IN THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

COMPANY APPLICATION NO. (CAA) 27(PB)/2026

(Under Section 230-232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016)

IN THE MATTER OF:

NCJ INFRASTRUCTURE PRIVATE LIMITED

... APPLICANT NO. 1/AMALGAMATING COMPANY

AND

ANIKET TIE UP PRIVATE LIMITED

... APPLICANT NO. 2/AMALGAMATED COMPANY

AND THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Order reserved on: 14.05.2026

Order Pronounced on: 21.05.2026

CORAM:

JUSTICE ANUPINDER SINGH GREWAL
HON'BLE PRESIDENT

SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Rajeev Kumar, Mr. Anukanksha Singh, Advs.

ORDER

1. This is a first motion application jointly filed by NCJ Infrastructure Private Limited i.e., Applicant No. 1 Company/ Amalgamating Company with Aniket Tie Up Private Limited i.e., Applicant No. 2 Company/Amalgamated Company under Sections 230 and 232 of the Companies Act, 2013 read with the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 seeking approval of this Tribunal for the Scheme of Amalgamation (**Scheme**) in respect of the amalgamation of aforementioned Companies (hereinafter referred to as **Applicant Companies**).

2. The prayers made in the application are as follows:
   (1) Appropriate order dispensing with requirement for convening the meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Amalgamating Company and Amalgamated Company and also to dispense with the requirement of issue and publication of notices for the same;
   (2) Appropriate orders/ directions for serving a notice to the Regional Director, Registrar of Companies, Official Liquidator, jurisdictional Assessing Officer of the Applicant Companies
   (3) Issuing direction for permitting the filing of application, petition, and other documents as may be required, for the purpose of sanctioning the proposed Scheme of Amalgamation between NCJ Infrastructure Private Limited and Aniket tie Up Private Limited and their respective Shareholders and Creditors.
   (4) Passing such other and further orders as are deemed necessary in the facts and circumstances of the case.

3. It is represented that the registered office of all the Applicant Companies is situated in New Delhi, and therefore, the subject matter of the said application falls within the jurisdiction of this Adjudicating Authority

Brief Facts of the Case as stated in the application:

4. The Applicant No.1/Amalgamating Company, i.e. NCJ Infrastructure Private Limited, was incorporated on 17.07.2002 under the Companies Act, 1956, under the jurisdiction of the Registrar of Companies, Delhi & Haryana, bearing CIN: U45203DL2002PTCI16224. The registered office of the Company is situated at Basement Floor, D-5/7, Vasant Vihar, New Delhi, India, 110057. Its main objectives are to carry on the business of infrastructure and real estate, including construction, development and maintenance of roads, highways, buildings, townships, commercial complexes, hospitality, tourism projects and other related facilities. The share capital structure of the Applicant No. 1/ Amalgamating Company as on 31.03.2025 is as follows:

Particulars	**(Amount in INR)**
Authorised Share Capital	
16,50,000 Equity shares of INR 10 each	1,65,00,000
Total	**1,65,00,000**
Issued, Subscribed and Paid-up Share Capital	
15,27,500 shares of INR 10 each	1,52,75,000
Total	**1,52,75,000**

Subsequent to March 31, 2025, and till the date of the Scheme being approved by the Board of

5. The Applicant No.2/Amalgamated Company, Aniket Tie Up Private Limited, bearing CIN: U51909UP2010PTC103525, was incorporated on 15.01.2010 under the Companies Act, 1956. The registered office of the Company is situated at Basement Floor, D-5/7, Vasant Vihar, New Delhi-110057. The Registered office of the Company was changed from West Bengal to Delhi. Its main objects are to carry on the business of acquiring, taking over, amalgamating, managing and operating businesses as going concerns together with their assets, liabilities, goodwill, rights and other business interests. The share capital structure of the Applicant No. 2/ Amalgamated Company is as follows:

Particulars	(Amount in INR)
Authorised Share Capital	
80,58,000 Equity shares of INR 10 each	8,05,80,000
Total	**8,05,80,000**
Issued, Subscribed and Paid-up Share Capital	

