



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**CP (CAA) 06/ALD/2022
(Second Motion)**

(An Application filed under Sections 230 & 232 of the Companies Act, 2013, the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions.)

IN THE MATTER OF COMPOSITE SCHEME OF ARRANGEMENT

1. Genus Prime Infra Ltd,

Registered office at Near Moradabad Dharam Kanta,
Kanth Road Harthala, Moradabad (U.P.)-244 001.

**..... Petitioner Company No. 1
/Amalgamated Company/ Resulting Company**

2. Sansar Infrastructure Private Limited,

Registered office at Village Aghwanpur,
Kanth Road, Moradabad (U.P.) -244 001.

**..... Petitioner Company No. 2
/Amalgamating Company No. 1**

3. Star Vanijya Pvt. Ltd,

Registered office at Moradabad Dharam Kanta,
Kanth Road Harthala, Moradabad (U.P.)-244 001.

**..... Petitioner Company No. 3
/Amalgamating Company No. 2**

4. Sunima Trading Pvt. Ltd,

Registered office at Moradabad Dharam Kanta,
Kanth Road Harthala, Moradabad (U.P.) -244 001.

**..... Petitioner Company No. 4
/Amalgamating Company No. 3**

5. Genus Power Infrastructures Ltd,

Registered office at G-123 Sector-63, Noida,
Gautam Buddha Nagar (U.P.) -201307.

..... Petitioner Company No. 5



/Demerged Company

6. Yajur Commodities Ltd,

Registered office at G-123, Sector-63, Noida,
Gautam Buddha Nagar (U.P.) – 201301.

**..... Petitioner Company No. 6/Amalgamating Company No.
4/Transferor Company No. 4**

Order Pronounced on: 24.04.2025

Coram:

Mr. Praveen Gupta	:	Member (Judicial)
Mr. Ashish Verma	:	Member (Technical)

Appearances:

Sh. Rajeev K Goel, with Sh. Sumit Kochhar, Adv.& Sh. Ankit K. Singh, CS	:	<i>For the Petitioners</i>
Sh. Krishna Agarwal, Sr. S.C.	:	<i>For the I.T. Deptt.</i>
Sh. Krishna Dev Vyas, Adv	:	<i>For the ROC</i>

ORDER

1. The present Joint Company Petition was filed by the Petitioner Companies above named under Sections 230 & 232 of the Companies Act, 2013, the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions, if any, for sanction of the Composite Scheme of Arrangement (“Scheme” or “Composite Scheme of Arrangement”) of Genus Prime Infra Ltd (Petitioner No. 1/Amalgamated Company/Transferee



Company/Resulting Company), Sansar Infrastructure Pvt. Ltd (Petitioner No. 2/Amalgamating Company No. 1/Transferor Company No. 1), Star Vanijya Pvt. Ltd (Petitioner No. 3/Amalgamating Company No. 2/Transferor Company No. 2), Sunima Trading Pvt. Ltd (Petitioner No. 4/Amalgamating Company No. 3/Transferor Company No. 3), Genus Power Infrastructures Ltd (Petitioner No. 5/Demerged Company) and Yajur Commodities Ltd (Petitioner No. 6/Amalgamating Company No. 4/Transferor Company No. 4)

- 2.** The Composite Scheme of Arrangement provides for the following:
 - i.** Amalgamation-1: Amalgamation of Transferor Companies No. 1 to 3 with the Transferee Company;
 - ii.** Demerger: Demerger of Strategic Investment Business (Demerged Undertaking) of Genus Power Infrastructures Ltd into Genus Prime Infra Ltd; and
 - iii.** Amalgamation-2: Amalgamation of Transferor Company No. 4 with the Transferee Company.
- 3.** The main objects, date of incorporation, and authorized and paid up share capital of all the Transferor Companies and Transferee Company, rationale of the scheme and required statutory compliances have been discussed in the first motion order dated 08.12.2021.
- 4.** A perusal of the present Petition discloses that initially the Petitioner Companies had filed a Company Application No. 27/ALD of 2021



seeking directions of this Tribunal to dispense with the requirement of convening the meetings of the Equity Shareholders of the Transferor Companies No. 1 to 4; Preference Shareholders of the Transferee Company and the Transferor Company No. 4; Secured Creditors of the Demerged Company and the Transferor Company No. 4; and Un-secured Creditors of the Transferee Company and the Transferor Companies No. 1 to 4, for the purpose of considering and approving the Composite Scheme of Arrangement. It was further prayed by the Petitioner Companies to convene separate meetings of Equity Shareholders of the Transferee Company and the Demerged Company and Un-secured Creditors of the Demerged Company under the supervision of this Tribunal for the purpose of considering and approving the proposed Composite Scheme of Arrangement. This Tribunal vide its order dated 8th December, 2021 (date of pronouncement), allowed the above mentioned prayers, by dispensing with the requirement of convening meetings of Equity Shareholders of the Transferor Companies No. 1 to 4; Preference Shareholders of the Transferee Company and the Transferor Company No. 4; Secured Creditors of the Demerged Company and the Transferor Company No. 4; and Un-secured Creditors of the Transferee Company and the Transferor Companies No. 1 to 4. It was further directed to convene



separate meetings of Equity Shareholders of the Transferee Company and the Demerged Company and Un-secured Creditors of the Demerged Company under the supervision of this Tribunal for the purpose of considering and approving the proposed Composite Scheme of Arrangement. None of the Petitioner Transferor Companies No. 1 to 3 and Transferee Company has any Secured Creditor.

5. As directed by this Tribunal, separate meetings of Equity Shareholders of the Transferee Company and the Demerged Company; and Un-secured Creditors of the Demerged Company were held physically on Saturday, 26th February, 2022 at 11:00 A.M., 1:30 P.M. and 4:00 P.M. respectively, at Paper Mill, Village Aghwanpur, Kanth Road, Moradabad-244 001, Uttar Pradesh. The Scheme of Arrangement was approved with overwhelming majority by the Equity Shareholders of the Transferee Company and Demerged Company and was unanimously approved by the Un-secured Creditors of the Demerged Company. The Chairperson filed his Reports on the aforesaid meetings with this Tribunal. The results of the meetings of Transferee Company and the Demerged Company; and Un-secured Creditors of the Demerged Company respectively are reproduced hereunder:



**Report of the Chairperson on the meeting of Equity Shareholders
of Genus Prime Infra Ltd. (Amalgamated Company/Resulting
Company) held on 26.02.2022.**

Sl. No.	Particulars	No. of Voters	No. of Votes
1.1	Equity Shareholders present in the meeting	31	1,23,23,028
1.2	Equity Shareholders present in the meeting and voted through Ballot Papers in the meeting	31	1,23,23,028
1.3	Equity Shareholders present in the meeting who have already voted through postal ballot and remote a voting process during the prescribed time period before the meeting	19	1,17,77,481
1.4	Equity Shareholders present in the meeting who have abstained from voting	NIL	NIL
2.1	Equity Shareholders who did not attend the meeting but cast their Votes through remote e-voting process during the prescribed time period before the meeting	33	3659
3.1	Total Votes Cast in the meeting and through postal ballot and remote e-voting process before the meeting which were considered for the purpose of this Report [1.2+1.3+2.1]	83	2,41,04,168
4.1	Invalid Votes	19	1,17,77,481
5.1	Total Valid Votes	64	1,23,26,687
6.1	Votes Against	02	400
7.1	Votes Against as % of total valid votes cast	3.13%	0.003%
8.1	Votes in Favour	62	1,23,26,287
9.1	Votes in Favour as % of total valid votes cast	96.88%	99.997%



Results of Voting	The Scheme of Arrangement was approved with overwhelming majority by the Equity Shareholders of the Amalgamated Company
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Report of the Chairperson on the meeting of Equity Shareholders of Genus Power Infrastructures Ltd. (Demerged Company) held on 26.02.2022.

