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12/02/24

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - I**

ITEM No.301

C.P.(CAA)/48(AHM)2023 in C.A.(CAA)/41(AHM)2023

**Order under Section 230-232**

**IN THE MATTER OF:**

Welspun Infraconstruct Pvt. Ltd.  
Welspun-Kaveri Infracapacity JV Private Limited  
Corbello Trading Pvt. Ltd.  
RGY Roads Pvt.Ltd.  
Welspun Enterprises Ltd.

.....Applicant

**Order delivered on 06/02/2024**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sameer Kakar, Hon,ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open Court, vide separate sheet.

-Sd-  
SAMEER KAKAR  
MEMBER (TECHNICAL)

-Sd-  
SHAMMI KHAN  
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH - I, AHMEDABAD**

**CP(CAA) No. 48/230-232/AHM/2023 in  
CA(CAA) No. 41/230-232/AHM/2023**

[Application under Section 230-232 of Companies Act, 2013  
read with the Companies (Compromise, Arrangement and  
Amalgamation) Rules, 2016]

**WELSPUN INFRACONSTRUCT PRIVATE LIMITED**

**CIN: U41000GJ2018PTC141883**

A Company incorporated under the provisions of  
Companies Act, 2013

Having its Registered Office at  
Welspun city, Village Versamedi, Taluka Anjar,  
Kutch-370110, Gujarat.

**...Petitioner Transferor Company 1**

**WELSPUN- KAVERI INFRAPROJECTS JV PRIVATE LIMITED**

**CIN: U41000GJ2021PTC141882**

A Company incorporated under the provisions of  
Companies Act, 2013

Having its Registered Office at  
Welspun city, Village Versamedi, Taluka Anjar,  
Kutch-370110, Gujarat.

**...Petitioner Transferor Company 2**

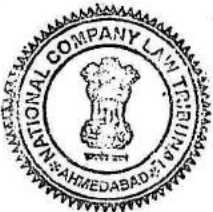
**CORBELLO TRADING PRIVATE LIMITED**

**CIN: U51909GJ2017PTC141193**

A Company incorporated under the provisions of  
Companies Act, 2013

Having its Registered Office at  
Welspun city, Village Versamedi, Taluka Anjar,  
Kutch-370110, Gujarat.

**...Petitioner Transferor Company 3**



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CP (CAA)/48/2023 in CA (CAA)/41/2023

Welspun infraconstruct pvt ltd., Welspun kaveri Infraprojects JV pvt ltd,  
Corbello Trading Pot ltd and RGY Roads Pot ltd, with Welspun Enterprises Limited.

**RGY ROADS PRIVATE LIMITED**  
**CIN: U45309GJ2017PTC141194**

A Company incorporated under the provisions of  
Companies Act, 2013

Having its Registered Office at  
Welspun city, Village Versamedi, Taluka Anjar,  
Kutch-370110, Gujarat.

**...Petitioner Transferor Company 4**

**With**

**WELSPUN ENTERPRISE LIMITED**  
**CIN: U45201GJ1994PLC023920**

A Company incorporated under the provisions of  
Companies Act, 2013

Having its Registered Office at  
Welspun city, Village Versamedi, Taluka Anjar,  
Kutch-370110, Gujarat.

**...Petitioner Transferee Company**

**And**

**Their Respective Shareholders.**

**Order pronounced on: 06.02.2024**

**CORAM**

**SHAMMI KHAN, MEMBER (JUDICIAL)**

**SAMEER KAKAR, MEMBER (TECHNICAL)**

**Appearance:**

For the Applicant(s) : Mr. Saurabh Soparkar, Ld. Sr. Adv.  
a. w. Ms. Dharmishta Raval, Ld. Adv.  
For the RD : Mr. Shiv Pal Singh, Deputy Director

For the OL :Mr. Sandip Tupe

For the Income  
Tax Department : None

CP (CAA)/48/2023 in CA (CAA)/41/2023

Welspun infraconstruct pvt ltd., Welspun kaveri Infraprojects JV pvt ltd,  
Corbello Trading Pvt ltd and RGY Roads Pvt ltd, with Welspun Enterprises Limited.

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## ORDER

1. The present Company Petition has been filed by the Applicant Companies above named for the purpose of the approval of the Scheme of Amalgamation of **Welspun Infraconstruct Pvt Ltd.** (for brevity "Transferor Company No.1"), **Welspun Kaveri Infraprojects JV Pvt Ltd** (for brevity "Transferor Company No.2"), **Corbello Trading Pvt Ltd** (for brevity "Transferor Company No.3"), **RGY Roads Pvt Ltd** (for brevity "Transferor Company No.4"), **with Welspun Enterprises Limited** (for brevity "Transferee Company") under section 230-232 of 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') (hereinafter referred to as the 'SCHEME') pursuant to the Scheme proposed by the Applicant Companies and the said Scheme is also annexed at "**Annexure G**" along with the Application.

