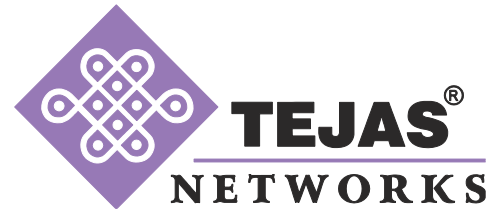


Tejas Networks Ltd.

Regd. Office: Plot No. 25, 5th Floor
J.P. Software Park, Electronic City Phase 1
Hosur Road, Bengaluru 560 100, India
Tel : +91- 80- 4179 4600/700/800
Fax: +91- 80- 2852 0201



September 05, 2024

The Secretary
National Stock Exchange of India Ltd
Exchange Plaza, C/1, Block G,
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051
NSE Symbol: TEJASNET

The Secretary
BSE Limited
P J Towers,
Dalal Street,
Mumbai – 400 001
BSE Scrip Code: 540595

Dear Sir/Madam,

Re: Intimation under Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“SEBI Listing Regulations”)

Ref: Scheme of Amalgamation of Saankhya Labs Private Limited (“Transferor Company 1”) and Saankhya Strategic Electronics Private Limited (“Transferor Company 2”) (Collectively known as “Transferor Companies”) with Tejas Networks Limited (“Transferee Company” or “Company”) and their respective shareholders under Section 230 - 232 and other applicable provisions of the Companies Act, 2013 (“Act”) (“Scheme”)

In reference to our earlier disclosure dated August 21, 2024, we wish to inform that the Company has today (i.e.) September 5, 2024, received certified copy of the order from the Hon’ble National Company Law Tribunal, Bengaluru Bench (the “Order”), approving the Scheme. Copy of the certified Order is enclosed herewith.

Kindly take the above information on record.

Yours sincerely
For Tejas Networks Limited

N R Ravikrishnan
General Counsel, Chief Compliance Officer
& Company Secretary



**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU**
(Through Physical hearing/ VC Mode (Hybrid))

C.P. (CAA) No.09/BB/2024
U/ss.230 and 232 of the Companies Act, 2013
R/w. Companies (CAA) Rules, 2016

IN THE MATTER OF:

1. M/S. SAANKHYA LABS PRIVATE LIMITED

R/o. 3rd Level, Mezaninne Floor,
No 3, Infantry Road,
Vasanth Nagar, Embassy Icon Building,
Bengaluru – 560 001.

**PETITIONER COMPANY NO.1 /
TRANSFEROR COMPANY NO.1**

**2. M/S. SAANKHYA STRATEGIC
ELECTRONICS PRIVATE LIMITED**

R/o. at No.3, Embassy Icon, 3rd Floor,
Infantry Road,
Bengaluru-560 001.

**PETITIONER COMPANY NO.2/
TRANSFEROR COMPANY NO.2**

3. M/S. TEJAS NETWORKS LIMITED

R/o. JP Software Park, Plot No 25,
Sy. No.13, 14, 17, 18
Konnapanana Agrahara Village,
Begur Hobli,
Bengaluru - 560 100.

**PETITIONER COMPANY NO.3/
TRANSFEREE COMPANY**

Order delivered on: 20th August, 2024

CORAM: 1. Hon'ble Shri K. Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner Companies : Shri Saji. P. John, Adv.

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. This is a second motion Petition filed on 22/02/2024 by **M/s. Saankhya Labs Private Limited** (for brevity, the "Petitioner Company No.1/Transferor Company No.1") and **M/s. Saankhya**





Strategic Electronics Private Limited (for brevity, the “Petitioner Company No.2/Transferor Company No.2”) and **M/s. Tejas Networks Limited** (for brevity, the “Petitioner Company No.3/Transferee Company”) under Sections 230 to 232 of the Companies Act, 2013 (for short to be referred hereinafter as the ‘Act’) and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, ‘Rules’) by *inter alia*, seeking for the sanction of Scheme of Amalgamation (for brevity ‘Scheme’) between the Petitioner Companies w.e.f. the Appointed Date, be sanctioned by this Tribunal so as to be binding on the Petitioner Companies and their respective shareholders.

2. The Petitioner Companies filed First Motion Application bearing C.A. (CAA)No.29/BB/2023 before this Tribunal under Sections 230-232 of the Companies Act, 2013. Based on the said Application vide Order dated 07.12.2023 of this Tribunal, the meetings of the Equity Shareholders, Unsecured Creditors of Petitioner Company No.1 & 2 were dispensed and it was directed to convene the Meeting of Equity Shareholders and Unsecured Creditors of the Applicant Company No.3.

In compliance with the above directions, meeting of the Equity Shareholders and Unsecured Creditors of the Applicant Company No.3 has been conducted by the Chairperson and Scrutinizer who have filed their reports in this regard, which are placed as Annexures – M & N to the Petition. It is seen that the Equity Shareholders and Unsecured Creditors of the Applicant Company No.3 have approved the proposed Scheme.

3. Vide Order dated 13.03.2024 of this Tribunal, the following directions were issued:-

“...4. The Petition be listed for hearing on **31.05.2024**. At least 10 days before the date fixed for final hearing, the Petitioner Company shall publish the notice of final hearing of the Company Petition in two local newspapers viz. “Deccan Herald” in English Edition and translation thereof in “Prajavani” in Kannada Edition, as per Rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

5. Notice be also served upon the Objector(s) or their representative as





contemplated under sub-section (4) of Section 230 of the Act who may have made representation and who have desired to be heard in their representation along with a copy of the Petition and the annexures filed therewith at least 15 days before the date fixed for hearing. It is to be specified in the notices that the objections, if any, to the Scheme may be filed within thirty days from the date of the receipt of the notice, failing which it will be considered that there is no objection to the approval of the Scheme on the part of the objectors.

6. In addition to the above public notice, each of the Petitioner Company shall serve the notice of the Petition on the following Authorities namely, (a) Regional Director (South East Region), Hyderabad; (b) Registrar of Companies, Karnataka, Bengaluru; (c) Official Liquidator; (d) jurisdictional Income Tax Authorities by disclosing the PAN numbers of the Applicant Companies; (e) Designated Nodal Officer – Principal Chief Commissioner of Income Tax, Karnataka & Goa along with the copy of this Petition by speed post immediately and to such other Sectoral Regulator(s) who may govern the working of the respective Companies involved in the Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, with a direction that they may submit their representation, if any, within 30 (thirty) days from the date of receipt of such notice, failing which it will be presumed that the said Authority has no representation to make to the Scheme.

7. The Petitioner Company shall host notices of final hearing along with the copy of the scheme on their respective websites, if any. The Petitioner Companies shall at least 7 days before the date of hearing of the Petition file an affidavit of service regarding paper publication as well as service of notices on the Authorities specified above including the sectoral regulator as well as the objectors, if any. The Petitioner Companies shall file compliance report with this Tribunal at least 10 (ten) days before the date fixed for final hearing and report to this Tribunal that the directions regarding the service of notices upon regulatory authorities and publication of advertisement of the notice of hearing in the newspapers have been duly complied with”.

