

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV**

**C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023**

In the matter of the Companies Act, 2013;

And

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

And

In the matter of

Scheme of Merger by absorption of

Ramgopal Textiles Limited

And

**Tarapur Synthetics Company Private
Limited**

by

**Ramgopal Investment and Trading
Company Private Limited**

and their respective shareholders ('Scheme')

Ramgopal Textiles Limited

[CIN: U17120MH1979PLC020952]

...First Petitioner Company /

Transferor Company No.1

Tarapur Synthetics Private Limited

[CIN: U17116MH1980PTC023469]

... Second Petitioner Company /

Transferor Company No.2

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

**Ramgopal Investment and Trading
Company Private Limited**

[CIN: U65990MH1980PTC022255]

...Third Petitioner Company /

Transferee Company

(hereinafter collectively referred to as the "Petitioner Companies")

Order delivered on: 17.04.2024

Coram:

Ms. Anu Jagmohan Singh

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Counsel Shyam Kapadia along with
Mrs. Shruti Kelji-Pednekar,
Advocate.

For the Regional Director:

Mr. Tushar Wagh, Authorised
Representative on behalf of RD
(WR) Regional Director, WR,
MCA.

ORDER

1. Heard the Learned Counsel for the Petitioner Companies and the representative of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme, nor has any party controverted any averments made in the Petition to the said Scheme.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

2. The sanction of the Tribunal is sought under Section 232 read with Section 230 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, to the Scheme of Merger by Absorption of Ramgopal Textiles Limited [Transferor Company No. 1] and Tarapur Synthetics Private Limited [Transferor Company No. 2] by Ramgopal Investment and Trading Company Private Limited [Transferee Company] and their respective shareholders under the provisions of Section 230 to 232 of the Companies Act, 2013.
3. The First Petitioner Company is engaged in the business of wholesale trading of commodities such as yarn and polymer etc. and the Second Petitioner Company is engaged in the business of wholesale trading of commodities such as yarn and polymer etc. and the Third Petitioner Company is engaged in the business of Investment Company, etc.
4. The Learned Advocate for the Petitioner Companies submit that the Board of Directors of the Petitioner Companies had approved the Scheme with Appointed Date 1st April, 2023 vide board resolution dated 21st August, 2023.
5. The Appointed Date is 1st April, 2023.
6. The Merger by Absorption of the Transferor Companies with the Transferee Company would inter alia have the following benefits / synergies:
 - a. Simplification of corporate structure of group entities;

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

- b. The proposed merger by absorption will enable to consolidate certain group entities and thereby save costs through focused operational efforts, rationalization, standardization and simplification of business processes and integration and optimization of various support functions, resources and the assets;
 - c. The proposed merger by absorption will enable easier and speedier decision making at all levels and better management and co-ordination;
 - d. The proposed merger by absorption will result in avoiding duplication of administrative functions, reduction in multiplicity of legal and regulatory compliances;
 - e. The proposed merger by absorption will also facilitate inter-transfer of resources and costs and optimum utilization of assets of the Transferee Company and Transferor Companies and bring uniformity in corporate policy;
 - f. The Scheme is commercially and economically viable and feasible and is fair and reasonable.
 - g. This Scheme will be beneficial, advantageous and not prejudicial to the interest of all the shareholders, creditors and other stakeholders of all the Transferor Companies and the Transferee Company.
7. The Learned Counsel for the Petitioner Companies submits this tribunal vide its Order dated 24th November 2023 had dispensed with the Meeting of

