



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH - COURT III,**

**C. P. (CAA)/141/MB /2024
IN
C.A. (CAA)/58 /MB /2024**

In the matter of the Companies Act, 2013;
And

In the matter of Sections 230 to 232 and
other relevant provisions of the Companies
Act, 2013 read with the Companies
(Compromises, Arrangements and
Amalgamation) Rules, 2016;

And

In the matter of **Scheme of Arrangement
and Merger by Absorption** (Scheme).

MANAJ TOLLWAY PRIVATE LIMITED, a private
limited company, incorporated under the
Companies Act, 1956, having its registered office
at 12th Floor, Krushal Commercial Complex,
Above Shoppers Stop, G.M. Road, Chembur
(West), Mumbai – 400089, Maharashtra, India.

CIN: U70100MH2011PTC224075

*...Petitioner Company 1/
Transferor Company 1*

MAN PROJECTS LIMITED, a public limited
company, incorporated under the Companies
Act, 1956, having its registered office at 12th
Floor, Krushal Commercial Complex, Above
Shoppers Stop, G.M. Road, Chembur (West),
Mumbai – 400089, Maharashtra, India.

CIN: U45200MH2007PLC172365

*...Petitioner Company 2/
Transferor Company 2*

MAN INFRACONSTRUCTION LIMITED, a public
limited company, incorporated under the
Companies Act, 1956, having its registered office
at 12th Floor, Krushal Commercial Complex,
Above Shoppers Stop, G.M. Road, Chembur,
Mumbai – 400089, Maharashtra, India.

CIN: L70200MH2002PLC136849

*...Petitioner Company 3/
Transferee Company*

(hereinafter collectively referred to as “Petitioner Companies”)

Order pronounced on 14.01.2025



Appearances:

For Petitioner Companies: Mr. Rushad Irani, A/w Mr. Narendra Dingankar and Mr. Rishab Jain, Advocates i/b Pioneer Legal

For Regional Director: Adv. Gaurav Jaiswal

For SEBI Veena Hari a/w Abhishek Nair i/b Mansukhlal Hiralal

Per: Smt. Lakshmi Gurung, Hon'ble Member (Judicial)

ORDER

1. Heard Learned Counsel for the Petitioner Companies, the representative of the Regional Director Western Region, Ministry of Corporate Affairs, Mumbai and Securities and Exchange Board of India (SEBI).
2. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and Rules framed thereunder for sanction to the Scheme of Arrangement and Merger by Absorption of Manaj Tollway Private Limited ("**Petitioner Company 1**" or "**Transferor Company 1**") and Man Projects Limited ("**Petitioner Company 2**" or "**Transferor Company 2**"), with Man Infra-construction Limited ("**Petitioner Company 3**" or "**Transferee Company**") and their respective shareholders ("**Scheme**").
3. The Company Scheme Petition No. C.P. (CAA) No. 141/MB/2024 has been filed in consonance with the Order of the Tribunal dated 06.06.2024 passed in the Company Scheme Application No. C.A. (CAA) No. 58/MB/2024.
4. The registered offices of the Petitioner Companies are situated in the State of Maharashtra and hence they are under the jurisdiction of this Tribunal.



5. It is submitted that, the Boards of Directors of the Petitioner Companies have approved the Scheme at their respective Board Meetings held on 22.03.2024, the board resolutions are annexed to the Company Scheme Petition.
6. The Appointed Date is **1st April 2024**.
7. **Nature of Business:**
 - 7.1. **Petitioner Company 1** is primarily engaged in the business of real estate being, purchasing, acquiring, selling, transferring, leasing, letting, constructing, investing in real estate projects and properties and to manage, develop, redevelop, maintain and alter various land parcels and other immovable properties along with rights and privileges attached thereto.
 - 7.2. **Petitioner Company 2** is primarily engaged in the business of constructing, reconstructing, extending, altering or demolishing buildings or tenements, blocks, flats, bungalows, shops, godowns, garages, residential and commercial premises through its own agency or through sub-contractors and dealing in real estate and properties and in particular, purchase, sale, development and transfer of land and/ or other immoveable properties.
 - 7.3. **Petitioner Company 3** is primarily engaged in the business of undertaking contracts/subcontracts for constructing, reconstructing, extending, altering or demolishing buildings or tenements, blocks, flats, bungalows, shops, godowns, garages, residential and commercial premises through its own agency or through sub-contractors and dealing in real estate and properties and in particular, purchase, sale, development and transfer of land and/ or other immoveable properties.



