
(2024) 02 NCLT CK 0035

In the National Company Law Tribunal

Case No : C.P. (C.A.A.) / 310 / MB / 2023 IN C.A. (CAA) / 211 / MB / 2023

IAC International Automotive Indiaprivate Limited Vs

Date of Decision : 16-02-2024

Acts Referred:

Companies Act, 2013 — Section 90, 230, 230(5), 232, 232(3)(i)
Income Tax Act, 1961 — Section 2(1B)

Citation : (2024) 02 NCLT CK 0035

Hon'ble Judges : Reeta Kohli, Member (J); Sanjiv Dutt, Member (T)

Bench : Division Bench

Advocate : Hemant Sethi, Tanaya Sethi, Hemant Sethi & Co., Gaurav Jaiswal

Final Decision : Disposed Of

Judgement

Reeta Kohli, Member (Judicial)

1. Heard Learned Counsel for the Petitioner Companies.

2. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 ("Act") in the matter of Scheme of Amalgamation of IAC International Automotive India Private Limited ("First Petitioner Company" or "Transferor Company"), with Lumax Integrated Ventures Private Limited ("Second Petitioner Company" or "Transferee Company") and their respective shareholders and creditors ("Scheme") under the provisions of Sections 230 to 232 and other applicable provisions of the Act and rules framed thereunder.

3. That Learned Counsel for the Petitioner Companies submits that the Board of Directors of the Petitioner Companies in their respective meetings held on 04th August, 2023 had approved the Scheme. The Appointed Date fixed under the Scheme is 10th March, 2023.

4. The Authorized, Issued, Subscribed and Paid-up Capital Share Capital comprising of Equity Shares and Compulsorily Convertible Preference Shares ("CCPS") of the First Petitioner Company as on 31st March, 2023 is as follows:

Particulars

Amount (in Rs.)

Authorized Share Capital

5,30,00,000 Equity Shares of INR 10 each

53,00,00,000

1,15,32,174 16.75% Series A CCPS of INR 10 each

11,53,21,740

57,85,827 14.75% Series B CCPS of INR 10 each

5,78,58,270

45,82,000 14.75% Series C CCPS of INR 10 each

4,58,20,000

1,73,35,500 16.00% Series D CCPS of INR 10 each

17,33,55,000

78,98,400 17.75% Series E CCPS of INR 10 each

7,89,84,000

28,66,099 17.75% Series F CCPS of INR 10 each

2,86,60,990

Total

1,03,00,00,000

Issued, Subscribed and Paid-up Share Capital

4,68,74,349 Equity Shares of INR 10 each

46,87,43,490

1,15,32,174 16.75% Series A CCPS of INR 10 each

11,53,21,740

57,85,827 14.75% Series B CCPS of INR 10 each

5,78,58,270

45,82,000 14.75% Series C CCPS of INR 10 each

4,58,20,000

1,73,35,500 16.00% Series D CCPS of INR 10 each

17,33,55,000

78,98,400 17.75% Series E CCPS of INR 10 each

7,89,84,000

28,66,099 17.75% Series F CCPS of INR 10 each

2,86,60,990

Total

96,87,43,490

5. The Authorized, Issued, Subscribed and Paid-up capital of the Second Petitioner Company as on 31st March, 2023 is as under:

Particulars

Amount (in Rs.)

Authorized Share Capital

10,00,000 equity shares of Rs 10 each

1,00,00,000

Total

1,00,00,000

Issued, Subscribed and Paid-up Share Capital

8,54,000 equity shares of Rs. 10 each

85,40,000

Total

85,40,000

6. The Learned Counsel for the Petitioner Companies submit that the First Petitioner Company is primarily engaged in the business of providing the research and development, design, manufacturing and supply services of all types of automobile component parts. It is submitted that the Second Petitioner Company is engaged directly or indirectly in the business of development, design, manufacturing and supply services of the types of automobile component parts.

Rationale of the Scheme:

7. The rationale/objects for the Scheme is as under:

The Scheme forms an integral part of the integration of the business of the Transferor Company into the Transferee Company. With the commercial intent of acquiring majority interest in the business of the Transferor Company, the Transferee Company has acquired 75% of the paid-up share capital of the

Transferor Company and now the Transferor Company and the Transferee Company through the Scheme, seeks to consolidate the business of the Transferor Company with the Transferee Company. This Scheme is expected to result in the following, inter-alia, benefits:

- a) Simplification of corporate structure by elimination of multiple entities in the group driven with single focused management team
- b) Incremental operational efficiencies and administrative synergies by pooling of financial, human, technological, managerial resources & expertise
- c) Cost reduction as a result of elimination of duplication of administrative expenses, overheads, compliances etc., and optimum utilization of the resources
- d) Better alignment, coordination and streamlining of day to day operations
- e) Unlocking potential synergies across products, customers, technology and manufacturing excellence.

