IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT– I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **14.07.2026** THROUGH VIDEO CONFERENCE

CORAM: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Application No	:	CA(CAA)/93(CHE)/2025
Petition No	:	CP(CAA)/3(CHE)/2026
Name of Petitioner & Name of Respondent	: :	Opexefi Services Pvt Ltd
Section	:	230-232 of CA, 2013

ORDER

CP(CAA)/3(CHE)/2026

Present: Mr. R.Inbaraju, Ld. Counsel for the Petitioner.

Vide separate order pronounced in the open Court, the Scheme is approved.

File be consigned to records.

-sd-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

-sd-
[SANJIV JAIN]
MEMBER (JUDICIAL)

MS

Date: 14.07.2026

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH - I, CHENNAI

CP (CAA) / 3 (CHE) / 2026

In

CA (CAA) / 93 (CHE) / 2025

(Filed under Sections 230 to 232 of the Companies Act, 2013)

In the matter of Scheme of Amalgamation between Opexefi Services Private Limited (Transferor Company) and One Box Warehouse Private Limited (Transferee Company) and their respective Shareholders and Creditors and their respective Shareholders

OPEXEFI SERVICES PRIVATE LIMITED,
CIN: U68200TN2018PTC126167,
Having its Registered Office at,
Trend India Business Centre, Kgeyes Padmalayam,
2nd Floor, Door No. 73/7,
Jawaharlal Nehru Road, Ekkaduthangal,
Chennai – 600 032

... 1st Petitioner / Transferor Company

With

ONE BOX WAREHOUSE PRIVATE LIMITED,
CIN: U43299TN2023PTC164154,
Having its Registered Office at,
Trend India Business Centre, Kgeyes Padmalayam,
2nd Floor, Door No. 73/7,
Jawaharlal Nehru Road, Ekkaduthangal,
Chennai – 600 032

... 2nd Petitioner / Transferee Company

Order Pronounced on ***14th July 2026***

<u>CORAM</u>

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Present: -

For Petitioner : Mr. Inbaraj R, Advocate
For Income Tax Depar. : Mr. Raj Jhabakh, Advocate
For Official Liquidator : Mr. B. Palani, appeared on behalf of OL
For Reginal Director : Mr. Avinash Krishnan Ravi, Advocate

ORDER

(Hearing Conducted though Hybrid Mode)

1. This Joint Company Petition has been filed by **OPEXEFI SERVICES PRIVATE LIMITED** *(hereinafter referred as 1st Petitioner Company / Transferor Company),* and **ONE BOX WAREHOUSE PRIVATE LIMITED** *(hereinafter referred as 2nd Petitioner Company / Transferee Company)* under section 230-232 of the Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') for approval of the Scheme of Amalgamation (*hereinafter referred to as the '**SCHEME**'*) proposed between the Petitioner Companies. The Scheme is appended as ***"Annexure – 18"*** at Page Nos. 255-272 of the Petition typeset.

2. **1ST MOTION APPLICATION**

2.1 The Petitioner Companies had filed First Motion Application vide CA (CAA) / 93 (CHE) / 2025 and sought directions for Dispensation/ Convening the meeting of its Members/ Shareholders and Creditors regarding approval of the proposed Scheme, which are extracted as follows:

	EQUITY SHAREHOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
TRANSFEROR COMPANY	Dispense with	NA	Dispense with
TRANSFEREE COMPANY	Dispense with	NA	Dispense with

2.2 Based on the submissions, this Tribunal vide Order dated 06.01.2026 ordered to dispense of the meetings of Equity Shareholders and Secured Creditors of both Transferor and Transferee Companies.

2.3. Subsequently, the second motion petition was filed before this Tribunal by the Petitioner Company on 02.02.2026 for sanction of the Scheme of Arrangement (Amalgamation).

3. SCHEME SUMMARY

The Scheme provides for the Amalgamation between **OPEXEFI SERVICES PRIVATE LIMITED** With **ONE BOX WAREHOUSE PRIVATE LIMITED** their respective Shareholders and Creditors. Both the Petitioner Companies come under the jurisdiction of this Tribunal.