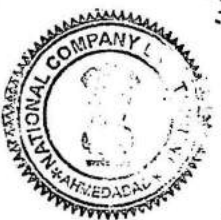


2. An Affidavit in support of petition has been sworn by Mr. Akhil Pillai, Authorised Signatory and the same is annexed with the petition. The above named Authorised Signatory of the Petitioner Companies has been authorized vide Board Resolution dated 07.06.2023.

3. **1<sup>ST</sup> MOTION APPLICATION – IN BRIEF**

The Transferor Company and the Transferee Company have filed the First Motion Application vide CA(CAA)41/AHM/2023 seeking reliefs as follows:

	EQUITY SHAREHOLDERS	PREFERENCE SHAREHOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
TRANSFEROR COMPANY 1	To dispense with	NIL	NIL	NIL
TRANSFEROR COMPANY 2	To dispense with	NIL	NIL	NIL
TRANSFEROR COMPANY 3	To dispense with	NIL	NIL	NIL
TRANSFEROR COMPANY 4	To dispense with	NIL	NIL	NIL
TRANSFEREE COMPANY	To dispense with	NIL	To dispense with	To dispense with



Based on such application moved under Sections 230-232 of the Companies Act, 2013; directions were issued by this Tribunal, vide order dated **13.09.2023**, to dispense the meetings of the Equity Shareholders, of the all the Transferor companies. Since there are no Creditors in Transferor Companies question of convening of meetings of the Creditors does not arise. Further, meeting of Equity Shareholder, Secured Creditor and Unsecured Creditors of the Transferee Company were dispensed with.

4. The second motion petition was filed before this Tribunal by the Petitioner Companies on **24.09.2023** for sanction of the Scheme of Amalgamation by this Tribunal.

5. **RATIONALE OF THE SCHEME**

The Rationale for the Scheme as envisaged under the Scheme of Amalgamation appended at **Annexure G** of the Transferor Companies and Transferee Company typeset is extracted hereunder:

The Scheme is expected to achieve the followings:



- i. Streamlining the structure of the Transferee Company by way of reduction in the number of entities / subsidiaries and making it simple and transparent;
  - ii. Elimination of doubling of related costs, thereby reducing operational and administrative expenses and overheads, and lead to better cost and operational efficiencies; and
  - iii. Reducing the multiplicities of legal and regulatory compliances.
6. In the second motion application filed by the Applicant Companies, this Tribunal directed the Applicant Companies to issue notice to the Statutory / Regulatory Authorities viz. (i) Central Government through the office of the Regional Director (North-Western Region), Ministry of Corporate Affairs (MCA) (ii) Registrar of Companies, Gujarat, MCA (iii) Office of the Official Liquidator (iv) the Income Tax Department, and other sectoral regulators, who may govern the working of the respective companies, as well as for paper publication to be made in "Indian Express"(Ahmedabad Edition) and "Sandesh" (Ahmedabad Edition).



7. In compliance to the said directions issued by this Tribunal, the Petitioner Companies have filed an affidavit of service before the Registry of this Tribunal on **06.12.2023** in **Inward No. D4963** and a perusal of the same discloses that the Petitioner Companies have effected paper publications as directed by the Tribunal in the "Indian Express"(Ahmedabad Edition) and "Sandesh" (Ahmedabad Edition) on 04.12.2023. It is also seen that notices have been also served to (i) Regional Director, North-Western Region, Gujarat on 01.12.2023, (ii) Registrar of Companies, Gujarat on 01.12.2023, (iii) Official Liquidator on 01.12.2023 and (iv) Income Tax Authority along with Chief Commissioner of Income Tax on 01.12.2023 and (v) Listing Department of BSE Ltd.(Bombay stock Exchange Limited) on 01.12.2023 (vi) The National Stock Exchange of India Limited on 01.12.2023 (vii) Securities and Exchange Board of India on 01.12.2023 the proof of the same by way of affidavits have been enclosed with the separate typed set. Pursuant to the





service of notice of the petition the following statutory authorities have responded as follows:-

**STATUTORY AUTHORITIES**

**8. REGIONAL DIRECTOR & REGISTRAR OF COMPANIES**

8.1 The Regional Director, North-Western Region (*hereinafter referred to as 'RD'*) to whom the notice was issued, has filed its Report along with the report of Registrar of Companies before this Tribunal on **12.12.2023** in **R744**.

