IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT– I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **07.07.2026** THROUGH VIDEO CONFERENCING

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

APPLICATION NUMBER	**:** CA(CAA)/31(CHE)/2025
PETITION NUMBER	**:** CP(CAA)/57(CHE)/2025
NAME OF THE PETITIONER(S)	**:** Mahogany Logistics Services Pvt Ltd
NAME OF THE RESPONDENTS	**:**
UNDER SECTION	**:** Sec 230-232 of CA, 2013

ORDER

Present: Ld. Counsel Ms. Niveditha Narayanan for the Petitioner.

Ld. Counsel Shri. Raj Jhabakh for the Income Tax Department.

Vide separate pronounced in Open Court, the scheme is approved.

File be consigned to records.

Sd/-
(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

Sd/-
(SANJIV JAIN)
MEMBER (JUDICIAL)

MG

Date: 07.07.2026

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

CP(CAA)/57(CHE)2025 in CA(CAA)/31/CHE/2025

Under Sections 230 to 232 of the Companies Act, 2013

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

Of

MAHOGANY LOGISTICS SERVICES PRIVATE LIMITED
(CIN: U74999TN2016PTC112949)
INCORPORATED UNDER THE COMPANIES ACT, 2013,
HAVING ITS REGISTERED OFFICE AT:
NO.10, JAWAHAR ROAD CHOKKIKULAM,
MADURAI-625002, TAMIL NADU, INDIA,
REPRESENTED BY MS. R PADMAPRIYA, AUTHORISED SIGNATORY.

… First Petitioner / First Transferor Company

And

TVS SCS GLOBAL FREIGHT SOLUTION S LIMITED,
CIN: U63010TN2007PLC064282
INCORPORATED UNDER THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT:
T.K. KUMARASWAMY TOWERS, NO. 58, ELDAMS ROAD,
TEYNAMPET, CHENNAI – 600 018, TAMIL NADU, INDIA,
REPRESENTED BY MR. SIDDHARTH JAIRAJ, WHOLE-TIME DIRECTOR.

… Second Petitioner/ Second Transferor Company

WHITE DATA SYSTEMS INDIA PRIVATE LIMITED
(CIN: U72200TN2015PTC129978)
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 2013,
HAVING ITS REGISTERED OFFICE AT
NO. 58, ELDAMS ROAD, TEYNAMPET, CHENNAI- 600018,
TAMIL NADU, INDIA,
REPRESENTED BY MR. RAVI VISWANATHAN, DIRECTOR

… Third Petitioner/ Third Transferor Company

FLEXOL PACKAGING (INDIA) LIMITED
(CIN: U74990TN2010PLC076131)
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT
NO.58, ELDAMS ROAD, TEYNAMPET,
CHENNAI- 600018, TAMIL NADU, INDIA,
REPRESENTED BY MR. RAVICHANDRAN SARGUNARAJ, DIRECTOR.

…Fourth Petitioner / Fifth Transferor Company

TVS SUPPLY CHAINS SOLUTIONS LIMITED
(CIN: L63011TN2004PLC054655) A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956, HAVING ITS REGISTERED OFFICE AT NO.10, JAWAHAR ROAD CHOKKIKULAM, MADURAI-625002, TAMIL NADU, INDIA, REPRESENTED BY MR. P D KRISHNA PRASAD, COMPANY SECRETARY.

…Fifth Petitioner / Transferee Company

And

Their Respective shareholders and creditors

*Order pronounced on **7th July, 2026***

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)/57(CHE)2025 in CA(CAA)/31/CHE/2024 filed by **Mahogany Logistics Services Private Limited** (hereinafter, "**First Transferor Company"**), **TVS SCS Global Freight Solutions Limited** (hereinafter, **"Second Transferor Company"**), **White Data Systems India Private Limited** (hereinafter, **"Third Transferor Company"**), Flexol Packaging (India) Limited (hereinafter, **"Fifth Transferor Company"**) and **TVS Supply Chain Solutions Limited** (hereinafter "**Transferee Company**") 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 seeking sanction of the Scheme of Amalgamation (hereinafter referred to as the "Scheme") proposed by the Petitioner Companies herein and **SPC International (India) Private Limited** (hereinafter "**Fourth Transferor Company**") with their respective shareholders. The Scheme is appended at ***Page Nos. 1233 – 1275*** of the petition.

2. 1st Motion Application – In Brief

2.1. The Petitioner Companies had filed First Motion Application vide CA(CAA)/31/CHE/2025 seeking directions as follows:

	Equity Shareholders	Preference Shareholders	Secured Creditors	Unsecured Creditors
First Transferor Company	Dispense With	N.A	Dispense With (NIL)	Dispense With
Second Transferor Company	Dispense With	N.A	Dispense With	Dispense With
Third Transferor Company	Dispense With	N.A	Dispense With (NIL)	Dispense With
Fourth Transferor Company	Dispense With	N.A	Dispense With (NIL)	Dispense With
Transferee Company	Convene Meeting	Dispense With	Dispense With	Convene 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 **30.05.2025**. The meetings of equity shareholders, preference shareholders, secured creditors and unsecured creditors of the First Transferor Company, Second Transferor Company, Third Transferor Company and Fourth Transferor Company were dispensed with. The meetings of preference shareholders and secured creditors of the Transferee Company were dispensed with. The Transferee Company was directed to hold meeting of equity shareholders and unsecured creditors on 30.07.2025.

2.3 The Chairman's Report on the meeting of Unsecured Creditors was filed on 01.08.2025. As per the Chairman's Report, remote e-voting commenced on 27.07.2025 at 9:00 AM and ended on 29.07.2025 at 5:00

PM. In the meeting of unsecured creditors of the Transferee Company held on 30.07.2025 between 03:18 PM to 03:48 PM, the unsecured creditors of the Transferee Company were provided with an opportunity to cast their votes. Out of 89 unsecured creditors who attended the meeting, 88 unsecured creditors constituting **99.997%** of the total unsecured creditors cast their votes in favour of the amalgamation of the Petitioner Companies.

2.4 The Chairman's Report on the meeting of Equity Shareholders was filed on 01.08.2025. As per the Chairman's Report, the remote e-voting commenced on 27.07.2025 at 9:00 AM and ended on 29.07.2025 at 5:00 PM. In the meeting of the equity shareholders of the Transferee Company held on 30.07.2025 between 11:20 AM to 11:50 AM, the equity shareholders of the Transferee Company, were provided with an opportunity to cast their votes. Out of 246 equity shareholders who cast their votes, 238 shareholders representing ***96.75%*** of the total value of equity shareholders voting approved the scheme of amalgamation of the Companies. Eight (8) equity shareholders representing ***3.25%*** of the total value of equity shareholders, voted against the scheme of amalgamation.

2.5 Subsequently, second motion petition was filed on **14.08.2025** for the sanction of Scheme of Amalgamation.

2.6 This Tribunal vide order dated 28.08.2025 directed the Petitioner Companies to issue notice to the Regional Director, Registrar of Companies, Income Tax Authorities, Official Liquidator, SEBI and other Statutory Regulators, if applicable. The Petitioners were also directed to issue notice in the Indian Express (English) & Daily Thanthi (Tamil) in terms of Rule 7 of the Companies (Companies Arrangements and Amalgamation) Rules, 2016. In compliance of the order dated 28.08.2025, the Petitioner filed Affidavit of Service dated 08.10.2025 evidencing proof of service. The affidavit discloses that the Petitioner Companies effected paper publications as directed by the Tribunal in Indian Express – All India Edition (English) and Daily Thanthi (Tamil) on **26.09.2025**. Notices have been also served to

S.No	Statutory authorities	Date of Notice
1.	Regional Director, Southern Region, Chennai	10.09.2025
2.	Registrar of Companies, Chennai	10.09.2025
3.	Income Tax Department	10.09.2025
4.	Official Liquidator	10.09.2025
5.	Reserve Bank of India	10.09.2025

2.7 Since the Fourth Transferor Company is a private limited company having its registered office in Karnataka, the Company has separately filed an application before the NCLT, Bangalore.

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 which deals with the Amalgamation of the Transferor Companies with and into the Transferee Company, would have the following benefits:

a. The amalgamation will enable product diversification and growth to the Transferee Company.

b. It will facilitate expansion of the business of Transferor Companies by using the customer base of the Transferee Company.

c. As a combined entity, the amalgamation will help in widening the service offering to the existing strategic customers of both the Transferor as well as the Transferee Company.

d. It will help in achieving consolidation, greater integration and flexibility that will maximize overall shareholder's value and improve the competitive position and negotiating power of the combined entity.

e. It will improve organizational capability and leadership, arising from the pooling of human capital who have the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.

f. Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, elimination of duplication and rationalization of administrative expenses.

g. The amalgamation will result in reduction of multiplicity of entities, thereby reducing compliance cost of multiple entities viz., statutory filings, regulatory compliances, labour law/ establishment related compliances.

h. The merger of First Transferor Company with the Transferee Company will simplify the holding structure of the Transferee Company and avoid multiple layers of shareholding, post the amalgamation."

4. Sequence of Effectiveness of The Scheme

4.1. The Undertakings of the Transferor Companies as defined in **Clause 3.25** of the Scheme shall be transferred to the Transferee Company with effect from the Appointed Date and shall be operative from the Effective Date, as a going concern in terms of Part III Clause 6 of the Scheme.

4.2. Clause 10.1 provides for issuance of consideration to the equity shareholders of the First Transferor Company, whose names appear in the register of members as on Record Date, by the Transferee Company, in the following manner:

> *"3,75,02,140 paid-up equity shares of Rs. 1 each of the Transferee Company shall be issued and allotted as fully paid-up to the equity shareholders of the First Transferor Company in proportion of their holding in the First Transferor Company"*

4.3. **Clause 10.3** of the Scheme provides for cancellation of shareholding of 8.52% held by the First Transferor Company in the Transferee Company, upon the sanction of Scheme by the Tribunal and equity shares of the Transferee Company shall be issued to the shareholders of the First Transferor Company, in accordance with Clause 10.1 above, to the extent of 8.52%.

4.4. As per **Clause 3.26** of the Scheme, the Second Transferor Company, Third Transferor Company, Fourth Transferor Company and Fifth Transferor Company are Wholly Owned Subsidiaries of the Transferee Company. Hence, as per Clause 11 of the Scheme, upon the sanction of Scheme, all the shares held by the Transferee Company in the wholly owned Transferor Companies shall be cancelled and extinguished as on Appointed Date.

4.5. Upon the sanction of the Scheme, the Transferor Companies will be dissolved without winding up in accordance with **Clause 17** of the Scheme.

5. REGIONAL DIRECTOR

5.1. On issuance of notice, the Regional Director, *(hereinafter referred to as 'RD')* Southern Region, Chennai filed his report on vide S.R. No. 76 dated 06.01.2026. Relevant Clauses of the Report are:

Para	Observations
4	Clause 3.3 of Part-I of the Scheme, defines "Appointed Date" as April 01st, 2023 (or) such other date as may be fixed or approved by the Tribunal being the date with effect from which this Scheme shall be deemed to be effective. The Petitioner Companies have filed the first motion Company Application on 31.03.2025. Hence, the appointed date is ante date beyond a year, which is against Section 232(6) of the Companies Act, 2013 and the Ministry's General Circular No. 09/2019 dated 21st August 2019.
5	Clause 7 of Part Ill of the Scheme provides that on Part Ill of the Scheme becoming operative, all the executives, staff, workmen

	and employees in the service of the Transferor Companies immediately preceding Effective Date, 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. In the event of retrenchment of such employees, the Transferee Company shall be liable to pay compensation in accordance with law on the basis that the services of the employees shall have been continuous and shall not have been interrupted by reason of such transfer.
6	Clause 10 of Part-II of the Scheme provides that upon coming into effect the Scheme and in consideration for transfer and vesting of Undertaking of the First Transferor Company with and into the Transferee Company, the Transferee Company shall, without any further application or deed and without any further payment, issue and allot to all the equity shareholders of the First Transferor Company (whose names appear in the register of members as on the Record Date), in the manner extracted below: *"3,75,02,140 paid-up equity shares of Rs. 1 each of the Transferee Company shall be issued and allotted as fully paid-up to the equity shareholders of the First Transferor Company in proportion of their holding in the First Transferor Company"*

7	Clause 11 of Part II of the Scheme provides that since the Second Transferor Company, Third Transferor Company, Fourth Transferor Company and Fifth Transferor Company are the wholly owned subsidiaries of the Transferee Company, upon the Scheme being sanctioned by the Tribunal and the transfer having been effected as provided hereinabove, all the equity shares held by the Transferee Company and its nominees in the above mentioned Transferor Companies shall be cancelled and extinguished as on the Appointed Date. Accordingly, there will be no issue and allotment of equity shares of the Transferee Company to the shareholders of the Wholly-Owned Subsidiaries upon this Scheme becoming effective.
8	Clause 12 of Part Ill of the Scheme provides that the Transferee Company shall account for the amalgamation of the Transferor Companies in its books of account as laid down in Appendix-C of the Indian Accounting Standard (Ind AS) 103 (Business Combination of entities under common control) prescribed under Section 133 of the Companies Act, 2013, as notified under the Companies (Indian Accounting Standard) Rules, 2015, as amended and relevant pronouncement and clarifications issued by Institute of Chartered Accountants of India, from time to time.
9	Clause 17 of Part Ill of the Scheme provides that upon the scheme being sanctioned by an order made by the Tribunal under Section 230-232 of the Act, the Transferor Companies shall stand dissolved without winding up on the Scheme becoming effective from the Effective date in accordance with the Act and the relevant rules.

13	ROC, Chennai vide report dated 18.12.2025 has stated that First, Second, Third and Fifth Transferor and Transferee companies are regular in filing their statutory returns and have filed up to financial year 31.03.2025 and that there are no prosecution/ complaint/ inspection or investigation pending against the Petitioner Companies involved in the Scheme of Amalgamation.
14	ROC Chennai has stated that it has been observed from the Audit report that there are disputable statutory dues pending against the Transferor Companies no. 1, 2 and 5. Hence, the Companies may be directed to clarify on the present status of pending dues to statutory authorities.
15	Petitioner Companies may be directed to undertake to comply with the provisions of Section 240 of the Companies Act, 2013 and Section 232(3)(i) of the Companies Act, 2013.

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 for the observations at para 4, 14 and 15 of the Report and has left it to this Tribunal to pass order on merits.

5.3. In the Affidavit filed before this Tribunal on vide SR No. 635 dated 12.02.2026, the Petitioner Companies, in response to the observations of the RD has submitted as under:

5.3.1. With respect to the observations of the RD in paragraphs 1 to 3 and para 5 to 13, the Petitioner Companies submit that the same do not require any specific traversal.

5.3.2. With respect to the objections regarding ante dated Appointed Date in **Clause 3.3** of the Scheme, it is stated that the Board of Directors of the First Transferor Company and the Transferee Company in their respective meetings held on 05.02.2024; and the Second, Third, Fourth and Fifth Transferor Company in their respective meetings held on 02.02.2024, have approved the Scheme of Amalgamation. Since the Transferee Company is a listed entity, an application was filed pursuant to Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, for obtaining the no objection from the Stock Exchanges. The applications were made with the BSE on 23.02.2024 and NSE on 26.02.2024. However, process of obtaining prior approval from the Stock Exchanges took longer than anticipated. The final approval was received from BSE Limited on 01.01.2025 and from the National Stock Exchange of India Limited on 28.02.2025. As a result, the time period between the Appointed Date and the filing date of the Scheme before this Tribunal exceeded one year. The reasons stating the delay in filing of the Scheme before the Tribunal is provided in an appendix annexed with the

Scheme in accordance with General Circular No. 09/2019 issued by Ministry of Corporate Affairs.

5.3.3. In response to the observations made in Para 14 of the Report, it is stated that the Transferee Company has sufficient and adequate cash balance and reserves to settle demand, if any, raised by Income Tax and other Tax authorities who have pending disputes/ claims as against Petitioner Companies No. 1, 2 and 5. The Authorities may continue the pending proceedings post amalgamation with the Transferee Company. Nonetheless, the details of the pending disputes/ proceedings against the Petitioner Companies as on 31.03.2025, as sought in the Report, is extracted as follows:

<u>First Petitioner/ First Transferor Company - Mahogany Logistics Services Private Limited</u>

Assessment Year	Details of Proceedings	Forum where dispute is pending	Disputed tax Amount (in Rs.)	Present Status
AY 2018-19	TDS Appeal against order under section 201 of the Act [Appeal No: CIT (A),	Commissioner of Income Tax (Appeals)	Rs. 3,59,88,923	The Company received a notice dated 20 November 2025 under Section 250 of the Income-tax Act, 1961, and has filed its response thereto on 25 November 2025. The Company is

	Madurai-1/10753/2018-19]			awaiting further communication from Commissioner of Income Tax (Appeals).
AY 2017-18	Assessment proceedings pursuant to notice under section 148 of the Income Tax Act, 1961	Not Applicable	Not Applicable	W.A.(MD) No.234 of 2025 and C.M.P.(MD) No.1684 of 2025 was disposed of by the Hon'ble Madras High Court, Madurai Bench, vide order dated 09.07.2025. Pursuant thereto, a fresh reassessment order under Section 148A(3) of the Income-tax Act, 1961 was issued by the Income Tax Department as per the directions of the Hon'ble High Court. The Company has filed its Return of Income in response thereto and the assessment proceedings are yet to be initiated.

For the sake of completeness, in addition to the proceedings stated above, the present status of the income-tax proceedings is set out below:

Assessment Year	Details of Proceedings	Forum where dispute is pending	Disputed tax Amount (in Rs.)	Present Status
AY 2018-19	Appeal against the order passed by Income Tax Appellate Tribunal, Chennai dated 28 July 2025 in ITA No. 1631/CHNY/2024	Hon'ble High Court of Madras	Not quantifiable	Appeal is awaited to be listed before Madras High Court.
AY 2018-19	Appeal against assessment order passed under section 143(3) read with Section 263 of the Act - [Appeal No: NFAC/2017-18/10442714]	Commissioner of Income Tax (Appeals)	Nil	A detailed submission has been filed. Further communication from the NFAC is awaited.

<u>Second Petitioner/ Second Transferor Company — TVS SCS Global Freight Solutions Limited</u>

Financial Year	Assessment Year	Details of Proceedings	Forum where dispute is pending	Disputed tax Amount (in Rs.)	Present Status
October 2013 to March 2015	AY 2024-25	The Company filed an appeal on 14.06.2021 against the order passed by the Commissioner (Appeals) seeking to tax the margin earned on ocean freight charges, whereas ocean freight per se was not brought within the ambit of Service Tax law.	CESTAT	Rs. 65.86 Lakhs	The appeal is pending before CESTAT. As on the date of this Affidavit, no notice of first hearing has been received.
FY 2017-18 to FY 2019-20	AY 2024-25	The Company has filed an appeal against the order of the Commissioner (Appeals) seeking to tax income arising from services rendered to foreign customers.	GST Appellate Tribunal	Rs. 61.23 Lakhs	The appeal is pending before GST Appellate Tribunal. As on the date of this Affidavit, no notice of first hearing has been received.

