S. No.105

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
05-04-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

CP (CAA) No. 49/230/HDB/2020
U/s 230 of Companies Act, 2013

IN THE MATTER OF:

Dr. Reddy's Reddy's Holdings Limited and
Dr. Dr. Reddy's Laboratories Ltd and Their respective Shareholders

...Petitioner

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

O R D E R

Orders in company petition CP(CAA)No.49/230/HDB/2020, passed vide separate orders. In the result petition is allowed. Scheme is approved as per the terms and conditions mentioned in the order.

MEMBER (T) **MEMBER (J)**

Pavani

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

CP (CAA) No. 49/230/HDB/2020

Connected with

CA (CAA) No. 231/230/HDB/2019

U/s 230-232 R/w Section 66 of the Companies Act, 2013

IN THE MATTER OF

SCHEME OF AMALGAMATION AND ARRANGEMENT

M/s Dr. Reddy's Holdings Limited
(Amalgamating Company)
AND

M/s Dr. Reddy's Laboratories Limited
(Amalgamated Company)
AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

M/s. Dr. Reddy's Holdings Limited
CIN: U67120TG1994PLC017906
Having registered office at
7-1-27, Ameerpet, Hyderabad – 500016 .... First Petitioner Company/
Amalgamating Company

AND

M/s. Dr. Reddy's Laboratories Limited
CIN: L85195TG1984PLC004507
Having registered office at
8-2-337, Road No. 3, Banjara Hills
Hyderabad – 500034 .... Second Petitioner Company/
Amalgamated Company

Date of order: 05.04.2022

Coram:

Dr N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble, Member (Technical)

Parties / counsels present:

For the Petitioners: Shri S. Ravi, Senior Advocate along with Ms. Divya Datla, Advocate

For Official Liquidator: In person, Smt. Santoshi Jagirdar

For the Regional Director: Shri. Srujan Kumar Reddy. Advocate

PER: BENCH

I. This is a joint petition filed by M/s Dr. Reddy's Holdings Limited (First Petitioner/ Amalgamating Company) and M/s Dr. Reddy's Laboratories Limited (Second Petitioner/ Amalgamated Company) under Section 230-232 of the Companies Act, 2013, praying for approval of the Scheme in terms of Scheme of Amalgamation and Arrangement shown as Annexure "G".

II. The gist of the 1st Petitioner (Amalgamating Company) in brief is -

(a) **M/s Dr. Reddy's Holdings Limited /the First Petitioner Company /DRHL** was initially incorporated as a private limited company under its name "Dr. Reddy's Holdings Private Limited" in the State of Telangana on July 12, 1994 under corporate identity number U67120TG1994PLC017906. Subsequently, it became a public limited company with effect from May 4, 2009 and the name of the Amalgamating Company was changed to "Dr. Reddy's Holdings Limited". Further, it holds 24.88% (as on March 31, 2019) of the equity share capital of the Amalgamated Company. The First Petitioner Company is engaged, inter-alia, in the business of holding investments. Copy of the audited annual report of Petitioner No.1 Company for the period ending 30.09.2019 is annexed and marked as Annexure-B.

(b) The gist of the 2nd Petitioner (Amalgamated Company) in brief is -

M/s Dr. Reddy's Laboratories Limited /the Second Petitioner Company/DRL was initially incorporated as a private limited company under the name "*Dr. Reddy's Laboratories Private Limited*" in the State of Telangana on February 24, 1984 under corporate identity number L85195TG1984PLC004507. Subsequently, it became a public limited company pursuant to the fresh certificate of incorporation dated December 06, 1985 and the name of the Second Petitioner Company was changed to "*Dr. Reddy's Laboratories Limited*". The equity shares of the Second

Petitioner Company are listed on the BSE Limited (Bombay Stock Exchange) ("BSE") and the National Stock Exchange of India Limited ("NSE") (hereinafter collectively referred to as the "Stock Exchanges") and its American Depository Receipts are listed on the New York Stock Exchange Inc. ("NYSE"). The Second Petitioner Company is an integrated pharmaceutical company, committed to providing affordable and innovative medicines for healthier lives. Through its three businesses - pharmaceutical services and active ingredients, global generics and proprietary products, it offers a portfolio of products and services including active pharmaceutical ingredients, custom pharmaceutical services, generics, biosimilars and differentiated formulations. A copy of the audited statement of accounts as on March 31, 2019 and the statement of unaudited financial results as on June 30, 2019 of the Second Petitioner Company are annexed and marked as Annexure D1 and D2.

III. The Rationale for the proposed scheme.

The proposed amalgamation of DRHL with DRL by this Scheme, would result in the promoters/shareholders of DRHL automatically becoming shareholders in DRL. The rationale for the proposed scheme are as under:

(1) The Amalgamation would lead to simplification of the shareholding structure and reduction of shareholding tiers and demonstrate direct commitment to and engagement with DRL of / by the Promoters. Further, the Amalgamation shall

have no adverse implications for DRHL, DRL, or public shareholders of DRL.

(2) The Promoter Group cumulatively would continue to hold the same number of shares in DRL, pre and post amalgamation.

(3) All costs, charges and expenses relating to the Scheme will be borne out of the Surplus Assets (as defined in clause 18 of the Scheme) of DRHL. Any expense, if exceeding the Surplus Assets of DRHL would be borne directly by the Promoters.

(4) The Scheme also provides that the Promoters / Indemnifying Parties (as defined in the Scheme) will jointly and severally indemnify, defend and hold harmless the Amalgamated Company, its directors, employees, officers, representatives, or any other person authorized by the Amalgamated Company (excluding the Promoters) for any liability, claim, or demand, which may devolve upon the Amalgamated Company on account of this amalgamation.

IV. The 1st Stage Application (CA (CAA) No. 231/230/HDB/2019.

The Company Petition is filed in pursuance of order dated 14th October 2020 passed in CA (CAA) No. 231/230/HDB/2019 on 22.11.2019. The Petitioner Companies have complied with all the requirements as per directions of this Tribunal and have filed necessary affidavits of compliance with the Tribunal.

V. Report of the statutory authorities

The Regional Director (South Eastern Region), Ministry of Corporate Affairs, Hyderabad has filed Report dated 07.09.2020, *inter alia*, stating therein that save and except as stated in paras 3 to 10 of the Report, the Scheme is not prejudicial to the interest of shareholders and public. In response to the observations made by the Regional Director, the Petitioner Companies have also given necessary undertakings and clarifications through their reply affidavit dated 28.12.2020. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Sr. No. Para	RD's report / Observation 07.09.2020	Response of the Petitioner
3 (a)	Petitioners Companies be directed to clarify as to whether the requirement of prior approval from FEMA/RBI is needed as the paid up share capital of Transferee Company includes 2,34,37,729 equity shares represented by 2,34,37,729 American Depository Receipts (ADRs).	The Petitioner Companies submit that the ADRs were issued in compliance with all applicable regulations issued under FEMA / RBI and 2nd Petitioner submits that no such permission is required as there is no alteration of the rights or liabilities of the ADR holders.
3(b)	Petitioner Companies to preserve its books of accounts and papers and records and not to dispose of without the prior permission of the Central Government in terms of Section 239 of Companies Act, 2013.	The 2nd Petitioner Company undertakes to comply with the same.
3(c)	Petitioner Companies to ensure compliance of all statutory compliance of all applicable laws and also on sanctioning of the Scheme the Petitioner Companies shall not be absolved for any of its statutory liability in any manner.	The Petitioner Companies undertake to ensure compliance of the same.
3(d)	Petitioner Companies to comply with Rule 17(2) of the Companies	Petitioner Companies undertake to comply with the same.

	(Compromise, Arrangement and Amalgamation) Rules, 2013.	
3(e)	Transferee Company to file an Application indicating the Revised authorised share capital and proof of paying prescribed fees due on revised capital after setting off the fee already paid by the Transferor Companies.	The Transferee Company pursuant to amalgamation, undertakes to file a letter indicating the revised authorised share capital and proof of paying the prescribed fees due on revised capital after setting of the fee already paid by the Transferor Company.
3(g)	Since the Scheme provides for dissolution of the Transferor Company without winding up, there is no requirement of Clause 11.2 of the Scheme which provides for reduction of share capital of Transferor Company under Section 66 of the Companies Act, 2013	Clause 11.2 of the Scheme provides for reduction of share capital of Transferee Company and not Transferor Company and that Transferee Company will be in existence post the Amalgamation. As such it is stated that reference to Section 66 of the Companies Act, 2013 is required.
4	To hear Income Tax authorities before the Scheme is allowed	It is submitted, both Transferor and Transferee Companies have sent required documents to IT authorities and the no-objection certificate are obtained which is annexed and marked as Annexure-1 to the Affidavit. It is further submitted that Tax Department is the appropriate authority to provide observations pertaining to tax issues and the same is beyond the scope of Regional Director.
5	The comments from Securities Exchange Board of India (SEBI) is awaited though notice dated 14.02.2020 was served upon them	The Transferee Company has obtained "no objection certificate" from BSE and NSE, copies of which are annexed as annexure-2 to the memo.
7	Observations on the meeting of the Unsecured Creditors of Transferee Company	It is submitted that as on 31.08.2019, the Transferee Company has 13,243 unsecured creditors to whom an aggregate amount of Rs. 22,70,42,40,306/- was outstanding. That this Tribunal had vide order dated 22.11.2019 had ordered for serving notices to only those unsecured creditors to whom the transferee company owes more than Rs. 5 lakhs. Accordingly, notices were issued to 1692 unsecured creditors and the meeting of Unsecured creditors held on 02.01.2020 was attended by 75 unsecured creditors to whom the Transferee Company owes a sum of Rs. 12,61,06,14,284/- and representing more than three fourths of the value who voted in favour of the Scheme. Further, the

		Transferee Company undertakes to discharge the dues to Unsecured creditors as and when the same would become due.
8	Direct the Petitioner Companies to state whether any approval/prior intimation is required to be obtained/intimated to Ministry of Chemicals & Fertilizers, Department of Pharmaceuticals	In response to the said observation, the Petitioner Companies state that no such approval/prior intimation is required to be obtained from the Sectoral Regulators.
9.	To direct the Transferee Company to furnish an undertaking that as and when the demand arises from statutory authorities (i.e. Income Tax, Service Tax, VAT) the Transferee company is ready to clear the debts as per rules	In response, the Transferee Company submits that the Scheme will not have any impact on the liabilities of the Transferee Company and undertakes to discharge all the liabilities in full as and when the same are legally due.
10	The Regional Director has observed that the Transferor Company has not obtained the approval/registration from Reserve Bank of India for carrying out the business of NBFC activities and requested this Tribunal to direct the Transferor Company to obtain consent or no objection from RBI.	In response to the said observation, it is submitted that the Transferor Company is categorized as a Core Investment Company (CIC) under RBI Regulations and as such there is no requirement of any registration with the RBI under Section 45-IA of the RBI Act, 1934. It is stated that the RBI has confirmed vide letter dated 11.11.2019 that CIC is exempted from obtaining registration with the RBI under the said provisions. The certified copy of the letter is marked as Annexure-5 to the Affidavit.