Consideration:

8. The Learned Counsel for the Petitioner Companies submits that, the share exchange ratio, as determined by the Share Entitlement Report received from CA. Prateek Mittal, Registered Valuer, IBBI on 4th August, 2023 is as follows:

Upon the Scheme coming into effect, in consideration (and subject to the provisions) of this Scheme, the Transferee Company shall without any further application, act, deed, consent, acts, instrument or deed, issue and allot shares to the shareholders (holding Equity shares and Compulsorily Convertible Preference Shares ("CCPS") of the Transferor Company (other than the Transferee Company), whose name is appearing in the Register of Members of the Transferor Company or appearing as beneficiary in the records of the depository (where the shares are held in dematerialized form) as on the Record Date, 1,54,459 (One Lakh Fifty Four Thousand Four Hundred and Fifty Nine) equity shares having face value of Rs. 10 (Rupees Ten only) each fully paid-up and 1,30,207 (One Lakh Thirty Thousand Two Hundred and Seven) 16.75% CCPS having face value of Rs. 10 (Rupees Ten only) each fully paid-up.

9. The Learned Counsel for the Petitioner Companies submits that the Company Scheme Petition is filed in consonance with Sections 230 to 232 of the Companies Act, 2013 along with the Orders passed by this Tribunal.

10. The Learned Counsel for the Petitioner Companies submits that in terms of the Order passed by this Tribunal on 14th September, 2023, the First Petitioner Company convened meetings of Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors on 22nd November 2023 via Video Conferencing/ Other Audio Visual means. The results of the meeting were as follows –

- a. 5 (Five) Equity Shareholders representing 5,25,63,669 (Five Crore Twenty Five

Lakh Sixty Three Thousand Six Hundred and Sixty Nine) Equity Shares voted in favour of the said resolution;

b. All the 2 (Two) Preference Shareholders representing 4,43,10,660 (Four Crore Forty-Three Lakh Ten Thousand Six Hundred and Sixty) Preference Shares voted in favour of the said resolution;

c. All the 2 (Two) Secured Creditors representing Rs. 16,41,80,324 in value (Rs. Sixteen Crore Forty-One Lakhs Eighty Thousand Three Hundred and Twenty-Four Only) voted in favour of the said resolution

d. 16 (Sixteen) Unsecured Creditors representing Rs. 7,08,72,324/- in value (Rs. Seven Crore Eight Lakhs Seventy-Two Thousand Three Hundred and Twenty-Four) voted in favour of the said resolution

11. Further vide Order passed by this Tribunal on 14th September, 2023, the Second Petitioner Company convened the meeting of Unsecured Creditors on 22nd November, 2023 via Video Conferencing/ Other Audio Visual means. The results of the meeting were as follows –

a. 2 Unsecured Creditors (including debenture holders) representing Rs. 2,05,10,00,000/- in value (Rupees Two Hundred Five Crores Ten Lakhs only) voted in favour of the said resolution. None of the Equity Shareholders, Preference Shareholders, Secured Creditors and Unsecured Creditors of the First Petitioner Companies and Unsecured Creditors of Second Petitioner company voted against the resolution.

12. The Learned Counsel for the Petitioner Companies further submits that there are 7 (Seven) Equity Shareholders (including nominee shareholders) in the Second Petitioner Company and all the Equity Shareholders have given their consent in writing to the proposed Scheme. In view of the consent affidavits filed by all the Equity Shareholders of the Second Petitioner Company, the meeting of the Equity Shareholders of the Petitioner Company was dispensed with by this Tribunal by its order dated 14th September, 2023.

13. The Learned Counsel for the Petitioner Companies further submits that there are 3 (Three) Secured Creditors of Rs. 2,50,00,00,000 (Rupees Two Hundred Fifty Crores Only) in the Second Petitioner Company. All the three Secured Creditors had consented to the proposed Scheme by way of consent affidavits. In view of the consent affidavits filed by the Secured Creditors of the Second Petitioner Company, the meeting of the Secured Creditors of the

Second Petitioner Company was dispensed with by this Tribunal by its order dated 14th September, 2023.