Fourth Petitioner/ Fifth Transferor Company — FLEXOL Packaging (India) Limited

Financial Year	Details of Proceedings	Forum where dispute is pending	Disputed tax Amount (in Rs.)	Net of Amount Paid Under Protest (in Rs.)	Present Status
2011-12	Disputed statutory due under Tamil Nadu Value Added Tax Act, 2006	Assistant Commissioner of Commercial Taxes	Rs. 1.33 Lakhs	Rs. 1.33 Lakhs	A petition to correct errors in the said order has been filed with the Assessing /officer and awaiting revised order.
2017-18	Disputed statutory due under the Central Goods and Services Tax Act, 2017	GST – Commissioner (Appeals), Tamil Nadu	Rs. 8.94 Lakhs	Rs. 8.04 Lakhs	Appeal filed on 18/03/24 and admitted. Awaiting first hearing notice.
2018-19	Disputed statutory due under the Central Goods and Services Tax Act, 2017	GST – Commissioner (Appeals), Tamil Nadu	Rs. 36.56 Lakhs	Rs. 32.90 Lakhs	Appeal filed on 5/7/2024 and admitted. Awaiting first hearing notice
2019-20	Disputed statutory due under the Central Goods and Services Tax Act, 2017	GST – Commissioner (Appeals)	Rs. 94. 77 Lakhs	Rs. 85.28 Lakhs	Appeal filed on 14/11/2024 and admitted. Awaiting first hearing notice.
2020-21	Disputed statutory due under the Central Goods and Services Tax Act, 2017	GST– Commissioner (Appeals) , Tamil Nadu	Rs. 17.86 Lakhs	Rs. 17.86 Lakhs	Appeal filed on 08/05/2025. Awaiting first hearing notice.

For the sake of completeness, in addition to the proceedings stated above, the present status of the Indirect tax proceedings is set out below:

Financial Year	Details of Proceedings	Forum where dispute is pending	Disputed tax Amount (in Rs.)	Net of Amount Paid Under Protest (in Rs.)	Present Status
2021-22	Disputed statutory due under the Central Goods and Services Tax Act, 2017	GST – Assistant Commissioner (Order has been passed on 09.12.2025)	Rs. 10.31 Lakhs	Rs. 10.31 Lakhs	The proceedings have been disposed.

5.3.4. It is stated that the respective jurisdictional Income-tax Officer(s) of the Second and Third Transferor Companies have conveyed their 'No Objection' to the Scheme vide letter dated 18.10.2025. Further, the jurisdictional Income-tax Officer of the Fifth Transferor Company has conveyed its 'No Objection' to the Scheme, subject to certain observations, vide letter dated 29.10.2025. The respective Petitioner

Companies have also submitted their response to the observations raised by the Income Tax Department on 01.12.2025.

5.3.5. It stated that Clause 8.1 of the Scheme provides that any legal proceedings, including tax proceedings, pending or arising against the Transferor Companies, as on the appointed date, shall stand continued and be enforced against the Transferee Company. Clause 8.1 of the Scheme is extracted below:

> *"8.1. All legal proceedings of whatsoever nature by or against the Transferor Companies pending and/or arising at the Appointed Date and relating to the Transferor Companies or their properties, assets, debts, liabilities, duties and obligations referred to above, shall be continued and/or enforced until the Effective Date as desired by the Transferee Company and as and from the Effective Date shall be continued and enforced by or against the Transferee Company in the same manner and to the same extent as would or might have been continued and enforced by or against the Transferor Companies. On and from the Effective Date, the Transferee Company shall and may, if required, initiate any legal proceedings in its name in relation to the Transferor Companies in the same manner and to the same extent as would, or might, have been initiated by the Transferor Companies. "*

[Emphasis Supplied]

5.3.6. Clause 13.3.a (Taxes) of the Scheme provides that all the taxes payable by the Transferor Companies in respect of operations prior to the appointed date shall be borne and discharged by the Transferee Company. Clause 13.3.a of the Scheme is extracted hereunder:

"13.3. a. All taxes paid or payable by the Transferor Companies 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 Companies 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. "

[Emphasis Supplied]

5.3.7. It is stated that all proceedings pending in relation to the statutory dues of the Transferor Companies shall, upon the Scheme becoming effective, be continued, complied with, and discharged by the Transferee Company in accordance with the terms of the Scheme and applicable law.

5.3.8. It is stated that as per Section 232(3)(i) of the Companies Act, 2013, where the Transferor Company is dissolved, the fee, if any, paid by the Transferor Company on its authorized capital shall be set-off against any fees payable by the Transferee Company on its authorized capital subsequent to amalgamation. The right to set off under Section 232(3)(i), is a statutory right available to the Transferee Company, and there is no requirement for the Transferee Company to undertake compliance of the same. Hence, the right to set off fees payable by the Transferee Company can be exercised even in the absence of any such undertaking as per the said provision.

5.3.9. It is stated that liability of officers of the Transferor Companies prior to amalgamation, respectively, shall continue after amalgamation by operation of law in terms of Section 240 of Companies Act, 2013. It is stated that since a provision of law fastens liability on officers in default of the Transferor Companies, such liability ipso facto attaches to such officers even without any such undertaking by virtue of the statutory mandate under the Act. Hence, the need for the Petitioner Companies to furnish an undertaking in this regard does not arise.

6. OFFICIAL LIQUIDATOR

6.1. The Official Liquidator, *(hereinafter referred to as 'OL')* has filed the Report on 06.01.2026 vide S.R. No. 88. It is stated that, they had appointed M/s. SVV Associates, Chartered Accountants firm from the panel maintained by their office to verify the affairs of the Transferor Companies.

6.2. The Chartered Accountant has 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 captured by the OL in its Report are as below,

Para	Observations
3(i)	Clause 7.1 of the scheme seeks to protect the employees of the Transferor Companies only if they are in service on effective date and hence, this Tribunal may direct the companies to submit an undertaking to this Tribunal to the effect that there would be no retrenchment of any employee who were in

	service as on Appointed Date (1.4.2023) as well except in the event of their resignation on their own before the Effective Date.
3(ii)	Clause 3.15 of the Scheme defines 'Record Date' as a date to be decided by the Transferee Company in consultation with the Board of Transferor Company No. 1. However, it is silent on the need to fix it immediately after sanction of the scheme and before the dissolution of the Transferor Company No. 1. Hence, this Tribunal may direct the companies to submit an undertaking to the effect that the companies would fix the record date immediately after sanction of the scheme and on or before the dissolution / effective date. Further, the Scheme must provide for fixing Record Date in respect of 49% shareholders of Transferor Company No. 3 as it was not a wholly owned subsidiary of the transferee company as at the appointed date.
3(iii)	Clause 4.2 of the Scheme provides for auto modification of content of the scheme to be in compliance with Income Tax Law etc., post its sanction by this Tribunal. Such auto modification of the Scheme without the previous specific approval / sanction of this Tribunal will be in violation of Section 231(1)(b) of the Companies Act, 2013 as every modification / auto modification of the content of the Scheme requires specific approval by this Tribunal and scheme cannot contain auto modification of content on its own. Hence, this Tribunal may direct the Petitioners to delete / modify the Clause 4.2 of Part II of the scheme by way of amendment to the Scheme proposed, so as to ensure that no such auto amendment / modification of the Scheme is provided for in the Scheme or takes place, post its sanction by this Tribunal or to submit an undertaking to this Tribunal to the effect that such auto modification of the content of the scheme will not be operative automatically or be

	implemented without specific prior approval of this Tribunal received by the companies under Section 231(1)(b) of the Companies Act, 2013.
3(iv)	As per para 6(c) of General Circular No.09/2019 dated 21.8.2019 issued by the Ministry of Corporate Affairs, if Appointed Date (in this case, 01.04.2023) is significantly ante-dated beyond a year from the date of final filing of the Company Application (April, 2025 in this case, subject to confirmation by the Companies), then the justification for the same would have to be specifically brought out in the scheme itself and it should not be against public interest. However, it is noticed that the company has incorporated the reasons for delay in filing CA, as part of Appendix attached to the Scheme, citing reasons as taking longer time than anticipated to get approval from Stock Exchanges. As per the observation letter issued by BSE dated 01.01.2025 based on SEBI letter dated 01.01.2025, it is noticed that the observation Sl.No. (f) mandates the company to ensure that the financials considered for the valuation report are not for period more than 6 months old, accordingly the Transferee Listed Company is mandated to ensure that the valuation report for the scheme considers the latest financials which are not for period older than 01.07.2024. Whereas the valuation report itself is dated 05.02.2024, accordingly, the observation Sl.No. (f) is not complied with. Further it is submitted that the valuation / latest financials will have reference to the Appointed Date undertaking. But, the Appendix attached to the Scheme is silent as to why the Appointed Date is still considered as 01.04.2023, and why old Appointed Date of 01.04.2023 with old valuation report dated 05.02.2024 (which is more than 6 months old prior to Exchange Letter dated 01.01.2025) is decided (January 2025 to April 2025) to be continued so, despite the stipulation of MCA (vide circular

	9/2019, ibid) and SEBI/Stock Exchange. Hence old Appointed Date is not justified, in either case may hit public interest aspect specified in the MCA Circular, *ibid.* and also result in non-compliance with SEBI/Stock Exchanges communication. Further, as is evident from Note No. 26 (Sl.No .4) of audited financials of Transferor Company No. 1 as at 31.03.2023 (Appointed Date 01.04.2023), the deferred tax asset as on 31.03.2023 (on account of carry forward of losses) stood at Rs. 726.41 Crores and justification is silent as to whether it is ante-dated to avoid lapse of any carry forward of losses in respect of Transferor Company No. 1 which may hit public interest. This may be clarified by the companies to this Tribunal.
3(v)(a)	Appointed Date is 01.04.2023 as per Clause 3.3 of the scheme. There are 5 Transferor Companies in the Scheme and one Transferee Company which is a listed entity. Further, the Scheme provides for allotment of shares as consideration in respect of amalgamation of Transferor Company No. 1 alone and does not provide for payment of any consideration in respect of remaining 4 Transferor Companies. The Clause 11.1 of the Scheme (apart from various other places in the scheme) provides and discloses that Transferor Company No. 2, 3, 4 and 5 (i.e., all 5 transferor companies excepting Transferor Company No. 1) are wholly owned subsidiaries of the Transferee Company and accordingly, there will be no issue of consideration in respect of amalgamation of Transferor Company No. 2, 3, 4 and 5 with the Transferee Company. However, the said Clause 11.1 of the scheme is silent as to whether there exists such subsisting relationship of wholly owned subsidiary and holding company between Transferor Company No. 2, 3, 4 and 5 and Transferee Company as on Appointed Date (01.04.2023) or not, as it is required to subsist such relationship as on Appointed Date to

	not allot any consideration for transfer and vesting of undertaking existed as on Appointed Date. Accordingly, Clause 11.1 of the Scheme needs to be amended to add about the subsisting relationship as on Appointed Date in respect of Transferor Company No. 2, 3, 4 and 5 and Transferee Company.
3(v)(b)	Out of 5 Transferor Companies, Transferor Company No. 4 is registered in the State of the Karnataka and is not a petitioner before this Tribunal. However, the petition filed before this Tribunal does not contain the audited financial statement of Transferor Company No. 4 that will show the list of shareholders of Transferor Company No. 4. Further, whether the disclosure made in Clause 11.1 of the Scheme, interalia, regarding Transferor Company No. 4 as a wholly owned subsidiary company of Transferee Company is not known through the Scheme. This Tribunal may direct the Petitioners to clarify the same and to submit copies of audited financials of the Transferor Company No. 4as on 31.03.2023 as well as the latest financial statements.
3(v)(c)	Transferor Company No. 2 and Transferor Company No. 5, have subsisting relationship as a wholly owned subsidiary of the Transferee Company as on Appointed Date and the same has been verified from respective audited financials/ list of shareholders as on 31.03.2023. Hence no objection to that extent.
3(v)(d)	As per the Audited Financial Statements of the Transferor Company No. 3 as on 31.03.2023, the Transferee Company holds 51% of the shares of the Transferor Company No. 3 and hence Transferor Company No. 3 was not a wholly owned subsidiary company as on 31.03.2023. By subsequent corporate action post appointed date Transferor Company No. 3 has become wholly owned subsidiary of the Transferee Company during the Financial Year 2023-24. Hence, the

	Appointed Date ought to be changed to the date on or subsequent to acquiring the full 100% stake by the Transferee Company as the scheme does not provide for payment of consideration to the Transferor Company No. 3. Clause 11.1 of the Scheme provides for the cancellation of investment by the Transferee Company into the Transferor Company No. 3, however, cancellation to the tune of 51% of holding only as at appointed date 1.04.2023 can be made. Any subsequent corporation action based acquisitions by the Transferee Company post appointed date in respect of any of the Transferor Company shareholding acquisition, will be deemed as transaction of Transferee Company alone and hence cannot be allowed through the scheme, since transferee cannot acquire shares of its own, as post appointed date, Transferor Company No. 3 and Transferee become one and the same. Since the remaining 49% of the shares of the Transferor Company No. 3 was acquired subsequent to the appointed date, cancellation of such stake to the tune of 49% should invariably result in refund of money paid by the Transferee Company to the previous shareholders of i.e., Cholamandalam Investment and Finance Company Limited, Mr Lakshmanan Vellayan, Mr. Narayana Vellayan etc., based on share purchase agreements whose copies are required to be verified. Hence, the Scheme shall provide for payment of consideration to the shareholders representing remaining 49% stake as on Appointed Date, based on a valuation report. However, valuation report does not provide for the same. Further, as per Clause 13.1 of the Scheme, any transaction post Appointed Date in respect of any of the Transferor Company, would be deemed as transaction of the Transferee Company only, upon sanction of the scheme. Accordingly, any subsequent acquisition of remaining 49% stake in Transferor Company No. 3 by the Transferee Company post

	appointed date 01.04.2023 (apparently at a cost of Rs. 63.86 Cr (106.06-42.20 Crores as disclosed in investments note of the Balance Sheet of transferee company as at 31.03.2024), the same will become a payment made by the Transferee Company to the existing shareholders (Cholamandalam, etc.) of Transferor Company No. 3 representing 49% stake, in the nature of buying back of shares by the Transferee Company at a cost of Rs. 63.86 Crores, if scheme is allowed. Hence, the present Scheme would be hit by the prohibition prescribed under section 230(10) of the Companies Act, 2013 read with Section 68 and 70 of the Companies Act, 2013. Hence, the Scheme should be amended to provide for payment of consideration by the Transferee Company to the remaining 49% shareholders of the Transferor Company No. 3 based on valuation report and cancellation of the subsequent payment in the nature of buy back, which is also in the nature of acquiring shares of a company which would be non-existent on the date of such post appointed date acquisition of 49%. This need clarification to be submitted by the companies to this Tribunal along with the relevant supporting documentation as above including share purchase agreement copies and its amendments along with proof of payment/ date of payment, etc.
3(v)(e)	Clause 11.1 of the scheme provides for the cancellation and extinguishment, with effect from the Appointed Date, of shares held by the Transferee Company in the Transferor Companies. The Petitioner Companies may be directed to undertake that such inter-se holding as existed as on appointed date only will get cancelled and not otherwise. Further, the Scheme requires provision of consideration to be made against the remaining shares in the respective Transferor Companies not held by the Transferee Company as on Appointed Date which is not presently provided in the

	scheme. Hence, this Tribunal may direct the companies to furnish the details of shares (numbers, percentages, acquisition cost, etc.) of the each of the 5 Transferor Companies held by the Transferee Company as on Appointed Date separately and post appointed date separately, till date, in order to verify the same vis-à-vis implication of the same on the contents of the Scheme and whether the same is in accordance with the law. This needs to be clarified by the Petitioners to this Tribunal along with supporting documentation..
3(vi)(a)	Clause 12.1 of the scheme interalia provides that date of accounting treatment would be in accordance with the applicable Ind AS. In this regard, it is submitted that the date of accounting treatment would take effect from the appointed date 01.04.2023. Further the said Clause is silent on the specific number of Ind AS(s) to be applicable in their case, in order to verify whether the proposed accounting treatment is covered under the said specified Ind AS or not. This needs to be clarified by the Petitioners to this Tribunal along with supporting documentation.
3(vi)(b)	Clause 12.1.1 of the scheme provides for accounting the assets and liabilities of the Transferor Company No. 1 at the fair value and not at their carrying value. Such details of fair value for each asset and liability of the Transferor Company No. 1 are not furnished in the scheme / annexure to the scheme. Further such fair values are not covered in the valuation report. Hence, it is a case, where pooling of interest method is not being adopted for accounting, instead, fair value method is sought to be adopted without disclosing complete details of values and basis for the same and compliance with specific Ind AS. This needs to be clarified by the Petitioners to this Tribunal along with supporting documentation.

3(vi)(c)	Clause 12.1.2 provides for recognising the fair value of consideration shares in the books of the Transferee Company. In this regard it is submitted that the said fair value is not mentioned in the Clause 10.1 dealing with the consideration of shares to be issued. Only number of shares to be issued as consideration is mentioned, but not disclosed its value in the scheme (Clause 10.1). Further, Clause 12.1.2 also provides for recognising the difference of face value and fair value as Securities Premium which is not referred to be based on any Ind AS / in accordance with the law. This needs to be clarified by the Petitioners to this Tribunal along with supporting documentation.
3(vi)(d)	Clause 12.1.3 of the Scheme provides for cancellation of inter se investment by the Transferor Company No. 1 into the shares of the Transferee Company, however, such cancellation is to be recognized only to the extent of such investment as existed as on appointed date only and do not extend to subsequent acquisitions. Further, excess balance adjustment to securities premium account (and if not sufficient to retained earnings/ profits of Transferee Company) is not supported by reference to any Ind AS and hence not to be permitted. This needs to be clarified by the Petitioners to this Tribunal along with supporting documentation.
3(vi)(e)	Clause 12.1.4 of the Scheme provides for the cancellation of inter se balances, however, such cancellation is to be recognized only to the extent of such interse balances as existed as on appointed date only and does not extend to subsequent balances. This needs to be clarified by the Petitioners to this Tribunal along with supporting documentation.
3(vii)(a)	Clause 12.2 of the Scheme provides for the accounting of assets and liabilities of Transferor Company No. 2, 3, 4 and 5

	under pooling of interest method as provided under Ind AS 103 (Appendix C) since they claimed to be wholly owned subsidiaries. In the scheme, however, it is noticed and reported in other sub-para of this report as above, that the Transferor Company No. 3 was not a wholly owned subsidiary as on appointed date (as Transferee Company held only 51%). Further it is not known whether the Transferor Company No. 4 was a wholly owned subsidiary as on Appointed Date or not since no financials as on appointed date and subsequent periods are filed before this Tribunal. Hence, it could not be verified whether the content of the scheme is correct or not to that extent and whether Appendix C of Ind AS 103 is applicable or not. Further, since the Transferor Company No. 3 was not under common control (since it is not 100% subsidiary) pre-merger date 01.04.2023, the conditions for the applicability of Appendix C regarding common control are not fulfilled as on Appointed Date in respect of Transferor Company No. 3. This needs to be clarified by the Petitioners to this Tribunal along with supporting documentation.
3(vii)(b)	Clause 12.2.2 of the Scheme provides for recording the amounts of reserves of the Transferor Companies No. 2, 3 and 4 as appearing in the consolidated financial statements of Transferee Company. In this regard, it is submitted that the same shall be recognized as appearing in the stand alone financials of the respective Transferor Companies. This needs to be clarified by the Petitioners to this Tribunal along with supporting documentation.
3(vii)(c) and (d)	c) Clause 12.2.3 of the Scheme provides for the cancellation of inter se balances, however, such cancellation is to be recognized only to the extent of such balances as existed on Appointed Date only and does not extend to subsequent balances.

