

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT No. - I

C.P. (CAA) 1025/MB-I/2020

Connected with

C.A. (CAA) 1011/MB-I/2020

*In the matter of*

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

*And*

*In the matter of*

Scheme of Amalgamation of Suremi Trading Private Limited (First Transferor Company) and Sushripada Investments Private Limited (Second Transferor Company) with NOCIL Limited (Transferee Company) and their respective Shareholders.

**Suremi Trading Private Limited**, a Company incorporated under the Companies Act, 1956 and having its Registered office at D1 Sindhu House, Nanabhat Lane, Mumbai – 400 023

CIN: U65990MH1978PTC020335 ... *First Petitioner Company*

**Sushripada Investments Private Limited**, a Company incorporated under the Companies Act, 1956 and having its Registered office at Mafatlal House, Backbay Reclamation Mumbai – 400 020

CIN: U65990MH1974PTC017275 ... *Second Petitioner Company*

**NOCIL Limited**, a Company incorporated under the Companies Act, 1956 and having its Registered office at Mafatlal House, H.T. Parekh Marg, Backbay Reclamation, Mumbai - 400020

CIN: L99999MH1961PLC012003 ... *Third Petitioner Company*

**Date of Order: 3<sup>rd</sup> March 2021**



CORAM:

Hon'ble Janab Mohammed Ajmal, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

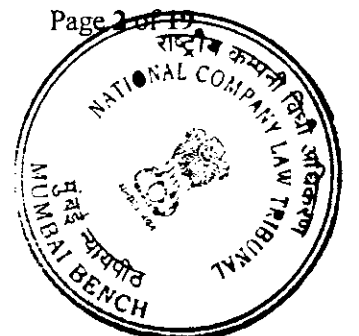
*Appearance:*

For the Petitioners : Mr. Hemant Sethi, i/b. Hemant Sethi &  
Co., Advocates  
For the Regional Director (WR) : Ms. Rupa Sutar, Deputy Director Office  
of Regional Director (WR), Ministry of  
Corporate Affairs

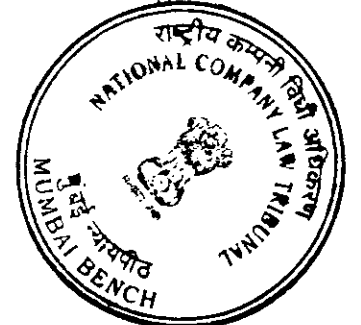
*Per: Janab Mohammed Ajmal, Member (Judicial)*

**ORDER**

1. This Petition seeks sanction of the Tribunal under sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (the Act) to the Scheme of Amalgamation (the Scheme) of Suremi Trading Private Limited and Sushripada Investments Private Limited with NOCIL Limited and their respective shareholders.
2. We have heard the learned counsel for the Petitioner Companies and the representative of the Regional Director (Western Region), MCA, Mumbai. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.
3. The learned counsel for the Petitioner Companies submitted that the First Petitioner Company and the Second Petitioner Company are promoters, respectively holding 12.54% & 5.41% shares of the Third Petitioner Company, as on 31<sup>st</sup> March, 2020. They are engaged in the business of trading of fabrics and hold investments in securities. The Third Petitioner Company is engaged in the business of manufacture of rubber chemicals.

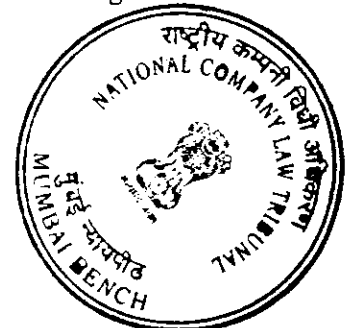


4. The Board of Directors of the Petitioner Companies approved the Scheme in their respective meetings held on 30<sup>th</sup> January, 2020. The Appointed Date fixed under the Scheme is 1<sup>st</sup> October 2020.
5. The learned counsel for the Petitioner Companies further highlighted the following rationale for the Scheme:
  - a. *Ensuring a streamlined group structure by reducing the number of legal entities in the group structure;*
  - b. *Reducing the multiplicity of legal and regulatory compliances required at present;*
  - c. *Eliminating duplicative communication and coordination efforts across multiple entities;*
  - d. *Rationalizing costs by eliminating multiple record keeping and administrative functions;*
6. The Company Petition is filed in consonance with sections 230 to 232 of the Act along with the Order dated 07.07.2020 passed in C.A. (CAA) No. 1011/MB/2020 by this Tribunal.
7. Learned counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Act and the Rules made thereunder. The undertaking given by the Petitioner Companies is accepted.
8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 27<sup>th</sup> October 2020, *inter-alia* stating therein that save and except as stated in para IV (a) to (n) of the Report, the Scheme is