4. RATIONALE OF THE SCHEME

The rationale and benefits of the Scheme are briefed in Clause C of the Scheme as follows,

RATIONALE FOR THE SCHEME OF AMALGAMATION:

- *"Consolidation of operations along with the land and other assets in a single entity, so as to unlock potential growth of the Real Estate Project;*
- *Simplification and rationalisation of corporate structure through consolidation;*
- *Synergies arising out of consolidation of resources which will lead to efficiency in operations and other functions related to the businesses of the Companies;*
- *Business and administrative synergies;*
- *Avoid duplication of efforts; and*
- *Reduction in multiplicity of legal and regulatory compliances, reduction in overheads, including administrative, managerial and other administrative costs."*

It is stated that the Board of Directors of the Petitioner Companies have proposed the Scheme of Amalgamation. This Scheme provides for various other matters consequential or otherwise integrally connected herewith.

5. In the second motion Petition filed by the Petitioner Companies, this Tribunal vide order dated 18.02.2026 directed the Petitioner Companies to issue notice to the Statutory / Regulatory Authorities concerned and to issue paper publication.

6. In compliance with the said directions issued by this Tribunal, the Petitioner Companies effected paper publications in ***"Business Standard"*** in English (All India Edition) and ***"Makkal Kural"*** in Tamil (Tamil Nadu Edition) on 26.02.2026.

7. It is also seen that notices have been also served to

S.No	Statutory authorities	Date of Notice

1.	Regional Director, Southern Region, Chennai	24.02.2026
2.	Registrar of Companies, Chennai	24.02.2026
3.	Income Tax Department	24.02.2026
4.	Official Liquidator	24.02.2026

Pursuant to the service of notice of the petition, the following statutory authorities have responded.

8. STATUTORY / REGULATORY AUTHORITIES

8.1. REGIONAL DIRECTOR

8.1.1. The Regional Director (RD), Southern Region to whom the notice was served, has filed its report on 25.03.2026 and has expressed its 'Observations'. The same are as follows,

Para	Observations
4	Clause 1.3 of Part I of the Scheme provides that "Appointed Date" means 1st day of April 2025 or such other date as may be fixed or approved by the NCLT and which is acceptable to the Board of Directors of the Transferor Company and the Transferee company.

5	Clause 6.1 of Part II of the Scheme provides that upon coming into effect this scheme, all employees of the Transferor Company on the Appointed Date and thereafter shall become the employees of the Transferee Company, on terms and conditions not less favourable than those on which they are engaged by the Transferor Company and without any interruption of or break in service as a result of the amalgamation of the Transferor Company with the Transferee Company. For the purpose of payment of all retirement benefits, the past services of such employees with the Transferor Company shall be taken into account from the date of their appointment with the Transferor Company and such benefits to which the employees are entitled in the Transferor company shall also be taken into account and paid (as and when payable) by the Transferee company.
6	Clause 11 of Part II of the Scheme provides that upon Part II of the Scheme becoming effective and in consideration of the trans vesting of all the assets and liabilities of the Transferor Company into the Transferee Company in accordance with this Scheme, the Transferee Company shall issue and allot to every member of the Transferor Company, holding fully paid up equity shares in the Transferor Company and whose names appear in the register of members of the Transferor Company on the Record Date or to such of their heirs, executors, administrators or the successors-in-title in the following manner: *"1 (One) Equity Share of the Face Value of Rs. 10/- each, fully paid-up of the Transferee Company to be issued for every 1 (One) Equity Share of the Face Value of Rs. 10/- each, fully paid-up of the Transferor Company"*

