



Power

November 7, 2024

BSE Limited

Floor 25, P J Towers,
Dalal Street,
Mumbai – 400 001

Scrip Code: 533096

**National Stock Exchange of India
Limited**

Exchange Plaza,
Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051

Scrip Code: ADANIPOWER

Sub: Update on the Scheme of Amalgamation

Dear Sir / Madam,

We refer to our letter dated June 3, 2024, informing you about the proposed Scheme of Amalgamation of Stratatech Mineral Resources Private Limited ("**SMRPL**"), a wholly owned subsidiary of Adani Enterprises Limited with Mahan Energen Limited ("**MEL**"), a subsidiary of Adani Power Limited.

Further to the above, we would like to inform that the Hon'ble National Company Law Tribunal, Bench at Ahmedabad ("**NCLT**") has sanctioned the Scheme of Amalgamation of SMRPL with MEL (the "**Scheme**") on November 7, 2024.

NCLT has uploaded its Order sanctioning the Scheme on its website, a copy of which is enclosed herewith.

The Appointed Date of the Scheme is April 1, 2024. The Scheme will be effective from the date on which certified copy of the aforementioned Order is filed with the jurisdictional Registrar of Companies ("**ROC**"). We will further update the exchanges once the Scheme becomes effective.

We request you to take the above submission on your record.

Thanking you.

Yours faithfully,
For **ADANI POWER LIMITED**

DEEPAK S PANDYA
COMPANY SECRETARY
MEMBERSHIP NO. F5002

Encl.: as above.

Adani Power Limited
"Adani Corporate House"
Shantigram, Near Vaishno Devi Circle,
S. G. Highway, Khodiyar,
Ahmedabad-382421, Gujarat India
CIN : L40100GJ1996PLC030533

Tel +91 79 2656 7555
Fax +91 79 2555 7177
info@adani.com
www.adanipower.com

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301
C.P.(CAA)/39(AHM)2024 in
C.A.(CAA)/29(AHM)2024

Order under Section 230-232

IN THE MATTER OF:

Stratatech Minral Resources Pvt. Ltd
Mahan Energen Limited

.....Applicant

.....Respondent

Order delivered on: 07/11/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

(Hybrid Mode)

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

- Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

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

CP(CAA)/39(AHM)2024

in

CA(CAA)/29(AHM)2024

[Company Petition under Sections 230 and 232 and other applicable provisions of the Companies Act, 2013 read with company (Compromise, Arrangement and Amalgamation) Rules, 2016]

In the matter of **Scheme of Amalgamation**

**Stratatech Mineral Resources
Private Limited**

CIN: U14290GJ2019PTC110138

Having registered office at:

Adani Corporate House,

Shantigram, Near Vaishno Devi

Circle, S.G. Highway,

Khodiyar, Ahmedabad

Gujarat – 382 421.

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

with

Mahan Energen Limited

CIN:U40100GJ2005PLC147690

Having its registered office at:

Adani Corporate House,

Shantigram,

Near Vaishno Devi Circle,

S.G.Highway,

Khodiyar, Ahmedabad,

Gujarat – 382 421.

**... Petitioner Company
No.1/Transferee
Company**

and

Their Respective Shareholders and Creditors

Order Pronounced On: 07.11.2024

CORAM:

Sh. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
Sh. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:-

For the Petitioner Companies	:	Mr. Sandeep Singhi, Adv.
For the Regional Director	:	Mr. Shiv Pal Singh, Deputy Director
For the Income Tax Department	:	Ms. Bhumi Gandhi, Proxy Adv. for Ms. Maithili D. Mehta, Adv.
For the Registrar of Companies	:	Ms. Rupa Sutar, Dy. RoC
For the Official Liquidator	:	Mr. Sandip Tupe, Technical Assistant

ORDER **Per Bench**

1. The present joint Company Petition has been filed by the Petitioner Companies viz **Stratatech Mineral Resources Private Limited** (Petitioner Company No.1/Transferor Company) and **Mahan Energen Limited** (Petitioner Company No.2/ Transferee Company) under Sections 230 and 232 of the Companies Act read with other applicable provisions of

the Companies Act, 2013 and Companies (Compromise, Arrangement and Amalgamations) Rules, 2016, seeking approval of the proposed Scheme of Amalgamation in the nature of Merger with effect from the Appointed Date, i.e. **01.04.2024**. The said Scheme is annexed at “**Annexure-E**” to the Company Petition.