16,700 shares of INR 10 each	1,67,000
Total	**1,67,000**

6. The Applicant companies have furnished the following documents:
   a. Copy of Memorandum and Articles of Association, of Applicant No.1 Company/ Amalgamating Company (**Annexure A2**);
   b. Copy of list of directors of Applicant No.1 Company/ Amalgamating Company & Copy of Board Resolution dated 30.03.2026 approving the Scheme (**Annexures A9, & A4**);
   c. Copy of List of Shareholders of Applicant No.1 Company / Amalgamating Company along with their consent letters (**Annexures A5, A6**)
   d. The certificate of a Chartered Accountant certifying that there are no secured and unsecured creditors of Applicant No.1 Company / Amalgamating Company as on 30.09.2025 (**Annexures A7 and A8**);
   e. Copy of the latest Audited Accounts of Applicant No.1 Company / Amalgamating Company as on 31.03.2025, along with provisional accounts for the six months ending 31.03.2026 (**Annexure A3**);
   f. Copy of Memorandum and Articles of Association, of Applicant No.2 Company / Amalgamated Company (**Annexure B1**);
   g. Copy of list of directors of Applicant No.2 Company / Amalgamated Company & Copy of Board Resolution dated 30.03.2026 approving the Scheme (**Annexures B8, & B3**);
   h. Copy of List of Shareholders of Applicant No.2 Company / Amalgamated Company along with their consent letters (**Annexures B4, B5**);

i. The certificate of a Chartered Accountant certifying that there are no secured and unsecured creditors of Applicant No.2 Company / Amalgamated Company on 30.09.2025; (**Annexure B6 & B7**);

j. Copy of the latest Audited Accounts of Applicant No.2 Company / Amalgamated Company as on 31.03.2025, along with provisional accounts for the six months ending 31.03.2026 (**Annexure B2**);

k. Copy of the Scheme as approved (**Annexure A1**);

l. Share entitlement report dated 12th March, 2026 and copy of the certificate of the Statutory Auditors of the Applicant Companies certifying that the present Scheme is in conformity with the Accounting Standards, Generally Accepted Accounting Principles in India (Indian GAAP) and is in conformity with Section 133 of the Companies Act, 2013 (**Annexures C2 & C1**); and

m. Affidavit in relation to compliance with the provisions of Section 230(2) of the Companies Act, 2013, on the part of all the Applicant Companies that there are no investigations or proceedings pending against the Applicant Companies, and that the Scheme is not a corporate debt restructuring scheme and that the Scheme does not involve reduction of share capital (**Annexures A10 & B9**).

n. Copy of the Affidavits of the authorized signatories of the Amalgamating and the Amalgamated Company with respect to sectoral regulators (**Annexures B10 & A11**).

7. It is further noted that the Board of Directors of both the Applicant Companies, at their respective meetings held on 30.03.2026, have approved the proposed Scheme. Copies of the Board Resolutions passed by the Applicant Companies are on record and annexed to the main application as **Annexure Nos. A4 & B3** respectively.

8. The Appointed Date of the Scheme is 01.04.2026, as mentioned in the scheme. The Effective Date as mentioned in the scheme is the last of the dates on which all the conditions specified in Clause 23 of the Scheme are complied with.

Perusal of the 1st Motion Application

9. The Applicant Companies have filed the true copy of the proposed Scheme, and the operative part of the scheme is as follows:

8. TRANSFER AND VESTING OF THE AMALGAMATING COMPANY

8.1 Upon the coming into effect of this Scheme and with effect from Appointed Date, the Amalgamating Company shall, pursuant to the provisions of Sections 230 to 232 of the Act and sanction of this Scheme by Tribunal and other applicable provisions of the law for the time being in force and without any further act, instrument or deed, stand transferred to and vested in or deemed to have been transferred to and vested in the Amalgamated Company, so as to become the assets and liabilities of the Amalgamated Company in accordance with Section 2(1B) of the IT Act.

