



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**
ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **27.11.2025** THROUGH VIDEO CONFERENCE

CORAM: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER : CA(CAA)/7(CHE)/2025
PETITION NUMBER : CP(CAA)/25(CHE)/2025
NAME OF THE PETITIONER(S) : TVS Investments Pvt Ltd and Other
NAME OF THE RESPONDENTS :
UNDER SECTION : 230-232 of CA, 2013

ORDER

CP(CAA)/25(CHE)/2025

Present: Mr. B.Palani, representative of OL.
Ms. Pushpitha, Ld. Counsel for the Petitioners.

Vide separate order pronounced in the open Court, the Scheme is approved.

File be consigned to records.

-sd-
(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

-sd-
(SANJIV JAIN)
MEMBER (JUDICIAL)

MS

Date: 27.11.2025



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI**

CP(CAA)/25(CHE)2025 in CA(CAA)/7/CHE/2024

Under Sections 230 to 232 of the Companies Act, 2013

In the matter of *Scheme of Arrangement (Amalgamation)*

Of

TVS INVESTMENTS PRIVATE LIMITED,
(CIN: U65999TN2018PTC124316)
INCORPORATED UNDER THE COMPANIES ACT, 2013,
HAVING ITS REGISTERED OFFICE AT:
HARITA TOWERS, 119, ST. MARY'S ROAD,
ABHIRAMAPURAM, CHENNAI TAMIL NADU – 600018,
REPRESENTED BY R RAGANTHAN, AUTHORISED SIGNATORY.

... First Petitioner / Transferor Company

And

TVS ELECTRONICS LIMITED,
CIN: L30007TN1995PLC032941
INCORPORATED UNDER THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT:
HARITA TOWERS, 119, ST. MARY'S ROAD,
ABHIRAMAPURAM, CHENNAI, TAMIL NADU – 600018,
REPRESENTED BY K SANTOSH, COMPANY SECRETARY.

... Second Petitioner/ Transferee Company

And

Their Respective shareholders and creditors

Order pronounced on 27th November, 2025



CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Petitioner : T.K.Bhaskar, K.Harishankar
Niranjan S. Rao,
Shakthivelan Manisekaran Advocates
For Regional Director : Avinash Krishnan Ravi, Advocate
For Official Liquidator : Shri. Pola Raghunathan,
Official Liquidator in person
For Income Tax Department : Raj Jhabakh, Advocate

ORDER

(Heard through –Hybrid mode-)

1. Under consideration is the petition i.e., CP(CAA)/25(CHE)2025 in CA(CAA)/7/CHE/2024 filed by **TVS Investments Private Limited** (hereinafter referred to as “**Transferor Company**”) and **TVS Electronics Limited** (hereinafter referred to as “**Transferee Company**”) along with their respective shareholders under Section 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement (Amalgamation) (hereinafter referred to as the “**SCHEME**”) proposed by the Companies herein with the Shareholders. The Scheme is appended as “**Annexure – 27**” at **Page Nos. 549 – 575** of the petition.



2. 1st Motion Application – In Brief

2.1. The Petitioner Companies filed the First Motion Application vide CA(CAA)/7/CHE/2025 seeking directions as follows

	EQUITY SHAREHOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
TRANSFEROR COMPANY	To Dispense with Meeting	To Dispense with Meeting	To Dispense with Meeting
TRANSFEE COMPANY	To Order Meeting	To Dispense with Meeting	To Order Meeting

2.2 Based on the Application moved under Sections 230-232 of the Companies Act, 2013, directions were issued by this Tribunal, vide order dated **18.02.2025**. The Transferee Company was directed to hold meeting of equity shareholders and unsecured creditors. The meetings of the equity shareholders, secured creditors and unsecured creditors of the Transferor Company were dispensed with. The meeting of secured creditors of the Transferee Company was dispensed with.

2.3 The Chairman's Report on the meeting of Unsecured Creditors was filed on 06.04.2025. As per the Chairman's Report, the remote e-voting commenced on 01.04.2025 at 9:00 AM and ended on 03.04.2025 at 5:00 PM. In the meeting of the unsecured creditors of the Transferee Company held on 04.04.2025 at 11.00 AM through virtual mode, 36



unsecured creditors of the Transferee Company, were provided an opportunity to cast their votes. All the 56 unsecured creditors *unanimously* cast their votes in favour of the amalgamation of the Petitioner Companies.

2.4 The Chairman's Report on the meeting of Unsecured Creditors was filed on 06.04.2025. As per the Chairman's Report, the remote e-voting commenced on 01.04.2025 at 9:00 AM and ended on 03.04.2025 at 5:00 PM. In the meeting of the equity shareholders of the Transferee Company held on 04.04.2025 at 9.00 AM through virtual mode, 59 equity shareholders of the Transferee Company, were present. The equity shareholders who had not completed the voting process but attended the meeting were provided an opportunity to cast their votes. Out of 131 equity shareholders who cast their votes, 130 shareholders representing **99.24%** of the total value of equity shareholders approved the scheme of amalgamation of the Companies. One (1) equity shareholder representing **0.76%** of the total value of equity shareholders, voted against the scheme of amalgamation.

2.5 The votes were cast by the equity shareholders excluding the promoter/ promoter group in terms of Securities and Exchange Board of India Master Circular No. SEBI/HO/CFD/POD-2/P/CIR/2C/23/93 dated 20/06/2023 regarding Approval of Shareholders to Scheme through e-voting.



2.6 Subsequently, second motion petition was filed on **13.04.2025** for the sanction of Scheme of Arrangement (Amalgamation).

2.7 This Tribunal vide order dated 23.04.2025 directed the Petitioner Companies to issue notice to the Regional Director, Registrar of Companies, Income Tax Authorities, Official Liquidator, BSE, NSE and SEBI. The Petitioners were also directed to issue notice in Hindu Business Line (English, All India Edition) & Makkal Kural (Tamil, Tamil Nadu Edition) in terms of Rule 7 of the Companies (Companies Arrangements and Amalgamation) Rules, 2016. In compliance of the order dated 15.05.2025, the Petitioners filed Affidavit of Service dated 15.05.2025 evidencing proof of service.

3. RATIONALE OF THE SCHEME

3.1. Clause 2 of the Scheme enumerates the object and rationale of the Scheme which is extracted as under:

“2.1. Part III of the Scheme deals with the Amalgamation of the Transferor Company with and into the Transferee Company, as a result of which the shareholders of the Transferor Company (including the promoter / promoter group) would directly hold shares in the Transferee Company, since it is envisaged that the following benefits would, inter alia, accrue from the Amalgamation:

a. The Transferee Company is a subsidiary of the Transferor Company. The Amalgamation would result in the promoters of the Transferor Company directly holding shares in the Transferee Company, which will not only lead to



simplification of the shareholding structure and reduction of shareholding tiers but also demonstrate the promoter group's direct commitment to and engagement with the Transferee Company;

- b. The promoter / promoter group of the Transferee Company is desirous of streamlining its holding in the Transferee Company. As a step towards such rationalization, it is proposed to merge the Transferor Company into the Transferee Company;*
- c. The Amalgamation will enable greater focus of the management on the business and facilitate in creating enhanced value for Transferee Company's shareholders and allow a focused strategy in operations, which would be in the best interest of all its shareholders, creditors, and stakeholders;*
- d. Consolidation and simplification of the group structure and reduction of administrative costs and legal and regulatory compliances at the group level; and*
- e. Mr. Gopal Srinivasan, promoter shareholder of the Transferor Company, shall indemnify and keep the Transferee Company indemnified for liability, claim and demand, if any, relating to any period prior the Effective Date (as defined hereinafter) of the Scheme which may devolve on the Transferee Company on account of this Amalgamation.*

2.2. Accordingly, the Board of Directors of the Transferor Company and the Transferee Company have formulated this Scheme to undertake various steps as envisaged in this Scheme pursuant to the provisions of Sections 230-232 of the Companies Act, 2013



(including any statutory modification or re-enactment or amendment thereof).

- 2.3. *There is no likelihood that the interests of any shareholder or creditors of the Transferor Company or the Transferee Company would be prejudiced as a result of the Scheme. The Scheme does not affect the rights of the creditors of the Transferor Company or the Transferee Company. There will not be any reduction in amounts payable to the creditors of the Transferor Company or the Transferee Company, nor will there be any change in the terms with creditors which are adverse to their interest, pursuant to the sanctioning of this Scheme."*

4. SEQUENCE OF EFFECTIVENESS OF THE SCHEME

- 4.1. Clause 3 of the Scheme deals with the sequence of effectiveness of the Scheme and the same is as below:

"Upon the Scheme becoming operative, with effect from the Appointed Date (as defined hereinafter), the following shall be deemed to have occurred and become effective and operative from the Effective Date only in the order mentioned hereunder:

1. *The Concurrent Scheme (as defined hereinafter) effective from the opening hours of the appointed date of 1st April, 2023, subject to its requisite sanction and approval of the National Company Law Tribunal, Chennai Bench in terms of Sections 230 to 232 and other such relevant provisions of the Companies Act, 2013.*
2. *This Scheme relating to the Amalgamation of the Transferor Company with and into the Transferee Company as per Part III effective from the closing hours of the Appointed Date of 1st April, 2023, subject to its requisite sanction and approval of the*



Securities and Exchange Board of India (SEBI), National Company Law Tribunal, Chennai Bench (NCLT) in terms of Sections 230 to 232 and other such relevant provisions of the Companies Act, 2013.”

4.2. Clause 4.1.7 defines, ‘Concurrent Scheme’, as extracted hereunder,

4.1.7 “Concurrent Scheme” means the separate Composite Scheme of Amalgamation and Arrangement (Demerger) under Sections 230 to 232 of the Act for the amalgamation of TVS Wealth Private Limited and TVS Capital Funds Private Limited with and into TVS Investments Private Limited, and thereafter demerger and vesting of the asset management and portfolio management business undertaking of TVS Investments Private Limited into Geeyes Capital Funds Private Limited and facility management business undertaking of TVS Investments Private Limited into Sundaram Investment private Limited on a going concern basis, approved, inter alia, by the Board of Directors of TVS Investments Private Limited on 6th June, 2023;”

4.3. The Concurrent Scheme was approved by this Tribunal vide order dated 07.06.2024 in **CP(CAA)/6-10/(CHE)/2024 in CA(CAA)/56-60/(CHE)/2023**. The Appointed Date of the Concurrent Scheme is, ‘opening business hours of 01.04.2023’.



5. REGIONAL DIRECTOR

5.1. On issuance of notice, the Regional Director, (*hereinafter referred to as 'RD'*) Southern Region, Chennai filed his report on 28.05.2025 vide S.R. No. 1999. Relevant observations are as under:

Para	Observations
3	Clause 4.1.3 of Part-II of the Scheme, states that the Appointed Date is closing hours of 1 st day of April, 2023. Since the appointed date specified in the scheme is ante date beyond one year, the scheme is in contravention of MCA Circular No. 9/2019 dated 21.08.2019 and Section 232(6) of the Companies Act, 2013.
5	Clause 8 of Part-III of the Scheme provides that upon the scheme becoming effective, all employees of the Transferor Company, on the effective date shall, stand transferred and vested and/or be deemed to have become staff, workmen and employees of the Transferee Company with effect from the effective date without any break or interruption in their service and on the terms and conditions not less favourable than those on which they are engaged by the Transferor Company on the effective date.
6	a. Clause 11.1 of Part-III of the Scheme provides that upon the scheme becoming effective, the Transferee Company shall without any further act or deed, issue and allot 1,11,60,093 fully paid-up equity shares of Rs. 10 each of the Transferee Company fully paid up to the equity shareholders of the Transferor Company in proportion to their holding in the Transferor



	<p>Company, and whose names appear in the Register of Members of the Transferor Company on the Record Date.</p> <p>b. Since the Transferor Company holds 59.84% of the shares in the Transferee Company, upon the Scheme being sanctioned by the Tribunal and the transfer having been effected as provided in this Scheme, all the equity shares held by the Transferor Company in the Transferee Company shall be cancelled and equity shares of the Transferee Company shall be issued to the shareholders of the Transferor Company, in accordance with Clause 11.1 of the Scheme, to the extent of 59.84%.</p> <p>c. CA Harsh Chandrakant Ruparelia, a registered valuer holding Certificate of Practice No. IBBI/RV/05/2019/11106, has furnished Valuation Report dated 10.11.2023.</p>
7	<p>Clause 11.4 of Part-III of the Scheme provides that the Transferee Company shall take necessary steps to increase or alter or re-classify, (if necessary), its authorized share capital suitably to enable it to issue and allot equity shares required to be issued and allotted by it under this Scheme.</p>
8	<p>Clause 12.1 of Part-III of the Scheme provides that , Amalgamation of the Transferor Company with the Transferee Company shall be accounted in the books of the Transferee Company as per "<i>Pooling of Interests Method</i>" under Appendix C of Ind-AS 103 (Accounting for Business Combinations) and any other relevant Indian Accounting Standard prescribed under Section 133 of the Companies Act, 2013 read with Rules framed thereunder.</p>



9	Clause 17 of Part-III of Scheme provides that on and from the Effective Date, Transferor Company shall stand dissolved without the process of winding up.
10	As per the report dated 21.05.2025 of ROC Chennai, the Transferor Company and Transferee Company are regular in filing the statutory returns up-to the Financial Year 2023-24. No prosecution / technical scrutiny/inspection /complaints is pending against the Transferor Company.
11	<p>It is stated that the Petitioner Companies may be directed to submit the following declaration/ undertakings:</p> <p>(a) The Transferee Company shall undertake to comply with Section 232(3)(i) of the Companies Act, 2013.</p> <p>(b) Petitioner Companies shall undertake to comply with Section 240 of the Companies Act, 2013.</p> <p>(c) The Transferee Company shall undertake to file copy of order of this Tribunal approving the Scheme in form CAA 6 within 30 days from the date of receipt of copy of order as prescribed under Rule 17(2) of Companies (Arrangements and Amalgamation) Rules, 2016.</p> <p>(d) The Transferee Company shall undertake to comply with the observations made by BSE/NSE and other regulatory bodies.</p>



(e) The Transferee Company shall undertake to file the amended MOA containing amendment to capital clause for record purpose.

5.2. It is stated by the RD that, after examining the scheme, he has decided not to make any objection to the Scheme of Amalgamation except at para 3 and 11 of the RD Report and has left it to this Tribunal to pass order on merits.

5.3. In the Affidavit filed before this Tribunal on 24.06.2025 vide SR No. 2513, the Transferor Company, in response to the observations of the RD has submitted as below:

5.3.1. In response to the observation made in para 3, with respect the appointed dated of the Scheme fixed as 01.04.2023, it is stated that upon approval of the Scheme by the Board of Directors of the Transferor Company on 10.11.2023 and of the Transferee Company on 11.11.2023, applications for approval from the Stock Exchanges were filed on 02.12.2023. The final approval was received from BSE Limited (hereinafter, BSE) on 31.07.2024 and from the National Stock Exchange of India Limited (hereinafter, NSE) on 20.08.2024. Since the process of obtaining approval from the Stock Exchanges took longer than anticipated, the time period between the Appointed Date and the filing date of the Application for approval of the Scheme before this Tribunal exceeded one year. The justification, in terms of General Circular No. 09/2019 issued by Ministry of Corporate Affair, for the date of filing of



application before this Tribunal being more than one year after the Appointed Date is specified at Pg. No. 575 of the Petition.

5.3.2. In response to the undertaking sought from the Petitioner Companies to comply with Section 240 of the Companies Act in para 11(b), 2013, it is stated that the liability of officers of the Transferor Companies prior to amalgamation, shall continue after such amalgamation by operation of law in terms of Section 240 of the Companies Act, 2013. Since the provision of law fastens liability on officers in default of the Transferor Company, the question of the Transferor Company's undertaking to comply with the same does not arise. Such liability ipso facto attaches to such officers even without any such undertaking.