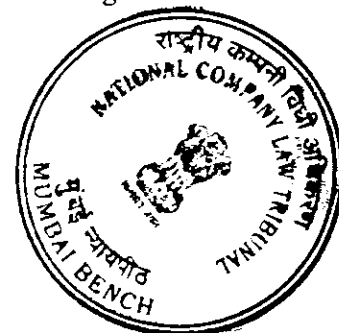


not prejudicial to the interest of shareholders and public. In response to the observations made by the Regional Director, the Petitioner Companies have also given necessary clarifications and undertakings *vide* their rejoinder affidavit dated 18<sup>th</sup> November 2020. In response to the rejoinder affidavit, the Regional Director has filed his Supplementary Report dated 24<sup>th</sup> December 2020. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies and the observations of the Regional Director in the Supplementary Report and the response of the Petitioner Companies is summarized in the table below:

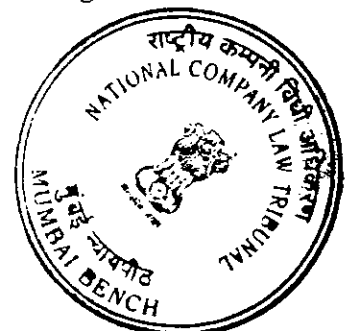
Sr. No. Para No. (IV)	RD Report /observations Dated 27 <sup>th</sup> October, 2020	Response of the Petitioner Companies.	Observation of Regional director in Supplementary Report dated 24 <sup>th</sup> December, 2020	Response of the petitioner Companies to the Supplementary Report
(a)	That it is seen that both the Transferor Companies are belonging to the Promoter, which are holding shares in the Transferee Company. The Scheme proposes at para No. 8 of Part-B of the scheme about issue of 207,72,170 equity shares of face value of Rs.10/- each as fully paid up to the equity shareholders of the Transferor Company No.1 and Compulsory Convertible Preference Shareholders of Transferor Company No.1 in proportion to their holding in Transferor Company No.1. Similarly, the Scheme proposes at para	As far as the observation of the Regional Director, as stated in IV(a) of the report is concerned, the Counsel for the Petitioner Companies states that the tax implications would arise, if the shares of the Transferee Company are deemed as sale of shares by the Transferor Companies. In this regard, Counsel of the Petitioner Companies submits as under: a. The Scheme of Amalgamation is for the merger of Suremi and Sushripada into NOCIL. The intention is to streamline the promoter group structure, to ensure a transparent shareholding pattern for the public to demonstrate the promoter group's direct commitment and engagement with NOCIL by having direct ownership in NOCIL. The Scheme clearly provides that the shareholders of the Transferor Companies will be issued identical number of shares of NOCIL held by the Transferor Companies. It has been clearly highlighted and disclosed in all the filings made by the	Based on the observations by this Directorate and the reply thereon by the Petitioner, Hon'ble Tribunal may pass order as deem fit and proper.	Further to the response referred to in the Rejoinder of the Petitioner Companies and several judgements cited therein, the Counsel for the Petitioner Company humbly submits that notice has been served to the Income Tax Department 21 <sup>st</sup> July 2020 and 19 <sup>th</sup> October 2020 by the Transferor Companies and on 13 <sup>th</sup> August



