

Ref.No.: NCCL/ Regulation 30/2021

Date : September 18, 2021

National Stock Exchange of India Ltd

Exchange Plaza, C-1, Block G

Bandra – Kurla Complex

Bandra (E)

MUMBAI - 400 051.

NSE: NCC

BSE Limited

Phiroze Jeejeebhoy Towers

Dalal Street,

Fort

M U M B A I – 400 001.

BSE: 500294

Dear Sir,

Sub: Submission of certified True copy of the order passed by NCLT, Hyderabad Bench for the Scheme of amalgamation

We refer to our letters dated 28th December 2019 and 4th January 2020 intimating about the Scheme of Amalgamation ("Scheme") providing for the merger of **two wholly owned Subsidiaries of the Company (Vaidehi Avenues Limited and Aster Rail Private Ltd) with the Company.**

Pursuant to Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, we inform you that the Hon'ble National Company Law Tribunal (NCLT), Hyderabad Bench has approved the Scheme of Amalgamation with Appointed Date 1st April 2020.

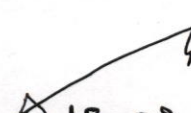
Certified copy of the NCLT Order dated 17th September 2021 is enclosed herewith for your reference.

We request you to take the above on record.

Thanking you,

Yours faithfully

For NCC LIMITED.


18-09-2021
M V Srinivasa Murthy
Company Secretary & EVP (Legal)

Encl : As above

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

**CP. (CAA) No.5/230/HDB/2021
Connected with
CA(CAA) No.223/230/HDB/2020**

Petition under Sections 230 to 232 of the Companies Act, 2013

**IN THE MATTER OF
SCHEME OF AMALGAMATION BETWEEN**

**VAIDEHI AVENUES LIMITED
TRANSFEROR COMPANY NO.1
AND**

**ASTER RAIL PRIVATE LIMITED
TRANSFEROR COMPANY NO.2
AND**

**NCC LIMITED
TRANSFeree COMPANY
AND
THEIR RESPECTIVE SHAREHOLDERS**



VAIDEHI AVENUES LIMITED

NCC House, Madhapur, Hyderabad,
Telangana India. Pin - 500081.

Represented by its Authorised Signatory,
Sri. A G K Raju, Director

...Petitioner /Transferor Company No.1

ASTER RAIL PRIVATE LIMITED

NCC House, Survey No.64, Durgam Chervu,
Madhapur, Hyderabad, Telangana, India. Pin-500081.

Represented by its Authorised Signatory,
Sri. K V Rao, Director

... Petitioner /Transferor Company No.2

NCC Limited

NCC House, Madhapur, Hyderabad. Telangana

India. Pin - 500081.

Represented by its Company Secretary & EVP (L),

Sri.M V Srinivasa Murthy,

... Petitioner /Transferee Company

Date of Order: 26.08.2021

Coram:

MADAN B. GOSAVI, MEMBER JUDICIAL.

DR. BINOD KUMAR SINHA, MEMBER TECHNICAL

For Petitioners: Mr.Vivek Ganesh, Advocate

For Respondent: Mr.B.Jithender, CGSC.

For Respondent: Ms.Ch.Anantha Lakshmi, STA from Official Liquidator.

Heard on:26.08.2021.



[PER-BENCH]

1. The present joint Company Petition is filed under Section 230 to 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 praying for the sanction of Scheme of Arrangement between Vaidehi Avenues Limited(the **"Transferor Company No.1"**), Aster Rail Private Limited (the **"Transferor Company No.2"**) and NCC Limited (the **"Transferee Company"**) and their respective shareholders (the **"Scheme"**)
2. The Registered Offices of the Petitioner Companies are situated in the State of Telangana and therefore, they are within the jurisdiction of this Tribunal. Copies of Memorandum of Association and Articles of

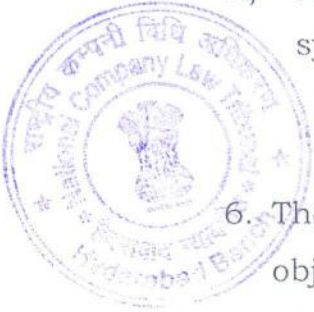
Association of Transferor Company No.1, Transferor Company No.2 and Transferee Company are annexed to the petition at Page No's 86-193B.