SI. No.	Particulars	No. of Voters	No. of Votes
1.1	Equity Shareholders present in the meeting	39	2,41,541
1.2	Equity Shareholders present in the meeting and voted through Ballot Papers in the meeting	39	2,41,541
1.3	Equity Shareholders present in the meeting who have already voted through postal ballot and remote a voting process during the prescribed time period before the meeting	28	2,27,102
1.4	Equity Shareholders present in the meeting who have abstained from voting	NIL	NIL
2.1	Equity Shareholders who did not attend the meeting but cast their Votes through remote e-voting process during the prescribed time period before the meeting	310	20,45,73,958
3.1	Total Votes Cast in the meeting and through postal ballot and remote e-voting process before the meeting which were considered for the purpose of this Report [1.2+1.3+2.1]	377	20,50,42,501
4.1	Invalid Votes	28	2,27,102
5.1	Total Valid Votes	349	20,48,15,399
6.1	Votes Against	32	1,49,84,896
7.1	Votes Against as % of total valid votes cast	9.17%	7.32%
8.1	Votes in Favour	317	18,98,30,503



9.1	Votes in Favour as % of total valid votes cast	90.83%	92.68%
Results of Voting		The Scheme of Arrangement was approved with overwhelming majority by the Equity Shareholders of the Demerged Company	

Report of the Chairperson on the meeting of Un-secured creditors of Genus Power Infrastructures Ltd. (The Demerged Company).

Sl. No.	Particulars	No. of Voters	No. of Votes
1.1	Un-secured Creditors present in the meeting	18	1,68,55,55,6
1.2	Un-secured Creditors present in the meeting and voted through Ballot Papers in the meeting	18	1,68,55,55,6
1.3	Un-secured Creditors present in the meeting who have already voted through postal ballot process during the prescribed time period before the meeting	10	1,14,25,335
1.4	Un-secured present in the meeting who have abstained from voting	NIL	NIL
2.1	Un-secured Creditors who did not attend the meeting but cast their Votes through Postal Ballot during the prescribed time period before the meeting	115	45,65,32,315
3.1	total Votes Cast in the meeting and through postal ballot before the meeting which were	143	48,48,13,206



	considered for the purpose of this Report [1.2+1.3+2.1]		
4.1	Invalid Votes	10	1,14,25,335
5.1	Total valid votes	133	47,33,87,871
6.1	Votes Against	NIL	NIL
7.1	Votes against as % of total valid votes cast	NIL	NIL
8.1	Votes in favour	133	47,33,87,871
9.1	Votes in favour as % of total valid votes cast	100%	100%
1.1	Un-secured Creditors present in the meeting	18	1,68,55,55,6
Results of Voting		The Scheme Arrangement of was approved unanimously by the Un-secured Creditors of the Demerged Company.	

- 6.** This Tribunal vide its order dated 29.03.2022 directed to issue notice of the Company Application/Scheme of Arrangement to the Statutory Authorities, viz., (a) the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi; having email id-rd.north@mca.gov.in (b) the Registrar of Companies, Uttar Pradesh, Ministry of Corporate Affairs, Kanpur; having email id – roc.kanpur@mca.gov.in; (c) The Official Liquidator, Uttar Pradesh, Allahabad; having email id ol.allahabad@mca.gov.in (d) the Income Tax Department by mentioning the PAN of the Company along with the copy of this petition in soft copy as well as



hard copy. Additionally, this Tribunal further directed to issue notice to the Income Tax Department through the Principal Chief Commissioner of Income Tax, Lucknow mentioning the Assessing Officer with whom the Petitioner companies as per the PAN of the Petitioner Companies.

7. This Tribunal further directed to make paper publication in this respect in “Financial Express” (English, Delhi Edition); and “Jansatta” (Hindi, Delhi Edition).

8. In compliance thereof, the Petitioner Companies have filed Affidavits of service and publication vide dairy No. 0902109007962021/2 dated 16th May, 2022 confirming that notices were duly published in “Financial Express” (English, Delhi Edition); and “Jansatta” (Hindi, Delhi Edition) Newspaper on 9th May, 2022. The Petitioner Companies have also served notice of the Company Petition to the Statutory Authorities as per the follow detail:

Sl. No.	Name and Address of the Authority	Detail of Dispatch
1.	The Regional Director Northern Region, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor Pt Deen Dayal Antodaya Bhawan CGO Complex, Lodhi Road, New Delhi 110 003	12th April, 2022, by email and 12th April, 2022, through speed post (ED794030569IN)
2.	The Registrar of Companies, Uttar Pradesh, Ministry of Corporate Affairs, 37/17, Westcott Building, The Mall, Kanpur-208 001, Uttar Pradesh	12th April, 2022 by email and on 18th April, 2022, through



		speed post (ED794029557IN)
3.	The Official Liquidator, Ministry of Corporate Affairs, 9th Floor, Sangam Place, Civil Lines, Allahabad 211 001	12th April, 2022, by email and 13th April, 2022, through speed post (ED794030590IN)

9. The present Second Motion Petition has also been served to the respective circle/ward of the Income Tax Department details of which are given below:

Sl. No.	Name and PAN of the Company	Income Tax Circle/ Ward No.	Detail of Dispatch
1.	(Genus Prime Limited) PAN: AABCG3955E	Ward 10(3) C. R. Building, Delhi	12th April, 2022 by email and 11th April, 2022 through speed post (ED794030538IN).
2.	Sansar Infrastructure Private Limited (Transferor Company No. 1) PAN: AALCS8861R	Ward 2(1) Kolkata	12th April, 2022 by email and on 11th April, 2022, through speed post (ED794030555IN)
3.	Star Vanijya Private Limited (Transferor Company No. 2) PAN: AALCS8863P	Ward 9(1) Kolkata	12th April, 2022 by email and on 11th April, 2022, through speed post (ED794030586IN)
4.	Sunima Trading Private Limited (Transferor Company No. 3) PAN: AALCS8858E	DCIT/ACIT (Central) Moradabad	12th April, 2022 by email and on 18th April, 2022, through speed post ((ED794030572IN)
5.	Genus Power Infrastructures Limited (Demerged Company)	DCIT/ACIT (Central) Moradabad	12th April, 2022 by email and on 18th April, 2022, through



	PAN: AACCG1218P		speed post ((ED794030572IN)
6.	Yajur Commodities Limited (Transferor Company No. 4) PAN: AACCG8485G	Circle 25(1), Delhi	12th April, 2022 by email and 13th April, 2022 through speed post (ED79403054IN)

- 10.** In response to the above stated notice, the Official Liquidator, Ministry of Corporate Affairs, Allahabad, Uttar Pradesh has submitted his Report dated 20th May, 2022 which has been reproduced herein:

“30. That the Official Liquidator has no objection to the dissolution of all the Transferor Companies without winding up pursuant to provisions of Section 230-232 of the Companies Act, 2013 and other applicable sections and rules there under apart from submissions made in preceding paras of this report.”