2. Affidavits in support of the above Company Petition were sworn by Mr. Darshak Thaker, Authorized Signatory of Petitioner Company No.1 and Ms. Purvee Dineshchandra Roy, Authorized Signatory of Petitioner Company No.2. The authorized representatives being, duly authorized vide Board Resolutions dated 03.06.2024 of Petitioner Companies. Affidavits and copies of the Board Resolutions are placed on record.

3. 1ST MOTION APPLICATION – IN BRIEF

3.1 The Petitioner Companies had filed the First Motion Application vide CA(CAA)/29(AHM)2024 sought reliefs as follows: -

PARTICULARS	EQUITY SHAREHOLDERS MEETING	SECURED CREDITORS MEETING	UNSECURED CREDITORS MEETING	PREFERENCE SHAREHOLDERS MEETING
-------------	-----------------------------	---------------------------	-----------------------------	---------------------------------

TRANSFEROR COMPANY	To Dispense with	To Dispense with	To Dispense with	N/A
TRANSFeree COMPANY	To Dispense with	To Dispense with	To Dispense with	N/A

3.2 Based on such application moved under Sections 230-232 of the Companies Act, 2013; this Tribunal vide order dated 08.07.2024 allowed the company application passed the following order:-

- i) The meetings of the equity shareholders, secured creditor and unsecured creditors of the applicant transferor company were dispensed with, in view of the consent affidavits of the equity shareholders, secured creditor and the unsecured creditors.
- ii) Since there are no preference shareholders in the transferor company, the necessity of holding and convening the meetings of the preference shareholders does not arise.
- iii) The meetings of the equity shareholders and unsecured creditors of the transferee company were dispensed with, in view of the consent affidavits of the equity shareholders and unsecured creditors.

- iv) Since there are no preference shareholders and secured creditors in the transferee company, the necessity of holding and convening of meetings of preference shareholders and secured creditors do not arise.
- iv) This Tribunal had directed the Applicant Companies for issuance of notice to (i) the Central Government through the Regional Director, MCA, (ii) the Registrar of Companies, Gujarat, (iii) the Official Liquidator (for Transferor Company), (iv) the Income Tax Authorities as well as other Sectorial Regulators who may have significant bearing on the operation of the applicant companies.
- v) In compliance of the order dated 08.07.2024, the applicant companies have filed service affidavit on 12.07.2024 vide Inward Diary No. D5582 along with proof of notices sent to the aforesaid statutory/regulatory authorities.

4. After complying with all the directions given in the order dated 08.07.2024, the Second Motion Petition was filed before this Tribunal by the Petitioner Companies on 15.07.2024, vide

Diary No. E1804, seeking sanction of the proposed Scheme by this Tribunal.

5. This Tribunal vide order dated 01.08.2024 directed the Petitioner Companies to issue notice to the Statutory/Regulatory Authorities viz. (i) the Central Government through the office of the Regional Director, [North Western Region], Ministry of Corporate Affairs (MCA) (ii) the Registrar of Companies, Gujarat, (MCA) (iii) the Official Liquidator (for Transferor Company), (iv) the jurisdictional Income-Tax office having jurisdiction over the companies indicating specifically their Permanent Account No. (PAN) in the communication as well as other sectorial Regulators, if any, who may govern the working of the respective Companies involved in the Scheme. This Tribunal had also directed the Petitioner Companies for paper publication to be made in **“Indian Express”** in English and in **“Sandesh”** in Vernacular language, both in Ahmedabad edition not less than 10 days before the date fixed for hearing, calling for objections, if any, on or before the date of hearing.