<p>No.8 of Part-B of the scheme about issue of 89,60,880 equity shares of face value of Rs.10/- each as fully paid up to the equity shareholders of the Transferor Company No.2 and Compulsory Convertible Preference Shareholders of Transferor Company No.2 in proportion to their holding in Transferor Company No.2.</p> <p>In this regard, it is seen that the Transferor Company No.1 is holding 207,72,170 number of equity shares in the Transferee Company and similarly Transferor Company No.2 is holding 89,60,880 number of equity shares in the Transferee Company. This reflects that the Promoters/Share holders of the Transferor Company No.1 &amp; 2, in the guise of present scheme, proposes to transfer the identical number of shares of Transferee Company (being a listed company) held in the name of the respective Transferor Companies, into their personal names and transfer the shareholding under the shelter of the scheme which may result in loss of revenue by way of Income Tax. If the</p>	<p>Petitioner Companies to the relevant authorities as well as in the Notice and Explanatory Statement issued to the shareholders. Adequate disclosures have been made in the Scheme and to the stakeholders and there is nothing done in disguise. As per the direction of this Bench, notices have been issued to the Income Tax Department on 21<sup>st</sup> July 2020 and 19<sup>th</sup> October 2020 by the Transferor Companies and on 13<sup>th</sup> August 2020 and 19<sup>th</sup> October 2020 by the Transferee Company respectively. No observation of the Income Tax department on the same has been received by the Petitioner Companies.</p> <p>Further, Counsel for the Petitioner Companies submits that the shares held by the Transferor Companies in NOCIL represents the strategic promoter holding and there is no intention to divest the shares of NOCIL held by the Transferor Companies or the Promoters. The Scheme envisages the restructuring of the group entities resulting into realignment of the shareholding.</p> <p>The Income Tax Act, 1961 provides specific tax exemption u/s 47 of the Income Tax Act, 1961 for corporate restructuring, such as for amalgamation and demerger, to the companies involved in such restructuring and the shareholders of such companies. Had such exemptions not been provided all such corporate restructuring would be taxable for the concerned parties. Hence, in any amalgamation or demerger, transfer of assets by the companies and exchange of shares for the shareholders would become taxable if such exemptions are not granted. The reason for providing such exemption is to carry out such restructuring exercise in a tax and cash neutral manner.</p> <p>There are judicial precedents affirming that the Petitioner's choice of opting any one of the available methods cannot be disputed.</p>	<p>2020 and 19<sup>th</sup> October 2020 by the Transferee Company respectively.</p> <p>There is no representation received so far from the Income Tax Department. Further, Section 230(5) of the Companies Act, 2013 provides that in case no representation is made within a period of 30 days from receipt of notice by the authorities, then it shall be presumed that they have no representations to make on the proposals. Petitioner Companies through their Counsel further say and submit that the tax implications, if any, arising out the Scheme shall be decided in accordance with the Income Tax Law.</p>
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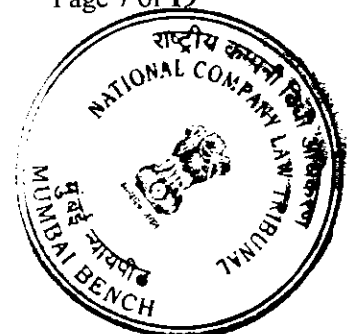


<p>Transferor Companies transfer the shares of the listed company into the name of the respective shareholders, then it will attract the relevant Income Tax/Corporate Tax. The present value of the shares of the listed company comes to approximately Rs.416 Crores (207,72,170 shares + 89,60,880 shares at Rs.140 per shares, the quoted price as on 27.10.2020). Therefore, the Petitioner Company be directed to place on record the relevant facts.</p>	<p>Also, if the Petitioner Company chooses a more elaborate route, they cannot be faulted for the same. Certain rulings of the High Court affirming the aforesaid finding are as under:</p> <ul style="list-style-type: none"><li>• In AVM Capital Private Limited (CSP No. 670-675 of the Bombay High Court by order dated July 12, 2012 issued by Justice S.J. Kathawalla J.) Hon'ble Court at para 23 of the order has held that <i>"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."</i></li></ul> <p>The Counsel for the Petitioner Companies submitted that the view taken by the Hon'ble Bombay High Court in AVM Capital Private Limited has been followed by the NCLT Delhi Bench in case of NIIT Ltd (CSP No. 347 of 2017) in the similar facts and circumstances.</p> <p>The Counsel for the Petitioner Company further relied upon the order passed by the Hon'ble Bombay High Court in case of Tata Services Limited and Tatanet services Limited (Company Petition No.758 of 2005 of the Bombay High Court), wherein it has been held that: <i>"If the Petitioners have chosen a more elaborate route, they cannot be faulted for the same."</i></p> <p>The above view has also been followed in the case of Balkrishna Industries Limited and Balkrishna Paper Mills Limited and Balkrishna Synthetics Limited (Company</p>		
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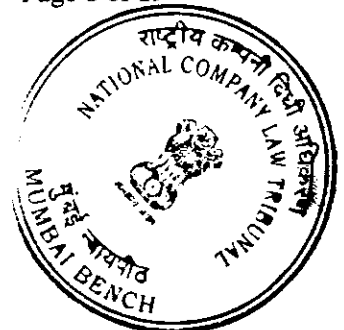
NCLT, MUMBAI BENCH, COURT No. - I,  
C.P. (CAA) 1025/MB-I/2020  
In C.A. (CAA) 1011/MB-I/2020