	Upon new equity shares being issued and allotted to the members of the Transferor Company, the share certificates in relation to the shares held by the said members of the Transferor Company, shall be deemed to have been automatically cancelled and be of no effect, without any further act, deed or instrument.
7	Clause 12 of Part Il of the Scheme provides that, pursuant to the Scheme coming into effect on the Effective Date and with effect from the Appointed Date, the Transferee Company shall account for the amalgamation of the Transferor Company with the Transferee Company in its books of accounts in accordance with the Indian Accounting Standard 103 "Business Combinations" prescribed under Section 133 of the act read with the relevant rules issued thereunder and other generally accepted accounting principles in India, or any other relevant or related requirements under the Companies Act, as applicable on the effective date.
8	Clause 14 of Part II of the Scheme provides that, on the scheme becoming effective, the Transferor Company shall be dissolved, pursuant to the order made by NCLT under Section 230-232 of the Act and without requiring any further act, instrument or deed form the Transferor Company and / or the Transferee company.
11	That ROC Chennai vide report dated 13.03.2026 has submitted that the petitioner companies have filed financial statement and annual return up to 31.03.2025.No Inquiry/ Inspection/ Investigation/ Prosecution/Complaint pending against the petitioner companies.

12	ROC Chennai has further stated that, as per the Independent Auditor's report of the Transferor company, the Independent Auditor has opined that the transferor company has incurred cash losses amounting to Rs. 3,29,000/- for the FY 31.03.2024 and Rs.7,20,000 for FY 31.03.2025. As per the Independent Auditor's report of the Transferee company, the Independent Auditor has opined that the transferee company has incurred cash losses amounting to Rs. 1,09,000 for the FY 31.03.2024 and Rs.96,53,000 for FY 31.03.2025. Petitioner companies may clarify the same.
13	The petitioner companies may be directed to undertake to comply with the provisions of Section 240 of the Companies Act, 2013 and provisions of Section 232(3)(i) of the Companies Act, 2013.
14	The Transferee Company may be directed to file amended MoA containing amendment to the Capital Clause for record purposes with the Registrar of Companies, with respect to increase its authorised capital.

8.1.2 It is submitted by the RD that the petition may be disposed of on merits after considering the submissions made in para 12, 13 and 14.

<u>Response to the RD Report:</u>

8.1.3 The Petitioners have filed response to the RD Report dated 07.04.2026. The response to the report of the RD is tabulated hereunder:

Para	Observations

12	It is submitted that that losses had occurred in the ordinary course of business the same do not have any extraordinary business loss. The merger shall not have any impact on account of cash losses, which are in its ordinary course of business.
13	The Petitioner Company No. 2/Transferee Company in compliance to Section 240 of Companies Act, 2013 undertakes to take liability in respect of offences committed under the Companies Act, 2013 by the officers in default, if any of the Transferor Company prior to its amalgamation.
14	It is submitted that the Transferee Company shall file the Amended Memorandum of Association containing the amended capital clause due to the Combination of Authorised Share Capital / increase in Authorised Share Capital of the Transferee Company with the Registrar of Companies, Chennai, as annexed in Annexure 4 of the response.

8.2. INCOME TAX DEPARTMENT

8.2.1 The Income Tax Department to whom the notice was served has filed its report on 17.04.2026 and has expressed its 'Observations' as follows:

8.2.2 The requirement to send notice to the concerned department is a procedural requirement and as such does not impact the right of the Department to proceed in accordance with the provisions of the Income Tax Act, 1961. It is prayed that this Tribunal may take the objections on record without prejudice to the rights of the Department to take all appropriate proceedings under the provisions of the Income Tax Act, 1961 to protect the interest of the government including the right to reopen the assessment. Therefore, by way of filing of this memo and the report, the Income Tax Department shall not have deemed to waive its rights to undertake all proceedings under the Income Tax Act, 1961.

