NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH

Company Appeal (AT) No. 132 of 2021

[Arising out of Order dated 29.10.2021 passed by the Adjudicating Authority/National Company Law Tribunal, Mumbai Bench, in CA 156 of 2021 and CA 261 of 2021 In CP (CAA) No. 70/MB/2021 Connected with CA (CAA) No. 3083/MB/2019 & CA(CAA) No 129/MB 11/2019.]

IN THE MATTER OF:

1. **Mr. Jatinder Singh Ahuja**
S/o Mr. Kishan Singh Ahuja
Aged about 62 years
R/o H.No. 38/15, Ashok Nagar,
Delhi – 110018
Email id:- jatinder01959@gmail.com **...Appellant No. 1**

2. **Mr. Vaidyanathan Venkateswara Trichur**
S/o Mr. K Venkateswara Iyer
Aged about 70 Years
R/o B905, Mantri Synergy,
Rajiv Gandhi Salai,
Padur 603103,
Tamil Nadu
Email id: girijal602@gmail.com **...Appellant No. 2**

3. **Mr. Vijesh Viswanathan**
S/o Mr. S. Viswanathan
Aged about 46 Years
R/o A402 Keerthi Signature,
Opposite Forum Shantiniketan,
Hoodi, Bangalore 560048
Email : vvijes@gmail.com **...Appellant No. 3**

4. **Mr. Saibabu.C**
S/o Mr. Nageswar Rao
Aged about 75 years
Villa-33, Meenakshi Bamboos,
Gachi Bowli,
Hyd. Pin : 500032.
Email id: chundurisb@gmail.com **...Appellant No. 4**

5. **Mrs. Nayanatara. C**
D/o Mr. Durga Prasadarao
Aged about 69 Years
Rio Villa-33, Meenakshi Bamboos,
Gachi Bowli, Hyd. Pin: 500032.
Email id : chundurisb@gmail.com **...Appellant No. 5**

6. **Mr. Venkateswara Rao Akkineni**

S/o Mr. Ranga Rao Akkineni
Aged about 65 Years
Rio 52-1/8- 1 OC,
NTR Colony Road No.2,
Gunadala,
VIJAYAWADA, PIN: 520008
Email id:- avrao333@rediffmail.com **...Appellant No. 6**

7. **Mr. Beereddy Jagan Mohan Reddy**
S/o Mr. Lakshma Reddy
Aged about 66 years
R/o Vill. 9 Green Space Hill Park
Narsingi 500075
Email ID : bjmreddy.b@gmail.com **...Appellant No. 7**

8. **Mrs. Babita Bhutoria**
D/o Mr. Duli Chand Chhajer
Aged about 50 Years Rio 10,
Belvedere Road,
Alipore, Kolkata,
Alipore, West Bengal- 700027
Email id:- Babitabhutoria49@gmail.com **...Appellant No. 8**

9. **Mrs. Binita Bhutoria**
D/o Khem chand Lalwani
Aged about 44 Years
R/o 10, Belvedere Road,
Alipore, Kolkata, Alipore,
West Bengal-700027
Email id: -
Kamalsinghbhutoria2018@gmail.com **...Appellant No. 9**

10 **Mrs. Sushila Devi Bhutoria**
D/o Mr. Punam Chand Dugar
Aged about 72 Years
R/o 10, Belvedere Road,
Alipore, Kolkata, Alipore,
West Bengal -700027
Email id:- Pmbhutoria1942@gmail.com **...Appellant No. 10**

11 **Mr. Indraj Mal Bhutoria**
S/o Mr. Padam Chand Bhutoria
Aged about 52 Years
R/o 10, Belvedere Road,
Near bhabani bhaban, Alipore,
H.O, Kolkata, West Bengal-700027
Email id: - Babitabhutorin49@gmail.com **...Appellant No. 11**

12 **Mr. Paras Mal Bhutoria**
S/o Mr. Anand Mal Bhutoria
Aged about 79 Years
R/o 10, Belvedere Road,
Near bhabani bhaban, Alipore,

H.O, Kolkata, West Bengal-700027
Email id: - Pmbhutoria1942@gmail.com **...Appellant No. 12**

13 **Mr. Sunil Bhutoria**
S/o Mr. Paras mal Bhutorai
Aged about 39 Years
R/o 10, Belvedere Road,
Near bhabani bhaban, Ali pore,
H.O, Kolkata, West Bengal-700027
Email id: - Pmbhutoria1942@gmail.com **...Appellant No. 13**

14 **Mr. Padam Chand Bhutoria**
S/o Mr. Anand Mal Bhutoria
Aged about 81 Years
R/o 10, Belvedere Road,
Near bhabani bhaban, Alipore,
H.O, Kolkata, West Bengal-700027
Email id: - godavaripcb@gmail.com **...Appellant No. 14**

15 **Mrs. Chanda Devi Bhutoria**
D/o Mr. Chagan Mal Singhi
Aged about 72 Years
R/o 10, Belvedere Road,
Alipore, Kolkata, West Bengal-700027
Email id: - godavaripcb@gmail.com **...Appellant No. 15**

16 **Jay Bhutoria Benefit Trust**
Through its Guardian/ Manager
Mr. Kamal Singh Bhutoria
Office at 18 N.S. Road,
2nd Floor, Kolkata-700001
Email id:-
Kamalsinghbhutoria2018@gmail.com **...Appellant No. 16**

17 **Naman Bhutoria Benefit Trust**
Through its Guardian/ Manager Mr. Kamal Singh Bhutoria
Office at 18 N.S. Road,
2nd Floor, Kolkata 700001
Email id:-
Kamalsinghbhutoria2018@gmail.com **...Appellant No. 17**

Versus

1. **M/s. TATA Steel Limited**
Registered office at Bombay House, 24,
Homi Mody Street,
Mumbai 400001
Email ID : cosec@tatasteeel.com **...Respondent No.1**

2. **M/s. Bamnipal Steel Ltd.**

Registered Office at
Tarapur Complex, Plot No. F8, MIDC,
Tarapur Industrial Area,
Palghar, Thane MH 401506
Email ID: cosec@tatasteel.com **...Respondent No. 2**

3. **M/s. TATA Steel BSL Limited**
Ground Floor, Mira Corporate Suites,
Plot No. 1 & 2, Ishwar Nagar,
Mathura Road, City,
New Delhi –110020
Cosec@tatasteelbsl.co.in **...Respondent No. 3**

Present:

For Appellants : Mr. Gaurav Mitra, Mr. Ujjwal Jain, Mr. Shikher & Ms. Lavonya Pathak, Advocates.

For Respondents : Mr. Arun Kathpalia, Sr. Advocate along with Mr. Shashank Gautam, Mr. Arvind Thapliyal, Mr. Siddhant Grover, Ms. Saravva Vasanta, Ms. Anindita Roy Chowdhury, Ms. Trisha Ray Chawdhary, Ms. Simran Bhat, Mr. Saurabh Batra & Mr. Aditya Dhupar, Advocates.

With

Company Appeal (AT) No. 150 & 151 of 2021

[Arising out of Order dated 29.10.2021 & 20.02.2020 passed by the Adjudicating Authority/National Company Law Tribunal, Mumbai Bench, in CA 156 of 2021 and CA 261 of 2021 In CP (CAA) No. 70/MB/2021 Connected with CA (CAA) No. 3083/MB/2019 & CA(CAA) No 129/MB 11/2019.]

IN THE MATTER OF:

1. **Ms. Pooja Rai**
Authorised Representative of Unsecured
Creditors of TATA Steel BSL Ltd.
Address: 25, Ramdev Row House,
NR. Balaji Krupa, Palanpur Surat
Email ID: pooja@adsizzler.com **...Appellant No. 1**

2. **Tapas Kumar Malla Proprietor**
Of M/s Tapas Kumar Malla
Address : Zangalpur, Mera Municipality
District – Dhenkanal Odisha, PIN – 759121.
E-mail ID: tapasmalla123@gmail.com **...Appellant No. 2**

3.
Ms. Pooja Rai Authorized Representative of R&S Engineering Services,
Address: RIO 25, Ramdev Row House,
Nr. Balaji Krupa, Palanpur Surat,
E-mail ID : pooja@adsizzler.com **...Appellant No. 3**

Versus

1. **M/s. TATA Steel BSL Limited**
(Formerly known as 'Bhushan Steel Limited')
CIN : L74899DL1983PLC014942
Registered Office :
Ground Floor, Mira Corporate Suites,
Plot No. 1 & 2, Ishwar Nagar,
Mathura Road, City,
New Delhi –110020
Cosec@tatasteelbsl.co.in **...Respondent No. 1**

2. **M/s. Bamnipal Steel Ltd.**
CIN: U27310MH2018PLC304494
Registered Office :
Tarapur Complex, Plot No. F8, MIDC,
Tarapur Industrial Area,
Palghar Thane, **...Respondent No. 2**
Maharashtra - 401506
Email ID: cosec@tatasteel.com

3. **M/s. TATA Steel Limited**
[CIN: L27100MH1907PLC000260]
Registered office at Bombay House, 24,
Homi Mody Street, Fort,
Mumbai 400001
Email ID : cosec@tatasteeel.com **...Respondent No. 3**

Present:

For Appellants : Mr. Pankaj Jain, Mr. Sarthak Dugar & Mr. Aman Shankar, Advocates.

