

542

7/12/24

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301
C.P.(CAA)/13(AHM)2024
in
C.A.(CAA)/57(AHM)2023

Orders under Section 230-232 of Co. Act, 2013

IN THE MATTER OF:

Lyka Exports Limited
(Transferor Co.)
Lyka Labs Limited
(Transferee Co.)

.....Applicants

Order delivered on: 24/09/2024

Coram:

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

ORDER
(Hybrid Mode)

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

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)



303
11/11/24

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

**C.P.(CAA) No.13/NCLT/AHM/2024
In
CA(CAA) No.57/NCLT/AHM/2023**

[Company Petition under Sections 230-232 read with Section 66 and other applicable provisions of the Companies Act, 2013 (Compromise, Arrangement and Amalgamation) Rules, 2016]

In the matter of Scheme of Amalgamation

LYKA EXPORTS LIMITED

CIN NO: U51100GJ1992PLC0023975

Having its registered office at
Plot No. C/4/10/B/2nd Floor,
Adarsh Industrial Complex,
Opp. SBI Ankleshwar,
Bharuch, Gujarat - 393 002.

**... Petitioner No.1
(Transferor Company)**

LYKA LABS LIMITED

CIN NO: L24230GJ1976PLC008738

Having its registered office at
4801/B & 4802/A, G.I.D.C.
Industrial Estate, Ankleshwar,
Gujarat - 393 002

**... Petitioner No.2
(Transferee Company)**

AND

Their Respective Shareholders and Creditors



Order pronounced on: 24.09.2024



CORAM:

Sh. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

Sh. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

Appearance:-

For the Applicant : Mr. Ravi Pawha, Adv.
For the OL : Mr. Pushendra Meena
: Sr. Technical Assistant
For the Income Tax : Ms. Kinjal Vyas, Proxy Advocate
: for Ms. Maithili Mehta, Advocate.
For RD : Mr. Shiv pal Singh, Deputy Director,
RD(NWR), Ahmedabad.

ORDER

1. The present joint Company Petition has been filed by the Petitioner Companies above named for the purpose of the approval of the Scheme of Amalgamation among **LYKA EXPORTS LIMITED** (hereinafter referred to as the “**Petitioner No.1**” or the “**Transferor Company**”) and **LYKA LABS LIMITED** (hereinafter referred to as the “**Petitioner No. 2**” or the “**Transferee Company**”) under Sections 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2013 (for brevity ‘the Rules’)



(hereinafter referred to as the 'Scheme') pursuant to the Scheme proposed by the Petitioner Companies and the said Scheme is also annexed at "**Annexure - J**" along with the Company Petition.

2. Affidavit in support of the above Company Petition was sworn by Mr. Deepak Prakash Rane, Authorized Signatory of the Petitioner No. 1, and Mr. Kishore Prafullchandra Shah, Authorized Signatory of the Petitioner No. 2 and the same is annexed with the Company Petition. The aforesaid authorized signatories of the petitioner companies have been authorized vide Board Resolutions dated 05.08.2022 and 08.08.2022 duly passed by the Petitioner Company No.1 and Petitioner Company No.2, respectively.

3. 1ST MOTION APPLICATION – IN BRIEF

- 3.1 The Petitioner Companies had filed the First Motion Application vide CA(CAA) 57/AHM/2023 sought reliefs as follows: -



PARTICULARS	EQUITY SHAREHOLDERS	PREFERENCE SHAREHOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
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TRANSFEROR COMPANY	To Convene with	N.A.	To Convene with.	To Convene with
TRANSFeree COMPANY	To Convene with	To Convene with	To Convene with	To Convene with

3.2 Based on such application moved under Sections 230-232 of the Companies Act, 2013; directions were issued by this Tribunal, vide order dated 24.11.2023 read along-with order dated 08.01.2024:-

3.2.1. The meetings of Equity Shareholders of the Applicant Companies were directed to be convened. There are 3005 (Three Thousand and Five) Equity Shareholders in Transferor Company and 27,202 (Twenty Seven Thousand Two Hundred and Two) Equity Shareholders in Transferee Company.

3.2.2 The meeting of Preference Shareholders of the Transferee Company was directed to be convened. There is no Preference Shareholder in Transferor Company. There is 1 (One)



Preference Shareholder in Transferee Company.

3.2.3 The meetings of Secured Creditors of the Applicant Companies were directed to be convened. There total are 2(two) Secured Creditors in both the Applicant Companies.

3.2.4 The meetings of Unsecured Creditors of the Applicant Companies were directed to be convened. There are 8 (Eight) Unsecured Creditors in the Transferor Company and 154 (One Hundred and Fifty Four) Unsecured Creditors in the Transferee Company.

3.3 In the order passed by this Tribunal order dated 24.11.2023 read along-with order dated 08.01.2024, this Tribunal has also directed the minimum Quorum which shall be present for convening the valid meetings.

Sr. No.	Particulars	Quorum
1.	Transferor Company	250
	Equity Shareholders	
	Secured Creditors	1
	Unsecured	3



		Creditors	
2.	Transferee Company	Equity Shareholders	300
		Secured Creditors	1
		Unsecured Creditors	15
		Preference Shareholder	1

3.4 That pursuant to the directions of this Tribunal given vide order dated 24.11.2023 read along-with order dated 08.01.2024:-

3.4.1 The meetings of the Equity Shareholders, Secured Creditor and Unsecured Creditors of the Transferor Company were duly held and convened on 20.02.2024. The Chairman appointed for the aforesaid meetings filed the report on 23.02.2024 vide Inward Diary No. D1555. On perusal of the Chairman's report, it is found that the Equity Shareholders, the Secured Creditor and the Unsecured Creditors of the Transferor Company unanimously approved the proposed Scheme.



3.4.2 The meetings of the Equity Shareholders, Preference Shareholder, Secured Creditor and Unsecured Creditors of the Transferee Company were duly held and convened on 20.02.2024. The Chairman appointed for the aforesaid meetings filed the report on 23.02.2024 vide Inward Diary No. D1555. On perusal of the Chairman's report, it is found that the Equity Shareholders, the Secured Creditor and the Unsecured Creditors of the Transferor Company unanimously approved the proposed Scheme.

3.4.3 This Tribunal had also directed the Petitioner Companies for issuance of notice to statutory/regulatory authorities viz., (i) the Central Government through the office of the Regional Director, North Western Region, Ministry of Corporate Affairs (MCA) (ii) the Registrar of Companies, Gujarat, (MCA) (iii) the Income-Tax Authorities (iv) the Official Liquidator (v) BSE and NSE as well as other Sectoral Regulators, if any, who may govern the working of the Applicant Companies involved in the proposed

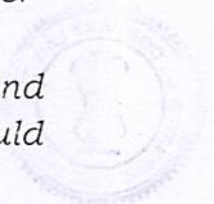


Scheme. In compliance to the aforesaid directions, the Applicant Companies have filed an affidavit on 05.02.2024 vide Inward Diary No. D938 along with proof of service to the aforesaid regulatory / statutory authorities.

3.5 After complying with all the directions given in the order dated 24.11.2023 read along-with order dated 08.01.2024, the Second Motion Petition was filed before this Tribunal by the Petitioner Companies on **29.02.2024** vide Diary No. **E 608** for sanction of the proposed Scheme by this Tribunal.