8. **The Rationale of the Scheme:**

The rationale mentioned in the Scheme is as under:

- (a) *Consolidation of businesses of the Petitioner Companies to enable long term sustainability and growth of the merged businesses;*
- (b) *Streamlining of the current holding structure which would lead to a reduction in the number of companies and regulatory compliances thereof;*
- (c) *Better administration and cost optimization from more focused operational efforts, standardization and simplification of business processes, and the elimination of duplication, and rationalization of administrative expenses as well as compliance;*
- (d) *Leveraging of synergies of the Petitioner Companies leading to pooling of resources and achieving economies of scale; and*
- (e) *Greater integration and flexibility to Petitioner Company 3 and strengthening of its position in terms of asset base, revenues and service range.*

9. The Authorised, Issued, Subscribed and Paid-up Share Capital of Petitioner Companies is as follows:

9.1. Petitioner Company 1/ Transferor Company 1:

<u>Particulars</u>	<u>INR</u>
Authorized Share Capital:	
10,80,00,000 Equity Shares of INR 10 each	108,00,00,000
Total	108,00,00,000
Issued, Subscribed and Paid-up Share Capital:	
50,00,000 Equity Shares of INR 10 each	5,00,00,000
Total	5,00,00,000



9.2. Petitioner Company 2/ Transferor Company 2:

<u>Particulars</u>	<u>INR</u>
Authorized Share Capital:	
5,00,000 Equity Shares of INR 10 each	50,00,000
Total	50,00,000
Issued, Subscribed and Paid-up Share Capital:	
5,00,000 Equity Shares of INR 10 each	50,00,000
Total	50,00,000

9.3. Petitioner Company 3/ Transferee Company:

<u>Particulars</u>	<u>INR</u>
Authorized Share Capital:	
45,00,00,000 Equity Shares of INR 2 each	90,00,00,000
Total	90,00,00,000
Issued, Subscribed and Paid-up Share Capital:	
37,12,50,405 Equity Shares of INR 2 each	74,25,00,810
Total	74,25,00,810

10. It is submitted that on 23.01.2024, Petitioner Company 3 has allotted 3,50,46,100 Warrants, each convertible into 1 Equity Share to 133 allottees. Out of the said Warrants, 9,37,760 Warrants held by 24 allottees have been converted into 9,37,760 Equity Shares on 02.09.2024 and the paid-up share capital of Petitioner Company 3 has increased to INR 74,43,76,330/- (Indian Rupees Seventy Four Crores Forty Three Lakhs Seventy Six Thousand Three Hundred and Thirty Only). On conversion of all the Warrants, the capital structure of Petitioner Company 3 will change accordingly. Assuming full



conversion, the paid-up share capital of Petitioner Company 3 post merger will be INR 81,25,93,010 (Indian Rupees Eighty-One Crores Twenty Five Lakhs Ninety Three Thousand and Ten Only).

11. Consideration:

11.1. No consideration is required to be or shall be discharged by Transferee Company pursuant to the Scheme of merger, as both Transferor Companies are wholly owned subsidiaries of the Transferee Company. Accordingly, no shares of Transferee Company shall be issued in lieu of/ exchange of the holding of Transferee Company in Transferor Companies (held directly and jointly with their respective nominee shareholders), and the issued and paid-up share capital of Transferor Companies will stand cancelled, without any further act, instrument or deed.

12. The Tribunal *vide* Order dated 06.06.2024 admitted the Company Scheme Application bearing no. CA(CAA)/58/MB/2024 and *inter-alia*, gave the following order/directions:

- a) Dispensation of the convening and holding of the meetings of the equity shareholders of Petitioner Company 1 and 2 in view of the consent affidavit(s) obtained from all equity shareholders of Petitioner Company 1 and 2;
- b) Dispensation of the convening and holding of the meetings of the secured and unsecured creditors of Petitioner Company 1 and 2 in view of the fact that there were no secured and / or unsecured creditors in Petitioner Company 1 and 2;
- c) Dispensation of the convening and holding of the meetings of the equity shareholders, secured and unsecured creditors of Petitioner Company 3 since the Scheme does not propose any



compromise or arrangement with or affect the rights and interests of the members or creditors of Petitioner Company 3;

- d) Issuance of notice by Petitioner Company 3 to each of its creditors, having an outstanding amount of more than Rs. 50,000/- (Indian Rupees Fifty Thousand Only);
- e) Issuance of notice by the Petitioner Companies to various relevant statutory authorities in terms of Section 230(5) of the Companies Act, 2013; and

13. Accordingly, Petitioner Company 3 has served notices to each of such Secured and Unsecured Creditors at their respective last known addresses as per the records of Petitioner Company 3, by registered post and the proof of the same is attached in the Affidavit of Service dated 23.09.2024 filed with the Tribunal by Petitioner Company 3 in this regard.
14. Further, Petitioner Companies have served notices by email and hand delivery upon various relevant statutory authorities in terms of Section 230(5) of the Companies Act, 2013, as per the directions vide the Order dated 06.06.2024.
15. The Petitioner Companies have made available the notices to regulatory authorities and the concerned secured and unsecured creditors of Petitioner Company 3, on the website of Petitioner Company 3, as per the directions vide Order dated 06.06.2024.
16. The Petitioner Companies have filed the requisite **affidavits of service** stating that the directions *inter alia* regarding issuance of notices to regulatory authorities and the concerned secured and unsecured creditors of Petitioner 3, have been duly complied with by the Petitioner Companies, as per the directions vide Order dated 06.06.2024.



