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

C.P. (CAA) No.45/BB/2023
[Application under Sections 230 to 232 of the Companies Act, 2013 and other Applicable Provisions of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2013]

IN THE MATTER OF:

Monica Trading Pvt. Ltd.
Registered Office: 7th Floor, Devchand House, Shiv Sagar Estate, Dr. Annie Besant Road, Worli, Mumbai-400018 ... Non-Petitioner Company / Transferor Company No.1

Shree Renuka Agri Ventures Ltd.
Registered Office: 2nd & 3rd Floor, Kanakashree Arcade, CTS No. 10634, JNMC Road, Nehru Nagar, Belagavi-590010, Belgaum, Karnataka ... Petitioner Company No. 1/ Transferor Company No.2

Shree Renuka Tunaport Pvt. Ltd.
Registered Office: 2nd & 3rd Floor, Kanakashree Arcade, CTS No. 10634, JNMC Road, Nehru Nagar, Belagavi-590010, Belgaum, Karnataka ... Petitioner Company No. 2/ Transferor Company No.3

Shree Renuka Sugars Ltd.
Registered Office: 2nd & 3rd Floor, Kanakashree Arcade, CTS No. 10634, JNMC Road, Nehru Nagar, Belagavi-590010, Belgaum, Karnataka ... Petitioner Company No. 3/ Transferee Company

Order delivered on: 22.10.2024

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
For the Registrar of Companies	:	Ms. Anuparna Bordoloi
For the IT Department	:	Shri Ganesh R. Ghale

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ORDER

Per: K. Biswal, Member (Judicial)

1) The Petitioner Companies have filed the instant Second Motion Petition on 05.10.2023 under Sections 230 to 232 of the Companies Act, 2013 (hereinafter referred to as the 'Act') and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, 'Rules') *inter alia,* seeking for the sanction of Scheme of Amalgamation (for brevity 'Scheme') of Monica Trading Pvt. Ltd. (Non-Petition Company/Transferor Company No.1), Shree Renuka Agri Ventures Ltd. (Petitioner Company No.1/Transferor Company No.2), Shree Renuka Tunaport Pvt. Ltd. (Petitioner Company No.2/Transferor Company No.3) with Shree Renuka Sugars Ltd. (Petitioner Company No.3/Transferee Company) and their respective Shareholders.

2) The facts of the case are as follows:

2.1 The Petitioner Companies filed First Motion Application bearing Company Application No.05/BB/2023 before this Tribunal, under Sections 230 & 232 of the said Act. Based on the said Application necessary directions were issued, vide, Order dated 13.04.2023 of this Tribunal, wherein the meetings of the Equity Shareholders Petitioner Companies, Sole Secured Creditor of the Petitioner Company No.3, Unsecured Creditors Petitioner Companies and Sole Secured Debenture-holder of the Transferee Company were dispensed with. Since there were no Secured Creditors of the Petitioner Company Nos.1 & 2, there were nothing to convene their meeting.

2.2 This Tribunal, vide, order, dated 09.01.2024 issued the following directions;

> *".....4.The Petition be listed for hearing on 27.02.2024. 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*

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newspapers viz. "Economic Times" in English Edition and translation thereof in "Udayavani" 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) the Principal Commissioner of Income Tax, Karnataka & Goa; (d) the Commissioner of Income Tax, Belgaum for Petitioners Company (e) the Office of the Liquidator, Bengaluru; (f) The National Stock Exchange, Mumbai; (g) BSE(Formerly Bombay Stock Exchange), Mumbai, Maharashtra, (h) Reserve Bank of India & (i) Securities and Exchange Board of India; 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.

2.3 In pursuance to the above directions, the Authorized Signatory of the Petitioner Company has filed copies of proof of service of

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notice, vide, Diary No.1074, dated 16.02.2024, along with copies of newspaper publication *"The Economic Times"* (English), and *"Udayavani"* (Kannada) dated 20.01.2024. In respect of the Newspaper Publication, the Petitioner Companies submits the Petitioner Companies have not received any objections from any persons/stakeholders/Creditors.

2.4 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 13.04.2023.

2.5 The Board Resolution of the Petitioner Companies approving the Scheme is annexed as Annexure-A of the Petition.

2.6 Ld. Counsel for the Petitioner Companies submitted that the certificate of the statutory auditors has been filed certifying that the proposed accounting treatment contained in para 12, is in compliance with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and applicable circulars issued thereunder and all the applicable accounting standards notified by the Central Government under Section 133 of the Act, 2013 read with relevant rules thereunder and other Generally Accepted Accounting Principles. The copy of the same is attached to the Petition and marked as Annexure- S.

2.7 The Ld. Counsel for the Petitioner Companies have filed affidavits with regard to the Sectorial Regulators, no Corporate Debt Restructuring or any kind of arrangement with the Creditors and no pending investigation proceedings pending against the Petitioner Companies or its Directors under Companies Act, 2013 or Companies Act, 1956. The aforesaid affidavits are attached to the Petition as Annexures P, Q & R.

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2.8 The Audited Financial Statement as on 31.03.2022 and 31.03.2023 of the Non-Petitioner Company is attached Annexure-C of the Petition

2.9 There are Related Party Transactions in the Non-Petitioner Company. The same is disclosed in Note 21 (f) of the Notes Forming part of the Audited Financial Statements for the year ended 31.03.2023. A Copy of the Relevant Extracts from the Audited Financial Statements regarding Related Party Transaction is attached to the Petition and marked as Annexure-C1.

2.10 The Audited financial statements as on 31.03.2023 of the Petitioner Companies are attached to the Petition and marked as Annexures E, G. & J.

2.11 There are Related Party Transactions in the Petitioner Companies. The same are disclosed in Note 16.5, Note 11.4 & Note 41 of the Audited Financial Statements for the year ended 31.03.2023. The copy of the same are attached to the Petition and marked as Annexures E-1, G-1 & J-1.