8.2.3 Reliance is placed on the judgement of the Hon'ble Supreme Court in ***Marshall Sons & Co India Ltd Vs Income Tax Officer (AIR 1997SC1763 & MANU/SC/0407/1997).*** It is stated that the Income Tax Department reserves its right to proceed against the Petitioner Companies through independent proceedings under the provisions of the Income Tax Act, 1961 and pass orders in accordance with law. The para 17 of the Judgement is extracted as under:

> *"17. We, however, make it clear that we have not expressed any opinion on the plea of the learned Counsel for the Revenue that the amalgamation itself is a device designed to evade the taxes legitimately payable by the subsidiary company.* ***<u>If the Income Tax authorities think that, they are entitled to raise this question in the proceedings under the Income Tax Act, it is open to them to do so by way of a separate proceeding according to law.</u>****"*
>
> *(emphasis supplied)*

8.2.4 It is stated that in line with the judgment of Hon'ble Supreme Court, the Income Tax Department reserves its right to proceed against the Petitioner Companies through independent proceedings under the provisions of the Income Tax. It is reiterated that filing of the present memo shall not in any manner amount to waiving its rights to proceed against the Petitioner Companies and pass orders in accordance with law.

8.2.5 It is stated that the office has no objections to the proposed scheme of amalgamation, subject to the condition that all existing and future tax liabilities of the amalgamating company shall be borne by the amalgamated company in accordance with Section 170 of Income Tax Act. The letter to this effect is reproduced as under:

आयकरअधिकारीकाकार्यालय,कॉर्पोरेटवार्ड – 5(1)

OFFICE OF THE INCOME TAX OFFICER, CORPORATE WARD–5(1)

कमरासंख्या.412,मुख्यभवन,आयकरकार्यालय, 121, महात्मागाँधीरोड़, नुन्गाम्बक्कम, चेन्नई - 34

Room No.412, Main building, 121,Aayakar Bhawan, M.G.Road, Nungambakkam, Chennai - 34 / Telephone: 044- 2833 3214, e-mail: chennai.ito.c5.1@incometax.gov.in

Amalgamation/CW 5-1/2026-27 Date: 13.04.26

To,

Sri Raj Jhabakh
Senior Standing Counsel
NCLT, Chennai

Sir/Madam,

Sub: No objection to scheme of Amalgamation and arrangement among M/s Opexifi Services Private Limited(Transferor Company) (PAN AACCO8338C) with M/s One Box Warehouse Private Limited (Transferee Company) (PAN AAECO1918N) – Reg.

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12.	Remarks about objection to the scheme or any representation to NCLT to protect the interest of Revenue.	All tax assessment proceedings and appeals of whatsoever nature, by or against the Transferor Company, pending or arising as on the effective date shall be continued and/or enforced by against the Transferee Company in the same manner and to the same extent as would or might have been continued and enforced by or against the transferor Company. The Department reserves its right to determine the tax implications of the Amalgamation/merger contemplated under the scheme in accordance with the provisions of the I.T Act, 1961 and the provisions of the I.T. Act, 1961 shall prevail over anything contrary provided under the scheme. This office has no objection to the proposed scheme of amalgamation.

Response to the IT Report:

8.2.6 The Petitioners have filed response to the IT Report on 04.05.2026. The response to the report of the IT is tabulated hereunder:

Para	Observations
5(a)	The observations made in Paras 1 to 11 requires no comments from the petitioner companies.
5(b)	Upon the effectiveness of the Scheme, in accordance with the terms thereof, the entire undertaking of the Transferor Company shall stand transferred to and vested in the Transferee Company viz., One Box Warehouse Private Limited. Accordingly, all proceedings including assessment, reassessment, appeal or any other proceedings, whether pending or arising in future in respect of the Transferor Company shall be continued and enforced by or against the Transferee Company in the same manner and to the same extent as would have been continued or enforced by or against the Transferor Company, in accordance with the applicable provisions of the law. Further any demand, liability, or tax implication that may arise in the future in respect of the Transferor Company shall be discharged by the Transferee Company in accordance with the applicable provisions of the Income-tax Act, 1961, including those under the General Anti-Avoidance Rules (GAAR) and/or any amendments thereto. An Undertaking Affidavit on behalf made by the Transferee Company is annexed as Annexure 3. It is also stated that the Scheme of Amalgamation is bona fide and not intended to evade any tax liability and that nothing contained in the Scheme shall be construed as limiting or restricting the powers of the

	Income Tax Authorities under the provisions of the Income Tax Act, 1961.

