IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CP (CAA) No. 115/KB/2021
Connected with
CA (CAA) No. 06/KB/2021

In the matter of:

The Companies Act, 2013- Section 230 read with Section 232 and other applicable provisions

And

In the matter of:

Adishwar Trade Link Private Limited, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U51909WB2004PTC099531 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

And

Astra Vinimay Private Limited, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U51909WB2010PTC148117 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

And

Barden Agencies Private Limited, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U51101WB2010PTC148261 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

And

DRP Trading & Investment Pvt Ltd, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U67120WB1992PTC056195 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

And

Embassy Vyapaar Private Limited, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U51909WB2007PTC119092 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

And

Jalsagar Sales Agency Pvt Ltd, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U51909WB1995PTC070180 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

And

JBLD Trading Private Limited, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U51909WB2008PTC127889 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

And

Kasauti Dealtrade Private Limited, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U51101WB2010PTC143823 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

And

Lumino Electrical Industries Private Limited, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U14200WB1997PTC085933 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

And

Lifeline Commotrade Private Limited, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U51109WB2008PTC126675 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

And

Regal Financial Advisory Private Limited, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U74120WB2007PTC119463 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

And

Sanatan Vinimay Private Limited, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U51109WB2005PTC102428 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

And

Sigma Vyapaar Private Limited, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U51109WB2008PTC121837 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

And

Welkon Goods Private Limited, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U51109WB2005PTC105654 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

And

Laser Power & Infra Private Limited, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U14220WB1988PTC043591 having its registered office at 4A, Pollock Street, 3rd Floor Kolkata 700001.

And

Lumino Power Infrastructure Private Limited, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U40105WB2010PTC151600 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

And

Lumino Industries Limited, a company incorporated under the provisions of Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having CIN: U14293WB2005PLC102556 having its registered office at Unit No-12/4, Merlin Acropolis 1858/1 Rajdanga Main Road, Kolkata 700107.

In the matter of:

1. Adishwar Trade Link Private Limited
2. Astra Vinimay Private Limited
3. Barden Agencies Private Limited
4. DRP Trading & Investment Pvt Ltd
5. Embassy Vyapaar Private Limited
6. Jalsagar Sales Agency Pvt Ltd
7. JBLD Trading Private Limited
8. Kasauti Dealtrade Private Limited
9. Lumino Electrical Industries Private Limited

10. Lifeline Commotrade Private Limited
11. Regal Financial Advisory Private Limited
12. Sanatan Vinimay Private Limited
13. Sigma Vyapaar Private Limited
14. Welkon Goods Private Limited
15. Laser Power & Infra Private Limited
16. Lumino Power Infrastructure Private Limited
17. Lumino Industries Limited

......Petitioners

Date of Hearing: 21/09/ 2021

Date of pronouncing the Order:08/11/2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)

Shri Harish Chander Suri : Member (Technical)

<u>Counsel on Record</u>

Appearances (via video conferencing)

1. Ms. Manju Bhuteria, Advocate] For the Petitioners
2. Mr. Arkodeb Sinha, Advocate
3. Ms. Meenakshi Manot, Advocate
4. Mr. Vivek Newatia, PCA
5. Ms. Shreya Jain, PCS

6. Mr. Harihara Sahoo, Joint Director - Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs

<u>ORDER</u>

Per: Rajasekhar V.K., Member(Judicial)

1. The instant Petition has been filed under Section 230(6) read with Section 232(2) of the Companies Act, 2013 (**"Act"**) for sanction of the Composite Scheme of Arrangement amongst Adishwar Trade Link Private Limited, being the Petitioner