3. It has been submitted that the Petitioner Companies had jointly filed an application CA (CAA) No. 223/230/HDB/2020 whereunder this Tribunal has by order dated 15.12.2020 dispensed with the conducting of meetings of shareholders and creditors of Transferor Company No.1 and Transferor Company No.2 and declared it not mandatory for Transferee Company to hold any meeting either with its creditors or members. Copy of Order of NCLT in CA(CAA) No.223/230/HDB/2018 dated 15.12.2020 is annexed to the petition at page no's 707-718.
4. The Petitioner Companies then filed the present Petition before this Tribunal seeking sanction of the Scheme with appointed date as 1st April 2019. This Tribunal vide order dated 25.01.2021 ordered notices to Registrar of Companies and other statutory authorities and directed to effect news paper publication. Pursuant to the Order, notices dated 01.02.2021 to the Registrar of Companies, Hyderabad; the Regional Director, South Eastern Region, Hyderabad; Official Liquidator for State of Telangana; Income Tax Officer, Ward-17(1), Hyderabad; Deputy Commissioner of Income Tax, Circle-1(1), Hyderabad, Deputy Commissioner of Income Tax, Circle-5(1), Hyderabad and Corporate Finance Department, Securities Exchange Board of India were issued. It has been submitted that the Petitioner Companies published notices of hearing of Petition in English Newspaper i.e. Business Standard and Telugu Newspaper i.e. Nava Telangana on 30.01.2021. The proof of publication and proof of service of notice of hearing was filed by an Affidavit dated 11.02.2021.
5. It is submitted that the Scheme involves the amalgamation of two wholly owned subsidiaries of the NCC Limited, namely Vaidehi Avenues Limited the Transferor Company No.1 and Aster Rail Private Limited, the Transferor Company No.2 with its holding company, NCC Limited, the Transferee Company. The Scheme is said to benefit the respective



Transferor Companies, the Transferee Company and their respective shareholders and inter alia is expected to have the following benefits:

- i) enable consolidation of businesses under one roof and will result in a simplified corporate structure and direct control of assets of the Transferor Companies in the hands of the Transferee Company;
- ii) facilitate focused strategic leadership and top management attention so as to integrate the business synergies and reap the benefits of consolidation;
- iii) reduce the number of legal entities in the group thereby reducing managerial overlaps which are necessarily involved in running multiple entities and help channelize synergies;
- iv) enable optimum utilization of the available resources, broadening the customer base besides enabling a focused business approach for achieving optimization;
- v) enable achievement of higher long-term financial returns and inculcation of greater financial strength and flexibility than could be achieved by the companies individually;
- vi) result in greater rationalization and help reduce duplication of systems and processes.



6. The Regional Director has vide his report dated 7th April 2021, has not objected to the proposed Scheme but has made certain observations. The Petitioner Companies have filed reply Affidavit dated 25.05.2021, in response to the observations made by the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad whereunder the Petitioner Company gave undertaking to appropriately comply with the observations made therein. The details are given below.

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Observation of Regional Director	Reply of the Petitioner Companies by way of Affidavit dated 25.05.2021
PARA 3 (a) TO (c) – PAGE 2 – Hon'ble Tribunal may please to direct the Petitioner Companies to preserve the books, comply with statutory laws, file Inc-28 with the Registrar of Companies.	The Petitioner [Transferee Company] undertakes to comply with all the Applicable provisions and rules under the Companies Act, 2013.
<u>Para.3(d)</u> Transferor Company No.1 and Transferee Company have engaged in similar business but Transferor Company No.2 is in a different business. As per clause No.13(1) of the Scheme the main objects stand altered to the effect that the objects of Transferor Company No.2 will also be added as clause No.III(A) (14) & (15) in MOA of the Transferee Company. Hon'ble Tribunal may be pleased to direct the Petitioner Transferee Company to file MGT-14 for the purpose of the said amendment and obtain certificate from Registrar of Companies in compliance with section 13(9) of the Companies Act, 2013, before the scheme is allowed.	The Petitioner/Transferee Company submitted in reply to the observation made in Para 3(d) and Para 6 that "the proposed Scheme in Clause 13 provides for amendment to the objects clause of the Memorandum of Association of the Transferee Company to include after Clause III (A) (13), sub clause(s) 14 and 15 (as specified therein) in order to enable the Transferee Company to carry on the activities currently being carried on by the Transferor Company No. and further submitted that the proposed Scheme provides for the relevant consents/approvals under Section 13 of the Companies Act, 2013 for amendment of the memorandum of association of the Transferee Company for such afore referred to insertion in its main objects clause to be deemed upon the Scheme becoming effective. In this connection the Petitioner Company undertake to file MGT-14 for the purpose of the aforesaid amendment to main objects clause of its memorandum of association."
<u>Para.3(e)</u> As per clause 15 of the Scheme the authorised capital of the Transferee Company shall stand increased by that of Transferor Companies without any further deed.	The Petitioner/Transferee Company undertakes to pay balance fee/stamp duty if any payable in the increase of its authorised share capital upon the Scheme becoming effective, after setting off fee/stamp duty already paid by the