4. RATIONALE OF THE SCHEME:

- (i) *The Transferee Company is holding stake directly in the Transferor Company and as the Transferor Company and Transferee Company's business activities are similar and complement each other, and to achieve inter-alia economies of scale and efficiency, the amalgamation of the Transferor Company is being undertaken. The amalgamation of the Transferor Company with the Transferee Company would inter-alia have the following benefits:*
- a) *Greater integration and greater financial strength and flexibility for the amalgamated entity, which would*



result in maximizing overall shareholder value, and will improve the competitive position of the combined entity.

- b) Greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholders value.
- c) Improved organizational capability and leadership, arising from the pooling of human capital who have the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry.
- d) Greater access by the amalgamated company to different market segments in the conduct of its business.
- e) Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, and the elimination of duplication and rationalization of administrative expenses.
- f) Achieving economies of scale. In view of the aforesaid, the Board of Directors of the Transferor Company and the Transferee Company have considered and proposed the amalgamation of the entire undertaking and business of the Transferor Company with the Transferee Company in order to benefit the stakeholders of both the Companies. Accordingly, the Board of Directors of the Transferor Company and the Transferee Company have formulated this Scheme of Amalgamation for the transfer and vesting of the entire undertaking and business of the Transferor company with and into the Transferee Company



pursuant to the provisions of Section 230 to Section 232 and other relevant provisions of the Act.

5. In the second motion application filed by the Petitioner Companies, this Tribunal vide order dated 07.03.2024 directed the Petitioner Companies to issue notice to the Statutory/Regulatory Authorities viz. (i) the Central Government through the office of the Regional Director, North Western Region, Ministry of Corporate Affairs (MCA) (ii) the Registrar of Companies, Gujarat, (MCA) (iii) the jurisdictional Income-Tax office having jurisdiction over the respective Companies indicating specifically there Permanente Account No. (PAN) in the communication (iv) Office of the Official Liquidator (v) BSE and NSE and other sectorial Regulators, if any, who may govern the working of the respective Companies involved in the Scheme as well as for paper publication to be made in **“Financial Express”(Ahmedabad edition)** and **“Janadesh” (Ahmedabad edition)** in Vernacular Language.



6. In compliance to the said directions issued by this Tribunal, the Petitioner Companies have filed a Compliance affidavit before the Registry of this Tribunal on **13.09.2024**, vide Inward Diary No.**D7050** and perusal of the same discloses that the Petitioner Companies have effected paper publications for notice of hearing, as directed by the Tribunal in the **“Financial Express” in English** and in **“Janadesh” in Gujarati** on 02.04.2024, both having circulation in Ahmedabad. The paper cutting of the paper publication is annexed at **“Annexure - A1 Colly”** to the affidavit filed on 13.09.2024.
7. The Petitioner companies has filed an Affidavit on **05.04.2024** vide diary no. **D-2951** stating that due service was effected to (i) Regional Director, North Western Region (ii) Registrar of Companies, Gujarat (iii) Income Tax Authority (iv) Official Liquidator (v) BSE and NSE and (vi) SEBI on **15.03.2024** and the same has been enclosed with the compliance affidavit at **“Annexure - A”**.



The following statutory authorities have responded as follows:-

STATUTORY AUTHORITIES:

8. REGIONAL DIRECTOR & REGISTRAR OF COMPANIES:

8.1 The Regional Director, North-Western Region (hereinafter referred to as 'RD') to whom the notice was issued, has filed its Report along with the report of Registrar of Companies (hereinafter referred to as 'ROC') before this Tribunal on **18.04.2024** in Inward Diary No. R 167.

Observations of the Regional Director are as under:

- i. That, as per para 10.10 of the Scheme, the authorized share capital of the petitioner Transferor Company will be added to the authorized share capital of the petitioner transferee company. In compliance with the provisions of Section 232 (3)(i) of the Companies Act, 2013 the petitioner transferee company is under statutory obligation to pay the difference amount of fees, if any which is payable on the enhanced Authorized Capital and the fees which have already been paid by all the petitioner companies at the time of registration / increase in authorized capital.



ii. That, it is stated at para 10.11 of the scheme that the capital clause being clause V of MOA the Transferee Company shall on the effective date stand substituted to read as follows:-

"The authorized share capital of the Transferee Company is Rs 4,80,00,000 equity shares of Rs 10 each and 20,000 redeemable preference shares of Rs.100 each with such....."

Further, the details of present Authorized Capital of both companies are as under:

Name of Company	Authorized Capital (Rs.) as on 31.03.2022
Lyka exports Limited (Transferor Company) State of Gujarat	Rs.9,00,00,000/- divided into 90,00,000 Equity Shares of Rs. 10/- each.
Total Authorized Capital of transferor companies	Rs. 9,00,00,000/-
Lyka Labs Limited (Transferee Company) State of Gujarat	Rs. 50,00,00,000/- divided into 4,80,00,000 Equity of Rs. 10/- each and 2,00,000 Redeemable Preference Share of INR 100/- each.



Consolidated Authorized Capital (Including Transferor Company)	Rs. 59,00,00,000/-
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In this regard, it is submitted that para under clause 10.11 of the scheme is required to be amended/corrected as under-

"The authorized share capital of the company is Rs 59,00,00,000/- divided in to 5,70,00,000 equity shares of Rs. 10 each and 2,00,000 redeemable preference shares of Rs. 100 each with such..."

Therefore, The Hon'ble NCLT may be pleased to direct the petitioner companies to rectify the clause 10.11 of the scheme accordingly and place on record all the relevant facts of the matter.

- iii. That, it is submitted that the Appointed Date/ Transfer Date is 01.04.2022 as per para 1.2 of the Scheme, however, company application was filed on 12.10.2023 after one year from Appointed Date. As per para 6 (c) of MCA Circular no. 09/2019 dt21.08.2019 have stated that 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". On examination of the scheme, It appears that no justification has mentioned in the scheme about gap of more than one year in filing of application and appointed date.

The Hon'ble NCLT may therefore be pleased to direct the petitioner companies to clarify the same and place on record all the relevant facts of the matter.

- iv. The Hon'ble Tribunal may kindly direct the Petitioner Companies 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.
- v. That, the clause No. 1.13 (v) and 8.1.1 of the Scheme provides for transfer of Staff, Workmen and Employees of the transferor companies. As per the said clause, all the permanent employees of all the transferor companies shall become the employees of the transferee company w.e.f. proposed appointed date. The petitioner companies have proposed to absorb all the permanent employees of the transferor companies. However, the scheme is silent about the employees other than permanent employees.



In this regard the Hon'ble NCLT may be pleased to direct the petitioner companies to undertake for granting of service terms and conditions to all the employees of the transferor company rather than only permanent employees, and said service terms and conditions will not be less favourable than the present benefits available to them.

- vi. That, the Petitioner Transferee Company namely Lyka Labs Limited is listed with the BSE and NSE. The Petitioner company have submitted with the office of the Regional Director, the copy of both observation letters dated 02.08.2023 issued by BSE & NSE to the petitioner Demerged Company pursuant to the SEBI circular No. SEBI/HO/CFD/DIL1/CIR/P/2021/665 dated 23.11.2021.