No. 1 **abovenamed ("Transferor Company No. 1" or "Petitioner No.1")**, Astra Vinimay Private Limited, being the Petitioner No. 2 **abovenamed ("Transferor Company No. 2" or "Petitioner No.2")**, Barden Agencies Private Limited, being the Petitioner No. 3 **abovenamed ("Transferor Company No. 3" or "Petitioner No.3")**, DRP Trading & Investment Pvt Ltd, being the Petitioner No. 4 **abovenamed ("Transferor Company No. 4" or "Petitioner No.4")**, Embassy Vyapaar Private Limited, being the Petitioner No. 5 **abovenamed ("Transferor Company No. 5" or "Petitioner No.5")**, Jalsagar Sales Agency Private Limited, being the Petitioner No. 6 **abovenamed ("Transferor Company No. 6" or "Petitioner No.6")**, JBLD Trading Private Limited, being the Petitioner No. 7 **abovenamed ("Transferor Company No. 7" or "Petitioner No.7")**, Kasauti Dealtrade Private Limited, being the Petitioner No. 8 **abovenamed ("Transferor Company No. 8" or "Petitioner No.8")**, Lumino Electrical Industries Private Limited (Formerly known as Laser Electrical Industries Private Limited), being the Petitioner No. 9 **abovenamed ("Transferor Company No. 9" or "Petitioner No.9")**, Lifeline Commotrade Private Limited, being the Petitioner No. 10 **abovenamed ("Transferor Company No. 10" or "Petitioner No.10")**, Regal Financial Advisory Private Limited, being the Petitioner No. 11 **abovenamed ("Transferor Company No. 11" or "Petitioner No.11")**, Sanatan Vinimay Private Limited being the Petitioner No. 12 **abovenamed ("Transferor Company No. 12" or "Petitioner No.12")**, Sigma Vyapaar Private Limited, being the Petitioner No. 13 **abovenamed ("Transferor Company No. 13" or "Petitioner No.13")**, Welkon Goods Private Limited, being the Petitioner No. 14 **abovenamed ("Transferor Company No. 14" or "Petitioner No.14")**, Laser Power & Infra Private Limited, being the Petitioner No. 15 **abovenamed ("Resulting Company No. 1" or "Petitioner No.15")**, Lumino Power Infrastructure Private Limited, being the Petitioner No. 16 **abovenamed ("Resulting Company No. 2" or "Petitioner No.16")** and Lumino Industries Limited, being the Petitioner No. 17 **abovenamed ("Demerged Company/Tranferee Company" or "Petitioner No.17")** whereby and whereunder the Transferor Companies no. 1 to 14 are proposed to be amalgamated with the Demerged Company/Transferee Company and demerger of "EPC & Manufacturing Division" and "Real Estate Division" of the Demerged Company/Transferee Company into Resulting Company 1 and Resulting Company 2 respectively on a going concern basis from the Appointed

Date, viz 1st April, 2019 in the manner and on the terms and conditions stated in the said Composite Scheme of Arrangement (**"Scheme"**).

2. The Petition has now come up for final hearing. Counsel for the Petitioners submits as follows:-

a. The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 30th September, 2020.

b. The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-

    i. The Transferor Company 1 to Transferor Company 14 (collectively hereinafter referred to as "Transferor Companies"), the Transferee Company and the Resulting Companies are under common management and control and are part of the same family group i.e. "Goel Group".

    ii. The proposed Scheme of Arrangement will result in simplification and streamlining of the shareholding structure of the Transferee Company and Resulting Companies by elimination of shareholding tiers and simplification of shareholding into a clear structure. The Petitioner Companies are closely held family companies and the restructuring of these companies would ensure simplification of group ownership by eliminating the crossholding of investments in group companies.

    iii. The amalgamation of the Transferor Companies with the Transferee Company would help in the consolidation of business which will lead to reflection of true net worth of the combined business for the stakeholders in the financial statements and enhancement of net worth of the combined business leading to enhancement in earnings and cash flow of the business.

    iv. The amalgamation shall also result in simplification of the Group structure and alignment of group business and consolidation of the group companies in one entity thereby resulting in rationalising and standardisation of the business process, economies of scale, reduction in overheads, administrative, managerial, and other expenditure, organizational efficiency and optimal utilization of resources which would be beneficial for all members and other stakeholders.

