(2021) 02 NCLT CK 0124

In the National Company Law Tribunal

Case No : Company Petition (CAA) No. 1085/ MB.V Of 2020, Company Application (CAA) No. 1009/ MB.V Of 2020

Embassy Office Parks Private Limited And Ors. Vs

Date of Decision : 11-02-2021

Acts Referred:

Companies Act, 2013 — Section 13, 14, 52, 61, 64, 66, 133, 230, 230(1), 230(3), 230(4), 230(5), 230(6), 231, 232, 230(3)(i), 232(6)
Income Tax Act, 1961 — Section 2(19AA), 72(4)

Citation : (2021) 02 NCLT CK 0124

Hon'ble Judges : Suchitra Kanuparthi, J;Chandra Bhan Singh, Member (Technical)

Bench : Division Bench

Advocate : Hemant Sethi, Vidisha Poonja, Rupa Sutar

Judgement

1. The Court is convened by videoconference today.

2. Heard Learned Counsel for Petitioner Companies. No objector has come before the Tribunal to oppose the petition and nor has any party contro- verted any averments made in the petition.

3. The sanction of this Tribunal is sought under Sections 230 to 232 read with Section 66 and other applicable provisions of the Companies Act, 2013 ("Act") and in the matter of Composite Scheme of Arrangement between Embassy Office Parks Private Limited ('Petitioner Company 1') and Embassy Pune TechZone Private Limited ('Petitioner Company 2') and Manyata Promoters Private Limited ('Petitioner Company 3') and their respective shareholders ('Scheme'). Petitioner Company 1, Peti- tioner Company 2 and Petitioner Company 3 are collectively referred to as 'Petitioner Companies'.

4. The Learned Counsel for the Petitioner Companies submits that Peti- tioner Company 1, Petitioner Company 2 and Petitioner Company 3 are engaged in the business of development and leasing of office space and related interiors.

5. The Learned Counsel for the Petitioner Companies submits that the ra- tionale mentioned in the Scheme is as under:

In order to maximise the stakeholders' value the Board of Directors of the Petitioner Company No.1, Petitioner Company No.2 and the Petitioner Company No.3 have decided to demerge the Embassy Techzone business park undertaking of Petitioner Company No.1 (defined as "TechZone Un- dertaking" or "Demerged Undertaking" in the Scheme) into the Petitioner Company No.2 and subsequently amalgamate/ merge the Petitioner Company No.1 into and with the Petitioner Company No.3. The proposed composite arrangement would result in an efficient corporate structure with focused management and streamlined shareholding. It is expected that the proposed composite arrangement shall result in unlocking the following benefits:

(i) Simplified management structure, leading to better administration and reduction in cost from more focused operational efforts, ra- tionalization, standardization and simplification of business pro- cess, the elimination of duplication, reduction in multiplicity of legal and regulatory compliances and rationalization of administrative expenses;

(ii) Simplification of group structure; and

(iii) The merger of the Petitioner Company No.1 into and with the Peti- tioner Company No.3 shall lead to simplification of the shareholding structure and reduction of shareholding tiers and value creation for the direct and indirect stakeholders of the Petitioner Companies.

6. All the Petitioner Companies have approved the Scheme by passing their respective Board Resolutions dated May 18, 2020 and have approached the Tribunal for sanction of the Scheme.

7. Learned Counsel for the Petitioner Companies submits that the Petition has been filed in consonance with the order dated July 07, 2020 passed by this Tribunal in C.A. (CAA)/1009/MB/2020.

8. The Regional Director has filed its report dated February 08, 2021 ("Re- port") praying that this Tribunal may pass such orders as it thinks fit, save and except as stated in paragraphs IV (a) to (o). In para IV of the Report, Regional Director has stated:

(a) In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Ac- counting Standards such as AS-5 (IND AS-8) etc.;

(b) As per Part- A- Definitions, Interpretation and Share Capital Clause 1(1.3) & 1(1.11) of the Scheme.

"Amalgamation Appointed Date" means the "Effective Date" as de- fined in Clause 1.11 hereunder.

"Demerger Appointed Date" means the "Effective Date" as defined in Clause 1.11 hereunder.

