

AWL/SEC/SE/2024-25/71

22<sup>nd</sup> August, 2024

**BSE LTD.**  
Phiroze Jeejeebhoy Towers,  
1<sup>st</sup> Floor, Dalal Street,  
Fort, Mumbai – 400 023  
**Company Scrip Code: 517041**

**NATIONAL STOCK EXCHANGE OF INDIA LTD.**  
Exchange Plaza, C-1, Block G,  
Bandra-Kurla Complex  
Bandra (East), Mumbai - 400 051.  
**Company Symbol: ADORWELD**

Dear Sir / Madam,

**Sub: Receipt of Final Order from the Hon'ble National Company Law Tribunal, Mumbai Bench, inter alia sanctioning the Composite Scheme of Amalgamation (Merger by Absorption) of Ador Fontech Limited with Ador Welding Limited and their respective Shareholders**

**Ref: Disclosure under Regulation 30(7) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

In furtherance to our letter dated 26<sup>th</sup> September, 2023, we wish to inform that the Scheme of Amalgamation (Merger by Absorption) of Ador Fontech Limited with Ador Welding Limited and their respective shareholders, pursuant to the provisions of Section 230 to 232 and other applicable provisions of the Companies Act, 2013 & rules made thereunder, has been approved / is sanctioned by the Hon'ble National Company Law Tribunal (NCLT), Mumbai Bench, vide its order dated 20<sup>th</sup> August, 2024.


A copy of the said order, as uploaded on the website of NCLT on 21<sup>st</sup> August, 2024, is available at [https://nclt.gov.in/case-details?bench=bXVtYmFp&filing\\_no=MjcwOTEzODA3MzgwMjAyMw==](https://nclt.gov.in/case-details?bench=bXVtYmFp&filing_no=MjcwOTEzODA3MzgwMjAyMw==) and is also enclosed herewith for your record. The certified copy of the said Order is awaited.

We hereby request you to make a note of it and acknowledge its receipt.

Thanking you,

Yours Sincerely,

For **ADOR WELDING LIMITED**

  
**SURYA KANT SETHIA**  
**CHIEF FINANCIAL OFFICER**  
Encl.: As above



**ADOR WELDING LIMITED**

Regd. & Corporate Office: Ador House, 6, K. Dubash Marg, Fort, Mumbai - 400 001 – 16, Maharashtra, India.

+91 22 6623 9300 | [www.adorwelding.com](http://www.adorwelding.com) | CIN: L70100MH1951PLC008647

☎ 1800 233 1071 | ✉ [care@adorians.com](mailto:care@adorians.com) | 📞 +91 20 40706000

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT-III**

**CP (CAA)246/MB/2023  
CP (CAA) 296/MB/2023  
IN  
CA (CAA) 47/MB/2023  
TP-1/2023**

In the matter of the Companies Act,  
2013

And

In the matter of Section 230 to Section  
232 of the Companies Act, 2013 and  
other applicable provisions of the  
Companies Act, 2013 and Rules  
framed thereunder.

And

In the matter of **Scheme of Merger by  
Absorption** of ADOR FONTECH  
LIMITED (“Transferor Company” or  
“ADFL”) with ADOR WELDING  
LIMITED (“Transferee Company” or  
“AWL”) and their respective  
shareholders (**Scheme**)

**ADOR FONTECH LIMITED** (*earlier  
known as Cosmic Fontech Limited*), a  
Public Limited Listed Company  
incorporated under the provisions of  
Companies Act, 1956 having its  
registered office at Belview, 7, Haudin  
Road, Bengaluru-560042, Karnataka,  
India  
CIN: L319009KA1974PLC020010

*...Transferor Company/  
ADFL*

**ADOR WELDING LIMITED** (*earlier  
known as Advani – Oerlikon Limited*), a  
Public Limited Listed Company  
incorporated under the provisions of  
Companies Act, VII of 1913 having its  
registered office at Ador House, 6, K.  
Dubash Marg Fort, Mumbai – 400001-  
16, Maharashtra, India  
CIN: L70100MH1951PLC008647

*...Transferee Company/  
AWL*

**Order Pronounced on 20.08.2024**

*Coram:*

**SMT. LAKSHMI GURUNG, HON'BLE MEMBER (JUDICIAL)**  
**SHRI. CHARANJEET SINGH GULATI, HON'BLE MEMBER (TECHNICAL)**

*Appearances:*

For the Transferor Company and Transferee Company (via videoconferencing): Mr. Hemant Sethi, Ms. Tanaya Sethi, Ms. Devanshi Sethi i/b Hemant Sethi Co., Advocates

For the Regional Director: Mr. Gaurav Jaiswal, Company Prosecutor, in the office of RD WR.

### **ORDER**

*Per - **SH. CHARANJEET SINGH GULATI, MEMBER (TECHNICAL)***

1. Heard the Ld. Professional for the Transferor Company and the Transferee Company and Ld. Counsel for the Regional Director, Western Region.
2. The sanction of the Tribunal is sought under sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with rules framed under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of Merger by Absorption of ADOR FONTECH LIMITED (“**ADFL**” or “**Transferor Company**”) with ADOR WELDING LIMITED (“**AWL**” or “**Transferee Company**”) and their respective shareholders (“**Scheme**”).
3. The registered office of the Transferor Company is situated in the state of Karnataka. The registered office of the Transferee Company is situated in the state of Maharashtra. The Company Scheme Petition 296 of 2023 has been filed by Transferor Company and the Company Scheme Petition 246 of 2023 has been filed by Transferee Company. Further, the Transferor Company filed an application with the Principal Bench, New Delhi on 01.03.2023 for transfer of application from Bengaluru Bench to Mumbai Bench, which was allowed by NCLT Principle Bench vide order dated

17.03.2023. Hence, both the Petition are within the jurisdiction of the NCLT, Mumbai Bench.

4. The Board of Directors of the Transferor Company and the Transferee Company have approved the said Scheme at the respective Board Meetings held on 31.05.2022.

5. The Appointed Date is **1<sup>st</sup> April 2022**.

6. **Nature of Business:**

6.1. The **Transferor Company** is engaged in the business of 'Life enhancement of Industrial Components' which *inter-alia* includes providing products, services and solutions for reclamation, repairs and maintenance.

6.2. The **Transferee Company** is primarily engaged in the business of manufacturing and selling of various products such as welding consumables, welding and cutting equipment, CNC machines, welding automation products as well as welding accessories. The Transferee Company is also engaged in the business of Flares and Process Equipment.