17. The Petitioner Companies have complied with all the requirements as per directions vide Order dated 06.06.2024 and they have made requisite filings with this Tribunal to demonstrate the compliance. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if and to the extent applicable, as may be required under the Companies Act, 2013 and the rules made thereunder.
18. The Petitioner Companies have complied with all the directions issued in the order dated 14.08.2024 in the Company Scheme Petition (NCLT Directions).
19. The Petitioner Companies have served notice of final hearing of the captioned Company Scheme Petition on the regulatory authorities on 02.09.2024 and 03.09.2024, as per NCLT Directions. The Petitioner Companies have filed Affidavits of Service on 23.09.2024 evidencing service of the said notice upon the regulatory authorities.
20. The Petitioner Companies have also published the notice of final hearing of the captioned Company Scheme Petition in the **Business Standard** in English Language and a Marathi translation thereof in **Navshakti** on 30.08.2024, as per NCLT Directions. The Petitioner Companies have filed an Affidavit of Service on 23.09.2024 evidencing publication of the said notice in the said newspapers.
21. The Regional Director has filed Report dated 30.09.2024 ("**RD Report**"). In response to the observations made by the Regional Director, the Petitioner Companies have given necessary clarifications and undertakings *vide* their Affidavit in rejoinder dated 01.10.2024. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:



Para	Observations in the RD Report	Response of the Petitioner Companies
2(a) 2(a)(i)	That on examination of the report of the Registrar of Companies, Mumbai dated 24.09.2024 for Petitioner Companies (Annexed as Annexure A-1) that the Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and/or representation regarding the proposed scheme of Arrangement has been received in the matter of Petitioner Company. Further, the Petitioner Companies have filed Financial Statements up to 31.03.2023. The ROC has further submitted that in his report dated 24.09.2024 which are as under :- i. That the ROC Mumbai in his report dated 24.09.2024 has also stated that No Inquiry,	As regards the observations made in Paragraphs 2(a) and 2(a)(i) of the said Report, it is submitted that the observations made by the ROC are self-explanatory and merely factual in nature and thus, no further response is required to that extent.



Para	Observations in the RD Report	Response of the Petitioner Companies
	Inspection, Investigations, Prosecutions, Technical Scrutiny and Complaint under CA, 2013 have been pending against the Petitioner Companies.	
2(a)(ii) (a) and (b)	Further ROC has mentioned as follows:- a) Both the Transferor companies and Transferee company are required to be issued composite notice in Form CAA-3 to other sectorial Regulators/ Authorities. b) Transferee Company is required to be issued composite notice in CAA-3 to SEBI & stock exchanges. Hence, the Petitioner Companies shall undertake to submit detail reply against observations mentioned above.	As regards the observations made in Paragraphs 2(a)(ii)(a) and (b) of the said Report, the Petitioner Companies submit that they have served notices as per Form CAA – 3 to all requisite sectoral regulators/ authorities, including SEBI and the stock exchange(s) on which the equity shares of Petitioner Company 3 are listed. The Petitioner Companies have filed their respective affidavits of service dated July 5, 2024, and July 6, 2024, in this regard. The Petitioner Companies crave leave to refer to their respective affidavits of service as and when necessary to do so. Neither does the Companies Act, 2013 nor do the Companies (Compromises, Arrangements and



Para	Observations in the RD Report	Response of the Petitioner Companies
		Amalgamations) Rules, 2016 mandate that a composite notice is required to be sent to the statutory authorities. Hereto annexed and marked as Annexure – A are copies of the notices as per Form CAA – 3 sent to all relevant statutory authorities along with the requisite acknowledgments of the said statutory authorities.
2(a)(ii) (c)	The necessary stamp duty on transfer of property or assets is to be paid to the respective authorities before the implementation of the scheme. Hence, the Petitioner Companies shall undertake to submit detail reply against observation mentioned above.	As regards the observation made in Paragraph 2(a)(ii)(c) of the said Report, the Petitioner Companies submit and undertake that on approval of the Scheme by this Hon'ble Tribunal, the Petitioner Companies shall be required to file the certified true copy of the order with the relevant Registrar of Companies as per the Companies Act, 2013, to give effect to the Scheme. Accordingly, post approval of the Scheme by this Hon'ble Tribunal and filing of Form INC-28 with the Registrar of Companies, the Petitioner Companies shall