For Respondents : Mr. Arun Kathpalia & Mr. Ramji Srinivasan, Sr. Counsels along with Mr. Shashank Gautam, Mr. Arvind Thapliyal, Ms. Saravna Vasanta, Mr. Siddharth Pandey, Mr. Siddhant Grover, Mr. Aditya Dhupar, Ms. Anindita Roychowdhury, Ms. Trisha Raychaudhuri, Mr. Saurabh Batra, Ms. Simran Bhat, Ms. Namrata Saraogi, Ms. Kartik Pandey.

J U D G M E N T

(05.10.2023)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal in CA (AT) No. 132 of 2021 has been filed by P. Jatinder Singh- Appellant No. 1 on behalf of 16 other Appellants herein, under Section 421 of the Companies Act, 2013 against the Impugned Order dated 29.10.2021 in CA 156 of 2021 and CA 261 of 2021 In CP (CAA) No. 70/MB/2021 Connected with CA (CAA) No. 3083/MB/2019 & CA(CAA) No 129/MB 11/2019 passed by National Company Law Tribunal, Mumbai Bench (in short, the 'Tribunal'), whereby the Tribunal rejected the application of Appellants through common Impugned Order dated 29.10.2021.

The Appellants, with respective client ID's, are public shareholder of Respondent No. 3 - M/s Tata Steel BSL Limited (formerly known as Bhushan Steel Limited). The Appellants are stated to be living in different part of India and have invested in the shares of Respondent No. 3. The objections of Appellants were rejected by the Tribunal and the scheme of amalgamation (in short '**Scheme**') of Respondent Nos. 2 & 3 in Respondent No. 1 company was approved. Aggrieved by the same, the Appellants have approached this Appellate Tribunal in the present Appeal for setting aside the Impugned Order.

2. The other appeal **Company Appeal (AT) No. 150 & 151 of 2021** arising out of same Impugned Order dated 29.10.2021 has been filed by

Tapas Kumar Malla, Proprietor and RS Engineering Services, both unsecured creditors of TATA Steel BSL Limited i.e., Respondent No. 3, who are being represented by Ms. Pooja Rai an authorized representative of the unsecured creditors.

It has been brought out that RS Engineering are unsecured creditors of the Respondent No. 3 i.e., TATA Steel BSL Limited for an outstanding amount of Rs. 4,16, 19,292/- and Tapas Kumar Malla had outstanding dues from Respondent No. 3 i.e., TATA Steel BSL Limited for amount of Rs. 16,00,810/-, thus total outstanding claims of both the unsecured creditors from the Respondent No. 3 are Rs. 4,32,20,102/-. It has been alleged that their outstanding dues has not been paid and no confirmation of outstanding dues were sent to them. It is the case of the Appellants that their outstanding debts would have been more secure in case of liquidation of the Respondent No. 3 i.e., TATA Steel BSL Limited, in comparison with the Respondent No. 1 i.e., TATA Steel Limited in terms of section 53 of the Insolvency & Bankruptcy Code, 2016 (in short the '**Code**') and therefore they are aggrieved by the Impugned Order which has approved the Scheme.

3. Heard the Counsel for Parties and perused the records made available including cited judgments.

4. Respondent No. 1 – M/s Tata Steel Limited is a public company, Respondent No. 2 – M/s Bamnipal Steel Ltd. is wholly own subsidiary company of Respondent No. 1. Bhushan Steel Limited was admitted through Corporate Insolvency Resolution Process (in short '**CIRP**') by the

Adjudicating Authority on 26.07.2017 under provisions of the Code. The Respondent No. 1 submitted its Resolution Plan for Bhushan Steel Limited for synergies and value enhancement of various stakeholders. The Resolution Plan was approved by the Adjudicating Authority on 15.05.2018. The Respondent No. 2, thereafter, acquired 72.65% shares of equity share capital of Bhushan Steel Limited on 18.05.2018. The Order of the Adjudicating Authority approving the Resolution Plan was challenged and the same was dismissed by the Adjudicating Authority on 10.08.2018. The name of Bhushan Steel Limited was changed to TATA Steel BSL Ltd. (Respondent No. 3) on 27.11.2018.

5. The Appellants in CA (AT) No. 132 of 2021 have clarified that they are not opposed, in principle, to the amalgamation of the Respondents companies, however, the Appeal is to safeguard their interest as minority shareholders in Respondent No. 3 and are seeking reasonable exit route to them. The Appellants are objecting to swap ratio of 15:1 upon the composite amalgamation scheme approved vide the Impugned Order dated 29.10.2021 by the Tribunal, as the swap ratio is not based on earning of either company i.e., Respondent No. 1 or the Respondent No. 3. It has been stated that the earnings of the Tata Steel Ltd for the Ql FY 2021 was Rs. 9,000 Crore (approx.), whereas for the corresponding period Tata Steel BSL earning was Rs. 2600 Crore (approx.). Therefore, if the earnings of the two companies were compared, then the swap ratio would have been 3.5: 1 instead of 15: 1.

6. It has been brought out by the Appellant in CA (AT) No. 132 of 2021 that the proposed scheme of amalgamation is unconscionable, as the minority shareholders of the transferor company i.e. Respondent No. 3 Company have been oppressed, and no reasonable "exit option/ route" in terms of the valuation of their respective shares have been offered by the transferee company to the contesting minority shareholders. The Appellants have allegedly been coerced to accept the valuation of their investment in Tata Steel BSL Ltd, Respondent No. 3 at 1/15 of the Tata Steel Share i.e. Respondent No. 1 Company.

7. The Appellants in CA (AT) No. 132 of 2021 have raised several legal issues pertaining to methodology of the valuation of concerned companies, adequacy of swap ration of 15:1, violation of Section 230 of Companies Act, 2013 in the scheme of amalgamation, challenge to market approach method of valuation and other illegalities which tantamount to Oppression & Mis-Management of the Appellants minority shareholders.

8. The Appellants in CA (AT) No. 150 & 151 of 2021 on the other hand, brings out that the Tribunal vide order dated 20.02.2020 dispensed with meeting of unsecured creditors without obtaining the necessary consent affidavit from the unsecured creditors of the transferor company No. 2 i.e., TATA Steel BSL Limited/ Respondent No. 3 herein. It is the case of these two Appellants that transferor company No. 2 i.e., TATA Steel BSL Limited issued notice to unsecured creditors on 19.02.2021 giving opportunity to make representation regarding any objection to the amalgamation scheme

and accordingly unsecured creditors have filed objection affidavits. It is further the case of two unsecured creditors / Appellants that neither no objection affidavits under Section 230(9) of the Companies Act, 2013 were obtained from them nor any meeting convened with them as required under Section 230(1) and 230(6) of the Companies Act, 2013 before approval of the scheme by the Tribunal. The Appellants cited two judgements ***Mega Corporation Ltd.*** passed in Company Appeal (AT) No. 04 of 2018 and ***MEL Windmills Private Limited Vs. Mineral Enterprises Ltd.*** passed in Company Appeal (AT) No. 04 of 2019 in support of their argument.

9. It has been argued by the Appellant that meeting of unsecured creditors can be dispensed with only after the following due procedure as laid down in Section 230(9) of the Companies Act, 2013 i.e., after obtaining consent affidavits from the unsecured creditors which have not been obtained in the present case.

10. In view of this, these two Appellants have requested this Appellate Tribunal to set aside the Impugned Order dated 29.10.2021 along with other related prayers including directing the Respondent No. 1 to secure outstanding claim of the Appellants of Rs. 4,32,20,102/-.