**OBSERVATION OF REGIONAL DIRECTOR**

- a) In para 5(i) of RDs report observation of ROC is given wherein it is stated that, there are no complaints, inquiry, inspection, investigation or prosecution pending against the Petitioner Companies.
- b) In para 5(ii) of RDs report observation of ROC is given wherein it is stated that, no case is pending against all the Transferor Companies. However, this office had filed prosecution u/s 58A of the



Companies Act, 1956 against the Transferee company erstwhile MSK Projects (India) Limited and its directors/promoters at the relevant time before the Chief Judicial Magistrate, Baroda on 26.03.2020. The Transferee company vide e-mail dated 17.10.2023 has submitted that "In the year 2010 MSK Projects (India) Limited was acquired by erstwhile Welspun Projects Limited whose name was later changed to Welspun Enterprises Limited. Since, MSK Projects was acquired after receipt of ROC Notice, hence, the show cause notice issued by ROC is not related to any of the promoters / directors of Welspun Enterprises Limited or to Welspun Enterprises Limited itself". Next date of hearing has been fixed on 12.12.2023 in the aforesaid matter.

- c) In para 5(iii) of RDs report as well as at para 14(2) of ROCs report it is stated that, in order dated 13.09.2023 the No. of secured creditors in Transferee Company are mentioned as 4 whereas, in the Index of Charge available under the MCA's



website, there are 38 open secured charge in favour of 14 Secured Charge holders. The company has failed to file satisfaction as per the requirement of section 82 of the Companies Act, 2013 r.w. Rule 8 of (registration of Charges) Rules, 2014. Therefore, the Transferee Company be directed to place on record the facts regarding due compliance of the provisions of section 82 of the Companies Act, 2013 r.w. Rule 8 of (registration of Charges) Rules, 2014 before implementation of the scheme.

- d) In para 6(i) it is stated that, the appointed date for Transferor Company No.1 is 1<sup>st</sup> April, 2022, for Transferor Company No.2 is 6<sup>th</sup> May, 2022, for Transferor Company No.3 is 5<sup>th</sup> September, 2022 and for Transferor Company No.4 is 28<sup>th</sup> September, 2022 however, the company application is filed on 21.06.2023 i.e. after one year from the appointed date and no justification is mentioned in the scheme about the gap of more than one year in filing of application and appointed date therefore, the petitioner companies be directed to comply with



the same and place on record all the relevant facts of the matter.

- e) In para 6(ii) it is stated that, all the Transferor Companies are merged with single Transferee Company but appointed date are different date for each transferor companies. The applicant companies should clarify reasons about different date for each transferor companies. Therefore, the Petitioner Companies be directed to comply with the same and place on record all the relevant facts of the matter.
- f) In para 6(iii) it is stated that, there is no clause in scheme with regards to transfer/merger of the authorised share capital of the petitioner transferor company in the authorized share capital of petitioner transferee company. Therefore, the petitioner companies be directed to place on record all the relevant facts of the matter for compliance of section 232 (3) (i) of the Companies Act, 2013.
- g) In para 6(iv) it is stated that, the petitioner companies be directed to file an affidavit to the



extent that the scheme enclosed to the Company Application and Company Petition are one and the same and there is no discrepancy or no change is made.

h) In para 6(v) it is stated that, as per financial statements as on 31.03.2022 of the Transferor Company No. 3 & 4, the following body corporate shareholders hold 10% or more of total shareholding of the companies:-

Sr. No.	Petitioner Company	Name of Shareholder	% of shares held	Remark
1	Corbello Trading Private Limited	Welspun Enterprises Limited	99.99%	No eForm BEN-2 has been filed by any of the Petitioner Companies as per records available at
2	RGY Roads Private Limited (Transferor Company No.4) State of Gujarat	Welspun Enterprises Limited	99.99%	



				MCA21 Portal
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No eForm BEN-2 has been filed hence, petitioner companies are under statutory obligation to file e-form BEN-2 for declaring name of the significant beneficial owner with concerned ROC.

- i) In para 7(i) it is stated that, petitioner companies have to ensure compliance of observation made by Registrar of Companies and this Directorate.
- j) In para 7(ii) it is stated that, the Petitioner Companies be directed to preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central Government as per the Provision Section 239 of the Companies Act, 2013.
- k) In para 7(iii) it is stated that, the Petitioner Companies be directed to ensure statutory compliance of all applicable Laws and on sanctioning of the present Scheme, the Petitioner



Companies shall not be absolved from any of its statutory liabilities, in any manner.

