

THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT- I)

COMPANY PETITION NO. (CAA)-1/CHD/HRY/2024
CONNECTED WITH
COMPANY APPLICATION NO. CA (CAA)-40/CHD/HRY/2023

IN THE MATTER OF SCHEME OF AMALGAMTION:

AMONGST

AIX CONNECT PRIVATE LIMITED

...Petitioner 1/Transferor Company

AND

AIR INDIA EXPRESS LIMITED

...Petitioner 2/ Transferee Company

AND

THEIR RESPECTIVE SHAREHOLDERS

Order Delivered on: 11.06.2024

Sections: 230 to 232 of the Companies Act, 2013

CORAM

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT

- For the Petitioners** : Adv. Atul V. Sood with Mr. Shashank Gautam, Ms. Saravna Vasanta, Advocate, Mr. Alok Gokhale, Advocates
- For the OL** : Mr. Edward Augustine George
- For the RD** : Mr. Vineet Khatri, Company Prosecutor

Judgment

PER: SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)

The present Company Petition is preferred by the Petitioner Companies jointly under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 for approval of the “Scheme of Amalgamation” (hereinafter referred to as “**Scheme**”) as contemplated amongst the Petitioner Companies and their respective shareholders. A copy of the Scheme has been placed on record. As per the Scheme, the “Appointed Date” shall be 29.11.2022 and the Effective Date shall be as defined in clause 1.1.8 of Part I of the Scheme.

2. Particulars of the Petitioners, as placed on record, are as follows:

2.1 AIX Connect Private Limited (hereinafter referred to as the “Petitioner 1” or the “Transferor Company”) having CIN U62200HR 2013PTC113301 is a company incorporated on 28.03.2013 under the provisions of the Companies Act, 1956. The registered office of the Petitioner 1 is situated at Block 4, Vatika One on One, Industrial Estate,

Gurugram, Haryana - 122007. The Petitioner 1 is engaged in the business of aircraft passenger and cargo services and operates as a domestic low-cost carrier with a network extending to 19 destinations in India. The Transferor Company also operates non-scheduled cargo charter flights on international sectors, upon approval of Directorate General of Civil Aviation. The Petitioner 1 is a wholly owned subsidiary of Air India Limited.

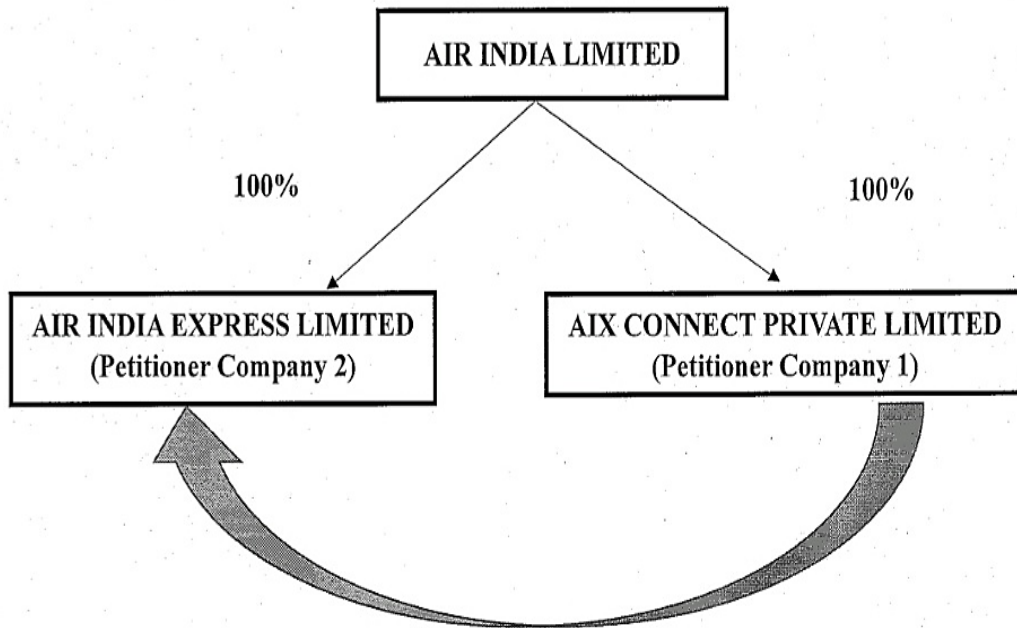
2.2 Air India Express Limited (hereinafter referred to as the “Petitioner 2” or the “Transferee Company”) having CIN U62100HR1971PLC113015 is a company incorporated on 09.09.1971 under the provisions of the Companies Act, 1956. The Petitioner 2 has its registered office at Block 4, Vatika One On One, Industrial Estate, Gurugram, Haryana - 122007. The Petitioner 2 is engaged in the business of aircraft passenger and cargo services and operates as an international low-cost carrier with the objective of providing connectivity to short/medium haul international routes in the Gulf and Southeast Asia at affordable fares with a network extending to 34 destinations. The Petitioner 2 is also a wholly owned subsidiary of Air India Limited.

3. The Registered offices of both the Petitioner Companies are situated in in the State of Haryana and, therefore, the jurisdiction lies with this Tribunal.

4. As per the information provided by the Petitioner Companies on Page 34 in the Synopsis filed on 31.05.2024 vide C.A. No. 108/2024

(“Synopsis”), current Shareholding pattern of the Petitioner Companies involved in the Scheme is given in the Chart given below:

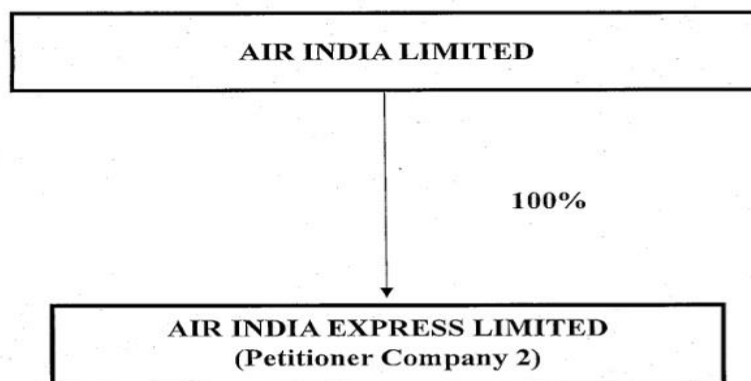
EXHIBIT-1
(Current shareholding of the Petitioner Companies)



5. It has been submitted that the Scheme is filed under Sections 230-232 read with other applicable provisions of the Companies Act, 2013 and provides for Amalgamation of the Petitioner 1 with the Petitioner 2 and the dissolution of the Petitioner 1 without winding up.