Para	Observations in the RD Report	Response of the Petitioner Companies
		submit requisite application with the jurisdictional stamp duty authority for adjudication and discharge of applicable stamp duty on the aforesaid order of NCLT within applicable time period.
2(a)(ii) (d)	As per provisions of section 232(3)(i) of CA, 2013 where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting off the fees already paid by the transferor company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to amalgamation.	As regards the observation made in Paragraph 2(a)(ii)(d) of the said Report, the Transferee Company submits that it would comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 with respect to payment of differential fees in respect of the share capital and undertakes to pay the differential fees, if any.



Para	Observations in the RD Report	Response of the Petitioner Companies
	Hence, the Petitioner Companies shall undertake to submit detail reply against observation mentioned above.	
2(a)(ii) (e)	Interest of the Creditors should be protected. Hence, the Petitioner Companies shall undertake to submit detail reply against observation mentioned above.	As regards the observation made in Paragraph 2(a)(ii)(e) of the said Report, it is submitted that the interest of creditors shall be protected at all times.
2(b)	Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies.	As regards the observation made in Paragraph 2(b) of the said Report, as stated above, the Transferee Company reiterates that it would comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 with respect to payment of differential fees in respect of the share capital and would pay the differential fees, if any.
2(c)	In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the resultant	As regards the observation made in Paragraph 2(c) of the said Report, the Transferee Company



Para	Observations in the RD Report	Response of the Petitioner Companies
	company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.	undertakes to comply with Accounting Standard-14 or IND AS-103 and undertakes to pass such accounting entries which are necessary in connection with the Scheme to comply with all applicable Accounting Standards including AS-5 or IND AS-8, etc., to the extent applicable.
2(d)	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.	As regards the observation made in Paragraph 2(d) of the said Report, the Petitioner Companies hereby submit and confirm 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.
2(e)	The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the	As regards the observation made in Paragraph 2(e) of the said Report, the Petitioner companies confirm that as per the provisions of Section 230(5) of the Companies Act, 2013, the Petitioner Companies have served notices to all the concerned authorities: Regional Director,



Para	Observations in the RD Report	Response of the Petitioner Companies
	Hon'ble Tribunal may not deter such authorities from dealing with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner Companies concerned.	Registrar of Companies, the Official Liquidator, the Stock Exchanges, SEBI, Goods and Service Tax Authority, Maharashtra Real Estate Regulatory Authority and the Income Tax Department and the observations, where made by the concerned authorities, have been dealt with by the Petitioner Companies, wherever required. Further, the approval of the Scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the Scheme. Such issues will be addressed in accordance with law and the Petitioner Companies shall be bound by any decision of such authorities that is made in accordance with law subject to right of appeal, if available. The notices sent to all relevant statutory authorities in compliance with Section 230(5) of the Companies Act, 2013, along with the requisite acknowledgments of the said



Para	Observations in the RD Report	Response of the Petitioner Companies
		statutory authorities, is attached as Annexure A to this affidavit.
2(f)	As per Definition of the Scheme, "Appointed Date" means 1st day of April 2024; "Effective Date" means the last of the dates on which the certified or authenticated copy of the order of the National Company Law Tribunal, Mumbai sanctioning the Scheme is filed with the Registrar of Companies by the Transferor Company – I, Transferor Company – II and by the Transferee Company. Any references in this Scheme to the date of "coming into effect of this Scheme" or "effectiveness of this Scheme" or "Scheme taking effect" shall mean the Effective Date;	As regards the observation made in Paragraph 2(f) of the said Report, the Petitioner Companies clarify that the Appointed Date, which is April 1, 2024 as mentioned in the Scheme, is in compliance with the Companies Act, 2013 and that the Scheme shall be deemed to be effective from such Appointed Date. However, the Scheme will come into effect only on the Effective Date, which is the date on which certified or authenticated copies of the order sanctioning this Scheme, passed by the National Company Law Tribunal at Mumbai are filed with the Registrar of Companies, Mumbai, Maharashtra. Further, the Petitioner Companies have complied with the requirements clarified vide circular No. 7/12/2019/CL - 1 dated August 21, 2019 issued by the Ministry of Corporate Affairs, as the Appointed