8.2 Without prejudice to the generality of the above said Clause:

8.2.1 With effect from Appointed Date the assets, rights and properties of Amalgamating Company of whatsoever nature and wheresoever situated, of or belonging to or in the possession or control of Amalgamating Company, as on the Appointed Date including but not limited to computers and servers, computer software, furniture and fixtures, investments, office equipment, research and development equipment, laboratory equipment, electrical fittings, leasehold improvements, electrical installations, telephones, telex, facsimile, other communication facilities, any registrations, copyrights, trademarks, permits, approvals, all rights or title or interest in property(ies) by virtue of any court order or decree, contractual arrangement, allotment, grant, lease, possession or otherwise, memorandum of understandings, tenancy rights, hire purchase contracts, lending contracts, permissions, incentives, tax registrations, tax balances with government authorities, advance tax credit [including Goods and Services Tax credit, Service Tax credit, Minimum Alternate Tax credit], tax losses, unabsorbed depreciation, contracts, engagements, arrangements of all kinds, rights, titles, interests, benefits and advantages of whatsoever nature and wheresoever situate belonging to or in the ownership, power or possession and in the control of or vested in or granted in favour of or enjoyed by Amalgamating Company, industrial and other licenses, municipal and other statutory permissions, approvals including but not limited to right to use and avail electricity connections, water connections, telephone connections, facsimile connections, telexes, e-mail, internet, leased line connections and installations, all records, files, papers, computer programs, manuals, data, quotations, list of present and former vendors

and suppliers, and all other rights, title, lease, interest, contracts, consent, approvals or powers of every kind, nature and descriptions whatsoever, shall under the provisions of Sections 230 to 232 of the Act and any other applicable provisions of the Act, and pursuant to the order of NCLT sanctioning this Scheme and without further act, instrument or deed, but subject to the charges, if any affecting the same, as on the Effective Date be transferred to and / or deemed to be transferred to and vested in the Amalgamated Company, so as to become the properties and assets of the Amalgamated Company.

8.2.2 With respect to such assets and properties of the Amalgamating Company as on the Effective Date, as are movable in nature and are capable of transfer by physical delivery or endorsement and delivery or novation and delivery, including cash in hand, the same shall be so transferred to the Amalgamated Company and deemed to have been handed over by physical delivery or by endorsement and delivery or novation and delivery, as the case may be, to the Amalgamated Company to the end and intent that the property and benefit therein passes to the Amalgamated Company with effect from the Appointed Date without requiring any deed or conveyance for transfer of the same.

8.2.3 In respect of the movable assets owned by the Amalgamating Company as on the Effective Date, other than those mentioned in Clause 9.2.1, 9.2.2 and 9.2.3 above, including actionable claims, sundry debtors, outstanding loans, investments, advances, whether recoverable in cash or kind or for value to be received and deposits, if any, with the local and other authorities, body corporate(s), clearing and forwarding agents, customers etc., the Amalgamating Company shall, if so required by the Amalgamated Company, and / or the Amalgamated Company may, issue notices or intimations in such form as Amalgamated Company may deem fit and proper, stating that pursuant to NCLT having sanctioned this Scheme, the debt, loan, advance or other asset, be paid or made good or held on account of Amalgamated Company, as the person entitled thereto, to the end and intent that the right of Amalgamating Company to recover or realize the same stands transferred to Amalgamated Company and that appropriate entries should be passed in their respective books to record the aforesaid changes.

8.2.4 All assets and properties which are acquired by Amalgamating Company on or after the Appointed Date but prior to the Effective Date shall be deemed to be and shall become the assets and properties of Amalgamated Company and shall under the provisions of Sections 230 to 232 and all other applicable provisions, if any, of the Act, without any further act, instrument or deed, be and stand transferred to and vested in or be deemed to

be transferred to and vested in Amalgamated Company upon the coming into effect of this Scheme pursuant to the provisions of Sections 230 to 232 of the Act and all other applicable provisions of the Act, provided however that no onerous asset shall have been acquired by Amalgamating Company after the Appointed Date without the prior written consent of Amalgamated Company.

8.3 With effect from the Appointed Date, debts, liabilities (including contingent liabilities), duties and obligations of every kind, nature and description of Amalgamating Company shall be transferred or be deemed to have been transferred to Amalgamated Company, to the extent they are outstanding on the Effective Date, without any further act, deed, matter or thing and the same shall be assumed by Amalgamated Company so as to become, on and from the Appointed Date, the liabilities and obligations of Amalgamated Company on the same terms and conditions as were applicable to Amalgamating Company. Amalgamated Company shall undertake to meet, discharge, and satisfy the same and further it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such debts, liabilities and obligations have arisen in order to give effect to the provisions of this clause.