		<p>Petition No.713 of 2007 of the Bombay High Court)</p> <p>b. Petitioner Companies through their Counsel further say and submit that the tax implications, if any, arising out the Scheme shall be decided in accordance with the Income Tax Law.</p>		
(b)	<p>As stated herein above both the Transferor Company No.1 &amp; 2 are holding equity shares in the Transferee Company and they have no other business in the respective companies. Hence, when the shares of the Transferee Company are issued to the individual shareholders of both the Transferor Companies and the investments in their books are written off, there will be nothing left in the company to merge or amalgamate into the Transferee Company. This contradicts with para II of the Rational of the Scheme.</p>	<p>As far as the observation of the Regional Director, as stated in IV(b) of the report is concerned, the Counsel for the Petitioner Companies submit that on issue and allotment of share pursuant to Clause 8 of the Scheme and as on the Effective Date the Transferor Companies shall be dissolved without winding up. Therefore, the contention of the Regional Director that there will be nothing left in the Transferor Companies has no relevance. Therefore, the question of contradiction with Para II of the Scheme does not arise.</p> <p>Further, the Counsel for the Petitioner Companies submitted that Section 232 of the Companies Act 2013 clearly envisages that a company can transfer whole or any part of the undertaking.</p> <p>The reliance is placed upon order passed by Mumbai Bench of NCLT in case of Spectra Motors Ltd (Company Scheme Petition No. 33 of 2017) which held that <b><i>“ as per section 232 (1)(b) of the Act, the scheme is permissible even when the whole of the undertaking is hived and transferred to two or more resulting companies, therefore, this Bench having seen the objection raised by the Regional Director is not supported by any provision of law, hereby allowed the company to proceed with the demerger proposed.”</i></b></p> <p>Further, rationale mentioned under the Scheme envisages that it will result in promoters holding shares of NOCIL directly and eliminate the holding companies, thereby streamline the group structure; it will benefit by reducing the multiplicity of legal and regulatory compliances such as year on year statutory and tax audits, filing of tax returns, its assessment procedures, secretarial and other</p>	<p>Based on the observations by this Directorate and the reply thereon by the Petitioner, Hon'ble Tribunal may pass order as deem fit and proper.</p>	<p>Counsel for the Petitioner Companies submits that response to the observation has been dealt with in detail in the Rejoinder citing several precedents and the contention of the Regional Director that there will be nothing left in the Transferor Companies has no relevance. Therefore, the question of contradiction with Para II of the Scheme does not arise.</p>



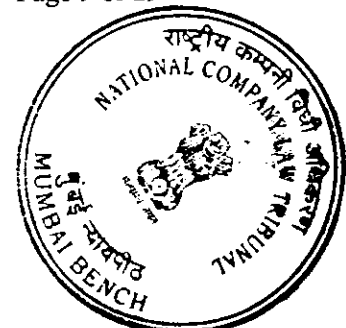
NCLT, MUMBAI BENCH, COURT No. - I,  
C.P. (CAA) 1025/MB-I/2020  
In C.A. (CAA) 1011/MB-I/2020

	<p>legal compliance required at present for the Transferor Companies. Also, on account of merger of two entities, the coordination and communication efforts will reduce. All this would result in savings in administrative and other costs required to be incurred for the Transferor Companies. Similar scheme of merger of promoter companies with its investee company has been approved in many other cases. Some of them being Welspun India Limited [CP (CAA) 34 of 2019 by Ahmedabad Bench of NCLT] , Welspun Corp Ltd [CP (CAA) 33 of 2019 by Ahmedabad Bench of NCLT], Welspun Enterprises Limited [CP (CAA) 46 of 2019 by Ahmedabad Bench of NCLT], Godrej Industries Limited [CP (CAA) 2716 /MB/ 2018 by Mumbai Bench of NCLT], Apcotex Industries Limited [CSP No. 1086 of 2017 by Mumbai Bench of NCLT], Piramal Enterprises Limited [Company Scheme Petition No. 278 of 2013 by Hon'ble Bombay High Court], Borosil Limited [CP (CAA) 2018/MB/2019 by Mumbai Bench of NCLT], NIIT Technologies Limited [Company Petition CA-347/ND/ 2017 by Delhi Bench of NCLT], Hero MotorCorp Limited [Co. Pet. No.547 of 2012 by Hon'ble Delhi High Court], Eicher Motors Limited [Company Petition No. 292/2009 by Hon'ble Delhi High Court], Sunteck Realty Limited [Company Scheme Petition No. 710 of 2014 by Hon'ble Bombay High Court] , Navneet Publications(I) Ltd [Company Scheme Petition No. 839 of 2012 by Hon'ble Bombay High Court], Kirloskar Oil Engines Limited [Company Scheme Petition No. 159 of 2015 by Hon'ble Bombay High Court] and PVR Limited [Company Petition No. 243 of 2016 by Hon'ble Delhi High Court]</p> <p>Lastly, the Counsel for the Petitioner Companies rely upon the order of the Hon'ble Supreme Court in Civil Appeal No. 984 of 2006 where the Hon'ble Supreme Court referred to the full bench judgement of the Hon'ble Allahabad High Court, wherein it was</p>		
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		observed: <i>“Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle, prohibition cannot be presumed.”</i>		
(c)	Since, the Transferee Company is a listed company and the Promoters/ Promoter group are to be issued shares as per the Scheme, the Petitioner Company be directed to place on record whether necessary approval from SEBI and the concerned Stock Exchanges have been obtained and whether the meeting of the shareholders/class of shareholders have been convened, as per the listing/SEBI guidelines.	As far as the observation of the Regional Director, as stated in IV(c) of the report is concerned, the Counsel for the Petitioner Companies submits that the BSE Limited and the National Stock Exchange of India Limited, in consultation with the Securities Exchange Board of India has given their no objection letter to the proposed Scheme. The Observation letter of the BSE and NSE is Annexed as Exhibit I1 and I2 to the Petition on page nos. 556-559. Further, the meeting of equity shareholders of the Third Petitioner Company for approving the Scheme was held on 15th September 2020 as directed by this Tribunal vide its order dated 7th July 2020. The Scheme was approved by 99.99% shareholders (including Promoters) and 99.95% of non promoter shareholders at the Tribunal convened meeting and was in compliant of the applicable SEBI guidelines and provisions of the Companies Act, 2013. The result of the meeting of the equity shareholders of the Third Petitioner Company is a part of the Chairman’s Report and Scrutinizer’s Report annexed to the Petition at page nos. 871 to 883 as ‘Exhibit O.’	Reply of the Company appears satisfactory.	
(d)	As stated herein above, the present scheme appears to have been devised for evasion of Income/Corporate Tax and Dividend Distribution Tax, hence, the Income Tax Department requires to be heard in the matter for	As far as the observation of the Regional Director, as stated in IV(d) of the report is concerned, the Petitioner Companies submit that the proposed Scheme does not envisage evasion of income tax for reasons as mentioned under reply to observation IV(a) of the RD Report. Further, there is no question of evasion of Dividend Distribution Tax as the same has been abolished by the amendment introduced vide Finance Act, 2020. Further,	Based on the observations by this Directorate and the reply thereon by the Petitioner, Hon’ble Tribunal may pass order as deem fit and	Further to the response referred to in the Rejoinder of the Petitioner Companies, the Counsel for the Petitioner Company humbly submits