14. The Regional Director has filed his report dated 13th February, 2024 ("RD Report") praying that this Tribunal may dispose of the case as deem fit in the facts and merits of the case. 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 14th February, 2024. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:-

Para

Observation by Regional Director

Undertaking of the

Petitioner Companies

2(a)

On examination of the report of the Registrar of Companies, Pune dated 12/02/2024 for both the Petitioner Companies falls within the jurisdiction of ROC, Pune. It is submitted that no representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Transferor Company. Further, the Petitioner Transferor Company has filed Financial Statements up to 31/03/2023. The ROC, Pune has further submitted that in his report dated 12/02/2024 which are as under: -

i. That the ROC Pune in its report dated 12/02/2024 has also stated that No Inquiry, Inspection, Investigations, Prosecutions under CA, 2013 have been pending against the Petitioner Companies.

ii. The applicant companies are neither vanishing nor scam related companies.

iii. In view of above the interest of the Shareholders & creditors of the applicant companies must be secured. Accordingly, the matter may be decided on merits in light of Para 11. Hon'ble NCLT may kindly direct the Petitioner Companies to furnish the reply on the observations of ROC, Pune to satisfy Hon'ble NCLT that scheme of merger is in public interest and creditors interest and will not affect adversely

In so far as the observation made in Paragraph 2(a)(i), 2(a)(ii) and 2(a)(iii) of the said Report is concerned, it is submitted that the observation made by the ROC is merely factual in nature and no further response is required to that extent.

2(b)

Further ROC has mentioned as follows: - Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies.

In so far as the observation made in Paragraph 2(b) of the said Report is concerned, it is hereby submitted that the Transferee Company undertakes to

comply with the provisions set out in Section 232(3)(i) of the Companies Act, 2013 and where the Transferor Company is dissolved, the stamp duty, if any, paid by the Transferor Company on its authorized share capital shall be set off against any stamp duty payable by the Transferee Company on their authorized share capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting off the stamp duty already paid by the Transferor Company on its authorized capital, shall be paid by the Transferee Company on the increased authorized capital subsequent to amalgamation.

2(c)

In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the resultant company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.

In so far as the observation made in Paragraph 2(c) of the said Report is concerned, the Transferee Company undertake that in addition to compliance of AS-14 (IND AS103), the Petitioner/Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with all applicable Accounting Standards such as AS-5 (IND AS8), to the extent applicable.

2(d)

The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.

In so far as the observation made in Paragraph 2(d) of the said Report is concerned, the Petitioner Companies submit and confirm that the Scheme enclosed in the Company Application and Company Petition are one and the same and there is no discrepancy, or no change is made.

2(e)

The Petitioner Companies 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 the Amalgamation or arrangement. Further, the approval of the scheme by the 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 shall be binding on the petitioner companies concerned.

In so far as the observation made in Paragraph 2(e) of this Report is concerned, the Petitioner Companies confirm that as per the provisions of section 230(5) of the Companies Act, 2013, the Petitioner Companies have served notices to all the concerned authorities; Regional Director, Registrar of Companies, the Official Liquidator (by Transferor Company), the Income Tax Department and the GST

Department and the observations made by the concerned authorities have been dealt with by the Petitioner Companies, wherever required. Further, the approval of the Scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the Scheme. Such issues will be addressed in accordance with the law and the Petitioner Companies shall be bound by any decision of such authorities that is made in accordance with law.

2(f)

As per Definition of the Scheme,

'Appointed Date' means March 10, 2023 or such other date as may be decided or approved by the Tribunal (as defined hereinafter) or such other Appropriate Authority and accepted by the Board of Directors.

'Effective Date' means the date on which the Scheme shall become effective pursuant to Clause 28 of the Scheme. Any references in this Scheme to the date of "Scheme becoming effective" or "coming into effect of this Scheme" or "effectiveness of the scheme" or "Scheme taking effect" shall mean the Effective Date. 'Record Date(s)' means the date fixed by the Board of Directors of the Transferor Company or committee thereof, if any, in consultation with the Board of Directors of the Transferee Company for the purpose of determining the shareholders of Transferor Company who shall be entitled to receive Amalgamation Shares of the Transferee Company, as consideration as per Clause 20.1 of this Scheme. Further the Petitioners may be asked to satisfy the Hon'ble NCLT about compliance of circular no. F. No. 7 /12/2019/CLI dated 21.08.2019 issued by the Ministry of Corporate Affairs

In so far as the observation made in Paragraph 2 (f) of the said Report is concerned, the Petitioner Companies clarify that the Appointed Date is 10th March, 2023 as mentioned in the Scheme which is in compliance with the Companies Act, 2013 and that the Scheme shall take effect from such Appointed Date. Further, the Petitioner Companies undertakes to comply with the requirements clarified vide circular No.7/12/2019/CL-I dated 21st August, 2019 issued by the Ministry of Corporate Affairs.