- 11.** In response to the above stated notice, the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi (RD) and the Registrar of Companies, Ministry of Corporate Affairs, Kanpur (ROC) have time and again filed multiple Reports in connection with the Scheme of Arrangement. The following Reports have been filed by the RD and the ROC:

- Report/Affidavit dated 17th January, 2023, filed by the RD, along with the Report of the ROC. The observations made by the RD and ROC in the aforesaid Reports have been reproduced hereunder:



“10. That as per Clause 29 of the ROC Report dated 29.08.2022, following observation was raised:

The transferee company namely Genus Prime Infra Limited is a Listed Company.

The Demerged Company Genus Power Infrastructure Limited is also a Listed company.

The Ministry/Directorate has ordered inquiry U/s. 206 of the Act against the company M/s. Sunima Trading Private Limited, the amalgamating company No. 3 and M/s. Star Vanijya Private Limited, the amalgamating company No. 2.

The inquiry was conducted against both the companies and report submitted in respect of Sunima Trading Private Limited Complaints U/s. 129 r/w Sch. III, 207 have been sent to the counsel for filing in the court. For the other one i.e. Star Vanijya Private Limited, the report was submitted and supplementary order which is under process & will be submitted shortly.

0/o the DGCOA vide letter No. CL-II-04/7/2021-DGCOA-MCA dated 07.01.2022 directed to take action against the following companies as SUSPECTED SHELL COMPANIES

- i. Star Vanijya Private Limited (Amalgamating Co. No. 2)*
- ii. Sansar Infrastructure Private Limited (Amalgamating Co. No. 1).*
- iii. Sunima Trading Private Limited (Amalgamating Co. No. 3)*
- iv. Genus Power Infrastructures Limited (Demerged Co.)*
- v. Genus Prime Infra Limited (Resulting Co.)*



To conclude the Merger/Arrangement at this stage is not recommended, therefore, RD, NR may take a call on it.

“11. On examination of the Scheme, the reply submitted by the Petitioner Transferee Company, and apart from the observations of ROC stated in Para 10 above, the observation of the Deponent is as under:

(1) The composite scheme of amalgamation and arrangement specifically speaks about transactions take place at different stages in the scheme, but they have not complied with the provisions of section 230 (2)(a) of the Companies Act, 2013 since they have not stated about the Investigation/Proceedings initiated against the Petitioner Companies as reported by the ROC stated in Para- 10 supra, hence the Petitioner Companies have not complied with the requirement of law the Act applicable in this matter.

(ii) Para-17.3 of Part-II of the scheme speaks about maintenance of the Bank Account of the Transferor Companies by the Amalgamated Companies after Effective Date of the scheme which statement is not correct since on giving effect of the scheme the corporate life of the Transferor Companies come to an end. Hence, they lost their perpetual succession, thereby Bank Account shall not be operated in the name of the Transferor Companies after "Effective Date" of the scheme.

(iii) Para-5.1 of Part-V of the scheme speaks about alteration of object clause of the Memorandum of Association of the Amalgamated Company without complying with any



procedural requirement under the Act, which statement is not correct since the provision of section 13 of the Act requires certain procedural compliance by filing amended MOA with the ROC to give effect of change of Object Clause of the MOA.”

- 1st Supplementary Affidavit dated 14th September, 2023, filed by the RD, in compliance with Order dated 26th April, 2023.

The RD has reiterated the submissions made in the ROC Report as well in the RD Report dated 17th January, 2023 and submitted that the objections may be taken into consideration before this Tribunal satisfies itself with the Scheme.

- 2nd Supplementary Affidavit dated 6th February, 2024 filed by the RD:

i. The RD has submitted the latest Status Report with respect to the inquiry in respect to the Petitioner Companies as received from the ROC, Kanpur vide email dated 25th January, 2024 the observations of which is reproduced hereunder:

a. *“The Transferor Company No. 2-Star Vanijya Pvt Ltd:*

- *Inquiry ordered on 07.03.2018 and the Report submitted on 18.07.2019.*
- *Inquiry report pointed out the violations of Section 88 in Part A, Section 118 r/w SS-1, 118 r/w SS-2, Section 206, Section 129 r/w Schedule III in Part B.*
- *No prosecution has been filed in these cases.*



- *Thereafter the Ministry vide its letter no. CL-II-04/78/2021-DGCoA MCA dated 07.01.2022 with a copy endorsed to the office of ROC, U.P. directed that all actions as per SOP on suspected shell companies to be taken against the subject company and the mentioned companies having common directorship and to submit a report.*
- *Supplementary inquiry report submitted on 05.01.2024 pointing out violation of Section 12 of the Companies Act, 2013.”*

ii. The Transferor Company No. 3-Sunima Trading Pvt Ltd:

- *“The Inquiry report has been submitted of Sunima Trading Private Limited by the office of ROC, U.P. on 09.07.2019.*
- *Prosecutions filed for Section 129 r/w Schedule III, Section 129, 207, Section 118(10), 129(1), Section 118(10) of the Companies Act, 2013 filed in the Special CJM, Lucknow.”*

a. The Transferor Company No. 1-Sansaar Infrastructure Pvt Ltd:

- *“No Inquiry has been conducted in the above-mentioned company.”*
- *Status Report filed by the ROC, in compliance with Order dated 22nd August, 2024, which is reproduced below:*



“A Status Report of Registrar of Companies, Uttar Pradesh in pursuant to the Hon'ble NCLT order dated 04.09.2024 in the matter as follows:

- 1. That Assistant Registrar of Companies, U.P., Government of India, Ministry of Corporate Affairs, and has read the aforesaid Company Petition and has fully understood the content thereof and as such is in a position to file the present report.*
- 2. That the O/o RoC Kanpur has already submitted report dated 29.08.2022 to the O/o Regional Director (Northern Region) and further submitted the status report vide email dated 25.01.2024. The O/o Regional Director (NR) has filed affidavit alongwith the report of this office on 14.09.2023 and 06.02.2024 respectively. Thereafter, Hon'ble NCLT vide order dated 22.08.2024 had directed to the O/o RoC, Uttar Pradesh, Kanpur to file a status report with respect to the proceeding initiated under section 206 of the Companies Act, 2013 for petitioner No. 4/ Transferor Company No. 3.*
- 3. That the Inquiry was ordered dated 17.08.2017 on the basis of inputs received from Income Tax Department upon compilation of database of shell companies sent by SFIO as per the decision taken in task force on shell companies. The company alongwith a group of 11 other companies was prima facie found to be involved in rotation/siphoning of funds and providing accommodation entries. It was also found that the whole group of companies are shell companies which are made only for the purpose of accommodation entries //rotation/siphoning of funds.*
- 4. The Inquiry was conducted by the O/o RoC Kanpur and a report u/s 208 of the Companies Act, 2013 was submitted on 09.07.2019*



to the Directorate/ Ministry by reporting the violation of Section 129 r/w Schedule III of the Companies Act, 2013, Section 118 (10) and Section 207 of the Companies Act, 2013. Accordingly, after receipt of the instructions from the Ministry/ Directorate, the prosecutions were filed u/s Section 129 r/w Schedule III of the Companies Act, 2013 and Section 207 of the Companies Act, 2013 before the Court of Ld. Special Chief Judicial Magistrate and the cases are pending for arguments.”

12. The Petitioner Companies have filed detailed Replies and Response to the aforesaid observations/comments made by the RD and the ROC vide diary no 2461 dated 02.11.2024. Submissions of the Petitioner Companies in support of the Scheme are summarized hereunder:

- Response of the Petitioner Companies on the Observations made by the ROC:
 - i. At the outset, it is pertinent to note that the Learned ROC has not made any objection against the proposed Scheme of Arrangement.
 - ii. Learned ROC has only pointed out that certain enquiry and/or prosecution proceedings have been initiated against the Transferor Companies No. 2 & 3. Hence, approval of the Scheme is not recommended at this stage.
 - iii. Sanction of the Scheme by this Hon’ble Tribunal will not cause any prejudice to the inquiry and/or prosecution proceedings already initiated or to be initiated in future, by the Learned ROC or any other Competent Authority.



- iv. Similarly, sanction of the Scheme cannot be denied solely on the grounds of the inquiry and/or prosecution proceedings already initiated or to be initiated in future, by the Learned ROC or any other Competent Authority.
- v. It is clarified and submitted that the proposed amalgamation of the Transferor Companies with and into the Transferee Company will be on a going concern basis. On amalgamation, entire business and undertaking(s) along with all the assets and liabilities, including statutory liabilities, all the legal proceedings and litigations by or against the Transferor Companies will be transferred to and vest in the Transferee Company on going-concern basis pursuant to the provisions of Sections 230 & 232 of the Companies Act, 2013.
- vi. It is, accordingly, clarified and confirmed that the approval of the Scheme by this Hon'ble Tribunal will not prejudice or adversely affect the on-going inquiry and/or prosecution proceedings or any other proceedings or actions taken or to be taken in future by the Learned ROC or any other Competent Authority.
- vii. As mentioned above, on sanction of the Scheme, all the inquiry and/or prosecution proceedings and all other proceedings by or against the Transferor Companies will automatically be transferred to and vest in the Transferee Company. Further, any Competent Authority is free to take any action or proceedings against any of the Companies to the Scheme including the Transferor Companies, even after the sanction of the Scheme.



- viii.** Orders passed by the Hon'ble NCLT, New Delhi Bench-IV in the matter of Scheme of Amalgamation of Casper Consumer Electronics Private Limited & Ors. [C.P. (CAA) 48/ND/2021; 6th June 2022; Hon'ble NCLT, Mumbai Bench-IV in the matter of Scheme of Amalgamation of Trans Continental e-Services Private Limited and Jet Enterprises Private Limited [CP (CAA)/224/MB-IV/2021]; Hon'ble High Court of Gujarat in Re: C.M. Smith and Sons Ltd. [2008 SCC Online Guj 249: (2008) 146Comp Case 359: (2009)88 CLA 137]; Hon'ble NCLT, Division Bench, Kolkata in the matter Amalgamation of of Scheme of Basukinath Trexim Pvt Ltd, Darpan Distributors Pvt Ltd, Gangotri Vincom Pvt Ltd, Prism Distributors Pvt Ltd, Rainbow Vincom Pvt Ltd and Bhushan Capitals Ltd [CP (CAA) No. 77/KB/2023] are landmark decisions in this regard.
- ix.** It is further clarified that this Hon'ble Tribunal is not required to wait for completion of the aforesaid inquiry and/or prosecution proceedings, before granting its approval to the present Scheme.
- x.** Section 240 of the Companies Act, 2013, makes specific provisions in this regard. Learned ROC, Ministry, DGCoA or any other Competent Authority are free to take any action against any Petitioner Transferee Company for any act of commission or omission of the Transferor Companies at any point of time, even after the sanction of the Scheme.
- xi.** It has been repeatedly upheld by various Benches of this Hon'ble Tribunal as well as different High Courts that



sanction to a scheme cannot be denied merely on the ground that some legal proceedings are pending against some of the companies to such scheme or their directors.

- Response of the Petitioner Companies on the Observations made by the RD:
 - i. With regard to non-compliance of the provisions of Section 230(2)(a) of the Companies Act, 2013, it is submitted that the Petitioner Companies were unaware of the investigations/proceedings initiated against them by the DGC&A, Ministry of Corporate Affairs, at the time of filing the present 2nd motion Petition with the Hon'ble Tribunal. Accordingly, at the time of filing of the present 2nd motion Petition, the Petitioner Companies duly complied with the provisions of Section 230(2)(a) of the Companies Act, 2013, to the best of their knowledge and belief.
 - ii. The RD has pointed out that the Scheme provides for maintenance of bank accounts in the name of the Transferor Companies after the Effective Date, i.e., after the dissolution of the Transferor Companies. It is most respectfully submitted that the said provision is solely for the convenience of various stakeholders of the Transferor Companies. The Petitioner Companies undertake that no ordinary or routine banking transactions shall occur through these bank accounts post sanction of the present Scheme. Instead, any use of these accounts would be strictly limited to matters necessary for the facilitation of any pending transactions or obligations that were in progress before the sanction of the present Scheme of



Arrangement. Further, such clauses are of a general nature solely for operational purposes and are referenced in various Schemes sanctioned by the Hon'ble Tribunal. We are also agreeable to any modification that may be deemed fit and proper by this Hon'ble Tribunal in the relevant Clause of the Scheme.