5.4. In the Affidavit filed before this Tribunal on 24.06.2025 vide S.R No. 2513, the Transferee Company has made identical submissions with respect to observations made by the RD in paragraph 3 and 11(b) of the Report. In addition, the Transferee Company has made the following submissions:

5.4.1. In response to para 11(a) wherein the RD requires the Transferee Company to undertake to comply with provisions of Section 232(3)(i) of the Companies Act, 2013, it is stated that the set-off provided under the provision is the statutory right available to the Transferee Company. There is no requirement for the Transferor Companies to undertake compliance with the same since the right to set off fees payable by the



Transferee Company can be exercised even in the absence of any such undertaking.

5.4.2. In response to para 11(c) of the report wherein the RD has sought undertaking by Transferee Company to comply with Rule 17(2) of Companies (Arrangements and Amalgamation) Rules, 2016, it is stated that it is the obligation of the Transferee Company to file certified copy of the order of the Tribunal in Form CAA 6 with Registrar of Companies (ROC) within 30 days from the receipt of copy of the Order. The Transferee Company undertakes to comply with the same to ensure adherence to the provisions of the Companies Act, 2013 and the rules made thereunder.

5.4.3. In response to para 11(d) of the Report which requires the Transferee Company to comply with the observations made by BSE/National Stock Exchange and other regulatory bodies, it is stated that the Transferee Company undertakes to comply with the observations made by BSE and National Stock Exchange in their letters dated 31.07.2024 and 20.08.2024 in addition to any further observations that may be issued by BSE and National Stock Exchange. It is stated that there are no other sector specific regulators governing the business of the Transferee Company.

5.4.4. In response to para 11(e) of the Report, it is stated that the Transferee Company undertakes to file the amended MoA containing



amendment to capital clause with the Registrar of Companies and Regional Director.

6. OFFICIAL LIQUIDATOR

6.1. The Official Liquidator, (*hereinafter referred to as 'OL'*) filed the Report on 25.06.2025 vide S.R. No. 2535. It is stated that, they had appointed M/s. Pores Fernando and Co., Chartered Accountants firm from the panel maintained by their office to verify into the affairs of the Transferor Company.

6.2. The Chartered Accountants appointed by the OL reviewed the books and records of the Transferor Companies for the last 3 financial years. i.e. F.Y. 2020-2021, F.Y. 2021-2022 and F.Y. 2022-2023. The observations made by the Chartered Accountant have been captured by the OL in his Report as below,

Para	Observations
4(i)	Clause 4.1.3 of the Scheme defines 'Appointed Date' as closing business hours of 01.04.2023. The significance for specifying 'closing business hours' as part of appointed date needs to be clarified, as to whether it is to ensure implementation of previous scheme of amalgamation / demerger on 01.04.2023 and giving effect thereto, before implementing the present scheme of amalgamation, or otherwise. Further, the Appendix attached at the end of the Scheme in its second para specifies that the appointed date was fixed by the Board(s) of both the companies as 01.04.2023 and the words 'closing business hours' were not



	<p>specified in the Appendix forming part of the scheme. The reason for such variance need be clarified.</p>
4(ii)	<p>As per para 6(c) of General Circular No. 09/2019 dated 21.08.2019 issued by the Ministry of Corporate Affairs, if the Appointed Date fixed in the Scheme (in this case, closing hours of 01.04.2023) is significantly ante-dated beyond one year from the date of filing an application for approval of the Scheme (07.01.2025 in this case), the justification for the same would have to be specifically brought out in the Scheme and the same should not be against the public interest. However, the Appendix attached to the Scheme mentions that the Board(s) of both Petitioner Companies, as early as in November 2023, fixed the appointed date as 01.4.2023. However, the Appendix does not provide any reason as to why the appointed date was not revised by the Board(s) of both the companies subsequently in the year 2024/2025 to be a date within one year before the date of filing the scheme in January 2025, in terms of the MCA circular dated 21.08.2019. Further, it is noticed that the Board has fixed the appointed date as 1.4.2023 for the present scheme, without waiting for the sanction of the previous composite scheme which was sanctioned by the Tribunal vide order dated 7.6.2024 and corrigendum order dated 12.6.2024. Hence, the reasons for prematurely entering into the scheme in the year 2023-24 and filing it with stock exchanges in same financial year (2023-24) without the sanction of previous composite scheme are not explained in the justification given in the Appendix. Hence fixing the Appointed date through Board Meeting of November 2023, when the previous composite scheme with same appointed date itself was not approved by the Tribunal by that date, which is prerequisite for its</p>



	<p>implementation before initiating the present scheme with same appointed date, is not justified. Further, the Appendix is silent as to whether the Transferor Company has significantly ante dated the appointed date to more than one year prior to the filing of the scheme in January 2025, to avoid lapse of any carry forward of losses of transferor company or to ensure the impact of implementation of the previous Concurrent Scheme implemented on the opening business hours of the Appointed Date, 01.04.2023, as no separate financial statements are prepared and audited for transactions of one day, in either case and may hit public interest aspect specified in the MCA Circular dated 21.08.2019.</p>
4(iii)	<p>Clause 4.1.14 of Scheme empowers the Transferee Company alone to decide on eligible members of Transferor Company for payment of consideration to the equity shareholders of the Transferor company as on Record Date. The scheme does not define any record date. Hence, the Petitioner Companies may be directed to amend the scheme to define Record Date as a date that would be fixed mutually by the Board of Directors of both the companies immediately after sanction of the scheme and before dissolution of the Transferor company on effective date or to submit an undertaking to this Tribunal that Record Date would be fixed mutually by the Board of Directors of both the companies immediately after sanction of the scheme and before dissolution of the Transferor company on effective date.</p>
4(iv)	<p>Cause 4.1.24 (iv) of the Scheme seeks to protect the permanent employees only if they are in service on effective date and that too if they are identified by the Transferor Company. Moreover, Clause 8.1 of the scheme protects employees only if they are in service on effective date, and</p>



	<p>hence, this Tribunal may direct the companies to submit an undertaking to the effect that there would be no retrenchment of any employee who were in service as on Appointed Date (closing of business hours of 01.04.2023) as well except in the event of their resignation on their own before the Effective Date.</p>
4(v)	<p>Clause 5.2 of the scheme provides for auto modification of content of the scheme, post its sanction by this Tribunal. As per to the Clause, such auto modification of the content of the scheme is in compliance with Income Tax Law, without the previous approval/sanction of this Tribunal. It is stated that such an auto modification will be in violation of section 231(1) of the Companies Act, 2013 as every modification of the content of the Scheme requires approval by this Tribunal. Hence, the Petitioners may be directed to delete / modify the clause 5.2 of the scheme by way of amendment to the scheme proposed, so as to ensure that no such auto amendment/modification of the Scheme takes place, post its sanction by this Tribunal or to submit an undertaking to the effect that such auto modification of the content of the scheme will not be implemented without prior approval of this Tribunal.</p>
4(vi)	<p>Clause 4.1.7 of the scheme defines the concurrent scheme (previous scheme implemented with appointed date 1.4.2023 but its sanction was made by this Tribunal on 7.6.2024) but it did not incorporate the details of its sanction by this Tribunal and also status of its implementation. Similarly, Clause 6.1 of the scheme is drafted prematurely before implementation of the previous scheme. Hence the scheme is drafted prematurely without incorporating the implication of previous composite scheme involving the Transferor Company. The entire scheme needs redrafting or</p>



	<p>amendments at all places based on the previous composite scheme implementation done with date as business of 01.04.2023.</p>
4(vii)	<p>The rationale envisaged in Clause 2.1 of the Scheme (object and rationale) makes it clear that, the amalgamation of the Transferor Company (unlisted entity) with the Transferee Company (listed entity) is chiefly aimed at facilitating direct holding of shares of Transferee Company (a listed entity) by the few promoters (shareholders of Transferor Company, Chief being Shri Gopal Srinivasan whose name is disclosed under clause 2.1(e) of the scheme as the person who will indemnify the Transferee Company for any liability, claim and demand if any for period up to effective date) instead of present holding of the same by same persons indirectly through the Transferor Company, of 1,11,60,093 number of equity shares (59.84%) of Transferee Company. As per the financials, at the close of business hours of 01.04.2023 (appointed so defined) there is no business left that belong to the Transferor Company to be continued as a going concern by the Transferee Company post-merger and hence there is no merger of businesses. Therefore, present scheme lacks commercial substance in the absence of any business left in the Transferor Company at the time of Appointed Date, as entire core business assets viz., Investment assets (holding shares in transferee company) would get wound up by way of its cancellation upon merger/amalgamation. Hence, the present scheme, is not a merger /amalgamation for the above reasons but constitutes a case of dissolution with winding up of the business. Hence, the sole purpose of the scheme is to facilitate direct holding of shares of listed entity (transferee company) by the shareholders of Transferor Company under the cloak of purported merger</p>



	<p>/amalgamation scheme, without actual merger of business. In fact, it is a simple case of change of shareholders name against 1,11,60,093 number of equity shares of a listed company for which the process prescribed is simple transfer of shares by the owners thereof under Section 56 of the companies Act, 2013 by paying necessary stamp duties / charges on such transfer and by paying necessary Income Tax on capital gains. Hence, the Scheme does not meet the criteria prescribed under section 232(1)(b) of the Companies Act, 2013. As a result, Section 232 of the Companies Act, 2013 dealing with merger and amalgamation is not applicable in this case.</p> <p>It is stated that Similar scheme meant for transfer of shares of listed company (transferee company in this case) by the transferor company in favour of its shareholders was rejected by the NCLT, Mumbai Bench vide its order dated 5.9.2018 in the scheme between GABS INVESTMENTS PRIVATE LIMITED AND AJANTA PHARMA LIMITED (CSP NO. 995 OF 2017 IN CSA NO.791 & 792 OF 2017)</p>
4(viii), 4(ix)	<p>The present scheme providing for transfer / gift of shares held by the Transferor Company to its shareholders constitutes a payment of dividend in kind by the Transferor Company to its shareholders and results in violation of Section 123(5) of the Companies Act, 2013 along with Section 281(1) of the Income Tax Act and would be void accordingly. This ratio was upheld by the Hon'ble High Court of Bombay vide their judgement dated 15.09.2015 in the case of INDIAN SEAMLESS ENTERPRISES LTD (Company Scheme Petition No. 709 of 2014 connected with Companies Summons for directions No. 632 of 2014). Hence, the scheme is in violation of section 123(1)(a) of the Companies Act, 2013 read with prohibitions / conditions prescribed under Rule 3 of</p>



	<p>Companies (Declaration and Payment of Dividend) Rules, 2014 and further the scheme would result in violation of section 123(5) of the Companies Act, 2013 as section 123(5) prohibits dividend in kind.</p>
4(x), 4(xi)	<p>The Scheme prepared invoking provisions of Section 230-232 of the Companies Act, 2013 discloses that the scheme is in accordance with the provisions of Section 2(1B) of the Income Tax Act. Such disclosure in the scheme prepared under the companies act is factually incorrect as it is not meeting the definition of amalgamation as per section 2(1B) of the Income Tax Act, as the scheme results in none of the properties getting vested to continue to be the properties of the Transferee Company as all the assets are being liquidated (wound up) / cancelled resulting into distribution of valuable property of Rs 370.52 Cr (as per market value as on 31.03.2023 / Appointed Date 01.04.2023) after the winding up of transferor company among its shareholders. Its market value as on the closing of the previous month stood at Rs 446.40 Cr. Hence, scheme does not fall under section 2(1B) of the Income Tax Act.</p> <p>The proposed scheme is not a merger either under section 232 of Companies Act, 2013 or under Section 2(1B) of the Income Tax Act. The transaction attracts capital gains tax which is sought to be avoided as a loss to the exchequer through the scheme to the tune of Rs 69.02 Cr (20% capital gain on differential of cost/book value of Rs 25.21 Cr and market value of Rs 370.52 Cr as at appointed date 345.31 Cr). Further, it is nothing but a scheme for distribution of dividend in kind to the tune of Rs 370.52 Cr in violation of section 123(1)(a) and 123(5) of Companies Act. In similar case of GABS INVESTMENTS AND AJANTA PHARMA LIMITED, NCLT, Mumbai adjudicated similar contentions of loss to the exchequer by accepting the contention of the Income Tax Authorities of Mumbai, to the effect that the</p>



	<p>transfer of shares was being undertaken under the garb of a scheme and the objection of the Income Tax Department were found to be containing merit as is evident from para Nos. 37, 38, 39, 48, 50 And 55 of the order. The objection of the income tax includes (para no.21(vi) of the order) that in view of GAAR provisions, the scheme is a deliberate measure to avoid tax burden by using the via media of the Tribunal and the scheme is purely impermissible avoidance agreement (IAA).</p>
4(xii)	<p>Clause 2.1.e of the Scheme discloses that Shri Gopal Srinivasan, promoter shareholder of the Transferor Company shall indemnify the Transferee Company for liability, claim and demand if any relating to any period prior to the effective date which may devolve on the transferee company on account of amalgamation. In this regard, it is required to be clarified whether the same extends to the Income Tax Liability as well in future on account of capital gains tax, or dividend distribution tax etc. Further, it is required to be clarified whether such indemnity liability extend to the successors of such shares sought to be transferred to them upon sanction of the scheme.</p>
4(xiii)	<p>The applicability of the takeover regulations of SEBI under SEBI (SAST) Regulations to the Petitioner Companies, as to how it is exempted from the same with calculations of percentages of shareholding etc. as applicable as per rules.</p>
4(xiv)	<p>Para 4.2(a) of the Valuation Report dated 10.11.2023 clearly specifies that the Transferor Company would not hold any other business assets/surplus assets except investment in Transferee Company. Hence, no value has been attributed to any other assets of Transferor Company except investments into Transferee Company. The valuation report did not arrive any specific enterprise valuation of the transferee company or Transferor Company, instead it simply reproduced the number of shares being transferred / gifted</p>



	<p>through the scheme. Further, this report is prepared in November 2023, even before implementation of the Concurrent Scheme sanctioned in June 2024. In view of the above, the valuation report relied upon to arrive at consideration etc. provided in the scheme may not be considered by this Tribunal as an expert report with regard to valuation in terms of section 232(2)(d) of the Companies Act, 2013.</p>
4(xv)	<p>The present scheme proposes to de facto transfer / gift the shares of Transferee Company it holds to and in favour of its shareholders without any consideration and in violation of Companies (Declaration and payment of Dividend) Rules, 2014, which will result in disposal of its valuable assets (invested shares) of Rs 446.40 Cr. Value at the closing of the previous month, as part of liquidation / winding up proceedings of Transferor Company. Hence, it would not be in accordance with section 232(3)(d) of the Companies Act, 2013.</p>
4(xvi)	<p>That the proviso to section 232(3)(b) of the Companies Act, 2013 clearly provides that such shares as investment by the Transferor Company into the Transferee Company shall stand cancelled / extinguished. However, the scheme in violation of Section 232(3)(b) provides for payment of consideration of Rs 446.40 Cr (the market value of 1,11,60,093 new equity shares to be issued by the listed Transferee Company as on appointed date and Rs 332 per share as on appointed date and Rs 400 per share as on last day of the previous month) against such cancelled /extinguished shares. The listed transferee company will not receive any asset from the Transferor Company for the benefit of Transferee Company, however, such listed Transferee Company in violation of Section 232(3)(b) decided to discharge and pay consideration by allotting listed company's shares worth Rs. 446.40 Cr without any</p>