11. Per-contra, the Respondents had denied all the averments made by the two Appellants in CA (AT) No. 150 & 151 of 2021. It is the case of the Respondents that **i**n consonance with the orders dated 20.02.2020, 11.01. 2021, 19.01.2021 and 05.02.2021, passed by the Tribunal in the Company Scheme Applications CA (CAA) 3083/MB/2019 and CA (CAA) 129/MB

II/2019, directions were issued by the Tribunal to Respondent Company 1 to send individual notices to

(i) all its secured creditors and

(ii) unsecured creditors having outstanding amount of Rs. 10,00,000/- or more as on 30.09.2020, with a direction that they may submit their representations in relation to the Scheme, if any, to the Tribunal.

In pursuance of the above, the Appellants had filed their individual objections to the Scheme vide their respective objection affidavits before the Tribunal dated 19.04.2021 & 27.04.2021.

12. It has been brought to our notice that the Tribunal in Para 42 & 43 of the Order, observed that the 'Scheme appears to be fair and reasonable and is not violative of any of the provisions of law and is not contrary to the public policy and the Scheme was sanctioned by the Tribunal with 'Appointed Date' as 01.04.2019.

13. The Respondents have raised the fundamental issue of locus of the Appellants in both the appeals, who do not meet the minimum threshold requirement to challenge the Impugned Order and therefore the appeals itself are not maintainable. In addition, the Respondents have also denied all the factual and legal issues raised by the Appellants in their averments as well as in their Written Submissions and Rejoinders in both the appeals.

14. In the Appeal CA (AT) No. 132 of 2021 before us the Appellant have raised 23 questions of law which reads as under:-

"1. Whether swap ratio of 15: 1 is unconscionable and prejudicial to the interest of the minority shareholders of Tata Steel BSL Ltd?

2. Whether, market approach was not conducive for valuing the shares of the petitioners companies for the purpose of amalgamation, on account of the fact that Respondent No. 3 while being taken over by the Respondent No. 1 in May, 2018 through CIRP contemplated that the same shall be merged in the Respondent No. 1 company therefore the market sentiments were in favor of the Tata Steel Ltd and

3. Whether the valuation report relied upon for the purpose of the determination of the swap ratio was principally "flawed"?

4. Whether the shareholders are disentitled from their bonafide return on their investment in view of the announcement on 25.04.2019 of 15: 1 prejudicial swap ratio, as same is not based upon the earnings of the Company and future prospects of the respective companies?

5. Whether valuers was justified m not adopting the income method of valuation for determination of the swap ratio for the purpose of the amalgamation?

6. Whether filing and subsequent withdrawal of application i.e., CA 1056/2020 filed by the Respondent No. 3 for change in appointed date from 01.04.2019 to 01.04.2020 was in clear violation of the General Circular No. 09/2019 issued by the Ministry of Corporate Affairs?

7. Whether the scheme of amalgamation is in violation of Section 230 of the Companies Act, 2013?

8. Whether the majority vote count claimed by the Respondent mere an eye wash?

9. Whether Respondents failure to adopt the Income approach method for valuation for determination of the swap ratio has vitiated the scheme of amalgamation?

10. Whether, the Hon'ble Tribunal has erred thereby taking the report of the Regional Director, Mumbai dated 17.06.2021 in respect of the Respondent No. 1, as gospel truth and not disclosing the contents of the said report to the Appellants herein, who have primarily objected to the prejudicial swap ratio 15: 1 proposed under the scheme of merger by the Respondent Companies?

11. Whether the Appellants in the facts of the present case were entitled to the report dated 17.06.2021 of the Regional Director, Mumbai, Affidavits/ Joint Affidavits filed on behalf of the Respondents and supplementary report dated 13.07.2021 filed by the Regional Director, Mumbai?

12. Whether determination of the swap ratio of 15: 1 based on a valuation report which is more than 2 years old, was correct?

13. Whether, in the peculiar facts of the present case wherein Respondent No. 1 while taking over the Respondent No. 3 Company in May, 2018 through CIR Process had already undertaken/ declared to merge the Respondent No. 3 Company, then considering the fact that the said fact driving the market sentiments for the purpose of investment post acquisition of Respondent No. 3 under CIR Process being always in favor of Respondent No. 1 Company in comparison to the Respondent No.3 Company, was it correct to conduct the valuation of the Respondent

Company shares for determining the swap ratio on the market approach ?

14. Whether the determination of swap ratio of 15: I on the basis of the Market Approach was correct?

15.Despite the fact that the Respondent No. 3 has better earnings and robust fundamentals post acquisition than Respondent No. 1, was swap ratio of 15: 1 correct?

16. Whether, m view of the announcement made by Shri. Narendran, Chairman of the Tata Steel BSL Ltd, Respondent No. 3 in its 37th Annual General Meeting of the Tata Steel BSL Ltd, in respect of the announcement of the appointed date to be 01.04.2020, can the Appointed Date i.e. April 1, 2019 as alleged to be part of the Clause 1.4 of the Scheme was in accordance with Section 232(6) of the Act?

17.Whether in view of the above mentioned announcement in the 37th Annual General Meeting of the Tata Steel BSL Ltd i.e. Respondent Company with respect to the Appointed date to be 01.04.2020, Respondent No. 3 Company ought to have carried out the fresh valuation as on the said date i.e. 01.04.2020 and ought to have determined new swap ratio for the purpose of merger?

18.Whether the scheme has complied with the Circular No. F. No.7/ 12/2019/CL-I dated August 21, 2019 issued by the Ministry of Corporate Affairs?

19. Whether, Respondent Companies were justified in proceedings and seeking approval of the Scheme of merger on the basis of the valuation conducted 2 years back from the date of the filing of the Second motion?

20. Whether Hon'ble Tribunal ought to have directed for the fresh valuation for determining the swap ratio for the purpose of the Amalgamation/ merger?

21. Whether, in view of the specific objections raised by the Appellants herein in respect of the valuation for the purpose of determining the swap ratio of the respondent Companies for the purpose of the merger, it was correct for the Hon'ble Tribunal to have solely without due application of mind to have relied upon the reports filed by the Regional Directors and Registrar of Companies?

22.Whether the Hon'ble Tribunal failed to appreciate that Appellants had approached the Hon'ble Tribunal in response to the Public announcement dated 01.06.2021 of the Respondent Company 3 in the newspaper "Times of India" wherein the Respondent Company No. 3 while notifying the date for final disposal and hearing of the petition before the Hon'ble Tribunal on 18.06.2021 has also invited the shareholders of the Respondent Company 3 to approach the Hon'ble Tribunal for the purpose of adjudication of their objections in respect of the merger scheme?

23.Whether, in view of proviso to Section 230 (4) of the Act cannot be construed to interdict the jurisdiction of the Hon'ble Tribunal during the second motion to scrutinise the scheme of merger on account of patent illegality and perversity?

(Emphasis Supplied)

Similarly, the Appellants in CA (AT) No. 150 & 151 of 2021, the 2 Appellants have raised three questions of law, which reads as under :-

> *(1) Whether the impugned order would not have approved the scheme of amalgamation of the Respondent Companies given that the statutory provisions of Section 230(1)(b) of the Companies Act, 2013 were not followed by the Hon'ble Adjudicating while passing the Impugned Order dated 29.10.2021?*
>
> *(2) Whether the scheme is liable to be rejected in view of the statutory mandate under the section 230(6) and 230(9) of the Companies Act, 2013 not followed by the Respondents?*
>
> *(3) Whether the Impugned Orders passed by the Hon'ble NCLT dated 29.10.2021 and is liable to be set aside in view of the settled mandate in re section 230 (6) and 230(9) of the Companies Act, 2013 were not followed by the Hon'ble NCLT in convening the meeting of the creditors.*
>
> *(Emphasis Supplied)*

15. After taking all submissions into consideration in deciding various Questions of Law in both the Appeals, this Appellate Tribunal need to deliberate and decide on the following major issues which covers all issues in broad sense, in order to test the legality or otherwise of the Impugned Order dated 29.10.2021 :-

(i) Whether the Appellants, in both the Appeal before us, have any locus to challenge the Impugned Order dated 29.10.2021.

(ii) Whether the valuation method adopted by the Registered Valuer and confirmed by independent experts was correct and adequate.

(iii) Whether the swap ratio of 15:1 was unconscionable and prejudicial towards the interest of minority shareholder of TATA Steel BSL Ltd.

(iv) Whether the appointed date was in violation to general Circular No. 09/2019 issued by Ministry of Corporate Affairs (in short '**MCA**').

(v) Whether the scheme of amalgamation was in violation of Section 230 of the Companies Act, 2013.

16. In order to examine above issues, we need to examine the rational and fundamentals of the composite scheme of amalgamation and salient features of the same.

