

SL.No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)

CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 15.03.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (CAA) No.29/230/2022
NAME OF THE COMPANY	MVK Energy Pvt Ltd (Transferor Co.1) & KVM Energy Pvt Ltd (Transferor Co.2) & MVK Infrastructure Pvt Ltd (Transferee Co.)
NAME OF THE PETITIONER(S)	
NAME OF THE RESPONDENT(S)	
UNDER SECTION	230

ORDER

This Petition is allowed, vide separate orders.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

CP (CAA) No.29/230/HDB/2022
connected with
CA (CAA) No.28/230/HDB/2022
*[Section 232 r/w Section 230 and other applicable
provisions of the Companies Act, 2013]*

In the matter of Scheme of Arrangement of

M/s. MVK ENERGY PRIVATE LIMITED
(Amalgamating/Transferor Company - 1)

And

M/s. KVM ENERGY PRIVATE LIMITED
(Amalgamating/Transferor Company - 2)

With

M/S. MVK INFRASTRUCTURES PRIVATE LIMITED
(Amalgamated/Transferee Company)

And

Their Respective Shareholders and Creditors

M/s. MVK ENERGY PRIVATE LIMITED

Having Registered Office at
Plot No.119, Flat No. 301, Road No. 44,
Kavuri Hills, IVY Terrace, Madhapur,
Hyderabad-500081, Telangana, INDIA

... 1st Petitioner/Transferor/
Amalgamating Company

and

M/s. KVM ENERGY PRIVATE LIMITED

Having Registered Office at
Plot No. 119, Flat No. 301, Road No. 44,
Kavuri Hills, IVY Terrace, Madhapur,
Hyderabad Telangana- 500081, INDIA

... 2nd Petitioner/Transferor/
Amalgamating Company

and

M/s. MVK INFRASTRUCTURES PRIVATE LIMITED

Having Registered Office at
Plot No. 119, Flat No. 301, Road No. 44,
Kavuri Hills, IVY Terrace, Madhapur,
Hyderabad Telangana 500081, INDIA

... 3rd Petitioner/Transferee/
Amalgamated Company

Date of Order: 15.03.2023

Coram:

Hon'ble Justice Telaprolu Rajani, Member (Judicial)

Hon'ble Shri Charan Singh, Member (Technical)

Counsel/Parties present:

For the Petitioner : Mr. Venkata Rami Reddy, Counsel.

For Regional Director : Mr. Dara Shashi Raj, Dy.RD.

For Official Liquidator : Official Liquidator.

[PER: BENCH]

ORDER

This is a Joint Application filed by the transferor and transferee companies, filed under Section 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013, praying for the sanction of Scheme of Amalgamation between M/s. MVK ENERGY PRIVATE LIMITED (Transferor Company -1), M/s. KVM ENERGY PRIVATE LIMITED (Transferor Company -2), and M/s. MVK INFRASTRUCTURES PRIVATE LIMITED (Transferee Company) in terms of Scheme of Amalgamation of Companies. The Registered Offices of the Transferor Companies and the Transferee Company are situated in the State of Telangana.

Briefly the facts are as follows:

1. The 1st Petitioner/Transferor Company no.1 (U40105TG2004PTC043741) i.e **MVK ENERGY PRIVATE LIMITED** was incorporated as a Private Limited Company on 27.05.2022. The Transferor Company 1 was incorporated on 18th July 2016 under the provisions of the Companies Act, 1956 and the registered office of the 1stPetitioner/Transferor

Company 1 is situated at Plot No. 119, Flat No. 301, Road No. 44, Kavuri Hills, IVY Terrace, Madhapur Hyderabad-500081 Telangana, India.