6. In compliance of order dated 01.08.2024, Petitioner Companies filed affidavit of service dated 21.08.2024 on 22.08.2024 vide Inward Diary No. D6576, in respect of service of notice upon the statutory/regulatory authorities along with proof of service as well as proof of publication of notice of hearing of the petition in ‘Indian Express’ in English and in ‘Sandesh’ in Gujarati both in Ahmedabad editions on 14.08.2024.

STATUTORY/REGULATORY AUTHORITIES OBSERVATION & RESPONSE THEREOF

7. The Regional Director, North-Western Region, Gujarat and the Registrar of Companies, Gujarat.

In response to the notice served upon the Regional Director (RD), a representation/report dated 24.09.2024 was filed by the RD, North-Western Region, on 25.09.2024 vide Inward Diary No.D475, along with the report of the Registrar of Companies (RoC) dated 05.09.2024.

Following are the observations of the Central Government (RD NWR):

- I. That, as per the Scheme, the authorized share capital of the petitioner Transferor Company amounting to Rs. 1,00,000/- will be added to the authorized share capital of the petitioner

transferee company. In compliance with the provisions of Section 232 (3) (i) of the Companies Act, 2013 the petitioner transferee company is under statutory obligation to pay the difference amount of fees, if any which is payable on the enhanced Authorized Capital and the fees which have already been paid by all the petitioner companies at the time of registration/increase in authorized capital.

- II. That, the ROC has informed about the auditor has given Qualified remark in the Audit Report for the FY 2020-21 and 2022-23 of the Transferee company and requested this Directorate to pursue the matter.

In this regard, this Directorate has verified the details and the following qualified opinion/remark found in the balance sheet for the FY 2020-21 and 2022-23:

Financial Year 2020-21

"Note 37 of Related Party Disclosure of the Financial Statements of the company regarding non-compliance of the provisions of the Companies Act, 2013 regarding amount of Rs. 7.70 crores paid as Managerial Remuneration to two managerial personnel in earlier years, which was subject to the approval of shareholders and lenders, the recovery of which is presently pending.

We refer to Note 3 and 57 of the financial statements, the impairment testing on the assets of the Company as at the end of the year is not carried out and impact, if any, is not considered in the financial statements by the Company, as required under Ind AS 36 'Impairment of Assets' issued by ICAI"

Financial Year 2022-23

"We refer to Note 53 of the financial statements. Pending completion of the ongoing investigations by Securities and Exchange Board of India and completion of proceedings before the Hon'ble Supreme Court in terms of its order dated March 2, 2023, in respect of the matter stated in the said note, we are unable to comment on the possible consequential effects thereof, if any, on these financial statements."

In this regard, this Directorate submits that the qualified remark for the FY 2020-21 was not tenable in the eyes of law as the company was admitted under CIRP proceedings during the said period i.e. 29.09.2020 and the Resolution Plan approved by the Hon'ble NCLT vide Order dated 01.11.2021.

Thus, the said qualified remark was not having relevance to the scheme as the matter was admitted into CIRP before NCLT and approval of resolution Plan and the other qualified remark mentioned in the audit report for the FY 2022-23 was also of informative in nature.

However, the Hon'ble NCLT may direct the petitioner company to place the fact of the case before the Hon'ble Bench.

- III. The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition. are one and same and there is no discrepancy, or no change is made.
 - IV. The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that no CIRP proceeding under IBC and/ or winding up petition against applicant companies are pending.
7. Hon'ble Bench of National Company Law Tribunal may be pleased to direct the petitioner companies:
1. To ensure compliance and furnish the clarification, if any, regarding observations made by Registrar of Companies and this Directorate (NWR) in forgoing Paragraph No. 5 and 6 above.
 2. To preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central Government as per the Provision Section 239 of the Companies Act, 2013
 3. To ensure statutory compliance of all applicable Laws and on sanctioning of the present Scheme, the Petitioner Companies shall not be absolved from any of its statutory liabilities, in any manner.
 4. Necessary Stamp Duty on transfer of property/Assets, if any is to be paid to the respective Authorities before implementation of the Scheme.
 5. The petitioner companies involved in the scheme to comply with the provisions of Section 232(5) of the Companies Act, 2013 with respect to file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from date of passing order.
 6. The Petitioner companies shall undertake to comply with Income Tax /GST law and any demand /taxes payable on implementation of the said scheme as per law.
 7. applicant company/(ies) to pay such amount of legal fees / cost to the Central Government which may be considered appropriate by this Hon'ble NCLT for the legal fees / expenses of the office of the Regional Director for

submitting this report and representing the matter on behalf of the Central Government.