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Hon'ble Tribunal may be pleased to direct to furnish an undertaking from the Petitioner Transferee Company that they will pay the balance fee/stamp duty if any payable on the increase after setting of fee/stamp duty already paid by the Transferor Companies as per Section 232(3)(h) (B) of the Companies Act, 2013.	Transferor Companies pursuant to Section 232(3)(i) of the Companies Act, 2013. It is further submitted that situation envisaged under Section 232(3)(h)(B) does not apply to this instant case as the Transferor Companies are unlisted/private companies and the Transferee Company is a listed company and Transferor Companies are wholly owned subsidiaries of the Transferee Company.
Para.3(f) Transferee Company is a listed company. Hon'ble Tribunal may be pleased to state whether the Petitioner Transferee Company has complied with the provisions of SEBI, BSE & NSE, if so to furnish the said documents, duly certified.	The Petitioner/ Transferee Company submitted that "the proposed Scheme being a Scheme of Arrangement involving amalgamation of two wholly owned subsidiaries with their holding company, by virtue of Regulation 37(6) of the Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (the "SEBI (LODR)"), the Transferee Company is not required to obtain an Observation/No Objection letter from Stock Exchanges before moving the present Company Petition. Pursuant to Regulation 30 and Regulation 37 of SEBI (LODR), as amended, the Transferee Company has intimated the stock exchanges about the approval accorded by its Board of Directors to the Scheme of Arrangement and as required filed the draft Scheme of Arrangement with both the National Stock Exchange of India Limited and the BSE Limited. It is further submitted that the Transferee Company has served on the Securities Exchange Board of India vide notice dated 01.02.2021, pursuant to Order of this Hon'ble Tribunal dated 25th January 2021. The Transferee Company has complied with the provisions of SEBI, BSE and NSE as applicable with regard to the Scheme of Arrangement." The Petitioner /Transferee Company has submitted a certified true copy of acknowledgement received from National Stock Exchange of India Limited and the



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	BSE Limited in respect of filing of draft Scheme under Regulation 37 of SEBI (LODR) 2015 as Exhibit XII to the Company Petition.
<u>Para 5</u> As per clause 1.1(ii) of Part-I of the Scheme appointed date is mentioned as 01/04/2019. As the appointed date is more than two years old, Hon'ble Tribunal may be pleased to direct the Petitioner/ Transferee Company to change the appointed date from 01.04.2019 to 01.04.2020.	The Petitioner/Transferee Company submitted that "as per Clause 1.1(ii) of the proposed Scheme the Appointed Date means "1st April, 2019 or such other dates as may be fixed by the NCLT" and it was submitted that by virtue of the provision in the Scheme, the Hon'ble Tribunal may direct the Appointed Date for the Scheme to be 1st April 2019 or such other date as it deems fit. As such there will not be a need to amend the Scheme."
<u>Para.6</u> Objects of Transferor Company No.2 are entirely different from that of the Transferee Company. Further, the objects of the Transferor Co. No.2 are into Railways and Income from work contract receipts (i.e. Revenue from Operations) as at 31.03.2019 is Rs.3000.12 Lakhs. Hon'ble Tribunal may be pleased to direct the Petitioner Transferor Company No.2 to state whether any approval of Ministry of Railways for merging of Transferor Company No.2 with the Transferee Company is required & prior intimation if any is to be obtained from the said authorities, be furnished by way of affidavit from the	The Petitioner/Transferee Company submitted that "the Transferor Company 2 is presently engaged in the business of designing, manufacturing, erection, installation, repairing and servicing of railway signalling, telecommunication equipment and other equipments related to railways and train control systems. The Transferor Company No.2 is not engaged in the business of operating railway lines or carriages for transportation of passengers, goods. The Transferor Company No.2 is not regulated by the Ministry of Railways or by the Railway Board and does not require any licence from the Ministry of Railways or by the Railway Board for its operations. Therefore there is no requirement of any approval of Ministry of Railways or any notice to be issued as it is not sectoral regulator which is likely to be affected by the arrangement contained in the proposed Scheme."