4. Pursuant to the aforesaid notice, the learned Counsel Petitioner Companies has filed copies of proof of service of notice vide Diary No.2787 dated 14.05.2024 and copies of paper publication of notice along with an affidavit stating that the Petitioner Companies have not received any objections from any persons/ stakeholders/Creditors as on the date of this Affidavit Diary No.2933 dated 24.05.2024.

5. The main objects, dates of incorporation, authorized, issued and





paid-up share capital, rationale of the scheme and interest of employees have been discussed in detail in first Motion Order dated 07.12.2023.

6. The Board Resolution of the Petitioners Companies approving the Scheme is annexed as Annexure-H Series to the Petition.
7. It is further submitted that the Certificate of Statutory Auditors of the Petitioner Companies have been filed, stating that, the Accounting Treatment contained in Clause 9 of the Scheme, is in compliance with the applicable Accounting Standards specified under Section 133 of the Act, 2013 and Other Generally Accepted Accounting Principles. The aforesaid certificates are attached as Annexure-U Series of the Petition.
8. The Audited Financial Statement as on 31.03.2023 of the Petitioner Companies are attached as Annexures-C, E & G and the Unaudited Financial Statements as on 31.12.2023 of the Petitioner Companies are attached as Annexures-C1, E1, G1 to the Petition.
9. As per the Scheme, the "Appointed Date" means 01.07.2022 or such other date as the NCLT may direct.
10. In pursuant to the notice, the Regional Director (RD) and the Registrar of Companies (ROC) have filed their Common report vide Dairy No.3224 dated 05.06.2024. Both RD and RoC have raised the following observations vide para II of their report :
 - (1) As per Para 1.1 of Part-I of the proposed Scheme the appointed date has been stated as 01/07/2022. It is not known as to why the Companies have opted odd dated (i.e. 01/07/2022) as appointed date. Further to inform that as per Company Master Data both the Companies have filed Annual Returns and Balance Sheets for the year ended 31/03/2023. Since the appointed date is ante-dated beyond a year, the Hon'ble Tribunal may be pleased to direct the Petitioner Companies to change the appointed date from 01/07/2022 to 01/04/2023 or any other date as deem fit and proper by the Hon'ble





Tribunal, before the Scheme is allowed.

- (2) As per the last Annual Return filed as on 31/03/2023, the Transferee Company holds majority Equity Shares of 64.40% in the Transferor Company No.1 and also as per the Scheme, the Transferor Company No.2 is Wholly Owned Subsidiary Company of the Transferor Company No.1.
- (3) As per the latest shareholders list attached to the last Annual Return filed as on 31/03/2023, the Transferor Company No.1 and its nominee holds 100% Equity Shares in the Transferor Company No.2. Hence, the Transferor Company No.2 is the Wholly Owned Subsidiary of the Transferor Company No. 1.
- (4) The Transferee Company is a listed Company. The equity shares of the Transferee Company are listed on BSE Limited and National Stock Exchange India Limited. The Hon'ble Tribunal may be pleased to direct the Transferee Company to show the compliance of SEBI (Listing Obligations and Disclosure Requirements), 2015 and No Objection Certificate from Securities and Exchange Board of India, BSE Limited and National Stock Exchange India Limited may be asked to submit for merging of two Unlisted Transferor Companies with a Listed Transferee Company, before the Scheme is allowed.
- (5) The Capital Structure of the Transferee Company as provided in Clause 2.3 of the Scheme does not match with the Capital Structure in the Master Data of the Company in the Ministry of Corporate Affairs. The Hon'ble Tribunal may be pleased to direct the Petitioner Company to clarify to the Hon'ble NCLT as to whether any share allotments/transfers have been done subsequent to the last Financial Year ending on 31/03/2023. Further, it is to be explained as to how their interest have been protected/safeguarded in this Scheme, before the Scheme is allowed.
- (6) As per MCA Records, the Transferee Company was incorporated as a Private Limited Company and converted into a Public Limited Company with effect from 23/10/2002. As per MCA Records, the Transferee Company has changed its name from Tejas Networks India Limited to Tejas Networks Limited with effect from 18/03/2008.
- (7) As per Clause 5.3.1 of Part II of the Scheme, the Transferor Company





No.1 has certain ESOPs. The Employees' rights shall not be affected or varied in any case adversely. The Hon'ble Tribunal may be pleased to direct the Petitioner Companies to state as to what measures are being taken to protect their interests and whether the Company have received any objections to the Scheme from them. Further, the terms and conditions after merger should not be detrimental to the existing ESOP holders under any circumstances.

- (8) As per Clause 5.3.1 of Part II of the Scheme, the Transferee Company shall issue 112 stock options for every 100 stock options held in the Transferor Company No.1 under Saankhya ESOPs. The above matter has not been verified due to lack of information available in the Scheme as well as the records of RoC. Since detailed period for exercising option by the eligible employees are not stated in the Scheme, it is prayed before the Tribunal to kindly direct the Petitioner Transferee Company to file an undertaking stating specifically to comply with the terms of EOSP as declared by the Transferor Company No.1 on post sanction of the Scheme.
- (9) As per the latest Audited Financial Statements for the year ending 31/03/2023, the Transferor Company No.1 is a loss-making entity; whereas, the Transferor Company No.2 and the Transferee Company are profit-making entities. This may have an Impact on the tax liability once the Scheme is allowed.
- (10) As per point no. xx (a) of the Annexure B to the independent Auditor's Report for the financial year ending 31/03/2023, the Transferor Company No. 1 has not transferred the unspent Corporate Social Responsibility amounting Rs.22.18 lakhs under Section 135(5) of the Companies Act, 2013 in respect of "other than ongoing project" to a Fund specified in Schedule VII to the Act. The Hon'ble Tribunal may be pleased to direct the Petitioner Company to clarify whether it has transferred such amount within the prescribed time to the specified fund, failing which the Tribunal may be pleased to direct the Company to file Adjudication Application under Section 454 of the Companies Act, 2013 for non-compliance of Section 135 of the Companies Act, 2013 after making the offence good, before the Scheme is allowed.
- (11) As per Point No. xx(b) of the Annexure B to the Independent Auditor's





Report for the financial year ending 31/03/2023, the Transferor Company No.1 has transferred the unspent Corporate Social Responsibility amounting Rs.18.63 Lakhs and Rs.15.60 lakhs for the financial years 2020-21 and 2021-22 respectively pursuant to ongoing projects beyond a period of thirty days from the end of the financial year to the Unspent Corporate Social Responsibility Account and thereby not complied with the provisions of Section 135(6) of the Companies Act, 2013. The Hon'ble Tribunal may be pleased to direct the Petitioner Company to file Adjudication Application under Section 454 of the Companies Act, 2013 for non-compliance of Section 135 of the Companies Act, 2013, before the Scheme is allowed.

(12) As per Note No. 17, 12 and 18 of the Financial Statements for the year ending 31/03/2023, the Transferor Company 1 & 2 and the Transferee Company have undisputed statutory dues to the tune of Rs.1.14 crores, Rs.12,000 and Rs.10.24 Crores respectively. The Hon'ble Tribunal may be pleased to direct the Petitioner Transferee Company to furnish an undertaking to the Hon'ble NCLT to the effect that it will settle the statutory dues immediately, if not settled so far.