"Effective Date" means the date on which the order of the National Company Law Tribunal at Mumbai, sancftioning this Scheme, is ob- tained.

In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall be effective and the scheme shall be deemed to be effective from such dates 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. In this regards Petitioner Companies shall clearly indicate appointed date which should be a calendar date. This Hon'le Tribunal may kindly direct the petitioner to amend the Amalgamation Appointed Date and Demerger Appointed Date accordingly or Hon'ble NCLT may pass appropriate order/ orders as deem fit.

Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.

(c) The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and cred- itors 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.

(d) 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 made, for changes if any, liberty be given to Central Government to file further report if any required.

(e) The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Amalgamation. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Com- pany(s).

(f) 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 transferee company on its au- thorized capital which shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.

(g) As regards Part-B-Clause 10(10.1) of the Scheme, (Treatment of Taxes and Consequential Matters Relating to Tax), the scheme has been drawn up to comply with the conditions relating to "Demerger" as specified under Section 2(19AA) and Section 72(4) of the Income Tax Act, 1961. In this regard it is submitted that to be eligible for Section 2(19AA) compliance, the Demerged

Company and Resulting Company shall have same set of shareholders in same ratio. In the instant scheme, the Resulting Company has difference Shareholders (including one corporate shareholder) then how the scheme shall be in comply with the Section 2(19AA) and Section 72(4) of the Income Tax Act, 1961. The Petitioner Company be directed to place on rec- ord full facts in this matter. The Hon'ble Tribunal may consider the same and decide matter on merits.

(h) As per Part-B-Clause 12(12.1 & 12.2) of the Scheme (Reduction of share Capital held by the Transferor company in the Resulting Com- pany), Upon the Scheme becoming effective and upon the issue of the shares by the Resulting Company in accordance with Clause 11 above, the existing 10,000 (Ten Thousand) equity shares of Rs. 10/- each of the Resulting Company held by the Transferor Company, as on the Effective Date shall, without any application or deed, stand cancelled without any payment. Accordingly, the share capital of the Resulting Company shall stand reduced to the extent of the face value of shares held by the Transferor Company as on the Effective Date. The cancellation of share capital shall be effected as an inte- gral part of the Scheme.

The Petitioner Company to place on record why the cancellation of share Capital is required. It is not beneficial to the Transferee Com- pany, as otherwise the Transferee Company will be a shareholder in Resulting Company. In this regard it is submitted that the Peti- tioner Company shall also comply the provisions of Section 66 and other relevant provisions of the Companies Act, 2013.

(i) As per Part B Clause 13.2(iii) of the Scheme (Accounting Treatment with Respect to Demerger), The difference, if any, between the book value of the assets of the TechZone Undertaking of the Transferor Company transferred to the Resulting Company less the book value of the liabilities of the TechZone Undertaking of the Transferor Com- pany transferred to the Resulting Company as per Clause 13.2(i) along with the investments cancelled as per Clause 13.2(ii), shall be debited/ credited, as the case may be, to the Capital Reserve of the Transferor Company. In this regards it is submitted that the reserve so created shall be treated as Capital Reserve arising out of Amalgamation and it shall not be available for distribution of divi- dend and other similar purposes.

(j) As per Part B Clause 13.2(iv) of the Scheme (Accounting Treatment with Respect to Demerger). The difference between the book value of the assets of the TechZone Undertaking of the Transferor Com- pany transferred to the Resulting Company less the book value of the liabilities of the TechZone Undertaking of the Transferor Com- pany transferred to the Resulting Company as per Clause 13.3(i) and the aggregate of share capital issued as per Clause 13.2(ii) along with the share capital cancelled as per Clause 13.3(iii), shall be debited/ credited, as the case may be, to the Capital Reserve of the Resulting Company. In this regards it is submitted that the re- serve so created shall be treated as Capital Reserve arising out of Amalgamation and it shall not be available for distribution of divi- dend and other similar purposes.