7. **Rationale of the Scheme:**

The Learned Counsel for the Transferor Company and Transferee Company states that, by sanction of this Scheme of Amalgamation the Transferor Company and Transferee Company will be able to achieve the following rationale:

- *The Transferor Company and the Transferee Company are engaged in similar lines of business and complement each other. With an intent to expand the business and achieve larger product portfolio, economies of scale, efficiency, optimization of logistics and distribution network and other related economies by consolidating the business operations being managed by different management teams, the Board of Directors of the Transferor Company and the Transferee Company propose to consolidate the business of the Transferor Company with the Transferee Company.*

*The proposed amalgamation of the Transferor Company with Transferee Company would inter alia have the following benefits:*

- i. Enable the consolidation of the Welding business of the Transferor Company with the Transferee Company to create one of the largest welding and cutting product manufacturer and refurbishment player in the industry.*
- ii. Creation of a combined entity, hosting all products under the Transferee Company, thereby resulting in diversified portfolio of products, economies of scale, operational rationalization, efficiency of management, broader and deeper market presence and maximizing value for the shareholders.*
- iii. Greater synergies between businesses and optimum use of manufacturing facilities, marketing strength, R & D facilities, optimized production, streamlining of supply chains, enhancing customer delight, brand strengthening and certifications resulting in productivity gains, thereby maximizing value for the shareholders.*
- iv. Enable greater access to different market segments in conduct of its business and addition of new products in the portfolio would improve the competitive position of the combined entity.*
- v. Optimum use of infrastructure and organizational efficiency by pooling of financial, managerial, and technical resources, personnel, capabilities, skills, expertise and technologies of the Transferor Company and the Transferee Company, thereby significantly contributing to the future growth and maximizing shareholder value.*
- vi. Better financial leverage, resulting in greater efficiency in cash and debt management and access to cash flow generated by the combined business, which can be deployed more efficiently to realize higher profits/margins for the combined entity.*
- vii. Improved organizational capability and leadership, arising from the pooling of human capital, who have the diverse skills, talent and vast experience, to compete successfully in an increasingly competitive industry.*
- viii. Cost savings because of standardization and simplification of business processes, elimination of duplication and rationalization of administrative expenses.*
- ix. Reduction in regulatory and legal compliances and avoidance of multiple records keeping.*

- x. *Strengthening ability to face increasing competitive, regulatory, environmental and global risks, thereby resulting in sustainable and profitable long-term growth for the combined entity.*
8. The Shares of the Transferor Company are listed on Bombay Stock Exchange Limited (BSE). Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with the SEBI circular CFD/DIL3/CIR/2017/21 dated 10.03.2017 read with SEBI Master circular no. SEBI/HO/CFD/DIL1/CIR/P/2021/0000000665, provides for prior approval from BSE. Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with the SEBI circular CFD/DIL3/CIR/2017/21 dated 10.03.2017 read with SEBI Master circular no. SEBI/HO/CFD/DIL1/CIR/P/2021/0000000665, provides for prior approval from BSE. In compliance of the same, the Transferor Company had applied to BSE for its Observation Letter/ No Objection Letter to file the Scheme for sanction for this Tribunal. BSE, vide its letter dated 26.09.2022 has given their 'No Objection Letter' to the Transferor Company to file the Scheme with Tribunal. A copy of the observation letter, received from BSE by the Transferor Company is annexed to the Company Scheme Petition 296 of 2023.
9. The Shares of Transferee Company are listed on BSE and National Stock Exchange of India Limited (NSE). Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with the SEBI circular CFD/DIL3/CIR/2017/21 dated 10.03.2017 read with SEBI Master circular no. SEBI/HO/CFD/DIL1/CIR/P/2021/0000000665, provides for prior approval from BSE/ NSE. Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with the SEBI circular CFD/DIL3/CIR/2017/21 dated 10.03.2017 read with SEBI Master circular no. SEBI/HO/CFD/DIL1/CIR/P/2021/0000000665, provides for prior approval from BSE/ NSE. In compliance of the same, the Transferee Company had applied to BSE and NSE for its Observation Letter/ No Objection Letter to file the Scheme for sanction for this Tribunal. BSE, vide

its letter dated 26.09.2022 and NSE vide its 'Observation Letter'/ 'No Objection Letter' dated 27.09.2022 have given their 'No Objection Letter' to the Transferee Company to file the Scheme with Tribunal. A copy of the observation letter, received from BSE and NSE by the Transferee Company is annexed to the Company Scheme Petition 246 of 2023.

10. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Transferor Company and the Transferee Company are as under:

10.1. Transferor Company (ADFL)

<b>Particulars</b>	<b>Amount (Rs.)</b>
<b>Authorized Share Capital:</b>	
5,00,00,000 Equity shares of Rs.2/- each	10,00,00,000
<b>TOTAL</b>	<b>10,00,00,000</b>
<b>Issued, Subscribed and Paid Up Share Capital</b>	
3,50,00,000 Equity shares of Rs.2/- Each	7,00,00,000
<b>TOTAL</b>	<b>7,00,00,000</b>

10.2. Transferee Company (AWL)

<b>Particulars</b>	<b>Amount (Rs.)</b>
<b>Authorized Share Capital:</b>	
3,30,00,000 Equity shares of Rs.10/- Each	33,00,00,000
<b>TOTAL</b>	<b>33,00,00,000</b>
<b>Issued, Subscribed and Paid Up Share Capital</b>	
1,35,98,467 Equity shares of Rs.10/- Each	13,59,84,670
<b>TOTAL</b>	<b>13,59,84,670</b>

11. **Consideration:**

11.1. Upon this Scheme becoming effective and upon Amalgamation of Transferor Company/ ADFL with Transferee Company/ AWL in terms of this Scheme, Transferee Company shall, following such transfer and vesting of the Undertaking of Transferor Company into Transferee

Company without any application or deed, issue and allot Equity shares, credited as fully paid up, to the extent indicated below, to the equity shareholders of Transferor Company whose names appear in the register of members of Transferor Company (except Transferee Company or its subsidiaries held directly or jointly with its nominee shareholders), on the Record Date or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title in the following proportion:

*“5 (Five) equity shares of AWL having face value of INR 10 each fully paid up shall be issued for every 46 (Forty-Six) equity shares held in ADFL having face value of INR 2 each fully paid up”*

- 11.2. The above Share Exchange Ratio is based on the Joint Valuation Report dated 31<sup>st</sup> May 2022 issued by Mr. Niranjana Kumar attached as Annexure E in C.P./(CAA)/296/MB/2023 filed by the Transferor Company and Annexure E in C.P. (CAA)/ 246/ MB-III/ 2023 filed by the Transferee Company.
- 11.3. The Fairness Opinion on the Share Stock Exchange Ratio of the Transferor Company issued by Fedex Securities Private Limited is attached as Annexure F in C.P. (CAA)/ 246/ MB-III/ 2023 filed by the Transferor Company.
- 11.4. The Fairness Opinion on the Share Exchange Ratio of the Transferee Company issued by Systematix Corporate Services Limited is attached as Annexure F in C.P. (CAA)/ 246/ MB-III/ 2023 filed by the Transferee Company.
12. The Company Petition has been filed by the Transferor Company and Transferee Company in consonance with the order dated 24.08.2023 and 28.08.2023 respectively, passed by this Bench in the connected Company Scheme Application bearing TP-1/2023 and C.A.(CAA)/47/MB/2023 respectively. The Transferor Company and Transferee Company have filed necessary Affidavits of compliance with this Tribunal. Moreover, the



Transferor Company and Transferee Company undertakes to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made there under.