- l) In para 7(iv) it is stated that, necessary Stamp Duty on transfer of property/Assets, if any is to be paid to the respective Authorities before implementation of the Scheme.
- m) In para 7(v) it is stated that, the petitioner companies involved in the scheme to comply with the provisions of Section 232(5) of the Companies Act, 2013 with respect to file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from date of passing order.
- n) In para 7(vi) it is stated that, the Petitioner companies shall undertake comply with Income Tax /GST law and any demand /taxes payable on implementation of the said scheme as per law.
- o) In para 7(vii) it is stated that, the Applicant company/(ies) have to pay such amount of legal fees / cost to the Central Government which may be considered appropriate by this Hon'ble NCLT for

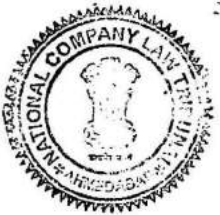


the legal fees / expenses of the office of the Regional Director for submitting this report and representing the matter on behalf of the Central Government.

p) In para 8 it is stated that, there are no other observations/submissions except stated hereinabove, for consideration of the Hon'ble NCLT in respect of the Scheme proposing an Amalgamation of Welspun Infraconstruct Private Limited, Welspun-Kaveri Infraprojects JV Private Limited, Corbello Trading Private Limited, RGY Roads Private Limited with Welspun Enterprises Limited and their respective shareholders.

#### **OBSERVATION OF REGISTRAR OF COMPANIES**

a) In para 14(1) it is stated that, the Transferor Companies are not listed with any stock exchange however, equity shares of Transferee Company are listed on BSE Limited (BSE) and National Stock Exchange (NSE). The scheme involves amalgamation of wholly owned subsidiaries with the parent company. Thus, the Transferee Company shall





comply with the directive/circular issued by SEBI from time to time.

- b) In para 14(2) as well as para in 5(iii) of RDs report at of it is stated that, in order dated 13.09.2023 the No. of secured creditors in Transferee Company are mentioned as 4 whereas, in the Index of Charge available under the MCA's website, there are 38 open secured charge in favour of 14 Secured Charge holders. The company has failed to file satisfaction as per the requirement of section 82 of the Companies Act, 2013 r.w. Rule 8 of (registration of Charges) Rules, 2014. Therefore, the transferee company be directed to place on record the facts regarding due compliance of the provisions of section 82 of the Companies Act, 2013 r.w. Rule 8 of (registration of Charges) Rules, 2014 before implementation of the scheme.
- c) In para 14(3) it is stated that, the petitioner companies be directed to preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central



Government as per the Provisions of section 239 of the Companies Act, 2013.

- d) In para 14(4) it is stated that, the Petitioner Companies be directed to ensure statutory compliance of all applicable laws and also on sanctioning of the present Scheme, the Petitioner Company shall not be absolved from any of its Statutory liabilities, in any manner.
- e) In para 14(5) it is stated that, necessary stamp duty on transfer of property/assets, if any is to be paid to the respective authorities before implementation of the Scheme.
- f) In para 14(6) it is stated that, the Petitioner Companies be directed to comply with provisions of Section 232(5) of the Companies Act, 2013 with respect to file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from date of passing order.

8.2 In response to the observations of RD, the Petitioner Companies have filed its reply before this tribunal on **13.12.2023** vide **inward no.D5114**.



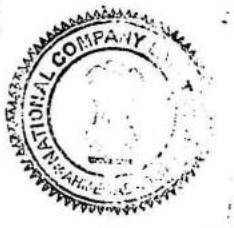
**RESPONSE TO OBSERVATION OF REGIONAL DIRECTOR**

a) In response to observation at para 5(iii), the Petitioner Transferee Company undertakes to comply with the provisions of section 82 of the Companies Act, 2013 read with Rule 8 of the Companies (Register of Charges) Rules, 2014. The Petitioner Transferee Company submits that the charges from serial no. 1 to 8 pertain to the Petitioner Transferee Company. With reference to the charges from serial no. 9 to 38 (representing 1.62% of the total charge amount), the Petitioner Transferee Company submits that the said charges are old charges and pertains to erstwhile MSK Projects (India) Limited (acquired by Welspun Group and subsequently changed the name to Welspun Enterprises Limited). The Petitioner Transferee Company submits that considering these are old charges of MSK Projects (India) Limited, it is undertaking suitable steps to ensure satisfaction of the same. The Petitioner Transferee Company had also



obtained a certificate from a Chartered Accountant confirming the list of creditors.

b) In response to observation at para 6(i), the petitioner companies states that the present scheme of amalgamation was initially approved by the Board of Directors of the Petitioner Companies on 14<sup>th</sup> November, 2022. Subsequently, the Transferee Company announced a buyback on 30<sup>th</sup> December 2022. The Transferee Company is listed entity and is required to comply with provisions of Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018. As per Regulation 24(ii) of Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018, no public announcement of buy-back shall be made during the pendency of any scheme of amalgamation pursuant to the provisions of the Companies Act, 2013 therefore, on 30<sup>th</sup> December 2022, the Board of Directors of the Petitioner Companies withdrew the scheme and on completion of buy-back the Board of Directors on 21<sup>st</sup> April 2023 again approved the scheme.



