



**NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH, COURT-II**

**COMPANY PETITION NO. (CAA)-31/(ND)/2024**

**CONNECTED WITH**

**COMPANY APPLICATION NO. : C.A. (CAA)-52/ND/2023**

**IN THE MATTER OF SCHEME OF AMALGAMATION OF:**

**1. ABHIPRA TRADING PRIVATE LIMITED**

Registered office at: Unit No. 201, C-50,  
Malviya Nagar, New Delhi – 110017

**... Petitioner No. 1/  
Transferor Company No. 1**

**AND**

**2. GRAPHIC RESEARCH CONSULTANTS INDIA  
PRIVATE LIMITED**

Registered office at: Unit No. 201, C-50,  
Malviya Nagar, New Delhi – 110017

**... Petitioner No. 2/  
Transferor Company No. 2**

**AND**

**3. UNITED BUILDWELL PRIVATE LIMITED**

Registered office at: Unit No. 201, C-50,  
Malviya Nagar, New Delhi-110017.

**... Petitioner No. 3/  
Transferor Company No. 3**

**AND**

**4. VINEETA TRADING PRIVATE LIMITED**

Registered office at Unit No. 201, C-50,  
Malviya Nagar, New Delhi - 110017

**... Petitioner No. 4/  
Transferor Company No. 4**

**AND**

**5. VIPUL EASTERN INFRACON PRIVATE LIMITED**

Registered office at: Unit No. 201,  
C-50, Malviya Nagar, New Delhi – 110017

**... Petitioner No. 5/  
Transferor Company No. 5**

**AND**

**6. VIPUL LIMITED**

Registered office at Unit No. 201, C-50,  
Malviya Nagar, New Delhi-110017

**... Petitioner No. 6/  
Transferee Company**

**AND**

**THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS**



**Section: 230 to 232 of the Companies Act, 2013**

**Order Delivered on: 17.04.2026**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**  
**MS. REENA SINHA PURI, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Petitioner** : Vikrant Rohilla Adv.  
**For the RD** : None  
**For the OL** : None  
**For the IT Dept.** : Mr. Ruchir Bhatia SSC, Mr. Pratyaksh Gupta and  
Mr. Punit Singhal JSCs, Adv. Himanshu Dutt



## ORDER

**PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)**

The captioned Company Petition has been jointly filed by **Abhipra Trading Private Limited** (“Petitioner No. 1/Transferor Company No. 1”); **Graphic Research Consultants India Private Limited** (“Petitioner No. 2/Transferor Company No. 2”); **United Buildwell Private Limited** (“Petitioner No. 3/Transferor Company No. 3”); **Vineeta Trading Private Limited** (“Petitioner No. 4/Transferor Company No. 4”); **Vipul Eastern Infracon Private Limited** (“Petitioner No. 5/Transferor Company No. 5”); and **Vipul Limited** (“Petitioner No. 6/Transferee Company”), under Sections 230 to 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, seeking sanction of the Scheme of Amalgamation. The said Scheme is annexed to the present Petition as “Annexure–P1”. The prayer made in the Petition reads thus: -

*“(a) Pass appropriate orders/directions to allow the present petition and to sanction the scheme of amalgamation between Petitioner Companies No. 1 to 5 and Petitioner Company No. 6 and their respective shareholders, for the amalgamation of the Petitioner Companies No. 1 to 5 (amalgamating companies) and transfer and vesting of the entire business and undertakings of the Petitioner Companies No. 1 to 5 with and into the Petitioner Company No. 6 (the amalgamated company), on a going concern basis, being 'Annexure-P1' hereto, so as to be binding with effect from the Appointed Date i.e. 1st day of April, 2022, in terms thereof, on the Petitioner Companies, their respective shareholders, creditors and all concerned and so as to become the business and undertakings of the Petitioner Company No. 6, in terms of the said Scheme;*



- (b) *pass necessary orders/directions for publication of notice of hearing of this Petition in Financial Express (English) and Jansatta (Hindi) both Delhi NCR editions; and*
- (c) *pass such further orders/directions in respect of the such incidental, consequential and supplementary matters or as may be deemed fit and proper in the facts and circumstances of this case to fully and effectually implement the said Scheme being 'Annexure-P1' to the present Company Petition."*

**2.** As can be seen from the Scheme placed on record, Petitioner/Transferor Companies No. 1 to 5 are proposed to be amalgamated with Petitioner No. 6/Transferee Company. The Transferor Companies are directly or indirectly wholly owned subsidiaries of the Transferee Company and beneficially held by the Transferee Company itself.

**3.** The rationale for the proposed Scheme of Amalgamation, as stated by the Petitioner Companies, reads thus:

- “(a) Each of the Petitioner Companies are inter alia engaged. in similar lines of businesses of infrastructure development, real estate development and allied activities and thus, bringing all these companies into one-fold is found beneficial and in the interest of the ultimate shareholder of the companies i.e. Petitioner Company No. 6;*
- (b) Under the Scheme, the entire business and undertakings of Petitioner Companies No. 1 to 5 shall be transferred and vested with and into Petitioner Company No. 6, with effect from the Appointed Date, i.e. 01 April, 2022;*
- (c) The amalgamation of Petitioner Companies No. 1 to 5 with the Petitioner Company No. 6 will enable the companies to work more cohesively, efficiently and effectively by pooling of resources, thereby bring about overall economy and reduction in costs. Cost savings are*



*expected to flow from more focused operational efforts, rationalisation, standardization and simplification of business processes and from the elimination of duplication and rationalisation of administrative expenses;*

- (d) The amalgamation will reduce multiplicity of legal and regulatory compliances required to be carried out by each of the Petitioner Companies, by reorganising and reducing the number of entities, eliminating administrative function and multiple recordkeeping;*
- (e) The amalgamation will enable the management to improve and enhance the working and operations and create a focused platform for future growth by consolidating the businesses, combining resources and leveraging combined assets. The amalgamation will result in the formation of a stronger company with a larger asset base and enable the combined businesses of the Petitioner Companies No. 1 to 5 to be pursued more conveniently and advantageously, with combined synergies and with larger resources available with the Petitioner Company No. 6;*
- (f) Greater integration and greater financial strength and flexibility for the amalgamated entities, which would result in maximising overall shareholder value, and will improve the competitive position of the combined entity;*
- (g) Improved organisational capacity and leadership, arising from the pooling of human resources of the Petitioner Company No. 6, who have the diverse skills, talent and vast experience to complete successfully in the increasingly competitive industry.”*

**4.** The First Motion Order was passed in CA (CAA) No. 52/ND/2023 on 05.03.2024, whereby this Tribunal dispensed with the requirement of convening meetings of the shareholders and creditors of the Transferor



Company as well as the Transferee Company. The relevant excerpt of the said Order reads thus:-

*“24. In the wake of the pleadings and documents put forth by the Applicant Companies and the prayer made in the Company Application, it is ordered:*

*I. The requirement of convening the meeting of the Equity Shareholders of Applicant Companies Nos. 1 to 5 is dispensed with, in view of the consent/NOC given by them.*

*II. Since there are no Secured Creditors of the Applicant Companies Nos. 1 to 5, the question of their meeting(s) does not arise.*

*III. The requirement of convening the meeting of the Unsecured Creditors of Applicant Companies Nos. 1 to 5 is dispensed with, in view of the consent/NOC given by them.*

*IV. Since, the Applicant Companies No. 1 to 5 are directly or indirectly, wholly owned subsidiary of the Applicant No. 6, which is the Transferee Company, the implementation of the scheme would have no impact on the shareholders of creditors of the parent company, as the amalgamation involves cancellation of shares held by the Applicant Company No. 6 in its wholly owned subsidiaries and does not involve either issuance of shares by the parent Transferee Company or any arrangement or compromise with the Creditors of Applicant No. 6, the meeting of Creditors either Secured or Unsecured as also Equity Shareholders qua the Applicant No. 6 is also dispensed with.”*

**5.** On filing of the 2<sup>nd</sup> Motion Petition, this Tribunal vide Order dated 03.05.2024, directed notice to be issued to the concerned statutory/regulatory authorities and to publish notice in two leading newspapers viz. *Financial Express (English)* and *Janasatta (Hindi)* newspapers, in terms of Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.



6. In compliance of the aforementioned directions, the Petitioner Companies through their common authorized representative, filed affidavit of service dated 21.05.2024, confirming the service of notice upon the concerned statutory/regulatory authorities and also publication of the said notice in the "Financial Express" and "Jansatta" newspapers, both dated 14.05.2024.