NCLT, MUMBAI BENCH, COURT No. - I,  
C.P. (CAA) 1025/MB-I/2020  
In C.A. (CAA) 1011/MB-I/2020

	<p>submission of their views.</p>	<p>due to the amendment introduced vide Finance Act, 2020, the dividend income will be taxed at 35.88% in case of individual promoters which is higher than tax on the companies i.e.25.17%. Hence in the present situation, the dividend income will be taxed at higher rate for individual promoters post the Scheme getting implemented as compared to the existing company shareholder. Also, as directed by this Bench, notices have been sent to the Income-Tax Department on 21<sup>st</sup> July 2020 and 19<sup>th</sup> October 2020 by the Transferor Companies and on 13<sup>th</sup> August 2020 and 19<sup>th</sup> October 2020 by the Transferee Company respectively. However, no observations have been received by the Petitioner Companies till date.</p>	<p>proper, after hearing the Income Tax Department.</p>	<p>that notice has been served to the Income Tax Department 21<sup>st</sup> July 2020 and 19<sup>th</sup> October 2020 by the Transferor Companies and on 13<sup>th</sup> August 2020 and 19<sup>th</sup> October 2020 by the Transferee Company respectively. There is no representation received so far from Income Tax Department. Further, Section 230(5) of the Companies Act, 2013 provides that in case no representation is made within a period of 30 days from receipt of notice by the authorities, then it shall be presumed that they have no representations to make on the proposals. Petitioner Companies through their Counsel further say and submit that the tax implications, if any, arising out</p>
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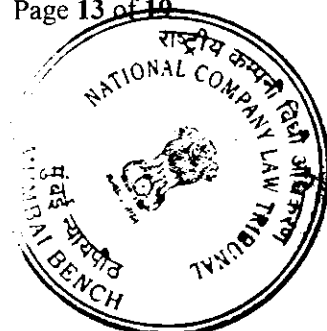
NCLT, MUMBAI BENCH, COURT No. - I,  
C.P. (CAA) 1025/MB-I/2020  
In C.A. (CAA) 1011/MB-I/2020