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

Shareholders of all the Petitioner Companies in view of Consents given by all the Shareholders of respective Companies. The meeting of Secured Creditors of the First Petitioner Company and Third Petitioner Company were dispensed with in view of the Consent Affidavits given by all the Secured Creditors of the said Petitioner Companies. There were no Secured Creditors in the Second Petitioner Company. Further, the Meeting of Unsecured Creditors of Second Petitioner Company was dispensed with in view of the consent affidavit given by the Sole Unsecured Creditor and there were no Unsecured Creditors in the Third Petitioner Company. Meeting of Unsecured Creditors of the First Petitioner Company was dispensed with in view of consent affidavit given by 1 (One) Unsecured Creditor constituting 97.48% in value and direction to issue notices to remaining unsecured creditors of First Petitioner Company. Pursuant to the said directions, the First Petitioner Company had served notices to all the remaining Unsecured Creditors of the First Petitioner Company. Hence, the meeting of members and creditors as per Section 230 (6) of the Act in terms of Section 230 (1) read with subsection (3) to (5) was dispensed with vide order 24 November, 2023 passed in CA(CAA)259/MB.IV/2023.

8. The Learned Counsel for the Petitioner Companies submits that the Petition has been filed in consonance with the Order dated 24th November, 2023, passed in C.A.(CAA)/259/MB-IV/2023 by this Bench.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

9. The Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have complied with all the requirements as per directions of this Tribunal given in the Order dated 12th January, 2024 passed in CP(CAA) NO.314/MB-IV/2023 and have filed necessary Affidavits of service / Compliance Affidavit with this Tribunal on 05 February, 2024. Further, as per directions given vide aforesaid order, the notices were hand-delivered to all the respective Authorities of all the Petitioner Companies.
10. The Share Exchange ratio of the Petitioner Companies is as follows:
The Transferee Company, without further application, act or deed, shall issue and allot to each of the shareholders of Transferor Companies (other than those getting cancelled pursuant to Clause 8.2 of the Scheme) and whose name appears in the Register of members of Transferor Companies on the Record Date, shares in the proportion as follows:
- i. To the Equity Shareholders of the Transferor Company No. 1:
90 Equity Shares of Transferee Company of Rs. 10/- each for every 100 Equity Shares of Rs.10/- each held in Transferor Company No.1.
 - ii. To the Equity Shareholders of the Transferor Company No. 2 :
1 Equity Share of Transferee Company of Rs. 10/- each for every 100 Equity Shares of Rs.100/- each held in Transferor Company No. 2.
11. All the Preference Shares of Transferor Company No. 2 are held by Transferor Company No.1 and the Transferee Company. All the said preference shares shall stand cancelled pursuant to the Scheme and no shares

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

shall be issued by the Transferee Company in exchange. Notwithstanding the said cancellation, any existing shareholding between Transferor Companies and Transferee Company, as the case may be, shall stand cancelled, without any further act or deed, upon the Scheme becoming effective.

12. The Regional Director has filed a Report dated 20th February, 2024 having certain observations. The said observations of the Regional Director and response submitted by the Petitioner Companies vide Rejoinder Affidavit are as follows:

Sr No.	Observations stated in Para 2 of RD Report	Responses by the Petitioner Companies
a)	In compliance of AS-14 (IND-AS 103), the Transferor Companies 1, 2 and Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.	The Petitioner Companies undertake that in compliance of AS-14 or IND-AS 103, as may be applicable, the Transferee Company will pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 or IND AS-8, etc.
b)	As per definition of the Scheme, 1.2. "Appointed date" for the purpose of this Scheme shall	The Petitioner Companies undertake to comply with the Circular No. F. No. 7/12/2019/CL-I dated