VI (i) The observations made by the Regional Director have been explained and the same have been clarified by the Petitioner Companies in Paras above. The undertakings filed by the Petitioner Companies in response to the said report are accepted by this Tribunal.

(ii). It is further observed at para 4 of the Regional Director's report that letter dated 14.02.2020 has been issued to the Principal Commissioner of Income Tax Office, Hyderabad. In response, the Joint Commissioner of Income Tax (OSD) Circle-17(1), Hyderabad

vide letter dated 23.01.2020 addressed to this Tribunal intimated that they do not have any objection to the proposed Scheme of Amalgamation and Arrangement.

(iii). The Official Liquidator has filed his report dated 20.05.2020 pointing out certain observations at para 6 of his report. The observations made by the Official Liquidator and the clarifications and undertakings given by the Petitioner Companies in the form of rejoinder are summarized as under: -

Para No.	Objections raised by Official Liquidator ("OL") in its Report dated 20.05.2020	Responses by the Petitioner Companies filed before the NCLT through Company's rejoinder dated 17.08.2020
Para (a) of the OL Report	That the present scheme, do not fall under the scheme of merger / amalgamation for the following reasons: The rationale envisaged in Para (B) of the Preamble to the Scheme makes it clear that, the amalgamation is chiefly aimed at facilitating direct holding of shares of Transferee company by the shareholders of transferor company. There is no business left to be continued post amalgamation / merger. The investment assets (holding shares in transferee company) would get wound up by way of its cancellation upon merger/amalgamation. Further, the Company is not showing its dividend income as part of income from business operations in its Profit and Loss account, instead it is considering it as other income. Hence, the present scheme would be a case of dissolution with winding up of the	In response to the observation, the Petitioners state that the rationale behind the Scheme of Amalgamation and Arrangement between Dr. Reddy's Holdings Limited ('DRHL') and Dr. Reddy's Laboratories Limited ('DRL') would result in the shareholders of DRHL directly holding the shares in DRL which is construed as a legitimate scheme. The Petitioners have relied on the *Bombay High Court in the case of AVM Capital Services (P) Limited, In re [2012] 111 CLA 71,* wherein it had upheld that undertaking a Scheme of Amalgamation which enables the shareholders of the amalgamating company to directly hold the shares in the amalgamated company and streamline its shareholding, is an objective / rationale enough for justifying the need for carrying out the said amalgamation. Bombay High Court also held that there is nothing illegal or unlawful in such a scheme and the same is permissible by law. The Petitioners submit the Amalgamation would lead to simplification of the shareholding structure and reduction of shareholding tiers and demonstrate direct commitment to and

	business in distinction with averments of 'dissolution without winding up' as envisaged in clause no.16.1 of the scheme. Further, the Scheme doesn't meet the criteria prescribed under section 232(1)(b) of the Companies Act, 2013.Consequently, the section 232 of the Companies Act, 2013 dealing with Merger and Amalgamation is not applicable to the present scheme of Amalgamation of transferor company with the transferee company. Hence, the Tribunal to consider the above and decide on merits or direct the petitioner companies to furnish reply on this issue.	engagement with DRL of/ by the Promoters. In response to the said observation, it is stated that financial statements of the Amalgamating Company are prepared in consonance with the Indian Accounting Standards (Ind AS) as provided under Section 133 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rules, 2015. The Amalgamating Company has accounted for such dividend income as "Other Income" in accordance with the prescribed Accounting Standards. The books of accounts of the Amalgamating Company with such disclosureare is duly audited by an independent Chartered Accountant. The Petitioners submit that the present scheme is in due compliance of criteria prescribed under Section 232(1)(b) thereunder as the entire assets and liabilities of the Amalgamating Company are beingtransferred to the Amalgamated Company. The same is clearly provided for at Clause 5.2 of the Scheme. In response to the contention of the OL that the business of the Amalgamating Company shall not exist due to cancellation of investments in Amalgamated Company pursuant to the merger, hence the Scheme cannot be regarded as in nature of merger / amalgamation and shall be considered as dissolution, it is stated that the provisions of section 232 of the Companies Act require an undertaking or assets or liabilities of a transferor company to be transferred to a transferee company in an amalgamation and the same is duly complied with. The Amalgamating Company has other assets (such as

		4,13,25,300 shares, Mutual funds, cash and cash equivalents etc.) as well in addition to investments in Amalgamated Company, which are being transferred as part of the Scheme of Amalgamation and Arrangement. Therefore, the undertaking / assets of the Amalgamating Company shall become assets of the Amalgamated Company pursuant to the proposed Amalgamation. The Scheme is also in accordance with Section 232(1)(a) - the relevant provision in this case. Further the Petitioners explain that Section 232 (3)(b) of the Companies Act, 2013 provides pursuant to the Amalgamation of the Amalgamating Company with the Amalgamated Company, the shares of the Amalgamated Company held by the Amalgamated Company are mandatorily required to be cancelled. He n c e the Scheme provides for cancellation of all equityshares held by the Amalgamating Company in the share capital of the Amalgamated Company (i.e. 4,13,25,300 equity shares), without any further act or deed, upon the Scheme becoming effective. Additionally, the Amalgamated Company shall discharge consideration by way of issue of similar number of fresh shares (i.e. 4,13,25,300 equity shares) to the shareholders of the Amalgamating Company. Reliance is placed on Ensource Holdings Mauritius Limited and Ors v. Ensource Consulting Private Limited (MANU/NC/11467/2019) where NCLT, Bengaluru Bench held as follows: *"13(h) With regard to the valuation report of the foreign registered companies it is stated that in the present case, considering that the foreign companies are wholly owned subsidiaries of the Transferee Company and merging into the Transferee Company, the question of issuance of shares by the Transferee Company to itself does not arise. Further,*

		a company cannot hold shares initself. It is stated that the ROC in SI. No. 9 of the affidavit have also reiterated the said aspect. Hence, no valuation report has been obtained from a Registered Valuer and has not been submitted before this Tribunal." The Petitioners further clarify that the scheme contemplates the dissolution of the Company without the process of winding up as nothing would remain in the Transferor Company upon the transfer and vesting of all its assets and liability in the Transferee Company and that this Tribunal can invoke provisions of Section 232 (3) (d) for dissolution without the winding up of the Transferor Company
Para 6 (b)(i) of OL Report	That, the scheme would, de facto, result in transfer of 4,13,25,300 number of equity shares of Listed Company (Transferee company) from its existing owner (Transferor Company — a separate legal entity different from its shareholders/ promoters) to new owner i.e. Promoters/ shareholders oftransferor company. Accordingly, the transaction of approval given by the Board of Transferor Company for the present scheme is, de facto, is in the nature of transaction for distribution of shares of transferee company as dividend to the shareholders of the transferor company Thus, the scheme is devised only for the benefit of the few common promoters/ shareholders of both the petitioner companies and no longer in public interest is being served The scheme, if implemented, would prima facie result in the following non-compliances:- (i) non-compliance of section 123(1)(a) of the Companies Act, 2013 (read with prohibitions/conditions	Per contra, the Petitioners submit that proviso to Sec. 232(3)(b) necessitates that pursuant to Amalgamation the Transferee Company shall not hold anyshares in its own name and such shares being transferred in the name of the Transferee Company, hence there is no question of distribution of any dividend through the transfer of ownership of the shares in favor of the Transferee Company. Further submits that the shares which were earlier held by the promoters through the Transferor Company would now be held directly by the individual promoters themselves and therefore the interest of the public or of the shareholder is not affected in any manner. There is no change of control and there is no tax loss whatsoever for the exchequer as alleged by the learned Official Liquidator. Per contra, the Petitioners submit that the Scheme falls squarely within Section 2(1B) of the Income Tax Act, 1956 and the Scheme cannot be construed as distribution of dividends by the Transferor Company within the meaning of Income Tax Act,

	prescribed under Rule 3 of Companies (Declaration and payment of Dividend) Rules, 2014), by the Transferor Company, as the proposed transaction is in the nature of dividend distribution by the transferor company without having realized sufficient profits/ accumulated profits/reserves in its hand/books	1956 or the Companies Act, 2013 or otherwise. As far as the shareholders of the Transferor Company are concerned, in consideration of the extinguishment of the shares they hold in the Transferor Company, they receive the shares held in the Transferee Company by way of a fresh allotment of shares by the Transferee Company. It is further stated that Section 123(5) of the Companies Act, 2013, provides, inter alia, that dividends can only be paid in form of cash and no other form or mode of assets. Therefore, issuance of shares pursuant to an amalgamation cannot be construed as akin to distribution of dividends. Therefore, the transaction contemplated within the Scheme of Amalgamation and Arrangement is in compliance with the provision of Companies Act, 2013.
Para 6 (b)(ii) of the OL Report	(ii) non-payment / avoidance of Income Tax (Capital Gains Tax And/or Dividend Distribution Tax either in the hands of Transferor Company or in the hands of Shareholders of Transferor Company).	Section 2(1B) r.w. Section 47(vi) of the Income Tax Act, 1961, specifically provides that transfer of capital assets pursuant to an amalgamation shall not be considered for capital-gain tax purposes. Hence, there shall be noloss to the state exchequer on approval of the Scheme of Amalgamation and Arrangement. The Petitioners further clarify that the assumption of attracting income under the Income Tax Act, 1961 may arise only if there is sale of shares of DRL by DRHL to its shareholders who in turn pay considerationfor the same. In the instant case, there is no such sale / transfer of shares (nor there is payment of consideration for the same). In this regard, the Petitioners relied on PIPL Business Advisors and Investment Private Limited and others before New Delhi Bench of National Company Law Tribunal (Company Petition 385/ND/2017) where in such question of

		law was discussed in detail. The co-ordinate Bench after detailed discussions and deliberations rejected the contention of the income tax authorities that transfer of shares was being undertaken under the garb of the scheme based on the facts of that case. The Petitioners further relied on the High Court in the case of AVM Capital Services (supra), wherein it had held that undertaking a scheme of amalgamation which enables the shareholders of amalgamating company to directly hold the shares in the amalgamated company, is an objective which cannot be disregarded. The High Court has held that this is commercial rationale enough for a Scheme. Further, where the scheme has sufficient commercial rationale, and the rationale is stateable, the General Anti-avoidance Rule ('GAAR') provisions under the income tax law cannot be attracted. Further, in the instant case wherein the Amalgamation is being proposed to be undertaken under applicable provisions of Companies Act, 2013 and is fulfilling the conditions provided for amalgamation as provided under the Income Tax Act, 1961 which may result in exemption of income taxes in the hands of the Amalgamated Company, the Amalgamating Company and their respective shareholders, the Schemecannot be considered to be a device for avoidance of tax as per applicable laws. In this regard, the Petitioners relied in the judgement rendered in Vodafone Essar Gujarat ltd. V. Department of Income Tax ([2013] 176 CompCas 7 (Guj)), reaffirmed by the Supreme Court in *Department of Income Tax v. Vodafone Essar Gujarat Ltd. ((2015) 16 Supreme Court Cases 629) as follows:* *"45..... if the scheme has been framed and*