Following are the observations of the Registrar of Companies:-

2. As per the financial statements as at 31.03.2023 of the Transferor company Transferee company, the following body corporate shareholders holding 10% or more of total shareholding of the Transferee / Demerged company and Resulting company:-

Sr. No.	Applicant Company	Name of the Shareholder	% of shares held	Remarks
1.	STRATATECH MINERALS RESOURCES PRIVATE LIMITED (Transferor Company)	ADANI ENTERPRISES LIMITED	100%	BEN-2 filed vide R27046283 dated 27.12.2019 for filing of BEN-1 dated 28.10.2019 regarding declaration of holding reporting company namely Adani Enterprises Limited
2.	MAHAN ENERGEN LIMITED (Transferee Company)	ADANI POWER LIMITED		BEN-2 F78833068 filed vide dated 07.11.2023 for filing of BEN-1 dated 26.4.2019, Nil, 26.04.2019.08.05.2019, 08.05.2019, 20.02.2020 and 20.02.2020 reg, declaration / change of 580 in holding reporting company namely Adani Power Limited

3. The Transferee Company has failed to file Board's resolution regarding approval of Arrangement/ Amalgamation of the proposed Scheme as per the requirement of Section 179(3)(i) read with Section 117 of the Companies Act, 2013 in prescribed e-form MGT-14 under the MCA21 portal along with requisite fees / additional fees within 30 days from the passing Board's resolution. Hon'ble NCLT may kindly direct the Transferee Company to comply with the provisions of Section 179 read with Section 117 and Section 454 of the Companies Act 2013 in the best interest of the Companies Act, 2013.

4. On perusal of the Scheme, it is observed that Issued, Subscribed and Paid-up Share capital of the Transferee company has mentioned as Rs. 801,00,00,000/- divided into 80,10,00,000 equity Shares of Rs. 10/- each at para 1.4.2 of the proposed Scheme. The company has increased its paid-up Capital from Rs. 801 Cr. to Rs. 897 Cr. through allotment of Equity Shares from time to time. In this regard, the Transferee company has filed prescribed e-Form PAS-3 (02 counts) on MCA21 portal and same were taken on record through STP mode.

5. Clause 16.1 of the scheme provides that "Upon this Scheme becoming effective, the authorized share capital of the Transferor Company shall stand consolidated with the authorized share capital of the Transferee Company. Accordingly, the authorized share capital of the Transferee Company shall stand increased to that extent without any further act, instrument or deed on the part of the Transferee Company, including without payment of stamp duty and any fees or charges payable to the Registrar of Companies and/or to any other government authority, and the Memorandum of Association and Articles of Association of the Transferee Company (relating to the authorised share capital) shall, without any further act, instrument or deed, be and stand altered, modified and amended, pursuant to Section 13, 14, 61 and 232(3)(1) respectively of the Companies Act, 2013 and/or any other applicable provisions of the Act, as the case may be. Hence, for this purpose, the stamp duties and fees paid on the authorised share capital of the Transferor Company shall be utilized and applied to the increased authorised share capital of the Transferee Company and no extra stamp duty and/or fees shall be required to be paid by the Transferee Company for its increased authorised share capital"

In this regard, the Registrar of Companies respectfully submits that Section 232 provides that Authorized capital of the Transferor Company merges with the Authorised capital of the Transferee Company, "where the transferor company is dissolved, the fee, if any, paid by the transferor company on its Authorised Capital shall be set-off against fees payable by the transferee company on its Authorised Capital subsequent to the amalgamation". In this regard, Applicant Companies have to undertake to comply with section 232(3)(1) of Companies Act. 2013 and Amalgamated Company must be paid the differential fee, if any after setting off the fee already paid by Amalgamating Company on its Authorised capital.