	d) Clause 12.2.4 of the Scheme provides for cancellation of inter se investment, however, in this regard it is submitted that such cancellation is to be recognized only to the extent of such investment as existed as on Appointed Date only and does not extend to subsequent acquisitions. This needs to be clarified by the Petitioners to this Tribunal along with supporting documentation.
3(viii)	Clause 6.1.16 of the Scheme interalia provides to the effect that the shareholder of the Transferor Company No. 1, a foreign entity, has agreed to indemnify the Transferor Company No. 1 and the Transferee Company or its directors/officers from and against all losses suffered or incurred out of litigations identified and provided in the Schedule I attached to the scheme. Such Schedule I refers to income tax litigation and its liabilities that may accrue in due course. In this regard, the Tribunal may direct the companies to furnish copy of documentary evidence of such agreement agreed to by the shareholder (Mahogany Singapore Company Pte Ltd) along with full details and documents/ orders / representations/appeal if any in respect of such Income Tax Liability (covered under Schedule I to the Scheme) to this Tribunal in order to verify the implication of the same on the scheme / its contents, etc. Further, it is submitted that as per provisions of Section 232 of the Companies Act, 2013 and Income Tax Act regarding definition of Amalgamation, all assets and liabilities a going concern are to be taken over by the Transferee Company, however, Income Tax Liabilities (as detailed in Schedule to the Scheme) are sought to be not taken over and borne by the Transferee Company itself instead it seeks indemnification. This needs to be clarified by the Petitioners to this Tribunal along with supporting documentation.
3(ix)	Clause 10.1 of the Scheme provides for issuance of 3,75,02,140

	shares of the listed Transferee Company to the shareholders of the Transferor Company No. 1 in proportion to their holding in the Transferor Company No. 1. However, the consideration clause is silent as to the share exchange ratio. Further, Clause 10.1 does not deal with issue of further shares by the Transferee Company in lieu of investment held by the Transferor Company No. 1 into the shares of the Transferee Company. However, Clause 10.3 discloses that Transferee Company will issue 8.52% equity shares of Transferee Company to the shareholders of the Transferor Company No. 1. As on Appointed Date, 3,75,02,140 shares of listed Transferee Company amounts to 10.30 % of the total number of shares as per Note 24A (Share capital) of the audited financials of the Transferee Company and not 8.52% disclosed in Clause 10.3 of the scheme. Hence, to that extent disclosure in Clause 10.3 is incorrect.
3(x)	The rationale envisaged in Clause 2.1 (h) of the scheme, makes it clear that the Scheme contained a separate rationale (h) for amalgamation of Transferor Company No. 1 with the Transferee Company which specifies to the effect that scheme would result in benefit of simplifying the holding structure of the Transferee Company because of the amalgamation of Transferor Company No. 1with the Transferee Company. However, such declaration that amalgamation of Transferor Company No. 1 with Transferee Company will result in simplifying the holding structure of the listed transferee company is false as the scheme only results in change of name of shareholder of Transferee Company from name of the Transferor Company No. 1 to name of the sole shareholder of the Transferor Company No. 1. This real purpose / rationale for amalgamation of the Transferor Company No. 1 with the Transferee Company as known to the companies in the scheme is not disclosed in the scheme,

	however, the same is communicated to the secured creditor (State Bank of India) by the Transferee Company through the letter dated 08.02.2024 (copy enclosed as Annexure-2) which specifies clearly to the effect that through the merger all the four subsidiaries (Transferor Companies No. 2 to 4) will cease to exist and will become part of the Transferee Company while in case of 5th one (Transferor Company No. 1), there will only be a change in the shareholder's register, whereby Mahogany Singapore Company Pte Ltd (shareholder of Transferor Company No. 1) will become direct shareholder in the Company. Accordingly, the real purpose / rationale for merger of Transferor Company No. 1 as admitted by the Transferee Company itself through letter dated 08.02.2024, is mere change of shareholder name of the Transferee Company from the name of Transferor Company No. 1 to the name of the sole shareholder Transferor Company No. 1. Hence, the rationale given in clause 2.1(h) is false. Further, it is noticed that the Transferee Company in its communication dated 8.2.2024 to the State Bank of India, has referred the Transferor Company No. 1 as subsidiary of the Transferee Company for getting their consent, however, the fact remains that the Transferor Company No. 1 is not a subsidiary of the Transferee Company and hence it requires fresh consent from the State Bank of India, with proper disclosures to them and true rationale is to be incorporated in the Scheme to that extent.
3(xi)	a) That the de facto rationale envisaged and communicated to the State Bank of India vide letter dated 08.02.2024 (Annexure-2) makes it clear that, the amalgamation of the Transferor Company No. 1 with the Transferee Company (listed entity) is chiefly aimed at facilitating direct holding of shares of Transferee Company (a listed entity) by the single foreign entity namely Mahogany Singapore Company Pte Ltd

	(shareholder of Transferor Company) instead of present holding of the same by same foreign entity indirectly through the Transferor Company No. 1, of 3,75,02,140 number of equity shares (10.30%) of Transferee Company. As per the financials on 31.03.2023, just before the appointed date 01.04.2023, there is no business remaining that belongs to the Transferor Company No. 1 that is to be continued as a going concern by the Transferee Company post approval of the Scheme. Hence, the Scheme lacks commercial substance 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. Therefore, the Scheme does not fall under the Scheme of merger /amalgamation for the above reasons and consequently it would be a case of dissolution with winding up of the business. Hence, the sole purpose of the Scheme vis-à-vis amalgamation of Transferor Company No. 1 with the Transferee Company is to facilitate direct holding of shares of listed entity (transferee company) by the shareholder of Transferor Company No. 1 under the cloak of purported merger /amalgamation scheme, without actual merger of business. In fact, it is a simple case of change of shareholder's name against the 3,75,02,140 (10.30%) 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. Further, there is no compromise / arrangement entered with the shareholders of the Transferee Company by Transferor Company No. 1 in this case, and hence the basic criteria as specified in section 230(1)(b) is not met. Hence, it is not meeting the criteria prescribed under section 232(1)(b) of the Companies Act, 2013 dealing with

	merger and amalgamation. 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 clearly rejected by the NCLT, Mumbai Bench vide its speaking order delivered on 5.9.2018 in the matter of scheme between ***GABS INVESTMENTS PRIVATE LIMITED AND AJANTA PHARMA LIMITED (CSP NO. 995 OF 2017 IN CSA NO.791 & 792 OF 2017)***. The present scheme is similar to the scheme rejected by the NCLT, Mumbai Bench in the above case. b) On the consideration that the Scheme vis-à-vis amalgamation of Transferor Company No. 1 with the Transferee Company is not a merger either under Section 232 of Companies Act, 2013 or under Section 2(1B) of the Income Tax Act, 1961 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. 15 Crores (20% capital gain on differential of cost / book value of Rs 675.04 Crores as on 31.03.2023 (AD 01.04.2023) and market value of Rs. 750.04 Crores as on closing of listing month of August 2023 closer to appointed date Rs 75 Crores). Further, it is nothing but a Scheme for distribution of dividend in kind to the tune of Rs. 750.04 Crores in violation of Section 123(1)(a) and 123(5) of Companies Act, 2013. In similar case of ***GABS INVESTMENTS AND AJANTA PHARMA LIMITED,*** NCLT, Mumbai bench adjudicated similar contentions of loss to the exchequer by accepting the contention of the Income Tax Authorities of Mumbai, to the effect that the transfer of shares was being undertaken under the garb of a scheme. In the said case, the Income Tax Department had objected strenuously before the Tribunal as discussed vide para no. 21 of the said orders of NCLT Mumbai (Annexure-3) and the objections of Income tax department were found to be containing merit as

	is evident from para Nos. 37, 38, 39, 48, 50 and 55 of the said order. The Income Tax Department also objected that (para no. 21(vi) of the order) in view of GAAR provisions, the scheme is a deliberate measure to avoid tax burden by using the via medium of NCLT. The scheme vis-à-vis amalgamation of Transferor Company No. 1 with the Transferee Company is purely Impermissible Avoidance Agreement (IAA). This may be clarified by the Petitioners to this Tribunal along with documentary evidence. c) In order to propose a scheme under Section 232, both Clause (a) & (b) of Section 232(1) of Companies Act, 2013 shall be complied with and further, 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 vis-à-vis merger of Transferor Company No. 1 with the Transferee Company, even Section 232(1)(a) of Companies Act, 2013 is not complied with as Scheme for merger of Transferor Company No. 1. Further, no assets are getting transferred to the Transferee Company from Transferor Company No. 1 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 name of its shareholder to facilitate the shareholder of a different entity Transferor Company No. 1 to get the shares transferred in their name from the name of Transferor Company. Hence there is no compromise / arrangement involved in Transferee Company vis-à-vis merger of Transferor Company No. 1. Hence, Section 230 is also not complied with and hence, the Scheme with amalgamation of Transferor Company No. 1 under Section 232(1) cannot be

	proposed at all. Hence, the scheme is not in accordance with law.
3(xii)	The present scheme provides by way of transfer / gift of shares held by the Transferor Company No. 1 to its shareholder constitutes. This amounts to payment of dividend in kind by the Transferor Company No. 1 to its shareholders and results in violation of section 123(5) of the Companies Act, 2013 and is also hit by the provisions of section 281(1) of the Income Tax Act and would be void accordingly. The underlying purpose of the scheme vis-à-vis amalgamation of the Transferor Company No. 1 is to gift the shares of Transferee Company by change of name of the shareholder and the scheme is meant for the purpose of distribution of dividend in kind which is prohibited as per law. This ratio was upheld by the Hon'ble High Court of Bombay vide their judgement dated 15.9.2015 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)***. b) The scheme vis-à-vis amalgamation of Transferor Company No. 1 is in violation of Section 123(1)(a) of the Companies Act, 2013 read with prohibitions /conditions prescribed under Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014 and further the scheme to that extent would result in violation of Section 123(5) of the Companies Act, 2013 as Section 123(5) prohibits dividend in kind. c) That the present scheme propose to defacto transfer / gift the shares of Transferee Company to the Transferor Company No. 1 to and in favour of its shareholder 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 750.04

	Crores, ibid. Hence, it would not be in accordance with section 232(3)(d) of the Companies Act, 2013.
3(xiii)	Clause 4.2 of the Scheme provides that 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, 2013 is factually incorrect as it is not meeting the said definition of amalgamation as per Section 2(1B) of the Income Tax Act, in respect of amalgamation of Transferor Company No. 1, 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 750.04 Cr, ibid, after the winding up of Transferor Company No. 1 to its sole shareholder, a foreign entity. Hence, scheme to the extent of amalgamation of Transferor Company No. 1 does not fall under section 2(1B) of the Income Tax Act.
3(xiv)	Para 2.1.4 of the Valuation Report dated 05.02.2024 (made exclusively for amalgamation of Transferor Company No. 1 with the Transferee Company) clearly specifies that the Transferor Company No. 1 does not hold any investments other than investment in the Transferee Company and it has no other operations and does not intend to carry on any material operating business activity in future. Further the Transferor Company No. 1 does not hold any other significant assets or liabilities, other than the investments in the Transferee Company and hence no value has been attributed to any other assets of Transferor Company No. 1. The valuation report did not arrive at any specific enterprise valuation of the Transferee Company or Transferor Company No. 1, instead, it simply reproduced the number of shares that are getting cancelled as equal number of fresh shares to be issued as consideration without any assets or liabilities

	being taken over by the Transferee Company. Further, this report dated 05.02.2024 is prepared for valuation date as 31.12.2023 as disclosed in Clause 1.2 of the report and hence it is not in sync with the appointed date 01.04.2023. Further, it did not consider latest financials of not more than 6 months old (from Exchange letter dated 01.01.2025) as stipulated by SEBI/Stock Exchanges. Further, it is not specified in the valuation report as to whether the said valuation is in accordance with SEBI / RBI norms/ applicable FEMA Rules since it would tantamount to transfer of shares to a foreign entity. Hence, notice to RBI (FE Department) is required. In view of the above submission, 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.
3(xv)	The proviso to Section 232(3)(b) of the Companies Act, 2013 provides that such shares as investment by the Transferor Company No. 1 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. 750.04 Crores, *ibid,* against such cancelled / extinguished shares. The Listed Transferee Company will not receive any asset from the 1st Transferor Company for the benefit of Transferee Company, however, such listed Transferee Company in violation of Section 232(3)(b) decided to pay consideration by allotting Listed Company's shares worth 750.04 Crores without any commensurate benefit at all. In fact, there is no benefit to the listed transferee company at all. Section 232(3)(b) requires to cancel such shares and does not enable fresh issue of shares against the inter-company investments getting cancelled.
3(xvi)	As against the invested book value of 675.04 Crores (as on

	appointed date) its market value stood at Rs 750.04 Crores, ibid, as on date closest to Appointed Date during August 2023 with a net profit of Rs. 75 Crores, if sold by the Transferor Company No. 1. However, the present scheme proposes in a manner which will facilitate their transfer to its shareholders by change of owners name using the vehicle of Listed Transferee Company, in violation of law. If similar scheme providing for change of name of owner of shares through scheme under Section 230-232 of the Companies Act, 2013 is allowed / sanctioned, then every corporate shareholder of a listed company having high worth will resort to the same 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. 750.04 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.
3(xvii)	Survey was conducted by the IT Department in Transferor Company No. 1 under Section 133A(2A) of IT Act, as disclosed under Note No. 7 of the audited financials of the Transferor Company No. 1 as at 31.3.2023, Accordingly, its latest status of appeal proceedings, and value involved need be disclosed to this Tribunal along with copy of orders issued on the said subject in order to verify if it has any impact on the scheme / content of the scheme or reliability of the financials of the Transferor Company No. 1.
3(xviii)	In para no. 16(viii) of this Tribunal's order pronounced on 30.05.2025, direction was issued to Applicant Companies to individually send notice, interalia, to the Official Liquidator,

	along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (CAA) Rules, 2016. Further, as per para no. 16(xi) of the said order, *ibid*, they were directed to comply with the applicable law including forms and formats contained in the Companies (CAA) Rules, 2016 as well as the provisions of the Companies Act, 2013. In this regard, it is submitted that the Transferee Company has not issued any notice to the Official Liquidator as directed by this Tribunal as above, till date, in compliance with the directions of this Tribunal. Accordingly, the Official Liquidator has not received the notice in CAA-3 format along with notice (CAA-2] as required under section 230(3) of the Companies Act, 2013 read with Rule 6 of Companies (CAA) Rules i.e., along with statement etc., prior to filing the petition. In this case, meeting is ordered and accordingly, CAA-2 as an attachment of CAA-3 is required to be served on Official Liquidator, but not served as on date. Further, it is noticed that SEBI/ Stock exchange has directed the Transferee Company to incorporate further details in the statement to be circulated as part of notice (CAA-2) of meeting and in the absence of service of the same, the Official Liquidator could not verify the compliance of the same as well and other compliances of Section 230(3) and Rule 6, *ibid*. Hence, this Tribunal may direct the Transferee Company to comply with the said order(s) pronounced on 30.05.2025 immediately and to direct it to serve proper notice in CAA-3 attached with CAA-2 and all other documents statement as required as per law, in order to verify and submit further report, if required. b) Further, similar direction was issued by this Tribunal vide para no. 6, 7(d) of the order dated 28.08.2025 to serve notice of petition, however, the Official Liquidator has not received any such notice from the Transferee Company. Hence, this

	Tribunal may be pleased to direct the transferee comply with the order dated 28.08.2025.

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 to public interest **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. 1,*50,000/- + GST (Rupees One Lakh and Fifty 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 vide S.R. No. 634 dated 12.02.2026:

Para	Observations
3(i)	The term "Appointed Date" has been defined in Clause 3.3 as 1st April 2023 or such other date as may be fixed or approved by this Tribunal, whereas the "Effective Date" has been defined as in Clause 3.6 the date on which certified copies of the order of this Tribunal sanctioning the Scheme are filed with the Registrar of Companies by the Transferor Companies and the Transferee Company. Further, the Petitioner Companies have, in the Company Petition, prayed that this Tribunal may fix the Appointed Date as 01.04.2025. In any event, the Effective Date occurs subsequent to the Appointed Date. Clause 7 of the Scheme expressly provides that all employees of the Transferor Companies who are in service on the Effective Date shall become employees of the Transferee Company without any interruption in service and on terms no less favourable than those existing prior to amalgamation. Consequently, employees who are in service as on the Effective Date would naturally include employees who were in service as on the Appointed Date, unless they have ceased employment in the ordinary course due to resignation, retirement, termination, or any other lawful reason. Therefore, no separate undertaking is warranted from the Petitioner Companies in relation to retrenchment of employees as on the Appointed Date, as the Scheme itself comprehensively safeguards continuity of employment upon the Scheme becoming effective.
3(ii)	The OL has sought for an undertaking from the companies stating that they would fix the Record Date to be immediately after sanction of the Scheme. It is submitted that the OL has not relied on any provision of law to seek for such direction. Clause 3.15 of Part I of the Scheme which defines the term "**Record Date**" as: *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 First Transferor Company for the purpose of determining the members of the First Transferor Company to whom new shares in the Transferee Company shall be allotted under Part Ill of the Scheme;" Once the Scheme is approved the Record Date would come to be fixed. The Petitioner Companies shall abide by the Scheme in terms of fixing the Record Date. Since the Clause 3 .15 of the Scheme states that the Record Date would be fixed by the board of directors of the Transferee Company in consultation with the board of directors of the First Transferor Company, it would be done before the Effective Date of the Scheme, upon which date the First Transferor Company would stand dissolved. All the Transferor Companies, except the First Transferor Company, are wholly owned subsidiaries of the Transferee Company, and _no new equity shares are proposed to be issued to the shareholders of such Transferor Companies pursuant to the Scheme. Accordingly, the requirement of fixing a record date in respect of such Transferor Companies except First Transferor Company, does not arise. The Transferee Company was already holding 51 % of the paid-up equity share capital of the Third Transferor Company and, in the ordinary course of business and for expansion purposes, acquired the remaining 49% of the paid-up equity share capital from the erstwhile shareholders on 20.04.2024. Consequently, the Third Transferor Company became a wholly owned subsidiary of the Transferee Company. Upon the Scheme becoming effective, the shares held by the Transferee Company in the Third Transferor Company shall stand cancelled or extinguished. Such cancellation arises solely on account of the legal impossibility of a company holding its own shares pursuant to an

	amalgamation. This principle is well recognized under company law and is also reflected in the proviso to Section 232(3)(b) of the Companies Act, 2013, which contemplates cancellation or extinguishment of such shares in a scheme of amalgamation. Accordingly, the question of fixing a record date in respect of the Third Transferor Company does not arise.
3(iii)	A plain reading of Clause 4.2 of the Scheme would make it clear that no such auto modification of the Scheme, either post or pre sanction is contemplated. Clause 4.2 of the Scheme only contemplates modification of any terms of provisions the Scheme that are found or interpreted to be inconsistent with 2(1B) of the Income Tax Act, 1961, including as a result of an amendment of law or any other reason whatsoever. Such modification is only to ensure the Scheme to the extent necessary to comply with Section 2(1B) of the Income Tax Act, 1961 or such other provisions. Clause 4.2 of the Scheme are extracted below: *"4.2. The merger of the Transferor Companies 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. "* Therefore, 'modification' contemplated under Clauses 4.2 operates to ensure compliance with the Income Tax Act, 1961 including any future amendments and to ensure that the Scheme is not rendered inconsistent with such amendments,

	if any. The Petitioner Companies further undertake that no alternation or modification to the contents of the Scheme shall be made, post sanction, without specific and prior approval of this Tribunal.
3(iv)	Insofar as the observations in paragraph 4(ii) are concerned, in terms of the General Circular No.09/2019 dated 21.08.2019, since the Scheme was filed after receipt of the 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. In order to fulfil the requirement 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. It is stated that the observation of the Official Liquidator alleging non-compliance by the Transferee Company with the BSE no-objection letter dated 01.01.2025, on the ground that the valuation report did not consider financial statements within a period of six months (i.e., that the financials ought not to be older than 01.07.2024), is without basis since there is no material to support the assumption as to how the date has been arrived at by the Official Liquidator. The Valuation Report dated 05.02.2024 was prepared based on the financial statements as on 31.12.2023. The Scheme of Amalgamation was approved by the Board of Directors of the Transferee Company on 05.02.2024, and thereafter the draft Scheme along with the Valuation Report was submitted to the stock exchanges. This application was made with the BSE on 23.02.2023 and NSE on 26.02.2023. The Scheme and the Valuation Report were based on financial statements as on