- iii. The RD has pointed out that the Scheme provides for alteration of object clause of Memorandum of Association of the Transferee Company without complying with any procedural requirement under the Act. In this regard, the Transferee Company undertakes and confirms to comply with all the applicable procedural compliances provided under Section 13 and other provisions of the Companies Act, 2013 in respect of alteration of object clause in the Memorandum of Association of the Transferee Company subsequent to the sanction of the Scheme of Arrangement.
- The Petitioner Companies and their Directors have filed Undertaking to cooperate with concerned office of the Ministry of Corporate Affairs and any other competent authority with regard to any inquiry/investigation/proceeding initiated by any such authority and the same has been summarized hereunder:
 - i. The Petitioner Companies categorically undertake to cooperate with concerned office of the Ministry of Corporate Affairs and any other competent authority with regard to any inquiry/investigation/proceeding initiated by any such authority.
 - ii. All the Directors of the Transferor Companies have filed their separate affidavits confirming and undertaking that they will



cooperate in any investigation or other proceedings already initiated or to be initiated in the future by the ROC or any other competent authority and they shall be bound by such undertaking. The aforesaid affidavits have been filed with this Tribunal along with the Additional Reply Affidavit vide Diary No. 0902109001962022/8 Dated 2nd June, 2023 as Annexure-A-11 (Page 110-125) of the paper book.

- The response of the Petitioner Companies to the Status Report filed by the ROC on the proceedings initiated under Section 206 of the Companies Act, 2013 against the Petitioner No. 4/Transferor Company No. 3, in compliance with Order dated 22nd August, 2024 of this Tribunal, is reproduced hereunder:

<i>Sl. No</i>	<i>Submissions made by the ROC</i>	<i>Response of the Petitioner Companies</i>
<i>1.</i>	<i>That Assistant Registrar of Companies, U.P., Government of India, Ministry of Corporate Affairs, and has read the aforesaid Company Petition and has fully understood the content thereof and as such is in a position to file the present report.</i>	<i>Needs no Reply.</i>
<i>2.</i>	<i>That the O/o RoC Kanpur has already</i>	<i>This is a matter of record and needs no Reply.</i>



	<p><i>submitted report dated 29.08.2022 to the O/o Regional Director (Northern Region) and further submitted the status report vide email dated 25.01.2024. The O/o Regional Director (NR) has filed affidavit along with the report of this office on 14.09.2023 and 06.02.2024 respectively. Thereafter, Hon'ble NCLT vide order dated 22.08.2024 had directed to the O/o RoC, Uttar Pradesh, Kanpur to file a status report with respect to the proceeding initiated under section 206 of the Companies Act, 2013 for petitioner No. 4/Transferor Company No. 3.</i></p>	
3.	<p><i>That the Inquiry was ordered dated 17.08.2017 on the basis of inputs received from Income Tax</i></p>	<p><i>With regard to pending proceedings against the Transferor Company No. 3, it is submitted that the proposed amalgamation of the Transferor Companies with and into the Transferee Company will be</i></p>



<p><i>Department upon compilation of database of shell companies sent by SFIO as per the decision taken in task force on shell companies. The company along with a group of 11 other companies was prima facie found to be involved in rotation/siphoning of funds and providing accommodation entries. It was also found that the whole group of companies are shell companies which are made only for the purpose of accommodation entries// rotation/siphoning of funds. The Inquiry was conducted by the O/o RoC Kanpur and a report u/s 208 of the Companies Act, 2013 was submitted on 09.07.2019 to the Directorate/</i></p>	<p><i>on a going concern basis. On amalgamation, entire business and undertaking(s) along with all the assets and liabilities, including statutory liabilities, all the legal proceedings and litigations by or against the Transferor Companies will be transferred to and vest in the Transferee Company on going-concern basis pursuant to the provisions of Sections 230 & 232 of the Companies Act, 2013.</i></p> <p><i>It is, accordingly, clarified and confirmed that the approval of the Scheme by this Hon'ble Tribunal will not prejudice or adversely affect the on-going inquiry and/or prosecution proceedings or any other proceedings or actions taken or to be taken in future by the Learned ROC or any other Competent Authority.</i></p> <p><i>As mentioned above, on sanction of the Scheme, all the inquiry and/or prosecution proceedings and all other proceedings by or against the Transferor Companies will automatically be transferred to and vest in the Transferee Company. Further, any Competent Authority is free to take any action or proceedings against any of the Companies to the Scheme including</i></p>
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	<p><i>Ministry by reporting the violation of Section 129 r/w Schedule III of the Companies Act, 2013, Section 118 (10) and Section 207 of the Companies Act, 2013. Accordingly, after receipt of the instructions from the Ministry/Directorate, the prosecutions were filed u/s Section 129 r/w Schedule III of the Companies Act, 2013 and Section 207 of the Companies Act, 2013 before the Court of Ld. Special Chief Judicial Magistrate and the cases are pending for arguments.</i></p>	<p><i>the Transferor Companies, even after the sanction of the Scheme.</i></p> <p><i>It is further clarified that this Hon'ble Tribunal is not required to wait for completion of the aforesaid inquiry and/or prosecution proceedings, before granting its approval to the present Scheme.</i></p> <p><i>Section 240 of the Companies Act, 2013, makes specific provisions in this regard. Learned ROC, Ministry, DGCoA or any other Competent Authority are free to take any action against any Petitioner Company for any act of commission or omission at any point of time, even after the sanction of the Scheme.</i></p> <p><i>It has been repeatedly upheld that sanction to a scheme cannot be denied merely on the ground that some legal proceedings are pending against some of the companies to such scheme or their directors.</i></p> <p><i>The aforesaid proposition is consistently upheld in various decisions of High Courts as well as different Benches of this Hon'ble Tribunal. The relevant excerpts of some of these judgements are reproduced below:</i></p>
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	<p><i>The Hon'ble National Company Law Tribunal, New Delhi Bench-IV in the matter of Scheme of Amalgamation of Casper Consumer Electronics Private Limited & Ors. [C.P. (CAA) 48/ND/2021; 6th June, 2022] has taken a view that:</i></p> <ul style="list-style-type: none"><i>“6. The reply of the Regional Director and report of the Official Liquidator have been filed. The Regional Director, Ministry of Corporate Affairs in its report dated 09.05.2022 submitted that SFIO vide letter dated 08.02.2022 had informed that the Petitioner Companies are accused in the case of Bhushan Steel Limited and the prosecution is pending before the Hon'ble Special judge, Dwarka Court. Further, the Regional Director submits that on the basis of the comments furnished by the SFIO, the instant Petition filed by the Petitioner Companies may be rejected. The Official Liquidator in its reply dated 24.03.2022 to this Tribunal stated that SFIO vide its letter No. SFIO/Pros/0166/2019/I/23563/20 21 has inter alia informed that a criminal complaint bearing No. 770/2019 was filed before the Hon'ble District & Session Judge,</i>
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	<p><i>Dwarka, Delhi and also filed disgorgement proceedings (Company Petition No.170/241-242 (PB)/ 2021) before the Hon'ble National Company Law Tribunal, Principal Bench, New Delhi against the persons/ entities including all the Transferor Companies and Transferee Company as mentioned in the scheme of amalgamation/merger. Both the civil and the criminal proceedings initiated by Serious Fraud Investigation Office (SFIO) against the said Transferor Companies and Transferee Company are still pending before the respective forums. The above facts indicate that the affairs of the Petitioner Companies were being conducted in a manner prejudicial to the public interest and the respective companies. Hence Scheme of Amalgamation does not deserve to be approved/sanctioned.</i></p> <p>• <i>12. In view of the foregoing submissions and categorical rulings, and upon considering the approval accorded by the members and creditors of all the petitioner companies to the proposed Scheme, and the submissions of the Regional Director, Northern Region,</i></p>
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	<p><i>Official Liquidator there appears to be no impediment in granting sanction to the scheme and scheme appears to be fair and reasonable and is not contrary to the public.</i></p> <p>• <i>15. While approving the Scheme as above, we further clarify that the scheme of amalgamation is considered by this bench on its merits without diluting the proposed legal action by the SFIO, Ministry of Corporate Affairs or any other competent authority. Further, the present order of sanctioning the scheme of amalgamation will not give any immunity for past deeds of the transferee companies or their directors or officers either in their official or personal capacity as the case may be and hence the proceedings that are initiated or may be initiated under the provisions of this Act or any other law for the time being in force would not be effected by the present order of sanctioning the scheme of amalgamation.”</i></p> <p><i>The Hon'ble National Company Law Tribunal, Mumbai Bench-IV in the matter of Scheme of Amalgamation of Trans Continental e-Services Private Limited and Jet Enterprises Private Limited [CP</i></p>
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	<p>(CAA)/224/MB-IV/2021] has taken a view that:</p> <p><i>“f. the Amalgamation has no impact on the ability of SFIO or Central Government to proceed against the Transferee Company if they choose to do so. Further, as per Section 212(14A) of the Companies Act, 2013, if and as and when it is established that a fraud has occurred on perusal of the report of the Investigating Officer (SFIO in present case), the Central government can make an application for disgorgement, to the Appropriate Authority. In the present case, no such report has been submitted on part of SFIO and if the same is submitted anytime in future, the Central Government will be at liberty to file a case for disgorgement against the Amalgamated Company and the present Scheme will bear no hindrance to such proceedings. It is also to be noted that no report to the effect that the present Scheme will prejudicially affect the public interest/disgorgement proceeding has been produced.”</i></p> <p><i>“Thus, the above pendency of any proceedings or investigation shall not be a bar to grant approval of the scheme which otherwise satisfies all legal requirements and the legal proceedings, if any can</i></p>
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	<p><i>continue to be impleaded against the Transferee company.”</i></p> <p><i>The Hon’ble High Court of Gujarat in the matter of Re: C.M. Smith and Sons Ltd. [2008 SCC Online Guj 249: (2008) 146Comp Case 359: (2009)88 CLA 137] has taken a view that “12. However, it is ordered that if any criminal prosecution/legal proceedings are initiated against any of the transferee companies or the directors of any of the transferor companies, this order sanctioning the scheme of amalgamation of these companies with the transferee company shall not come in the way of such proceedings. The fact of amalgamation shall not give any immunity for such past deeds.”</i></p> <p><i>The Hon’ble National Company Law Tribunal, Division Bench, Kolkata in the matter of Scheme of Amalgamation of Basukinath Trexim Pvt Ltd, Darpan Distributors Pvt Ltd, Gangotri Vincom Pvt Ltd, Prism Distributors Pvt Ltd, Rainbow Vincom Pvt Ltd and Bhushan Capitals Ltd [CP (CAA) No. 77/KB/2023] has taken a view that “9.2. If any suit, appeal or other proceedings of whatever nature by or against Transferor Companies be pending, the same shall not abate, be discontinued or in any way be prejudicially affected</i></p>
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	<p><i>by reason of the transfer of the Transferor Company's business and undertakings or of anything contained in this scheme but the proceedings may be continued, prosecuted and enforced by or against Transferee Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against Transferor Companies as if this Scheme had not been made.</i></p> <p><i>All proceedings inquiries 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, for which the necessary records of the transferor companies, as required by law shall be kept preserved by the Transferee Company till the end of said inquiry/proceedings."</i></p> <p><i>Copies of the orders are enclosed as Annexure: 1 in the Affidavit filed by the Petitioner Companies.</i></p>
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- The Petitioner Companies in compliance with the Order dated 24th February, 2025, passed by this Tribunal, filed Undertaking(s) affidavits vide diary no 307 confirming the duration for which the Bank Accounts in the name of the Transferor Companies will be maintained by the Transferee Company, subsequent to the sanction