Para	Observations in the RD Report	Response of the Petitioner Companies
	It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. No. 7/12/2019/CL - 1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.	Date is after the date of filing the Company Application with this Hon'ble Tribunal and not ante dated.
2(g)	Petitioner Companies shall undertake to comply with the directions of the Income Tax Department and the GST Authorities, if any.	As regards the observation made in Paragraph 2(g) of the said Report are concerned, the Petitioner companies undertake to comply with the directions of the Income Tax Department and GST Department, if any, in accordance with applicable law.
2(h)	The Transferee Company is listed company with BSE therefore the Transferee Company and Transferor Companies shall undertake to comply with the provisions of the SEBI (LODR) Regulation, 2015 and observation letter issued by BSE, if any.	As regards the observation made in Paragraph 2(h) of the said Report are concerned, the Securities and Exchange Board of India (" SEBI ") master circular SEBI/HO/CFD/POD-2/ P/ CIR/ 2023/93 dated June 20, 2023 (" SEBI Master Circular ") read with Regulation 37 of the SEBI (Listing Obligations and Disclosure



Para	Observations in the RD Report	Response of the Petitioner Companies
		Requirements) Regulations, 2015, as amended (" SEBI LODR Regulations ") lays down the detailed requirements to be complied with by listed entities while undertaking schemes of arrangements, including the requirement of obtaining No Objection Certificate (" NOC ") / Observation Letter from the Stock Exchanges on the draft Scheme. However, Clause 4 of the SEBI Master Circular read with Regulation 37(6) of the SEBI LODR Regulations expressly provides that the requirements therein shall not apply to schemes which provide for merger of a wholly owned subsidiary or its division with the parent company. Further, Clause 4 of the SEBI Master Circular read with Regulation 37(6) of the SEBI LODR Regulations provides that the draft schemes are simply required to be filed with the Stock Exchanges for the purpose of disclosures. Since Petitioner



Para	Observations in the RD Report	Response of the Petitioner Companies
		Company 1 and Petitioner Company 2 are wholly owned subsidiaries of Petitioner Company 3, Petitioner Company 3 is not required to obtain an NOC/ Observation Letter from the Stock Exchanges. However, a copy of the Scheme along with the Board Resolution of Petitioner Company 3 approving the Scheme have been duly disclosed to both BSE and NSE, on which the equity shares of Petitioner Company 3 are listed, in compliance with the SEBI Master Circular and the SEBI LODR Regulations. In any event, the Petitioner Companies undertake to comply with the provisions of the SEBI LODR Regulations, and observation letter issued by the stock exchanges, including BSE, if any.
2(i)	Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory including	As regards the observations made under Paragraph 2(i) of the said Report are concerned, the Petitioner Companies undertake to



Para	Observations in the RD Report	Response of the Petitioner Companies
	RERA Authority as Petitioner Companies are involved into business of real estate being purchasing, acquiring, selling, transferring, leasing, letting, constructing, investing in real estate projects and properties and to manage, develop, redevelop, maintain and alter various land parcels and other immovable properties along with rights and privileges attached thereto, if any.	comply with the directions, if any, of the concerned sectoral regulatory authority including RERA, as per applicable law.
2(j)	No Form BEN-2 has been filed by any of the Petitioner Companies as per records available at MCA21 Portal, hence Petitioner Companies shall undertake to comply with the provisions of section 90 of Companies Act, 2013 r/w. Proviso to Rule 8(h) of Companies (Significant Beneficial Owners) Amendment herein it is mandatory to file Form BEN-2 by Transferor	As regards the observations made under Paragraph 2(j) of the said Report are concerned, the Petitioner Companies state that the Petitioner Company 1 and 2 have filed the requisite BEN 2 forms. Hereto annexed and marked as Annexure – B and Annexure – C are copies of the said forms filed by the Petitioner Company 1 and Petitioner Company 2, respectively, along with their respective challans. The Petitioner Companies



Para	Observations in the RD Report	Response of the Petitioner Companies
	Companies for its shareholder i.e., holding company.	further submit that Petitioner Company 1 and Petitioner Company 2 are wholly owned subsidiaries of Petitioner Company 3 and that there has been no change in the shareholding pattern of Petitioner Company 1 and Petitioner Company 2 after the filing of the aforesaid forms. In the circumstances, Petitioner Company 1 and Petitioner Company 2 are not required to file any further BEN 2 forms. As regards Petitioner Company 3, there is no company/LLP holding more than 10% shareholding in Petitioner Company 3 and thus, Petitioner Company 3 is not required to file any BEN 2 forms. In any event, the Petitioner Companies undertake to comply with the provisions of Section 90 of Companies Act, 2013 r/w Proviso to Rule 8(h) of Companies (Significant Beneficial Owners) Amendment Rules, as and to the extent applicable, and file the requisite BEN 2 forms in the future,



Para	Observations in the RD Report	Response of the Petitioner Companies
		if it is eventually determined that they are required to do so under applicable law.