6. As per the provisions of the Companies Act, 2013 wherein it is mandated certain statutory responsibilities on the part of the public company and its KMP/BoD. A public company so long as remain as public company shall ensure that such statutory requirements of law are duly complied with at relevant time in prescribed manner. Therefore, onus of the due compliance of the applicable provisions of the Companies Act, 2013 is vested with the Applicant Public Company and its KMP/BoDs.
7. The Registrar of Companies, Ahmedabad further submits that the Hon'ble Bench of National Company Law Tribunal may be pleased to direct the Applicant Companies to preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central Government as per the Provision Section 239 of the Companies Act, 2013.
8. The Registrar of Companies, Ahmedabad further submits that the Hon'ble Bench of National Company Law Tribunal may be pleased to direct the Applicant Companies to ensure Statutory compliance of all applicable Laws and also on sanctioning of the present Scheme, the Amalgamating Company shall not be absolved from any of its Statutory liabilities, in any manner.
9. Necessary Stamp Duty on transfer of property/Assets, if any is to be paid to the respective Authorities before implementation of the Scheme.
10. The Registrar of Companies, Ahmedabad further submits that the Hon'ble Tribunal may direct the Applicant Companies involved in the scheme to comply with the provisions of Section 232(5) of the Companies Act, 2013 with respect to file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from date of passing order.
11. The Registrar of Companies, Ahmedabad most respectfully submits that Hon'ble NCLT is insisting for appearance of ROC during the proceedings before Hon'ble NCLT. In this regard, it is requested that the Directorate may, if deemed fit & proper may kindly request the Hon'ble NCLT to grant exemption from appearance of the O/o RD/ROC in the interest of smooth functioning of both public offices, unless for specific purpose such appearance needed in the interest of justice. The above facts may kindly be seen by the Directorate in order to do the needful in the matter as deemed fit and proper, in accordance with Law.

Response of Petitioner Companies

The Petitioner Companies has filed its reply to the observations of Regional Director before this Tribunal on **22.09.2024** vide diary no. **D 7326**. Following are the relevant portion of the reply:

1. With reference to the paragraph no. 6 (i) of the Representation, we state and submit that no fees would be payable on the enhanced authorised share capital of the Petitioner No. 2/Transferee Company. However, the Petitioner No. 2/Transferee Company shall comply with the provisions of Section 232 (3) (1) of the Companies Act, 2013 (hereinafter referred to as the "Aer") and undertakes to pay necessary fees, if so required, in accordance with law.
2. With reference to the paragraph no. 6 (ii) of the Representation, we state and submit that the contents are a matter of record. The Petitioner No. 2/Transferee Company was under Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP"), and was acquired pursuant to the order dated 1st November 2021, passed by the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi, approving the Resolution Plan submitted by Adani Power Limited. The said order was implemented and made effective w.e.f. 16th March 2022
3. With reference to the paragraph no. 6 (iii) of the Representation, we state that the Scheme enclosed with the joint company application and with the joint company petition are one and the same and that there is no discrepancy or any change.
4. With reference to the paragraph no. 6 (iv) of the Representation, we state that no CIRP proceeding under the Insolvency and Bankruptcy Code, 2016, and/or winding up petition against the Petitioner No. 1/Transferor Company and Petitioner No. 2/Transferee Company are pending.
5. With reference to paragraph no. 7 i. of the Representation, we state and submit that the observations made by the Registrar of Companies are also the observations made by the Regional Director in the present Representation. Having dealt with the observations of the Regional Director, by way of the present affidavit in reply, we submit that the present affidavit in reply be also considered as the reply to the observations of the Registrar of Companies.
6. With reference to paragraph no. 7 ii. of the Representation, we state and submit that the Petitioner No. 2/Transferee

Company undertakes to preserve the books of accounts, papers and records of the Petitioner No. 1 and the same would not be disposed of without prior permission of the Central Government under the provisions of Section 239 of the Act.