The Share Capital structure of the Transferor Company as on 31.03.2022 is as follows:

AUTHORISED SHARE CAPITAL		
Particulars	Number of Shares	Amounts in Rs.
Equity Shares of Rs. 10/- each	1,50,00,000	15,00,00,000/-
ISSUED, SUBSCRIBED, AND PAID-UP SHARE CAPITAL		
Equity Shares of Rs. 10/- each	1,07,48,480	10,74,84,800/-

- The main objects of the 1stPetitioner/Transferor Company 1 are to generate, harness, develop,

accumulate, distribute and supply electricity by setting up Thermal power plants by use of liquid, gaseous or solid Fuels for the purpose of light, heat, motive power and for all other purposes for which electric energy can be employed. To carry on and generate power supply either by hydro, thermal, gas, diesel oil or through renewable Energy sources such as solar, photo voltaic wind mill, bio-mass and or any other means. To transmit, distribute, supply and sell such power either directly or through transmission lines and facilities of Central/State Governments or private companies or electricity boards to industries and to Central/State Governments, other consumers of electricity including for captive consumption for any Industrial projects

promoted by this company or promoter companies, and generally to develop, generate, accumulate power at any place or places and to transmit, distribute, sell and supply such power and to support to, or to Invest In companies with above mentioned objects.

The 2nd Petitioner/Transferor Company - 2 i.e., **KVM ENERGY PRIVATE LIMITED** (U40109TG2006PTC051819) was incorporated under the provisions of the Companies Act, 1956 and the Registered office of the 2nd Petitioner/Transferor Company 2 is situated at Plot No. 119, Flat No. 301, Road No. 44, Kavuri Hills, IVY Terrace, Madhapur Hyderabad-500081, Telangana, India.

- The Share Capital structure of the Transferor Company as on 31.03.2022 is as follows:

AUTHORISED SHARE CAPITAL		
Particulars	Number of Shares	Amounts in Rs.
Equity Shares of Rs. 10/- each	2,50,00,000	25,00,00,000
ISSUED, SUBSCRIBED AND PAID-UP SHARE CAPITAL		
Equity Shares of Rs. 10/- each	2,39,77,480	23,97,74,800

- The main objects of the 2nd Petitioner/Transferor Company - 2 are to generate, harness, develop, accumulate, distribute, and supply electricity by setting up Thermal power plants by use of liquid,

gaseous or solid Fuels for the purpose of light, heat, motive power and for all other purposes for which electric energy can be employed. To carry on and generate power supply either by hydro, thermal, gas, diesel oil or through renewable Energy sources such as solar, photo voltaic wind mill, bio-mass and or any other means. To transmit, distribute, supply and sell such power either directly or through transmission lines and facilities of Central/State Governments or private companies or electricity boards to industries and to Central/State Governments, other consumers of electricity including for captive consumption for any Industrial projects promoted by this company or promoter companies, and generally to develop, generate, accumulate power at any place or places and to transmit, distribute, sell and supply such power and to support to, or to Invest In companies with above mentioned objects.

2. The 3rd Petitioner /Transferee Company i.e MVK INFRASTRUCTURES PRIVATE LIMITED U45209TG2008PTC059113 is a Company incorporated under the provisions of the Companies

Act, 1956 and the Registered office of the 3rdPetitioner/Transferee Company is situated at Plot No. 119, Flat No. 301, Road No. 44, Kavuri Hills, IVY Terrace, Madhapur Hyderabad 500081 Telangana India.

- The Share Capital structure of the Transferee Company as on 31.03.2022 is as follows:

AUTHORISED SHARE CAPITAL		
Particulars	Number of Shares	Amounts in Rs.
Equity Shares of Rs. 10/- each	1,00,00,000	10,00,00,000
ISSUED, SUBSCRIBED, AND PAID UP SHARE CAPITAL		

Equity Shares of Rs. 10/- each	67,90,000	6,79,00,000
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- The main objects of the 3rd Petitioner/Transferee Company are briefly as under:

1. To construct, let out, furnish and carry on all or any of the functions of proprietors of flats, maisonettes, dwelling houses, shops, offices and for these purposes, to purchase, take on lease, or otherwise acquire and hold any lands and prepare layout thereon or buildings of any tenure or description wherever situate, or rights or interests therein or connected therewith, to layout, prepare building sites, to construct, reconstruct, repair, pull down, alter, improve, decorate, furnish and maintain flats, maisonettes, dwelling houses, shops, offices,

buildings, works and sanitary conveniences of all kinds, to layout roads, drainage pipes, water pipes and electric installations and to set apart land for Pleasure gardens and recreations, grounds or otherwise improve land or any part hereof.