## 7. OBSERVATIONS OF STATUTORY AUTHORITIES

### I. Registrar of Companies (RoC)/Regional director

- i. Upon perusal of the record, it is observed that the Regional Director ("RD") has filed its representation through an affidavit dated 09.09.2024, annexing thereto the Report of Registrar of Companies ("RoC"), wherein certain observations have been made in respect of the Petitioner Companies in relation to the proposed Scheme of Amalgamation. In response, the Petitioner Companies have filed a common reply vide letter dated 20.08.2024, furnishing their explanations to the observations raised by the RoC/RD. The tabulated presentation consist of observations of the RoC/RD and the corresponding replies of the Petitioner Companies reads thus:

S. No.	Observations	Response
1.	<p><b>Para 10 (Pg. 4) Representation:</b></p> <p>As per MCA General Circular no. 9/2019 dated 21.08.2019, 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</p>	<p><b>Para 11 (Pg. 7) Representation:</b></p> <p>Appointed Date of 1.04.2022 was approved by the respective Board of Directors of Abhipra Trading Pvt. Ltd., Graphic Research Consultants India Pvt. Ltd., United Buildwell Pvt. Ltd., Vineeta Trading Pvt. Ltd. and Vipul Eastern Infracon Pvt. Ltd. ("<b>Transferor Companies</b>") in their respective meetings held on 10 November, 2022 and the Board of Directors of Vipul Ltd. in its meeting held on 11 November, 2022. The said Scheme was thereon filed under company application being CA (CAA) 15/(ND)/2023 on 07.01.2023. The said</p>
	<p>against public interest. In this case, the appointed date is 01.04.2022. However, the justification of the same being significantly ante-dated in terms of the above circular is not clearly brought out.</p>	



		<p>company application was heard by the Hon'ble NCLT ("Tribunal") but was disposed off vide order dated 09.06.2023 with liberty to refile the same afresh. The same Scheme, with the same set of documents under company application being CA (CAA) 52/(ND)/2023 was again filed on 17.06.2023. The said fact about refiling pursuant to orders of the Hon'ble Tribunal was also stated in para 2 'Brief Synopsis' at page 25 of the company application being CA (CAA) 52/(ND)/2023 (copy of which was served on your good offices). The said company application was finally heard and disposed by the Hon'ble Tribunal vide its Order dated 05.03.2024. Consequently, the company petition being CP (CAA) 31/(ND)/2024 was filed on 23.03.2024.</p> <p>As is evident from the facts aforesaid the Appointed Date is not ante-dated and was much less than a year when the first company application being CA (CAA) 15/(ND)/2023 was filed on 07.01.2023. The present matter has only taken in due course to reach the present stage.</p>
2.	As per the Auditors Report for the year ended 31.03.2023 of all the Transferor Companies and the Transferee Company, all the applicant companies incurred cash losses during the current and in the immediately preceding year.	<p>The contents of the Auditor's report are a matter of record and hence need no reply. It is however stated that in the past years specially owing to covid 19 pandemic, the real estate sector suffered a huge setback and consequently the petitioner companies also incurred losses. This petitioner companies however are now recovering as the real estate market recovers and with the consolidation of companies in terms of the Scheme, the petitioner companies hope to fully set off all their losses, with recovered business, additional capital and resources.</p> <p>In any event the combined net worth of all the Transferor Companies is positive i.e. Rs. 2,728.71 lakhs as on 30 September,</p>
		<p>2022 and the merger would not negatively affect the net worth of the Transferee Company. As such the Scheme/amalgamation is not affecting the rights of the shareholders or creditors of the Transferee Company and is not opposed to public interest, since the merger is of directly or indirectly wholly owned subsidiaries of the Transferee Company.</p>
3.	In case of all the Transferor Companies and the Transferee Company, auditor has made 'Emphasis of Matter' in the audit report for the FY ended 31.03.2023. Therefore, the necessary clarification may be sought from all the applicant companies on all 'Emphasis of Matter'.	<p>As also noted in the auditor's report, owing to covid 9 pandemic the entire real estate sector suffered a huge setback causing disruption in business operations, thereby resulting in delay in supplies or refund of advances extended by the petitioner companies in relation to their business and operations. However, since the real estate sector is now recovering, the petitioner companies (and the Transferee Company) post the merger hopes to recoup and recover all its advances in the usual course of its business and operations.</p>



4.	As per audited financial statement of the Transferor Company no. 1, 2, 4 and 5 for the FY ended 31.03.2023, it is seen that the companies have nil revenue from its operations since last two years. Therefore, these companies appear to be dormant u/s 455 of the Companies Act, 2013.	The Transferor Companies 1, 2, 4 and 5 had nil revenue as they are/were land holding companies and have been actively involved in real estate projects with the Transferee Company and as such no revenue is yet reflecting in the books and accounts of the aforesaid companies. In any event, all these companies are operational and very much engaged in development of real estate projects along with the Transferee Company and solely on the basis of lack of revenue cannot be held to be dormant companies within the meaning of Section 455 of the Companies Act, 2013 ("Act"). Further, the aforesaid companies are regularly filing their financial statements/annual returns and cannot be held to be dormant within the meaning of Section 455(4) of the Act.
5.	As per financial statements for the years ended 31.03.2023, Transferor Companies No. 02, 03, 04, 05 and the Transferee Company have not paid the certain statutory dues on account of dispute.	The contents are a matter of record and hence need no reply. It is however stated that the petitioner companies and especially Transferee Company undertakes to pay any and all statutory dues as may be found due and payable by either the Transferee Company or (post the merger) the Transferor Companies, once the dispute is finally resolved.
6.	As per audited financial statement of the Transferor Company No. 03 for the FY ended 31.03.2023, it is seen that in the Balance Sheet, the company has shown negative figure of Rs. (49,216.62) of 'Current Tax Assets (Net)' under head Current Assets which is not clear. The Company may be asked to clarify the same.	It is stated that the Transferor Company No. 3 presents its current tax assets after netting off with the corresponding tax provisions for the year. At the end of the FY ended 31 March, 2023, the provisions for taxation were higher than the corresponding tax assets in the form of TDS and advance tax and hence, there was a negative figure of Rs. (-49,212.62) under the head Current Tax Assets (Net).
7.	As per the financial statement for the year ended 31.03.2023, the Transferor Company No. 05 has the quantum of investment which is more than 50% of total assets of the company and the company has other income of Rs. 16,50,000 and no source of the same is disclosed, it appears to be income from the financial assets, which is more than 50% of the total income. Therefore, it appears that the transferor company No. 5 is operating as a NBFC, however, it is not registered as NBFC with the RBI.	It is stated that the other income of Rs. 16,50,000 of Transferor Company No. 5 is not business income of the company but in fact was a liability which was written back as it was no longer payable. Such liability write back is neither an income from any financial assets nor there is any source of such income. Accordingly, the company does not have any income from financial assets which may be more than 50% of its total income and the company does not qualify as an NBFC within the meaning of Section 45-IA of the RBI Act, 1934. The Transferor Company No. 5 is not an NBFC and is not required to be registered as NBFC with the RBI.



8.	<p>In the Auditors report for the year ended 31.03.2023 of Transferee Company, Auditor has Qualified the opinion and the basis for Qualified opinion are as under:</p> <ul style="list-style-type: none"><li>- Cash and cash equivalent include cheques in hand aggregating to Rs. 221.56 lakhs collected from customers towards advance/ booking amount. As stated by the management, these are yet to be presented for encashment at the request of the customers;</li><li>- The Company has taken as well as granted several secured and unsecured loans and advances during the year. The agreements/ documentation in respect of such loans and advances are in the process of being signed. In the</li></ul>	<ul style="list-style-type: none"><li>- As also noted in the report, the cheques in hand of Rs. 221.56 lacs have yet not been presented for encashment as the same have been retained and not presented only at the request of the customers. The Transferee Company presents such cheques only once the customers finalise the transaction and has thereon recovered substantial amount pertaining to these cheques during the year under review;</li><li>- The loans and advances were taken or granted in the usual course of business of the company and documentation with respect to the same is time consuming hence could not be completed by the end of the FY of which the auditor report</li></ul>
	<p>absence of such signed agreements, interest payable and receivables, as applicable, has been computed on the basis of the details provided by the management where available. The impact, if any, will be recognised after the completion of such documentation.</p>	<p>pertains. Some of them were signed post end of the FY and some other are in the process of execution and signing.</p>
9.	<p>In the Auditors report for the year ended 31.03.2023 of Transferee Company auditor has stated the in one case the title deed of the Immovable property of the company is not held in the name of the company. Thus the company may be asked to clarify the compliance of the provisions of Section 187 of the Companies Act, 2013.</p>	<p>It is stated that the title of the immovable property in question is yet to be transferred in the name of the Transferee Company and could not be done due to paucity of funds required to consummate a valid transfer. The Transferee Company is putting its best efforts to conclude the transfer in the current financial year and is arranging requisite funds for the same.</p>



10.	As per the Auditors Report for the year ended 31.03.2023, the Transferee Company has granted loans and advances to other parties. Thus, the company may be asked to ensure the compliances of the provisions of Sections 185 and 186 of the Companies Act, 2013.	It is stated that the Transferee Company is in due compliance of the provisions of Sections 185 and 186 of the Act. Section 185 does not apply to the loans and advances in question, as the same have not been extended by the company to any Director of the company or any other person where such director may be interested. Section 186 (1) as does not apply since the Auditor's note does not pertain to any investments made by the company. Only Section 186 (2) applies and the Transferee Company has duly complied with its provisions, as these loans and advances are dully supported/approved by resolutions passed by the shareholders under Section 186 (3) of the Act in its general meeting held on 24 September, 2014.
11.	As per the Auditors Reports for the year ended 31.03.2023 of Transferee Company, the company has arrears of outstanding undisputed statutory dues as at the last date of the financial year for a period of more than six months from the date they become payable.	It is stated that the said arrears of TDS liability of Rs. 67.47 lakhs that was due for more than six months as at the last date of the financial year, was duly deposited by the Transferee Company during the FY 2023-2024.
12.	As per the Auditors Report for the year ended 31.03.2023 of Transferee Company, the company has defaulted in the repayment of dues of certain banks and financial institutions.	It is stated that the delays caused in the financial covenants in payment of principal as well as interest to lenders due to overall sluggishness in the Indian economy and slump in the real estate industry in the recent past, especially
		owing to Covid 19 pandemic, which spilled over to the period in question. The Company is in the process of negotiation and settlement with the relevant lenders for regularization of all such loans taken by the Transferee Company. In any event, owing to the positive net worth of the Transferee Company and good business prospects in light of the now growing real estate sector, the lenders have confidence in the company and never recalled any of their loans.
13.	As per this office record Inquiry in respect of Transferee company i.e. Vipul Limited was ordered and a report u/s 208 of the Companies Act, 2013 has been submitted to O/o RD(NR) on 10.10.2023.	The contents of para 13 of the Letter are a matter of record and needs no reply.