8.4 Where any of the debt, liabilities (including contingent liabilities), duties and obligations of Amalgamating Company as on the Appointed Date, deemed to be transferred to Amalgamated Company, have been discharged by Amalgamating Company after the Appointed Date and prior to the Effective Date, such discharge shall be deemed to have been for and on account of Amalgamated Company, and all loans raised and used and all liabilities and obligations incurred by Amalgamating Company after the Appointed Date and prior to the Effective Date shall be deemed to have been raised, used or incurred for and on behalf of Amalgamated Company, and to the extent they are outstanding on the Effective Date, shall also without any further act, deed, matter or thing shall stand transferred to Amalgamated Company and shall become the liabilities and obligations of Amalgamated Company on same terms and conditions as were applicable to Amalgamating Company. Amalgamated Company shall undertake to meet, discharge, and satisfy the same and further it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such loans and liabilities have arisen in order to give effect to the provisions of this Clause.

8.5 The transfer and vesting of the assets of the Amalgamating Company to and in Amalgamated Company shall be subject to the mortgages and charges, if any, affecting the same, as and to the extent hereinafter provided:

8.5.1 All the existing securities, mortgages, charges, Encumbrances or liens, if any, as on the Appointed Date and created by the Amalgamating Company after the 'Appointed Date', over the assets or any part thereof transferred to Amalgamated Company by virtue of this Scheme and in so far as such Encumbrances secure or relate to liabilities of the Amalgamating Company, the same shall, after the Effective Date, continue to relate and attach to such assets or any part thereof to which they are related or attached prior to the Effective Date and as are transferred to Amalgamated Company and such Encumbrances shall not relate or attach to any of the other assets of Amalgamated Company.

8.5.2 The existing Encumbrances over the assets and properties of Amalgamated Company or any part thereof which relate to the liabilities and obligations of Amalgamated Company prior to the Effective Date shall continue to relate only to such assets and properties and shall not extend or attach to any of the assets and properties of the Amalgamating Company transferred to and vested in Amalgamated Company by virtue of this Scheme.

8.5.3 Any reference in any security documents or arrangements to which the Amalgamating Company and its assets and properties, shall be construed as a reference to Amalgamated Company and the assets and properties of the Amalgamating Company shall be transferred to Amalgamated Company by virtue of this Scheme. Without prejudice to the foregoing provisions, the Amalgamating Company and Amalgamated Company may execute any instruments or documents or do all the acts and deeds as may be considered appropriate, including the filing of necessary particulars and/or modification(s) of charge(s), with the Registrar of Companies to give formal effect to the above provisions, if required upon the coming into effect of this Scheme, Amalgamated Company alone shall be liable to perform all obligations in respect of the liabilities, which have been transferred to it in terms of the Scheme.

8.5.4 It is expressly provided that, save as herein provided, no other terms or conditions of the liabilities transferred to Amalgamated Company is modified by virtue of this Scheme except to the extent that such amendment is required statutorily or by necessary implication.

8.5.5 The provisions of this clause shall operate in accordance with the terms of the Scheme, notwithstanding anything to the contrary contained in any instrument, deed or writing or the terms of sanction or issue or any security document, all of which instruments, deeds or writings shall be deemed to stand modified and / or superseded by the foregoing provisions.

8.6 The Amalgamating Company may be entitled to various benefits under incentive schemes and policies under various laws, regulations, and notifications. Pursuant to this Scheme, the benefits under all of such schemes and policies shall be transferred to and vest in the Amalgamated Company and all benefits, entitlements and incentives of any nature whatsoever including tax concessions (not limited to income tax, tax deducted at source, tax holiday, special economic zone related benefits, fringe benefit tax, sales tax, value added tax, turnover tax, excise duty, service tax, customs, goods and service tax (GST), minimum alternate tax credit entitlement whether recognized or not, unutilized deposits or credits, benefits under the GST/ VAT / Sales Tax Law, VAT / Sales Tax set off, benefits of any unutilized CENVAT / Service Tax credits / input tax credit under goods and service tax etc. and others) and incentives shall be claimed by the Amalgamated Company and these shall relate back to the Appointed Date as if the Amalgamated Company was originally entitled to all benefits under such incentive scheme and policies, subject to continued compliance by the Amalgamated Company of all the terms and conditions subject to which the benefits under the incentive schemes and policies were made available to the Amalgamating Company. Further, privileges, liberties and advantages of whatsoever nature and wheresoever situate belonging to or in the ownership, power or possession and in the control of or vested in or granted in favour of or enjoyed by the Amalgamating Company or in connection with or relating to the Amalgamating Company and all other interests of whatsoever nature belonging to or in the ownership, power, possession or the control of or vested in or granted in favour of or held for the benefit of or enjoyed by the Amalgamating Company, shall stand transferred and vested with the Amalgamated Company. Without prejudice to the above, Amalgamated Company shall continue to be eligible for all the benefits/ incentives including tax incentives (as referred above in this clause) which it was earlier availing prior to coming into effect of the Scheme.