13. The Tribunal vide order dated 24.08.2023, directed the meeting of Equity shareholders of the Transferor Company to be held on 30.10.2023 to consider the Scheme and approve the same, with or without modifications. The Transferor Company has duly convened the meeting of Equity Shareholders on Monday, 30.10.2023 at 11:00 AM (IST) through video conferencing. As per Chairman's report the Scheme was approved by 98.42% of the Equity Shareholders (including Promoter and Promoter Group). The Chairman in his report has mentioned that "*The Scheme of Amalgamation was approved by requisite majority by the Equity Shareholders (including Promoter and Promoter Group) of the Transferor Company*".
14. The Transferor Company has no secured creditors, so the question of dispensation of the meeting of the secured creditors of Transferor Company did not arise. The meeting of unsecured creditors was dispensed with the direction to serve notice to all of its unsecured creditors. The Affidavit of Service is annexed to the Company Scheme Petition no. 296/2023.
15. The Tribunal vide order dated 18.05.2023, directed the meeting of Equity shareholders of the Transferee Company to be held on 10.08.2023 to consider the Scheme and approve the same, with or without modifications. The Transferor Company has duly convened the meeting of Equity Shareholders on Thursday, 10.08.2023 at 11:00 AM (IST) through video conferencing. As per Chairman's report the Scheme was approved by 99.998% of the Equity Shareholders (including Promoter and Promoter Group). The Chairman in his report has mentioned that "*The Scheme of Amalgamation was approved by requisite majority by the Equity*

*Shareholders (including Protomer and Promoter Group) of the Transferee Company”.*

16. Tribunal vide order dated 18.05.2023, dispensed the meeting of secured creditors of the Transferee Company on account of consent affidavits from all its secured creditors, also the meeting of unsecured creditors of Transferee Company was dispensed with the direction to serve notice to its unsecured creditors having value above Rs. 1,00,000. The Affidavit of Service is annexed to the Company Scheme Petition no. 246/ 2023.
17. In relation to the Transferor Company, the Regional Director (South East Region), Ministry of Corporate Affairs, Hyderabad has filed its Report dated 20.02.2024. The Transferor Company has filed an affidavit in rejoinder to the report filed by the Regional Director with this Tribunal on 16.03.2024 providing clarification/undertakings to the observations made by the Regional Director. The observations made by the Regional Director and the clarifications/undertakings given by the Transferor Company are summarized in the table below:

<b>Para</b>	<b>RD Report / Observations dated 20<sup>th</sup> February, 2024</b>	<b>Response of Transferor Company</b>
6.	The Transferor Company is a Listed Company. The equity shares of the Transferor Company are listed on Bombay Stock Exchange Limited. The Hon'ble Tribunal may be pleased to direct the Petitioner Company to furnish the compliance of SEBI (Listing Obligations and Disclosure Requirements), 2015 and other applicable Regulations as a proof of compliance.	As regards the observation made in Point no. 6 of the said Report is concerned, Transferor Company has duly complied with the requisite regulations of the SEBI (Listing Obligations and Disclosure Requirements), 2015 and other applicable regulations. Transferor Company also obtained the Non-Objection Certificate (NOC) from the BSE.
7.	Since the proposed merger is of two listed	As regards the observation made in point no. 7 of the said Report is concerned, the threshold limits

companies who are involved in a similar line of business, approval of Competition Commission of India may be required for considering sanction of the scheme.

prescribed under Section 5 of the Competition Act 2002 are:

Table Number – 1

Particulars	Threshold Limit (in Crores) (INR)		Amount (in Crores) (INR)	
	31.03.2022	31.03.2024 (revised limits)	31.03.2022	31.03.2024
Assets	> 2000	> 2500	169.28	179.35
Turnover	> 6000	> 7500	204.74	203.78

As on the Board Meeting date i.e. 31st May 2022, considering the financials dated 31st March 2022, amalgamation of ADFL with AWL is not exceeding the threshold prescribed under section 5 of the Competition Act, 2002. Even if we consider the financials as on 31st March 2024 and the revised limits, said amalgamation is not falling under section 5 of the Competition Act, 2002. Therefore, the Transferor Company is exempt from obtaining approval and accordingly, no prior approval from Competition Commission of India is required.

Table Number – 2

Particulars	Threshold Limit (in Crores)		Amount (in Crores)	
	31.03.2022	31.03.2024 (revised limits)	31.03.2022	31.03.2024
Assets	≤ 350	≤ 450	169.28	179.35
Turnover	≤ 1000	≤ 1250	204.74	203.78

Further, as per the notification issued by the Central Government dated 27<sup>th</sup> March 2017, and the revised notification issued on 7<sup>th</sup> March 2024 if the enterprise being acquired, taken control of,

		<p>merged or amalgamated has within the threshold prescribed in Table Number 2 such enterprise shall be exempted from provisions of section 5 of the Competition Act, 2002. As the ADFL being the Transferor Company having assets size and turnover less than the limits prescribed in Table Number 2 considering financials as on 31st March 2022 and 31st March 2024. Hence, no prior approval of Competition Commission of India shall be required for the purpose of merger.</p>
8.	<p>As per MCA records, the Transferor Company has many open charges. Hence, the Hon'ble Tribunal may direct to comply/clarify the compliance of provisions of Section 230 of the Act read with Rule 5 of the Companies (Arrangements and Amalgamations) Rules 2016.</p>	<p>As regards the observation made in point no.8 of the said Report is concerned, as per MCA records, there are six charges listed against the Transferor Company, out of which three charges have been duly closed and three charges are existing as on date. These charges are against the facilities obtained by the Transferor Company, however as on date, these facilities are not fully utilized by the Transferor Company for its purpose and are contingent in nature. Hence, there are no outstanding Secured Creditors in the Transferor Company, the same is disclosed in the application and petition filed by the Transferor Company with Hon'ble Tribunal and the same were approved by the Hon'ble Tribunal. Furthermore, the NOCs obtained from charge holders of the Transferor Company are submitted to Stock Exchange as annexure. Thus, the Transferor Company is in compliance with section 230 of the Act read with Rule 5 of the Companies (Arrangements and Amalgamations) Rules, 2016.</p> <p>Further, as the Transferee Company will be the surviving entity, all the charges against the Transferor Company shall be transferred and registered against the Transferee Company and will be settled by Transferee Company in due course of its business.</p>
9.	<p>The petitioner companies are required to attach a certificate from the company's auditors to the effect that the accounting treatment is in conformity with the</p>	<p>As regards the observation made in point no. 9 of the said Report is concerned, the certificate from the company's auditors to the effect that the accounting treatment is in conformity with the accounting</p>