v. The Demerged Company is proposing to demerge EPC & Manufacturing Division (Demerged Undertaking 1), and Real Estate Division (Demerged Undertaking 2). Both the Demerged Undertaking 1 and Demerged Undertaking 2 have their own strengths and dynamics, and it is being felt that each of the undertakings has the potential of being developed into a parallel, scalable, and independently profitable business but requires focused management and long term business plan. Thus, the management is contemplating the segregation of the Demerged Undertakings.

vi. The 'Resulting Company 1' has vast experience as manufacturer of Cables and has supplied to major State Power Utilities. The Resulting Company is also in the business of exporting cables. The demerger of the EPC & Manufacturing Division, in relation to the operations carried out in the states of Tamil Nadu & Assam, (Demerged Undertaking 1) into the 'Resulting Company 1' is a strategic fit for serving existing market and for catering to additional volume linked to new consumers since the business of the 'Resulting Company 1' is similar to the business of the 'Demerged Undertaking 1'. The demerger shall unlock the true value of each of the business verticals, achieve prosperity and align with the business model of the 'Resulting Company 1'. This will also lead to synergies in operational and logistics alignment leading to economies of scale for the 'Resulting Company 1' and creation of sectoral efficiencies and benefitting shareholders as well as optimization of operation and capital expenditure.

vii. The demerger of the Real Estate Division (Demerged Undertaking 2) into the 'Resulting Company 2' would enable consolidation of real estate business and investments/ loans & advances to entities engaged in real estate business into one single entity. The proposed demerger of real estate division is also expected to provide an absolute focus on infrastructure business and make it a pure-play real estate business company. It shall provide an impetus to the financials and make a strong case of improved credit profile.

viii. The proposed Scheme of Arrangement will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses.

ix. The said Scheme of Arrangement will contribute in fulfilling and furthering the objects of these Companies. It will strengthen, consolidate, and stabilize the business of these Companies and will facilitate further expansion and growth of their business. The Resulting Company and the Transferee Company will be able to participate more vigorously and profitably in the competitive market scenario.

x. The key objectives for this restructuring, which is primarily focused on maximising shareholder value, are:

   i. It will give shareholders the opportunity to participate in the business of their choice, based on their risk reward profile.
   ii. It will facilitate each business to independently pursue their growth plans through organic / inorganic means.
   iii. It will enhance management focus and operational flexibility; and
   iv. It will create a platform to enhance financial flexibility to pursue next stage of growth.

c. The Statutory Auditors of the respective Petitioner Companies 1 to 14, 16 and 17 have by their certificate dated 5th October 2020 and the Statutory Auditor of the Petitioner Company 15 have by their certificate dated 5th November 2020 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

d. No proceedings are pending under Sections 206 to 229 of the Companies Act, 2013 against the Petitioners.

e. The exchange ratio of shares in consideration of the Scheme has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Ms. Astha Gupta, IBBI Registered Valuer.

f. The shares of the Petitioner Companies are not listed on stock exchange.

g. By way of an Order dated 27th January 2021 in Company Application (CAA) No.06/KB/2021, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act-

   i. Meeting(s) dispensed:

   - Meetings of the Shareholders of the Petitioner Companies 1 to 17 for considering the Scheme were dispensed with in view of the consent given in affidavit by all the shareholders of the Petitioner Companies 1 to17.
   - Meetings of the Unsecured Creditors of the Petitioner Companies 1 to 14 for considering the Scheme were dispensed with in view of the consent given in affidavit by the Unsecured Creditors of the Petitioner Companies comprising the following percentage of consent in value:

Petitioner Company	**Percentage (%) of Creditors consent obtained (in value)**
Petitioner Company 1	100
Petitioner Company 2	100
Petitioner Company 3	100
Petitioner Company 4	100
Petitioner Company 5	100
Petitioner Company 6	96.78
Petitioner Company 7	100