				the Scheme shall be decided in accordance with the Income Tax Law.
(e)	Transferor Companies are Investment Companies and hence the Petitioner Companies be directed to place on record, whether the NOC from RBI is required to be obtained or not and whether RBI has been issued any notice, if so details of the same be placed on record.	As far as the observation of the Regional Director, as stated in IV(e) of the report is concerned, the Counsel for the Petitioner Companies submits that the First Petitioner Company is a non-deposit taking Core Investment Company, which has more than 90% assets as investment in group companies and has not accessed public funds. Hence it is exempt from registration with the Reserve Bank of India('RBI') based on Master Direction - Core Investment Companies (Reserve Bank) Directions, 2016. The Second Petitioner Company is not involved in the business of non-banking finance activity since its financial income is less than 50% of the total income. Accordingly, approval or No Objection Certificate from RBI is not required.	Hon'ble Tribunal may kindly direct the petitioner companies to submit an undertaking that the NOC of RBI is not required and the Company has not received any notice from RBI	The Counsel on behalf of the Petitioner Transferee Company undertakes that NOC of RBI is not required and that the Transferor Companies as well as the Transferee Company has not received any notice from RBI.
(f)	In compliance of AS-14 (IND AS-103), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.	As far as the observation of the Regional Director, as stated in IV(f) of the report is concerned, the Transferee Company undertakes that it shall pass such accounting entries as may be necessary in connection with the Scheme to comply with all the applicable Indian Accounting Standards (IND AS).	Reply of the Company appears satisfactory.	
(g)	As per Definition of the Scheme, "Appointed Date" means October 1, 2020 "Effective Date" means the date on which the certified copy of the order of NCLT sanctioning this Scheme of Amalgamation, is filed by the Transferor Company	As far as the observation of the Regional Director, as stated in IV(g) of the report is concerned, the Petitioner Companies submit as under: a. The Ministry of Corporate Affairs ('MCA') Circular F.No.7112/2019/CL -I ('Circular') dated August 21, 2019 provided for certain clarifications on Appointed Date under section 232(6) of the Companies Act, 2013. The purpose and intent of the MCA circular was to provide clarification on	Based on the observations by this Directorate and the reply thereon by the Petitioner, Hon'ble Tribunal may pass order as deem fit and proper.	Further to the detailed submission in the Rejoinder and placing reliance on the orders passed by the NCLT, the Counsel for the Petitioner Companies state



<p>I, the Transferor Company 2 and the Transferee Company with the Registrar of Companies, Mumbai In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers. Further, the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs. In the present case the appointed date is proposed to be 01.10.2020, which is a prospective date from the date of filing the petition as well as the convening the meeting of Shareholders, Creditors etc. The exchange ratio should be relating to the particular date of valuation and the appointed date shall be subsequent to the</p>	<p>appointed date and acquisition date. Accordingly, the Circular clarifies that appointed date needs to be a specific calendar date but does not restrict it to be a prospective date from the date of the Board Meeting or filing of application with the Hon'ble NCLT. In the present case it is a specific date of 1st October 2020 and hence in compliance with the Circular.</p> <p>b. Also in case of KPIT Technologies Limited (Company Petition CA -3607/MB/2018 NCLT Mumbai Bench), on the objection of the Regional Director on Appointed Date being the Effective Date, the Hon'ble NCLT has approved the Scheme with the prospective Appointed Date of 1st January 2019 whilst the order sanctioning the Scheme was 29th November 2018.</p> <p>c. Further, reliance is also placed on Atlas Copco (India) Limited (Company Scheme Petition No. 976 of 2017 by NCLT Mumbai Bench) approved by Hon'ble NCLT sanctioning the scheme having a prospective appointed date. The relevant extracts of the explanations made by the Petitioner Companies on the observations made by the Regional Director in the said matter of Atlas Copco (India) Limited are reproduced as under:</p> <p><i>"The Companies Act, 2013 does not prohibit a prospective Appointed Date and Section 232(6) of the Companies Act, 2013 merely provides that the Scheme shall be deemed to be effective only from the Appointed Date specified in the Scheme and not from a date subsequent to such Appointed Date...</i></p> <p><i>...Further, the value of the assets and liabilities as on the Appointed Date is immaterial in the present case as the Scheme intends to mirror the shareholding of the Transferor Company and Transferee Company by prescribing a share exchange ratio of 1:1...</i></p> <p><i>...The Valuation report issued by Thadani</i></p>	<p>that the purpose and intent of the MCA circular was to provide clarification on appointed date and acquisition date. Accordingly, the Circular clarifies that appointed date needs to be a specific calendar date but does not restrict it to be a prospective date. In the present case it is a specific date of 1st October 2020 and hence in compliance with the Circular.</p>
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	<p>appointed date. Whereas, in the present case it is prospective date. Therefore, the proposed appointed date is against the spirit of the Ministry's Circular as stated above and not to be allowed.</p>	<p><i>&amp; Company, Chartered Accountants for this purpose also states that the proposed share exchange ratio is fair and reasonable...</i></p> <p><i>...Further, the share swap ratio has been unanimously approved by the shareholders of the Transferor Company and the Transferee Company. The Counsel for the Petitioners submit that even in a given situation where the appointed date was retrospective, the swap ratio would have been the same."</i></p> <p>d. In the present Scheme, the share entitlement ratio would be the same irrespective of the appointed date being retrospective or prospective as the Scheme envisage issuance of exactly the same number of shares held by the Transferor Company in the Transferee Company to the shareholders of the Transferor Company in proportion of their shareholding in the Transferor Company</p> <p>e. Hence, the valuation of the Transferor Company 1 and the Transferor Company 2 is derived only from its holding in the Transferee Company and it shall not be affected by appointed date being prospective or retrospective.</p> <p>Accordingly, the Counsel for the Petitioner Companies submits that the appointed date can be a prospective date in the present situation.</p>		
(h)	<p>Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the</p>	<p>As far as the observation of the Regional Director, as stated in IV(h) of the report is concerned, the Third Petitioner Company states that the Scheme does not provide for combination of authorised Share capital and accordingly, no additional fees would be payable.</p>	<p>Reply of the Company appears satisfactory.</p>	