22. Heard the submission of the Petitioner Companies and the Regional Director. Upon perusal of the response received from the Petitioner Companies to the RD's Report, Ld. Counsel submits that there are no further observations/objections.
23. The Official Liquidator, attached to the Bombay High Court ("**Official Liquidator**") has filed its Report dated 27.09.2024 ("**OL Report**"). The observations of the Official Liquidator, the reply of the Petitioner Companies in their joint affidavit dated 01.10.2024, are set out in tabular format below:

Para	Observations in the OL Report	Response of the Petitioner Companies
6	With reference to part D Clause No. 1.1 of the scheme it is stated that such clauses overrides the provision of Companies Act, 2013 namely Section 232(3)(i) which inter-alia provides that, 'if a company is dissolved, the fees paid by such company on its Authorised Capital shall be set off	The Petitioner Companies confirm and clarify that as set out in Clause 1.1. of Part D of the Scheme, the Transferee Company shall pay the differential fees (if any) after setting off fees already paid by the Transferor Companies in respect of their Authorized Share Capital.



Para	Observations in the OL Report	Response of the Petitioner Companies
	against any fees payable by the transferee company on its Authorised Capital. Hon'ble Tribunal may be pleased to direct Transferee Company to pay differential amount, if any, after setting off fees already paid by the Transferor Company.	
7	From the Assets and Revenue of the 1) Manaj Tollway Private Limited 2) Man Projects Limited (Transferor Companies) as at 31.03.2023 it appears to be a deemed NBFC. There may be applicability of provisions of Section 45-IA of Reserve Bank of India Act. Hon'ble Tribunal may require the Companies to clarify on this.	On May 8, 2023, Petitioner Company 1 had addressed a letter to RBI, informing RBI that Petitioner Company 1 met the RBI's criteria for an NBFC which required Petitioner Company 1 to apply as an NBFC and for the reasons contained in the said letter, Petitioner Company 1 sought time from RBI to implement a proper business plan as it did not intend to carry on business as an NBFC. Accordingly, RBI, vide its letter dated July 14, 2023, advised Petitioner Company 1 to ensure that it did not meet the Principal Business Criteria (which required a company to register as an NBFC) in



Para	Observations in the OL Report	Response of the Petitioner Companies
		future. Pursuant to the same, the Board of Directors of Petitioner Company 1, on March 22, 2024, decided to merge Petitioner Company 1 with and into Petitioner Company 3 and hence approved the Scheme. As provided in the Scheme, the Petitioner Company 1 will stand dissolved without winding up w.e.f. the Appointed Date of the Scheme i.e., April 1, 2024. This was informed to the RBI <i>vide</i> Petitioner Company 1's letter dated March 28, 2024. The aforesaid information was provided to the Ld. Official Liquidator <i>vide</i> the letter of Petitioner Company 1 dated July 31, 2024. Further, the aforesaid letter of the Petitioner Company 1 addressed to RBI dated March 28, 2024, regarding the actions taken by the Petitioner Company is also noted in the Statutory Auditor's report for the Financial Year ended March 31, 2024.



Para	Observations in the OL Report	Response of the Petitioner Companies
		In respect of Petitioner Company 2, as the ratio of financial assets to total assets did not cross 50%, no registration as an NBFC is required. The financial assets as per the Audited Financial Statements for the year ended March 31, 2023, are entirely in the form of cash and cash equivalents and bank balances other than cash and cash equivalents, which are not covered under the definition of NBFC business activity as per the Regulation issued by RBI. Additionally, the Independent Auditor's report on the Audited Financial Statements for the year ended March 31, 2023, clearly states that the Petitioner Company 2 is not required to register as an NBFC with the RBI.
8	It is observed from the information submitted by the 1) Manaj Tollway Private Limited (First Transferor Company) that, there are litigations pending	Petitioner Company 3 (the Transferee Company) submits that as set out under the Scheme, all the pending litigation / legal proceedings by or against the



Para	Observations in the OL Report	Response of the Petitioner Companies
	before High Court, Bombay. Hon'ble Tribunal may consider the facts on its merit as deem fit and proper.	Transferor Companies will be continued and / or enforced by or against the Transferee Company from the Effective Date of the Scheme.