(k) As per Part-C Clause 26(26.2(vi) of the Scheme (Accounting Treat- ment with Respect to Amalgamation), The difference between the book value of the assets of the Transferor Company less the book value of the liabilities of the Transferor Company as per Clause 26.2(i) as reduced by reserves transferred by the Transferor Com- pany as per Clause 26.2(ii) and aggregate of share capital issued and allotted as per Clause 26.2(iv), after giving effect to the adjust- ment referred to in Clause 26.2(v) above, shall be debited/ credited, as the case may be, to the Capital Reserve of the Transferee Com- pany. In this regards it is submitted that the reserve so created shall be treated as Capital Reserve arising out of Amalgamation and it shall not be available for distribution of dividend and other similar purposes.

(l) As per Part C Clause 22(22.1 to 22.3) of the Scheme (Consolidation of Authorized Capital) in this regard it is submitted that the fee pay- able by the Transferee Company shall be in accordance with the provisions of Section 13, Section 14, Section 61, Section 64 and Section 232(3)(i) of the Companies Act, 2013 further if any stamp duty is payable the same should be paid in accordance with appli- cable laws of the State;

(m) As per Part C Clause 23(23.1 to 23.9) of the Scheme (Consideration for Amalgamation of Transferor Company with and into the Trans- feree Company) The approval of this Scheme by the shareholders of the Transferor Company and the Transferee Company under Sec- tion 230 to 232 of the Act shall be deemed to be the approval under section 13 and 14 of the Act and other applicable provisions of the Act and any other consent and approval required in this regard. In this regard it is submitted that the issue of Shares of the Transferee Company shall be in accordance with the provisions of Section 13, Section 14 and Section 232(3)(i) of the Companies Act, 2013.

(n) The Petitioner Companies be directed to place on record of this Tri- bunal the list of assets to be demerged with complete details and its respective valuation.

(o) In view of the observation raised by the ROC Pune, mentioned at para 28 above Hon'ble NCLT may pass appropriate orders/ orders as deem fit.

The observation made by the Registrar of Companies is as under:

"From the Scheme filed it is observed that Embassy Techzone Busi- ness Park undertaking of Embassy Office Parks Private Limited is demerged into Embassy Pune Techzone Private Limited and subse- quently Embassy Office Parks Private Limited is amalgamating/ merging into Manyata Promoters Private Limited. Thus one scheme of application involves both one demerger and merger.

Further, the transferor company has simultaneously filed a petition for reduction of capital for utilization of balance in securities pre- mium account to set off accumulated losses of Rs. 308.22 Crores and thereby reducing the securities premium account from Rs. 1038.72 Crores to Rs. 730.49 Crores. The Company has borrowing of Rs. 446.80 Crores as at 31-03-2020 and also has applied for setting off accumulated losses worth Rs. 308.22 Crores. Thus, the Petition may be decided in the interest of creditors and members of the Transferee Company. In view of the above, the matter may be decided on merits."

1. In response to the above observations of the Regional Director, the Pe- titioner Companies have filed an affidavit in rejoinder dated February 09, 2021 and have clarified as follows:

(a) In so far as the observation made in paragraph IV (a) of the Report is concerned, it is submitted that in addition to compliance with In- dian Accounting Standard (Ind AS) 103, Business Combinations, the Resulting Company and the Transferee Company undertakes to pass such accounting entries which are necessary to comply with all other applicable Accounting Standards such as IND AS-8 etc.

(b) In so far as the observation made in paragraph IV (b) of the Report is concerned, it is submitted that as per clause 1.2 and 1.9 of the Scheme, the Amalgamation Appointed Date and Demerger Ap- pointed Date are defined to mean the Effective Date. As per clause 1.11 of the Scheme, the Effective Date means the date on which the order of the National Company Law Tribunal at Mumbai, sanc- tioning the Scheme, is obtained. Since the Appointed Dates are de- fined as the Effective Date and the Effective Date, being a prospec- tive date, cannot be determined with certainty and hence, no spe- cific Appointed Date has been mentioned in the Scheme.