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

<p>mean 1 April, 2023;</p> <p>1.3. “Effective Date” means the last of the dates on which conditions and matters referred to in Clause 21 hereof occur or have been fulfilled or waived;</p> <p>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 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 its inherent powers.</p> <p>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.</p>	<p>21.08.2019 issued by the Ministry of Corporate Affairs.</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

c)	<p>The Transferor Companies 1, 2 and Transferee Company have to undertake to comply with Section 230(3)(i) of the Companies Act, 2013, where the transferor company is dissolved, the fee, and stamp duty paid by the transferor company on its authorized capital shall be set-off against any fees and stamp duty payable by the transferee company on its authorized capital subsequent to the amalgamation and therefore, petitioners to undertake that the transferee company shall pay the difference of fees and stamp duty.</p>	<p>The Petitioner Companies states that the Transferee Company undertake that the fees and stamp duty if any, paid by the Transferor Companies on its Authorized Capital will be set-off against any fees payable by the Transferee Company on its Authorized Capital subsequent to the Merger by Absorption in accordance with the provisions of section 232(3)(i) of Companies Act, 2013 and affirms that it will comply with the provisions of the section. Further, the Petitioner Companies undertakes that the Transferee Company will pay the balance / difference amount of the fees and stamp duty on its increasing Authorized share capital, if any.</p>
d)	<p>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</p>	<p>The Petitioner Companies states that;</p> <ul style="list-style-type: none">➤ The Hon'ble NCLT vide its Order dated 24th November 2023 had dispensed with the meeting of all the Equity Shareholders of all the

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

<p>(3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.</p>	<p>petitioner companies in view of the Consent Affidavits given by all the Equity Shareholders of the respective Petitioner Company(ies).</p> <p>➤ Further, the meeting of the preference shareholders of Second Petitioner Company was dispensed in view of the Consent Affidavits given by the Preference Shareholders of Second Petitioner Company. Further, there were no preference shareholders in the First Petitioner Company and Third Petitioner Company.</p> <p>➤ The meeting of Secured Creditors of the First Petitioner Company and Third Petitioner Company were dispensed in view of the Consent Affidavits given by the Secured Creditor/s of the respective Petitioner Company. Further, there are no Secured Creditors in</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

		<p>Second Petitioner Company. Therefore, the question of holding the meeting did not arise.</p> <p>➤ Further, by the said Order in the above matter, the meeting of the Unsecured Creditors of First Petitioner Company having value of Rs.1,02,58,654/- has been dispensed with in view of consent affidavit given by 1 (One) Unsecured Creditor constituting 97.48% in value of the total outstanding Unsecured Creditors of the First Petitioner Company. The meeting of the Unsecured Creditors of the Second Petitioner Company is dispensed with in view of the consent affidavit given by the Sole Unsecured Creditor. Further, there were no Unsecured Creditors in the Third Petitioner Company. Hence, the question of</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

		<p>meeting of Unsecured Creditors of Third Petitioner Company did not arise.</p> <p>Hence, the meeting of members and creditors as per Section 230 (6) of the Act in terms of Section 230 (1) read with subsection (3) to (5) has been dispensed vide order 24 November, 2023 passed in CA(CAA)259/MB.IV/2023.</p>
e)	<p>The Transferor companies 1, 2 and Transferee company shall undertake to comply with the directions of the concerned sectoral Regulator, if so required</p>	<p>The Petitioner Companies states that the Transferor Company 1 & Transferor Company 2 are not regulated by any Sectoral Regulator. Further, the Transferee Company (being registered NBFC) is regulated by RBI and accordingly, the Transferee Company undertakes to comply with the directions of the RBI, if any, as per the applicable provisions.</p>
f)	<p>The Transferor companies 1, 2 and Transferee Company shall undertake to comply with the directions of the I.T. Department and GST Department, if any.</p>	<p>The Petitioner Companies states that none of the Petitioner Companies have received any direction from Income Tax Department or GST Department. Further, the Petitioner</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