2.12 The "Appointed Date" as defined under the scheme is **01.04.2022.**

3) In pursuant to the notice, the Regional Director (RD) and the Registrar of Companies (ROC) have filed their Common report vide Dairy No.2945 dated 27.05.2024 by, interalia, observing as under, vide para II:

1. The Transferor Company 1 is registered under the jurisdiction of Registrar of Companies, Maharashtra, Mumbai and the Transferor Company No.2, the Transferor Company No.3 and the Transferee Company are registered under the jurisdiction of Registrar of Companies, Karnataka. The observations henceforth are restricted to the Transferor Company Nos. 2, 3 and the Transferee Company only.
2. The Transferee Company is a Listed Company. The equity shares of the Company are listed on both BSE Limited and National

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Stock Exchange of 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 obtain the approval from Securities and Exchange Board of India/ Stock Exchanges.

3. Further the non-convertible redeemable debentures of the Transferee Company are listed on BSE 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 SEBI (Issue and Listing of Non-Convertible Securities) Regulation, 2021.
4. As per the list of shareholders attached to the Scheme and Chartered Accountant's certificate dated 21.12.2022, the percentage of shareholding of Non-resident shareholders, foreign portfolio investors category 1 and foreign body corporate is 0.65%, 2.81% and 1.38% respectively. The Hon'ble Tribunal may be pleased to direct the Petitioner Company to submit the relevant approvals and compliances made under FEMA/RBI Regulations before the Scheme is allowed.
5. As per Para 1.3 of Part-A of the proposed Scheme, the appointed date has been stated as 01.04.2022. All the Companies have filed their due Annual Returns and Balance Sheets for the financial year 31.03.2023. Since the appointed date is ante-dated beyond a year, the Hon'ble Tribunal may be pleased to direct the Petitioner Company to change the appointed date from 01.04.2022 to 01.04.2023 or any other date as deem fit and proper by the Hon'ble Tribunal.
6. As per MCA records, the Transferee Company has many open charges. The Hon'ble Tribunal may be pleased to direct the Petitioner Transferee Company to furnish no objection certificate from the concerned charge holder/s before the Scheme is allowed.

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7. As per Clause 10.1 of Part-B of the Scheme, all the employees of the Transferor Companies in service on the effective date shall become employees of the Transferee Company. Since the Transferor Company 1 is situated in Mumbai, Maharashtra and the Transferee Company in Bangalore, Karnataka, this Hon'ble Tribunal may be pleased to direct the Petitioner Companies to explain as to what measures are being taken for implementation of this clause and to safeguard the interest of the employees.
8. The Transferee Company has Foreign Exchange Transactions. This Tribunal may be pleased to direct the Transferee Company to submit the relevant approvals and compliances made under FEMA/ RBI Regulations before the Scheme is allowed.
9. As per the latest Audited Financial Statement for the financial year ending 31.03.2023, the Transferor Company No.2 is profit making Company and the Transferor Company No.3 and the Transferee Company are loss making entities. There may be negative out flow of taxes, once the Scheme is allowed.
10. As per note no.6 and 25 of the financial statements for the financial year ending 31.03.2023, the Transferor Company No.3 and the Transferee Company have undisputed statutory dues to the tune of Rs. 10,000 and Rs. 15.72 crores respectively. This Hon'ble Tribunal may be pleased to direct the Petitioner Companies to furnish an undertaking to the effect that it will settle the statutory dues immediately, if not settled so far.
11. As per note no. 23 of the financial statements for the year ending 31.03.2023 of the Transferee Company, outstanding dues to Micro, Small and Medium Enterprises to the tune of Rs. 11.14 Crore exists. This Tribunal may be pleased to direct the Petitioner Company to show as to how it has complied with Micro, Small and Medium Enterprise Development Act, 2006 and may be directed to furnish an undertaking to the effect that it will settle the dues as per the said Act immediately, if not settled so far.

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12. As per Independent Auditor's Report for the financial year 2022-23, the Transferor Company 2 has disputed Statutory dues towards Custom Demand to the tune of Rs. 11 Crores and the Transferee Company has disputed statutory dues towards customs duty, excise duty, Service Tax, GST, Value Added Tax and Income Tax to the tune of Rs. 486.06 Crores. The Hon'ble Tribunal may be pleased to obtain necessary consents/ NOCs from the concerned Statutory Authorities as stated above, before the Scheme is allowed as the voluminous of the taxes due are amounting to Rs. 486.06 Crores.
13. Clause 13.1 of Part-B of the Scheme provides for clubbing of Authorised 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) (i) of the Companies Act, 2013. This Tribunal may be pleased to direct the Petitioner Transferee Company to comply with the with the provisions of the Section and to pay the difference of fee, after setting off the fee already paid by the Transferor Companies on their respective capital.
14. As per Section 240 of the Companies Act, 2013, the liability in respect of offences committed under the Companies Act by the officers in default, of the Transferor Companies prior to merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.
15. With reference to this Directorate's letter dated 07.02.2024 issued to the Principal Commissioner of Income Tax, Bengaluru, till date no report/comments in the matter have been received from the Income Tax Department. Taking into consideration the facts as stated at para 12 above, this Tribunal may be pleased to obtain consent/ NOC from the Income Tax Department, before the Scheme is allowed.

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16. Report of Official Liquidator, Karnataka dated 01.02.2024 is filed before this Tribunal and the copy of the same has been furnished to this Directorate vide e-mail dated 19.02.2024 with respect to this instant Company Petition. The Official Liquidator in his report has pointed out certain observations. This 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.

17. An e-mail dated 15.02.2024 (copy enclosed as Annexure-2) has been received from Mr. Kishan Rastogl, Deputy Manager, Listing Approvals, National Stock Exchange of India Limited (NSEIL), Bandra (East), Mumbal-400 051 and stated that as per the Master Circulars on Schemes it is stated that "Provisions of the Circular shall not apply to Schemes which solely provide for mergers of a wholly owned subsidiary or its division with the parent Company" and stated that they do not have any comments on the Scheme.