		is approved by the shareholders in their wisdom, in our view, it cannot be said that the scheme itself is floated with the sole criteria of tax avoidance simply because it may have effect and result into avoidance tax. *..... In our considered view, this court cannot refuse the sanction on the aforesaid ground by coming to the conclusion that the only object of the scheme is to avoid taxes."* As part of the Amalgamation process, the Amalgamating and Amalgamated Company are required to obtain no objection certificate from the tax authorities. Both the Amalgamating and Amalgamated Company have sent the requisite documents to the tax authorities and have obtained their no objections to the proposed Scheme of Amalgamation and Arrangement (Certified copy of the same is attached as Annexure 1to the rejoinder filed to the OL Report before the Hon'ble NCLT.
Para 6 (b)(iii) of the OL Report	(iii) Transferor Company holds about 24.88% of equity share capital of Transferee Company as at 31.3.2019. No provision is also made in the scheme with regard to open offer to be made by the promoters (shareholders) of transferor company under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Scheme do not provide for complying with Takeover Regulations, ibid. Hence, Hon'ble Tribunal may be pleased to consider the above and decide on merits or direct the petitioner companies to furnish reply on this issue and also to direct the SEBI to specifically report on the issue of non-compliance Of Takeover Regulations	In response to the said observations it is submitted that present Scheme of Amalgamation and Arrangement is exempted from the obligation to make an open offer as per Regulation 10(1)(d)(ii) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Additionally, it is submitted that Amalgamated Company (DRL) has obtained 'No Objection Certificate' from BSE (based on the observations received from SEBI by BSE), NSE for the Scheme of Amalgamation and Arrangement and the same has been filed with the Tribunal. Therefore, the question of directing SEBI to report on the alleged non-complianceof the takeover regulation is ex-facie incorrect.
Para 6 (c) of the OL	That, the transferee company (a listed entity)'s paid up capital also include 2,34,37,729 equity shares represented	In Para 6(c), learned Official Liquidator has observed that the paid up capital of the Amalgamated Company also include

Report	by equivalent number of ADRS (American Depository Receipts) listed on New York Stock Exchange (NYSE). The same was also disclosed in Clause (A)2 of Preamble of the Scheme and a linked reference was also made in Clause no.20.1 of the scheme. As the transferee company seeks to issue new shares to the shareholders of the transferor company, through this scheme, the said foreign stock exchange also is likely to be affected by the scheme, hence, requiring it to issue notice ofthe scheme to NYSE as well in terms of section 230(5) of the Companies Act, 2013. Hence, Hon'ble Tribunal may be pleased to consider the above and issue direction to issue notice of the Scheme to NYSE as well.	2,34,37,729 equity shares of the Amalgamating Company represented by equivalent number of American Depository Receipts ('ADR') viz. listed with the New York Stock Exchange (NYSE). It is further stated that the Scheme of Amalgamation and Arrangement duly discloses the same in the preamble (Clause (A)2). As stated in Clause 20.1 of the Scheme, offer for the New Equity Shares (as defined at Clause 1.17 of the Scheme) issued pursuant to theAmalgamation are made only to persons resident in India and, no such person is a resident of USA. According to Regulation of the Securities Act, 1933 (laws applicable in US), an exemption is provided from the requirement of obtaining any registration under the USSecurities Act, for any offer of shares that is made outside of the US. Accordingly, the Amalgamated Company is duly exempted from obtaining any registration under the US Securities Act, asthe New Equity Shares shall be issued / offered only to persons resident in India. Further, Amalgamated Company has duly informed the NYSE of the ongoing Amalgamation. Notice for the NCLT convened shareholder's meeting that was conducted on 2nd January 2020, was sent to all ADR shareholders as well. Further, option for E-voting was made available to them and they duly exercised their voting rights. Copiesof the notice sent by the Amalgamated Company to ADR holders is attached as **Annexure 2** to the rejoinder filed to the OL Report before the Hon'ble NCLT. It is also stated that out of the total 2,34,37,729 equity shares held by way of ADRs by the ADR holders, 1,73,61,597, have voted and 1,73,50,331 have voted in favour of the Scheme (representing 99.94% of votes casted by the ADR holders).

		Further, it is stated that NYSE will be intimated by the Amalgamated Company once the Scheme is approved by the NCLT. Accordingly, it is stated that that all due requirements for intimating NYSE have been duly complied with.
Para (d)of the OL	No consideration is provided for by the transferee company to the shareholders of transferor company as the transferor company sought to be transferred to the transferee company vide clause 5.2 of the scheme, to the tune of Rs 26.19 Cr. Hence, the Board of the Transferor company approved the scheme resulting into gift of assets worth Rs26.19 Cr (without commensurate consideration) to the transferee company which is prejudicial transaction to the shareholders/ members of the Transferor company.	With respect to the said observation of OL, the Petitioners submit that as per Clause 10 of the Scheme, 4,13,25,300 fully paid up equity shares of face value of Rs. 5 each of the Amalgamated Company shall be issued and allotted as fully paid up equity shares to the equity shareholders of the Amalgamating Company, in proportion to their holding in the Amalgamating Company. The shareholding of the promoters / promoter group (as defined in the Scheme) in Amalgamated Company, pre and post amalgamation shall remain the same. Further Clause 5.2 of the Scheme provides that all assets of the Amalgamating Company shall become the assets of the Amalgamated Company, with effect from the Appointed Date though it would be effectual from the "Effective Date". Further Clause 18.1 of the Scheme encapsulates that surplus would be utilized to discharge all costs including stamp duty and as such surplus assets have not been considered for determining the consideration under the Scheme, which has been certified by the chartered accountants in the State Exchange Report dated 29.07.2019. It is further stated that the shareholders of the Amalgamating Company are aware of the fact that any excess of the surplus assets over and above the cost of amalgamation shall belong to and remain with the Amalgamated Company and that OL cannot challenge the valuation reports provided by Independent Auditors. The Petitioners placed reliance on the decision of Hon'ble Supreme Court in

		Miheer H. Mafatlal vs. Mafatlal Industries Limited(1996) 87 CompCas 792 (SC) where in it was held at para 39 that "*It must at once be stated that valuation of shares is a technical and complex problem which can be appropriately left to the consideration of experts in the field of accountancy.* *....considering all the relevant aspects and obviously keeping in view the accounting principles underlying the valuation of shares suggested the said ratio which was found acceptable both by the Board of Directors of the respondent company as well as the Board of Directors of the transferor company.* The Petitioners also relied on Kamala Sugar Mills Limited (55 Company Cases p.308 MANU/TN/0005/1980) & In Re: Interglobe Enterprises Limited (MANU/NC/2030/2017) were similar principles were upheld. As such the Petitioners urge there is no requirement to alter Clause 18.1 as prayed by OL.
Para 6 (f) of the OL Report	That the clause 10.6 of the scheme provide for considering any pending share transfers in transferor company by the Board of Transferee Company. There were 9 shareholders as at 31.3.2019 in Transferor Company including one Trust namely APS Trust, whose Details are not known. A copy of list of shareholders as at 31.3.2019 is enclosed vide Annexure- C. Hence, Hon'ble Tribunal may bepleased to direct the transferor company to furnish all such details of pending transfer cases upto the latest date for their verification / To examineimplication on any other non- compliances as applicable In case of change of shareholders of transferor company and change of theircomposition viz., promoter / non-promoter, if any, Including the implication of clause no.20.1 of the	In response to the said observation it is stated that, the Official Liquidator never requested for the same prior to filing of report. The Petitioners submit that there are no pending share transfer cases in the Amalgamating Company as on date. Additionally, there are no non compliances which are applicable in the case of change of shareholders, to the Amalgamating Company. Further, it is submitted that APS Trust is an 83.11%shareholder of the Amalgamating Company(both as on 31 March 2019 and as on date). APS Trust is a family trust of the Promoters and has been instituted for the benefit of their descendants. Beneficial ownership of APS Trust has been provided in Form Ben - 2. Copy of the Form Ben - 2 is annexed as **Annexure 4** to the rejoinder filed to the OL Report. Requisite disclosure regarding APS Trust has been made in Company Petition. Clause 10.6 is in the nature of an

	scheme as up to latest date, if any.	enabling clause in the scheme and hence does not require any modification.
Para 6 (g) of the OL Report	That the clause 10.8 of the Scheme provide for modification/change of consideration prescribed in clause no.10.1 of the scheme. Hence, the same needs to be deleted as the consideration is made open ended without fixing it finally. Hence, Hon'ble Tribunal may be pleased to consider the above and issue direction to delete the Clause 10.8 of the scheme by amending the scheme.	The Petitioners apprise that Present Scheme of Amalgamation and Arrangement is contemplated between a listed company - Amalgamated Company (DRL) and an unlisted company - Amalgamating Company (DRHL). In response to observations made in Para 6(g), it is stated that Clause 10.8 which is in the nature of enabling clause ensures flexibility to amend/modify the consideration in case there is a change in capital structure of the listed company due to a corporate action, only providing for a fair and reasonable consideration to be ascertained as a consequence of such corporate action. Further, 'Corporate Action' has been defined in the Scheme of amalgamation. Hence it is urged that Clause 10.8 of the Scheme does not require amendment.
Para 6 (h) of the OL Report	That the clause no. 12 of the scheme do not actually propose any Specific accounting treatment and no details are given about the actual accounting treatment for recording the assets and liabilities taken over/transferred and for recording the reduction of share capital with consequential adjustment against reduction. Hence, section 230(7) of the Companies Act, 2013 is not complied with. Hence, Hon'ble Tribunal may be pleased to consider the above and Issue direction to amend the clause no.12 of the scheme by giving details of actual accounting treatment sought to be given and also to obtain auditor's certificate on such specific accounting treatment required to be disclosed in the scheme.	It is stated that as per requirement under Section 230 (7) the Petitioners have obtained accounting treatment, certificate from their respective auditors on Clause 12 of the Scheme that the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013. The certificate has been furnished to all regulatory authorities as required under the Companies Act. Clause 12 of the Scheme provides that the Amalgamated Company shall account for the Scheme, in its books of accounts, in accordance with the applicable Indian Accounting standard notified under the provisions of Section 133 of the Companies Act. In view of the same the Petitioners submit that amendment to Clause 12 of the Scheme as observed by the learned Official Liquidator is not warranted.
Para 6 (i) of	That, the clause 7.8 of the scheme is contradictory to clause 7.1(i) of the Scheme, as any dividend payment	In response to the said observation, it is stated that every scheme of amalgamation has to necessarily provide a date with

the OL Report	made by the transferee Company to the transferor company post appointed date (till now) would be counted as intercompany transaction liable for cancellation upon sanction of merger/amalgamation. Further, Dividend Distribution Tax already paid by the transferee company on such dividend paid to transferor company may not be allowed for reversal by the Income Tax Department. Hence, Hon'ble Tribunal may be pleased to consider the above and direct the petitioner companies to submit an undertaking not to seek reversal of DDT Paid or issue direction to amend the scheme by deleting clause no.7.8 of the scheme.	effect from which the amalgamation/transfer shall take place. In this regard, the **Hon'ble Supreme Court, in Marshall Sons & Co. [India] Ltd V. Income Tax Officer, In re1992 195 ITR 417 Mad**, has held that while applying to the court for sanction of a scheme under Section 391(1) of Companies Act, 1956, a scheme has to be framed and such scheme has to contain a date of amalgamation/transfer, the proceedings before the court may take some time. In such a situation, it would not be reasonable to say that the scheme of amalgamation takes effect on and from the date of the order sanctioning the scheme. Further, the order of the court sanctioning the scheme, the filing of the certified copies of the orders of the court before the Registrar of Companies, the allotment of shares etc. may have all taken place subsequent to the date of amalgamation/transfer, yet the date of amalgamation would be the date of amalgamation/transfer mentioned in the scheme i.e. the Appointed Date. In the present case, the Appointed Date of the Scheme is 1st April 2019 and based on the above Supreme Court ruling the Scheme of Amalgamation and Arrangement once approved will be effective from 1st April 2019. Therefore, any dividend declared by Amalgamated Company from the Appointed Date i.e. 1st April 2019 till Scheme of Amalgamation and Arrangement becoming effective, belongs to the shareholders of Amalgamating Company. Clause 7.8 of the Scheme of Amalgamation and Arrangement intends to ensure that such dividend is paid by the Amalgamating Company onward to the rightful owners (i.e. shareholders of Amalgamating Company). It is reiterated, given no value is being attributed to the assets of the Amalgamating Company (including Surplus Assets, other than Investments in the Amalgamated