24. As a reply to the para 7 of the OL Report, the Petitioner Companies have submitted that the Petitioner Company 1 was meeting the principal business criteria of a Non-banking Financial Company ("**NBFC**") only because the Petitioner Company 1 received a sum of INR 377,72,25,845/- Crore (Indian Rupees Three Hundred Seventy Seven Crore Seventy Two Lakhs Twenty Five Thousand Eight Hundred and Forty Five only) up to FY 2021-2022 under an arbitral award dated August 17, 2018 read with consent terms dated December 10, 2019 filed before the Hon'ble High Court of Judicature at Bombay on December 12, 2019. While Petitioner Company 1 was exploring new business opportunities, the said surplus funds were deployed as loans to group/other entities for business purposes and thus the aforesaid amount, is shown as a financial asset in the balance sheet of Petitioner Company 1 for FY 2022-2023.

25. It is stated that it is for this reason alone that the financial assets of Petitioner Company 1 exceeded 50% of its total assets for FY 2022-2023 as the Petitioner Company 1 did not have any business income. The Petitioner Company 1 addressed a letter dated May 8, 2023, to the Reserve Bank of India ("**RBI**") stating that Petitioner Company 1 did not intend to carry on business of a NBFC and requested for sufficient time



to explore other business opportunities. The RBI considered the same which is why *vide* letter dated July 14, 2023, the RBI advised Petitioner Company 1 to ensure that it does not meet the principal business criteria in the future, and only approach the RBI for registration as a NBFC in case Petitioner Company 1 met the principal business criteria. In such circumstances, Petitioner Company 1 is not required to register itself as a NBFC under Section 45-IA of the Reserve Bank of India Act, 1934. It was submitted by the company during the course of the company that post sanction of the Scheme, the Transferee Company shall not carry on the business of an NBFC without obtaining the registration from the RBI.

26. Further, Point No. 8 of the OL Report, the Official Liquidator has pointed out that the following litigations are pending *vis-à-vis* Petitioner Company 1:

Sr No	Court / Tribunal / Investigation	Parties	Brief Summary	Current Status
1.	Hon'ble High Court, Bombay	Manaj Tollway Private Limited v/s The State of Maharashtra	In the High Court at Judicature at Bombay-Ordinary Original Civil Jurisdiction in its Commercial Division-Commercial Execution Application (L) No. 6558 of 2024 in Consent Terms dated 10 th December 2019 filed by Manaj Tollway Private Limited against	Pre-Admission

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH - COURT III,

C. P. (CAA) /141/MB /2024
IN
C. A. (CAA) /58 /MB /2024



Sr No	Court / Tribunal / Investigation	Parties	Brief Summary	Current Status
			<i>the State of Maharashtra represented by the Secretary Public Works Department (Application for execution under Order XXI Rule 11(2) of the Code of Civil Procedure).</i>	
		<i>Inspector General of Registration and Collector of Stamps Pune through Dy. Igr. Petitioner Mumbai... v/s Manaj Tollway Private Limited And Anr.....Respondent</i>	<i>Interim Application No. 2398 of 2023 In Commercial Execution Application No. 310 of 2019 WITH Commercial Execution Application (L) No. 6558 of 2024</i>	<i>Pre Admission</i>



27. Petitioner Company 1, *vide* its joint affidavit dated 01.10.2024, has clarified to the Official Liquidator that as provided under the Scheme, all pending litigations/ legal proceedings by or against the Transferor Companies, including the above, will be continued and/or enforced by or against the Transferee Company from the Effective Date of the Scheme. No further observations have been noted by the Official Liquidator.

Compliance of SEBI Regulations

28. The equity shares of Transferee Company are listed on Bombay Stock Exchange Limited and National Stock Exchange of India Limited. Accordingly, notices were issued to the Stock Exchanges and SEBI.
29. Adv. Veena Hari appearing on behalf of the SEBI, in the course of hearing stated that they have gone through the data of the companies and the applicable regulations. SEBI has no objection to the scheme of arrangement of amalgamation of 2 wholly owned subsidiary companies (Transferor Companies) into the Transferee Company which is a listed company. Submission on behalf of SEBI is taken on record.
30. The Petitioner Company shall comply with the provisions of the SEBI LODR Regulations and observation letter issued by the stock exchanges including BSE.

Compliance of RBI Regulations

31. Post sanction of the Scheme, the Transferee Company shall not carry on the business of an NBFC without obtaining the registration from the RBI.



Compliance to RERA Law

32. Further, the Petitioner Company is directed to comply with the directions of the concerned sectoral Regulatory including Real Estate Regulatory Authority (RERA).

Other compliances

33. The Statutory Auditors of the Transferee Company have examined the Scheme in terms of provisions of Sections 230-232 and certified that the accounting treatment contained in the Scheme is in compliance with the applicable accounting standards specified under Section 133 of the Companies Act, 2013.
34. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
35. No objection has been received by the Tribunal opposing the Company Scheme Petition and nor has any party controverted any averments made in the Company Scheme Petition.
36. The shareholders and Creditors of the Petitioner Companies are the best judges of their interest. Their decision should not be ordinarily interfered with by the Tribunal as per the decision of Hon'ble Supreme Court in **Miheer H. Mafatlal vs. Mafatlal Industries Ltd [JT 1996 (8) 205]** wherein it was held as follows:

“It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court.”