8.3. OFFICIAL LIQUIDATOR

8.3.1 The Official Liquidator to whom the notice was served, has filed its report on 28.04.2026 and has expressed its 'Observations' to the Scheme as follows:

Para	Observations
3(i)	Clause B.1 of the scheme read with Clause 'C' disclose that the Transferor company is engaged in the business of construction and real estate development. As they constitute Real Estate Business, the notice to RERA may be required to be issued to the RERA of respective State(s) in which the transferor company is operating with real estate projects.
3(ii)	Clause B.2 of the scheme read with Clause 'C' disclose that the Transferee company is also engaged in the business of construction and real estate development. As they constitute Real Estate Business, the notice to RERA may be required to be issued to the RERA of respective State(s) in which the transferee company is operating with real estate projects.
3(iii)	The record date as defined in Clause 1.9 of the scheme refers to "Record Date" as a date to be determined mutually by the Board(s) of both companies. This Tribunal may direct the companies to submit an undertaking to this tribunal to the effect that it would be fix the record date immediately after sanction of the scheme and before the effective date / dissolution date.

3(iv)	Clause 8.1 (Taxes / Duties / Cess) of the scheme provides auto modification of content of the scheme, post its sanction by this Tribunal. It is stated that such auto modification of the content of the scheme to be in compliance with Income Tax Law etc., without the previous specific approval / sanction of this Tribunal will be in violation of Section 231(1)(b) of the Companies Act, 2013 as every modification / auto modification of the content of the Scheme requires specific approval by this Tribunal. Hence, this Tribunal may direct the companies to delete / modify the clauses 8.1 of the scheme by way of amendment to the scheme proposed, so as to ensure that no such auto amendment / modification of the Scheme provided for in the scheme or takes place, post its sanction by this Tribunal or to submit an undertaking to this Tribunal to the effect that such auto modification of the content of the scheme will not be operative automatically or be implemented
3(v)	Clause 12 of the scheme does not specify the method, i.e. Acquisition Method or Pooling of Interest Method under Ind AS-103. Hence, the Tribunal may seek clarification on the same.
3(vi)	The Company Application vide its Annexure 24 (page nos. 239-246 of Company Application) and the company petition vide its Annexure 29 (page nos. 311-318 of Company Petition) described the annexure as valuation report. However, it is noticed that the said report is just a Share Exchange Ratio report alone and does not constitute Valuation Report as evident from the scope described in the said Fairness Exchange Ratio Report. Hence, the NCLT may direct the petitioner companies to obtain a valuation report under Section 232(2)(d) of Companies Act, 2013 (valuing the entity level and per share for each company relevant for Appointed Date 1/4/2025) and amend the consideration Clause 11.1 of the scheme as per the said valuation report as the Fairness Exchange Ratio report alone do not constitute "report of Expert with regard to Valuation" in terms of Section 232(2)(d) of Companies Act, 2013.

8.3.2 It is stated that the Official Liquidator is of the opinion that the affairs of the Transferor Company appear to have not been conducted in a manner prejudicial to the interest of its members or to public interest subject to representation in para 3 above.

8.3.3 The Official Liquidator has sought to take on record the report.

Response to the OL Report:

8.3.4 The Petitioners have filed response to the OL Report dated 08.06.2026. The response to the report of the OL is tabulated hereunder:

Para	Observations
6(b)	The Transferor Company though being authorized to engage in the business of construction and real estate development, as on the date of this affidavit, there are no ongoing real estate projects. Further, as per the latest audited financial statement as on March 31, 2025 of the Transferor Company, there has been NIL revenue from operations. In the absence of any ongoing real estate activity or projects, the requirement of issuing notice to RERA does not arise.
6(c)	The Transferee Company though being authorized to engage in the business of construction and real estate development, as on the date of this affidavit, there are no ongoing real estate projects. Further, as per the latest audited financial statement as on March 31, 2025 of the Transferee Company, there has been NIL revenue from operations. The absence of any ongoing real estate activity or projects, the requirement of issuing notice to RERA does not arise.

