off in the ordinary course of business. In view of above, the meetings of the Unsecured Creditors of Applicant Companies are hereby dispensed with. However, the Applicant

Companies are hereby directed to issue notices to all their respective Unsecured Creditors by Registered Post AD/Speed Post AD/Hand Delivery/Courier/Email with the direction that they may submit their representation, if any, to the Tribunal and copies of such representation shall simultaneously be served upon the Applicant Companies.

The Petitioner Companies have not received any objections from the unsecured creditors.

Para (2) (g)

As per Definition of the Scheme, "Appointed Date" means the opening of business hours on April 1, 2023 or such other date as may be approved by the NCLT, with effect from which Part C of the Scheme will be deemed to be effective in the manner described in the Scheme.

"Effective Date" means the date on which the order of the Court sanctioning the Scheme or any particular parts of the Scheme, is filed with the RoC. Any references in this Scheme to "upon this Scheme becoming effective" or "effectiveness of this Scheme shall be construed accordingly.

In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective, and the scheme shall be

As regards the observation made in Paragraph 2(g) of the said Report it is concerned, the Petitioner Companies confirm that the Appointed Date is 1st April 2023 as mentioned in the Scheme which is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall take effect from such Appointed Date.

The Petitioner Companies undertake to comply with the requirements clarified vide circular No.7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

<p>deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account of its inherent powers.</p> <p>The Petitioner Companies shall undertake to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21 08 2019 issued by the Ministry of Corporate Affairs.</p>	
<p>Para (2) (h)</p>	
<p>Petitioner Companies shall undertake to comply with the directions of the Income Tax Department & GST Department, if any.</p>	<p><i>As regards the observation made in Paragraph 2(h) of the said Report it is concerned, the Petitioner Companies undertake that it shall ensure the compliance with the directions of the Income Tax Department and GST Department, if any.</i></p>
<p>Para (2) (i)</p>	
<p>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any</p>	<p><i>As regards the observation made in Paragraph 2(i) of the said Report it is concerned, the Petitioner Companies undertake that it shall ensure the compliance with the directions of the</i></p>

	<i>concerned sectoral regulator, if any.</i>
Para (2) (j)	
SEBI has given their no objection dated 19.05.2022 to this scheme of Arrangement (Copy Enclosed)	<i>As regards the observation made in Paragraph 2(j) of the said Report it is concerned, it is submitted that observation made by the Regional Director is merely factual in nature and no further response is required to that extent.</i>
Para (2) (k)	
<p>As per records available at this Directorate, the inspection is pending against Metropolitan Stock Exchange of India Limited ("MSE"/ "Amalgamated/ Transferee Company") wherein Preliminary Findings Letter (PF Letter) seeking comments on serious financial irregularities and violations of Companies Act, 2013 were issued on 10.11.2023 by inspecting officer of this Directorate and reply from the subject company & its directors & auditors are still awaited.</p> <p>Further the Inspection is based on fraud and market manipulation observed by SEBI in its investigation. The SEBI has also barred former MSEI MD&CEO for six months over multiple violations and detected breach of clearing fee rules, issue of contracts without bidding process and vendor payments without supporting bills.</p> <p>Since subject company is a Transferee/Amalgamated Company and will be in existence even after implementation of the scheme and the necessary action under provisions of CA, 2013 will be carried out against the Transferee Company and its directors in default as per law and the Petitioner Company & its directors shall undertake to co-operate in</p>	

completion of subject inspection by this Directorate and file the complete reply to the PF letter dated 10.11 2023.

Response of the Petitioner Companies:

As regards the observation made in Paragraph 2(k) of the said Report it is concerned, the First Petitioner Company (Amalgamated Company) has filed its reply to the PF letter dated 10.11.2023 on 29.02.2024. The First Petitioner Company (Amalgamated Company) undertakes that any questionnaire received by it from the Directorate shall be responded to promptly and full co-operation shall be provided by the First Applicant Company (Amalgamated Company) in completion of subject inspection by this Directorate.

Para (2) (1)

Petitioner Companies as per clause 9 of the scheme proposed for Re-Organization of Paid-Up Share Capital:

Upon the Scheme becoming effective, 51,99,545 (Fifty-One Lakhs Ninety-Nine Thousand Five Hundred and Forty-Five) fully paid-up equity shares of the Company of INR 10 (Indian Rupees Ten) each of MEL held by Eligible Shareholders shall be cancelled and extinguished and consequently, the paid-up equity share capital of MEL as on the Effective Date shall become INR 1,20,17,14,460 (Indian Rupees One Hundred and Twenty Crores Seventeen Lakhs Fourteen Thousand Four Hundred and Sixty) divided into 12,01,71,446 (Twelve Crores One Lakh Seventy One Thousand Four Hundred and Forty Six) equity shares of INR 10 (Indian Rupees Ten) each.