2. To undertake real estate business of buying and selling or otherwise generally deal in lands, houses, flats and other properties and to undertake market survey and works such as planning outlays of land, plotting and also to obtain necessary permissions, clearances, sanctions, approvals from Government or other agencies in respect of the real estate transactions and to lease, hire, contract or otherwise give on rent the construction and earth moving equipments and all other properties movable or immovable.
3. To carry on the trade or business of service contractors and engineers, builders and

contractors, to own, to erect, construct, maintain, alter, repair, pull down and restore either alone or jointly or in collaboration with any other or others, works of all descriptions in particular Gas pipe line, barrages, dams, sluices, locks, embankments, quarries, breakwaters, docks, quays, harbours, pixels, wharves, canals, tanks, bridges, aqueducts, reservoirs, irrigation, reclamation, improvement, river works of all kinds, power projects of all types, railways, airports, airstrips, waterways, waterworks, roads, bridges, warehouses, offices, factories, mills, engines, steel plant, machinery and equipment of every descriptions, gas works drainage and sewerage works and buildings of every description.

4. To carry on the business of consultants, technicians, service contractors and engineers insanitary, waterworks, industrial, civil, mechanical, and structural.

- According to the Petitioner Companies, the benefits of the proposed Scheme are: -
 - a) The amalgamation will enable pooling of resources of the companies involved in amalgamation to their common advantage, resulting in more productive utilization of the said resources and achieving economies of scale resulting into cost and operational efficiencies, which would be beneficial for all the stakeholders
 - b) The amalgamation would bring synergies in procurement, technology, administration and marketing operations
 - c) The amalgamation would bring synergies in procurement, technology, administration and marketing operations
 - d) The amalgamation would help to achieve consolidation, greater integration and flexibility which will maximize overall shareholder value and improve the competitive position of the Transferee Company.

- e) The amalgamation would help combine the administrative and marketing functions of the entities involved and consequently result into more efficient functioning of the Transferee Company in a cost-effective manner.
- f) The amalgamation is expected to increase the financial strength thereby enabling further growth and development of the Transferee Company
- g) The amalgamation would result into simplification of the entity structure of different entities and the shareholding in the group
- h) The amalgamation would bring greater management focus and would help in achieving uniform corporate policies and faster / effective decision making and its implementation
- i) Cost reduction as a result of focused operational efforts, elimination of duplication of administrative expenses, optimum utilization of available resources and integrating management focus which will make the internal control systems more efficient and effective

- j) Business synergies in the operations of the Transferee Company and the Transferor Companies will provide operational flexibility and a stronger and wider capital and financial base for future growth/ expansion of the Transferee Company.
- k) The amalgamation would help avoiding duplication of regulatory and procedural compliances and consequently result into saving of time, resources and cost involved in such compliances.
- l) The amalgamation shall be beneficial and in the best interests of the shareholders, creditors, employees of the companies involved, and all concerned.

In view of the above it is considered desirable and expedient to amalgamate the Transferor Companies with the Transferee Company in accordance with this Scheme, pursuant to Section 230 to 232 and other applicable provisions of the Companies Act, 2013 read with rules made thereunder.

3. The Board of Directors of the Petitioner Companies have no material interest in the proposed Scheme of Amalgamation between **MVK ENERGY PRIVATE LIMITED** (Transferor Company - 1), **KVM ENERGY PRIVATE LIMITED** (Transferor Company - 2) and **MVK INFRASTRUCTURES PRIVATE LIMITED** (Transferee Company) and their respective Shareholders and Creditors except as shareholders of their respective companies in general.
4. The Board of Directors of the Petitioner Companies approved their Scheme at their respective board meetings held on 08.07.2022. Petitioner Companies gave their consent to the Scheme supported by Board resolutions which was also obtained and provided in Annexure G.
5. The Company Petition is filed in pursuance of the Order dated 19.10.2022 passed in CA (CAA) 28/230/HDB/2022. The Petitioner Companies have complied with all the requirements as per directions of this Tribunal and have filed necessary affidavits of compliance with the Tribunal.