6. Further, as per the information provided by the Petitioner Companies on Page 35 in the Synopsis filed on 31.05.2024, post-merger, the Shareholding pattern of the Petitioner Company 2 shall be as reflected in the following chart:

EXHIBIT-2
(Post-merger shareholding of the Petitioner Company 2)



7. From the records, it is seen that the First Motion Application bearing No. CA (CAA) No. 40/Chd/Hry/2023 was filed by the Petitioner Companies for seeking directions for (a) convening the meeting of the Unsecured Creditors of the Petitioner Companies having outstanding balances above Rs. 10 Lakh; (b) dispensing with the requirement of convening the meetings of the Equity Shareholders of the Petitioner Companies; (c) dispensing with the requirement of convening the meetings of the Preference Shareholders of the Petitioner Companies;

and (d) dispensing with the requirement of convening the meetings of the Secured Creditors and Unsecured Creditors having outstanding balance below Rs. 10 Lakh of the Petitioner Companies.

8. Accordingly, this Tribunal vide Order dated 10.10.2023 allowed (a) convening of meetings of the Unsecured Creditors of the Petitioner Companies having outstanding balances above Rs. 10 Lakh; (b) dispensed with the requirement of convening the meetings of the Equity Shareholders of all the Petitioner Companies; (c) dispensed with the requirement of convening the meetings of the Preference Shareholders of all the Petitioner Companies; and (d) dispensed with the requirement of convening the meetings of the Secured Creditors of the Petitioner Companies.

9. Later, the Petitioner Companies filed the Second Motion petition on 13.12.2023. In compliance with the direction dated 10.10.2023, the Reports of Chairperson dated 09.12.2023 are filed on 11.12.2023 vide Diary No. 02627/4 and 02627/6, according to which the Resolutions approving the Scheme of Amalgamation were approved and passed by 100% of the Unsecured Creditors (having outstanding balances above Rs. 10 Lakh) of the Petitioner 1 and 100% of the Unsecured Creditors (having outstanding balances above Rs. 10 Lakh) of the Petitioner 2.

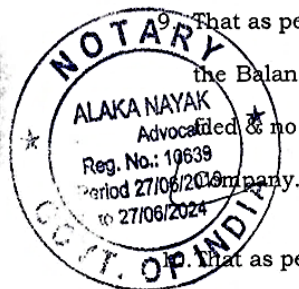
Further, the Petitioner Companies sought directions of this Tribunal in connection with the Scheme for issuance of notices to (i) Regional Director, Northern Region; (ii) Registrar of Companies, N.C.T. of Delhi &

Haryana; (iii) Official Liquidator, attached to the High Court Punjab & Haryana; (iv) Income Tax Department through its nodal office and the Jurisdictional Assessment Office of each of the Petitioner Companies; (v) Ministry of Civil Aviation; and (vi) Directorate General of Civil Aviation; and (viii) also for publication of the said Scheme in the newspapers. Accordingly, directions were issued vide Order dated 12.01.2024 of this Tribunal, requiring the Petitioner Companies to issue notices and carry out necessary publication with regard to the said Scheme in “Business Standard” (English, All India Edition) and “Business Standard” (Hindi, All India Edition) newspapers in not less than 10 days before the next date fixed for hearing.

10. In compliance with the above-mentioned directions, the Petitioner Companies duly filed Affidavits of Service dated 07.03.2024 confirming that Notices of the present Petition were duly published in the “Business Standard” (English, All India Edition) on 16.02.2024 and “Business Standard” (Hindi, All India Edition) on 16.02.2024 and also, complete paper book was served to all the Statutory Authorities, as ordered.

11. Pursuant to this, the RD filed its Report dated 15.04.2024 vide affidavit dated 08.04.2024, the relevant excerpts of which are reproduced overleaf:

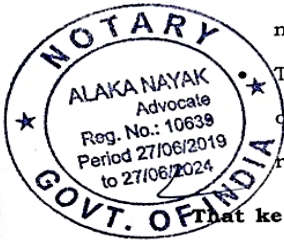
3. That the Petitioner Companies having their registered office in Haryana and within the jurisdiction of this Hon'ble National Company Law Tribunal Bench at Chandigarh.
4. That, the report of the Registrar of Companies, NCT of Delhi & Haryana, has been received vide letter dated 07.03.2024. Copy of report of ROC, NCT of Delhi & Haryana is marked as Annexure - A.
5. That as per the Composite Scheme of Amalgamation, the appointed date is 29.11.2022, which is more than a year.
6. That as per clause 05 of the proposed Scheme of the Petitioner Company provides for the protection of the interest of the employees and employee benefits of the Petitioner Companies.
7. That as per Clause 5 the Scheme, the share exchange ratio of the company:
- 5,65,207 fully paid-up equity shares of Transferee Company of INR – 100 (Indian Rupee Hundred) each for every 10,00,00,000 (Ten Crore) equity share of Transferor Company of INR 10 (Indian rupee Ten) each.
8. That the meeting of equity shareholders and secured creditors of petitioner companies were dispensed with by Hon'ble Tribunal vide order dated 09.12.2023. Pursuant to an order dated 10.10.2023 of the Hon'ble Tribunal, Chandigarh Bench has directed to hold the meeting of unsecured creditors of transferor and transferee companies on 09.12.2023 at 10:00AM and 12PM respectively and as per the chairperson report of the said meeting the proposed amalgamation/merger have been approved by majority of person representing more than 3/4th in value of the unsecured creditors in terms of Section 230 (6) of the Act.



9. That as per the report of Registrar of Companies, the Petitioner Companies have filed the Balance Sheet and Annual Return up to 31.03.2023. No prosecution has been filed & no inspection or investigation has been conducted in respect of the Petitioner Company.

10. That as per the deponent and as per Clause 31 of the ROC Report dated 07.03.2024, following observations were raised:

- "In case of Transferor company auditor has stated in the audit for the F.Y. 2022-23 that the company has not paid the certain statutory dues on account of dispute and the cases for the same are being pending before their respective authority.
- In case of Transferee Company auditor has stated in the audit report for the F.Y. 2022-23 that the company has not paid the certain statutory dues on account of dispute and the cases for the same are being pending before their respective authority.
- On examination of the financial statement of the Companies it is observed that the companies are loss making and have also negative net worth i.e. Company's current liability exceeds its current assets. Hence, the companies may be asked to clarify the going concern assumption.



The Transferee company may kindly be directly to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 regarding fee payable of its revised Authorized Share Capital."

that keeping in view of above observations, the Hon'ble Tribunal may satisfy itself w.r.t scheme and pass such order or orders as deemed fit and proper.

1707 847 80
I, Vinod Sharma, the deponent who has signed in my presence.