	31.12.2023, which were not older than six months from the date of submission to the stock exchanges. Accordingly, the requirements stipulated in the no-objection letters issued by BSE and NSE have been duly complied with. In response to the allegation that the ante dated Appointed Date is to avoid the lapse of losses a deferred tax asset of Rs. 726.41 crore as on 31.03.2023 on account of carryforward losses reported in the books of the First Transferor Company, it is reiterated that the delay in filing the Company Application beyond one year from the stated Appointed Date was solely on account of the time consumed in obtaining in-principle approvals from the stock exchanges. Further, the discrepancy between Note 37 and Note No. 26 of the audited financial statements for the FY 2022-23 of the First Transferor Company is a presentation error in relation to the disclosure of carryforward losses. The carry-forward loss figure was mistakenly stated as "72,641.36" instead of being expressed in lakhs after applying the unit convention. The correct carry-forward loss figure is approximately Rs. 0.73 Lakhs. It is pertinent to note that the figure has been correctly reflected as Rs. 0.73 lakhs in the "Earnings Per Equity Share" section, where reference to Note No. 26 is also made. This isolated presentation error does not affect the underlying books of accounts, tax records, or the actual financial position of the First Transferor Company. Accordingly, the reference in the Report to a deferred tax asset of Rs. 726.41 crore arises from a misreading of the said note. Save and except the presentation issue in Note No. 26 of the audited financial statements for FY 2022-23, the figures have been correctly and consistently captured in all other parts of the financial statements and records. The audited financial statements of the First Transferor Company as on 31.03.2024 already form part of the Company

	Petition. Note No. 26, Sl. No. 4 of the Financial Statements as on 31.03.2024 correctly sets out the carry-forward loss figures i.e., indicates that the carry-forward losses during the FY 2022-23 is 0.73 (Rupees Seventy Three Lakh). The First Transferor Company is not eligible for carry forward and set-off of tax losses under Section 72A of the Income-tax Act, 1961. Therefore, the observation that the Appointed Date was selected to avoid lapse of such losses is misconceived and without factual basis. The Official Liquidator has, travelled beyond the scope of his jurisdiction in making observations relating to tax matters, which fall within the domain of the Income Tax Authorities. In compliance with Section 230(5) of the Companies Act, 2013, notices were duly served upon the jurisdictional Income Tax Authorities of the Petitioner Companies. While the Jurisdictional Income Tax Officer of the Second, Third, Fourth and Fifth Transferor Companies, have given their no objection to the proposed scheme and sought certain clarification/representation from respective, the jurisdictional Income Tax Officer of the First Transferor Company has not submitted any representation or observation to the Scheme.
3(v)(a)	At the time of the approval of the Scheme by the Board of Directors Second, Third, Fourth and Fifth Transferor Companies were wholly owned subsidiaries of the Transferee Company. In view of the settled legal position that a company cannot hold its own shares pursuant to an amalgamation, Clause 11.1 of the Scheme appropriately provides for cancellation of the shares held in the wholly owned subsidiary companies upon the Scheme becoming effective. The observation of the Official Liquidator appears to proceed on the premise that, since the Appointed Date under the Scheme is defined as 01.04.2023, Clause 11.1 ought to expressly record the subsisting shareholding relationship

	between the Transferor Companies and the Transferee Company. It is stated that such a contention is misplaced and not warranted under the provisions of law. Clause 11.1 deals with the treatment of shares upon the Scheme becoming effective and does not require a reiteration of the inter se shareholding structure as on the Appointed Date. It is stated that the Petitioner Companies have, in the Company Petition, prayed that this Tribunal may be pleased to fix the Appointed Date as 01.04.2025. Accordingly, the Appointed Date remains subject to the approval and directions of this Tribunal.
3(v)(b)	The Official Liquidator travelled beyond the scope of the present proceedings in making observations concerning the Fourth Transferor Company in Paragraph 3(v)(b) of the Report, whose registered office is situated in the State of Karnataka which falls under the jurisdiction of the Official Liquidator attached to the Hon'ble High Court of Karnataka. Since the registered office of the Fourth Transferor Company is situated in the State of Karnataka, the said company is not a petitioner in the present Company Petition and a separate Company Petition in respect of the Fourth Transferor Company has been filed before NCLT, Bengaluru in CP(CAA)/56/BEN/2025. Accordingly, the audited financial statements of the Fourth Transferor Company have already been duly filed before the NCLT, Bengaluru in the aforesaid proceedings.
3(v)(c)	It is stated that averments in this paragraph does not require any specific traversal
3(v)(d)	At the time of approval of the Scheme by the Board of Directors of the Petitioner Companies in February 2024, the Third Transferor Company a wholly owned appropriately determined the share exchange consideration only for the

	shareholders of the First Transferor Company and excluded the other Transferor Companies, which were wholly owned subsidiaries of the Transferee Company. From the Appointed Date, till the Effective Date, the Third Transferor Company shall carry on its business activities in trust for the Transferee Company. The Third Transferor Company's business does not come to a standstill after the Appointed Date, till the Effective Date. The Transferee Company was already holding 51 % of the total paid up equity share capital of the Third Transferor Company and in order to undertake an expansion in the ordinary course of business, Transferee Company has purchased remaining 49% of the total paid up equity share capital from the erstwhile shareholders on 20.04.2023. The true copy of the Form MGT 7 along with the List of Shareholders and share transfers which was filed with the MCA are annexed herewith. With respect to the allegations that the transaction amounts to buy-back under Section 68 of the Companies Act, 2013, it is stated that a buy back necessarily requires the satisfaction of two essential statutory elements: (i) the company must purchase its own shares from its shareholders for consideration; and (ii) such shares must thereafter be extinguished in accordance with Section 68(7) of the Act and the applicable rules. Neither of these foundational elements is attracted in the present case. The cancellation of shares in the present case arises ipso jure from the amalgamation process and constitutes a statutory consequence of the merger. It does not amount to, nor does it partake the character of, a transaction whereby the Transferor Company provides consideration to its shareholders or "buys back" its own shares as contemplated under Section 68 of the Companies Act, 2013. The extinguishment results solely from the legal impossibility of a company holding its own shares

	post-amalgamation. This position is reinforced by the proviso to Section 232(3)(b) of the Companies Act, 2013, which expressly mandates that, pursuant to a compromise or arrangement, a Transferee Company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished. Furthermore, the Third Transferor Company stands dissolved without winding up upon amalgamation. The extinguishment of share capital incident to such dissolution has repeatedly been held by courts to not constitute a buyback, and does not fall within the scope of Sections 68-70. The NCLT, Chandigarh Bench, in the scheme of amalgamation between Salter India Limited with Avery India Limited (CP(CAA)No.2/Chd/Hry/2019), dealt with an analogous objection raised by the Regional Director regarding the alleged characterization of a capital reduction under a Scheme of Arrangement as a "buy-back" under Section 68 of the Companies Act, 2013. In that matter, the petitioner companies submitted that capital reduction under the proposed Scheme of Arrangement is in no manner a buyback of shares under Section 68 of the Act. The buyback provisions do not supplant any part of the pre-existing jurisdiction of the Court/NCLT to sanction a scheme for share reduction under Sections 230-232, 66 of the Act. The NCLT accepted this position and sanctioned the scheme. It is stated that a copy of form MGT 7 (Annual Return) for the FY 2023-24 along with the attachments (1) List of Shareholders and (2) List of Share Transfers, filed by the Third Transferor Company has been annexed herewith. The copy of share purchase agreement which was requested by the OL is not relevant to the proposed scheme and therefore

	it may not be required to be filed. In a scheme of amalgamation, consideration shares are issued to the shareholders whose names appear on the register of members as on the record date, which is fixed prior to the Effective Date. In the present case, with effect from 20.04.2023, the Transferee Company holds 100% of the paid-up equity share capital of the Third Transferor Company. Therefore, there is no requirement to amend the Scheme to provide for payment of consideration by the Transferee Company to shareholders holding 49% of the paid-up share capital as on 01.04.2023
3(v)(e)	In a scheme of amalgamation, the consideration is issued to the shareholders of the Transferor Company whose names appear in the register of members as on the Record Date, and not as on the Appointed Date, as has been incorrectly assumed by the OL. Upon sanction of the Scheme, in terms of Clause 10 thereof, shares of the Transferee Company shall be issued as consideration to the shareholders of the First Transferor Company whose names appear in the register of members as on the Record Date and the share capital of the Second, Third, Fourth and Fifth Transferor Companies being the wholly owned subsidiary of the Transferee Company, shall be cancelled in accordance with Clause 11 of the Scheme.
3(vi)(a)	There is no single accounting standard that exclusively governs accounting for a scheme of amalgamation of the First Transferor Company with the Transferee Company. The accounting treatment is determined in accordance with the principles laid down under the applicable Indian Accounting

	Standards (Ind AS), to the extent relevant in the facts and circumstances of the case. It is further submitted that there is no requirement under law to enumerate the specific Ind AS proposed to be applied in advance. The Petitioner Companies nevertheless undertake that, upon the Scheme becoming effective, the accounting treatment shall be carried out in strict compliance with the applicable Indian Accounting Standards and other statutory requirements.
3(vi)(b)	There is no requirement under law to furnish a separate list of assets and liabilities proposed to be transferred pursuant to a scheme of amalgamation. Upon the Scheme becoming effective, all the assets and liabilities of the First Transferor Company as on the Effective Date shall stand vested in and transferred to the Transferee Company by operation of law in terms of the Scheme. The pooling of interests method is not applicable in the present case, as the First Transferor Company and the Transferee Company are not entities under common control. Accordingly, upon sanction of the Scheme, the assets and liabilities of the First Transferor Company shall be recorded in the books of the Transferee Company at fair value, in compliance with the applicable Indian Accounting Standards.
3(vi)(c)	Clause 12.1.2 of the Scheme provides how the shares to be issued to the shareholders of the First Transferor Company will be recorded in the books of the Transferee Company. For ease of reference same has been extracted below: *"12.1.2. The equity shares issued by the Transferee Company to the shareholders of the First Transferor Company, as prescribed in Clause 10 of this Scheme, shall be recorded at fair value such that their face value shall be credited to the share capital account and*

	excess of fair value of equity shares over their face value shall be recognised as the securities premium account. " With reference to the observation of the Official Liquidator that the value of the shares proposed to be issued to the shareholders of the First Transferor Company is not specified in the Scheme, is without basis. The Transferee Company is a listed company and, therefore, its share price is subject to market fluctuations. The fair value of the consideration shares can only be determined at the date of issuance of such shares, in accordance with applicable valuation principles. It is further submitted that, although a specific reference to the relevant Indian Accounting Standards has not been expressly set out in the Scheme with respect to recognition of any difference between fair value and face value, the Petitioner Companies hereby undertake that the same shall be accounted for in strict compliance with the applicable Indian Accounting Standards and other statutory requirements.
3(vi)(d)	The First Transferor Company is holding 37,502,140 equity shares in the Transferee Company and upon the sanction of scheme, since the company cannot hold its own shares, not only the total number of shares held by the First Transferor Company as on the appointed Date, the shares held as on the Effective date will be cancelled and treated in accordance with Clause 12. 1.3 of the Scheme. Clause 12. l.3 of the Scheme is extracted below: *"12.1.3. The investment in equity shares of the Transferee Company held by the First Transferor Company shall stand cancelled and corresponding adjustment shall be made against the Share Capital to the extent of face value of equity shares cancelled. The excess of carrying amount over the face value of the equity shares shall be debited to the Securities Premium Account to the extent of total credit balance in the said account and balance, if any,*

	against retained earnings under the head reserves & surplus. " Therefore, merely because the specific reference to the relevant Indian Accounting Standards has not been expressly set out in Clause 12.1.3 of the Scheme in relation to adjustment of any excess balance to the securities premium account, cannot be a ground for the Official Liquidator to contend that such accounting treatment is impermissible. Nevertheless, the Petitioner Companies undertake that the accounting treatment contemplated under Clause 12.1.3 shall be carried out in strict compliance with the applicable Indian Accounting Standards and other statutory requirements.
3(vi)(e)	Clause 13 .1 of the Scheme, provides that from the Appointed Date until the Effective Date, the First Transferor Company shall carry on its business and operations in trust for and on behalf of the Transferee Company. The business of the First Transferor Company does not cease or come to a standstill during the intervening period between the Appointed Date and the Effective Date. Accordingly, all inter se balances and transactions between the First Transferor Company and the Transferee Company, as appearing on the Effective Date, shall stand cancelled in accordance with Clause 12.1.4 of the Scheme.
3(vii)(a)	As on the date of approval of the Scheme by the respective Boards of Directors, as well as on the date of filing of the first motion application, the second motion petition and on the Effective Date, the Third Transferor Company is and continues to be a wholly owned subsidiary of the Transferee Company. Since the Transferee Company holds 100% of the total paid up share capital of the Third Transferee Company, it clearly evidences a common control situation within the

	meaning of Appendix C to Ind AS 103 (Business Combinations). Accordingly, the pooling of interests method prescribed under Appendix C to Ind AS 103 is applicable and shall be followed for accounting purposes. It is further submitted that the accounting treatment contemplated under Clause 12.2.2 of the Scheme shall be implemented in strict compliance with the applicable Indian Accounting Standards and other statutory requirements. In so far as the submission of the financial statements of the Fourth Transferor Company is concerned, the reasons have already been set out in detail in above in response to Paragraph 3(v)(b), and the same are reiterated and relied upon herein for the sake of brevity
3(vii)(b)	Upon the sanction of the Scheme, the reserves of the Second to Fifth Transferor Companies shall be recognised as appearing in their stand-alone financials and shall be transferred to the Transferee Company. It is further submitted that the accounting treatment contemplated under Clause 12.2.2 shall be carried out in strict compliance with the applicable Indian Accounting Standards and other statutory requirements.
3(vii)(c) and (d)	In terms of Clause 13.1 of the Scheme, from the Appointed Date until the Effective Date, the Second to Fifth Transferor Companies shall carry on their respective businesses and operations in trust for and on behalf of the Transferee Company. The businesses of the Second to Fifth Transferor Companies do not cease or come to a standstill during the intervening period between the Appointed Date and the Effective Date. Accordingly, all inter se balances and inter se investments between the Second to Fifth Transferor Companies and the

	Transferee Company, as appearing on the Effective Date, shall stand cancelled in accordance with Clauses 12.2.3 and 12.2.4 of the Scheme.
3(viii)	Upon the Scheme becoming effective, all the assets and liabilities of the First Transferor Company, including the pending and identified litigations set out in Schedule I to the Scheme, shall stand transferred to and vest in the Transferee Company and shall be continued, prosecuted and/or defended by or against the Transferee Company, as the case may be. Clause 6.1.16 of the Scheme does not in any manner restrict or negate the continuation of such identified litigations against the Transferee Company. Without prejudice to the foregoing, Mahogany Singapore Company Pte. Ltd., being the 100% shareholder of the First Transferor Company, has agreed to indemnify the First Transferor Company and the Transferee Company and their respective directors and officers for any losses that may arise out of the identified litigations. Such indemnity arrangement does not in any manner prejudice or adversely impact any tax liability, as any tax dues, if determined, would in any event be discharged in accordance with law. For the ease of reference, Clause 6.1.16 has been extracted below: *"6.1.16. Notwithstanding the aforesaid, the Parties to the Scheme acknowledge that the shareholder of the First Transferor Company, Mahogany Singapore Company Pte Ltd., which holds the entire beneficial interest of the First Transferor Company, has agreed to indemnify and hold harmless the First Transferor Company, its directors and officers and upon consummation of the Scheme, indemnify and keep indemnified and hold harmless the Transferee Company, its directors and officers ("Indemnified Party") from and against all Losses suffered or incurred by the Indemnified Party arising out of or pursuant to an order or award passed by a court of*

	competent jurisdiction on account of or relating to the identified litigations, more fully set out in Schedule I of this Scheme ("Identified Litigation'') which may devolve on Indemnified Party on account of amalgamation of the First Transferor Company with the Transferee Company but would not have been payable by such Indemnified Party otherwise, in the form and manner as may be agreed amongst the Transferee Company and the shareholders of the First Transferor Company. " However, no such agreement exists between the Transferee Company and Mahogany Singapore Pte. Ltd. Therefore, no obligation arises to furnish any documentary evidence in respect of such an agreement. Since the jurisdictional Income Tax Officer of the First Transferor Company has not submitted any representation to the Scheme, in the absence of any response from the concerned Income Tax Authority, it shall be presumed that the department has no representation to the Scheme in so far as the First Transferor Company is concerned.
3(ix)	The Valuation Report dated 05.02.2024 issued by Mr. Harsh Chandrakant Ruparelia, a Registered Valuer - Securities or Financial Assets (IBBI Registration No. IBBI/RV/05/2019/11106), for the purpose of determining the share exchange ratio under the Scheme, has been prepared in accordance with generally accepted valuation methodologies and applicable regulatory requirements. The Valuation Report inter alia provides that, upon the Scheme becoming effective, 3,75,02,140 equity shares held by the First Transferor Company in the Transferee Company shall stand cancelled, as the Transferee Company cannot hold its own shares pursuant to the amalgamation. Correspondingly, the same number of equity shares, i.e., 3, 75,02, 140 equity shares, shall be issued by the Transferee Company to the

	shareholders of the First Transferor Company in accordance with the share exchange ratio under the Scheme. Therefore, the shareholders of the First Transferor Company would continue to hold an equivalent number of equity shares in the Transferee Company post-amalgamation, thereby ensuring continuity of their economic interest. Section 232(2)(d) of the Companies Act, 2013 does not prescribe any specific or mandatory methodology for valuation. The said provision also does not restrict a valuation report to merely setting out the share exchange ratio, nor does it prohibit the valuer from indicating the number of shares to be issued pursuant to amalgamation. The Valuation Report in the present case has been prepared by a registered valuer in accordance with generally accepted valuation principles and industry practice, and therefore satisfies the requirements contemplated under the Act. In the present Scheme, the valuation has been carried out by a reputed IBBI-registered valuer adopting well-recognized valuation methodologies. Once such valuation has been accepted by majority of shareholders and creditors, the Official Liquidator cannot substitute his own view on valuation in place of expert determination The Hon'ble Supreme Court in the landmark judgement of ***Miheer H. Mafatlal v Mafatlal Industries Limited (1997) I SCC 579)*** , held that it is for the equity shareholders acting bona fide in the interest of their class as a whole to accept a particular scheme and once the exchange ratio is 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.