		Company) for determining the share exchange ratio, any further assets / incomes of the Amalgamating Company, if not distributed to the shareholders of the said company, and left behind, would be prejudicial to the interests of the shareholders of the Amalgamating Company. Further, it is pertinent to note that the Amalgamated Company had last declared its dividends on 30th July 2019 and distributed the same to all its shareholders, including the Amalgamating Company on 5th August 2019. Further, once the said dividends were received by the Amalgamating Company, the same was declared as onward dividends to its shareholders, pursuant to Clause 7.8 of the Scheme, after paying due Dividend Distribution Tax (DDT). The said DDT was paid by the Amalgamating Company on 21st August 2019 vide Challan Serial No. 04340. Proof of payment of the said DDT is attached as Annexure 6 to the rejoinder filed to the OL Report before the Hon'ble NCLT. It is respectfully submitted that the Amalgamating Company has no intent to avoid any taxes in the form of Dividend Distribution Tax. The said DDT paid shall not be reversed or reclaimed from the tax authorities in future. Accordingly, the observation of the Learned OL that Clause 7.8 of the Scheme needs to be amended is erroneous in nature.
Last Para of the OL Report	It is submitted that basing on the information made available by the Petitioner/ Amalgamating Company, the Official Liquidator is of the humble opinion that the affairs of the Petitioner Amalgamating Company appears to have not been conducted in a manner prejudicial to the interests of the members or to public interest, subject to representation at para no 6 above.	Without prejudice to the above, it is respectfully submitted that it is a well-established principle that the scope of the Official Liquidator is limited to the purpose of knowing that the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or the public interest. The Learned Official Liquidator has, on Page 17 of his report stated that the Official Liquidator is of the view that the affairs of the Amalgamating Company appears to

		have not been conducted in a manner prejudicial to the interests of its members or to public interest. The Supreme Court of India, in the case of M/s. Miheer H. Mafatlal vs. Mafatlal Industries Ltd,In re (1997) 1 SCC 579, has held that the scope of Company Court to sanction the Scheme is limited. Court can intervene in a matter only when it is not just and fair or prejudicial to the interest of shareholders. Court cannot intervene if Scheme is sanctioned by majority of shareholders and is lawful. The Delhi High Court, in the case of Vodafone Essar Ltd and Ors vs. Vodafone Essar Infrastructure Ltd.(C.P. No. 334 of 2009 dated 29.03.2011) held that it was not open to the Court, in exercise of company jurisdiction, to sit over views of Shareholders and Board of Directors of Petitioner companies, unless their views are against framework of law and public policy. The equity shareholders secured creditors and unsecured creditors (as applicable) of both the Amalgamating Company and Amalgamated Company have provided their consent to the Scheme of Amalgamation and Arrangement by way of voting in their respective meetings as directed by the Hon'ble Tribunal or by providing their no objection certificates, as the case may be. Based on the same and as stated in the above judgements, where the Scheme is approved by the members and creditors of the Company, the Scheme shall be considered by the Tribunal unless it is prejudicial to the interests of the shareholders or public at large.

VII. A memo dated 01.04.2021 is filed by Ld. Counsel for Petitioner Company submitting that a notice is issued by the 2nd Petitioner Company/Amalgamated Company to New York Stock Exchange (NYSE) as required under Section 230 (5) of the Companies Act, 2013. It is further stated that notice convening the meeting of Equity Shareholders along with explanatory statement and other annexures have been uploaded on the portal.

VIII (1). The Official Liquidator has filed his further report dated 20.04.2021 stating that he is not satisfied with the comments offered by the Petitioner Companies at para 6 (a) to (i) and concluding para of his report dated 20.05.2020. The observations made by the Official Liquidator in the report and the response given by the Petitioner Companies vide memo dated 17.05.2021 are summarised as under: -

Para No.	Objections raised by Official Liquidator ("OL") in his further report dated 20.04.2021.	Responses by the Petitioner Companies filed before the Tribunal dated 10.05.2021 filed on 17.05.2021
(i)(C1) To (C13)	**No merger of business, dissolution with winding up and section 232 of the Companies Act 2013 not complied with, etc:** There is no business left in the Transferor Company to be continued as a going concern by the Transferee Company post-merger. Hence, there is no merger involved in this case at all to be considered for sanction under Section 232 of the Companies Act, 2013. The Rationale for the scheme to amalgamate the Transferor Company with the	The Transferor Company was incorporated on 12.07.1994 and is currently engaged inter-alia, in the business of holding investments. Further Section 232 of the Companies Act, 2013 requires whole or part of the undertaking, property or liabilities of the Transferor Company to be transferred to the Transferee Company and the provisions do not require the Transferor Company to be carrying out active business as a going concern in order for the Scheme to be eligible for provisions of Section 232 of the Companies Act. All properties and liabilities available with the Transferor

	Transferee Company is only to facilitate direct holding of shares of Transferee Company by the shareholders of the Transferor Company under the cloak of purported merger/amalgamation without actual merger of business, is incorrect. The ratio of AVM Capital Services Private Limited in re (2012) 111 CLA 71 by Hon'ble Bombay High Court relied by the Petitioners is not applicable to this case as there is no scheme of amalgamation and no asset/ business of Transferor Company will continue as a going concern. Similar scheme meant for transfer of shares of listed company i.e. Transferee Company by the Transferor Company in favour of its shareholders was rejected by Hon'ble NCLT Mumbai Bench on 05.09.2018 in the matter of GABS Investments Private Limited and Ajanta Parma Limited and the present case is similar to the scheme rejected by NCLT Mumbai Bench. Further the Petitioner Companies are required to provide reasons as to and how the ratio held by Hon'ble NCLT Mumbai Bench and Hon'ble NCLAT in the case of Gabs Investment Private Limited and Wiki Kids Limited, is not applicable in the present case	Company are being transferred to the Transferee Company. In the case of AVM Capital Services (P) Ltd, the primary assets of the Transferor Companies, consisted of equity shares in the Transferee Company and the cash balance to meet the expenses in relation to the Scheme. There was no other business in the Transferor Companies. Hon'ble Bombay High Court in this case had upheld that the scheme was perfectly legitimate and permissible under law. Similar schemes of Amalgamation have been approved in the past by Hon'ble High Courts and NCT wherein the assets of the Transferor Companies, primarily consists of equity shares in the Transferee Company and the cash balance to meet the expenses in relation to the scheme As regards to the observation by the OL, the Petitioners submitted that in the case of Gabs Investment Private Ltd (GIPL), the Tribunal arrived at the conclusion that the scheme was not in the public interest primarily because it was designed to avoid payment of tax on the transfer shares of Ajanta Pharma Ltd from GIPL to GIPLs shareholders. This was the position canvassed by the IT department. In the instant case, the IT department has not raised any such plea. On the other hand, the Petitioner Companies relied on the latest speaking order of Hon'ble NCLT

		Delhi in the case of PIPL Business Advisors and Investment Private Limited and GSPL Advisory Services and Investment Private Limited wherein the NCLT Bench sanctioned a scheme of amalgamation between investment holding companies with a listed entity NIIT Technologies LTd, while rejecting the objections raised by tax authorities and holding that every transaction or arrangement which is permissible under law and has the effect of reducing the tax burden cannot be looked upon with disfavour. Additionally, NCLT Delhi Bench held that there is a difference in tax mitigation and tax evasion/ avoidance – a tax payer shall be allowed to arrange its affairs to reduce tax burden in a lawful manner. As regards to the Wiki Kids Limited, the Petitioner Companies submit that the payment of consideration by way of issue of shares to the promoters of Wiki Kids Limited by the listed entity was leading to an increase in the promoter shareholding from approximately 38% to 44%, thereby reducing the public shareholding in the listed entity and the scheme was rejected by Hon'ble NCLT Delhi Bench which was upheld by Hon'ble NCLAT in an appeal preferred by the Petitioner Companies therein. The Petitioners further submit that, for consideration of merger, the Transferee Company will issue the same number of shares to the shareholders of the Transferor Company as held by the Transferor Company in the Transferee Company, and that there will be no change in the promoter shareholding of the Transferee Company and that there is no impact on the public shareholders.
Para 6(b) (ii) (c1) to (c17)	Scheme defacto result in Transfer of 4,13,25,300 equity shares of a listed company from Transferor	The Petitioners submit that for consideration of a merger, it is acceptable practice that the Transferee Company

	Company to shareholders of Transferor Company The Petitioner Companies are required to provide an explanation as to why payment of consideration in the form of issuance of equity shares of the Transferee Company for the merger should not be considered as violation of provisions of Section 232 (3)(b) of the Companies Act, 2013. The Petitioner Companies to provide explanation as to why the Scheme of Amalgamation shall not be considered as violation of Section 123(5) of the Companies Act, 2013, basing on the judgement provided by Hon'ble High Court of Bombay in the case of Indian Seamless Enterprises Limited.	shall issue shares to the shareholders of the Transferor Company. Further the Petitioners relied on Section 232 (3)(b) of the Companies Act, 2013 which itself envisages and provides for issuance of shares pursuant to a compromise or arrangement. The Petitioners further submit that in the instant case, the shareholders of the Transferor Company are indirectly holding shares/interest in the Transferee Company through their shareholding in the transferor Company. Merger of the Transferor Company with the Transferee Company would lead to a cancellation of shares held by the Transferor Company in the Transferee Company and also the shares held by the shareholders of the Transferor Company in the Transferee Company. It is vital that the Transferee Company issues fresh shares to the shareholders of the Transferor Company such that they continue to hold shares/interest in the Transferee Company (the only difference is the shares/interest is held by them directly instead of indirectly) and there is no violation of provisions of Section 232 (3)(b) of the Companies Act, 2013. As such the arguments made by the OL on the grounds that there is fresh issue of shares worth Rs. 18,662 cr by the Transferee Company without receiving any assets is devoid of any merit, as the fresh shares are being issued by the transferee Company in lieu of cancellation of shares held by the Transferor Company in the Transferee Company. The Petitioners submit that as regards Indian Seamless Enterprises Limited, the Petitioner therein was seeking sanction of the Bombay High Court to a scheme of arrangement between the Petitioner company and its shareholders therein for