(13) As per the Independent Auditors Report for the financial year ending 31/03/2023, the Transferor Company No.1 has total outstanding disputed dues towards Income Tax and Goods & Services Tax to the Tune of Rs.6.16 crores and Rs.5.71 crores respectively. Further, the Transferee Company has total outstanding disputed dues towards Central Excise Duty, West Bengal Value Added Tax, Karnataka Value Added Tax and Custom to the tune of Rs.46.24 Crores, Rs.51 lakhs, Rs.2 lakhs and Rs.14 lakhs respectively. The Hon'ble Tribunal may be pleased to direct the Petitioner Companies to furnish an undertaking to the Hon'ble NCLT to the effect that it will settle the dues as and when the claim is crystallized.

(14) As per Note No.14, 11 and 16 of the Audited Financial Statements for the year ending 31/03/2023, the Transferor Company 1 & 2 and the Transferee Company have outstanding dues to Micro, Small and Medium Enterprises to the tune of Rs.1.40 Crores, Rs.54,000 and Rs.24.53 crores respectively. The Hon'ble Tribunal may be pleased to direct the Petitioner Companies to state as to how it has complied with





Micro, Small and Medium Enterprises Development Act, 2006 and may be directed to furnish an undertaking to the Hon'ble NCLT to the effect that it will settle the dues as per the said Act immediately, if not settled so far.

- (15) As per the Shareholding pattern of the Transferor Company No.1, it is found that certain shares are held by Foreign Body Corporates who are entitled to get shares as purchase consideration post approval of the Scheme. Also, as per the Audited Financial Statements for the year ending 31/03/2023, the Transferor Company No.1 and the Transferee Company have Foreign Exchange Transactions. The Hon'ble Tribunal may be pleased to direct the Petitioner Companies to submit the relevant approvals and compliances made under FEMA/RBI Regulations before the Scheme is allowed.
- (16) Clause 10.1 of part C of the Scheme provides for Clubbing of Authorized Share Capital wherein it is stated that the Authorized Share Capital of the Transferee Company shall automatically stand increased without any payment of stamp duty and fees. This term in the Scheme is not in line with the provisions of Section 232(3)(l) of the Companies Act, 2013. The Hon'ble Tribunal may be pleased to direct the Transferee Company to comply with the provisions of the Section and pay the difference of fee, after setting off the fee already paid by the Transferor Companies on its respective capital.
- (17) As per Clause 5.1 of Part II of the Scheme, all employees of the Transferor Companies shall be absorbed into the Transferee Company. The Hon'ble Tribunal may be pleased to direct the Petitioner Companies to explain before the Hon'ble NCLT as to what measures are being taken to safeguard the interests of the employees of the Transferor Companies and steps taken for implementation of this Clause.
- (18) As per Section 240 of the Companies Act, 2013, the liability in respect of offence committed under the Companies Act by the Officers In default, of the Transferor Company prior to merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.
- (19) The Transferor Company is required to comply with the provisions of Section 239 of the Companies Act, 2013 with respect to preservation of





books and papers of amalgamated Companies. The Hon'ble Tribunal may be pleased to direct the Petitioner Transferor Companies to furnish an undertaking that they will preserve their books and papers of the amalgamated Company.

- (20) With reference to this Directorate's letter dated 08/02/2024 issued to the Principal Commissioner of Income Tax, Bengaluru, till date no report/comments in the matter have been received from Income Tax Department with respect to the Transferor Company No.1 and the Transferee Company. The Hon'ble Tribunal may be pleased to obtain consent/NOC from the Income Tax Department, before the Scheme is allowed.
- (21) Letter received from Mr. R. Srinivas, Income Tax Officer, Ward - 6(1)(1), Bengaluru vide No. Amalgamation/ABEC51179C/ITO W-6(1)(1)/ 2023-24 dated 09/01/2024 (received on 19/01/2024) in the case of Saankhya Strategic Electronics Private Limited (Transferor Company No.2). The copy of the said letter of Income Tax dated 09/01/2024 is enclosed as Annexure-1.
- (22) The Para 4.2.4 of the Scheme speaks that after giving effect of the Scheme on its post approval by the Hon'ble Tribunal, the Transferee Company shall operate the Bank Accounts of the Transferor Companies in their respective names till such time as the Transferee Company may be determined, also all cheques and other negotiable instruments including bank guarantees, letters of credit, payment orders, etc. received after effective date of the Scheme In the names of the Transferor Companies shall be accepted by the bankers of the Transferee Company. The above contention in the Scheme is not correct. Since with effect from the "Effective Date" of the Scheme, the Transferor Companies shall be dissolved without winding up, hence bank account could not be operated in the names of the Transferor Companies after the effective date. The Hon'ble Tribunal may be pleased to direct the Petitioner Companies to delete such contentions from the Scheme by amending the Scheme.
- (23) The Petitioner Transferee Company may be directed by the Hon'ble Tribunal to comply with the provisions of Section 125(2) of the Companies Act, 2013 if any dues is pending with them, since they have



not replied correctly to a query raised in this regard to them.

(24) In a reply regarding shareholding pattern of the Transferor Company No.2, the Petitioner Transferee Company vide reply dated 18/04/2024 stated that as on the appointed date the entire paid-up capital were held by three individual shareholders and after appointed date those shares were acquired by the Transferor Company No.1. The Scheme is silent about the price at which the Transferor Company No.1 acquired the shares of the Transferor Company No.2 to make it as its Wholly Owned Subsidiary Company, since more than 64% of the share capital of the Transferor Company No.1 were held by the Transferee Company, which is a listed Company. The Hon'ble Tribunal may kindly direct the Petitioner Companies to file affidavit stating fairness in valuation of shares of the Transferor Company No.2 and also the acquisition price of shares by the Transferor Company No.1 are not prejudicial to the interest of the Petitioner Company No.1 and the Transferee Company before considering sanction of the Scheme.

(25) Report of Official Liquidator, Karnataka dated 22/05/2024 is filed before the Hon'ble NCLT(BB) and copy of the same has been furnished to this Directorate vide e-mail dated 24/05/2024 (copy enclosed as Annexure-2) with respect to CP(CAA)09/BB/2024 connected with CA(CAA)29/ BB/2023. The Official Liquidator in his report has pointed out certain observations. The Hon'ble Tribunal may be pleased to direct the Petitioner Companies to comply with the observations pointed out by the Official Liquidator, before the Scheme is allowed.

III. There are no open Complaints, Prosecutions, Technical Scrutiny/ Inquiry, Inspections and Investigations pending in this Office against the Petitioner Companies.