DEPONENT

VERIFICATION

I, Vinod Sharma, Regional Director (NR), the Deponent above do solemnly verify and affirm that the contents of Affidavit in para 1 to 10 are true to the best of my knowledge and belief and have been made believing it to be true.

08 APR 2024

Verified this on 8/4 day of April, 2024 at New Delhi.

Identify the Deponent who has signed/put T. I. in my presence

Identified-By:
Sanjay Kumar Gupta
(Sanjay Kumar Gupta)
Joint Director

संजय कुमार गुप्ता / Sanjay Kumar Gupta
संयुक्त निदेशक / Joint Director
कार्यालय प्रादेशिक निदेशक (उ. अ.)
Office of Regional Director (N.R.)
कारपोरेट कार्य मंत्रालय / Ministry of Corporate Affairs
भारत सरकार, नई दिल्ली / Govt. of India, New Delhi

DEPONENT

CERTIFIED THAT THE DEPONENT
Shri/Smt./K...
S/o. W/o R/o...
Identified by...
Has...
Delhi on...
That the contents of the affidavit which
have been read & explained to him/her
are true & correct to his/her knowledge

08 APR 2024

NOTARY

12. The Petitioner Companies, in their Synopsis filed on 31.05.2024, have reflected their Joint Reply dated 23.04.2024 filed in response to the Report of RD/ROC, which is reproduced overleaf:

- 3.1. Certain non-adverse objections have been made by the RD and RoC reports and most of the other contents/observations in the reports pertain to statements of fact or description in relation to *inter alia* the Scheme.
- 3.2. The responses to the observations have been captured in the joint reply filed in response to the reports of the RD and RoC. A summary of both the observations and responses is provided in the table below for ready reference:

| S. No. | Observations (No-objections) | Responses (Diary No. 03968/11 dated April 23, 2024) |
|--------|--|---|
| 1. | <i>"Yes. The Appointed Date is 29.11.2022"</i> | The Appointed Date under the Scheme is November 29, 2022. The Scheme was approved by the Boards of Directors of the Transferor Company and the Transferee Company respectively on June 23, 2023. Thereafter, the Petitioner Companies filed the joint first motion application connected with this petition viz., CA(CAA) No. 40/CHD/HRY/2023 on August 12, 2023. Hence, the first motion application bearing CA(CAA) No. 40/CHD/HRY/2023 was filed with this Hon'ble Tribunal before completion of one year from the Appointed |

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| | | Date in compliance with the provisions of the General Circular 09/2019 dated August 21, 2019, issued by the Ministry of Corporate Affairs. |
| 2. | <i>"In the case of the Transferor Company, the auditor has stated in the audit report for FY 2022-23 that the company has not paid certain statutory dues on account of dispute and the cases for the same are pending before their respective authority"</i> | With respect to the observations regarding the non-payment of statutory dues on account of pending disputes before statutory authorities by the Transferor Company and the Transferee Company it is submitted that: (a) Clauses 6.1 and 7.1 of the Scheme provide that all legal proceedings/tax dues or proceedings of the Transferor Company shall be continued against the Transferee Company pursuant to sanction of the Scheme; and |
| 3. | <i>"In case of the Transferee Company the auditor has stated in the audit report for the FY 2022-23 that the company has not paid certain statutory dues on account of"</i> | (b) post sanction of the scheme by this Hon'ble Tribunal and post implementation of the Scheme, the Transferee Company will continue to conduct its business operations in the ordinary course and outstanding dues (if |

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| | <i>for the same are pending before their respective authority.”</i> | under law will be suitably addressed in compliance with applicable law |
| 4. | <i>“On examination of the financial statements of the Companies it is observed that the Companies are loss making and have negative net worth i.e. the Company’s current liabilities exceed its current assets”</i> | <p>With respect to the observation that the Petitioner Companies are loss making, have a negative net worth and may accordingly be requested to clarify the going concern assumption, it is submitted as under:</p> <p>(a) In case of the Transferor Company, the following has been duly recorded in the Notes to the Financial Statements for the financial year ended March 31, 2023, with respect to the “going concern assumption”:</p> <p><i>“iii. Going concern assumption</i> <i>Further, the Company has received letter of financial support from its holding company, Air India Limited (a wholly-owned subsidiary of Tata Sons Private Limited) to assist the Company in meeting its financial liabilities including operating and capital</i></p> |

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| | <p><i>expenditure requirements and statutory liabilities for the period at least upto next 12 months from the date of balance sheet. In view of the foregoing, management is confident that the Company would continue to generate cash flows from its operations and receive operational and financial support from its holding company to fund its operating and capital expenditure requirements for the foreseeable future. Accordingly, these financial statements have been prepared by the management assuming going concern which contemplates realization of assets and settlement of liabilities in the normal course of business.”</i></p> <p>(b) In case of the Transferee Company, the following has been duly recorded in the Notes to the Financial Statements for the financial year ended March 31, 2023, with respect to the “going concern assumption”:</p> |
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| | | <p><i>"The Financial Statements for FY 2022-23 of the Company have been prepared on a Going Concern basis, though the Net Worth of the Company is negative, and has a negative working capital (current liabilities in excess of current assets by Rs. 28,710.17 million) due to the following factors / reasons:</i></p> <p><i>a. The Company has recorded Cash Profit of Rs. 7,221.66 million in FY 2022-23...</i></p> <p><i>d. The Company has adequate funds at its disposal, for the next 12 months to enable the Company to meet its debts and obligations as they all fall due. Accordingly, the financial statements of the Company have been prepared on a Going Concern basis."</i></p> <p>(c) The Petitioner Companies are wholly owned subsidiaries of a common parent company, i.e., Air India Limited. The Tata Group acquired 100% shares of Air India Limited from the Government of</p> |
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| | | <p>India on January 27, 2022, pursuant to Share Purchase Agreement dated October 25, 2021, along with the Transferee Company (a wholly owned subsidiary of Air India Limited). The Transferor Company became a wholly owned subsidiary of Air India Limited on November 3, 2022, pursuant to its acquisition of 100% of the issued subscribed and paid-up equity share capital of the Transferor Company.</p> <p>(d) The Transferor Company is engaged in business of aircraft passenger and cargo services and operates as a domestic low-cost carrier with a network extending to 19 destinations in India. The Transferee Company is engaged in the business of aircraft passenger and cargo services and operates as an international low-cost carrier with the objective of providing convenient connectivity to short/medium haul international routes in the Gulf and Southeast Asia with a</p> |
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| | | <p>India on January 27, 2022, pursuant to Share Purchase Agreement dated October 25, 2021, along with the Transferee Company (a wholly owned subsidiary of Air India Limited). The Transferor Company became a wholly owned subsidiary of Air India Limited on November 3, 2022, pursuant to its acquisition of 100% of the issued subscribed and paid-up equity share capital of the Transferor Company.</p> <p>(d) The Transferor Company is engaged in business of aircraft passenger and cargo services and operates as a domestic low-cost carrier with a network extending to 19 destinations in India. The Transferee Company is engaged in the business of aircraft passenger and cargo services and operates as an international low-cost carrier with the objective of providing convenient connectivity to short/medium haul international routes in the Gulf and Southeast Asia with a</p> |
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| | | <p>network extending to 43 stations in India and abroad.</p> <p>(e) As stated in the Rationale and Benefits of the Scheme (page 50, Vol. 1 of the SMP) by way of the present Scheme, the Petitioner Companies propose to consolidate their operations to realize the benefits of large-scale operations, operational synergies and efficiencies. Further, there is no bar under the Companies Act, 2013 for companies having negative net worths to amalgamate.</p> <p>(f) Hence, both the Companies are actively running their respective businesses.</p> |
| 5. | <p><i>"The Transferee company may kindly be directed to comply with the provisions of Sections 232(3)(i) of the Companies Act, 2013 regarding the fee payable on its</i></p> | <p>It is submitted that the Transferee Company shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 and undertakes to pay necessary fees, if so, required in compliance with applicable law.</p> |