	The Hon'ble NCLAT, New Delhi in ***Indiabulls Real Estate Limited and Others v. Department of Income Tax (2025 SCC OnLine NCLAT 85)***, has held that approval by overwhelming majority of shareholders indicates fairness of the Scheme, and that in normal course, the Tribunal should not interfere in the Valuation done by the Experts using one of the standard prescribed valuation methods. The Official Liquidator has submitted that, since the First Transferor Company held 10.30% (3,75,02,140 equity shares) of the paid-up equity share capital of the Transferee Company as on 31.03.2023 and 8.50% (3,75,02,140 equity shares) as on 31.03.2024, notices under the Scheme ought to be issued to persons who allegedly purchased the differential shares. In this regard, it is stated that although the percentage shareholding of the First Transferor Company has reduced due to changes in the total paid-up share capital of the Transferee Company, the First Transferor Company has continued to hold the same number of shares, i.e., 3,75,02,140 equity shares, on 31.03.2023, 31.03.2024 and continues to hold the same even as on the date of this Affidavit. There has been no transfer or sale of shares by the First Transferor Company and, accordingly, there are no purchasers from whom any shares were acquired. Therefore, the question of issuing notices to any alleged purchaser of equity shares from the First Transferor Company does not arise.
3(x)	At present, the First Transferor Company holds 3, 75,02, 140 equity shares in the Transferee Company, and Mahogany Singapore Pte. Ltd. holds 100% of the paid-up share capital of the First Transferor Company. Upon the Scheme becoming effective, Mahogany Singapore Pte. Ltd. shall directly hold shares in the Transferee Company instead of holding the same indirectly through its wholly owned subsidiary i.e.,

	First Transferor Company. The Scheme therefore results in a simplification of the shareholding structure of the Transferee Company and elimination of multiple layers of shareholding. Therefore, the rationale envisaged is 2.1(h) that the merger of First Transferor Company with the Transferee Company will simplify the holding structure of the Transferee Company and avoid multiple layers of shareholding, post the amalgamation is true and correct. The reference in the communication dated 08.02.2024 addressed to State Bank of India describing the First Transferor Company as a subsidiary of the Transferee Company was an inadvertent clerical error. At the time of filing of the Company Application, the auditor's certificate confirmed that HDFC Bank was the sole secured creditor of the Transferee Company as on 07.03.2025. State Bank of India was not a secured creditor of the Transferee Company as on the date of filing or thereafter. Accordingly, the inadvertent reference in the letter dated 08.02.2024 does not cause any prejudice to any stakeholder, as State Bank of India is neither a secured creditor nor an affected party in the present Scheme.
3(xi)	Paragraph 3(xi)(a) & (c) of the Report. The First Transferor Company is in the business of trading of auto components and generated revenue from operations is INR 93,000 for the financial year 2024-25. The report fails to provide any reason or basis for stating there would be no business left that belongs to the First Transferor Company to be continued as a going concern by the Transferee Company post-merger. Concluding 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 the whole purpose of the purported scheme is to facilitate direct holding of shares of listed entity by shareholders of the First Transferor Company under the cloak of merger, without actual merger of business. The allegations of the OL that the change in the shareholding of the Transferee Company from the First Transferor Company to the Singapore Company can only be accomplished under Section 56 of the Companies Act, 2013 by paying stamp duties and by paying necessary tax on capital gains, are completely misconceived. Any Scheme of Amalgamation between two entities is a matter of domestic concern of the respective companies 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 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)(a) &(b) is ex-facie incorrect in as much as it is contemplated that the assets and liabilities of the Transferor Company would stand vested in the Transferee Company under the Scheme. The Scheme has been framed strictly in conformity with the provisions of Sections 230 - 232 of the Companies Act, 2013. Upon the Scheme becoming effective, inter alia, all assets, liabilities, rights, approvals, licenses, employees, legal proceedings and contracts of the First Transferor Company shall stand vested in and continued with the Transferee Company in terms of the

	Scheme. In the section 232(1)(b) definition it is provided that, under the scheme, any part of undertaking, property or liabilities of company is required to be transferred pursuant to the Scheme. As per the audited financial statements of the First Transferor Company as on 31.03.2025, the First Transferor Company, inter alia, has total assets aggregating to INR 4,55,06,70,000, including investments held in the Transferee Company. The First Transferor Company has also recorded revenue from operations of INR 93,000 for FY 2024-25. 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 and cash equivalent and other current assets, etc. As regards the assets 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 10.3 of the Scheme, and in lieu thereof, to the extent of the shares held by the First Transferor Company, the shareholders of the First Transferor Company would be allotted shares in the Transferee Company pursuant to Clause 10.1 of the Scheme, in proportion to their respective holdings in the First Transferor Company. Such a Scheme is fully compliant with the provisions of the Companies Act, 2013 and Section 232(1) in particular. Therefore, the assets and liabilities of the Transferor Company shall become assets and liabilities of the Transferee Company pursuant to the proposed Amalgamation and the Scheme is in compliance with the provisions of the Companies Act, 2013 and Section 232(1) in particular. The observation that the present case amounts to a "dissolution with winding up" instead of a "dissolution without winding up" is based on an erroneous interpretation of the Scheme. Reliance 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 inapplicable to the present case. In GABS INVESTMENTS matter, the NCLT rejected the scheme with a view that the Scheme was a mechanism to tax evasion considering the case on its own merits. In the said case, the Income Tax Department had raised significant objections opposing the sanction of the scheme demonstrating that the scheme was a device to cause substantial loss to the exchequer to the Government. 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 Scheme, the jurisdictional Income Tax Officer of the First Transferor Company has not submitted any representation to the Scheme. Subsequent to the issuance of notice under Section 230(5) of the Companies Act, 2013, and in the absence of any response from the concerned Income Tax Authority, it shall be presumed that the department has no representation in relation to the Scheme in so far as the First Transferor Company is concerned. In response to paragraph 3(xi)(b) &(xiii) of the Report, it is stated that the provisions of Section 2(1B) of the Income Tax Act, 1961, prescribes the following conditions to an amalgamation: a) 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; b) 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

	c) 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. 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 10 of the Scheme, the, Transferee Company would issue and allot shares to the shareholders of the First Transferor Company whose names appear in the register of members as on the Record Date. Hence, all the conditions of Section 2(1B) of the Income Tax Act, 1961, are satisfied and it cannot be said that the Scheme is not a scheme of amalgamation. As regards the averment in relation to capital gains, it is stated 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 a 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 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 stated 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 bonafide transaction based on a commercial rationale. 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 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. The Bombay High Court in the case of AVM Capital Private Limited and Ors., 2012 173 Comp Cas 355 (Bom) at para 22 has held that where the holding companies merge 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. 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 First Transferor or Transferee company. Instead, it provides for the issuance of shares by the Transferee Company to the shareholders of the First Transferor Company as consideration for the amalgamation. Accordingly, the provisions of Section 123 of the Companies Act, 2013, are not applicable in this context.
3(xii)	The Scheme does not contemplate any transfer or gift of shares by the First Transferor Company to its shareholders. Upon the Scheme becoming effective, equity shares of the Transferee Company shall be issued to the shareholders of the First Transferor Company as consideration for the transfer and vesting of the entire Undertaking of the First 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 further supported by a fairness opinion issued by a SEBI-registered Category I Merchant Banker. Therefore, the issuance of shares under the Scheme is a discharge of consideration pursuant to a Scheme and cannot, by any stretch, be characterised as a dividend. In the case of Indian Seamless Enterprises Ltd., 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 First Transferor Company and not a distribution of dividend in kind. The Regional Director, vide its Report dated 01.01.2026, has expressly stated that 'no objections' are there to the present Scheme, subject to submission of requisite declarations and undertakings by the Petitioner Companies which have been furnished. In response to Paragraph 3(xii)(b) & (c), it is stated that the Scheme does not contemplate any distribution or payment of dividend to any person. In terms of Section 123 of the Companies Act, 2013, a dividend may be declared only out of the profits of a company. The present Scheme does not involve any distribution of profits by the First Transferor Company. Instead, it provides for issuance of shares by the Transferee Company to the shareholders of the First Transferor Company strictly as consideration for the amalgamation. Therefore, the provisions of Section 123 of the Companies Act, 2013 and the Companies (Declaration and Payment of Dividend) Rules, 2014 are not applicable to the present Scheme. The assertion that the proposed amalgamation of the First Transferor Company with the Transferee Company is not in compliance with Section 232(3)(d) of the Companies

	Act, 2013 is incorrect and devoid of merit
3(xiv)	Valuation Report dated 05 February 2024, issued by Mr. Harsh Chandrakant Ruparelia for purpose of determining the share exchange ratio under the Scheme, has been prepared in accordance with generally accepted valuation methodologies and applicable regulatory requirements. It has been held by the Hon'ble Supreme Court in the judgement of ***Miheer H. Mafatlal v Mafatlal Industries Limited ((1997) 1 SCC 579),*** that it is for the equity shareholders acting bona fide in the interest of their class as a whole to accept a particular scheme and once the exchange ratio is 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. In the case of ***Indiabulls Real Estate Limited and Others v. Department of Income Tax (2025 SCC OnLine NCLAT 85***), Hon'ble Supreme Court of India, has held that approval by overwhelming majority of shareholders indicates fairness of the Scheme, and that in normal course, the Tribunal should not interfere in the valuation done by the experts using one of the standard prescribed valuation method. In the case of ***Aradhana Beverages & Foods Company Ltd. v. Regional Director of Companies (1998 (46) DRJ 228),*** Hon'ble Delhi High Court, has held that when the shareholders and creditors are better equipped to gauge the value of their shares with reference to market trends and if they have approved the amalgamation, the Regional Director cannot be heard to say that the merger would not be in the interest of the shareholders and creditors and consequently in public

	interest. The OL's observation the Valuation report is based on the financials as on 31.12.2023 and it does not sync with the Appointed Date being 01.04.2023 is wholly misconceived and baseless. The Companies Act, 2013 does not specify that the valuation should be based on the financials as on the Appointed Date and not on any other date. Therefore, a valuation based on the financial statements as on 31.12.2023 cannot be regarded as non-compliant with the Companies Act. The Hon'ble NCLAT, New Delhi in ***RHI India Private Limited and Ors. Vs. Union of India (MANU/NV0013/2021)*** set aside order of NCLT, Mumbai dated 02.03.2020 wherein a scheme of amalgamation was rejected inter alia on the ground that the appointed date of the scheme is 01.01.2019 whereas the valuation date is 31.07.2018. The Hon'ble NCLAT observed that the MCA Circular enables the companies in question to choose and state in the scheme an 'appointed date' and such date may be a specific calendar date or may be tied to the occurrence of an event such as grant of license by a competent authority or fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant to the scheme. Hon'ble NCLAT had observed that NCLT shall not reject the scheme solely on the ground that the appointed date and valuation date are different. The NCLT has approved various schemes of arrangement despite similar objection by Regional Director/ official liquidator on the date and relevancy of valuation report, including the following: a) Scheme of arrangement between Akarsh Business Consulting Private Limited and Nous Infosystems Private Limited, sanctioned by NCLT,) Scheme of arrangement

	between Manoj Mercantile Credit Private Limited, New Age Import Private Limited, Aakarashak Properties & Holding Private Limited, Ektaa Steel & Credit Private Limited, Srivaru Poly Packs Private Limited; and Srivaru Agro Private Limited Company, sanctioned by NCLT, Kolkata, Court I, on April 05, 2024 in (C.P.) (CAA) No. 12/KB/2023. Upon the Scheme becoming effective, shares of the Transferee Company shall be issued to the shareholders of the First Transferor Company in accordance with the Scheme, as consideration for the transfer and vesting of the undertaking of the First Transferor Company into the Transferee Company. In the present case, the Scheme does not involve any inflow of funds from outside India and therefore there is no requirement to issue any prior notice to the Reserve Bank of India solely on that basis. It is stated that, since the shareholder of the First Transferor Company is a foreign entity, the Transferee Company shall undertake and complete all necessary filings and compliances as may be required under the Foreign Exchange Management Act, 1999 and the regulations framed thereunder, upon issuance of the consideration shares. It is reiterated that Section 232(2)(d) of the Companies Act, 2013 does not prescribe any specific or mandatory methodology for valuation. The Valuation Report in the present case has been prepared by a duly registered valuer in accordance with generally accepted valuation principles and industry practice, and therefore satisfies the requirements contemplated under the Act.
3(xv)	The allegation that no asset is being transferred and that the Scheme is in violation of Section 232 of the Companies Act, 2013 has already been addressed in the response to Paragraph 3(xi)(a) of the Report. It is stated that under Section 232(1)(b) of the Companies Act, 2013, a scheme

	qualifies as a merger where the whole or any part of the undertaking, property or liabilities of a transferor company is proposed to be transferred to the transferee company. The present Scheme clearly contemplates such transfer and therefore fully satisfies the statutory requirement. Further Clause 10.3 of the Scheme of Amalgamation expressly provides for the cancellation of shares held by the First Transferor Company in the Transferee Company, which is a necessary and consequential step in a merger where the transferee company cannot hold its own shares. The Scheme is in strict compliance with the framework contemplated under Section 232(3)(b) of the Companies Act, 2013. The Scheme has been formulated on the basis of commercial considerations and perceived synergies by the respective Boards of the Petitioner Companies. The Hon'ble Gujarat ***High Court in Core Healthcare Limited Vs. Nirma Limited (MANU/GJ/7176/2007)*** has held that where the scheme was approved by the requisite majority of shareholders, the court said that it would not consider whether the scheme was commercially beneficial and the Court is not required to find out as to whether a better Scheme could have been adopted by the parties. The court would only consider whether the scheme was manifestly unfair or intended to defraud shareholders. The Hon'ble Bombay High Court in ***In Re: Induslnd Bank Ltd. (MANU/MH/0543/2004A)*** has held that the scheme was fair, sound and reasonable and also based on expert opinion. It had majority support of the concerned parties, including shareholders, creditors, secured and general. The commercial wisdom of companies in such circumstances could not be interfered with, particularly when there were no objections and also no objections were on record as to public interest. All material documents were there and there was also compliance of statutory

	requirements. The Hon'ble Supreme Court in ***Miheer H Mafatlal v Mafatlal Industries, (1997) 1 SCC 579*** has held that it is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the court. Upon the Scheme becoming effective, the entire undertaking, including the assets and liabilities of the First Transferor Company, shall stand transferred to and vest in the Transferee Company. As part of the amalgamation, consideration is required to be discharged to the shareholders of the First Transferor Company, and such consideration is proposed to be satisfied by issuance of shares of the Transferee Company in accordance with the consideration clause under the Scheme. The extinguishment of the shares held by the First Transferor Company in the Transferee Company arises solely on account of the legal impossibility of a company holding its own shares pursuant to amalgamation. This principle is recognized under company law and is also reflected in the proviso to Section 232(3)(b) of the Companies Act, 2013.
3(xvi)	The OL has reiterated the observation that the proposed Scheme facilitates a change in shareholding instead of a transfer of shares in terms of Section 56 of the Companies Act, 2013. The said observation has already been addressed in detail in the response to Paragraph 3(xi)(a) of the Report
3(xvii)	The OL has, travelled beyond the scope of his jurisdiction in making observations relating to tax matters, which fall within the domain of the Income Tax Authorities. Nevertheless, and

	without prejudice to the above, it is stated that a survey under Section 133A(2A) of the Income-tax Act, 1961 ("IT Act") was conducted at the business premises of the First Transferor Company on 22 February 2019. During FY 2017-18, the First Transferor Company created a provision for accrued interest on debentures amounting to Rs. 30,89,17,808 in its profit and loss account. The jurisdictional Income-tax Officer concluded that the provision for accrued interest on debentures for AY 2018-19 attracted tax withholding at 10% under Section 193 of the IT Act. Subsequently, an order under Sections 201(1) and 201(1A) of the Act was passed on 04.03.2019, raising a total demand of Rs. 3,59,88,923, including interest. Aggrieved by the said order, the First Transferor Company filed an appeal before the Commissioner of Income Tax (Appeals) on 13.09.2019 and numbered as Appeal No. CIT(A), Madurai-1/10753/2018-19. The said appeal is presently pending before the Commissioner of Income Tax (Appeals), Madurai
3(xviii)	Under the provisions of Sections 230-232 of the Companies Act, 2013 read with the applicable Rules, the Applicant/Petitioner Companies are required to serve notices on authorities which are likely to be affected by the compromise or arrangement and shall require their representations. Since the Transferee Company is not a company proposed to be dissolved without winding up under the Scheme, service of notice on the Official Liquidator is not a statutory requirement in respect of the Transferee Company. Without prejudice to the same, it is submitted that all four Petitioner Companies (Transferor Companies) have, served individual notices on the Official Liquidator on 24.06.2025 and have filed an Affidavit of Service before this Tribunal on 22.07.2025. The direction in paragraph 16(viii) of

	the order dated 30.05.2025 passed by this Tribunal in CA(CAA)/31(CHE)/2025 is a general procedural direction issued in scheme matters requiring service of notice on the authorities, as applicable. The said direction does not impose any obligation on the Transferee Company beyond issuance of notices to the authorities as directed. The matters relating to compliance with stock exchange directions concerning issuance of notices by the Transferee Company to its shareholders and unsecured creditors for the meetings convened pursuant to the directions of this Tribunal fall within the regulatory domain of the concerned stock exchanges. The same do not fall within the scope of review of the Official Liquidator. The Petitioner Companies have duly complied with the applicable directions in this regard. It is submitted that in paragraphs 6 and 7(d) of the order dated 28.08.2025 passed by the Tribunal in CP(CAA)/57(CHE)/2025 in CA(CAA)/3l(CHE)/2025, this Tribunal has directed issuance of notices to the authorities specified under Section 230(5) of the Act and to the concerned Official Liquidator. The Petitioner Companies are required to serve notices on authorities which are likely to be affected by the compromise or arrangement and shall require that representations. Since the Transferee Company is not a company proposed to be dissolved without winding up under the Scheme, service of notice on the Official Liquidator is not a statutory requirement in respect of the Transferee Company.

6.6. **INCOME TAX AUTHORITIES**

6.6.1. On service of notice, the Deputy Commissioner of Income Tax, Corporate Circle – 3(1), Chennai and Income Tax Officer, Corporate

Ward 2(2) entered appearance and submitted his observations by a Memo vide SR Mo. 1187 dated 18.03.2026.

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 prayed 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 the right to reopen the assessment. Therefore, by way of 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 Judgement 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.* ***<u>If the Income Tax authorities think that, they are entitled to raise this question in the proceedings under the</u>***

<u>Income Tax Act, it is open to them to do so by way of a separate proceeding according to law.</u>"

(emphasis supplied)

6.6.3. In the Letter of the Income Tax Department dated 18.10.2025 to the Counsel for the Department, filed along with the Memo, the following submission are made:

6.6.3.1. Out of the five Transferor Companies, the Second and Third Transferor Companies namely, TVS SCS Global Freight Solutions Limited having PAN AACCT7471P and White Data Systems India Pvt. Ltd. having PAN AABCW6402E are only assessed to tax in this office, i.e. Corporate Circle-3(1), Chennai.