Petitioner Company 8	100
Petitioner Company 9	100
Petitioner Company 10	100
Petitioner Company 11	100
Petitioner Company 12	100
Petitioner Company 13	100
Petitioner Company 14	100

- Meeting of Unsecured Creditors of Petitioner Company 16 for considering the Scheme was dispensed with in view of NIL Unsecured Creditors existing in the Company.
- Meeting of the Secured Creditors of the Petitioner Companies No. 1 to 14 and 16 for considering the Scheme were dispensed with in view of NIL Secured creditors existing in the Petitioner Companies.

ii. Meeting(s) directed to be held: Following meetings were directed to be convened:

- Meetings of the Secured Creditors and Unsecured Creditors of the Petitioner No.15 for considering the Scheme were directed to be held on 12th April 2021 at 11:00 A.M and 11:45 A.M respectively, through video conferencing or other audio-visual mode.
- Meetings of the Secured Creditors and Unsecured Creditors of the Petitioner Company No.17 were directed to be held on 12th April 2021 at 12:30 P.M and 01:15 P.M respectively, through video conferencing or other audio-visual mode.

h. The Secured & Unsecured Creditors of each of the Petitioner Companies No. 15 & 17 were given the option of voting on the resolution for approval of the Scheme either by way of e-voting or remote e-voting. The facility of remote e-voting was available for a period of 7 (seven) days preceding the date of the meeting which commenced on 5th April 2021 at 9:00 A.M. and was disabled on 11th April 2021 at 5:00 P.M. on the preceding date.

i. The said meetings of the Secured & Unsecured Creditors of the Petitioner Companies No. 15 & 17 were duly convened on 12th April 2021, as directed. The Secured & Unsecured Creditors of the Petitioner Companies

15 and 17 during said meetings approved the Scheme by requisite majority.

j. Consequently, the Petitioners presented the instant Petition for sanction of the Scheme. By an Order dated 23rd July, 2021, the instant Petition was admitted by this Tribunal and was fixed for hearing on 21st September 2021. In compliance with the said Order dated 23rd July, 2021, the Petitioner(s) have duly served such notices on -
   - (i) Central Government through the Regional Director (Eastern Region)- Ministry of Corporate Affairs, Kolkata; (ii) Registrar of Companies, West Bengal with whom the Petitioners are registered; (iii) Official Liquidator; and (iv) Reserve Bank of India by way of hand delivery on 11th August 2021.
   - Income Tax Department having jurisdiction over the Petitioners and Chief Commissioner of Income Tax, Kolkata by way of hand delivery on 12th August 2021.
   - The Petitioners have also published such advertisements once each in the Financial Express and Aajkal in their respective issues dated 31st August 2021.

     An affidavit in compliance to the above has also been filed by Petitioners on 7th September 2021.

k. All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned stakeholders.

3. Pursuant to the said advertisements and notices, the Regional Director, Ministry of Corporate Affairs, Kolkata (**"RD"**), Official Liquidator, High Court, Calcutta have filed their representations before this Tribunal.

4. The Official Liquidator has filed his report dated 6th September 2021 stating as under:

"11. That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Petitioner Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable.

12. That in view of the submissions made above the Hon'ble National Company Law Tribunal may like to pass such Order/Orders as deemed fit and proper in the facts and circumstance of the case."

5. The RD has filed his reply affidavit dated 17th September 2021 ("**RD affidavit**") which has been dealt with by the Petitioner(s) by way of their Rejoinder affidavit dated 21st September 2021 ("**Rejoinder"**). The observations of the RD and responses of the Petitioner(s) are summarized as under:-

a. Paragraph No 2(a) of RD Affidavit

That it is submitted that on examination of the report of the Registrar of Companies, West Bengal it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. The petitioner companies are also up-dated in filing their statutory returns.