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| | <p>Authorised Share Capital"</p> | |
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13. Thus, the Petitioner Companies clarified their position vis-a-vis the observations made by RD/ROC. During the hearing held on 03.06.2024, Ld. Company Prosecutor appearing on behalf of RD categorically stated that all of their observations stand satisfied and they have no objection to the Scheme. Hence, it is presumed that there is no such clause in the Scheme, which could be considered oppressive or against the public policy. Hence, we proceed in the matter to examine the Report of Official Liquidator (OL).

14. In response to the notice, the Official Liquidator (OL) also filed its Report dated 12.03.2024 and did not raise any objection towards the approval of the Scheme. The relevant excerpts of the OL's Report read as under:

8. That the Fair valuation of the Companies as on 31.05.2023, recommending the Fair Equity Share exchange ratio for the proposed amalgamation of, M/s AIX CONNECT PRIVATE LIMITED (Transferor Company) with M/s AIR INDIA EXPRESS LIMITED (Transferee Company) was conducted by BDO Valuation Advisory LLP, Registered Valuer, having membership No. IBBI/RV-E/02/2019/103.

9. **OFFICIAL LIQUIDATOR'S OBSERVATIONS:-**

As per the information provided by the Petitioner Companies following litigation are pending against M/s AIX CONNECT PRIVATE LIMITED (Transferor Company) :-

| No | Party Name | Forum | Amount | Description |
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| A. Criminal Proceedings | | | | |
| 1 | AIX Connect Private Limited, its directors, and some unknown govt. officials | CBI Investigation FIR No.: RC AC1 2018 A0010 | Potential criminal proceedings initiated against the Company and its former director and CEO of the Company and certain unidentified government officials. | CBI had registered an FIR against the Company, its former directors, former CEO and some unidentified Government officials for the alleged act of corruption by the company's former officials for seeking alleged removal/amendment of the rule requiring a domestic flight operator to have minimum 5 years' experience of domestic air operations and fleet size of 20 aircraft, to make it eligible for operating international flights (commonly known as of " <u>5/20 rule for the airlines</u> "). Period Involved: 2014 to 2016 (Period in which impugned transactions were undertaken) |
| 2 | AIX Connect Private Limited and its directors/ officials | ED Investigation: for alleged violation of provisions of FEMA; and under Prevention of Money Laundering | Potential criminal proceedings initiated against the Company and its former director and | ED has suo-moto undertaken an investigation against the Company, its directors/ officials for the alleged violation of FEMA rules and the Prevention of Money Laundering Act, 2002 in relation to for seeking alleged removal / |

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| | | Act, 2002 ("PML Act") in connection with the FIR registered by the CBI in 2018. | CEO of the Company and certain unidentified government officials. | amendment the 5/20 Rule for the airline and certain other international transactions made with some foreign entities. Period Involved: 2014 to 2016(Period in which impugned transactions were undertaken) |
| B. Tax Litigation | | | | |
| 3 | AIX Connect Private Limited (AIXC) vs. Commissioner of Central Tax | Appeal in CESTAT, Bangalore. Appeal No. ST/20505/20 22 OIO No. DIN: 20220457YZ 000000F50A | Service Tax 81,58,71,85 4 + Penalty u/s 78 81,58,71,85 4 + Interest u/s 75 Total= 163,17,43,7 08 | <u>Issue Involved:</u> Service tax authorities alleged that the lease of aircraft will qualify as a service and not a transfer of right to use goods (deemed sale) and accordingly levied service tax on the lease rental charges paid by AIXC to the lesser. This claim is currently being contested by AIX Connect before the CESTAT, Bangalore. <u>Period involved:</u> From 2014-15 to 2017-18 (up to June 2017) |
| 4 | AIX Connect Private Limited (AIXC) vs. Commissioner of Central Tax | Appeal in CESTAT, Bangalore. Appeal No. ST/DEFE CT/20628/20 22 OIO No. DIN: 20220457YZ 000000C1E8 | Service Tax 342,95,12,3 84 + Penalty u/s 78 342,95,12,3 84 + Penalty u/s 77 10,000 + Interest u/s 75 Total= 685,90,24,7 | <u>Issue Involved:</u> AIXC was collecting money on behalf of AirAsia group companies from travel agents based in India towards sale of air tickets and the amount was remitted back to AirAsia Berhad situated in Malaysia. The Service tax authorities alleged that the Company was an agent of other parties to whom the monies accrue and accordingly service tax is payable by the Company. This claim is currently being contested by AIX Connect before the CESTAT, Bangalore. <u>Period involved:</u> From |