- c) In response to observation at para 6(ii), the Petitioner Companies submits that the appointed date for the Scheme is kept as 1 April 2022 (i.e. first date of the financial year 2022-23) or the date on which each of the Petitioner Transferor Companies became a wholly owned subsidiary of the Petitioner Transferee Company, whichever is later.
- d) In response to observation at para 6(iii), the Petitioner Companies submit that pursuant to the Scheme, the Petitioner Companies does not intent to aggregate the authorised share capital of the Petitioner Transferor Companies with that of the Petitioner Transferee Company. However, the Petitioner Companies undertake to ensure compliance of section 232(3)(i) of the Companies Act, 2013 to the extent applicable.
- e) In response to observation at para 6(iv), the Petitioner Companies submits that the Scheme enclosed to the Company Scheme Application and the Company Scheme Petition are one and the same and there is no discrepancy, or any change is made.



- f) In response to observation at para 6(v), the Petitioner Transferor Company 3 and the Petitioner Transferor Company 4 submits that Form BEN-2 has been filed with the Registrar of Companies. The Petitioner Transferor Company 3 and the Petitioner Transferor Company 4 has complied with and undertakes to comply with the provisions of section 90 of the Companies Act, 2013 read with Companies (Significant Beneficial Owners) Amendment Rules, 2019.
- g) In response to observation at para 7(ii), the Petitioner Companies undertake to preserve its books of accounts, papers and records and that the same shall not be disposed of without prior permission of Central Government as per the provisions of section 239 of the Companies Act, 2013.
- h) In response to observation at para 7(iii), the Petitioner Companies has ensured and shall ensure compliance of all the applicable laws and undertakes that on sanctioning of the present Scheme, the Petitioner Companies shall not be absolved from any of its statutory liabilities in any manner.



- i) In response to observation at para 7(iv), the Petitioner Companies undertakes to pay necessary legitimate stamp duty on transfer of property / assets pursuant to the Scheme as and when they statutorily become due for payment.
- j) In response to observation at para 7(v), the Petitioner Companies undertakes to comply with the provision of Section 232(5) of the Companies Act, 2013 with respect to filing of certified copy of order sanctioning the Scheme with the Registrar of Companies withing 30 days from date of receipt of certified copies of the order sanctioning the Scheme.
- k) In response to observation at para 7(vi), the Petitioner Companies undertakes to comply with the Income Tax / GST law and any demand / taxes payable in accordance with the provisions of the applicable law.
- l) In response to observation at para 7(vii), the Petitioner Companies undertakes to pay such legal fees / cost to the Central Government as may be considered appropriate by this Hon'ble Tribunal.



8.3 This Adjudicating Authority vide its order dated 14.12.2023 had directed the Petitioner Companies to file relevant affidavit to satisfy this Tribunal on the observations made by the RD office along with citations.

8.4 In compliance of said order, the Petitioner Companies filed an affidavit dated **05.01.2024** before this Tribunal on **08.01.2024 in Inward No. D162**. The submissions of the Petitioner Companies are as under:

a. With respect to observation of RD on appointed date being ante-dated beyond a year the Petitioner Companies submits that:

i. The appointed date for the **Petitioner Transferor Company 3** and the **Petitioner Transferor Company 4** is not ante-dated beyond a year at the time of filing application.

ii. General Circular 09/2019 dated 21.08.2019 issued by the Ministry of Corporate Affairs reads as below:





“the ‘appointed date’ is chosen as a specific calendar date, it may precede the date of filing 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.”

In view of the above, the justification given by the Petitioner Companies for having an appointed date ante-dated beyond a year in case of **Petitioner Transferor Company 1** and **Petitioner Transferor Company 2** is as follows:

The present scheme of amalgamation was initially approved by the Board of Directors of the Petitioner Companies on 14<sup>th</sup> November, 2022. Subsequently, the Transferee Company announced a buyback



on 30<sup>th</sup> December 2022. The Transferee Company is listed entity and is required to comply with provisions of Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018. As per Regulation 24(ii) of Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018, no public announcement of buy-back shall be made during the pendency of any scheme of amalgamation pursuant to the provisions of the Companies Act, 2013 therefore, on 30<sup>th</sup> December 2022, the Board of Directors of the Petitioner Companies withdrew the scheme and on completion of buy-back the Board of Directors on 21<sup>st</sup> April 2023 again approved the scheme.

- iii. The provisions of section 232(6) of the Companies Act, 2013 and the general circular 09/2019 nowhere prohibits the determination of an appointed date as ante-



date or prior to the date of filing of the application.

iv. The scheme is beneficial to the Petitioner Companies and is not against the public interest.

v. Reliance is place by Petitioner Companies on the following decisions:

- In the matter of Tenshi Life Sciences Private Limited CP(CAA)/31(CHE)2022 in CA(CAA)/49/CHE/2021, order dated 29 November 2022 passed by Hon'ble Tribunal, Chennai Bench.
- In the matter of Scientific Publishing Services Private Limited CP(CAA)/57(CHE)/2021 in CA(CAA)/792(CHE)/2020, order dated 14th October 2022 passed by Hon'ble Tribunal, Chennai Bench.
- In the matter of Mandala Wellness Private Limited CP(CAA)/8/(CHE)/2021 in CA/343/CAA/2020, order dated 13th



January 2022 passed by Hon'ble Tribunal,  
Chennai Bench.