	<p>commensurate benefit at all. In fact, there is no benefit to the listed transferee company at all.</p>
4(xvii)	<p>To propose a scheme under section 232, both clause (a) & (b) of section 232(1) of Companies Act, 2013 shall be complied with and, there shall be a compromise / arrangement under section 230 of the Companies Act, 2013 as a pre-condition before merger scheme to be entered into as specified in section 232(1). In this case, even 232(1)(a) is not complied with as scheme does not involve merger at all. Further, no assets are getting transferred to the transferee company and hence, section 232(1)(b) is also not complied with. Further, there is no scheme / arrangement entered into vis-à-vis Transferee Listed Company, as there is no compromise / arrangement with their shareholders at all. The transferee company is involved for a simple purpose of change of names of its shareholders to facilitate common promoters to get the shares transferred in their name from the name of transferor company. Hence there is no compromise / arrangement involved in Transferee Company. Section 230 is also not complied with and hence the scheme under section 232(1) cannot be proposed at all. Hence, the scheme is not in accordance with law.</p>
4(xviii)	<p>As against the invested book value of 25.21 Cr (approx.), its market value stood at Rs. 370.52 Cr as on appointed date (1,11,60,093 no. of shares 332 per share market price on 31.3.2023) with a net profit of Rs 345.31 Cr, if sold by the transferor company as on appointed date. However, the scheme proposes in a manner which will facilitate the transfer to its shareholders by change of owners name using the vehicle of listed transferee company, is in violation of law. If similar scheme providing for change of name of owner of shares through scheme under sec 230-232 of the Companies Act, 2013 is allowed / sanctioned, then every corporate shareholder of a listed company having high</p>



	worth will resort to the same illegal practice of merger of shareholder company with listed company, instead of transferring the shares as provided under section 56 of the Companies Act, 2013. In this case, such transfer is without payment of any consideration for transfer of ownership of listed company's shares worth Rs 345.31 Cr. Hence, if the present scheme is allowed, it would become a substitute for regular share transfer transactions between two parties for a lawful and valuable consideration, without any consideration through merger between previous owner and listed company.
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6.3. It is stated that the Official Liquidator is of the opinion that the affairs of the Transferor Company appear **to have not been conducted in a manner prejudicial** to the interest of its members or public **subject to representation at para 4 above.**

6.4. The Official Liquidator has sought to take on record the report and consider the report of the Chartered Accountant. He has also sought to fix the remuneration payable to the Auditor who has investigated into the affairs of Transferor Company for the minimum 3 years before and up to closing hours of 1/4/2023 Le. Appointed Date (2020-2021, 2021-2022 & 2022-2023 1/4/2023). In this regard, this Tribunal directs the Transferor Company to pay a sum of **Rs. 75,000/- + GST (Rupees Seventy-Five Thousand Only Plus GST if applicable)** to the Official Liquidator for the payment of fees payable towards the Auditor who has investigated into the affairs of the Transferor Company.



6.5. In response to the submissions made by the OL, the Petitioner Companies have made the following submissions in the Affidavit filed on 18.07.2025 vide S.R. No. 2938:

Relevant para in 's Report	Respective Response in the Affidavit
4(i)	<p>As regards objections regarding the Appointed Date of the Scheme, it is stated that the said definition applies to entirety of the Scheme, including its Appendix. Absence of the words 'closing business hours' in the Appendix is of no significance, given Appointed Date has to be read in terms of its definition in the Scheme being Clause 4.1.3. Accordingly, any reference to Appointed Date in the Scheme shall mean closing business hours of 1st April, 2023. Clause 4.1.3 is extracted as under:</p> <p><i>"Appointed Date" means the closing business hours of 1st day of April, 2023, or such other date as may be approved by the National Company Law Tribunal(s), for the purposes of this Scheme;"</i></p> <p>Further, the Concurrent Scheme, as defined in Clause 4.1.7, has an appointed date of opening business hours of 1st April, 2023, Clause 3 of the Scheme provides for the sequence of effectiveness of the Scheme and makes it clear that the Concurrent Scheme first becomes effective from the opening business hours of 1.4.2023 and thereafter the present Scheme becomes effective from the closing business hours of 1.4.2023 subject to the sanction of this Tribunal.</p>



	<p>At the time of the approval of the present Scheme by the boards of the respective Transferor and Transferee Companies on 10.11.2023 and 11.11.2023 respectively, the Concurrent Scheme was yet to be sanctioned by the Tribunal. The Concurrent Scheme subsequently came to be sanctioned by this Tribunal vide order dated 07.06.2024. The said Concurrent Scheme has since been fully implemented with effect from the opening business hours of 1.4.2023. Subject to the present Scheme to be sanctioned by this Tribunal, this Scheme would be given effect to in the sequence specified in Clause 3. The expressions 'opening' and 'closing' of business hours were mentioned only for the purpose of clearly identifying the sequence in which the Scheme would be given effect to.</p>
4(ii)	<p>In terms of the General Circular No.09/2019 dated 21.08.2019, since the Scheme was filed after receipt of approval from the stock exchanges beyond a period of one year from the Appointed Date fixed in the Scheme approved by the respective board of directors, there was a need to attach an appendix setting out the reasons for such delay in filing of the Scheme before the Tribunal. Subsequent to the approval by the respective boards of the Transferor and Transferee Companies in respect of the Scheme on 10.11.2023 and 11.11.2023, the application for in-principle approval of the stock exchanges was filed with the BSE and NSE on 02.12.2023. Regulation 37 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 state that, where a listed company is a party to a scheme, an application for approval of the Scheme by the Tribunal</p>



cannot be filed without the receipt of the in-principle approval of the stock exchanges. The respective approvals of the BSE and NSE were received by the Transferee Company on 31.07.2024 and 20.08.2024,. Subsequent to the same, approvals in the form of consent affidavits from various secured creditors of the Second Petitioner Company were obtained in the subsequent months being November and December of 2024, by which time the period of one year from the Appointed Date of the Scheme approved by the Board of Directors had expired. Therefore, in order to fulfil the requirements of the circular, an appendix was prepared and annexed to the Scheme, prior to its filing, to explain the reasons as to why the time period between the Appointed Date and date of filing exceeded more than a year. Therefore, the Petitioners are in full compliance of the provisions of the law. Insofar as the observation made in paragraph 4(ii) that the Appointed Date ought to have been revised to within a date one year prior to filing of the application, the same is misconceived and self-defeating. Any modification to the Scheme at this stage would have necessitated the filing of the same with the stock exchanges once again and therefore the only option available was to provide the justification as contemplated in paragraph 6(c) of the General Circular, which was duly provided. Further, there is nothing wrong, in principle, in filing two schemes for sanction by the Tribunal concurrently. In the present case, as it turned out, due to the delay in receipt of the approvals from the stock exchange, the Concurrent Scheme to which the First Petitioner Company was a party, was sanctioned by this Tribunal on 07.06.2024, much prior



	<p>to the filing of the present Scheme before the Tribunal on 07.01.2025.</p> <p>Further averment that the Appendix is silent in relation to the ante dating as to whether the Transferor Company has ante dated the Appointed Date to avoid lapse of any carry forward losses of the Transferor Company, or to ensure the impact of the implementation of the previous composite scheme are all speculative and beyond the scope of the OL's enquiry. As explained above, the reasons for the delay in filing the second scheme have already been explained above. There are no carry forward losses of the Transferor Company that would lapse, and therefore, the reasons are merely imaginary and speculative.</p>
4(iii)	<p>It is denied that the Clause 4.1.14 empowers Transferee Company alone to decide on eligible members of the Transferor Company for payment of consideration to the equity shareholders of the Transferor Company as on Record Date. It is denied that the Scheme does not define any record date. The said understanding of Clause 4.1.14 of the Scheme is incorrect. Clause 4.1.14 is extracted below:</p> <p><i>"Clause 4.1.14 "Record Date" means the date to be fixed by the Board of Directors of the Transferee Company or a committee thereof, in consultation with the Board of Directors of the Transferor Company for the purpose of determining the members of the Transferor Company to whom new shares in the Transferee Company shall be allotted under Part III of the Scheme;"</i></p>



	<p>A bare perusal of the Clause 4.1.14 is self-explanatory in as much as it provides that the Record Date shall be fixed by the Board of Directors of the Transferee Company in consultation with the Board of Directors of the Transferor Company. Therefore, the Official Liquidator's observation that the entire power to fix the Record Date is vested with the Board of the Transferee Company, without the involvement of the Transferor Company, is completely misplaced. Without prejudice to the same, Transferor Company undertakes to comply with Clause 4.1.14 of the Scheme, and the Board of Directors of the Transferor Company will render necessary assistance to the Board of Directors of the Transferee Company in relation to fixing the Record Date prior to the dissolution of the Transferor Company in accordance with the Scheme.</p>
4(iv)	<p>Provisions under Clause 8 of the Scheme sufficiently provide for protection of Staff & Employees. The Transferor Company states that there are no permanent employees in the Transferor Company as of date, therefore no question of retrenchment of employees arises. In any event, a perusal of the Clause 8 as a whole, would demonstrate that no prejudice would be caused in any manner to any employee (if at all, any) of the Transferor Company. Clauses 8.1 and 8.4 adequately address the concerns of the OL.</p>
4(v)	<p>It is denied that Clause 5.2 of the Scheme provides for auto modification of the Scheme post its sanction by this Tribunal, or as alleged. It is denied that such auto modification without previous approval/sanction of this Tribunal would be in violation of Section 231(1)(b) of the Companies Act, 2013. No question of modifying</p>



or deleting the Clause 5.2 arises in the present case. The interpretation of Clause 5.2 by the OL is erroneous. Clause 5.2 only contemplates modification of any terms of provisions of the Scheme that are found or interpreted to be inconsistent with Section 2(1B) of the Income Tax Act, 1961. Such modification is only to ensure that the Scheme is compliant with any changes (if any) to the Income Tax Act, 1961, such that the Scheme is not rendered inconsistent with such changes, if any. Clause 5.2 of the Scheme is extracted as under:

"Clause 5.2 The merger of the Transferor Company with and into the Transferee Company shall be in accordance with Section 2(1B) of the Income Tax Act, 1961. If any terms or provisions of the Scheme are found to be or interpreted to be inconsistent with Section 2(18) of the Income Tax Act 1961 at a later date, whether as a result of any amendment of law or any judicial or executive interpretation or for any other reason whatsoever, the aforesaid provision of the Income Tax Act. 1961, shall prevail. The Scheme shall then stand modified to the extent deemed necessary to comply with the said provisions. Such modification will, however, not affect other parts of the Scheme."

Further, Clause 19.1 of the Scheme specifies that no modification, alternation, amendment to the Scheme shall be made without the approval of the Tribunal. Clause 19.1 of the Scheme is extracted below:

*"Clause 19.1 **Subject to approval of NCLT**, the respective Boards or the respective authorized representative appointed by the Boards of the Transferor Company and the Transferee Company. may assent to any modifications, alterations or amendments of this Scheme or any conditions which the*



	<p><i>NCLT and or any other competent authority may deem fit to direct or impose and the said respective Boards and after dissolution of the Transferor Company (without winding up), the Board of the Transferee Company may do all such acts, things and deeds necessary in connection with or to carry out the Scheme into effect and take such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions whether by reason of any order of the NCLT or any directions or order of any other authorities or otherwise howsoever arising out of, under or by virtue of this Scheme and/ or matters concerned or connected therewith."</i></p>
4(vi)	<p>The present Scheme refers to the Concurrent Scheme for the limited purpose of sequencing the coming into effect of the Scheme after the approval and coming into effect of the Concurrent Scheme under Clause 3 of the Scheme. The Concurrent Scheme has since been approved and come into effect in accordance with the terms thereof. The present Scheme does not require any redrafting, and nor has it been drafted prematurely and is a self-working Scheme and the said contention need be rejected.</p>
4(vii)	<p>As regard to objections regarding compliance with Section 56 of the Companies Act, 2013, it is stated that any Scheme of Amalgamation between two entities is a matter of domestic concern of the respective companies as that are parties to the scheme and that of their shareholders and creditors. All necessary approvals of the relevant stakeholders have already been obtained for such amalgamation. The OL is not entitled to sit in appeal over the manner of accomplishment of the objective of the shareholders in approving the Scheme which is otherwise in accordance with law. There is no</p>



	<p>need to comply with the provisions of Section 56 and transfer the shares held by the Transferor Company in the Transferee Company in favour of its shareholders. The averment that it does not meet the criterion prescribed under Section 232(1)(b) is ex-facie incorrect in as much as it is contemplated that the entire property of the Transferor Company would stand vested in the Transferee Company under the Scheme. Besides the investment in the Transferee Company, there are other assets in the Transferor Company that would stand vested in the Transferee Company like cash, bank deposits, inputs tax credits etc. As regards the property represented by shares in the Transferee Company, as the Company cannot become the owner of its own shares, the said shares would stand cancelled under Clause 11.2 of the Scheme, and in lieu thereof, to the extent of the shares held by the Transferor Company, the shareholders of the Transferor Company would be allotted shares in the Transferee Company pursuant to Clause 11.1 of the Scheme, in proportion to their respective holdings in the Transferor Company. Such a Scheme is fully compliant with the provisions of the Companies Act, 2013 and Section 232(1)(b) in particular.</p> <p>It is denied that there is no business left that belongs to the Transferor Company to be continued as going concern by the transferee company post merger and hence the scheme lacks commercial substance, as alleged. It is denied that the Scheme does not fall under scheme of merger and that it would be a case of dissolution with the winding up of business. The Transferor Company is in the business of trading and</p>
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	<p>investment activities of all kind, and holds 59.84% of the paid-up capital of the Transferee Company. The report fails to provide any reason or basis for stating that there would be no business left that belongs to the Transferor Company to be continued as a going concern by the Transferee Company post-merger. Conclusion that the Scheme lacks commercial substance on such basis, is entirely arbitrary and capricious, and as such ought to be disregarded. The Scheme does not contemplate winding up of business, and the report fails to justify making such observations. It is denied that whole purpose of the purported scheme is to facilitate direct holding of shares of listed entity by shareholders of the transferor company under the cloak of merger, without actual merger of business.</p> <p>Reliance placed on the case of GABS INVESTMENTS PRIVATE LIMITED AND AJANTA PHARMA LIMITED (CSP NO. 995 OF 2017 IN CSA NO. 791 & 792 OF 2017), is erroneous, and the said case is wholly inapplicable to the present case. In the GABS INVESTMENTS matter, NCLT, Mumbai rejected the scheme viewing that the Scheme was a mechanism to evade tax considering the case on its own merits. In the said case, the Income Tax Department had raised significant objections opposing sanction of the scheme demonstrating that the scheme was a device to cause substantial loss to the exchequer to the Government to the tune of approximately 421.66 crores. The Department further alleged that the scheme was a deliberate mechanism to avoid tax liability and amounted to misuse and abuse of the provisions of the Income Tax Act, 1961. In contrast, in the present</p>
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	<p>Scheme, the Income Tax Department, vide its Report dated 21.05.2025 has decided not to raise any objection to the Scheme. The aforesaid case therefore is inapplicable to the present case.</p> <p>There is no bar in law for amalgamation of a promoter holding company with its subsidiary, and such schemes, including the following, have been sanctioned by the Adjudicating Authority: (i) Scheme of Amalgamation between <i>Jayant Finvest Limited and Jayant Agro-Organics Limited</i> was sanctioned by the NCLT, Mumbai on 29.08.2024 in <i>C.P.(CAA)/201/MB-111/2022 connected with C.A.(CAA)/139/MB-111/2022</i>, (ii) Scheme of Amalgamation between <i>Dr. Reddy's Holdings Ltd. and Dr. Reddy's Laboratories Ltd</i> was sanctioned by the NCLT, Hyderabad on 05.04.2022 in <i>CP (CAA) No. 49/230/HDB/2020 Connected with CA (CAA) No. 231/230/HDB/2019</i>. and (iii) Scheme of Amalgamation among <i>Suremi Trading Private Limited, Sushripada Investments Private Limited and NOCIL Limited</i> was sanctioned by the Hon'ble NCLT, Mumbai on 03.03.2021 in <i>CP (CAA)1011/MB-I/2020</i>).</p>
4(viii)	<p>The Scheme does not contemplate any transfer or gift of shares by the Transferor Company to its shareholders. Upon the Scheme becoming effective, equity shares of the Transferee Company shall be issued to the shareholders of the Transferor Company as consideration for the transfer and vesting of the entire Undertaking of the Transferor Company into the Transferee Company. This consideration has been determined based on a valuation report issued by a registered valuer for securities and financial assets and</p>



further supported by a fairness opinion issued by a SEBI-registered Category I Merchant Banker.