The SEBI's circulars are intended to ensure compliances by listed companies in the interest of shareholders at large. This office is of the view that the SEBI circulars which are applicable, and the petitioner transferee company should comply with the requirements of the circular.

The Hon'ble NCLT may therefore be pleased to direct the petitioner transferee Company to ensure



about the compliances of observation letters issued by BSE and NSE.

Hon'ble Bench of National Company Law Tribunal may be pleased to direct the petitioner companies:

i. To ensure compliance and furnish the clarification, if any, regarding observations made by Registrar of Companies and this Directorate (NWR) in forgoing Paragraph No. 5 and 6 above.

ii. To preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central Government as per the Provision Section 239 of the Companies Act, 2013.

iii. To ensure Statutory compliance of all applicable Laws and on sanctioning of the present Scheme, the Petitioner Companies shall not be absolved from any of its Statutory liabilities, in any manner.

iv. Necessary Stamp Duty on transfer of property/Assets, if any is to be paid to the respective Authorities before implementation of the Scheme.

v. The petitioner companies involved in the scheme to comply with the provisions of Section



232(5) of the Companies Act, 2013 with respect to file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from date of passing order.

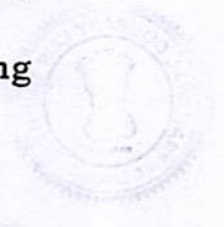
vi. The Petitioner companies shall undertake to comply with Income Tax/GST law and any demand /taxes payable on implementation of the said scheme as per law

That, there are no other observations / submissions except stated hereinabove, for being consideration of the Hon'ble NCLT in respect of the Scheme propose on Amalgamation of Lyka Export Limited, with Lyka Labs Limited and their respective shareholders & creditors.

9. Observations of the Registrar Of Companies are as under:

The Registrar of Companies, Ahmedabad, Gujarat has reported that there are no inquiry, inspection, investigation or prosecution is pending against the Petitioner companies.

In "Annexure A" to the report of the Regional Directors Report, the ROC has raised following Observations:



1. The Applicant Transferor Company is not listed with any Stock Exchange. The equity shares are Transferee Company are listed on Bombay Stock Exchange Limited (BSE) and National Stock Exchange of India Limited. Both the Stock Exchange vide their letter dated 02.08.2023 have issued Observation letter for the proposed Scheme. Therefore, directions be issued to the Petitioner Transferee Company to comply with the directive /Circular issued by SEBI from time to time.
2. As per the Definition clause stated under part 1 of the Scheme, "Appointed Date" means the opening hours of business hours on 1 April 2022. In this regard, Petitioner Companies have to undertake to comply with the provisions of Section 232(6) of the Companies Act, 2013 read with the General Circular No. 9/2019 dated 21.08.2019 issued by the Ministry of Corporate Affairs. In this regard, Hon'ble NCLT may kindly issue suitable directions to the Companies as deems fit and proper.
3. Clause 8.1.1 of the Scheme provides the provisions for only permanent employees of Transferor Company. No provisions incorporated in the proposed Scheme regarding other than permanent employees. Hon'ble NCLT may kindly direct the petitioner companies to place the relevant fact on record pertaining to other than Permanent Employees and kindly issue suitable directions as deem fit and proper.
4. As per the financial statements as at 31.03.2023 of the Transferor company and Transferee company, the following body corporate shareholders holding 10% or more of total shareholding of the Petitioner companies:-

Sr. No.	Petitioner Company	Name of the Shareholder	Percentage of shares held	Remarks



1.	Lyka Exports Limited (Transferor Company)	Lyka Labs Limited (Transferee Company)	72.8%	No eform BEN-2 filed.
2.	Lyka Labs Limited (Transferee Company)	IPCA Laboratories Limited	31.36%	Ben-2 filed vide SRN F79311361 dated 09.11.2023 for filing of BEN-1 dated 16.10.2023 made by NehalNarendra Gandhi wrt company namely Enai Trading and Investment Private Limited.

In view of the above-mentioned facts, the Registrar of Companies respectfully submits that Petitioner Companies are under statutory obligation to file the e- form BEN-2 for declaring name of the significant beneficial owner with concerned ROC under the mandate contained in Section 90 of Companies Act, 2013 read with Rule 4 of the Companies (Significant Beneficial Owners) Amendment Rules, 2019 within 30 days from the date of receipt of such declaration along with the fees as prescribed in Companies (Registration Offices and Fees) Rules, 2014. The Hon'ble NCLT may kindly issue suitable directions to the Applicant Companies to place the fact on the record regarding compliance of aforesaid provisions of the Companies Act, 2013 and Rules made thereunder.

5. It is observed from the para 8(ii) of the order dated 24.11.2023 passed in CA(CAA)/57(AHM) 2023 by

the Hon'ble NCLT in respect of Applicant Transferor Company that "There are 1(one) Secured Creditor having value of debt of Rs. 59,64,577/-as on 30.06.2023". Whereas, as per the Index of Charge available under the MCA's website, there are no open Charge ID shown in the record of the Company. In view of the above, it has revealed that the Transferor Company has failed to file creation of Charge as required under Section 77 of the Companies Act, 2013 read with Rule 3 of the Companies (Registration of Charges) Rules, 2014. The Hon'ble NCLT may kindly issue suitable directions to the Applicant Transferor Company to place the fact on the record regarding compliance of aforesaid provisions of the Companies Act, 2013 and Rules made thereunder.

6. It is observed from the para 9(ii) of the order dated 24.11.2023 passed in CA(CAA)/57(AHM) 2023 by the Hon'ble NCLT in respect of Applicant Transferee Company that "There is 1(one) Secured Creditor having value of debt of Rs. 1,64,21,604/- as on 30.06.2023. Whereas, as per the Index of Charge available under the MCA's website, there are 45 open secured Charge IDs in favour of 11 Secured. Charge holders. For the brevity the details of aforesaid open charge Ids are mentioned at page no. 7 of "Annexure A" to the report of the Regional Director.

In view of the said, it is revealed that the Transferee has failed to file satisfaction of charges from time to time as per the requirement of Section of Section 82 of the Companies Act, 2013 r.w. Rule 8 of the Companies (registration of Charges) Rules, 2014. The Registrar of Companies respectfully submits that the Hon'ble NCLT may kindly issue suitable directions to the both the aforesaid Applicant Transferee Company to place on record all the relevant facts regarding due compliance of



the provisions of the Section 82 of the Companies Act, 2013 read with Rule 8 of the Companies (register of Charges) Rules, 2014.

7. Clause 10.10 of the scheme provides that "Upon the Scheme coming into effect, the authorized share capital of the Transferor Company shall be added to that of the Transferee Company and in the Memorandum of Association and Articles of Association it shall be automatically stand enhanced without any further act, Instrument or deed on the part of the Transferee Company. The Memorandum of Association and Articles of Association of the Transferee Company (relating to the authorized share capital) shall, without any further act, instrument or deed, be and stand altered, modified and amended, and the consent of the shareholders to the Scheme shall be deemed to be sufficient for the purposes of effecting this amendment, and no further resolution(s) under sections 13, 14, 61, 64 of the Act or any other applicable provisions therein, would be required to be separately passed. For this purpose, the filing fees and stamp duty already paid by the Transferor Company on the authorized share capital shall be utilized and applied to the increased share capital of the Transferee Company, and shall be deemed to have been so paid by the Transferee Company on such combined authorized share capital".