- In the matter of United Petro Finance Limited C.P.(CAA) No. 4143 of 2019 connected with C.A. (CAA) No. 2464 of 2019, order dated 13th December 2020 passed by Hon'ble Tribunal, Mumbai Bench.

b. With respect to the observation of the RD on the different appointed dates, the Petitioner Companies submits that:

- i. The provisions of section 232(6) of the Companies Act, 2013 read with general circular no 09/2019, permits the appointed date to be a specific calendar date or an event-based date, as may be mutually agreed upon by the parties to the Scheme.
- ii. The appointed date for the Scheme is kept as 1 April 2022 (i.e. first date of the financial year 2022-23) or the date on, which each of the Petitioner Transferor



Companies became a wholly owned subsidiary of the Petitioner Transferee Company, whichever is later. Hence, the Petitioner Companies have opted for different appointed dates as the Petitioner Transferor Company 2, the Petitioner Transferor Company 3 and the Petitioner Transferor Company 4 became the wholly owned subsidiary of the Petitioner Transferee Company at different point in time.

iii. Reliance is placed on the following decisions:

- In the matter of Bellissimo Constructions and Developers Private Limited CSP NO. C.P. (CAA)/4(MB)/2023 connected with CSA NO.C.A. (CAA)/262(MB)/2022, order dated 25th April 2023 passed by Hon'ble Tribunal, Mumbai Bench.
- In the matter of Microin Services Private Limited CP(CAA) No. 31/BB/2022, order



dated 25th November 2022 passed by Hon'ble Tribunal, Bengaluru Bench.

- In the matter of Scientific Publishing Services Private Limited CP(CAA)/57(CHE)/2021 in CA(CAA)/792(CHE)/2020, order dated 14th October 2022 passed by Hon'ble Tribunal, Chennai Bench.
- In the matter of Anantnath Constructions and Farms Private Limited C.A. (CAA)/275/MB/2021 connected with C.P.(CAA)/33/MB/2022, order dated 20th April 2022 passed by Hon'ble Tribunal, Mumbai Bench.
- In the matter of Brahmi Tracks Management Services Private Limited C.P.(CAA)56(AHM)2021 in C.A. (CAA)56(AHM)2021, order dated 27th January 2022 passed by Hon'ble Tribunal, Ahmedabad Bench.



8.5 During the hearing held on 11.01.2024, the representative of RD submitted that in view of additional affidavit filed by the Petitioner Companies they do not have an objection for approval of the scheme.

8.6 It is observed that no response is filed to the observations of Registrar of Companies, therefore, the Petitioner Companies are directed to comply with directions issued by Registrar of Companies more particularly the direction in para 14(1) with regards to compliance of directive/circular issued by SEBI as the equity shares of Transferee Company are listed on BSE Limited and National Stock Exchange of India Limited.

## 9. OFFICIAL LIQUIDATOR

9.1. In relation to the Official Liquidator, (*hereinafter referred to as 'OL'*) to whom the notice was issued has filed the Report before this Tribunal on **06.12.2023** in **Inward No. R-736.**

### OBSERVATIONS OF OFFICIAL LIQUIDATOR



- a) In para 11 it is stated that, the petitioner companies be directed to preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central Government as per the provision of Section 239 of the Companies Act, 2013.
- b) In para 12 it is stated that, the petitioner companies be directed to ensure statutory compliance of all applicable laws and on sanctioning of the present Scheme, the Company shall not be absolved from any of its Statutory liabilities, in any manner.
- c) In para 13 it is stated that, the Transferor Company, may be dissolved without following the process of winding-up in terms of sub-section 3(d) of Section 232 of the Companies Act, 2013. Further, the Transferor company being dissolved, the fee, if any paid by the Transferor Company on its Authorized Share Capital shall be set-off against any fees payable by the Transferee Company on its Authorized Capital subsequent to the amalgamation in terms of sub section 3(i) of Section 232 of Companies Act,2013.





- d) In para 14 it is stated that, the cost of proceedings and office expenses of the office of the official liquidator for submitting the report is Rs. 10,000/- therefore, the Transferee Company be directed to pay such cost and expenses to the Official Liquidator for the Transferor Company or any other amount as may be considered appropriate by this Hon'ble Bench by submitting Demand Draft/Bankers Cheque only in favour of the Official Liquidator, payable at Ahmedabad.
- e) In para 15 it is stated that, the Petitioner Companies be directed to lodge a certified copy of the order along with the scheme, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any.
- f) In para 16 it is stated that, the petitioner companies be directed to comply with provision of Section 232(5) of Companies Act, 2013 to file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from the date of passing order.