Paragraph No. 3 of Rejoinder:

With reference to statement made in Paragraph 2(a) of the Affidavit, the Petitioner Companies have no comments to offer as the same is matter of record.

b. Paragraph No. 2(b) of RD affidavit:

Appointed Date is 1st April 2019. In terms of the Circular no. 09/2019 dated 21.08.2019 of the Ministry of Corporate Affairs, "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. It is not ascertainable from the documents provided by the Applicant whether the application for the scheme was filed before the Hon'ble Tribunal within a year from 1st April 2019. If the application for the scheme was filed with the Hon'ble Tribunal after more than one year from the appointed date, Hon'ble Tribunal may kindly direct the Applicant *to bring out the justification for the appointed date being more than one year before the date of filing of the application for the scheme, in the scheme according to the Circular.*

Paragraph No. 4 of Rejoinder:

With reference to statement made in Paragraph 2(b) of the Affidavit, it is hereby submitted that the Petitioner Companies 1 to 16 and 17 have by way of board resolution dated 20th March 2020 and 23rd March 2020 respectively deliberated upon the proposed Composite Scheme and appoint a Registered Valuer for carrying out the valuation as required in the prescribed manner. (Copy of the Resolutions are attached herewith and collectively marked as Annexure A). However, due to the outbreak of the novel COVID-19, the Valuer appointed could not provide the Report and that the same was provided at a later date. Upon receipt of the Valuation Report, the Petitioner Companies immediately, adopted the valuation report and thereby approved the Scheme. Subsequently, the Companies filed the Application before the Hon'ble Tribunal for approval and sanction of the said Composite Scheme. It is further stated that the delay in filing the Company Application is purely unintentional, bona fide and was beyond the control of the Petitioners. It is further stated that the Composite Scheme with the said Appointed Date shall not be prejudicial to the public interest and/or any shareholder, creditor of the Petitioner Companies. Furthermore, the Transferee Company/ Petitioner Company 17 i.e. Lumino Industries Limited shall be adopting Ind AS and as such the Appointed Date shall aid in accounting and transitioning to Ind AS purposes.

c. Paragraph No. 2(c) of RD affidavit:

Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act,2013 through appropriate affirmation

Paragraph No. 5 of Rejoinder:

With reference to statement made in Paragraph 2 (c) of the Affidavit, it is hereby submitted that consequent to the sanction of the Scheme by this Hon'ble Tribunal, the Petitioner Companies shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 thereto.

d. Paragraph No. 2(d) of RD Affidavit:

That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Paragraph No. 6 of Rejoinder:

With reference to statement made in Paragraph 2 (d), it is hereby submitted that upon sanctioning of the Scheme by this Hon'ble Tribunal, the Petitioners undertake to pay the applicable stamp duty subject to the applicable laws arising pursuant to the transfer of immovable properties.

e. Paragraph No. 2(e) of RD Affidavit:

In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 or IND AS-8 etc.

Paragraph No. 7 of Rejoinder:

With reference to statement made in Paragraph 2(e) of the Affidavit, it is hereby submitted that upon sanctioning of the Scheme by this Hon'ble Tribunal, the Resulting Company shall pass necessary accounting entries in connection with the Scheme to comply with the relevant Accounting Standards or Ind AS as may be applicable inter-alia AS 14 or Ind AS 103, Accounting Standard such as AS-5 or Ind AS 8 etc.

f. Paragraph No. 2(f) of RD Affidavit:

The Hon'ble Tribunal may kindly seek the undertaking that this scheme is approved by the requisite majority of members and creditors as per section 230(6) of the Companies Act 2013 in meeting duly held in terms of section 230(1) read with sub-sections (3) to (5) of section 230 of the said Act and the Minutes thereof are duly placed on record.