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| | | | 68 | 2014-15 to 2017-18 (up to June 2017) |
| ++ - Please note that items 5,6 and 7 below refer to the same matter that has been contested across different financial years before the Commissioner of Income-tax (Appeals) by AIXC and that cumulatively the amount involved in these cases amount to INR 223,25,86,414 | | | | |
| 5 | AIX Connect Private Limited (AIXC) vs. Commissioner of Income Tax ++ | Appeal before Commissioner of Income-tax (Appeals), Bangalore. Appeal No. CIT (A), Bengaluru-11/10901/2015-16 Order No. 154 r.w.s 143(3) ITBA/REC/S/15 4_1/2021-22/1037747197(1) | Income Tax 6,89,862* + Penalty 0 + Interest 4,55,268 Total = 11,45,130 | <u>Issue Involved:</u> AIXC was paying lease rentals to Ireland based Aircraft Lessor - Red Lotus Aviation Company without deducting taxes while relying on certain benefits under the India Ireland Tax Treaty. The income-tax department had rejected the applicability of the Treaty benefit and held that AIXC should have withheld taxes on the lease rentals paid and disallowed same. There were other disallowances on account of secondment charges paid to AirAsia Berhad, Advertisement expenses paid to overseas entities on the ground that AIXC has not withheld taxes where there was no obligation on the Company to withheld taxes. In addition, there was protective disallowance of brand license fee payable by AIXC to Air Asia Behard which was waived by the latter on account of non-profitability of AIXC . <u>Period involved:</u> FY 2015-16 |
| 6 | AIX Connect Private Limited (AIXC) | Appeal before Commissioner of Income-tax (Appeals), | Income Tax 41,17,82,26 9* + | <u>Issue Involved:</u> AIXC was paying lease rentals to Ireland based Aircraft Lessor - Red Lotus |

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| | vs. Commissioner of Income Tax++ | Bangalore. Appeal No. CIT (A), Bengaluru- 11/10609/2016- 17 Order No. 154 r.w.s 143(3) ITBA/REC/S/15 4_1/2021- 22/1037747198(1) | Penalty 0 + Interest 21,11,01,49 8 Total = 62,28,83,76 7 | Aviation Company without deducting taxes based on India Ireland Tax Treaty. The income-tax department had rejected the applicability of the Treaty benefit and held that AIXC should have withheld taxes on the lease rentals paid and disallowed same. There were other disallowances on account of secondment charges paid to AirAsia Berhad, Advertisement expenses paid to overseas entities on the ground that AIXC has not withheld taxes where there was no obligation on the Company to withheld taxes. In addition, there was protective disallowance of brand license fee payable by AIXC to Air Asia Behard which was waived by the latter on account of non-profitability of AIXC. <u>Period involved:</u> FY 2016-17 |
| 7 | AIX Connect Private Limited (AIXC) vs. Commissioner of Income Tax++ | Appeal before Commissioner of Income-tax (Appeals), Bangalore. Appeal No. CIT (A), Bengaluru- 11/10671/2017- 18 Order No. 154 r.w.s 143(3) TBA/REC/M/154/ | Income Tax 1,13,72,67, 957* + Penalty 0 + Interest 47,12,89,56 0 Total = | <u>Issue Involved:</u> AIXC was paying lease rentals to Ireland based Aircraft Lessor-Red Lotus Aviation Company, without deducting taxes based on India Ireland Tax Treaty. The income-tax department had rejected the applicability of the Treaty benefit and held that AIXC should have withheld taxes on the lease rentals paid and disallowed same. There were other disallowances on account of secondment charges paid to |

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| | | 021/1039266177() | 1,60,85,57,517 | <p>AirAsia Berhad, AIXC has not withheld taxes where there was no obligation on the Company to withheld taxes.</p> <p>In addition, there was protective disallowance of brand license fee payable by AIXC to Air Asia Behard which was waived by the latter on account of non-profitability of AIXC.</p> <p><u>Period involved:</u> FY 2017-18</p> |
|--|--|-------------------|----------------|--|

Further, as per the information provided by the Petitioner Companies following litigation are pending against M/s Air India Express Limited (Transferee Company) :-

| No | Party Name | Forum | Amount | Description |
|----|--|--|--|--|
| 1 | Air India Express Limited (AIXL) vs. Commissioner of GST | Service Tax/GST Department Order No 55/MRM/PR.Co MMR/ME/2023-24 Dated 31.07.2023 | Rs.56,13,99,924 Cenvat Credit u/s 73 of the Finance Act 1994:- Rs 28,06,94,962 Penalty u/s 78 of the Finance Act, 1994:- Rs-28,06,94,962/- Penalty u/s 77(2) of the Finance Act 1994:- Rs-10,000/- | The case concerns the disallowance of CENVAT credit in relation to certain invoices raised for catering services and more particularly differences between the opening balances in relation to certain returns filed thereto <u>Period involved:</u> April 2006 to June-2017 |

PRAYER:

In view of the submissions made in preceding paras of this report and the observations of the Independent Auditor mentioned as per the audit reports, the

Official Liquidator most respectfully prays that the matter may kindly be decided on merits of the case by this Hon'ble Tribunal.

PLACE: CHANDIGARH

DATED: 12.03.2024



(ANUPAM VASHISTA)
OFFICIAL LIQUIDATOR

15. Further, during the course of hearing held on 03.06.2024, the Ld. Counsel appearing for OL reiterated that OL did not have any objection to the Scheme, although some criminal proceedings are pending against the Transferor company and its Directors, the same can continue individually against the Directors/the person concerned as well as against the Transferee Company, which is provided in Clause 6.1 of the Scheme. This was further confirmed by an Affidavit filed vide C.A. 135 of 2024 on 07.06.2024 by the Transferee Company (which was allowed and kept on record vide order dated 07.06.2024 of this Tribunal), the relevant excerpts of which reads thus:

LEGAL PROCEEDINGS PENDING AGAINST THE PETITIONER COMPANY 1 (TRANSFEROR COMPANY) INCLUDING CRIMINAL PROCEEDINGS IN THE NAME OF THE TRANSFEE COMPANY UPON THE SCHEME BECOMING EFFECTIVE.

1. That the main Petition has been filed seeking sanction of Scheme of Amalgamation ("Scheme") between AIX Connect Private Limited ("Transferor Company" or the "Petitioner Company 1") and Air India Express Limited ("Transferee Company" or the "Petitioner Company 2") and their respective shareholders.
2. That vide orders dated June 3, 2024, this Hon'ble Tribunal was pleased to reserve the order.
3. The Petitioner Companies refer to Affidavits dated December 10, 2023, on behalf of the Petitioner Companies (Annexures P-9 and P-16) filed in the main Company Petition in relation to material investigations or proceedings/litigations whereby disclosure was made with regard inter alia to criminal proceedings.
4. The Petitioner Companies also refer to the report of the Official Liquidator, attached to the Punjab & Haryana High Court, Chandigarh dated March 12, 2024, whereby the Official Liquidator had referred to the disclosure of inter alia criminal proceedings by Petitioner Companies and the affidavit in response of the Transferor Company dated March 27, 2024 to the said report.
5. In furtherance of the above filings made on behalf of the Petitioner






Companies, the Petitioner Companies, out of abundant caution, are filing this application to take on record undertaking by way of Affidavit on behalf of the Petitioner Company 2 in relation to continuation of legal proceedings that are pending against the Transferor Company (including criminal proceedings) in the name of the Transferee Company, upon the Scheme becoming effective.