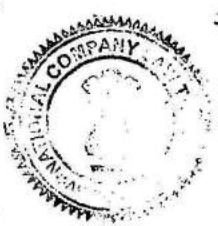


g) In para 17 it is sated that, the official liquidator has no further observations or objections based on the information provided by the Transferor Company for consideration of the Hon'ble Tribunal in respect on proposed scheme of Amalgamation between Welspun Infraconstrucr Private Limited, Welspun-Kaveri Infraprojects Private Limited, Corbello Trading Private Limited, RGY Roads Private Limited with Welspun Enterprises Limited and their respective Shareholders and creditors.

9.2 In response to the observations of Official Liquidator, the Petitioner Companies have filed its reply before this tribunal on **13.12.2023** vide **inward no. D5114**.

**RESPONSE TO OBSERVATION OF OFFICIAL LIQUIDATOR.**

a) In response to observation at para 11, the petitioner transferee company undertakes that it shall preserve the books of accounts, papers and records of the Transferor Companies and shall not dispose them without prior permission of the central government as



per the provision of section 239 of the Companies Act,2013.

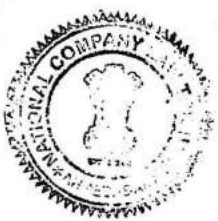
- b) In response to observation at para 12, the Petitioner Transferor Companies undertakes to ensure statutory compliances of all applicable laws. Further the Petitioner Transferor Companies undertakes that on sanctioning of the Scheme, it shall not be absolved from any of its<sup>s</sup> statutory liabilities, in any manner.
- c) In response to observation at para 13, the Petitioner Transferor Companies submits that the scheme does not contain provision for aggregation of the authorised share capital of the Petitioner Transferor Companies with the Petitioner Transferee Company. Further, the Petitioner Transferor Companies undertakes to abide and comply by the terms of sub section 3(i) of section 232 of the Companies Act,2013 to the extent applicable.
- d) In response to observation at para 14, the Petitioner Transferee Company undertakes to pay such legal fees/cost to the office of Official Liquidator as is quantified and directed by this Hon'ble Tribunal.



- e) In response to observation at para 15, the Petitioner Companies undertakes to lodge a certified copy of the order along with the Scheme, with the concerned Superintendent of Stamps for the purpose of adjudicating the stamp duty payable.
- f) In response to observation at para 16, the Petitioner Transferor Companies undertakes to comply with the provisions of Section 232(5) of the Companies Act, 2013 with respect to filing certified copy of the order sanctioning the Scheme with the office of the ROC within 30 days from the date of receipt of the order.

**10. Income TAX DEPARTMENT:**

10.1 Despite notice having been served on 01.12.2023, 19.12.2023 and 20.12.2023 and paper publication made on 04.12.2023 in The Indian Express in English and Sandesh in Gujarati, there is no representation from the Department of Income Tax. Under such circumstances this Tribunal in terms of Section 230(5) of the Companies Act, 2013 presumes that the



Department of Income Tax does not have any objection to the sanction of the Scheme.

Further, the Petitioner Companies have filed an affidavit dated 12.12.2023 before this Tribunal on **13.12.2023 vide inward no. D5114** wherein it stated that there are no on-going pending income tax litigations/demand in the Petitioner Transferor Companies and certificate of Chartered Accountant to that effect along with screenshot of income tax portal are annexed.

## **11. VALUATION REPORT**

11.1 The Transferor Companies are wholly owned subsidiaries of the Transferee Company, no shares are issued to the shareholders of the Transferor Companies hence, there is no requirement of valuation report.

## **12. ACCOUNTING TREATMENT**

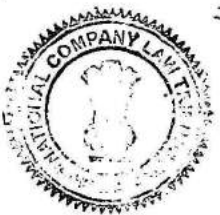
12.1 The Learned Counsel for the Petitioner Companies have stated that the Statutory Auditors has certified that the Accounting Treatment proposed in terms of



clause 6 of the Scheme is in conformity with the applicable Accounting Standards. The Certificate issued by the Statutory Auditors certifying the Accounting Treatment of the Petitioner Companies is placed at '**Annexure H-Colly**' of the typeset.

### **13. OBSERVATIONS OF THIS TRIBUNAL**

13.1. After analyzing the Scheme in detail, this Tribunal is of the considered view that the scheme as contemplated amongst the petitioner companies seems to be *prima facie* beneficial to the Company and will not be in any way detrimental to the interest of the shareholders of the Company. Considering the record placed before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the Scheme of Amalgamation appended at '**Annexure G**' of the Transferor Companies and Transferee Company to the typed set filed along with the Company Petition as well as the prayer made therein.