The case of *Indian Seamless Enterprises Ltd (supra)* cited by the Official Liquidator is wholly inapplicable to the present case. In the said matter, the Regional Director objected to the scheme on the ground that “the Scheme violates Section 205 of the 1956 Act and Section 123 of the 2013 Act, in as much as by gifting the shares of TAAL to its Shareholders, the Petitioner Company is in effect giving dividend to its Shareholders in kind, which is prohibited by the aforesaid provisions.” The aforesaid case involved a proposal by the company to gift shares to its shareholders through a reduction and cancellation of its share capital. In contrast, the present Scheme does not involve any capital reduction. It is a Scheme of Amalgamation, wherein shares of the Transferee Company are proposed to be issued to the shareholders of the Transferor Company as consideration for the merger. There is no transfer or gift of shares involved, rather, it entails a fresh issuance of shares by the Transferee Company. Accordingly, the facts of the present case are entirely different, and reference to the aforementioned case is not applicable. The issuance of shares by the Transferee Company is purely in the nature of consideration for the transfer of entire undertaking of the Transferor Company and not a distribution of dividend in kind. Moreover, the Regional Director, vide his Report dated 27.05.2025, has raised no objections to the present Scheme, subject to submission of requisite declarations and undertakings by the Petitioner Companies. The said declarations/undertakings have been duly submitted



	<p>by way of an affidavit dated 24.06.2025. In view of the above, the reliance placed by the Official Liquidator on the judgment in Indian Seamless Enterprises Ltd, is misplaced and irrelevant to the facts and legal position in the present Scheme.</p>
4(ix)	<p>The Scheme does not involve any distribution or payment of dividend to any person. As per Section 123 of the Companies Act, 2013, dividend may be declared only out of the profits of a company. However, the present Scheme does not entail any distribution of profits by either company. Instead, it provides for the issuance of shares by the Transferee Company to the shareholders of the Transferor Company as consideration for the amalgamation. Accordingly, the provisions of Section 123 of the Companies Act, 2013, are not applicable in this context.</p>
4(x)	<p>The compliance of the scheme with the provision of Income Tax Act, 1961 is matter for the Income Tax Department. A notice has been served to the Income Tax Department by the Transferor Company on 30.04.2025 and the Transferee Company on 30.04.2025. The Income Tax Department has filed a report on 27.05.2025, deciding not to raise any objection to the Scheme, while reserving their rights at the time of the relevant assessment. Therefore, it is not open to the OL to examine the compliance of the Scheme with Section 2(18) of the Income Tax Act, 1961.</p> <p>Nevertheless, without prejudice to the same, it is submitted that the provisions of Section 2(1B) of the Income Tax Act, 1961, prescribes the following conditions to an amalgamation:</p>



	<p>(i) <i>all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation:</i></p> <p>(ii) <i>all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation; and</i></p> <p>(iii) <i>shareholders holding not less than three-fourths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation.</i></p> <p>In the given case, all the assets and liabilities of the Transferor Company as on the Appointed Date become the assets and liabilities of the Transferee Company. Further, pursuant to Clause 11 of the Scheme, the Transferee Company would issue and allot shares to all shareholders of the Transferor Company whose names appear in the register of members as on the Record Date. Hence, all the conditions of Section 2(18) of the Income Tax Act, 1961, are satisfied and it cannot be said that the Scheme is not a scheme of merger/amalgamation.</p> <p>In any case, the implementation of the Scheme would not interfere in any manner with the ability of the Income Tax department to recover any tax statutorily due from the companies or any other person who is liable for payment of such tax due. In <i>Department of</i></p>
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	<p><i>Income Tax vs Vodafone Essar Gujarat, 2015 16 SCC 629</i>, it was held by the Hon'ble Supreme Court that the Income Tax Department is entitled to take out appropriate proceedings for recovery of any tax statutorily due from the transferor or transferee company or any other person who is liable for payment of such tax due and it is not inclined to interfere with the Scheme approved by the Tribunal.</p>
4(xi)	<p>The averment that the Scheme neither satisfies Section 232 of the Companies Act, 2013 nor Section 2(18) of the Income Tax Act, 1961 is ex-facie incorrect. As stated in response to the earlier observation contained in sub-para 4(x), it is beyond the remit of the OL to observe and deal with the income tax implications on the said Scheme. It is denied that the present Scheme is a scheme for distribution of dividend. The observation is identical to the observation made in paragraph 4(viii) of the Report. The reference to the case of <i>Gabs Investment</i> has been dealt with earlier in observation in paragraph 4(vii).</p> <p>As regards averment in relation to capital gains, it is submitted that as per Section 47(vi) of the Income Tax Act, 1961, any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company shall not be regarded as transfer. Further, as per Section 47(vii), any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being a share or shares held by him in the amalgamating company, shall not be regarded as a transfer if the transfer is made in consideration of the allotment to him of any share or shares in the</p>



amalgamated company except where the shareholder itself is the amalgamated company, and the amalgamated company is an Indian company. The tax neutrality in the hands of the Transferor Company and the shareholders of the Transferor Company is conferred by the provisions of the above and therefore, no case can be made of prejudice to revenue if compliances are made within the aforementioned provisions of the Income Tax Act, 1961. Further, Section 47(vii) specifically accounts for a case where the shareholder of a transferee company is itself the transferor company, such as in the present Scheme, and does not consider such a transaction as a transfer chargeable to capital gains.

It is denied that the Scheme falls under the impermissible Avoidance Agreement under Section 96 of the Income Tax Act, 1961. It is submitted that for an arrangement to qualify as an impermissible avoidance arrangement, the main purpose of the arrangement should be to obtain a tax benefit. As stated above, the present Scheme is a bona fide transaction based on a commercial rationale. The rationale behind the Scheme is to simplify the existing shareholding structure and reduce the number of layers of entity involved in the shareholding structure to make it compliant with the provisions of the Act.

In any case, the implementation of the Scheme would not interfere in any manner with the ability of the Income Tax department to recover any tax statutorily due from the companies or any other person who is liable for payment of such tax due. In *Department of Income Tax vs Vodafone Essar Gujarat, 2015 16 SCC*



	<p>629 it was held by the NCLT that the Income Tax department is entitled to take out appropriate proceedings for recovery of any tax statutorily due from the transferor or transferee company or any other person who is liable for payment of such tax due and not inclined to interfere with the Scheme approved by the Tribunal.</p> <p>It is submitted that Hon'ble Bombay High Court in the case of <i>AVM Capital Private Limited and Ors.</i>, 2012 173 <i>Comp Cas 355 (Bom)</i> at para 22 held that where the holding companies merges with the subsidiary, it cannot be said that the same is a device for the avoidance of tax as the same shares which were earlier held by the promoters indirectly, are now held by them directly and the same is legitimate and permissible in law.</p> <p>It is stated that the Scheme is permissible under Section 230 of the Companies Act, 2013, and squarely falls under the provisions of Section 2(1B) of the Income Tax Act, 1961, which may result in exemption of income tax in the hands of the Transferor Company, Transferee Company and their respective shareholders. The Scheme cannot be considered as a device for avoidance of tax.</p>
4(xii)	<p>With respect to the observations made by the Official Liquidator in Para 4(xii) of the report, the Official Liquidator seeks clarification as regards indemnity in Clause 2.1.e of the Scheme, which is self-explanatory in nature. The same is extracted below:</p> <p><i>"Clause 21 e Mr. Gopal Srinivasan, promoted shareholder of the Transferor Company, shall indemnify and keep the</i></p>



	<p><i>Transferee Company indemnified for liability, claim and demand, if any, relating to any period prior the Effective Date (as defined hereinafter) of the Scheme which may devolve on the Transferee Company on account of this Amalgamation.”</i></p> <p>The undertaking cum indemnity provided by Mr Gopal Srinivasan to the Transferee Company dated 23.07.2024 is attached to this response and the same was also submitted to the Securities and Exchange Board of India vide email dated 23.07.2024 for the purpose of obtaining the in-principle approval of the stock exchanges. The letter dated 23.07.2024 is annexed herewith. Pursuant to the indemnity, Mr Gopal Srinivasan has undertaken to cover the liabilities of the Transferor Company relating to the period to the giving effect of the Scheme that would devolve upon the Transferee Company after the sanction of the Scheme. It would not cover any tax that may arise consequent to the sanction of the Scheme, which liability would be the responsibility of the Transferee Company being the successor in interest, and in any event, the determination of tax neutrality of the Scheme would only be undertaken by the department at the time of the relevant assessment, and not by the OL pursuant to his observation in paragraph 4(xii).</p>
4(xiii)	<p>Pursuant to Regulation 10(1)(d)(iii) of the SEBI (SAST) Regulations, 2011, the companies are exempt from the obligations of making of open offer. There is no requirement in law or otherwise for the OL to scrutinise matters which pertain to other sectoral regulators and statutory authorities, particularly under circumstances</p>



	where necessary approvals have already been obtained.
4(xiv)	<p>The valuation report, in paragraph 4.2, specifies the factors considered by the registered valuer for the recommendation provided in the share entitlement ratio report, where it is clarified that post the Concurrent Scheme being made effective, the Transferor Company would not hold any other business assets/surplus assets/investments and/or any other net liabilities, which are getting transferred pursuant to the Scheme. Hence, no value has been attributed to any other assets or liabilities except investments held in the Transferee Company. The management/shareholders of the Transferor Company have given an undertaking that the Transferor Company shall maintain sufficient cash/bank balance and liquid investments in the books of Transferor Company immediately prior to the implementation of the Scheme or otherwise will be utilized to meet the costs, fees, charges, expenses (including stamp duty payable, if any) in relation to the Proposed Scheme. Further, in the event that the Transferor Company is unable to bear any expenses due to lack of sufficient funds, the shareholders of the Transferor Company shall bear such expenses. Hence, no value has been attributed to any other assets or liabilities except investments held in the Transferee Company.</p> <p>Accordingly, valuation approach as indicated in the format as prescribed under <i>Part 1-(A)(4)(a) of SEBI master circular no. SEBI/HO/CFD/POD-2/P/CIR/2023/93</i> dated <i>20th June 2023</i> have not been undertaken as they are not relevant with respect to the</p>



	<p>proposed Scheme. Further, it is an established precedent that the valuation report of a registered valuation professional shall not be questioned. It is settled law that matters of valuation are technical in nature, best left to experts. Neither the courts, nor the OL ought to sit in judgment over matters pertaining to valuation, and particularly methods of valuation.</p> <p>The board meetings of the Transferor Company and Transferee Company approving the Scheme were held on 10th and 11th November, 2023, respectively. Since the board of the Petitioner Companies, and the audit committee and independent directors' committee of the Transferee Company are required to consider and approve the valuation report at their respective meetings in accordance with SEBI master circular no. SEBI/HO/CFD/POD-2/P/CIR/2023/93 dated 20th June 2023, the valuation report is also issued in November 2023. The board meetings of the Transferor Company and Transferee Company approving the Scheme was held on 10th and 11th November, 2023, respectively, and the Scheme was filed with the stock exchanges on 2nd December, 2023. Hence, the date of issuance of the valuation report is not significantly ante-dated.</p>
4(xv)	<p>The observations made in Para 4(xv) are similar to observations made in 4(viii) and (ix) and responses to the same be taken as part and parcel of this response. Courts and Tribunals have approved innumerable Schemes that involve the amalgamation of a promoter holding company into a subsidiary. For instance, Hon'ble Bombay High Court in the case of <i>AVM Capital Private Limited and Ors., 2012 173 Comp Cas 355 (Bom)</i> has held that where the holding companies</p>



	<p>merges with the subsidiary, it cannot be said that the same is a device for the avoidance of tax as the same shares which were earlier held by the promoters indirectly, are now held by them directly and the same is legitimate and permissible in law.</p> <p>To illustrate further, reference may be had to the schemes, where a promoter holding company is merging with its subsidiary, have also been approved by the jurisdictional NCLT benches as referenced in the response to para 4(vii) of the Report.</p> <p>Given the fact that the present Scheme is a scheme of amalgamation, and there is no transfer/gift of existing shares, the question of payment of dividend does not arise. Section 232(3)(d) of the Companies Act, 2013, states that the Tribunal may make provision for dissolution, without winding-up, of any transferor company.</p>
4(xvi)	<p>The averment that the Scheme is in violation of Section 232(3)(b) is ex-facie incorrect. The Transferor Company holds 1,11,60,093 shares in the Transferee Company, and being the property of the Transferor Company, the same will stand transferred and vested in the Transferee Company. However, since a company cannot hold its own shares, the shares are contemplated to be cancelled. In lieu of the same, shares are allotted to the shareholders of the Transferor Company to the very same extent so that there is no change to the paid-up share capital of the Transferee Company arising out of the Scheme. The question of any loss to the Transferee Company does not arise, nor is there any benefit derived by any person which did not exist prior</p>



	<p>to the Scheme. The OL cannot sit in judgment over the commercial wisdom and decision making of the shareholders, in as much as the Scheme is a domestic concern between the company and its shareholders.</p>
4(xvii)	<p>With respect to the observations made by the Official Liquidator in Para 4(xvii) of the Report, the same is entirely denied as false and factually erroneous. It is submitted that the Scheme satisfies all requirements of the Companies Act, 2013 and such schemes of holding companies merging with subsidiary companies have been approved time and again by Courts and Tribunals. The same has already been reference in my response to para 4(vii) of the Report.</p>
4(xviii)	<p>As highlighted earlier in this response, Section 56 has no application. There is nothing illegal, unlawful, or colourable in the Scheme proposed by the Petitioner Companies. The Scheme is in compliance with applicable laws and is a legitimate and permissible arrangement. The transaction is bona fide, conducted at arm's length, and supported by a commercially justifiable rationale.</p> <p>In the landmark judgment of <i>Miheer Mafatlal v. Mafatlal Industries Limited</i>, (1997) 1 SCC 579, the Hon'ble Supreme Court has held that the scheme sanctioning court is required to see that the statutory procedure has been complied with; that the requisite meetings have been held and whether the Scheme is not found to be violative of any law and not contrary to public policy. The Supreme Court has also held that once the aforesaid broad parameters about the requirements are found to be met, the court will have</p>



	<p>no further jurisdiction to sit in appeal (rather than supervisory jurisdiction) over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval.</p> <p>It is stated that none of the above observations have any merit and are liable to be rejected by this Tribunal. In para 5, the OL has stated that the affairs of the Transferor Company are not carried out in a manner prejudicial to public interest and to the interest of the members.</p>
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6.6. INCOME TAX AUTHORITIES

6.6.1. On service of notice, the Commissioner of Income Tax, CC-3(1) entered appearance and submitted his observations by a Memo dated 27.05.2025.

6.6.2. It is stated that the requirement to send notice to the concerned department is a procedural requirement and as such does not impact the right of the Department to proceed in accordance with the provisions of the Income Tax Act, 1961. It is submitted that this Tribunal may take the observations on record without prejudice to the rights of the Department to take all appropriate proceedings under the provisions of the Income Tax Act, 1961 to protect the interest of the government including right to reopen the assessment. By filing of this memo and the report, the Income Tax Department shall not have deemed to waive its rights to undertake all proceedings under the Income Tax Act, 1961. Reliance is placed on the judgement of the Supreme Court in *Marshall*



Sons & Co India Ltd Vs Income Tax Officer (AIR 1997SC1763 & MANU/SC/0407/1997). It is stated that the Income Tax Department reserves its right to proceed against the Petitioner Companies through independent proceedings under the provisions of the Income Tax Act, 1961 and pass orders in accordance with law. The relevant para 17 of the Judgment is extracted as under:

"17. We, however, make it clear that we have not expressed any opinion on the plea of the learned Counsel for the Revenue that the amalgamation itself is a device designed to evade the taxes legitimately payable by the subsidiary company. If the Income Tax authorities think that, they are entitled to raise this question in the proceedings under the Income Tax Act, it is open to them to do so by way of a separate proceeding according to law."