10. The purpose and rationale and benefits for the proposed Scheme of Amalgamation, as stated by the Applicant Companies, are as follows:

2. PURPOSE FOR THE SCHEME OF AMALGAMATION

This scheme of amalgamation **("Scheme" or "the Scheme" or "this Scheme")** provides for the amalgamation of the Amalgamating Company into and with the Amalgamated Company in the manner set out in the Scheme, in accordance with sections 230 to 232 and other applicable provisions of the Act (as defined hereunder) and the rules and regulations framed thereunder.

The Scheme is designed to, inter alia, amalgamate the Amalgamating Company (as defined hereinafter) with the Amalgamated Company (as defined hereinafter) with an objective of consolidating the Amalgamating Company and Amalgamated Company into a single entity which shall attain efficiencies, reduce the compliance cost and running cost of multiple entities and simplify the overall corporate structure.

The Board of Directors of the Amalgamating Company and Amalgamated Company are of the opinion that legal consolidation as envisaged in the Scheme shall be for the benefit of the shareholders and creditors. Accordingly, this Scheme seeks to achieve a legal consolidation of the Amalgamating Company with the Amalgamated Company with an Appointed Date (as defined hereinafter) of 1 April 2026.

3. RATIONALE FOR THE SCHEME OF AMALGAMATION

The Board of Directors of the Amalgamating Company and the Amalgamated Company, consider that the Scheme would benefit the respective companies and their respective stakeholders on account of the following reasons:

(a) Greater efficiency in cash management and access to cash flow generated by the combined business which can be deployed more efficiently in discharging the consolidated liabilities of the group;

(b) It will prevent duplication of expenses and overlapping of administrative responsibilities with respect to records, legal and regulatory compliances generally involved with running separate legal entities;

(c) Simplification of existing structure; and

(d) Alignment, coordination and streamlining of day-to-day management of all the companies.

The Scheme would, thus, have beneficial results for the Amalgamating Company and the Amalgamated Company, their shareholders, and all concerned and will not be prejudicial to the interests of any concerned shareholders and creditors.

11. In line with the aforesaid benefits that would arise, negotiations were started between the companies, and it was decided that the Applicant No.1 would amalgamate with the Applicant No.2, whereby the entire business of the Applicant No.1 is proposed to be amalgamated with the Applicant No.2 in the manner set out in the Scheme.

12. The Share entitlement report dated 12.03.2026 issued by SSPA & Co. (Registration No.: IBBI/RV-E/06/2020/126), a registered valuer, has been placed on record at Annexure C-2 of the Application, which recommends the share exchange ratio in relation to the proposed transaction under the scheme. The computation suggested is attached below:

6. RECOMMENDATION OF EQUITY SHARE EXCHANGE RATIO

6.1. As mentioned in Para 1.2 above, in consideration for the Proposed Amalgamation, ATUPL would issue Equity Shares to the equity shareholders of NIPL.

6.2. The Management has recommended the following equity share exchange ratio in consideration for the Proposed Amalgamation i.e. amalgamation of NIPL into ATUPL:

10,000 (Ten Thousand) fully paid-up equity Shares of INR 10 each of ATUPL to be issued and allotted to the shareholders of NIPL for 15,27,500 (Fifteen Lakh Twenty-Seven Thousand Five Hundred) fully paid-up equity shares of INR 10 each held in NIPL;

6.3. The Proposed Amalgamation is between members of Jain family who are related to each other. Considering this, we believe that the aforementioned equity share exchange ratio is fair considering that all the shareholders of NIPL are and will, upon Proposed Amalgamation, be the ultimate beneficial owners of ATUPL in the same ratio (inter se) subject to minuscule difference.

13. It has been submitted that the proposed Scheme of Amalgamation shall not, in any manner whatsoever, adversely affect the rights or interests of any of the members, creditors and other stakeholders. The proposed Scheme of Amalgamation is fair, reasonable, and in no way detrimental to the interests of the public at large.

