



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT NO. V, MUMBAI BENCH**

C.P.(CAA)/08/MB-V/2022
Connected with
C.A.(CAA)/247/MB-V/2021

In the matter of

Section 230-232 of the Companies Act,
2013 and other applicable provisions of
the Companies Act, 2013 read with the
Companies (Compromises, Arrangements
and Amalgamations) Rules, 2016;

And

In the matter of

Scheme of Amalgamation of VIBRANT
GLOBAL INFRAPROJECT PRIVATE
LIMITED, the Transferor Company with
VIBRANT GLOBAL CAPITAL
LIMITED, the Transferee Company

VIBRANT GLOBAL INFRAPROJECT PRIVATE LIMITED

CIN: U45201MH2006PTC163487

... Petitioner Company No. 1/ Transferor Company

VIBRANT GLOBAL CAPITAL LIMITED

CIN: L65900MH1995PLC093924



... Petitioner Company No. 2/ Transferee Company

Order delivered on 06.06.2022

Coram:

Hon'ble Ms. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Ms. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconferencing):

For the Applicants : Mr Ahmed M Chunawala, i/b
Rajesh Shah & Co, Advocates
For the Regional Director : Mr. Chiradeep Balooni, Regional
Director, WR, MCA.

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The Bench is conveyed by videoconference.
2. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.
3. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of



Amalgamation of VIBRANT GLOBAL INFRAPROJECT PRIVATE LIMITED, the Transferor Company with VIBRANT GLOBAL CAPITAL LIMITED, the Transferee Company.

4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions dated 11th August, 2021 which are annexed to the respective Company Scheme Petitions.
5. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in the Company Scheme Application No. 247 of 2021 of the Hon'ble Tribunal.
6. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench.
7. The Learned Counsel for the Petitioner Companies states that the First Petitioner Company presently is engaged in business to undertake and to develop, construct, run, maintain, improve, build, operate and manage roads, bridges, flyovers, highways, railways, waterways gas lines, airport, docks, port, jetties, hotels, hospitals, stadiums, dams & reservoirs, gardens, public amenities, buildings warehousing including residential, commercial & industrial parks and complex and other structure, developments, utilities and infrastructure and that the Second



Petitioner Company presently is engaged in the business of finance company and to transact and promote business as financiers.

8. The rationale for the Scheme of Amalgamation of the Petitioner Companies would, inter alia, all the Companies are under the same management. The management is of the opinion that the merger will lead to synergies of operations and more particularly the following benefits:

- a. The amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base.
- b. It would be advantageous to combine the activities and operations of both companies into a single Company for synergistic linkages and the benefit of combined financial resources. This will be reflected in the profitability of the Transferee Company.
- c. This Scheme of amalgamation would result in merger and thus consolidation of business of the Transferor Company and the Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform.
- d. The Amalgamation of the Transferor Company with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal



utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of both the companies.

- e. The Scheme of amalgamation will result in cost saving for both the companies as they are capitalizing on each others core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.
- f. The transferor Company is a wholly owned subsidiary of the Transferee Company. The Shareholders would consolidate their holdings and leverage the share value consequent to higher profitability.

9. Since the entire equity share capital of the Transferor Company is held by the Transferee Company, upon amalgamation, the Transferee Company would not be required to issue and allot any shares to the shareholders of the Transferor Company. The Shares so held by the Transferee Company shall stand cancelled and extinguished pursuant to the implementation of the Scheme of Amalgamation.

10. The Regional Director has filed his Report dated 28th March 2022 *inter-alia* making the following observations in Paragraphs IV (a) to (j) which are reproduced hereunder:

Para	Observation by the Regional Director	Undertaking of the Petitioner Company/ Rejoinder
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IV(a)	In compliance of AS-14 (IND AS-I03), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.	So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes that in addition to compliance of IND AS-103 for accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as IND AS-8 as applicable.
IV(b)	The Petitioners under provisions of Section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or arrangement. Further, the	So far as the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Petitioner Companies through their Counsel hereby confirm that notices have been served to the concerned authorities which are



	approval of the Scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the Scheme. The decision of such Authorities is binding on the Petitioner Company(s).	likely to be affected by Amalgamation. Such authorities may decide issues arising after giving effect to approval of Scheme by this Honorable Tribunal in accordance with law.
IV (c)	Petitioner Company have to undertake to comply with section 232(3)(i) of Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions	So far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be accordance with provisions of section 232(3)(i) of the Companies Act, 2013.



	<p>of the section.</p> <p>The Transferee Company shall pay the balance / difference amount of the fees and stamp duty on its increasing Authorised share capital.</p>	
IV (d)	<p>Petitioner Companies undertake to obtain NOC from Income tax department, if applicable.</p>	<p>So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Petitioner Companies through their Counsel submits that the Petitioner Companies as per Section 230(5) of Companies Act, 2013 have provided notice to the concerned Income Tax Authorities. Therefore, no NOC need to be obtain from the concerned Income Tax Authorities and shall ensure compliance of all the provisions of Income Tax Act and Rules thereunder.</p>



IV (e)	Hon'ble NCLT may kindly direct the petitioners to file an undertaking to the extent that the Scheme enclosed to Company Application & the scheme enclosed to the Company Petition are one and same and there is no discrepancy or deviation.	So far as the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Petitioner Companies undertake that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy / any change / changes are made.
IV (f)	<p>As per the Definition of the Scheme.</p> <p>a. "The Appointed Date" means 1st April, 2021 or such other date as the National Company Law Tribunal (Tribunal) or other competent authority may otherwise direct/fix.</p> <p>b. "The Effective Date"</p>	<p>So far as the observation in paragraph IV (f) of the Report of the Regional Director is concerned, the Petitioner Companies through their Counsel submits that the Appointed Date is 1st April, 2021. The Counsel further submits that the Petitioner will comply with the requirements as to Appointed Date and clarified vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the</p>