of the Scheme of Arrangement and the same is reproduced hereunder:

- a.** *“The continued existence of bank accounts in the name of the Transferor Companies subsequent to the sanction of the present Scheme of Arrangement is solely for the convenience of various stakeholders of the Transferor Companies. The Transferor Companies undertake that that no ordinary or routine banking transactions shall occur through these bank accounts post sanction of the present Scheme of Arrangement. Instead, any use of these accounts would be strictly limited to matters necessary for the facilitation of any pending transactions or obligations that were in progress before the sanction of the present Scheme of Arrangement. Further, such clauses are of a general nature solely for operational purposes and are referenced in various Schemes sanctioned by the Hon’ble Tribunal.*
- b.** *The Transferee Company undertakes that such Bank accounts in the name of the Transferor Companies shall be closed after a period of 1 (one) year from the date of sanction of the Scheme of Arrangement by this Hon’ble Tribunal.”*

- 13.** In response to the above stated notice, the Income Tax Department has time and again filed multiple Reports with regard to all the Petitioner Companies. The following Reports have been filed by the Income Tax Department:



- Composite Report vide diary no, 249 dated 14th December, 2022 in respect of all the companies.
- Composite Supplementary Report dated 24th April, 2023 in respect of all the companies
- Status Report dated 19th January, 2025, filed in compliance with Order dated 5th September, 2024, on the proceedings initiated by the Income Tax Department against the Petitioner Companies. The same is reproduced below:

“3. That it is humbly submitted that the amalgamating company and/or demerge entity is liable to undertake that apart from the present proceedings, any future proceedings as permissible under the Income Tax Act, against the amalgamating company and/or demerge undertaken initiated against such companies, the amalgamating company shall be liable and responsible for the said proceedings and shall not object to the notices issued in the name of the amalgamating and/or demerged companies.

4. That it shall not be open for the amalgamating company to dispute the notices issued in the name of the amalgamating and/or demerged companies, in any manner whatsoever, on the ground that he said notices have been issued in the name of the amalgamating and/or demerged companies and not in the name of amalgamated company/resulting company. The notices issued and the resultant proceedings shall be fully binding upon the amalgamated/resulting company.

5. That in terms of the undertakings to be given by the petitioner companies for securing the department rights as stated above,



the income tax department has no objection on the present scheme of arrangement.”

- 14.** The Petitioner Companies have filed Replies/Undertakings to the aforesaid Reports filed by the Income Tax Department vide diary no. 2181 dated 21.10.2024. Replies/Undertakings of the Petitioner Companies to the Reports filed by the Income Tax Department are reproduced below:

“7. That we have no objection if the Hon'ble Tribunal grants specific liberty to the Income Tax Department to take out appropriate proceedings for recovery of any Income Tax Dues from the Transferor, Transferee Company/Resulting Company, Demerged Company or any other person who is liable for payment of such dues.