	That the Scheme of Amalgamation is not a merger under Section 2(1B) of the IT Act and that the Scheme is a deliberate measure to avoid tax by using the media of this Tribunal.	making a gift of shares held by the Petitioner Company in Taneja Aerospace and Aviation Limited to its shareholders. It was held by the Hon'ble court that the gift of such shares tantamount to dividend under the Companies Act and would be in violation of Section 123 of the Companies Act, 2013. However, in the instant case, the Petitioners are proposing to enter into a Scheme of Amalgamation and Arrangement and not entailing gifting of shares to shareholders and that as part of the merger process, the shares held by the transferor Company in the transferee company are getting cancelled and as consideration for the merger, the Transferee Company is issuing fresh shares to the shareholders of the Transferor Company; there is no distribution of shares of the Transferee Company by the Transferor Company to its shareholders and the shares held by the Transferor Company are getting cancelled. Hence, there is no merit in the OL's observation that the ration provided in the case of Indian Seamless Enterprises Limited would be applicable in the present case. The proposed Scheme of Amalgamation and Arrangement is compliant with the conditions provided under Section 2 (1B) of the Income Tax Act. The Petitioners submit that all the assets and liabilities of the Transferor Company are being transferred to the Transferee Company. Just because a few assets are being utilized for meeting the expenses of merger, and certain other assets are being cancelled on merger, which does not mean that such assets are not being transferred to the Transferee Company. Clause 5.2 of the Scheme of Amalgamation and Arrangement clearly envisages that all assets and liabilities of the Transferor Company will be transferred to the

		transferee company on amalgamation. As regards to the OL's observation that the Scheme is a deliberate measure to avoid tax, the Petitioners submit that, as part of the merger process, the Transferor and Transferee Company are required to obtain no objection certificate from the tax authorities and both the Transferor and Transferee Company have obtained their no objections to the proposed scheme of amalgamation and arrangement. The Petitioners vehemently contend that the scope of OL is limited to the purpose of knowing that the affairs of the Company have not been conducted in a manner prejudicial to the interest of its members or the public interest and the OL lacks jurisdiction to comment on the same when no objections are obtained from IT authorities.
6(c) (iii) (c1) to (c2)	**ADRs-NoC of New York Stock Exchange and details of break-up of voting by public shareholders not available in AA-4** Though notice to NYSE was issued, it is not clear from the Memo filed whether the CAA-3 has also been filed online with NYSE or not as CAA-3 format informs the Regulatory authorities to the effect that their representation on the scheme can be made to the Tribunal. As such, the Tribunal to direct the Petitioner Companies to submit proof of issuing CAA-3 to NYSE under Section 230(5) and not merely notice of meeting in CAA-2. No mention was made in the Chairperson's report dated 03.01.2020 in Form CAA-4 about	The Petitioners submit that the notice filed with NYSE is in a form similar to Form No. CAA-3. Additionally, the laws and regulations of NYSE do not require any separate filings and would require the filings made with Indian Stock exchanges to be filed in the same shape and form with NYSE. The Petitioners further submit that voting numbers provided in the Chairperson's Report at page 3 include the votes cast by the ADR holders as well, even though that was not specifically stated therein given for

	the participation of ADR holders in the equity shareholders meeting held on 02.01.2020 It is not clear as to why a separate meeting of ADR holders (being separate class of Members) was not proposed to be called under Section 230(1) of the Companies Act and approval of the Hon'ble NCLT was not sought to convene the meeting of ADR holders separately. The Chairperson's report dated 03.01.2020 is silent and no break up of votes cast in favour of the Scheme and against the Scheme by the public shareholders were given in the report. Hence, it is not known whether Clause 13 (iii) of the Scheme is complied with or not	the Transferee Company, the ADR shareholders are part of the overall equity shareholders. There is no specific requirement under law to show such voting percentage of the ADR holders separately. The Petitioners submit that ADR holders do not hold a different class of shares and the underlying security of the ADRs is the same equity shares. Further, there is no requirement to conduct a separate meeting of ADR holders as per law, given the ADR holders are not required to directly participate in the shareholders meeting and are required to cast their voting through the appointed custodian for the underlying securities (equity shares) which is not a separate class. The Petitioners submit that page 4 of the Scrutinizer report (provided in Annexure-2) clearly provides the break up of the votes cast in favour and against the Scheme by the public shareholders and the report further provides votes in favour are more than the votes against by the public shareholders.
6(d) & 6(e) (iv) & (v) (c)	To direct the Petitioner Companies to provide for consideration towards other assets of Rs. 26.19 cr by amending the clause 10 of the Scheme and to consequentially amend the clause 18.1 and the relevant para in preamble of the Scheme.	The clarification has already been provided by the Petitioner Companies vide their rejoinder dated 17.08.2020 and the same is stated supra and further clarifications provided during the course of all hearing.
6(f) (vi) (c1) & (vi) (c2)	To direct the Petitioner Companies to delete clause 10.6 of the Scheme	The clarification has already been provided by the Petitioner Companies vide their rejoinder dated 17.08.2020 and the same is stated supra and further clarifications provided during the course of all hearings. The Transferor Company further submits that there is no transfer of shares by its shareholders from the date of filing of the application with the NCLT.

6(g) (vii) (c1) & (c2)	To direct the Petitioner Companies to delete clause 10.8 of the Scheme.	The clarification has already been provided by the Petitioner Companies vide their rejoinder dated 17.08.2020 and the same is stated supra and further clarifications provided during the course of all hearing.
6(h) (viii) (c)	A direction to be issued to amend Clause 12 of the Scheme for incorporating the details of actual accounting treatment sought to be given and also to obtain auditor certificate on such specific accounting treatment required to be disclosed in the scheme.	The clarification has already been provided by the Petitioner Companies vide their rejoinder dated 17.08.2020 and the same is stated supra and further clarifications provided during the course of all hearing.
6(i) (ix) (c1) & (ix) (c2)	A direction to be issued to delete Clause 7.8 of the Scheme	The clarification has already been provided by the Petitioner Companies vide their rejoinder dated 17.08.2020 and the same is stated supra and further clarifications provided during the course of all hearing.

(II). On 23.02.2022 the Official Liquidator has filed 2nd further report, reiterating the contentions raised earlier as stated here under: -

(a) The proposed Scheme is against Section 232 of the Companies Act, 2013 as no assets of the Transferor Company are being transferred to the Transferee Company and that as per Clause 18 of the scheme, the major asset i.e., investment in Transferee Company would get cancelled upon sanction of the scheme and the remaining current investment worth Rs. 26.03 crores and other assets like cash & cash equivalents would be used to meet the expenses relating to the amalgamation by the Transferor Company. Further as per the financial statement as at 31.03.2019, the Transferor Company has very little /nil liability to be transferred and nil revenue from operations.

(b) The Scheme fails to meet all the conditions laid down in para 3 (e) of AS-14 and the present scheme cannot be terms as amalgamation by merger. The Scheme further does not fit in to the scope of IND AS 103 as there is no acquisition of business as IND AS-103 is applicable only to such schemes where there is business combination. The Auditor's certificate filed in the instant case to the effect that the accounting treatment, if any, proposed in the Scheme of compromise or arrangement is in conformity with the accounting standards prescribed under Section 133, is itself under challenge as the Scheme does not satisfy any of the conditions laid down for amalgamation.

(c) The proposed Scheme not only lacks commercial substance but is not beneficial to the transferee Company or its shareholders and contrary to the public interest.

(d) That the present case is squarely covered by the judgement in the matter of Wiki Kids Limited and Avanti Limited which was also upheld by Hon'ble NCLAT, wherein it was held that the scheme of amalgamation ought to be beneficial to each and every class of shareholders and creditors and also in public interest. In the instant case the proposed scheme is beneficial only to the common promoters/shareholders.

(e) The valuation report dated 29.07.2019 is questionable for the reason that the valuer, instead of considering the value of assets/liabilities or valuation of business combination that would be transferred to Transferee Company, for arriving at the share exchange ratio, has merely stated that the same number of shares held by Transferor Company would be allotted to the shareholders of the Transferor Company.

(f) The Tribunal has been requested to direct the Petitioner Companies to explain as to what are those expenses under merger which require a huge sum of Rs. 26.19 crores, which according to OL is just a book value.

(g) Though APS Trust was shareholder of Transferor Company since may years, it is shown in the promoter group only from the return filed from September, 2019, with an intension to show that the allotment post approval of the Scheme would be an inter-se allotment and post approval of the scheme, the APS trust would hold 20.68% shares in the Transferee Company. APS Trust is not promoter of Transferee Company as per the shareholding pattern available on BSE website, as the shareholding is "nil". Further SEBI observations vide letter dated 10.10.2019 is not filed.

(h) The principle laid down in *Indian Seamless Enterprises Limited* case is squarely applicable in the instant case owing to the reason that under the guise of scheme of amalgamation, the Transferor Company proposes to transfer its holding in the Transferee Company in favour of its shareholders and the shareholders of the Transferor company would directly become the shareholders of the Transferee company by holding shares worth Rs. 11,489.47 crores in the Transferee Company which is completely disproportionate to their holding in Transferor Company.According to the OL, the scheme is formulated to avoid double taxation on the dividend amount.

(i) The Scheme is nothing but buy-back of its shares by the Transferee Company and instead of paying consideration they have devised to allot the shares to the promoters without making an offer of buy-back to all the shareholders as per Section 68 of the Companies Act, 2013.

(j) The argument of the Petitioner Companies that they have right to choose the mode of proceedings to avoid tax is unacceptable owing the fact that when the scheme proposed by them does not fit under Section 232 of the Companies Act, 2013.

(k) That the Shareholders of the Transferee Company which is a listed company is unaware of the fact that by the proposed scheme, the promoters would be getting 41325300 number of shares for their meagre investment of 804080 shares in the Transferor Company. The number of shares being allotted is not significant but the value of shares that is being transferred is more vital in this case.

(l) As there is an incidence of tax involved, specific no objection from IT Department is necessary. As such, comments of IT Department to be sought for in reply to the Reports of the Official Liquidator dated 20.05.2020 and 20.04.2021.

(iii) **There is no record of service of this 2nd report on the Petitioners.**

IX. (i) It is stated no investigation or proceedings have been instituted or are pending in relation to the Petitioner Companies with this Tribunal.

(ii) It is also submitted by the Learned Counsel for Petitioner Companies that the Scheme does not in any way violate, override or circumscribe any of the provisions of Companies Act, 2013 and the Rules, Regulations and Guidelines made under the said Act.

X. In the above backdrop this Adjudicating Authority is required to find whether the proposed scheme of Amalgamation and

arrangement, is not found to be violative of any provision of law and is not contrary to public policy.

