

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**  
**COURT-IV**

**IN THE MAIN MATTER OF:**

Company Petition CP(CAA)92/ND/2021

Connected with

Company Application No CAA (CA)/183 (ND)/2019

In the matter of an application under Section 230 and 232 of the  
Companies Act, 2013 and 60 and 62 of Limited Partnership Act, 2008

And

In the matter of Scheme of Arrangement(demerger) of:

SKN Haryana City Gas Distribution Private Limited

... Applicant/De-merged Company

From

Chopra Electricals LLP ("CELLP")

Resulting LLP no.1" or "Transferee LLP no.1")

And

SKN City Gas LLP ("SKNCGLLP")

"Resulting LLP no.2" or "Transferee LLP no.2"

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM**

**HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI**

**HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on 08.06.2026**

**PRESENT:**

**For the Applicant**

: Mr. Ashish Middha, Advocate

For the RD

: Mr. P. Ganguly, Deputy Director

**ORDER**

**Per: Atul Chaturvedi (Member Technical)**

1. The present company application has been filed by SKN Haryana City Gas

Distribution Private Limited (demerged company) along with Chopra

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CP(CAA)92/ND/2021

Connected with

CAA (CA)/183 (ND)/2019

Date of Order 08.06.2026

Electricals LLP and SKN City Gas LLP (both being the resulting entity) seeking reliefs as follows:

- a) *pass an order that the Scheme of Arrangement (demerger) mentioned in this petition being Annexure 4 hereto be sanctioned by this Hon'ble Tribunal to be binding with effect from the commencement of business on the 1 day of April 2018 on the Demerged and Resulting Firms, their Shareholders, Designated Partners, Secured/ Unsecured Creditors and all concerned without any further act, deed or thing;*
- b) *Order the advertisements be issued in Business Standard in English in English Edition and Business Standard in Hindi in Hindi Edition;*
- c) *Issue notices to the Central Government (Regional Director), Registrar of Companies, and Income Tax Department. As there are no other Sectoral Regulator or Authorities of the petitioner companies, hence notice to any other Regulatory Authority is not required; and*
- d) *Pass such other/ further order (s) as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

2. The particulars of the petitioner companies are as follows:

- a) *SKN Haryana City Gas Distribution Private Limited ("SKN-HCGDPL" or "Demerged Company" or "Transferor Company") was originally incorporated as a private limited company under the provisions of the Companies Act, 2013 on 23rd day of November 2015 as SKN*

*Haryana City Gas Distribution Private Limited with the Registrar of Companies, Delhi & Haryana with CIN: U40300HR2015PTC057359 with the Registered Office within the State of Haryana. The registered office of the company was changed from the State of Haryana to Delhi and consequent thereto fresh certificate was issued on 1st day of December 2017. The transferor (de-merged) company presently has the Registered Office at 368/369, 3rd FLORR BASANT BUILDING, CHAUDHARY MARKET, SULTANPUR NEW DELHI South Delhi DL 110030 within the jurisdiction of Hon'ble National Company Law Tribunal, Delhi. The PAN no. of the company is AAWCS4893C.*

*b) Chopra Electricals LLP ("CELLP" or "Resulting LLP no.1" or "Transferee LLP no.1") is a Limited Liability Partnership incorporated under the Limited Liability Partnership, 2008 on 14th day of October 2019 with the Registrar of Companies, Delhi & Haryana with LLPIN: 7972. The transferee (resulting) LLP no.1 is having its registered office at KH no. 319, SEQ no.91, Forest Lane, Sultanpur, Near Vandhya Farm, New Delhi 110030 within the jurisdiction of Hon'ble National Company Tribunal, Delhi. The PAN no. of the LLP is AAOFC9504H.*

*c) SKN City Gas LLP ("SKNCGLLP" or "Resulting LLP no.2" or "Transferee LLP no.2") is a Limited Liability Partnership incorporated under the Limited Liability Partnership, 2008 on 18th July'2019 with the*