(emphasis supplied)

6.6.3. In the Report of the Income Tax Department dated 27.05.2025, the following objections are made:

6.6.3.1. The parties to the transaction, TVS Investments Pvt. Ltd. (Transferor company) (PAN: AAHCG4411H) and TVS Electronics Ltd. (Transferee company) (PAN: AAAC10886K), have given notice in pursuance of section 230(5) of the Companies Act, 2013, as directed by the Hon'ble Tribunal vide order dated 23.04.2025 u/s 230(1) of the Companies Act, 2013 stating that representation, if any, in connection with the proposed scheme of amalgamation may be made to the



Tribunal within 30 days from the date of receipt of the notice. It is stated that both the transferor company and transferee company are assessed to tax in the jurisdiction of this office.

6.6.3.2. It is stated that the same is as per the provisions of Section 2(1B) of the Income Tax Act. Hence, there is no objection for the proposed scheme of amalgamation. However, following demand has been raised in the case of the Transferor Company which is outstanding as on date:-

S. No.	A.Y.	Demand Section	Date of Order	Demand Outstanding (In Rs.)	Remarks
1.	2022-23	143(3)	15.03.2024	37,98,492/-	The assessee has filed an appeal before the CIT(A) which is pending for adjudication.

6.6.3.3. Hence, the payment of outstanding demand by the Transferor company may be ensured before ordering the amalgamation, Transferee Company may make payment of the same after amalgamation in view of pending appeal before the CIT(A).

6.6.3.4. The pending appeal filed by the Transferor Company as on the effective date shall be permitted to be continued and/ or enforced against the transferee company i.e. TVS Electronics Limited (AAACI0886K).



6.6.3.5. In case, post amalgamation, if any information suggesting escapement of income is received by the office relating to the PAN of the Transferor Company, the Department shall initiate such proceedings for assessment of the same in the case of the transferee company and the transferee company shall not have any objection for the same and shall pay the demand that may arise on account of such assessment proceedings.

6.6.4. In response to the objections filed by the Income Tax Department in the report dated 27.05.2025, the Transferor Company has made the below submissions:

6.6.4.1. In paragraph 2 of the Letter filed by the Commissioner of Income Tax, Corporate Circle-3(1) ("**Letter of objection**") that has conveyed its no objection to the Scheme in the following terms, '*...On perusal of the scheme of amalgamation, it is seen that the same is as per the provisions of Section 2(1B) of the Income Tax Act. Hence, there is no objection for the proposed scheme of amalgamation.... (...continued)*' and has not raised any objection to the Scheme.

6.6.4.2. In relation to the objections to the demand of Rs.37,98,492/- outstanding by an order dated 15.03.2024 for the A.Y. 2022-23, it is stated that the Transferor Company has filed an appeal before the CIT(A) which is pending for adjudication.



Paragraphs 2(1) and 2(iii) of the Letter of Objections are extracted as under:

i. The following demands have been raised in the case of the Transferor Company which are outstanding as on date:-

S. No.	A.Y.	Demand Section	Date of Order	Demand Outstanding (In Rs.)	Remarks
1.	2022-23	143(3)	15.03.2024	37,98,492/-	The assessee has filed an appeal before the CIT(A) which is pending for adjudication.

Hence, it is requested that the payment of outstanding demand by the Transferor company may be ensured before ordering the amalgamation or payment of the same by the Transferee company after amalgamation in view of pending appeal before the Id. CIT(A).

ii. The pending appeal by the Transferor Company as at the effective date shall be permitted to be continued and/ or enforced against the transferee company i.e. M/s. TVS Electronics Limited (AAACI0886K).

6.6.4.3. It is stated that the provisions under Clause 13.3 (a) of the Scheme sufficiently satisfies the observations of the Income Tax Department extracted above. Clause 13.3(a) is extracted as under:

“Clause 13.3 :

(a) All taxes paid or payable by the Transferor Company in respect of the operations and / or profits of the business before the Appointed Date and from the Appointed Date till the Effective Date, shall be on



account of the Transferee Company and in so far as it relates to the tax payment by the Transferor Company in respect of the profits or activities or operation of the business after the Appointed Date, the same shall be deemed to be the corresponding item paid by the Transferee Company and shall in all proceedings be dealt with accordingly."

6.6.4.4. It is stated that in terms of the Scheme, the tax payable by the Transferor Company, shall be liable to be discharged by the Transferee Company in the manner provided for under the provisions of Clause 13.3 of the Scheme as stated above.

6.6.4.5. In response to the observations made in relation to the pending appeal by Transferor Company to be continued or enforced against the Transferee Company, it is stated that Clause 9.1 of the Scheme satisfies the observations of the Income Tax Department. Clause 9.1 is extracted as under:

"Clause 9.1

If any suit, appeal or proceedings of whatsoever nature (hereinafter referred to as "the said proceedings") by or against the Transferor Company be pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of the transfer of the Transferor Company or by anything in this Scheme, but the said proceedings may be continued, prosecuted and enforced, as the case may be, by or against the Transferee Company in the same manner



and to the same extent as it would be or might have been continued and enforced, as the case may be, by or against the Transferor Company if this Scheme had not been made. On and from the Effective Date, the Transferee Company may initiate any legal proceeding for and on behalf of the Transferor Company.”

6.6.4.6. It is stated that in terms of the Scheme, pending appeal by the Transferor Company, shall be continued and enforced against the Transferee Company in the manner provided for under the provisions of Clause 9.1 of the Scheme as extracted above.

6.6.5. In response to the objections filed by the Income Tax Department in the report dated 27.05.2025, the Transferee Company has made the below submissions:

6.6.5.1. It is stated that in terms of Clause 13.3(a) of the Scheme, the tax payable by the TVS Investments Private Limited ("Transferor Company"), shall to be liable to discharged by the Transferee Company in the manner provided for under the provisions of Clause 13.3 of the Scheme as extracted above. The Transferee Company undertakes to comply with the same, in terms of the Scheme.

6.6.5.2. It is stated that the net worth of the Transferee Company as on 31.03.2025 is Rs.9,266 Lakhs. The demand of the Income Tax Department as per its Letter of Observation at paragraph 2 (i) is Rs.37,98,492/-. The Transferee Company has sufficient and



adequate cash flow and reserves, to settle the demand as raised by the Income Tax Department.

6.6.5.3. It is stated that in terms of Clause 9.1 of the Scheme, the pending appeal by the Transferor Company, shall be continued and enforced against the Transferee Company in the manner provided for under the provisions of Clause 9.1 of the Scheme as above. The Transferee Company undertakes to comply with the same, in terms of the Scheme.

7. VALUATION REPORT

The Petitioner Companies have filed Valuation Report dated 07.06.2024 obtained from **CA HARSH C. RUPARELIA**, Registered Valuer. The valuation report is placed at *Pgs. 525-536* the Petition. The Valuation Analysis of the Independent valuer is extracted hereunder for reference.

5.4. In the present facts and circumstances and based on the information and explanation provided to me, I believe that the following Share Exchange Ratio, after giving due consideration to the management representations and the fact that upon Scheme becoming effective, 1,11,60,093 equity shares of Rs. 10 each fully paid up, representing about 59.84% of the total paid up share capital of the Transferee Company shall get cancelled and same number of equity shares will be issued to the equity shareholders of the Transferor company in the manner provided under the Scheme. Thereby the interest of the shareholders in TVSEL will effectively remain unchanged and shareholders interest would not be prejudicially affected. Further, the Scheme does not envisage dilution of the holding of any one or more of the shareholders as a result of the Scheme becoming effective, the Share Exchange Ratio would be fair and reasonable for the shareholders of TVSIPL and TVSEL:



"1,11,60,093 fully paid-up equity shares of Rs. 10/- each of the Transferee Company shall be issued and allotted as fully paid up to the equity shareholders of the Transferor Company in proportion of their holding in the Transferor Company"

In the event that the New Equity shares to be issued result in fractional entitlement, the Board of Directors of the Transferee Company shall be empowered to consolidate and/or round off such fractional entitlements into whole number of New Equity shares to nearest integer. However, in no event, the number of New Equity shares to be allotted by the Transferee Company to the equity shareholders of the Transferor Company shall exceed the total number of equity shares held by the Transferor Company in the Transferee Company.

8. ACCOUNTING TREATMENT

8.1. The Petitioner Companies have stated that the Statutory Auditors of the Petitioner Companies have examined the Scheme and certified that the accounting treatment specified in the Scheme is in accordance with the accounting principles laid down under Section 133 of the Companies Act, 2013. The Auditor's Certificate of the Second Petitioner Company in relation to the Accounting Treatment proposed in the Scheme of Amalgamation is placed at *Pgs. 455 – 457* of the Petition. The Auditor's Certificate of the First Petitioner Company in relation to the Accounting Treatment proposed in the Scheme of Amalgamation is placed at *Pgs. 222 – 224* of the Petition.



9. OBSERVATIONS OF THIS TRIBUNAL

9.1. REGIONAL DIRECTOR

9.1.1. On perusal of the Scheme, it is seen the RD has five major objections in para 3 and 11 of the Scheme.

9.1.2. As per Section 240 of the Companies Act, 2013, the criminal liability of the officers in default of the Transferor Company persists even after the approval of any scheme of merger/amalgamation/acquisition. Hence, the RD in his report has sought an undertaking from the Transferor Company that it shall comply with the provisions of Section 240 of the Companies Act, 2013. However, the Transferor Company in its reply to the Report of the RD has refused to provide such undertaking on the ground that no such undertaking is required to be provide for a liability mandatorily arising under the Act, 2013.

9.1.3. We hold that the liability of all such persons who may be classified as 'officer who is in default' of the Transferor Company under Section 2(60) of the Act, 2013 and who is found to be liable for any of the offences under Companies Act, 2013, shall continue to be liable even after the effective date of the Scheme.

9.1.4. In the present petition, the Appointed date is stated as 01.04.2023 whereas the Application in CA(CAA)/7(CHE)/2025 was filed before this Tribunal on 07.01.2025.



9.1.5. On perusal of the Appendix of the Scheme of Amalgamation placed at Pg. 575 of the Petition Typeset, it is seen that the Petitioner Companies have submitted their justification for the Appointed Date being ante dated by more than a year from the date of filing of the petition for approval of the scheme before this Tribunal. It is stated that although the application for approval of the scheme was submitted to BSE and NSE in accordance with Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter, SEBI(LODR) Regulations) on 02.12.2023, the approval for the same was received from BSE Limited on 31.07.2024 and from NSE Limited on 20.08.2024. Only upon receiving such approval, the petition was filed before this Tribunal on 07.01.2025.

9.1.6. Regulation 37 of SEBI(LODR) Regulations provides as under:

37. Draft Scheme of Arrangement & Scheme of Arrangement.

(1) Without prejudice to provisions of regulation 11, the listed entity desirous of undertaking a scheme of arrangement or involved in a scheme of arrangement, shall file the draft scheme of arrangement, proposed to be filed before any Court or Tribunal under sections 391-394 and 101 of the Companies Act, 1956 or under Sections 230-234 and Section 66 of Companies Act, 2013, whichever applicable, 199 [along with a non-refundable fee as specified in Schedule XI,] with the stock exchange(s) for obtaining 200 [the] No-objection letter, before filing such scheme with any Court or Tribunal, in terms of requirements specified by the Board or stock exchange(s) from time to time.



(2) *The listed entity shall not file any scheme of arrangement under sections 391-394 and 101 of the Companies Act, 1956 or under Sections 230-234 and Section 66 of Companies Act, 2013, whichever applicable, with any Court or Tribunal unless it has obtained 201[the]No-objection letter from the stock exchange(s)*

(3) *The listed entity shall place the No-objection letters of the stock exchange(s) before the Court or Tribunal at the time of seeking approval of the scheme of arrangement:*

Provided that the validity of the No-objection letter of stock exchanges shall be six months from the date of issuance, within which the draft scheme of arrangement shall be submitted to the Court or Tribunal.

(4) *The listed entity shall ensure compliance with the other requirements as may be prescribed by the Board from time to time.*

(5) *Upon sanction of the Scheme by the Court or Tribunal, the listed entity shall submit the documents, to the stock exchange(s), as prescribed by the Board and/or stock exchange(s) from time to time. 204*

(6) *Nothing contained in this regulation shall apply to draft schemes which solely provide for merger of a wholly owned subsidiary with its holding company:*

Provided that such draft schemes shall be filed with the stock exchanges for the purpose of disclosures.

(7) *The requirements as specified under this regulation and under regulation 94 of these regulations shall not apply to a restructuring proposal approved as part of a resolution plan by the Tribunal under section 31 of the Insolvency Code, subject to the details being disclosed to the recognized stock exchanges within one day of the resolution plan being approved."*



9.1.7. On perusal of Regulation 37, it is seen that any listed entity forming part of a Scheme of Arrangement has to file the draft scheme before the respective stock exchanges, obtain the mandated Observation Letter or No-objection letter, and only then shall it be allowed to file the scheme for approval by Court/ Tribunal. The only exception carved out in the Section is for the merger of a wholly owned subsidiary company with its holding company. It is clear that the Transferee Company is bound by Regulation 37 of the SEBI(LODR) Regulations. The Transferee Company obtained the approval of its Board on 11.11.2023 and promptly applied for the approval of the stock exchanges on 02.12.2023. **However, the approval was received only on 31.07.2024 from BSE and on 20.08.2024 from NSE. Hence, we find the ante dating of the Appointed Date to be completely justified and not harmful to public interest.**

9.1.8. In the instant case, the RD in para 11(a) of the Report has sought an undertaking from the Transferee Company that it shall comply with Section 232(3)(i) of the Companies Act, 2013 which provides that whenever the Transferor Company is dissolved, any fees paid by such Transferor Company on its authorised capital shall be set off against any fees payable by the Transferee Company on its authorised capital subsequent to the amalgamation.

9.1.9. **Since Section 232(3)(i) is a beneficial provision that provides the right to set off to the Transferee Company, we direct that the set-off of**



fee payable on authorised capital by the Transferee Company shall be made in accordance with Section 232(3)(i) of the Companies Act, 2013.

9.1.10. With respect to undertaking sought in the matter of compliance with Rule 17(2) of Companies (Arrangements and Amalgamation) Rules, 2016., filing of amended Memorandum of Association and Articles of Association, compliance with objections made by NSE, BSE and other statutory authorities, the undertakings have been provided by the Petitioner Companies and hence no directions are required to be given.

9.2. **OFFICIAL LIQUIDATOR**

9.2.1. This Tribunal now analyses the objections made by the Official Liquidator (hereinafter, OL) and the submissions made by the Petitioner in this regard,

9.2.2. **Appointed Date**

9.2.2.1. The OL has objected to Clause 4.1.3 which defines 'Appointed Date' as 'closing business hours of 1st April, 2023'. The Clause is objected by the OL on three grounds - firstly, the Appointed Date predates the date of filing the Application before this Tribunal by more than a year; secondly, the Appendix to the Scheme defines the Appointed Date as '01.04.2023' in contrast with Clause 4.1.3 which specifies that the Appointed Date is the 'closing business hours of 01.04.2023' and thirdly, that the Clause



4.1.3 contains phrasing 'closing business hours' in order to gain unfair tax exemptions/ tax advantage after the 'Concurrent Scheme' takes effect. Hence, the OL seeks clarification on the 'Appointed Date' defined in the Scheme on these grounds.