6.6.3.2. 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. Moreover, these two transferor companies are wholly owned subsidiaries of the transferee company. Hence, there is no objection for the proposed scheme of amalgamation of the two entities with TVS Supply Chain Solutions Limited.

6.6.3.3. However, in the case of the TVS SCS Global Freight Solutions Limited, the Second Transferor Company, scrutiny assessment u/s 143(3) of the Income Tax Act, 1961 for the A.Y. 2023-24 is pending before the Faceless Assessing Officer. The

A.Y. relates to the period prior to the proposed appointed for amalgamation of 01.04.2023. The Transferor Company or the Transferee Company shall participate in the completion of the said assessment proceedings and shall undertake to pay the demand, if any, arising on completion of the assessment.

6.6.3.4. In case, post amalgamation, if any information suggesting escapement of income is received by this office relating to the PAN of the Transferor Companies, 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 the Letter of the Income Tax Department dated 29.10.2025 to the Counsel for the Department, filed along with the Memo, the following submissions are made:

6.6.4.1. Flexol Packaging (India) Limited Holding PAN: AABCF5484F, Fifth Transferor Company is assessed to tax with this Circle. There is no objection to the scheme of amalgamation subject to the condition that the scheme of arrangement should not flout any provisions of Income Tax Act, 1961 and any rules under Income Tax Rules 1962 subject to fulfilment of conditions specified in scheme of amalgamation. If any part of the scheme is found to be repugnant to the Income Tax Act 1961 and Income Tax Rules 1962, the same is to be treated as void ab initio.

6.6.4.2. The Transferee Company, TVS Supply Chain Solutions Limited shall discharge all its responsibilities and liabilities emanating in respect of the proceedings pending/completed/likely to arise in respect of transferor company.

6.6.4.3. The Petitioner Companies will bring it to the notice of the department as and when the scheme is approved by the Tribunal. The continuation of the proceedings of assessment or recovery or any other statutory action will be subject to the provisions of the Income Tax Act and the Assessee Companies will not quote the approved scheme as a ground to oppose such continuation of proceedings. In the event of the failure of the assessee to notify the department of the approval of the scheme, the same will preclude the assessee companies from raising any technical grounds on the validity of the proceedings.

6.6.4.4. If the refund of tax which has already been determined but not issued either to the company the company/ amalgamating amalgamated/transferee company will be issued in the name of respective companies only, as per the extant technical limitations of the system. The amalgamated company shall ensure that no technical glitches arise due to any name mismatch by changing the name of the account or closure of the bank accounts. The Department is not liable to pay any interest due to the delay attributable to the assessee in informing such changes. The assessee will make all such claims in respect of grant of refund/interest on refund to the Income Tax Authorities only. The petitioners will not claim any right under this scheme in respect of calculation of any period of delay attributable to the assessee while granting interest under section 244A of the Income Tax Act.

6.6.4.5. Any credit in respect of which tax at source was deducted/collected on intercompany transactions will be dealt with under the extant provisions of the Income Tax Act depending on the date of remittance of such TDS/TCS remitted into the Government account.

6.6.4.6. The transferor company, FLEXOL Packaging (India) Limited is having no arrears as per the demand portal of the Income Tax Department as on 29.10.2025. The transfer of assets is subject of provisions of u/s 281 of the Income Tax Act.

6.6.4.7. With respect to any litigation due to delay in issue of shares, the department will independently examine the conditions of amalgamation.

6.6.5. The Income Tax Department, Bengaluru has made the following submissions in its letter dated 11.11.2025 in respect of the Fourth Transferor Company i.e., SPC International (India) Private Limited:

6.6.5.1. As per available record, there is no proceedings or demands pending against the applicant. There are also no carry forward losses and unabsorbed depreciation.

6.6.5.2. The Company has filed ITR for AY 2024-25 on 25.09.2024 disclosing Total Income Rs. 3,98,37,990; for AY 2023-24 dated 03.10.2023 for Total Income Rs. 2,98,19,310 and for AY 2022-23 - 29.10.2022: Total Income Rs. 1,15,51,070.

6.6.5.3. As per E-filing portal, latest ITR has been filed by the SPC International (India) Private Limited for AY 2025-26 declaring total income as Rs 3,86,35,230/-.

6.6.5.4. All tax assessment proceedings and appeals of whatsoever nature by or against the Merged Company/Demerged Company pending/Transferor Company pending or arising as at the effective date shall be continued and / or enforced by or against the Resulting Company /Transferee Company.

6.6.5.5. The Department reserves its right to relook at the scheme of arrangement as per the provisions of the Income tax Act 1961 in the light of any new facts or information emerging in the future.

6.6.5.6. The Department reserves its right to determine the tax implications of the Applicant company contemplated under the scheme in accordance with the provisions of the IT Act, 1961 and the provisions of the IT Act, 1961 shall prevail over anything contrary provided under the scheme.

6.6.6. In the Letter of the Income Tax Department dated 12.03.2026 to the Counsel for the Department, filed along with the Memo, the following submissions are made relating to the First Transferor Company:

6.6.6.1. For the Assessment year 2017-18, the assessee's case was reopened by issuance of Notice under Section 148 of the Income tax Act, 1961 on 22.08.2025 and now the assessment proceedings are pending with the National Faceless Assessment Centre, New Delhi.

6.6.6.2. The reason for reopening the assessment is availability of the information with this office as per Clause (ii) sub section 3 of section 148 of the Income Tax Act, 1961 i.e., Processing charges incurred as Rs. 6,98,00,000 and legal and professional charges incurred as Rs. 35,73,645/-. The absence of any evidence to prove that these expenses (processing charges and legal & professional charges) are having nexus with the assesses business and expended wholly for the business purpose, suggests that income to the extent of Rs. 7,33,73,645/-

has escaped assessment. The assessment is getting time barred by 31.03.2026.

6.6.6.3. For the Assessment year 2018-19, based on the Audit Objection this office by accepting the audit objection as cited under reference, the remedial action was taken by way of passing set aside order by PCIT, Madurai-1, Madurai vide order under Section 263 of the Income tax Act, 1961 dated 30.03.2024. Subsequently, by complying with the directions of the PCIT, Madurai-1, Madurai, the assessment order u/s 143(3) r.w.s. 263 r.w.s. 144B of the Income Tax Act, 1961 was passed on 03.02.2025 in which audit objection was taken into consideration. The remedial action viz. the assessment order u/s 143(3) r.w.s. 263 r.w.s 144B of the Income Tax Act, 1961 was passed on 03.02.2025 in which the expenditure claimed to the extent of Rs.30,89,17,808/- (Long-term provisions) was disallowed and the total income/loss was determined as under:

Loss as per BP of return of income	Rs.31,28,96,436/-
Add: Interest on debentures	Rs.30,89,17,808/-
Current year Loss	Rs.39,78,638/-

6.6.6.4. Thus the issue in the audit objection (disallowance of Interest on debentures) was duly taken care of in the assessment order passed as stated above, Aggrieved by this Order the assessee company has preferred appeal before the CIT

(Appeal), National Faceless Appeal Centre, New Delhi and the same is pending as on date. On verification of the System there is no Tax Arrears as on date for any of the assessment years. **However, it is stated that the Amalgamation may be considered after the assessment for the assessment year 2017-18 attains finality**.

6.6.7. The First Petitioner Company filed its reply to the submissions made by the Income Tax Department vide S.R. No. 1187 dated 18.03.2026:

6.6.7.1. With respect to reassessment proceedings for the Assessment Year 2017-18, the Department has provided details of reassessment proceedings initiated under Section 148 of the Income-tax Act, 1961 pursuant to a notice dated 22.08.2025, which are presently pending against the First Petitioner Company for Assessment Year 2017-18. The reassessment has been initiated with respect to (i) processing charges amounting to 26,98,00,000 and (ii) legal and professional charges amounting to ₹35,73,645.

6.6.7.2. As regards the revision proceedings for the assessment year 2018-19, the Department has stated that remedial action was taken and an assessment order under Sections 143(3) read with Sections 263 and 44B of the Income-tax Act, 1961 was passed on 03.02.2025, wherein the expenditure claimed towards interest on debentures amounting to 30,89,17,808 was disallowed and the loss was recomputed accordingly. The First Petitioner Company has filed an appeal before the Commissioner of Income Tax (Appeals), which is pending.

6.6.7.3. As regard the contents of last paragraph of the Letter, the Department has conveyed that on verification of the System there is no Tax Arrears as on date against the First Petitioner Company for any of the assessment years.

6.6.7.4. The Department has stated that the proposed amalgamation may be considered only after the assessment proceedings for Assessment Year 2017-18 attain finality. The said observation is misconceived and not relevant for the consideration of the present Scheme, as upon sanction of the Scheme and the consequent amalgamation of the First Petitioner Company with the Transferee Company, all pending tax proceedings shall continue against the Transferee Company and any tax liability, if determined, shall be discharged by the Transferee Company in accordance with law. It is also submitted that the First Petitioner Company has challenged the jurisdiction of revisionary proceedings for Assessment Year 2018-19 before the Hon'ble Madras High Court and the same is pending.

6.6.7.5. Clause 8.1 of the Scheme expressly provides that any legal proceedings (including tax proceedings) pending or arising against the Transferor Companies, as on the appointed date shall stand continued and be enforced against the Transferee Company.

6.6.7.6. Clause 13.3.a (Taxes) of the Scheme expressly provides that all the tax payable by the Transferor Companies in respect of operations prior to the appointed date shall be borne and discharged by the Transferee Company

6.6.8. The Second and Third Petitioner Company filed its reply to the submissions made by the Income Tax Department and reiterated the submissions of First Petitioner Company Clause 8.1 and Clause 13.3.a of the Scheme.

7. VALUATION REPORT

The Petitioner Companies have filed Valuation Report dated 05.02.2024 obtained from **CA HARSH C. RUPARELIA**, Registered Valuer. The valuation report is placed at ***Pgs. 1217-1227*** of the Petition. The Valuation Analysis of the Independent valuer is extracted hereunder for reference:

5.3. Further, there would be no change in the aggregate promoters' shareholding in the Transferee Company and hence, shall not affect the interest of any of the shareholders of the Transferee Company for the reasons enlisted in Para 4 – Basis of Recommendation. Accordingly, valuation approaches as indicated in the format as prescribed under Part I - Para (A)(4) of Annexure II of SEBI Master Circular no. SEBI/HO/CFD/POD-2/P/CIR/2023/93 dated 20th June 2023 have not been undertaken as they are not relevant with respect to the proposed Scheme. For the purpose of the current exercise, I have provided following weights to the valuation methodologies based on our basis of recommendation and other various factors relevant to the valuation exercise for recommendation of Equity Share Exchange Ratio:

Particulars	Mahogany Logistics Services Private Limited		TVS Supply Chain Solutions Limited	
Methods	*Value per Share (INR)*	*Weights*	*Value per Share (INR)*	*Weights*
Asset Approach	NA	NA	NA	NA
Market Approach	NA	NA	NA	NA
Income Approach	NA	NA	NA	NA
Relative Value per share	**NA**		**NA**	

NA = Not Adopted / Not Applicable, as provided in Para 4 – Basis of Recommendation

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, 3,75,02,140 equity shares of Re. 1 each fully paid up 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 TVS SCS 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 as suggested by the management of the Companies, would be fair and reasonable for the shareholders of MLSPL and TVS SCS:'

"3,75,02,140 fully paid-up equity shares of Re. 1 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"

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 First, Second, Third, Fourth and Fifth Petitioner Company in relation to the Accounting Treatment proposed in the Scheme of Amalgamation is placed at ***Pgs. 216 – 217, 478 – 479, 649, 810 and 1109 – 1113*** of the Petition, respectively.

9. CLARIFICATIONS SOUGHT BY THIS TRIBUNAL:

9.1. This Tribunal vide order dated 06.05.2026, has sought the following clarifications

1. Clause 12.1 of the Scheme does not specify the applicable accounting standards to be followed for the proposed amalgamation of Transferor Company No. 1 with the Transferee Company. Accordingly, the Petitioners are directed to clarify the the applicable Accounting Standards/Indian Accounting Standards (Ind AS) in compliance with Section 133 of the Companies Act, 2013.

2. We observe that pursuant to the Scheme, a foreign entity, namely Mahogany Singapore Company Pte. Ltd., would hold approximately 8–10% of the equity share capital of a public listed company. Accordingly, the Petitioners are directed to furnish detailed compliance with: (i) Regulation 7 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000; (ii) Paragraph 4 of SEBI Master Circular No. SEBI/HO/CFD/POD- 2/P/CIR/2023/93 dated 20.06.2023 which mandates disclosure of relative fair value per share and the fair share exchange ratio in the valuation report; and (iii) Regulations 16 and 18 of the Companies (Registered Valuers and Valuation) Rules, 2017.

3. If the present is a case of exemption from submission of valuation report under Paragraph 4(b) of SEBI Master Circular No. SEBI/HO/CFD/POD-2/P/CIR/2023/93 dated 20.06.2023, the Petitioners are directed to demonstrate the applicability of such exceptions to the present Scheme.

4. Clause 6.1.16 of the Scheme provides that the Foreign Company shall indemnify the Transferee Company against liabilities arising out of identified litigations as set out in Schedule I. However, the scope, enforceability, and mechanism of such indemnity have not been adequately elaborated. In view of the pending proceedings before Income Tax Authorities as highlighted in its letter dated 12.03.2026, the Petitioners are directed to clarify: (i) the financial viability of the indemnity clause; (ii) the enforceability of such indemnity against the Foreign Company under applicable laws; and (iii) the financial strength of the Transferee Company to meet such contingent liabilities arising post approval of the Scheme in case of non-enforceability of the indemnity clause.

9.2. In response, the Petitioner Companies have made the following submission:

9.2.1. There is no single Accounting Standard which exclusively governs the accounting treatment for amalgamation of the First Transferor Company with the Transferee Company. **Clause 12.1** of the Scheme of Amalgamation specifically provides that the Transferee Company shall account for the amalgamation in its books of account in accordance with the Indian Accounting Standards ("Ind AS") notified under Section 133 of the Companies Act, 2013. Since the First Transferor Company and the Transferee Company are not under common control, the proposed amalgamation constitutes a "Business Combination" and shall accordingly be accounted for in accordance with Ind AS 103 by applying the "Acquisition Method" prescribed thereunder. In this regard, Clauses 12.1.1 and 12.1.2 of the Scheme specifically provide for recognition of the identifiable assets acquired, liabilities assumed, and equity shares issued as consideration at their respective fair values. Further, Clause 12.1.7 of the Scheme provides that matters not specifically dealt with under Clause 12.1 shall be governed by the applicable provisions of the relevant Indian Accounting Standards.

9.2.2. Regulation 7 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 ("FEM(TISPRO) Regulations, 2000") provided that where a scheme of amalgamation of two or more Indian companies is approved by a competent Court in India, the Transferee Company may issue shares to shareholders of the Transferor Company resident outside India, subject to compliance with the conditions prescribed therein. However, the aforesaid regulations stand superseded by the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017; and thereafter by the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019

("FEM (NDI) Rules, 2019") read with the Foreign Exchange Management (Debt Instruments) Regulations, 2019, with effect from 17.10.2019.

9.2.3. Regulation 19 of the FEM (NDI) Rules, 2019 is the corresponding provision governing merger/amalgamation involving issuance of securities to persons resident outside India. Regulation 19 has been extracted below for the ease of reference:

"***19. Merger or demerger or amalgamation of Indian companies.***

(1) Where a scheme of compromise or arrangement or merger or amalgamation of two or more Indian companies or a reconstruction by way of demerger or otherwise of an Indian company, or transfer of undertaking of one or more Indian company to another Indian company, or involving division of one or more Indian company, has been approved by the National Company Law Tribunal (NCLT) or other authority competent to do so by law, the transferee company or the new company, as the case may be, may issue equity instruments to the existing shareholders of the transferor company resident outside India, subject to the following conditions, namely—

(a) the transfer or issue is in compliance with the entry routes, sectoral caps or investment limits, as the case may be and the attendant conditionalities of investment by a person resident outside India: Provided that where the percentage is likely to breach the sectoral caps or the attendant conditionalities, the transferor company or the transferee or new company may obtain necessary approval from the Central Government;

(b) the transferor company or the transferee company or the new company is not engaged in any sector prohibited for investment by a person resident outside India.

Note: Government approval shall not be required in case of mergers and acquisitions taking place in sectors under automatic route."

9.2.4. The Transferee Company is engaged in the supply chain/logistics sector, which is not a sector prohibited for foreign investment under the FEM (NDI) Rules, 2019. Accordingly, in terms of Paragraph 3(b)(iii) of Schedule I to the said Rules, foreign investment up to 100% is permitted under the automatic route, subject to compliance with applicable laws, regulatory conditions and sectoral requirements. In view thereof, no prior approval from the Reserve Bank of India or the Central Government is required for issuance of securities by the Transferee Company to the shareholders of the First Transferor Company pursuant to the Scheme. Nevertheless, compliance with all applicable FEMA provisions, reporting requirements and regulatory formalities, as may be applicable, shall be ensured.

9.2.5. The Petitioner Companies have complied with Paragraph 4(a) of the SEBI Master Circular bearing No. SEBI/HO/CFD/POD-2/P/CIR/2023/93 dated 20.06.2023 ("SEBI Master Circular"), which mandates submission of a valuation report containing the relative fair value per share and fair share exchange ratio. For ease of reference paragraph 4.a) has been extracted below:

"4 Valuation Report

a. All listed entities are required to submit a valuation report from a Registered Valuer. The valuation report shall contain the workings, relative fair value per share and fair share exchange ratio in the manner as provided in Annexure-II."

9.2.6. It is stated that the consideration proposed to be issued to the shareholders of the First Transferor Company pursuant to the Scheme is based on the Valuation Report dated 05.02.2024 issued by Mr. Harsh Chandrakant Ruparelia, Registered Valuer – Securities or Financial Assets (IBBI Registration No. IBBI/RV/05/2019/11106). The valuation report has been prepared in accordance with generally accepted valuation methodologies and applicable regulatory requirements and is further supported by a Fairness Opinion dated 05.02.2024 issued by a SEBI registered Category-I Merchant Banker. The Valuation Report inter alia provides that, upon the Scheme becoming effective, 3,75,02,140 equity shares held by the First Transferor Company in the Transferee Company shall stand cancelled, as the Transferee Company cannot hold its own shares pursuant to the amalgamation. Correspondingly, the same number of equity shares, i.e., 3,75,02,140 equity shares, shall be issued by the Transferee Company to the shareholders of the First Transferor Company in accordance with the Scheme.

9.2.7. It is stated that the Transferee Company being a listed entity, in compliance with Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 ("SEBI LODR Regulations") read with Part I of the SEBI Master Circular, has obtained the in-principal approval from BSE Limited on 01.01.2025 and from the National Stock Exchange of India Limited on 28.02.2025. Therefore, the Petitioner Companies have duly complied with the applicable provisions including SEBI Master Circular and SEBI LODR Regulations.

9.2.8. Since Regulation 16 pertains to complaints against registered valuers or registered valuers organisation, the said provision does not cast any independent compliance obligation upon the Petitioner Companies in relation to the present Scheme. Regulation 18 pertains to valuation standards to be notified by the Central Government. In this regard, it is submitted that the Valuation Report dated 05.02.2024 issued by the aforesaid Registered Valuer has been prepared in accordance with generally accepted valuation methodologies and applicable regulatory requirements.