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Directors of the Petitioner Transferor Co. No.2 before the scheme is allowed. Also as per clause No.13(1) of the scheme since the main objects stand altered to the effect that the objects of Transferor Company No.2 will also be added, the Hon'ble Tribunal may be pleased to direct the Petitioner Company to file MGT-14 with Registrar of Companies for the purpose of the said amendment.

Para.7

Petitioner Company at para 20. of its reply dated 09.03.2021 has stated that valuation report is not applicable and reason for not applicability has not been stated by the Petitioner Companies. However, as per Section 232 (2)(d) of the Companies Act, 2013 and Rule 232(3)(h) (b) of the Companies Act, 2013 and as per Rules 6 (3)(c) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Valuation Report by Registered Valuer is required to be furnished by the Company in case of amalgamations. Hon'ble, Tribunal may be pleased to

The Petitioner/ Transferee Company submitted that "since the Transferor Companies being wholly owned subsidiaries of the Transferee Company are being amalgamated with the Transferee Company, there would be no issue of shares as consideration pursuant to the amalgamation. The entire issued and paid up share capital of the respective Transferor Companies shall stand cancelled upon the Scheme being effective as provided in Clause 14 of the Scheme of Arrangement. Therefore, there is no requirement for valuation of shares of the Transferor Companies and the Transferee Company to arrive at a share exchange ratio. It is further submitted that Section 232(2)(d) by its use of words 'if any' provides for the Hon'ble Tribunal to take into account report with regard to valuation only where there is a requirement to issue shares in exchange, and similarly Rule 6(3)(v)(c) (which provision is not

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direct the Petitioner Companies to submit their views/comments for the same with supporting documents, duly certified, before the scheme is allowed.	applicable in the present situation as the meetings have been dispensed with for Transferor Companies and held as not mandatory for the Transferee Company by Order dated 15.12.2020) by using words '(if applicable)' affirms that the valuation is not mandatory".
<u>Para.8</u> As per Annexure 11 to the reply of the Transferee Company dated 09.03.2021, it is stated that Banks, Foreigners, NRIs, NBFCs, Body Corporates, Mutual Funds, Indian Financial Institutions are some of the Shareholders. However, Transferee Company has not stated whether any approval/has been obtained from FEMA/RBI. Hon'ble Tribunal may be pleased to direct the Petitioner Transferee Company to state whether any approval has been obtained from FEMA/RB	The Petitioner/Transferee Company has submitted that upon the Scheme being effective there would be no change in the shareholding of the Transferee Company as no issue of shares is contemplated under the Scheme, therefore there is no change in foreign investments or in institutional investments in the Transferee Company. It is further submitted that the Transferee Company is not acquiring any liability of the Transferor Companies that are owed to sources outside India. Therefore, in view of the Scheme not having any impact under FEMA and there would be no person affected by the arrangement, there is no requirement on the Transferee Company to issue notice to the RBI or to obtain approval from RBI or under FEMA
<u>Para 9&10</u> The Regional Director in the said report has indicated that no report in the matter has been received by him from the Commissioner of Income Tax, Hyderabad (in para.9) or SEBI, BSE & NSE (in Para10).	
<u>Para.11</u> As per the Balance Sheet as at 31.03.2019 of Transferor Company No.1 i.e. Vaidehi Avenues Limited, the paid up capital of the company is Rs. 5,16,34,000/- and there is no Company Secretary, thereby violated the provisions of Section	The Petitioner/Transferor Company No.1 has submitted its reply as follows: "... (i) Since the Transferor Company No.1 is a public company, a requirement to have appointed wholtime key managerial personnel pursuant to Section 203 read with Rule 8 of Companies (Appointment & Remuneration of Managerial Personnel) Rules 2014, will accrue