6(d)	The record date as defined in Clause 1.9 of the scheme shall be mutually fixed by the Board of Directors of the Petitioner Companies immediately after sanction of the scheme and before the effective date and dissolution of the Transferor Company. An undertaking to this effect is annexed as Annexure 4 & 5 in this response.
6(e)	Though Clause 8.1 of the Scheme provides for modification of the Scheme to comply with applicable laws, such modification shall not be operative, implemented or given effect to without obtaining specific prior approval of this Tribunal under Section 231(1)(b) of the Companies Act, 2013. An undertaking to this effect is annexed as Annexure 4 & 5 in this response.
6(f)	Clause 12 of the Scheme states that the Transferee Company shall account for the amalgamation of the Transferor Company with the Transferee Company in its books of accounts in accordance with the Indian Accounting Standard 103 "Business Combinations". Under Ind AS 103, while multiple methods are generally recognized for accounting of business combinations, in cases involving entities under common control, the applicable method is specifically prescribed under Appendix C to Ind AS 103. Both the Companies are under the common control i.e., both the Companies are controlled by identical Shareholders with identical controlling rights. Further in terms of Paragraph 8 of Appendix C, such business combinations are required to be accounted for using the Pooling of Interest Method and therefore, Clause 12 inherently envisages the adoption of Pooling of Interest Method, considering that the Petitioner Companies are under the common control. Thus, considering the above facts, it is submitted that the Transferee Company shall account for the amalgamation of the Transferor Company with the Transferee Company in its books of account under the "Pooling of Interest Method" in accordance with Appendix C of Ind AS 103 also the Statutory Auditor of the Transferee Company has

	certified that such accounting treatment proposed in the Scheme is in accordance with Section 133 of the Companies Act, 2013.
6(g)	The learned Valuer has given fair exchange ratio based on the fact that both the Transferor Company and the Transferee Company has identical Shareholders with identical controlling rights. The report has been issued by an IBBI registered Valuer and the same has been prepared after considering generally accepted valuation methodologies, along with relevant assumptions, limitations, and financial parameters. Determination of "Share Exchange ratio" is the commercial wisdom of the petitioner companies and same has been approved by the shareholders in form of consent affidavit and therefore such "Share Exchange ratio" is not prejudicial to interest of shareholders and only supplementing the protection towards the interest of shareholders.

9. ACCOUNTING TREATMENT

The Petitioners have stated that the Statutory Auditors have examined the Scheme and certified that the Accounting Treatment contained in the proposed Scheme of Arrangement is compliant with the Applicable Indian Accounting Standards. The Certificate issued by the Statutory Auditors certifying the Accounting Treatment of the Petitioner Companies are placed at ***Annexure 30*** of the typed set.

10. VALUATION

The Petitioner Company has filed Share Exchange Ratio Report obtained from a Registered Valuer, namely, CA Harsh. H. Dedhia. The report dated 04.11.2025 is placed as ***Annexure 29*** of the Petition typeset. The Valuation Approach and the Share Entitlement Ratio Analysis of the Independent Valuer is extracted hereunder for reference,

Considering the basis of recommendation, in my opinion, the equity share exchange ratio for the amalgamation of OSPL with OBWPL as under as per the report annexed herewith as "**Annexure - A**".

"1 (One) fully paid-up equity share of Rs. 10/- each of OBWPL to be issued to the shareholders of OSPL for every 1 (One) fully paid-up equity share of Rs. 10/- each held in OSPL"

E. BASIS FOR EQUITY SHARE EXCHANGE RATIO

The basis of arriving at equity share exchange ratio for amalgamation of OSPL with OBWPL has been determined after taking into consideration all the factors mentioned hereinabove and considering participant specific view taking into account the nature of the Scheme and beneficial shareholding of the Companies. It is however important to note that in doing so, I am not attempting to arrive at the absolute value per share of the Companies as the Companies would beneficially be held and controlled by the same shareholders in same proportion, thereby the interest of the shareholders will effectively remain unchanged and shareholders interest would not be prejudicially affected. Hence, no relative valuation of the Companies is required to be undertaken to facilitate the determination of the Equity Share Exchange Ratio.