*Registrar of Companies, Delhi & Haryana with LLPIN AAP-9825. The transferee (resulting) LLP no.2 is having its registered office at KH no. 319, SEQ no.91, Forest Lane, Sultanpur, Near Vandhya Farm, New Delhi 110030 within the jurisdiction of Hon'ble National Company Tribunal, Delhi. The PAN no. of the LLP is AEAFS8320P.*

3. Facts of the case as per the submissions made in the are as follows:

- a) The transferor company through its director Mr. Satish Chopra together with transferee company filed the petition for the scheme of arrangement(demerger).
- b) 13. The present Authorized Share Capital of the applicant/ De-merged Company is Rs.20,00,00,000/- (Rupees Twenty Crores only) divided into 2,00,00,000 (Two crores) Equity Shares of Rs. 10/- (Ten) each. The present issued, subscribed and paid-up share capital of the Company is Rs. 16,59,32,200/- (Rupees Sixteen crores fifty-nine lakh thirty-two thousand two hundred only) divided into 1,65,93,220 (One Crores sixty-five lakhs ninety-three thousand two hundred and twenty) equity shares of Rs.10/- (Ten) each as on 31.03.2019.
- c) The applicants have submitted that the accounts of the Applicant/De-merged Company have been prepared and audited for the financial year ended on 31st March, 2019 and subsequent to the

date of the aforesaid audited accounts, there has been no substantial change in the financial position of the applicant/ de-merged company except those arising out of or resulting from normal course of business.

- d) The objects of the applicant/ resulting LLP no.1 are to carry on the business of designers, researchers, developers, manufacturers, buyers, assemblers, modifiers, installers, reconditioners, sellers, hirers, sub lessors, market makers, repairers, operators, exporters, importers, distributors, and to act as an agent, broker, consignor, indenting agent, C&F agent, representative, correspondent, franchisers, stockiest, supplier, vendor, transporter, collaborator, export house or otherwise to deal in all kinds of electrical and electronic equipment and appliances including Starters, Pump, LED, MCB, High Pressure Regulator, Switches, Fans, and all kinds of domestic and household equipment and appliances, other types of tools, instruments, apparatus, systems & equipments, and their parts, products, components, instruments, raw materials, display units, control devices, elements, gadgets, circuits, or otherwise treated and to do all incidental acts and things necessary for the attainment of the above said objects.

- e) The present LLP Capital and partner's contribution in the LLP 1 is Rs. 10,00,000/- (Rupees Ten lacs only) and the accounts of the Applicant/Transferee LLP no.1 have not been prepared and audited as the same was incorporated on 14th October 2019 and the LLP has two (2) partners in the LLP Partnership.
- f) That the objects of the applicant/ resulting LLP no.2 are to carry on the business of storage, suppliers, distributors, sellers and dealers in natural gas and its derivatives including LPG, CNG, Propane and any conventional and non-conventional type of energy.
- g) The present LLP Capital and partner's contribution in the LLP is Rs. 10,00,000/- (Rupees Ten lacs only) and the accounts of the applicant/transferee LLP no.2 have not been prepared and audited as the same was incorporated in 18th July'2019.
- h) The petitioners have submitted that due to following reasons, the demerger was needed:
- i. The Demerged Company has been in existence for more than four (4) years and has grown up in size and its operations are diversified into multifarious activities and is carrying carry on all or any of the business of storage, suppliers, distributors, sellers and dealers in natural gas and its derivatives including LPG, CNG PROPANE and any conventional and non-*

*conventional type of energy to design, fabricate, construct, lay, install, operate, use, lease, hire, inspect, maintain, improve, enlarge, alter, protect and facilitate related to the operation or use of pipelines and to install in any premises or place and to operate and to operate, use, inspect, maintain, repairs, replaced and remove meters or other devices for assessing the quantity or quality of supply of gas etc. Under a liberalized, fast changing and highly competitive environment and taking advantage of the impetus provided for the Government of India, it is necessary for demerged undertakings into two new companies so that it may concentrate on its core business activities and they concentrate into their respective businesses.*