Paragraph No. 8 of Rejoinder:

With reference to statement made in Paragraph 2(f) of the Affidavit, it is hereby submitted that all the members of the Petitioner Companies have given their consent to the Scheme by way of their affidavit and that the same is on record with this Hon'ble Tribunal. The Petitioner further submits that Petitioner Companies 1 to 14 for considering the Scheme were dispensed with in view of the consent given in affidavit by the Unsecured Creditors of the Petitioner Companies comprising the following percentage of consent in value:

Petitioner Company	***Percentage (%) of Creditors consent obtained (in value)***
Petitioner Company 1	*100*
Petitioner Company 2	*100*
Petitioner Company 3	*100*
Petitioner Company 4	*100*
Petitioner Company 5	*100*
Petitioner Company 6	*96.78*
Petitioner Company 7	*100*
Petitioner Company 8	*100*
Petitioner Company 9	*100*
Petitioner Company 10	*100*
Petitioner Company 11	*100*
Petitioner Company 12	*100*
Petitioner Company 13	*100*
Petitioner Company 14	*100*

Furthermore, in view of NIL Unsecured Creditors of the Petitioner Company 16, the question of obtaining the consent did not arise. Similarly, in view of nil Secured Creditors in Petitioner Companies No. 1 to 14 and 16 the requirement of obtaining the consent did not arise. As regards the Secured Creditors and Unsecured Creditors of the Petitioner No.15 and Petitioner Company 17, it is hereby submitted that the Scheme has been duly approved by the requisite majority in the meetings of the said class of Creditors held on 12th April 2021 and that the same is on record with this Hon'ble Bench. The Chairperson's Report alongwith the minutes of the meetings is duly annexed as Annexure HHH to the Petition filed before the Hon'ble Bench.

g. Paragraph No. 2(g) of RD Affidavit:

The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

Paragraph No. 9 of Rejoinder:

With reference to Paragraph 2(g) of the Affidavit, it is hereby submitted that the Scheme enclosed in the Company Application and Company Petition are one and same and there is no discrepancy or no changes made thereof.

h. *Paragraph 2(h) of the RD Affidavit*:

The Petitioners under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the Petitioner Company (s) concerned.

Paragraph No. 10 of Rejoinder:

With reference to statement made in Paragraph 2(h) of the Affidavit, the Petitioners have duly served the notices upon the Statutory Authorities under Section 230(5) of the Companies Act, 2013, affidavit of service of which has been filed with the Hon'ble Tribunal and that the observations of such authorities, if any, are on record with the Hon'ble Tribunal. It is submitted that the Petitioners shall be duty bound to comply with the directions of the Hon'ble Tribunal in this regard, if any. To the best of the knowledge and as per the documents available on record, there are no adverse remarks/objections to the present Scheme by such authorities.

i. **Paragraph No. 2(i) of RD Affidavit:**

The proposed Scheme is a composite in nature encompassing merger and demergers. The petitioner should undertake that no asset, right, property and liability or obligation etc. which are transferred to the Transferee/ Demerged Company from the Transferor Companies under the scheme should be demerged/transferred to the Resulting Companies through the demerger under this Scheme unless falling within the scope of demerged undertakings.

Paragraph No. 11 of Rejoinder:

With reference to statement made in Paragraph 2(i) of the Affidavit, it is submitted that the Resulting Company shall not demerge/transfer any asset, right, property and liability or obligation etc. which are transferred to the Transferee/ Demerged Company from the Transferor Companies unless falling within the scope of the demerged undertakings.

j. **Paragraph No. 2(j) of RD Affidavit:**

It is submitted that the Transferor Companies DRP Trading and Investment Private Limited and Jalsagar Sales Agency Private Limited are registered with RBI as NBFC Companies. The Reserve Bank of India by two separate letters, all dated 06/09/2021 issued its 'No Objection' to the proposed Scheme. However, as stated, the said approval said *approval is valid for six months from the date of respective dates of issue of those two letters (Copy of the said letters of RBI collectively marked as Annexure-I is enclosed herewith for perusal and ready reference.)*

Paragraph No. 12 of Rejoinder:

With reference to statement made in Paragraph 2(j) of the Affidavit, it is submitted that the Reserve Bank of India vide its letter dated 6th September 2021 has given its no objection to the proposed Scheme.