6. Affidavit on behalf of Petitioner Company 2 dated June 6, 2024 in relation to the continuation of legal proceedings that are pending against the Transferor Company (including criminal proceedings) in the name of the Transferee Company, upon the Scheme becoming effective is marked herewith and annexed as "Annexure A."

16. Now, we proceed on to examine the Reports of the Income Tax Department. In response to the notice, the Income Tax Department too filed its Reports dated (i) First report dated 05.03.2024; (ii) Additional report dated 04.04.2024; (iii) Second revised report dated 08.04.2024 (**"Revised Report"**). The Revised Report of Income Tax Department in respect of the Petitioner Companies reads thus:


Government of India
Income Tax Department
Office of the Deputy Commissioner of Income Tax, Circle-1(1), Gurgaon
5th Floor, HSIIDC Building, Vanijya Nikunj, Udyog Vihar, Phase-V,
Gurugram, Webmail: gurgaon.dcit1.1@incometax.gov.in,
F.No: DCIT/Circle-1(1)/GGN/2024-25/ 24 08.04.2024

To,
The Hon'ble National Company Law Tribunal,
Chandigarh Bench,
Chandigarh.

(Through Standing Counsel)

Sir/Madam,

Sub: CP(CAA) No.1/CHD/HRY/2024 In CA(CAA) No.40/CHD/HRY2023 under Section 230-232 and other applicable provisions of the Companies Act, 2013 in the matter of AIX Connect Private Limited (Applicant Company No.1/Transferor Company), PAN: AALCA4699P and AirIndia Express Limited (Applicant Company No.2/Transferee Company), PAN: AABCA0522B.

Kindly refer to the subject cited above .

2. In this regard, it is submitted that AirIndia Express Limited (Applicant Company No.2/Transferee Company), PAN: AABCA0522B is assessed to tax with DCIT, Circle-1(1), Gurgaon. The report with respect to AirIndia Express Limited (Applicant Company No.2/Transferee Company), PAN: AABCA0522B is submitted as under:-

Details of ITR filed alongwith other details as per ITBA system of the department by the AirIndia Express Limited (Applicant Company No.2/Transferee Company), PAN: AABCA0522B is as under:

| Sl. No. | Particulars | A.Y. | Date of Filing of Return | Gross total Income/Loss (in Rs.) | Refund/Demand (in Rs.) |
|---------|--|---------|---|----------------------------------|---------------------------|
| 1 | Details of ITR filed by the company | 2019-20 | 30.07.2020 | 38,05,70,223 | NIL |
| | | 2020-21 | 31.03.2021 | NIL | 54,49,610 |
| | | 2021-22 | 12.02.2022 | NIL | 2,16,22,385 |
| | | 2022-23 | 03.10.2022 | NIL | 4,20,55,800 |
| 2 | Whether any dues are pending | A.Y. | Date of Order | Demand Outstanding | Amount Collectible |
| | | 2022-23 | 25.03.2024 | 88,550 | 88,550 |
| 3 | Whether any proceedings are pending. | | As per record available on ITBA system there is no proceedings pending in this case except recovery proceeding for outstanding demand. | | |
| 4 | Whether transactions of disproportionate value were under taken by the company. | | Complete account of the company are not available with this office. Therefore, this office is not in a position to report on this aspect. | | |
| 5 | Whether huge cash deposits are found in their account. | | Complete account of the company are not available with this office. Therefore, this office is not in a position to report on this aspect | | |
| 6 | Whether company's bank accounts have been used for money laundering and tax evasion. | | Complete account of the company are not available with this office. Therefore, this office is not in a position to report on this aspect | | |

3. On perusal of the assessee's submission it is observed that outstanding demand of Rs. 88,550/- is due for payment on 24th April, 2024 and assessee undertakes to discharge the same prior to the said date.

4. In view of the above discussion, it is submitted that, this office has no objection subject to, if upon coming in to effect of this scheme of amalgamation, the Hon'ble National Company Law Tribunal may kindly direct that :

All the compliances under the Income Tax Act, 1961 shall be made by the Transferee Company or resultant company after the appointed date. All the tax liabilities and all the pending appeals and proceedings under the Income Tax Act shall be enforced and continued against the Transferee Company.

Yours faithfully,


(Sonia Nain)

Deputy Commissioner of Income Tax,
Circle-1(1), Gurugram.

17. The Petitioner Companies have in their Synopsis filed on 31.05.2024 have captured the conclusion of the Reports of the Income Tax Department, which reads thus:

5. Representations of the Income Tax Department

| |
|---|
| Report of the Income Tax Department relating to Petitioner Company 1 (Diary No. 03968/4 dated March 5, 2024) read with Additional Report of the Income Tax Department relating to Petitioner Company 1 (Diary No. 03968/6 dated April 4, 2024) |
| No-objections. |
| Revised Report of the Income Tax Department relating to Petitioner Company 2 (Diary No. 03968/6 dated April 8, 2024) |
| No-objections. |

18. Thus, it is observed that there is a clear no objection of Income Tax Department in respect of the Petitioner Company No. 1 and 2. Further, as desired by the Income Tax Department in the Revised Report, the Transferee Company/Petitioner 2 has submitted an undertaking that upon sanction of the Scheme, the compliances under the Income Tax Act, 1961 shall be made by the Transferee Company/Petitioner 2 after the appointed date. All the tax liabilities and

all the pending appeals and proceedings under the IT Act shall be enforced and continued against the Transferee Company/Petitioner 2. During the course of hearing on June 3, 2024, it has been observed by this Tribunal that as seen from the Income Tax report, there is some outstanding demand against the Transferee Company which is under appeal. The same shall be subject to the result of the appeal and undertaking given by the Transferee Company.

19. It is submitted by the Petitioner Companies that the Scheme does not attract the requirement to notify/seek approval of the Hon'ble CCI. The Petitioner Companies have also filed Affidavits dated 27.3.2024 confirming the non-applicability of the requirement of notifying/seeking approval of the CCI in relation to the Scheme of Amalgamation by way of C.A No. 92/2024 placed on record.

20. Further, the Petitioner Companies have also submitted that the Ministry of Civil Aviation (MOCA), by way of its no-objection certificate vide letter No. AV-13016/10/2016-DT dated 01.04.2024 (containing therewith letter No. DGCA-14015/2/2024-AT-1 dated 13/14.03.2024 issued by the DGCA), to the Petitioner 1 with a copy to the Petitioner 2, has conveyed its approval to the Scheme. The said letter of Ministry of Civil Aviation (MOCA) dated 01.04.2024 containing therewith the letter dated 13.03.2024 of the DGCA has been placed on record by the Petitioner Companies by way of C.A. No. 84 of 2024, which is reproduced overleaf for immediate reference:

AV-13016/10/2016-DT
Government of India
Ministry of Civil Aviation

B Block, Rajiv Gandhi Bhawan,
New Delhi, Dated 01 April, 2024

M/s AIX Connect Limited,
Block 4, Vatika One on One,
Sector 16, NH 48, Industrial Estate,
Gurugram, Haryana - 122007
[Kind Attn : Shri Alope Singh, Accountable Manager].