Further, it has been observed that in the proposed clause 10.11 of the Scheme it is mentioned that "The Authorized equity Share Capital of the Transferee Company is Rs. 4,80,00,000 equity shares of Rs. 10/- each and 20,000 Redeemable Preference shares of Rs.100 each". However, it appears that Authorised Capital of Transferor Company Rs. 9 Cr. has been not consolidated with the Authorised Capital of the Transferee Company, moreover, the Authorised Redeemable Preference Shares has also been extinguished from Rs. 2Cr. to



Rs.20 Lakhs in the proposed Scheme. In this regard, the Hon'ble NCLT may kindly issue suitable directions to the Applicant Companies to place the fact on the record and amend the proposed Authorised Capital clause on Scheme, as deem fit and proper.

The Registrar of Companies further respectfully submits that the Section 232 provides that Authorized capital of the Transferor Company merges with the Authorised capital of the Transferee Company, "where the transferor company is dissolved, the fee, if any, paid by the transferor company on its Authorised Capital shall be set-off against fees payable by the transferee company on its Authorised Capital subsequent to the amalgamation". In this regard, Petitioner Companies have to undertake to comply with section 232(3)(i) of Companies Act, 2013 and Transferee Company must be paid the differential fee, if any after setting off the fee already paid by Transferor Company on its Authorised capital.

8. As per the provisions of the Companies Act, 2013 wherein it is mandated certain statutory responsibilities on the part of the public company and its KMP/BOD. A public company so long as remain as public companies shall ensure that such statutory requirements of law are duly complied with at relevant time in prescribed manner. Therefore, onus of the due compliance of the applicable provisions of the Companies Act, 2013 is vested with all the Petitioner Companies and its KMP/BoD.
9. The Registrar of Companies, Ahmedabad further submits that the Hon'ble Bench of National Company Law Tribunal may be please to direct the Petitioner Companies to preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central



Government as per the Provision Section 239 of the Companies Act, 2013.

10. The Registrar of Companies, Ahmedabad further submits that the Hon'ble Bench of National Company Law Tribunal may be pleased to direct the Petitioner Companies to ensure Statutory compliance of all applicable Laws and also on sanctioning of the present Scheme, the Transferor Company shall not be absolved from any of its Statutory liabilities, in any manner.
11. Necessary Stamp Duty on transfer of property/Assets, if any is to be paid to the respective Authorities before implementation of the Scheme.
12. The Registrar of Companies, Ahmedabad further submits that the Hon'ble Tribunal may direct the Petitioner Companies involved in the scheme to comply with the provisions of Section 232(5) of the Companies Act, 2013 with respect to file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from date of passing order.

In response to the observations of RD, the Petitioner Company had filed the Affidavit in Response and the same is filed before this Hon'ble Tribunal on 16.04.2024 vide Inward Diary No. D - 3254. In the same Affidavit the following is stated:-

1. With regards to the observations made in Para 5 which refers to the observations of Registrar of Companies and encloses the RoC Report, I say and submit that as admitted by the Regional Director, the RoC has stated in its report that there are no



inquiry, inspection, investigation and prosecution pending against the petitioner companies. I say that so far as observations contained in Para 11 and 14 of the RoC Report is concerned, the same shall be dealt with hereinafter.

2. With reference to observation contained in Para 6(i), the petitioner Transferee Company undertakes to comply the provisions of Section 232 (3)(i) of the Companies Act, 2013 to the extent applicable.
3. With reference to observation contained in Para 6(ii), I state that through inadvertence, oversight and typographical mistake, the amount of consolidated authorized share capital in Para 10.11 of the Scheme is mentioned as Rs.4,80,00,000 equity shares of Rs. 10 each and 200,000 redeemable preference shares of Rs.100 each. In fact, the consolidated authorized share capital should be Rs.59,00,00,000/- as rightly mentioned by RD in this paragraph. **The petitioner companies pray this Hon'ble Tribunal to permit the petitioner companies to rectify and substitute Para 10.11 of the Scheme to read as under:-**

"10.11 The capital clause being Clause V of the Memorandum of Association of the Transferee Company shall on the Effective Date stand substituted to read as follows, assuming that the Scheme of Merger of Lyka Exports Ltd a subsidiary of the Transferee is approved by that date:

"The authorized share capital of the company is Rs.59,00,00,000 divided in to 5,70,00,000 equity shares of Rs.10 each and 2,00,000 redeemable preference shares of Rs.100 each with such rights, privileges and conditions as to security, redemption, conversion into equity



shares, rate of dividend, right of accumulation of dividend etc., attaching thereto as are provided by the Articles of Association of the Company. The Company shall have power to increase or reduce, consolidate or sub-divide the Share Capital of the Company for the time being and from time to time divide the shares of the new Capital into several classes and denomination and to issue any shares of the original or further Share Capital of the Company for the time being with such preferential, qualified or special rights, privileges or conditions attached thereto respectively including rights to dividend in distribution of assets of the Company from time to time in accordance with the Articles of Association of the Company and subject to the provisions of the Company Act, 2013, for the time being in force."

4. With reference to observations contained in Para 6(iii) which is in relation to the Appointed Date, I state that the **Appointed Date** is 01.04.2022 because when the Scheme was considered by the Board of Directors of the Petitioner Companies on 08.08.2022, the accounts of the Petitioner Companies for the year ending on 31.03.2023 was not audited. I say that Lyka Labs Limited, the Petitioner Company 2 is a listed company, and therefore, only after prior approval of Stock Exchanges, the Company Application could be filed. I however state that the Scheme of Amalgamation with an appointed date of 01.04.2022 is not against the public interest. I state that after receipt of observation letters regarding the draft Scheme of Amalgamation from BSE Limited and National Stock Exchange of India Limited on 02.08.2023, immediately Company Application was filed before this Hon'ble Tribunal on 12.10.2023.



5. With reference to observation contained in Para 6(iv), the Petitioner Companies confirm that the Scheme enclosed to the Company Application and the Company Petition are one and the same and there is no discrepancy and no change is made.
6. With reference to observation contained in Para 6(v), the Petitioner Companies undertake to grant service to all employees permanent or otherwise and who were working with the Transferor Company on the same terms and conditions on which they were working with the Transferor Company.
7. With reference to observation contained in Para 6(vi), the Petitioner Transferee Company undertakes to comply with the requirements of circulars and the observation contained in the letters issued by BSE and NSE.
8. With reference to observation contained in Para 7, the petitioner companies state as under:-
 1. The compliances and clarification regarding observations made by RoC and the RD sought in Para 5 and 6 of the Report are already dealt with in this affidavit.
 2. The Petitioner Transferee Company undertakes to preserve books of accounts, papers and records of the Petitioner Companies and shall not dispose of the same without prior permission of Central Government as per Sec. 239 of the Act.
 3. The Petitioner Companies shall undertake to make all statutory compliances of all applicable laws and on sanctioning of present Scheme, the Petitioner Companies shall not be absolved from any of its statutory liabilities in any manner.