14.	As per the financial statements for year ended 31.03.2023 of Transferee company, the company has transaction with the struck off companies.	It is stated that the Transferee Company had transactions or dealt with these companies in the past and they were subsequently struck off by the ROC, apparently on account of non-filing of financial statements and annual returns. These companies are existing as such and the balances payable / receivable would be settled with such companies as and when possible. However, pursuant to disclosure requirements under Schedule III of the Act, the same were disclosed in the financial statements.
15.	The Transferee company may kindly be directed to comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013 regarding fee payable of its revised Authorised Share Capital.	It is stated that the Transferee Company will duly comply with the provisions of Section 232 (3) (i) of the Act regarding payment of fee on its revised authorized share capital, if any, consequent to amalgamation of the Transferor Companies with the Transferee Company.

## II. Official Liquidator (OL)

- i. In terms of notice served upon the Official Liquidator (“OL”) under Section 230(5) of the Companies Act, 2013, read with Rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, the OL has filed its report dated 05.08.2024. The relevant excerpt of the OL’s report read thus:

*“15. That the Official Liquidator has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner till the date of filing of this Report. Based on information/documents as submitted by the Transferor Companies and Transferee Company, it has emerged that:-*

- a) *The Transferor Company No.1, Transferor Company No.2, Transferor Company No.4 are wholly owned subsidiaries of*



*Transferor Company No.5 and in turn the Transferor Company No.5 and Transferor Company No.3 are wholly owned subsidiaries of Transferee Company. As such all the above-named Transferor Companies are directly or indirectly wholly owned subsidiaries of the Transferee Company. The Balance Sheet as at 31.03.2023 of the respective Transferor Companies reflect as under: -*

- ***Transferor Company No.1:*** *It is recipient of security deposits of Rs. 2.85 crores from the Transferee Company and primarily used to pay project advances to its holding company (Transferor Company No.5). During the current year and the previous year, it has not done any operational activities and reported 'nil' revenue.*
- ***Transferor Company No.2:*** *It is recipient of security deposits of Rs. 14.00 crores from the Transferee Company. The corresponding assets are mainly project advances of Rs. 1.15 crores to its holding company (Transferor Company No.5), land of Rs. 8.18 crores under the head 'inventory' and project advances of Rs. 6.07 crores to the above-named Transferee Company. During the year and previous year, it has not done any operational activities and reported 'nil' revenue.*
- ***Transferor Company No.3:*** *During the year, the company has recorded income on account of receipt of enhanced compensation of Rs. 25.97 crores on land acquisition. Accordingly, as on 31.03.2023, against the paid-up share capital of Rs. 0.05 lacs, the company has net surplus of Rs. 19.42 crores. On the assets side, the company has reported project advances of Rs. 24.32 crores to its holding company (Transferee Company).*
- ***Transferor Company No.4:*** *Against the paid-up share capital of Rs. 0.50 crores, it has net surplus of Rs. 0.13 crores and outstanding security deposits of Rs. 3.00 crores from the Transferee Company. corresponding assets are mainly project*



advances of Rs. 3.50 crores to its holding company (Transferor Company No.5) and fellow subsidiary apart from land of Rs. 0.12 crores under the head 'inventory'. During the current year and the previous year, it has not done any operational activities and reported 'nil' revenue.

- **Transferor Company No.5:** Against the paid-up share capital of Rs. 2.62 crores, it has net surplus of Rs. 4.38 and capital subsidiary from West Bengal Tourism Development Corp. Limited of Rs. 0.97 lacs apart from advances of Rs. 10.16 crores taken from the Transferee Company, Transferor Company No.1, Transferor Company No.2 and Transferor Company No.3. The corresponding assets are mainly non-current investment of Rs. 17.64 crores and taxation advances of Rs. 0.51 crores. During the current year, its major source of revenue is 'other income' rather than its regular operations.

b) The Transferee Company is a listed company and as per its standalone Balance Sheet as at 31.03.2023, as on the date of the said Balance Sheet, it has accumulated losses of Rs. 194.79 crores.

16. That the report of Official Liquidator is based upon the documents/reply submitted by the petitioner companies. Balance Sheet, Memorandum and Article of Association and other documents furnished by the petitioner companies have not been enclosed with the report as the same are already on records of the Hon'ble Tribunal.

17. That the Official Liquidator on the basis of information submitted by the petitioner companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest in terms of the provisions of the Companies Act, 2013.

18. That in view of the submission made above the Hon'ble National Company Law Tribunal may pass such order/orders as may deem fit and proper in the facts and circumstance of the case.”



ii. In response to the aforesaid observations made by the Official Liquidator, an affidavit dated 04.10.2024 has been filed on behalf of the Petitioner Companies, furnishing clarifications with respect to the “nil” revenue of Transferor Companies Nos. 1, 2 and 4, and regarding the source of revenue of Transferor Company No. 5, which is reflected as “other income” rather than income from its regular operations. The relevant excerpt of the submissions made on the behalf of petitioner companies reads thus:-

*“In response to the aforesaid observation of the Official Liquidator, it is most humbly submitted that the Transferor Companies No. 1, 2 and 4 are basically land holding companies and are engaged in development of real estate projects which are lead by the Transferee Company. These project are still under development and hence no revenue is yet generated for the aforesaid Transferor Companies. It is stated that all the aforesaid companies are very much operational and actively involved in real estate development activities and merely because no revenue is generated by any of the companies above, it cannot be stated that the companies are non-operational.*

*Further, in relation to Transferor Company No. 5 it is stated that, similarly, no revenue is yet generated by Transferor Company No. 5 from its real estate activities, owing to aforesaid reasons. Further, the other income appearing in the books of accounts of Transferor Company No. 5 is because of a liability which was written back, as it was no longer payable. Such write back is neither an income from any financial assets nor from any other sources. It is reiterated that income from regular operations is yet to be generated by the Transferor Company No. 5.”*

### **III. Income Tax department**

i. The Income Tax Department has also filed its reports qua Transferor Company no. 2 to 5 and Transferee Company, giving the details of the proceedings



pending, tax liabilities and its remark on the proposed Scheme of Amalgamation. The relevant excerpt of the reports reads thus:-

**Report dated 24.11.2025 of Transferor Company no. 3 viz., M/s United Buildwell Private Limited.**

7.	Details of any proceedings pending against applicant companies under the Income Tax Act.	As per details available on ITBA Portal, no income tax proceedings are pending as on date								
8.	Details of tax demand pending for recovery from applicant companies (Specify year wise amount outstanding)	As per details available on ITBA portal following outstanding demands are pending <table border="1"> <thead> <tr> <th>AY</th> <th>Outstanding demand (Rs.)</th> <th>Demand section</th> <th>DIN</th> </tr> </thead> <tbody> <tr> <td>2014-15</td> <td>3,99,644/-</td> <td>143(1)</td> <td>2015201437007810425C</td> </tr> </tbody> </table>	AY	Outstanding demand (Rs.)	Demand section	DIN	2014-15	3,99,644/-	143(1)	2015201437007810425C
AY	Outstanding demand (Rs.)	Demand section	DIN							
2014-15	3,99,644/-	143(1)	2015201437007810425C							
9.	Details of pendency of investigation/inquiry proceedings, if any.	No such information is available with this office as on date								
10	Whether any proceedings are contemplated any provisions of the I.T Act,	No such information is available with this office as on date								
11.	Details of ITR filed by the company.	ITR has been filed for AY 2022-23 on 10.10.2022								
21.	Remarks about objection to the scheme or any representation to NCLT to protect the interest of Revenue.	This office has no objection in the proposed scheme of amalgamation and their respective shareholders and creditors subject to payment of the above outstanding liability.								