	accounting standards prescribed under Section 133 of the Act.	standards prescribed under section 133 of the Act.
10.	As per the Independent Auditor's Report of Transferor Company for the financial year ending 31.03.2022, the company has outstanding disputed dues to the tune of Rs. 5.02 crores towards Corporate Income Tax. Hon'ble Tribunal may be pleased to direct the Petitioner company to furnish an undertaking to Hon'ble NCLT to the effect that it will settle the dues of the Income Tax Authority as and when the claim will crystallized.	As regards the observation made in point no. 10 of the said Report is concerned, As and from the Effective Date, the tax proceedings shall be continued and enforced by or against the Transferee Company in the same manner and to the same extent as it would or might have been continued and enforced by or against the Transferor Company (Refer clause no. 14.3 of the Scheme). The Transferee Company will settle the dues of the Income Tax Authority as and when the claim will be crystallized.
11.	In note no. 18 of the Financial Statement for the financial year ending 31.03.2022 of Transferor Company it is stated about undisputed statutory dues to the tune of Rs. 1.67 crores. The Hon'ble Tribunal may be pleased to direct the Petitioner company to furnish an undertaking to Hon'ble NCLT to the effect that it will settle the statutory dues immediately, if not settled so far.	As regards the observation made in point no. 11 of the said Report is concerned, the undisputed statutory dues of INR 1.67 Crs as on 31.03.2022 have been paid by the Transferor Company. An amount of INR 0.64 Crs approx. is paid in cash and an amount of INR 1.03 Crs has been paid by utilizing the available Input tax credit. Accordingly, as on the date of this affidavit, the statutory dues have been paid-off by the Transferor Company.  Further, as and from the Effective Date, the liability towards undisputed statutory dues of the Transferor Company shall be transferred and continued by the Transferee Company in the same manner and to the same extent as it would or might have been continued for the Transferor Company (Refer clause no.14.3 of the Scheme). The Transferee Company will settle the dues of the Income Tax Authority as and when the claim will be crystallized.
12.	Clause 16 of Part II of the Scheme provides for Clubbing of Authorized Share Capital of the Transferor Company with	As regards the observation made in point no.12 of the said Report is concerned, Upon the Scheme becoming effective, the Authorised Share Capital of the Transferor

	the authorized share capital of the Transferee Company. Hon'ble Tribunal may be pleased to direct the Transferee Company to comply with the provisions of the Section and pay the difference of fee, after setting off the fee already paid by the Transferor Company on its respective capital.	Company shall stand transferred, re-organised, credited and merged with that of the Transferee Company with payment of additional fees and stamp duty, if any, and the Authorised Share Capital of the Transferee Company will be increased to that effect by filing requisite forms (Refer clause 16.1 of the Scheme). Further, difference of fee, if any, after setting off the fee already paid by the Transferor Company will be paid by the Transferee Company upon combination of authorized capital.
13	As per Section 240 of the Companies Act, 2013, the liability in respect of offences committed under the Companies Act by the Officers in default of the Transferor Company prior to merger, amalgamation or acquisition shall continue after such merger, amalgamation, or acquisition.	As regards the observation made in point no.13 of the said Report is concerned, the liability in respect of offences committed, if any by the Officers in default of the Transferor Company shall continue pursuant to such merger on such officers.

18. In relation to the Transferee Company, the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai has filed its Report dated 23.11.2023. The Transferee Company has filed an Affidavit in rejoinder to the report filed by the Regional Director with this Tribunal on 06.12.2023 providing clarification/undertakings to the observations made by the Regional Director. The clarifications and undertakings given by the Transferee Company are accepted. The observations made by the Regional Director, Western Region and the clarifications/undertakings given by the Transferee Company are summarized in the table below:

<b>Para</b>	<b>RD Report / Observations dated 23<sup>rd</sup> November 2023</b>	<b>Response of the Transferee Company</b>
(a)	That on examination of the report of the Registrar of Companies, Mumbai dated	As regards the observation made in Paragraph 2(a) of the

	<p>22.08.2023 for Petitioner Transferee Company that the Petitioner Transferee Company falls 'within the jurisdiction of ROC, Mumbai. It is submitted that no representation regarding the proposed scheme of Arrangement has been received in the matter of Petitioner Transferee Company. Further, the Petitioner Transferee Company has filed Financial Statements up to 31.03.2022.</p>	<p>said report is concerned, it is submitted that that no representation regarding the proposed scheme of Arrangement has been received in the matter of Transferee Company. Further, the Transferee Company has filed the Financial Statements up to 31.03.2022.</p>																								
<p>(b)</p>	<p>The ROC has further submitted that in his report dated 22.08.2023 which are as under :-</p> <p>i. That the ROC Mumbai in its report dated 22.08.2023 has also stated that no inquiry, inspection, investigations, Prosecutions, Technical Scrutiny under CA, 2013 have been pending against the Petitioner Companies.</p> <p>ii. Further ROC has mentioned as follows:</p> <p>a) There are 5 charges pending against Transferee Company on MCA 21 Portal.</p>	<p>As regards the observation made in Paragraph 2(a)(i) of the said Report is concerned, it is submitted that there is no Inquiry, Inspection, Investigations and Prosecutions pending against the Transferee Company.</p> <p>As regards the observation made in Paragraph 2(a)(ii)(a) of the said Report is concerned, the Transferee Company submits that there are 5 charges pending against the company. Details of the same are given as under:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th style="text-align: center;">Charge ID</th> <th style="text-align: center;">Date of Creation of Charge</th> <th style="text-align: center;">Date of last modification</th> <th style="text-align: center;">Amount Secured (in Rs.)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">100783325</td> <td style="text-align: center;">05.09.2023</td> <td style="text-align: center;">-</td> <td style="text-align: right;">70,00,00,000</td> </tr> <tr> <td style="text-align: center;">100611992</td> <td style="text-align: center;">07.09.2022</td> <td style="text-align: center;">-</td> <td style="text-align: right;">27,50,000</td> </tr> <tr> <td style="text-align: center;">100567784</td> <td style="text-align: center;">10.01.2022</td> <td style="text-align: center;">-</td> <td style="text-align: right;">70,00,000</td> </tr> <tr> <td style="text-align: center;">10532829</td> <td style="text-align: center;">23.09.2014</td> <td style="text-align: center;">-</td> <td style="text-align: right;">1,00,00,000</td> </tr> <tr> <td style="text-align: center;">90230039</td> <td style="text-align: center;">04.02.2005</td> <td style="text-align: center;">03.01.2018</td> <td style="text-align: right;">1,05,50,00,000</td> </tr> </tbody> </table> <p>The Transferee Company further submits that these charges are created in the normal course of the business and since, Transferee Company is the surviving entity these charges shall be dealt with accordingly.</p>	Charge ID	Date of Creation of Charge	Date of last modification	Amount Secured (in Rs.)	100783325	05.09.2023	-	70,00,00,000	100611992	07.09.2022	-	27,50,000	100567784	10.01.2022	-	70,00,000	10532829	23.09.2014	-	1,00,00,000	90230039	04.02.2005	03.01.2018	1,05,50,00,000
Charge ID	Date of Creation of Charge	Date of last modification	Amount Secured (in Rs.)																							
100783325	05.09.2023	-	70,00,00,000																							
100611992	07.09.2022	-	27,50,000																							
100567784	10.01.2022	-	70,00,000																							
10532829	23.09.2014	-	1,00,00,000																							
90230039	04.02.2005	03.01.2018	1,05,50,00,000																							