17. The Composite Scheme of Amalgamation of Bamnipal Steel Limited ("Respondent Company 2" or "Transferor Company 1") and Tata Steel BSL Limited (formerly known as Bhushan Steel· Limited) ("Respondent Company 3" or "Transferor Company 2") into and with Tata Steel Limited ("Respondent Company 1" or "Transferee Company") ("Scheme") provides for:

(i) the amalgamation of the Respondent Company 2 into and with the Respondent Company 1 and consequent dissolution of the Respondent Company 2 without winding up;

(ii) the amalgamation of the Respondent Company 3 into and with the Respondent Company 1 and consequent dissolution of the Respondent Company 3 without winding up;

18. The salient features of the Scheme as noted from submissions are as follows :-

(a) ***Appointed Date:*** *April 1, 2019, or any other date approved by the NCLT* ***(Clause 1.4)***

(b) ***Effective Date:*** *Date on which the last terms and conditions referred in Clause 25.1 have been fulfilled.* ***(Clause 1.9)***

(c) ***Date of Taking Effect:*** *The Scheme shall be effective from the Appointed Date mentioned herein but shall be operative from the Effective Date* ***(Clause 3.1)***

(d) ***Record Date:*** *The Record Date under the Scheme means the date to be mutually fixed by the Board of Directors of the Respondent Company 3 and the Respondent Company 1, for the purpose of determining the shareholders of the Respondent Company 3 who shall be entitled to receive fully paid-up equity shares of the Respondent Company 1 as contemplated under the Scheme.* ***(Clause 1.18)***

(e) ***Consideration:*** *1 (One) equity share of INR 10/- each credited as fully paid up of the Transferee Company for every 15 (Fifteen) equity shares of INR 2 each fully paid up of the Transferor Company 2.* ***(Clause 13.1)***

(f) ***Scheme Conditional on Approvals & Sanctions*** *which are as follows* ***(Clause 25)***

(i) *The requisite consents, no objection and approvals of stock exchanges and SEBI to the Scheme in terms of SEBI Circular and/or SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 on terms acceptable to the companies.*

(ii) *The Scheme being approved by respective requisite majorities in numbers and value of such class of members and creditors of the Companies as may be directed by NCLT or required under applicable law.*

(iii) *The Scheme being approved by the public shareholders of the Transferee Company and the Transferor Company 2 through e voting*

(iv) The Scheme being sanctioned by NCLT under Section 230 to 232 of the Companies Act

(v) There having been no interim or final ruling, decree, or direction by any governmental authority, which has not been stayed by an appellate authority, which has the effect of prohibiting or making unlawful, the consummation of the proposed scheme by any of the companies

(vi) The certified copy of the NCLT Order being filed with RoC by respective companies.

19. We note that the scheme was approved by 99.33% of the equity shareholders and 90.93% of the public shareholders of Respondent Company 3 and combined 99.99% of public shareholders and equity shareholders of Respondent Company 1. After obtaining the shareholder's approval on 13.04.2021, a Joint Company Scheme Petition bearing No. C.P. (CAA)/70/2021 was filed by the Companies in CA (CAA) 129/ND/2019 and CA (CAA)/3083/2019 and the Tribunal vide order dated 29.10.2021, approved the Composite Scheme of Amalgamation.

20. It has been brought to our notice by the Respondents that after obtaining the approval of the Tribunal for amalgamation scheme, the Respondents have taken various legal, statutory and financial steps, as required, which inter-alia includes :-

(a) On 29.10.2021, the Respondent Company 1 and 3, intimated the stock exchanges, regarding the approval of the Scheme, in terms of

Regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations").

(b) On 02.11.2021, the Board of Directors of the Respondent Company 1 and 3, passed resolution to (a) take on record the Order of the Tribunal in the matter of Scheme of Amalgamation; (b) to fix l6.11.2021 as the Record Date.

(c) On 02.11.2021, Respondent Company 3 informed the stock exchange under Regulation 42 of the LODR Regulations that the (a) Board of Directors of the Respondent Company l, has taken on record the Tribunal Order dated 29.10.2021 and (b) Board of Directors have approved 16.11.2021 as the Record Date for the purpose of determining the shareholders of Respondent Company 3 who will be entitled to receive fully paid-up equity shares of Respondent Company I, as per the Share Exchange Ratio.

(d) On 09.11.2021, the stock exchanges issued circulars taking note of the Record Date and fixing 16.11.2021 as the date on which the script of the Respondent Company 3 would stop trading on the exchanges.

(e) On 11.11.2021, the Board of Directors of Respondent Company I approved the:

i) audited Standalone and unaudited Consolidated Financial Results for the quarter and period ended 30.09.2021. The

Respondent No. 1 had accounted for the amalgamation of both Respondent Nos. 2 and 3 into and with Respondent No. l for all the periods presented in the said results in accordance with the applicable accounting standards.

ii) issuance of one fully paid-up Equity Share of Respondent Company I of face value Rs. 10/- each for every fifteen Equity shares of Respondent No. 3 of face value Rs. 2/- each up to 1,99,34,052 equity shares, to eligible shareholders of Respondent No. 3 as on the Record Date i.e., 16.11.2021 (as announced by Respondent No. l). Further, in terms of the Scheme of Amalgamation, the Equity shares owned by Respondent No. 2 in Respondent No. 3 and Equity shares owned by the Respondent No.1 in Respondent No. 2 shall stand cancelled. Also, the preference shares held by the Respondent No. l in Respondent No. 3 shall also stand cancelled.

(f) On 11.11.2021, Respondent Companies, in terms of Clause 25. 1.6 of the Scheme of Amalgamation and directions as per Para-44 of the Order, filed the Certified Copy of the Tribunal's Order along E-Form INC 28, for sanctioning the Scheme of Amalgamation with the respective jurisdictional Registrar of Companies. With this filing, the Respondent Companies had complied with all the conditions specified in Clause 25.1 of the Scheme of Amalgamation. Accordingly, in terms of Clause 3.1 read with Clause 1.9 of para II of Part I of Scheme of Amalgamation, the captioned Scheme of

Amalgamation had become operative from 11.11.2021. The INC 28 of Respondent No. 3 was approved and taken on record on 12.11.2021. The INC 28 of the Respondent No. 2 was approved and taken on record on November 15, 2021.

21. It is the case of Respondents that the Respondent No. 1 infused Rs. 36,400 Crores into Respondent No. 3 to revive it, which was much more than the liquidation value of Respondent No. 3 of Rs. 14,541 Crores.

22. After perusal of above details, we shall endeavour to examine the issues framed earlier in subsequent discussions.

23. In order to examine various issues and points raised by the Appellants, in both the Appeals before us, we will take into account various relevant provisions of Companies Act, 2013, pertinent to compromise, arrangement and amalgamation, which are primarily covered in Section 230, 231 & 232 of the Companies Act, 2013 to examine the various issues of the Appellants to challenge the composite scheme of amalgamation. Chapter- XV of Companies Act, 2013 deals with "Compromises, Arrangements & Amalgamations". Section 230 describes Power to Compromise for arrangements with Creditors and Members, Section 231 describes Power of Tribunal to enforce compromise or Arrangement and Section 232 deals with Merger and Amalgamation of Companies.

These Sections read as under:

CHAPTER XV

COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

230. Power to compromise or make arrangements with creditors and members.

(1) Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them, the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Explanation.—For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

(2) The company or any other person, by whom an application is made under subsection (1), shall disclose to the Tribunal by affidavit—

(a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;

(b) reduction of share capital of the company, if any, included in the compromise or arrangement;

(c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including—

(i) a creditor's responsibility statement in the prescribed form;

(ii)safeguards for the protection of other secured and unsecured creditors;

(iii) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;

(iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and

(v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

(3) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of

the directors of the company or the debenture trustees, and such other matters as may be prescribed:

Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed:

Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.

(5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock

exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1)of section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

(6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.

(7) An order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:—

(a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;

(b) the protection of any class of creditors;

(c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;

(d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;

(e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement: Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

(8) The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

(9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

(10) No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.

(11) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed: Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.

(12) An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.

231. Power of Tribunal to enforce compromise or arrangement.

(1) Where the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it—

(a) shall have power to supervise the implementation of the compromise or arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.

(2) If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications,

and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act sanctioning a compromise or an arrangement.

232. Merger and amalgamation of companies.

(1) Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and

(b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the

Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply mutatis mutandis.