9.2.9. Paragraph 4 (b) of SEBI Master Circular provides ", *Valuation Report is not required in cases where there is no change in the shareholding pattern of the listed entity / resultant company."* With respect to amalgamation of the First Transferor Company with the transferee Company, the Petitioner Companies have not sought to avail the exemption contemplated under Paragraph 4(b) of the SEBI Master Circular. In compliance with the applicable regulatory requirements, the Petitioner Companies have obtained a Valuation Report from an IBBI Registered Valuer, which is further supported by a Fairness Opinion issued by a SEBI-registered Category-I Merchant Banker and submitted before relevant stock exchanges.

9.2.10. The Transferor Companies, other than the First Transferor Company, are wholly owned subsidiaries of the Transferee Company. Accordingly, upon the Scheme becoming effective, the shares held by the Transferee Company in the Second, Third, Fourth and Fifth Transferor Companies shall stand cancelled in accordance with the provisions of the Scheme. Hence, no consideration by way of issuance of fresh equity shares is contemplated or required in relation to the amalgamation of the Second, Third, Fourth and Fifth Transferor Companies with the Transferee Company. Consequently, there shall be no change in the shareholding pattern of the Transferee Company pursuant to the amalgamation of the aforesaid wholly owned subsidiary companies with the Transferee Company. Therefore, in terms of Paragraph 4(b) read with Paragraph 4(d)(ii) of the SEBI Master Circular, there is no requirement for obtaining a separate valuation report in respect of the amalgamation of the Second, Third, Fourth and Fifth Transferor Companies with the Transferee Company. Paragraph 4(d)(ii) of the SEBI Master Circular is extracted hereinbelow:

"4 d) Further, a few examples illustrating 'no change in shareholding pattern' are indicated below: i …. ii In case a wholly-owned-subsidiary (say, "entity X") of a listed entity is merged with its parent listed entity (say, "entity Y"), where the shareholders and the shareholding pattern of entity Y remains the same, it will be treated as 'no change in shareholding pattern'."

9.2.11. Clause 6.1.16 of the Scheme pertains to a specific indemnity in relation to a TDS-related litigation of the First Transferor Company presently pending before the Commissioner of Income Tax (Appeals). The aggregate demand involved in the said proceeding is INR 3,59,88,923/- (Rupees Three Crores Fifty-Nine Lakhs Eighty-Eight Thousand Nine Hundred and Twenty-Three only), out of which approximately 20% has already been deposited under protest. The appeal remains pending adjudication. The Notice of Demand issued under Section 156 of the Income Tax Act, 1961 has been annexed herewith. The indemnity clause reflects the commercial understanding between the shareholder of the First Transferor Company, i.e., Mahogany Singapore Pte. Ltd., and the Transferee Company, whereby any crystallised liability arising upon final adjudication and exhaustion of appellate remedies shall be borne/reimbursed in terms of the Scheme. The indemnity arrangement contemplated under Clause 6.1.16 of the Scheme, between Mahogany Singapore Pte. Ltd., being the 100% shareholder of the First Transferor Company, and the Transferee Company, has been expressly confirmed and acknowledged by Mahogany Singapore Pte. Ltd. vide Indemnity Letter dated 25.05.2026.

9.2.12. The receipt of any amount by way of indemnity from a non-resident entity would be considered as a permissible current account transactions under Section 5 of the Foreign Exchange Management Act, 1999 read with the Foreign Exchange Management (Current Account Transactions) Rules, 2000, and shall be received through authorised banking channels in accordance with applicable FEMA regulations.

9.2.13. The Transferee Company, being a listed entity having a net worth of INR 2,637.95 crore as on 31.03.2025, possesses sufficient financial strength and liquidity to adequately meet and discharge the aforesaid contingent liability of approximately INR 3,59,88,923/- (Rupees Three Crores Fifty-Nine Lakhs Eighty-Eight Thousand Nine Hundred and Twenty-Three only), even in the event the indemnity contemplated under Clause 6.1.16 of the Scheme is not invoked or is otherwise held to be unenforceable.

10. OBSERVATIONS OF THIS TRIBUNAL

10.1. REGIONAL DIRECTOR

10.1.1.In the Scheme, the RD has raised objections in para 4, 14 and 15 of the report/ reply.

Appointed Date:

10.1.2.RD has objected to the Appointed Date of the Scheme, 01.04.2023, being ante dated beyond a year from the date of filing an application for approval of the Scheme before this Tribunal on 31.03.2025 which is against General Circular No. 09/2019 issued by the Ministry of Corporate Affairs. The Petitioner Companies have submitted that the reason for the delay in filing the Scheme is due to the time taken to obtain the approval of the stock exchanges in terms of Regulation 37 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter, SEBI(LODR) Regulations) ,

10.1.3.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 [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 [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."

10.1.4.On perusal of Regulation 37, it is seen that any listed entity forming part of a Scheme of Amalgamation has to file the draft scheme before the respective stock exchanges, obtain the mandated Observation Letter or No-objection letter, and on compliance of the same, 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 Second Transferor Company, Fifth Transferor Company and the Transferee Company are bound by Regulation 37 of the SEBI(LODR) Regulations. The Second Transferor Company and the Fifth Transferor Company obtained the approval of its Board on 02.02.2024; and the Transferee Company obtained the approval of its Board on 05.02.2024. Thereafter, the Petitioner Companies promptly applied for the approval of the stock exchanges on 29.02.2024. However, the approval for the same was received from BSE Limited on 01.01.2025 and from NSE Limited on 28.02.2025. Upon receiving such approval, the petition was filed before this Tribunal on 31.03.2025.

10.1.5.It is seen that as per para 6(c) of the General Circular No. 09/2019 issued by the Ministry of Corporate Affairs, there is no restriction in the Appointed Date of the Scheme preceding the date of filing the application under Section 230-232 of the Companies Act, 2013 before this Tribunal, provided that the requisite justification for the delay in filing the application has been provided in the Scheme and the same is not against public interest. The relevant paragraph of the circular is extracted as under:

> *"6. c) where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest."*

10.1.6.Accordingly, the reason for the delay in filing the application before the Tribunal has been enumerated in the Appendix to the Scheme. The Statutory Authorities, including the RD, has not placed anything on record to demonstrate that the ante dated appointed date is against the public interest.

10.1.7.Hence, the ante dating of the Appointed Date is completely justified in terms of General Circular No. 09/2019.

Disclosure of pending disputable statutory dues:

10.1.8.The RD, in para 14 of its report has sought the present status of the disputable statutory dues pending against the Transferor Companies No. 1, 2 and 5. In response, the Petitioner Companies have disclosed the present status of the statutory dues referred in the Audited Financial Statements of the First Transferor Company, Second Transferor Company and the Fifth Transferor Company as on 31.03.2025. The details of the pending statutory dues submitted by the Petitioner Companies have been reproduced in para 5.3.3 of this Order.

10.1.9.Based on the submissions made by the Petitioner Companies, it is seen that the pending statutory dues pertain to income tax, commercial tax and GST dues. The rights of the respective statutory authorities of the Transferor Companies No. 1, 2 and 5 have been adequately protected by Clause 8.1 of the Scheme which provides for the continuance of all the pending legal proceedings, pending against the Transferor Companies against the Transferee Company after the implementation of the Scheme. Further, Clause 13.3.a, specifically protects the interest of the tax departments by providing that the tax payable by the Transferor Companies shall be borne and discharged by the Transferee Company after the Scheme takes into effect.

10.1.10. Since the Scheme safeguards the right of the tax authorities to take all measures against the Transferee Company to recover the pending statutory dues, if any, pertaining to the Transferor Companies, no further directions are required to be passed by the Tribunal in this regard.

Undertaking under Section 232(3)(i) of the Act, 2013:

10.1.11. The RD in para 15 of the Report has sought an undertaking from the Petitioner Companies 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. However, no undertaking has been filed in this regard.

10.1.12. **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.**

Undertaking under Section 240 of the Act, 2013:

10.1.13. 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. According to 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. However, the Petitioner Companies did not provide such undertaking on the ground that no such undertaking is required to be provided for a liability mandated under the Act, 2013.

10.1.14. **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.**

10.2. **OFFICIAL LIQUIDATOR**

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

Protection of Employees with effect from the Effective Date:

10.2.2.The OL has objected Clause 7 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 Clause 7 of the Scheme, provides that employees who are in service as on the Effective Date would continue unless they have ceased employment in the ordinary course due to resignation, retirement, termination, or any other lawful reason and hence no separate undertaking is required in this regard.

10.2.3.**Considering the submission of the Petitioner Companies that employees on effective date include employees on the Appointed Date, except in the case of voluntary retrenchment or lawful termination of service, clause 7 of the Scheme shall be interpreted to protect the rights of the employees who were in service on the appointed date who shall become employees of the Transferee Company without any interruption in service and on terms no less favourable than those existing prior to amalgamation.**

Record Date:

10.2.4.The OL has sought an undertaking that the record date will be fixed immediately after the sanction of the Scheme and before the dissolution of the Transferor Company No. 1. However, the Petitioner Companies clarified that in terms of Clause 3.15 of the Scheme, the 'Record Date' shall be fixed by the Transferee Company only on consultation with the Board of the First Transferor Company. Since all other Transferor Companies are wholly owned subsidiaries, no share issuance or record date is required for them. **It is seen from the Reply Report filed by the OL, the objections pertaining to Record Date have been dropped by the OL. Hence, no further directions are required in this regard.**

Purchase of the shares of Transferor Company No. 3:

10.2.5.In para 3(v)(a) and 3(v)(d), the OL has contended that for the Scheme to not involve any consideration payable to the shareholders of the Third Transferor Company, the relationship of wholly owned subsidiary and holding company between the Third Transferor Company and the Transferee Company ought to have existed as on the Appointed Date. The OL has further submitted that any transactions undertaken subsequent to the Appointed Date are deemed to have been undertaken by the Transferee Company itself on behalf of the Transferor Companies. In response, the Petitioners have submitted that there is no requirement for the relationship of wholly owned subsidiary and holding company to exist as on the Appointed Date itself, as the consideration, if any, under the Scheme would be issued only to those shareholders whose names appear in the Register of Members as on the Record Date, which is fixed prior to the Effective Date. The Petitioner Companies have submitted that the Transferee Company became the 100% holding Company of the Third Transferor Company on 20.04.2023 and as on the date of approval of the Scheme by the respective Boards, all the Transferor Companies are the wholly owned subsidiaries of the Transferee Company.

10.2.6. It is pertinent to note that at the time of the actual acquisition of the remaining 49% shares of the Third Transferor Company by the Transferee Company on 20.04.2023, the Scheme had not yet been approved by the respective Boards of the Petitioner Companies. The Appointed Date is a date proposed by the Companies while formulating the Scheme and the fixation of 01.04.2023 as the Appointed Date, for reasons deemed appropriate by the Petitioner Companies, cannot by itself be considered impermissible.

10.2.7.The transactions undertaken between the Appointed Date and the Effective Date are required to be viewed independently and cannot be presumed to have been undertaken pursuant to the Scheme. Upon acquisition of the remaining 49% shareholding by the Transferee Company on 20.04.2023, the erstwhile shareholders of the Third Transferor Company ceased to have any relationship with the Third Transferor Company. As on the date of filing of the present Petition, there exists no relationship between such erstwhile shareholders and the Third Transferor Company.

10.2.8.**In such circumstances, the contention of the OL that the erstwhile shareholders of the Third Transferor Company as on the Appointed Date are required to be paid consideration does not have any basis, as such shareholders are no longer shareholders of the Third Transferor Company on the relevant date for implementation of the Scheme.**

Applicability of Pooling of Interest Method under Ind AS 103

10.2.9.In para 3(v)(a) and 3(vii)(a), the OL has further objected that for adoption of the pooling of interest method under Appendix C of Ind AS 103, the existence of common control ought to have been established as on the Appointed Date.

10.2.10. The OL has proceeded on the basis that the existence of a wholly owned subsidiary and holding company relationship as on the Appointed Date is the determining factor for applicability of the pooling of interest method. However, the applicability of Appendix C of Ind AS 103 is governed by the definition of "common control business combination", which refers to a business combination involving entities or businesses in which all the combining entities or businesses are ultimately controlled by the same party or parties both before and after the business combination, and such control is not transitory. Hence, the assessment of common control under Ind AS 103 is not restricted only to the existence of a wholly owned subsidiary and holding company relationship. The scope of common control is wider and requires examination of whether the entities are ultimately controlled by the same party or parties both before and after the combination.

10.2.11. In the present case, even prior to the acquisition of the remaining 49% shares of the Third Transferor Company by the Transferee Company on 20.04.2023, the Transferee Company was already exercising majority control of 51% in the Third Transferor Company. Further, the Petitioners have placed on record the Auditor's

Certificate certifying the adoption of the accounting treatment proposed under the Scheme of Amalgamation in respect of the Third Petitioner Company as well as the Transferee Company.

10.2.12. Accordingly, the date on which the relationship of wholly owned subsidiary and holding company came into existence between the Third Transferor Company and the Transferee Company cannot be treated as the sole determining factor for applicability of the pooling of interest method. The relevant consideration is whether the entities were under common control, which in the present case stands established. The objection of the OL in this regard is rejected.

<u>Allegation of Buy-Back of shares</u>

10.2.13. In para 3(v)(d), the OL has objected to the cancellation of the inter-company holdings between the Third Transferor Company and the Transferee Company to the extent of the 49% shares acquired by the Transferee Company subsequent to the Appointed Date i.e., 01.04.2023. The OL has contended that if the cancellation of such shares is given effect from the Appointed Date, the cancellation of the 49% equity shares held by third-party shareholders as on the Appointed Date would amount to a buy-back of shares by the Transferee Company at a consideration of Rs. 63.86 Crores. The Petitioners have submitted that the essential ingredients and requirements for a buy-back under the Companies Act, 2013 are not attracted, as the acquisition of shares by the Transferee Company was of shares in another company within the same group and not of its own shares.

10.2.14. Upon consideration of the submissions, we find that the objection raised by the OL cannot be accepted. There cannot be a complete prohibition on inter-company transactions between group companies during the period commencing from the Appointed Date and ending on the date of sanction of the Scheme by this Tribunal. At the time of acquisition of the shares of the Third Transferor Company by the Transferee Company, the transaction cannot be construed as a purchase of the Transferee Company's own shares. The transaction was merely an acquisition of shares of another company within the same group. It is only upon sanction of the Scheme that the shares held by the Transferee Company in the Third Transferor Company are liable to be cancelled as a consequential effect of amalgamation, since a company cannot hold its own shares in accordance with the provisions of Section 19 of the Companies Act, 2013 and the provisions governing compromise and arrangement under Section 230(10) of the Act..

10.2.15. The subsequent cancellation of shares pursuant to the Scheme does not retrospectively alter the nature of the original acquisition transaction or recharacterize the same as a purchase of the Transferee Company's own shares. **Therefore, the cancellation of shares contemplated under the Scheme neither amounts to a buy-back within the meaning of the Companies Act, 2013 nor results in contravention of Section 230(10) of the Companies Act, 2013.**

10.2.16. **Accordingly, the objections raised by the OL on the ground that the acquisition of the remaining 49% shareholding in**

the Third Transferor Company took place after the Appointed Date are rejected.

Recording of Reserves of Wholly Owned Subsidiary Transferor Companies

10.2.17. The OL, in para 3(vii)(b), has objected that the consolidated financial statements of the Transferee Company should not be taken into consideration for recording the value of reserves of the wholly owned subsidiary Transferor Companies. The Petitioners have submitted that upon sanction of the Scheme, the reserves of the Second to Fifth Transferor Companies shall be recognised as appearing in their respective standalone financial statements and shall be transferred to the Transferee Company. The Petitioners have clarified that the reserves of the Second to Fifth Transferor Companies shall be recognised based on their standalone financial statements and not on the basis of the consolidated financial statements of the Transferee Company. In view of the clarification furnished, the objection raised by the OL has been addressed. **The OL has also, in his Reply Report, dropped the said objection.**

Auto Modification

10.2.18. The Petitioner Companies, in response to the objections to Clause 4.2 of the Scheme made by the OL in para 3(iii) have undertaken that no alteration or modification to the contents of the Scheme shall be made post sanction without the specific and prior approval of this Tribunal. However, the OL in the Reply Report has sought for amendment of Clause 4.2 of the Scheme. **In view of undertaking submitted by the Petitioners, we find no need to issue directions for the modification of Clause 4.2 of the Scheme.**

<u>Compliance with the observation of BSE</u>

10.2.19. The OL has submitted that in terms of observation (f) of the letter of the BSE dated 01.01.2025, the valuation report should be based on the financial statements not more than 6 months old i.e., 01.07.2024 whereas the valuation report is of date 05.02.2024 thereby not complying with observation (f). Hence, the OL has sought for modified valuation report. In response it is submitted that the Scheme and the Valuation Report were based on financial statements as on 31.12.2023, which were not older than six months from the date of submission to the stock exchanges and Clause (f) of the letter is complied with.

10.2.20. **Since the valuation report is dated 05.02.2024 and the financial statements as on 31.03.2023 are considered, the condition that financial statements considered for valuation report are not for period more than 6 months old is satisfied.**

<u>Appointed Date</u>

10.2.21. The OL has objected to the ante-dated Appointed Date on the ground that the same may be used as a tool for carrying forward the deferred tax asset of Rs. 726.41 Crores in the books of the First Transferor Company as on 31.03.2023. However, the Petitioner Companies have submitted that the deferred tax asset referred to by the OL is an inadvertent overstatement made by the Petitioners and the accurate value is reflected in Note 26 of the Financial Statements, which discloses the losses as Rs. 0.73 lakhs. Moreover, the First Transferor Company is not eligible for carry forward and set-off of tax losses under Section 72A of the Income-tax Act, and therefore, there would be no tax benefit accruing from the ante-dated Appointed Date. The said reply has been accepted by the OL in his Reply Report. **In view of the findings made by this Tribunal in para 10.1.1 – 10.1.7 of this order, this Tribunal finds no reason to modify the Appointed Date.**

Details of the Fourth Transferor Company

10.2.22. The OL has sought the audited financial statements of the Fourth Transferor Company to determine whether it was a wholly owned subsidiary as on the Appointed Date. In response, the Petitioners have submitted that the same is beyond the scope of the OL, as it falls within the jurisdiction of the NCLT, Bengaluru. A separate Company Petition in respect of the Fourth Transferor Company has been filed and is presently pending before the NCLT, Bengaluru in CP(CAA) 56/BEN/2025.

10.2.23. **We agree with the submissions of the Petitioner Companies that there is no need to investigate into the affairs of the**

Transferor Company No. 4 as the same falls within the jurisdiction of NCLT, Bengaluru and the Official Liquidator attached to the respective jurisdictional High Court. Hence, no further directions are given in this regard.

Accounting Treatment for Amalgamation of First Transferor Company with the Transferee Company.

10.2.24. The OL in para 3(vi)(a) to 3(vi)(c) The OL has objected that Clause 12.1 of the Scheme does not specify the Accounting Standard applicable for the amalgamation of the First Transferor Company with the Transferee Company. The OL has further stated that the proposed recording of assets and liabilities of the First Transferor Company and the consideration to be issued by the Transferee Company at fair values is not supported by any applicable Accounting Standard. In the Clarification Memo filed by the Petitioner Companies, it has been disclosed that the amalgamation of the First Transferor Company with the Transferee Company shall be accounted for in accordance with Ind AS 103 by applying the "Acquisition Method".