As the beneficial ownership of OBWPL would continue to be held by the same shareholders in same proportion, the following share exchange ratio (assuming no change in the beneficial shareholding) as suggested by the management of the Companies (keeping in mind participant specific view sought by the Clients) would be fair and reasonable –

"1 (One) fully paid-up equity Share of Rs. 10/- each of OBWPL to be issued to the shareholders of OSPL for every 1 (One) fully paid-up equity share of Rs. 10/- each held in OSPL"

11. OBSERVATIONS OF THIS TRIBUNAL:

11.1 <u>REGIONAL DIRECTOR:</u>

11.1.1 This tribunal observes that no objections have been raised by the RD in its report.

11.1.2 With respect to the Appointed Date of the Scheme, it is noted that Clause 4 stipulates the Appointed Date as 01.04.2025. The application in CA(CAA)/93(CHE)/2025 came to be filed before this Tribunal on 17.11.2025.

11.1.3 As per MCA General Circular No. 09/2019, if the chosen appointed date precedes the date of filing the application for the Scheme with the NCLT by more than one year, the specific justification for doing so must be adequately disclosed in the Scheme. The same is extracted as follows:

> *"c) where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, 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."*

11.1.4 Here, the Appointed Date falls within one year from the date of filing the application under Section 230 of the Companies Act, 2013.

11.1.5 Hence, **the Appointed Date shall remain as 01.04.2025, as specified in Clause 1.3 of the Scheme.**

11.1.6 The petitioner in response to the report filed by the RD has stated that the loss incurred was in normal course of business operations and the same shall not have any impact on the merger.

11.1.7 The petitioners have furnished an undertaking to the observation made in Para 13 to comply with the provisions of Section 240 and Section 232(3)(i) of the Companies Act, 2013.

11.1.8 The petitioners have furnished an undertaking to the observation made in Para 14 to file the amended MoA, which contain the amendment made to the capital clause for record purposes with the Registrar of Companies.

11.2 <u>OFFICIAL LIQUIDATOR:</u>

11.2.1 This Tribunal now analyses the objections raised by the Official Liquidator (hereinafter, OL) and the submissions made by the Petitioner.

11.2.2 <u>*Notice to RERA for Transferor and Transferee Company:*</u>

This tribunal notes that though both the petitioner companies are engaged in the business of construction and real estate development, but as on the date of affidavit, there are no ongoing real estate projects. Hence, the requirement of issuing notice to RERA does not arise in the present case.

11.2.3 <u>*Record Date*</u>

It is observed that the Petitioners have undertaken that the Record Date shall be fixed mutually and immediately after the sanction of the Scheme and prior to the dissolution of the Transferor Company.

11.2.4 ***Auto Modification of scheme without prior consent of tribunal:***

Clause 8.1 of the scheme provides that if any terms or provisions of the Scheme are found to be inconsistent with the provisions of the said section and other related provisions at a later date, the provisions of the said section and other related provisions of the Income-tax Act, 1961 shall prevail and the Scheme shall stand modified, unless the Board of Directors decide otherwise, to the extent required to comply with section 2(1B) and other relevant provisions of the Income-tax Act, 1961. The petitioners in their undertaking have stated that the Transferee Company shall not undertake any modification without the prior approval of the tribunal. In view of the said undertaking, the objection does not survive and no further directions are required in this regard.

11.2.5 ***Acquisition Method:***

Clause 12 of the Scheme provides that the Transferee Company shall account for the amalgamation of the Transferor Company with the Transferee Company in its books of accounts in accordance with the Indian Accounting Standard 103 Business Combinations. The petitioner companies have clarified in the response that the Transferee Company shall account for the amalgamation in its books of account under the Pooling of Interest Method in accordance with Appendix C of Ind AS 10.