(2) Where an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:—

(a) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;

(b) confirmation that a copy of the draft scheme has been filed with the Registrar;

(c) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promotors and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

(d) the report of the expert with regard to valuation, if any;

(e) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

(3) The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

(a) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;

(b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;

(d) dissolution, without winding-up, of any transferor company;

(e) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;

(f) where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;

(g) the transfer of the employees of the transferor company to the transferee company;

(h) where the transferor company is a listed company and the transferee company is an unlisted company,—

(A) the transferee company shall remain an unlisted company until it becomes a listed company;

(B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal:

Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;

(i) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and

(j) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the

scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

(4) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect.

(5) Every company in relation to which the order is made shall cause a certified copy of the order to be filed with the Registrar for registration within thirty days of the receipt of certified copy of the order.

(6) The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

(7) Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

(8) If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh

rupees and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Explanation.—For the purposes of this section,—

(i) in a scheme involving a merger, where under the scheme the undertaking, property and liabilities of one or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing company, it is a merger by absorption, or where the undertaking, property and liabilities of two or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, it is a merger by formation of a new company;

(ii) references to merging companies are in relation to a merger by absorption, to the transferor and transferee companies, and, in relation to a merger by formation of a new company, to the transferor companies;

(iii) a scheme involves a division, where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either an existing company or a new company; and

(iv) property includes assets, rights and interests of every description and liabilities include debts and obligations of every description."

(Emphasis Supplied)

Issue No. (i) **Whether the Appellants, in both the Appeals before us, have any locus to challenge the Impugned Order dated 29.10.2021.**

- Under Proviso to Section 230 (4) of the Companies Act, 2013, any objection to compromise or arrangement can be made only by person holding not less than 10% of the shareholding or having outstanding debt amounting to not less than 5% of total outstanding debt as per latest Audited Financial Statements of the relevant period.
- In the present case, in CA (AT) No. 132 of 2021, the Appellants shareholding in Respondent No. 3 company is 7,64,791 equity shares as on 04.06.2021, which has been stated to be approximately 0.0699% of the total paid up share capital of Respondent No. 3.
- It has been brought out that on 26.03.2021, the shareholder's meeting took place where 523 equity shareholders representing 85,22,26,979 equity shares of the Respondent No. 3, which tantamount to 99.33% voted in favour of resolution of the scheme. We also note that 503 equity shareholders representing 57,68,106 equity share of Respondent No. 3 i.e., 0.67% voted against the resolution. Similarly, 522 public shareholders representing 5,77,97,993 equity shares voted in favour of the resolution in contrast to 503 public shareholders representing 57,68,106 equity shares i.e., 9.07% voted against the Resolution. This indicate that 99.99% of public shareholders and equity shareholders of Respondent No. 1 company voted in favour of the scheme. As a matter of record, it has

been brought out that out of 17 objecting shareholders, 11 shareholders holding 3,20,871 shares as on12.02.2021 i.e., cut off date did not vote at all.

- It has been submitted that the total debt amount of the Respondent Company 1 as per its financial statement is Rs. 11,608.51 Crores, and that the total percentage of the alleged outstanding debt of the Appellants amounts to only 0.04% of the total outstanding debt of the Respondent Company l, which is well below the prescribed threshold of 5% under Section 230(4) of the Companies Act ("Debt Percentage Requirement"), to file an objection to the Scheme.

  The details of the percentage of debts of each of the Appellants with respect to the total outstanding debt amount of Respondent Company 1, reads as under :-

Annexure- R-7

Annexure A 6: Details of percentage of debts of the Creditors with respect to the total outstanding debts of the Company

List of parties

Sl No	Particulars	Claim as provided by Legal Dept (Rs)	Claim as provided by Legal Dept (Rs Crs)	% of Debt (Debt as on 31st March 21)	
1	Adilakshmi Engineering	24,77,587	0.25	0.00%	
2	Dee Tee Industries	25,62,482	0.26	0.00%	
3	Arrdy Engineering Innovations Private Limited	-	-	0.00%	Seeking Return of Goods/Equipments
4	Sai Shelly Construction	29,86,862	0.30	0.00%	
5	Bharat Construction Company	1,87,90,028	1.88	0.02%	
6	Sunil Construction Company	3,26,01,101	3.26	0.03%	
7	New India Infra Buildtech	-	-	0.00%	
8	Nigs and Company	6,91,982	0.07	0.00%	Seeking Return of Allen Paver Machine
9	Redden Engineering Pvt. Ltd.	12,20,607	0.12	0.00%	
10	Tapas Kumar	16,00,810	0.16	0.00%	
11	R&S Engineering Services	4,16,19,292	4.16	0.04%	
	Total claim	10,45,50,751	10.46	0.09%	

Particulars	Rs Crs
Non current borrowings	11,202.35
Current borrowings	250.00
Current maturities of Lease Liability	156.16
Total outstanding debt as per financial statement	11,608.51

Note - Creditors is not considered above.

- The Respondents have brought out that amalgamation proceedings cannot be used as Recovery Proceedings. It is submitted that the Appellants have filed this appeal to agitate their alleged claims against the Respondent Company 1 and are hence trying to. use ·the amalgamation proceedings before the Tribunal and this Appellate Tribunal as recovery proceedings and it is a settled position of law that amalgamation proceedings cannot be treated or used for recovery proceedings.
- It has been submitted that the Appellants in CA (AT) No. 150 & 151 of 2021 herein have repeatedly alleged in the Appeal under reply herein that that there is a non-compliance of Section 230 of the Companies Act, 2013 as there was no meeting held of the unsecured creditors, and that the Tribunal has erred by dispensing with the said meeting of creditors vide its order dated 20.02.2020. In this context we have already seen earlier Section 230 (1) of the Companies Act, 2013 which contains the provisions related to amalgamation of companies. The present Scheme of Amalgamation between the Respondents is a case as contemplated in sub-clause (b) of Section 230(1), in as much that it is an arrangement between the Respondents and their respective shareholders and not in accordance with the provisions of Section 230(1)(a), as there is no compromise or arrangement with the creditors, and since no sacrifice is called for by the creditors, there is

no requirement of convening· a .meeting of the secured and unsecured creditors of the Respondent Company 1. Therefore, the provisions with respect to conducting/ dispensing with the meeting of creditors or unsecured creditors of the Respondent Company 1 does not seems to arise. The same has been noted by this Appellate Tribunal in its judgment in ***Mohit Agro Commodities Private Limited Vs. Gujarat Ambuja Exports Ltd. Company Appeal (AT) No. 59 of 2021***:

> *"**20.** This Tribunal has placed reliance in 'DLF Phase IV, Commercial Developers Limited and Ors.' in Company Appeal (AT) No. 180 of 2019 and observed that the scheme would not prejudicially affect the Creditors or Shareholders of the Appellant Company when an Application is filed by the 'Transferor Company' or 'Transferee Company', a separate Application is not necessary and dispensed with the meeting of the equity Shareholders and Creditors of the Appellant Company. At the cost of repetition, keeping in view that the financial position of the 'Transferee Company' is highly positive, the merger does not involve any compromise/arrangement with any Creditor of the Company, that there would be a positive net worth and Creditors would not be compromised, the Tribunal ought to have exercised the discretion in dispensing with the requirement of convening the meeting which would facilitate ease of doing business and save time and resources. To reiterate, we observe that the rights and liabilities of Secured and Unsecured Creditors were not getting affected in any manner by way of the proposed scheme as no new shares are being issued by the 'Transferor Company' and no compromise is offered to any*

Secured and Unsecured Creditors of the 'Transferee Company'. Therefore, we are of the considered view that when the 'Transferor and Transferee Company' involve a parent Company and a Wholly Owned Subsidiary the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors can be dispensed with as the facts of this case substantiate that the rights of the Equity Shareholders of the 'Transferee Company' are not being affected."

(Emphasis Supplied)

- It is important to note that Section 230(1) of the Companies Act, 2013 ·provides for the discretion to the Court with respect to dispensing with the requirement of calling of meeting of the Creditors. This Appellate Tribunal in its judgement in ***Mohit Agro*** *(Supra)* also made the following observations reiterating the same:

*"**17.** It is seen that Section 232(1) of the Companies Act, 2013 uses the word 'may' which introduces an element of discretion to the Tribunal · to be exercised 'in the interest of justice in appropriate situations. It is evident from the aforesaid citations that the High Courts have exercised this discretion dispensing with the requirement of convening the meetings, ·if the Bench is satisfied in all respects. Section 232 is a specific provision carved out by the Legislature when both conditions maintained in clauses (a) and (b) of sub Section (1) of Section 232 are met. In the instant case the amalgamation sought for is between a Wholly Owned Subsidiary and the Holding Company. The point which needs to be noted is whether*

such an arrangement alters the rights of the Stakeholders of the Company; whether such an amalgamation has any bearing internally on Creditors/Members of both the Companies; whether not holding the subject meeting would amount to violation of any of the provisions of the Companies Act, 2013 ; whether the Tribunal can exercise their discretion· when the 'Transferor Company' is a Wholly Owned Subsidiary of the 'Transferee Company' and financial position of the 'Transferee Company' is positive and the merger is not affecting the rights of the Shareholders or the Creditors."