Further, as per the General Circular No.09/2019 (F. No. 7/12/2019/CL-1) dated August 21, 2019 issued by the Ministry of Corporate Affairs, it is clarified that the Appointed Date under sec- tion 232(6) of the Companies Act, 2013 can be tied to the occur- rence of an event or fulfilment of any preconditions as may be agreed between the parties. It is also clarified that such Appointed Date identified in the Scheme shall also be deemed to be the 'ac- quisition date' and the date of transfer of control for the purposes of accounting under IND AS 103 - Business Combinations. The Pe- titioner Companies hereby undertakes to comply with the require- ments of the General Circular No.09/2019 (F. No. 7/12/2019/CL-1) dated August 21, 2019 issued by the Ministry of Corporate Affairs in relation to the Appointed Date and the Effective Date.

(c) In so far as the observation made in paragraph IV (c) of the Report is concerned, it is submitted that the Petitioner Companies had pro- cured the consent affidavits from all its equity shareholders and submitted it to this Hon'ble Tribunal along with the application filed. Based on the consent affidavits submitted by the Petitioner Compa- nies, this Hon'ble Tribunal vide its order dated July 7, 2020 has dis- pensed the requirement of conducting the meetings of the equity shareholders of the Petitioner Companies.

Further, the Petitioner Company No. 1 and the Petitioner Company No. 3 have procured the consent affidavits from more than 90% in value of the total Unsecured Creditors and submitted it to this Hon'ble Tribunal along with the application filed. Also, there are no Unsecured Creditors in Petitioner Company No. 2. Based on the con- sent affidavits submitted by the Petitioner Company No. 1 and the Petitioner Company No. 3, this Hon'ble Tribunal vide its order dated July 7, 2020 has dispensed the requirement of conducting the meet- ings of the Unsecured Creditors of the Petitioner Companies.

Further, there are no Secured Creditors in the Petitioner Company No. 1 and the Petitioner Company No. 2 and there are 2 (Two) Se- cured Creditors in the Petitioner Company No 3. This Hon'ble Tribu- nal vide its order dated July 7, 2020 had dispensed the requirement of convening the meeting of the Secured Creditors of the Petitioner Company No. 3 and had directed the Petitioner Company No. 3 to issue notices to the Secured Creditors. In compliance with the di- rections of this Hon'ble Tribunal, the Petitioner Company No. 3 had served notices to the Secured Creditors. It is submitted that the Petitioner Company No. 3 has not received any representations / objections from the Secured Creditors in relation to the Composite Scheme of Arrangement.

(d) In so far as the observation made in paragraph IV (d) of the Report is concerned, it is submitted that that the Scheme enclosed to the Company Application and the Company Petition are one and the same and there are no discrepancies or changes made in the Scheme.

(e) In so far as the observation made in paragraph IV (e) of the Report is concerned, it is submitted that the Petitioner Companies have served notices to the concerned authorities as per the provisions of section 230(5) of the Companies Act, 2013.

Further, it is submitted that the approval of the Scheme by this Hon'ble Tribunal may not deter the authorities to deal with any of the issues arising after giving effect to the Scheme.

(f) In so far as the observation made in paragraph IV (f) of the Report is concerned, it is submitted that the Petitioner Companies under- take to comply with the provisions of section 232(3)(i) of the Com- panies Act, 2013 regarding set-off of fees paid by the Transferor Company and against any fees payable by the Transferee Company on its authorized capital subsequent to the Scheme.

(g) In so far as the observation made in paragraph IV (g) of the Report is concerned, it is submitted that the Petitioner Companies shall comply with the provisions of section 2(19AA) of the Income-tax Act, 1961 in relation to "demerger" for Part B of the Composite Scheme.

Further, it is submitted that section 2(19AA) of the Income-tax Act, 1961, inter alia, specifies that the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the de- merger, or by a nominee for, the resulting company or, its subsidi- ary) become shareholders of the resulting company by virtue of the demerger. The said section does not impose any condition requiring the

Demerged Company and the Resulting Company to have the same set of shareholders in the same ratio.

The entire shareholding of Petitioner Company No. 1 is currently held by Embassy Office Parks Real Estate Investment Trust ("EOP REIT") and pursuant to the demerger of TechZone Undertaking from the Petitioner Company No. 1 into Petitioner Company No. 2 (i.e., the Resulting Company), shares of the Petitioner Company No. 2 shall be issued to EOP REIT (being the shareholder of Petitioner Company No. 1) in discharge of consideration for the said demerger as required under the provisions of Section 2(19AA) of the Income- tax Act, 1961.