**Report dated 24.11.2025 of Transferee Company viz., M/s Vipul Ltd**

3.	Details of any proceedings pending against applicant companies under the Income Tax Act.	Re-assessment proceedings u/s 148 for A.Y. 2019-20
4.	Details of tax demand pending for recovery from the applicant company	Rs. 27,66,17,941/-
5.	Date of present report	28-05-2024
6.	Remarks about objection to the scheme or any representation to NCLT to protect the interest of Revenue.	This office has no objection in the proposed scheme of amalgamation w.r.t  1. M/s Vipul Ltd. (Transferee Company)



**Report dated 10.06.2025 of Transferor Company No. 2 viz., M/s Graphic**

**Research Consultants India Pvt. Ltd.**

7.	Details of any proceedings pending against applicant companies under the Income Tax Act.	As per details available on ITBA Portal, no income tax proceedings are pending as on date												
8.	Details of tax demand pending for recovery from applicant companies (Specify year wise amount outstanding)	As per details available on ITBA portal following outstanding demands are pending <table border="1"> <thead> <tr> <th>AY</th> <th>Outstanding demand (Rs)</th> <th>Demand section</th> <th>DIN</th> </tr> </thead> <tbody> <tr> <td>2011-12</td> <td>5,67,660</td> <td>154</td> <td>2020201110000174743C</td> </tr> <tr> <td>2013</td> <td>1,390</td> <td>154</td> <td>2014201337062037800C</td> </tr> </tbody> </table>	AY	Outstanding demand (Rs)	Demand section	DIN	2011-12	5,67,660	154	2020201110000174743C	2013	1,390	154	2014201337062037800C
AY	Outstanding demand (Rs)	Demand section	DIN											
2011-12	5,67,660	154	2020201110000174743C											
2013	1,390	154	2014201337062037800C											
9.	Details of pendency of investigation/inquiry proceedings, if any.	No such information is available with this office as on date												
10	Whether any proceedings are contemplated any provisions of the I.T Act,	No such information is available with this office as on date												
11.	Details of ITR filed by the company.	ITR has been filed for AY 2022-23 on 10.10.2022												
21.	Remarks about objection to the scheme or any representation to NCLT to protect the interest of Revenue.	This office has no objection in the proposed scheme of amalgamation and their respective shareholders and creditors subject to payment of the above outstanding liability.												

**Report dated 01.12.2025 of Transferor Company No. 4 viz., M/s Vineeta**

**Trading Private Limited**

7	Whether any proceedings (ie Assessment/Penalty/Appeal/Prosecution/Writ/Investigation/Inquiry/Tax Recovery etc) is pending against the applicant company under the provision of Income Tax Act, or not  (Plz specify under which section & for which year, it has been pending)	As per details available on ITBA Portal, there is no such proceedings is pending against the assessee company.												
8	Whether any income tax demand is outstanding against the applicant company under the provision of Income Tax Act, or not  (Plz specify under which section & for which year, it has been pending)	As per details available on ITBA Portal, the following demands are pending <table border="1"> <thead> <tr> <th>AY</th> <th>DEMAND</th> <th>DEMAND SECTION</th> <th>DIN</th> </tr> </thead> <tbody> <tr> <td>2006-07</td> <td>2607/-</td> <td>143(1)</td> <td>2010200651065061980C</td> </tr> <tr> <td>2007-08</td> <td>100786/-</td> <td>220(2)</td> <td>2024200737000440325C</td> </tr> </tbody> </table>	AY	DEMAND	DEMAND SECTION	DIN	2006-07	2607/-	143(1)	2010200651065061980C	2007-08	100786/-	220(2)	2024200737000440325C
AY	DEMAND	DEMAND SECTION	DIN											
2006-07	2607/-	143(1)	2010200651065061980C											
2007-08	100786/-	220(2)	2024200737000440325C											

**XXXX**



19	Details of Rerun of Income Filed by The Applicant Company for last three years.	AY	Date of filing	Return Income/Loss
		2020-21	20.01.2021	(-) 31961/-
		2021-22	03.12.2021	(-) 25340/-
		2022-23	04.10.2022	(-) 24810/-
20	Remarks about objection to the scheme or any representation to NCLT to protect the interest of revenue.	The assessment proceedings/all tax assessment proceedings and appeal of whatsoever, nature by or against the above said company, pending or arising as at the		

		<p>effective date shall be continued and/or enforced by or against the company in the same manner and to the same extent as would or might have been continued and enforced by or against the transferor company.</p> <p>This office has no objection in the proposed scheme of amalgamation and their respective shareholders and creditors subject to payment of the above outstanding liability.</p> <p>The department reserves its right to determine the tax implications of the Amalgamation/Merger/Demerger contemplated under the scheme in accordance with the provisions of the I T Act, 1961 and the provisions of the I T Act, 1961 shall prevail over anything contrary provided under the scheme.</p>
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**Report dated 25.03.2026 of Transferor Company No. 5 viz., M/s Vipul**

**Eastern Infracon Private Limited**

- i. That as per available records, regular assessment proceedings u/s 143(3)/263 of Income Tax Act 1961 against Vipul Eastern Infracon Private Limited for the Assessment Year 2011-12 has been completed on dated 30-03-2016, which culminated into Income Tax Demand of Rs 2,61,78,720/-.  
[Copy of assessment order and notice of demand is enclosed as **Annexure-A**]
- ii. That subsequently for challenging the said demand, assessee company has filed an appeal before the Commissioner Income Tax (Appeals), which is pending for adjudication. However, no stay over the said demand has been granted either by this office or in appeal.

**Objection, if any:** Out of demand raised of Rs 2,61,78,720/- for Assessment year 2011-12, an amount of Rs. 2,21,67,720/- is presently outstanding. Assessee company may be directed to make the payment of above outstanding income tax demand amounting to Rs. 2,21,67,720/-.

- ii. The Petitioner Companies have filed their respective affidavits dated 04.10.2024. They have also placed on record a tabular representation



addressing the objections/observations of the Income Tax Department. The relevant excerpt of the said representation reads thus:-

**3.1 Petitioner No. 1 / Abhipra Trading Pvt. Ltd.:**

**No Objection at Para 7 (Pg. 1) and Para 23 (Pg. 3):** The IT Department has not made any observations in its representation and has stated that:

*“As per details available on ITBA Portal, no Income Tax proceedings are pending in this case.”*

*“This office has no objection in the proposed Scheme of amalgamation and their respective shareholder and creditors.”*

**3.2 Petitioner No. 2 / Graphic Research Consultants India Pvt. Ltd.:**

S. No.	Observations	Response						
	<b>Para 8 (Pg. 1) of Representation:</b>	<b>Para 4 (Pg. 5) Reply Affidavit:</b>						
1.	As per details available on ITBA Portal, following outstanding demands are pending: <table border="1" data-bbox="371 981 801 1104"> <thead> <tr> <th>AY</th> <th>Outstanding Demand (INR)</th> </tr> </thead> <tbody> <tr> <td>2011-12</td> <td>5,67,660</td> </tr> <tr> <td>2013</td> <td>1,390</td> </tr> </tbody> </table>	AY	Outstanding Demand (INR)	2011-12	5,67,660	2013	1,390	It is most humbly submitted that the liability of INR 1,390 is already extinguished and the liability of INR 5,67,660 in relation to assessment year 2011-12 is under challenge by Petitioner Company No. 2 for which grievance has been filed by Petitioner Company No. 2.  It is most humbly submitted that in any event, in terms of the Scheme, the Petitioner Company No. 2 would stand merged and amalgamated with the Petitioner Company No. 6/ Transferee Company and all the liabilities of  Petitioner Company No. 2 would also stand transferred to the Petitioner Company No. 6/ Transferee Company. Further, Petitioner Company No. 6/ Transferee Company has already undertaken in paras 5.3.9 and 5.3.11 of the Scheme and hereby further undertakes that all liabilities of Petitioner Company No. 2 (including the aforesaid demands) shall be borne and paid by the Petitioner Company No. 6/ Transferee Company, post the amalgamation, as and when and if the same are found due and payable. As such no prejudice would be caused to the income tax department.
AY	Outstanding Demand (INR)							
2011-12	5,67,660							
2013	1,390							

**No Objection at Para 7 and Para 21 (Pg. 1):** The IT Department has not made any other observation in its representation and has stated that:

*“As per details available on ITBA Portal, no income tax proceedings are pending as on date.”*

*“This office has no objection in the proposed scheme of amalgamation and their respective shareholders and creditors subject to payment of the above outstanding liability.”*



**3.3 Petitioner No. 3 / United Buildwell Pvt. Ltd.:**

S. No.	Observations	Response				
1.	<p><b>Para 8 (Pg. 1) of Representation:</b> As per details available on ITBA Portal, following outstanding demands are pending:</p> <table border="1"> <thead> <tr> <th>AY</th> <th>Outstanding Demand (INR)</th> </tr> </thead> <tbody> <tr> <td>2014-15</td> <td>3,99,644</td> </tr> </tbody> </table>	AY	Outstanding Demand (INR)	2014-15	3,99,644	<p><b>Para 4 (Pg. 5) Reply Affidavit:</b> It is most humbly submitted that, the aforesaid amount of INR 3,99,644 has already been deposited by the Petitioner Company No. 3.</p> <p>It is most humbly submitted that, in any event in terms of the Scheme, the Petitioner Company No. 3 would stand merged and amalgamated with the Petitioner Company No. 6/ Transferee Company and all the liabilities of Petitioner Company No. 3 would also stand transferred to the Petitioner Company No. 6/ Transferee Company. In any event, Petitioner Company No. 6/ Transferee Company has already</p>
AY	Outstanding Demand (INR)					
2014-15	3,99,644					
		<p>undertaken in paras 5.3.9 and 5.3.11 of the Scheme and hereby also undertakes that all liabilities of Petitioner Company No. 3 shall be borne and paid by the Petitioner Company No. 6/ Transferee Company, post the amalgamation, as and when and if the same are found due and payable. As such no prejudice would be caused to the income tax department.</p>				