(Emphasis Supplied)

- It is pertinent to note that the Tribunal vide its order dated 20.02.2020, accepted the submission of the Respondent No. 1 that in terms of Section 230(1) (b) of the Companies Act, 2013, only a meeting of the shareholders. of the Respondent Company 1 is proposed to be held, and that the meeting of the secured and unsecured creditors of the Respondent Company 1 is not required to be convened. The Tribunal directed the Respondent No. 1 to issue individual notices to its secured and unsecured creditors. The relevant portion of the order dated 20.02.2020, is being reproduced hereinunder for ready reference:

*"**20.** The Counsel for the Applicant Companies submits that since the Scheme is an arrangement between the Applicant Companies and their respective shareholders as contemplated under Section 230(1)(b) and not in*

accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no compromise and/or arrangement with the creditors and the debenture holders and as no sacrifice is called for by the creditors and the debenture holders, only a meeting of the shareholders is proposed to be held with in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. Therefore, the meeting of the Secured Creditors of the Applicant Company I and the Applicant Company 3, the Unsecured Creditors of the Applicant Companies 1, 2 and 3 and the Unsecured Debenture Holders of the Applicant Company 1 are not required to be convened. The Counsel for the Applicant Companies further submits that the Applicant Companies may be allowed to issue individual notices to their creditors (as applicable) as on July 31, 2019 and debenture holders (as applicable) as on August 2, 2019, stating therein that they may submit their representations in relation to the Scheme, if any, to the Hon'ble Tribunal within 30 (thirty) days from the date of receipt of the said notice and copy of such representations shall simultaneously be served upon the respective Applicant Companies. Further, the Applicant Company 1 do not have any Secured Debenture Holders, the Applicant Company 2 do not have any Secured Creditors, Secured Debenture Holders and Unsecured Debenture Holders and the Applicant Company 3 do not have any Secured Debenture Holders and Unsecured Debenture Holders. Accordingly, the question of convening a meeting of the Secured Debenture Holders of the Applicant Company 1, the Secured Creditors, the Secured Debenture Holders and the · Unsecured Debenture Holders of the Applicant Company

2 and the Secured Debenture ' Holders and the Unsecured Debenture Holders of the Applicant Company 3 does not arise. Accordingly, this bench hereby directs the Applicant Company 1 to issue notices·· to its sole Secured Creditor as on July 31, 2019 and all its Unsecured Debenture Holders as on August 2, 2019, the Applicant Company 2 to issue notices to all its Unsecured Creditors as ·on July 31, 2019 and the Applicant Company 3 to issue notices to all its Secured Creditors as on July 31, 2019, by courier/ registered post/ speed post/ hand delivery or through e-mail (to those creditors/ debenture holders whose e-mail addresses are duly registered with the Applicant Companies), at their last known address as per the records of the Applicant Companies, with a direction that they may submit their representations, if any, to . the Tribunal within 30 (thirty) days from the date of receipt of the said notice and copy . of such representations shall simultaneously be served upon the respective Applicant Companies. Further, this bench hereby directs the Applicant Company 1 and the Applicant Company 3 to issue notices to all those Unsecured Creditors having value of Rs. 10,00,000 (Rupees Ten Lakhs only) and more, as on July 31, 2019, by courier/ registered post/ speed post/ hand delivery or through e-mail (to those creditors whose e-mail addresses are duly · registered with the Applicant Company 1 and the Applicant Company 3), at their last known address as per the records of the Applicant Company 1 and the Applicant Company 3 respectively, with a direction that they may submit their representations, if any, to the Tribunal within 30 (thirty) days from the date of receipt of the said notice and copy of

such representations shall simultaneously be served upon the Applicant Company 1 and the Applicant Company."

(Emphasis Supplied)

- The Respondents also stated that this Appellate Tribunal in ***Housing Development Finance Corporation Ltd.,*** In re, ***2017 SCC OnLine NCLT 11108,*** held that when the scheme of amalgamation does not affect a particular class of stakeholders, like the creditors, the ·provision for holding the meeting itself is not attracted. The Hon'ble Tribunal made the following observations:

> *14. On giving combined reading to section 230(1) and section 232(2) of the Act, 2.013, it is noticeable that entire section 230 deals · with compromises and arrangements within a company, whereas section 232. though it speaks of procedure laid u/s. 230(3-6) applicable to mergers and· amalgamations. the requisites u/s. 232 (1) is beyond the scope of section 230(1). …*
>
> *26. The moot point for 'consideration is when external arrangement does not alter the rights of the stakeholders of that ·company, do we need to insist upon such company to call and hold meetings in respect to such scheme? Law is always to be understood on need based approach, unless it is specifically directed to obtain permission or license to do an 'act. This kind of obtaining permission of State or Court normally arises to ensure not only to ensure the economic interest of the members/creditors is not adversely affected, ·but also to*

ensure fiscal discipline or to remain adhere to public policy or to maintain law and order. Since main emphasis held out is on protecting the rights of members/creditors of the companies involved in mergers and amalgamations. as long as the merger or amalgamation has no bearing internal/y on creditors/members. of the respective company. we with all humility believe, such company need not propose a meeting with· its creditors or members .....

29. In this case situation is different, when meeting itself is not ordered to be held, there could not be an occasion for dispensing with holding meeting. Until before 2013 I. Act has come into force, shareholder/creditors meetings were dispensed with by considering consent given by members/creditors. Since this Bench has already held that Board of Directors themselves are empowered to approve scheme, no occasion would arise for holding shareholders meeting. Therefore, question of dispensation of shareholders meeting would obviously not arise and henceforth it can't be said that not holding shareholders meeting will amount to violation of any of the provisions of Companies Act, 2013, more specially under this Chapter-XIII. Likewise, when it does not require a meeting with creditors. the question of dispensation of meeting would not arise.

30. Until now, it has been dealt with that approval of either shareholders or creditors is not a requisite to approve the scheme, now the point ascertainable is whether the transferee company has to comply with

remaining procedure so as to get sanction for the scheme or not.

31. In section 232(1), it has been said that the provisions of sub-section (3) to (6) of section 230 shall apply mutatis mutandis. For no meeting is ordered to be held with either members or creditors. giving a notice to them under sub-section (3) will not arise, because their rights are not affected by this demerger/merger, but when it comes to notice to various regulating authorities under sub-section 5 of section 230, a notice has to go to all those authorities along with documents as mentioned under section 232(2), - (a) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company; (b) confirmation that a copy of the draft scheme has been filed with the Registrar; (c) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties; (d)the report of the expert with regard to valuation, if any; (e) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme."

(Emphasis Supplied)

There is no mandatory requirement under the Companies Act, 2013 to conduct a meeting of secured and unsecured creditors if an

arrangement or compromise is not envisaged with them. Hence, as per the provisions of the Companies Act, 2013, there was no necessity of either conducting a meeting of the unsecured creditors of Respondents, or of obtaining consent affidavits from the unsecured creditors of the Respondents before dispensing with the meeting of unsecured creditors.

- The Respondents submitted that nothing remains due and payable by the Respondents towards the alleged dues of the Appellants. It is submitted that R&S Engineering in its objection affidavit dated 27.04.202l had claimed Rs. 4,16,19,292/-. Whereas, R&S Engineering has falsely stated in the present appeal that the said amount pertains to the period past the CIRP of the Respondent No. 1, whereas all invoices filed by the Appellant before this Appellate Tribunal pertain to the period prior to the effective date under the Resolution Plan of the Respondent No. 1, i.e. 15.05.2018, i.e., entire claim and all invoices arose from a period prior to the CIRP of the Respondent No. 1. It has been brought out by the Respondents that R&S Engineering had issued a notice dated 28.01.2020 under Section 8 of the Code to Respondent No. 1, which was duly responded to by Respondent No. 1 vide its reply dated 20.02.2020, wherein it was stated that all the invoices were duly paid in the ordinary course except for one invoice no.123 dated 31.03.2017, also belonging to a period prior to the CIRP of the Respondent Company 1, amounting to Rs. 22,57,562/-,

however the same was not claimed before Resolution Professional and hence stood extinguished in terms of approved Resolution Plan of Respondent Company 1 and the provisions of the IBC. Therefore, out of Rs. 4,16,19,292/-, as claimed by R&S Engineering, all amounts stand paid except Rs. 22,57 ,562/-, which was not even Claimed before the Resolution Professional during the CIRP, and hence stands extinguished.