Accordingly, the Petitioner Companies undertake to comply with the conditions stated in section 2(19AA) of the Income-tax Act, 1961 regarding the discharge of consideration through issuance of shares to the shareholders of the Demerged Company.

(h) In so far as the observation made in paragraph IV (h) of the Report is concerned, it is submitted that the reduction of capital of the Pe- titioner Company No. 2 is effected as an integral part of the Scheme under Sections 230 to 232 of the Companies Act, 2013 and the con- sent accorded to the Scheme by the Shareholders of the Petitioner Companies shall be construed or deemed to be the consent required under the provisions of Section 66 of the Companies Act, 2013 and therefore, no separate compliance shall be required under Sec- tion 66 of the Companies Act, 2013.

Further, it is submitted that the Petitioner Companies are directly or indirectly held by the same shareholder viz. Embassy Office Parks Real Estate Investment Trust. The reduction of equity share capital of the Petitioner Company No. 2 (i.e. the equity shares held by the Petitioner Company No. 1 in the Petitioner Company No. 2) is being undertaken to mirror the shareholding pattern of Petitioner Com- pany No. 1 in Petitioner Company No. 2 (i.e., the Resulting Com- pany) pursuant to the demerger in order to achieve a simplified shareholding structure and reduce the shareholding tiers. Given that the Petitioner Company are all ultimately held by Embassy Of- fice Parks Real Estate Investment Trust (i.e., EOP REIT), the can- cellation of shares will not be detrimental to the interests of the Transferee Company / Petitioner Company No. 3 and would rather result in value creation for the shareholder of the Petitioner Com- panies i.e. Embassy Office Parks Real Estate Investment Trust.

(i) In so far as the observation made in paragraph IV (i) to paragraph IV (k) of the Report is concerned, it is submitted that the Composite Scheme of Arrangement shall be accounted for by the Petitioner Companies as per the accounting standards prescribed under Sec- tion 133 of the Companies Act, 2013 read with rules made thereun- der, and the Capital Reserve arising from such accounting, if any, shall be governed by the provisions of the Companies Act, 2013 and shall not be available for distribution of dividend.

(j) In so far as the observation made in paragraph IV (l) of the Report is concerned, it is submitted that the Petitioner Company No. 3 un- dertakes to comply with the provisions of Section 13, Section 14, Section 61, Section 64 and Section 232 (3)(i) of the Companies Act, 2013, as may be applicable, in relation to the consolidation of the authorised capital and the stamp duty liability, if any, on such con- solidation shall be paid by the Petitioner Company No. 3 as per the applicable laws.

(k) In so far as the observation made in paragraph IV (m) of the Report is concerned, it is submitted that the Petitioner Company No. 3 un- dertakes to comply with the provisions of Section 13, Section 14 and Section 232(3)(i) of the Companies Act, 2013, as may be ap- plicable, in relation to issue of shares by the Petitioner Company No. 3 / Transferee Company.

(l) In so far as the observation made in paragraph IV (n) of the Report is concerned, it is submitted that as per Part B of the Scheme, all the assets and liabilities of the Petitioner Company No. 1 as on the Demerger Appointed Date relating to the TechZone Undertaking (as defined in the Scheme) shall be demerged into the Petitioner Com- pany No. 2. The indicative list of assets and liabilities relating to the TechZone Undertaking (as defined in the Scheme) along with their respective book values as on March 31, 2020 is already submitted by the Petitioner Companies.

(m) In so far as the observation made in paragraph IV (o) of the Report is concerned, it is submitted that the Petitioner Company No. 1 has filed a petition before this Hon'ble Tribunal for reduction of capital under Section 66 read with Section 52 of the Companies Act, 2013. The said petition provides for setting-off the accumulated losses of Rs. 308,22,58,632/- (Rupees Three Hundred and Eight Crores Twenty-Two Lakhs Fifty-Eight Thousand Six Hundred and Thirty Two Only) against the balance in Securities Premium Account of the Petitioner Company No. 1, thereby reducing the balance in Securi- ties Premium Account from Rs 1038,72,30,000/- (Rupees One Thousand and Thirty Eight Crore Seventy Two Lakhs and Thirty Thousand Only) to Rs 730,49,71,368/- (Rupees Seven Hundred and Thirty Crores Forty-Nine Lakhs Seventy-One Thousand Three Hun- dred and Sixty Eight Only). The said petition for capital reduction was heard by Bench III of this Hon'ble Tribunal and has approved the petition, allowing the reduction of capital under section 66 read with section 52 of the Companies Act, 2013 vide its order dated January 28, 2021.