<p>b) There are two complaints pending against the Transferee Company vide SRN No. I0005864 &amp; J00086478. The complaint is regarding non-receipt of certificate after endorsement.</p> <p>c) As per provisions of section 232(3)(i) of CA, 2013 where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation. Therefore, the remaining fee, if any after setting off the fees already paid by the transferor company on its authorized capital, must be paid by the transferee company</p>	<p>As regards the observation made in Paragraph 2(a)(ii)(b) of the said Report is concerned, the Transferee Company submits that it has two complaints pending against the Transferee Company vide SRN No. I0005864 and J00086478. The Transferee Company has not received any documents / communication regarding the submission of complaint nos. I0005864 and J00086478, against the Company. Once the copy of the complaint is received by the Transferee Company, suitable reply will be provided and the complaints will be decided on its own merit. Further, the Transferee Company received email from MCA regarding closure of complaint no. I00058641 dated 25th October, 2023. The email communication is attached as “Annexure 1”. The complaints shall have no bearing on the Scheme of Amalgamation. Further, the Transferee Company shall remain in existence, even after giving effect to the Scheme of Amalgamation, hence all the complaints shall be resolved upon their merits in due course as per applicable law.</p> <p>As regards the observation made in Paragraph 2(a)(ii)(c) of the said Report is concerned, as per the provisions of Section 230(3)(i) of the Companies Act, 2013, the fee paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the Scheme of Merger. Therefore, the remaining fee, if any after setting-off the fees already paid by the Transferor Company on its authorized capital, will be paid by the Transferee Company on the increased authorized capital subsequent to amalgamation.</p>
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	<p>on the increased authorized capital subsequent to amalgamation.</p> <p>d) Interest of creditors should be protected.</p>	<p>As regards the observation made in Paragraph 2(a)(ii)(d) of the said Report is concerned, the interest of creditors will be protected.</p>
(c)	<p>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.</p>	<p>As regards the observation made in Paragraph 2(b) of the said Report is concerned, the Transferee Company undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by the Transferee Company for increase of share capital on account of merger of the Transferor Company with the Transferee Company.</p>
(d)	<p>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.</p>	<p>As regards the observation made in Paragraph 2(c) of the said Report is concerned, it is submitted that in addition to compliance with IND AS-103 (AS-14 not applicable) and IND AS-8 (AS-5 not applicable), in connection with the Scheme, the Transferee Company shall pass such accounting entries, which are necessary to comply with all other applicable Indian Accounting Standards to the extent applicable.</p>
(e)	<p>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.</p>	<p>As regards the observations made in paragraph 2(d) of the said report is concerned, the Transferee Company submits that the Scheme enclosed in Company Application and Company Petition is one &amp; the same and there is no discrepancy / deviation in the same.</p>

(f)	<p>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.</p>	<p>As regards the observation made in paragraph 2(e) of the said report is concerned, the Transferee Company submits that an affidavit of service, stating that the notices have been served to concerned authorities, as required under Section 230(5) of the Companies Act, 2013, has been annexed with the Company Scheme Petition. 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 and the same will be dealt with by the Transferee Company, in accordance with the applicable laws under the respective Acts.</p>
(g)	<p>As per Definition of the Scheme,</p> <p><b>"Appointed Date"</b> means 1<sup>st</sup> April 2022, or such other date, as may be fixed or approved by Hon'ble National Company Law Tribunal or such other competent authority / Appropriate Authority;</p> <p><b>"Effective Date"</b> means the last of the dates on which the authenticated copies or certified copies of the Order of NCLTs under Sections 230 to 232 of the Act sanctioning the Scheme is filed with Registrar of Companies by the Transferor Company and the Transferee Company. References in this Scheme to the date of "coming into effect of the Scheme" or "upon the Scheme becoming effective", or "effectiveness of the Scheme" and other similar expressions shall mean the Effective Date;</p> <p><b>"Record Date"</b> means such date, as may be mutually fixed by the Board of Directors of the Transferor Company and the Transferee Company for the purpose of reckoning names of</p>	<p>As regards the observation made in Paragraph 2(f) of this Report is concerned, the Transferee Company clarifies that the Appointed Date shall be 01<sup>st</sup> April, 2022 and the Scheme shall take effect from the Appointed Date in terms of provisions of Section 232(6) of the Companies Act, 2013.</p> <p>Further, the Transferee Company undertakes that they would comply with the provisions and requirements clarified vide circular no. F. No 7/12/2019/CL-I dated 21-08-2019</p>

	<p>Equity Shareholders of the Transferor Company, who shall be entitled to receive shares of the Transferee Company upon coming into effect of this scheme;</p> <p><b>It is submitted that 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.</b></p>	<p>issued by the Ministry of Corporate Affairs, if required / applicable.</p>
(h)	<p>Petitioner companies shall undertake to comply with the directions of the Income Tax Department &amp; GST Department, if any.</p>	<p>As regards the observations made in paragraph 2(g) of the Report of the Regional Director are concerned, the Transferee Company undertakes to comply with the directions of Income-tax department and GST Department, if any, to the extent applicable and in compliance with the applicable laws.</p>
(i)	<p>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.</p>	<p>As regards the observations made in paragraph 2(h), the Transferee Company undertakes to comply with the directions of the concerned Sectoral Regulatory, if any, to the extent applicable and required.</p>
(j)	<p>As per list of shareholders of both Petitioner Companies, they have foreign shareholders hence Petitioner Companies shall undertake to comply with guidelines of RBI, FEMA, FERA.</p>	<p>As regards the observations of the Regional Director, Western Region, Mumbai, made in paragraph 2(i) of his report are concerned, the Transferee Company submits that it shall comply with all the applicable FEMA and RBI laws and regulations, to the extent applicable, in relation to the foreign shareholders of the Transferor Company. Further, the Transferee Company shall file all the relevant forms, including Form FC-GPR, under FEMA and RBI Regulations in relation to issuance of shares to the foreign shareholders of the Transferor Company to the extent required.</p>