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203 of the Companies Act, 2013. Hon'ble Tribunal may be pleased to direct the Petitioner Company to file adjudication application under section 454 of the Companies Act, 2013 for violation of Section 203 of the Companies Act, 2013 with the jurisdictional Registrar of Companies, before, before the scheme is allowed.

only if it satisfies the conditions of having paid up share capital of Rupees Ten Crore or more. In the Instant case, since the paid up capital of Transferor Company No.1 is only Rs. 5, 16, 34,220 which is less than the minimum requirement of Rs. Ten Crore, though the Transferor Company No.1 comes within the ambit of 'other public company' for the purposes of Rule 8 of the Companies (Appointment & Remuneration of Managerial Personnel) Rules 2014, requirements under Section 203 to have appointed wholtime key managerial personnel does not apply.

(ii) Rule 8A of the Companies (Appointment & Remuneration of Managerial Personnel) Rules 2014, as it stood before its amendment with effect from 1st April 2020 brought within its ambit public companies that are not covered under Rule 8 of the Companies (Appointment & Remuneration of Managerial Personnel) Rules 2014. Hence in compliance of requirement to have appointed a wholtime company secretary under the Rule 8A of Companies (Appointment & Remuneration of Managerial Personnel) Rules 2014, the Petitioner Company had appointed a wholtime company secretary who held office until his resignation with effect from the closing hours of 12th February 2020. That pursuant to sub-section (4) of Section 203 of the Companies Act, 2013, a vacancy in appointed wholtime company secretary of a company could be filled up by it any time within six months from the date of such vacancy.

(iii) that applicable from financial year starting on or after 1st April 2020, the Rule 8A of the Companies (Appointment & Remuneration of Managerial Personnel) Rules 2014 stands amended by Companies (Appointment and Remuneration of



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	Managerial Personnel) Amendment Rules, 2020 to the effect that a private company having paid up share capital of Rupees Ten Crore or more is required to appoint a wholetime company secretary. Accordingly with effect from 1st April 2020, the a public company which is having a paid up capital of less than Rupees Ten Crores need not appoint a wholetime company secretary. In the light of above change in law, which came into effect within the permitted six months for filling up vacancy in office of company secretary by the Petitioner Company, the Petitioner company is not required to have appointed a wholetime company secretary
Para.12 As per para 12 of the Order of the Hon'ble NCLT (HB) dated 15.12.2020 has stated that the applicant companies aver that since the scheme does not envisage an arrangement or compromise with the shareholders or creditors of the Transferee Company, the Transferee Company should not be required to convene meetings of its shareholders and creditors for obtaining their consents for the scheme. On the aspect the Applicant Companies relied on the Hon'ble NCLAT in Company Appeal (AT) No.180 of 2019 in the matter of DLF Phase-IV Commercial Developers Limited and Ors. read with the order passed by Hon'ble NCLT, Chandigarh Bench, in CA 741 of 2019	The Petitioner/ Transferee Company submitted that "this Hon'ble Tribunal has by a speaking Order, after considering a plethora of caselaws including ruling by Hon'ble NCLAT in Company Appeal (AT)No.180 of 2019 in the matter of DLF Phase-IV Commercial Developers Ltd &Ors, and of Hon'ble NCLT in the matters of - Housing Development Finance Corporation Ltd., In re (CSA.No.243 of 2017; - Godrej Consumer Products Limited (CSA.No.915 of 2017) - Mahindra CIE Automotive Limited; (CA.(CAA).No.1335/MD/2018) - Godrej Properties Limited; (CSA.No.1019 of 2017) held it to be not mandatory for the Transferee Company to hold meetings either with creditors or members where wholly owned subsidiaries are merging with their holding company. It is further submitted that the Hon'ble NCLT in aforementioned DLF Phase-IV Commercial Developers Ltd & Ors has observed that "following of the judicial precedent and observing the judicial view