6. The Regional Director (South East Region), Ministry of Corporate Affairs, Hyderabad has filed its Report on 22.02.2023, inter alia, stating that the Adjudicating Authority may be pleased to consider the observations as pointed out therein and pass such orders after hearing the Income Tax Department.
7. In response to the observations made by the Regional Director, the Petitioner Companies have given necessary undertakings and clarifications through their reply affidavit filed on 28.02.2023. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Para Nos.	Regional Director's Report dated 22.02.2023.	Reply Affidavit filed by the Petitioner Companies vide Memo dated 28.02.2023.
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<p>Page 1 @ para 1,2 (a)</p>	<p>The Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad and Regional Director is authorized to swear this affidavit on behalf of Central Government.</p> <p>That the Central Government represented by the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad has been served with Copy of CP(CAA) No. 29/230/HDB/2022 Connected with CA (CAA) No.28/230/HDB/2022, pursuant to Section 230 - 232 of the Companies Act, 2013. The registered offices of the Petitioner Companies are situated in the State of Telangana within the jurisdiction of this Hon'ble Tribunal. Regional Director, respectfully submit that the scheme of amalgamation and other material papers have been examined and to submit as under</p>	<p>1. The Regional Director has made some observations vide his report dated 22.02.2023. The reply / compliance of the Petitioner Companies are as under:</p>
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Page 2 @ para 3 (b)	<p>Directorate has received letter No. ROCH/Amal/230-232/2022/4201 dated 01.02.2023 from the Registrar of Companies, Telangana, Hyderabad opining no objection to the proposed Amalgamation, but pointed out certain observations as under:-</p> <p>(a) As per Clause No. 4.3 the appointed date of the Scheme 01.04.2022. The Applicant Companies have filed Annual Statutory Returns up to 31.03.2022.</p> <p>(b) Hon'ble NCLT vide its order 19.10.2022 has dispensed with the meeting of shareholders and creditors of all the three companies.</p> <p>(c) Clause No 15 of the scheme provides for merger of Authorised Capital of Transferor Companies with Authorised Capital of Transferee Company. The Transferee Company shall</p>	<p>2. That at Para 3 (a), 3 (b), 3 (c), 3 (d), 3 (e) and 3(f) with regard to the letter No.ROCH/Amal/230-232/2022/4201 dated 01.02.2023 from the Registrar of Companies, Telangana opining no objection to the proposed Amalgamation, but pointed out certain observations as under:</p> <p style="padding-left: 40px;">a. As per clause No. 4.3 the appointed date of the scheme 01.04.2022. The Applicant Companies have filed Annual Statutory Returns up to 31.03.2022. Reply / Undertaking of the Petitioner Companies for the observation of the Regional Director in his Report at Para 3a): It is humbly submitted that the above</p>
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<p>pay differential registration fee and stamp duty if any payable for the proposed increase in authorised capital through the merger after deducting fee and stamp duty already paid by the Transferor Companies before the merger.</p> <p>(d) Hon'ble Tribunal may be pleased to direct the Petitioner Company(s) to preserve its books of accounts and papers and records and shall not be disposed off without the prior permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.</p> <p>(e) Hon'ble Tribunal may be pleased to direct the Petitioner Company(s) to ensure statutory compliance of all applicable laws and on sanctioning of the present scheme the applicant company shall not be absolved for any of its statutory liability in any manner.</p>	<p>statement is fact on record and hence no comments.</p> <p>b. Hon'ble NCLT vide its order 19.10.2022 has dispensed with the meeting of shareholders and creditors of all the three companies. Reply Undertaking of the Petitioner Companies for the observation of the Regional Director in his Report at Para 3 (a): It is humbly submitted that the above statement is fact on record and hence no comments.</p> <p>c. Clause No 15 of the scheme provides for merger of Authorised capital of Transferor companies with authorised capital</p>
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	<p>(f) Hon'ble Tribunal may be pleased to direct the Petitioner Company(s), involved in the scheme to comply with Rule 17(2) of the Companies (Compromise, Arrangement and Amalgamation) Rules 2013 with respect to filing of order for confirmation of scheme to be filed in Form No.INC-28 with the concerned office of Registrar of Companies by the Petitioner Company.</p>	<p>of Transferee Company. The transferee company shall pay differential registration fee and stamp duty if any payable for the proposed increase authorised capital through the merger after deducting fee and/tap duty already paid by the transferor companies before the merge Reply Undertaking of the Petitioner Companies for the observation of the Regional Director in his Report at Para 3(c): It is humbly submitted that the Authorised capital of Transferor companies shall merge with</p>
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		<p>authorised capital of Transferee Company. The transferee company shall pay differential registration fee and stamp duty any payable for the proposed increase in authorised capital through the merger after deducting fee and stamp duty already paid by the transferor companies before the merger.</p> <p>D. Hon'ble Tribunal may be pleased to direct the petitioner company (s) to preserve its books of accounts and papers and records and shall not be disposed off without the prior permission of the Central</p>
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		<p>Government in terms of provisions of section 239 of the Companies Act 2013.</p> <p>Reply /Undertaking of the Petitioner Companies for the observation of the Regional Director in his Report at Para 3(d):</p> <p>It is humbly submitted that, the books of accounts and papers and records of petitioner companies shall be preserved and shall not be disposed of without the prior permission of the Central Government in terms of provisions of section 239 of the Companies Act 2013. 3(e). Hon'ble Tribunal may be pleased to direct</p>
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		<p>the petitioner company(s), involved in the scheme to comply with rule 17(2) of the Companies (Compromise, Arrangement and Amalgamation) Rules 2013 with respect to filing of order for confirmation of scheme to be filed in form no INC-28 with the concerned office of Registrar of Companies by the petitioner Company.</p> <p>Reply/Undertaking of the Petitioner Companies for the observation of the Regional Director in his Report at Para 3(e):</p> <p>It is humbly submitted that, the petitioner company (s),</p>
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		<p>involved in the scheme shall comply with rule 17(2) of the Companies (Compromise, Arrangement and Amalgamation) Rules 2013 with respect to filing of order for confirmation of scheme to be filed in form no INC-28 with the concerned office of Registrar of Companies by the petitioner Company.</p>
<p>Page 3 @ para 4 (c)</p>	<p>This Directorate has received <u>e-mail O.L.R.No. 14/2023</u> dated 10.02.2023 enclosing he copy of his report addressed to Hon'ble NCLT and copy to this Directorate. Official Liquidator in his report has pointed out certain observations. Hon'ble Tribunal may be pleased to direct the Petitioner Transferee Company to comply with the observations pointed out by</p>	<p>3. That at Para 4 of the report states that this directorate has received e-mail O.L.R. No. 14/2023 dated 10.02.2023 enclosing the copy of his report addressed to Hon'ble NCLT and copy to this Directorate. Official Liquidator</p>