37. In view of the foregoing, upon considering the approval accorded by the members of the Petitioner Company 1 and 2 to the proposed Composite Scheme of Arrangement, and the affidavit filed by the Regional Director,



the report of the Official Liquidator and the rejoinder and undertakings of the Petitioner Companies, there appears to be no impediment in sanctioning the present Scheme as the Scheme appears to be reasonable and is not violative of any provisions of law and is not contrary to public policy.

38. All pending complaints/ inspection/ litigation of Transferor Companies will continue with by or against the Transferee Company and approval of the Scheme will not deter the concerned authorities including but not limited to the Income Tax Department to continue and/or initiate any further legal proceedings against the Transferee Company in case any violation is found in relation to the conduct of affairs by the Transferor Companies or arising out of any complaint, inspection or investigation.
39. The effectiveness of this Scheme shall not deter any regulatory authorities to initiate action, proceedings, prosecution, investigation or any regulatory action against the Transferor Companies and Transferee Company undertakes all such proceedings shall continue in its own name.
40. Allowing this Scheme, the Tribunal does not deter concerned authorities from dealing with any issues arising in future and the decision of such authorities shall be binding on the Transferee Company as per applicable law, even for the issues relating to Transferor Company 1 and Transferor Company 2.
41. The Scheme annexed to the Company Scheme Petition is hereby sanctioned, and the Appointed Date of the Scheme is **1st April, 2024**. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors, Employees and/or any other stakeholders concerned.



ORDER

42. Consequently, sanction is hereby **granted** to the Composite Scheme of Arrangement under Sections 230 to 232 of the Companies Act, 2013 and other applicable provision of Companies Act, 2013 read with Companies (Compromise, Arrangements and Amalgamation) Rules, 2016 with the following directions:
- a. All the Transferor Companies shall be dissolved without winding up;
 - b. If there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit in accordance with law, against the concerned persons, directors and officials of the Transferor Companies and Transferee Company;
 - c. While approving the Scheme, we clarify that this Order should not, in any way, be construed as an Order granting exemption from payment of stamp duty, taxes or other charges, if any, and payment in accordance with law or in respect of any permission or compliance with other requirements which may be specifically required under any law;
 - d. The Income Tax Department will be at liberty to examine the aspect of any tax payable by the Companies or by the Shareholders of the Transferor Companies. It shall be open to the income tax authorities to take necessary action as permissible under the Income Tax Law;
 - e. The Petitioner Companies are directed to file a certified copy of this Order along with the Scheme duly authenticated/certified by the Deputy Registrar or the Joint Registrar or the Assistant



Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Registrar of Companies, electronically in e-form INC-28 within 30 (thirty) days from the date of receipt of the certified copy of this Order along with the Scheme.

- f. Certified copy of this Order along with the Scheme be also submitted to all the concerned statutory authorities;
- g. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the Certified copy of the Order from the Registry;
- h. All the employees of the Transferor Company in service, on the date immediately preceding the date on which the Scheme takes effect i.e. the Effective Date, shall become the employees of the Transferee Company on such date, without any break or interruption in service and upon terms and conditions not less favourable than those subsisting in the concerned Transferor Companies on the said date.
- i. Employees/ workmen of Transferor Companies, if any, will not be retrenched/ terminated in the terms of amalgamation of Transferor Companies with Transferee Company;
- j. Any proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company;
- k. All the properties, rights, liabilities, duties and powers of the Transferor Companies, be transferred without further act or deed, to the Transferee Company and accordingly the same shall,



pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee Company;

1. The Registrar of Companies is entitled to proceed against the Transferee Company for violation/ offences committed by Transferor Company, if any.
 - m. Since all the requisite statutory compliances have been fulfilled, Company Petition bearing C.P.(CAA)/141/MB/2024 filed by the Petitioner Companies is made absolute in terms of prayers clause of the said Company Scheme Petition; and
 - n. Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
 - o. Any concerned authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
 - p. All concerned regulatory authorities to act on a copy of this Order duly certified by the Registry of this Tribunal, along with a copy of the Scheme.
43. Ordered Accordingly. Thus, the present Scheme shall stand to be **disposed of**.

‘Files to be Consigned to the Records’

Sd/-

CHARANJEET SINGH GULATI
MEMBER (TECHNICAL)

(Saayli, LRA)

Sd/-

LAKSHMI GURUNG
MEMBER (JUDICIAL)