The share capital of MEL before and after the Capital Reduction in terms of this Scheme shall be as under:

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III
C.P.(CAA)/12/MB/2024 IN C.A.(CAA)/86/MB/2023

Particulars	As on date of approval of the Scheme		Post Capital reduction in terms of this Scheme	
	Number of Equity shares	Amount (INR)	Number of Equity shares	Amount (INR)
Authorized equity share capital	30,00,00,000	300,00,00,000	30,00,00,000	300,00,00,000
Issued, subscribed and fully paid-up equity share capital	12,53,70,991	1,25,37,09,910	12,01,71,446	1,20,17,14,460

In this regard, Petitioner Companies shall undertake to comply with the provisions of section 66 r/w. applicable Rules.

Response of the Petitioner Companies:

As regards the observation made in Paragraph 2(l) of the said Report it is concerned, the Petitioner Companies submit that the Second Petitioner Company shall comply with the provisions of the Companies Act, 2013 to the extent applicable.

Para (2) (m)

Petitioner Companies as per clause 20 of the scheme proposed for Change

As regards the observation made in Paragraph 2(m) of the said Report it is concerned, the Petitioner Companies submit that

in Authorized Share Capital of the Amalgamated Company.

Upon this Scheme becoming effective on the Effective Date, the authorised share capital of Amalgamating Company as on the Effective Date shall stand transferred to and be merged/amalgamated with the authorised share capital of the Amalgamated Company, and the fee, if any, paid by the Amalgamating Company on its authorised share capital shall be set off against any fee payable by the Amalgamated Company on such increase in its authorised share capital, consequent to the amalgamation. Accordingly, Clause V of the Memorandum of Association of the Amalgamated Company shall stand modified and shall read as under

"The Authorised Share Capital of the Company is INR 850,00,00,000 (Rupees Eight Hundred and Fifty Crore) consisting of 8,500,000,000 Equity Shares having face value of INR 1 (Rupees One)"

In this regard, Petitioner Companies shall undertake to comply with provisions of section 61 and 64 r/w. applicable Rules.

the First Petitioner Company shall comply with the provisions of the Companies Act, 2013 to the extent applicable.

Para (2) (n)

It is observed from Financial Statements as on 31.03.2023 of Petitioner Amalgamating Company, details of shareholding is as follows:

Sr. No	Petitioner Company	Name of Shareholder	% of shares held	Remark
1	MSE Enterprises Limited ("MEL" / Amalgamating Company")	Metropolitan Stock Exchange of India Limited ("MSE" or "Amalgamated Company")	95.85%	No Form BEN- 2 has been filed by the Petitioner Companies as per records available at MCA 21 Portal.

No Form BEN-2 has been filed by any of the Petitioner Amalgamating Company as per records available at MCA21 Portal, hence Petitioner Amalgamating Company 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.

Response of the Petitioner Companies:

As regards the observation made in Paragraph 2(n) of the said Report it is concerned, it is submitted that the Petitioner Companies state that, as per Section 90 of the Companies Act, 2013, the Form BEN-2 has to be filed for giving declaration with respect to the significant beneficial owners of the company, disclosing their interest in the company by way of shareholding or voting rights.

Significant beneficial owners are such individual shareholders 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/voting rights in the shares of the Petitioner Companies (or in shares/voting rights in the shares of the respective 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 Company. Further, the 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.

Para (2) (o)

<p>The Petitioner Amalgamated Company shares held by foreign shareholders; hence Hon'ble NCLT may kindly direct the Petitioner Amalgamated Company to comply with the Regulations of RBI/FEMA/FERA.</p>	<p><i>As regards the observation made in Paragraph 2(0) of the said Report it is concerned, the Petitioner Companies undertake to comply with rules, regulations, guidelines of FEMA, FERA and RBI to the extent applicable.</i></p>
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16. The Official Liquidator has filed his report on 22nd February 2024, inter alia stating their observations. The Transferor Company has filed an Affidavit in rejoinder to the report filed by the Official Liquidator with this Tribunal on 25th February 2024 providing clarification/undertakings to the observations made by the Official Liquidator. The clarifications and undertakings given by the Transferor Company are accepted.

17. The observations made by the Official Liquidator and the clarifications/undertakings given by the Petitioner Company are summarized in the table below:

OL Report/Observations dated 22nd February 2024	Response of the Petitioner Company.
Para 7	
<p>With reference to clause No. 20.1 of the scheme it is stated that such clauses override the provision of Companies Act, 2013 namely Section 232(3)(i) which inter- alia provides that, if a company is dissolved, the fees paid by such company on its Authorised Capital shall be set off against any fees payable by the transferee company on its Authorised 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.</p>	<p><i>As regards the observation made in point no. 7 of the said Report, the Amalgamating Company undertake to comply with the provisions set out in Section 232(3)(i) of the Companies Act, 2013 and that the fee, if any, paid by the Amalgamating Company on its authorized share capital shall be set off against any fees payable by the Amalgamated Company on its authorized share capital subsequent to the Amalgamation, if applicable and the Amalgamated Company shall pay the difference of fees and stamp duty, if any.</i></p>

18. It has been submitted that Transferee Company is in receipt of Preliminary Finding Letter (PF Letter) dated 10.11.2023 seeking comments from the Transferee Company. The Transferee Company has filed its reply to the PF letter dated 10.11.2023 on 29.02.2024. The Transferee Company further undertakes that any questionnaire received/ to be received in future from the Directorate shall be responded to promptly and full co-operation shall be provided by the Transferee Company in completion of subject inspection by the Directorate.