	<p>the Official Liquidator before the scheme is allowed.</p>	<p>in his report has pointed out certain observations. Hon'ble Tribunal may be pleased to direct the petitioner Transferee Company to comply with the observations pointed out by the Official Liquidator before the scheme is allowed.</p> <p>Reply / Undertaking of the Petitioner Companies for the observation of the Regional Director in his Report at Para 4: It is humbly submitted that, the petitioner company(s) complied with the observations pointed out by the Official Liquidator through an affidavit</p>
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		The same is filed before the Hon 'ble NCLT.
Page 3 @ para 5(d)	The main objects of Transferor Co. No.1 & 2 are to develop, accumulate, distribute and supply, electricity by setting up Thermal Power plants by use of liquid, gaseous etc. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to confirm if any approval of Ministry of Power or any other Regulator Authority is required. If so whether the petition was served on the Regulatory Authorities. Petitioner Companies to state the present status with supporting documents.	4. That at Para 5 of the report states that the main objects of transferor co no. 1& 2 are to develop, accumulate, distribute, and supply electricity setting up thermal power plants by use of liquid, gaseous etc. Hon ble- Tribunal may be pleased to direct the petitioner companies to confirm if any approval of Ministry of Power or any other Regulator Authority is required. If so whether the petition was served on the Regulatory Authorities.