8. That we confirm and undertake that the Transferee Company/Resulting Company and the Demerged Company will make the payment of demand(s) which are subject matter of appeal(s) and/or rectification, on finalization of such appeals/rectification in terms of the applicable provisions of Law.

9. That the Transferee Company/Resulting Company and the Demerged Company undertake to pay any demand that may be raised by the Income Tax Department or any other competent authority in terms of the applicable provisions of law subsequent to the sanction of the Scheme by this Hon'ble Tribunal.



10. That it is most respectfully submitted that the Petitioner Companies are not seeking any exemption or relaxation from the applicability of the provisions of the Income Tax Act, 1961. The Scheme of Arrangement is subject to the provisions of the Income Tax Act. The Petitioner Companies will comply with the provisions of the Income Tax, 1961, including the provisions of Section 72A of the Act, to the extent applicable. It is pertinent to mention that this Hon'ble Tribunal also clarifies that sanction of Scheme is subject to the provisions of the applicable laws.”

The Petitioner Companies have also filed their respective Undertaking Affidavits in response to report(s) filed by the Income Tax Department.

- The Petitioner Companies in compliance with the Order dated 20th February, 2025, passed by this Tribunal filed Undertaking(s) affidavits vide diary no. 308 and the same is reproduced hereunder:
 - a. *“The Transferee Company/Resulting Company undertakes that it shall be liable and responsible for any future proceedings as permissible under the provisions of the Income Tax Act, 1961, that may be initiated against the Amalgamating Companies and/or the Demerged Undertaking of the Demerged Company.*
 - b. *The Transferee Company/Resulting Company hereby undertakes not to contest the issuance of notices addressed to the Amalgamating Companies and/or Demerged Company by the Income Tax Department, subsequent to the sanction of the Scheme of Arrangement.*



- c. *The Transferee Company/Resulting Company hereby unequivocally waives any right or contention to contest the validity or legitimacy of notices emanating in the name of the Amalgamating Companies and/or the Demerged Company, irrespective of the mode or justification presented, including but not confined to the argument that said notices are attributed to the Amalgamating Companies and/or Demerged Company, rather than the Transferee Company/Resulting Company. The notices issued and any consequential proceedings stemming therefrom shall command absolute adherence and legal constraint upon the Transferee Company/Resulting Company. The notices issued and the resultant proceedings shall be fully binding upon the Transferee Company/Resulting Company.*
- d. *The Transferee Company/Resulting Company undertakes that any existing tax demand, whether determined, pending adjudication, or arising as a consequence of any assessment, reassessment, or appellate proceedings pertaining to the Amalgamating Companies and/or the Demerged Undertaking of the Demerged Company, shall be duly discharged by the Transferee Company/Resulting Company, as and when required under law. The Transferee Company/Resulting Company shall remain solely responsible for the payment of such tax liabilities and shall not contest or dispute its obligation to satisfy such demands on any ground whatsoever.”*



- 15.** The Petitioner Companies have also filed Affidavits vide Diary No. 2773 dated 26th October, 2023, confirming that neither the Petitioner Companies nor their Legal Counsel has received any objection/representation from any person against the Petition or the proposed Scheme of Amalgamation in response to the publication of the notice of hearing of the present Petition in Newspapers.
- 16.** We have gone through the reports/comments of the Ld. Registrar of Companies, Uttar Pradesh, Kanpur, Ld. Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi, Ld. Official Liquidator, Ministry of Corporate Affairs, Allahabad and the Income Tax Department and after perusing the same, we find that there appears to be no reservation to grant sanction to the Scheme and we are of the view that the sanction of the present Scheme is not against public policy, nor it would be prejudicial to the public interest at large.
- 17.** In addition to above, all the statutory compliance seems to have been complied with by the Petitioner Companies, therefore, the present Company Petition deserves to be allowed in terms of its Prayer Clause.
- 18.** In the result, the proposed Composite Scheme of Arrangement, which is annexed to the Company Petition stands approved and sanctioned and the same shall be binding on all the Shareholders and Creditors of



the above-named Petitioner Companies and also on the Petitioner Companies with effect from the Appointed Date. The Petitioner Companies are required to act upon as per terms and conditions of the sanctioned Scheme of Arrangement.

- 19.** While approving the Scheme as above, it is clarified that this order should not be construed as, in any way, granting exemption from payment of stamp duty (if any, is applicable), taxes (including Income Tax, GST or any other charges, if any, are applicable) and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law. The Transferee Company shall also comply with the provisions of Section 170A of the Income Tax Act, 1961 for filing of modified tax returns if any are required to be filed.

THIS TRIBUNAL DO FURTHER ORDER:

20. Amalgamation-1: Amalgamation of Transferor Companies No. 1 to 3 with the Transferee Company:

- i.** Upon the Scheme becoming effective, all the property, rights and powers of the Transferor Companies No. 1 to 3 specified in the first, second and third parts of the Schedule hereto and all other property, rights and powers of the Transferor Companies No. 1 to 3 be transferred, without further act or deed, to the Transferee Company



and accordingly, the same shall, pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Companies No. 1 to 3 therein but subject nevertheless to all charges now affecting the same; and

- ii.** Upon the Scheme becoming effective, all the liabilities and duties of the Transferor Companies No. 1 to 3 be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and
- iii.** Upon the Scheme becoming effective, all the employees of the Transferor Companies No. 1 to 3, in service on the Effective Date, shall be transferred to and shall become the employees of the Transferee Company as provided in the Scheme of Amalgamation; and
- iv.** Upon the Scheme becoming effective, all proceedings now pending by or against the Transferor Companies No. 1 to 3 be continued by or against the Transferee Company.
- v.** All the inquiry and/or prosecution proceedings and all other proceedings by or against the Transferor Companies will be transferred to and vest in the Transferee Company and concerned authorities may take any action or proceedings against any of the Companies to the Scheme including the Transferor Companies, even after the sanction of the Scheme.
- vi.** Any proceedings relating to demand or assessment or reassessment



or any other proceedings under the Income Tax Act pertaining to the period prior to the appointed date but initiated after the appointed date against the Transferor Companies shall not be objected by the Transferee Company on the ground of non-existence of the Transferor Company till the limitation to initiate and conclude the assessment or reassessment proceedings or any other proceedings under the Income Tax Act is available as per the Income Tax Act.