14. The Applicant Companies have sought dispensation of the meetings on the basis of the consents obtained from the requisite stakeholders, the details whereof are extracted herein below:

Company	**Particulars**	**Total No.**	**Consent**
Amalgamating Company	Equity Shareholders	4	Consent affidavits are given by 100% Equity shareholders
	Secured Creditors	NIL	N.A.
	Unsecured Creditors	NIL	N.A.

Amalgamated Company	Equity Shareholders	4	Consent affidavits are given by 100% of equity shareholders
	Secured Creditors	NIL	N.A.
	Unsecured Creditors	NIL	N.A.

15. We have heard the learned counsel appearing for the Applicant Companies and have perused the material available on record.

16. It is pertinent here to discuss Section 230(9) of the Companies Act, 2013, which reads as follows:

"230. Power to compromise or make arrangements with creditors and members.

…

(9) The Tribunal may dispense with the calling of a meeting of creditors or a class of creditors, where such creditors or class of creditors, having at least ninety per cent in value, have agreed to and confirmed, by way of affidavit, the scheme of compromise or arrangement."

17. Further, in the context of shareholders, reference may be made to the proviso to Section 230(4) of the Companies Act, 2013, which reads as under:

"*(4) ……*

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent of the shareholding or having outstanding debt amounting to not less than five per cent of the total outstanding debt as per the latest audited financial statement."

18. The Companies Act 2013 is silent on the aspect of dispensation of shareholders' meeting. However, it is judicially settled now that the NCLT has power to parallelly dispense also the meeting of shareholders, in appropriate cases. Under the erstwhile Company Law regime, the Division bench of Hon'ble Delhi High Court in the matter of *Mazda Theatres Pvt. Ltd. v. New Bank of India Ltd. ILR1975DELHI1* held as follows:

(13) Let us examine whether the second part of the arrangement relating to the subsidiary and its members complies with the requirements of section 391. Ordinarily a company acts by its Board of Directors and the shareholders act in a general meeting of the shareholders. The meeting contemplated in section 391 is analogous to an extraordinary general meeting of the members of the company inasmuch as a three-fourths majority is required to pass the required resolution. The normal rule is that the consent of the shareholders whether it is unanimous or by a three-fourths majority must be obtained in a meeting summoned on the orders of the Court under section 391. This is in accordance with the general principle that the members must act in a general meeting.

(14) Inroads have however, been made on this formal doctrine.

Firstly, the consent of all the shareholders given even outside a meeting is sufficient to comply with the requirement of a meeting. *After this principle was established by judicial decisions…*

(15) ***The second inroad on the requirement of a formal meeting is that the consent of the shareholders may be ascertained without calling any meeting at all.*** *Further, the doctrine of lifting the veil of incorporation and looking at the reality of the action of the members of the company enables us to hold that the consent of the overwhelming majority of the shareholders outside a meeting is sufficient to show that the resolution was supported virtually by all the members of the company….*

…

(22) Shri Parpia's challenge to the order was based mainly on the ground that the provision of section 391 regarding the calling of a meeting was contravened. This challenge would have been on better ground if the only way to comply with section 391 was for the Court to call a meeting of the members of the subsidiary. We have shown above that the calling of a general meeting can be dispensed with if a written resolution is passed by all the members or if the consent of all the members is given otherwise or if all the members have acquiesced in the matter by conduct even without a formal consent or a meeting. It cannot be said, therefore, that the calling of a meeting is the only manner in which section 391 could be complied with. The order could have been attacked as being without jurisdiction on the face of it for non-compliance with a mandatory legal provision only if the only question for consideration was whether the meeting under section 391 was called or not. For, the absence of the meeting is seen on the face of the record. But it is impossible to conclude merely from such absence that the order was without jurisdiction. A further inquiry would be necessary whether the absence of meeting was made good by obtaining the consent of the members of the subsidiary by other means.