k. **Paragraph No. 2(k) of RD Affidavit:**

In the Financial Statement as at 31.3.2020 of the Transferor Company, DRP Trading and Investments Private Limited, the long term loans and advances to Related parties was reported as Rs. 427,679,461/- without disclosing "details" thereof and long-term loans and advances to 'others' was reported as Rs. 92,968,922/- without specifying nature thereof. Similarly the short term loans and advances to Related parties was reported as Rs. 590,392/- without disclosing "details" thereof and short term loans and advances to 'others' was reported as Rs. 10,34,710/- without specifying nature thereof. Such disclosures are mandated according to Schedule III of the Companies Act 2013. As a result of afore-stated non-disclosures, the material facts concerning financials were not provided in the financial statement.

Paragraph No. 2(l) of RD Affidavit:

In the Financial Statement as at 31.3.2020 of the Transferor Company, Jalsagar Sales Agency Private Limited, the long term loans and advances to Related parties was reported as Rs.1,05,851/- without disclosing "details" thereof and long-term loans and advances to 'others' was reported as Rs.1160,03,431/- without specifying nature thereof. Such disclosures are mandated according to Schedule III of the Companies Act 2013. As a result of afore-stated non-disclosures, the material facts concerning financials were not provided in the financial statement**.**

Paragraph No. 2(m) of RD Affidavit:

In the Financial Statement as at 31.3.2020 of the Transferor Company, JBLD Trading Private Limited, the short term loans and advances of Rs.105,25,992/- without disclosing "details" thereof . Such disclosures are mandated according to Schedule III of the Companies Act 2013. As a result of afore-stated non-disclosures, the material facts concerning financials were not provided in the financial statement.

Paragraph No. 13 of Rejoinder:

With reference to statements made in Paragraph 2(k) to 2(m), the same is being dealt in a phased manner below:

i. *The long term and short loans and advances to the Related Parties have been duly disclosed in the financials of the Companies viz. DRP Trading & Investment Private Limited, Jalsagar Sales Agency Private Limited and JBLD Trading Private Limited under the head of Related Party Disclosures. Relevant extracts of the financials are attached herewith and collectively marked as Annexure B.*
ii. *As regards disclosure of nature of loan is concerned, please note that the same has also been disclosed in the financials of the respective companies as secured or unsecured loan. Copy of the relevant extract of the financials are attached herewith and marked as Annexure C. Furthermore, it is submitted that since amount extended were in the nature of loans and advances in the nature of loans, the same has been disclosed as loans and advances in the financial statements of the respective companies.*

Furthermore, given that the said observation is technical in nature and the same shall not have effect on the Scheme. Also, the Transferee Company hereby assures to comply with the necessary disclosure as required under Schedule III of the Companies Act 2013.

l. **Paragraph No. 2(n) of RD Affidavit:**

It is submitted that the Income Tax Department vide letter No. F. DCIT/CC-2(1)/Scheme of amalgamation/ Kol/2002-21/38-40 dated 09.04.2021 in the Scheme of Amalgamation having CP 06/KB/2021 in the case of M/s Astra Vinimay Private Limited, M/s Kasauti Dealtrade

Private Limited and M/s Lumino Power Infra Private Limited submitted that there is no demand outstanding against the above three companies as on date and no appeal is pending as per filing portal of the department. Hence the scheme of arrangement may not be opposed. Further, by another letter ITBA/Com/F/17/2021-22/1035520598(1) dated 13/09/2021 submitted that no objection is hereby accorded towards the proposed scheme of amalgamation, subject to provision of realization of the outstanding demand from the resulting company/companies.

Paragraph no. 14 of the Rejoinder

With reference to statement made in Paragraph 2(n) of the Affidavit, the Petitioner Companies have no comments to offer as the same is matter of record.

6. From the material on record, the Scheme appears to be fair and reasonable and is neither violative to any provisions of law, nor contrary to public interest.