- ii. For the optimum growth and development of the respective business and undertakings of the Demerged Company, it is considered desirable and expedient to reorganize and reconstruct the Demerged Company by transferring Undertaking A to Resulting Firm No.1 and Undertaking B to Resulting Firm No.2 in the manner and on the terms and conditions stated in the Scheme of Demerger.*
- iii. This Scheme will have the beneficial results for all the three companies, their respective shareholders and all concerned.*

- iv. *The proposed arrangement (de-merger) would enable the De-merged Company to focus on its core business area which is relating to storage and supply of gas and the Resulting Firms to focus on their respective businesses. All the entities shall be termed at different business entity.*
- v. *The proposed arrangement (de-merger) would result in optimum utilization of the manpower of the concerned Companies. It will open better avenues for the employees of the concerned companies. The employees will have a better choice of skill up gradation, development and carrier growth.*
- vi. *The proposed scheme of arrangement (de-merger) will result in usual economies of a decentralized company including better and more productive utilization of human and other resource and enhancement of overall business efficiency. It will enable these companies to focus on its managerial and operating strength, to build better financial base and to promote and secure overall growth of their businesses.*
- vii. *The proposed scheme of arrangement (de-merger) would enable the de-merged company to unlock its values and will promote overall growth of the company.*

*viii. The said scheme of arrangement (de-merger) will have beneficial impact on all the de-merged and Resulting Firms, their employees, their shareholders and all concerned.*

- i. That the said Scheme of Arrangement, inter alias, involves transfer of moveable and immovable assets for an amount totaling to Rs.42,10,00,000/- (assets) (Rupees Forty-two Crores and Ten lakhs only) to be transferred to Chopra Electricals LLP i.e. Transferee Firm no.1/ Resulting Firm not on a going concern basis and transfer of moveable and immovable assets for an amount totaling to Rs.1,79,21,09,446/- (assets) (Rupees One hundred and seventy nine crores twenty one lacs nine thousand four hundred and forty six only) to be transferred to SKN City Gas LLP i.e. Transferee Firm no.2/ Resulting Firm no.2 on a going concern basis in compliance with provisions of Section 230 to 232 and other relevant provisions of the Companies Act, 2013, Companies (Compromises, Arrangement and Amalgamation) Rules, 2016 and Section 2(19AA) of the Income Tax Act, 1961.
- j. All the assets acquired between Appointed Date and Effective date to be transferred to the resulting firms on the book value.
- k. The petitioners on the issue of obligations and liabilities have submitted as follows:

*Where any of the liabilities and obligations of the Demerged Company as on the Appointed Date deemed to be transferred to the Resulting Firms have been discharged by the Demerged Company after the Appointed Date and prior to the Effective Date, such discharge shall be deemed to have been for and on account of the Resulting Firms, and all loans raised and used and all liabilities and obligations incurred by the Demerged Company for the operations of the Demerged Undertakings 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 the Resulting Firms and to the extent they are outstanding on the Effective Date, shall also without any further act or deed be and stand transferred to the Resulting Firms and shall become its liabilities and obligations.*

*Upon the coming into effect of this Scheme, insofar as the security in respect of the liabilities of the Demerged Company as on the Appointed Date is concerned, it is hereby clarified that the Demerged Company and the Resulting Firms shall, subject to confirmation by the concerned creditor(s), mutually agree upon and arrange for such security as may be considered necessary to secure such liabilities, and obtain such consents under law as may be prescribed.*