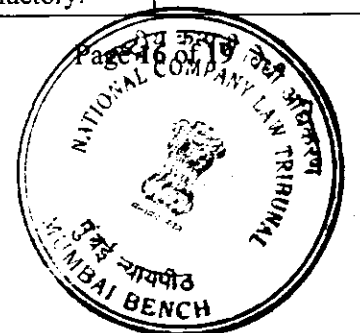
NCLT, MUMBAI BENCH, COURT No. - I,  
C.P. (CAA) 1025/MB-1/2020  
In C.A. (CAA) 1011/MB-1/2020

	amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.													
(i)	In view of the observations and comments made by the ROC, Mumbai in its Report dated 16.09.2020 mentioned on para No. 12 in the table above, the Petitioner Company may be directed to submit clarification regarding the difference in paid up Share Capital of Transferee Company and/or on the basis of comments/observations of ROC, Mumbai	As far as the observation of the Regional Director, as stated in IV(i) of the report and the report of ROC dated 16 <sup>th</sup> September 2020, the Petitioner Companies submit that the paid-up share capital of the Third Petitioner Company mentioned in Clause 3.3 of the Scheme relates to the paid-up share capital of the Third Petitioner Company as on date on the approval of the Scheme by the Board of Directors of the Third Petitioner Company on 30th January 2020. After the approval of the Scheme by the Board of Directors, the Third Petitioner Company has allotted 9,250 equity shares, 69,550 equity shares and 2,59,550 equity shares on 10th February 2020, 16th July 2020 and 21st September 2020 respectively pursuant to NOCIL Limited – Employee Stock Grant Scheme. After considering the said allotment, the paid-up capital of the Third Petitioner Company is matching with MCA Master Data. A reconciliation of the paid up capital of the Third Petitioner Company is summarized below:	Reply of the Company appears satisfactory.											
		<table border="1"> <thead> <tr> <th>Particulars</th> <th>Amount in Rs.</th> </tr> </thead> <tbody> <tr> <td>Share Capital as on 30.01.2020</td> <td>1,65,59,67,050</td> </tr> <tr> <td>Share Capital as on 10.02.2020</td> <td>1,65,60,59,550</td> </tr> <tr> <td>Share Capital as on 30.08.2020</td> <td>1,65,67,55,050</td> </tr> <tr> <td>Share Capital as on 30.10.2020</td> <td>1,65,93,50,550</td> </tr> </tbody> </table>	Particulars	Amount in Rs.	Share Capital as on 30.01.2020	1,65,59,67,050	Share Capital as on 10.02.2020	1,65,60,59,550	Share Capital as on 30.08.2020	1,65,67,55,050	Share Capital as on 30.10.2020	1,65,93,50,550		
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(j)	That in view of provisions of proviso to Section 66(3) of the Companies Act, 2013, Hon'ble Tribunal may kindly direct the Company to submit certificate from the	As far as the observation of the Regional Director, as stated in IV(j) of the report is concerned, it is submitted that the reduction of capital provided under the Scheme is undertaken pursuant to provisions of section 230-232 of the Companies Act and accordingly, provisions of section 66 are not required to be complied with separately. The	Reply of the Company appears satisfactory.											