18. *Letter No. FE.BG.FID No.s-1479/21.05.870/2023-24 dated 28.02.2024 (copy enclosed as Annexure-3) and stated that as per EDPMS (Export Data Processing and Monitoring System) data as on December 31, 2023, the following information is furnished in relation to Shree Renuka Sugars Limited (Transferee Company):*

1(a) *As per Para A.2 of Master Direction-Export of Goods and Services, it is stated that "It is obligatory on the part of the exporter to realize and repatriate the full value of goods/ software/ services to India within a stipulated period from the date of export, as under: It has been decided in consultation with the Government of India that the period of realization and repatriation of export proceeds shall be nine months from the date of export for all exporters including Units in Special Economic Zones (SEZs), Status Holder Exporters, Export Oriented Units (EOUs), Units in Electronic Hardware Technology Parks (EHTPs), Software Technology Parks*

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(STPs) & Bio-Technology Parks (BTPs) until further notice." However, as per EDPMS data as on December 31, 2023, there are 3 shipping Bills outstanding beyond 9 months amounting to Rs. 92,61,461/- for Shree Renuka Sugars limited (the Transferee Company).

1(b) *In terms of Regulation 15 Notification No. FEMA 23 (R)/2015-RB dated January 12, 2016, it is stated that:*

"Where an exporter receives advance payment (with or without interest), from a buyer/ third party named in the export declaration made by the exporter, outside India, the exporter shall be under an obligation to ensure that "the shipment of goods is made within one year from the date of receipt of advance payment."

However, as per EDPMS data as on December 31, 2013, there are 3 Inward Remittance Messages (IRMs) outstanding beyond 1 year amounting to Rs. 1,62,99,087/- for Shree Renuka Sugars Limited.

1(c) *As per Para B.5 of Master Direction-Import of Goods and Services, it is stated that:*

"Remittances against imports should be completed not later than six months from the date of shipment, except in cases where amounts are withheld towards guarantee of performance, etc."

However, as per EDPMS letter date as on December 31, 2013, there is 1 Bill of entry outstanding for more than 6 months amounting to Rs.27,44,860/- for M/s. Shree Renuka Sugars Limited.*

2. *It may be noted that EDPMS and IDPMS database are based on the reporting done by different stakeholder like customs, STPI, SEZ and AD Banks, and RBI does not modify/ amend/ cancel the details/ data available in the EDPMS/ IDPMS. Hence, for latest and updated data, the primary source in this regard will be authentic.*

**EDPMS and IDPMS are comprehensive IT- based systems for better monitoring of export of goods and Software from India and Import of goods to India, respectively. The data in these systems are based*

on the Shipping Bills/ Softex forms/ Bills of Entries, which are received from Customs (ICEGATE), SEZ and STPI respectively and the data related to outward/ inward remittance for the goods and software exported/ imported through customs/ STPI/ SEZ are reported by AS Banks in EDPMS/ IDPMS.

3. *In terms of provisions of para 13.1 (2) of Foreign Exchange Management (Transfer or issue of security by a Person Resident Outside India) Regulation, 2017 dated November 07, 2017, an Indian Company issuing capital instruments to a person resident outside India and where such issue is reckoned as Foreign Direct Investment, for the purpose of these regulations, shall report such issue in Form FCGPR to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the Company operates, not later than thirty days from the date of issue of capital instruments. Shree Renuka Sugars Limited issued shares to Non-Resident investor on March 09, 2018 and the same was reported in form FCGPR on August 08, 2022. The Company had submitted compounding application for the said delay in reporting of FCGPR on April 12, 2023, but same was returned to the applicant vide out letter dated June 16, 2023 (enclosed) due to reasons mention therein. The Hon'ble Tribunal may kindly look into the matter. The copy of letter issued by RBI dated 28.02.2024 is enclosed as Annexure-4.*

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.

- There are no open Complaints, Prosecutions, Technical scrutiny/ Inquiry, Inspections and Investigations pending in this office against the Transferor Companies 2 &3.
- There are no open Complaints, Prosecutions, Technical scrutiny/ Inquiry, and Investigations pending in this office against the Transferee Company.

21. An inspection was conducted against the Transferee Company and certain violations were pointed out. Action as applicable under the companies Act is being taken against the Company and the Officers in default which will continue irrespective of the sanction of the scheme. The Transferee Company may be directed to submit an Affidavit to the Hon'ble Tribunal stating that it will comply with the provisions of the Companies Act and file Compounding/ Adjudication applications, as the case may be, in the instances of non-compliances.

4) Subsequently, reply affidavit to the common report of RD & RoC have been filed by the petitioner companies vide diary No. 3131 dated 03.06.2024, inter alia stating as under: -

1. **Reply to para II (1) the ROC & RD report:** It is submitted that the same pertains to factual information and do not call for any response.
2. **Reply to para II (2) of the ROC & RD report:** It is submitted that pursuant to the provisions of Regulation 37(6) of the Listing Regulations read with the provisions of SEBI Master 32. Circular No. SEBI/HO/CFD/DILI/CIR/P/2020/249 dated 22.12.2020 read with paragraph 5 of circular no.CIR/DIL3/ CIR/2017/21 dated 10.03.2017 issued by Securities and Exchange Board of India (SEBI) and Regulations 11, 37 and 94 of the Listing Regulations as amended from time to time, when a Scheme provides for merger of a Wholly Owned Subsidiary (WOS) with the Parent Company, the

Company is not required to file any application with Stock Exchanges as required by Clause 37 of Listing Regulations for seeking the prior approval of Stock Exchange/SEBI and that such Scheme shall be filed with the Stock Exchange only for the limited purpose of disclosure. Pursuant to said Circular, the Transferee Company had filed draft Scheme with BSE and NSE only for the purpose of dissemination/disclosure. The copy of the acknowledgements were already annexed to the Petition and the copy of which was served upon the Office of Registrar of Companies as well as Regional Director. In addition to the same, pursuant to the directions of the Hon'ble Tribunal in C.A.(CAA)No. 05/BB/2023 dated 13.04.2023, the notices were issued to SEBI, BSE and NSE on 07.06.2023, 21.06.2023 and 13.06.2023 respectively stating that representation, if any in connection with the proposed scheme may be made within 30 days. Further, pursuant to the directions of the Hon'ble Tribunal in C.P.(CAA)No.45/BB/2023 dated 09.01.2024, Notice of Final Hearing were issued to SEBI, BSE and NSE on 25.01.2024 stating to submit reply, if any, on or before 26.02.2024. As per para 17 of Common 4 Report of the Central Government and Registrar of Companies, Karnataka. NSE already provided their no objection. However, as on date, no response has been received from SEBI and BSE. In any case, the Transferee Company undertakes to comply with the applicable provisions/ regulations of SEBI.