4. The Tribunal vide order dated 18.04.2022 directed the Petitioner Companies to carry out requisite publication and to serve notices to the Central Government through the Regional Director, RoC, Official Liquidator and Income Tax Authorities. It is seen from record that the petitioner companies have filed an affidavit dated 13.09.2022 affirming compliance and disclosing that the applicants have effected publication in “Business Standard” (English and Hindi) both dated 29.07.2022. In addition to the public notice, notice was also sent to the Regional Director (Northern Region), Registrar of Companies, NCT of Delhi and Haryana, and the Income Tax Department.
5. Pursuant to the notice issued, the Regional Director has filed the report and participated in the proceedings.
6. Income Tax Department and OL have not filed any report or made any submissions.
7. The Regional Director in its affidavit report dated 26.04.2023 and the same had been sent to the Applicants on 22.08.2022 had made certain observations with regard to the Scheme of Demerger among the Petitioner Companies. The Petitioner Companies had replied on dated 16.09.2022 and the same was filed as rejoinder to reply on 28.09.2023 in response to the observations made by the Regional Director, under wherein the

Petitioner Companies gave clarification to the observations made by the Regional Director. The details of which are given below:

	Observations made by Regional Director in its affidavit report dated 26.04.2023	Rejoinder made by the Petitioner Companies dated 09.12.2024
1.	<i>According to the judgment dated 4th Dec. 2019 passed by the Hon'ble NCLAT in the matter of Regional Director, Southern Region and Ors. Vs. Real Image LLP &amp; Ors., regarding merger/demerger between company and LLP is not maintainable.</i>	a. In the said letter, it is stated that in the case titled as Regional Director, Southern Region Vs Real Image LLP & other, the Hon'ble NCLAT had held that the petition for merger/ demerger between the company and LLP is not maintainable. In the said case Hon'ble NCLAT was considering about

		<p>the Amalgamation and not the Demerger of Company with LLP.</p> <p>b. That after the scheme is sanctioned by the Hon'ble Tribunal, the resulting companies shall move appropriate applications to the Registrar of Companies, Delhi &amp; Haryana for the conversion of LLP's to Private Limited Companies and the capital allotted to the shareholders of the Demerged</p>
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		<p>Company shall be converted into the equity share capital at par i.e. Equity Shares of Rs.10/- (ten) each.</p> <p>c. In view of sub-clause c) of clause 21 of Scheme of Arrangement (Demerger), the said Judgment of the Hon'ble NCLAT will be taken care of.</p>
2.	<p>Further, as per explanation occurring after subsection 4 of section 62 of the LLP Act-2008, as amended by LLP Act 2008, as amended by LLP (Amendment) Act, 2021 it is provided that limited liabilities partnership shall not be</p>	<p>a. a. The Limited Liability Partnership (Amendment) Act, 2021 had received the assent on 13th August, 2021. The present petition was</p>

	<p>amalgamated with company. Therefore this petition is not maintainable.</p>	<p>filed on 4th June'2020 and was registered on the said date and was numbered as COMP.APPL 274/2020. After the First -motion petition was allowed. Thereafter the petitioner company filed the Second Motion Petition numbered as C.P.(CAA) 92/2021 on 3rd August 2021 which is prior to the date of Amendment in the LLP Act.</p>
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		<p>b. That it is the common knowledge that the enactment or amendment is always prospective and is never retrospective. In our case the Ist Motion was filed on 4th June'2020 and the IInd Motion is in continuation of the Ist motion.</p> <p>c. In view of the above, the LLP Amendment Act is not applicable to the present case.</p>
3.	<p>As per the clause 2, it has been provided that the scheme shall be effective from the effective date. However, as per the provision of</p>	<p>a. As regards the Observation it may be stated that the Appointed Date is</p>