	<p>auditor of the Company that "the accounting treatment proposed by the company for such reduction is in conformity with the Accounting Standards specified in Section 133 or any other provisions of the Companies Act, 2013.</p>	<p>accounting treatment as provided in Clause 11 of the Scheme provides for cancellation of shares of Transferee Company held by the Transferor Companies and the same is reproduced as under:</p> <p>"11.1 Upon the coming into effect of this Scheme, the Transferee Company shall account for the amalgamation of the Transferor Companies in its books as per the applicable accounting principles prescribed under Indian Accounting Standards (Ind AS). It would inter alia include the following;</p> <p>11.2 The shares of the Transferee Company held by the Transferor Companies shall stand cancelled.</p> <p>11.3 The inter-company deposits/ inter-company loans and advances, if any, in the books of accounts of the Transferee Company and the Transferor Companies shall stand cancelled.</p> <p>11.4 The face value of New Equity Shares issued by the Transferee Company to the shareholders of the Transferor Company pursuant to Clause 8.1 above shall be credited to the Equity Share Capital Account of the Transferee Company.</p> <p>11.5 Other assets and liabilities of the Transferor Companies transferred to and vested in the Transferee Company shall be recorded at their respective fair values as appearing in the books of accounts of the Transferor Companies and in accordance with requirements of Ind AS.</p> <p>11.6 The difference, if any, being excess or deficit arising pursuant to the Scheme, after giving effect to the above adjustments, shall be accounted based on generally accepted accounting principles under Ind AS."</p> <p>The Third Petitioner Company has obtained the Certificate from its Auditor certifying the entire Accounting Treatment provided in the Scheme and accordingly, covers the accounting treatment on capital reduction as well.</p>		
(k)	The Hon'ble Tribunal may kindly seek the	As far as the observation of the Regional Director, IV(k) of the report is concerned, the	Reply of the Company	



	undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.	Counsel for the Petitioner Companies submits that in lieu of the consent affidavits of the shareholders of the Transferor Companies, the meeting of the shareholders of Transferor Companies was dispensed of with by this Bench vide order dated 7 <sup>th</sup> July 2020. Further, the Scheme was approved by requisite majority of members as required under section 230(6) of the Companies Act, 2013 and the meetings convened of the Transferee Company vide Hon'ble Tribunal Order dated 7 <sup>th</sup> July 2020 in terms of section 230(1) read with subsection (3) to (5) of Section 230 of the Companies Act, 2013. The minutes thereof are duly placed before this Hon'ble Tribunal. Further, the Scheme has also been approved by the requisite majority of the public shareholders of the Transferee Company in compliance with the SEBI Circular date 10 <sup>th</sup> March 2017. This Bench of NCLT had dispensed with the requirement to hold the meetings for the creditors of the Petitioner Companies vide the order dated 7 <sup>th</sup> July 2020, with a direction that notices be sent to the creditors above INR 10 lakhs to the creditors of NOCIL and all the creditors of the Transferor Companies intimating them regarding the Scheme. The Petitioner Companies have served notices to the creditors as per the direction and till date, no representations have been received from any of the creditors.	appears satisfactory.	
(l)	The Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy/any change/changes are made.	As far as the observation of the Regional Director, IV(l) of the report is concerned, the Petitioner Companies confirm that the Scheme enclosed to the Company Scheme Application No. 1011 of 2020 and the Company Scheme Petition No. 1025 of 2020 are one and the same and there is no discrepancy or change in the Scheme.	Reply of the Company appears satisfactory.	
(m)	It is observed that the Petitioner companies have not submitted a admitted copy of the	As far as the observation of the Regional Director, IV(m) of the report is concerned, the Petitioner Companies have submitted the admitted copy of the Petition and Minutes of	Reply of the Company appears satisfactory.	





	Petition, and Minutes of Order for admission of the Petition. In this regard, the Petitioner has to submit the same for the record of Regional Director.	Order for admission of the Petition to the Regional Director on 29 <sup>th</sup> October 2020.		
(n)	Complaints as mentioned in para-10 of above table, Petitioner may ask to submit clarification regarding the various complaints and ensure resolution of the same.	As far as the observation of the Regional Director, IV(n) of the report and observation of ROC Mumbai is concerned, the complaint against the Third Petitioner Company relates to a matter unconnected with the Scheme. Further, the Scheme does not envisage any compromise to the public shareholders of the Third Petitioner Company and hence the interest of the shareholders would not be adversely affected pursuant to the Scheme. Further, the Petitioner Companies respectfully submit that the Third Petitioner Company shall continue to remain in existence post the approval of the Scheme and the complainant shall continue to have his rights of redressal and claims, if any, against the Third Petitioner Company in the appropriate forum.	The Petitioner Transferee Company to give an undertaking that it shall be accountable for the complaint redressal.	The Counsel on behalf of the Petitioner Transferee Company undertakes that it shall be accountable for the complaint redressal and shall be dealt with as per the Law.

9. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies have been verified and accepted.
10. The Official Liquidator has filed his report dated 17<sup>th</sup> August 2020 *inter alia*, stating therein that the affairs of the First Petitioner Company and the Second Petitioner Company have been conducted in a proper manner.
11. From the material on record, the Scheme appears to be fair and reasonable and so far not in violation of any provisions of law, nor contrary to public interest.