**No Objection at Para 7 and Para 21 (Pg. 1):** The IT Department has not made any other observation in its representation and has stated that:

*“As per details available on ITBA Portal, no income tax proceedings are pending as on date.”*

*“This office has no objection in the proposed scheme of amalgamation and their respective shareholders and creditors subject to payment of the above outstanding liability.”*

**3.4 Petitioner No. 4 / Vineeta Trading Pvt. Ltd.:**

S. No.	Observations	Response						
1.	<p><b>Para 8 (Pg. 1) of Representation:</b> As per details available on ITBA Portal, following outstanding demands are pending:</p> <table border="1"> <thead> <tr> <th>AY</th> <th>Outstanding Demand (INR)</th> </tr> </thead> <tbody> <tr> <td>2006-07</td> <td>62,640</td> </tr> <tr> <td>2007-08</td> <td>2,606</td> </tr> </tbody> </table>	AY	Outstanding Demand (INR)	2006-07	62,640	2007-08	2,606	<p><b>Para 4 (Pg. 5) Reply Affidavit:</b> It is most humbly submitted that the liability of INR 2,606 is already extinguished and the liability of INR 62,640 has already been deposited by the Petitioner Company No. 4.</p> <p>It is most humbly submitted that in any event, in terms of the Scheme, the Petitioner Company No. 4 would stand merged and amalgamated with the Petitioner Company No. 6/ Transferee Company and all the liabilities of Petitioner Company No. 4 would also stand transferred to the Petitioner Company No. 6/ Transferee Company. Further, Petitioner Company No. 6/ Transferee Company has already undertaken in paras 5.3.9 and 5.3.11 of the Scheme and hereby further undertakes that all liabilities of Petitioner Company</p>
AY	Outstanding Demand (INR)							
2006-07	62,640							
2007-08	2,606							



	No. 4 (including the aforesaid demands) shall be borne and paid by the Petitioner Company No. 6/ Transferee Company, post the amalgamation, as and when and if the same are found due and payable. As such no prejudice would be caused to the income tax department.
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**No Objection at Para 7 and Para 21 (Pg. 1):** The IT Department has not made any other observation in its representation and has stated that:

*“As per details available on ITBA Portal, no income tax proceedings are pending as on date.”*

*“This office has no objection in the proposed scheme of amalgamation and their respective shareholders and creditors subject to payment of the above outstanding liability.”*

**3.5 Petitioner No. 5 / Vipul Eastern Infracon Pvt. Ltd.:**

S. No.	Observations	Response						
	<b>Second Para (Pg. 1) of Representation:</b>	<b>Para 4 (Pg. 4) Reply Affidavit:</b>						
1.	<p>The following demands are outstanding:</p> <table border="1"> <tr> <td>Demand Raised for AY 2011-12</td> <td>Rs. 2,61,78,720/-</td> </tr> <tr> <td>Less: Paid by the assessee till date</td> <td>Rs. 65,10,000/-</td> </tr> <tr> <td>Demand outstanding as on date</td> <td>Rs. 1,96,68,720/-</td> </tr> </table>	Demand Raised for AY 2011-12	Rs. 2,61,78,720/-	Less: Paid by the assessee till date	Rs. 65,10,000/-	Demand outstanding as on date	Rs. 1,96,68,720/-	<p>It is most humbly submitted that, the aforesaid demand of the income tax department is presently under challenge and an appeal against the said demand has been filed by Petitioner Company No. 5 which is pending before the Commissioner of Income Tax.</p> <p>It is most humbly submitted that in terms of the Scheme, the Petitioner Company No. 5 would stand merged and amalgamated with the Petitioner Company No. 6/ Transferee Company and as also rightly noted in the representation of the Income Tax Department, all the liabilities of Petitioner Company No. 5 would also stand transferred to the Petitioner Company No. 6/ Transferee Company. Further, Petitioner Company No. 6/ Transferee Company has already undertaken in paras 5.3.9 and 5.3.11 of the Scheme and hereby further undertakes</p>
Demand Raised for AY 2011-12	Rs. 2,61,78,720/-							
Less: Paid by the assessee till date	Rs. 65,10,000/-							
Demand outstanding as on date	Rs. 1,96,68,720/-							
		that all liabilities of Petitioner Company No. 5 (including the aforesaid demand) shall be borne and paid by the Petitioner Company No. 6/ Transferee Company, post the amalgamation, as and when and if the same are found due and payable. As such no prejudice would be caused to the income tax department.						

**No Objection at Second Para and Fourth Para (Pg. 1):** The IT Department has not made any other observation in its representation and has stated that:

*“As per available Departmental database, there is no pending proceedings and actionable information in respect of M/s Vipul Eastern Infracon Pvt. Ltd.”*

*“I do hereby extend by no objection in the proposed amalgamation scheme subject to confirmation of realisation of the outstanding demand.”*



### 3.6 Petitioner No. 6 / Vipul Ltd.:

S. No.	Observations	Response
	<b>Para 3 / 4 (Pg. 1) of Representation:</b>	<b>Para 4 (Pg. 5) Reply Affidavit:</b>
1.	Details of any proceedings pending against applicant companies under the Income Tax Act: Reassessment proceedings u/s 148 for A.Y. 2019-20.  Details of tax demand pending for recovery from the applicant company: Rs. 27,66,17,941/-.	It is most humbly submitted that in terms of the scheme, the Petitioner Companies No. 1 to 5 would stand merged and amalgamated with the Petitioner Company No. 6/Transferee Company, which shall continue to exist and operated in its usual course. The scheme is not designed to diminish or extinguish any rights of the income tax department via a vis the Petitioner Company No. 6/ Transferee Company. In any event, Petitioner Company No. 6 undertakes that it shall bear and pay all its liabilities as and when the same are found due post completion of the assessment proceedings. As such no prejudice would be caused to the concerned income tax department.

**No Objection at Para 6 on Page 1:** The IT Department has not made any other observation in its representation and has stated that:

*“This office has no objection in the proposed scheme of arrangement w.r.t. M/s Vipul Ltd. (Transferee Company).”*

iii. On 17.03.2026, while reserving the order this Tribunal accorded liberty to the Income Tax Department to file its written submissions/report in respect of the Petitioner Companies. Pursuant thereto, the Income Tax Department has filed its written submissions, setting out the status of current tax liabilities and pending proceedings in respect of the Petitioner Companies, along with certain submissions/observations, which reads thus:-

***“Chart showing the outstanding income tax demand and proceedings under Income Tax Act 1961, against all the companies of present scheme of amalgamation is reproduced below: -***



S.No	Name of the Company	Quantum	Pending Proceedings
1	M/s Aphipra Trading P Ltd (Transferor Company No. 1)		
2	M/s Graphic Research	Rs 5,67,660/- & Rs 1,390/-	
	Consultants India P Ltd (Transferor Company No. 2)		
3	M/s United Buildwell P Ltd (Transferor Company No. 3)	Rs 3,99,644/-	
4	M/s Vineeta Trading P Ltd (Transferor Company No. 4)	Rs 2,607/- & Rs 1,00,786/-	
5	M/s Vipuls Eastern Infracon P Ltd (Transferor Company No. 5)	Rs 2,21,67,720/-	AY 2011-12 U/s 246A Appeal Before Commissioner
6	M/s Vipul Limited (Transferee Company)	Rs 27,66,17,941/-	AY 2019-20 U/s 148 IT Act

**XXXX**

*a. In respect of the outstanding income tax demand of Rs 5,67,660/- for AY 2011-12, against transferor company no. 2 (i.e.) M/s Graphic Research Consultants India P Ltd, it has been submitted that "liability of INR Rs 5,67,660/- in relation to AY 2011-12 as under challenge by the petitioner Company No. 2 for grievance has been filed by the Petitioner Company No.2" however for substantiating said claim/ submission no substantial evidence has been placed on record for strengthening the said submission.*

*Further for extinguishment of the claim of Rs. 1,390/- for AY 2013-14 no substantial evidence has been placed on record for strengthening the said submission too.*



b. In respect of the outstanding income tax demand of Rs 2,61,78,720/- for AY 2011-12, against transferor company no. 5 (i.e.M/s Vipul Easten Infracon P Ltd), it has been submitted that "aforesaid demand of income tax department is presently under challenge and an appeal against the said demand has been filed by the Petitioner Company No.5 which is pending before the Commissioner of Income".

In reply to the same it would be pertinent to mention that mere filing of the appeal does not absolve the petitioner company no. 5 from its liability to pay an outstanding income tax demand of Rs 2,61,78,720/- for AY 2011-12, unless there is a stay upon the said demand, and in the instant case petitioner company no. 5 has not demonstrated that any stay over the outstanding income tax demand of Rs 2,61,78,720/- for AY 2011-12, has been granting to it.