	<p>section 232(6) the scheme shall clearly indicate an appointed date from which it shall be effective, and the scheme shall be deemed to be effective from such date and not a date subsequent to the appointment date. The same needs to be modified in the scheme</p>	<p>only for the purpose of ascertaining the assets and is never the effective date. Whenever the petition is filed for demerger the NCLT calls for the representation of the departments. On considering the report it approves the Scheme. On approval of the Scheme and passing of orders, the orders are filed with the ROC. Unless the orders are filed with ROC, the Scheme does not become</p>
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		<p>effective. Hence, there is the difference between the two dates.</p> <p>b. 11. Further in the case titled as Delhi High Court Hel Ltd., In Re Hcl Vs Unknown decided on 26 November, 1991 citations: 1994 80 Comp Cas 228 Delhi it was held that this date,</p> <p>"Mr. Shroff has explained, has been taken for the identification and quantification of the assets and liabilities</p>
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		<p>of the existing company and the new company consequent upon the proposed spin off. This identification has been done on the basis of the audited balance-sheet of the existing company for the financial year ending June 30, 1990. The "appointed date" is relevant for the purpose of fixation of the share valuation/share exchange rate which HP Co. would offer</p>
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		<p>to the existing shareholders after the bifurcation and spinning off of the divisions as the price is payable per share post-consolidation and reduction. The scheme nowhere seeks transfer artificially of new assets in July, 1990. All the assets which are sought to be transferred to the new company were in fact in existence on the "appointed date". There is, as such, no deeming</p>
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		<p>fiction in so far as the existence of assets is concerned for the purposes of transfer to the new company despite its incorporation only on May 15, 1991. The observation made by the Central Government overlooks the distinction between the "appointed date" and the "effective date" under the scheme. The definition of the latter expression makes clear. It reads thus:</p>
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		<p>"The 'effective date' means the later of the date on which all the consents and approvals referred to in Part VI, clause 9, of this scheme are obtained and/or the date on which the certified copy of the order passed by the Hon'ble High Court at Delhi sanctioning this scheme of arrangement is filed with the Registrar of Companies, Delhi."</p>
4.	As per MCA General Circular no. 9/2019 dated 21.08.2019, if the appointed date is significantly ante-dated beyond a year from the date	The Scheme of Demerger was approved by the Demerged Company on 31.08.2019 in its board

	<p>of filling, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest. In this case, the appointed date is 01.04.2018. However, the justification of the same being significantly ante-dated in terms of the above circular is not clearly brought out.</p>	<p>meetings. Thereafter the resulting LLP's were incorporated and the Scheme was approved by the respective LLP's and the present petition was filed on 4-06-2020. However there is not much difference between the appointed date and filing of petition.</p>
5.	<p>On perusal of e-form filed for the F.Y. ended 31.03.2021, it seen that the Resulting LLP 01 and Resulting LLP 02 both are not doing any business and also have nil revenue from operations over the last two period.</p>	<p>It may be stated that the Scheme of Demerger was approved by the Demerged Company and on 31.08.2019 and thereafter the resulting LLP's were formed. Hence, they were only incorporated for the purpose of demerger. Once the Scheme is approved,</p>

		they will carry on the business.
6.	As per auditor's certificate dated 25.10.2019 there are 12 secured creditors amounting to Rs. 39,15,910,519 and 159 un-secured creditors amounting to Rs. 81,79,36,412 in the demerged company. However, no meeting of these creditors have been conveyed as well as no consent/NOC obtained by way of affidavit.	It may be stated that the meeting for secured creditors was held and the chairman's report had been filed with IIND Motion Petition. However as regards the unsecured creditors, the Hon'ble NCLT had directed to issue notice to unsecured creditors and notices were sent to them through courier and the affidavit along with courier slips have been filed with NCLT. The NCLT had directed the unsecured creditors to file their representation, if any, with NCLT or the

		petitioner company. The company has not received any representation from unsecured creditor till date.
7.	No valuation report is annexed with the petition, simply valuation is determined by the designated by the partners.	it may be stated that the Demerger is always done on book value basis. No valuation is required where the assets are being transferred on book value basis. The increase or decrease in the value of value of assets is not considered or taken care of in the present Scheme of Arrangement (Demerger). Moreover, no valuation report is required in the Scheme of Demerger.