7. With reference to paragraph no. 7 iii. of the Representation, we submit that the Scheme nowhere seeks to absolve any of the Petitioner Companies from any of the statutory liabilities, if any.
8. With reference to paragraph no. 7 iv. of the Representation, we state that the Petitioner No. 2/Transferee Company shall make necessary application, within the prescribed time, to the concerned stamp authority for payment of stamp duty, if any, once the Scheme is sanctioned by this Hon'ble Tribunal and the same is made effective.
9. With reference to paragraph no. 7 v. of the Representation, we state and submit that the Petitioner Companies shall comply with the provisions of Section 232(5) of the Act and shall file the copy of the order sanctioning the Scheme with the Registrar of Companies within the prescribed time.
10. With reference to paragraph no. 7 vi. of the Representation, the Petitioner Companies undertake that they shall comply with Income Tax/GST law including any demand, in accordance with law.
11. With reference to paragraph no. 7 vii. of the Representation, we state that the Petitioner No. 2/Transferee Company shall pay necessary fees/costs to the office of the Regional Director as may be decided/directed by this Hon'ble Tribunal.

8. The Official Liquidator's observations are as under:-

The Official Liquidator has filed its report in respect of the Transferor Company which is dated **08.08.2024** before this Tribunal and the same is taken on record. Upon perusal of the same it is noted that nothing adverse has been stated in the report in respect of the proposed scheme between the Transferor and Transferee Company.

Response of Petitioner Companies

The Transferor Company has filed its reply dated **28.08.2024** to the observations of the Official Liquidator before this Tribunal in which undertaking is been given by the Transferor Company to comply with the observations made by the Official Liquidator in its report dated 08.08.2024 and the same has been taken on record.

9. Income Tax Department's Observations:

(i) In response to the notice served upon the Income Tax Department, it filed its reports dated 26.09.2024 and 27.08.2024 on 14.10.2024, vide Inward Diary No.R488. The report dated 26.09.2024 of the Income Tax Officer, Ward-1(1)(3), Ahmedabad, the following has been stated it is stated that in respect of Stratetech Mineral Resources:

“as per the ITBA Module as on date no outstanding demand is pending in this case”.

as well as the report dated 27.08.2024 of the Assistant Commissioner of Income Tax, Circle-2(1)(1), Ahmedabad, it is stated that in respect of Mahan Energen Limited, as per the ITBA portal there are nil outstanding demand.

10. During the hearing on 24.10.2024, the Deputy RoC for the RoC, the representative of office of the OL, the Deputy

Director for the office of the RD as well as the proxy counsel for the Income Tax Department submitted that they have no objection for approval of the scheme, in view of the response filed by the applicant companies to their reports.

11. VALUATION REPORT:

The Learned Counsel for the Petitioner Companies invited the attention of this Tribunal to the Valuation Report dated 03.06.2024 obtained from, one Mr. Roshan Nilesh Vaishnav, Registered Valuer having RV Registration No. – IBBI/RV/06/2019/11653, determining the share entitlement ratio for the proposed scheme and the same is placed on record. The valuation report given by the registered valuer is attached with the petition at “**Annexure-F**”.

12. ACCOUNTING TREATMENT:

The Petitioner Companies submitted that the accounting treatment specified in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013. The certificates issued by the Statutory Auditors certifying the Accounting Treatment of

the Petitioner Companies are annexed to the Company Petition as **Annexure-J and Annexure-K**.

13. OBSERVATION OF THIS TRIBUNAL:

- A. We have gone through the Company Petition, representation/report of the Regional Director, the Registrar of Companies, the Official Liquidator and the Income Tax Department as well as the response of the Petitioner Companies in respect of the observation/report of the RD, RoC, OL and Income Tax Department. There are no adverse observation in respect of the petitioner companies as well as in respect of the scheme by the Regional Director, the Registrar of Companies, the Income Tax Department and by the Official Liquidator.
- B. After analysing the Scheme in detail, this Tribunal is of the considered view that the Scheme as contemplated between the Companies seems to be *prima facie* beneficial to the Companies and will not be in any way detrimental to the interest of the shareholders of the Companies. Considering the record placed before this

Tribunal and since all the requisite statutory compliances have been fulfilled by the Petitioner Companies, this Tribunal sanctions the proposed Scheme of Amalgamation appended at **“Annexure-E”** to the typed set filed along with the Company Petition as well as the prayer made therein.