It would be further pertinent to mention here that appeal against regular assessment order passed u/s 143(3) of IT Act, which culminated into income tax demand of Rs 2,61,78,720/- for AY 2011-12, is still pending for adjudication.

**3. Income Tax Authority Apprehension upon Settled Law of initiating proceedings under Income Tax Act 1961, against a non-existence/amalgamating company: -**

In catena of judgement, it has been observed by Hon'ble Supreme Court, Hon'ble High Court of Delhi, and other state High Court's, that "proceedings under Income Tax Act cannot be initiated qua the amalgamating/non-existence company"

Further Hon'ble Supreme Court in **Civil Appeal No 5409 of 2019 titled as PCIT vs Maruti Suzuki India Limited** ruled that an assessment framed against a non-existence entity (amalgamating company) is **void ab-initio**, holding it a **substantiative illegality** (jurisdictional) rather than a curable procedural error, particularly when AO was informed of the amalgamation.



*In the instant case a huge income tax demand is pending against the petitioner company no. 2 and 5 total quantum of which is amounting to Rs 2,67,46,380/-, (Rs 5,67,660 + Rs 2,61,78,720), and in light of the settled law mentioned herein above, income tax authority has apprehension that after approval of the present scheme of amalgamation by this Hon'ble Tribunal, existence of all transferor company become cease which thereupon can cause extinguishment of pending income tax demand against the petitioner company no. 2 and 5.*

**4. No specific undertaking by way of affidavit by transferee company with respect to indemnify the income tax department, and also to maintain and keep separate the account of amalgamating companies:-**

*In the instant case transferee company has not filed any specific undertaking by way of affidavit, for indemnifying the income tax department to the extent of outstanding income tax demand pending qua the amalgamating companies on their amalgamation with transferee/amalgamated company.*

*Further transferee company has not filed any specific undertaking by way of affidavit, to keep and maintain separate accounts of amalgamating/transferor till date of approval to the present scheme of amalgamation.*

**5. Transferee/Amalgamated Company cannot owe the income tax liability of Transferor/Amalgamating Company: -**

*In the instant case income tax demand of Rs 27,66,17,941/-is pending against transferee/amalgamated company, and in view of the same transferee company by way of this scheme of amalgamation may not be permitted to owe the outstanding income tax liability of transferor/ amalgamating companies, since an entity which in itself is in default in discharging its statutory liability on the same time may not be permitted to owe the statutory liability of other company.”*



#### **IV. SEBI and Stock Exchanges**

i. As can be seen from the documents placed on record, Petitioner Company No. 6 is a listed company. Being a listed entity, it is required to comply with the provisions of Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The said regulation mandates that a listed entity desirous of undertaking a scheme of arrangement, or involved in such a scheme, shall file the draft scheme of arrangement proposed to be presented 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 the Companies Act, 2013, as applicable, with the Stock Exchange(s) for obtaining a No-Objection Letter prior to filing the scheme before such Court or Tribunal, in terms of the requirements specified by SEBI or the Stock Exchange(s) from time to time. Regulation 37 SEBI (LODR) regulations, 2015 reads thus:-

***“Draft Scheme of Arrangement & Scheme of Arrangement.***

*37. (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, [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 letter 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.*

***[(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.”*

## **V.Haryana Real Estate Regulatory Authority**

i.As per the pleadings on record, it is contended that no prior approval to the Scheme is required from the Haryana Real Estate Regulatory Authority,



Gurugram, under the provisions of RERA. The same is elucidated in para 25 of the captioned Petition. Para 25 reads thus:-

*“25. It is further submitted that the Scheme also does not attract the provisions of Real Estate (Regulation and Development) Act, 2016, requiring any prior approval to the Scheme under the said Act, vis a vis Petitioner Companies No. 3 and 5 as neither of these companies currently have any projects requiring registration under RERA. Further, in so far as Petitioner Companies No. 1, 2 and 4 are concerned, no prior approval of the Haryana Real Estate Regulatory Authority, Gurugram, in terms of Real Estate (Regulation and Development) Act, 2016, would still be required as the Petitioner Companies No 1, 2 and 4 are joint 'promoters' of the real estate project currently being developed by these companies along with Petitioner Company No. 6 and the Scheme neither envisages any 'transfer of rights in a real estate project by the promoter to a third party' nor is a 'transfer' of a projected registered with Haryana Real Estate Regulatory Authority, Gurugram and thus exempted in terms of Circular No. 01/RERA GGM Circular 2020 dated 29.06.2020.”*

## **8. OBSERVATIONS OF THIS TRIBUNAL**

- I. We have heard the learned counsel for the parties and perused the material available on record. The Petitioner Companies have filed their replies addressing the observations/objections raised by the Registrar of Companies and the Regional Director. Most of the observations made by the Registrar of Companies do not come in the way of amalgamation of subsidiary companies into holding company (Group Companies) and could be responded by the Applicants suitably. As far as the notice of inquiry ordered in respect of the Transferee Company, namely Vipul Limited, and the submission of a report under Section 208 of the Companies Act, 2013 to the office of the Regional Director is concerned,



apparently, the Transferee Company would remain in existence and the approval of Scheme of Amalgamation would not affect the inquiry in any manner. It is further amplified that the sanction of the Scheme in issue would not, in any manner, impede or prejudice any investigation, inquiry or proceedings, whether pending or to be initiated, against the Petitioner Companies under the provisions of the Companies Act, 2013 or any other law for the time being in force. Upon consideration of the observations made and the explanations furnished by the Petitioner Companies, this Tribunal is satisfied that the issues raised stand explained and do not, per se, constitute any impediment to the sanction of the Scheme. The Scheme appears to be reasonable and in the interest of consolidation of the businesses of the Petitioner Companies, and not prejudicial to the interests of their shareholders or creditors. It is further clarified that the Petitioner Companies shall remain bound to comply with all applicable provisions of law, including the applicable accounting standards. The sanction of the Scheme shall not be construed as an approval of any accounting treatment, if the same is found to be not in accordance with law, nor shall it preclude any statutory authority from taking such action as may be warranted, in accordance with law.

- II. It is made clear that if at any stage the undertakings/commitments made qua the observation made by the RD are not satisfied or flawed, the present order would become non est. It is further directed that any term contrary to the provisions of Section 6 of Companies Act, 2016 contained in the scheme would be non est.



- III. As can be seen from the report of the Official Liquidator dated 05.08.2024, certain observations in respect of the Scheme have been made, to which the Petitioner Companies have furnished their replies. It is noted that no complaints have been received by the Official Liquidator from any person or party interested in the proposed Scheme of Amalgamation up to the date of filing of the report. The Official Liquidator, upon examination of the information and records submitted by the Petitioner Companies, has opined that the affairs of the Transferor Companies do not appear to have been conducted in a manner prejudicial to the interests of their members or to the public interest, in terms of the provisions of the Companies Act, 2013. In view of the aforesaid, this Tribunal finds that there is no impediment espoused in the report of the Official Liquidator to the sanction of the Scheme.
- IV. The Income Tax Department has also raised objections to the Scheme of Amalgamation on account of outstanding income tax demands of the Petitioner Companies. In this regard, it is apposite to refer to the judgment of the Hon'ble NCLAT in ***Ad2Pro Global Creative Solutions Pvt. Ltd. v. Regional Director (SER), MCA [(2019) ibclaw.in 538 NCLAT]***, wherein it has been held that, while sanctioning a scheme of arrangement, the rights of the tax authorities to initiate or continue proceedings for recovery of any tax dues remain unaffected. It has further been held that an undertaking by the Transferee Company to discharge any crystallised tax liabilities ensures that the Scheme cannot



be refused solely on the ground of pending tax demands. The relevant excerpt of the judgement reads thus:

***“6. Heard learned counsel for the parties and perused the record. It is well settled by a catena of Rulings that while sanctioning a scheme of arrangement the right of Tax Authorities remains intact to initiate appropriate proceedings regarding recovery of any tax. The Tax Authorities concern is in regard to recovery of the outstanding tax dues and in the event of a scheme of arrangement/merger/amalgamation the Tax Authorities right to recover the outstanding tax dues must remain intact. Once a scheme has been sanctioned by a Tribunal in accordance with law, as admittedly in the instant case it is and the same goes unassailed, nothing precludes the Tax Authorities from recovering its legitimate and recoverable outstanding tax dues from the Transferor or the Transferee Company, as provided in the scheme. Where in a given case the liability has arisen or would arise or the demand would be raised against the Transferor Company for the relevant period after due scrutiny, assessment, review or determination through a due judicial process and the Transferee Company undertakes to make payment of all outstanding tax dues as determined in the aforesaid manner, the scheme cannot be refused and has to be allowed. Reference can be made to the judgment rendered by the Hon’ble High Court of Delhi in Company Petition No. 597/2014 reported in 2016 SCC Online Del 1135, para 45 whereof which is relevant for our purposes is reproduced as under:-***