Subject: Issuance of NOC with extension for time period of 08 months towards Scheme of Amalgamation of AIX Connect Private Limited ("Transferor Company") with Air India Express Limited ("Transferee Company") and their respective shareholders as filed before the National Company Law Tribunal (NCLT), Chandigarh Bench-reg.

Sir,

I am directed to refer to your letter ref. no. NIL dated 01.03.2024 regarding the above mentioned subject and to convey the approval of the Competent Authority for grant of NOC for the proposed merger of AIX Connect ("Transferor Company") and Air India Express ("Transferee Company") within a time frame of 08 months from the date of the written Order approving the scheme by NCLT to enable the company to complete the process of merger and associated formalities thereof in accordance with DGCA's letter No. DGCA-14015/2/2024-AT-1 dated 14.03.2024 (copy enclosed).

2. This issues with the approval of the Competent Authority.

Yours faithfully,

Signed by

Kameshwar Mishra

(Kameshwar Mishra)

Under Secretary to the Govt. of India
Date: 01-04-2024 17:05:22
Tel No. 011 24648983

Encl. As above

Copy to:-

(i) M/s Air India Express Limited.

(ii) The Director General, Directorate General of Civil Aviation, Opp. Safdarjung Airport, New Delhi - 110003.



A. Khondekar

GOVERNMENT OF INDIA
OFFICE OF THE
DIRECTOR GENERAL OF CIVIL AVIATION
OPP. SAFDARJUNG AIRPORT
NEW DELHI- 110 003, INDIA
दूरभाष / फ़ैक्स : +९१-११-२४६२८९२२
Telefax : +91-11-24628922



भारत सरकार
वायव्य विमानन महानिदेशक का कार्यालय
महानगर बंग विमानतल के सामने
नई दिल्ली - ११० ००३, भारत
संलग्न
एक प्रतः संलग्न की जाे

संख्या/Ref. : DGCA-14015/2/2024-AT-1
(Comp. No. 252175)
To,

दिनांक / Dated: 13.03.2024

The Ministry of Civil Aviation
Rajiv Gandhi Bhawan,
Safdarjung Airport
New Delhi - 110003

[Kind Attn.: Sh. Kameshwar Mishra, Under Secretary]

Subject: Request for Issuance of NOC with extension for time period of 08 months towards Scheme of Amalgamation of AIX Connect Private Limited ("Transferor Company") with Air India Express Limited ("Transferee Company") and their respective shareholders as filed before the National Company Law Tribunal (NCLT), Chandigarh Bench-reg.

Sir,

I am directed to refer to the Ministry's email dated 12.03.2024 forwarding therewith a letter dated 01.03.2024 from AIX Connect Private Limited, seeking comments/inputs from DGCA, and to furnish the following comments/inputs in the matter for consideration of MoCA:

- i. On the day when the proposed scheme of amalgamation comes into effect (Effective Date), AIX Connect Private Limited shall cease to exist as a legal entity. Therefore all the regulatory approvals/aircraft registration as well as the AOC issued to the company shall become invalid. Therefore, pursuant to the NCLT approved scheme of amalgamation, the airlines would be required to move their aircraft, personnel, operations etc. from AIX Connect Private Limited to Air India Express Limited on or before the effective date. Since, the Airline companies are regulated entities, they need approvals from DGCA for the transfer.
- ii. In order to effect transfer/integration of their aircraft and operations, the airline would be required to formulate a transition plan which would inter alia include Safety risk assessment and change management plan including a system of continuous monitoring, changes in the AOC organisation and post holders,

Page 1 of 2



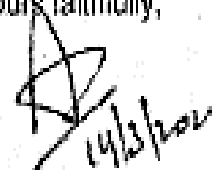
Khandekar

changes/update proposed in regulatory manuals/documents, integration of operational control systems, safety management systems, maintenance arrangements, training plans for pilots/ cabin crew/ engineers and other personnel, aircraft Specific approvals/documents for each aircraft.

- iii. In this regard meeting was also held for discussions with AIX Connect Private Limited and Air India Express Limited on 20.02.2024 on the modalities to be followed for safe and orderly integration of the two airline post approval from NCLT. Considering the size and complexity of the integration exercise the airlines were advised to consider sufficient transition time and suitable effective date in their scheme of amalgamation to be approved by NCLT.
- iv. Based on the discussions with the airlines and the submissions made by AIX Connect Private Limited vide letter dated 01.03.2024, a time frame of 08 months from the written Order approving the Scheme by the NCLT as proposed by AIX Connect Private Limited seems to be reasonable and realistic for achieving the merger/integration keeping the complexities and safety aspects into consideration. However, this projected timeframe is contingent upon the Airlines adhering to their timelines regarding submission of manuals and other compliance obligations which are to be initiated by them in a defined timeframe.
- v. DGCA will engage with the airlines and facilitate required regulatory approvals for the safe and orderly transfer of aircraft and integration between the two airlines.

This issues with approval of Competent Authority.

Yours faithfully,



(Atul Maindola)