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dated 21.11.2020, wherein the dispensation was allowed and referred to various other cases. Whereas, from the website of the Hon'ble NCLT, it is observed that the matter relating to DLF Phase-IV Commercial Developers Limited and Ors in Hon'ble NCLT, Chandigarh Bench is adjourned to 07.05.2021. Copy of the same as obtained from NCLT website is enclosed for ready reference. Further some of the matters referred are Private Limited Companies and some matters referred are not pertaining to the orders of Hon'ble NCLT. However, Hon'ble Tribunal may be pleased to pass necessary directions as deemed fit and proper.	propounded by a Coordinate Bench in compliance is a matter of judicial discipline and the only course open to Coordinate Bench of equal strength taking a different view is to refer the matter to a large Bench. This is the law of the land declared by the Hon'ble Apex Court and has to be observed and adhered to strictly.” It is also submitted that the decisions of Coordinate Benches in the cited matters of (i) to (iv) relied on by the Petitioner Company in the company application involves transferee companies that are listed public companies. Further, this Hon'ble Tribunal has by a speaking Order, has allowed a similar application in CA (CAA) No.57/230/HDB/2020 in the matter of Orient Software Development and Training Company Pvt Ltd & Orient Backswan Pvt Ltd.
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Official Liquidator's Report:

7. The Official Liquidator has filed his report, OLR NO.18/2021 dated 28.05.2021. Official Liquidator is of the opinion that the affairs of the petitioner/transferor Company appears to have not been conducted in a manner prejudicial to the interests of the members or to public interest subject to the observation in para no.13 of the report. The observations pointed out and the comments offered by the Petitioner Company on the report of Official Liquidator vide affidavit dated 27.07.2021 are mentioned against each.

OBSERVATIONS - OL REPORT 28.05.2021	REPLY AFFIDAVIT 27.07.2021
PARA 13(a) Hon'ble Tribunal may be pleased to direct the	Petitioner Companies have severally given their respective undertaking that there would be no retrenchment of any of

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petitioner Company to submit an undertaking that there would not be any retrenchment of any employee who will be in service as on appointed date i.e 01.04.2019.	the permanent employees after the Appointed Date but prior to the Effective Date.
PARA 13(b) In Para.13(b) of the report of the Official Liquidator it has been pointed out that there is an increase with respect to the issued subscribed and paid up capital of the transferee company from the position as at 31-03-2019 and required the Petitioner Companies to suitably incorporate the changes occurred in the capital structure thereafter by amending the Clause 2 of Part-I of the Scheme.	The Petitioner Companies in their Affidavits submitted that the Scheme of Arrangement was considered and approved by the Board of Directors of the respective Transferor Companies and of the Transferee Company on 28th December 2019 which reflected amongst other things, the status with respect to the 'Authorised Capital' and 'Issued, Subscribed and Paid up capital of the Transferee Company as at 31st March 2019 and immediately prior to the date of approval by the respective Board of directors of the participating Companies to the Scheme of Arrangement. The Transferee Company further submitted that it issued and allotted 9,200,000 equity shares of Rs. 2/- each on 27th January, 2020 which is subsequent to the approval of the Scheme by the respective Board of Directors on 28th December, 2019. Therefore the Scheme of Arrangement to the extent it reflects that there is no change in the status of the Issued, Subscribed and Paid up capital of the Transferee Company after 31st March 2019 only reflects such position as on a date prior to the respective Board of directors having approved the Scheme 28th December 2019 and is factually correct and needs no amendment. Further, the captioned joint Company Petition has reflected clearly that the issued subscribed and paid up capital after 1st April 2019 stood increased to Rs 121,96,93,176 divided into 60,98,46,588 equity shares of Rs 2/- each consequent upon conversion of warrants issued to the promoters and therefore the joint Company Petition also reflects the factual position correctly and therefore needs no amendment as sought by the Learned Official Liquidator.