		Companies undertake to comply with the directions of the Income Tax Department and GST Department (in the event it is received) in the course of applicable law.
g)	The Hon'ble Tribunal may kindly direct the Transferor companies 1, 2 and Transferee Company 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.	The Petitioner Companies undertake that the Scheme enclosed to the Company Application and the Company Petition are one and the same and there is no discrepancy, or no change is made.
h)	The Directorate has received letter dated 14.11.2023 (copy is enclosed as Annexure- A-1) and same is placed on record to protect the interest of Income Tax department in the matter. The Transferee Company shall be in compliance with the provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the Transferor companies 1, 2 and Transferee company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder.	The Petitioner Companies states that the Petitioner Companies have not received any communication from Income Tax Department. Notwithstanding the same, the Petitioner undertakes that interest of Income Tax department will be protected and remain unaffected by the Scheme. The Petitioner Companies further undertakes to ensure compliance with the provisions of Section 2(1B) and

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

		all other provisions of the Income Tax Act, 1961 and rules made thereunder.
i)	The Transferee company is NBFC therefore the Hon'ble NCLT may, if deems fit, direct the Transferee Company to place on record NoC of the RBI	<p>The Petitioner Companies states that NoC from RBI was not required in the present case.</p> <p>Regulation 66 of Master Direction of RBI DNBR.PD.008/03.10.119/2016-17 dated September 01, 2016, as amended from time to time, reads as follows :</p> <p>“Chapter – X - Acquisition/ Transfer of Control of Applicable NBFCs</p> <p>66. An applicable NBFC, shall require prior written permission of the Bank for the following:</p> <p>(a) any takeover or acquisition of control of the applicable NBFC, which may or may not result in change of management;</p> <p>(b) any change in the shareholding of the applicable NBFCs, including progressive increases over time, which would result in acquisition/ transfer of shareholding of 26 per cent or</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

		<p>more of the paid-up equity capital of the applicable NBFC.</p> <p>Provided that, prior approval shall not be required in case of any shareholding going beyond 26 per cent due to buyback of shares/ reduction in capital where it has approval of a competent Court. The same shall be reported to the Bank not later than one month from its occurrence;</p> <p>(c) any change in the management of the applicable NBFC which results in change in more than 30 per cent of the directors, excluding independent directors.”</p> <p>Para 3(ix) of the aforesaid direction defines “Control” as follows :</p> <p>“(ix) "Control" shall have the same meaning as is assigned to it under clause (e) of sub-regulation (1) of regulation 2 of Securities and Exchange Board of India (Substantial Acquisition of</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

		<p>Shares and Takeovers) Regulations, 2011.”</p> <p>Regulation 2(1)(e) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 defines “Control” as follows:</p> <p>“(e) “control” includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner”</p> <p>The Petitioner Companies submits that prior written permission of RBI is not required in the present case on the basis of following :</p> <p>a) There is no takeover or acquisition of control of the</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

		<p>Transferee Company which is registered with RBI as NBFC</p> <p>b) The Scheme will not result in acquisition / transfer of shareholding of 26% or more of the paid-up capital of the Transferee Company. In fact, there is no change in the shareholding considering that all the shareholders, whether existing or new, are part of the same group. Further, there is reduction of share capital of the Transferee Company to the extent shares held by Transferor Company No. 1.</p> <p>c) The Scheme will not result in change in more than 30% of the directors of the Transferee Company. In fact, there is no change in the Directors of the Transferee Company in the present case.</p> <p>d) The Company which is Registered as a NBFC with RBI is a Transferee Company which will continue to exist post proposed Scheme.</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

		<p>In view of the above, Petitioner Companies submits that prior written permission of RBI is not required in the present case.</p> <p>The Petitioner Companies further submits that the Transferee Company has already submitted the above facts to RBI as a prior intimation of the proposed merger vide it's letter dated 26 October, 2023 (filed with RBI on 27 October 2023). The communication with RBI on this subject is as follows:</p> <ul style="list-style-type: none">- Prior intimation by Transferee Company dated 26 October, 2023 filed with RBI on 27 October, 2023.- Pursuant to directions of Hon'ble NCLT dated 24th November, 2023 in CA(CAA)259/MB-III/2023, the Transferee Company has filed Notice (dated 04th December, 2023) with RBI on 05th December, 2023.- Pursuant to directions of Hon'ble NCLT dated 12th
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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