		<p>Petitioner Companies to state the present status with supporting documents.</p> <p>Reply / Undertaking of the Petitioner Companies for the observation of the Regional Director in his Report at Para 5:</p> <p>It is humbly submitted that the Transferor Company No. 1 and Transferor Company No. 2 has not registered with the Ministry of Power or any other Regulator Authority. Hence, approval from the Ministry of Power or any other Regulator Authority is not required.</p>
Page 3 @ para 6(e)	With reference to this Directorate's letter dated	5. That at Para 6 of the report states

	<p>03.01.2023, issued to The Add. Commissioner of Income Tax, Hyderabad till date no reply / comments in the matter has been submitted to this office. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to furnish an undertaking that, if any demand arises in future with respect to Transferor Company and Transferee Company and Transferee Company will pay such dues to the Income Tax Authorities as per law.</p>	<p>that With reference to this Directorate's letter dated 03.01.2023, issued to the Add. Commissioner of Income Tax, Hyderabad. Till date no reply/comments in the matter have been submitted to this office. Hon'ble Tribunal may please to direct the petitioner companies to furnish an undertaking that, if any demand arises in future with respect to transferor company and transferee company and transferee company will pay such dues to the Income Tax Authorities as per law.</p>
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		<p>Reply / Undertaking of the Petitioner Companies for the observation of the Regional Director in his Report at Para 6: It is humbly submitted any Income Tax demand arisen in future with respect to Transferor Companies and Transferee Company, Transferee Company will bear all direct and indirect Tax implications and undertake to pay such dues to the Tax Authorities as per Law and hence this affidavit.</p>
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8. Hence, from the above report of the RD, it can be understood that there are no tenable objections raised

and that the queries posed to the companies were also answered. Hence, the direction as sought for by the Regional Director (RD) would stand complied.

9. The Official Liquidator (OL) made certain observations in his report filed on 31.01.2023. In response, the Petitioner Companies filed their reply vide their letter dated 03.02.2023, after studying the response/reply of the Petitioner Companies Official Liquidator has also filed their Further observations report, which are as follows:

Para No.	Observations of the Official Liquidator (OL) (vide Report dated 13.02.2023)	Reply of the Petitioners received by the Official Liquidator dated 10.02.2023.
	a. That, with reference to Clause 4.13 of Part-"I" the Scheme dealing with Record Date', leaving it as undetermined and seeking to vest entire power to fix the Record Date completely with the Board of Directors of Transferee Company	A. That, with reference to Clause 4.13 of Part-I[" the Scheme dealing with Record Date', leaving it as undetermined and seeking to vest entire power to fix Record Date completely with the Board of Directors of Transferee Company alone without the involvement of

	<p>alone without the involvement of Transferor Companies and hence, this Hon'ble Tribunal may be pleased to direct the Transferee Company to submit an undertaking to this Hon'ble Tribunal to the effect that the Record Date would be decided and fixed mutually by the Board of Directors of Transferor & Transferee Companies immediately after sanction of the Scheme and before dissolution of the Transferor Companies on effective date.</p>	<p>Transferor Companies and hence, this Hon'ble tribunal may be pleased to direct the Transferee Company to submit an undertaking to this Hon'ble Tribunal to the effect that the Record Date would be decided and fixed mutually by the Board of Directors of Transferor & Transferee Companies immediately after sanction of the Scheme and before dissolution of the Transferor Companies on effective date.</p> <p>Reply / Undertaking of the Petitioner Companies for the observation of the Official Liquidator in his Report at Para 22(a):</p> <p>It is humbly submitted that the Record Date would be</p>
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		<p>decided and fixed mutually by the Board of Directors of Transferor & Transferee companies immediately after sanction of the Scheme and before dissolution of the Transferor companies on effective date.</p>
	<p>B. That, the Clause 8.1 of Part "III" of the Scheme seeks to protect the employees of the Transferor Companies who are in service as on the Effective Date shall become the staff, workmen and employees of the Transferee Company with effect from the Appointed Date. Hence, this Hon'ble Tribunal may be pleased to direct the Transferor and Transferee Companies to</p>	<p>b. That, the Clause 8.1 of Part-"II" of the Scheme seeks to protect the employees of the Transferor Companies who are in service as on the Effective Date shall become the staff, workmen and employees of the Transferee Company with effect from the Appointed Date. Hence, this Hon'ble Tribunal may be pleased to direct the Transferor and Transferee Companies to submit an undertaking to this Hon'ble Tribunal to</p>