2(g)

Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required.

In so far as the observation made in Paragraph 2(g) of the said Report is concerned, the Petitioner Companies submit that it has duly submitted notices on all relevant Regulatory Authorities such as Registrar of Companies, Regional Director, the Income Tax Authority and GST Authorities and undertake to comply with any other sectoral authority as may be applicable.

2(h)

Petitioner Companies shall undertake to comply with the directions of Income

tax department & GST Department, if any.

In so far as the observation made in Paragraph 2(h) of the said Report is concerned, it is submitted that the Petitioner Companies hereby undertake to ensure compliance of all the provisions of the Income tax Act and GST Act and Rules made thereunder pursuant to the Scheme. Further, the approval of the Scheme by this Tribunal may not deter Income-tax authorities or the GST authorities to deal with tax related issues arising after giving effect to the Scheme and the Petitioner Companies submit that any tax related issues arising out of the Scheme will be met and answered during the course of regular tax assessments in accordance with the provisions of the Income-tax Act, 1961 and GST Act.

2(i)

The Petitioner Company states that the Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961. In this regard, the petitioner company shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder.

In so far as the observation made in Paragraph 2(i) of the said Report is concerned, Petitioner Companies undertake to comply with the provisions of Income Tax Act 1961 including the provision of section 2(1B) of the Income Tax Act, 1961.

2(j)

Petitioner Companies may satisfy the Hon'ble NCLT that the interest of creditors shall be protected on implementation of the scheme.

In so far as the observation made in Paragraph 2(j) of the said Report is concerned, Petitioner Companies undertakes that the interest of the creditors shall be duly protected on the amalgamation of the Transferor Company with the Transferee Company.

2(k)

Petitioner Transferor Company has foreign shareholders; hence Petitioner Company shall undertake to comply with rules, regulations, guidelines of FEMA, FERA and RBI.

In so far as the observation made in Paragraph 2(k) of the said Report is concerned, Petitioner Companies undertakes to comply with the regulations, guidelines of FEMA, FERA and RBI.

2(l)

As per shareholding pattern as on 31.03.2023 submitted by the Petitioner company, details of shareholding are as follows: -

Sr. No.

Petitioner Company

Name of Shareholder

% of shares held

Remark

1.

IAC International Automotive India Private Limited

IACNA Mauritius Limited

25%

No Form BEN-2 has been filed by any of the Petitioner Companies as per records available at MCA21 Portal

2.

Lumax Integrated Ventures Private Limited

Lumax Auto Technologies Ltd

100%

No Form BEN-2 has been filed by any of the Petitioner Companies as per records available at MCA21 Portal, hence Petitioner Companies shall undertake to comply with the provisions of section 90 of Companies Act, 2013 r/w Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder and to file Form BEN-2 for the declaring name of the significant beneficial owner with concerned ROC.

In so far as the observation made in Paragraph 2(I) of the said Report is concerned, Petitioner Companies submit that Form BEN-2 has already been filed by the Transferor Company as well as by the Transferee Company on January 22, 2024 and January 19, 2024 respectively. However this is to state that for Transferor Company, there are 2 shareholders namely IACNA Mauritius Limited holding 25% Shareholding and Lumax Integrated Ventures Private Limited (Transferee Company) holding 75% Shareholding. The Form BEN-2 is not applicable for IACNA Mauritius Limited, a clarification letter dated May 8, 2019 have been issued by IACNA Mauritius Limited wherein it has been clarified that there is no Individual significant beneficial owner and hence necessary disclosure in form BEN-2 is not applicable, said letter attached herewith as an Annexure A and reconfirmation thereof by e mail dated 18th January 2024 which is annexed as AnnexureB. Whereas Transferee company has made necessary disclosure and filling of form BEN 2 was applicable for Transferee Company. Accordingly the Form BEN-2 as applicable have already been filed with the Registrar of Companies. Form BEN2 along with challan are attached herewith as Annexure C.

15. The clarifications and undertakings given by the Petitioner Company are accepted by this Tribunal.

16. Mr. Gaurav Jaiswal, for the Regional Director, submits that the explanation and clarifications given by the Petitioner Companies are found satisfactory and that the Scheme is otherwise not prejudicial to the interests of the shareholders/creditors and the public. He further submitted that they have no objection for approving the Scheme by this Tribunal.