- It is further submitted by the Respondents that Mr. Tapas Kumar Malla had claimed an amount of Rs. 16,00,810/- vide his objection affidavit dated 19.04.2021, out of which an amount of Rs. 12,71,999/- pertains to a period prior to the effective date under the Resolution Plan of Respondent No. 1, i.e. 15.05.2018, and the same stands extinguished in terms of the approved Resolution Plan of the Respondent Company 1. The remaining amount of Rs. 3,28,811/- is on hold for contractual compliances on the part of Mr. Tapas Kumar Malla and shall be dealt in due course.
- The Respondents also brought out that the claim raised by the Appellants pertaining to the period prior to the approval of the Resolution Plan of the Respondent No. 1 is squarely covered by the principle laid down by the Hon'ble Supreme Court of India in its judgement of ***Ghanshyam Mishra and Sons Private Limited through Authorized Signatory v. Edelweiss Asset Reconstruction Company Limited Through the Director and Ors. (2021 SCC***

Online SC 313), wherein the Hon'ble Supreme Court has observed that the liability of the corporate debtor (like the Respondent Company 1 herein) and the resolution applicant (such as the Respondent Company 3) shall freeze upon approval of the resolution plan by the Adjudicating Authority.

- It is seen that the Respondent No. 1 sent notices to 861 unsecured creditors and all its secured creditors, however, only the Appellants herein, i.e., R & S Engineering and Mr. Tapas Kumar Malla, continued to object to the Scheme. The Scheme of Amalgamation of the Respondent Companies is not prejudicial to or compromising the rights of the unsecured creditors in any matter whatsoever, as the remaining creditors of Respondent No. 1 have not raised any doubts with respect to the security of their debts with the amalgamated entity or the ability of Respondent No. 3 to service their respective debts.
- The Scheme of Amalgamation does not extinguish any pending Claims of the Appellants that remain to be settled between the unsecured creditors of the Respondent No. 1. Clause 1.30 of the Scheme categorically provides the definition of Undertaking 2 to include all undertaking and business of the Company as a going concern including the assets, properties, investments, rights, approvals, licenses and powers, leasehold rights and all its debts outstanding liabilities, duties, obligations and employees. The Scheme provides that upon the Scheme coming into effect, the Undertaking. 2 shall

without any further act, instrument or deed be and stand transferred to and vested in and/or be deemed to have been and stand transferred to and vested in the Transferee Company (i.e., Respondent Company 3), as a going concern, so as to become the undertaking of the Transferee Company, with effect from the Appointed Date. The relevant provision of the Scheme reads under :-

> *"10.1 With effect from the Appointed Date, the Undertaking 2 shall, subject to the terms and conditions of this Scheme and, without any further act, instrument or deed, be and stand transferred to and vested in and/or be deemed to have been and stand transferred to and vested in the Transferee Company, as a going concern, so as to become the undertakings of the Transferee Company by virtue of and in the fallowing manner .... "*
>
> *(Emphasis Supplied)*

- The Tribunal, while approving the scheme vide Impugned Order dated 29.10.2021 has rejected the objections of the Appellants in Company Appeal (AT) No. 132 of 2021 being not maintainable in terms of Section 230(4) of the Companies Act, 2013 and gave the detail reasoning in Para 40 & 41 of the Impugned Order, which read as under :-

> ***"40.*** *Learned Senior Counsels for the Petitioner Companies submitted that the Petitioner Company 3 has received certain representations from its shareholders and creditors pursuant to the notices issued by the Petitioner Company 3. The Petitioner Company 3 received representations from*

certain shareholders holding 7,64, 791 equity shares which is approximately 0.0699% vide Company Application No. 156 of 2021 and Company Application No. 261 of 2021 in respect of the share exchange ratio in relation to the Scheme which was appropriately responded to by the Petitioner Company 3 vide response dated June 15, 2021. The Petitioner Company responded that as per Proviso to Section 230(4) of the Companies Act, 2013 ("CA 2013") any objection to Compromise or arrangement shall be made only by person holding not less than ten percent of shareholding or having outstanding debt amounting to not less than five per cent of the total outstanding debt as per the latest audited financial statement. The Petitioner Company 3 has also received objections from creditors regarding claims pertaining to the pre-CIRP period. The Petitioner Company 3 has filed appropriate responses to the said claims of the objecting creditors. In response to Creditors objections, Counsel for Petitioner company submitted that clause 18(e) of the scheme provides the definition of undertaking 2 to include all undertaking and business of the Company as a going concern including the assets, properties, investments, rights, approvals, licenses and powers, leasehold rights and all its debts, outstanding liabilities, duties, obligations and employees. Clause 18(i) of the Scheme provides that upon the Scheme coming into effect, the Undertaking 2 shall without any further act, instrument or deed be and stand transferred to and vested in and/ or be deemed to have been and stand transferred to and stand vested in the Transferee company, as a going concern, so as to become the undertaking of the Transferee Company, with effect from the Appointed Date.

41. *Therefore, as per above submissions and clear position of law the grievances of the objector is addressed accordingly and nothing survives in CA 156 of 2021 and CA 261 of 2021, Accordingly both CA 156 of 2021 and CA 261 of 2021 disposed of as dismissed."*

42. *From the material on record and after perusing the clarifications and submissions of the Petitioner Companies to the Reports filed by the Regional Directors, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.*

43. *Since all the requisite statutory compliance have been fulfilled, the Company Scheme Petition filed by the Petitioner Companies is made absolute in terms of prayer clauses (a), (b), (c), and (d) of the joint Company Scheme Petition. The Scheme is hereby sanctioned with the 'Appointed Date' as April 1, 2019.*

(Emphasis Supplied)

- It is the case of the Appellants in Company Appeal (AT) No. 132 of 2021 that admittedly the Appellants do not have the shares to meet minimum threshold limit of 10% of equity shareholders as per Companies Act. 2013. However, the Appellant's case is that the threshold limit as stipulated under Section 230 (4) of the Companies Act, 2013 does not, in any manner curtail or interdict the jurisdiction of the Tribunal to consider the objection with regard to legality or fairness of the scheme. It is the argument of the Appellants that in terms of Section 231 of the Companies Act, 2013, the Tribunal is fully

competent to consider the scheme and pass appropriate directions including modifications.

- It has been argued by the Appellants that the issue regarding locus for shareholders having less than 10% shareholding has been dealt in detail by this Appellate Tribunal in the matter of ***Ankit Mittal Vs. Ankita Pratisthan Ltd. & Ors.*** judgment passed on 29.11.2019 2019 SCC OnLine NCLAT 847.
- It has been submitted by the Appellants that in catena of judgments by Hon'ble Supreme Court of India, High Court of different states have held that powers of courts and tribunals could not be curtailed from scrutinising the scheme on any account, if the same is illegal and have referred to judgments in case of **:-**

(i) Hindustan Lever Employees Union v. Hindustan Lever Ltd 1995 Supp (1) SCC 499

(ii) Miheer H. Mafatlal v. Mafatlal Industries Ltd (1997) 1 SCC 579

(iii) Sesa Industries Ltd v. Krishna H. Bajaj and Others (2011) 3 sec 21s

(iv) Ankit Mittal v. Ankita Pratisthan Ltd and Ors. 2019 SCC OnLine NCLAT 847

- Per-contra, it is a case of Respondents that the cited judgements as discussed above are not applicable in the present appeal as they were on different facts. It has been stated that as regard ***Ankit Mittal*** *(Supra)***,** NCLAT has acknowledged that the legal position stipulates

that objectors must have a 10% threshold limit, however interference in this standalone matter was only required as the Scheme was promoter oriented and due procedures had not been followed. The Respondents have brought out the distinguishing factors noted in the judgement of Ankit Mittal (Supra) vis-à-vis in the present appeals as per tabulated comparison, submitted by the Respondents :-