	<p>submit an undertaking to this Hon'ble Tribunal to the effect that there would no retrenchment of any employee who were in service as on the Appointed Date (i.e. 01-04-2022) as well.</p>	<p>the effect that there would no retrenchment of any employee who were in service as on the Appointed Date (i.e. 01-04-2022) as well. Reply/Undertaking of the Petitioner Companies for the observation of the Official Liquidator in his Report at Para 22(b): It is humbly submitted that there would be no retrenchment of any employee of transferor companies, who were in service as on the Appointed Date i.e. 01-04-2022.</p>
	<p>C. That, the Transferor Company-2 is loss making company getting merged into profit making Transferee Company along with other profit-</p>	<p>c. That, the Transferor Company-2 is loss making company getting merged into profit making Transferee Company along with other profit-making Transferor Company-</p>

	<p>making Transferor Company-1 as per the audited balance sheets as at 31-03-2022 (i.e. appointed date as at 01-04-2022). Hence, the Income Tax implication due to merger needs to be examined by the Income Tax Department and Resultant entity should comply with all direct and indirect Tax implications.</p>	<p>l as per the audited balance sheets as at 31-03-2022 (i.e. appointed date as at 01-04-2022). Hence, the Income Tax implication due to merger needs to be examined by the Income Tax Department and Resultant entity should comply with all direct and indirect Tax implications. The Petition may be decided on merits. Reply / Undertaking of the Petitioner Companies for the observation of the Official Liquidator in his Report at Para 22(c): It is humbly submitted any Income Tax demand arisen in future with respect to Transferor Companies and Transferee Company, Transferee Company will bear all direct and indirect Tax</p>
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		implications and undertake to pay such dues to the Tax Authorities as per Law and hence this affidavit.
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Finally, the Official Liquidator (OL) accepted the submissions made by the Petitioners and did not raise any objections for accepting the Scheme of Amalgamation of the Petitioner Companies.

10. “M/s. M B V & ASSOCIATES L.L.P, Chartered Accountants, the Statutory Auditors of the transferor Company no. 1 and transferor Company no. 2 and transferee Company have certified that the Scheme of Amalgamation between M/s. **MVK ENERGY PRIVATE LIMITED**/ Transferor Company -1 and M/s. **KVM ENERGY PRIVATE LIMITED** (Transferor Company -2), and M/s. **MVK INFRASTRUCTURES PRIVATE LIMITED** / Transferee Company is in accordance with the accounting treatment as prescribed under Section 133 of the Companies Act, 2013.”

11. Upon the Scheme becoming effective the Transferee Company shall stand substituted for the Transferor Companies for all purposes whatsoever, including with regard to the obligation to make contributions to relevant authorities, in accordance with the provisions of Applicable Laws or otherwise. It is hereby clarified that upon this Scheme becoming effective, the aforesaid benefits or schemes shall continue to be provided to the transferred employees and the services of all the transferred employees of the Transferor Companies for such purpose shall be treated as having been continuous.
12. Valuation Certificates dated 17-08-2022 obtained from the Shri. SANKA HARI SURYA, Registered Valuer, IBBI, for determining the share swap ratio in relation to the Scheme is filed from page no. 241 to 252 of the Petition.
13. We have heard the Learned Counsel for Petitioner Companies and perused the material papers on record. Considering the entire facts and circumstances of the case and on perusal of the Revised Scheme, Reports of the Regional Director, Official Liquidator, and reply/undertakings of the

Petitioner Companies thereon and the documents produced on record, the Scheme of Amalgamation appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under Section 230 to 232 of the Companies Act, 2013.