The current petition is a joint petition by the Petitioner Companies before this Hon'ble Tribunal under Sections 230 to 232 of the Com- panies Act, 2013 for approval of the Composite Scheme of Arrange- ment between the Petitioner Companies and their respective share- holders. The said Composite Scheme of Arrangement provides for demerger of TechZone Undertaking from the Petitioner Company No. 1 into the Petitioner Company No. 2 followed by merger of the Petitioner Company No. 1 with Petitioner Company No. 3.

The Petitioner Companies respectfully submits that both the peti- tions are filed under different sections of the Companies Act, 2013 and the utilization of balance in the Securities Premium Account by the Petitioner Company No. 1 to set-off its accumulated losses, as approved by this Hon'ble Tribunal, has no impact on the Composite Scheme of Arrangement. Accordingly, we humbly request this Hon'ble Tribunal to approve the proposed Composite Scheme of Arrangement under the current petition.

12. The Regional Director has filed his Supplementary Report dated February 10, 2021 and in relation to the observation made by the Regional Direc- tor in IV (n), the Petitioner Companies submit that the Demerger Ap- pointed Date and the Amalgamation Appointed Date is defined in the Scheme as the Effective Date. Effective Date is a prospective date which has been linked to obtaining a copy of the order passed by this Hon'ble Tribunal approving the said Composite Scheme of Arrangement. Since the Appointed Dates and the Effective Date is a prospective date, the complete list of assets and liabilities relating to the TechZone Undertak- ing proposed to be demerged from the Petitioner Company No. 1 into the Petitioner Company No. 2 cannot be determined with complete cer- tainty at this stage. Therefore, the Petitioner Companies have submitted a list of assets and liabilities along with their respective book values as on March 31, 2020. The said list of assets and liabilities may undergo some marginal changes based on the actual assets and liabilities deter- mined on the Effective Date. The Petitioner Companies undertake to sub- mit the final list of assets and liabilities as on the Effective Date which are demerged into the Petitioner Company No. 2 within 30 days of the Scheme becoming effective by way of an Affidavit. The clarifications and undertakings given by the Petitioner Companies are accepted by this Tribunal.

13. The Official Liquidator, High Court, Bombay, has filed his report dated January 27, 2021, inter alia, stating therein that the affairs of Petitioner Company 1 / Transferor Company have been conducted in a proper manner, not prejudicial to the interest of the shareholders of Petitioner Company 1 / Transferor Company and that Petitioner Company 1 / Transferor Company may be ordered to be dissolved without winding up by this Tribunal.

14. From the material on record, the Scheme appears to be fair and reason- able and is not violative of any provisions of law and is not contrary to public policy. All the assets and properties comprised in the TechZone undertaking of Petitioner Company 1 of whatsoever nature and wheresoever situated, shall, under the provisions of Sections 230 to 232 and all other applicable provisions, if any, of the Act, without any further act or deed, be and stand transferred to and vested in the Petitioner Company 2 or be deemed to be transferred to and vested in Petitioner Company 2 as a going concern so as to become the assets and properties of Petitioner Company 2. Further, upon the coming into effect of this Scheme and with effect from the Demerger Appointed Date, all liabilities relating to and comprised in the TechZone undertaking of Petitioner Company 1 including all secured and unsecured debts (whether in Indian rupees or foreign currency),

sundry creditors, liabilities (including contingent liabilities), duties and obligations and undertakings of Petitioner Company 1 of every kind, nature and description whatsoever and howsoever aris- ing, raised or incurred or utilized for its business activities and operations shall, pursuant to the sanction of this Scheme by the Tribunal under and in accordance with the provisions of Sections 230 to 232 and other applicable provisions, if any, of the Act, without any further act, instrument, deed, matter or thing, be transferred to and vested in or be deemed to have been transferred to and vested in Petitioner Company 2, along with any charge, encumbrance, lien or security thereon, and the same shall be assumed by Petitioner Company 2 to the extent they are outstanding as on the Effective Date so as to become as and from the Demerger Appointed Date the liabilities of Petitioner Company 2 on the same terms and conditions as were applicable to Petitioner Company 1, and Petitioner Company 2 shall meet, discharge and satisfy the same and further it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such liabilities have arisen in order to give effect to the provisions of this Clause.