S.No	*Factual Position in Ankit Mittal*	*Factual Position in TSL TSBSL Merger*
1.	Out of the 9 (nine) Respondent companies, 8 (eight) of the Respondent companies are public non-listed entities and the remaining 1(one) shareholder is a private limited entity. (Para 2) Note: None of the Companies herein are public listed companies.	Both Respondent Company 1 and Respondent Company 3 are listed entities. Note: This is significant because both Respondent Company 1 & 3 being listed entities are subject to significantly enhanced scrutiny by the Stock Exchanges and SEBI. Both companies have complied with all of the requirements stipulated by Stock exchanges and SEBI and hence received no observation letters from the stock exchanges and SEBI. This form of enhanced scrutiny and compliance requirements are not required for unlisted entities (entities which form part of the Ankit Mittal judgement).
2.	Valuation Report is an unreasoned document and is not prepared by a Registered Valuer. The valuation reports did not	Valuation Report has been prepared by C.A. Sujal Shah & CA Vikrant Jain who are reputed registered valuers. The Valuation Reports provide detailed

	calculate the per share valuation in respect of some of the material companies involved in the scheme.	reasoning on the method and approach adopted by the valuers. In granting the no observation letter by Stock Exchanges and SEBI, compliance to requirements in relation to the integrity of the valuation report is considered as an integral part of review by Stock Exchanges and SEBI.
3.	Scheme allows the participant companies to wipe out the stake of public shareholders and convert the same into its capital reserve. The Scheme was promoter oriented and hence against public policy.	The Scheme of Respondent Company no. 1 and 3, were first considered by the Audit Committees and the Board of Directors of these respective companies. The Audit Committees and the Board of Directors of both companies have independent directors and hence the level of review and scrutiny is far higher. The Audit Committee and the Board of the respective companies were provided with valuation reports and fairness opinions prepared by independent experts. C.A. Vikrant Jain and Ernst and Young Merchant Banking Services LLP for Respondent Company 1, and C.A. Sujal A. Shah and RBSA Capital Advisors for Respondent Company 3. Thereafter, in compliance with Regulation 37 of the LODR, the Scheme and all the accompanying documents were submitted to the Stock Exchanges and SEBI by Respondent Company 1 and 3. On August 26, 2019, Respondent Company no. 1 and 3 received, no observation letter from the Stock Exchanges. On March 26, 2021, the Respondent Company no. 1 and 3 convened and held the meeting of shareholders, seeking their

		approval for the Scheme. The shareholders of both companies approved the Scheme with an overwhelming majority. Given that both Respondent no. 1 and 3 are listed entities, leading proxy advisory firms, also publish their recommendations on the proposed resolution. All the proxy advisory firms recommended *a vote in favour* of the Scheme. The Scheme and accompanying documents were also reviewed by the RD, Maharashtra and Delhi. The RD of Maharashtra, and Delhi, filed their respective reports with NCLT, Mumbai and these reports are clean reports without any finding with respect to Scheme being against public policy. The Scheme and accompanying documents were also reviewed by the OL, Mumbai and Delhi. The OL of Mumbai, and Delhi, filed their respective reports with NCLT, Mumbai and these reports are clean reports without any finding with respect to Scheme being against public policy.
4.	The Regional Director in his report in relation to the Scheme had stated that the scheme of arrangement is merely a mechanism to effect a transfer of shares and is not in itself a transfer of a business undertaking and accordingly cannot be considered a scheme of arrangement under Section 230-232 of the Companies Act, 2013.	No adverse observations in the report of the RD and OL.

- It is empathetic argument of the Respondents that where the language of the Section including proviso is clear, it must be followed in the same spirit. In this connection, they relied on the ratio of ***Gurudev Dutta Vs. State of Maharashtra*** [(2001) SCC Online 573].

> **"26.** *Further we wish to clarify that it is à cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary.* ***It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law given. The Courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute,"***
>
> *(Emphasis Supplied)*

- This Appellate Tribunal feels that the requirement of minimum threshold limit for raising any objection being filed by shareholders or creditors has a rational that the shareholders holding miniscule no. of shares or less than prescribed 5% of total outstanding debts cannot be allowed to delay or abuse the process of approving scheme. In commercial sense, every single day's delay has financial impact on the concerned companies. It is the free will of the shareholders to decide what is good for them and to take logical and rational decision during voting on the scheme. The minority shareholders, if holding less than 10% of equity share capital or creditors less than 5% of total outstanding debts, do not hold any veto power to stall the process of scheme which is in larger interest of all the stakeholder.
- Of course, the Tribunal is required to ensure that all procedures as stipulated for amalgamation under Companies Act, 2013 and the relevant rules have been duly followed and the scheme is conscionable. It also implies that the Tribunal is also required to look into, before approving the scheme, that the scheme as such is fair and reasonable from different points of view and various perspectives, taking care interests of various stakeholders and the scheme can be upheld as commercially prudent decision.
- In the present appeal in Company Appeal (AT) No. 132 of 2021 the Appellants have not objected to amalgamation scheme in principle as stated in oral averments as well as in the Written Submissions but

have objected to swap ratio of 15:1. It implies that they also consider scheme to be generally beneficial to all stakeholders and in financial and economical interest of three concerned companies. For arguments sake, if based on some analogy, the swap ratio would have been better in the eyes of in the Appellants Company Appeal (AT) No. 132 of 2021, they would have agreed to the amalgamation scheme as agreed by 99.99% of the combined equity shareholders and public shareholders. Thus, we observe that the only point of contention of the Appellant is regarding valuation and prima-facie do not raise the issue regarding fair or unreasonable scheme. We also note that although the Appellants have treated the scheme as unconscionable, however, the same has not been substantiated.

- The term "conscionable" can also appear in legal contexts, including judgments, to refer to principles of fairness, equity, and conscience. When used in legal opinions, it generally carries the same meaning as in contract law, emphasizing fairness, reasonableness, and morality.

  For example, Court judgment might use the term "conscionable" to discuss whether a particular action, law, or decision aligns with principles of justice and fairness, might analyse whether a law or action is conscionable by evaluating its impact on individual rights, societal norms, and ethical considerations.

  It's important to note that the specific context in which the term "conscionable" is used in a Court judgment will determine its precise

interpretation and implications within that case. Legal language can be complex and its interpretation many times relies on the specific context as well as wording and the legal arguments presented in that relevant case.

- On a conjoint reading of Section 230 to 232 of the Companies Act, 2013, we observe that the Tribunal while considering the sanctioning of scheme has to consider the majority decision of shareholders (and creditors) who have voted in favour of the scheme after considering the pros & cons of the scheme and finding the scheme to be just, fair and reasonable, not violating any law of the land. In such case, the approved scheme becomes binding on all including dissenting minority shareholders or creditors. The commercial wisdom of the parties of the scheme who have taken an informed decisions on the scheme is required to be respected by the Tribunal. The Tribunal, being in summary proceeding, is neither expected to have the requisite expertise nor jurisdiction to go into realm of commercial wisdom of the members and the creditors of the concerned companies. On the other hand, if the scheme is against the public interest, then the Tribunal is not to approve such scheme. In the present case, the same could not been made out to be the case, by the Appellants in both the appeals before us. Similarly, if material facts are not disclosed or adequate facts are not disclosed, the Tribunal is required

to look into the legality of the scheme, which is also not the case in the present Appeals.

- The cited judgments by the Appellants have been perused and we do not find that the same to have been violated by the Tribunal while approving the composite scheme of amalgamation. The facts of the cited cases are not exactly in the same context as of the present appeals. Here is the case where overwhelming majority of 99.99% of the shareholders have approved the scheme and therefore minuscule minority shareholder holding 0.0699% of the total paid up share capital of Respondent No. 3, cannot be allowed to sabotage the scheme of amalgamation, which has been correctly adjudicated and allowed by the Tribunal. We have also taken into relevant paragraphs of the Impugned Order dated 29.10.2021, discussed earlier, which are quite clear and do not find any fault in the Impugned Order.
- By any standard, the shareholding of the 17 Appellants in Company Appeal (AT) No. 132 of 2021 are not meeting the prescribed threshold of 10% as provided in Proviso to Section 230 (4) of the Companies Act, 2013 which could entitle them to file the objections to the scheme and similarly the Appellants in Company Appeal (AT) No. 150 & 151 of 2021 do not hold minimum stipulated debt of 5% of total outstanding debts of the Respondents and therefore, we uphold that there is not locus of the Appellants in both the appeals before us.

24. Since, both the Appeals fails on the account of locus itself and do not meet the minimum threshold of 10% shareholding and 5% of the total outstanding debts as per latest Auditors Financial Statement (in the relevant period at that time), we do not intent to go into details of other issues as framed by us in earlier discussion.

25. In fine, both the Appeal are dismissed devoid of any merit(s). No Costs. The Interlocutory Application(s)', if any, are closed.

[Justice Anant Bijay Singh]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Simran