7. Heard submissions made by the Ld. Counsel appearing for the Petitioner and the Regional Director. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the Petition and make the following Orders:-

(a) The Scheme being Annexure "ZZ" to this Petition, be and is hereby sanctioned by this Tribunal to be binding with effect from 1st April 2019 being the Appointed Date on the Transferor Companies, the Resulting Companies, the Transferee Company and their respective shareholders and creditors and all concerned;

(b) All the property, estate, assets, rights, title and interests including accretions and appurtenances of the Transferor Companies be transferred to and vested in the Transferee Companies as a going concern from the Appointed Date and accordingly the same shall be transferred to and vest without any further deed or Act in the Transferee Company pursuant to section 232(4) of the Companies Act, 2013 for all estates and interest of the Transferor Companies but subject to all charges now affecting the same, as provided in the Scheme;

(c) All the debts, liabilities, duties and obligations of the Transferor Companies be transferred from the said Appointed Date, without further act or deed to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;

(d) The employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in the Scheme;

(e) All proceedings and/or suits and/or appeals now pending by or against the Transferor Companies be continued by or against the Transferee Company, as provided in the Scheme;

(f) The Transferee Company, does, without further application, issue and allot to the shareholders of the Transferor Companies, the shares in the Transferee Company to which they are entitled in terms of the Scheme;

(g) All the property, rights and powers of the Demerged Company in relation to Demerged Undertaking 1 and Demerged Undertaking 2, be transferred from the said Appointed Date, without further act or deed as a going concern to the Resulting Company 1 and Resulting Company 2 respectively and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013 be transferred to and vest in the Resulting Company 1 and Resulting Company 2 respectively for all the estate and interest of the respective Demerged Undertakings of the Demerged Company therein but subject to all charges now affecting the same, as provided in the Scheme;

(h) All the debts, liabilities, duties and obligations of the Demerged Company in relation to Demerged Undertaking 1 and Demerged Undertaking 2 be transferred from the said Appointed Date, without further act or deed to the Resulting Company 1 and Resulting Company 2 respectively and, accordingly, the same shall pursuant to Section 232(4) of the Companies

Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company, as provided in the Scheme;

(i) The employees with respect to the Demerged Undertaking 1 and Demerged Undertaking 2 of the Demerged Company shall be engaged by the Resulting Company 1 and Resulting Company 2 respectively, as provided in the Scheme;

(j) All proceedings and/or suits and/or appeals now pending by or against the Demerged Undertaking 1 and Demerged Undertaking 2 of the Demerged Company be continued by or against the Resulting Company 1 and Resulting Company 2 respectively, as provided in the Scheme;

(k) The Resulting Company 1 and the Resulting Company 2, does, without further application, issue and allot to the shareholders of the Demerged Company, the shares in the Resulting Company 1 and Resulting Company 2 to which they are entitled in terms of the Scheme.

(l) Leave is granted to the Petitioner(s) to file the Schedule of Assets of the Transferor Companies, Demerged Undertaking 1 and Demerged Undertaking 2 in the form as prescribed in the Schedule to Form No. CAA7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this Order;

(m) The Petitioner Companies shall each within thirty days of the date of the receipt of this Order, cause a certified copy thereof to be delivered to the Registrar of Companies, West Bengal for registration;

(n) In the event any of the Petitioner Companies supply a computerized print out of the said Scheme in acceptable form in the department, the department concerned is hereby directed to append such computerized prints out upon verification to the certified copy of this Order without insisting on a handwritten copy thereof;

(o) The Transferor Companies be dissolved without winding up with effect from the date or last of the dates of filing of the certified copies of the Order, and the Registrar of Companies, West Bengal shall place all documents relating to the Transferor Companies and registered with him on the file with the records of and related to the Transferee Company and the files relating to the said companies shall be consolidated accordingly.

8. The Petitioner(s) shall supply legible print out of the Scheme and Schedule of Assets in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the Order.

9. Company Petition (CAA) No. 115/KB/2021 is disposed of accordingly.

10. Urgent certified copy of this Order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rajasekhar V. K.)
Member (Judicial)

Signed on this, the 8th day of November, 2021

PJ