19. The lists of litigations by and against the Petitioner Companies pending under various laws, other than the Companies Act, 2013, are annexed to the Petition. All pending complaints/ inspection/ litigation of Transferor Company will continue with by or against the Transferee Company and approval of the Scheme will not deter the concerned authorities including but not limited to SEBI to continue and/or initiate any further legal proceedings against the Transferee Company in case any violation is found in relation to the conduct of affairs by the Transferor Company or arising out of any complaint, inspection or investigation.
20. Heard the submission of the Petitioner Companies and the Regional Director. The Regional Director is satisfied with the reply/ clarification/ undertaking given by the Petitioner Companies and no further observations have been raised.
21. No objection/ representation has been received by the Tribunal opposing the Company Scheme Petition nor has any party controverted any averments made in the Company Scheme Petition. There is no impediment in Sanctioning the Scheme.
22. Allowing this Scheme, the Tribunal does not deter concerned authorities from dealing with any issues arising in future and the decision of such authorities shall be binding on the Transferee Company even for the issues relating to Transferor Company.
23. The Statutory Auditors of the Transferee Company have examined the Composite Scheme of Arrangement in terms of provisions of Sections 230-232 and Section 66 and other applicable provision of Companies Act, 2013 read with Companies (Compromise, Arrangements and Amalgamation) Rules, 2016 and certified that the accounting treatment contained in the Composite Scheme of Arrangement is in compliance with

the applicable accounting standards specified under section 133 of the Companies Act, 2013.

24. The shareholders and Creditors of the Petitioner Company are the best judges of their interest. Their decision should not be ordinarily interfered with by the Tribunal as per the decision of Hon'ble Supreme Court in **Miheer H. Mafatlal vs. Mafatlal Industries Ltd [JT 1996 (8) 205]**

wherein it was held as follows:

“It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the usefulness and propriety of the scheme by supporting it by the requisite majority vote.”

25. In view of the foregoing, upon considering the approval accorded by the members of the Petitioner Companies to the proposed Composite Scheme of Arrangement, and the affidavits filed by the Regional Director, the rejoinder and undertakings of the Petitioner Companies and the report of the Official Liquidator, there appears to be no impediment in sanctioning the present Scheme as the Scheme appears to be reasonable and is not violative of any provisions of law and is not contrary to public policy.
26. The Scheme annexed to the Company Scheme Petition is hereby sanctioned, and the Appointed Date of the Scheme is 1st April 2023. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors, Employees and/or any other stakeholders concerned.

ORDER

27. Consequently, sanction is hereby **granted** to the Composite Scheme of Arrangement under Sections 230 to 232 of the Companies Act, 2013 and Section 66 and other applicable provision of Companies Act, 2013 read with Companies (Compromise, Arrangements and Amalgamation) Rules, 2016 with the following directions:
- a. The Transferor Company shall be dissolved without winding up.
 - b. While approving the Scheme, we clarify that this Order should not, in any way, be construed as an Order granting exemption from payment of stamp duty, taxes or other charges, if any, and payment in accordance with law or in respect of any permission or compliance with other requirements which may be specifically required under any law.
 - c. The Income Tax Department will be at liberty to examine the aspect of any tax payable by the Companies or by the Shareholders of Transferor Company who are receiving consideration for reduction of shares. It shall be open to the income tax authorities to take necessary action as permissible under the Income Tax Law. The decision of Income Tax Department shall be binding on the Transferee Company even for the concerns relating to Transferor Company.
 - d. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the Certified copy of the Order from the Registry.

- e. Certified copy of this Order be also submitted to all the concerned statutory authorities.
- f. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, 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 from the date of receipt of the Certified copy of the Order from the Registry.
- g. All the employees of the Transferor Company in service, on the date immediately preceding the date on which the Scheme takes effect i.e. the Effective Date, shall become the employees of the Transferee Company on such date, without any break or interruption in service and upon terms and conditions not less favorable than those subsisting in the concerned Transferor Company on the said date.
- h. Any proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.
- i. All the properties, rights, liabilities, duties and powers of the Transferor Company, be transferred without further act or deed, to the Transferee Company and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee Company.
- j. 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.
- k. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P.(CAA)/12(MB)2024 filed by the

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

1. The Scheme of Amalgamation is hereby sanctioned, and the Appointed Date of the Scheme is fixed as 1st day of April 2023.
 - m. Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
 - n. Any concerned authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
 - o. All concerned regulatory authorities to act on a copy of this Order duly certified by the Registry of this Tribunal, along with a copy of the Scheme.
28. Ordered Accordingly. Thus, the present Scheme of Arrangement shall stand to be **disposed of**.

“To be Consigned to the Records”

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

(Saayli, LRA)

Sd/-

LAKSHMI GURUNG
MEMBER (JUDICIAL)