(i) We have heard Shri. S Ravi, the Learned Senior Counsel for the Petitioner Companies, Smt. Santoshi Jagirdar, the Official liquidator who appeared in person and Shri. Srujan Kumar Reddy, Ld. Counsel for the Regional Director, perused the record, the case laws and the written submissions.

(ii) We have examined the proposed scheme of Amalgamation and arrangement on the basis of the factual matrix of this case and the following legal frame, set by Hon'ble Supreme Court of India, and various Hon'ble High Courts which is relied on by the parties before us.

(a) **Anglo-Continental Supply Co. Ltd., (1992) 2 Ch. 723, it was held that,**

> "Before giving its sanction to a scheme of arrangement the court will see firstly that the provisions of the statute have been complied with; secondly that the class was fairly represented by those who attended the meeting and that the statutory majority are acting *bona fide* and are not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent; and, thirdly, that the arrangement is such as a man of business would reasonably approve".

(b) **Hon'ble High Court of Calcutta in, Mankam Investments Ltd. and Ors. (1995) 4 Comp LJ 330, relying on a catena of decisions of the English Courts and Indian High Courts observed as under on the power and jurisdiction of the Company Court which is called upon to sanction a scheme of merger and amalgamation of companies:**

"It is a matter for the shareholders to consider commercially whether amalgamation or merger is beneficial or not. The court is really not concerned with the commercial decision of the shareholders until and unless the court feels that the proposed merger is manifestly unfair or is being proposed unfairly and/or to defraud the other shareholders.

"Whether the merged companies will be ultimately benefited or will be able to economies in the matter of expenses is a matter for the shareholders to consider. If three companies are amalgamated, certainly, there will be some economies in the matter of maintaining accounts, filing of returns and various other matters. However, the court is really not concerned with the exact details of the matter and if the shareholders approved the scheme by the requisite majority, then the court only looks into the scheme as to find out that it is not manifestly unfair and/or is not intended to defraud or do injustice to the other shareholders."

(c) **Hindustan Lever Employee's Union v. Hindustan Lever Ltd. and Ors. MANU/SC/0101/1995, wherein a Bench of three learned judges speaking through Sen, J. on behalf of himself and Hon'ble Justice Venkatachaliah, CJ., and with which decision Hon'ble Justice Sahai, concurred made the following pertinent observations;**

"But what was lost sight of was that the jurisdiction of the Court in sanctioning a claim of merger is not to ascertain with mathematical accuracy if the determination satisfied the arithmetical test. A company court does not exercise an appellate jurisdiction.... Section 394 casts an obligation on the court to be satisfied that the scheme for amalgamation or merger was not contrary to public interest. The basic principle of such satisfaction is none other than the broad and general principles inherent in any compromise or settlement entered between parties that it should not be unfair or contrary to public policy or unconscionable. In amalgamation of companies, the courts have evolved, the principle "prudent business management test" or that the scheme should not be a device to evade law".

(d) **Hon'ble Supreme Court of India, in Miheer H. Mafatlal Vs. Mafatlal Industries Ltd. MANU/SC/2143/1996 In view of the aforesaid settled legal position, therefore, the scope and ambit of the jurisdiction of the Company Court has clearly got earmarked. The following broad contours of such jurisdiction have emerged:**

1. The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by Section 391(1)(a) have been held.

2. That the scheme put up for sanction of the Court is backed up by the 24-03-2022 (Page 15 of 31) www.manupatra.com National Company Law Tribunal requisite majority vote as required by Section 391 Sub-Section (2).

3. That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.

4. That all necessary material indicated by Section 393(1)(a) is placed before the voters at the concerned meetings as contemplated by Section 391 Subsection (1).

5. That all the requisite material contemplated by the proviso of Sub-section (2) of Section 391 of the Act is placed before the Court by the concerned applicant seeking sanction for such a scheme and the Court gets satisfied about the same.

6. **That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the Scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same.**

7. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising of the same class whom they purported to represent.

8. **That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.**

9. Once the aforesaid broad parameters about the requirements of a scheme

for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.

10. The aforesaid parameters of the scope and ambit of the jurisdiction of the Company Court which is called upon to sanction a Scheme of Compromise and Arrangement are not exhaustive but only broadly illustrative of the contours of the court's jurisdiction

(iii) Having examined of the facts, the reply by the Petitioner Companies with regard to various observations of the Authorities, namely, the Regional Director, Official Liquidator, Income Tax Department and other departments, on perusal of the scheme, the submissions made by the Learned Senior Counsel of the petitioner Companies, Ld. Liquidator in person, and the Ld. Counsel for the Regional Director, we are fully satisfied that the Scheme is fair, reasonable, not contrary to public policy besides does not violate any of the provisions of law. We further hold that the Scheme does not contemplate any compromise or arrangement with any secured and unsecured creditors and that the Scheme does not adversely affect the rights of any creditor. Moreover, Petitioner Companies through their Counsel undertook to comply with statutory requirements, if any, required under the Act, and the Rules made there under as applicable. The undertaking is accepted.

(iv) As regards the plea of the Official Liquidator that, the present amalgamation is chiefly aimed at facilitating direct holding of shares of Transferee Company by the shareholders of transferor company, there is no business left to be continued post amalgamation / merger, the investment assets (holding shares in transferee company) would get wound up by way of cancellation upon merger/amalgamation as such the Scheme doesn't qualify for a merger / amalgamation as per the criteria prescribed under section 232(1)(b) of the Companies Act, consequently, it shall be regarded as dissolution with winding up of business, in distinction with averments of 'dissolution without winding up' as envisaged in clause no.16.1 of the scheme, and ruling in Wiki Kids, supra, wherein it was held that "entire scheme of amalgamation was conceived/designed to benefit only major common promoters of both the company and no/negligible public interest is involved in this case especially the transferee company being a listed company having more than four thousand shareholders as on 25.11.2016" and also the ruling in Indian Seamless Enterprises, supra, wherein, *Hon'ble High Court of Bombay, rely on the ruling of Hon'ble Supreme Court of India, in Kantilal Manilal case, the challenge therein being the Scheme whereby the Petitioner proposed to gift shares held by the Petitioner Company in Taneja Aerospace and Aviation Limited (TAAL) to its shareholders in the ratio of one fully paid up equity share of TAAL shall be issued and allotted for every*

8 fully paid up equity shares of Rs. 5 each held in TAAL, found the same to be violative of Section 123 of Companies Act 2013, squarely applies to the case on hand, the Ld. Sr. Counsel for the petitioners contended that, the rationale for Scheme of Amalgamation and Arrangement is to amalgamate Dr. Reddy's Holdings Limited ('DRHL'), the 1st petitioner company with Dr. Reddy's Laboratories Limited ('DRL'), the 2nd petitioner company, as a result of which the shareholders of DRHL viz. Promoters shall directly hold shares in DRL. The Amalgamation shall lead to simplification of the shareholding structure and reduction of shareholding tiers and demonstrate direct commitment to and engagement with DRL of / by the Promoters. According to the Ld. Sr. Counsel, it is a settled principle that a Scheme of Amalgamation enabling the shareholders of the amalgamating company to directly hold the shares in the amalgamated company has been construed as a legitimate scheme.

(v) Ld. Sr. Counsel in support of this submission placed reliance on the ruling of the Hon'ble High Court of Bombay in AVM Capital Services (P) Limited, [2012] 111 CLA 71, and contended that Hon'ble High Court, had upheld a similar Scheme of Amalgamation which enabled the shareholders of the amalgamating company to directly hold the shares in the amalgamated company and streamline its shareholding is an objective / rationale enough for justifying the need for carrying out the said amalgamation.

(vi) Ld. Sr. Counsel further submitted that, while the principles of Section 232 (1)(a) pertain to amalgamations, the provisions of Section 232(1)(b) pertain to scenario where there is a transfer of the assets / undertaking, while a transferor entity may continue (commonly referred to as matters if 'demerger') hence reference to the said provisions of law by theOL, is erroneous. Ld. Sr. Counsel would further submit that, irrespective, Section 232(1)(b) unambiguously provides that a scheme must transfer, the whole or any part of the undertaking, property or liabilities of any company. Ld. Sr. Counsel, placing reliance on Clause 5.2 of the Scheme submitted that the scheme is in due compliance of criteria prescribed under the above provisinas the entire assets and liabilities of the Amalgamating Company are being transferred to the Amalgamated Company.

(vii) According to the Ld. Sr. Counsel, Clause 18.1 of the Scheme encapsulates that the Surplus Assets shall be utilised to discharge all costs, charges, levies and expenses in relation to the Scheme including stamp duty, as such the Surplus Assets have not been considered for determining the consideration under the Scheme, since the same has been duly stated in the Share Exchange Report, dated 29th July 2019, issued by N.S. Kumar & Company, Chartered Accountants (Registered Valuer) and Fairness Opinion, dated 29th July 2019, issued by Keynote Financial Services Limited (Merchant Banker). Copies of the said reports are attached as Annexure 3A

and 3B to the rejoinder filed to the OL Report. The Shareholders of the Amalgamating Company have accordingly approved the Scheme of Amalgamation and Arrangement, with an intent to facilitate the said Scheme of Amalgamation and Arrangement without any hindrance for the public shareholders of the Amalgamated Company (being publicly traded). It is further submitted that, the shareholders of the Amalgamating Company understand that any excess of the Surplus Assets over and above the costs for Amalgamation, shall duly belong to and remain with the Amalgamated Company (pursuant to the Amalgamation), and have no objection to the same.

(viii) In the light of the above contentions, we have perused section 231(1) (a) (b) of Companies Act 2013 and Clause 5.2 of the Scheme, which are as below, besides the ruling in AVM Capital, supra.

Section 232. (1) Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and

(b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies.

The Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply *mutatis mutandis*.

(ix) Clause 5.2 of the Scheme.

TRANSFER AND VESTING OF AMALGAMATING COMPANY

(a) With effect from the Appointed Date, and upon the Scheme becoming effective, the Amalgamating Company shall stand transferred to and be vested in the Amalgamated Company, as a going concern, without any further deed or act, together with all the properties, assets, rights, liabilities, benefits and interest therein as detailed below.