3. **Reply to para II (3) of the ROC & RD report:** It is submitted that the compliances with SEBI Regulations has been clarified herein in the above Para and the routine compliances in respect of non-convertible redeemable debentures as per SEBI laws is complied with.

4. **Reply to para II (4) of the ROC & RD report:** It is submitted that since the scheme is merger of Wholly Owned Subsidiaries with the Holding Company, no shares are being issued pursuant to the

Scheme. Hence, there is no change in the shareholding of Transferee Company pursuant to the Scheme. Therefore, compliances/approvals requirement under the FEMA/RBI Regulations are not applicable to the Scheme. In any case, the Transferee Company has already issued notice to RBI on 09.06.2023 and 24.01.2024 pursuant to directions of the Hon'ble Tribunal dated 13.04.2023 and 09.01.2024 respectively. Nonetheless, the Transferee Company undertakes to comply with all the application/relevant compliances/ regulations of FEMA/RBI.

5. **Reply to para II (5) of the ROC & RD report:** It is submitted that the Appointed Date of 01.04.2022 as set out in the Scheme has been approved by the Board of Directors of the respective Petitioner Companies have duly complied with the requirement of Para 6(C) of MCA Circular F.No.12/2019/CL-I dated 21.08.2019 by filing first motion application with Hon'ble Tribunal within One Year i.e. on 16.01.2023. Also, Petitioner Companies and/or Non-Petitioner Company undertakes to comply with the requisite requirements pursuant to Appointed Date being 01.04.2022 such as filing of Revised Income Tax Returns for A.Y. 2023-24, etc., as applicable.

6. **Reply to para II (6) of the ROC & RD report:** It is submitted that the open charges pertain to the Transferee Company which is going to exist even after sanctioning of the scheme. In any case, the Transferee Company had obtained Consent Affidavits from all the Secured Creditors and the same was also submitted to this Hon'ble Tribunal along with the First Motion Application. Nonetheless, the Transferee Company undertakes that the rights of Charge Holders will not be affected by the Scheme.

7. **Reply to para II (7) of the ROC & RD report:** It is submitted that as stated in clause 10 of the scheme, all employees of the Transferor Companies will become employees of Transferee Company without any break or interruption. Further, The

Transferee Company undertakes that it shall not carry out any retrenchment exercise on account of amalgamation of the Transferor Company into the Transferee Company with respect to its employees upon the sanction of the Scheme by the NCLT. The treatment of both its existing employees as well as those joining from the Transferor Company will continue as per the normal course of business.

8. **Reply to para II (8) of the ROC & RD report:** It is submitted the Transferee Company has always been in compliance with the relevant provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder and undertakes that it will adhere to the applicable Laws post completion of Scheme, as applicable.

9. **Reply to para II (9) of the ROC & RD report:** It is submitted that the losses of the Transferor Company 3 is immaterial considering the size of operations of the Transferee Company. Further, Transferee Company is not Loss making Company. However, it is just that the Transferee Company has incurred losses only in some financial years. Further, the Transferor Companies are wholly owned subsidiaries of the Transferee Company and the Transferee Company being a listed Company has always presented Consolidated Financial Statements. Further, this proposed merger is to consolidate the group entities & business and upon the scheme becoming effective, the Transferor Companies shall stand dissolved, all the assets, liabilities and reserves of the Transferor Companies will be recorded at the carrying values in the consolidated financial statements. Further, Petitioners complied with the procedure set out in the Companies Act, 2013 and that the proposed scheme of compromise or arrangement is not in violation of any provision of law, unconscionable or contrary to public policy. The Income Tax Department have already filed their Reports in this matter which does not contain any observation in

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this regard. In any case, the tax impact post-merger will be due assessments by the Income Tax Department and the Petitioner Companies undertakes to comply with the provisions of the Income Tax Act.

10. **Reply to para II (10) of the ROC & RD report:** It is submitted that the undisputed statutory dues w.r.t. the Transferor Company No.3 amounting to Rs. 10,000/- has been paid on 28.04.2023. Further, in respect of Transferee Company, out of total undisputed statutory dues amounting to Rs. 15.72 Crores, Rs. 14.49 Crores has been paid by Transferee Company till date and balance of Rs. 1.23 Crores pertains to provisions which are not yet due and the Transferee Company undertakes to discharge the said balance as and "when due.

11. **Reply to para II (11) of the ROC & RD report:** It is submitted that as per financial statements for the year ending 31.03.2023, the said MSME dues to the tune of Rs. 11.14 Crores are not in dispute. Further, all the said dues are outstanding for less than 1 year. Additionally, the Transferee Company has also provided for applicable interest on the said MSME dues and the same has been disclosed appropriately in the said Audited Financial Statement. Accordingly, the Transferee Company has been appropriately complying with the provisions of MSME Act. As on date, the Transferee Company has cleared the aforesaid MSME dues to the extent of Rs. 10.33 Crore out of the total outstanding dues of Rs.11.14 Crore and the Transferee Company undertakes to pay the remaining balance of Rs.0.81 Crore in due course and comply with the appropriate provisions of MSME Act.