Director of Operations - Air Transport
for Director General of Civil Aviation

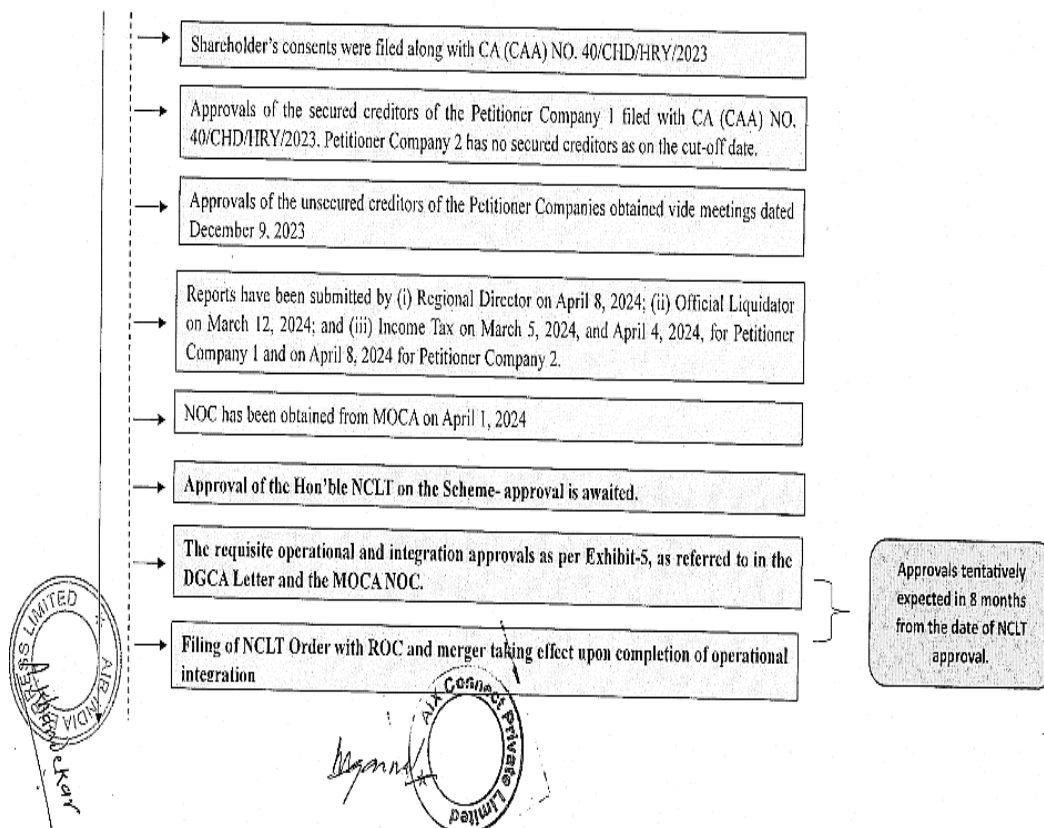
It is submitted by the petitioner companies that by way of the aforesaid NOC, the MOCA, being the competent authority, has conveyed their approval to the Scheme. The MOCA has also granted a time frame of 08 months from the date of the written order of this Tribunal approving the

Scheme to enable the Company to complete the process of merger and associated formalities thereof. The Petitioner Companies have, accordingly, undertaken that they shall take necessary steps to for obtaining applicable approvals/clearances from the MOCA/DGCA/any other authority.

21. Lastly, the Petitioner Companies, by way of C.A. No. 108 of 2024 (Synopsis), inter alia, have also placed a Flow Chart (page No. 44) depicting various compliances required by/from the Regulators. The Flow Chart summarizing the stages of various approvals obtained/required to be obtained by the Petitioner Companies is reproduced thus:

EXHIBIT-6

FLOW CHART DEPICTING THE STAGES AT WHICH VARIOUS APPROVALS HAVE ALREADY BEEN OBTAINED AND CERTAIN APPROVALS THAT WILL BE OBTAINED ONCE THIS HON'BLE TRIBUNAL HAS APPROVED THE SCHEME



22. In view of the foregoing facts, discussions and considering the approval accorded by the shareholders and creditors of both the Petitioner Companies to the proposed Scheme and no sustainable objections having been raised by the Regional Director (North), Official Liquidator, Income Tax Department or any other interested party and that all the necessary and applicable approvals including those of the Sectoral Regulators i.e. DGCA/MOCA that are required for sanction of the Scheme, have already been obtained and are on record with this Tribunal, there appears to be no impediment in granting sanction to the Scheme. **Accordingly, sanction is hereby granted to the “Scheme of Amalgamation” amongst the Petitioner Companies and their respective shareholders under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013.** The sanctioned Scheme shall be binding on the Petitioner Companies and their respective shareholders. The Petitioner Companies shall remain bound to comply with the statutory requirements in accordance with law.

23. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Authority to the Scheme will not come in the way of action to be taken, albeit, in accordance with law, against the concerned persons, Directors, and Officials of the Petitioner Companies.

24. While approving the Scheme as above, it is clarified that this Order should not be construed as an order in any way granting exemption to Petitioner Companies from payment of Stamp Duty, Taxes,

or other statutory dues if any, 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. Further, approval of the Scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act 1961 or serve as any exemption or defence for the Petitioner Companies against tax treatment in accordance with the provisions of the Income Tax Act, 1961.

25. **THIS TRIBUNAL FURTHER DIRECTS** with respect to Transferor Company and Transferee Company, that:

- i. Upon the sanction becoming effective from the appointed date of amalgamation i.e., 29.11.2022, the Transferor Company shall stand dissolved without undergoing the process of winding up on completion of merger and associated formalities after receipt of necessary approvals including as required by DGCA/MCA/any other Authority within a period of 8 months from the date of this order;
- ii. All benefits, entitlements, incentives, and concessions under incentive schemes and policies that the Transferor Company is entitled to including 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;

- iii. All contracts of the Transferor Company, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;
- iv. All the employees of the Transferor Company shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Effective Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged by the Transferor Company, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;
- v. All liabilities of the Transferor Company, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts,

liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company as if it had incurred such liabilities;

- vi. All proceedings now pending by or against the Transferor Company shall continue by or against the Transferee Company.
- vii. Further, all proceedings including criminal proceedings initiated by CBI and ED against the Transferor Company shall continue against the Transferee Company. The criminal proceedings against Directors/individuals of Transferor Company shall continue in individual capacity.
- viii. As observed by RD in its report, the Transferee Company shall comply with the provisions of Section 232 (3)(i) of the Companies Act 2013 in regard to fee payable on its revised authorized share capital.
- ix. The Income Tax Department shall be at liberty to undertake action as deemed fit under the provisions of the Income Tax Act, 1961 as observed by them while conveying approval in respect of and the Petitioner Company 2/Transferee Company shall abide by their undertaking as recorded in Para 18 of this order.
- x. Further, as undertaken by the Transferee Company/Petitioner 2, upon sanction of the Scheme, the compliances under the Income Tax Act, 1961 shall be made by the Transferee

Company/Petitioner 2 after the appointed date. All the tax liabilities and all the pending appeals and proceedings under the IT Act shall be enforced and continued against the Transferee Company/Petitioner 2.

- xi. The Petitioner Companies shall ensure applicable the grant of applicable approvals/clearances in this regard from the MOCA/DGCA or any other authority within a time frame of 08 months from the date of this order.
- xii. Any person interested shall, however, be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

26. The Petitioner Companies, within thirty days of completion of merger and associated formalities after receipt of necessary approvals, shall cause a Certified Copy of this Order to be delivered to the ROC for registration, and on such Certified Copy being so delivered, the Transferor Company shall be dissolved and the ROC shall place all documents relating to the Transferor Company on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Companies shall be consolidated accordingly.

27. **The Second Motion Petition, i.e., CP(CAA) No. 1/Chd/Hry/2024 is allowed, accordingly.**

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(HARNAM SINGH THAKUR)
MEMBER (J)