(b) Subject to the provisions of the Scheme in relation to the modalities of transfer and vesting, on occurrence of the Effective Date, the whole of the business, personnel, property, assets, investments, rights, benefits and interest therein of the Amalgamating Company shall, with effect from the Appointed Date, stand transferred to and be vested in the Amalgamated Company, without any further act or deed, and by virtue of the order passed by the NCLT. Without prejudice to the generality of the above, and in particular, the Amalgamating Company shall stand transferred to and be vested in the Amalgamated Company in the manner provided below:

(i) all assets of the Amalgamating Company, as are movable in nature or incorporeal property or are otherwise capable of transfer by manual delivery or by endorsement and delivery or by vesting pursuant to this Scheme, if any, shall stand vested in the Amalgamated Company;

(ii) all movable properties of the Amalgamating Company, other than those specified in sub-clause (i) above, including but not limited to sundry debtors, outstanding loans and advances, if any, recoverable in cash or in kind or for value to be received, bank balances, cash in hand, deposits, investments (including investments in securities of other companies whether, shares, stocks, debentures, units, or other similar instruments) if any, shall without any further act, instrument or deed, become the property of the Amalgamated Company;

(iii) all debts, liabilities, contingent liabilities, duties and obligations, secured or unsecured, whether provided for or not in the books of account or disclosed in the balance sheets of the Amalgamating Company, shall, be deemed to be the debts, liabilities, contingent liabilities, duties and obligations of the Amalgamated Company and the Amalgamated Company undertakes to meet, discharge and satisfy the same unless otherwise stated in this Scheme;

(iv) all contracts, deeds, bonds, agreements, schemes, arrangements and other instruments, permits, rights, entitlements, licenses in relation to the Amalgamating Company, shall be in full force and effect on the Amalgamated Company and may be enforced as fully and effectually as if, instead of the Amalgamating Company, the Amalgamated Company had been a party thereto;

(v) any pending suit/appeal or other proceedings of whatsoever nature relating to the Amalgamating Company, whether by or against the Amalgamating Company, shall not abate or be discontinued or in any way prejudicially affected by reason of the amalgamation of the Amalgamating Company or of anything contained in this Scheme, but the proceedings shall continue and any prosecution shall be enforced by or against the Amalgamated Company in the same manner and to the same extent as they would or might have been continued, prosecuted and/or enforced by or against the Amalgamating Company, as if this Scheme had not been made. The Amalgamated Company shall file necessary application for transfer of all pending suit/appeal or other proceedings of whatsoever nature relating to Amalgamating Company;

(vi) all employees of the Amalgamating Company, who are on its pay roll shall be engaged by the Amalgamated Company, on such terms and conditions as are no less favorable than those on which they are currently engaged by the Amalgamating Company, without any interruption of service as a result of this amalgamation and transfer. With regard to provident fund, gratuity, leave encashment and any other special scheme or benefits created or existing for the benefit of such employees of the Amalgamating Company, upon this Scheme becoming effective, the Amalgamated Company shall stand substituted for the Amalgamating Company for all purposes whatsoever, in accordance with the provisions of applicable laws and in terms of this Scheme. It is hereby clarified that upon this Scheme becoming effective, the aforesaid benefits or schemes shall continue to be provided to the transferred employees and the services of all the transferred employees of the Amalgamating Company for such purpose, shall be treated as having been continuous;

(vii) all statutory licenses, permissions or approvals or consents held by the Amalgamating Company required to carry on its operations shall stand transferred to and be vested in the Amalgamated Company without any further act or deed, and shall, as may be required, be appropriately mutated by the statutory authorities concerned therewith in favor of the Amalgamated Company. The benefit of all statutory and regulatory permissions, approvals and consents of the Amalgamating Company shall vest in and become available to the Amalgamated Company pursuant to the Scheme;

(viii) any and all registrations, goodwill, licenses appertaining to the Amalgamating Company shall stand transferred to and vested in the Amalgamated Company; and

(ix) all taxes payable by the Amalgamating Company, if any, including all or any refunds of claims shall be treated as the tax liability or refunds/claims as the case may be of the Amalgamated Company.

(x) We have tested clause 5.1 of the scheme on the touch stone of sub section 1 of section 23 of the Companies Act, and we are unable to find any inconsistency between clause 5.1 of the scheme and

section 23(1)(b) of the companies Act, as a part of the property of the transferor company will get transferred to the transferee company, upon approval of the scheme, though not the entire property of the Amalgamating Company, since it is stated that clause 18.1 of the Scheme encapsulates that the Surplus Assets shall be utilized to discharge all costs, charges, levies and expenses in relation to the Scheme including stamp duty, as such the Surplus Assets have not been considered for determining the consideration under the Scheme, since the same has been duly stated in the Share Exchange Report, dated 29th July 2019, issued by N.S. Kumar & Company, Chartered Accountants (Registered Valuer) and Fairness Opinion, dated 29th July 2019, issued by Keynote Financial Services Limited (Merchant Banker). Copies of the said reports are attached as Annexure 3A and 3B to the rejoinder filed to the OL Report.

(xi) Moreover, the Shareholders of the Amalgamating Company have approved the Scheme of Amalgamation and Arrangement, with an intent to facilitate the said Scheme of Amalgamation and Arrangement without any hindrance for the public shareholders of the Amalgamated Company (being publicly traded). Thus, it is clear that, the shareholders of the Amalgamating Company understood that any excess of the Surplus Assets over and above the costs for Amalgamation, shall duly belong to and remain with the Amalgamated Company (pursuant to the Amalgamation).

(xii) The equity shareholders secured creditors and unsecured creditors (as applicable) of both the Amalgamating Company and Amalgamated Company have provided their consent to the Scheme of Amalgamation and Arrangement by way of voting in their respective meetings as directed by this Tribunal or by providing their no objection

(xiii) Here it may be pointed that Section 231(1) (b) of the Companies Act, require only transfer of assets by the Amalgamating Company either in whole or in part for the scheme to be acceptable, and it does not envisage transfer of assets of a particular value or of 'high value 'by the Transferor Company for the scheme to be acceptable. In the case on hand when clause 5.2 of the scheme has provided for transfer and vesting of the Amalgamating Company, in our considered opinion section 231(1) (b) of the companies Act stands complied with. That apart, Share Exchange Report. dated 29th July 2019 filed as Annexure 3A and 3B to the rejoinder filed to the OL Report further lend support to this conclusion of ours.

(xiv). Hon'ble Supreme Court of India, in the case of M/s. Miheer H. Mafatlal vs. Mafatlal Industries Ltd, (1997) 1 SCC 579, has held that the scope of Company Court to sanction the Scheme is limited. The Court can intervene in a matter only when it is not just and fair or prejudicial to the interest of shareholders. Court cannot intervene if Scheme is sanctioned by majority of shareholders and is lawful.

(xv). Hon'ble High of Delhi, in the case of Vodafone Essar Ltd and Ors vs. Vodafone Essar Infrastructure Ltd.(C.P. No. 334 of 2009 dated 29.03.2011) held that. "it was not open to the Court, in exercise of company jurisdiction, to sit over views of Shareholders and Board of Directors of Petitioner companies, unless their views are against framework of law and public policy."

Nothing unlawful or against the public policy has been specifically pointed out or even found in the subject scheme.

(xv) Hon'ble High Court of Bombay, in AVM Capital Services (P) Limited, supra, dealing with an identical plea, held as follow:

"In the present case, as submitted by the Transferee Company, the scheme involves –

(i) The merger of Transferor Companies with Transferee Company;
(ii) The consequent cancellation of the shares held by the Transferor Companies in the Transferee Company;
(iii) The consequent reduction in share capital of the Transferee Company;
(iv) Issuance of shares of the Transferee Company to the shareholders of the Transferor Companies."

"The purpose of the Scheme is to provide long term stability and transparency in the Transferee Company. The Transferor Companies are in existence since 1975. It was felt that it would be in the interest of the Transferee Company to merge the five Transferor Companies with the Transferee Company, and to enable the Promoter thereof to hold shares directly in the Transferee Company rather than indirectly. The object of the Scheme is not to avoid any tax. Even today the shares are owned/controlled by the same Promoter albeit through the Transferor Companies. Under the Scheme the only difference is that the Promoter will now hold shares directly in the Transferee Company. It is correctly submitted by the Transferee Company that there is nothing illegal or unlawful or dubious or colorful in the Scheme and the same is a perfectly legitimate scheme and permissible by law."

(xvi) (i). Now we refer to the ruling in WIKI Kids Limited vs Avantel Limited in CP (CAA) Nos. 14 & 15/230/HDB/2017, which ruling has been upheld by the Hon'ble NCLAT, in Company Appeal (AT) Nos. 285/2017, heavily relied upon by the Ld. Official Liquidator, where in, this Tribunal had taken a view that "*entire scheme of amalgamation was conceived/designed to benefit only major common promoters of both the company and no/negligible public interest is involved in this case especially the transferee company being a listed company having more than four thousand shareholders as on 25.11.2016*"

(xvii) We have carefully perused the above ruling. In para 18 of the order, it has been sated that the *"Transferor Company is yet to commence its commercial production/operation for almost 13 years, whereas the rationale as stated in the scheme of amalgamation is that "Amalgamation will enable Avantel to diversity into high growth and profitable areas of business without any gestation. It enables Avantel to improve steadiness of cash flows and to participate more vigorously and profitably in an increasingly competitive and liberalized market; the amalgamation would result in optimizing and every growing existing resources and infrastructure of Avantel; the combined entity would result in improved cash flows, increased*

net worth, better credit rating and thereby strengthening the value of all the stakeholders of the company".

(xviii) In para 19 of the order, it was held that *"perusal of the documents also revealed that Cash Flow Statement was not forming part of the Transferor Company and the income earned as on 31.03.2016 is only Rs.85,490 through interest income on Fixed Deposit".*

(xix). In para 22 it was observed that *"neither, BSE, SEBI, Registrar of Companies (ROC); Regional director (RD) and Official Liquidator (OL) have not scrutinized the above angle, financial benefit flowing only to the few common promoters for an amount of Rupees approx. Rs.12 crores for a net worth/value of approx Rs.22.32 lakhs to transferor company".*

(xx). In para 23, it was held that *"the Scheme of amalgamation submitted/circulated to the Shareholders and Creditors do not have the list of names of shareholders, names of Directors of both the Companies, the disclosure that shares of the transferee company would be allotted to the common promoters of Transferor Company. In the absence of the vital information in the scheme of amalgamation, document submitted to various stake holders, they were handicapped*

to take a well-informed decision as to whether to approve/reject the scheme".

(xxi). the case on hand projects entirely different set of facts. The Transferor Company is in the business of holding investments since July 12, 1994. The balance sheet of the Transferor Company shows income. Admittedly, the Transferor Company herein, has more assets of much higher value unlike in the case of Wiki Kids, supra, wherein the only income earned was on fixed deposits. Unlike in the case, *supra,* there is no observation whatsoever from the authorities that the scheme of amalgamation submitted/circulated to the shareholders and creditors has fallen short of any material information to the stakeholders. Therefore, the ruling in Wiki Kids, *supra,* since has been rendered basing on factual matrix of that case which is unique, and different from the facts of the case on hand the said ruling cannot be applied to the case on hand.

(xxii). In so far as *Indian Seamless Enterprises Limited,* supra, relied on by the Ld. Liquidator is concerned, wherein, Hon'ble High Court of Bombay, placed reliance on the ruling of Hon'ble Supreme Court of India, in Kantilal Manilal case, the challenge therein was the

Scheme whereby the Petitioner proposed to gift shares held by the Petitioner Company in Taneja Aerospace and Aviation Limited (TAAL) to its shareholders in the ratio of one fully paid up equity share of TAAL shall be issued and allotted for every 8 fully paid up equity shares of Rs. 5 each held in TAAL.

(xxiii). The main objection to the said Scheme by the Regional Director was that it violates Section 205 of the Companies Act, 1956(corresponding new section 123 of Companies Act 2013), besides the Scheme violates Section 281 of the IT Act. The Deputy Commissioner of IT, further informed the Regional Director that proceedings against the Petitioner therein under IT Act, were pending which was not in dispute.