(k)	<p>Both Petitioner Companies are Listed Companies hence both Petitioner Companies shall dated 26<sup>th</sup> September, 2022 issued by BSE Limited and NSE Limited respectively undertake to comply with observation pointed out through Observation letter Complaints Report filed with the BSE Limited dated 16<sup>th</sup> August 2022 and NSE Limited dated 25<sup>th</sup> August 2022 respectively as well comply with SEBI (LODR) Regulations, 2016.</p>	<p>As regards the observation made in para 2(j), the Transferee Company is a Listed Company, hence the Transferee Company undertakes to comply with the observations pointed out through Observation Letter dated 26<sup>th</sup> September, 2022 and 27<sup>th</sup> September, 2022, issued by BSE Limited and the National Stock Exchange of India Limited (NSE), respectively and also undertakes to comply with the observation pointed out through the Complaints Reports filed with BSE Limited dated 24<sup>th</sup> August, 2022 and the National Stock Exchange of India Limited dated 25<sup>th</sup> August, 2022 respectively, and the Transferee Company also undertakes to comply with SEBI (LODR) Regulations, 2015.</p>
(l)	<p>Ador Fontech Limited, (“Transferor Company” or “ADFL”) is a Listed Public Limited Company and having its registered office at Belview, 7 Haudin Road, Bengaluru – 560042, Karnataka, India. But as per Hon’ble National Company Law Tribunal, New Delhi, Principal Bench order dated 17.03.2023 (Copy Enclosed as Annexure A-2) in TA (Co. Act) – 10 (PB)/2023 given following direction:</p> <p>“Transfer of Company Application bearing No. CAA 07/BB/2023 filed by the Applicant Company before the NCLT, Bengaluru Bench under Section 230-232 of the Companies Act, 2013 to Mumbai Bench of this Hon’ble Tribunal and be heard jointly/collectively with Company Application bearing CA (CAA) No. 47/MB/2023 filed by the Transferee Company before Mumbai Bench-III this Hon’ble NCLT (involving composite scheme of Amalgamation);</p> <p>Direct the Registry of the Bengaluru Bench to initiate appropriate steps regarding the handover of the original paper book(s)/documents to the</p>	<p>As regards the observation made in para 2(k), ROC and OL report of the Transferor Company shall be submitted before the Mumbai Bench-III of this Hon’ble Tribunal.</p>

counsel for onward submission before the Mumbai Bench-III of this Hon'ble Tribunal; Alternatively, Direct the Registry of the Bengaluru Bench to send the Paper Books) directly to the Mumbai Bench-III; and/or pass such order/further order (s) as this Hon'ble Tribunal may deem fit and proper.”

Based on that the present transfer application has been filed seeking to transfer the application filed by the Transferor Company before the NCLT, Bengaluru Bench under Section 230- 232 of the Companies Act, 2013 to Mumbai Bench of NCLT to be heard jointly with company application bearing No. CA (CAA) No. 47/MB/2023 i.e. petition filed by the Transferee Company before the NCLT, Mumbai Bench. The registered office of the Transferee Company is in Mumbai. The registered office of the Transferor Company is in Bengaluru.

Hence, the present application is filed. Considering the nature of relief sought for and the Scheme of Amalgamation, this transfer petition stands allowed”

**And as per Hon'ble National Company Law Tribunal, Mumbai Bench order dated 24.08.2023 (Copy Enclosed as Annexure A-2) in Transfer Petition/1/2023 given following direction:-**  
“Petition is allowed”

Ador Fontech Limited, the Transferor Company is having its registered office at Belview, 7 Haudin Road, Bengaluru – 560042, Karnataka, India, hence, in this regard, office of ROC and OL Bangalore is requested to submit their report/representation directly this Hon'ble NCLT Mumbai Bench and further that Hon'ble NCIT Mumbai Bench may decide the matter on merit after directly this Hon'ble NCLT Mumbai Bench and further that Hon'ble NCLT Mumbai Bench may decide the matter on merit after considering observations raised by office of ROC and OL

	Bangalore. However, this Directorate reserves the right to file Additional Affidavit / Supplementary Report in the matter.	
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19. The Official Liquidator, High Court of Karnataka has filed its Report dated 08.02.2024. The Transferor Company has filed an Affidavit in rejoinder to the report filed by the Official Liquidator with this Tribunal on 12.03.2024 providing clarification/undertakings to the observations made by the Official Liquidator. The observations made by the Official Liquidator in para 6, 9-13, 17-21 and the clarifications/undertakings given by the Transferor Company are summarized in the table below:

Para	OL Report / Observations dated 08 <sup>th</sup> February 2024	Response of the Transferor Company
6	Both TR and TE companies are listed companies with substantial public interest involved. The compliance of SEBI, Stock Exchange is required to be ensured by the companies.	As regards the observation made in Point no. 6 of the said report is concerned, it is submitted that Transferor Company and Transferee Company undertakes to comply with relevant and applicable compliances required under SEBI and Stock Exchange regulations.
9	Since the foreign shareholders are being issued fresh shares of TE company, necessary compliance of FEMA, RBI etc., to be made.	As regards the observation made in point no. 9 of the said report is concerned, as the fresh shares will be issued by the Transferee Company to the shareholders of the Transferor Company. The Transferee Company shall comply with necessary compliances under FEMA, RBI etc. Further, the Transferee Company shall file all the applicable forms, including Form FC-GPR, under FEMA, RBI etc. in relation to issuance of shares to the foreign shareholders of the Transferor Company.
10	The appointed date proposed is 01.04.2022.	As regards the observation made in point no. 10 of the said report is concerned, the Transferor Company had filed the application with the Hon'ble Tribunal,

	Being old and out dated, the scheme may be allowed from 01.04.2023 or any other alternative date deem fit.	Bengaluru Bench on 2nd February 2023. As per the MCA circular no. 09/2019 dated 21st August 2019, if the Appointed Date is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest. However, in our case, filing with Hon'ble Tribunal is made within 1 year from the date of Appointed Date. Hence, Appointed Date of 1st April 2022 is falling within the stipulated time frame and is in compliance with the MCA Circular.
11	As per the details provided, the TR company has received many claims from Income Tax department including Rs.40 crores for the Assessment Year 2021-2022. If the scheme is allowed, the TE company has to take care of the claims / litigations till it is crystallized.	As regards the observation made in point no. 11 of the said report is concerned, any litigation, suits, recovery proceedings which are to be initiated or may be intimated against the Transferor Company, Transferee Company shall be made party thereto and any payment and expenses made thereto shall be the liability of the Transferee Company (Refer clause 6.3 of the Scheme). In this regard Transferee Company will take care of the claims / litigations pursuant to the scheme being sanctioned and approved.
12	The TR company has one, 100% subsidiary i.e., 3D Future Technologies Private Ltd. The Status of the said company after merger of TR company with TE company is not specified in the scheme as to whether is going to be stand alone or merge with its holding company to TE Company.	As regards the observation made in point no. 12 of the said report is concerned, upon sanction of the scheme, all the investments of the Transferor Company shall on and from the appointed date stand transferred to Transferee Company, (Refer clause 5.6 of the Scheme). Hence, the investment made by the Transferor Company in its 100% subsidiary shall be transferred to the Transferee Company and the same will be reflected as investment of Transferee Company pursuant to sanction of the scheme.