***“45. In response to the aforesaid objections, the transferee company in the affidavit dated 7th November, 2015 of Mr. Rajesh Bhatia, authorized signatory of the transferee company, has undertaken that in case of any liability, which may be legally assessed and payable by the transferor companies to the Income Tax Department, the same shall be paid by the transferee company. They further undertake that none of the provisions of the Scheme, shall***



*prejudice the income tax dues and the income tax department shall be free to recover the said tax, if any, from the transferee company. The undertaking given by the transferee company is accepted and it shall remain bound by the same. In view of the aforesaid, the objection raised by the Regional Director stands satisfied.”*

*7. In the instant case, Appellants have assailed the impugned order approving the Scheme of Arrangement manifesting in amalgamation of the Transferor Company with the Transferee Company approved and sanctioned by the Tribunal in terms of provisions of Section 230 and Section 232 of the Act to the limited extent of condition 10(b) in the impugned order in terms whereof the Transferor Company has been directed to pay the entire dues i.e. Rs.18,13,24,680/- to the Commissioner of Income Tax Appeals I, Bengaluru and Service Tax amount of Rs.86,81,439/- to the competent authorities. It emerges from the impugned order that the approval of the Scheme is subject to compliance of various conditions including the condition of which the Appellants are aggrieved. Appellants have not taken exception in so far as other conditions, to which the approval of Scheme has been subjected to, are concerned. The amalgamation of the Transferor Company with the Transferee Company was to be effective from 1st February, 2018 in terms of the impugned order. However, it is submitted that the approved Scheme of Arrangement cannot be made effective till such time as the Transferor Company makes payment of the outstanding dues to the Income Tax and Service Tax Authorities in terms of the condition in the order impugned in this appeal. Though the Appellant's claim is that the outstanding tax liability in regard to income tax dues has been reduced to Rs.8,03,10,076/- , according to Respondents 3 and 4*



pending income tax dues against the Transferor Company are Rs.8,03,10,074/-. This is besides the demand position in regard to balance of Rs.5,21,67,417/- emanating from DCIT, Circle 1(1)(1), Bengaluru. It appears that Respondent No. 4 has issued a No Objection Certificate (NOC) dated 24th September, 2018 raising no objection to the sanction of the Scheme, however, seeking to protect its legitimate interests by raising future demands as warranted. It is not disputed that in terms of affidavits sworn on 18th December, 2018 and 19th December, 2018 and filed before the Tribunal, the Transferee Company has undertaken to make payments in regard to the demand raised by the Income Tax and Service Tax Authorities **upon the same becoming crystallized.** The Transferor Company too has reiterated the same before the Tribunal. This is forthcoming from the record of the Tribunal to which reference has been made in the memos of appeals. Our attention has also been invited to clause 12.7 of the approved Scheme of Arrangement which eloquently states that post amalgamation all the tax assessment proceedings and appeals shall be continued with the Transferee Company and all or any dues payable in accordance with law shall be paid by the Transferee Company. Admittedly, proceedings are pending in appeal before ITAT and depending upon the outcome of such proceedings, the Transferee Company has undertaken to satisfy all demands emanating from and raised by the competent tax authorities. The Scheme having been approved and sanctioned and the same being in consonance with law, no fault can be found with the Transferee's undertaking to satisfy all demands raised by the tax authorities as finally determined by due process. The Appellants are justified in maintaining that the tax liabilities would be satisfied by the Transferee as determined by the competent forum seised of the matter in



*accordance with the approved Scheme which admittedly does not come in conflict with any express provision of the Companies Act, 2013. The legitimate interests of the concerned Tax Authorities have been lawfully protected and their right to recover the tax dues as determined by ITAT or any other competent forum as the case may be, remains intact.”*

In view of the above, it is clarified that the sanction of the present Scheme shall not, in any manner, affect the rights of the Income Tax Department. All assessment, reassessment, appellate or any other proceedings of whatsoever nature, whether pending or arising in future, in relation to the Transferor Companies and/or the Transferee Company, shall continue in accordance with law. Upon the Scheme becoming effective, such proceedings shall be continued, enforced and concluded against the Transferee Company, which shall be deemed to have stepped into the shoes of the Transferor Companies for all such purposes. It is further clarified that any tax demand arising pursuant to such proceedings shall be duly borne and discharged by the Transferee Company, and the outcome of all such proceedings shall be binding upon it. The sanction of the Scheme shall not come in the way of any investigation, inquiry, scrutiny or proceedings by the Income Tax Department or any other statutory authority. In the event that any investigation or proceeding requires the independent existence of the Transferor Companies, the same shall be deemed to continue for such purposes. It is also clarified that this Order shall not be construed as granting any exemption, concession or relaxation from any applicable tax laws or any other laws in force.



V. The Transferee Company shall be liable for all acts, omissions, liabilities and consequences of the Transferor Companies, in accordance with law. It is further clarified that the Transferee Company shall not be entitled to carry forward losses of the Transferor Companies, and shall be liable to pay income tax without availing the benefit of such losses, in accordance with law.

VI. Since the entire share capital of Petitioner Companies Nos. 1 to 5 is directly or indirectly held by Petitioner Company No. 6, thereby rendering them wholly owned subsidiaries of Petitioner Company No. 6 in terms of Regulation 37(6) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, no 'No-Objection Letter' or 'Observation Letter' is required from the Stock Exchanges in the present matter. It is noted that vide letter dated 11.11.2022, the approval and filing of the present Scheme was duly intimated to the Stock Exchanges, namely BSE and NSE, where the shares of Petitioner Company No. 6 are listed, in compliance with the proviso to Regulation 37(6) of the SEBI (LODR) Regulations, 2015. Further, notice of Company Application being CA (CAA) No. 52/(ND)/2023 was also issued on 13.03.2024 to the aforesaid Stock Exchanges as well as to SEBI, in compliance with the order dated 05.03.2024 passed by this Tribunal. No response or objection has been received from BSE, NSE or SEBI in respect of the Scheme. In view of the aforesaid, and in the absence of any objection from the concerned Stock Exchanges or SEBI, it is presumed that they have no objection to the Scheme. The Petitioner Companies shall, however, ensure compliance with all applicable provisions of the SEBI (LODR) Regulations, 2015. A copy of this Order shall also be forwarded to the concerned Stock Exchanges and SEBI for information and necessary action, if any.



VII. The Petitioner Companies Nos. 3 and 5 do not have any projects requiring registration under the Real Estate (Regulation and Development) Act, 2016, and that Petitioner Companies Nos. 1, 2 and 4, being joint promoters along with Petitioner Company No. 6, are not affecting any transfer of rights in a real estate project to a third party under the Scheme. In this regard, reliance has been placed on Circular No. 01/RERA GGM Circular 2020 dated 29.06.2020 issued by the Haryana Real Estate Regulatory Authority, Gurugram. The said circular reads thus:-

Circular No:	<b>01/RERA GGM Circular 2020</b>	Date:	<b>29.06.2020</b>
<b>Subject: Procedure for transferring or assigning of promoter's rights and liabilities in a real estate project to a third party under/section 15 of the Real Estate (Regulation and Development) Act, 2016</b>			
In exercise of the powers conferred under Section 37 of the Real Estate (Regulation and Development) Act, 2016, the Haryana Real Estate Regulatory Authority, Gurugram considers it necessary to prescribe procedure for the purpose of transfer of promoter's rights and liabilities in a real estate project to third party in accordance with the provisions of Section 15 of the Real Estate (Regulation & Development) Act, 2016.			
Whereas, in accordance with Section 15 of the Real Estate (Regulation and Development) Act, 2016, the promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority.			
Therefore, the procedure detailed herein below shall be followed and complied with immediate effect from the coming into force of this circular:			
<b>I. Procedure for transfer of rights in a real estate project to a third party where the transfer is initiated by the promoter:</b>			
(a) The promoter shall have to apply to HARERA, Gurugram with the written consent of two-third allottees as on the date of application in the project under consideration, along with the BIP Permission, transfer of development rights or transfer of licence, to seek permission for transfer of its right and liabilities to a third party. The promoter shall have to write to the Secretary, HRERA, Gurugram along with format provided at Annexure A. The online application to be submitted will be made available in the promoter log-in of HRERA website.			
(b) On submission of such application along with CA Certificate, the transferor promoter shall freeze all financial transactions affecting Separate Bank Account of the project (RERA Account) as the same will have to be transferred to the transferee promoter being the balance 70% of amounts received from the allottees and the same is to be utilized for proportionate cost of land and development cost of the project incurred.			
(c) On receipt of such application as stated above, the Secretary shall initiate action through the planning wing which would take necessary steps to obtain approval of the Authority, which may include scheduling a hearing.			
(d) Thereafter, the Authority shall, pass an order, within one month and or within reasonable time of filing of such application for transfer (with or without such conditions) or reject such application for transfer after recording reasons for rejection. However, before rejecting the application for transfer the Authority shall give an opportunity of hearing to the promoter.			
(e) Within seven days from the receipt of approval for transfer from HRERA, Gurugram, the transferee promoter(s) shall then apply for necessary correction in the existing registration details. He shall also upload required supporting documents in its name			



like land title, building plan approval etc., upon obtaining the same from time to time. While making such application for correction, the transferee promoter shall upload on the website of HRERA, Gurugram a registered undertaking stating that it shall comply with all the obligations under the agreement of sale executed by the erstwhile promoter with respect to the allottee(s) of the project and has/have assumed all the obligations of the erstwhile promoter under the Act.