4. The Petitioner Companies shall undertake to make all statutory compliances of all applicable laws and on sanctioning of present Scheme, the Petitioner Companies shall not be absolved from any of its statutory liabilities in any manner.

5. The Petitioner Companies undertake to comply with the provisions of Section 232(5) of the Companies Act, 2013 with respect to filing certified copy of order sanctioning the Scheme with RoC within 30 days from the date of passing the order.

6. The Petitioner Companies undertake to comply with Income Tax/GST Law and demand/ tax payable on implementation of the Scheme, to the extent applicable.

7. The Petitioner Transferee Company undertakes to pay the requisite legal fees/ cost to the Central Government as may be quantified by this Hon'ble Tribunal.

9. So far as observations made by the RoC in Para 11 of its Report dated 21.3.2024 is concerned, I state that it is true that the matter is subjudice before the Hon'ble Bombay High Court, Metropolitan Magistrate, Gurgaon Court at Bombay and the City Civil Court at Bombay.

10. So far as observations made by the ROC in Para 14 of its Report dated 21.3.2024 is concerned, the Petitioner Companies state as under:-

1. The Petitioner Companies undertake to comply with the directive/ circular issued by SEBI from time to time;

2. The Petitioner Companies reiterate the submission as made in Para 5 of this Affidavit in response to issue of appointed date. Without prejudice, the Petitioner Companies undertake



to comply with the provisions of Sec.232(6) of the Act r/w. General Circular No.9/2019 dated 21.8.2019 issued by Ministry of Corporate Affairs, to the extent applicable;

3. The Petitioner Companies reiterate what is stated in Para 7 of this affidavit in response to issue of permanent employees;

4. So far as the issue of filing of e-Form BEN-2 as mandated in Sec.90 of the Act r/w. Rule 4 of the Companies (Significant Beneficial Owners) Amendment Rules, 2019 along with fees as prescribed in Companies (Registration Offices and Fees) Rules, 2014 is concerned, the Petitioner Transferor Company i.e. Lyka Exports Limited submits and clarifies that no individual Shareholder of the Shareholder Lyka Labs Limited, either alone or together with others, fall under the definition of Significant Beneficial Owner (SBO) under Section 90(1) of the Companies Act, 2013 and the Rules made thereunder as the Lyka Labs Limited is a listed Company and consequently, the requirement of filing e-form BEN-2 does not arise. Similarly, the Petitioner Transferee Company i.e. Lyka Labs Limited submits and clarifies that no individual Shareholder of the Shareholder IPCA Laboratories Limited, either alone or together with others, fall under the definition of Significant Beneficial Owner (SBO) under Section 90(1) of the Companies Act, 2013 and the Rules made thereunder as the IPCA Laboratories Limited is a listed Company and consequently, the requirement of filing e-form BEN-2 does not arise.

5. So far as the observation with respect to creation of charge is concerned, the Petitioner Transferor Company states that it has



borrowed money for a Car Loan from one Secured Creditor namely, M/s. BMW Financial Services Private Limited and at the given time, the Transferor Company had queried the said Secured Creditor for creation of charge for the said Loan. However, as per the communication received from the said Secured Creditor, it was mutually agreed that it was not mandatory to create a charge on MCA Portal for a Car Loan. Therefore, the Transferor Company had not created charge for the said Car Loan in pursuance to the communication made with the said Secured Creditor. Be that as it may, if the circumstances so warrant, the Transferor Company has declared and undertaken to rectify the default at the earliest and make it good. Also, it is stated that the said issue shall have no bearing in deciding the present case, in as much as the said default can also be made good even after the sanctioning/ approval of the Scheme by this Tribunal. Thus, it is stated that the said issue not being germane to the present proceedings, it is not necessary for this Tribunal to give any further directions.

6. So far as the observation that in respect of Transferee Company, there is one secured creditor as recorded in the order dated 24.11.2023 passed in CA (CAA)57 of 2023 whereas, as per the index of charge available under MCA website, there are 45 open secured charge IDs in favour of 11 Secured Charge Holders is concerned, the Petitioner Transferee Company submits that as on 30th June, 2023 there is only one Secured Creditor of the Petitioner Transferee Company. It is submitted that even the Chartered Accountant has perused the Papers and has thereafter given a certificate that there is only one Secured



Creditor of the Petitioner Transferee Company. It is submitted that the Registrar of Companies has filed its report that there are charges of 45 Secured charges from 11 charge holders based on the information available on the MCA's website. However, the Petitioner Transferee Company has been pursuing for deletion of Charge since 2017 with various financial institution including with the Banks. Annexed herewith and marked as Annexure-A (COLLY) are sample copies of such letters. It is therefore submitted that the objections raised by the Registrar of Companies stands satisfied as the charge which are mentioned in the Report are already closed. Annexed herewith and marked as Annexure-B is the copy of the Chartered Accountant Certificate certifying that there is only one Secured Creditor in the Petitioner Transferee Company and all the charges as mentioned in the Registrar of Companies Report are already closed. However, this has not affected any interest of the Secured Creditors to whom the payment has already been made and there is no due payable to the secured creditors. The Secured Creditor has approved the Scheme of Amalgamation. The Petitioner Transferee Company undertakes to comply with the provisions of Sec. 82 of Companies Act r/w. Rule 8 of Companies (Register of Charges) Rules, 2014.

7. With regards to amendment in proposed authorized capital clause in the Scheme, the Petitioner Companies reiterate what is stated in Para 4 of this affidavit. 6 The Petitioner Companies undertake to comply with the provisions of Sec.232(3) (i) of the Act and pay the differential fee, if any.

8. The Petitioner Companies ensures to comply with the statutory requirements of law at



relevant time in prescribed manner on the part of the public company and its KMP/BOD.

9. The observations contained in Para 14(9) to 14(12) are concerned, the same are already forming part of RD report and are dealt with in this Affidavit and hence, the same are not repeated hereunder.

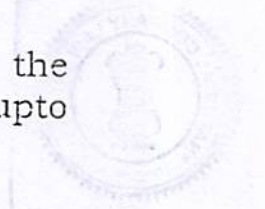
11. I say and submit that there are no other observations made by the office of the Regional Director or the RoC. I say that considering the facts and circumstances, this Hon'ble Tribunal may be pleased to accord sanction to the Scheme.

10. OFFICIAL LIQUIDATOR:

The Official Liquidator(hereinafter referred to as 'OL') to whom the notice was issued has filed Report in respect of the Transferor Companies before this Tribunal on **16.04.2024** in Inward Diary No. **R-152**.

Observations of the Official Liquidator:

- (i). That, it is observed from the MCA portal that the Transferor Company has filed its Audited Annual Accounts (Balance Sheet) with the Registrar of Companies, Gujarat up to 31.03.2023.
- (ii) That, the Transferor Company has not accepted any Deposits u/s 73 of the Companies Act, 2013 and maintaining of cost record is not applicable to the company. Further, the Transferor Company is not required to register with RBI as a NBFC.
- (iii) That, the Income Tax Assessments of the Transferor Company has been completed upto A.Y. 2023-24.