10.2.25. **In view of the clarification furnished by the Petitioners that the amalgamation of the First Transferor Company with the Transferee Company shall be accounted for in accordance with Ind AS 103 by applying the Acquisition Method, the objection raised by the OL stands addressed.**

Accounting Treatment for adjustment of Securities Premium Account

10.2.26. The OL, in para 3(vi)(d), has objected that the difference between the fair value consideration and the face value of shares proposed to be issued under the Scheme is sought to be adjusted against the securities premium account, retained earnings, and profit account of the Transferee Company, which according is not recognized under the applicable Accounting Standards.

10.2.27. We find that the accounting treatment contemplated under the Scheme is in accordance with the applicable Indian Accounting Standards and the treatment of excess or deficit arising on account of consideration payable in a merger is a recognized accounting practice. The adjustment of the difference between the consideration and the carrying values of assets, liabilities, and reserves is a consequential accounting treatment arising out of the implementation of the Scheme. **The OL has not placed any material on record to demonstrate that the accounting treatment proposed under the Scheme is contrary to any specific provision of the applicable Accounting Standards. Accordingly, the objection raised by the OL remains unsubstantiated and does not survive.**

Cancellation of inter se balances:

10.2.28. The OL, in para 3(vi)(d) and 3(vii)(c) to (d), has objected that the cancellation of inter-se balances and investments should be restricted only to the balances existing as on the Appointed Date and should not extend to subsequent balances as contemplated under

Clause 12.1.3, Clause 12.1.4, Clause 12.2.3, and Clause 12.2.4 of the Scheme.

10.2.29. It is observed that the cancellation of inter-company balances, investments, and shareholding is envisaged in the Scheme since a company cannot hold its own shares, the cancellation of inter-company shareholding is in the nature of an adjustment arising pursuant to the amalgamation. The same cannot be restricted only to the balances existing as on the Appointed Date. Accordingly, the objection raised by the OL in this regard does not survive.

<u>Compliance with Section 232(1)(b) of the Companies Act, 2013</u>

10.2.30. The OL, in para 3(x) has alleged that the sole purpose of the Scheme, insofar as it relates to the amalgamation of the First Transferor Company with the Transferee Company, is to facilitate direct holding of shares of the listed Transferee Company by the shareholder of the First Transferor Company under the guise of a Scheme of Amalgamation under Section 232 instead of Section 56 of the Companies Act, 2013. On that basis, the OL has sought the amendment of Clause 2.1(h) of the Scheme. The OL, in para 3(xi)(a) & (c) of his report has alleged that the Transferor Company No. 1 has no business and the Amalgamation is not within the Scope of Section 232 of the Act, 2013. Per contra, the Petitioners have submitted that the Transferor Company No. 1 carries on the business of auto components trading which would merge with and continue under the Transferee Company. Hence, the Scheme is compliant with Section 232(1) of the

Act, 2013 and there is no need for the amendment of the rational clause Scheme.

10.2.31. The First Transferor Company, apart from its investment in the Transferee Company amounting to Rs. 45,283.83 lakhs and non-current tax assets of Rs. 68.58 lakhs, also holds cash balances of Rs. 50,000/- and balances with government authorities amounting to Rs. 153.787 lakhs. While the inter-company investment would stand cancelled pursuant to the Scheme and the treatment of tax and statutory balances would be governed by the applicable statutory provisions, the other assets and liabilities of the First Transferor Company would continue to vest with the Transferee Company upon effectiveness of the Scheme. Further, the First Transferor Company continues to carry on the business of trading in auto components and has generated revenue from operations of Rs. 78,000/- during FY 2024-25. The same indicates that the First Transferor Company continues to be an operational entity. Therefore, the contention of the OL that the First Transferor Company has no undertaking or business capable of being transferred under the Scheme is not supported by the facts on record.

10.2.32. While assessing the compliance with 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*"., it is not necessary that a narrow view adopted by the OL is to be followed. The scope of the provision is wide and does not require that the transfer must be restricted only to a particular category of assets or business undertaking.

10.2.33. In the present case, Clause 6 of the Scheme specifically provides for transfer and vesting of the entire undertaking of the Transferor Companies as a going concern, including their assets, liabilities, rights, obligations, and business. It is further relevant to note that the Scheme does not only contemplate amalgamation of the First Transferor Company but also provides for amalgamation of the Second, Third, Fourth, and Fifth Transferor Companies with the Transferee Company. The Scheme therefore results in consolidation and simplification of the group structure. The fact that the First Transferor Company holds shares in the Transferee Company as one of its assets does not alter the nature of the Scheme or reduce the transaction to a mere transfer of shares. Upon sanction of the Scheme, all assets and liabilities of the First Transferor Company, including its investments, stand transferred to the Transferee Company in accordance with the terms of the Scheme.

10.2.34. The commercial rationale for proposing a Scheme of Arrangement is within the domain of the Companies and their stakeholders. This Tribunal is required to examine whether the Scheme complies with the statutory requirements and whether the interests of shareholders, creditors, and public interest are protected. The Tribunal is not required to substitute its own commercial assessment for that of the Companies.

10.2.35. **Accordingly, the contention of the OL that the Scheme is merely a mechanism for transfer of shares and does not constitute a valid amalgamation under Section 232 of the Companies Act, 2013 cannot be accepted. There is no requirement for amendment of Clause 2.1(h) of the Scheme as sought by the OL, and the Scheme is found to be compliant with Section 232(1)(b) of the Companies Act, 2013**.

<u>Valuation Report and Compliance with Applicable Regulations</u>

10.2.36. The OL, in para x(iv) of the Scheme has objected to the valuation report on the ground that same number of shares (3,75,02,140 equity shares) that were held by the Transferor Company No. 1 in the Transferee Company and cancelled pursuant to the Scheme are subsequently recommended to be allotted to the foreign shareholder of Transferor Company No. 1, M/s. Mahogany Singapore Company Pte Ltd (hereinafter, Singapore Holding Company) without any separate share exchange valuation. The OL has further raised concerns regarding compliance of the valuation report with the applicable provisions of FEMA, SEBI and RBI regulations. The Petitioners have submitted that the valuation has been undertaken by an independent registered valuer and the share exchange ratio has been determined in accordance with the applicable accounting and valuation principles.

10.2.37. 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),*** where a scheme involving the cancellation of the shares held by the Transferor Company in the Transferee Company and the consequent issuance of the shares of the Transferee Company to the shareholders of Transferor Company was upheld. 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 paragraph is 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.

10.2.38. 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 the 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"

10.2.39. In the Valuation Report prepared by CA Harsh Chandrakant Ruparelia, the valuer has considered that Transferor Company No. 1 does not hold any other significant business assets and/or any other net liabilities, other than the investments held in the Transferee Company itself. Further, on the implementation of the Scheme, 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. Accordingly, the report concludes that the Share Exchange Ratio of the Scheme is fair and reasonable. In order to arrive at this occlusion, the Valuer places reliance on the decision of ***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 Hon'ble Supreme Court in the case reported in ***176 ITR 417***. The relevant portion of 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.'

10.2.40. It is seen that in terms of ***the A.R. Krishnamoorthy v. Commissioner of Income Tax, (1989) 176 ITR 417 (SC)*** which affirmed the decision of ***Gold Coast Selection Trust Ltd(supra)*** relied upon by the Registered Valuer, the 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. This means that 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.

10.2.41. In view of the above, the share exchange ratio recommended by the Valuer **considering the shareholding structure, full asset profile, including cash, bank balances, and tax credits appears to be fair and is accepted. The allegations of an improper expert valuation are misconceived.**

10.2.42. The present Scheme provides for issuance of 3,75,02,140 fully paid-up equity shares of Re. 1/- each of the Transferee Company to the Singapore Holding Company, being the shareholder of the First Transferor Company.

10.2.43. Since the shares are proposed to be issued to a non-resident shareholder, reference is made to Rule 19 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, which provides that issuance of equity instruments to a person resident outside India is permissible subject to the conditions prescribed therein, i.e., the Company is not engaged in any sector prohibited for foreign investment or in excess of applicable sectoral limits. The Petitioners have submitted that the Transferee Company is engaged in the supply chain/logistics sector, which is not a prohibited sector under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

10.2.44. Paragraph 4(a) of the SEBI Master Circular bearing No. SEBI/HO/CFD/POD-2/P/CIR/2023/93 dated 20.06.2023 ("SEBI Master Circular"), mandates submission of a valuation report containing the relative fair value per share and fair share exchange ratio. Such a Valuation Report is not required under Paragraph 4(b) of the SEBI Master Circular, when there is no change in the shareholding pattern of the Transferee Company. The Petitioner Companies have submitted that the exception under paragraph 4(b) have not been availed. However, on perusal of the Valuation Report, it is seen that the valuer has submitted that *"valuation approaches as indicated in the format as prescribed under Part I - Para (A)(4) of Annexure II of SEBI Master Circular no. SEBI/HO/CFD/POD-2/P/CIR/2023/93 dated 20th June 2023 have not been undertaken as they are not relevant with respect to the Proposed Scheme;"*. The reasoning for the same, as submitted by the registered valuer is that there is no change in the aggregate promoters' shareholding in the Transferee Company and hence, shall not affect the interest of any of the shareholders of the Transferee Company.

10.2.45. On perusal of the contents of the Valuation Report, it appears that the rationale adopted by the valuer is similar to the exception contemplated under paragraph 4(b) of the SEBI Master Circular, since the relative fair value per share has not been separately provided. However, the valuation exercise has been undertaken by an independent valuer and has further been supported by a Fairness Opinion issued by a SEBI registered Category-I Merchant Banker.

10.2.46. The rationale in the case of ***AVM Capital Services (supra)*** squarely applies to the present case. Accordingly, since the share exchange ratio is supported by an independent valuation report and fairness opinion and no prejudice is caused to the shareholders, the commercial determination of the exchange ratio need not be interfered with. The Scheme does not result in any dilution of the existing shareholding of the shareholders of the Transferee Company, and the issuance of shares is pursuant to the statutory process of amalgamation approved by the stakeholders. **Further, the Petitioners have undertaken to comply all applicable provisions of FEMA, SEBI and other statutory requirements. Considering the valuation report, the fairness opinion issued by the SEBI registered Category-I Merchant Banker, and the compliance undertaken by the Petitioners, we find that the valuation process adopted under the Scheme cannot be said to be contrary to the applicable provisions of law. The objection raised by the OL on this count does not survive.**

Violation of Section 56 of the Companies Act, 2013:

10.2.47. One of the contentions is that the Scheme does not constitute a transfer within the scope of Section 232(1)(b) of the Companies Act, 2013. The OL in para 3(vi), para 3(xi) and para 3(xvi) of his report, 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 its contentions, the OL 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 case of share transfer affecting public interest. Per contra, the Petitioners submit that the reliance placed on ***Gabs Investments (supra)*** is erroneous. It is the Petitioner's contention that 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 the transfer of all assets and liabilities of the Transferor Company. In the said matter NCLT, Mumbai has rejected the scheme with of the view that the Scheme was a mechanism to tax evasion considering the case on its own merits. Further, the Petitioners have submitted that there is no bar in law for amalgamation of a promoter holding company with its subsidiary, and has 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.***

10.2.48. 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 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 in secondary market over a long period of time. Considering the massive and unilateral benefit to promoters, the lack of clarity on tax liabilities, and violation of regulatory requirements, the NCLT held that the Scheme was unfair, unreasonable, and contrary to public interest.

10.2.49. In the present case, the Income Tax Department, vide letters dated 18.10.2025, 29.10.2025, 11.11.2025 and 12.03.2026 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. Another distinguishing fact in the present case is that the tax liability of the Transferor Company has been secured by way of Clause 13.3 (a) of the Scheme which provides that Transferee Company will be liable for such tax liabilities.

10.2.50. It is seen that in a situation wherein the 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.

10.2.51. It is seen that the OL has placed nothing on record to show that the approval of the Scheme would affect the interest of the public shareholders. Moreover, as per 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.

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

56 also does not arise. The reliance placed on *Gabs Investments(supra)* is therefore is inapplicable to the present case.

<u>Violation of Section 123 of the Companies Act, 2013:</u>

10.2.53. The OL, in para 3(xi)(b) and(xii), has contended that the transfer of shares held by the First Transferor Company in the Transferee Company to the Singapore Holding Company, amounts to distribution of dividend in kind and is in violation of Sections 123(1)(a) and 123(5) of the Companies Act, 2013. In response, the Petitioners have submitted that the Scheme does not involve distribution of any dividend or transfer of assets by way of gift. The transaction contemplated under the Scheme is an amalgamation wherein the entire undertaking of the First Transferor Company, including its assets and liabilities, stands transferred to the Transferee Company.

10.2.54. The OL also relies 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 the present is a case of gifting shares and amounts to issuance of dividend in kind in violation of Section 123 of the Companies Act, 2013. Per contra, the Petitioner Companies herein 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.

10.2.55. It is seen that in the case of ***Indian Seamless Enterprises Ltd (supra)*** the Petitioner sought the sanction of the Hon'ble Bombay High Court to a scheme of arrangement between the Petitioner and its Shareholders. By the Scheme, the Petitioner sought to make a gift of the shares held by the Petitioner in a 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 that distribution of the company's property to its shareholders under the Scheme amounted 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 amounted to dividend in kind and was impermissible under Section 123. On these grounds, the petition was dismissed.

10.2.56. The case of ***Indian Seamless Enterprises Ltd.(supra)*** cited by the OL 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." However, in the present case, there is no transfer or gift of shares 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, there is an element of quid pro quo is present case and it would be incorrect to state that the shares are issued merely as a tactic to issue dividend in kind when it has been established that the Scheme envisages a transfer within the meaning of Section 232(1)(b) of the Companies Act, 2013. It is also noted that the Regional Director, vide its Report dated 27.05.2025, has expressly not objected the approval of the Scheme.

10.2.57. **The cancellation of shares held by the First Transferor Company in the Transferee Company and issuance of shares by the Transferee Company pursuant to the Scheme are consequential steps arising out of the amalgamation process. The same cannot be characterised as distribution of dividend or transfer of assets in specie. The Scheme is therefore not a mechanism for declaration or payment of dividend in kind and the provisions relating to declaration of dividend are not attracted.**

10.2.58. **In view of the above, we are of the 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.**

<u>Tax Liability</u>

10.2.59. OL, in para 3(xi)(b), 3(xi)(c) and 3(xiii), has submitted that the Scheme results in avoidance of capital gains tax liability arising from the difference between the book value/cost of the shares amounting to Rs. 675.04 Crores as on 31.03.2023 and the market value of Rs. 750.04 Crores. It has been contended that since the transaction does not qualify as an amalgamation under Section 2(1B) of the Income Tax Act, 1961, the tax benefit arising from the Scheme is impermissible. In response, the Petitioners have submitted that the Scheme constitutes a valid amalgamation under the provisions of the Companies Act, 2013 and provides for transfer and vesting of the entire undertaking, assets, liabilities, rights, and obligations of the Transferor Companies with the Transferee Company. It has further been submitted that the tax consequences, if any, arising from implementation of the Scheme would be determined by the Income Tax Authorities in accordance with law.

10.2.60. OL, in para 3(xvii), has also sought details regarding the status of pending appeals and proceedings before the Income Tax Department. The Petitioners have submitted the relevant details and have undertaken that all pending proceedings shall continue and be dealt with in accordance with law even after implementation of the Scheme.

10.2.61. This Tribunal finds that Income Tax Department vide letter dated 18.10.2025, 29.10.2025, 11.11.2025 and 12.03.2026, has given 'no objection' to the approval of the Scheme. Although, the Jurisdictional Officer of the First Transferor Company has sought for the postponement of the proceedings till the completion of the appeal proceedings, but Clause 13.3(a) and Clause 8 sufficiently provide for the recovery of any tax liability pertaining to the Transferor Companies subsequent to the approval of the Scheme. **Accordingly, 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, then the Department will be free to initiate the appropriate course of action as per law Accordingly, no further directions are required in this regard.**

<u>Compliance with Section 232(3)(b) of the Companies Act, 2013</u>

10.2.62. OL in para 3(xv) has contended that the Scheme violates Section 232(3)(b) of the Companies Act, 2013 since shares are extinguished and consideration is issued only in respect of such cancelled shares. In this regard, it is seen that the Sub section 3 of Section 232 deals with the scope of powers of this Tribunal while passing order pertaining to Scheme of Amalgamation. The objection raised by the OL proceeds on an incorrect interpretation of the said provision.

10.2.63. The Scheme specifically provides for cancellation of the shares held by the First Transferor Company in the Transferee Company. Such cancellation is in consonance with the proviso to Section 232(3)(b), which provides that as a result of the Scheme, the Transferee Company shall not hold any shares in itself or hold shares of the Transferor Company in its own name or in the name of any trust. The cancellation of inter-company shareholding pursuant to the Scheme is therefore a consequential step arising out of the amalgamation and is permissible under the proviso to Section 232(3)(b) of the Companies Act, 2013. Such cancellation cannot be construed as a violation of the said provision. **The cancellation of inter-company shareholding pursuant to the Scheme is therefore permissible under the proviso to Section 232(3)(b) and does not amount to violation of the said provision. Accordingly, the objection raised by the OL does not survive.**

Notice Requirements

10.2.64. OL has sought directions for issuance of notices in Form CAA-3 along with Form CAA-2 as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

10.2.65. The OL has sought directions for issuance of notices in Form CAA-3 along with Form CAA-2 as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Upon consideration, it is noted that notices had been issued to the concerned stakeholders, statutory authorities, and regulatory authorities in accordance with the provisions of the Companies Act, 2013 and the applicable Rules. The relevant statutory authorities have also entered appearance and made their submissions.

10.3. **INCOME TAX DEPARTMENT**

10.3.1.The Income Tax Department, vide letter dated 12.03.2025 has submitted that there are pending proceedings in relations to the First Transferor Company, hence, the Scheme may be considered after finality of such proceedings. The jurisdictional Income Tax Offices pertaining to the Second and Third Transferor Companies vide letter dated 18.10.2025; pertaining to Fifth Transferor Company vide letter dated 29.10.2025 and pertaining to Fourth Transferor Company vide letter dated 11.11.2025 have all conveyed their 'no objection' to the Scheme. During the hearing held on 18.03.2026, Ld. Counsel for the Income Tax Department has submitted that have no objection to the Scheme.

10.3.2.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 8 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 13.3(a) further ensures that all taxes payable in respect of the operations and / or profits of the business till Effective Date, shall be on account of the Transferee Company.

10.3.3.This Tribunal refers to the judgment in the case of Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, where 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 <u>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."</u>*

10.3.4.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 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**.

10.4. 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 at *Page Nos. 1233 - 1275.***

10.5. 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.

10.6. While approving the Scheme as above, it is clarified that this order shall 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.

11. THIS TRIBUNAL DO FURTHER ORDER:

(i) That the entire business and undertaking of the Transferor Companies 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 Companies 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 Companies shall be transferred to the Transferee Company and accordingly the same become the liabilities and duties of the Transferee Company.

(v) That the Appointed date for the Scheme shall be **01.04.2023** as mentioned in clause 3.3 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.

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

13. Company Petition ***CP(CAA)/57(CHE)2025 in CA(CAA)/31(CHE)2025*** accordingly, stands **allowed** on the aforementioned terms.

-Sd-	-Sd-
VENKATARAMAN SUBRAMANIAM	**SANJIV JAIN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)