17. The Official Liquidator has filed his report dated 9th February, 2024. In response to the observations made by the Official Liquidator, the First Petitioner Company has also given necessary clarifications and undertakings vide their rejoinder affidavit dated 13th February, 2024. The observations made by the Official Liquidator and the clarifications and undertakings given by the Petitioner Company are summarized in the table below:-

Para

Observation by Official Liquidator

Undertaking of the

Petitioner Company

5.

With reference to clause No. 21 of the scheme it is stated that such clauses overrides the provision of Companies Act, 2013 namely Section 232(3)(i) which inter-alia provides that, 'if a company is dissolved, the fees paid by such company on its Authorised Capital shall be set off against any fees payable by the transferee company on its Authorised Capital. Hon'ble Tribunal may be pleased to direct Transferee Company to pay differential amount, if any, after setting off fees already paid by the Transferor Company.

As regards observation in para 5, it is submitted that the Transferee Company undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 as regards to the combination of Authorised share capital, where the Transferor Company is dissolved and the fees, if any, paid by the Transferor Company on their Authorised share capital shall be set-off against any fees payable by the Transferee Company on its Authorised share capital subsequent to the Amalgamation.

As per clause 21 of the Scheme, it is specified that no stamp duties and fees would be payable for increase in the authorized share capital of the Transferee Company to the extent of fees already paid in relation to the authorized share capital of the Transferor Company.

Therefore, remaining fee, if any after setting off the stamp duty already paid by the Transferor Company on its authorized capital, shall be paid by the Transferee Company on the increased authorized capital subsequent to

amalgamation.

6.

It has been noticed from the Financial Statement as at 31.03.2023 of Transferor Company that the company owes Rs.14,715.01 to MSME In this respect it is stated that under MSMED Act, 2006 the buyer is to make payment within 45 days of it becoming due. In case of failure to pay to the MSME supplier, the company is liable to pay compound interest rate. Hon'ble Tribunal may be require the Transferor Company to clarify whether they have paid the said amount to the MSME creditor or whether there is any dispute with respect to payment of such amount. In case of dispute with regard to amount due whether the reference has been made to the MSME facilitation council constituted by the respective Government or not. Company may also be required to produce form MSME-1 filed with the ROC for the above said dues.

As regards observation in para 6, the First Petitioner Company / Transferor Company clarifies that the amounts outstanding as stated in the para 6 of the report is incorrect and the that said amounts outstanding to MSME were:

- Rs. 1894.06 Lakhs as at 31.03.2023;
- Rs. 2277.43 Lakhs as at 31.03.2022; and
- Rs. 584.29 Lakhs as at 31.03.2021.

A copy of the aforesaid financial statements for FY 2022-2023 are annexed as Annexure "B" to the reply filed by the Petitionersto the RD report. Reference is made to note number 20 of financials of FY 2022-23, where all the above three figures are captured.

Further it is submitted that the dues to the MSME's are generally paid within the prescribed limit of 45 days and provision has been appropriately made for the interest amount wherever the dues are outstanding for more than the prescribed time limit. Also basis the Provisional Financial Statements as on 30th June 2023 annexed in the Second Motion Petition the outstanding dues of MSME have reduced from 1894.06 lakhs to 914.03 lakhs. A copy of the provisional financial statements is annexed herewith and marked as Annexure C. These outstanding amounts shall be taken over by the Transferee Company if not paid by the Transferor Company and payment shall be made in the ordinary course of business.

There is no dispute or litigations on the payments of the said amount. Accordingly, the question whether the reference has been made to the MSME facilitation council constituted by the respective Government or not does not arise. The Transferor Company has filed returns in respect to outstanding payments to Micro and Small Enterprises in MSME FORMS 1 with the ROC. (Copy of the MSME Forms 1 filed with the Registrar of Companies are annexed herewith and marked as Annexure D)

7.

Clause No. 22 of proposed scheme of amalgamation provides for Change of name of the Transferee Company which is reproduced as follows:

'Upon this Scheme becoming effective, the name of the Transferee Company shall stand changed, from "Lumax Integrated Ventures Private Limited" to "IAC International Automotive India Private Limited" or such other name as may be decided by the Board of Directors and which is made available by the RoC, In accordance with the provisions of Section 13 and other applicable provisions of the Act. Furthermore, the Clause I of the Memorandum of Association of the Transferee Company and Articles of Association of the Transferee Company, wherever the name of the Transferee Company is specified, shall, without any requirement of a further act, deed, be and stand altered, modified and amended.'