9.2.2.2. In response to allegations of the OL, the Petitioners have stated that Clause 4.1.3 applies to the entirety of the Scheme, including the Appendix. Moreover, use of the phrase, 'closing business hours' is a tool to demarcate the sequence of effectiveness of the Concurrent Scheme and the present scheme. Accordingly, Concurrent Scheme will come into effect on the opening hours of 01.04.2023 and the present scheme, subject to approval of this Tribunal will come into effect in the closing hours of 01.04.2023. Further, ante dating of appointed date by more than a year is legally permissible in terms of General Circular No. 09/2019, so long as commercial justification exists. The allegation of tax avoidance is also denied as speculative, especially the Income Tax Department, in its report dated 21.05.2025, has expressly stated that it has no objection. It is stated that the revision of the Appointed Date is unwarranted.

9.2.2.3. In the present case, the objections regarding ante dating of the Appointed Date and concerns regarding compliance with General Circular No. 9/2019 dated 21.08.2019 have already been dealt with in para 9.1.7 of this order.



9.2.2.4. With reference to usage of the phrase ‘closing business hours’, we are of the view that the exclusion of the same from the Appendix to the scheme does not create substantive ambiguity, for the reason that the meaning provided in Clause 4.1.3 is apparent and clear. Clause 4.1.3 of the Scheme may be referred to in case of any inconsistencies anywhere in the Scheme.

9.2.2.5. The Transferor Company herein is also the party to another Composite Scheme of Amalgamation and Demerger (Concurrent Scheme), which came to be approved by this Tribunal vide order dated 07.06.2024 in *CP(CAA)/6-10/(CHE)/2024 in CA(CAA)/56-60/(CHE)/2023*. Hence, we find merit in the submissions of the Petitioners that the phrase ‘closing business hours of 01.04.2023’ is merely to enumerate the sequence of effectiveness of the Scheme i.e., first the Concurrent Scheme and thereafter, the present Scheme. The allegations of illegal tax advantage by the OL appear to be speculative at this juncture. Further, the sanction granted by this Tribunal will not come in the way of action by the Income Tax Department, albeit, in accordance with law, in view of para 9.3.4 and 9.3.5 of the order.

9.2.2.6. We are therefore of the view that the concerns of the OL with regard to ‘Appointed Date’, have been sufficiently addressed by the Petitioner Companies in their response. This Tribunal



finds that there is no infirmity in Clause 4.1.3 which defines, 'Appointed Date'.

9.2.3. Record Date

9.2.3.1. Initially, the OL sought clarification regarding fixing of the Record Date. The Petitioner Companies clarified that in terms of Clause 4.1.14, 'Record Date' shall be fixed by the Transferee Company only after consultation with the Board of the Transferor Company.

9.2.3.2. It is seen from the written submissions filed by the Official Liquidator, that the objections made in para 4(iii) pertaining to Record Date have been dropped by the OL. Hence, no further directions are required in this regard.

9.2.4. Protection of Employees with effect from the Effective Date

9.2.4.1. The OL has objected Clause 8 of the Scheme on the ground that it grants continuity of service to the employees only with effect from the date immediately preceding the Effective Date. According to the OL, this Clause excludes employees who were in service of the Transferor Company on the Appointed Date and thereby prejudices their statutory protection. The Petitioners have responded stating that presently there are no permanent employees in the Transferor Company. Further Clause 8.1 and Clause 8.4 adequately safeguard continuity of service for any



eligible employees on the rolls as on the Effective Date, therefore, no prejudice is caused to the employees of the Transferor Company.

9.2.4.2. Section 232(6) mandates 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. The MCA Circular No. 09/2019 issued on 21.08.2019 provides further clarity on the meaning of “appointed date” for the purposes of Section 232(6). Para 6(b) specifically states that appointed date shall also be deemed to be the 'acquisition date' as per Ind-AS 103 (Business Combinations). The relevant paragraph is extracted for reference:

6. (b) The appointed date shall be deemed to be the “acquisition date” and the date of transfer of control for purposes of compliance with accounting standards, including Ind-AS 103 (Business Combinations).

9.2.4.3. Ind-AS 103 provides as under:

“103. Business Combinations

Determining the acquisition date

8. The acquirer shall identify the acquisition date, which is the date on which it obtains control of the acquiree.



9. The date on which the acquirer obtains control of the acquiree is generally the date on which the acquirer legally transfers the consideration, acquires the assets and assumes the liabilities of the acquiree—the closing date. However, the acquirer might obtain control on a date that is either earlier or later than the closing date. For example, the acquisition date precedes the closing date if a written agreement provides that the acquirer obtains control of the acquiree on a date before the closing date. An acquirer shall consider all pertinent facts and circumstances in identifying the acquisition date.”

9.2.4.4. According to IND AS 103, ‘acquisition date’ is the date on which the acquiring company (Transferee Company) recognizes the identifiable assets and liabilities and consolidates the acquiree's results. Thus, where a Scheme specifies an appointed date, the entire business including employees must be accounted for as transferred on such appointed date. On perusal of IND AS 19 (EMPLOYEE BENEFITS), it is seen that the standard mandates the recognition of a liability, when an employee has provided service, in exchange for employee, benefits are to be paid in future; and an expense when the entity consumes the economic benefit arising from service provided by an employee in exchange for employee benefits. Therefore, the liabilities being recognised by the Acquiree/ Transferee Company essentially includes the employee related expenses



too. However, Clause 8 provides that the employee benefit shall take effect only from the Effective Date, much after the Appointed Date (acquisition date) on which the remainder of the assets and liabilities of the Transferor Company will be recognised in the books of the Transferee Company. Clause 8 of the Scheme is extracted hereunder for reference,

8 STAFF & EMPLOYEES

8.1 On Part III of the Scheme becoming operative, all the executives, staff, workmen and employees in the service of the Transferor Company immediately preceding Effective Date, and that they shall

become the executives, staff, workmen and employees, of the Transferee Company on the basis that their services shall be deemed to have been continuous and not have been interrupted by reasons of the said transfer. The terms and conditions of service applicable to such executives, staff, workmen and employees after such transfer shall not in any way be less favourable to them than those applicable to them immediately preceding the transfer.

8.2 The equitable interest in accounts/funds of the employees and staff, if any, whose services are vested with the Transferee Company, relating to superannuation, provident fund and gratuity fund, if any, shall be identified, determined and vested with the respective trusts/funds of the Transferee Company and such employees shall be deemed to have become members of such trusts/funds of Transferee Company. Until such time, the Transferor Company may, subject to necessary approvals and permissions, if any, continue to make contributions pertaining to the employees of the Transferor Company to the relevant funds of the Transferor Company.

8.3 The Transferee Company, at any time after the Scheme becoming effective in accordance with the provisions hereof, if so required under any law or otherwise, will execute deeds of confirmation or other writings or arrangements with any party to any contract or arrangement in relation to the Transferor Company to which the Transferor Company is a party in order to give formal effect to the provisions of the Scheme. The Transferee Company shall, under the provisions of this Scheme, be deemed to be authorized to execute any such writings on behalf of the Transferor Company and to carry out or perform all such formalities or compliances, referred to above, on behalf of the Transferor Company.



- 8.4 The Transferee Company undertakes that for the purpose of payment of any retrenchment compensation, gratuity and other terminal benefits to the employees of the Transferor Company, the past services of such employees with the Transferor Company shall also be taken into account and it shall pay the same accordingly, as and when such amounts are due and payable. Upon this Scheme becoming effective, the Transferor Company will transfer/handover to the Transferee Company, copies of employment information, including but not limited to, personnel files (including hiring documents, existing employment contracts, and documents reflecting changes in an employee's position, compensation, or benefits), payroll records, medical documents (including documents relating to past or ongoing leaves of absence, on the job injuries or illness, or fitness for work examinations), disciplinary records, supervisory files relating to its and all forms, notifications, orders and contribution/identity cards issued by the concerned authorities relating to benefits transferred pursuant to this sub-clause.
- 8.5 The Transferee Company shall continue to abide by any agreement(s)/ settlement(s) entered into by the Transferor Company with any of its employees prior to Appointed Date and from Appointed Date till the Effective Date.

9.2.4.5. This Tribunal refers to Section 232(3)(g) of the Companies Act, 2013 which expressly empowers this Tribunal to provide directions for the transfer of employees of the transferor company to the transferee company. We are of the view that, even if the Transferor Company presently has no permanent employees, employee protection and continuity of service should, as an accounting principle, relate back to the Appointed Date and not the date preceding the Effective Date.

9.2.4.6. **Therefore, in exercise of the powers granted to this Tribunal under Section 232(3)(g) of the Companies Act, 2013, we hold that 'effective date' in Clause 8 shall have the effect such that the employees on the rolls of the Transferor Company as on the Appointed Date shall stand transferred with full continuity of service.**



9.2.5. Compliance with Section 232(1)(b) of the Companies Act, 2013

9.2.5.1. The OL objects that upon the earlier Concurrent Scheme becoming effective, the Transferor Company ceases to hold any business assets. According to the OL, the Scheme under consideration was prematurely drafted without taking into consideration the impact of the Concurrent Scheme in the books of the Transferor Company. It is alleged that since the Transferor Company has no assets except the investment in the Transferee Company, there is no valuable consideration provided by the Transferor Company. As a result, the criteria required under Section 232(1)(b) is not met. Per contra, the Petitioners submit that except for the assets expressly transferred under the Concurrent Scheme, the Transferor Company continues to hold other assets and investments which are part of the present merger.

9.2.5.2. On perusal of Note 34 of the Financial Statement for the year ending 31.03.2024, it is seen that the Concurrent Scheme involves a Composite Scheme of Amalgamation and Demerger. Firstly, the entire business undertaking of TVS Wealth Private Limited (TVSWPL) and TVS Capital Funds Private Limited, (TVSCFPL) would be transferred to TVS Investments Private Limited (the Transferee Company in the Concurrent Scheme and the Transferor Company in the Scheme under consideration hereinafter referred to as TVSIPL). In the second part of the



Concurrent Scheme, the Demerged Undertaking 1 component of TVSIPL shall vest with the Resulting Company 1 (i.e., Geeyes Capital Funds Private Limited/ GCFPL) and the Demerged Undertaking 2 component of the TVSIPL shall vest with the Resulting Company 2 (i.e., Sundaram Investments Private Limited/ SIPL). Thereafter, according to the terms of the Concurrent Scheme, TVSIPL shall de-recognise carrying value of assets, liabilities and reserves of the Demerged undertaking 1 and Demerged undertaking 2 as on the Appointed date.

9.2.5.3. Consequently, the Share capital of TVSIPL in TVSCFPL is cancelled and shares in TVSIPL are issued to the shareholders of TVSCFPL. Any inter-company Loans, advances, deposits between TVSIPL, TVSCFPL and TVSWPL, post the implementation of the Concurrent Scheme, TVSCFPL and TVSWPL stand dissolved and only TVSIPL, SIPL and GCFPL remain in operation.

9.2.5.4. On perusal of the Audited Financial Statement for the FY ended 31.03.2024 it is seen that as on 31.03.2023,

S.No.	Particulars	Financial Position as on 31.03.2023 i.e., prior to the Concurrent Scheme taking effect (Amount in lakhs rupees)
1	Assets	8752.69
2	Liabilities	7133.09



3	Equity Share Capital	1619.6
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9.2.5.5. According to the 'Notes to the Standalone Financial Statements as on 31.03.2024, the Changes effected on **01.04.2023** i.e., the appointed date of the Concurrent Scheme can be summarized as extracted below:

S.No	Particulars	Amount in lakhs rupees
	Assets:	
1	Book value of total assets transferred is to GCFPL and SIPL	1364.05
2	Book value of total liabilities transferred is to GCFPL and SIPL	86.14
	Net Assets Transferred	(1277.91)

9.2.5.6. Further, as on the appointed date of the Concurrent Scheme, account of cancellation of inter-company transactions and investments, the position of the capital reserve can be summarized as below,



TVS Investments Private Limited, Chennai (Formerly Geeyes Family Holdings Private Limited)
Notes to standalone financial statements for the year ended March 31, 2024
(All amounts are in Lakhs of Indian Rupees, except share data and as stated)

B. Capital Reserve arising due to amalgamation as per Part II of the Scheme

Particulars	Amount
Indemnity Deposit by TVSCFPL	2000.00
Investment in debentures by TVSCFPL	2500.00
Trade Receivables of TVSCFPL	1.88
Equity share capital	(2743.27)
Securities Premium	(1752.27)
Net impact to Capital Reserve on account of amalgamation (A)	6.34
Intercompany elimination of Investments	
Equity share capital	2743.27
Securities Premium	1752.27
Investment by TVSIPL in TVSCFPL	(4689.91)
Net impact to Capital Reserve on account intercompany transactions (B)	(194.37)
Net impact to Capital Reserve (A + B)	(188.03)

9.2.5.7. After the aforementioned changes were effected in the books of the Transferor Company, its financial position as on FY 31.03.2024 is as below:

S.No.	Particulars	Financial Position as on 01.04.2023 i.e., after to the Concurrent Scheme taking effect (Amount in lakhs rupees)
1	Assets	2898.29
2	Liabilities	78.08
3	Equity Share Capital	2820.21

9.2.5.8. It is seen from the notes to the Financial Statement for the year ending 31.03.2024 that the value of Plant, Property and Equipment as on 31.03.2024 is NIL. The Transferor Company does not hold any Land or Building of its own. The Transferor Company holds Non-Current Investments to the extent of Rs. 1,11,60,093, being investment in 59.54% of the fully paid-up



equity shares of TVSEL/ Transferee Company herein. Additionally, TVSIPL also holds receivables, Current Accounts balance, unclaimed capital reduction balance which amount to Rs. 244.92 lakh. The financial position of assets of the Petitioner as on 31.03.2024, as reflected in the Financial Statement of the Transferor Company for the year ending 31.03.2024, are summarized as under:

S.No	Balance Sheet Asset item	Details	Amount in Rs
1	Property, Plant & Equipment	No PPE held	NIL
2	Land & Building	No land or building owned	NIL
3	Non-Current Investments	59.54% equity in TVSEL (Transferee Company)	1,11,60,093
4	Receivables – GCFPL	Amount due from GCFPL	107.89 lakh
5	Receivables – SIPL	Amount due from SIPL	38.38 lakh
6	Current Account Balance	Result of Scheme of Arrangement	55.93 lakh



7	DEMAT Account	Security holdings	0.13 lakh
8	Escrow Account – Unclaimed Capital Reduction Amount	Awaiting IEPF directions due to technical issues	42.17 lakh
9	Escrow Account – Other Amount	Additional escrow balance	0.42akh

9.2.5.9. It is seen that the management/shareholders of the Transferor Company, in response to the OL report have undertaken to maintain sufficient cash/bank balance and liquid investments in the books of Transferor Company immediately prior to the implementation of the Scheme or otherwise and will be utilized to meet the costs, fees, charges, expenses (including stamp duty payable, if any) in relation to the Scheme.

9.2.5.10. Nonetheless, it is seen that as a result of the implementation of the Concurrent Scheme, the total liabilities of TVSIPL have decreased drastically from Rs. 7133.09 to Rs. 78.08 lakhs. The equity share capital has increased from Rs. 1619.60 to Rs. 2820.21. Consequent to the Scheme, inter company holdings have been eliminated, as a result of which net worth of TVSIPL has improved post approval of the Concurrent Scheme. The change in the 'Reserves and Surplus' of the Company as a



result of the Scheme taking effect as per the Financial Statements as on 31.03.2024 of the Transferor Company is extracted hereunder,

Particulars	As at 31-03-2024	As at 31-03-2023
Reserves and Surplus		
Refer Note No.B under Statement of Changes in Equity for Additions and Deductions from Last year balance sheet		
(a) Capital Redemption Reserve	5.24	5.24
(b) Capital Reserve arising on Amalgamation and Demerger (*)	(2,730.16)	(2,541.17)
(c) Securities Premium	2,544.14	45.05
(d) General Reserve	2,726.39	3,587.51
(e) Retained Earnings	256.17	506.43
(f) Shares Pending Allotment (*)	0.96	-
Total Other Equity	2,802.74	1,603.06

(*) Refer note no. 34 for the details of the Scheme of Arrangement

9.2.5.11. Therefore, on the approval of the present scheme, the remaining assets of TVSIPL, apart from the investments held in TVSEL itself, to the tune of Rs. 244.92 lakh, albeit, subject to the expenses incurred in the implementation of the scheme, are being transferred to the Transferee Company/ TVSEL. In return, the shareholders of the Transferor Company are allotted 1,11,60,093 fully paid-up equity shares of Rs. 10 each of the Transferee Company in proportion of their holding in the Transferor Company. Hence, the criteria envisaged under Section 232(1)(b) i.e., *the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is*



proposed to be divided among and transferred to two or more companies, is met.