		<p>January, 2024 in C.P.(CAA)/314(MB)2023, the Transferee Company has further filed Notice (dated 22th January, 2024) with RBI on 23rd January, 2024.</p> <ul style="list-style-type: none">- RBI responded for the first time vide their mail dated 09 February, 2024 called for certain documents & information.- Transferee Company replied to RBI on 19 February, 2024 and provided all the documents & information called for by RBI. All the aforesaid communication with RBI is annexed hereto and collectively marked as Annexure -“B” to the response affidavit filed by the Petitioner Companies. <p>Pursuant to aforesaid response filed by the Petitioner Companies, the Office of the Regional Director had filed their Supplementary Report dated 06.03.2024 stating that “The reply of the company may be considered by the Hon'ble NCLT</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

		<p>as the matter falls under RBI domain. However, the Petitioner Company has sought exemption of prior written approval of RBI under Master Direction of RBI having no. DNBR. PD.008/03.10.119/2016-17 dated 01.09.2016 the relevant portion of which is enclosed herewith for kind consideration of this Hon'ble Tribunal and deciding the matter on merits as subject matter falls under RBI domain.”.</p> <p>RBI on 03.04.2024 issued their No Objection to the Scheme. The Petitioner Companies have submitted the said “No Objection” letter of the RBI vide their additional affidavit dated 03.04.2024 which filed with the Hon’ble Tribunal.</p> <p>Further, in addition to Clause 7 of the Scheme, as required by RBI vide their aforesaid letter dated 03.04.2024, the Petitioner Companies vide their Additional Affidavit dated 03.04.2024 have</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

		<p>undertaken that all regulatory or other proceedings of like nature or cause of actions against the Transferor companies pending and/or arising, before, on, or after, the appointed date shall not abate or be discontinued or be in any way prejudicially affected by reason of anything contained in this scheme but shall be initiated, continued and enforced by or against the Transferee Company in the manner and to the same extent as would or might have been initiated, continued and enforced against the Transferor Companies without any further act, instrument, deed, matter or thing being made, done or executed.</p>
j)	<p>The Transferee Company shall be in compliance with the provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the Transferor Companies 1, 2 and Transferee Company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder.</p>	<p>The Petitioner Companies further undertakes that to ensure compliance with the provisions of Section 2(1B) and all other provisions of the Income Tax Act, 1961 and rules made thereunder.</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

k)	<p>In the Balance Sheet of the Transferor Company 1 and in the Transferee Company as on 31st March 2023, Security Premium of Rs. 5,80,40,000/- and Rs. 5,17,50,000/- respectively is showing.</p> <p>In view of the above, if agreed, Hon'ble NCLT may be direct the petitioners to clarify that Income Tax Department has properly assessed the increase of share capital from time-to-time u/s. 68 of the Income Tax Act, 1961 and payment of Income Tax by existing shareholders, if they who have purchased shares at lower price than issued price from above allottees or seek the reply from Income tax department about issue of share capital at high premium.</p> <p>It is further submitted that CBDT vide circular dated 17.03.2023 (Copy Enclosed) appointed the following nodal officer for income tax department for the Region of Mumbai & Goa, which is as follows: Pr. CCIT, Mumbai</p>	<p>The Petitioner Companies states that the Securities Premium of Rs. 5,80,40,000/- and Rs. 5,17,50,000/- as appearing in the Balance Sheet as on 31st March 2023 of Transferor Company No. 1 and Transferee Company respectively was collected vide allotment of shares during F.Y. 1995-96 and 1996-97. The said Securities Premium has been appropriately considered and disclosed in the duly Audited Financial Statements and Income Tax Returns of the relevant Assessment Years as required under the Income Tax Act, 1961 and rules made thereunder and in compliance with all relevant laws.</p> <p>As far as Assessment of Share Capital u/s 68 or any other relevant section of Income Tax Act, 1961 is concerned, the Petitioner Companies submits that question on Securities Premium collected by the Petitioner Companies was not</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