11. Subsequently, reply affidavit to the common Report of RD & ROC have been filed by the Petitioner Companies vide Diary No.3505 dated 19.06.2024, *inter alia* stating as under:

- i. **Reply to para II (1) of the ROC & RD report:** It is submitted that Appointed Date i.e. 1st July, 2022 as mentioned in the Scheme is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall take effect from such Appointed Date. Further, the Petitioner Companies are in compliance with the requirements





clarified vide circular No.7/12/2019/CL-dated 21.08.2019 issued by the Ministry of Corporate Affairs regarding Appointed Date. The Appointed date as fixed in the Scheme precedes the date of filing of the Application however the Appointed Date is not ante-dated. The Board of Directors of the Transferor Company and Transferee Company approved the Scheme of Amalgamation on 29/09/2022. The Petitioner Companies submit that the Company Application was filed on 27/07/2023 whereas the Appointed Date mentioned in the Scheme is 01/07/2022. The Petitioner Companies could not file the Scheme on or before 01/07/2023, i.e. within One Year from the Appointed Date but was able to file on 27/07/2023. The delay of 26 days is due to the additional time Companies required to obtain approval from Stock Exchanges in compliance of Regulation 37 of the SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015. The Petitioner Company No. 3 whose shares are listed with BSE and NSE received the no-objection Letter from BSE and NSE on 06/07/2023. Subsequently, without any delay, the Company Application came to be filed on 27/07/2023. The said justification for not filing the Scheme within one Year from the Appointed Date is reasonable, genuine and not against the public interest. Therefore, the Scheme is in compliance with the Circular.

Para 6 (c) of the said Circular is reproduced below:

6 (c): “Where the 'Appointed Date' is chosen as a specific calendar date, it may precede the date of filing of the Application for scheme of merger/amalgamation in NCLT. However, if the 'Appointed Date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.”

The reason for choosing Appointed Date of 01/07/2022 is because the Transferee Company acquired majority stake in Saankhya Labs Private Limited on July 1, 2022. Hence, the appointed Date mentioned in the Scheme is July 1, 2022. Further it is submitted that filing of Financial Statements are statutory requirements and non-filing will attract penalty. Filing of Financial Statements has nothing to do with Appointed Date in the Scheme.

Reply to para II (2) of the ROC & RD report: It is submitted that





- the said observation is correct and is not required to be traversed.
- iii. **Reply to para II (3) of the ROC & RD report:** It is submitted that the said observation is a matter of fact and is not required to be traversed.
- iv. **Reply to para II (4) of the ROC & RD report:** It is submitted that Petitioner No.3 has obtained No Objection Letter from Stock Exchanges in compliance of Regulation 37 of the SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015. The Petitioner Company No. 3 whose shares are listed received the no-objection Letter from BSE and NSE on 06/07/2023 and the same is produced as ANNEXURE-P of the Petition.
- v. **Reply to para II (5) of the ROC & RD report:** The Transferee Company states that the details of share capital in the Scheme are as on the Board approving the Scheme i.e. September 29, 2022 whereas the Master Data shows the current position of the share capital basis the filings made by the Transferee Company. The reconciliation between the paid up share capital as per Scheme and as per Master data is as below:

Authorized share capital

Particulars	Amount in INR
As per Scheme	2,60,00,00,000
As per Master data	2,60,00,00,000

Issued and subscribed and paid up share capital

Particulars	Amount in INR
As per Scheme	1,52,10,98,620
Add: Allotment of 1,87,90,202 equity shares of INR 10 each under the Employees Stock Option Scheme	18,79,02,020
As per Master data	1,70,90,00,640

The copy of the form PAS – 3 filed by the Transferee Company for allotment of equity shares is enclosed and marked as Annexure – “A colly”. Further, the Transferee Company will continue to remain in existence post effectiveness of the Scheme and hence there will be no impact on the shareholders of the Transferee Company.





- vi. **Reply to para II (6) of the ROC & RD report:** It is submitted that the said observation is correct and is not required to be traversed.
- vii. **Reply to para II (7) of the ROC & RD report:** It is submitted that as per Clause 5 of the Scheme of Amalgamation, the Employees of Transferor Companies shall become the employees of Transferee Company pursuant to the sanction of the Scheme by this Hon'ble Tribunal. Upon the Scheme becoming effective, the interest of the ESOP holders of the Transferor Company 1 would be duly taken care of, and the Transferee Company hereby undertakes that it shall not take any action which is detrimental to ESOP holders of the Transferor Company 1. It is stated that the Petitioner Companies have not received any objection from its employees as on the date of this Affidavit. Further, the Transferee Company undertakes not to retrench or terminate any of the Employees of Transferor Companies on account of the merger.
- viii. **Reply to para II (8) of the ROC & RD report:** It is submitted that the Transferee Company undertakes to comply with the terms of ESOPs as declared by the Transferor Company No. 1 post-merger.
- ix. **Reply to para II (9) of the ROC & RD report:** It is submitted that neither the provisions of Companies Act, 2013 nor the provisions of the Income Tax Act, 1961 prohibit the merger of a loss-making entity with a profit-making entity. The merger of companies is based on operational and commercial rationales as provided at Para C of the General Section of the Scheme. The shareholders and Board of Directors in their commercial wisdom approved to merge the Transferor Companies with the Transferee Company and focus on the business operations of one single entity. Lastly, it is submitted that the Transferor Companies and Transferee Company undertake to satisfy all conditions prescribed under the provisions of the Income-tax Act, 1961



with respect to the merger.

- x. **Reply to para II (10) of the ROC & RD report:** The Transferor Company No.1 submits that an amount of INR.22,18,961/- has been transferred to PM CARES Fund on April 28, 2023 within the prescribed time limit as specified under the provisions of Section 135 of the Companies Act, 2013.
- xi. **Reply to para II (11) of the ROC & RD report:** It is submitted that the unspent amount has been transferred to Prime Minister Relief Fund. The Company has got it adjudicated under Section 454 of the Companies Act, 2013 and has paid penalty as well. Details of the same are annexed herewith as ANNEXURE B.
- xii. **Reply to para II (12) of the ROC & RD report:** It is submitted that Transferor Companies and Transferee Company undertakes to clear its undisputed Tax Liabilities if not settled already in the ordinary course of its business.
- xiii. **Reply to para II (13) of the ROC & RD report:** It is submitted that pursuant to the sanction of the Scheme by this Tribunal, the Transferee Company undertakes to clear all the disputed statutory dues of its own and Transferor Companies as and when the said demands are crystalized and attains finality.
- xiv. **Reply to para II (14) of the ROC & RD report:** It is submitted that pursuant to the merger, Transferee Company undertakes to clear all the dues of MSME Creditors and other Unsecured Creditors of Transferor Companies and its own, if not cleared already, as per the provisions of MSME Act and in the ordinary course of its business as and when the dues become payable.
- xv. **Reply to para II (15) of the ROC & RD report:** It is submitted that as per the provisions of Companies Act, 2013 or under FEMA/RBI Regulations there are no specific approvals or compliances to be made prior to merger. The Transferor Company 1 and the Transferee Company has complied with the provisions of FEMA/RBI regulations, as applicable, for





the shares issued to foreign body corporate/individuals and the Transferee Company undertakes to comply with the applicable FEMA/RBI Regulations post-merger for allotment of Shares of Transferee Company to the Foreign Shareholders of Transferor Company No. 1 as consideration of merger, as applicable.