11.2.6 *__Valuation Report:__*

It is stated by the OL that the annexure given in the scheme for valuation is in actually the Share Exchange Ratio. OL has sought for a direction to the companies to obtain a valuation report under Section 232(2)(d) of the Companies Act, 2013. Since, the petitioner companies have given fair exchange ratio based on the fact that both the Transferor Company and the Transferee Company have identical Shareholders with identical controlling rights, and determination of "Share Exchange ratio" is the commercial wisdom of the petitioner companies and same has been approved by the shareholders, the same is not prejudicial to the interests of Shareholders.

11.3 __DEPARTMENT OF INCOME TAX__

11.3.1 In Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi has made the following observations with regard to the right of the IT Department in the Scheme of Amalgamation,

> *"taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in RE: Vodafone Essar Gujarat Limited v. Department of Income Tax (2013)353 ITR 222 (Guj) and the same being also affirmed by the Hon'ble Supreme Court and as reported in (2016) 66 taxmann.com.374(SC) from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15,2015 __that the Department is entitled to take out appropriate__*

proceedings for recovery of any statutory dues from the transferor or transferee or any other person who is liable for payment of such tax dues, the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned."

11.3.2 Hence, the Income tax Department is at liberty to undertake appropriate recovery proceedings in accordance with law.

12. After analysing the Scheme in detail, this Tribunal is of the view that the Scheme as contemplated amongst the Petitioner Companies seems beneficial to the Companies and will not be in any way detrimental to the interest of the shareholders of the Companies. In the absence of any other objections having been placed on record, this Tribunal sanctions the Scheme as well as the prayer made therein.

13. Notwithstanding the above, 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 petitioners.

14. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

15. This Tribunal is of the view that the scheme as contemplated by the Petitioner companies seems to be *prima facie* not, in any way detrimental to the interest of the members of the Companies. In view of the absence of any material objections from any statutory authorities and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Amalgamation as well as the prayer made therein.

16. Notwithstanding the above, if there is any deficiency found or, the 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 the law, against the concerned persons, directors and officials of the petitioners.

17. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law.

18. THIS TRIBUNAL DO FURTHER ORDER

(i) That the entire business and undertaking of the Transferor Company shall, under the provisions of Section 230 to 232 of the Companies Act, 2013, without further act or deed, be transferred to and vest in or be deemed to have been transferred and vested in the Transferee Company.

(ii) That all the assets of the Transferor Company shall be transferred to the Transferee Company, without further deed or instrument of conveyance and accordingly the same become the property of the Transferee Company.

(iii) That all the debts, liabilities, duties and obligations of the Transferor Company shall be transferred to the Transferee Company and accordingly the same become the liabilities and duties of the Transferee Company.

(iv) That the Transferee Company do without further application allot to such members of the Transferor Company, as have not given such notice of dissent, as is required by ***Clause 11.1 of the SCHEME*** herein the shares in the Transferee Company to which they are entitled under the said Scheme.

(v) That the Appointed date for the Scheme shall be **01.04.2025** as mentioned in Clause 1(C) of the Scheme.

(vi) That all proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.

(vii) That all the employees of the Transferor Company in service from the Appointed Date till the date on which the Scheme finally takes effect, shall become the employees of the Transferee Company without any break or interruption in their service.

(viii) That the Transferee Company shall file the revised Memorandum and Articles of Association with the Registrar of Companies and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company after setting off the fees paid by the Transferor Company.

(ix) That the Transferor Company and the Transferee Company, shall within thirty days of the date of receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration. That as per ***Clause 16(iii)*** of the Scheme, on such certified copy being so delivered, the Transferor Company shall be dissolved without the process of winding up and the Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said company shall be consolidated accordingly.

(x) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

19. The Scheme is **approved** subject to the directions issued above.

20. Company Petition ***CP(CAA)/3(CHE)2026 in CA(CAA)/93(CHE)2025*** accordingly, stands **disposed of** on the aforementioned terms.

-Sd-	-Sd-
VENKATARAMAN SUBRAMANIAM	**SANJIV JAIN**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)