## 8. Findings and Analysis

- a) That the regional director in its report relying on the order of Hon'ble NCLAT in the case of Regional Director, MCA vs. Real Image LLP & Anr. (Company Appeal (AT) No.352 of 2018) has made submissions that the current petition is not maintainable.

*Section 232 of Companies Act, 2013 reads as under:*

*232. Merger and amalgamation of the companies:- (1) Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal-*

*(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and (b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the Tribunal may on such application, order a meeting of the creditors or class of creditors or the*

*members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply mutatis mutandis. (2) Where an order has been made by the Tribunal under subsection (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:— (a) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company; (b) confirmation that a copy of the draft scheme has been filed with the Registrar; (c) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties; (d) the report of the expert with regard to valuation, if any; (e) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.*

- b) The Hon'ble NCLAT while interpreting the sec 232 of the Companies Act stated in following words:

*It is apparent that as per Section 232 of Act, 2013 a company or companies can be merged or amalgamated into another company or companies. The Act, 2013 has taken care of merger of LLP into company. In this regard Section 366 of the Act, 2013 provides that for the purpose of Part I of Chapter XXI the word company includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity which can apply for registration under this part. It means that under this part LLP will be treated as company and it can apply for registration and once the LLP is registered as company then the company can be merged in another company as per Section 232 of the Act, 2013. 12. Section 55 to Section 57 of Chapter X of Limited Liability Partnership Act,2008 provides conversion from firms, private company and unlisted public company into limited liability partnership 13. In such a situation it is implicitly clear that the legislature has enacted provisions in Act, 2013 for conversion from the Indian LLP into Indian company and LLP Act 2008 provides conversion from Firm, Private company and unlisted public company into LLP.*

- c) The Hon'ble NCLAT further said that the LLP ACT 2008 and companies act 2013 both have clearly stated the method for the

conversion of a company into an LLP and vice versa, legislature intent can be easily deduced that it wanted an LLP to convert into a company and vice versa for any scheme of arrangement

*Section 55 to Section 57 of Chapter X of Limited Liability Partnership Act, 2008 provides conversion from firms, private company and unlisted public company into limited liability partnership*

*In such a situation it is implicitly clear that the legislature has enacted provisions in Act, 2013 for conversion from the Indian LLP into Indian company and LLP Act 2008 provides conversion from Firm, Private company and unlisted public company into LLP.*

- d) While explaining the maxim casus omissus, for interpreting the section 232 of the companies Act. Hon'ble NCLAT has clarified that the same principle cannot be applied here.

*Now we have considered when the principal of casus omissus can be applied. Hon'ble Supreme Court in the case of Union of India Vs Rajiv Kumar (2003) 6 Supreme Court Cases 516 held that subsidiary rules of interpretation-Casus Omissus when can be supplied by the Court.*

*Para 23 and para 24 of the judgement is as under:-*

*“23. Two principles of construction-relating to casus omissus and the other in regard to reading the statute/statutory provision as a whole appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. But, at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. “An intention to produce an unreasonable result”, said Danckwerts, L.J. in Artemiou V. Procopiou (All ER p. 544 I), “is not to be imputed to a statute if there is some other construction available”. Where to apply words literally would “defeat the obvious intention of the legislation and produce a wholly unreasonable result” we must “do some violence to the words” and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke V. IRC where AC at p.577 (All ER p. 664 I) he also observed: “This is not a*

*new problem, though our standard of drafting is such that it rarely emerges.”) 24.It is then true that, “when the words, of a law extend not to an inconvenience rarely happening, but do to those which often happen, it is good reason not to strain the words further than they reach, by saying it is cause omissus, and that the law intended quae frequentius accident”. “But”, on the other hand, “it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as it happened more frequently, because it happens but seldom” A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle of quod enim semel aut bis existit practereunt legislatores, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute-casus omissus er oblivion datus disposition juris communis relinquitur; “a casus omissus”, observed Buller, J. in Jones V. Smart (ER p.967), “can in no case be supplied by a court of law, for that would be to make laws”.*

e) The NCLAT further states as follows:

*We found on reading of the provisions of Act 2013 as a whole in reference of conversion of Indian LLP into Indian company there is no*

*ambiguity or absurdity or anomalous results which could not have been intended by the legislature. The principal of casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. As we have discussed above there is no such occasion to apply the principal of casus omissus.*

- f) The Hon'ble Supreme Court in the matter of UOI and ors. Vs Priyanka Sharan and Anr. (CIVIL APPEAL NO.5539 OF 2008 Arising out of SLP (C) No. 25514 of 2004) has made certain observations on the principle of Casus Omissus:

*19. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent.*

*20. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See*

*Institute of Chartered Accountants of India v. M/s Price*

*Waterhouse and Anr. (AIR 1998 SC 74)) The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner (1846 (6) Moore PC 1), Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See The State of Gujarat and Ors. v. Dilipbhai Nathjibhai Patel and Anr. (JT 1998 (2) SC 253)). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tiptan) Ltd. (1978 1 All ER 948 (HL)). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not*

*entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans (1910) AC 445 (HL), quoted in Jamma Masjid, Mercara v. Kodimaniandra Deviah and Ors.(AIR 1962 SC 847).*

*21. The question is not what may be supposed and has been intended but what has been said. “Statutes should be construed not as theorems of Euclid”. Judge Learned Hand said, “but words must be construed with some imagination of the purposes which lie behind them”. (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).*

*22. In Dr. R. Venkatchalam and Ors. etc. v. Dy. Transport Commissioner and Ors. etc. (AIR 1977 SC 842), it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme*

*into which the provision to be interpreted is somewhat fitted.*

*They are not entitled to usurp legislative function under the disguise of interpretation.*

*23. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the*

*legislature to amend, modify or repeal it, if deemed necessary. (See Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain (2000 (5) SCC 515). The legislative casus omissus cannot be supplied by judicial interpretative process.*

*24. Two principles of construction – one relating to casus omissus and the other in regard to reading the statute as a whole – appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose*

*all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. “An intention to produce an unreasonable result”, said Danackwerts, L.J. in Artemiou v. Procopiou (1966 1 QB 878), “is not to be imputed to a statute if there is some other construction available”. Where to apply words literally would “defeat the obvious intention of the legislature and produce a wholly unreasonable result” we must “do some violence to the words” and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC (1966 AC 557) where at p. 577 he also observed: “this is not a new problem, though our*

*standard of drafting is such that it rarely emerges”.*

*25. It is then true that, “when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt.” “But,” on the other hand, “it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom” (See Fenton v. Hampton 11 Moore, P.C. 345). A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such*

*statute - Casus omissus et oblivioni datus dispositioni communis juris relinquitur; “a casus omissus,” observed Buller, J. in Jones v. Smart (1 T.R. 52), “can in no case be supplied by a court of law, for that would be to make laws.”*

*26. The golden rule for construing wills, statutes, and, in fact, all written instruments has been thus stated: “The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further” (See Grey v. Pearson 6 H.L. Cas. 61). The latter part of this “golden rule” must, however, be applied with much caution. “if,” remarked Jervis, C.J., “the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an*

*absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning” (See Abley v. Dale 11, C.B. 378).*

9. That this tribunal after considering the above facts and issues, has come to the conclusion that for the scheme of Arrangement under sec 230-230 of the companies Act 2013, either for the amalgamation or demerger, the transferor companies and the transferee companies need to be the companies incorporated under the Companies Act 2013/1956.
10. It is an established fact that the petitioner 2 & 3 have failed to fulfill the criteria of being a company.
11. Hence, the present Company petition CP(CAA)92/ND/2021 is dismissed on the ground of maintainability.

**Sd/-**  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(MANNI SANKARIAH SHANMUGA SUNDARAM)**  
**MEMBER (JUDICIAL)**