The clause to an extent it proposes that the name of Transferee Company namely "Lumax Integrated Ventures Private Limited" shall be changed to "IAC International Automotive India Private Limited", that is Transferor Company, is repugnant to the provisions of Sub-Rule (I)(n) of Rule SA, of Companies (Incorporation) Rules, 2014 provides as follows:

'the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of two years has not elapsed from the date of such dissolution: Provided that if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act or under section 560 of the Companies Act, 1956 (1 of 1956) then the same shall not be allowed before the expiry of twenty years from the date of publication in the Official Gazette being so struck off;'

As regards the observation in para 7, Petitioner Companies undertake that the Change in Name of Transferee Company as mentioned in the Scheme will be done in compliance with the provisions of section 13 of the Companies Act, 2013 r/w relevant rule(s) of the Company (Incorporation) Rules, 2014. That the proposed change of name of the Transferee Company to IAC International Automotive India Private Limited or such other name as may be decided by the Board of Directors and which is made available by the Registrar of Companies will be subject to approval of the Central Registration Centre (CRC) which is an initiative of Ministry of Corporate Affairs (MCA) and will be done by following additional applicable procedures. This will also not create any confusion with any authority since there will be a fresh certificate which shall be obtained from the Registrar of Companies stating the change of name. Also, the CIN of the Transferee Company will remain the same. Further, the PAN of the Transferee Company as mentioned in communication to all authorities including Income Tax, GST, MCA, etc. will remain the same.

Lastly, it is submitted that as per clause 8 of the Companies (Incorporation) Rules, 2014, such change of name is permitted for use by group company in the course of compromise, arrangement and amalgamation.

Accordingly, since the name change is for a group company and not to any third party or outside the group, it is allowed to change the name as aforesaid through a scheme of amalgamation. In support of this, there are various precedents wherein the NCLT Mumbai has permitted such change of name belonging to the Transferor Company to be used by the Transferee Company by way of change of name clause being proposed in the scheme of amalgamation wherein post sanction of the scheme of amalgamation, it is filed with the ROC and thereafter the applicable process followed by the Transferee Company for name change with further approval of CRC is obtained.

Some of the latest precedents wherein NCLT Mumbai has allowed the name change of the Transferee Company to that of the Transferor Company under schemes of amalgamation are given as follows and annexed herewith and marked as Annexure E1-E3 to this affidavit: -

i) CP (CAA) /11/MBIV/2021 connected with CA (CAA)/1064/MB-IV/2020 in the matter of Scheme Of Amalgamation Of Bharat Serums and Vaccines Limited ('First Petitioner Company' or 'First Transferor Company') And BSV Life Private Limited ('Second Petitioner Company' or 'Second Transferor Company') With Aksipro Diagnostics P Limited ('Third Petitioner Company' or 'Transferee Company') and their respective shareholders by way of order dated 02 August 2021; ii)CP(CAA)/No.172/MB/20 21 connected with CA(CAA) No. 54/MB/2021 in the matter of Composite Scheme of Amalgamation Amongst Gateway East India Private Limited and Gateway Distriparks Limited into Gateway Rail Freight Limited and their respective shareholders by way of order dated 12 December 2021

iii) CP(CAA)/3904/2019 connected with CA(CAA)/248/2019 in the matter of Scheme of Merger by Absorption of Menon and Menon Limited with MML Industries Limited and their respective shareholders by way of order dated 20 January 2020

Further, Rule 8 of the Companies (Incorporation) Rules, 2014 clarify that "The names released on change of name by any company shall remain in data base and shall not be allowed to be taken by any other company including the group subject to specific direction from the competent authority in course of compromise, arrangement and amalgamation

18. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

19. Since all the requisite statutory compliances have been fulfilled, C.P. (C.A.A.) / 310 / MB / 2023 is made absolute in terms of the prayer clauses of the said Company Scheme Petition.

20. The Scheme is hereby sanctioned with the Appointed Date of 10th March, 2023.

21. 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 (Thirty) days from the date of receipt of the certified copy of Order by the Petitioner Companies. The Scheme will become effective on filing of the copy of this order with the concerned Registrar of Companies.

22. The Petitioner Companies are directed to lodge a copy of this Order along with the Scheme duly certified by the Designated Registrar of this Tribunal with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 (Sixty) 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 Designated Registrar of this Tribunal.

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.