- xvi. **Reply to para II (16) of the ROC & RD report:** It is submitted that the Transferee Company undertakes to file a separate request letter with the Registrar of Companies to increase/club the Authorized Share Capital of Transferor Companies by complying the applicable provisions of the Companies Act, 2013 by paying the differential fee, if any, after setting of the fee paid by Transferor Companies and filing relevant e-forms with Registrar of Companies.
- xvii. **Reply to para II (17) of the ROC & RD report:** It is submitted that as per para 5.1 of the Scheme wherein it is stated that *“With effect from the Effective Date, all employees of the Transferor Companies shall become employees of the Transferee Company, without any interruption in service and (on the basis of continuity of service), on terms and conditions no less favorable than those on which they are engaged by the Transferor Companies, immediately preceding the Effective Date.”*

Accordingly, as also stated in the Scheme, the Transferee Company/Petitioner Company No.3 hereby undertake that it will not retrench or swap the staff or employee of Transferor Companies in the guise of surplus staff on account of amalgamation.

- xviii. **Reply to para II (18) of the ROC & RD report:** It is submitted that the said observation is correct as per section 240 of the Companies Act, 2013 and is not required to be traversed.
- xix. **Reply to para II (19) of the ROC & RD report:** It is submitted that the Transferee Company undertakes to preserve the Books and Papers of Transferor Companies in accordance with Section 239 of the Companies Act 2013.
- xx. **Reply to para II (20) & (21) of the ROC & RD report:** It is submitted that the IT Department has filed its Reports for





both Transferor and Transferee Companies. The Petitioner Companies have filed Common Reply Affidavit to the IT Reports of Transferor Companies on 24.05.2024 vide Dy. No. 2903111003522024/2. Further the IT Department has filed the Report for Transferee Company and in the said Report IT Department has given its no-objection to the Scheme. The Copy of Income Tax Reports of Transferor and Transferee Companies are produced herewith as ANNEXURE-C.

- xxi. **Reply to para II (22) of the ROC & RD report:** The Transferee Company submits that Clause 4.2.4 of the scheme is an enabling provision whereby the Transferee Company will be entitled to maintain and operate the bank accounts of the Transferor Companies. Since upon the scheme becoming effective, the transferor companies will be dissolved without being wound up, it is important that the bank accounts of the transferor companies be operated and maintained, immediately, by the transferee company to ensure smooth transition of the business operations on going concern basis. From the date the transferor Companies are dissolved, the banks may, as matter of their internal procedures, require certain documentation and authorizations to change the name of bank accounts in favour of the transferee company. This process usually takes a few days and during this period, it is important that the bank accounts are used by the transferee company for the smooth functioning of the business. Clause 4.2.4 of the Scheme merely enables the rightful/ lawful recipient of the business of the transferor companies to maintain and operate its own bank accounts after effectiveness of the scheme.

Clause 4.2.4 of the Scheme is reproduced below for ease of reference:

“On and from the Effective Date and till such time that the bank accounts of the Transferor Companies have been





transferred in favour of the Transferee Company or the Transferor Company's name has been replaced with that of the Transferee Company, the Transferee Company shall be entitled to maintain and operate the bank accounts of the Transferor Companies in the name of the Transferor Companies and for such time as may be determined to be necessary by the Transferee Company. All cheques and other negotiable instruments (including but not limited to bank guarantee(s), letter(s) of credit), payment orders, electronic fund transfers like NEFT, RTGS etc. received or presented for encashment which are in the name of the Transferor Companies after the Effective Date shall be accepted by the bankers of the Transferee Company and credited to the account of the Transferee Company, if presented by the Transferee Company”.

In view of the above, clause 4.2.4 of the scheme may not be omitted/deleted from the scheme.

xxii. Reply to para II (23) of the ROC & RD report: It is submitted the Transferee Company states that all the shares in respect of which dividend has remained unclaimed or unpaid for seven consecutive years or more are required to be transferred to the demat Account of the IEPF Authority. The Transferee Company has declared its maiden dividend during the year ended March 31, 2019 and hence the amount of dividend remaining unclaimed or unpaid for a period of seven years from the date of transfer has not arisen till date. The Transferee Company undertakes to comply with the provisions of Section 125 of the Companies Act, 2013, as applicable.

xxiii. Reply to para II (24) of the ROC & RD report: The Transferor Company 1 submits that the entire share capital of the Transferor Company 2 was acquired from the erstwhile 3 individual shareholders based on the valuation certificate stating the fair value of the shares determined in accordance with provisions of Income Tax Act, 1961.

xxiv. Reply to para II (25) of the ROC & RD report: It is submitted that the Official Liquidator's Office has filed its Report and the Petitioner Companies have filed Reply Affidavit on



29/05/2024 vide Dy.No.2903111003522024/4.



12. The Official Liquidator (OL) has filed his report vide Diary No.2928 dated 24.05.2024, *inter alia* stating as under:

- (i) The TR companies and the TE Company are registered in the state of Karnataka. This report is in respect of Transferor Companies only which is prepared based on the published financial statements and documents /details furnished by the petitioner TR companies. The TE Company being a listed company, the Official Liquidator has engaged M/s. NSVM & Associates, empanelment Chartered Accountant for scrutiny of Books of accounts with respect to 2 TR Companies. The reports of Chartered Accountant are enclosed herewith. The said report dated 17.05.2024 may be treated as Part and Parcel of this report.
- (ii) The TR-1 and the TR-2 companies are incorporated on 29/12/2006 and 04/08/2020 respectively.
- (iii) Both the TR companies are Private Limited companies and TE Company is a listed entity.
- (iv) The TR-1 company is a partly owned subsidiary of TE Company and the TR -2 company is a wholly owned subsidiary of the TR-1 company. All these companies are the subsidiary companies of TATA Sons Limited.
- (v) The appointed date is proposed on 01/07/2022. Being old, the scheme may be allowed from 01/04/2023 or any later date. The relevance of odd date of 1st July, 2022 may be asked to explain. The transferor companies have filed their latest Balance Sheets as at 31/03/2023 with the ROC.
- (vi) The Hon'ble Tribunal vide its order dated 07/12/2023 has dispensed with meeting of equity shareholders, secured and unsecured creditors of both the TR-Companies.
- (vii) As per the scheme "for every 100 equity shares of face value of Rs.10/- each held in the TR-1 company shall be issued 112 equity shares of face value of Rs.10/- each as fully paid up in the TE Company. However, being a wholly on subsidiary of TR-1 Company, no share will be issued to the shareholders of TR-2 Company. The TE Company has to extinguish all the shares held by TR-1 Company in





TR-2 Company.