- D. The Learned Counsel for the Petitioner Companies submitted that no investigation proceedings are pending against the Petitioner Companies under the provisions of the Companies Act, 1956 or the Companies Act, 2013 and no proceedings are pending under the Act or under the corresponding provisions of the Companies Act, 1956 against the petitioner companies as well as no winding up proceedings have been filed or pending against the petitioner companies under the Act or the corresponding provisions of the Companies Act, 1956.
- E. 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 petitioner companies.

F. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting approval of the said loan assignments and 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.

G. Further, it becomes relevant to discuss that in Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi has made the following observations with regard to the right of the IT Department in the Scheme of Amalgamation:

*“taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in re **Vodafone Essar Gujarat Limited v. Department of Income Tax (2013) 353 ITR 222 (Guj)** and the same being also*

affirmed by the Hon'ble Supreme Court and as reported in (2016) 66 taxmann.com374 (SC) from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15,2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutory dues from the Petitioner 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."

14. THIS TRIBUNAL DO FURTHER ORDER:

- I. The Scheme of Amalgamation as annexed as **Annexure 'E'** to the Company Petition is hereby sanctioned and it is declared that same shall be binding on the Petitioner Companies and its Shareholders and Creditors and all concerned under the Scheme.
- II. All the properties, rights and powers of Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Act, stand transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Company.

- III. All licenses, permissions, permits, approvals, certificates, clearances, authorities, leases, tenancy, assignments, rights, claims, liberties, special status, other benefits or privileges and any power of attorney relating to the Transferor Company shall stand transferred to and vested in the Transferee Company, without any further act or deed. The Transferee Company shall be bound by the terms thereof, the obligations and duties thereunder, and the rights and benefits under the same shall be available to the Transferee Company.
- IV. All the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- V. All contracts, agreements, insurance policies, bonds and all other instruments of whatsoever nature or description, of the Transferor Company, shall stand transferred to and vested in the Transferee Company

and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually against the Transferee Company.

- VI. All taxes paid or payable by the Transferor Company including existing and future incentives, un-availed credits and exemptions, the benefit of carried forward losses and other statutory benefits, which shall be available to and vest in the Transferee Company. The Tax liability of the Transferor Company shall become a liability of the Transferee Company and any proceedings against the Transferor Company shall continue against the Transferee Company.
- VII. All proceedings now pending by or against the Transferor Company shall be continued by or against the Transferee Company.
- VIII. The Appointed Date for the Scheme shall be **01.04.2024**.
- IX. **Consideration/ Issue of Shares:**
- a) *Upon the coming into effect of this Scheme, and in consideration of the transfer of and vesting of the Undertaking of the Transferor Company in the*

Transferee Company in terms of the Scheme, the Transferee Company shall, without any further application, act, instrument or deed, issue and allot to the equity shareholder(s) of the Transferor Company whose names are recorded in the register of members, on the Record Date, 1841 Preference Shares each, credited as fully paid-up, for every 2 equity shares of the face value of Rs. 10/- (Rupees Ten only) each fully paid-up and held by such equity shareholder in the Transferor Company.