- (iv) That, the Hon'ble Tribunal may be pleased to direct the Transferor Company to preserve its books of accounts, papers and records and shall not be disposed of without prior permission of the Central Government as per the Provision of Section 239 of the Companies Act, 2013.
- (v) That, the Hon'ble Tribunal may be pleased to direct the Transferor Company to ensure Statutory compliance of all applicable laws. And, on sanctioning of the present Scheme, the Transferor Company shall not be absolved from any of its statutory liabilities, in any manner.
- (vi) That, M/s. Lyka Exports Limited, being the Transferor Company may be dissolved without following the process of winding-up in terms of sub-section 3(d) of Section 232 of the Companies Act, 2013. Further, the Transferor company being dissolved, the fee, if any, paid by the Transferor Company on its Authorized Share Capital shall be set-off against any fees payable by the Transferee Company on its Authorized Capital subsequent to the amalgamation in terms of sub section 3(i) of Section 232 of Companies Act, 2013.
- (vii) That, the Hon'ble Tribunal may be pleased to direct the Petitioner Company to lodge a certified copy of the order along with the scheme, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any.
- (viii) That. Hon'ble Tribunal may direct the companies involved in the scheme to comply with Provision of Section 232(5) of Companies Act, 2013 with respect to file certified copy of order sanctioning the scheme with Registrar of Companies within 30 days from the date of passing order.
- (ix) That, subject to complying with the directions of the Hon'ble Tribunal, as prayed by the Official



Liquidator above, Official Liquidator has no further observations or objections based on the information provided by the Transferor Company for consideration of the Hon'ble Tribunal in respect on proposed scheme of Amalgamation between the Applicant Companies and their respective Shareholders and Creditors.

10.1 In response to the observations of The Official liquidator, the Authorized Representatives of the Transferor Company and Transferee Company had filed Affidavit in Response qua the report of the Official Liquidator and the same is filed before this Hon'ble Tribunal on 17.04.2024 vide Diary No. D - 3323 qua the Transferor Company and on 12.08.2024 and vide Inward Diary No. D - 6323 qua the Transferee Company. In both the Affidavits similar stand is taken by the petitioners companies. the following is stated in both the affidavits:

3. We say that in Paragraph 11 of the Report, the Official Liquidator has requested this Hon'ble Tribunal to direct the Transferor Company to preserve its books of accounts, papers and records and has required that the Transferor Company does not dispose the documents without prior permission of Central Government as per the provisions of Section 239 of the Act. I say that, after effectiveness of the Scheme, the Petitioner Transferee Company undertakes to preserve books of accounts,



papers and records of the Petitioner Transferor Company and shall not dispose the same without prior permission of Central Government as required under Section 239 of the Act.

4. I say that in Paragraph 12 of the Report, the Official Liquidator has sought directions against the Transferor Company to ensure statutory compliance of all applicable laws and also on sanctioning of the present Scheme, the Transferor Company shall not be absolved from any of its statutory liabilities, in any manner. I state that, the Transferor Company undertakes that it will comply with all statutory compliance of all the applicable laws and after effectiveness of the Scheme, all liabilities including statutory liabilities of the Transferor Company shall stand transferred to the Transferee Company and the same will be honoured by the Transferee Company in ordinary course of business and as per applicable law and accordingly, the Transferor Company shall not be absolved from any of its statutory liabilities, in any manner.

5. I say that in Paragraph 13 of the Report, the Official Liquidator has stated that the Transferor Company may be dissolved without following the process of winding up in terms of sub-section 3(d) of Section 232 of the Companies Act, 2013 ("Act").

7. I say that in Paragraph 15 of the Report, the Official Liquidator has requested this Hon'ble Tribunal to direct the Petitioner Company to lodge a certified copy of the order along with the Scheme with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any. I state that the Petitioner Company undertakes to lodge a certified copy of the order along with



the Scheme with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any.

8. I say that in Paragraph 16 of the Report, the Official Liquidator has requested this Hon'ble Tribunal to direct the companies to comply with the provision of Section 232(5) of the Act with respect of filing of certified copy of order sanctioning the Scheme with the Registrar of Companies within 30 days from date of passing order. I state that, the Petitioner Companies undertake to file certified copy of order sanctioning the Scheme with the Registrar of Companies within 30 days from the date of issuance of the certified copy of the order by this Hon'ble Tribunal as per relevant provisions of the Act.

11. INCOME TAX DEPARTMENT:

The Department of Income tax has filed its report in which objections of the department is filed before this Hon'ble Tribunal on 06.06.2024 vide Inward Diary No. R 247 in which the following has been stated:

2. This office has received a notice from the assessee i.e. M/s Lyka Lab Limited in pursuance of sub-section (5) of the section 230 of the Companies Act, 2013. In respect of order u/s. 230(1) of the Act, dated 08th Day of January 2024 of the Hon'ble National Company Law Tribunal, Ahmedabad Bench, in the matter of the Scheme of Amalgamation of Lyka Exports Limited (Transferor Company with Lyka Labs Limited (Transferee Company)



and their respective shareholders and creditors.

3. The management of M/s Lyka Labs Ltd and M/s Lyka Exports Ltd are considering a merger proposal of Lyka Exports Ltd with Lyka labs Ltd pursuant to section 230/232 of the companies Act 2013. Further as consideration for the proposed merger under Part III of the scheme equity shares of Transferee company would be issued to the equity shareholders of Transferor company respectively.

Vide letter dated Nil submitted on 27.02.2024, M/s Lyka labs Ltd filed a copy of form no CAA -3 and sought representation if any in connection with the proposed scheme of amalgamation may be made to the NCLT. In this regard, the objections which are subject to verification are as under:

4. With respect to the application of the DCF method, on careful perusal of the submission made this office could not disregard the choice of method but the valuation is subjected to verification since the taxpayer had neither substantiated nor verified nor provided proof for the basis of the estimates adopted in the valuation. It is to be clarified that the valuation is based on projections made by Assessee Company itself as well as based on estimates only because the valuations were solely certified by the management. It is noted from the submission of report that the actual figures were a long way away from the projections which had been made and without any substantial evidences.

5. Further, the transferor company M/s Lyka Exports Ltd which is also assessed with the



undersigned, which has filed compounding application for the AY 2016-17 for non-payment of Self-assessment taxes and regular income tax u/s 276C(2) of the Act. The petition of the assessee is still pending till date and despite issue of demand of compounding charges amounting to Rs 20,27,692/-, (not yet decided), neither assessee paid the said compounding charges as per the provisions of section 276C(2) nor filed any objection before the compounding authority. It appears from the above, to avoid the tax liability due on account of the compounding charges the assessee has proposed /submitted this proposal of merger.

6. It is to be noted that there are outstanding demands for various assessment years against the Transferee company M/s Lyka labs Ltd which are enlisted below:

Sr. No.		Section	AY	Amount Outstanding
1		220(2)	2010-11	9450218
2		271(1)(c)	2011-12	8387020
3		271(1)(c)	2011-12	15539749
4		271(1)(c)	2014-15	6176924
5		147	2014-15	1500480
6	220 (2)	147	2014-15	2002775
7		147	2017-18	76282260
8	220 (2)	147	2017-18	1147560
9		143(3)	2018-19	40590
10		154	2023-24	4154480



7. Further it is to be submitted that share premium referred to in section 56(2)(viib) is 'income' under the Income Tax Act owing to the expansion of the definition of income under section 2(24)(xvi) to specifically include such sum within its ambit and therefore the said proposed merger is to avoid this tax liability if any thereto.