13.2. The Learned Counsel for the Petitioner companies submitted that no winding up/ liquidation proceedings/ corporate insolvency resolution process proceedings have been filed or pending against the Petitioner Companies under the Companies Act, 2013 or the corresponding provisions of the Companies Act, 1956. Further, investigation or proceedings under the Companies Act, 1956/ Companies Act, 2013 have been instituted or are pending in relation to the Petitioner Companies.

13.3. 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.

13.4. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting approval of the said loan



assignments and 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.

13.5. Further it becomes relevant to discuss that 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.”*

**14. THIS TRIBUNAL DO FURTHER ORDER:**

- i. The Scheme of Amalgamation as annexed herewith as “**Annexure A**” is hereby sanctioned and it is declared that same shall be binding on the Petitioner Companies and their Shareholders and Creditors and all concerned under the scheme;
- ii. All the properties, rights and powers of Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Act, stand transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Company.
- iii. All licenses, permissions, permits, approvals, certificates, clearances, authorities, leases, tenancy, assignments, rights, claims, liberties, special status, other benefits or privileges and



any power of attorney relating to the Transferor Companies shall stand transferred to and vested in the Transferee Company, without any further act or deed. The Transferee Company shall be bound by the terms thereof, the obligations and duties thereunder, and the rights and benefits under the same shall be available to the Transferee Company.

- iv. All the liabilities and duties of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- v. All contracts, agreements, insurance policies, bonds and all other instruments of whatsoever nature or description, of the Transferor Companies, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually against the Transferee Company.
- vi. All taxes paid or payable by the Transferor Companies including existing and future



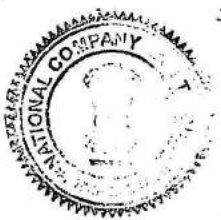
incentives, un-availed credits and exemptions, the benefit of carried forward losses and other statutory benefits, which shall be available to and vest in the Transferee Company. The Tax liability of the Transferor Companies shall become a liability of the Transferee Company and any proceedings against the Transferor Companies shall continue against the Transferee Company.

- vii. All proceedings now pending by or against the Transferor Companies shall be continued by or against the Transferee Company.
- viii. That the Appointed Date for the scheme shall be 01.04.2022 for the Transferor Company 1, 06.05.2022 for Transferor Company 2, 05.09.2022 for the Transferor Company 3 and 28.09.2022 for the Transferor Company 4 as mentioned in clause 1.2 of the Scheme.
- ix. All employees in the service of the Transferor Companies shall be deemed to have become the employees of the Transferee Company on a date on which the scheme finally takes effect on the basis that their services shall be deemed to have been continuous and not have been interrupted by reasons of the said transfer and on term and conditions no less favourable than those on



which they were/are engaged, as on the Effective Date.

- x. The Petitioner Companies within thirty days of the date of the receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the entire Undertaking of the Transferor Companies shall stand transferred to the Transferee Company and the Registrar of Companies shall place all documents relating to the Petitioner Companies to the file kept by him in relation to the Transferee Company and the files relating to the said two companies shall be treated accordingly;
- xi. All concerned Authorities to act on the copy of this order along with the Scheme authenticated by the Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme immediately;
- xii. The Petitioner Companies are directed to lodge a copy of this Order and the approved Scheme and Schedule of Assets of the Transferor Companies attached as **Annexure-B** with this order, duly authenticated by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for



adjudication of stamp duty, and pay requisite stamp duty payable, if any, within 60 days from the date of this Order.

- xiii. The Petitioner Companies are further directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-form INC-28 in addition to a physical copy within 30 days from the date of issuance of the certified copy of the Order by the Registry as per relevant provisions of the Act.
- xiv. The legal fees and expenses for the office of the Regional Director are quantified at Rs.20,000/-. The said fees to the Regional Director shall be paid by the Transferee Company.
- xv. The legal fees and expenses for the office of the Official Liquidator are quantified at Rs.20,000/-. The said fees to the Official Liquidator shall be paid by the Transferee Company.
- xvi. The Income Tax Department will be free to examine the aspect of any tax payable as a result of the sanction of the Scheme and if it is found that the Scheme of Arrangement ultimately results in tax avoidance or is not in accordance



with the applicable provisions of Income Tax Act, then the Income Tax Department shall be at liberty to initiate appropriate course of action as per law. Any sanction of the Scheme of Arrangement under Sections 230-232 of the Income Tax Act, 2013 shall not adversely affect the rights of Income Tax Department or any past, present or future proceedings and the sanction of the scheme shall not come in its way for the appropriate course of action as per law for the tax liabilities, if any.

xvii. Any person aggrieved shall be at liberty to apply to this Tribunal for any directions that may be necessary.

**15.** Accordingly, the Company Petition stands allowed on the aforementioned terms.

-Sd-  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-Sd-  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

Arati-LRA