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PARA 13(c) Official Liquidator has submitted that the OL has not received notice in format of CAA-3 along with CAA-2 and statutory information /documents required to be attached to CAA-2 and hence prayed to submit additional report upon receipt of the same from the Transferor Companies and Transferee Company.	It has been submitted that, under sub section (1) of Section 232, it has been stated that the provisions of sub section (3) to (6) of Section 230 shall apply mutatis mutandis only in the event that the Tribunal orders a meeting of the creditors or members on an application made, to be called held and conducted in such manner as Tribunal may direct. The necessary corollary would mean that in the absence of any direction to hold a meeting of the members or creditors and in the absence of any direction by the Tribunal while holding that there is no mandatory requirement to convene such meeting, to issue notice to statutory authorities under Section 230(5) of the Companies Act, 2013, the applicability of sub section (5) of Section 230, should not arise. The Petitioner Companies have further submitted that therefore, in the Company Application C.A(CAA)No.223/230/HDB/2020 since the Tribunal has not directed to issue any notice to the statutory authorities when it held that it is not mandatory to convene the meeting of members and creditors of the Transferee Company and as such the Transferee Company has not conducted the meeting of its members or creditors, a requirement to give notices in Form CAA-3 and Form CAA-2 does not arise in this instance.
PARA 13(d) Official Liquidator has made an elaborate submission on why the present Petition should not be entertained as the proposed Scheme does not involve an arrangement with shareholders and creditors. The Official Liquidator has also submitted that if there be finding to the effect that	In response, the Petitioner Companies have submitted that there is arrangement with shareholders with respect to Transferor Companies and that there is no arrangement with shareholders or creditors of the Transferee Company. As submitted by the Petitioner Companies, this Bench has in CA(CAA)No.223/230/HDB/2020 on the basis of facts and circumstances of the case and in the light of case laws while dispensing with the convening of meetings of shareholders and creditors of the Transferor Companies has also held



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the Scheme does involve arrangement with Shareholders, the Hon'ble Tribunal should direct the meetings of shareholders and in support of the argument for directing a meeting, relies on order passed in *in Re. L&T Valves Limited* [C.A.No.61 of 2017] by Mumbai Bench.

that it is not mandatory for the Transferee Company to hold any meeting either with its creditors or members. The Bench considered the following declaration by the Applicant Companies in the aforesaid Company Application:

"9.1 It is stated that the proposed Scheme being an amalgamation of two wholly owned subsidiaries into its holding company, no shares would be issued or allotted as consideration for the amalgamation; as such the proposed Scheme does not result in any dilution in shareholding of its shareholders including public shareholders and that the shareholding and other rights of the members of the Transferee Company will remain unaffected since the Transferee Company shall continue to subsist with no new shares being issued and with no change in the share capital structure. The Applicant Companies further declare that the Scheme does not contemplate any compromise or arrangement with the creditors of the Transferee Company. The Creditors of the Transferee Company will not be affected by the sanction of the Scheme.

In response to the reliance placed by the Official Liquidator on the Order dated 13.02.2017 of the Hon'ble NCLT Mumbai Bench in *In Re. L&T Valves Limited*, the Petitioner Company has submitted that the decisions of coordinate Benches in *Housing Development Finance Corporation Ltd.*, *In re*, [CSA.No.243 of 2017], *Godrej Consumer Products Limited* in CSA No.915 of 2017, *Mumbai. Mahindra CIE Automotive Limited*, in C.A.(C.A.A)/1335/MB/2018, *Godrej Properties Limited* in CSA No. 1019 of 2017 and *Ness Technologies (India) Pvt Ltd.*, in C.A.(CAA) No.2629/MB/2019. and of this Bench in the matter of *Orient Software (supra)* are all later in time to the order in C.A.No.61 of 2017 in the matter of *L&T Valves Limited*. In CSA. No. 243 of 2017 in the matter of *Housing Development Finance Corporation Ltd.* vide Order dated 04.09.2017, the Hon'ble Mumbai Bench had occasion to refer to



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	the order in C.A. No.61 of 2017 (in Re. L&T Valves Limited) dated 13-02-2017 passed by the Mumbai Bench earlier and has chosen to distinguish the case before it with that of the L&T Valves Limited and ordered that no meeting of the members or creditors of the Transferee company is called for in the case of wholly owned subsidiaries merging with their holding company.
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8. Considering the facts and circumstances of the case and on perusal of the Scheme, the documents produced on record and the undertakings given by the Petitioner Companies, the Scheme of Arrangement between Vaidehi Avenues Limited (Transferor Company No.1) and Aster Rail Private Limited (Transferor Company No.2) and NCC Limited (Transferee Company) and their respective shareholders, appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law.