12. **Reply to para II (12) of the ROC & RD report:** It is submitted that the Scheme of Amalgamation provides for transfer and vesting of all the liabilities including contingent liabilities of the Transferor Companies to the Transferee Company upon the Scheme becoming effective. Accordingly, all the disputed statutory dues of Transferor

Company No.2 will be dealt appropriately by the Transferee Company. Further, as far as the disputed dues of Transferee Company are concerned, the Transferee Company undertakes to discharge the same as and when the said dues are crystallized in the course of law. The Transferee Company further undertakes that the Scheme will not deter the rights of the respective Authorities in respect of disputed statutory dues pertaining to Transferor Company No. 2 and Transferee Company.

13. **Reply to para II (13) of the ROC & RD report:** It is submitted that the Transferee Company undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 and pay the difference of fee, if any, after setting off the fee already paid by the Transferor Companies on its respective capital.
14. **Reply to para II (14) of the ROC & RD report:** It is submitted that Transferee Company undertakes that the liability in respect of offences, if any committed under the Companies Act by the officers in default, of the Transferor Companies prior to merger, amalgamation or acquisition will continue after such merger, amalgamation or acquisition.
15. **Reply to para II (15) of the ROC & RD report:** It is submitted that the Income Tax department have already filed their necessary reports to this Hon'ble Tribunal on 19.03.2024 stating their no objection to the Scheme. The copy of the said reports are enclosed along with the reply as Annexure B.
16. **Reply to para II (16) of the ROC & RD report:** It is submitted that the Petitioner Companies have filed its response to the report of the Official Liquidator's report and the same is enclosed with the reply as Annexure C.
17. **Reply to para II (17) of the ROC & RD report:** It is submitted that the same pertains to factual information and do not call for any further response.

18. **Reply to para II (18) of the ROC & RD report:** It is submitted that:

Ref. Para 1(a), 1(b) and 1(c): The information provided in the said paras does not provide any specific details with respect to vendors/parties. The Renuka Transferee Company has been complying with the FEMA/RBI regulations. Further, the Transferee Company undertakes to comply with any requirements under the FEMA/RBI regulations and apply for compounding as per law in case of any default.

Ref. Para 2: The said para is only informative.

Ref. Para 3: As a full and final settlement of the credit facilities availed by Renuka Commodities DMCC, Dubai (Renuka Dubai), a wholly owned subsidiary of Shree Renuka Sugars Limited (the Company/SRSL) from standard Chartered Bank. Dubai (SCB), the Company, inter-alia, allotted 2,93,86, equity shares to SCB having face value of Rs. 1/- each, at Rs. 16.28 per share including a premium of Rs. 15.28 per share, amounting S to the total value of Rs. 47,84,12,171.16. The FC-GPR reporting for the said allotment was made on 08.08.2022. As there was an inadvertent delay in submission of the Form FC-GPR within the prescribed time, the Company had submitted compounding application for the delay in reporting of FC-GPR on 12.04.2023. However, the compounding application was returned to the Company due to non-completion of administrative procedures by SCB. Subsequently, RBI had requested SCB to provide certain documents/information from the Company which were provided to SCB by the Company on 06.05.2024. Thereafter, the Company has not received any communication regarding the compounding application either from SCB or RBI. In any case, the Transferee Company (which is continuing entity post-merger) undertakes to submit any requirement/documentation to SCB or RBI as and when called for.

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19. **Reply to para II (19) of the ROC & RD report:** It is submitted that the Petitioner Companies undertakes that the books and papers of the amalgamated/Transferor Companies will be preserved and papers of as per provisions of Section 239 of the Companies Act, 2013.
20. **Reply to para II (20) of the ROC & RD report:** It is submitted that that the same pertains to factual information and do not call for any further response.
21. **Reply to para II (21) of the ROC & RD report:** It is submitted the Transferee Company undertakes to comply with the provisions of the Companies Act and file Compounding/ Adjudication applications, as the case may be, in the instances of non-compliances in due course of law.

5) Official Liquidator (OL) has filed his report vide Diary No. 756 dated 02.02.2024 wherein it has been pointed out as under:

1. TR-1 is registered in the state of Maharashtra, TR2 & TR-3 companies and TE Company are registered in the state of Karnataka. This report is in respect of TR-2 & TR-3 companies only which is prepared based on the published financial statements and documents/details furnished by the petitioner TR-2 and TR-3 companies. TR 2 and TR 3 are proposed to merge with TE Company which is a listed Company. TE Company being a listed Company the Official Liquidator has engaged Shri. Niranjan Prabhu of NSVM and Associates, Panel Chartered Accountant for scrutiny of books and accounts. The reports of CA is enclosed with this report.
2. The authorized and paid capital of TR-2 & TR-3 companies are:
   TR2-Rs. 25,00,00,000 and Rs. 25,00,000
   TR 3 Rs. 1,00,000 and Rs. 1,00,000
3. The main objects of the both Transferor companies and TE Company are entirely different. TE Company needs to comply with

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Sec. 13 of the Companies Act, 2013 to alter the MOA before commencing or clubbing of main objects of TR companies. It cannot be automatic or by operation of law. Needs to state specifically by the TE Company by way of an undertaking.

4. The appointed date proposed is 01.04.2022. Being old, the scheme may be allowed from 01.04.2023 or any other date as deemed fit. It may be noted that the Transferor Companies have filed the Balance sheets as at 31.03.2023.
5. TR2 & TR3 does not have any pending charges as per charge register /master data maintained by MCA/ROC.
6. As disclosed, the TR-2 & TR-3 companies are wholly owned subsidiaries of Transferee Company. Hence no shares will be issued pursuant to the amalgamation of the Transferor Companies into Transferee Company. The paid up capital held by the Transferee Company together with its nominees in the respective TR companies shall stand cancelled without any further act, application or deed.
7. TE Company is a widely held listed Company with substantial public Interest. The Interest of shareholders and creditors of TR companies shall be taken care of. Total 37.52% shares are held by general public, MF, FII, etc.
8. Being listed Company, the TE Company shall comply with all the requirements of SEBI, BSE, NSE and approval of CCI, if the threshold limit is crossed beyond prescribed limit.
9. As per the financial statement as at 31.3.2022 TR-2, has entered Into Related Party Transaction amounting to Rs. 22,29,19,533 while TR-3 has Related Party Transaction to the tune of Rs. 84,75,950. Both of the above are loan inter se between TR companies & TE Company. The same should be extinguished by following applicable Accounting Standards.
10. The Scheme has been approved by the Board of Directors of TR-2 & TR-3 companies in the meeting held on 17.5.2022. The meeting

of shareholders, secured creditors and unsecured creditors of TR-2 & TR-3 Companies have been dispensed by the NCLT vide its order dated 13.4.2023. In spite, the TE Company has to safeguard the Interest of all creditors in all respect including of MSME and statutory Authorities as on date.