13	<p>No unsecured creditor of the TR company meeting has been convened by the TR company stating that there is no compromise or arrangement with creditors. However, in the interest of all creditors including MSME shall be taken care by the TE company to that extent an undertaking has to be submitted by TE company. There are more than 400 creditors for an amount of Rs.20.85 crores in the TR company.</p>	<p>As regards the observation made in point no. 13 of the said report is concerned, Hon'ble Tribunal in its Order dated 24th August 2023 had dispensed off the requirement of conducting the meeting of the Unsecured Creditors of the Transferor Company. Further, as stated in the scheme of arrangement there is no arrangement proposed to be entered into with the creditors, either secured or unsecured creditors of the Transferor Company and / or the Transferee Company. No compromise is offered under this Scheme to any of the creditors of the Transferor Company. The liability towards the creditors of the Transferor Company under the Scheme, is neither being reduced nor being extinguished but shall be assumed and discharged by the Transferee Company in its ordinary course of business, (Refer Point no III of the Scheme). Hence, in this regard, Transferee Company undertakes that it will discharge the payment of the Unsecured Creditors as and when due in the ordinary course of its business.</p>
17	<p>It is noticed that 94.7% shareholders of TR company are in dematerialized form. Fresh issue of new shares to be issued by the TE to TR company shareholders shall be and dematerialize form only.</p>	<p>As regards the observation made in point no. 17 of the said report is concerned, Transferee Company undertakes to ensure that all the fresh issue of new shares by the Transferee Company to the shareholders of the Transferor Company shall be in dematerialize form only.</p>
18	<p>It is noticed that Company Secretary and Chief Finance Officer post are held by Ms. Geetha. As per section 203 of Companies Act, 2013, both posts cannot be held by a single person</p>	<p>As regards the observation made in point no. 18 of the said report is concerned, there is no express prohibition provided under section 203 of the Companies Act, 2013 in relation to the appointment of one individual as Company Secretary and Chief Finance Officer both. In the instance case, the Transferor Company is in compliance and has not violated with the requirements under section</p>



	<p>as their duties and responsibilities are different. Hence, company has to file compounding /adjudication application before the Registrar of Companies, Karnataka.</p>	<p>203 of the Companies Act, 2013. Accordingly, there is no requirement to file compounding/adjudication application before the ROC Karnataka. The Hon'ble Supreme Court in case of RAJENDRA PRASAD GUPTA VERSES PRAKASH CHANDRA MISHARA &amp; ORS. (CIVIL APPEAL NO 984 OF 2006) observed that :-  <i>"Courts are not to act upon the principal that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principal that every procedure is to be undersold as permissible till it is shown to be prohibited by the law. As a matter of general principal prohibition cannot be presumed".</i></p>
<p>19</p>	<p>No Employees/workmen of Transferor company to be retrenched/terminated in the terms of amalgamation of Transferor company with Transferee company. The Hon'ble Tribunal may kindly see that TR or TE will not retrench Swap the staff or employee of Transferor Company in the guise of surplus staff on account of merger. Need to give a separate undertaking by the Transferee Company in this regard.</p>	<p>As regards the observation made in point no. 19 of the said report is concerned, all staff, workmen and employees, who are on the payroll of the Transferor Company, shall become the staff, workmen and employees of the Transferee Company ,employees/personnel engaged on contract basis and contract labourers and interns/trainees of the Transferor Company shall become employees/personnel on contract basis, contract labourers and interns/trainees as the case may be of the Transferee Company with effect from the effective date on such terms and conditions as are no less favorable than those on which they are currently engaged by the Transferor Company, (Refer clause 9.1 of the Scheme). In this regard Transferee Company undertakes to ensure that no Employees/workmen of Transferor Company to be retrenched/terminated in</p>

		the terms of amalgamation of Transferor Company with Transferee Company.
20	An undertaking may be obtained from the applicant companies that they will pay applicable stamp duty and other charges to the state Govt. within a reasonable time with an outer-line of 6 months.	As regards the observation made in point no. 20 of the said report is concerned, all costs, charges, levies and expenses (including, but not limited to, any taxes and duties, stamp duty, registration charges, etc.) of the Transferor Company and Transferee Company, respectively in relation to or in connection with or incidental to this Scheme or the implementation thereof shall be borne and paid for by the Transferee Company, unless otherwise determined by the Boards of Directors of the Transferor Company and Transferee Company(Refer clause 23 of the Scheme. In this regard, Transferee Company undertakes to ensure that it will pay applicable stamp duty and other charges to the state Govt. as per the applicable laws.
21	The TR Company had related party transactions with TE company, Associated company, subsidiary company and KMP relatives. Needs to comply with the provisions of section 188 read with Rule 15 of Companies Act, 2013.	As regards the observation made in point no. 21 of the said report is concerned, the Transferor Company and the Transferee Company has complied with the provisions of section 188 read with Rule 15 of Companies Act, 2013 as on the date.  Post merger, the Transferee Company shall be responsible and will accordingly, comply with all the provisions pertaining to the related party transactions under section 188 read with Rule 15 of the Companies Act, 2013 to the extent it is applicable.

20. During the course of hearing, we observed that the Official Liquidator (OL), Karnataka has raised an objection regarding positions of Company Secretary and Chief Financial Officer being held by the same individual. With regards to the same this bench directed Ador Fontech Limited/

Transferor Company to provide copy of the OL Report to Regional Director, West Region.

21. In this regard it has been submitted that-

*“there is no express prohibition under section 203 of the Companies Act, 2013 appointing one individual as both Company Secretary and Chief Finance Officer. In our case since, the Transferor Company is in compliance with the requirements under section 203 of the Companies Act, 2013, hence there is no requirement to file compounding/adjudication application before the ROC Karnataka”*

22. The Transferor Company has also relied upon the judgment of Hon’ble Supreme Court in the case of **Rajendra Prasad Gupta Vs. Prasad Chandra Mishara & ors. (Civil Appeal no. 984 of 2006)** and also on the ruling by the Authority of Advance Ruling (AAR) in the case of **M/s Rasi Nutri Foods** which cites the above decision of the Hon’ble Supreme Court.