8. The Hon'ble NCLT is hereby requested to kindly look into the matter and review the petition of the assessee in view of the stated liability of the Income Tax department and the prosecution matters which are pending with the higher authorities of the Income Tax department.

11.1 In response to the observations of The Income Tax Department, the Transferee Company had Affidavit in Response and the same is filed before this Hon'ble Tribunal on 04.07.2024 vide Inward Diary No. D - 4307. In the same Affidavit the following is stated:

"2. With regard to observation contained in paragraph 4 of the Report, we say and submit that it is not true that the taxpayer has not substantiated the basis of valuation nor provided proof for the basis of estimates adopted in the valuation. We say that the valuation report has been certified by a SEBI registered valuer. Further, a SEBI registered merchant banker has issued fairness opinion on recommended share exchange ratio and valuation approach adopted in the valuation report. We say that SEBI and NSE had sought certain clarifications pertaining



to the valuation report like methodology adopted and explanation on projections considered therein. We say that the Petitioners have submitted requisite clarifications along with supporting documents to both SEBI and NSE. We say that after considering the response, both SEBI and NSE have given approval to the valuation and swap ratio of shares. We say that a copy of valuation report was also shared to the shareholders of Transferor Company and no objection has been received in relation to the same during the course of meeting held on 20 February 2024. We say that the valuation report already contains year-wise break-up of the estimates prepared under the DCF method. We say that the petitioner had meetings with Asst Commissioner of Income-tax Circle 2(2)(1) wherein the tax officer was briefed on the basis of projections prepared by the management. As requested by him, a brief note on valuation report was separately prepared and shared with him providing a detailed break-up of historical earnings on the basis of which projected earnings were considered for arriving at the final valuation. A copy of the above brief note filed with the office of Asst Commissioner of Income-tax Circle 2(2)(1) is enclosed as Annexure-A1.

3. Without prejudice to the above, we say that the valuation shall be redundant parameter from the perspective of income-tax implications since amalgamation in the present case shall be in accordance with the provisions of section 2(1B) of the Act. Accordingly, it will not constitute 'transfer' under section 47(vi) for Transferor 3 Company and under section 47(vii) for shareholders of Transferor Company. Thus, there shall not be implications of any capital gains tax.

4. With regards to observation contained in paragraph 5 of the Report which is in relation to



compounding proceedings filed by Transferor Company, we say and submit that the Transferor Company filed an application on 3.12.2018 with Addl. Commissioner of Income-Tax (HQ) for compounding of offence pertaining to delay in payment of self-assessment tax and interest thereon. We say that the said application has remained unheard and no order has been passed thereon. We say that as such, the Petitioner strongly disputes the compounding charges of Rs 20,27,692 mentioned in the Report. We say that any such compounding charges shall be duly discharged by Petitioner once the compounding order is passed by the Tax Authorities.

5. With regards to observation contained in paragraph 6 of the Report, we say and submit that the purported outstanding tax demands referred in this paragraph pertain to Transferee Company and not the Transferor Company. We say that post the sanction of present Scheme of Amalgamation, the Transferee Company shall continue to remain in operation and therefore, the demand/ proceedings against the Transferee Company, if any, can still be pursued.

6. With regards to observation contained in Para 7 of the Report, we say and submit that there is no question of any share premium in the present case as alleged in the Report. We beg to rely upon Clause 10.2 of the Scheme which provides for swap ratio. As per swap ratio, 23 equity shares of the face value of Rs.10 each shall be issued by the Transferee Company for every 100 equity shares of the face value of Rs.10 each held by the shareholders of the Transferor as on record date. We say that since there is no share premium involved in the present case, there is no question of avoidance of any potential tax under section 56(2)(viib) of the Act.



7. We say and submit that it is settled law that a Scheme of Arrangement cannot be rejected on the basis of allegation that the object of Scheme is tax avoidance. We say that sanction to a Scheme does not preclude or restrict the right of the Income-Tax department to examine the arrangement in accordance with the provisions of the Act. In this regard, I beg to rely upon the following decisions:-

A. JCIT (OSD) v Reliance JioInfocomm Ltd, [2019] 112 taxmann.com 275 (NCLAT, New Delhi)

"35. The Income Tax Department in one hand asked that it is entitled to examine the aspect of any tax payable as a result of the Scheme and the Scheme of Arrangement ultimately results in tax avoidance or not, on the other hand, without any basis, it comes to a conclusion that the Composite Scheme of Arrangement amongst the Petitioner Companies and their shareholders and creditors is giving undue favour to the shareholders of the company and also the overall scheme of arrangement results into tax avoidance.

36. Without going to the record and without placing any evidence or substantiate the allegation by appearing before the Tribunal, it was not open to the Income Tax Department to hold that the Composite Scheme of Arrangement amongst the Petitioner Companies and their respective shareholders and creditors is giving undue favour to the shareholders of the company and also the overall scheme of arrangement results into tax avoidance.

37. The Income Tax Department, which sought for liberty, while accepted by the Petitioner



Companies (Respondents herein) and the Tribunal while approving the Composite Scheme of Arrangement has granted liberty. Such liberty to the Income Tax Department to enquire into the matter, if any part of the Composite Scheme of Arrangement amounts to tax avoidance or is against the provisions of the Income Tax and is to let it take appropriate steps if so required.

38. Mere fact that a Scheme may result in reduction of tax liability does not furnish a basis for challenging the validity of the same.

B. The above decision of NCLAT is affirmed by the Hon'ble Supreme Court in JCIT (GSD) v Reliance JioInfocomm Ltd [2022] 145 taxmann.com 642 (SC) wherein it is observed as under:-

"4. However, it is required to be noted that in the order passed by the NCLT, the NCLT has already clarified that the Income-tax Department will be free to examine the aspect of any tax payable as a result of the sanction of the Scheme and in case it is found that the Scheme of arrangement ultimately results in tax avoidance or is not in accordance with the de-merger provisions of the Income-tax Act, then the Income-tax Department will be at liberty to initiate appropriate course of action as per law. It is further clarified by the NCLT that any sanction to the scheme of arrangement under sections 230-232 of the Income-tax Act, 2013 shall not adversely affect the rights of the Income-tax Department or any past, present or future proceedings and the same has been reiterated by NCLAT in the impugned judgment and order."

C. Panasonic India (P.) Ltd [2022] 138 taxmann.com 570 (NCLT-Chandigarh)



"7.15 Even if a proposal of a Scheme of Amalgamation has been approved by the Adjudicating Authority, it is clarified that no provision of such a Scheme can override the existing provisions of the Income-tax Act. In any case, the above issues will come up for the consideration of the Assessing Officer at the time of assessment of the petitioner companies, and the Department can analyse the Scheme and is entitled to take any decision as per the provisions of the Income-tax Act on any above. Issues including those discussed 7.16 in view of the aforementioned discussions; we do not find enough merit in the objections raised by the Income-tax Department to justify any adverse inference with regard to the proposed Scheme of Amalgamation."

9. We say and submit that there are no other observations made by the office of Income Tax Department. We say that considering the facts and circumstances, this Honble Tribunal may be pleased to accord sanction to the Scheme.