9.2.5.12. This Tribunal refers to the decision of the Hon'ble Bombay High Court in the case of *In Re: AVM Capital Services Private Limited and Ors (2012(114)BOMLR2533)*, which involves a scheme of merger of the Transferor Company with the Transferee Company, cancellation of the shares held by the Transferor Company in the Transferee Company and consequent issuance of the shares of the Transferee Company to the shareholders of Transferor Company. In such a case, the valuation of shares based on the investments held by the Transferor Company in the Transferee Company, in the absence of cash or bank balances, was held to be legitimate. The relevant paragraphs are extracted hereunder,

"28. The Objector has next contended that the valuation of the shares of the Transferor Companies which are unlisted was not done as per the rules prescribed under the Wealth Tax Act, but was wrongly done on the basis of value of the shares of the Transferee Company. As pointed out on behalf of the Transferee Company, the provisions of the Wealth Tax Act, does not apply in the instant case. Again, the only assets (apart from cash and bank balance) of the Transferor Companies were the shares held by them in the Transferee Company. As such, it was reasonable and proper to value the Transferor Companies on the basis of the value of their shareholdings in the Transferee Company. Moreover, the Transferee Company has secured a Fairness Opinion of Fedex Securities Ltd, a Category I Merchant Banker



on the Valuation Report of N.A.Shah Associates, which Fairness Opinion was secured in terms of Clause 24 of the Listing Agreement. In view thereof, the submission of the Objector that the share valuation is not proper, lacks merit and is rejected.

9.2.5.13. Therefore, this Tribunal does not find merit in the contentions of the Official Liquidator that the Scheme is in violation of Section 232(1)(b) of the Companies Act, 2013.

9.2.6. Violation of Section 56 of the Companies Act, 2013:

9.2.6.1. As regards contention that the Scheme does not constitute a transfer within the scope of Section 232(1)(b) of the Companies Act, 2013, the OL has alleged that the Scheme is a substitute for share transfer, thereby violating Section 56 of the Companies Act, 2013 which governs the transfer and transmission of shares. In support of his contentions, the Official Liquidator has placed reliance on the decision of NCLT, Mumbai in the case of *Gabs Investments P. Ltd vs. Ajanta Pharma Ltd (C.S.P. Nos. 995 and 996 of 2017 in C.S.A. Nos. 791 and 792 of 2017)* to state that the present Scheme is a case of share transfer affecting public interest. Per contra, the Petitioners submit that the reliance placed on *Gabs Investments (supra)* is erroneous. The decision in *Gabs Investments (supra)* is inapplicable because that case dealt with a situation where the transfer was effectively a share transfer lacking any undertaking whereas in the present case, the



Scheme contemplates transfer of all assets and liabilities of the Transferor Company. In the said matter NCLT, Mumbai has rejected the scheme with a view that the Scheme was a mechanism to evade tax considering the case on its own merits. The Petitioners have also submitted that there is no bar in law for amalgamation of a promoter holding company with its subsidiary. They have placed reliance on the Scheme sanctioned by NCLT, Mumbai in the case of *Jayant Finvest Limited and Jayant Agro-Organics Limited (C.P.(CAA)/201/MB-III/2022 connected with C.A.(CAA)/139/MB-111/2022*, by NCLT, Hyderabad in Scheme of Amalgamation between *Dr. Reddy's Holdings Ltd. and Dr. Reddy's Laboratories Ltd (CP (CAA) No. 49/230/HDB/2020 Connected with CA (CAA) No. 231/230/HDB/2019)* and by NCLT, Mumbai in Scheme of Amalgamation among *Suremi Trading Private Limited, Sushripada Investments Private Limited and NOCIL Limited CP (CAA)/1025/MB-1/2020 connected with CA(CAA)/1011/MB-1/2020*.

9.2.6.2. It is seen that in the case of *Gabs Investments(supra)*, a scheme of amalgamation was proposed between a closely-held private company (GABS Investment Private Limited/GIPL) and a listed public company (Ajantha Pharma Limited/APL). GIPL was wholly owned by the members of the Agarwal family, who also held 61.17% of APL. Under the Scheme, shares of the private limited company were proposed to be transferred to individual



shareholders. The Income Tax Department on considering the tax implications concluded that the approval of the Scheme would result in a loss of revenue of approximately Rs. 421.66 crore. Further, in the case of *Gabs Investments (supra)*, the transferor company had not originally subscribed to the shares of the transferee company, but acquired the same from the secondary market over a long period of time. Considering the massive and unilateral benefit to promoters, lack of clarity on tax liabilities, and violation of regulatory requirements, the NCLT, Mumbai held that the Scheme was unfair, unreasonable, and contrary to public interest.

9.2.6.3. Contrary to the facts in the case of *Gabs Investments (supra)*, in the present case, the Income Tax Department, vide its Report dated 21.05.2025 has decided not to raise any objection to the Scheme reserving its right to pursue the present and future assessment proceedings for recovering the tax liability of the Transferor Company. Further the tax liability of the Transferor Company has been secured by way of Clause 13.3 of the Scheme which provides that Transferee Company will be liable for such tax liabilities.

9.2.6.4. It is seen that in a situation where public interest is not in jeopardy, the Adjudicating Authority has time and again approved a scheme of merger of the holding company with the transferee company and the consequent allotment of shares of



the transferee company to the promoters such as in the case of *Jayant Finvest Limited and Jayant Agro-Organics Limited (C.P.(CAA)/201/MB-III/2022 connected with C.A.(CAA)/139/MB-111/2022)* and *Suremi Trading Private Limited, Sushripada Investments Private Limited and NOCIL Limited CP (CAA)/1025/MB-1/2020 connected with CA(CAA)/1011/MB-1/2020* by NCLT, Mumbai and in Scheme of Amalgamation between *Dr. Reddy's Holdings Ltd. and Dr. Reddy's Laboratories Ltd (CP (CAA) No. 49/230/HDB/2020 Connected with CA (CAA) No. 231/230/HDB/2019)* by NCLT, Hyderabad.

9.2.6.5. It is seen that the OL has not placed anything on record to show that the approval of the Scheme would affect the interest of public shareholders. Moreover, it has been stated in para 7 of this order, that according to the valuation report, there is no significant change in the overall shareholding structure that would result in the dilution of the existing shareholders in the Transferee Company. Further, BSE and NSE have granted their approval to the scheme vide letter dated 31.07.2024 and 20.08.2024 respectively.

9.2.6.6. **Since it has already been clarified that present is a case of issuance of shares as consideration in the Transferor Company, the question of Share Transfer under Section 56**



does not arise. The ratio in the case of *Gabs Investments(supra)* does not apply to the present case.

9.2.7. Violation of Section 123 of the Companies Act, 2013:

9.2.7.1. The Official Liquidator has relied on the judgment of the Hon'ble Bombay High Court in *Indian Seamless Enterprises Ltd. (Company Scheme Petition No. 709 of 2014)* to assert that present is a case of gifting shares and it amounts to issuance of dividend in kind in violation of Section 123 of the Companies Act, 2013. Per contra, the Petitioner Companies submit that the aforesaid case involved a proposal by the company to gift shares to its shareholders through a reduction and cancellation of its share capital. In contrast, the present Scheme does not involve any capital reduction but is a Scheme of Amalgamation, wherein shares of the Transferee Company are proposed to be issued to the shareholders of the Transferor Company as consideration for the merger.

9.2.7.2. It is seen that in the case of *Indian Seamless Enterprises Ltd (supra)* the Petitioner sought sanction to a scheme of arrangement between the Petitioner and its Shareholders. By the Scheme, the Petitioner sought to make gift of shares held by the Petitioner in the Company known as Taneja Aerospace and Aviation Limited ("TAAL") to its Shareholders. Pursuant to the gift of the aforesaid equity shares of TAAL to its



Shareholders, the Petitioner proposed to reduce the balance lying in its Securities Premium Account (“SPA”) by the book value of the Petitioner’s investment in the shares of TAAL as appearing in the books of accounts of the Petitioner on the record date. Additionally, the Regional Director objected the distribution of the company’s property to its shareholders under the Scheme since amounting to distribution of dividend in kind, in violation of Section 123 of the Companies Act, 2013, which does not permit dividend distribution other than in cash. The High Court accepted these objections and held that gifting of shares of TAAL by the petitioner company to its shareholders amounts to dividend in kind and is impermissible under Section 123. On these grounds, the petition was dismissed.

9.2.7.3. The case of *Indian Seamless Enterprises Ltd. (supra)* referred by the Official Liquidator is wholly inapplicable to the present case. In that matter, the Regional Director had objected to the scheme on the ground that “*the Scheme violates Section 205 of the 1956 Act and Section 123 of the 2013 Act, in as much as by gifting the shares of TAAL to its Shareholders, the Petitioner Company is in effect giving dividend to its Shareholders in kind, which is prohibited by the aforesaid provisions.*” However, in the present case, no transfer or gift of share is involved; rather, issuance of shares by the Transferee Company is in the nature of consideration for the transfer of entire undertaking of the Transferor



Company and not a distribution of dividend in kind. There is an element of consideration being provided by the Transferor Company in return for the shares allotted in the Transferee Company. Hence, an element of quid pro quo is present. It would be incorrect to state that the shares are issued merely as a tactic to issue dividend in kind when it is established that the Scheme envisages a transfer within the meaning of Section 232(1)(b) of the Companies Act, 2013.

9.2.7.4. It is also noted that the Regional Director, vide his Report dated 27.05.2025, has not objected to the approval of the Scheme.

9.2.7.5. **We are therefore of view that the present Scheme cannot be characterised as a case of issuing dividend in kind and therefore, does not violate Section 123 of the Companies Act, 2013.**

9.2.8. **Tax Liability**

9.2.8.1. It is alleged by the OL that capital gains liability may arise on cancellation of shares or vesting of assets. The OL asserts that absence of an indemnity clause exposes the Transferee Company to potential tax liabilities. The Petitioners object by stating that in terms of Sections 47(vi) and 47(vii) of the Income Tax Act which exempt transfers under amalgamation from capital gains, the present scheme does not attract any capital gains tax liability.



The Petitioners state that, upon amalgamation, all liabilities including tax liabilities vest in the Transferee Company as successor-in-interest.

9.2.8.2. Reference is made to the decision of the Hon'ble High Court of Bombay in the case of *In Re: AVM Capital Services Private Limited (supra)*, where it was held that in a scheme involving merger of the Transferor Company with the Transferee Company, the cancellation of the shares held by the Transferor Company in the Transferee Company and the consequent issuance of shares of the Transferee Company to the shareholders of Transferor Company, cannot to be construed as a device of tax avoidance. The effect of the scheme under consideration was that the promoters would directly hold shares in the Transferee Company resulting in the same shareholding structure and is held to be permissible under law. The relevant paragraphs are extracted hereunder for reference,

“The purpose of the Scheme is to provide long term stability and transparency in the Transferee Company. The Transferor Companies are in existence since 1975. It was felt that it would be in the interest of the Transferee Company to merge the five Transferor Companies with the Transferee Company, and to enable the Promoter thereof to hold shares directly in the Transferee Company rather than indirectly. The object of the Scheme is not to avoid any tax. Even today the shares are



owned/controlled by the same Promoter albeit through the Transferor Companies. Under the Scheme the only difference is that the Promoter will now hold shares directly in the Transferee Company. It is correctly submitted by the Transferee Company that there is nothing illegal or unlawful or dubious or colourful in the Scheme and the same is a perfectly legitimate scheme and permissible by law. Therefore, the objection of the Objector that the Scheme is a tax avoidance device and ought not to be approved, stands rejected."

9.2.8.3. This Tribunal finds that in the report filed by the Income Tax Department dated 27.05.2025, no objection to approval of the Scheme has been raised. Further, Clause 13.3 and Clause 9.1 sufficiently provide for recovery of any tax liability pertaining to the Transferor Company subsequent to the approval of the Scheme. In case, the Income Tax Department examines the aspect of any tax payable as a result of the Scheme and finds that the scheme results in tax avoidance/evasion or is not in accordance with the provisions of Income Tax laws, the Department will be free to initiate appropriate course of action as per law.

9.2.8.4. In view of the same, the concern raised by the OL stands resolved and need for an indemnity clause in this regard does not arise.



9.2.9. Valuation Methodology and Asset Composition

9.2.9.1. The OL alleges that valuation report does not consider the aspect of enterprise valuation thereby not meeting the criteria of an expert valuation. According to the OL, valuation does not meet the criteria set forth in case of *Mihir Mafatlal (supra)*. In response, the Petitioners have submitted that post the Concurrent Scheme taking effect, there are no business assets except investments and current asset, and the same have been considered for the purpose of valuation report.

9.2.9.2. This Tribunal refers to the decision of the Hon'ble Supreme Court of India in the case of *Miheer H. Mafatlal vs Mafatlal Industries Ltd (AIR 1997 SUPREME COURT 506)* wherein scope of review of valuation report was discussed. It was held that where an expert valuation has been obtained in case of a proposed Scheme of Compromise and Amalgamation and the same has been adopted by shareholders of the respective companies that are parties to the Scheme, the Court cannot sit in appeal over this value judgment of equity shareholders. The chartered accountants are experts in the field of valuation and if they opine that mistake can be pointed out in the said valuation, then the collective wisdom may not be questioned by the Court before which a Scheme is pending approval. The relevant paragraphs of the judgment are extracted below,



“We may also refer to a decision of the Gujarat High Court in Kamala Sugar Mills Limited 55 Company Cases P.308 dealing with an identical objection about the exchange ratio adopted in the Scheme of Compromise and Arrangement. The Court observed as under :

“Once the exchange ratio of the shares of the transferee-company to be allotted to the shareholders of the transferor-company has been worked out by a recognised firm of chartered accountants who are experts in the field of valuation and if no mistake can be pointed out in the said valuation, it is not for the court to substitute its exchange ratio, especially when the same has been accepted without demur by the overwhelming majority of the shareholders of the two companies or to say that the shareholders in their collective wisdom should not have accepted the said exchange ratio on the ground that it will be determined to their interest.”

These observations in our view represent the correct legal position on this aspect. We may also keep in view that in the present case not only expert like M/s C.C., Chokshi & Co. had suggested the ratio but another independent body ICICI Security & Finance Company Limited reached the same conclusion which was conveyed by its letter dated 10th November 1993 to the company approving of the entire Scheme along with the suggested ratio. A mere look at the report of the Chartered Accountants M/s C.C. Chokshi & Co. shows that various factors underlying the Scheme of Compromise and Arrangement were taken into consideration while suggesting the exchange ratio by the said reputed firm of chartered accountants. The said opinion had taken into account the fact that on amalgamation shares have to be cancelled.