- (viii) There is a cross holding between TR and TE companies. 64% of shares in TR companies is held by TE Company whereas, 99.99% shares of TR-2 Company is held by TR-1 Company.
- (ix) 64% shares of TR-1 Company is held by TE Company and 10.36% shares are held by TR- 1 Company's ESOP Trust. The remaining 25.64% shares held by few individuals and entities.
- (x) The TR-1 company has one more wholly owned subsidiary company namely M/s. Saankhya Labs Inc. The scheme is silent on the fate of this company upon merger as to whether it will stand independently or will be merged with its holding company. Needs clarification.
- (xi) The Authorized Capital of TR-1 Company is Rs.47,58,50,000/- consisting of both equity under preference capital. The Paid-up capital of company is Rs.8,70,17,000/-. This does not include 1006100 number of Treasury shares held by Saankhya Labs ESOP Trust. The Authorized and Paid-up capital of TR-2 company is Rs.10 lakhs divided into 1,00,000 equity shares of Rs.10/- each.
- (xii) As per the scheme, the fresh shares will be issued by TE Company to the shareholders of TR Company. The applicant has to ensure compliance of FEMA/RBI before issuing shares to NRI/Foreign Entities.
- (xiii) The TR Companies have substantial related party transactions. The compliance of Section 188 read with Rules made thereon to be ensured by the applicant Companies.
- (xiv) As per the Statutory Auditor, the TR-1 Company for the year 2021-22 and 2022-23 did not comply with Section 135 of the Companies Act, 2013 with regard to Transferor of unspent due CSR amount to the Fund. It has been informed that the company has got it adjudicated under Section 454 of the Companies Act, 2013. However, the TR Company has to state categorically as to whether the unspent amount has been transferred to the Fund created under Section 135 read with Schedule VII of the Companies Act, 2013 and also to state whether penalty has been paid by the defaulting Company.
- (xv) In respect of TR-1 Company, pending statutory disputes are there. The TE Company has to ensure that the amount will be settled as and



when it is crystalized.

- (xvi) The TR-1 company has huge MSME dues as on 31/12/2023. These dues must be settled as per the provisions of MSME Act, 2016. Further, in respect of all the creditors of TR-1 and TR-2 companies their interest shall be ensured by TE Company.
- (xvii) The TR-1 company is loss making company. Hence, there may be an impact on the IT payment by the TE company in case set off is availed.
- (xviii) The TE Company is listed company where 2 private companies are merging with. The compliance of SEBI (LODR) and Stock Exchanges are to be ensured.
- (xix) No Employee/workman of Transferor Company to be retrenched/terminated in the terms of amalgamation of Transferor Company with Transferee Company. The Hon'ble Tribunal may kindly see that TR or TE will not retrench Swap the staff or employee of Transferor Company in the guise of surplus staff on account of merger. Need to give a separate undertaking by the Transferee Company in this regard. An undertaking may be obtained from the applicant companies that they will pay applicable stamp duty and other charges to the state government within a reasonable time with an outer limit of 6 months.

13. The reply affidavit to the Official Liquidator has been filed by the Petitioner Companies vide Diary No.3044 dated 29/05/2024, inter alia stating as under:-

- (i) **Reply to para 1 of the OL report:** It is submitted that it is correct and is not required to be traversed.
- (ii) **Reply to para 2 of the OL report:** It is submitted that it is true and is not required to be traversed.
- (iii) **Reply to para 3 of the OL report:** It is submitted that it is correct and is not required to be traversed.
- (iv) **Reply to para 4 of the OL report:** It is submitted that it is true and is not required to be traversed.

Reply to para 5 of the OL report: It is submitted that Appointed Date i.e. 1st July, 2022 as mentioned in the Scheme is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme





shall take effect from such Appointed Date. Further, the Petitioner Companies are in compliance with the requirements clarified vide circular No.7/12/2019/CL-dated 21/08/2019 issued by the Ministry of Corporate Affairs regarding Appointed Date. The Appointed date as fixed in the Scheme precedes the date of filing of the Application however the Appointed Date is not ante-dated. The Board of Directors of the Transferor Company and Transferee Company approved the Scheme of Amalgamation on 29/09/2022. The Petitioner Companies submit that the Company Application was filed on 27/07/2023 whereas the Appointed Date mentioned in the Scheme is 01/07/2022. The Petitioner Companies could not file the Scheme on or before 01/07/2023, ie; within One Year from the Appointed Date but was able to file on 27/07/2023. The delay of 26 days is due to the additional time Companies required to obtain approval from Stock Exchanges in compliance of Regulation 37 of the SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015. The Petitioner Company No. 3 whose shares are listed with BSE and NSE received the no-objection Letter from BSE and NSE on 06/07/2023. Subsequently, without any delay, the Company Application came to be filed on 27/07/2023. The said justification for not filing the Scheme within one Year from the Appointed Date is reasonable, genuine and not against the public interest. Therefore, the Scheme is in compliance with the Circular. Para 6 (c) of the said Circular is reproduced below;

6 (c): *“Where the 'Appointed Date' is chosen as a specific calendar date, it may precede the date of filing of the Application for scheme of merger/amalgamation in NCLT. However, if the 'Appointed Date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.”*

The reason for choosing Appointed Date of 01/07/2022 is because the Transferee Company acquired majority stake in Transferor Company No.1 on July 1, 2022. Hence, the Appointed Date mentioned in the scheme is July 1, 2022.





- (vi) **Reply to para 6 of the OL report:** It is submitted that the same is a fact on record and is not required to be traversed.
- (vii) **Reply to para 7 of the OL report:** It is submitted that the as per Clause 8.2 of the Scheme, Transferee Company shall not issue any Shares as consideration to the Shareholders of Transferor Company No. 2. Thus no Shares shall be allotted to Transferor Company No. 1 for its holding in Transferor Company No. 2. Further as per Clause 8.3 all shares held by Transferor and Transferee Companies *inter-se* shall be cancelled.
- (viii) **Reply to para 8 of the OL report:** It is submitted that the same is correct and is not required to be traversed except to the extent that the Transferee Company holds 64.40% Shares in Transferor Company No. 1 only and does not hold any shares in Transferor Company No. 2.
- (ix) **Reply to para 9 of the OL report:** It is submitted that the same is a matter on record and is not required to be traversed.
- (x) **Reply to para 10 of the OL report:** It is submitted that as per Clause 4.2.2 of the Scheme all the Assets of Transferor Companies including investments in Shares of other Companies shall become the investments of Transferee Company pursuant to sanction of the Scheme by this Hon'ble Tribunal. The shareholding of Transferor Company No. 1 in M/s Saankhya Labs Inc. is an investment in the Share. Hence by virtue of Clause 4.2.2 the said observation has been complied. In other words, M/s Saankhya Labs Inc. shall become the wholly owned subsidiary of Transferee Company pursuant to the merger.
- (xi) **Reply to para 11 of the OL report:** It is submitted that it is true and is not required to be traversed.
- (xii) **Reply to para 12 of the OL report:** It is further submitted that the Transferee Company undertakes to comply with applicable FEMA/RBI guidelines for issuance of its shares as consideration for the merger to the Shareholders of Transferor Company No.1.
- (xiii) **Reply to para 13 of the OL report:** It is submitted that the related party transactions of Transferor Companies are in the ordinary course of business and are on arm's length basis. It is further





submitted that the Related Party Transactions have been disclosed in the financial statements as well.