15. All the assets and properties comprising the Remaining Business (de- fined in the Scheme) of the Petitioner Company 1 of whatsoever nature and wheresoever situated, shall, under the provisions of Sections 230 to 232 and all other applicable provisions, if any, of the Act, without any further act or deed, be and stand transferred to and vested in the Petitioner Company 3 or be deemed to be transferred to and vested in Petitioner Company 3 as a going concern so as to become the assets and properties of Petitioner Company 3. Further, upon the coming into effect of this Scheme and with effect from the Amalgamation Appointed Date, all liabilities relating to and comprised in the Remaining Business of Petitioner Company 1 including all secured and unsecured debts (whether in Indian rupees or foreign currency), sundry creditors, liabilities (including contingent liabilities), duties and obligations and undertakings of Petitioner Company 1 of every kind, nature and description whatsoever and howsoever arising, raised or incurred or utilized for its business activities and operations shall, pursuant to the sanction of this Scheme by the Tribunal under and in accordance with the provisions of Sections 230 to 232 and other applicable provisions, if any, of the Act, without any further act, instrument, deed, matter or thing, be transferred to and vested in or be deemed to have been transferred to and vested in Petitioner Company 3, along with any charge, encumbrance, lien or security thereon, and the same shall be assumed by Petitioner Company 3 to the extent they are outstanding as on the Effective Date so as to become as and from the Amalgamation Appointed Date the liabilities of Petitioner Company 3 on the same terms and conditions as were applicable to Pe- titioner Company 1, and Petitioner Company 3 shall meet, discharge and satisfy the same and further it shall not be necessary to obtain the con- sent of any third party or other person who is a party to any contract or arrangement by virtue of which such liabilities have arisen in order to give effect to the provisions of this Clause.

16. As consideration under the Scheme, Petitioner Company 2 shall issue and allot 1(One) fully paid up equity share of face value of Rs. 10/- each for every 1(One) fully paid up equity share of face value of Rs. 10/- held by the equity shareholders of the Petitioner Company 1.

On the Scheme becoming effective and on issuance of consideration, equity shares held by Petitioner Company 1 in Petitioner Company 2 shall stand cancelled without any payment.

17. As consideration under the Scheme, Petitioner Company 3 shall issue and allot 1(One) fully paid up equity share of face value of Rs. 100/- each for every 11.85 (Eleven Decimal Eight Five) fully paid up equity share of face value of Rs. 10/- held by the equity shareholders of the Petitioner Company 1.

On the Scheme becoming effective and on issuance of consideration, equity shares held by Petitioner Company 1 in Petitioner Company 3 shall stand cancelled without any payment.

18. Since all the requisite statutory compliances have been fulfilled, C.P.(CAA)/1085/MB/2020 is made absolute in terms of the prayer clauses of the said Company Scheme Petition.

19. The Scheme is hereby sanctioned with the Demerger Appointed Date and the Amalgamation Appointed Date as the Effective Date as defined in Clause 1.11 of the Scheme.

20. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with e-form INC-28 within 30 days from the date of receipt of the certified copy of Order by the Petitioner Companies.

21. On filing of this Order with the Registrar of Companies as instructed in paragraph 18 above, the Petitioner Company 1 shall stand dissolved.

22. The Petitioner Company 2 and the Petitioner Company 3 to lodge a copy of this Order along with the Scheme duly authenticated/certified by the Deputy Director or the Assistant Registrar, National Company Law Tri- bunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified Order from the Registry of this Tribunal.

23. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the Deputy Director or the Assistant Reg- istrar, National Company Law Tribunal, Mumbai Bench.

24. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.

25. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.

26. Ordered accordingly.