21. Demerger- Demerger of Strategic Investment Business (Demerged Undertaking) of Genus Power Infrastructures Ltd into Genus Prime Infra Ltd:

- i.** Upon the Scheme becoming effective, all the property, rights and powers of the Demerged Undertaking of the Demerged Company specified in the first, second and third parts of the Schedule hereto and all other property, rights and powers of the Demerged Undertaking of the Demerged Company be transferred, without further act or deed, to the Resulting Company and accordingly, the same shall, pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and vested in the Resulting Company for all the estate and interest of the Demerged Undertaking of the Demerged Company therein but subject nevertheless to all charges now affecting the same; and
- ii.** Upon the Scheme becoming effective, all the liabilities and duties of the Demerged Undertaking of the Demerged Company be transferred, without further act or deed, to the Resulting Company and accordingly the same shall pursuant to Sections 230 & 232 of



the Companies Act, 2013, be transferred to and become the liabilities and duties of the Resulting Company;

- iii.** Upon the Scheme becoming effective, all the employees of the Demerged Undertaking of the Demerged Company, in service on the Effective Date, shall be transferred to and shall become the employees of the Resulting Company as provided in the Scheme of Arrangement;
- iv.** Upon the Scheme becoming effective, all proceedings now pending by or against the Demerged Undertaking of the Demerged Company be continued by or against the Resulting Company; and
- v.** Upon the Scheme finally coming into effect and in consideration of de-merger and vesting of the Demerged Undertaking of the Demerged Company into the Resulting Company, in terms of this Scheme, the Resulting Company, shall, without any further application or deed, issue and allot Share(s), to the Shareholders of the Demerged Company in the following manner as provided in the Scheme of Arrangement:
 - The Resulting Company-Genus Prime Infra Ltd will issue 1 Equity Share of ₹2 each for every 6 Equity Shares of ₹1 each of the Demerged Company to the Shareholders of Demerged Company-Genus Power Infrastructures Ltd.

22. Amalgamation-2: Amalgamation of Transferor Company No. 4 with the Transferee Company:

- i.** Upon the Scheme becoming effective, all the property, rights and powers of the Transferor Company No. 4 specified in the first,



second and third parts of the Schedule hereto and all other property, rights and powers of the Transferor Company No. 4 be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall, pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company No. 4 therein but subject nevertheless to all charges now affecting the same; and

- ii. Upon the Scheme becoming effective, all the liabilities and duties of the Transferor Company No. 4 be transferred, without further act or deed, to the Transferee Company and accordingly the same shall be pursuant to Sections 230 & 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and
- iii. Upon the Scheme becoming effective, all the employees of the Transferor Company No. 4, in service on the Effective Date, shall be transferred to and shall become the employees of the Transferee Company as provided in the Scheme of Amalgamation; and
- iv. Upon the Scheme becoming effective, all proceedings now pending by or against the Transferor Company No. 4 be continued by or against the Transferee Company; and
- v. Upon the Scheme finally coming into effect and in consideration of the transfer and vesting of all the said assets and liabilities of the Transferor Company No. 4 to the Transferee Company in terms of the Scheme, the Transferee Company shall, without any further



application or deed, issue and allot Share(s) to the Shareholders of the Transferor Company No. 4 in the following manner as provided in the Scheme of Amalgamation:

a. Equity Shares:

The Transferee Company-Genus Prime Infra Ltd will issue 3 (three) Equity Shares of ₹2 each for every 5 (five) Equity Shares of ₹10 each of the Transferor Company No. 4 to the Equity Shareholders of Transferor Company No. 4-Yajur Commodities Ltd.

b. Preference Shares:

- i. The Transferee Company-Genus Prime Infra Ltd will issue 1 (one) Zero Coupon Redeemable Preference Share of ₹100 each for every 1 (one) Zero Coupon Redeemable Preference Share of ₹100 each of the Transferor Company No. 4, to such Redeemable Preference Shareholders of the Transferor Company No. 4-Yajur Commodities Ltd holding Zero Coupon Redeemable Preference Shares in the Transferor Company No. 4.
- ii. The Transferee Company-Genus Prime Infra Ltd will issue 1 (one) 9% Cumulative Non-Convertible Redeemable Preference Share of ₹100 each, fully paid-up for every 1 (one) 9% Cumulative Non-Convertible Redeemable Preference Share of ₹100 each of the Transferor Company No. 4, to such Redeemable Preference Shareholders of the Transferor Company No. 4-Yajur Commodities Ltd holding 9% Cumulative Non-Convertible Redeemable Preference Shares in the Transferor Company No. 4.



23. All the tax liabilities and all the pending appeals and proceedings under the Income Tax Act, if pending against the Petitioner Companies is transferred to the Petitioner Company No. 1 and shall be enforced and continued against the Petitioner Company no. 1 and all compliances under Income Tax Act, 1961 shall be made by Petitioner Company No 1 after the Appointed Date. Further, the Income Tax department is permitted to retain recourse for recovery in respect of demand and any other future liabilities of the Petitioner Company No. 1 as well as the Petitioner Companies in respect of the assets sought to be transferred under the proposed scheme. The Petitioner Company no. 1 is also directed to discharge the outstanding demand, if any, found later against the Petitioner Companies.

24. That the assessment under the Income Tax Act will be in accordance with the provisions of the Section 170 (2A) of the Income Tax Act, 1961; The Petitioner Company No. 1/Transferee company shall file modified income tax return if any required to be filed pursuant to the scheme as approved by this order in the manner and form as prescribed u/s 170A of the Income Tax Act, 1961 within six months from the end of the month of this order.



- 25.** The Petitioner Company No. 1 will clear all the pending statutory dues after exercising all Appellate jurisdictions as per final orders. The Scheme shall not come in the way of the statutory authorities to recover any of their dues. All the contentions of the parties shall remain open before the relevant forum(s), where disputes are pending.
- 26.** That all benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Companies are entitled to include under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;
- 27.** Liberty is granted to the Petitioners to file the Schedule of Assets.
- 28.** The Petitioner Companies shall supply legible print outs of the Scheme of Amalgamation and the Schedule of Assets, if any, in acceptable form to the Registry within three weeks from the date of pronouncement of



the order and the Registry will append such print outs, after verification, to the certified copy of the Order.

- 29.** A certified copy of this Order in Form No. CAA -7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 be supplied if applied for, subject to compliance with usual formalities.
- 30.** The Petitioner Company shall, within thirty days of the date of the receipt of this Order, cause a certified copy of this order to be delivered to the Registrar of Companies, Kanpur, for registration;
- 31.** The authorized share capital of the Petitioner Company No. 1, after the Scheme becoming effective, shall be in accordance with Section 232(3)(i) of the Companies Act, 2013 and the fee, if any, paid by the Petitioner Companies on its authorized capital shall be set off against any fees payable by the Petitioner Company no. 1 on its authorized capital subsequent to the amalgamation.
- 32.** That the Transferee Company shall file the revised memorandum and articles of association with the concerned Registrar of Companies and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company; after setting off the fees paid by the Transferor Companies;



- 33.** That the Petitioner Company shall deposit an amount of Rs. 25,000/- in favour of “The Ministry of Corporate Affairs” within a period of four weeks from the date of receipt of the certified copy of this order and file affidavit of compliance thereof.
- 34.** All the concerned Regulatory Authorities and other persons to act on a copy of this Order annexed with the Scheme duly authenticated by the Registrar, National Company Law Tribunal, Allahabad Bench.
- 35.** Any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- 36.** Accordingly, the present Company Petition bearing **CP (CAA) No. 06/ALD of 2022** is allowed and stands disposed off.

-Sd-

Ashish Verma
Member (Technical)

-Sd-

Praveen Gupta
Member (Judicial)

Date: 24.04.2025