- (xiv) **Reply to para 14 of the OL report:** The Transferor Company hereby state that the unspent amount has been transferred to Prime Minister Relief Fund. The Transferor Company No. 1 has got it adjudicated under Section 454 of the Companies Act, 2013 and paid penalty as well. Details of the same are annexed herewith as ANNEXURE 1.
- (xv) **Reply to para 15 of the OL report:** It is submitted that the Transferee Company undertakes to clear all the disputed statutory dues to Income Tax as and when the said demands are crystalized.
- (xvi) **Reply to para 16 of the OL report:** It is submitted that pursuant to the merger, Transferee Company undertakes to clear all the dues of MSME Creditors and other Unsecured Creditors of Transferor Companies as per the provisions of MSME Act and in the ordinary course of its business as and when the dues become payable.
- (xvii) **Reply to para 17 of the OL report:** It is submitted that the Rationale for the merger is outlined in the Scheme of Amalgamation itself. The Provisions of Section 230 and 232 of the Companies Act, 2013 or Income Tax Act, 1961 do not bar merger of a loss making Company with the profit making Company.
- (xviii) **Reply to para 18 of the OL report:** It is submitted that Petitioner Company No. 3 has obtained No Objection Letter from Stock Exchanges in compliance of Regulation 37 of the SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015. The Petitioner Company No. 3 whose shares are listed received the no-objection Letter from BSE and NSE on 06/07/2023 and the same is produced as ANNEXURE-P of the Petition.
- (xix) **Reply to para 19 of the OL report:** It is submitted that as per Clause 5 of the Scheme, upon the Scheme becoming effective, all employees of the Transferor Companies shall become the employees of the Transferee Company. Further, the Transferee Company undertakes to not retrench or terminate any of the Employees of Transferor Companies on account of the merger. Further, the Transferee Company undertakes to pay the stamp duty to the





government as per the adjudication order from the jurisdictional District Registrar.

14. The Deputy Commissioner of Income Tax, Circle-6(1)(1), Koramangala, Bengaluru has filed its report for the Transferor Companies vide Diary No.2934 dated 24.05.2024, wherein it has pointed out as under:

3	Details of proceedings pending against the Applicant Company under the Income Tax Act.	<p>1. 2016-2017 - Appeal is pending before CIT (A) against the order u/s.143 (3) for disallowance of share premium.</p> <p>2. 2017-2018 - Appeal is pending before CIT (A) against the order passed u/s.143 (3) for carry forward losses disallowances.</p> <p>3. 2022-2023 - Appeal is pending before CIT (A) against short grant of TDS.</p>
4	Details of tax demand pending for recovery (year wise amount outstanding).	<p>As per Demand analysis module of ITBA, pending demands are as follows: Rs.3,42,17,829/- for AY 2018-19. Rs.90,34,610/- for AY 2022-23.</p> <p>However, assessee is in appeal against both the demands. Further, as per Clause 6 of the proposed scheme, all pending tax proceedings of Saankhya Labs Private Limited and Saankhya Strategic Electronics Private Limited shall be taken over by Tejas Networks Limited.</p>
5	Details of pendency of investigation/enquiry proceedings, if any.	None observed.





6	<p>Whether proposed scheme will impact allowability of carry forward loses or unabsorbed depreciation or any benefits under the IT Act. If yes, quantify the amount of tax effect compliance of Section 72A.</p>	<p>There are no carry forward losses and unabsorbed depreciation as of 31st March, 2022 (A.Y.2022-23) with respect to M/s. Saankhya Strategic Electronics Pvt. Ltd., as it is profit making Company, however, the carry forward losses and unabsorbed depreciation as of 31st March, 2022 (A.Y.2022-23) with respect to M/s. Saankhya Labs Pvt. Ltd., are as follows:</p> <table border="1" data-bbox="869 772 1348 907"> <thead> <tr> <th>Particulars</th> <th>Amount in INR</th> </tr> </thead> <tbody> <tr> <td>Losses</td> <td>Nil</td> </tr> <tr> <td>Unabsorbed Depreciation</td> <td>3,00,97,644</td> </tr> </tbody> </table>	Particulars	Amount in INR	Losses	Nil	Unabsorbed Depreciation	3,00,97,644
Particulars	Amount in INR							
Losses	Nil							
Unabsorbed Depreciation	3,00,97,644							
7	<p>Whether the proposed scheme will have any impact or exemption of capital gain tax/dividend distribution tax.</p>	<p>Based on the NCLT approval all the assets and liabilities of Saankhya Labs Private Limited and Saankhya Strategic Electronics Private limited will be transferred to Tejas Networks Limited. The existing shareholders of Saankhya Labs Private Limited (excluding Tejas Networks Limited) will be issued shares of Tejas Networks Limited in lieu of shares held in Saankhya Labs Private Limited. The existing shareholder of Saankhya Strategic Electronic Private Limited will not be issued any shares of Tejas Networks Limited as it a subsidiary of Saankhya Labs Private Limited which is also being merged as part of proposed Scheme. Proposed Scheme of amalgamation will be as per the provisions of Section 47 of the Income Tax Act.</p>						





9	In case of reverse merger where loss making Company continues to exist and profit making dissolves to reduce its tax. What is the specific reasons for continuation of loss making Company? Need to examine applicability of provisions of GAAR.	The scheme of Amalgamation is not a kind of reverse merger.
10	Details of ITRs filed by the Company	The Transferee Companies have filed the Return of Income till A.Y.2023-24.

15. The Income Tax Department, Ward-6(1)(1), Bengaluru has filed its report for the Transferor Company No.2 vide Diary No.582 dated 29.01.2024, wherein it has pointed out as under:

4	Details of tax demand pending for recovery (year wise amount outstanding)	NIL												
5	Details of pendency of investigation/enquiry proceeding, if any.	NA												
6	Whether proposed scheme will impact allowability of carry forward losses or unabsorbed depreciation or any benefits under the IT Act. If yes quantify the amount of tax effect compliance of Section 72A.	As per the return of income Saankhya Strategic Electronics Private Limited for the previous years, there is no carry forward loss.												
11	Details of ITRs filed by the Company	<table border="1"> <thead> <tr> <th>A.Y.</th> <th>Income/(Loss)</th> <th>Total Tax paid</th> </tr> </thead> <tbody> <tr> <td>2021-22</td> <td>Rs.43,01,750/-</td> <td>Rs.12,73,363/-</td> </tr> <tr> <td>2022-23</td> <td>Rs.60,34,040/-</td> <td>Rs.34,89,313/-</td> </tr> <tr> <td>2023-24</td> <td>Rs.12,59,710/-</td> <td>Rs.3,29,272/-</td> </tr> </tbody> </table>	A.Y.	Income/(Loss)	Total Tax paid	2021-22	Rs.43,01,750/-	Rs.12,73,363/-	2022-23	Rs.60,34,040/-	Rs.34,89,313/-	2023-24	Rs.12,59,710/-	Rs.3,29,272/-
A.Y.	Income/(Loss)	Total Tax paid												
2021-22	Rs.43,01,750/-	Rs.12,73,363/-												
2022-23	Rs.60,34,040/-	Rs.34,89,313/-												
2023-24	Rs.12,59,710/-	Rs.3,29,272/-												

16. Subsequently, common reply affidavit to the report of Income Tax Department has filed by the Transferor Companies vide Diary No.2934 dated 24/05/2024, *inter alia* stating as under:-

- (i) It is submitted that Serial No.3 and 4 of the said Report shows 3 disputed demands. As per Report at Sl. No. 3, it is clear that the Appeals are pending against all 3 demands before CIT (A). The





Report also mentions that as per clause 6 of the Scheme all pending Tax proceedings of the Transferor Companies shall be taken over by Transferee Company. Hence, there are no adverse observations in the said report that are required to be traversed.