23. The RD in SER- Affidavit dated 20.02.2024 has stated that-

*“The issue raised by the Official Liquidator Karnataka under Section 203 of Companies Act, 2013 is not having impact on the Scheme and for non-compliance of Section 203 of Companies Act 2013 and for defaulting for occupying the post of KMP. Hon’ble NCLT may give liberty to ROC Karnataka to proceed for Adjudication under Section 203 of the Companies Act, 2013 as per the law and the Scheme may be decide on the merit of the case.”*

24. Further, in the Short Affidavit on behalf of the RD, West Region, RD mentioned that-

*“(b) The said inputs are given in compliance of directions from Hon’ble NCLT Mumbai Bench Court Room-III order dated 7<sup>th</sup> May 2024. However, the company falls under the jurisdiction of Regional Director- Southeast Region.”*

25. The Regional Director, Southeast Region/ ROC Karnataka and Regional Director, West Region/ ROC Mumbai are at liberty to examine the aforesaid issue and adjudicate under Section 203 of the Companies Act, 2013.

26. From the material on record, the Scheme annexed to the Company Scheme Petition appears to be fair and reasonable and is not violative of any provisions of law subject to Section 203 and is not contrary to public policy.
27. All pending complaints/ inspection/ litigation of Transferor Company will continue with by or against the Transferee Company and approval of the Scheme will not deter the concerned authorities including but not limited to the Income Tax Department to continue and/or initiate any further legal proceedings against the Transferee Company in case any violation is found in relation to the conduct of affairs by the Transferor Company or arising out of any complaint, inspection or investigation.
28. Heard the submission of the Transferor Company and Transferee Company and the Regional Director. The Regional Director is satisfied with the reply/ clarification/ undertaking given by the Transferor Company and Transferee Company and no further observations have been raised.
29. No objection has been received by the Tribunal opposing the Company Scheme Petition and nor has any party controverted any averments made in the Company Scheme Petition.
30. Allowing this Scheme, the Tribunal does not deter concerned authorities from dealing with any issues arising in future and the decision of such authorities shall be binding on the Transferee Company even for the issues relating to Transferor Company.
31. The Statutory Auditors of the Transferee Company have examined the Scheme in terms of provisions Sections 230-232 and certified that the accounting treatment contained in the Scheme is in compliance with the applicable accounting standards specified under section 133 of the Companies Act, 2013.
32. The shareholders and Creditors of the Transferor Company and Transferee Company are the best judges of their interest. Their decision should not

be ordinarily interfered with by the Tribunal as per the decision of Hon'ble Supreme Court in **Miheer H. Mafatlal vs. Mafatlal Industries Ltd [JT 1996 (8) 205]** wherein it was held as follows:

*“It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the usefulness and propriety of the scheme by supporting it by the requisite majority vote.”*

33. In view of the foregoing, upon considering the approval accorded by the members of the Transferor Company and Transferee Company to the proposed Composite Scheme of Arrangement, and the affidavits filed by the Regional Director, the rejoinder and undertakings of the Transferor Company and Transferee Company and the report of the Official Liquidator, there appears to be no impediment in sanctioning the present Scheme as the Scheme appears to be reasonable and is not violative of any provisions of law and is not contrary to public policy.
34. The Scheme annexed to the Company Scheme Petition is hereby sanctioned, and the Appointed Date of the Scheme is **1<sup>st</sup> April, 2022**. The Transferor Company and Transferee Company have stated that the Appointed date complies with the Circular no. F. No. 7/12/2019/CL-I dated 21.08.2019. It shall be binding on the Transferor Company and Transferee Company involved in the Scheme and all concerned including their respective Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors, Employees and/or any other stakeholders concerned.

#### **ORDER**

35. Consequently, sanction is hereby **granted** to the Composite Scheme of Arrangement under Sections 230 to 232 of the Companies Act, 2013 and other applicable provision of Companies Act, 2013 read with Companies (Compromise, Arrangements and Amalgamation) Rules, 2016 with the following directions:
- a. The Transferor Company be dissolved without winding up.

- b. If there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit in accordance with law, against the concerned persons, directors and officials of the Transferor Company and Transferee Company.
- c. While approving the Scheme, we clarify that this Order should not, in any way, be construed as an Order granting exemption from payment of stamp duty, taxes or other charges, if any, and payment in accordance with law or in respect of any permission or compliance with other requirements which may be specifically required under any law.
- d. The Income Tax Department will be at liberty to examine the aspect of any tax payable by the Companies or by the Shareholders of Transferor Company who are receiving consideration for reduction of shares. It shall be open to the income tax authorities to take necessary action as permissible under the Income Tax Law. The decision of Income Tax Department shall be binding on the Transferee Company even for the concerns relating to Transferor Company.
- e. The Transferor Company and Transferee Company are directed to file a certified copy of this Order along with the Scheme duly authenticated/certified by the Deputy Registrar or the Joint Registrar or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Registrar of Companies, electronically in e-form INC-28 within 30 (thirty) days from the date of receipt of the certified copy of this Order along with the Scheme.
- f. Certified copy of this Order along with the Scheme be also submitted to all the concerned statutory authorities.

- g. The Transferor Company and Transferee Company to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, 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 copy of the Order from the Registry.
- h. All the employees of the Transferor Company in service, on the date immediately preceding the date on which the Scheme takes effect i.e. the Effective Date, shall become the employees of the Transferee Company on such date, without any break or interruption in service and upon terms and conditions not less favourable than those subsisting in the concerned Transferor Companies on the said date.
- i. No Employees/ workmen of Transferor Company be retrenched/ terminated in the terms of amalgamation of Transferor Company with Transferee Company.
- j. Any proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.
- k. All the properties, rights, liabilities, duties and powers of the Transferor Company, be transferred without further act or deed, to the Transferee Company and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee Company.
- l. The Registrar of Companies is entitled to proceed against the Transferee Company for violation/ offences committed by Transferor Company, if any.

- m. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
- n. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P. (CAA)/296/MB/2023 filed by the Transferor Company and C.P. (CAA)/246/MB/2023 filed by the Transferee Company are made absolute in terms of prayers clause of the said Company Scheme Petition.
- o. Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
36. Any concerned authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
37. All concerned regulatory authorities to act on a copy of this Order duly certified by the Registry of this Tribunal, along with a copy of the Scheme.
38. Ordered Accordingly. Thus, the present Scheme shall stand to be **disposed of**.

“File to be consigned to records.”

Sd/-

**CHARANJEET SINGH GULATI**  
**MEMBER (TECHNICAL)**

(Saayli, LRA)

Sd/-

**LAKSHMI GURUNG**  
**MEMBER (JUDICIAL)**