11. Both TR2 and TR3 are loss making companies and accumulated losses exceeded the net worth. Once these two entities merged with a listed Company which is a profit making Company, there may be an impact on EPS, net worth, IT and dividend payout of TE Company.
12. The TR2 Company has to pay Rs. 84.15 lakhs and TR3 Company has unsecured loan of Rs. 21.84 crores to TE Company. Once TR companies are merged with TE Company, all the amount which are to be written off will have impact on net worth, EPS, dividend payout, etc. of TE Company.
13. No Employees/workmen of Transferor companies to be retrenched/terminated in the terms of amalgamation of Transferor companies with Transferee Company. The Hon'ble Tribunal may kindly see that TR or TE will not retrench / Swap the staff or employee of Transferor Companies in the guise of surplus staff on account of merger. Need to give a separate undertaking by the Transferee Company in this regard.
14. 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.
15. That the scrutiny of the books of accounts and records of Transferor Companies, the Official Liquidator has engaged NSVM & Associates, No. 63/1, 1st Floor, Above Canara Bank, Railway Parallel Road, Kumara Park West, Bangalore 560 020.
16. That the said Chartered Accountants, has submitted report on Transferor Companies with the Official Liquidator on 01.1.2024.

The Chartered Accountant's reports regarding TR Companies may be treated as part and parcel of this report.

6) The reply affidavit to the Official Liquidator have been filed by the petitioner companies vide Diary No. 3029 dated 29.05.2024, inter alia stating as under:-

I. **Reply to paras 1 and 2 of the OL report:** It is submitted that the observation in paragraphs 1 & 2 pertains to factual information and do not call for any response.

II. **Reply to para 3 of the OL report:** It is submitted that the Transferee Company undertake to comply with Section 13 of the Act, 2013 to alter the MOA before commencing or clubbing of main objects of Transferor Companies.

III. **Reply to para 4 of the OL report:** It is submitted that the Appointed Date may not be changed from 01.04.2022. The appointed date of the Scheme has been kept as 01.04.2022, considering the business requirements and operations of the Transferee Company and the business interest of the amalgamated companies. Further, it is submitted that under law, Appointed Date can be retrospective date. The shareholders and creditors of the respective Petitioner Companies have given their consent to the scheme by way of affidavits. Therefore, if the Appointed Date is changed from 01.04.2022, it will not be in the interest of the Scheme and will adversely affect the business requirements and operations of the Transferor Companies and the Transferee Company.

IV. **Reply to paras 5 and 6 of the OL report:** It is submitted that the same pertains to factual information and does not call for any response.

V. **Reply to para 7 of the OL report:** It is submitted that since the Transferor Companies are Wholly Owned Subsidiaries of the Transferee Company and the Transferee Company will be surviving

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entity after merger becomes effective, the interest of the shareholders of the Transferor Companies will be protected in all respects. Also, as per Clause 4 of the Scheme, post- merger all liabilities of Transferor Companies will become liabilities of Transferee Company. Therefore, interest of all creditors of the Transferor Companies will be protected in spirit as provide in the Scheme.

VI. **Reply to para 8 of the OL report:** It is submitted that being listed company, the TE company shall comply with all the requirements of SEBI, BSE, NSE and approval of CCI, if the threshold limit is crossed beyond prescribed Transferee Company undertakes to comply with all the requirements of SEBI, BSE, NSE, approval of CCI to the extent applicable. However, it is not applicable since it does not cross the threshold limit criteria.

VII. **Reply to para 9 of the OL report:** It is submitted that pursuant to clause 12.4 of the scheme, both of the above transactions will be extinguished as per applicable Accounting Standard.

VIII. **Reply to para 10 of the OL report:** It is submitted that as per clause 4 of scheme, post-merger all liabilities of Transferor Companies will become liabilities of Transferee Company. Therefore, interest of all creditors including MSME creditors of Transferor Companies and statutory authorities is protected in spirit as provided in the Scheme.

IX. **Reply to para 11 of the OL report:** It is submitted that the Transferor Companies are wholly owned subsidiaries of the Transferee Company and the Transferee Company being a listed company has always presented consolidated financials to its shareholders for approval. Further, this proposed merger is to consolidate the group entities & business and upon the scheme becoming effective, the Transferor Companies shall stand dissolved, all the assets, liabilities and reserves of the Transferor Companies will be recorded at the carrying values in the

consolidated financial statements. Further, Petitioners complied with the procedure set out in the Companies Act, 2013 and that the proposed scheme of compromise or arrangement is not in violation law, unconscionable or contrary to public policy. In any case, the impact of losses of the Transferor Companies is immaterial considering the size operations and profits of the Transferee Company.

X. **Reply to para 12 of the OL report:** It is submitted that as per Clause 12.4 of the Scheme, inter-company balances between the Transferee Company and/or each of the 3 Transferor Company, if any, appearing in the books of each of the 3 Transferor Company and/or the Transferee Company, shall stand cancelled. Hence, there is no impact on the net worth, EPS, dividend payout, etc. of the Transferee Company. Above all, the Transferor Companies are wholly owned subsidiaries of the Transferee Company and the effect of the Wholly Owned Subsidiary's Balance Sheets always have been reflected in the Consolidated Financial Statement of the Transferee Company.