12. BSE AND NSE:

The Petitioner companies have filed an affidavit before this Tribunal on **13.09.2024** vide Inward Diary No. **D - 7050** through which the observation letters issued by BSE and NSE dated 02.08.2023 is produced on record. In the same both BSE and NSE has stated that they have No Adverse Opinion/ No Objection to the proposed scheme. The said observation letters of BSE



and NSE is attached at "**Annexure - A2**" of the affidavit.

13. VALUATION REPORT:

The Learned Counsel for the Petitioner Companies invited the attention of this Tribunal to the Valuation Report dated **06.08.2022** obtained from, one Mr. Bhavesh M. Rathod, Registered Valuer having RV Registration No. BBI/RV/06/2019/10708, determining the share entitlement ratio for the proposed scheme and the same is placed on record. The valuation report given by the registered valuer is attached with the petition at "**Annexure - H**".

13 ACCOUNTING TREATMENT:

Learned Counsel for the Petitioner Companies have stated that the Statutory Auditors has certified that the Accounting Treatment proposed in terms of **clause 11 of part-IV** of the Scheme is in conformity with the applicable Accounting Standards. The Certificate issued by the Statutory Auditors certifying the



Accounting Treatment of the Petitioner Companies is placed at 'Annexure G and G1' of the typeset.

14. OBSERVATIONS OF THIS TRIBUNAL:

A. We have gone through the Company Petition, the Chairman's report in respect of the meetings of the stakeholders of the petitioner companies, representation/report of the Regional Director, the Registrar of Companies, the Official Liquidator and the Income Tax Department. On perusal of **para-6 (ii)** of representation of the **Regional Director**, it is stated as under:-

"ii. That, it is stated at para 10.11 of the scheme that the capital clause being clause V of MOA the Transferee Company shall on the effective date stand substituted to read as follows:-

"The authorized share capital of the Transferee Company is Rs 4,80,00,000 equity shares of Rs 10 each and 20,000 redeemable preference shares of Rs.100 each with such....."
Further, the details of present Authorized Capital of both companies are as under:

Name of Company	Authorized Capital (Rs.) as on 31.03.2022
Lyka exports Limited (Transferor Company) State of Gujarat	Rs. 9,00,00,000/- divided into 90,00,000 Equity Shares of Rs. 10/- each.
Total Authorized Capital of transferor companies	Rs. 9,00.00,000/-
Lyka Labs Limited (Transferee Company)	Rs. 50,00,00,000/- divided into 4,80,00,000 Equity of Rs.



State of Gujarat	10/- each and 2,00,000 Redeemable Preference Share of INR 100/- each.
Consolidated Authorized Capital (Including Transferor Company)	Rs. 59,00,00,000/-

In this regard, it is submitted that para under clause 10.11 of the scheme is required to be amended/corrected as under-

"The authorized share capital of the company is Rs 59,00,00,000/- divided in to 5,70,00,000 equity shares of Rs. 10 each and 2,00,000 redeemable preference shares of Rs. 100 each with such..."

Therefore, The Hon'ble NCLT may be pleased to direct the petitioner companies to rectify the clause 10.11 of the scheme accordingly and place on record all the relevant facts of the matter.

The Petitioner Companies in their affidavit in reply at para-3 stated as under:-

3. With reference to observation contained in Para 6(ii), I state that through inadvertence, oversight and typographical mistake, the amount of consolidated authorized share capital in Para 10.11 of the Scheme is mentioned as Rs.4,80,00,000 equity shares of Rs. 10 each and 200,000 redeemable preference shares of Rs.100 each. In fact, the consolidated authorized share capital should be Rs 59,00,00,000/- as rightly mentioned by RD in this paragraph. The petitioner companies pray this Hon'ble Tribunal to permit the petitioner companies to rectify and substitute Para 10.11 of the Scheme to read as under:-

"10.11 The capital clause being Clause V of the Memorandum of Association of the Transferee Company shall on the Effective Date stand substituted to read as follows, assuming that the Scheme of Merger of Lyka Exports Ltd a subsidiary of the Transferee is approved by that date:



"The authorized share capital of the company is Rs.59,00,00,000 divided in to 5,70,00,000 equity shares of Rs.10 each and 2,00,000 redeemable preference shares of Rs.100 each with such rights, privileges and conditions as to security, redemption, conversion into equity shares, rate of dividend, right of accumulation of dividend etc., attaching thereto as are provided by the Articles of Association of the Company. The Company shall have power to increase or reduce, consolidate or sub-divide the Share Capital of the Company for the time being and from time to time divide the shares of the new Capital into several classes and denomination and to issue any shares of the original or further Share Capital of the Company for the time being with such preferential, qualified or special rights, privileges or conditions attached thereto respectively including rights to dividend in distribution of assets of the Company from time to time in accordance with the Articles of Association of the Company and subject to the provisions of the Company Act, 2013, for the time being in force."

B. It is seen that the Board of Directors of the Petitioner Companies had approved the proposed un-amended Scheme on 05.08.2022 and 08.08.2022 respectively which is annexed at "**Annexure - J**" along with the Company Petition. Further, the Equity Shareholders, Preference Shareholder, Secured Creditors and Unsecured Creditors of the Petitioner Companies, also approved the proposed un-amended Scheme in meetings held on 20.02.2024 as per the report of the



Chairman appointed by this Tribunal filed on 23.02.2024 vide Inward Diary No. D1555.

C. However, after the Observation/Report dated 28.03.2024 of Regional Director (hereinafter referred to as 'RD'), the Petitioner Companies filed the Affidavit in Response dated 15.04.2024 and sought permission to rectify and substitute Para 10.11 of the Scheme.

D. Since, the revised Scheme was not placed before the Equity Shareholders, Preference Shareholder, Secured Creditors and Unsecured Creditors of the Petitioner Companies, this Tribunal is unable to allow amendment by substituting Para 10.11 of the proposed scheme in the present form.

15. THIS TRIBUNAL DO FURTHER ORDER:

- i. The Scheme of Amalgamation, which is annexed as **"Annexure - J"** to the Company Petition, is hereby rejected.



- ii. Liberty is given to the Petitioner Companies to move fresh application within **45** days from the date of this order.
- iii. The legal fees and expenses for the office of the Regional Director are quantified at Rs. 20,000/-. The said fees to the Regional Director shall be paid by the Transferee Company.
- iv. The legal fees and expenses for the office of the Official Liquidator are quantified at Rs. 20,000/-. The said fees to the Official Liquidator shall be paid by the Transferee Company.

16. Accordingly, the Company Petition i.e. CP(CAA) No. 13 of 2024 in CA(CAA) 57/(AHM) 2023, stands rejected.



-sd-

SAMEER KAKAR
MEMBER (TECHNICAL)
 RS/SP

Prepared by Rohit
 Signature Rohit
 Date 6/11/24

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

Certified to be True Copy of the Original
dm
06/11/2024
 Deputy Registrar
 NCLT, Ahmedabad Bench
 Ahmedabad

Date of pronouncement of Order: 24/11/24
 Date on which application for Certified Copy was made: 6/11/24
 Date on which Certified Copy was ready: 6/11/24
 Date on which Certified Copy delivered: 7/11/24