- (f) Amalgamation, merger or demerger etc. of the companies implemented under orders of NCLT/MCA/High Court or Other Statutory Authorities or Tribunals affecting the project registered under HRERA, Gurugram, shall be regarded as transfer initiated by the promoter and the promoter shall have to follow the procedure prescribed herein in this circular for obtaining the approval of the allottee(s) and prior approval of the Authority.

However, if the amalgamation or merger or demerger of the companies, which is not regarded as transfer under section 47 of the Income Tax Act, 1961 or where 75% of the shareholders remain same in the resultant company, the same shall not require the aforesaid approvals of allottee(s) under section 15 of the Act. Nevertheless, the

promoter will have to report the promoter entity status change or management change to HARERA, Gurugram along with a certified copy of the order of the competent authority/resolution.

**II. Procedure for transfer of rights in a real estate project to a third party where the transfer is initiated by a third party like banks/financial institutions/ creditors etc. by operation of law or by way of enforcing of the security:**

- (a) Cases wherein the details of the secured loan and/or the charge on the project is disclosed in the registration of the project on the website of HRERA, Gurugram; then in such cases the promoter shall write to the Secretary, HRERA, Gurugram in the format provided at Annexure A, within seven days of being aware of the such impending or potential transfer arising out of enforcement of security or mortgage, seeking permission for transfer of its right and liabilities to a third party.
- (b) The promoter shall also simultaneously inform each and every allottee of the project of the impending or potential transfer. Within seven days of the transfer being affected by the financial institution or creditors, such banks, financial institution or creditor shall also simultaneously intimate to each of the allottee(s) and Secretary HRERA, Gurugram about the enforcement of the security which has resulted in the transfer of the ownership of the promoter's organization or transfer of the project.
- (c) The banks, financial institution or creditors (acting as "transferee promoter") or transferee promoter (appointed by such financial institution or creditors) shall then apply for necessary corrections in the existing registration details.
- (d) New promoter shall also upload required supporting documents in its name like land title, building plan approval etc., upon obtaining the same from time to time. While making such application for correction, the new promoter shall upload on the website of HRERA, Gurugram an undertaking stating that they shall comply with all the obligations under agreement of sale executed by the erstwhile promoter with



respect to the allottee(s) of the project and has assumed all the obligations of the erstwhile promoter under the Act.

Example or list of some of the relevant documents to be uploaded on the website of the Authority and to be submitted alongwith the application for transfer of rights from the existing promoter to the new promoter:

- (i) Invocation of pledge of shares of the promoter organization by pledgee;
- (ii) Takeover of the asset of the project or of the project by bank/ Financial Institution/ asset reconstruction company under SARFAESI;
- (iii) Transfer of the project by the bank/financial institution/asset reconstruction company under SARFAESI or under Insolvency and Banking Code, 2016;
- (iv) Takeover of the management of the promoter in case of Insolvency and Banking Code 2016;
- (v) And/or any other relevant document and details applicable in this regard or applicable as per prevalent laws in India.

### III. Procedure for updating details of "Transferee Promoter":

The following procedure should be adopted for updating details:

- (i) Post receipt of the application, the Secretary, HRERA Gurugram shall initiate action through the planning wing for order of the Authority;
- (ii) HRERA, Gurugram order shall be e-mailed to the applicant on their given email address(es);
- (iii) As per the order, the Transferee Promoter may apply in correction module for change in promoter details and attach the order of the Authority as supporting document;
- (iv) The Transferee promoter shall, from time to time, also upload supporting documents in its name like amended land title, amended building plan approval etc., upon obtaining the same.

For the sake of clarification, it is stated that the transfer or assignment when being permitted by the allottees and the Authority under Section 15 sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees and any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of any default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

#### **Explanation:-**

- (i) For the purpose of section 15 of The Real Estate (Regulation and Development) Act, 2016, changes in (internal) shareholding or constituents of a promoters organization, that does not affect obligation and liabilities with respect to the allottee(s) and the right and liabilities of the promoters organization, shall not require the aforementioned approvals. However,



changes in the legal status of the promoter entity, which though does not affect its obligations and liabilities and rights with respect to the allottee(s), shall be reported to HRERA, Gurugram through change in detail segment that will be made available on promoter log-in of the HRERA, Gurugram website for affecting necessary changes in the database of the registered project for public information. Following are the illustrative cases of above reporting requirements.

Any Conversion of the promoter's entity under any statute, of

- (a) Partnership Firm into a Limited Liability Partnership(LLP)/ Private Limited Company; or
- (b) Conversion of Private Limited Company or unlisted Company to a Limited Liability Partnership (LLP); or otherwise
- (c) Proprietorship change by succession to legal heirs.

**Notwithstanding anything contained above, based on case specifics and complexities involves, HRERA, Gurugram shall provide addition direction to the promoters, if deemed appropriate.**

**This has been issued under the seal and by the approval of the Authority.**

Upon consideration of the said Circular and the submissions made, this Tribunal is satisfied that the present Scheme does not attract the requirement of prior approval from RERA. In view of the aforesaid, the absence of notice to RERA does not vitiate the present proceedings. However, for the sake of completeness, a copy of this Order shall be forwarded to the Haryana Real Estate Regulatory Authority, Gurugram, for information and necessary action, if any.

VIII. It goes without saying that all liabilities, whether existing or arising hereafter, pertaining to the Transferor Companies shall, upon the Scheme becoming effective, stand transferred to and be borne by the Transferee Company. The Scheme will be effective only after payment of such dues and taxes by the Transferor Companies to the Income Tax Department, in respect of which no stay has been granted by Commissioner Appeal/ ITAT or any other forum.



IX. The sanctioned Scheme of Amalgamation shall be binding on the Transferor Companies, Transferee Company, their Shareholders and Creditors. The Petitioner Companies shall remain bound to comply with the statutory requirements in accordance with law. Besides the present order, it would not affect any of the pending investigation/ proceedings/ inquiry qua any of the applicants and/ or their promoters/ directors/KMPs/ any other staff associated with the affairs of the companies.

X. While approving the Scheme as above, we clarify that this Order should not be construed as an order in any way granting exemption from payment of Stamp Duty, Taxes or other statutory dues, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement, which may be specifically required under any law. Further the approval of the Scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act, 1961 or serve as any exemption or defense for the Petitioner Companies against tax treatment in accordance with the provisions of Income Tax Act, 1961 and the rules and regulations made thereunder.

XI. The amalgamated company would not be entitled to any refund or advance tax, withholding of tax credit or immunity from demand of income tax.

XII. Additionally, we issue following directions qua the Petitioner Companies:-

- i. The scheme shall be effective from the appointed date i.e., 01.04.2022.
- ii. All benefits, entitlements, incentives and concessions under incentive schemes and policies that Transferor Companies is entitled, including under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from



any governmental authorities, direct tax benefit/exemptions/ deductions shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company, as if the and Transferee Company were originally entitled to all such benefits, entitlements, incentives and concessions;

- iii. Upon the Scheme becoming effective, all the properties, rights, and entitlements of the Transferor Companies pertaining to the business shall stand transferred to and vested in the Transferee Company, without any further act or deed. Accordingly, in terms of Sections 230 to 232 of the Companies Act, 2013, the same shall be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Companies, subject nevertheless to all existing charges, liens, encumbrances, if any, affecting the same.
- iv. All contracts of the Transferor Companies, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;
- v. All the employees of the Transferor Companies, shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged



by the Transferor Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

- vi. All liabilities of the Transferor Companies, shall pursuant to the provisions of section 232(4) and other applicable provisions of the Company Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company in accordance with their respective liability, as if it had incurred such liabilities.
- vii. All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.
- viii. The Income Tax/GST Department shall have the liberty to determine the tax implications arising from the Scheme under the provisions of the Income Tax Act, and such determination shall prevail over the terms of the Scheme. In the event of any tax liabilities arising in respect of the Transferor Companies, the Transferee Company shall be liable to pay of the same.
- ix. The Transferee Company is directed to comply with the provisions of Section 232(3)(i) of the Companies Act regarding the fee payable on its revised authorized share capital.



- x. As per the aforesaid directions, formal orders in Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 be issued after the filing of the Schedule of Properties within three weeks from the date of receiving a certified copy of this order by the petitioners.
- xi. That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
- xii. It is hereby clarified that the present Order shall not entitle the Transferee Company to any exemption from the requirement of obtaining any license /permit /registration /quota /clearance /concession or grant that may be required by them from the Central Government/State Government/ Local Authority/Sectoral Regulator, or any other authority constituted under any law for the time being in force.
- xiii. The Investigation under Section 208 of the Companies Act, 2013 would continue qua the Transferee Company, unaffected by this order.
- xiv. That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration in the prescribed form.

**9. The CP (CAA)-31/ND/2024 is disposed of in the aforesaid terms accordingly.**

**Sd/-  
(REENA SINHA PURI)  
MEMBER (T)**

**Sd/-  
(ASHOK KUMAR BHARDWAJ)  
MEMBER (J)**