XI. **Reply to para 13 of the OL report:** It is submitted that as stated in clause 10 of the scheme, all employees of the Transferor Companies will become employees of Transferee Company without any break or interruption. Further, the Transferee Company undertakes not to retrench or terminate any of the Employees of Transferor Companies pursuant to the merger.

XII. **Reply to para 14 of the OL report:** It is submitted that the Petitioner Companies undertakes applicable stamp duty, if any and other charges, if any to the state government within a reasonable time with an outer limit of 6 months.

XIII. In para 16 of the OL report regarding the Chartered Accountants report, it is noticed that the NSVM & Associates, Chartered Accountants vide its report dated 29.12.2023 has given the following comments:

a. *The Transferor Company has maintained proper books of accounts, statutory register and records as required by the Companies Act, 2013.*
b. *The affairs of the Transferor Company have been conducted in a manner not prejudicial to the interest of creditors, employees or the members or the public.*
c. *Nothing has come to our attention during our review which causes us to believe that the affairs of the Transferor Company has not been carried out in the manner required by the Companies Act, 2013.*

7) The Income Tax Department has filed its report vide Diary No. 1810 dated 19.03.2024 in respect of Shree Renuka Agri Venture/Transferor Company No.2 wherein it has been pointed out as under:

Sl. No.	Components of the Proposal	Observation of A. O.
1.	Details of proposal	Petition filed to obtain sanction of the Hon'ble Tribunal to the scheme of Amalgamation of Monica Trading Pvt. Ltd. (Transferor company No.1) and Shree Renuka Agri Venture Ltd. (Transferor Company No.2) and Shree Renuka Tunaport Pvt. Ltd. (Transferor Company No.3) with Shree Renuka Sugar Ltd. (Transferee Company) and their respective shareholders.
2.	Details of benefits as stipulated in the scheme	The amalgamation of all the Transferee Companies with the Transferee Company would inter alia have the following benefits: (a) Simplify group and business structure and achieve operational synergies, (b) Optimized legal structure of the group with elimination of multiple legal entities – The Transferor Companies being Wholly Owned Subsidiaries of the Transferee Company, are under the management and control of the Transferee Company and are part of the same group. It would be advantageous to merge the said entities to ensure focused management in the Transferee Company thereby resulting in efficiency of management and maximizing value to the shareholders; (c) With the proposed amalgamation, the Transferee Company will be able to pool all the resources such as employees, technology etc. of Transferor Companies to optimally utilize the same and in the combined entity unlocking growth potential for proposed business expansion etc.
3.	Details of any proceedings pending against the applicant company under the Income Tax Act	Nil
4.	Details of tax demand pending for recovery	Nil

	(year wise amount outstanding)	
5.	Details of pendency of investigation/enquiry proceeding, if any	There are investigation/enquiry proceedings pending.
6.	Whether proposed scheme will impact allow ability of carry forward losses of unabsorbed depreciation or any benefits the IT Act. If yes, quantify the amount of tax effect compliance of section 72A	The details of losses or unabsorbed depreciation carried forward to the next year as per the latest return of income of assesse i.e. for AY. 2023-24 is as under As per SCHEDULE CFL

A.Y.	Date of filing of ITR	Brought forward business loss	Brought forward Business available for set off for future years
2015-16	18.09.2015	3,32,417	3,32,417
2016-17	27.09.2016	1,88,28,677	1,88,28,677
2017-18	28.09.2017	2,02,88,018	2,02,88,018
2018-19	03.10.2018	1,92,65,448	1,92,65,448
2019-20	27.09.2019	1,26,429	1,26,429
2020-21	24.11.2020	1,49,133	1,49,133
2021-22	01.02.2022	1,02,791	1,02,791
2022-23	26.09.2022	1,06,770	1,06,770
Total			**5,91,99,683**

The assesse shown business income for the AY 2023-24 at Rs.13,78,149/- and after adjustment of above loss the assesse has shown total loss to be carried forward to future years at Rs.5,78,21,534/-
Further the assesse has shown loss for the A.Y. Rs.17,83,64,036/-
As per Schedule UD-Unabsorbed Depreciation and Allowance under Section 35(4) the assesse has shown carried forward unabsorbed depreciation to future years at Rs.21,103/-.

The proposed scheme will not impact allow-ability of carry forward losses, Unabsorbed Depreciation or any other benefit under the Act as the Business Loss, Unabsorbed Depreciation loss of an amalgamated Company if certain conditions mentioned in Section 72A are satisfied.
Accordingly, the proposed scheme won't have any tax benefits under the IT Act to merged entity.

7.	Whether the proposed scheme will have any impact of exemption of capital gain tax/ dividend distribution tax	1. <u>Tax exception to the Amalgamating Company:</u> According to Section 47(vi) of the Act [5], Any transfer of capital assets performed as part of an amalgamation plan from an amalgamated Company in India is not regarded as a transfer, and as a result, the amalgamating Company does not have to pay any capital gains tax on the transaction. 2. <u>Tax benefits for shareholders of a merging company:</u> When a shareholder transfers shares in the emerging company in exchange for being given shares in the combined company, the transfer is not treated as a transfer under Section 47(vii) of the Act, on the basis, the shareholder of the merging business does not realize a capital gain

		Further, proposed scheme will not impact Dividend Distribution Tax in any manner.
8.	Whether in view of the assessing officer prime facie GAAR provisions appear to be attracted in the scheme of arrangement	No, there is no pending proceedings and demand outstanding in this case. Hence, prime facie GAAR provisions not appeared to be attracted in the scheme of amalgamation.
9.	Comments on valuation report attached to the scheme	No report has been filed along with the application
10.	In case of reverse merger where loss making company continues to exist and profit making company dissolves to reduce its tax. What is specific reasons for contention of loss making company? Need to examine applicability of provisions of GAAR	Not applicable Proposed scheme is not a case of reverse merger
11.	Details of ITRs filed by the Company	Details of ITR filed by Shree Renuka Agri Ventures Ltd. (AAMCS1841C)