9. OBSERVATION



We have heard the Learned Counsel appearing for the Petitioner Companies and perused the material papers on record. As regards to the observations pointed out by the Regional Director and compliance filed by the petitioner company, we are convinced with the explanation given by the petitioners. The Official liquidator had also raised certain observation for which the Petitioner Companies filed its reply by way of Affidavit. After hearing the Counsel for the Petitioner Companies and considering the material on record, we are of the view the scheme is not opposed to public interest and the proposed Scheme is in the interests of the Transferor Company, the Transferee Company and their respective shareholders, employees, creditors and all persons concerned. Hence the scheme can be approved. The Bench as per the provisions of the Scheme in sub-clause 1.1(ii) of Clause 1 hereby

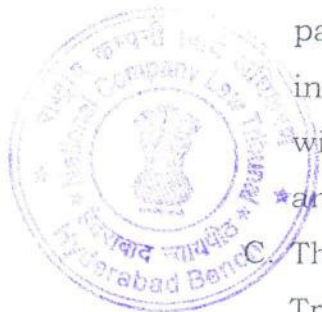
decides on the Appointed Date to be 1st April 2020 instead of 1st April 2019.

10. All the statutory compliances have been made under Section 230 to 232 of the Companies Act, 2013. Hence ordered.

ORDER

After hearing the Counsel for the Petitioner Companies and after considering the material on record, this Tribunal passed the following order:

- A. The Scheme of Amalgamation as consented by the Equity Shareholders, Secured, Unsecured and Trade Creditors of the petitioner companies, is sanctioned subject to modification of appointed date as 1st April 2020 instead of 1st April 2019 and confirmed so as to be binding on all the members, creditors, employees, concerned statutory and regulatory authorities and all other stakeholders of the Petitioner Companies.
- B. While Approving the Scheme, we made it clear that this order should not be construed as an order in anyway granting exemption from payment of Stamp Duty, taxes or any other charges, if any, payable in accordance with law or in respect of any permission/compliance with any other requirement which may be specially required under any law.
- C. The whole of the assets, property, rights and Liabilities of the Transferor Company shall be transferred without the requirement of any further act or deed to the Petitioner/Transferee Company.
- D. Direct the Petitioner companies to comply with the observations pointed out by the Regional Director and Official Liquidator, if any. They are also directed to comply with all the undertakings given as indicated in foregoing paragraphs 6 and 7 respectively.
- E. Directed the Petitioner Companies to preserve its books of accounts and papers and records and shall not be disposed of without the prior



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permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.

- F. Directed the Petitioner Companies to ensure statutory compliance of all applicable laws and also on sanctioning of the present Scheme the Petitioner Companies shall not be absolved for any of its statutory liability in any manner.
- G. Directed the Petitioner Companies involved in the Scheme to comply with Rule 17 (2) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2013. The Petitioner Companies within 30 days after the date of receipt of certified copy of the order, shall cause certified copy to be delivered in Form INC-28 to the Registrar of Companies concerned for registration and on such certified copy being delivered, Registrar of Companies concerned shall take all necessary consequential action in respect of the Petitioner Companies.
- H. All the legal proceedings pending by or against the Transferor Company shall be continued by or against the Transferee Company.
- I. The tax implications, if any, arising out of the scheme is subject to final decision of Concerned Tax Authorities and the decision of the Concerned Tax Authorities shall be binding on the Transferee Company.
- J. The sanction of the Scheme by this Tribunal shall not forbid the revenue authority from taking appropriate recourse for recovering the existing and previous tax liabilities of the Transferor and Transferee Companies.
- K. Directed to Transferee Company to comply with the provisions of Section 2 (41) of the Companies Act, 2013.
- L. The Transferor Companies shall be dissolved without going through the process of winding up.
- M. The Petitioner Companies shall until the completion of the Scheme of Amalgamation, file a statement in such form and within such time as prescribed with the Registrar every year duly certified by a Chartered Accountant or a Cost Accountant or a Company Secretary to the effect that the Scheme of Amalgamation is being complied with in



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accordance with the orders of the Tribunal as required under Section 232 (7) of the Companies Act, 2013.

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


DR. BINOD KUMAR SINHA

MEMBER TECHNICAL




MADAN B. GOSAVI

MEMBER JUDICIAL


Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench.

17/09/2021

प्रमाणित प्रति
CERTIFIED TRUE COPY

केस संख्या (P.C.A.) No. 5/230/HDB/2021
CASE NUMBER
निर्णय का तारीख 26/8/2021
DATE OF JUDGEMENT
प्रति तैयार किया गया तारीख 17/9/2021
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