<p>Address: 3rd Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai- 400020.</p> <p>Phone No. 022-22017654</p> <p>Email:- Mumbai.pccit@incometax.gov.in</p>	<p>raised in respect of any allotment of shares at Premium. Further, the said Securities Premium was collected more than 25 years back and accordingly, assessment for the said years is already time barred.</p> <p>The Petitioner Companies also submits that at Application stage, the Petitioner Companies have issued notices to the respective Jurisdictional Assessing Officer as well as Pr. CCIT, Mumbai on 07th December, 2023 as directed by NCLT vide Order dated 24th November, 2023. Also, pursuant to directions given by the Hon'ble Tribunal during Petition admission vide order dated 12th January, 2024, the notice of Final Hearing has also been issued to respective Jurisdictional Assessing Officer as well as Pr. CCIT, Mumbai on 22nd January, 2024. The Affidavit of Service to that effect have been filed with Hon'ble NCLT. However, none of the Petitioner Companies have</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

		received any response from the Income Tax Department. Nonetheless, the Petitioner Companies undertakes that the approval of the Scheme by the NCLT will not deter the rights of the Income Tax department to deal with any of the issues arising after giving effect to the scheme and the Transferee Company shall deal in the proceedings appropriately in the course of applicable law.
1)	That on examination of the report of the Registrar of Companies Mumbai dated 09.02.2024 (Annexed as Annexure A-1) that all Transferor Companies 1, 2 and Transferee Company fall 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 Transferor Companies 1, 2 and Transferee Company. Further, the Transferor companies 1, 2 and Transferee company have filled	i. The Petitioner Companies states that the said para does

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

<p>Financial Statements up to 31.03.2023 further observations in ROC report are as under:-</p> <p>i. That the ROC Mumbai in his report dated 09.02.2023 has stated that no Inquiry, inspection, investigation & prosecution is pending against the Transferor companies 1, 2 and Transferee Company.</p> <p>ii. It is submitted that as per the provisions of Section 232(3)(i) of the Companies Act, 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 subsequent to the amalgamation. Therefore, the remaining fee, if any after setting off the fees already paid by the transferor company on its authorized capital, has to be paid</p>	<p>not contain any observation, instead, it merely states factual information / comments which are positive in nature and does not call for any reply.</p> <p>ii. The Petitioner Companies undertake that the fee, if any, paid by the Transferor Companies on its Authorised Capital will be set-off against any fees payable by the Transferee Company on its Authorised Capital subsequent to the Merger by Absorption in accordance with the provisions of section 232(3)(i) of Companies Act, 2013 and affirms that it will comply with the provisions of the section. Further, the Transferee Company will pay the balance / difference amount of the fees on its increasing Authorised share capital, if any.</p> <p>iii. The Transferee Company</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

<p>by the transferee Company on the increased authorized capital subsequent to the amalgamation.</p> <p>iii. The objects of transferor and transferee company are different. Hence, they may be directed to amend the objects clause of Memorandum of Association.</p> <p>iv. Transferee Company is an NBFC, Yet NOC from RBI has not been attached.</p> <p>v. May be decided on its merits.</p> <p>The Transferor companies 1, 2 and Transferee company may please be directed to submit reply on the above observations of RoC, Mumbai and Hon'ble NCLT may consider the scheme on merit after receipt of reply of petitioner.</p>	<p>undertakes to amend the main objects in order to include main objects of Transferor Company No. 1 and Transferor Company No. 2.</p> <p>iv. The Petitioner Companies have clarified the same in Para 2(i) above.</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

13. Mr. Tushar Wagh, Authorised Representative of office of Regional Director (WR), Mumbai, appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.
14. The Official Liquidator has filed his report in the Company Scheme Petition No. C.P.(CAA)/314/MB-IV/2023. Following is the table depicting observations of the Official Liquidator vide Para 6 & 7 of their Report and response submitted by the Petitioner Companies:

Sr No.	Observations stated in OL Report	Responses by the Petitioner Companies
6.	With reference to Clause no. 15.1 of the Scheme it is stated that such clause overrides the provision of Companies Act, 2013 namely section 232(3)(i) which inter-alia provides that, 'if a companies are dissolved, the fees paid by such company on its Authorized Capital shall be set off against any fee payable by the transferee company on its Authorized Capital. Hon'ble Tribunal may be pleased to direct transferee company to pay differential amount, if any, after setting off fees	The Petitioner Companies states that the Transferee Company undertakes that the fee, if any, paid by the Transferor Company on its Authorized Capital will be set-off against any fees payable by the Transferee Company on its Authorized Capital subsequent to the Merger by Absorption in accordance with the provisions of section 232(3)(i) of Companies Act, 2013 and affirms that it will comply with the provisions of the section. Further, the Petitioner Companies undertakes that the Transferee

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C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

	already paid by the Transferee Company.	Company will pay the balance/difference amount of the fees on its increasing Authorized share capital, if any.
7.	The Second Transferor Company has informed that Company has taken unsecured loan from its director Sanjay M. Jatia. As per the ledger account the company owes Rs. 26,50,000/- to the Director. In the matter, it is to report that, in terms of proviso to clause (viii) sub rule (c) of Rule 2 of Companies (Acceptance of Deposit) Rules, 2014 a declaration needs to be given to the effect that, that such amount is given from own fund and not being given out of funds acquired by him by borrowing or accepting loans or deposits from others. Hon'ble Tribunal may require Transferor Company to produce a copy of such declaration.	The petitioner companies submits that Mr. Sanjay M. Jatia, director of Transferor Company No. 2 has given declaration in terms of proviso to clause (viii) sub rule (c) of Rule 2 of Companies (Acceptance of Deposit) Rules, 2014 from time to time stating that the amount lent by him to the Transferor Company No. 2 is given from his own funds and not out of funds acquired by him by borrowing or accepting loans or deposits from others. Copy of said declarations given by directors is enclosed as Annexure - "B" to the response affidavit filed by the Petitioner Companies.

15. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme

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MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

ultimately results in tax avoidance under the provisions of Income Tax Act, it shall be open to the Income tax authorities to take necessary action as possible under the Income Tax Law.

16. In terms of the RBI Letter dated 03/04/2024, all regulatory or other proceedings initiated by or against the Transferor Companies shall stand transferred in the name of the Transferee Company and same shall be continued, prosecuted and enforced by or against the Transferee Company, to the exclusion of the Transferor Companies.

17. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.

18. Since all the requisite statutory compliances have been fulfilled, CP(CAA)-314(MB)/2023 is made absolute in terms of the prayer clauses of the said joint Company Petition. Therefore, the Scheme is hereby **sanctioned**. This Bench further orders that –

- i) The Appointed Date is fixed as 01.04.2023. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Creditors and Employees.
- ii) The Transferor Company be dissolved without winding up.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

- iii) The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in E-Form INC-28 within 30 days from the date of issuance of the certified copy of the Order from the Registry.
- iv) The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy Registrar or the Assistant Registrar, as the case may be, of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified copy of order.
- v) The Petitioner Companies shall comply with all the undertakings given by them.
- vi) The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
- vii) All concerned shall act on a copy of this Order along with the Scheme duly authenticated by the Registrar of this Tribunal.
- viii) Any person interested in the above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/314/MB/2023 IN
C.A.(CAA)/259/MB/2023

19. With the above directions, C.P.(CAA)/314/MB/2023 c/w
CA(CAA)/259/MB/2023 is **allowed** and **disposed-off**. File to be consigned
to records.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)

17.04.2024/-