A.Y.	Date of filing	u/s.	Income/loss (in Rs.)	Total Tax Paid	TDS (in Rs.)
2023-24	26.09.2023	139(1)	0	2,22,472	0
2022-23	26.09.2022	139(1)	(-)1,07,637	0	0
2021-22	01.02.2022	139(1)	(-)1,03,810	0	0
2020-21	24.11.2020	139(1)	(-)1,50,331	0	0
2019-20	27.09.2019	139(1)	(-)1,27,841	0	0
2018-19	03.10.2018	139(1)	(-)1,92,67,117	0	0
2017-18	28.09.2017	139(1)	(-)2,02,90,114	0	0
2016-17	27.09.2016	139(1)	(-)1,88,31,404	0	0
2015-16	18.09.2015	139(1)	(-)3,36,292	0	0
2014-15	24.09.2014	139(1)	(-)17,83,64,036	0	0

Further as per ITR for AY 2023-24 SCHEDULE MATC-COMPUTATION OF TAX CREDIT UNDER SECTION 115JAA, the assesse has shown balance MAT credit available for credit in subsequent assessment years

12.	Whether scheme is opposite to public policy. It need to examine whether promoters are only getting benefit and also examine, if possible, quantum of tax evaded which is proposed to be avoided through the scheme arrangement	The scheme is not opposed to Public policy.

8) Further, in the reply filed vide Diary No.3131 dated 03.06.2024 by the Petitioner Companies to the report filed by the ROC/RD, the Ld. Counsel for the Petitioners has attached the copy of the letter dated 13.03.2024 issued by the Joint Commissioner of Income Tax stating that the scheme of amalgamation of Monica Trading Pvt. Ltd., Shree Renuka Agri Ventures Ltd., Shree Renuka Tunaport Pvt. Ltd. and Shree Renuka Sugars Ltd. are not opposed to public policy and there are no investigation/enquiry proceedings are pending in the aforesaid cases.

9) The Ld. Counsel for the Petitioners has filed a memo Vide Diary No.3996 dated 09.07.2024, wherein it is stated that;

> *"3.Regarding para no.2 of the said order, the Petitioner Companies state that as per the Report of the Income Tax Department (IT), in respect of the Petitioner Companies, there are no outstanding demand, no investigation/ enquiry proceedings are pending against any of the Petitioner Companies and the Assessing Officer reported that the Scheme of Amalgamation of the Petitioner Companies are not opposed to public policy. Hence, the aforesaid report of the IT Department pertain to factual information which does not contain any observation and did not call for any further response. In any case, the tax impact-post merger will be subject to due assessments by the Income Tax Department and the Petitioner Companies undertakes to comply with the provisions of the Income Tax Act."*

10) On 07.08.2024 the learned counsel for the RoC submitted that there are no further observations after considering the reply filed by the Petitioner Companies.

11) In respect of the observations of the ROC and the OL regarding the amalgamation of a profit making Company with a loss making Company, we have considered the replies of the Petitioner Companies, it is hereby observed that there is no bar under the provisions of the Companies Act as well as under the Income Tax Act, 1961 for amalgamation of a loss making Company with a profit making Company. However, the set off and carryforward of the business losses and unabsorbed depreciation is subject to the provisions of Section 72A of the Income Tax Act, 1961 and

the Assessing Officer under the Income Tax Act is free to take a decisions as per the provisions of the Income Tax Act, irrespective of the approval granted for this scheme of amalgamation.

12) The reports of the RoC/RD, OL and the IT Dept. are taken on record and replies filed by the Petitioner Companies to the Report of the RoC/RD and OL are also taken on record.

13) The Authorised Signatory of the Petitioner Companies have filed Affidavits dated 27.09.2023 stating that there are no investigation proceedings pending against the Petitioner Companies or its Directors under the Companies Act, 2013 and the Companies Act, 1956 or under any other statutes and the Company Petition does not envisage for Corporate Debt Restructuring or Capital Reduction and the Scheme does not provide for any kind of arrangement with the Creditors of the Petitioner Companies and thereby corporate Debt Restructuring is not applicable to the Scheme.

14) Heard the learned Counsels for the Petitioner Companies. We have carefully perused the pleadings of the parties.

15) In view of the above discussion, we conclude that the objections/ observations to the Scheme received from RoC, RD, OL and IT Dept. have been adequately explained by the Petitioner Companies and hence there is no impediment in approval of the Scheme.

16) It is seen that in the para 5 of the Common Report filed by the RoC & RD, the Appointed Date was desired to be changed to 01st April, 2023 from 01st April, 2022. 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 requirement clarified vide Circular No.7/12/2019/CL-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 and OL regarding the Appointed Date and the MCA Circular mentioned above, we have perused the explanation furnished by the Petitioner Companies and we are of the opinion that no change is required regarding the chosen Appointed Date, and it is retained as proposed.

17) **In view of the above directions, the Scheme of Amalgamation as annexed at Annexure – A is approved** and we hereby 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 constructed as on 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 Company shall stand dissolved without being wounded-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/-** in favour of "Pay and 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 comply with all the undertakings given by them in their reply filed to the ROC/RD, OL & IT report; and

(iv) 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; and

(v) That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary; and

(vi) 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.

18) As per the directions, Form No.CAA-7 of the 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 'Industrial Undertakings' of the Transferor Company and (ii) leasehold property of 'Industrial Undertakings' of the Transferor Company by way of affidavit of the 'Industrial Undertakings' of the Transferor Company.

19) **Accordingly, C.P. (CAA) No.45/BB/2023 is disposed of.**

20) Copy of this Order be communicated to the Counsel for the Petitioner Companies.

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21) The Learned Counsel for the Petitioner Companies is directed to serve a copy of this Order to all the Statutory Authorities within ten days from the date of receipt of copy of this order.

-Sd-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-
(K. BISWAL)
MEMBER (JUDICIAL)

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Bengaluru Bench