19. Further, Hon'ble NCLAT in Company Appeal (AT) No. 180 of 2019 held as follows:

7. Indisputably, the proposed scheme of amalgamation between the Holding Company and its Subsidiaries is regulated by provisions of Chapter XV of the Act, Section 230 whereof provides for passing of an order by the Tribunal directing convening of a meeting of the creditors or class of creditors, members or class of members, as the case may be. Sub-section 9 thereof vests discretion in the Tribunal to dispense with calling of a meeting of such creditors or classes thereof where such creditors or class of creditors, having atleast 90% value, agree and confirm, by way of affidavit to the scheme of compromise or arrangement. Admittedly, in the instant case dispensation in regard to holding of meeting qua Shareholders of Appellant Nos. 1 to 4 was sought on the basis of their written consent obtained by way of affidavits. Same was the case as regards Unsecured Creditors of Appellant Nos. 1 to 3 as also the Secured

Debenture Holders, Warrant Holders and CCD Holders of Appellant No.5. As regards these, the Tribunal exercised its discretion and dispensed with calling of their meeting. There were no Secured Creditors of Appellant No. 1 to 4. The Tribunal while exercising its discretion as noticed hereinabove declined the first motion to the extent it related to directions for convening of meetings of Unsecured Creditors of Appellant No. 4 and Equity Shareholders and Secured and Unsecured Creditors of Appellant No. 5. This is stated to have been done despite the settled legal position and view taken by the Coordinate Benches which were binding on the Tribunal. The first motion by the Appellants before the Tribunal sought dispensation in regard to calling of meeting of Members and Creditors, etc. This being the very threshold stage and not the Stage envisaged for consideration of the scheme for amalgamation by the Tribunal on merit, the Tribunal was required to exercise its discretion in accordance with the legal precedents and views adopted by the Coordinate Benches or Larger Benches. At least one case has been referred to and relied upon by learned counsel for Appellants where, on account of difference of opinion, between the Members of Division Bench of the Tribunal reference was made to the third Member and the case was decided as per majority view which, inter alia dispensed with the requirement of convening of meeting of members and creditors taking into account the considerations that there shall be positive net worth and creditors will not be compromised.

20. At this first motion stage, this Tribunal is required to consider whether, on a prima facie examination of the Scheme and the supporting materials, appropriate directions should be issued for convening or dispensing with meetings of the concerned classes of shareholders and creditors.

21. In the present case, it prima facie appears that the requisite threshold of consent, as prescribed under the Companies Act, 2013, from the creditors and shareholders has prima facie been met in respect of all the classes for whom dispensation of meetings has been sought.

22. The no objection affidavit from 100% of the shareholders along with the certificate issued by the chartered Accountant certifying that the Applicant Company has no creditors, whether secured or unsecured, have been placed on record of the applicant companies.

ORDER

23. Accordingly, upon consideration of the application, affidavits, annexures, and the material placed on record, the following directions are hereby issued:

A. In relation to the Applicant No. 1 Company / Amalgamating Company

24. In view of the consent affidavits placed on record from the requisite equity shareholders, the requirement of convening the meeting of the shareholders of Amalgamating Company is hereby dispensed with.

25. Since Applicant Company No.1/ Amalgamating Company has nil secured and unsecured creditors, the requirement of convening the meeting of its secured creditors does not arise.

B. In relation to Applicant Company No. 2 / Amalgamated Company

26. In view of the consent affidavits placed on record from the equity shareholders of Amalgamated Company, the requirement of convening the meeting of its shareholders is hereby dispensed with.

27. Since Applicant Company No. 2 / Amalgamated Company has nil secured and unsecured creditors, the requirement of convening the meeting of its secured creditors does not arise.

28. Further, in compliance with Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, notice in Form CAA-3, along with a copy of the Scheme, explanatory statement and all requisite annexures, shall be served upon the following authorities:

    i. Central Government through the Regional Director (Northern Region);
    ii. Registrar of Companies, NCT of Delhi & Haryana;
    iii. Official Liquidator, High Court of Delhi;
    iv. Jurisdictional Income Tax Authorities;
    v. such other sectoral regulator(s), if any, as may be applicable in law.

The said intimation shall be sent forthwith by registered post or by speed post or by courier or by hand delivery at the office of the authority as required by sub-rule (2) of Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

29. On completion of the exercise as above, the Applicant Companies shall be entitled to move an appropriate application.

30. It is clarified that the observations made herein are only for the purpose of the present first motion application and shall not be construed as an expression on the merits of the Scheme at the second motion stage.

31. The Court Officer/Registry is directed to send a copy of this order to the Applicant Companies for the necessary steps to be taken at their end.

32. The present Company Application **stands disposed of in the aforesaid terms**.

Sd/-
(ANUPINDER SINGH GREWAL)
PRESIDENT

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)