- (ii) It is submitted that the said report is clean and there are no disputed or undisputed dues pending against the Transferor Company No.2.
- (iii) It is submitted that the Transferee Company further undertakes to clear the disputed Tax Demands of Transferor Companies once the said demands are crystalized and attains finality.
- (iv) It is submitted that the sanction of the scheme will not adversely affect the rights of the Income Tax department for any present and future proceedings and the Income Tax Department shall have the liberty to take appropriate action as per applicable law in case of an event of any tax avoidance or violation of the Act or any other similar issue. If there are any outstanding demands and/or any pending proceedings of the Petitioner Companies, the same shall be dealt with in accordance with applicable law.

17. The Deputy Commissioner of Income Tax, Central Circle-2(1), Queen's Road, Bengaluru has filed its report for the Transferee Company vide Diary No.3276 dated 06.06.2024, wherein it is stated that there is tax demand pending for recovery from the Transferee Company for A.Y.2020-21 of Rs.3,15,09,448/-. It is further submitted that ITR has been filed up to 2022-23, except Transferor Company 1 which has a loss of 3,00,97,644/- of A.Y.2021-22, there are no losses to be carried forward and set off against the income of the Transferee Company. Hence his office has no objections for the proposed amalgamation of Transferor Company 1 and Transferor Company 2 with the Transferee Company and no assessment proceedings are pending as on date.

18. Reply affidavit to the report of Income Tax Department has filed by the Transferee Company vide Diary No.3353 dated 11/06/2024, *inter alia* stating as under:-

- (i) It is submitted that Serial No.5 of the said Report shows one disputed





demand. The said demand is disputed and is pending before CIT (A). They have also filed a rectification Application with the AO to nullify the demand. Further the last Part of the Said Report has given a No Objection to the Scheme.

- (ii) It is submitted that the Transferee Company further undertakes to clear the disputed Tax Demands of Transferor Companies and its own once the said demands are crystalized and attains finality.
- (iii) It is submitted that the sanction of the Scheme will not adversely affect the rights of the Income Tax department for any present and future proceedings and the Income Tax department shall have the liberty to take appropriate action as per applicable law in case of an event of any tax avoidance or violation of the Act or any other similar issue. If there are any outstanding demands and/or any pending proceedings of the Petitioner Companies, the same shall be dealt with in accordance with applicable law.

19. On 05.07.2024, the following order was passed:

“...2. Ld. Counsel for the Petitioner submits that with regard to para 22 of the Report filed by the ROC, he has already given a clarification vide para no.22 at page no.7 of his reply filed on 19.06.2024. In this regard, Ld. Counsel for the Petitioner is directed to file a separate undertaking, within a period of one week stating that the Bank Account in the name of the Transferor Companies is open for the purpose of receiving money from its Creditors only and they will not make any payment from the account of the Transferor Companies from the date of dissolution of Transferor Companies”.

20. Accordingly, an Affidavit regarding para II (22) of the Common Report filed by Petitioner Companies, vide diary No. 3997 dated 08/07/2024, inter alia, stating that the Transferee Company undertakes to not use the Bank Accounts/s of Transferor Companies for any other purpose other than for realizing the pending invoices/Bills of Transferor Company, if any, in order to ensure smooth transfer of business operations on going concern basis. Further, the Transferee Company undertakes necessary and expedite steps to change the name of the Bank Accounts of Transferor Companies to that of Transferee Company pursuant to sanction of the Scheme by this Tribunal and subsequent dissolution without



winding up of the Transferor Companies.

21. Heard the Ld. Counsel appearing for the Petitioner Companies, Ld. Counsel for the ROC/RD, IT Department and the Official from the office of OL. We have carefully perused the pleadings of the parties and the Law and fact on the issue.
22. It is noted that in the Reports of ROC/RD & OL that the Appointed Date mentioned in the Scheme is 01.07.2022. Being an old dated, if the scheme is approved, it may be allowed from 01.04.2023 as the Appointed Date. The explanation given by the Petitioner Companies for not filing the Scheme within one year from the Appointed Date is found to be reasonable and not against public interest. Therefore, the Scheme is in compliance with the General Circular No.09/2019 dated 21.08.2019 issued by Ministry of Corporate Affairs, para 6 (c) of the said Circular, which reads as under:

“6(c): Where the ‘Appointed Date’ is chosen as a specific calendar date, it may precede the date of filing of the Application for scheme of merger/amalgamation in NCLT. However, if the ‘Appointed Date’ is significantly ante-date 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 respect of the observations made by the ROC/RD & OL regarding the Appointed Date and the MCA Circular mentioned above, the reason for choosing the Appointed Date is acceptable. Therefore, no change is required regarding the Appointed Date, and it is retained as proposed.

23. The reports of the ROC, RD, OL and IT Dept., for the Petitioner Companies are taken on record. Similarly, reply filed by the Petitioner Companies to the above mentioned reports are also taken on record. In view of the above discussion, we conclude that the objections/observations to the Scheme received from RD/ROC, OL and IT Department have been adequately replied by the Petitioner Companies and hence there is no impediment in approval of the Scheme.

24. The Scheme in question as annexed at **Annexure-A is approved with Appointed Date being 01st July, 2022** and further declare that





the Scheme is to be binding on all the Shareholders and Creditors of the Petitioner Companies. While approving the Scheme, it is clarified that this order should not be construed as an order in anyway granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law. With the sanction of the Scheme, the Transferor Companies shall stand dissolved without being wound-up, without any further act or deed.

AND THIS TRIBUNAL DOES FURTHER ORDER:

- (i) That the Petitioner Companies do, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company and the files relating to Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and
- (ii) That the Transferee Company shall deposit an amount of Rs.75,000/- with the "Pay & Accounts Officer, Chennai in respect of the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad" and Rs.25,000/- in favour of "The Prime Minister's National Relief Fund", within a period of four weeks from the date of receipt of certified copy of this Order; and
- (iii) The Petitioner Companies are directed to make compliance to the provisions of Section 170A of the Income Tax Act, 1961 within the stipulated period of time.
- (iv) That any person interested shall be at liberty to apply this Tribunal in the above matter for any directions that may be necessary.
- (v) The approval/sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act, 2013 and that the authorities under both the Acts, are at liberty to take appropriate action, in accordance with law, if so advised.





(vi) The Petitioner Companies have given various undertaking in response to observations made in ROC/RD, IT Dept., & OL reports. They are directed to ensure compliance of the same.

25. As per the directions, Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioner Company on filing of the Schedule Property i.e., (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company by way of affidavit of the Transferor Company respectively.

26. Accordingly, **C.P. (CAA)No.09/BB/2024 is disposed of.**

27. Copy of this Order be communicated to the Ld. Counsel for the Petitioner Companies.

-Sd-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)



-Sd-

(K. BISWAL)
MEMBER (JUDICIAL)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Sunder P
5/9/2024

DEPUTY/ASST. REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
Bengaluru Bench