- b) Upon the Preference Shares in the Transferee Company being issued and allotted by it to the equity shareholder(s) of the Transferor Company in terms of clause 2.4.1 above, the equity shares of the Transferor Company, shall be deemed to have been automatically cancelled and be of no effect.*
- c) The Preference Shares issued, pursuant to clause 2.4.1 above, to the equity shareholders of the Transferor Company by the Transferee Company shall be issued in dematerialized form by the Transferee Company, provided that the details of the depository account of the equity shareholders of the Transferor Company are made available to the Transferee Company by the Transferor Company at least two (2) days prior to the Effective Date. In the event that such details are not available with the Transferee Company or for such equity shareholders of the Transferor Company which holds the shares of the Transferor Company in physical form, it shall issue the Preference Shares, to the equity shareholders of the Transferor Company in physical form.*
- d) In the event that the aggregate number of the Preference Shares to be issued by the Transferee Company to the equity shareholder(s) of the Transferor Company results in a fraction of Preference Shares, the Board of Directors of the Transferee Company shall round-off such fraction to the nearest whole number, and thereupon shall*

issue and allot the Preference Shares to the equity shareholders of the Transferor Company.

e) Approval of the Scheme by the equity shareholders of the Transferee Company shall be deemed to be the due compliance of the provision of Sections 55, 62 of the Act read with Rule 9 of the Companies (Share Capital and Debentures) Rules, 2014 for the issue and allotment of Preference Shares by the Transferee Company to the equity shareholders of the Transferor Company, as provided in the Scheme.

X. All workers/employees of the Transferor Company shall be deemed to have become the workers/employees of the Transferee Company with effect from the Appointed Date without any break, discontinuance or interruption in their service and on the basis of continuity of service, and the terms and conditions of their employment with the Transferee Company shall not be less favourable than those applicable to them with reference to the Transferor Company as on the Effective Date.

XI. The Petitioner Companies within thirty days of the date of the receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy

being so delivered, the entire Undertaking of the Transferor Company shall stand transferred to the Transferee Company and the Registrar of Companies shall place all documents relating to the Petitioner Companies to the file kept by him in relation to the Transferee Company and the files relating to the said two companies shall be treated accordingly;

XII. All concerned Authorities to act on the copy of this order along with the Scheme which is annexed at **“Annexure E”** of this petition, The Registrar of this Tribunal shall issue the certified copy of this order immediately.

XIII. The Petitioner Companies are directed to lodge a copy of this Order and the approved Scheme as annexed at **“Annexure E”**, duly certified by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for adjudication of stamp duty, and pay requisite stamp duty payable, if any, within 60 days from the date of this Order.

XIV. The Petitioner Companies are further directed to file a copy of this order along with a copy of the Scheme

with the concerned Registrar of Companies, electronically, along with e-form INC-28 in addition to a physical copy within 30 days from the date of issuance of the certified copy of the Order by the Registry as per relevant provisions of the Act.

XV. The legal fees and expenses of the office of the Regional Director are quantified at Rs.20,000/- in respect of the Petitioner Companies. The said fees to the Regional Director shall be paid by the Transferee Company.

XVI. The legal fees and expenses of the office of the Official Liquidator are quantified at Rs.20,000/- in respect of the Transferor Company. The said fees of the Official Liquidator shall be paid by the Transferee Company.

XVII. The Income Tax Department will be free to examine the aspect of any tax payable as a result of the sanction of the Scheme and if it is found that the Scheme of Arrangement ultimately results in tax avoidance or is not in accordance with the applicable provisions of Income Tax Act, then the Income Tax

Department shall be at liberty to initiate appropriate course of action as per law. Any sanction of the Scheme of Arrangement under Sections 230-232 of the Companies Act, 2013 shall not adversely affect the rights of Income Tax Department or any past, present or future proceedings and the sanction of the scheme shall not come in its way for the appropriate course of action as per law for the tax liabilities, if any.

XVIII. The Statutory auditors of the Applicant Companies are hereby directed to ensure the following:

- I. That the Accounting Treatment as a result of this order is carried out in accordance with the provisions of Section 133 of the Companies Act 2013 and as per the draft treatment as proposed in the scheme which was annexed at “Annexure – E” of the scheme;**
- II. That they are further directed to disclose their observations in this regard and**

**regarding convey other compliances as per
this order in the next annual Audit Report of
Applicant Companies.**

XIX. Any person aggrieved shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

15. Accordingly, Company Petition i.e. **CP(CAA)/39(AHM)2024** in **CA(CAA)/29(AHM)2024**, stands allowed and disposed of in terms of the aforementioned terms.

- Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)
RS/SP

- Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)