.... It has also to be kept in view that which exchange ratio is better is in the realm of commercial decision of well-informed equity shareholders. It is not the Court to sit in appeal over this value



judgment of equity shareholders who are supposed to be men of the world and reasonable persons who know their own benefit and interest underlying any proposed scheme. With open eyes they have okayed this ratio and the entire Scheme. 40% of the majority shareholders were financial institutions who were supposed to be well versed on the aspect of valuation of shares. They had no objection to the exchange of 2 shares of transferor-company for 5 shares of transferor company. As stated earlier it was a sort of package duly considering all imponderables and implicit factors which the shareholders had to keep in view for deciding whether to approve the Scheme of Amalgamation or not. The exchange ratio was only one of the items. They thought it fit in their commercial wisdom to accept the Scheme as whole along with the exchange ratio presumably in expectation of better profits in years to come when the amalgamated companies would operate and when the amalgamated companies would operate and when there would be, according to the shareholders, better prospects of earning greater dividends”

- 9.2.9.3. On a perusal of the Valuation Report prepared by CA Harsh Chandrakant Ruparelia, it is seen that effect of the Concurrent Scheme, Indemnity Clause of the present Scheme and the financial position of the Transferor Company, all form the basis of recommendation of valuation. The valuer has opined that there is no change in the aggregate promoter’s shareholding and there is no dilution of interest of any of the shareholders of the Transferor Company. The report concludes that the Share Exchange Ratio of the Scheme is fair and reasonable. In order to arrive at this conclusion, the Valuer has placed reliance on the decision of *Viscount Simon Bd in Gold Coast Selection Trust Ltd. vs. Humphrey reported in 30*



TC 209 (House of Lords) reported in **176 ITR 417**. The relevant portion referred in the valuation report is extracted below:

*“In the ultimate analysis, recommendation will have to involve the exercise of judicious discretion and judgment taking into account all the relevant factors. There will always be several factors, e.g. present and prospective competition, yield on comparable securities and market sentiments, etc. which are not evident from the face of the balance sheets but which will strongly influence the worth of a share. This concept is also recognized in judicial decisions. For example, **Viscount Simon Bd in Gold Coast Selection Trust Ltd. vs. Humphrey** reported in **30 TC 209 (House of Lords)** and quoted with approval by the Supreme Court of India in the case reported in 176 ITR 417 as under:*

‘If the asset takes the form of fully paid shares, the valuation will take into account not only the terms of the agreement but a number of other factors, such as prospective yield, marketability, the general outlook for the type of business of the company which has allotted the shares, the result of a contemporary prospectus offering similar shares for subscription, the capital position of the company, so forth. There may also be an element of value in the fact that the holding of the shares gives control of the company. If the asset is difficult to value, but is nonetheless of a money value, the best valuation possible



must be made. Valuation is an art, not an exact science. Mathematical certainty is not demanded, nor indeed is it possible.'

9.2.9.4. The case of *A.R. Krishnamoorthy v. Commissioner of Income Tax, (1989) 176 ITR 417 (SC)* which affirms the decision of *Gold Coast Selection Trust Ltd(supra)*. relied upon by the Registered Valuer. Further, valuation cannot be made solely on the basis of what is written in the company's balance sheet. The Balance Sheet/ Financial Statements of the company only show part of the picture. The object of valuation is not to arrive at mathematical precision. Two valuers may arrive at slightly different figures, and that is acceptable as long as their reasoning is sound and they considered all relevant factors. The goal is to arrive at a reasonable, defensible value, not a perfect one. **In this case, the valuation was conducted considering the full asset profile, including cash, bank balances, and tax credits and hence, the allegations of an improper expert valuation to not appear to be found.**

9.2.10. Auto modification of the Scheme

9.2.10.1. The OL has raised objection to the Clause 5.2 of the Scheme stating that the Clause provides for auto-modification of the Scheme, without prior approval or the Tribunal, in order to remove any inconsistencies with Section 2(1B) of the Income Tax Act, 1961. Per contra, it is submitted by the Petitioners that



Clause 5.2 is provided to ensure compliance with the provisions of the Income Tax Act, 1961. Further, Clause 19.1 of the Scheme explicitly provides that no modification of the Scheme shall be made without the approval of the Tribunal.

9.2.10.2. We refer to Clause 5.2 and Clause 19.1 of the Scheme which are extracted as under:

5.2 The merger of the Transferor Company with and into the Transferee Company shall be in accordance with Section 2(1B) of the Income Tax Act, 1961. If any terms or provisions of the Scheme are found to be or interpreted to be inconsistent with Section 2(1B) of the Income Tax Act, 1961 at a later date, whether as a result of any amendment of law or any judicial or executive interpretation or for any other reason whatsoever, the aforesaid provision of the Income Tax Act, 1961, shall prevail. The Scheme shall then stand modified to the extent deemed necessary to comply with the said provisions. Such modification will, however, not affect other parts of the Scheme.

19.1 Subject to approval of NCLT, the respective Boards or the respective authorized representative appointed by the Boards of the Transferor Company and the Transferee Company, may assent to any modifications, alterations or amendments of this Scheme or any conditions which the NCLT and / or any other competent authority may deem fit to direct or impose and the said respective Boards and after dissolution of the Transferor Company (without winding up), the Board of the Transferee Company may do all such acts, things and deeds necessary in connection with or to carry out the Scheme into effect and take such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions whether by reason of any order of the NCLT or any directions or order of any other authorities or otherwise howsoever arising out of, under or by virtue of this Scheme and / or matters concerned or connected therewith.

9.2.10.3. Clause 5.2 provides that if any of the terms of the Scheme are found to be inconsistent with Section 2(1B) or the Income Tax Act, 1961 owing to developments as a result of amendments, judicial/ executive interpretation or otherwise, the Income Tax provision will prevail. While the Clause seemingly provides



compliance with the tax statute, the effect of such judicial/ legislative developments on this Scheme under consideration cannot be foreseen at the moment. It is unknown whether such modification will result in material changes or will affect the public interest. Therefore, any modification to the Scheme shall be subjected to the scrutiny of this Tribunal in terms of Section 232(3) of the Companies Act, 2013.

9.2.10.4. We direct that, Clause 5.2 shall be read with Clause 19.1 and construed to mean that any modification due to developments in the tax legislation shall be subject to the approval of this Tribunal.

9.2.11. Compliance with SEBI (Substantial Acquisition and Takeover of Shares) Regulations, 2011

9.2.11.1. The OL contends that the Scheme is in violation of Regulation 3 of the SEBI (Substantial Acquisition and Takeover of Shares) Regulations, 2011 (hereinafter, SEBI (SAST) Regulations, 2011) whereas the Petitioners submit that they are exempt from compliance in terms of Regulation 10(1)(d) of SEBI (SAST) Regulations, 2011.

9.2.11.2. Reference is made to Regulation 3 and 10(1)(d) of SEBI (SAST) Regulations, 2011 which is extracted as under,



“Substantial acquisition of shares or voting rights.

3. (1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

(2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

Provided that the acquisition beyond five per cent but upto ten per cent of the voting rights in the target company shall be permitted for the financial year 2020-21 only in respect of acquisition by a promoter pursuant to preferential issue of equity shares by the target company.

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Provided further that, acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 [No. 31 of 2016] shall be exempt from the obligation under the proviso to the sub-regulation (2) of regulation 3

Explanation. — For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation, —

i. gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.

ii. in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of



new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition .

3. For the purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.

(4) Nothing contained in this regulation shall apply to acquisition of shares or voting rights of a company by the promoters or shareholders in control, in terms of the provisions of Chapter VI-A of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

(5) For the purpose of this regulation, any reference to “twenty-five per cent” in case of listed entity which has listed its specified securities on Innovators Growth Platform shall be read as “forty-nine per cent”.

General exemptions.

10.(1) The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfillment of the conditions stipulated therefor, —

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d. acquisition pursuant to a scheme, —

i. made under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) or any statutory modification or re-enactment thereto;

ii. of arrangement involving the target company as a transferor company or as a transferee company, or reconstruction of the target company, including amalgamation, merger or demerger, pursuant to an order of a



court or a tribunal or a competent authority under any law or regulation, Indian or foreign; or

iii. of arrangement not directly involving the target company as a transferor company or as a transferee company, or reconstruction not involving the target company's undertaking, including amalgamation, merger or demerger, pursuant to an order of a court or a tribunal or a competent authority under any law or regulation, Indian or foreign, subject to,—

(A) the component of cash and cash equivalents in the consideration paid being less than twenty-five per cent of the consideration paid under the scheme; and

(B) where after implementation of the scheme of arrangement, persons directly or indirectly holding at least thirty-three per cent of the voting rights in the combined entity are the same as the persons who held the entire voting rights before the implementation of the scheme."

9.2.11.3. Regulation 3(1) mandates a public announcement of an open offer where an acquirer (Transferor Company's shareholders herein), together with persons acting in concert, acquires shares or voting rights entitling it to exercise 25% or more of the voting rights in the target company (Transferee Company). The exception to compliance with the open offer requirement under Regulation 3 is carved out in Regulation 10 of SEBI (SAST) Regulations, 2011. Regulation 10(1)(d) exempts mergers, demergers or arrangements involving the target company sanctioned by a court or tribunal where the scheme does not directly involve the target company, subject to conditions that the cash component does not exceed 25% and shareholder continuity of at least 33% is maintained.



9.2.11.4. In the present case, proposed Scheme is subject to the approval of this Tribunal. The OL has not placed anything on record to show that the change in the shareholding structure, post the approval of the Scheme would warrant an open offer to be issued under Regulation 3 of SEBI (SAST) Regulations, 2011.

9.2.11.5. Since the acquisition is effectuated through a Tribunal-approved scheme, we hold that the acquisition squarely falls within the statutory exemption under Regulation 10(1)(d) and the obligation to make an open offer under Regulation 3 does not arise.

9.3. INCOME TAX DEPARTMENT

9.3.1. The Income Tax Department, upon examination of the proposed Scheme, has communicated that it has no objection to the Scheme of Amalgamation. However, in its Report dated 27.05.2025 it has raised concerns regarding continuation of pending appeal against the Transferor Company and initiation of fresh assessment proceedings against the Transferor Company post approval and effectiveness of the Scheme.

9.3.2. With regard to the outstanding tax demands and the pendency of appellate proceedings, the Tribunal observes that the Scheme contains comprehensive provisions to safeguard the interests of the Revenue of the State. Clause 13.3 stipulates that all liabilities, duties, and obligations of the Transferor Company including tax liabilities, whether crystallised



or contingent shall, upon the Scheme becoming effective, stand transferred to and be borne by the Transferee Company. Clause 9.1 further ensures that all proceedings initiated or capable of being initiated against the Transferor Company, including income tax proceedings, shall continue against the Transferee Company as if it were the original party. Clause 9.1 and Clause 13.3 are extracted below for reference:

9 LEGAL PROCEEDINGS

9.1 If any suit, appeal or proceedings of whatsoever nature (hereinafter referred to as “the said proceedings”) by or against the Transferor Company be pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of the transfer of the Transferor Company or by anything in this Scheme, but the said proceedings may be continued, prosecuted and enforced, as the case may be, by or against the Transferee Company in the same manner and to the same extent as it would be or might have been continued and enforced, as the case may be, by or against the Transferor Company if this Scheme had not been made. On and from the Effective Date, the Transferee Company may initiate any legal proceeding for and on behalf of the Transferor Company.

13.3. Taxes

- a. All taxes paid or payable by the Transferor Company in respect of the operations and / or profits of the business before the Appointed Date and from the Appointed Date till the Effective Date, shall be on account of the Transferee Company and in so far as it relates to the tax payment by the Transferor Company in respect of the profits or activities or operation of the business after the Appointed Date, the same shall be deemed to be the corresponding item paid by the Transferee Company and shall in all proceedings be dealt with accordingly.
- b. Any refund under Income Tax Act, 1961, or other applicable laws or regulations dealing with taxes allocable or related to the business of the Transferor Company and due to the Transferor Company consequent to the assessment made on the Transferor Company and for which no credit is taken in the accounts as on the date immediately preceding the Appointed Date shall also belong to and be received by the Transferee Company.



- c. All tax benefits of any nature, duties, cesses or any other like payments or deductions available to the Transferor Company under Income Tax, Goods and Services Tax, Service Tax etc. or any Tax Deduction/Collection at Source, MAT Credit, tax credits, GST input tax credits, benefits of CENVAT credits, benefits of input credits, and in respect of set-off, carry forward of tax losses, and unabsorbed depreciation shall be deemed to have been on account of or paid by the Transferee Company and the relevant authorities shall be bound to transfer to the account of and give credit for the same to the Transferee Company upon the passing of the order on this Scheme by the NCLT upon relevant proof and documents being provided to the said authorities.

9.3.3. This Tribunal refers to the judgment in the case of Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi has made the following observations with regard to the right of the IT Department in the Scheme of Amalgamation,

“taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in RE: Vodafone Essar Gujarat Limited v. Department of Income Tax (2013)353 ITR 222 (Guj) and the same being also affirmed by the Hon’ble Supreme Court and as reported in (2016) 66 taxmann.com.374(SC) from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15,2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutory dues from the transferor or transferee or any other person who is liable for payment of such tax dues, the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned.”



9.3.4. In line with the principles laid down by the Hon'ble Supreme Court in *Company Petition CAA-284/ND/2018(ibid)* and *Marshall Sons & Co. (India) Ltd. v. ITO (supra)*, the Tribunal holds that the sanction of the Scheme does not curtail or restrict the powers of the Income Tax Department under the Income Tax Act, 1961. **The Income Tax Department retains full authority to conduct assessments and reassessments, reopen past assessments, initiate or continue inquiries or investigations, and enforce recovery of tax dues against the Petitioner Companies, as may be warranted in law. The Scheme does not grant any immunity to the Transferor or Transferee Company against tax liabilities nor does it impede lawful action initiated by the Income Tax Department.**

9.3.5. **We find that the Scheme contains adequate safeguards to protect the interest of the Revenue and that the tax-related issues raised do not present any obstacle to the sanction of the Scheme.**

9.4. After analyzing the Scheme in detail, this Tribunal is of the considered view that the scheme as contemplated amongst the Petitioner Companies seems to be *prima facie* beneficial to the Company and will not be in any way detrimental to the interest of the shareholders of the Company. In the absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the Scheme of Amalgamation appended as "Annexure -31" at Page Nos. 549-575.



9.5. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

9.6. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

10. THIS TRIBUNAL DO FURTHER ORDER:

(i) That the entire business and undertaking of the Transferor Company shall, under the provisions of Section 230 to 232 of the Companies Act, 2013, without further act or deed, be transferred to and vest in or be deemed to have been transferred and vested in the Transferee Company.

(ii) That all the assets of the Transferor Company shall be transferred to the Transferee Company, without further deed or instrument of conveyance and accordingly the same become the property of the Transferee Company.



(iii) That all the debts, liabilities, duties and obligations of the Transferor Company shall be transferred to the Transferee Company and accordingly the same become the liabilities and duties of the Transferee Company.

(iv) That the Transferee Company do without further application allot to such members of the Transferor Company, as have not given such notice of dissent, as is required by *Clause 11 of the SCHEME* herein the shares in the Transferee Company to which they are entitled under the said SCHEME.

(v) That the Appointed date for the Scheme shall be **01.04.2023** as mentioned in clause 4.1.3 of the SCHEME.

(vi) That all proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.

(vii) That all the employees of the Transferor Companies in service from the Appointed Date till the date on which the Scheme finally takes effect, shall become the employees of the Transferee Company without any break or interruption in their service.

(viii) That the Transferee Company shall file the revised Memorandum and Articles of Association with the Registrar of Companies and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company after setting off the fees paid by the Transferor Companies.



(ix) That the Transferor Companies and the Transferee Company, shall within thirty days of the date of receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration. That as per *Clause 17* of the Scheme, on such certified copy being so delivered, the Transferor Companies shall be dissolved without the process of winding up and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said company shall be consolidated accordingly.

(x) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

11. The Scheme is **approved** subject to the directions issued above.

12. Company Petition *CP(CAA)/25(CHE)2025* in *CA(CAA)/7(CHE)2025* accordingly, stands **allowed** on the aforementioned terms.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)