(xxiv). In so far as the case on hand is concerned, pursuant to the letter dated 14.02.2020 sent by the Regional Director's to the Principal Commissioner of Income Tax Office, Hyderabad, the Joint Commissioner of Income Tax (OSD),Circle-17(1), Hyderabad vide letter dated 23.01.2020 addressed to this Tribunal stated that they do not have any objection to the proposed Scheme of Amalgamation and Arrangement.

(xxv). In the case of PIPL Business Advisors and Investment Private Limited and GSPL Advisory Services and Investment Private Limited supra, Hon'ble NCLT Delhi has held that *"taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the*

Income Tax and in terms of the decision in re Vodafone Essar Gujarat Limited v Department of Income Tax (2013)353 ITR 222 (Guj) and the same being also affirmed by the Hon'ble Supreme Court and as reported in (2016) 66 taxmann.com.374(SC) from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated 15.04.2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutory dues from the Transferor or Transferee or any other person who is liable for payment of such tax dues the said protection be afforded is granted".

(xxvi) In the case of AVM Capital Services (P) Limited, supra, it has been held that, supra, Hon'ble High Court of Bombay, held that, as submitted by the Transferee Company, the scheme involves - (i) The merger of Transferor Companies with Transferee Company; (ii) The consequent cancellation of the shares held by the Transferor Companies 24-03-2022 (Page 9 of 12) www.manupatra.com National Company Law Tribunal in the Transferee Company; (iii) The consequent reduction in share capital of the Transferee Company; (iv) issuance of shares of the Transferee Company to the shareholders of the Transferor Companies. The purpose of the Scheme is to provide long term stability and transparency in the Transferee Company. The Transferor Companies are in existence since 1975. It was felt that it would be in the interest of the Transferee Company to merge the five Transferor Companies with the Transferee Company, and to enable the Promoter thereof to hold shares directly in the Transferee Company rather than indirectly.

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

(xxvii)In so far as the ruling in Miheer H Mafatlal Vs Mafatlal Industries Ltd, supra, which ruling both sides have relied upon, it may be stated that, no doubt in the aforesaid ruling some of the parameters suggested for accepting the scheme state that "the proposed scheme of compromise and arrangement should not be found to be violative of any provision of law and should not be contrary to public policy. For ascertaining the real purpose underlying the Scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same. That the Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising of the same class

whom they purported to represent. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant. Once the aforesaid broad parameters about the requirements of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction".

(xxviii)In our discussion we have referred to the resolutions of the majority of the class of persons who with their open eyes have given their approval to the scheme. This ruling further says that, even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed , the Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction. From the facts of this case we also found that the

proposed scheme of Amalgamation and arrangement is not found to be violative of any provision of law and is not contrary to public policy. Therefore, the rulings in Miheer H. Mafatlal, supra, is more in favour of the petitioners rather than the Respondents.

(xxix) Therefore, we reiterate that there is nothing illegal or unlawful or dubious or colorful in the Scheme and the same is a perfectly legitimate scheme and permissible by law.

(XI) Both the Amalgamating and Amalgamated Company have sent the requisite documents to the tax authorities and have obtained their no objections to the proposed Scheme of Amalgamation and Arrangement (Certified copy of the same is attached as Annexure 1 to the rejoinder filed to the OL Report. It may be stated that stated that Tax Department is the appropriate authority to provide observations pertaining to tax issues, and the same are not within the scope of the learned Official Liquidator.

(ii). Hon'ble Supreme Court in Department of Income Tax v. Vodafone Essar Gujarat Ltd. ((2015) 16 Supreme Court Cases 629) which is as follows:

> "45..... if the scheme has been framed and is approved by the shareholders in their wisdom, in our view, it cannot be said that the scheme itself is floated with the sole criteria of tax avoidance simply because it may have effect and result into avoidance tax.
>
> ..... In our considered view, this court cannot refuse the sanction on the aforesaid ground by coming to the conclusion that the only object of the scheme is to avoid taxes."

(XII) (i) The record placed before reveals that the Amalgamated Company has duly informed the New York Stock Exchange (NYSE) of the ongoing Amalgamation, as required under subsection 5 of section 230 of the Companies Act 2013. However, the NYSE authorities have not replied to the same. Notice of this Tribunal convened shareholder's meeting which was conducted on 2nd January 2020, was sent to all ADR shareholders as well. Further, option for E-voting was made available to them and they duly exercised their voting rights. Copies of the notice sent by the Amalgamated Company to ADR holders has been filed as Annexure 2 to the rejoinder filed to the OL report. Out of the total 2,34,37,729 equity shares held by way of ADRs by the ADR holders, 1,73,61,597, have voted. Of the votes casted, 1,73,50,331 have voted in favour of the Scheme (representing 99.94% of votes casted by the ADR holders). Copy of the voting result of the ADR holders has been filed.

(ii). Be that as it may, the Amalgamated Company has undertaken to make appropriate intimations to NYSE (in prescribed form) upon approval of the Scheme by this Adjudicating Authority and the said undertaking is accepted and recorded.

(iii). It is claimed by the Petitioners that the Regulations of the Securities Act, 1933 (laws applicable in US), provide an exemption from the requirement of obtaining any registration under the US Securities

Act, for any offer of shares that is made outside of the US. Accordingly, the Amalgamated Company is duly exempted from obtaining any registration under the US Securities Act, as the New Equity Shares shall be issued / offered only to persons resident in India.

(iv). Since the Amalgamated Company has undertaken to make appropriate intimations to NYSE (in prescribed form) upon approval of the Scheme by this Adjudicating Authority, the said undertaking is hereby recorded as binding on the Petitioners.

XIII. The Amalgamating Company and Amalgamated Company have furnished the certificates to the Hon'ble Tribunal, SEBI, BSE, NSE, Registrar of Companies, Regional Director, Official Liquidator and other regulatory authorities as required under the Companies Act, 2013. as Annexure 5 to the rejoinder filed to the OL Report. Further, Clause 12 of the Scheme unequivocally provides that the Amalgamated Company shall account for the Scheme, in its books of accounts, in accordance with the applicable Indian Accounting standard notified under the provisions of Section 133 of the Companies Act.

XIV. In the present case, upon approval of the Scheme of Amalgamation and Arrangement, the same will be effective from 1st April 2019 which is the appointed date. Clause 7.8 of the Scheme of Amalgamation and Arrangement intends to ensure that such

dividend is paid by the Amalgamating Company onward to the rightful owners (i.e., shareholders of Amalgamating Company). It is stated that the Amalgamated Company had last declared its dividends on 30th July 2019 and distributed the same to all its shareholders, including the Amalgamating Company on 5th August 2019. Further, once the said dividends were received by the Amalgamating Company, the same was declared as onward dividends to its shareholders, pursuant to Clause 7.8 of the Scheme, after paying due Dividend Distribution Tax (DDT). The said DDT was paid by the Amalgamating Company on 21st August 2019 vide Challan Serial No. 04340. Proof of payment of the said DDT is attached as Annexure 6 to the rejoinder filed to the OL Report. It is also submitted that the Amalgamating Company has no intention to avoid any taxes in the form of Dividend Distribution Tax.

XV. We have noticed that the issued and paid-up share capital of the Transferee Company includes 2,34,37,729 equity shares represented by 2,34,37,729 American Depository Receipts (ADRs) as on 31st March 2019. It is stated that these ADRs were issued in compliance with all applicable regulations including rules / regulations issued under Foreign Exchange Management Act (FEMA) or by Reserve Bank of India (RBI). It is stated that there is no alteration of the rights or liabilities of the ADR holders. Further it has been stated that none of the ADR holders are NRI's and all

the ADR holders were given an opportunity to vote at the shareholders meeting and they duly exercised their right.

XVI. Therefore, in view of our discussion as above, and on perusal of the scheme, the oral and written submissions made by the Learned Senior Counsel for the Petitioner Companies, Ld. Liquidator in person and the Ld. Counsel for the Regional Director, and having been satisfied that the proposed Scheme of Amalgamation and Arrangement is not found to be violative of any of the provisions of law and is not contrary to public interest, we hereby pass the following;

ORDER

(1) That all the property, rights and powers of the Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now effecting the same.

(2) That all the liabilities and duties of the Transferor Company be transferred without any further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become liabilities and duties of the Transferee Company.

(3) While Approving the Scheme, we make it clear that this order should not be construed as an order in anyway granting exemption from payment of Stamp Duty, taxes or any other charges, if any, payable in accordance with law or in respect of any permission/compliance with any other requirement which may be specially required under any law.

(4) The Appointed Date is fixed as 01.04.2019.

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

(6) That all the employees of the Transferor Company in service on date on immediately preceding the date on which the Scheme finally takes effect shall become the employees of the Transferee Company without any break or interruption.

(7) That the Transferee Company do without any further application allot its equity shares to the shareholders of the Transferor Company as provided in the said scheme.

(8) The Transfer Company shall be dissolved without going through the process of winding up.

(9) That the sanction of the Scheme shall not forbid the revenue authorities for taking appropriate recourse for recovering the existing or past tax liabilities of the Transferor Company or the Transferee Company.

(10) The Scheme of Amalgamation as consented by the Equity Shareholders, Secured and Unsecured Creditors of the petitioner companies, is sanctioned and confirmed so as to be binding on all the members, creditors, employees, concerned statutory and regulatory authorities and all other stakeholders of the Petitioner Companies.

(11) The Petitioner Companies to ensure statutory compliance of all applicable laws and also on sanctioning of the present Scheme the Petitioner Companies shall not be absolved for any of its statutory liability in any manner.

(12) The Petitioner Companies involved in the Scheme to comply with Rule 17 (2) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2013. The Petitioner Companies within 30 days after the date of receipt of certified copy of the order, shall cause certified copy to be delivered in Form INC-28 to the Registrar of Companies concerned for registration and on such certified copy being delivered, Registrar of Companies concerned shall take all necessary consequential action in respect of the Petitioner Companies.

(13) The tax implications, if any, arising out of the scheme is subject to final decision of Concerned Tax Authorities and the decision of the Concerned Tax Authorities shall be binding on the Transferee Company.

(14) Direct the Petitioner Companies to comply with the observations pointed out by Regional Director (SEZ), and Official Liquidator, if any and the undertakings given by it.

(15) The Petitioner Companies shall until the completion of the Scheme of Amalgamation, file a statement in such form and within such time as prescribed with the Registrar every year duly certified by a Chartered Accountant or a Cost Accountant or a Company Secretary to the effect that the Scheme of Amalgamation is being complied with in accordance with the orders of the Tribunal as required under Section 232 (7) of the Companies Act, 2013.

(16) All concerned shall act on a copy of this Order along with Scheme duly authenticated by the Deputy/Assistant Registrar of this Tribunal.

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

(18). Accordingly, the Scheme is hereby allowed and petition disposed of.

05/04/2022

(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)

(DR N. VENKATA RAMAKRISHNA BADRINATH)
MEMBER (JUDICIAL)

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