	<p>means the date on Ministry.</p> <p>which certified copies of the Order(s) of the National Company Law Tribunal (Tribunal) vesting the assets, properties, liabilities, rights, duties, obligations and the like of all the Transferor Company in the Transferee Company are filed with the Registrar of Companies, Maharashtra, after obtaining the necessary consents, approvals, permissions, resolutions, agreements, sanctions and order in this regard.</p> <p>Further, the Petitioner may</p>	
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	be asked to comply with the requirements and clarified vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.	
IV (g)	<p>As per Clause 13 of the Scheme.</p> <p>ACCOUNTING TREATMENT</p> <p>a. The accounting treatment to be given to the amalgamation shall be for Amalgamation in the Nature of Merger as given in Ind AS 103 - Business Combination issued under the companies (Indian Accounting Standards) Rule 2015.</p>	<p>So far as the observation in paragraph IV (g) of the Report of the Regional Director is concerned, the Petitioner Companies undertake that the that as per IND AS-103, such surplus/deficit if any arising out of the scheme should be credited to the Capital Reserve/debited to Goodwill account arising out of amalgamation and such Capital Reserve arising out of the amalgamation shall not be considered as free reserve and will not be available for distribution of dividend.</p>



	<p>b. The Transferee Company shall record all assets and liabilities including reserves recorded in the Books of Account of the Transferor Company, which are transferred. to and vested in the Transferee Company pursuant to the Scheme at their book values as on the Appointed Date.</p> <p>c. If there is a surplus arising as a result of the difference, if any, of the value of the assets over the value of the liabilities of the Transferor Company, in accordance with this Scheme, the same shall be credited to</p>	
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	<p>the Capital Reserve Account of the Transferee Company and in the event of deficit, if any, the same shall also be debited to Capital Reserve Account of the Transferee Company.</p> <p>d. Inter-company balances, investments and transactions if any, will stand cancelled. Further, Investment in share capital of the Transferor Company, as appearing, inter alia, in the books of the Transferee Company shall stand cancelled.</p> <p>e. In case of any</p>	
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	<p>differences in the accounting policies between the Transferor Company and the Transferee Company, the impact of the same till the Appointed Date of amalgamation will be quantified and adjusted in the Free/General Reserves of the Transferee Company to ensure that the financial statements of the Transferee Company reflects the financial position on the basis of consistent accounting policies.</p> <p>Petitioner Companies have to undertake that the surplus/deficit shall be adjusted to Capital Reserve</p>	
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	<p>Account.</p> <p>Further Petitioner Companies have to undertake that reserves shall not be available for distribution of dividend.</p>	
IV(h)	<p>There is foreign shareholder in Transferee Company, hence Petitioner Companies shall undertake to comply the provisions of FERA/FEMA and RBI.</p>	<p>So far as the observation in paragraph IV (h) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company will comply with the provisions of FERA/ FEMA and RBI after the approval of the Scheme.</p>
IV(i)	<p>The Shares of the Transferee Company is listed on Bombay Stock Exchange Limited and the Transferor Company is not listed on any stock exchange. The Petitioner</p>	<p>So far as the observation in paragraph IV (i) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that this a merger between a wholly owned</p>



	<p>Company has stated that with reference to circular vide SEBI/HO/CFD/DIL1/CIR/P/2020/249 dated December 22, 2020, the transferee company is exempted from taking approval from Stock Exchange.</p>	<p>subsidiary with its holding company and hence no approval from Stock Exchange is required.</p>
IV(j)	<p><u>STATUS OF ROC REPORT: -</u></p> <p>ROC, Mumbai Report dated 20.12.2021 has interalia mentioned that there are no prosecution, no technical scrutiny, no inquiry, no inspection and no complaints pending against Petitioner Companies.</p> <p>Further mentioned that:-</p> <ol style="list-style-type: none">1. Transferor Companies has open charges.2. Interest of the Creditors	<p>So far as the observation in paragraph IV (j) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the charges which are open by the Transferor Company will be taken over by the Transferee Company and that the interest of creditors will be protected.</p>



	should be protected.	
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11. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 above. The Representative of the RD has submitted that the explanations and clarifications given by the petitioner companies are found satisfactory and that they have no objection to the Scheme. The Counsel for the Petitioner further submits that the Regional Director, Western Region further submits that they had filed their Supplementary Report on 6th May 2022.
12. The Official Liquidator has filed his report on 12th April 2022 in the Company Scheme Petition No. 08 of 2022, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner not prejudicial to the interest of the Shareholders of the Transferor Company and that the Transferor Companies may be ordered to be dissolved by this Tribunal.
13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 08 of 2022 is made absolute in terms of clauses (a) to (c) of the said Company Scheme Petition.
15. The First Petitioner Company be dissolved without winding up.
16. Petitioners are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of



Companies, electronically along with E-Form INC-28, in addition to physical copy within 30 days from the date of receipt of the Order from the Registry.

17. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Joint or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.
18. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Joint or Assistant Registrar, National Company Law Tribunal, Mumbai.
19. The Appointed Date is 1st April 2021.
20. Ordered Accordingly.

Sd/-

Anuradha Sanjay Bhatia
Member (T)

Sd/-

Suchitra Kanuparthi
Member (J)



Certified True Copy _____
Date of Application 07/06/2022
Number of Pages 18
Fee Paid Rs. 90
Applicant called for copy on 30/06/2022
Copy prepared on 30/06/2022
Copy Issued on 30/06/2022

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Deputy Registrar 30-6-2022
National Company Law Tribunal, Mumbai Bench