ORDER

14. After hearing the Learned Counsel for the Petitioner Companies and after considering the material on record, this Adjudicating Authority passed the following order:

- i. The Scheme of Amalgamation, which is filed at page nos. 209 to 237 filed by the Petitioner is hereby sanctioned and confirmed with appointed date as 01-04-2022 and shall be binding on all the members, employees, creditors, concerned statutory, regulatory

authorities and all other stakeholders of the Petitioner Companies.

- ii. While approving the Scheme, we make it clear that this order should not be construed as an order in anyway granting exemption from payment of stamp duty, taxes or any other charges, if any, payable, in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.
- iii. The whole of the assets, property, rights and Liabilities of the Transferor Companies shall be transferred without the requirement of any further act or deed to the Petitioner/Transferee Company.
- iv. We direct the Petitioner companies to comply with all the observations pointed out by the Regional Director and Official Liquidator, if any.
- v. We direct the Petitioner Companies to preserve the books of accounts and papers and records and the same shall not be disposed of without the prior

permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.

- vi. We direct the Petitioner Companies to ensure statutory compliance of all applicable laws and also on sanctioning of the present Scheme the Petitioner Companies shall not be absolved for any of its statutory liability in any manner.
- vii. We direct the Petitioner Companies involved in the Scheme to comply with Rule 17 (2) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2013. The Petitioner Companies within 30 days after the date of receipt of certified copy of the order, shall cause certified copy to be delivered in the Form INC-28 to the Registrar of Companies concerned for registration and on such certified copy being delivered, Registrar of Companies concerned shall take all necessary consequential action in respect of the Petitioner Companies.
- viii. The Petitioner Companies are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Amalgamation

under the provisions of the Companies Act, 2013 and submit necessary compliance and undertaking relating to the objections raised by the Regional Director (SER), MCA, Government of India, Hyderabad and Official Liquidator, Hyderabad.

- ix. All the legal proceedings pending by or against the Transferor Companies shall be continued by or against the Transferee Company.
- x. Though no representation has been received from the Income Tax Authorities despite service of notice by the Petitioner Companies, the tax implications, if any, arising out of the Scheme is subject to final decision of the Tax Authorities concerned and the decision of the Tax Authorities concerned shall be binding on the Transferee Company.
- xi. The Transferee Company is directed to strictly comply with the Accounting Treatment Standards prescribed under Section 133 of the Companies Act, 2013.
- xii. The sanction of the Scheme by this Adjudicating Authority shall not forbid the Revenue Authority from

taking appropriate recourse for recovering the existing and previous tax liabilities of the Transferor and Transferee Companies.

- xiii. We direct the Transferee Company to comply with the provisions of Section 2(41) of the Companies Act, 2013.
- xiv. The Transferor Company shall be dissolved without going through the process of winding up.
- xv. The Petitioner Companies shall until the completion of the Scheme of Amalgamation, file a statement in such form and within such time as prescribed with the Registrar every year duly certified by the Chartered Accountant or a Cost Accountant or a Company Secretary to the effect that the Scheme of Amalgamation is being complied in accordance with the orders of the Adjudicating Authority as required under Section 232(7) of the Companies Act, 2013.
- xvi. All concerned shall act on a copy of this order along with Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal.

- xvii. Any person shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- xviii. Accordingly, the Scheme is allowed and the Company Petition bearing CP(CAA)No.29/230/HDB/2023 stands disposed of.

Sd/-

CHARAN SINGH
MEMBER (TECHNICAL)
SAIF

Sd/-

JUSTICE TELAPROLU RAJANI
MEMBER (JUDICIAL)